Electronically Filed by Superior Court of California, County of Orange, 10/16/2025 01:40:00 PM.
30-2025-01482941-CL-UD-CJC - ROA # 47 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

In the Appellate Division of the Superior Court of California
for the County of Orange

Consolidated Case Nos.:
30-2025-1482941 (Lead Case) and 30-2025-01487778

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Adam Bereki,
Appellant.

v.

Canjian Hou,
Respondent.

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# REQUEST FOR JUDICIAL NOTICE
# PART 1 OF 4

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Adam Bereki
3649 Metter St.
Las Vegas, Nevada 89129
949.241.6693 | abereki@gmail.com

# REQUEST FOR JUDICIAL NOTICE

## I. INTRODUCTION

**NOTE:** Appellant requests this Court take special notice of Judicial Notice Exhibit 25, the case of *Flowers and Sons Development Corp. et al., v. Municipal Court of and the City and County of San Francisco*, 86 Cal.App.3d 818 (1976) in further support of his Ex parte Application for Reconsideration regarding his jurisdictional challenge as it provides further supporting case law and evidence that the limited civil division and the appellate division of this Court lack subject matter jurisdiction because CCP § 85(a), which precludes jurisdiction for disputes over $35k, includes the "value of the property", in this case ~1.5 million, when title disputes are involved. In *Flowers,* the Court of Appeal held that "if there is present in a case any material issue involving the title of real property which property is over the value of $5,000 [present day limit $35k], the superior court has jurisdiction over the action." *Flowers* directly refutes Respondents' Opposition argument that "the value of the subject real property does not determine the amount in controversy" (Opp'n ¶ 5, p. 3).

The *Flowers* Court held that a municipal court lost jurisdiction when an amended complaint introduced a fraudulent conveyance claim affecting real property title, as such issues fell outside its authority under Code of Civil Procedure (CCP) § 86(c), which limited municipal court jurisdiction to cases with an amount in controversy of $5,000 or less and excluded title disputes. This aligns with Appellant's contentions that the UD Court and this Court lack jurisdiction over this case due to a title dispute and an amount in controversy (~$1.5 million) exceeding the $35,000 limit for limited civil cases under CCP §§ 85(a) and

580(b)(3). The relevance of *Flowers* is further strengthened by its emphasis on the mandatory transfer of cases exceeding jurisdictional limits, as required by CCP § 396. While *Flowers* was decided under the municipal court system (replaced by the unified superior court system in 1998) and a $5,000 threshold (now $35,000 for limited civil cases), its principle that the value of the property is considered in determining the "amount of controversy" when an underlying title dispute is involved and that courts must transfer cases involving title disputes or amounts exceeding jurisdictional limits. *Flowers* directly supports Appellants claim that the Appellate Division's refusal to transfer his appeal, denial of his Application to File an Oversized Brief, and order to submit his brief to this Court were without fundamental jurisdiction and violated due process.

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This document is filed in this Court to support Appellant's jurisdictional challenge as stated in his Verified Opening Brief ("VOB"), Application for Transfer, Ex parte Application for Reconsideration and Reply to Opposition, all incorporated as if fully set forth herein.

Appellant Adam Bereki ("Appellant") respectfully requests that this Court take judicial notice of the following documents pursuant to California Evidence Code § 451(a) requiring this Court to take notice of: decisions, records, and official acts of Courts of this State and the United States (RJN, Ex.'s 1–22, 24–25, excepting Ex.'s 14 and 16), § 451(c),(d) rules of professional conduct for members of the bar and rules of practice and procedure for the courts of this state (RJN Ex.s 26 and 27). Notice is further requested pursuant to § 452 (c) and § 453 for the official acts the Orange County Clerk-Recorder

(RJN Ex. 14 and 16). These documents are official records of court proceedings, official acts, and judicial precedents, and judicial notice is requested for the existence of the documents themselves and the statements contained therein, but not for the truth or validity of the statements, as they are relevant to Appellant's Verified Opening Brief, appealing the void unlawful detainer judgment in Case No. 30-2025-01459684 and related orders in Case No. 30-2015-00805807.

## DOCUMENTS FOR JUDICIAL NOTICE

1. **Judicial Notice Exhibit 1**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Certified copies of (a) Minute Orders for Trial dated March 27, 2017, and March 28, 2017; (b) Judgment Order dated April 20, 2017; and (c) Authenticated Copy of Docket from occourts.org as of May 25, 2025 (certification pending). **Relevance**: Evidences the trial court's imposition of a ~$930,000 penalty under Cal. Bus. & Prof. Code § 7031(a) and (b) without evidence of profits, damages, or criminal safeguards, initiating a chain of remedy denials and financial ruin leading to the wrongful foreclosure and unlawful detainer (UD) action at issue in this appeal. The judgment's voidness due to lack of jurisdiction and due process violations underpins the title dispute that was concealed from the UD proceedings (VOB pp. 19-26).
2. **Judicial Notice Exhibit 2**: California Fourth District Court of Appeal, Case No. G055075: Certified copies of (a) Unanimous Opinion affirming Superior Court Judgment dated October 31, 2018; (b) Rehearing Denial dated November 20, 2018; and (c) Authenticated Copy of Docket from appellate.courts.ca.gov/district-

courts/4dca as of May 25, 2025. **Relevance**: Demonstrates the appellate court's affirmance of the void Case No. 30-2015-00805807 judgment, ignoring arguments on lack of prosecutorial authority and penal nature, perpetuating extrinsic fraud and due process violations that caused financial ruin, forced bankruptcy, and the wrongful foreclosure underlying the UD action (VOB pp. 19-26).

3. **Judicial Notice Exhibit 3**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy (certification pending) of Minute Order Denying Motion to Vacate dated March 15, 2019. **Relevance**: Evidences the post-appeal refusal to vacate the void Case No. 30-2015-00805807 judgment, entrenching extrinsic fraud and denying a remedy, which contributed to the financial distress and wrongful foreclosure at issue in the UD appeal (VOB pp. 19-26).
4. **Judicial Notice Exhibit 4**: Supreme Court of California, Petition for Review, Case No. S252954: Certified copy of Petition Denied En Banc dated January 30, 2019; Authenticated Copy of Docket from supreme.courts.ca.gov as of June 11, 2025. **Relevance**: Illustrates the state's highest court's refusal to review the void Case No. 30-2015-00805807 judgment, denying a remedy for jurisdictional and Constitutional errors, contributing to the cascade of harm leading to the wrongful foreclosure and UD action (VOB pp. 19-26).
5. **Judicial Notice Exhibit 5**: United States Supreme Court, Petition for Writ of Certiorari, Case No. 18-1416: Certified Copy of denial of Petition Denied dated October 7, 2019. **Relevance**: Shows the federal judiciary's refusal to hear Appellant's certiorari petition, blocking relief for Constitutional violations in Case

No. 30-2015-00805807, exacerbating harm that led to the foreclosure and UD action (VOB pp. 19-26).

6. **Judicial Notice Exhibit 6**: U.S. District Court for the Central District of California, Case No. 8:19-CV-02050: Certified copies of (a) Dismissal of Independent Action in Equity to Vacate Void Judgment and Challenge Constitutionality of State Statute dated February 6, 2020; (b) Denial of Request for Assistant Counsel dated November 12, 2019; (c) Court Dismissal of in forma pauperis dated February 27, 2020; and (d) Docket from pacer.gov as of May 25, 2025. **Relevance**: Demonstrates the federal district court's dismissal of Appellant's action to vacate the void Case No. 30-2015-00805807 judgment under Rooker-Feldman, denying a remedy and contributing to the financial ruin and foreclosure underlying the UD appeal (VOB pp. 19-26).
7. **Judicial Notice Exhibit 7**: United States Court of Appeals for the Ninth Circuit, Case No. 20-55181: Authenticated Copy (certification pending) of Dismissal of Appeal as "frivolous" dated November 12, 2020, and Docket from pacer.gov as of May 25, 2025. **Relevance**: Evidences the federal appellate court's summary dismissal of the Case No. 8:19-CV-02050 appeal, denying a fair hearing and ignoring new authority (*Liu v. SEC*, 591 U.S. 71 (2020)), perpetuating harm that led to the foreclosure and UD action (VOB pp. 19-26).
8. **Judicial Notice Exhibit 8**: United States Supreme Court: Authenticated Copy of Clerk Refusal to File Emergency Petition for Original Writ of Error and/or Non-Statutory Habeas Corpus dated September 22, 2021. **Relevance**: Highlights administrative barriers to federal relief for the void Case No. 30-2015-00805807

judgment, underscoring systemic denial of remedies that contributed to the foreclosure and UD action (VOB pp. 19-26).

9. **Judicial Notice Exhibit 9**: Superior Court of California for the County of Orange, Case No. 30-2022-01271693: Authenticated Copy of Emergency Ex Parte Application for Petition for Writ of Habeas Corpus – Denied. **Relevance**: Shows continued state court denials of collateral relief for the void Case No. 30-2015-00805807 judgment, supporting equitable tolling and absence of remedies, which led to the foreclosure and UD action (VOB pp. 19-26).
10. **Judicial Notice Exhibit 10**: Superior Court of California for the County of Orange, Case No. 30-2022-01271693: Authenticated Copy of Petition for Writ of Habeas Corpus – Denied. **Relevance**: Further evidences state court refusals to address the void Case No. 30-2015-00805807 judgment's constitutional defects, reinforcing systemic denial of remedies leading to the foreclosure and UD action (VOB pp. 19-26).
11. **Judicial Notice Exhibit 11**: United States Supreme Court, Case No. 22A426: Authenticated Copy of (a) Application for Emergency Stay Pending the Filing of Original Writs of Quo Warranto, Mandamus, and Habeas Corpus and Court website Denial by Justice Kagan dated November 15, 2022; and (b) Certified Copy of Denial by Court dated January 9, 2023. **Relevance**: Confirms the federal judiciary's rejection of emergency stays, leaving Appellant without recourse and contributing bankruptcy, foreclosure ,and UD action (VOB pp. 19-26).
12. **Judicial Notice Exhibit 12**: United States Bankruptcy Court for the Central District of California, Case No. 8:22-BK-12076-SC: Authenticated Copy of Discharge

Order dated March 27, 2023, and Docket from pacer.gov as of May 25, 2025. **Relevance**: Illustrates the financial devastation caused by the void Case No. 30-2015-00805807 judgment, with the discharge order highlighting violations of the bankruptcy discharge injunction (11 U.S.C. § 524(a)) through foreclosure, underpinning the UD action's title dispute (VOB pp. 19-26).

13. **Judicial Notice Exhibit 13**: California Court of Appeal, Second Appellate District, Case Nos. B326780 and B328264: Authenticated Copy of Denial of Permission to File Amicus Brief [and request for intervention] dated July 2, 2024. **Relevance**: Evidences the Second Appellate District's denial of Appellant's request to file an amicus brief or intervene in Case Nos. B326780 and B328264, further demonstrating the systemic denial of judicial remedies for the void Case No. 30-2015-00805807 judgment, which contributed to the financial ruin, wrongful foreclosure, and UD action by continued denial of remedy (VOB pp. 19-26).
14. **Judicial Notice Exhibit 14**: Certified Copy of Trustee's Deed Upon Sale, Clerk-Recorder for the County of Orange, filed January 30, 2025, Certified. **Relevance**: Evidences the purported sale of Appellant's property at 818 Spirit, Costa Mesa, CA, for $371,688 to Respondent Hou (VOB p.71).
15. **Judicial Notice Exhibit 15**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of Ex Parte Application for Emergency Stay of Unlawful Detainer Action (Case No. 30-2025-01459684), Answer to Complaint, Verified Motion to Vacate Void Judgment, Complaint filed March 14, 2025 (without signatures, exhibits omitted). **Relevance**: Demonstrates Appellant's efforts to challenge the void UD judgment in Case No. 30-2025-

01459684 by raising the title dispute and jurisdictional defects stemming from the void Case No. 30-2015-00805807 judgment, wrongful foreclosure, and bankruptcy violations, supporting the appeal's claims of due process violations (VOB passim)

16. **Judicial Notice Exhibit 15.1**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Certified Minute Order (March 18, 2025) – Denying Ex Parte Relief without substantive explanation, refusing to recognize Answer, Motion to Vacate, and Complaint. **Relevance**: Evidences Judge Hesseltine's summary denial of relief, ignoring unopposed evidence of title defects and fraud, perpetuating jurisdictional errors and extrinsic fraud in the UD action (VOB pp. 52-56).
17. **Judicial Notice Exhibit 15.2**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of Ex Parte Application to Vacate March 18, 2025 Order, Stay UD Action, Restore Possession (May 21, 2025). **Relevance**: Shows Appellant's continued efforts to seek relief from the void UD judgment and restore possession, highlighting ongoing harm and jurisdictional defects in Case No. 30-2025-01459684 (VOB pp.74-77).
18. **Judicial Notice Exhibit 15.3**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Certified Minute Order (May 22, 2025) – Summarily Denying Ex Parte. **Relevance**: Demonstrates Judge Hesseltine's refusal to address unopposed evidence of jurisdictional defects and fraud, entrenching due process violations in the UD action (VOB pp.74-77).
19. **Judicial Notice Exhibit 15.4**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of Motion to Vacate

(Independent Action in Equity) (Reporter's Transcript omitted). **Relevance**: Supports Appellant's equitable challenge to the void Case No. 30-2015-00805807 judgment, which caused the foreclosure and UD action, evidencing jurisdictional defects and extrinsic fraud (VOB pp. 19-26).

20. **Judicial Notice Exhibit 15.4A**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of First Amended Declaration of Adam Bereki for Motion to Vacate (Independent Action in Equity). **Relevance**: Provides sworn statements supporting the equitable action to vacate the void Case No. 30-2015-00805807 judgment, reinforcing jurisdictional and constitutional arguments underlying the UD appeal (VOB pp. 19-26).
21. **Judicial Notice Exhibit 15.4B**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of Second Amended Declaration of Adam Bereki for Motion to Vacate (Independent Action in Equity). **Relevance**: Further supports the equitable action with updated declarations, evidencing the void Case No. 30-2015-00805807 judgment's impact on the foreclosure and UD action (VOB pp. 19-26).
22. **Judicial Notice Exhibit 15.5**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of Humphreys Opposition to Reply for Motion to Vacate (Independent Action in Equity). **Relevance**: Evidences opposition to Appellant's equitable action in Case No. 30-2015-00805807, relevant to assessing the procedural history and ongoing disputes impacting the UD appeal (VOB pp. 19-26).

23. **Judicial Notice Exhibit 15.6**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated Copy of Reply to Opposition for Motion to Vacate (Independent Action in Equity). **Relevance**: Demonstrates Appellant's response to opposition, supporting arguments for vacating the void Case No. 30-2015-00805807 judgment, which caused the foreclosure and UD action (VOB pp. 19-26).
24. **Judicial Notice Exhibit 15.7**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Certified Minute Order Denying Vacatur (June 26, 2025). **Relevance**: Shows Judge Hesseltine's denial of the motion to vacate the void Case No. 30-2015-00805807 judgment, perpetuating jurisdictional errors and due process violations related to the UD action's underlying title dispute (VOB pp. 19-26).
25. **Judicial Notice Exhibit 15.8A**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated copy of Verified Statement to Disqualify Judge David Hesseltine. **Relevance**: Evidences Appellant's attempt to address potential judicial bias in Case No. 30-2015-00805807, relevant to due process claims in the UD appeal (VOB pp. 19-26).
26. **Judicial Notice Exhibit 15.8B**: Superior Court of California for the County of Orange, Case No. 30-2015-00805807: Authenticated copy of Order Striking Statement of Disqualification and Verified Answer, Judge David Hesseltine. **Relevance**: Demonstrates the court's refusal to consider disqualification in Case No. 30-2015-00805807, supporting claims of procedural unfairness (VOB p.26)

27. **Judicial Notice Exhibit 15.8C**: California Fourth District Court of Appeal, Case No. G065772: Authenticated Copy of Writ of Mandate, First Amended and Exhibits. **Relevance**: Shows Appellant's attempt to seek appellate relief for judicial disqualification in Case No. 30-2015-00805807, evidencing ongoing procedural challenges relevant to the UD case (VOB p.26).
28. **Judicial Notice Exhibit 15.8D**: California Fourth District Court of Appeal, Case No. G065772: Authenticated Copy of Petition Summarily Denied by Justices Motoike, Delaney, Scott (August 7, 2025). **Relevance**: Evidences the appellate court's denial of relief in Case No. G065772, perpetuating denial of remedies and further evidencing bias (VOB p.26).
29. **Judicial Notice Exhibit 16**: Orange County Clerk-Recorder, Certified Abstract of Judgment, Superior Court of California for the County of Orange, Case No. 30-2015-00805807. **Relevance**: Demonstrates the enforcement mechanism of the void Case No. 30-2015-00805807 judgment, causing financial and property harm through the foreclosure underlying the UD action and evidencing notice to Respondent of liens effecting the validity of the title to the property (VOB p. 47: Respondent is not a bona fide purchaser).
30. **Judicial Notice Exhibit 17**: Superior Court of California for the County of Orange, Case No. 30-2025-01459684: Authenticated Copy of Updated Proof of Service Re: Ex Parte Hearing. **Relevance**: Evidences procedural compliance in the UD action (Case No. 30-2025-01459684), relevant to challenging the enforcement of the void judgment (VOB p.73 erroneous notice claim).

16. **Judicial Notice Exhibit 18**: Superior Court of California for the County of Orange: Authenticated Copy of Conversation with Deputy Clerk, occourt.org chat. **Relevance**: Provides evidence of procedural interactions with court staff, supporting claims of systemic barriers to relief in the UD action, including obstruction of filings (VOB pp. 69-70 Deputy Clerk's continued ministerial breaches– denial of petition for redress).
17. **Judicial Notice Exhibit 19**: U.S. Bankruptcy Court for the Central District of California, Case No. 8:22-BK-12076-SC: Authenticated Copy of Citizens Bank's Notice of Motion and Motion for Relief from Automatic Stay. **Relevance**: Shows Citizens Bank's reliance on the void Case No. 30-2015-00805807 judgment lien to justify foreclosure, violating bankruptcy protections and contributing to the UD action's title dispute (VOB pp. 27-39).
18. **Judicial Notice Exhibit 20**: U.S. Bankruptcy Court for the Central District of California, Case No. 8:22-BK-12076-SC: Authenticated Copy of Debtors Responses and Objections to Citizens Bank Notice of Motion and Motion for Relief from Automatic Stay; Declared Statement of Intent of Adam Bereki to Commence Adversary Proceedings. **Relevance**: Evidences Appellant's efforts to challenge the invalid lien in bankruptcy, supporting claims of due process violations and harm leading to the UD action (VOB pp. 27-39).
19. **Judicial Notice Exhibit 21**: U.S. Bankruptcy Court for the Central District of California, Case No. 8:22-BK-12076-SC: Authenticated Copy of Order Granting Motion for Relief from Automatic Stay. **Relevance**: Demonstrates the bankruptcy court's premature grant of stay relief, enabling the wrongful foreclosure by relying

on the void Case No. 30-2015-00805807 judgment lien, central to the UD action's title dispute (VOB pp. 27-39).

20. **Judicial Notice Exhibit 22**: U.S. Bankruptcy Court for the Central District of California, Case No. 8:22-BK-12076-SC: Authenticated Copy of Order Granting Motion to Avoid Lien. **Relevance**: Confirms the avoidance of the Case No. 30-2015-00805807 judgment lien for impairing the homestead exemption, supporting claims of bankruptcy violations and invalid foreclosure in the UD appeal (VOB pp. 27-39).
21. **Judicial Notice Exhibit 23**: U.S. Bankruptcy Court for the Central District of California, Case No. 8:22-BK-12076-SC: Authenticated Copy of Declaration of Adam Bereki. **Relevance**: Provides sworn statements challenging the Case No. 30-2015-00805807 judgment lien's validity, supporting claims of financial devastation and wrongful foreclosure in the UD appeal (VOB pp. 27-39).
22. **Judicial Notice Exhibit 24**: *Flowers and Sons Development Corp. et al., v. Municipal Court of and the City and County of San Francisco*, 86 Cal.App.3d 818 (1976). **Relevance**: Provides legal precedent supporting Appellant's arguments that jurisdictional defects and due process violations render judgments void, applicable to the UD action and Appeal.
23. **Judicial Notice Exhibit 25**: Rules of Professional Conduct for Members of the State Bar of California, adopted pursuant to California Business and Professions Code § 6076, as published on the official website of the State Bar of California. **Relevance**: Provides the ethical standards governing attorney conduct, relevant to evaluating Henry Paloci's misconduct in filing an improper unlawful detainer

complaint, unnotified default request, and fraudulent writ application despite knowledge of the title dispute and jurisdictional defects in Case No. 30-2025-01459684, constituting extrinsic fraud and violations of Cal. Bus. & Prof. Code § 6068(a)–(d)

24. **Judicial Notice Exhibit 26**: Rules of Practice and Procedure for the Courts of this State, adopted by the Judicial Council of California, as published on the official website of the California Courts. **Relevance**: Establishes the procedural standards governing judicial officers and court personnel, relevant to evaluating the misconduct of Judge David Hesseltine, Commissioner Carmen Snuggs-Spraggins, and Deputy Clerks in Case No. 30-2025-01459684 and Case No. 30-2015-00805807, including summary denials without reasoned explanation, obstruction of filings, and unauthorized rulings, which violated due process and perpetuated jurisdictional defects.

## LEGAL BASIS FOR JUDICIAL NOTICE

Pursuant to California Evidence Code §§ 451(a), 452(c),(d), this Court may (or shall as required by § 451 and 453) take judicial notice of records of any court of this state or of the United States, including minute orders, judgments, opinions, denials, and dockets, as these are official acts of the judicial department. Judicial notice is requested for the existence of these documents and the statements contained therein, but not for the truth or validity of the statements, consistent with California Evidence Code § 450. These documents are relevant to Appellant's Verified Opening Brief, Application for Transfer/Re-Assignment as they demonstrate the procedural history, prior judicial

actions, and official acts underlying the claims of jurisdictional defects, extrinsic fraud, and Constitutional violations in Case No. 30-2025-01459684 and related Case No. 30-2015-00805807, including the void 2015 judgment, wrongful foreclosure, and UD proceedings.

## REQUEST

Appellant respectfully requests that the Court take judicial notice of the above-listed documents as allowed or required by law, for the existence of the documents and the statements contained therein, but not for the truth of the statements, as they are relevant to the Appellant's Verified Opening Brief filed concurrently herewith.

Date: October 16, 2025

Adam Bereki

## DECLARATION OF ADAM BEREKI IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE

I, Adam Bereki, declare under the laws of California that the following is true and correct:

1. The documents listed in the concurrently filed Request for Judicial Notice (Judicial Notice Exhibits 1–23) are true and correct copies of official court records, judicial precedents, or records of the Office of the Orange County Clerk-Recorder, except for any bates numbering or non-substantive marks I may have added for reference.
2. Certain exhibits are certified, while others are authenticated copies, as noted, with certified documents in some instances not available due to financial constraints

consistent with my approved fee waiver status. I accessed certain records as indicated via official court websites (e.g., occourts.org, appellate.courts.ca.gov, supreme.courts.ca.gov, supremecourt.gov, pacer.gov), as noted.

3. These exhibits are incorporated by reference into the Appellant's Verified Opening Brief and support arguments regarding lack of subject matter and procedural jurisdiction, extrinsic fraud, fraud on the court, and the exhaustion of state and federal remedies in challenging the void judgments in Case No. 30-2015-00805807 and Case No. 30-2025-01459684.

Signed on October 16, 2025, at Las Vegas, Nevada.



Adam Bereki

# Judicial Notice Exhibit 1

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/27/2017 TIME: 09:00:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Shanon Taylor

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

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EVENT ID/DOCUMENT ID: 72514442
**EVENT TYPE:** Jury Trial

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**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
GARY HUMPHREYS, Defendant is present.
KAREN HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

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All counsel answer ready for trial.

**1st day of trial**

At 9:21 a.m. This being the date set for Court Trial in the above-entitled cause, having been assigned to this department, all parties and counsel appear as noted above and trial commences.

All parties waived jury trial.

The Court and counsels discuss exhibits and pleadings as set forth on the record.

At 9:33 a.m. The Court declared a recess to read the trial briefs.

At 10:19 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Pursuant to Court's ruling on 3/24/2017, the Court to commence a severed Cross Complaint 1st cause of action as against Cross-Defendant, Adam Bereki.

At 10:14 a.m. Mr. William G. Bissell presents an opening statement on behalf of Cross Complainants Karen & Gary Humphreys for the severed Cross complaint 1st cause of action against Mr. Adam Bereki.

At 10:29 a.m. Mr. J. Scott Russo presents an opening statement on behalf of Plaintiffs/Cross-Defendants The Spartan Associates, Inc..

At 10:32 a.m Mr. Adam Bereki presents an opening statement on behalf of himself as the Cross-Defendant.

121 document(s) are ordered pre-marked for identification as Plaintiffs/Cross-Defendants exhibits 1 through 137, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

62 document(s) are ordered pre-marked for identification as Cross-Complainants/Cross-Defendants exhibits 301 through 362, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

**MS. KAREN HUMPHREYS** is sworn and testifies.

At 11:14 p.m. Court declares a recess.

At 11:25 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 11:26 a.m. Ms. Karen Humphreys, previously sworn, resumes the stand for further testimony .

Ms. Karen Humphreys steps down.

**MR. GARY HUMPHREYS** is sworn and testifies.

At 11:58 a.m. Court declares a recess.

At 1:40 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 1:42 p.m. Mr. Gary Humphreys, previously sworn, resumes the stand for further testimony .

Exhibit(s) **32, 302, 303, 304, 305, 306,** having been previously marked for identification are admitted into evidence.

At 2:20 p.m. Mr. Gary Humphreys steps down.

**MR. ADAM BEREKI** is sworn and testifies.

Portions of Mr. Adam Bereki's deposition transcripts of 8/2/2016 read on the record (page 98 lines 10 to 13; page 61 lines 5 to 9)

At 2:34 p.m. Court declares a recess.

2:42 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 2:45 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

Exhibit(s) **34, 35, 33, 351 and 355,** having been previously marked for identification are admitted into

evidence.

At 3:22 p.m. Court declares a recess.

At 3:41 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 3:42 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

**Exhibit(s) 30-1; 348,** having been previously marked for identification are admitted into evidence.

Mr. Adam Bereki steps down.

At 3:55 p.m. Mr. Gary Humphreys, previously sworn, recalls to the stand for further testimony by his counsel.

Mr. Gary Humphreys steps down.

At 4:10 p.m. Court declares a recess.

Court is adjourned until 03/28/2017 at 09:30AM in C-20.

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/28/2017 TIME: 09:30:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Michelle Gallegos

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

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EVENT ID/DOCUMENT ID: 72559889
**EVENT TYPE**: Jury Trial

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**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
KAREN HUMPHREYS, Defendant is present.
GARY HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

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**2nd day of trial**

At 9:55 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 9:57 a.m. Mr. William G. Bissell presents closing argument on behalf of Cross-Complainants/Defendants, Karen & Gary Humphreys.

At 10:12 a.m. Mr. J. Scott Russo presents closing argument on behalf of Cross-Defendant, The Spartan Associates, Inc..

Mr. Adam Bereki waived closing argument.

At 10:19 a.m. Court declares a recess.

At 10:52 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license.

The Court finds judgment for the Cross Complainants, Gary & Karen Humphreys (First Cause of Action,

for Disgorgement of Funds Paid) and against cross-defendant, Adam Bereki.

The Court invites counsels to meet and discuss the plan for the remaining cause of actions and the complaint.

At 11:19 a.m. Court declares a recess.

At 11:37 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Legal discussions held with regards to remaining cross-complaint cause of actions and the complaint as set forth on the record.

Counsels are to resume discussions during lunch hour and report to the Court at 1:45 p.m.

At 11:47 p.m. Court declares a recess.

At 1:48 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Counsels reached an agreement as set forth on the record.

Mr. J. Scott Russo presents an offer of proof on plaintiff's complaint that if called Mr. Adam Bereki would be the witness and the testimony would be that Plaintiff, Spartan Associates had rendered goods and services to the defendants. The fair market value for the services and goods of $82,821.53 to be backed up by invoices and testimony about the reasonable value of those services that would be the first cause of action Quantum Merit. For the 2nd cause of action, go and in hand that it was an open book accounting was rendered to the defendants that they were given the accountings and the sum was $82,821.53 that was still due.

Based on Mr. Russo's offer of proof, the Court understand that those claims are based upon the view of plaintiff Spartan Associates, Inc. was the general contractor on the project. The Court finds that Spartan Associates does not have standing as determined earlier today that Mr.Bereki was the purported general contractor on the contract. Spartan Associates, Inc. may have been apparently substituted but it is certainly not with the permission or agreement of the defendants. Based on that, the **Court finds judgment for the defendants on the complaint.**

The parties have discussed, agreed and stipulates on the record as follows: The entirety of remaining causes of action on the First Amended Cross-Complaint will be dismissed without prejudice. If judgment on the first cause of action becomes final, the dismissal without prejudice will be converted to dismissal with prejudice. Pending judgment on the first cause of action becoming final, the statute of limitations on the re-filing of an action of the dismissed causes of action is waived. If a new action is filed on the dismissed causes of action , discovery deemed completed and will not be re-opened and the newly filed case will be consolidated with the remanded case for trial.

Pursuant to Mr. Bissell's Motion, **the Court orders the remaining causes of action, negligence, fraud, alter ego, penalty, attorney's fees and recovery against the Contractor's license bond be dismissed without prejudice. The judgment on the First Amended Cross Complaint is on the 1st cause of action for discouragement only.**

The Court directs Mr. William G. Bissell to prepare the judgment.

At 2:03 p.m. **Pursuant to oral stipulation set forth on the record, exhibits are released and returned to the submitting parties/counsels for maintenance, custody and safekeeping pending any post-verdict or appeal proceedings. All identification tags and other identifying markings are to remain in place pending this period.**

At 2:05 p.m. The Court is adjourned in this matter.

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/04/2017 at 12:01:05 PM
Clerk of the Superior Court
By Enrique Vaca,Deputy Clerk

JUD-100

| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): | FOR COURT USE ONLY |
|---|---|
| William Bissell SBN 93527<br>14 Corporate Plaza Drive, Suite 120<br>Newport Beach, CA 92660<br>TELEPHONE NO.: (949) 719-1159 FAX NO. (Optional):<br>E-MAIL ADDRESS (Optional): wbissell@wgb-law.com<br>ATTORNEY FOR (Name): Gary Humphreys & Karen Humphreys | FILED<br>SUPERIOR COURT OF CALIFORNIA<br>COUNTY OF ORANGE<br>CENTRAL JUSTICE CENTER<br>APR 20 2017<br>DAVID H. YAMASAKI, Clerk of the Court<br>BY: DEPUTY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE<br>STREET ADDRESS: 700 Civic Center Drive West<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Santa Ana, CA 92701<br>BRANCH NAME: Central Justice Center | |
| PLAINTIFF: The Spartan Associates, Inc.<br>DEFENDANT: Gary Humphreys, Karen Humphreys et al | |
| JUDGMENT<br>☐ By Clerk ☐ By Default ☑ After Court Trial<br>☑ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial | CASE NUMBER<br>2015-00805807<br>Judge David Chaffee |

JUDGMENT

1 ☐ **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application
- d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)) Defendant was sued only on a contract or judgment of a court of this state for the recovery of money
- e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
  - (1) ☐ plaintiff's testimony and other evidence
  - (2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**
- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
- b. ☐ the signed written stipulation was filed in the case
- c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☑ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on *(date and time)*: March 27, 2017 at 9.00 a.m.
  before *(name of judicial officer)*: The Honorable David Chaffee
- b. Appearances by:

☑ Plaintiff *(name each)*
(1) The Spartan Associates, Inc.
(2)
☐ Continued on Attachment 3b

☑ Plaintiff's attorney *(name each)*:
(1) J. Scott Russo esq.
(2)

☑ Defendant *(name each)*:
(1) Gary Humphreys
(2) Karen Humphreys
☑ Continued on Attachment 3b.

☐ Defendant's attorney *(name each)*:
(1) William Bissell esq.
(2) William Bissell esq.

- c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
- d. ☑ A statement of decision (Code Civ. Proc., § 632) ☑ was not ☐ was requested.

| PLAINTIFF The Spartan Associates, Inc. | CASE NUMBER 2015-00805807 |
|---|---|
| DEFENDANT Gary Humphreys, Karen Humphreys et al | |

JUDGMENT IS ENTERED AS FOLLOWS BY: ☑ THE COURT ☐ THE CLERK

4 ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties

5. **Parties.** Judgment is

a ☐ for plaintiff *(name each)*

and against defendant *(names)*:

☐ Continued on Attachment 5a.

b. ☑ for defendant *(name each)*.
Gary Humphreys & Karen Humphreys

c ☑ for cross-complainant *(name each)*.
Gary Humphreys & Karen Humphreys
and against cross-defendant *(name each)*:
Adam Bereki

☐ Continued on Attachment 5c.

d ☐ for cross-defendant *(name each)*:

6 **Amount.**

a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

| | | |
|---|---|---|
| (1) ☐ | Damages | $ |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☐ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

b. ☑ Plaintiff to receive nothing from defendant named in item 5b.
☑ Defendant named in item 5b to recover costs $
☐ and attorney fees $

c ☑ Cross-defendant named in item 6c above must pay cross-complainant on the cross-complaint:

| | | |
|---|---|---|
| (1) ☑ | Damages | $ 848,000.00 |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☑ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 6d.
☐ Cross-defendant named in item 6d to recover costs $
☐ and attorney fees $

7 ☑ Other *(specify)*:
Causes of action two through eight of the first amended cross-complaint are dismissed without prejudice subject to a stipulation by the parties and entered on the record.

Date: APR 2 0 2017

☐ _____
JUDICIAL OFFICER
DAVID R. CHAFFEE

Date ☐ Clerk, by _____, Deputy

(SEAL)

**CLERK'S CERTIFICATE** *(Optional)*

I certify that this is a true copy of the original judgment on file in the court

Date:

Clerk, by _____, Deputy



JUD-100 [New January 1 2002] **JUDGMENT**

1028

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

JUSTICE CENTER:
- ☒ **Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045**
- ☐ Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512
- ☐ Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653-1251
- ☐ Harbor-Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595
- ☐ Lamoreaux - 341 The City Drive, Orange, CA 92868-3205
- ☐ North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500
- ☐ West - 8141 13th Street, Westminster, CA 92683-4593

PLAINTIFF/PETITIONER: **THE SPARTAN ASSOCIATES, INC.**

DEFENDANT/RESPONDENT: **GARY HUMPHREYS, AN INDIVIDUAL; KAREN HUMPHREYS, AN INDIVIDUAL; AND DOES 1 THROUGH 25, INCLUSIVE.**

| **CLERK'S CERTIFICATION** | CASE NUMBER: **30-2015-00805807-CU-CO-CJC** |
|---|---|

Pursuant to Government Code § 68150 et seq., this court's original documents in civil cases are preserved in electronic form.

I certify as follows:
The enclosed copies, consisting of 45 documents and 624 pages, and dated from 06/13/2017 to 03/15/2019, are true and correct copies of the originals on file in this court.

*All copies contained herein are true and correct copies of the originals on file in this court.*

DAVID H YAMASAKI, Clerk of the Court

Date: January 23, 2020

By: Patty Conde

Patty Conde, Deputy Clerk

Case Summary:

| | |
|---|---|
| Case Id: | 30-2015-00805807-CU-CO-CJC |
| Case Title: | THE SPARTAN ASSOCIATES, INC. VS. GARY HUMPHREYS |
| Case Type: | CONTRACT - OTHER |
| Filing Date: | 08/21/2015 |
| Category: | CIVIL - UNLIMITED |

Register Of Actions:

| ROA | Docket | Filing Date | Filing Party | Document | Select |
|---|---|---|---|---|---|
| 1 | E-FILING TRANSACTION 3322759 RECEIVED ON 08/21/2015 09:40:35 AM. | 08/21/2015 | | *NV* | |
| 2 | COMPLAINT FILED BY THE SPARTAN ASSOCIATES, INC. ON 08/21/2015 | 08/21/2015 | | 4 pages | |
| 3 | CIVIL CASE COVER SHEET FILED BY THE SPARTAN ASSOCIATES, INC. ON 08/21/2015 | 08/21/2015 | | 2 pages | |
| 4 | SUMMONS ISSUED AND FILED FILED BY THE SPARTAN ASSOCIATES, INC. ON 08/21/2015 | 08/21/2015 | | 1 pages | |
| 5 | PAYMENT RECEIVED BY FOR 194 - COMPLAINT OR OTHER 1ST PAPER IN THE AMOUNT OF 435.00, TRANSACTION NUMBER 11836057 AND RECEIPT NUMBER 11660317. | 08/21/2015 | | 1 pages | |
| 6 | CASE ASSIGNED TO JUDICIAL OFFICER FELL, SHEILA ON 08/21/2015. | 08/21/2015 | | 1 pages | |
| 7 | CASE MANAGEMENT CONFERENCE SCHEDULED FOR 01/21/2016 AT 08:45:00 AM IN C25 AT CENTRAL JUSTICE CENTER. | 09/15/2015 | | 2 pages | |
| 8 | E-FILING TRANSACTION 3340344 RECEIVED ON 10/12/2015 10:17:24 AM. | 10/13/2015 | | *NV* | |
| 9 | NOTICE AND ACKNOWLEDGMENT OF RECEIPT FILED BY THE SPARTAN ASSOCIATES, INC. ON 10/13/2015 | 10/13/2015 | | 2 pages | |
| 10 | NOTICE AND ACKNOWLEDGMENT OF RECEIPT FILED BY THE SPARTAN ASSOCIATES, INC. ON 10/13/2015 | 10/13/2015 | | 2 pages | |
| 15 | E-FILING TRANSACTION 4448623 RECEIVED ON 10/12/2015 02:59:56 PM. | 10/14/2015 | | *NV* | |
| 16 | ANSWER TO COMPLAINT FILED BY HUMPHREYS, KAREN; HUMPHREYS, GARY ON 10/13/2015 | 10/13/2015 | | 9 pages | |
| 17 | CROSS-COMPLAINT FILED BY HUMPHREYS, KAREN; HUMPHREYS, GARY ON 10/13/2015 | 10/13/2015 | | 21 pages | |
| 18 | SUMMONS ISSUED AND FILED FILED BY HUMPHREYS, KAREN; HUMPHREYS, GARY ON 10/13/2015 | 10/13/2015 | | 3 pages | |
| 19 | PAYMENT RECEIVED BY FOR 195 - ANSWER OR OTHER 1ST PAPER, 195 - ANSWER OR OTHER 1ST PAPER IN THE AMOUNT OF 870.00, TRANSACTION NUMBER 11861690 AND RECEIPT NUMBER 11685906. | 10/14/2015 | | 1 pages | |
| | E-FILING TRANSACTION 4452614 RECEIVED ON 10/20/2015 | | | | |

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|---|---|---|---|---|---|
| 20 | 04:04:25 PM. | 10/20/2015 | | NV | |
| 21 | PROOF OF SERVICE FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 10/20/2015 | 10/20/2015 | | 1 pages | |
| 22 | E-FILING TRANSACTION 4464691 RECEIVED ON 11/16/2015 09:42:37 AM. | 11/17/2015 | | NV | |
| 23 | ANSWER TO CROSS-COMPLAINT FILED BY THE SPARTAN ASSOCIATES, INC.; BEREKI, ADAM ON 11/16/2015 | 11/16/2015 | | 7 pages | |
| 24 | PAYMENT RECEIVED BY FOR 195 - ANSWER OR OTHER 1ST PAPER IN THE AMOUNT OF 435.00, TRANSACTION NUMBER 11878984 AND RECEIPT NUMBER 11703175. | 11/17/2015 | | 1 pages | |
| 25 | E-FILING TRANSACTION 4470695 RECEIVED ON 12/01/2015 11:06:56 AM. | 12/02/2015 | | NV | |
| 26 | ANSWER TO CROSS-COMPLAINT FILED BY SURETEC INSURANCE COMPANY ON 12/01/2015 | 12/01/2015 | | 6 pages | |
| 27 | PAYMENT RECEIVED BY FOR 195 - ANSWER OR OTHER 1ST PAPER IN THE AMOUNT OF 435.00, TRANSACTION NUMBER 11885730 AND RECEIPT NUMBER 11709923. | 12/02/2015 | | 1 pages | |
| 28 | E-FILING TRANSACTION 2431580 RECEIVED ON 12/23/2015 01:53:55 PM. | 12/29/2015 | | NV | |
| 29 | MOTION TO COMPEL PRODUCTION/INSPECTION OF DOCUMENTS OR THINGS FILED BY HUMPHREYS, GARY ON 12/23/2015 | 12/23/2015 | | 4 pages | |
| 30 | DECLARATION IN SUPPORT FILED BY HUMPHREYS, GARY ON 12/23/2015 | 12/23/2015 | | 44 pages | |
| 31 | MEMORANDUM OF POINTS AND AUTHORITIES FILED BY HUMPHREYS, GARY ON 12/23/2015 | 12/23/2015 | | 8 pages | |
| 32 | STATEMENT - OTHER FILED BY HUMPHREYS, GARY ON 12/23/2015 | 12/23/2015 | | 9 pages | |
| 33 | PAYMENT RECEIVED BY FOR 36 - MOTION OR OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE AMOUNT OF 60.00, TRANSACTION NUMBER 11898186 AND RECEIPT NUMBER 11722378. | 12/29/2015 | | 1 pages | |
| 34 | MOTION TO COMPEL PRODUCTION SCHEDULED FOR 04/13/2016 AT 10:00:00 AM IN C25 AT CENTRAL JUSTICE CENTER. | 12/29/2015 | | NV | |
| 35 | E-FILING TRANSACTION 4484715 RECEIVED ON 01/04/2016 04:06:49 PM. | 01/04/2016 | | NV | |
| 36 | CASE MANAGEMENT STATEMENT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 01/04/2016 | 01/04/2016 | | 6 pages | |
| 37 | E-FILING TRANSACTION 3369137 RECEIVED ON 01/11/2016 01:14:59 PM. | 01/11/2016 | | NV | |
| 38 | CASE MANAGEMENT STATEMENT FILED BY THE SPARTAN ASSOCIATES, INC. ON 01/11/2016 | 01/11/2016 | | 7 pages | |
| | MINUTES FINALIZED FOR CHAMBERS WORK 01/12/2016 | | | | |

| | | | | | |
|---|---|---|---|---|---|
| 39 | 03:26:00 PM. | 01/12/2016 | | 1 pages | |
| 40 | CASE REASSIGNED TO DAVID CHAFFEE EFFECTIVE 01/13/2016. | 01/13/2016 | | NV | |
| 41 | THE HONORABLE SHEILA B. FELL RECUSED HERSELF. | 01/13/2016 | | NV | |
| 42 | THIS CASE IS REASSIGNED TO THE HONORABLE DAVID CHAFFEE FOR ALL PURPOSES. | 01/13/2016 | | NV | |
| 43 | MINUTES FINALIZED FOR CHAMBERS WORK 01/13/2016 04:03:00 PM. | 01/13/2016 | | 1 pages | |
| 44 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 01/13/2016 | | 2 pages | |
| 45 | CASE MANAGEMENT CONFERENCE REASSIGNED TO C20 AT CENTRAL JUSTICE CENTER ON 01/21/2016 AT 08:45:00 AM. | 01/13/2016 | | NV | |
| 46 | MOTION TO COMPEL PRODUCTION REASSIGNED TO C20 AT CENTRAL JUSTICE CENTER ON 04/13/2016 AT 10:00:00 AM. | 01/13/2016 | | NV | |
| 47 | E-FILING TRANSACTION 3372319 RECEIVED ON 01/20/2016 10:17:19 AM. | 01/20/2016 | | NV | |
| 48 | NOTICE OF POSTING JURY FEES FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 01/20/2016 | 01/20/2016 | | 3 pages | |
| 49 | PAYMENT RECEIVED BY FOR 209 - ADVANCED JURY FEE (NON-REFUNDABLE) IN THE AMOUNT OF 150.00, TRANSACTION NUMBER 11908151 AND RECEIPT NUMBER 11732368. | 01/20/2016 | | 1 pages | |
| 50 | CASE MANAGEMENT CONFERENCE SCHEDULED FOR 02/19/2016 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 01/21/2016 | | NV | |
| 51 | MOTION TO COMPEL PRODUCTION SCHEDULED FOR 02/19/2016 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 01/21/2016 | | NV | |
| 52 | CASE MANAGEMENT CONFERENCE CONTINUED TO 02/19/2016 AT 09:30 AM IN THIS DEPARTMENT. | 01/21/2016 | | NV | |
| 53 | MOTION TO COMPEL PRODUCTION CONTINUED TO 02/19/2016 AT 09:30 AM IN THIS DEPARTMENT. | 01/21/2016 | | NV | |
| 54 | MINUTES FINALIZED FOR CASE MANAGEMENT CONFERENCE 01/21/2016 08:45:00 AM. | 01/21/2016 | | 1 pages | |
| 55 | E-FILING TRANSACTION 4492900 RECEIVED ON 01/21/2016 11:45:06 AM. | 01/21/2016 | | NV | |
| 56 | NOTICE OF POSTING JURY FEES FILED BY THE SPARTAN ASSOCIATES, INC. ON 01/21/2016 | 01/21/2016 | | 3 pages | |
| 57 | PAYMENT RECEIVED BY FOR 209 - ADVANCED JURY FEE (NON-REFUNDABLE) IN THE AMOUNT OF 150.00, TRANSACTION NUMBER 11909108 AND RECEIPT NUMBER 11733325. | 01/21/2016 | | 1 pages | |

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|---|---|---|---|---|---|
| 58 | E-FILING TRANSACTION 2440688 RECEIVED ON 02/02/2016 02:18:15 PM. | 02/02/2016 | | *NV* | |
| 59 | AMENDMENT TO CROSS-COMPLAINT (ROE 16) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/02/2016 | 02/02/2016 | | 2 pages | |
| 60 | E-FILING TRANSACTION 4498885 RECEIVED ON 02/03/2016 11:34:10 AM. | 02/03/2016 | | *NV* | |
| 61 | OPPOSITION FILED BY THE SPARTAN ASSOCIATES, INC. ON 02/03/2016 | 02/03/2016 | | 8 pages | |
| 62 | RESPONSE FILED BY THE SPARTAN ASSOCIATES, INC. ON 02/03/2016 | 02/03/2016 | | 9 pages | |
| 63 | E-FILING TRANSACTION 3379481 RECEIVED ON 02/09/2016 03:54:25 PM. | 02/09/2016 | | *NV* | |
| 64 | REPLY TO OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/09/2016 | 02/09/2016 | | 6 pages | |
| 65 | E-FILING TRANSACTION 3381646 RECEIVED ON 02/17/2016 09:51:11 AM. | 02/19/2016 | | *NV* | |
| 66 | MOTION FOR SUMMARY JUDGMENT/ADJUDICATION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/17/2016 | 02/17/2016 | | 19 pages | |
| 67 | DECLARATION IN SUPPORT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/17/2016 | 02/17/2016 | | 22 pages | |
| 68 | DECLARATION IN SUPPORT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/17/2016 | 02/17/2016 | | 22 pages | |
| 69 | SEPARATE STATEMENT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/17/2016 | 02/17/2016 | | 18 pages | |
| 70 | PAYMENT RECEIVED BY FOR 38 - MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION IN THE AMOUNT OF 500.00, TRANSACTION NUMBER 11922663 AND RECEIPT NUMBER 11746860. | 02/19/2016 | | 1 pages | |
| 71 | JURY TRIAL SCHEDULED FOR 09/26/2016 AT 09:00:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 02/19/2016 | | *NV* | |
| 72 | MANDATORY SETTLEMENT CONFERENCE SCHEDULED FOR 09/02/2016 AT 09:00:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 02/19/2016 | | *NV* | |
| 73 | THE JURY TRIAL IS SCHEDULED FOR 09/26/2016 AT 09:00 AM IN DEPARTMENT C-20. | 02/19/2016 | | *NV* | |
| 74 | THE MANDATORY SETTLEMENT CONFERENCE IS SCHEDULED FOR 09/02/2016 AT 09:00 AM IN DEPARTMENT C-20. | 02/19/2016 | | *NV* | |
| 75 | MINUTES FINALIZED FOR MULTIPLE EVENTS 02/19/2016 09:30:00 AM. | 02/22/2016 | | 7 pages | |
| 76 | MOTION FOR SUMMARY JUDGMENT AND/OR ADJUDICATION SCHEDULED FOR 05/20/2016 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 02/24/2016 | | *NV* | |

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|---|---|---|---|---|---|
| 77 | E-FILING TRANSACTION 1309065 RECEIVED ON 03/09/2016 05:09:44 PM. | 03/10/2016 | | NV | |
| 78 | ANSWER TO CROSS-COMPLAINT FILED BY OLD REPUBLIC SURETY COMPANY ON 03/09/2016 | 03/09/2016 | | 5 pages | |
| 79 | PAYMENT RECEIVED BY ONELEGAL FOR 195 - ANSWER OR OTHER 1ST PAPER IN THE AMOUNT OF 435.00, TRANSACTION NUMBER 11933907 AND RECEIPT NUMBER 11758092. | 03/10/2016 | | 1 pages | |
| 80 | E-FILING TRANSACTION 4543755 RECEIVED ON 05/06/2016 12:06:58 PM. | 05/06/2016 | | NV | |
| 81 | OPPOSITION FILED BY THE SPARTAN ASSOCIATES, INC. ON 05/06/2016 | 05/06/2016 | | 19 pages | |
| 82 | OPPOSITION FILED BY THE SPARTAN ASSOCIATES, INC. ON 05/06/2016 | 05/06/2016 | | 31 pages | |
| 83 | DECLARATION - OTHER FILED BY THE SPARTAN ASSOCIATES, INC. ON 05/06/2016 | 05/06/2016 | | 27 pages | |
| 84 | PROPOSED ORDER RECEIVED ON 05/13/2016 | 05/13/2016 | | 7 pages | |
| 85 | E-FILING TRANSACTION 2462585 RECEIVED ON 05/13/2016 10:56:48 AM. | 05/13/2016 | | NV | |
| 86 | PROOF OF ESERVICE FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/13/2016 | 05/13/2016 | | 1 pages | |
| 87 | E-FILING TRANSACTION 1322034 RECEIVED ON 05/13/2016 10:38:47 AM. | 05/13/2016 | | NV | |
| 88 | REPLY TO OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/13/2016 | 05/13/2016 | | 5 pages | |
| 89 | DECLARATION IN SUPPORT OF REPLY FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/13/2016 | 05/13/2016 | | 28 pages | |
| 90 | NOTICE OF RULING FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/13/2016 | 05/13/2016 | | 8 pages | |
| 91 | STATEMENT - OTHER FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/13/2016 | 05/13/2016 | | 18 pages | |
| 92 | OBJECTION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/13/2016 | 05/13/2016 | | 6 pages | |
| 93 | MINUTES FINALIZED FOR MOTION FOR SUMMARY JUDGMENT AND/OR ADJUDICATION 05/20/2016 09:30:00 AM. | 05/23/2016 | | 2 pages | |
| 94 | E-FILING TRANSACTION NUMBER 2462587 REJECTED. | 05/23/2016 | | 1 pages | |
| 95 | E-FILING TRANSACTION 4551943 RECEIVED ON 05/24/2016 09:52:27 AM. | 05/24/2016 | | NV | |
| 96 | NOTICE OF RULING FILED BY THE SPARTAN ASSOCIATES, INC. ON 05/24/2016 | 05/24/2016 | | 7 pages | |
| 97 | E-FILING TRANSACTION 1324181 RECEIVED ON 05/25/2016 04:16:18 PM. | 05/27/2016 | | NV | |

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|---|---|---|---|---|---|
| 98 | APPLICATION AND ORDER RECEIVED ON 05/25/2016. | 05/25/2016 | | 6 pages | |
| 99 | PAYMENT RECEIVED BY ONELEGAL FOR 37 - STIPULATION AND ORDER IN THE AMOUNT OF 20.00, TRANSACTION NUMBER 11974595 AND RECEIPT NUMBER 11798755. | 05/27/2016 | | 1 pages | |
| 100 | APPLICATION - OTHER (FOR WAIVER OF REQUIREMENT FOR PERSONAL APPEARANCE AT THE MSC) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 06/02/2016 | 06/02/2016 | | 6 pages | |
| 101 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 06/07/2016 | | 7 pages | |
| 102 | E-FILING TRANSACTION 2487192 RECEIVED ON 08/19/2016 01:39:54 PM. | 08/22/2016 | | *NV* | |
| 103 | NOTICE OF CHANGE OF ADDRESS AND/OR TELEPHONE FILED BY OLD REPUBLIC SURETY COMPANY ON 08/19/2016 | 08/19/2016 | | 3 pages | |
| 104 | APPLICATION AND ORDER RECEIVED ON 08/19/2016. | 08/19/2016 | | 4 pages | |
| 105 | PAYMENT RECEIVED BY ONELEGAL FOR 37 - STIPULATION AND ORDER IN THE AMOUNT OF 20.00, TRANSACTION NUMBER 12017836 AND RECEIPT NUMBER 11841893. | 08/22/2016 | | 1 pages | |
| 106 | APPLICATION - OTHER (FOR WAIVER OF REQUIREMENT FOR PERSONAL APPEARANCE AT MSC) FILED BY OLD REPUBLIC SURETY COMPANY ON 08/22/2016 | 08/22/2016 | | 4 pages | |
| 107 | E-FILING TRANSACTION 2488390 RECEIVED ON 08/24/2016 04:05:09 PM. | 08/25/2016 | | *NV* | |
| 108 | MANDATORY SETTLEMENT CONFERENCE STATEMENT RECEIVED ON 08/24/2016. | 08/24/2016 | | *NA* | |
| 109 | E-FILING TRANSACTION 2488522 RECEIVED ON 08/25/2016 10:38:38 AM. | 08/25/2016 | | *NV* | |
| 110 | MANDATORY SETTLEMENT CONFERENCE STATEMENT RECEIVED ON 08/25/2016. | 08/25/2016 | | *NA* | |
| 111 | E-FILING TRANSACTION 4597334 RECEIVED ON 08/26/2016 11:49:40 AM. | 08/26/2016 | | *NV* | |
| 112 | MANDATORY SETTLEMENT CONFERENCE STATEMENT RECEIVED ON 08/26/2016. | 08/26/2016 | | *NA* | |
| 113 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 09/02/2016 | | 5 pages | |
| 114 | MINUTES FINALIZED FOR MANDATORY SETTLEMENT CONFERENCE 09/02/2016 09:00:00 AM. | 09/02/2016 | | 1 pages | |
| 115 | PROPOSED ORDER RECEIVED ON 09/22/2016 | 09/22/2016 | | 2 pages | |
| 116 | E-FILING TRANSACTION 1344940 RECEIVED ON 09/22/2016 12:01:46 PM. | 09/22/2016 | | *NV* | |
| 117 | EX PARTE APPLICATION - OTHER FILED BY THE SPARTAN ASSOCIATES, INC. ON 09/22/2016 | 09/22/2016 | | 10 pages | |
| | PAYMENT RECEIVED BY ONELEGAL FOR 36 - MOTION OR OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE | | | | |

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| 118 | AMOUNT OF 60.00, TRANSACTION NUMBER 12033827 AND RECEIPT NUMBER 11857832. | 09/22/2016 | | 1 pages | |
| 119 | EX PARTE SCHEDULED FOR 09/23/2016 AT 01:30:00 PM IN C20 AT CENTRAL JUSTICE CENTER. | 09/22/2016 | | NV | |
| 120 | E-FILING TRANSACTION 3460867 RECEIVED ON 09/23/2016 11:23:19 AM. | 09/23/2016 | | NV | |
| 121 | STATEMENT OF COMPLIANCE FILED BY THE SPARTAN ASSOCIATES, INC. ON 09/23/2016 | 09/23/2016 | | 1 pages | |
| 122 | TRIAL BRIEF FILED BY HUMPHREYS, GARY; HUMPHREYS, GARY ON 09/23/2016 | 09/23/2016 | | 21 pages | |
| 123 | TRIAL BRIEF FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 09/23/2016 | 09/23/2016 | | 11 pages | |
| 124 | WITNESS LIST FILED BY THE SPARTAN ASSOCIATES, INC. ON 09/23/2016 | 09/23/2016 | | 3 pages | |
| 125 | REQUEST - OTHER (FOR JURY INSTRUCTIONS) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 09/23/2016 | 09/23/2016 | | 100 pages | |
| 126 | REQUEST - OTHER (FOR VERDICT FORMS) RECEIVED ON 09/23/2016. | 09/23/2016 | | 10 pages | |
| 127 | JURY TRIAL SCHEDULED FOR 01/17/2017 AT 09:00:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 09/23/2016 | | NV | |
| 128 | JURY TRIAL CONTINUED TO 01/17/2017 AT 09:00 AM IN THIS DEPARTMENT. | 09/23/2016 | | NV | |
| 129 | MINUTES FINALIZED FOR EX PARTE 09/23/2016 01:30:00 PM. | 09/23/2016 | | 1 pages | |
| 130 | E-FILING TRANSACTION 4609875 RECEIVED ON 09/22/2016 12:01:55 PM. | 09/27/2016 | | NV | |
| 131 | ORDER GRANTING (EX PARTE APPLICATION TO CONTINUE TRIAL) FILED BY THE SPARTAN ASSOCIATES, INC. ON 09/23/2016 | 09/23/2016 | | 2 pages | |
| 132 | E-FILING TRANSACTION 2496277 RECEIVED ON 09/26/2016 09:38:48 AM. | 09/27/2016 | | NV | |
| 133 | NOTICE OF CONTINUANCE OF TRIAL FILED BY THE SPARTAN ASSOCIATES, INC.; BEREKI, ADAM; SURETEC INSURANCE COMPANY ON 09/26/2016 | 09/26/2016 | | 4 pages | |
| 134 | E-FILING TRANSACTION 3486349 RECEIVED ON 12/05/2016 01:44:16 PM. | 12/09/2016 | | NV | |
| 135 | MOTION FOR LEAVE TO FILE CROSS-COMPLAINT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 12/05/2016 | 12/05/2016 | | 2 pages | |
| 136 | MEMORANDUM OF POINTS AND AUTHORITIES FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 12/05/2016 | 12/05/2016 | | 5 pages | |
| 137 | DECLARATION IN SUPPORT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 12/05/2016 | 12/05/2016 | | 26 pages | |
| | PAYMENT RECEIVED BY ONELEGAL FOR 36 - MOTION OR | | | | |

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| 138 | OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE AMOUNT OF 60.00, TRANSACTION NUMBER 12074614 AND RECEIPT NUMBER 11898578. | 12/09/2016 | | 1 pages | |
| 139 | MOTION FOR LEAVE TO FILE AMENDED CROSS-COMPLAINT SCHEDULED FOR 01/06/2017 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 12/09/2016 | | NV | |
| 140 | E-FILING TRANSACTION 4649272 RECEIVED ON 12/14/2016 02:39:06 PM. | 12/14/2016 | | NV | |
| 141 | SUBSTITUTION OF ATTORNEY FILED BY BEREKI, ADAM ON 12/14/2016 | 12/14/2016 | | 4 pages | |
| 142 | MINUTES FINALIZED FOR MOTION FOR LEAVE TO FILE AMENDED CROSS-COMPLAINT 01/06/2017 09:30:00 AM. | 01/06/2017 | | 2 pages | |
| 143 | E-FILING TRANSACTION 4658397 RECEIVED ON 01/06/2017 11:29:21 AM. | 01/06/2017 | | NV | |
| 144 | AMENDED CROSS-COMPLAINT (FIRST) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 01/06/2017 | 01/06/2017 | | 21 pages | |
| 145 | PROPOSED STIPULATION AND ORDER RECEIVED ON 01/12/2017 | 01/12/2017 | | 3 pages | |
| 146 | E-FILING TRANSACTION 2522475 RECEIVED ON 01/12/2017 11:35:44 AM. | 01/12/2017 | | NV | |
| 147 | PROPOSED STIPULATION AND ORDER (CONTINUE TRIAL) RECEIVED ON 01/12/2017. | 01/12/2017 | | 3 pages | |
| 148 | PAYMENT RECEIVED BY ONELEGAL FOR 37 - STIPULATION AND ORDER IN THE AMOUNT OF 20.00, TRANSACTION NUMBER 12090169 AND RECEIPT NUMBER 11914152. | 01/12/2017 | | 1 pages | |
| 149 | PROPOSED STIPULATION AND ORDER RECEIVED ON 01/12/2017 | 01/12/2017 | | 3 pages | |
| 150 | JURY TRIAL SCHEDULED FOR 03/27/2017 AT 09:00:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 01/12/2017 | | NV | |
| 151 | JURY TRIAL CONTINUED TO 03/27/2017 AT 09:00 AM IN THIS DEPARTMENT. | 01/12/2017 | | NV | |
| 152 | MINUTES FINALIZED FOR CHAMBERS WORK 01/12/2017 03:36:00 PM. | 01/12/2017 | | 1 pages | |
| 153 | E-FILING TRANSACTION 4661362 RECEIVED ON 01/12/2017 11:35:44 AM. | 01/12/2017 | | NV | |
| 154 | STIPULATION AND ORDER (TO CONTINUE TRIAL) FILED BY THE SPARTAN ASSOCIATES, INC. ON 01/12/2017 | 01/12/2017 | | 3 pages | |
| 155 | PAYMENT RECEIVED BY ONELEGAL FOR 37 - STIPULATION AND ORDER IN THE AMOUNT OF 20.00, TRANSACTION NUMBER 12090319 AND RECEIPT NUMBER 11914302. | 01/12/2017 | | 1 pages | |
| 156 | E-FILING TRANSACTION 4669845 RECEIVED ON 01/30/2017 09:53:38 AM. | 01/31/2017 | | NV | |

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| 157 | PROPOSED STIPULATION AND ORDER RECEIVED ON 01/30/2017. | 01/30/2017 | | 9 pages | |
| 158 | PAYMENT RECEIVED BY ONELEGAL FOR 37 - STIPULATION AND ORDER IN THE AMOUNT OF 20.00, TRANSACTION NUMBER 12099402 AND RECEIPT NUMBER 11923335. | 01/31/2017 | | 1 pages | |
| 159 | E-FILING TRANSACTION 2526423 RECEIVED ON 01/27/2017 11:13:32 AM. | 02/01/2017 | | *NV* | |
| 160 | MOTION FOR SEVERANCE FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 01/27/2017 | 01/27/2017 | | 12 pages | |
| 161 | PAYMENT RECEIVED BY ONELEGAL FOR 36 - MOTION OR OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE AMOUNT OF 60.00, TRANSACTION NUMBER 12100262 AND RECEIPT NUMBER 11924178. | 02/01/2017 | | 1 pages | |
| 162 | MOTION FOR SEVERANCE SCHEDULED FOR 03/24/2017 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 02/01/2017 | | *NV* | |
| 163 | STIPULATION AND ORDER (RE: LIABILITY AND DAMAGES) FILED BY THE SUPERIOR COURT OF ORANGE ON 02/01/2017 | 02/01/2017 | | 9 pages | |
| 164 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 02/08/2017 | | 10 pages | |
| 165 | E-FILING TRANSACTION 3509619 RECEIVED ON 02/10/2017 08:27:54 AM. | 02/10/2017 | | *NV* | |
| 166 | ANSWER TO AMENDED CROSS-COMPLAINT (FIRST) FILED BY THE SPARTAN ASSOCIATES, INC.; BEREKI, ADAM ON 02/10/2017 | 02/10/2017 | | 8 pages | |
| 167 | E-FILING TRANSACTION 4697847 RECEIVED ON 03/23/2017 01:23:39 PM. | 03/24/2017 | | *NV* | |
| 168 | TRIAL BRIEF (1ST AMENDED OF AMENDED X COMPLAINT) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/23/2017 | 03/23/2017 | | 22 pages | |
| 169 | TRIAL BRIEF (1ST AMENDED ON SPARTAN AND ASSOCIATES) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN; THE SPARTAN ASSOCIATES, INC. ON 03/23/2017 | 03/23/2017 | | 18 pages | |
| 170 | TRIAL BRIEF (1ST AMENDED RE 1ST AMENDED X COMPLAINT RE HUMPHREYS) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/23/2017 | 03/23/2017 | | 9 pages | |
| 171 | SUPPLEMENTAL FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/23/2017 | 03/23/2017 | | 3 pages | |
| 172 | REQUEST - OTHER (1ST AMENDED TO USE VERDICT FORM) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/23/2017 | 03/23/2017 | | 3 pages | |
| 173 | REQUEST FOR STATEMENT OF DECISION (FOR 1ST CAUSE OF ACTION) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/23/2017 | 03/23/2017 | | 3 pages | |

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| 174 | MOTION IN LIMINE (□ᵀᵖ□ツ□ツ□ツ

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| 188 | FEES FOR CIVIL PROCEEDINGS LASTING MORE THAN 1 HOUR IN THE AMOUNT OF 250.00, TRANSACTION NUMBER 12130632 AND RECEIPT NUMBER 11954449. | 03/28/2017 | | 1 pages | |
| 189 | PAYMENT RECEIVED BY THE LAW OFF OF WILLIAM G. BISSELL FOR 22 - COURT REPORTER PER DIEM FEES: COURT REPORTER PER DIEM FEES FOR CIVIL PROCEEDINGS LASTING MORE THAN 1 HOUR IN THE AMOUNT OF 250.00, TRANSACTION NUMBER 12130635 AND RECEIPT NUMBER 11954452. | 03/28/2017 | | 1 pages | |
| 190 | MINUTES FINALIZED FOR JURY TRIAL 2017-03-27 09:00:00.0. | 03/28/2017 | | 17 pages | |
| 191 | PAYMENT RECEIVED BY BEREKI, ADAM FOR 22 - COURT REPORTER PER DIEM FEES: COURT REPORTER PER DIEM FEES FOR CIVIL PROCEEDINGS LASTING MORE THAN 1 HOUR IN THE AMOUNT OF 125.00, TRANSACTION NUMBER 12130854 AND RECEIPT NUMBER 11954671. | 03/28/2017 | | 1 pages | |
| 192 | PAYMENT RECEIVED BY THE LAW OFF OF WILLIAM G. BISSELL FOR 22 - COURT REPORTER PER DIEM FEES: COURT REPORTER PER DIEM FEES FOR CIVIL PROCEEDINGS LASTING MORE THAN 1 HOUR IN THE AMOUNT OF 125.00, TRANSACTION NUMBER 12130870 AND RECEIPT NUMBER 11954687. | 03/28/2017 | | 1 pages | |
| 193 | MINUTES FINALIZED FOR JURY TRIAL 03/28/2017 09:30:00 AM. | 03/29/2017 | | 3 pages | |
| 194 | EXHIBIT LIST FILED BY THE SPARTAN ASSOCIATES, INC.; BEREKI, ADAM ON 03/28/2017 | 03/28/2017 | | 9 pages | |
| 195 | EXHIBIT LIST FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/28/2017 | 03/28/2017 | | 5 pages | |
| 196 | E-FILING TRANSACTION 2542706 RECEIVED ON 03/29/2017 12:34:01 PM. | 04/03/2017 | | *NV* | |
| 197 | PROPOSED JUDGMENT RECEIVED ON 03/29/2017. | 03/29/2017 | | 4 pages | |
| 198 | E-FILING TRANSACTION 1377287 RECEIVED ON 04/04/2017 12:01:05 PM. | 04/07/2017 | | *NV* | |
| 199 | PROPOSED JUDGMENT RECEIVED ON 04/04/2017. | 04/04/2017 | | 4 pages | |
| 200 | JUDGMENT FILED BY THE SUPERIOR COURT OF ORANGE ON 04/20/2017 | 04/20/2017 | | 4 pages | |
| 201 | MINUTE ORDER DATED 3/28/2017 CORRECTED NUNC PRO TUNC. | 04/20/2017 | | *NV* | |
| 202 | THE COURT ORDERS THE SPARTAN ASSOCIATES, INC., SURETEC INSURANCE COMPANY BE DISMISSED WITHOUT PREJUDICE ON AMENDED CROSS-COMPLAINT(FIRST). | 04/20/2017 | | *NV* | |
| 203 | MINUTES FINALIZED FOR COURT TRIAL 04/20/2017 03:49:00 PM. | 04/20/2017 | | 1 pages | |
| 204 | THE COURT ENTERS JUDGMENT AS TO COMPLAINT. | 04/20/2017 | | *NV* | |

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| 205 | COMPLAINT DISPOSED WITH DISPOSITION OF COURT FINDING. | 04/20/2017 | | NV | |
| 206 | THE COURT ENTERS JUDGMENT AS TO AMENDED CROSS-COMPLAINT. | 04/20/2017 | | NV | |
| 207 | AMENDED CROSS-COMPLAINT DISPOSED WITH DISPOSITION OF COURT FINDING. | 04/20/2017 | | NV | |
| 208 | CASE DISPOSED WITH DISPOSITION OF COURT FINDING | 04/20/2017 | | NV | |
| 209 | PROPOSED ORDER RECEIVED ON 04/18/2017 | 04/18/2017 | | 30 pages | |
| 210 | E-FILING TRANSACTION 3536878 RECEIVED ON 04/21/2017 02:03:27 PM. | 04/24/2017 | | NV | |
| 211 | MEMORANDUM OF COSTS (SUMMARY) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 04/21/2017 | 04/21/2017 | | 7 pages | |
| 212 | E-FILING TRANSACTION NUMBER 4710506 REJECTED. | 04/24/2017 | | 1 pages | |
| 213 | E-FILING TRANSACTION 1380974 RECEIVED ON 04/24/2017 01:55:15 PM. | 04/24/2017 | | NV | |
| 214 | NOTICE OF ENTRY OF JUDGMENT FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 04/24/2017 | 04/24/2017 | | 6 pages | |
| 215 | E-FILING TRANSACTION NUMBER 1380998 REJECTED. | 04/25/2017 | | 1 pages | |
| 216 | E-FILING TRANSACTION 2549673 RECEIVED ON 04/25/2017 11:58:26 AM. | 04/26/2017 | | NV | |
| 217 | ABSTRACT OF JUDGMENT (ISSUED 4/26/17) RECEIVED ON 04/25/2017. | 04/25/2017 | | 2 pages | |
| 218 | PAYMENT RECEIVED BY ONELEGAL FOR 141 - ABSTRACT OF JUDGMENT IN THE AMOUNT OF 25.00, TRANSACTION NUMBER 12145733 AND RECEIPT NUMBER 11969533. | 04/26/2017 | | 1 pages | |
| 219 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/01/2017 | | 5 pages | |
| 220 | E-FILING TRANSACTION 4720663 RECEIVED ON 05/08/2017 02:27:16 PM. | 05/09/2017 | | NV | |
| 221 | MEMORANDUM OF COSTS (SUMMARY) FILED BY SURETEC INSURANCE COMPANY ON 05/08/2017 | 05/08/2017 | | 7 pages | |
| 222 | E-FILING TRANSACTION 1383582 RECEIVED ON 05/08/2017 02:10:43 PM. | 05/09/2017 | | NV | |
| 223 | MOTION TO STRIKE OR TAX COSTS FILED BY THE SPARTAN ASSOCIATES, INC.; SURETEC INSURANCE COMPANY ON 05/08/2017 | 05/08/2017 | | 9 pages | |
| 224 | PAYMENT RECEIVED BY ONELEGAL FOR 36 - MOTION OR OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE AMOUNT OF 60.00, TRANSACTION NUMBER 12152854 AND RECEIPT NUMBER 11976629. | 05/09/2017 | | 1 pages | |
| 225 | MOTION TO TAX COSTS SCHEDULED FOR 06/09/2017 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 05/09/2017 | | NV | |
| 226 | E-FILING TRANSACTION 1386845 RECEIVED ON 05/24/2017 02:13:24 PM. | 05/24/2017 | | NV | |

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| 227 | MEMORANDUM OF POINTS AND AUTHORITIES FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/24/2017 | 05/24/2017 | | 8 pages | |
| 228 | DECLARATION IN SUPPORT OF OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 05/24/2017 | 05/24/2017 | | 5 pages | |
| 229 | E-FILING TRANSACTION 3551761 RECEIVED ON 06/01/2017 11:56:40 AM. | 06/01/2017 | | *NV* | |
| 230 | REPLY TO OPPOSITION FILED BY SURETEC INSURANCE COMPANY; THE SPARTAN ASSOCIATES, INC. ON 06/01/2017 | 06/01/2017 | | 9 pages | |
| 231 | MINUTES FINALIZED FOR MOTION TO TAX COSTS 06/09/2017 09:30:00 AM. | 06/09/2017 | | 4 pages | |
| 232 | E-FILING TRANSACTION 3556218 RECEIVED ON 06/13/2017 01:58:43 PM. | 06/13/2017 | | *NV* | |
| 233 | NOTICE OF APPEAL FILED | 06/13/2017 | | 1 pages | |
| 234 | NOTIFICATION OF FILING NOTICE OF APPEAL | 06/13/2017 | | 1 pages | |
| 235 | E-FILING TRANSACTION NUMBER 1390863 REJECTED. | 06/14/2017 | | 1 pages | |
| 236 | REQUEST TO WAIVE COURT FEES FILED BY BEREKI, ADAM ON 06/20/2017 | 06/20/2017 | | *NA* | |
| 237 | DESIGNATION OF RECORD ON APPEAL FILED BY BEREKI, ADAM ON 06/20/2017 | 06/20/2017 | | 4 pages | |
| 238 | NOTICE OF DEFAULT | 06/21/2017 | | 2 pages | |
| 239 | E-FILING TRANSACTION 1393898 RECEIVED ON 06/22/2017 12:30:27 PM. | 06/22/2017 | | *NV* | |
| 240 | DESIGNATION OF RECORD ON APPEAL FILED BY BEREKI, ADAM ON 06/22/2017 | 06/22/2017 | | 13 pages | |
| 241 | ORDER ON COURT FEE WAIVER (SUPERIOR COURT) FILED BY BEREKI, ADAM ON 06/21/2017 | 06/21/2017 | | 2 pages | |
| 242 | BEREKI, ADAM REQUEST TO WAIVE COURT FEES GRANTED IN WHOLE ON 06/26/2017. | 06/26/2017 | | *NV* | |
| 243 | E-FILING TRANSACTION 1395764 RECEIVED ON 06/28/2017 12:37:22 PM. | 06/28/2017 | | *NV* | |
| 244 | NOTICE - OTHER FILED BY BEREKI, ADAM ON 06/28/2017 | 06/28/2017 | | 22 pages | |
| 245 | E-FILING TRANSACTION 2567206 RECEIVED ON 06/26/2017 03:13:55 PM. | 06/28/2017 | | *NV* | |
| 246 | DESIGNATION OF RECORD ON APPEAL (RESPONDENT) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 06/26/2017 | 06/26/2017 | | 5 pages | |
| 247 | BEREKI, ADAM REQUEST TO WAIVE COURT FEES GRANTED IN WHOLE ON 06/26/2017. | 06/26/2017 | | *NV* | |
| 248 | E-FILING TRANSACTION 4743793 RECEIVED ON 06/30/2017 09:40:05 AM. | 07/05/2017 | | *NV* | |
| 249 | DESIGNATION OF RECORD ON APPEAL (AMENDED (APPELLANT)) FILED BY BEREKI, ADAM ON 06/30/2017 | 06/30/2017 | | 18 pages | |
| 250 | NOTICE OF DEFAULT | 07/06/2017 | | 2 pages | |

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| 251 | E-FILING TRANSACTION 2571878 RECEIVED ON 07/12/2017 09:57:34 AM. | 07/12/2017 | | NV | |
| 252 | PROOF OF ESERVICE FILED BY BEREKI, ADAM ON 07/12/2017 | 07/12/2017 | | 4 pages | |
| 253 | NOTICE OF CLERK'S TRANSCRIPT FEES | 07/24/2017 | | 1 pages | |
| 254 | PAYMENT RECEIVED BY THE LAW OFFICE OF WILLIAM BISSELL FOR 24 - TRANSCRIPT ON APPEAL IN THE AMOUNT OF 575.00, TRANSACTION NUMBER 12197168 AND RECEIPT NUMBER 12020903. | 08/02/2017 | | 1 pages | |
| 255 | E-FILING TRANSACTION 4761540 RECEIVED ON 08/25/2017 11:40:01 AM. | 08/28/2017 | | NV | |
| 256 | MOTION TO COMPEL PRODUCTION/INSPECTION OF DOCUMENTS OR THINGS FILED BY BEREKI, ADAM ON 08/25/2017 | 08/25/2017 | | 14 pages | |
| 257 | PAYMENT RECEIVED BY ONELEGAL FOR 36 - MOTION OR OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE AMOUNT OF 60.00, TRANSACTION NUMBER 12210957 AND RECEIPT NUMBER 12034652. | 08/28/2017 | | 1 pages | |
| 258 | MOTION TO COMPEL PRODUCTION SCHEDULED FOR 09/29/2017 AT 09:30:00 AM IN C20 AT CENTRAL JUSTICE CENTER. | 08/28/2017 | | NV | |
| 259 | E-FILING TRANSACTION 3586621 RECEIVED ON 09/13/2017 11:39:38 AM. | 09/13/2017 | | NV | |
| 260 | OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 09/13/2017 | 09/13/2017 | | 7 pages | |
| 261 | DECLARATION IN SUPPORT OF OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 09/13/2017 | 09/13/2017 | | 3 pages | |
| 262 | E-FILING TRANSACTION 1424843 RECEIVED ON 09/27/2017 11:49:13 AM. | 09/27/2017 | | NV | |
| 263 | REPLY TO OPPOSITION FILED BY BEREKI, ADAM ON 09/27/2017 | 09/27/2017 | | 275 pages | |
| 264 | MINUTES FINALIZED FOR MOTION TO COMPEL PRODUCTION 09/29/2017 09:30:00 AM. | 09/29/2017 | | 2 pages | |
| 265 | PROPOSED ORDER RECEIVED ON 09/29/2017 | 09/29/2017 | | 2 pages | |
| 266 | E-FILING TRANSACTION 4773219 RECEIVED ON 10/02/2017 10:02:17 AM. | 10/02/2017 | | NV | |
| 267 | REPLY TO OPPOSITION FILED BY BEREKI, ADAM ON 10/02/2017 | 10/02/2017 | | 43 pages | |
| 268 | E-FILING TRANSACTION 2597919 RECEIVED ON 09/29/2017 03:56:44 PM. | 10/04/2017 | | NV | |
| 269 | ORDER - OTHER (RE: SANCTIONS) FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 10/04/2017 | 10/04/2017 | | 2 pages | |
| 271 | CERTIFICATE OF SERVICE BY MAIL OF ORDER STRIKING STATEMENT OF DISQUALIFICATION AND VERIFIED | 10/10/2017 | | 1 pages | |

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| | ANSWER OF HON. D. CHAFFEE, DATED 10/6/2017 | | | | |
| 272 | ORDER - OTHER (STRIKING STATEMENT OF DISQUALIFICATION AND, IN THE ALTERNATIVE, VERIFIED ANSWER OF JUDGE DAVID R. CHAFFEE) FILED BY THE SUPERIOR COURT OF ORANGE ON 10/06/2017 | 10/06/2017 | | 8 pages | |
| 273 | E-FILING TRANSACTION 2605032 RECEIVED ON 10/23/2017 08:52:01 AM. | 10/30/2017 | | *NV* | |
| 274 | REQUEST FOR STATEMENT OF DECISION FILED BY BEREKI, ADAM ON 10/23/2017 | 10/23/2017 | | 11 pages | |
| 275 | ORDER G055075 | 11/09/2017 | | 2 pages | |
| 276 | MINUTES FINALIZED FOR CHAMBERS WORK 11/17/2017 02:03:00 PM. | 11/17/2017 | | 1 pages | |
| 277 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 11/17/2017 | | 2 pages | |
| 278 | E-FILING TRANSACTION NUMBER 3624656 REJECTED. | 01/11/2018 | | 1 pages | |
| 279 | E-FILING TRANSACTION NUMBER 3632172 REJECTED. | 02/01/2018 | | 1 pages | |
| 280 | E-FILING TRANSACTION NUMBER 4817440 REJECTED. | 02/21/2018 | | 1 pages | |
| 281 | E-FILING TRANSACTION 3639076 RECEIVED ON 02/22/2018 10:56:04 AM. | 02/22/2018 | | *NV* | |
| 282 | NOTICE - OTHER FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 02/22/2018 | 02/22/2018 | | 5 pages | |
| 283 | E-FILING TRANSACTION 1474970 RECEIVED ON 03/05/2018 12:20:44 PM. | 03/05/2018 | | *NV* | |
| 284 | APPEAL - OTHER (NOTIC OF TRANSMISSION OF EXHIBIT) FILED BY BEREKI, ADAM ON 03/05/2018 | 03/05/2018 | | 6 pages | |
| 285 | ORDER G055075 | 03/13/2018 | | 2 pages | |
| 287 | OPINION G055075 | 10/31/2018 | | 14 pages | |
| 288 | ORDER G055075 | 11/20/2018 | | 1 pages | |
| 289 | E-FILING TRANSACTION NUMBER 2744540 REJECTED. | 12/20/2018 | | 1 pages | |
| 290 | REMITTITUR G055075 | 02/01/2019 | | 16 pages | |
| 291 | E-FILING TRANSACTION 3754882 RECEIVED ON 01/31/2019 02:08:55 PM. | 02/08/2019 | | *NV* | |
| 292 | MEMORANDUM OF COSTS ON APPEAL FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 01/31/2019 | 01/31/2019 | | 2 pages | |
| 293 | E-FILING TRANSACTION 2763977 RECEIVED ON 02/19/2019 09:48:25 AM. | 02/22/2019 | | *NV* | |
| 294 | MOTION TO VACATE (VOID JUDGMENT) FILED BY BEREKI, ADAM ON 02/19/2019 | 02/19/2019 | | 56 pages | |
| 295 | MOTION TO VACATE SCHEDULED FOR 03/15/2019 AT 09:30:00 AM IN C16 AT CENTRAL JUSTICE CENTER. | 02/22/2019 | | *NV* | |
| 296 | E-FILING TRANSACTION 1595355 RECEIVED ON 02/26/2019 02:02:37 PM. | 02/26/2019 | | *NV* | |
| | REQUEST FOR COURT REPORTER BY PARTY WITH FEE | | | | |

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| 297 | WAIVER (MARCH 15, 2019) FILED BY BEREKI, ADAM ON 02/26/2019 | 02/26/2019 | | 3 pages | |
| 298 | E-FILING TRANSACTION NUMBER 2766884 REJECTED. | 02/27/2019 | | 1 pages | |
| 299 | E-FILING TRANSACTION 3765605 RECEIVED ON 03/04/2019 10:29:17 AM. | 03/04/2019 | | *NV* | |
| 300 | MEMORANDUM OF POINTS AND AUTHORITIES FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/04/2019 | 03/04/2019 | | 10 pages | |
| 301 | DECLARATION IN SUPPORT OF OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 03/04/2019 | 03/04/2019 | | 30 pages | |
| 302 | E-FILING TRANSACTION 1599743 RECEIVED ON 03/11/2019 08:44:44 AM. | 03/11/2019 | | *NV* | |
| 303 | REPLY TO OPPOSITION FILED BY BEREKI, ADAM ON 03/11/2019 | 03/11/2019 | | 24 pages | |
| 304 | MINUTES FINALIZED FOR MOTION TO VACATE 03/15/2019 09:30:00 AM. | 03/15/2019 | | 1 pages | |
| 306 | EX PARTE APPLICATION - OTHER (FOR EMERGENCY STAY OF UNLAWFUL DETAINER ACTION) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 503 pages | |
| 307 | EX PARTE SCHEDULED FOR 03/18/2025 AT 09:00:00 AM IN C23 AT CENTRAL JUSTICE CENTER. | 03/14/2025 | | *NV* | |
| 308 | MINUTES FINALIZED FOR EX PARTE 03/18/2025 09:00:00 AM. | 03/18/2025 | | 1 pages | |
| 309 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 393 pages | |
| 310 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 383 pages | |
| 311 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 340 pages | |
| 312 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 429 pages | |
| 313 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 344 pages | |
| 314 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | *NV* | |
| 315 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 635 pages | |
| 316 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 649 pages | |
| 317 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 460 pages | |
| 318 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 267 pages | |
| 319 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 524 pages | |

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| 320 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | NV | |
| 321 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 435 pages | |
| 322 | NOTICE - OTHER (EXHIBITS FOR EX PARTE) FILED BY BEREKI, ADAM ON 03/14/2025 | 03/14/2025 | | 447 pages | |
| 323 | PROPOSED ORDER RECEIVED ON 05/19/2025 | 05/19/2025 | | 2 pages | |
| 324 | E-FILING TRANSACTION NUMBER 41832582 REJECTED. | 05/19/2025 | | 1 pages | |
| 325 | PROPOSED ORDER RECEIVED ON 05/19/2025 | 05/19/2025 | | 2 pages | |
| 326 | E-FILING TRANSACTION 11484386 RECEIVED ON 05/19/2025 07:58:24 AM. | 05/19/2025 | | NV | |
| 327 | DECLARATION - OTHER FILED BY BEREKI, ADAM ON 05/19/2025 | 05/19/2025 | | 2 pages | |
| 328 | NOTICE OF RELATED CASE FILED ON 05/19/2025 | 05/19/2025 | | 5 pages | |
| 329 | EX PARTE APPLICATION - OTHER FILED BY BEREKI, ADAM ON 05/19/2025 | 05/19/2025 | | 11 pages | |
| 330 | NOTICE OF CHANGE OF ADDRESS AND/OR TELEPHONE FILED BY BEREKI, ADAM ON 05/19/2025 | 05/19/2025 | | 1 pages | |
| 331 | EX PARTE SCHEDULED FOR 05/20/2025 AT 09:00:00 AM IN C23 AT CENTRAL JUSTICE CENTER. | 05/19/2025 | | NV | |
| 332 | EX PARTE CONTINUED TO 05/21/2025 AT 09:00 AM IN THIS DEPARTMENT PURSUANT TO COURT'S MOTION. | 05/19/2025 | | NV | |
| 333 | MINUTES FINALIZED FOR CHAMBERS WORK 05/19/2025 04:05:00 PM. | 05/19/2025 | | 1 pages | |
| 334 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/19/2025 | | 2 pages | |
| 335 | E-FILING TRANSACTION 41833329 RECEIVED ON 05/20/2025 09:23:45 AM. | 05/20/2025 | | NV | |
| 336 | PROOF OF SERVICE FILED BY BEREKI, ADAM ON 05/20/2025 | 05/20/2025 | | 2 pages | |
| 337 | PROPOSED ORDER RECEIVED ON 05/21/2025 | 05/21/2025 | | 2 pages | |
| 338 | E-FILING TRANSACTION NUMBER 11485688 REJECTED. | 05/21/2025 | | 1 pages | |
| 339 | PROPOSED ORDER RECEIVED ON 05/21/2025 | 05/21/2025 | | 2 pages | |
| 340 | E-FILING TRANSACTION 31655260 RECEIVED ON 05/21/2025 09:34:49 AM. | 05/21/2025 | | NV | |
| 341 | EX PARTE APPLICATION - OTHER FILED BY BEREKI, ADAM ON 05/21/2025 | 05/21/2025 | | 177 pages | |
| 342 | DECLARATION - OTHER FILED BY BEREKI, ADAM ON 05/21/2025 | 05/21/2025 | | 2 pages | |
| 343 | EX PARTE SCHEDULED FOR 05/22/2025 AT 09:00:00 AM IN C23 AT CENTRAL JUSTICE CENTER. | 05/21/2025 | | NV | |
| 344 | THE MOTION TO CONSOLIDATE IS SCHEDULED FOR 06/26/2025 AT 02:00 PM IN DEPARTMENT C23. | 05/21/2025 | | NV | |
| | THE MOTION TO SET ASIDE/VACATE JUDGMENT IS | | | | |

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| 345 | SCHEDULED FOR 06/26/2025 AT 02:00 PM IN DEPARTMENT C23. | 05/21/2025 | | *NV* | |
| 346 | MINUTES FINALIZED FOR EX PARTE 05/22/2025 09:00:00 AM. | 05/23/2025 | | 1 pages | |
| 348 | MINUTES FINALIZED FOR EX PARTE 05/21/2025 09:00:00 AM. | 05/23/2025 | | 2 pages | |
| 349 | E-FILING TRANSACTION NUMBER 11485687 REJECTED. | 05/23/2025 | | 1 pages | |
| 350 | E-FILING TRANSACTION NUMBER 41834001 REJECTED. | 05/23/2025 | | 1 pages | |
| 351 | E-FILING TRANSACTION NUMBER 21652392 REJECTED. | 05/23/2025 | | 1 pages | |
| 352 | E-FILING TRANSACTION NUMBER 21652405 REJECTED. | 05/23/2025 | | 1 pages | |
| 353 | E-FILING TRANSACTION 41838114 RECEIVED ON 05/28/2025 05:00:45 PM. | 05/28/2025 | | *NV* | |
| 354 | REQUEST FOR JUDICIAL NOTICE FILED BY BEREKI, ADAM ON 05/28/2025 | 05/28/2025 | | 164 pages | |
| 355 | E-FILING TRANSACTION 41838118 RECEIVED ON 05/28/2025 05:00:51 PM. | 05/28/2025 | | *NV* | |
| 356 | REQUEST FOR JUDICIAL NOTICE FILED BY BEREKI, ADAM ON 05/28/2025 | 05/28/2025 | | 204 pages | |
| 357 | E-FILING TRANSACTION 41838271 RECEIVED ON 05/29/2025 08:01:53 AM. | 05/29/2025 | | *NV* | |
| 358 | REQUEST FOR COURT REPORTER BY PARTY WITH FEE WAIVER FILED BY BEREKI, ADAM ON 05/29/2025 | 05/29/2025 | | 1 pages | |
| 359 | APPLICATION TO BE RELIEVED AS ATTORNEY ON COMPLETION OF LIMITED SCOPE REPRESENTATION SCHEDULED FOR 07/17/2025 AT 02:00:00 PM IN C23 AT CENTRAL JUSTICE CENTER. | 05/29/2025 | | *NV* | |
| 360 | E-FILING TRANSACTION 21658035 RECEIVED ON 05/28/2025 02:59:46 PM. | 05/29/2025 | | *NV* | |
| 361 | MOTION TO VACATE (JUDGMENT) FILED BY BEREKI, ADAM ON 05/28/2025 | 05/28/2025 | | 266 pages | |
| 362 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/30/2025 | | 267 pages | |
| 363 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/30/2025 | | 267 pages | |
| 364 | E-FILING TRANSACTION 41839310 RECEIVED ON 05/30/2025 09:10:52 AM. | 05/30/2025 | | *NV* | |
| 365 | PROOF OF ESERVICE FILED BY BEREKI, ADAM ON 05/30/2025 | 05/30/2025 | | 5 pages | |
| 366 | E-FILING TRANSACTION 11490716 RECEIVED ON 05/30/2025 09:10:53 AM. | 05/30/2025 | | *NV* | |
| 367 | PROOF OF SERVICE FILED BY BEREKI, ADAM ON 05/30/2025 | 05/30/2025 | | 2 pages | |
| 368 | E-FILING TRANSACTION 11493326 RECEIVED ON 06/04/2025 04:02:23 PM. | 06/04/2025 | | *NV* | |
| 369 | DECLARATION IN SUPPORT FILED BY BEREKI, ADAM ON | 06/04/2025 | | 162 pages | |

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| | 06/04/2025 | | | | |
| 370 | E-FILING TRANSACTION 31662940 RECEIVED ON 06/04/2025 04:23:07 PM. | 06/04/2025 | | *NV* | |
| 371 | NOTICE - OTHER FILED BY BEREKI, ADAM ON 06/04/2025 | 06/04/2025 | | 3 pages | |
| 372 | E-FILING TRANSACTION 11493530 RECEIVED ON 06/05/2025 06:24:11 AM. | 06/05/2025 | | *NV* | |
| 373 | PROOF OF ESERVICE FILED BY BEREKI, ADAM ON 06/05/2025 | 06/05/2025 | | 7 pages | |
| 374 | E-FILING TRANSACTION NUMBER 11493529 REJECTED. | 06/05/2025 | | 1 pages | |
| 375 | E-FILING TRANSACTION 11495100 RECEIVED ON 06/09/2025 10:08:39 AM. | 06/09/2025 | | *NV* | |
| 376 | NOTICE TO APPEAR AT TRIAL (AND PRODUCE DOCUMENTS) FILED BY BEREKI, ADAM ON 06/09/2025 | 06/09/2025 | | 20 pages | |
| 377 | E-FILING TRANSACTION 31665374 RECEIVED ON 06/09/2025 05:13:24 PM. | 06/09/2025 | | *NV* | |
| 378 | DECLARATION IN SUPPORT FILED BY BEREKI, ADAM ON 06/09/2025 | 06/09/2025 | | 3 pages | |

Participants:

| Name | Type | Assoc | Start Date | End Date |
|---|---|---|---|---|
| RUSSO & DUCKWORTH LLP | ATTORNEY | | 08/21/2015 | |
| LAW OFFICES OF WILLIAM G. BISSELL | ATTORNEY | | 01/06/2017 | |
| KAREN HUMPHREYS | RESPONDENT ON APPEAL | | 06/28/2017 | |
| RUSSO & DUCKWORTH LLP | CROSS - DEFENDANT | | 08/26/2016 | |
| GARY HUMPHREYS | DEFENDANT | | 08/21/2015 | |
| ADAM BEREKI | APPELLANT | | 06/13/2017 | |
| SURETEC INSURANCE COMPANY | CROSS - DEFENDANT | | 10/14/2015 | |
| THE SPARTAN ASSOCIATES, INC. | PLAINTIFF | | 08/21/2015 | |
| WILLIAM G BISSELL | ATTORNEY | | 10/14/2015 | |
| ADAM BEREKI | CROSS - DEFENDANT | | 10/14/2015 | |
| RUSSO & DUCKWORTH LLP | ATTORNEY | | 08/26/2016 | |
| GARY HUMPHREYS | RESPONDENT ON APPEAL | | 06/28/2017 | |
| OLD REPUBLIC SURETY COMPANY | CROSS - DEFENDANT | | 02/02/2016 | |
| LAW OFFICES OF HAUSMAN & SOSA | ATTORNEY | | 03/10/2016 | |
| KAREN HUMPHREYS | DEFENDANT | | 08/21/2015 | |
| ADAM BEREKI | DEFENDANT | | 10/30/2017 | |
| THE SPARTAN ASSOCIATES, INC. | CROSS - DEFENDANT | | 10/14/2015 | |
| GARY HUMPHREYS | CROSS - COMPLAINANT | | 10/14/2015 | |
| KAREN HUMPHREYS | CROSS - COMPLAINANT | | 10/14/2015 | |

Hearings:

| Description | Date | Time | Department | Judge |
|---|---|---|---|---|
| MOTION TO VACATE | 06/26/2025 | 02:00 | C23 | SUPERVISING |
| MOTION TO SET ASIDE/VACATE JUDGMENT | 06/26/2025 | 02:00 | C23 | SUPERVISING |
| MOTION TO CONSOLIDATE | 06/26/2025 | 02:00 | C23 | SUPERVISING |

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# Judicial Notice Exhibit 2

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**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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.

I, BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District State of California do hereby certify that the annexed is a true and correct copy of DENIAL 10-31-2018 as shown by records of my office

WITNESS my hand and the Seal of the Court this 19 day of MAY A.D. 20 25

BRANDON L. HENSON

By L. PICKRELL
Deputy Clerk

L. Pickrell

Court of Appeal, Fourth Appellate District, Division Three
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 11/20/2018 by Debra Saporito, Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| ADAM BEREKI,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>GARY HUMPHREYS et al.,<br><br>Plaintiff and Appellant. | G055075<br><br>(Super. Ct. No. 30-2015-00805807)<br><br>O R D E R |

The petition for rehearing is DENIED.

ARONSON, ACTING P. J.

I CONCUR:

GOETHALS, J.

I, BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District State of California do hereby certify that the annexed is a true and correct copy of ORDER 11-20-2018 as shown by records of my office

WITNESS my hand and the Seal of the Court this 19 day of MAY A.D. 20 25

BRANDON L. HENSON

By L. PICKRELL
Deputy Clerk

# Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

4th Appellate District Division 3 Change court

| Case Summary | Docket | Briefs | Scheduled Actions |
|---|---|---|---|
| Disposition | Parties and Attorneys | Trial Court | |

## Docket (Register of Actions)

**Humphreys et al. v. Bereki.**
**Case Number G055075**

| Date | Description | Notes |
|---|---|---|
| 06/14/2017 | Notice of appeal lodged/received. | by aplt Adam Bereki |
| 06/14/2017 | Default notice sent-appellant notified per rule 8.100(c). | The notice of appeal filed with the Civil Appellate Division of the Orange County Superior Court was not accompanied by a $775.00 filing fee as required by Government Code section 68926, an application for a waiver of court fees and costs on appeal under California Rules of Court, rule 3.50 et seq., or an order granting such an application pursuant to California Rules of Court, rule 8.100(b)(1).<br><br>The appeal will be dismissed unless, within 15 days of the date of this notice, you either transmit the filing fee of $775.00 or file an application for a waiver under rule 3.50 et seq. if you have not previously filed such an application. |
| 06/29/2017 | Returned document for non-conformance. | aplt fee waiver, waiver submitted was a copy of the superior court's fee waiver granted. |
| 06/29/2017 | Returned document for non-conformance. | ccis returned. Needs a signed and filed stamp copy of judgment for 4/20/17. Submitted an abstract of judgment signed by not filed stamped for 4/24/17. Aplt has been instructed to submit a declaration for the difference. No $775 filing fee or fee waiver submitted. |
| 06/29/2017 | Application for waiver of filing fee filed. | aplt |
| 06/30/2017 | Order waiving filing fee. | |
| 06/30/2017 | Default notice sent; no case information statement filed, or statement incomplete. | |
| 07/12/2017 | Civil case information statement filed. | |
| 07/24/2017 | Appellant 's notice designating record on appeal filed in trial court on: | aplt - proceeding by CT and no RT |
| 08/03/2017 | Returned document for non-conformance. | aplt's request for eot for aob. States the brief is scheduled for 8/14/17. No other pending cases. His request is returned as premature. |
| 08/07/2017 | Record on appeal filed. | 4CT (pages 1-1151) |
| 08/07/2017 | Confidential document | 1CT (pages 1-17) |

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| | filed********* | |
| 08/08/2017 | Letter sent advising record on appeal has been filed. | |
| 09/08/2017 | Returned document for non-conformance. | Appellant's motion to augment - rejected for the following:<br>no bookmarks<br>pagination - not numbered consecutively<br>incorrect proof of service form (using the pos for an ext of time to file brief).<br><br>Aplt submitted same motion twice - the first filing was too blurry and not readable. |
| 09/18/2017 | Requested - extension of time | |
| 09/19/2017 | Granted - extension of time. | ORDER FILED-<br>Appellant's request for an extension of time to file appellant's opening brief is GRANTED in part. Appellant?s opening brief is granted 30 days to file appellant's opening brief. |
| 10/13/2017 | Returned document for non-conformance. | Aplt's motion to augment; missing bookmarks |
| 10/13/2017 | Requested - extension of time | |
| 10/16/2017 | Motion/application to augment record filed. | by appellant |
| 10/16/2017 | Granted - extension of time. | Appellants application for an extension of time to file appellants opening brief is GRANTED for 30 days only. Appellant shall serve and file appellants opening brief on or before November 20, 2017. |
| 10/20/2017 | Request for judicial notice filed. | filed by aplt Bereki. |
| 10/27/2017 | Opposition filed. | by resps Gary Humphrey et al. |
| 10/27/2017 | To court. | Aplt's request for judicial notice and oppo thereto. |
| 10/30/2017 | Request filed to: | Aplt's request to file a reply to the opposition filed to motion for judicial notice. |
| 11/02/2017 | To court. | Aplt's motion to augment |
| 11/08/2017 | Augmentation denied. | Appellant's motion to augment the record on appeal filed on October 16, 2017 is DENIED for failure to comply with California Rules of Court, rule 8.155(a)(2) [must attach copy of document or transcript to motion].<br>Appellant's motion for judicial notice filed on October 20, 2017, is DENIED as to Exhibit C attached to his motion for failure to comply with California Rules of Court, rule 8.252 a)(2)(A) [demonstrate relevance to appeal], and as to all other exhibits attached to his motion as unnecessary (Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 46 [request for judicial notice of published material unnecessary; proper citation to material in briefs sufficient]).<br>On October 30, 2017, appellant filed a request for leave to file a reply to respondent's opposition to his motion for judicial notice, which proposed reply has improperly attached 10 additional items of which he requests judicial notice. Accordingly, the request is DENIED.<br>Appellant's opening brief remains due on November 20, 2017. |
| 11/15/2017 | Requested - extension of time | for aplt - rqsting 45 days extension to 1-6-18. |
| 11/15/2017 | Granted - extension of time. | AOB granted t 1-6-18. Last Extension |
| 12/13/2017 | Motion/application to augment record filed. | By aplt, mtn to augment. (RECEIVED: 2-RT, 4-CT) |
| 12/13/2017 | Received document entitled: | 4-CT: starting at pg 1,152, pg 1,251, pg 1,351, pg 1,451.<br>(Recieved with mtn to augment) |
| 12/29/2017 | To court. | Aplt's mtn to augment record with: 4-CT, 2-RT |
| 01/03/2018 | Augmentation | Appellant's motion to augment the record on appeal filed on December 13, 2017, is GRANTED in part only. |

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| | granted. (See order.) | Appellant's motion to augment the record on appeal with the reporter's transcripts from the proceedings held on March 27, 2017 and March 28, 2017 is GRANTED. The reporter's transcripts from the March 27, 2017 and March 28, 2017 proceedings submitted with appellant's motion on December 13, 2017 are deemed part of the record on appeal.<br>Appellant also moves to augment the record on appeal with various documents totaling 385 pages submitted to this court in four separate volumes. Appellant has not included an index of the documents or specifically identified the documents in his motion to augment. The documents pertain to post judgment motions that are not the subject of this appeal, which is from the judgment entered on April 20, 2017. Accordingly, appellant's motion to augment the record with the four volumes of documents is<br>DENIED.<br>Appellant's opening brief remains due on January 8, 2018. Appellant has<br>previously been granted extensions totaling 111 days to file his opening brief, and the<br>extension granted on November 15, 2017, was marked "Last Extension." Accordingly,<br>no further extensions of time will be granted. |
| 01/03/2018 | Augmented record filed. | 2-RT: 200 pgs |
| 01/09/2018 | Returned document for non-conformance. | AOB bookmarks are missing, POS to Superior Court is missing. |
| 01/10/2018 | Appellant's opening brief. | Cross-defendant and Appellant: Adam Bereki<br>Pro Per Three extensions granted for a total of 111 days:<br>09/18/2017 Requested - extension of time. Requested for 11/13/2017 By 56 Day(s)<br>09/19/2017 Granted - extension of time. Due on 09/06/2017 By 30 Day(s)<br>10/13/2017 Requested - extension of time. Requested for 01/05/2018 By 78 Day(s)<br>10/16/2017 Granted - extension of time. Due on 11/20/2017 By 32 Day(s)<br>11/15/2017 Granted - extension of time. Due on 01/08/2018 By 49 Day(s)<br>**LAST EXTENSION** |
| 01/26/2018 | Returned document for non-conformance. | Aplt's rejected doc's:<br>1) Aplt appendix cannot be filed due designation not being filed under rule 8.124<br>2) 2-vol's of CT are labeled as vol 5 and 6, both CT's are missing bookmarks and pagination starts of incorrectly<br>3) mtn to augment rejected due to supporting doc's having been rejected |
| 01/26/2018 | Motion/application to augment record filed. | By aplt |
| 01/26/2018 | Received document entitled: | Aplt's exhibits for mtn to augment filed 01/26/18 (pages 201) |
| 01/26/2018 | Received document entitled: | Aplt's CT vol 5 for mtn to augment filed 01/26/18 (202 pages) |
| 01/26/2018 | Received document entitled: | Aplt's CT vol 6 for mtn to augment filed 01/26/18 (186) |
| 02/01/2018 | Returned document for non-conformance. | rb returned. Incorrect case title and pos lacks address for Superior Court. Per resp atty, please return for corrections. |
| 02/01/2018 | Respondent's brief. | Cross-complainant and Respondent: Gary Humphreys<br>Attorney: William G. Bissell<br>Cross-complainant and Respondent: Karen Humphreys<br>Attorney: William G. Bissell |
| 02/02/2018 | Misc. fee received for: | Paid |
| 02/13/2018 | To court. | Aplt's mtn to augment record |
| 02/20/2018 | Order filed. | Appellant's request to augment the record on appeal will be decided in conjunction with the decision on appeal. |
| 02/21/2018 | Returned document for non-conformance. | arb returned. Covers need to reflect Adam Bereki as plaintiff/appellant and Karen and Gary Humphreys as defendant/respondent. Attachment to the arb exceeds the 10 page limit. Attachments total 37 pages. There is no service to the Superior Court. |
| 02/23/2018 | Filed proof of service. | By aplt, amended POS showing service of AOB to Superior Court. |

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| 02/23/2018 | Motion filed. | By aplt, mtn to consider new evidence. |
| 02/26/2018 | Appellant's reply brief. | Cross-defendant and Appellant: Adam Bereki<br>Pro Per |
| 02/26/2018 | Case fully briefed. | |
| 02/26/2018 | Argument letter sent. | |
| 03/05/2018 | Returned document for non-conformance. | Resp's notice of designation of exhibits needs to be filed as a mtn to transmit exhibits |
| 03/05/2018 | Received document entitled: | Aplt's copy of request for transmission of exhibits, submitted in Superior Court. |
| 03/05/2018 | Received document entitled: | Resps' copy of request for transmission of exhibits, submitted in Superior Court. |
| 03/07/2018 | Opposition filed. | By resp, oppo to aplt's mtn to consider new evidence. |
| 03/07/2018 | Reply filed to: | By aplt, reply to resp's oppo of mtn to consider new evidence. |
| 03/07/2018 | Returned document for non-conformance. | Resp's transmission of exihibits is missing mtn of late transmittal of exhibits. |
| 03/07/2018 | Returned document for non-conformance. | Aplt's transmission of exihibits is missing mtn of late transmittal of exhibits. |
| 03/07/2018 | To court. | 1) Aplt's mtn to consider new evidence.<br>2) Resps' oppo to aplt's mtn.<br>3) Aplt's reply to oppo. |
| 03/07/2018 | Request for oral argument filed by: | Adam Berki will argue in Propria Persona - 25 minutes. |
| 03/08/2018 | Returned document for non-conformance. | Resps' OA request is missing a POS. |
| 03/08/2018 | Motion filed. | By resps, mtn for permission for late transmittal of trial exhibits |
| 03/09/2018 | Motion filed. | By aplt, mtn for permission for late transmittal of trial exhibits |
| 03/09/2018 | To court. | Both parties request for late transmission of trial exhibits. |
| 03/08/2018 | Request for oral argument filed by: | William Bissell will argue for respondents - 10 minutes. |
| 03/12/2018 | Order filed. | Appellant's request to take additional evidence will be decided in conjunction with the decision on appeal. Both parties' requests for late transmission of trial exhibits is GRANTED. Pursuant to California Rules of Court, rule 8.224(b), Orange County Superior Court, Appellate Division and/or any party in possession of the designated exhibits is ORDERED to transmit the exhibits to this court no later than 20 days from the date of this order. |
| 03/16/2018 | Returned document for non-conformance. | Resp's exhibits are not paginated and are missing Superior Court's lodged exhibit tags. |
| 03/21/2018 | Exhibits lodged. | By resp, exhibits: 303, 305, 355 (49 pgs). |
| 08/02/2018 | Case briefed and on assignment panel. | |
| 09/07/2018 | Calendar notice sent electronically. Calendar date: | |
| 09/11/2018 | Returned document for | Aplt's mtn for judicial notice is missing bookmarks. |

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| | non-conformance. | |
| 09/18/2018 | Returned document for non-conformance. | Judicial notice request was rejected for not having bookmarks. |
| 09/18/2018 | Request for judicial notice filed. | by appellant |
| 09/19/2018 | Received document entitled: | By aplt, notice to court (special notice to clerk). |
| 09/20/2018 | Order on motion filed. | Appellant's request for judicial notice filed on September 18, 2018, and any opposition thereto (Cal. Rules of Court, rule 8.54(a)(3)), shall be decided in conjunction with the appeal. The matter remains set for oral argument on October 16, 2018 at 9:30 a.m. |
| 09/21/2018 | Opposition filed. | by resp opposition to motion for judicial notice. |
| 09/24/2018 | Reply filed to: | by aplt reply to opposition motion for judicial notice (and additional notice) |
| 10/16/2018 | Cause argued and submitted. | Merits. Cause called. Appellant Adam Bereki argued in propria persona. William Bissell argued for respondents. Cause submitted. |
| 10/19/2018 | Returned document for non-conformance. | Aplt's additional filings cannot be filed due to case having been submitted on 10/16/18. |
| 10/31/2018 | Opinion filed. | (Signed Unpublished) The judgment is affirmed. Aronson/O'Leary/Goethals |
| 11/13/2018 | Rehearing petition filed. | By aplt |
| 11/20/2018 | Order denying rehearing petition filed. | The petition for rehearing is DENIED.<br><br>ARONSON, ACTING P. J.<br><br>I CONCUR:<br><br>GOETHALS, J. |
| 12/10/2018 | Service copy of petition for review received. | By pet.<br><br>S252954 |
| 12/20/2018 | Answer to petition for review received. | By x-complainants/respondent Gary Humphrey's et al. |
| 01/31/2019 | Petition for review denied in Supreme Court. | Filed 1/30/2019. The petition for review is denied. |
| 01/31/2019 | Remittitur issued. | S252954 |
| 01/31/2019 | Case complete. | |
| 05/21/2019 | Received copy of: | US Supreme Court notice that a petition for writ of certiorari was filed on 04/23/19 and placed on the docket 05/13/19 as No. 18-1416. |
| 08/28/2019 | Received document entitled: | Aplt's letter re trying to resolve his situation. |
| 08/30/2019 | Note: | Aplt's letter received 08/28/19 rejected due to lack of jurisdiction. |
| 11/05/2019 | Misc. fee received for: | 50.00 copy charge |
| 11/27/2019 | Received copy of: | US Supreme Court order denying petition for a writ of certiorari. |
| 02/04/2021 | Record shipped to records center | All documents scanned. |
| 11/09/2022 | Received copy of: | Aplt's letter informing the court that there is a new filing in the U.S. Supreme Court. |

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| 05/17/2023 | Received copy of: | United States Bankruptcy Court notice of hearing. |
| 05/17/2023 | Received copy of: | United States Bankruptcy Court First amended debtor's notice of motion to avoid lien. |
| 05/17/2023 | Received copy of: | United States Bankruptcy Court Debtor's exhibits to motion to avoid lien. |
| 05/23/2023 | Received copy of: | United States Bankruptcy Court service copy of declaration in support of exhibits. |
| 06/05/2023 | Received copy of: | Movant's responses and objections to opposition to avoid lien. |
| 06/21/2023 | Received copy of: | Service copy of opposition to entry of judgment to United States Bankruptcy Court. |
| 11/06/2023 | Received copy of: | Notice of Bankruptcy status from United States Bankruptcy Court. |
| 10/21/2024 | Received copy of: | Received copy of bankruptcy update. |
| 12/04/2024 | Received copy of: | Received copy of bankruptcy update. |
| 05/19/2025 | Filed letter from: | Adam Bereki requesting certified copy of opinion and order denying petition for rehearing. |
| 05/19/2025 | Misc. fee received for: | Fee for copywork by appellant. |

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# Judicial Notice Exhibit 3

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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

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EVENT ID/DOCUMENT ID: 72990898

**EVENT TYPE**: Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

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

---

Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. 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.

Counsel for the Humphreys to give notice.

# Judicial Notice Exhibit 4

Court of Appeal, Fourth Appellate District, Division Three - No. G055075

**S252954**

# IN THE SUPREME COURT OF CALIFORNIA

**En Banc**

SUPREME COURT
FILED

JAN 30 2019

Jorge Navarrete Clerk

Deputy

GARY HUMPHREYS et al., Cross-complainants and Respondents,

v.

ADAM BEREKI, Cross-defendant and Appellant.

The petition for review is denied.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.
Witness my hand and the seal of the Court this
16th day of May 2019
By _____ Deputy

CANTIL-SAKAUYE

*Chief Justice*

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

May 16, 2025

**SENT VIA USPS**
Adam Bereki
3649 Metter Street
Las Vegas, NV 89129

Re: ***HUMPHREYS v. BEREKI – S252954***

Dear Mr. Bereki:

This will acknowledge receipt of your letter, received May 16, 2025. As requested, enclosed is a certified copy of the order filed January 30, 2019, for the above-mentioned case.

Sincerely,

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

By: G. Muca, Deputy Clerk

cc: Rec.

# Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court

| Case Summary | Docket | Briefs |
|---|---|---|
| Disposition | Parties and Attorneys | Lower Court |

## Docket (Register of Actions)

**HUMPHREYS v. BEREKI**
**Division SF**
**Case Number S252954**

| Date | Description | Notes |
|---|---|---|
| 12/10/2018 | Petition for review filed | Cross-defendant and Appellant: Adam Bereki<br>Pro Per |
| 12/10/2018 | Record requested | Court of Appeal record imported and available electronically. |
| 12/10/2018 | Forma pauperis application filed | |
| 12/10/2018 | Forma Pauperis application granted | |
| 12/11/2018 | Received Court of Appeal record | Per clerk at CA 4/3, the record is electronic. |
| 12/20/2018 | Answer to petition for review filed | Cross-complainant and Respondent: Gary Humphreys<br>Attorney: William G. Bissell<br><br>Cross-complainant and Respondent: Karen Humphreys<br>Attorney: William G. Bissell |
| 12/31/2018 | Reply to answer to petition filed | Cross-defendant and Appellant: Adam Bereki<br>Pro Per |
| 01/30/2019 | Petition for review denied | |

**Click here** to request automatic e-mail notifications about this case.

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# Judicial Notice Exhibit 5

# Supreme Court of the United States
# Office of the Clerk
# Washington, DC 20543-0001

**Scott S. Harris**
Clerk of the Court
(202) 479-3011

June 10, 2025

Mr. Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129

**Re: Adam Bereki**
**v. Gary Humphreys, et ux.**
**No. 18-1416**

***and***

**In Re Adam Bereki**
**No. 22A426**

Dear Mr. Bereki:

I have received your letter and check No. 8162 in the amount of $22.00 respectively, for certified copies of the orders of denial, and true test certificates in the above-entitled cases. Enclosed, please find a receipt of this transaction along with the aforementioned documents.

If you have any questions, please feel free to contact me at 202-479-3135.

Sincerely,

SCOTT S. HARRIS, Clerk

By

M. Altner
Assistant Clerk – Judgments

Enclosures

# Supreme Court of the United States

I, SCOTT S. HARRIS, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing photocopies are true copies of the: Docket sheet in the case of:

**ADAM BEREKI,**

Petitioner

*v.*

**GARY HUMPHREYS, ET UX.**

No. 18-1416, of the October Term 2019, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of the Supreme Court of the United States, at the City of Washington, D.C. this 10th day of June, A.D., 2025.

/s/ SCOTT S. HARRIS
Clerk of the Supreme Court
*of the United States*

by LWood
*Laurie Wood*
*Deputy Clerk*

# Supreme Court of the United States

No. 18-1416

Adam Bereki,

Petitioner

v.

Gary Humphreys, et ux.

ON PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of California, Fourth Appellate District, Division Three, No. G055075.

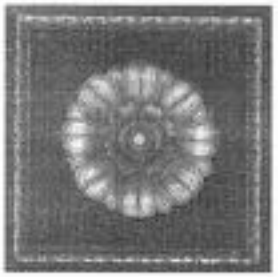
ON CONSIDERATION of the petition for a writ of certiorari herein to the Court of Appeal of California, Fourth Appellate District, Division Three.

IT IS ORDERED by this Court that the said petition is denied.

October 7, 2019



A true copy SCOTT S. HARRIS
Test:
Clerk of the Supreme Court of the United States
By _____
Deputy



Search documents in this case: Search

## No. 18-1416

| | |
|---|---|
| Title: | Adam Bereki, Petitioner<br>v.<br>Gary Humphreys, et ux. |
| Docketed: | May 13, 2019 |
| Lower Ct: | Court of Appeal of California, Fourth Appellate District, Division Three |
| Case Numbers: | (G056076) |
| Decision Date: | October 31, 2018 |
| Discretionary Court Decision Date: | January 30, 2019 |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| Apr 23 2019 | Petition for a writ of certiorari filed. (Response due June 12, 2019)<br>**Petition** **Appendix** **Certificate of Word Count** **Proof of Service** **Proof of Service** |
| May 21 2019 | Waiver of right of respondent Gary Humphreys, et ux. to respond filed. |
| Jun 19 2019 | DISTRIBUTED for Conference of 10/1/2019. |
| Oct 07 2019 | Petition DENIED. |

| NAME | ADDRESS | PHONE |
|---|---|---|
| Attorneys for Petitioner | | |
| James Glenn Bohm<br>Counsel of Record | Bohm Walsh LLP<br>695 TOWN CENTER DRIVE SUITE 700<br>COSTA MESA, CA 92626<br><br>abereki@gmail.com | 714 384 6320 |
| Party name: Adam Bereki | | |
| Attorneys for Respondents | | |
| William Bissell | Law Office of William G. Bissell<br>14 Corporate Plaza Drive<br>Suite 120<br>Newport Beach, CA 92660 | 949-719-1159 |
| Party name: Gary Humphreys, et ux. | | |

# Judicial Notice Exhibit 6

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

Adam Bereki,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(B)(1), (6) & (7) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND REQUEST FOR JUDICIAL NOTICE [JS-6]**

The matter before the Court is Defendants Gary Humphreys and Karen Humphreys' (collectively, "Defendants'" or "The Humphreys'") "Motion to Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the Federal Rules of Civil Procedure and Request for Judicial Notice." (Dkt. No. 9 (the "Motion").)[1]

## I. BACKGROUND

This action arises from a state court judgment in favor of Defendants and

[1] Following the hearing on the Motion, Plaintiff filed a document entitled "Additional Authorities and Corrected Testimony To Be Considered By the Court re: Defendants Motion to Dismiss Filed 11/19/19," which has been reviewed by the Court. (Dkt. No. 30 (hereinafter, "Additional Authorities").)

against Plaintiff in connection with remodeling work performed by Plaintiff. On April 20, 2017, following a bench trial, the Superior Court, County of Orange, entered judgment in favor of The Humphreys and against Plaintiff in the amount of $848,000 (plus costs).[2] (FAC Exs. D, G.) The Superior Court found Plaintiff (as opposed to his company Spartan Associates) was the contractor who performed the remodel work for The Humphreys, and found Plaintiff was not a licensed contractor. Accordingly, the superior court awarded The Humphreys disgorgement of all compensation paid by The Humphreys to Plaintiff for the remodel work pursuant to Cal. Bus. & Prof. Code § 7031.[3] Plaintiff appealed the state court judgment. The California Court of Appeals affirmed the judgment in favor of The Humphreys. Plaintiff's request for review by the California Supreme Court was denied, and Plaintiff's writ for certiorari with the United States Supreme Court was also denied.

Plaintiff then commenced this action on October 28, 2019. On November 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this action is "an Independent Action in Equity to relieve a party from a judgment, order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this action "is a direct attack on the jurisdiction of the California trial and appellate Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

## II. STATEMENT OF THE LAW

### A. Fed. R. Civ. Proc. 12(b)(1)

On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction,

[2] While the superior court judgment reflects judgment entered against Plaintiff in the amount of $848,000, the FAC alleges Plaintiff was "fined $930,000 for allegedly doing remodel construction work without a contractor's license." (FAC at p.16.)

[3] California Business & Professions Code § 7031 provides: "[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."

the party asserting jurisdiction bears the burden of proving jurisdiction exists. *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995). A motion under Rule 12(b)(1) may challenge the court's jurisdiction facially, based on the legal sufficiency of the claim, or factually, based on the legal sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court considers the complaint's allegations to be true, and draws all reasonable inferences in the plaintiff's favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the substance of jurisdictional allegations, the court does not presume the factual allegations to be true, and may consider evidence such as affidavits and testimony to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

**B. Fed. R. Civ. Proc. 12(b)(6)**

Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." Dismissal of a complaint can be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663, (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a cause of action will not suffice. *Twombly*, 550 U.S. at 555. To conform to Federal Rule of Civil Procedure 8, the plaintiff must make more than "an unadorned, the-defendant-harmed me" accusation. *Iqbal*, 556 U.S. at 678. Labels and conclusions are insufficient to meet the Plaintiff's obligation to provide the grounds of his or her entitlement to relief. *Twombly*, 550 U.S. at 555. "Factual allegations must be

enough to raise a right to relief above the speculative level." *Id.* If a complaint cannot be cured by additional factual allegations, dismissal without leave to amend is proper. *Id.* On a motion to dismiss for failure to state a claim, courts accept as true all well-pleaded allegations of material fact and construes them in a light most favorable to the non-moving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031–32 (9th Cir. 2008). A court may only consider the allegations contained in the pleadings, exhibits attached to or referenced in the complaint, and matters properly subject to judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

**C. Fed. R. Civ. Proc. 12(b)(7)**

Rule 12(b)(7) permits a party to move to dismiss the case for "failure to join a party under Rule 19." Fed. R. Civ. Proc. 12(b)(7). Rule 19 requires "[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction" to be joined as a party if:

> **(A)** in that person's absence, the court cannot accord complete relief among existing parties; or
>
> **(B)** that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > **(i)** as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > **(ii)** leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19. If "a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. Proc. 19(b).

## III. DISCUSSION

**A. Request for Judicial Notice**

Defendants request that the Court take judicial notice of the following:

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);
2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);
3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);
4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);
5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);
6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and
7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).[4]

(Hereinafter, "RJN".) The Court grants Defendants' request for judicial notice because the accuracy of Exhibits A-G can be "readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

**B. Rooker-Feldman Doctrine**

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker–Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

[4] Plaintiff did not oppose Defendants' request for judicial notice.

judgment entered against Plaintiff in the superior court action and (2) ordering the superior court to remove the property lien based on the judgment entered against Plaintiff in the superior court action (*id.*, Prayer for Relief). The FAC also alleges the instant federal action "is a direct attack on the jurisdiction of the California trial and appellate Courts in case numbers – 30-2015-00805897, and G055075." (*Id.* at p.17.) Therefore, Plaintiff seeks relief from the state court judgment affirmed by the California Court of Appeals.

The FAC also alleges a legal error by the superior court and California Court of Appeals on the ground that the superior court and appellate court entered and affirmed the judgment against Plaintiff without supporting evidence, and erred in holding disgorgement pursuant to Cal. Bus. & Proc. § 7031 is an equitable remedy rather than a penalty, thereby "resulting in a void judgment." (FAC at p.82, 90.)

**(1) Extrinsic Fraud on the Court**

Where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, Rooker-Feldman does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003). Therefore, the Rooker-Feldman doctrine does not apply where the plaintiff alleges extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud. *Kougasian*, 359 F.3d at 1141.

Plaintiff contends this action is not barred because this Court has the power to set aside or enjoin state-court judgments procured by fraud. The FAC alleges Defendants committed "fraud in the procurement of jurisdiction" in the superior court action because Defendants took one position during summary judgment (i.e., that they had contracted with Spartan (Plaintiff's company) to perform the work) and then took a contrary position during trial (i.e., that they believed they contracted with Plaintiff to perform the work). (FAC at 94-97.) Such alleged conduct does not constitute "extrinsic" fraud on the court since such evidence was

presented by Defendants before the superior court, nor constitute a legal injury caused by Defendants. Rather, the FAC alleges the superior court erred in entering judgment despite Defendants taking contrary positions throughout the state court litigation. Therefore, the extrinsic fraud exception to the Rooker-Feldman doctrine does not apply. *Kougasian*, 359 F.3d at 1141.

**(2) Constitutional Challenge**

Plaintiff also argues the Rooker-Feldman doctrine does not bar this action because the FAC raises a constitutional challenge to California Business & Professions Code §§ 7071.17 and 7031. While the FAC raises a "facial" and "as applied" challenge to the constitutionality of Sections §§ 7071.17 and 7031, the relief sought by Plaintiff is an order vacating or voiding the state court judgment. Moreover, the basis for Plaintiff's constitutional challenge is that the Superior Court and California Court of Appeals lacked subject matter jurisdiction to enter and affirm the judgment against Plaintiff because (1) there is no evidence supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The California Court of Appeals, however, found there was evidence supporting the Superior Court's judgment and held disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus, despite purporting to raise a "constitutional" challenge in his FAC, Plaintiff seeks relief from the state court judgment in this action and asserts legal errors by the Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman doctrine applies to bar Plaintiff's instant action.

* * *

Accordingly, the Court finds Plaintiff's action is barred pursuant to the Rooker-Feldman doctrine because Plaintiff seeks relief from the state court judgment and alleges legal errors by the state trial and appellate court. *See Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

**C. Res Judicata / Collateral Estoppel**

Defendants also move to dismiss the FAC as barred by the res judicata / collateral estoppel doctrines.[5]

Issue preclusion, or collateral estoppel, bars relitigation of issues that have been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824. Pursuant to the doctrine of collateral estoppel, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738. Under California law, collateral estoppel/issue preclusion applies: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." *DKN Holdings LLC*, 61 Cal. 4th at 825.

Here, the FAC alleges the superior court lacked jurisdiction and violated Plaintiff's due process rights because there was no evidence supporting the judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the superior court in a motion to vacate the judgment, which was denied. (FAC at 97-98.)

Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued the Superior Court committed due process violations and lacked subject matter jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals affirmed the Superior Court's judgment, and found Plaintiff's arguments on appeal had "no merit." (*Id.* Ex. C; *see also* FAC at p.19 (alleging California Court of Appeal held the superior court judgment against Plaintiff was a "non-punitive"

[5] "Res judicata" refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007) Since the claims asserted by Plaintiff in this action were not asserted in the state court action, res judicata would not apply to bar Plaintiff's claims here.

"equitable remedy").)

Plaintiff filed a petition for review with the California Supreme Court wherein Plaintiff argued the superior court and California Court of Appeals lacked jurisdiction and violated Plaintiff's due process rights, and argued Cal. Bus. & Prof. Code §§ 7031 and 7071.17 were unconstitutional and authorize imposition of penalties. (RJN, Ex. D.) The California Supreme Court denied Plaintiff's petition for review. (*Id.* Ex. E.) On April 23, 2019, Plaintiff filed a petition for writ of certiorari with the United States Supreme Court, which was denied. (*Id.* Exs. F, G.)

Therefore, the issues raised by Plaintiff in this federal action regarding the Superior Court and California Court of Appeal's lack of jurisdiction and violation of Plaintiff's due process rights, the unconstitutionality of Cal. Bus. & Prof. Code §§ 7031 and 7071.17, Plaintiff's contention that disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and the lack of evidence supporting the Superior Court's judgment and California Court of Appeals decision affirming the judgment, were actually litigated by Plaintiff in the state court action and necessarily decided in a final judgment. *See DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1132 (9th Cir. 2019).

Thus, even if the instant action was not barred pursuant to the Rooker-Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing this action. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th Cir. 2006).

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## IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action.[6] The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.[7]

**IT IS SO ORDERED.**

DATED: February 6, 2020.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

[6] Because Plaintiff's claims are barred on collateral estoppel grounds, leave to amend would be futile. *See Tait v. Asset Acceptance, LLC*, 2013 WL 3811767 (C.D. Cal. July 22, 2013).

[7] Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the superior court and California Court of Appeals which are "indispensable parties." Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine, and finds collateral estoppel would bar Plaintiff from bringing this action, it does not reach the issue of whether the superior court and California Court of Appeals are indispensable parties.

I hereby attest and certify on 5/19/25
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY CLERK

JASON JIANG

1175

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 19-2050-CBM-(ADSx) Date November 12, 2019

Title *Bereki v. Humphreys et al.*

Present: The Honorable CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE

| YOLANDA SKIPPER | NOT REPORTED |
|---|---|
| Deputy Clerk | Court Reporter |
| Attorneys Present for Plaintiff: | Attorneys Present for Defendants: |
| NONE PRESENT | NONE PRESENT |

**Proceedings:** **IN CHAMBERS- ORDER RE: REQUEST FOR ASSISTANCE OF COUNSEL**

The matter before the Court is Plaintiff's Request for Assistance of Counsel (the "Request").

The Request is **DENIED** because the Court does not appoint counsel in civil cases.

The Court, however, advises Plaintiff that the Central District of California offers Pro Se Clinics in Los Angeles, Riverside, and Santa Ana to provide information and guidance to *pro se* litigants, such as Plaintiff, who are not represented by counsel. Below is information regarding the Pro Se Clinics:

Los Angeles Federal Pro Se Clinic
The Edward Roybal R. Federal Building and U.S. Courthouse
255 East Temple Street, Suite 170 (Terrace Level)
Los Angeles, CA 90012
Hours (by appointment only): Mondays, Wednesdays, and Fridays, 9:30 am - 12:00 pm and 2:00 pm - 4:00 pm
To make an appointment, contact Public Counsel at 213-385-2977, Ext. 270.

Riverside Joint Federal Pro Se Clinic
George E. Brown Federal Building
3420 Twelfth Street, Room 125
Riverside, CA 92501
Hours: Tuesdays and Thursdays, 10:00 am – 2:00 pm

Santa Ana Federal Pro Se Clinic
Ronald Reagan Federal Building and United States Courthouse
411 W. 4th Street, Room 1055 (first floor)
Santa Ana, CA 92701
Hours: Tuesdays, 1:00 pm – 4:00 pm; Thursdays, 10:00 am – 12:00 pm and 1:30 pm – 3:30 pm

Plaintiff can find more information about the Pro Se Clinics, including contact information, at http://prose.cacd.uscourts.gov/federal-pro-se-clinics.

**IT IS SO ORDERED.**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

Adam Bereki,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: NINTH CIRCUIT'S REFERRAL AND REVOCATION OF PLAINTIFF'S IN FORMA PAUPERIS STATUS [34]**

Plaintiff filed the Complaint in this action on October 28, 2019. (Dkt. No. 1.) On October 31, 2019, the Court granted Plaintiff's Request to Proceed in Forma Pauperis. (Dkt. No. 5.) On February 6, 2020, this Court issued an order granting Defendants' Motion to Dismiss, and dismissed the action with prejudice because Plaintiff is collaterally estopped from bringing this action and the action is barred pursuant to the Rooker-Feldman doctrine. (Dkt. No. 31 (the "Order").)

Plaintiff filed a notice of appeal of the Order on February 10, 2020. (Dkt. No. 32.) On February 24, 2020, the Ninth Circuit referred the matter to this Court "for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith."

(Dkt. No. 34.)

The Court finds Plaintiff's in forma pauperis status should not continue for the appeal because Plaintiff's appeal of the Order is frivolous. Therefore, the Court revokes Plaintiff's in forma pauperis status. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."); *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where the district court finds the appeal to be frivolous).

The clerk of this Court shall provide notice to the Ninth Circuit and the parties of this Order.

**IT IS SO ORDERED.**

DATED: February 27, 2020.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

CC: 9TH COA

(ADSx),CLOSED,DISCOVERY

# UNITED STATES DISTRICT COURT
# CENTRAL DISTRICT OF CALIFORNIA (Southern Division - Santa Ana)
# CIVIL DOCKET FOR CASE #: 8:19-cv-02050-CBM-ADS

Adam Bereki v. Gary Humphreys et al
Assigned to: Judge Consuelo B. Marshall
Referred to: Magistrate Judge Autumn D. Spaeth
Case in other court: 9th Circuit, 20-55181
Cause: 28:2201 Constitutionality of State Statute(s)

Date Filed: 10/28/2019
Date Terminated: 02/06/2020
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

**Plaintiff**

**Adam Bereki**
*a man*

represented by **Adam Bereki**
818 Spirit
Costa Mesa, CA 92626
949-585-3016
Email: abereki@gmail.com
PRO SE

V.

**Defendant**

**Gary Humphreys**
*a man*

represented by **William George Bissell**
William G Bissell Law Offices
23 Corporate Plaza Drive Suite 150
Newport Beach, CA 92660
949--287-4503
Email: wbissell@wgb-law.com
*ATTORNEY TO BE NOTICED*

**Defendant**

**Karen Humphreys**
*a woman*

represented by **William George Bissell**
(See above for address)
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|---|---|---|
| 10/28/2019 | 1 | COMPLAINT against Defendants Gary Humphreys, Karen Humphreys. Case assigned to Judge Consuelo B. Marshall for all further proceedings. Discovery referred to |

| | | |
|---|---|---|
| | | Magistrate Judge Autumm D. Spaeth. Filed by Plaintiff Adam Bereki. (Attachments: # 1 Civil Cover Sheet) (lh) (Entered: 10/30/2019) |
| 10/28/2019 | 2 | CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff Adam Bereki, (lh) (Entered: 10/30/2019) |
| 10/28/2019 | 3 | APPLICATION to Proceed In District Court Without Prepaying Fees or Costs (Long Form) filed by Plaintiff Adam Bereki. (lh) (Entered: 10/30/2019) |
| 10/28/2019 | 4 | NOTICE OF ASSIGNMENT to District Judge Consuelo B. Marshall and Magistrate Judge Autumn D. Spaeth. (lh) (Entered: 10/30/2019) |
| 10/28/2019 | 7 | REQUEST FOR ASSISTANCE OF COUNSEL filed by Plaintiff Adam Bereki. (shb) (Entered: 11/12/2019) |
| 10/31/2019 | 5 | ORDER RE REQUEST TO PROCEED IN FORMA PAUPERIS by Magistrate Judge Autumn D. Spaeth: IT IS ORDERED that the Request to Proceed In Forma Pauperis 3 is hereby GRANTED. (kh) (Entered: 10/31/2019) |
| 11/01/2019 | 6 | STANDING ORDER upon filing of the complaint by Judge Consuelo B. Marshall. READ THIS ORDER CAREFULLY. It controls this case and may differ in some respects from the Local Rules. (ys) (Entered: 11/01/2019) |
| 11/08/2019 | 11 | FIRST AMENDED VERIFIED COMPLAINT amending Complaint - (Discovery), 1 , filed by Plaintiff Adam Bereki(shb) (Entered: 11/20/2019) |
| 11/12/2019 | 8 | MINUTES (IN CHAMBERS) by Judge Consuelo B. Marshall: DENYING 7 REQUEST FOR ASSISTANCE OF COUNSEL. The Court, however, advises Plaintiff that the Central District of California offers Pro Se Clinics in Los Angeles, Riverside and Santa Ana. See order for details. (shb) (Entered: 11/13/2019) |
| 11/14/2019 | 10 | NOTICE filed by Plaintiff Adam Bereki. (shb) (Entered: 11/20/2019) |
| 11/19/2019 | 9 | NOTICE OF MOTION AND MOTION to Dismiss Case filed by defendants Gary Humphreys, Karen Humphreys. Motion set for hearing on 12/17/2019 at 10:00 AM before Judge Consuelo B. Marshall. (Attachments: # 1 Proposed Order) (Attorney William George Bissell added to party Gary Humphreys(pty:dft), Attorney William George Bissell added to party Karen Humphreys(pty:dft)) (Bissell, William) (Entered: 11/19/2019) |
| 11/20/2019 | 12 | NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: NOTICE OF MOTION AND MOTION to Dismiss Case 9 . The following error(s) was/were found: Local Rule 7.1-1 No Notice of Interested Parties and/or no copies. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (shb) (Entered: 11/20/2019) |
| 11/20/2019 | 14 | NOTICE re CHALLENGE TO THE CONSTITUTIONALITY OF STATE STATUTES filed by Plaintiff Adam Bereki. (shb) (Entered: 11/21/2019) |
| 11/21/2019 | 13 | NOTICE Notice of interested Parties filed by defendants Gary Humphreys, Karen |

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| | | Humphreys. (Bissell, William) (Entered: 11/21/2019) |
| 11/22/2019 | 15 | NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Notice (Other) 13 . The following error(s) was/were found: Incorrect event selected. Correct event to be used is: Civil Events Other Filings Notices select - Certificate/Notice of Interested Parties. In response to this notice, the Court may: (1) order an amended or correct document to be filed; (2) order the document stricken; or (3) take other action as the Court deems appropriate. You need not take any action in response to this notice unless and until the Court directs you to do so. (shb) (Entered: 11/22/2019) |
| 11/25/2019 | 19 | APPLICATION for Pro Se Litigant to electronically file documents in a specific case filed by Plaintiff Adam Bereki. (shb) (Entered: 12/03/2019) |
| 11/27/2019 | 16 | WAIVER OF SERVICE Returned Executed filed by Plaintiff Adam Bereki served upon Gary Humphreys waiver sent by Plaintiff on 11/4/2019, answer due 1/3/2020; Karen Humphreys waiver sent by Plaintiff on 11/4/2019, answer due 1/3/2020. Waiver of Service signed by Attorney, William Bissell. (shb) (Entered: 12/02/2019) |
| 11/27/2019 | 17 | OPPOSITION TO DEFENDANT'S MOTION TO DISMISS CASE, 9 filed by Plaintiff Adam Bereki. (shb) (Entered: 12/02/2019) |
| 11/27/2019 | 18 | DECLARATION OF ADAM BEREKI IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS MOTION TO DISMISS CASE, 9 filed by Plaintiff Adam Bereki. (shb) (Entered: 12/02/2019) |
| 11/27/2019 | 20 | PLAINTIFF'S EXHIBIT K IN SUPPORT OF OPPOSITION TO DEFENDANTS MOTION re NOTICE OF MOTION AND MOTION to Dismiss Case 9 filed by Plaintiff Adam Bereki. (Attachments: # 1 Exhibit K Part 2 of 2)(shb) (Entered: 12/03/2019) |
| 11/27/2019 | 21 | PLAINTIFFS EXHIBIT K Part 2 RE OPPOSITION TO DEFENDANTS MOTION TO DISMISS 9 , filed by Plaintiff Adam Bereki. (Attachments: # 1 Exhibit K Part of 4) (shb) (Entered: 12/03/2019) |
| 11/27/2019 | 22 | PLAINTIFFS EXHIBIT K Part 3 RE OPPOSITION TO DEFENDANTS MOTION TO DISMISS CASE 9 filed by Plaintiff Adam Bereki. (Attachments: # 1 Exhibit K Part 3 part 2)(shb) (Entered: 12/03/2019) |
| 11/27/2019 | 23 | [REFER TO NOTICE OF CLERICAL ERROR, DKT 27 FOR EXHIBIT K, PART 4 OF 4]. PLAINTIFFS EXHIBIT K Part 4 -1, 2 IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS CASE, 9 filed by Plaintiff Adam Bereki. (Attachments: # 1 Exhibit K Part 4-2)(shb) (Additional attachment(s) added on 12/3/2019: # 2 Exhibit K Part 4. No. 3, # 3 Exhibit K Part 4 No. 4) (shb). Modified on 12/9/2 019 (shb). (Entered: 12/03/2019) |
| 11/27/2019 | 24 | PLAINTIFFS EXHIBIT L Pts 1-4 RE REPLY TO DEFENDANTS MOTION TO DISMISS, 9 filed by Plaintiff Adam Bereki. (Attachments: # 1 Exhibit L Part 2, # 2 Exhibit L Part 3, # 3 Exhibit L Part 4)(shb) (Entered: 12/03/2019) |
| 11/27/2019 | 25 | PLAINTIFFS EXHIBIT M IN OPPOSITION TO DEFENDANTS MOTION TO |

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| | | DISMISS, 9 filed by Plaintiff Adam Bereki. (shb) (Entered: 12/03/2019) |
| 12/04/2019 | 26 | ORDER by Judge Consuelo B. Marshall: GRANTING 19 APPLICATION for Pro Se Electronic Filing. The applicant must register to use the Courts CM/ECF System within five (5) days of being served with this order. Registration information is available at the Pro Se Litigant E-Filing web page located on the Courts website. Upon registering, the applicant will receive a CM/ECF login and password that will allow him/her to file non-sealed documents electronically in this case only. Any documents being submitted under seal must be manually filed with the Clerk. (shb) (Entered: 12/05/2019) |
| 12/09/2019 | 27 | NOTICE OF CLERICAL ERROR: Due to clerical error Re: Plaintiff's Exhibits in Opposition to Defendant's Motion to Dismiss, Exhibit K, Part 4 of 4, 23 . Document 23 image is missing parts and out of order. THE ATTACHMENT 23 IS BEINGREPLACED AND THE CORRECT/COMPLETE DOCUMENT RE EXHIBIT K, Part 4 of 4, IS ATTACHED HERETO. (Attachments: # 1 Exhibit 4, Part 1, # 2 Exhibit 4, Part 2, # 3 Exhibit 4, Part 3, # 4 Exhibit 4, Part 4, # 5 Exhibit 4, Part 5, # 6 Exhibit 4, Part 6, # 7 Exhibit 4, Part 7, # 8 Exhibit 4, Part 8) (shb) (Entered: 12/09/2019) |
| 12/11/2019 | 28 | MINUTE IN CHAMBERS ORDER RE DEFENDANTS MOTION TO DISMISS THE FIRST AMENDED COMPLAINT by Judge Consuelo B. Marshall: The Court continues the hearing on the Motion to Dismiss from December 17, 2019 to January 14, 2020 at 10:00 a.m. See order for further details. (shb) (Entered: 12/11/2019) |
| 01/14/2020 | 29 | MINUTES OF HEARING RE DEFENDANT'S MOTION TO DISMISS, 9 Hearing held before Judge Consuelo B. Marshall: Following discussions with the parties, the Court advises counsel that the motion is taken under submission. Plaintiff is ordered to file the additional citations by no later than January 17, 2020. Once the Court review the new citations a written order will issue. Defendant's judicial notice is granted. Court Reporter: Sherri Kleeger. (shb) (Entered: 01/14/2020) |
| 01/16/2020 | 30 | PLAINTIFF'S ADDITIONAL AUTHORITIES AND CORRECTED TESTIMONY TO BE CONSIDERED BY THE COURT RE: DEFENDANTS MOTION TO DISMISS FILED 11/19/19, 9 filed by Plaintiff Adam Bereki. (shb) (Entered: 01/17/2020) |
| 02/06/2020 | 31 | ORDER RE: DEFENDANTS MOTION TO DISMISS THE FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(B)(1), (6) & (7) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND REQUEST FOR JUDICIAL NOTICE by Judge Consuelo B. Marshall: The Court GRANTS Defendants Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action. The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine. ( MD JS-6. Case Terminated ) (shb) (Entered: 02/06/2020) |
| 02/10/2020 | 32 | NOTICE OF APPEAL and Representation Statement, to the 9th CCA filed by plaintiff Adam Bereki. Appeal of Order on Motion to Dismiss Case, 31 Filed On: 2/6/20; Entered On: 2/6/20; In forma pauperis was granted on 10/31/19, see item 5. (mat) (Entered: 02/19/2020) |
| 02/20/2020 | 33 | NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 20-55181 assigned to Notice of Appeal to 9th |

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| | | Circuit Court of Appeals, 32 as to Plaintiff Adam Bereki. (shb) (Entered: 02/21/2020) |
| 02/24/2020 | 34 | APPEAL REFERRAL - REFERRAL NOTICE re: Notice of Appeal to 9th Circuit Court of Appeals 32 RECEIVED from 9th Circuit Court. Referred to the District Court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. If the district court elects to revoke in forma pauperis status, the district court is requested to notify this court and the parties of such determination within 21 days of the date of this referral. If the district court does not revoke in forma pauperis status, such status will continue automatically for this appeal. (mat) (Entered: 02/25/2020) |
| 02/27/2020 | 35 | ORDER RE: NINTH CIRCUITS REFERRAL AND REVOCATION OF PLAINTIFFS IN FORMA PAUPERIS STATUS 34 by Judge Consuelo B. Marshall. The Court finds Plaintiff's in forma pauperis status should not continue for the appeal because Plaintiffs appeal of the Order is frivolous. Therefore, the Court revokes Plaintiffs in forma pauperis status. (SEE ORDER FOR FURTHER DETAILS) (yl) (Entered: 02/28/2020) |
| 03/16/2020 | 37 | TRANSCRIPT ORDER re: Court of Appeals case number 20-55181, as to Plaintiff Adam Bereki for Court Reporter. Court will contact Adam Bereki at abereki@gmail.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter. (ha) (Entered: 08/05/2020) |
| 03/23/2020 | 36 | NOTICE OF APPEAL and Representation Statement. to the 9th CCA filed by plaintiff Adam Bereki. Appeal of Order, 35 Filed On: 2/27/20; Entered On: 2/28/20. (mat) (Entered: 03/26/2020) |
| 11/12/2020 | 38 | ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 32 filed by Adam Bereki. CCA # 20-55181. All other pending motions are denied as moot. DISMISSED. (lom) (Entered: 11/17/2020) |
| 12/02/2020 | 40 | 12-8-2020 - DOCUMENT STRICKEN PER ORDER 41 . Letter from Adam Bereki (shb) Modified on 12/8/2020 (shb). (Entered: 12/08/2020) |
| 12/04/2020 | 39 | MANDATE of Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 32 , CCA # 20-55181. The judgment of this Court, entered November 12, 2020, takes effect thisdate.This constitutes the formal mandate of this Court issued pursuant to Rule41(a) of the Federal Rules of Appellate Procedure. \|See USCA Order 38 , DISMISSED.\| (mat) (Entered: 12/04/2020) |
| 12/08/2020 | 41 | MINUTE IN CHAMBERS-ORDER AND NOTICE TO ALL PARTIES by Judge Consuelo B. Marshall: Counsel are hereby notified that pursuant to the Judge's directive, the Letter 40 filed in this case on December 2, 2020, was incorrectly filed by the Clerk and is hereby stricken from this case. Document No. 40 is now directed to the Clerk of Court for processing. IT IS SO ORDERED. (shb) (Entered: 12/08/2020) |

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# Judicial Notice Exhibit 7

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

| | |
|---|---|
| ADAM BEREKI,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>GARY HUMPHREYS; KAREN HUMPHREYS,<br><br>Defendants-Appellees. | No. 20-55181<br><br>D.C. No. 8:19-cv-02050-CBM-ADS<br>Central District of California, Santa Ana<br><br>ORDER |

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On March 24, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the responses to the court's March 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

**DISMISSED.**

**General Docket**
**United States Court of Appeals for the Ninth Circuit**

**Court of Appeals Docket #:** 20-55181
**Nature of Suit:** 3950 Constitutionality of State Statutes
Adam Bereki v. Gary Humphreys, et al
**Appeal From:** U.S. District Court for Central California, Santa Ana
**Fee Status:** Due

**Docketed:** 02/20/2020
**Termed:** 11/12/2020

**Case Type Information:**
**1)** civil
**2)** private
**3)** null

**Originating Court Information:**
**District:** 0973-8 : 8:19-cv-02050-CBM-ADS
**Court Reporter:** Sheri S. Kleeger
**Court Reporter:** Alberto V. Ortiz, Court Reporter Supervisor
**Trial Judge:** Consuelo B. Marshall, Senior District Judge
**Date Filed:** 10/28/2019

| Date Order/Judgment: | Date Order/Judgment EOD: | Date NOA Filed: | Date Rec'd COA: |
|---|---|---|---|
| 02/06/2020 | 02/06/2020 | 02/10/2020 | 02/19/2020 |

**Prior Cases:**
None

**Current Cases:**
None

| | |
|---|---|
| ADAM BEREKI<br>Plaintiff - Appellant, | Adam Bereki<br>Direct: 949-241-6693<br>[NTC Pro Se]<br>818 Spirit<br>Costa Mesa, CA 92626 |
| v. | |
| GARY HUMPHREYS<br>Defendant - Appellee, | William George Bissell, Esquire<br>Direct: 949-719-1159<br>Email: wbissell@wgb-law.com<br>[NTC Retained]<br>Law Office of William Bissell<br>110 Newport Center Drive,<br>Suite 200<br>Newport Beach, CA 92660 |
| KAREN HUMPHREYS<br>Defendant - Appellee, | William George Bissell, Esquire<br>Direct: 949-719-1159<br>[COR LD NTC Retained]<br>(see above) |

ADAM BEREKI,

Plaintiff - Appellant,

v.

GARY HUMPHREYS; KAREN HUMPHREYS,

Defendants - Appellees.

| | | |
|---|---|---|
| 02/20/2020 | 1<br>61 pg, 1.04 MB | DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND PRO SE APPELLANT. SEND MQ: No. The schedule is set as follows: Transcript ordered by 03/11/2020. Transcript due 04/10/2020. Appellant Adam Bereki opening brief due 05/20/2020. Appellees Gary Humphreys and Karen Humphreys answering brief due 06/19/2020. Appellant's optional reply brief is due 21 days after service of the answering brief. [11603143] (JMR) [Entered: 02/20/2020 11:29 AM] |
| 02/24/2020 | 2<br>2 pg, 125.3 KB | Filed referral notice (Deputy Clerk:CKP): Referring to the district court for determination whether in forma pauperis status should continue for this appeal. [11606741] (CKP) [Entered: 02/24/2020 01:35 PM] |
| 03/20/2020 | 3<br>125 pg, 1.71 MB | Filed Appellant Adam Bereki motion to appoint pro bono counsel, motion to proceed In Forma Pauperis. Deficiencies: None. Served on 03/16/2020. [11637287] (QDL) [Entered: 03/20/2020 03:57 PM] |
| 03/24/2020 | 4<br>6 pg, 159.21 KB | Filed clerk order (Deputy Clerk: JW): A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. See 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. See 28 U.S.C. § 1915(e)(2). Within 35 days after the date of this order, appellant must: (1) file a motion to dismiss this appeal, see Fed. R. App. P. 42(b), or (2) file a statement explaining why the appeal is not frivolous and should go forward. If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. See 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. If appellant files a statement that the appeal should go forward, appellees may file a response within 10 days after service of appellant's statement. The briefing schedule for this appeal is stayed. The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss the appeal or statement that the appeal should go forward. [11640174] (CKP) [Entered: 03/24/2020 12:28 PM] |
| 03/26/2020 | 5<br>4 pg, 387.58 KB | Received copy of amended notice of appeal from district court filed on 03/23/2020. [11643228] (QDL) [Entered: 03/26/2020 04:36 PM] |
| 04/27/2020 | 6<br>3 pg, 437.59 KB | Filed Appellant Adam Bereki response to order to show cause dated 03/24/2020. Served on 04/27/2020. [11672226] (QDL) [Entered: 04/27/2020 09:49 AM] |
| 05/04/2020 | 7<br>16 pg, 239.95 KB | Filed (ECF) Appellees Gary Humphreys and Karen Humphreys reply to response to order to show cause dated 03/24/2020. Date of service: 04/05/2020. [11679778] [20-55181] --[COURT UPDATE: Updated docket text to reflect correct ECF filing type. 5/4/2020 by TYL] (Bissell, William) [Entered: 05/04/2020 02:21 PM] |
| 06/26/2020 | 8<br>22 pg, 239.83 KB | Filed Appellant Adam Bereki supplemental response to order to show cause dated 03/24/2020. Served on 06/26/2020. [11734768] (QDL) [Entered: 06/26/2020 10:54 AM] |
| 11/12/2020 | 9<br>1 pg, 164.29 KB | Filed order (SIDNEY R. THOMAS, A. WALLACE TASHIMA and WILLIAM A. FLETCHER)The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. See 28 U.S.C. § 1915(a). On March 24, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and the responses to the court's March 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. [3] ) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2). All other pending motions are denied as moot. DISMISSED. [11890590] (JPD) [Entered: 11/12/2020 01:42 PM] |
| 12/04/2020 | 10<br>1 pg, 91.8 KB | MANDATE ISSUED. (SRT, AWT and WAF) [11914823] (QDL) [Entered: 12/04/2020 08:53 AM] |
| 09/21/2021 | 11<br>2 pg, 23.55 KB | Filed Appellant Adam Bereki letter re: Notification of filing a Supreme Court document/case. Paper filing deficiency: Case closed. [12234951] (RL) [Entered: 09/21/2021 02:41 PM] |

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| **Description:** | Docket Report (filtered) | **Search Criteria:** | 20-55181 |
| **Billable Pages:** | 2 | **Cost:** | 0.20 |

# Judicial Notice Exhibit 8

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

September 22, 2021

Adam A. Bereki
695 Town Center Dr., Ste. 700
Costa Mesa, CA 92626

RE: In Re Bereki

Dear Mr. Bereki:

The above-entitled petition for an extraordinary writ of habeas corpus was received on September 22, 2021. The papers are returned for the following reason(s):

The petition does not follow the form prescribed by Rule 14 as required by Rule 20.2.

The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

No motion for leave to file a petition for an extraordinary writ of habeas corpus is required. However, a petition for an extraordinary writ of habeas corpus may not be combined with any other filing, and the Rules of the Court make no provision for the filing of a petition for a writ of error.

The Rules of the Court make no provision for the filing of documents via digital media.

Please be advised that the Court does not appoint counsel for the purpose of preparing a petition.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:
Jacob Levitan
(202) 479-3392

Enclosures

# Judicial Notice Exhibit 9

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 09/15/2022 TIME: 01:30:00 PM DEPT: C66

JUDICIAL OFFICER PRESIDING: Sandy Leal
CLERK: V. Do
REPORTER/ERM: Olivia Caucas
BAILIFF/COURT ATTENDANT: M. Wright

CASE NO: **30-2022-01271693-CL-CL-CJC** CASE INIT.DATE: 07/25/2022
CASE TITLE: **First National Bank of Omaha vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Rule 3.740 Collections

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EVENT ID/DOCUMENT ID: 73846965

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 09/14/2022

---

**APPEARANCES**
James McCleoud, Plaintiff, present remotely.
Adam Bereki, self represented Defendant, present remotely.
Attorney, Katelyn Burnett for Prestige Default Services appears remotely.

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Hearing held, all participants appearing remotely.

Case called at 1:46 PM.

Ex-Parte application for Emergency Hearing on Petition for Writ of Habeas Corpus is requested by Defendant, Adam A. Bereki.

The Court hears oral argument.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Ex- Parte Application for Emergency Hearing on Petition for Writ of Habeas Corpus is **DENIED.**

**The Court notes the Petition for Writ set for October 13, 2022 in Judge Corey S. Cramin's Department in C3.**

# Judicial Notice Exhibit 10

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 10/13/2022 TIME: 09:30:00 AM DEPT: C03

JUDICIAL OFFICER PRESIDING: Corey S. Cramin
CLERK: M. Dambert
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: K. Thach

CASE NO: **30-2022-01271693-CL-CL-CJC** CASE INIT.DATE: 07/25/2022
CASE TITLE: **First National Bank of Omaha vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Rule 3.740 Collections

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EVENT ID/DOCUMENT ID: 73841220,116895273

**EVENT TYPE:** Petition for Writ
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Petition - Other For Writ of Habeas Corpus, 09/07/2022

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**APPEARANCES**
James MacLeod, from The Dunning Law Firm APC, present for Plaintiff(s) remotely.
Adam Bereki, self represented Defendant, present remotely.

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Hearing held, all participants appearing remotely.

The Court, having fully considered the documents submitted, now rules as follows:

Defendant's Petition for Writ of Habeas Corpus is denied.

No further notice was ordered.

# Judicial Notice Exhibit 11

# Supreme Court of the United States

I, SCOTT S. HARRIS, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing photocopies are true copies of the: Docket sheet in the case of:

**IN RE ADAM BEREKI,**

Applicant.

No. 22A426, of the October Term 2022, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of the Supreme Court of the United States, at the City of Washington, D.C. this 10th day of June, A.D., 2025.

/s/ SCOTT S. HARRIS
Clerk of the Supreme Court
*of the United States*

by _____
*Laurie Wood*
*Deputy Clerk*

# Supreme Court of the United States

No. 22A426

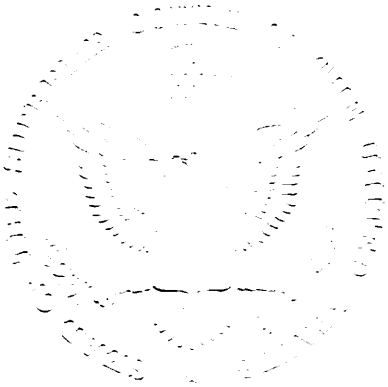
In Re Adam Bereki,

Applicant

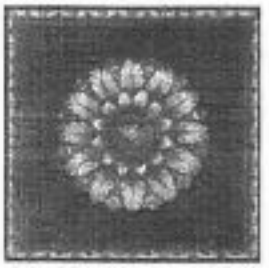
ON CONSIDERATION of the application for stay addressed to Justice Thomas and referred to the Court,

IT IS ORDERED by this Court that the said application is denied.

January 9, 2023



A true copy SCOTT S. HARRIS
Test:
Clerk of the Supreme Court of the United States
By _____
Deputy



Search documents in this case: Search

## No. 22A426

| | |
|---|---|
| Title: | In Re Adam Bereki, Applicant |
| Docketed: | November 15, 2022 |
| Lower Ct: | Superior Court of California, Orange County |
| Case Numbers: | (30-2022-01271693) |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| Nov 05 2022 | Application (22A426) for a stay, submitted to Justice Kagan. |
| | Main Document Other |
| Nov 15 2022 | Application (22A426) denied by Justice Kagan |
| Nov 17 2022 | Application (22A426) refiled and submitted to Justice Thomas. |
| | Written Request |
| Dec 14 2022 | Application (22A426) returned to the Court. |
| Dec 14 2022 | DISTRIBUTED for Conference of 1/6/2023 |
| Jan 09 2023 | Application (22A426) denied by the Court |

| NAME | ADDRESS | PHONE |
|---|---|---|
| Attorneys for Petitioner | | |
| Adam A. Bereki | 818 Split<br>Costa Mesa, CA 92626 | |
| Party name: In re Adam Bereki | | |

No. _____

IN THE

# Supreme Court of the United States

In re Adam Bereki,

Petitioner.

## *VERIFIED* APPLICATION FOR EMERGENCY STAY *PENDING THE FILING AND LAWFUL ADJUDICATION OF A* PETITION FOR ORIGINAL WRITS OF *QUO WARRANTO, MANDAMUS, & HABEAS CORPUS*

To Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Ninth Circuit

Adam A. Bereki
*In Propria Persona*
818 Spirit
Costa Mesa, California
916.585.3016
abereki@gmail.com

**To Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:**

Pursuant to "Rules" 22 and 23 of the "Rules" of the Supreme Court, Petitioner Adam Bereki applies for an emergency stay of: (1) the non-judicial foreclosure proceedings initiated by Respondent Prestige Default Services, LLC in the Office of the Clerk-Recorder for the County of Orange, California; and, (2) the judgment in the Superior Court of California case# 30-2022-01271693 initiated by Respondent First National Bank of Omaha for "damages" pertaining to Petitioner's alleged breach of contractual obligation.

This Application is made pending the filing and Lawful adjudications of an Emergency Petition for Original Writs of *Quo Warranto*, *Mandamus*, and *Habeas Corpus* to be sent within 40 calendar days of the date this Stay is granted.

## I. WHY THE RELIEF PETITIONER REQUESTS IS NOT AVAILABLE FROM ANY OTHER COURT OR JUDGE

Petitioner has been unlawfully restrained of his liberty and irreparably harmed and damaged by the repeated and deliberate denial of all rights, privileges, and immunities guaranteed to him by the California and U.S. Constitutions.

### A. BACKGROUND

Petitioner is a former police officer in southern California with more than twenty years of experience in forensic civil and criminal investigations and a specialty in cases involving highly sophisticated fraud and government corruption. In March of 2017, he became aware of a criminal Enterprise orchestrated individually and/or collectively by officials of all three branches of the governments of California and the

United States designed to egregiously deprive him and the American People of the rights, privileges, and immunities secured by the California and United States Constitutions.

Petitioner became aware of the Enterprise when it was used to maliciously prosecute and falsely constructively imprison him for allegedly performing construction work without a license even though he was the licensee of a general contractor license.

During the faux "trial" held in the Superior "Court" of California-County of Orange, he was maliciously prosecuted by *private parties* for violating the contractor "licensing laws" under the fraudulent pretense of a remedial civil action in equity for "disgorgement". He was never told the true nature and cause of the accusation(s) against him, never informed of his right to or afforded the assistance of counsel, never allowed to confront his accuser(s), denied all of the heightened protections in criminal proceedings, and then excessively fined about $930,000 resulting in a bill of pains and penalties.

When Petitioner challenged the jurisdiction of the "Court" to excessively, cruelly, and unusually punish him–including by depriving him of the right to a judicial proceeding–he was further punished by monetary sanctions obviously intended to silence his dissent.

When Petitioner was unable to pay the excessive fine (an amount more than 42 times his qualifying net worth) his general contractor license (the one he allegedly didn't have) was summarily suspended without *any* hearing or means of appeal by operation of the contractor "licensing laws". Consequently, he has been unlawfully

restrained from earning a living in his profession as a general contractor for more than five years causing an estimated three million dollars in lost earnings, irreparable harm, and other damages that include the impairment of his private contracts and obligations. As recognized by a former Justice of this Court, "by taking away his opportunity to earn a living, you can drain the blood from his veins without even scratching his skin."[1]

Among the impairment of Petitioner's private obligations is the fraudulent and wrongful non-judicial foreclosure proceedings on the "Deed of Trust" secured by the real property held in his Living Trust because he and his estate are unable to discharge the alleged monthly mortgage obligation as a direct result of the restraint of his liberty. Prestige is also fraudulently attempting to foreclose on this "Deed of Trust" to steal Petitioner's home when it knows neither the "Deed of Trust" nor the real property are security for an entirely separate security instrument traded on the U.S. Stock Exchange as a purported "mortgage backed security".

At almost the same time as the "trial", and in mirror-like despotic fashion, Petitioner was also subjected to another bill of pains and penalties in the form of a "mandatory arbitration" proceeding executed by the Contractors State License Board and a private arbitration company. Not only was there no statutory authority for the Board and arbitration company to create or conduct a "mandatory arbitration" proceeding, or to assign the proceeding to unelected unappointed private arbitrators who don't hold public office, he was never given notice of the proceedings. After

[1] *Flemming v. Nestor*, 363 U.S. 603, 629 (1960). Justice Douglas Dissenting. Citation omitted.

discovering what had transpired and repeatedly objecting, his license was summarily suspended/revoked without *any* hearing or known means of appeal.

Having honorably served in law enforcement and seen first-hand how the justice system can operate for the good of our society and with integrity, Petitioner was initially shocked and in disbelief at what had transpired. He initially thought it was just a series of sloppy government mistakes that could be corrected on appeal or through other checks and balances. What he didn't understand was that it was not a mistake at all and was just the beginning of the fraud, treason, and other crimes that would be perpetrated upon him as he sought remedial justice that continues to be denied.

Over the past five years, Petitioner put the purported system of "checks and balances" in every branch of State and Federal government to a real test as he sought relief. In addition to meticulously following the State and Federal "Court" appellate processes and being denied relief at every step, he made complaints to five municipal Police departments, the Orange County Sheriff-Coroner department, California Highway Patrol, Orange County District Attorney, U.S. Dept. of Justice and FBI, California Assembly and Senate, California Governor and Attorney General, and the California Commission on Judicial Performance. In every instance, the officials involved either acted with careless disregard or deliberate indifference to the irreparable harm and damages being suffered by him as result of the obvious and ongoing deprivation of his rights. In every instance, the officials refused to fully, fairly, and impartially investigate his criminal complaints and deprivation of rights claims and/or to intervene to stop the ongoing irreparable harm and damages.

All of the authenticated Exhibits pertaining to Petitioner's investigation, including many digital audio recordings, are available for viewing and/or download in the spirit of full disclosure and transparency at http://www.thespiritoflaw.com.

This Application and Petitioner's forthcoming Petition for Extraordinary Original Writs will evidence his forensic investigation throughout the entire process from treasonous "conviction" to every attempt at seeking relief. It will expose the egregiously anti-Constitutional policies and procedures that have been established under color of law but without lawful authority by "official" actors of the Enterprise to obliterate the system of checks and balances and overthrow the Constitutional Republican forms of government of California and the United States.

In the words of the Founders, "[a]n elective despotism was not the government we fought for; but one which should not only be founded on free principles, [...] in which the powers of government should be so divided and balanced [...], as that no one could transcend their legal limits, without being effectually checked and restrained by the others."[2]

Article III of the Constitution *mandates* that "[t]he judicial Power of the United States **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution" and therefore, that "[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"[3]. Despite this, this "Court"

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[2] *Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, 2022, U.S. App. LEXIS 29060, 2 (5th Cir. 2022) citing The Federalist No. 48 (J. Madison) (quoting Thomas Jefferson's *Notes on the State of Virginia* (1781)).

[3] "The constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of

has refused its mandatory duty to hear Petitioner's case twice– an act it has repeatedly admitted is "treason to the Constitution".[4]

This Court has a mandatory, non-discretionary ministerial duty to exercise jurisdiction over this case to: (1) conduct a full, fair, and impartial investigation; (2) intervene to stop the crimes and irreparable harm and damages being perpetrated upon Petitioner and the American People; and, (3) to take all Lawful action necessary and within the bounds of its authority to restore the Republican governments of California and the United States.

## B. EXTRAORDINARY CIRCUMSTANCES REQUIRING THIS COURT TO EXERCISE JURISDICTION AND GRANT THE REQUESTED RELIEF

The right to liberty includes "the right to be free from, and to obtain judicial relief for, unjustified intrusions of personal security."[5] Based on the extraordinary circumstances presented herein, unless the jurisdiction of this Court is exercised, there is a complete absence of any judicial or other trustworthy and effective corrective process available in the "governments" of California and the United States leaving Petitioner and the American People without a Constitutional form of government. Even if there appears to be another corrective process available, the evidence presented herein will reveal that it is a façade intended to create the illusion of justice and that rogue "officials" will continue to abuse their authority as a means

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justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."*Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

[4] "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[5] *Ingram v. Wright*, 430 U.S. 651, 673 (1977). Citations omitted.

to commit additional crimes and treason to aid and abet the Enterprise to ensure its survival while simultaneously denying Petitioner and the American People Lawful remedy.

1. **Petitioner has exhausted all apparent remedies in the "Courts" of California and the United States and has been denied a judicial determination of his rights in every instance;**

2. **There is a complete and total absence of any State or Federal corrective processes** as the officials of all three branches of the governments of California and the United States involved in this case are allegedly engaged in fraud, deceit, and/or treason and other crimes to deliberately deprive Petitioner of his rights, liberty, and property and have either exercised jurisdiction over his person and/or property without Lawful authority and/or have refused to exercise jurisdiction to perform their sworn duties to investigate and intervene as mandated by Law;

3. **There is no judicial Constitutional Court in the State of California with subject matter jurisdiction upon which Petitioner can present these claims**
    i. California "Courts" claim that they lack subject matter jurisdiction to hear and determine cases involving Federal questions. Exhibit [D] p.5438, pp.5441-5447. Amongst other structural jurisdiction issues, this has resulted in the apparent summary suspension of the writ of *Habeas Corpus* secured by Art. I, §9, cl. 2 in all Cal. "Courts";
    ii. The Cal. "Constitution of 1879" does not vest any Court of California with subject matter jurisdiction at Law or Equity as mandated by the U.S. Constitution. Article VI, §5 of the Cal. "Constitution of 1879" that once granted the Superior Courts subject matter jurisdiction at Law and Equity was repealed in 1966. The "Courts" of California appear to have been proceeding without any Lawful authority ever since.
    iii. The Cal. "Constitution of 1879" does not grant the Legislature any power to create lower Courts or to vest them with any statutory jurisdiction, including jurisdiction over the "statutes" involved in this case;
    iv. All "Courts" of California involved in this case have either committed fraud and treason to the Constitutions of California and the United States by exercising personal and/or subject matter jurisdiction without Lawful authority and/or *repeatedly* refusing to exercise jurisdiction to stop the crimes and the irreparable harm and damages resulting therefrom. Most recently, this includes summary denials of Petitioner's

Application for Emergency Stay and Petition Writ of *Habeas Corpus*:

4. **The Contractor's State Licensing Board and its "mandatory arbitration" program are treason to the Constitutions of California and the United States and there are no checks and balances in the government of California to stop it;**

5. **Congress has not vested any inferior Court of the United States with subject matter jurisdiction at Law or Equity as defined by the U.S. Constitution to hear and determine Petitioners claims;**

6. **There is no lawful representative quorum in the "Legislature" of California or the "Congress" of the United States;**

7. **The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief*.**

## ADDITIONAL ISSUES RAISED IN THE FORM OF QUESTIONS

Petitioner has included a *preliminary* copy of the questions to be presented in his forthcoming Petition for Original Writs in Appendix [S], beginning on page 90. There are *many* additional issues raised therein, all of which are fully incorporated in this Application.

## CORPORATE DISCLOSURE STATEMENT

First National Bank of Omaha is a subsidiary of the public traded corporation, First National of Nebraska. Citibank N.A. may be a subsidiary of publicly traded Citigroup.

## NOTICE

By direction of the office of the Clerk of Court, Petitioner has not included the voluminous Exhibits referenced herein but intends them to be fully incorporated. They will be delivered to the Court on the Court's request and can be viewed and/or downloaded in the meantime at: https://www.thespiritoflaw.com/exhibits.

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**2. Petitioner Has Exhausted All Apparent Remedies in the "Courts" of California and the United States and Has Been Denied a Judicial Determination of His Rights in Every Instance**

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**8. The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief* [75]**

*a. First National Bank of Omaha [75]*
*b. Citibank N.A. [81]*

**9. The Constitutions of California and the United States Mandate a Judicial Determination of Rights and Redress of Grievance in the *First Instance*, Not a Multi-year Expedition to Find An Official Willing to Abide Their Sworn Duties. Petitioner Cannot be Subjected to Involuntary Servitude to Continue to Seek Relief From "Government" Agencies and "Officials" Who Have *Repeatedly* Demonstrated Their Engagement in Crimes and Acts of Treason [84]**

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**IV. RELIEF [87]**

**DECLARATION OF ADAM BEREKI**

## PARTIES TO THE PROCEEDINGS

### Petitioner

Adam Bereki is one of the People domiciled in California. He is not a "citizen of the United States", or "person subject to the jurisdiction thereof" according to the so-called "14th Amendment" or a statutory resident of the District of Columbia, a municipal corporation[6] chartered[7] by Congress masquerading as a "State"[8] or as the "United States."[9] According to the Supreme Court of California, the People of California do not owe their Citizenship to the "14th Amendment".[10]

Petitioner also cannot possibly be "subject to the jurisdiction [of the United States]" by virtue of the so-called "14th Amendment" because it was never Lawfully ratified commensurate with Article V,[11] having been forced upon the People without a Lawful representative quorum in "Congress" and by means of federal regional

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[6] MUNICIPAL CORPORATION "A public corporation, created by government for political purposes, and having subordinate and local powers of legislation." [e.g., cities, towns etc.] Black's Law Dictionary by Henry Campbell Black, Revised Fourth Edition, St. Paul, Minn.: West Publishing Co., 1968, pp.1168-9.

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

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

[9] Cal. Code of Civil Procedure §17 (13) "State" includes the District of Columbia and the territories when applied to the different parts of the United States, and the words "United States" may include the district and territories.

[10] *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

[11] *Dyett v. Turner*, 20 Utah 2d 403 (UT Supreme Ct. 1968); Congressional Globe April 5, 1866 pp. 1775-1776; Congressional Record Volume 113 Part 12 June 1967 pp.15641-15646; Tulane Law Review Volume 28, 14th Amendment. (Unknown source; accuracy unverified).

martial law rule imposed by the Reconstruction Acts.[12] Martial law appears nowhere in the Constitutional amending processes found in Article V. Moreover, Petitioner has not made any knowing, voluntary, or intelligent waiver of rights to be subject to the jurisdiction of the "14th Amendment" which is, on account of having never been ratified and in violation of all six Articles of the Constitution, "foreign to our Constitution and unacknowledged by its law." Any claims for privileges or "rights" pursuant to the "14th Amendment" and all statutes, regulations, rules, and codes in pursuance thereof or in pursuance any other unlawful authority made herein are under extreme duress and coercion.

See also Appendix [S]– Questions Presented: 29-31.

**Respondents**
(Emergency Stay Application Only)

Superior Court of California- County of Orange; Hugh Nguyen, Clerk Recorder-County of Orange;

The status and standing of the following Respondent entities and People are unknown:

Karen Humphreys, a human being;

Gary Humphreys, a human being;

William Bissell, a human being;

David Chaffee, a human being in his private capacity;

Kathleen O'Leary, a human being, in her private capacity;

Thomas Goethals, a human being, in his private capacity;

[12] See especially President Andrew Johnson's Veto thereof.

Richard Aronson, a human being. in his private capacity;

Law Offices of William Bissell;

Prestige Default Services, LLC;

Citibank, N.A. As Owner Trustee for NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2;

First National Bank of Omaha;

The Dunning Law Firm, APC;

Donald Dunning, a human being;

James MacLeod, a human being;

Patricia Sanchez, a human being;

Does 1 through 100.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS

### California "Statutes"

For Cal. Business and Professions Codes §7028, §7031, §7071.17 and §7085, refer to Appendix [Q] pp.82-88.

### Northwest Ordinance of 1787

**Section 14, Article 2 of the Northwest Ordinance of 1787 as reenacted by the First Congress** declares that "The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

### Constitution for the United States of America

**Article I, §2** declares that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at Least one Representative; and until such enumeration shall be

made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

**Article I, §9** declares in pertinent part that "[n]o Bill of Attainder [...] shall be passed."

**Article I, §10** declares that "No State shall [...] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.

**Article III** declares in pertinent parts that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

**Article IV, §3** declares in pertinent part that "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; [...] without the Consent of the Legislatures of the States concerned as well as of the Congress."

**Article IV, §4** declares that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

**Article VI, §2** declares in pertinent parts that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States

and of the several States, shall be bound by Oath or Affirmation, to support this Constitution[.]"

**The First Amendment** declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

**The Fifth Amendment** declares that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

**The Sixth Amendment** declares that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

**The Seventh Amendment** declares that "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

**The Eighth Amendment** declares that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

**The Ninth Amendment declares that** "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

**The Tenth Amendment** declares that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

**The Thirteenth Amendment** declares that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

**The Fourteenth Amendment** declares, in pertinent parts that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

## STATEMENT OF JURISDICTION

Under our Constitutional government of *defined and limited* powers, the Constitution is the "supreme Law of the Land",[13] not the arbitrary acts of public officials. As public officials are agents of the People, challenges to their authority cannot be summarily denied and avoided at the whim or discretion of the official. "[W]henever an act of [...a] government [official] is challenged[,] [the] grant of power must be shown, or the act is void."[14]

Petitioner's accompanying Petition for Original Writs of *Quo Warranto*, *Mandamus*, and non-statutory *Habeas Corpus* challenging the authority of officials of the State of California and the United States to excessively, cruelly, and unusually punish and/or to conspire to punish him and deprive him of his rights, liberty, and property without a judicial determination thereof are writs of *right* and are not to be confused with any "discretionary" writs. Cf. Rule 20 of the Rules of the Supreme Court declaring that petitions for extraordinary writs are "not a matter of right, but of discretion."

On petition for non-statutory Original Writ of *Habeas Corpus*, this Court has jurisdiction over the subject matter pursuant to Article I, §9, Cl. 2 and Article III, §2, which declares, that "[t]he judicial Power **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution [...]." (Emphasis added). See also *Ex parte Siebold*,[15] holding that "[t]he only ground on which this Court, or any court, without

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[13] Article VI, §2.

[14] *United States v. Rhodes*, 27 F. Cas. 785, 790 (1866).

[15] *Ex parte Siebold*, 100 U.S. 371, 375 (1879).

some special statute authorizing it, will give relief on habeas corpus [...] is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void."

Petitioner asserts that the officials in the challenged actions herein lacked jurisdiction over his person and/or of the cause and that he has been falsely constructively imprisoned and subjected to involuntary servitude as a result of an *ultra vires* prosecution and other "official" actions taken under color of law but without Lawful authority. Accordingly, this Court also has power to grant this Writ pursuant to Article III, §2, Article I, §9 Cl. 2, Article I, §9 and §10, the First and Fifth Amendments, §14 of the Judiciary Act of 1789, and/or 28 U.S.C. §2241(c)(1) and (2) because Petitioner has been unlawfully restrained "under or by color of the authority of the United States[,] [an] act done or omitted in pursuance of an Act of Congress, [and] order[s], [and] judgment[s] of judge[s] of the United States."

On Petition for Original Writs of *Quo Warranto* and *Mandamus*, this Court has subject matter jurisdiction pursuant to Article III, §2, Article I, §9 and §10, the First and Fifth Amendments, §14 of the Judiciary Act of 1789, and/or §28 U.S.C. §1651(a).

Pursuant to Article I, §9, Article VI, §2, and Article III, §2, this Court has personal jurisdiction over all of the parties who are either officers of the Court, officials of California or the United States or People or entities that have submitted to the jurisdiction of this Court by filing pleadings subject to its review. All parties have been properly served pursuant to the "Rules" of this Court.

## II. VERIFIED STATEMENT OF THE CASE

### A. BACKGROUND

The case against Petitioner arose as a simple and straightforward civil contract dispute over non-payment for materials and labor services rendered by his company, The Spartan Associates, Inc.[16] ("Spartan"), pursuant to its alleged agreement with Karen and Gary Humphreys, ("the Humphreys"), to perform custom remodel construction work on their condominium units in Newport Beach, California. When the Humphreys refused to pay Spartan, Spartan initiated a suit in the Superior Court of California-County of Orange with claims for quantum meruit and open book account.

In response to Spartan's suit, the Humphreys filed cross-complaints against Spartan, Petitioner, and two surety companies. Among the allegations were claims for damages, negligence, and misrepresentation.

The Humphreys initial defense strategy was to a file a Motion for Summary Judgment on the grounds that because Spartan had allegedly not complied with certain aspects of the contractor "licensing laws" that it lacked standing to the relief it sought. The part of their Motion most relevant here claimed that: (1) the "undisputed facts" establish that Spartan was a **licensed building contractor** and that Spartan (not Petitioner) entered into an agreement with them for home improvement work. Exhibit [A3] pp.231-233. Bolded emphasis added.

[16] A corporation chartered under the laws of the State of California that was solely owned and operated by Petitioner and had repeatedly elected itself as a subchapter S corporation. Spartan remains in the process of dissolution as a result of the issues in this case.

When the Humphreys failed to prove as a matter of law that they were entitled the relief they sought, they concocted a new claim that they *never* contracted with Spartan, but instead with Petitioner, and that since Petitioner was allegedly unlicensed, they were entitled a full refund *without* offsets for the benefits they received pursuant to Cal. Business and Professions Code. §7031(b). (This would amount to a $930,000 total forfeiture to Petitioner while the Humphreys would also receive a windfall of the $930,000 in custom work Spartan performed on their home).

Immediately prior to "trial", the Humphreys amended their complaint with the new first cause of action under §7031(b) they called "disgorgement", while simultaneously severing *all* of their other remaining cross-claims in a Motion for Severance that was granted by the "Court". "Trial" proceeded on their first cause of action for "disgorgement" *only*.

As will be evidenced, Business and Professions Code §7031(b) does not mention let alone authorize a claim for "disgorgement"– an equitable remedy designed to strip a wrongdoer of their illegal profits. Rather, §7031(b) authorizes a total penal forfeiture as punishment for committing the offense of contracting without a license– a public offense that can only be prosecuted under the Executive power of California by the District Attorney's office, not private parties like the Humphreys.

## B. PROCEDURAL HISTORY

### 1. "Trial": Superior "Court" of California-County of Orange

On March 27-28th, 2017, Petitioner was criminally prosecuted in the Superior Court of California-County of Orange, under the fraudulent pretense of a remedial

civil action in Equity for allegedly performing construction work without a license pursuant to Cal. Business and Professions Code §7031(b). At "trial" he was denied all the heightened protections of criminal proceedings including the assistance of counsel and trial by jury. Upon "conviction" he was excessively fined (ordered to forfeit) about $930,000 without any of the protections of the excessive fines clause pursuant to §7031(a) and (b).

Despite the facts that: (1) Spartan was listed on the City of Newport Beach Building Permits as the contractor (vf)[17](Exhibit [A5] pp.499-501); (2) Petitioner was the qualifying individual for Spartan's general contractor license (vf); (3) the Humphreys and Gary Humphreys company, directly paid Spartan $758,000 (Exhibits [A4] p.128 line 19–p.129 line 3, p144 line 17–p.146 line 9 and [A5] pp.475-488); (5) the Humphreys never presented any known evidence Petitioner was a "person" required to be licensed[18] (vf); (6) the Humphreys never presented any known evidence that Petitioner, independent of Spartan, performed any specific work on their project *and* that this work was required to be licensed (vf); and, (7) the Contractors State Licensing Board had determined Petitioner was "qualified" as a general building contractor (vf), "Judge" David Chaffee, found that Petitioner (not Spartan) was the contractor, that he was unlicensed, and "subject to the [total] forfeiture". Exhibit [A4]– Reporter's Transcript p.201.

Chaffee awarded the Humphreys "disgorgement of funds paid" in the amount of $848,000 pursuant to Cal. Business and Professions Code §7031(b). Appendix [A]–

[17] All statements followed by "(vf)" indicated a verified fact. The same applies to all statements made citing Exhibits verifying the statement.

[18] See *Bass v. United States*, 784 Fed. 2d. 1282, 1284 (1986).

Minute Order pp.4-5 and [B]– Judgment p.7 even though §7031(b) fails to grant the "Court" subject matter jurisdiction to award the forfeiture of payments made to *licensed* contractors. Chaffee also held that Petitioner was barred from recovering the approximate $82k allegedly due Spartan on its quantum meruit claim because he was the contractor (not Spartan) pursuant to §7031(a). Appendix [B]– Minute Order, p.5. See also Proc. Hist. Exhibits [A1-A5] found on http://www.thespiritoflaw.com.

Ninety days after the "Judgment Order" was issued on April 20, 2017, Petitioner's vested right to act as a qualifying individual for a general contractor license (which included Spartan's license) was summarily suspended/revoked indefinitely by operation of Cal. Business and Professions Code §7071.17 without a hearing or any known appeal process. No known official record exists for this suspension, even though it is commanded by §7071.17.

### 2. "Appeal"–Fourth District "Court" of Appeal

On appeal to the California Fourth District "Court" of Appeal, "Justices" Aronson, Goethals, and O'Leary (CJ) affirmed Chaffee's "Judgment" in its entirety, holding that all of Petitioner's claims on appeal were "meritless" and that he was not being punished because the $930,000 fine was not penal, but instead an "equitable remedy" known as "disgorgement".[19] Appendix [C]– Opinion pp.9-22 dated October 31, 2018, and Proc. Hist. Exhibits [A5-A18].

### 3. Challenge to Jurisdiction: Superior "Court" of California- County of Orange

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[19] *Humphreys v. Bereki*, 2018 Cal. App. Unpub. LEXIS 7469 p.14 (2018).

When the Appellate "Justices" awarded costs against Petitioner (to further take his money and property without Lawful authority) and remitted the case to the Superior "Court", he again challenged jurisdiction. "Judge" Di Cesare refused to vacate the void "Judgment" finding that the appellate "Court's" arbitrary edict was "final". Appendix [D]– Minute Order p.23 dated March 15, 2019, Reporter's Transcript pp.24-37, Proc. Hist. Exhibits [A19-A23], and [E1].

**4. Petition for Review– California Supreme "Court"**

On Petition for Review to the Supreme "Court" of California, "Justices" Tani Cantil-Sakouye (CJ), Carol A. Corrigan, Goodwin H. Liu, Mariano-Florentino Cuellar, Leondra R. Kruger, Joshua P. Groban, and Ming W. Chin, sitting en banc, denied Petitioner's Petition for Review. Ordinarily review by the Supreme Court is discretionary. In this case however, it was *mandatory* because Petitioner never received a full, fair, or impartial trial or appeal and there was no other Court of California to obtain a remedy. Appendix [E] p.38, and Proc. Hist. Exhibits [A24-A27]. The "Court" has no record of which "Justices" voted to arbitrarily deny the Petition. Exhibit [C] pp.2595-2608.

**5. Petition for Writ of Certiorari– U.S. Supreme "Court"**

On Petition for Writ of *Certiorari* to this "Court", unknown "Justices" arbitrarily denied Petitioner's challenge to jurisdiction on October 7, 2019, despite the fact that Article III, §2 of Constitution mandated the Court to hear and determine his case. The "Court" also had a duty to hear his case especially because he had never

been afforded a full, fair, impartial or independent trial or appeal and there was no Court in California to obtain a judicial remedy. See case# 18-1416.

**8. Independent Action in Equity– U.S. District "Court" Central District of California**

In an Independent Action in Equity in the United States District "Court" for the Central District of California, Petitioner challenged the jurisdiction of the State "Court" "Judgments" and the Constitutionality of §7031 and §7071.17. District "Judge" Marshall refused to perform a full, fair, impartial, and independent investigation of his claims and held that the "Court" lacked subject matter jurisdiction to grant him relief because of the doctrines of collateral estoppel and Rooker-Feldman. Appendix [G]– Opinion pp.41-50 dated February 6, 2020, and Procedural History Exhibits [A29-A36]. Upon notice of appeal, Marshall declared Petitioner's appeal "frivolous" and denied his *in forma pauperis* status. Appendix [H] pp. 51-52. She also denied his request for counsel. Appendix [F] p.39.

**7. "Appeal"– Ninth Circuit "Court" of Appeals**

On appeal to the Ninth Circuit "Court" of Appeals, "Judges" Thomas (CJ), Tashima, and W. Fletcher, dismissed Petitioner's appeal as "frivolous" on November 12, 2020. Appendix [I] p.53, and Proc. Hist. Exhibits [A38-A42].

**8. Emergency Petition for Writ of *Habeas Corpus*– U.S. Supreme "Court"**

On September 16, 2021, Petitioner sent an Emergency Petition for Writs or Error and/or non-Statutory *Habeas Corpus* to this "Court". It was received on

September 22, 2021. Exhibit [A43]. The Clerk refused to file the Petition and returned it because it was allegedly not in the proper form as required by the "Rules of "Court" (Appendix [N] p.72).

According to this Court, "the Constitution does not require that the case or controversy should be presented by traditional forms of procedure[.]"[20] Equally important, the "Rules of Court", which have the force and effect of law and can result in the summary denial of Constitutional rights (as they did here), have never been approved by "Congress" or the President and therefore are without authority. The Clerk's office has also repeatedly acted in the capacity of a "gatekeeper" to screen cases before they are given to the Justices. The Clerk of Court has never been appointed as an Article III United States Judge by any President or confirmed by the Senate, and therefore has no power whatsoever to act in the capacity of a Constitutionally unauthorized "gatekeeper" to exercise the judicial power of the United States and summarily reject cases. Cf. Rule 5 of the FRCP whereby "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

See also Appendix [S]– Questions Presented: 21-22.

### 9. Criminal Complaints/ Petitions for Redress of Grievance

While pursuing a judicial remedy, Petitioner filed Petitions for Redress of Grievance and/or criminal complaints with the Governor of California (Gavin Newsom), Attorney General of California, California Commission on Judicial

[20] *Nashville, C. & St; Louis Ry. Co. v. Wallace*, 288 U.S. 249, 264 (1933)

Performance, Assembly of California through the office of Assemblywoman Cottie Petrie-Norris, the Senate of California through the office of Senator John MW Moorlach, Santa Ana Police Department, Orange County Sheriff-Coroner Department, Newport Beach Police Department, Costa Mesa Police Department, Irvine Police Department, California Highway Patrol, Orange County District Attorney, U.S. Department of Justice, and the Federal Bureau of Investigation. All of the officials who received the complaints have either refused to perform a full, fair, impartial, and independent investigation into his claims and/or refused to intervene to stop the irreparable harm and damages being perpetrated upon him. Exhibits [C], [D], [E], [F] and section II(D)(3) *infra*.

**10. Application for Emergency Stay/ Petition for Writ of *Habeas Corpus* Superior "Court" of California- County of Orange**

As a direct and proximate cause of the fraud, deceit, treason and other crimes perpetrated upon Petitioner–especially the restraint of his liberty with no apparent means of relief–his private contracts and obligations became impaired resulting in two actions (thus far) taken by "creditors". In the first action, Prestige Default Services, LLC, the (Trustee) for the "Deed of Trust" securing the "Promissory Note" for a "loan" pertaining to real property held in Petitioner's living trust, initiated non-judicial foreclosure proceedings on July 7, 2022 for non-"payment" of $37,958.42. Exhibit [D] pp.5225-5230. In the second action, First National Bank of Omaha sued Petitioner for "damages" for breach of credit card contract in the Superior "Court" of California, County of Orange, for failure to "pay" $13,052.87. See case #30-2022-01271693.

Petitioner responded to both actions by filing a Petition for Writ of *Habeas Corpus* in the Superior "Court" on September 7, 2022, challenging the personal and subject matter jurisdiction of the State of California and the United States to unlawfully prosecute and punish him and/or sanction this behavior, including denying him a remedy, republican form of government, and impairing the obligations of his private contracts. The requested relief included a request for expedited processing[21] and for an emergency stay of both of the above actions. Proc. Hist. Exhibit [A46]. The Deputy Clerk set a hearing date for the Petition for October 13, 2022.

Pursuant to Cal. Civil Code §2924(a)(2), the foreclosure redemption period is not less than three months, or about October 7, 2022, 90 days after July 7, 2022 when the Notice of Default was filed and six days *after* the hearing date for the *Habeas* Petition was set. Because Petitioner had been denied relief in every branch of government and could not cure the defaults by "payment", his only apparent recourse other than an emergency stay would be to file for bankruptcy involuntarily. To stop the irreparable harm and damages, including to avoid being forced into bankruptcy, he filed an *Ex parte* Application for Emergency Hearing on the Petition and set the hearing date for September 15, 2022. Proc. Hist. Exhibit [A47].

While the *appearance* of a hearing was conducted by Superior Court "Judge" Sandra Leal, Petitioner was denied a full, fair, and impartial hearing and judicial determination of his rights resulting in the summary denial of his Application and all claims for relief. On the record, Leal held that she "[didn't] find that there [were]

[21] Cal. Rules of Court, Rule 4.551(h).

exigent circumstances [...and] that a Petition for Writ of *Habeas Corpus* [was not] applicable in this situation." Appendix [R] p.89.

Pursuant to Cal. Penal Code §1473(a) "[a] person unlawfully [...] restrained of their liberty, **under any pretense**, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint." (Bolded emphasis added). Leal made no apparent meaningful inquiry. See also *In re Winchester*,[22] holding that *habeas corpus* is the proper remedy to collaterally attack a judgment [restraining liberty] in violation of fundamental constitutional rights, *In re McDonald*[23], *and Deshaney v. Winnebago County Dep't of Social Services*,[24] holding that:

> "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The affirmative duty to protect arises [...] from the limitation which [the State] has imposed on his freedom to act on his own behalf."

The Minute Order issued by Leal contains no Lawful authority or other substantive reasoning for her summary denial of not only Petitioner's right to *Habeas* relief, but to all his rights secured by the California and U.S. Constitutions that continue to be violated.

On October 13, 2022, the hearing initially scheduled for the Petition was commenced before Superior "Court" "Judge" Corey Cramin. Cramin summarily denied the Petition and requests for an emergency stay. Cramin's "Minute Order",

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[22] *In re Winchester*, 53 Cal 2d 528, 531 (1960).

[23] *In re McDonald*, 16 F. Cas. 17 (1861).

[24] *Deshaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 199-200 (1989).

like Leal's, contains no Lawful authority or other substantive reasoning for his summary denials. Appendix [R] p.90.

## C. OVERVIEW OF THE CRIMINAL ENTERPRISE

The criminal Enterprise operates as a shadow government, what some have called "The Deep State", in interstate commerce and/or under Federal regional martial law rule, whereby it uses the appearance and facade of the Lawful California and U.S. Constitutional governments to carry out its agenda while committing crimes, treason, and acts of racketeering upon the People of California and America to systematically their Lawful governments. Many of these subversive acts also appear to be taking place under the guise of the "progressive" movement, apparently intent on overthrowing Republican forms of government with communist or totalitarian forms of government.

The principal ways the Enterprise functions and continues to expand its parasitic sphere of influence is either through the arbitrary exercise of power without Lawful authority and/or the refusal to exercise the Constitutionally mandated powers vested in the official offices occupied by members of the Enterprise.

## D. ANTI-CONSTITUTIONAL POLICIES AND PROCEDURES OF THE ENTERPRISE/ EXTRAORDINARY REASONS RESULTING IN THIS COURT'S MANDATORY DUTY TO EXERCISE JURISDICTION AND GRANT THE REQUESTED RELIEF

### 1. Malicious Prosecution and False Imprisonment

#### *a. Destruction of Inalienable Rights and Unlawful Creation of Fourth Branch of Government*

To understand how Petitioner became subjected to the malicious prosecution for unlicensed contracting in the first place, it's imperative to examine how the contractor "licensing laws" under the California Business and Professions Code came into existence.

One of the primary reasons behind establishing our Constitutional forms of government of carefully defined and limited powers was to recognize and protect the inherent rights of People to life, liberty, and property, and to declare, without any ambiguity, that these rights were innate in the individual, antecedent to the formation of government, and could not be taken away by whichever way the political winds blew.[25] Put differently, these "creator-endowed inalienable rights" were not mere privileges subject to the arbitrary whim of government officials, democracies/mob majorities, commercial regulations, or "police powers".

As one of the checks and balances to ensure these private inalienable rights remained protected beyond their mere parchment declaration, the Judicial branch of government was established to adjudicate disputes involving them, but only through procedures that had been established over centuries that were firmly rooted in the common Law upon which every State (except Louisiana) had been admitted to the union. Many of these protections also became enumerated in the Bills of Rights of Constitutions.

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[25] "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943).

In the early 1900's, however, the "Legislature" of California, acting without any Lawful representative quorum or Lawful authority, began converting private inalienable[26] (not lienable, non-commercial) rights into revocable public privileges in interstate commerce.[27] While done under the guise of "protecting the public", the real agenda was to create and empower a centralized totalitarian[28] Police State ("total State" or "the Enterprise") by implementing a new authoritarian system of government under Roman civil law in direct violation of the California and U.S. Constitutions. The intent of this new "government"–as directly evidenced by the untold millions of rules, regulations, statutes, and codes it has since created–was to dominate and control nearly every aspect of the lives of the People of California while masquerading as a Lawful Republican, "free" form of government despite having no consent of the governed or Lawful authority.

The implementation of the total State/ Enterprise required three primary means: (1) for government "officials" to commit fraud, treason, and other crimes by either exercising powers without Lawful authority to create and enforce the new policies and procedures of the total State/Enterprise; (2) for government "officials" to

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[26] Secured by: Article I, §1 of the Cal. Constitution; Article I, §10 and the Ninth Amendment to the U.S. Constitution. See also *Hale v. Henkel*, 201 U.S. 43, 74 (1906) recognizing that "[t]he individual [...] is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State [...]."

[27] Inalienable rights secured on Land by the California and U.S. Constitutions are either not recognized or secured in interstate commerce governed by international law, Roman civil law, and/or Admiralty/Maritime jurisdictions where there is no Constitution/ Bill of Rights securing them. Commerce (com- with, mer- sea) is a jurisdiction dealing with commodities and things that doesn't recognize the inalienable rights of sentient beings.

[28] A form of government and a political system that prohibits all opposition parties, outlaws individual and group opposition to the State and its claims, and exercises an extremely high degree of control and regulation over public and private life. It is regarded as the most extreme and complete form of authoritarianism. In totalitarian States, political power is often held by autocrats, such as dictators and absolute monarchs, who employ all-encompassing campaigns in which propaganda is broadcast by state-controlled mass media in order to control the citizenry.

refuse to perform the sworn mandatory non-discretionary duties of their office, including, most specifically, those duties known as "checks and balances"; and, (3) for the People to refuse to perform their duties as principals of their government to keep their agents within the chains of the Constitution thereby stopping the usurpers of the total State/ Enterprise from implementing the takeover.

One of the most explicit acts of the Enterprise was to literally create a Fourth branch of government, without any authority whatsoever, that would combine the powers of all three of the existing Legislative, Executive, and Judicial branches Constitutionally made separate. These branches were intentionally made separate because the People and Framers, having just escaped the throes of tyranny, knew that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[29] And they "regarded [the separation of powers as a system of] checks and balances [and] self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."

To this end, The California Constitution of 1849 established a tripartite Republican form of government that almost mirrors that of the United States government. Each branch was vested with certain "core" or "essential" functions that were not be usurped by another branch.[30] Article IV, Section 1 declares that "[t]he

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[29] *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57 (1982) (Per curiam)(Internal quotations and citations omitted) citing The Federalist No. 47, p. 300 (H. Lodge ed. 1888) (J. Madison).

[30] *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57-8 (1982) citing *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). (Per curiam).

legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly [...]" Article V, Section 1 declares that "[t]he supreme executive power of this State is vested in the Governor [and that] "[t]he Governor shall see that the law is faithfully executed". Article VI, Section 1 declares that "the judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record." Just to ensure this separation of powers was abundantly clear, Article III, Section 3 separately declares that "[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."[31]

Despite the foregoing, one Fourth branch agency, known today as the Contractors State Licensing Board, sprung into existence to take total control of the construction industry in California and to create a means for the non-judicial determination of property rights in construction-related disputes by forcing parties into highly unconstitutional "mandatory arbitration" proceedings in direct violation of the separation of powers. The "mandatory arbitration program" was created by the Licensing Board and/or employees thereof treasonously exercising the Legislative and Executive powers of California that have never been conferred upon it/them.

To initially create and empower the Board, the "Legislature" had to effectively

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[31] See especially Justice Thomas' dissent in *Seila Law, LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2216 (2020). "The Constitution does not permit the creation of officers exercising "quasi-legislative" and "quasi-judicial powers" in "quasi-legislative" and "quasi-judicial agencies." No such powers or agencies exist. Congress lacks the authority to delegate its legislative power, and it cannot authorize the use of judicial power by officers acting outside of the bounds of Article III[.] Nor can Congress create agencies that straddle multiple branches of Government. The Constitution sets out three branches of Government and provides each with a different form of power[...]. Free-floating agencies simply do not comport with this constitutional structure.

rob[32] the People of California of their inalienable right to their time and labor (Cal. Const. Article I, §1) by denying them a hearing and judicial determination of their rights while simultaneously converting their inalienable rights into revocable privileges entirely subject to the "licensing laws" and "policies" of the Board. This policy was most clearly expressed by the Attorney General of California in Opinion 47-175:

> "Since a license to conduct any of the regulated activities [in California] is a mere statutory privilege [not an inalienable right]–a creature of statute–it is at all times subject to legislative control, including destruction or termination by the legislative process."

The destruction of inalienable rights at the hands of political majorities was exactly what the doctrine of separation of powers and checks and balances was intended to protect against. But the system of check and balances could only work if the Courts, Executive officials, and the People were steadfast in their duties. They weren't, and "The New Despotism"[33] in the form of the total State/ Enterprise was born.[34]

### *b. The "Legislature" of California Was Without Authority to Transfer the Executive Power of California to Private Parties Depriving the Superior Court of Subject Matter Jurisdiction*

At first blush, Business and Professions Code §7031(b) appears to be civil remedial statute giving private parties the privilege of recovering compensation they

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[32] Robbery is the taking of property (such as rights) without Lawful authority by means of force or fear. See e.g. Cal. Penal Code §211. If a government official uses force and/or fear to take something (rights, liberty, property) without Lawful authority (Constitutionally prescribed due process), then they are committing the felonious crime of robbery.

[33] The New Despotism, Lord Hewart (London Ernest Benn Limited 1929), p.17.

[34] Petitioner has been unable to locate any official documents that these changes to California's form of government, in addition to having never been approved by the People, have ever been approved by Congress pursuant to Article IV, §3.

paid to an unlicensed contractor by commencing a civil suit. But §7031(b) is a wolf in sheep's clothing. It's really an action intended for private parties to commence an unlawful criminal prosecution disguised as a remedial civil action. To discover the wolf lurking behind the sheep's clothing, it's necessary to forensically examine the "Legislative" intent, the history of interpreting and enforcing §7031(b) claims by California "Courts", and most importantly, what the real effect of the statute has on an unlicensed contractor.

### 1. Business and Professions Code §7031 Imposes a Total Penal Forfeiture Not Equitable Disgorgement

California Business and Professions Code §7031(b) is a public regulatory penal statute that governs contractor licensing under California's contractor "licensing laws". It declares that:

> "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."

According to the Supreme "Court" of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing **penalty** for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[35]

[35] *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (Cal. Supreme Ct. 2005). Italicized emphases original. Internal quotations omitted. Bolded emphasis added.

More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[36] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided.[37] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

One august authority addressing these precise issues is the *Town of Gilbert Prosecutors Office v. Downie*,[38] which Petitioner cited on appeal to the Fourth District. Exhibit [A6] pp.29-30. The *Gilbert* case involved "disgorgement" and the criminal prosecution of an unlicensed contractor where the Supreme Court of Arizona found that "a rule of total disgorgement [forfeiture] regardless of any benefit conferred on the victim [...] may lead to absurd or troubling results." Discussing the issue, the high Court found that "when determining the proper amount of restitution to be paid to a victim, consideration should be made for [the] value conferred on the victim;" *Id.* p.18. and, that restitution "should not compensate victims for more than their actual loss." *Id.* p.13. Citing both the Seventh[39] and Ninth[40] Circuit Courts of Appeal, the Gilbert Court declared that they "[found] no significant difference between returning cash,

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[36] *Asdourian v. Araj*, 38 Cal. 3d 276, 282 (Cal. Supreme Ct. 1985) "In view of the severity of this sanction and of the forfeitures which it necessarily entails [...]." Quotations and citation omitted; *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882, 895 (2015). "Because the remedies of subdivisions (a) and (b) of section 7031 are essentially two sides of the same coin in denying compensation to an unlicensed contractor, we will refer to the remedies jointly as forfeiture." Internal quotations omitted. See also *Austin v. United States*, 509 U.S. 602, 614 (1993) stating forfeit is the word the First Congress used for a fine.

[37] *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469 (2018) p.14, *Lewis & Queen v. N. M. Ball Sons*, 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957) "[T]he courts may not resort to equitable considerations in defiance of section 7031." *Ebbert v. Mercantile Trust Co.*, 213 Cal. 496, 499-500 (Cal. Supreme Ct. 1931).

[38] *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (2008).

[39] *United States v. Shephard*, 269 F. 3d 884 (7th Cir. 2001).

[40] *United States v. Matsumaru*, 244 F.3d 1092, 1109 (9th Cir. 2001). See also *People v. Fortune*, 129 Cal. App. 4th 790 (2005).

one form of value, and returning other forms of value, such as permits, chattels, services, or other property [and that the concept of] loss is [...] rooted in value, not solely in the exchange of money." *Id.* p.25.

In his concurring opinion, Justice Hurwitz added that under the pretense of a total forfeiture of "disgorgement" without offsets for the value conferred, "a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but would nonetheless also retain the work performed." He concluded "[i]t is impossible for me to view such a victim as having suffered any loss, economic or otherwise..." *Id.* p.30.

Notably, the Fourth District "Justices" refused to even acknowledge this case and found all of Petitioner's claims making these Lawful and rational arguments "meritless".

After Petitioner was purportedly found to be the unlicensed contractor (as opposed to Spartan), he was denied all offsets for the alleged $930,000 work that was performed by Spartan on the Humphreys project and ordered to pay the Humphreys an additional $848,000. He was also denied the right to compensation for the approximate $82,000 that the Humphreys refused to pay pursuant to §7031(a).

The legislative history of §7031(b) confirms this draconian punishment was indeed intended by the California "Legislature" and "Governor" upon its enactment. See Exhibit [B] p.860:

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, 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, those using unlicensed contractors 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."

As this Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment [...]."[41]

Other obvious indications of §7031's purely penal nature are: (1) that §7031(b) falls squarely within the definition of a crime or public offense as defined by Cal. Penal Code §15[42]; and, (2) that the same conduct is made criminal by Cal. Business and Professions Codes §7028 and §16240.

It should be carefully noted that the *maximum* fine for a first offense of unlicensed contracting under §7028 is $5,000, not $930,000.

Pursuant to a Public Records Request to the Orange County District Attorney, the ten most recent first-offense convictions for violating §7028 averaged a fine of $750 and a year of informal probation. Exhibit [C] pp.2550-2557.

Chaffee's "Judgment" was no accident or "harmless error". He had direct knowledge of §7031's penal nature by the fact that he was the trial "Judge" in the *MW Erectors* case that went to the Cal. Supreme "Court" where it found that §7031 imposed "a stiff all-or-nothing penalty". Chaffee also cited *MW Erectors* in his discussion of his "Judgment" at "trial", identified it as the "bellwether case on the issue of [...] unlicensed contractor responsibility" (Exhibit [A4]– Reporter's Transcript p.200) and admitted that he was imposing a forfeiture. *Id.* p.201.

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[41] *Smith v. Doe*, 538 U.S. 84, 92 (2003).

[42] "A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction [...][a] [f]ine."

## 2. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Award a Total Forfeiture Disguised as Equitable Disgorgement Because the Humphreys Never Stated a Claim for Disgorgement

Business and Professions Code §7031 mentions nothing about "disgorgement". Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is also *not* used *anywhere* in the legislative of history of §7031. Exhibit [B]. And, as previously evidenced, the "Legislature" and "Governor" (Gray Davis) were perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

According to this Court's recent decision in the case of *Liu v. SEC*,[43] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, *not* the total penal forfeiture of an entire transaction *without* offsets for benefits conferred.

Even assuming §7031(b) called for a true claim of equitable disgorgement, Petitioner is: (1) unaware of any evidence on the trial "Court's" record that he profited even one dollar let alone the $930,000 awarded by Chaffee to the Humphreys (vf); or, (2) that he was unjustly enriched by allegedly performing the custom remodel work requested by the Humphreys (vf). See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

> "Allegations that the defendant is a wrongdoer, and that the defendant's business is profitable, do not state a claim in unjust enrichment. By contrast, a claimant who is prepared to show a causal connection between defendant's wrongdoing and a measurable increase in the defendant's net assets will satisfy the burden of proof as ordinarily understood."

[43] *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020).

The Humphreys evidenced that they (and Gary Humphreys company, Humphreys & Associates, Inc.) paid a total of $848,000 to Petitioner and Spartan, which was undisputed (vf). In an action for unjust enrichment, however, "[t]he emphasis is on the wrongdoer's enrichment, not the victim's [payments]".[44] Therefore, if §7031(b) actually provided a claim for disgorgement, Petitioner was entitled to offsets for the compensation that had *already* been returned to the Humphreys. Under the Maxims and Principles of Equity Adjudication, "[n]o one is presumed to give something for nothing. And no one can in reason and conscience expect to receive something for nothing."[45]

Not only does §7031(b) not authorize a claim for "disgorgement", the punishment provided by §7031(b) is neither equitable nor remedial. The Supreme "Court" of California and lower "Courts" have also repeatedly held that "courts may not resort to equitable considerations in defiance of section 7031"[46], evidencing it is not an equitable action. Consequently, the Humphreys never stated a claim for equitable disgorgement or unjust enrichment and Chaffee clearly imposed a total penal forfeiture.

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent–is to invoke a default rule, [...] not of flexibility but of omnipotence".[47]

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[44] *Meister v. Mensinger*, 230 Cal. App. 4th 381, 390 (2014) citing *County of San Bernardino v. Walsh*, 158 Cal. App. 4th 533 542-543 (2007). See also Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *h*.

[45] A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings, Practice, Proofs and Process of The Jurisprudence of Equity, Henry R. Gibson, Second Edition 1907, §43, p.37.

[46] *Lewis & Queen v. N. M. Ball Sons*, 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957).

[47] *Grupo Mexicano De Desarollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). Internal quotations omitted.

"Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[48]

### 4. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Award a Total Penal Forfeiture Disguised as "Damages" Because the Humphreys Never Stated a Claim for Damages

Even though Chaffee's "Minute Order" stated that he awarded the Humphreys "disgorgement", the "Judgment Order" he later signed, Appendix [B] pp.7-8, is for "[d]amages". Petitioner is also unaware of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with any State or Federal Court definition thereof (vf).

In *Birdsall v. Coolidge*,[49] this Court defined damages as "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and that "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

Under Cal. Civil Code §3281, which purportedly codified the common Law definition of damages in California, "[e]very person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages." "[A] [p]laintiff has [the] burden of proving, with reasonable certainty, damages actually sustained by him as result of defendant's wrongful act, and [the] extent of such damages must be proved

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[48] *Id.* p.333. Internal quotations omitted. See also *Liu v. SEC*, 140 S. Ct. 1936, 1941 (2020) holding "equity never lends it's aid to enforce a forfeiture or penalty." Internal quotations and citation omitted.

[49] *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

as fact. [The] burden of proving damages placed on plaintiff is not lessened by his presentation of [a] prima facie case of negligence against [the] defendant"[50] "[and] [d]amages cannot be recovered if the evidence leaves them uncertain, speculative, or remote."[51]

According to the California Second District "Court" of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*,[52] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the "licensing laws" are founded is purely hypothetical.

Under California law, "any provision by which money or property is to be forfeited without regard to the actual damage suffered calls for a penalty and is therefore void."[53] See also Cal. Civil Code §3275 and *Ebbert v. Mercantile Trust Co.*[54] requiring equitable relief from a penalty or forfeiture by compensation for damages

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[50] *Chaparkas v. Webb*, 178 Cal. App. 2d 257, 259 (1960).

[51] *Page v. Bakersfield Uniform & Towel Supply Co.*, 239 Cal App. 2d 762, 774 (1966). See also *Frustuck v. Fairfax*, 212 Cal. App. 2d 345, 368 (1963) "[a] wrong without damage does not constitute a cause of action for damages" and "nominal damages to vindicate a technical right cannot be recovered in a negligence action where no actual loss has occurred."

[52] *Eisenberg Village etc. v. Suffolk Construction Co., Inc.*, 53 Cal. App. 5th 1201, 1213 (2020). Internal parenthesis omitted.

[53] *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 1357 (2015). Citation omitted.

[54] *Ebbert v. Mercantile Trust Co.*, 213 Cal. 496, 499-500 (1931).

*actually suffered*. No such relief was afforded to Petitioner.

The case against Petitioner was clearly not to remediate damages for an *actual* injury suffered by the Humphreys. The Humphreys severed their alleged claim for damages and proceeded to "trial" *only* on their first-amended claim for "disgorgement." At "trial" they introduced no evidence of damages, including any damages that arguably could have been caused by Petitioner's purported lack of a license. In other words, there was no evidence presented of a traceable connection or nexus between the Humphreys claim and the remedy they sought. Their non-existent "injury" was purely hypothetical and speculative and not based in reality. Accordingly, they failed to state a claim for "damages" and thereby deprived Chaffee of subject matter jurisdiction to award any.

See also Appendix [S]– Questions Presented: 1-10, 28, 41.

### 5. State and Federal "Court" History of Treason Involving §7031 Actions

The case against Petitioner is not an anomaly. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.*,[55] where the so-called "Judicial" Council of California sought a $22.7 million "dollar" forfeiture under the same false and fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired to maintain the California "Court" buildings that had admittedly done a good job. In response to a public records request, the "Judicial" Council admittedly spent over $3 million "dollars" of the People's tax "money" in its attempts to prosecute, punish, and likely financially destroy *Jacobs*

[55] *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015).

due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. $3,307,408.78 to be exact. Exhibit [C] p. 1815. One has to wonder just what degree of sociopathy[56] it must take to spend more than 3 million "dollars" to try to ruin a company that provided quality service and caused no harm. This is precisely the lack of humanity and direct evidence of the severe mental illness that is rampant in the behavior of the "officials" of this case (and many others) to use one's position of honor, profit, and trust without empathy or fairness and as a weapon of domestic violence, treason, and oppression.

It is unknown exactly how many other similar cases like Petitioner's have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes like §7031, which has been in existence since 1929. The following are just a handful of other cases Petitioner was able to locate because an appeal was filed. (Please note that the facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.): (1) *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS. ; (2) *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and "Court" costs awarded against *MW Erectors, Inc.* pursuant to §7031(a)

[56] "Sociopathy refers to a pattern of antisocial behaviors and attitudes, including manipulation, deceit, aggression, and a lack of empathy for others."
Source: https://www.psychologytoday.com/us/basics/sociopathy.

upheld by the Cal. Supreme "Court", awarded by "Judge" Chaffee; (3) *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a); (4) *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against *Hydrotech* pursuant to §7031(a); and, (5) *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District "Courts" enforce these same Enterprise "policies". See e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,[57] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a); and the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

In every case Petitioner examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed–and consequently <u>any</u> protections guaranteed by State and Federal Constitutions (especially the excessive fines clause protections)–they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution [...] of another."[58]

> *"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would*

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[57] *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*, 2010 U.S. Dist. LEXIS 116566.

[58] *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

*be treason to the Constitution."*[59]

## 5. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Punish Petitioner Because Private Parties Lack State and National Constitutional Standing to Prosecute Other Private Parties

### *1. The History of Criminal Forfeiture Laws*

In the case of *United States v. Seifuddin,*[60] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

> "the classical distinction between civil and criminal forfeiture was founded upon whether the penalty assessed was against the person or against the thing. Forfeiture against the person operated *in personam* and required a conviction before the property could be wrested from the defendant. Such forfeitures were regarded as criminal in nature because they were penal; they primarily sought to punish. Forfeiture against the thing was *in rem* and the forfeiture was based upon the unlawful use of the *res*, irrespective of its owner's culpability. These forfeitures were regarded as civil; their purpose was remedial."

Applying this criteria to the instant case, it is plainly obvious that the action against Petitioner was an *in personam* forfeiture intended to punish him for allegedly committing the public offense of unlicensed contracting (even though he was licensed). A total forfeiture like this would be appropriate if he committed a robbery or defrauded the Humphreys by taking their money without conferring any value upon them. But that's clearly *not* what happened.

In *United States v. Shapleigh*, the Circuit Court of Appeals for the Eighth Circuit found that "[t]o protect the substantial rights of the parties [and] to wisely administer the law, courts must frequently look beyond the outward form to the real substance and nature of things."[61] "It is not the form, but the nature of the proceeding

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[59] *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[60] *United States v. Seifuddin*, 820 F.2d 1074, 1076-7 (1987). Citations omitted.

[61] *United States v. Shapleigh*, 54 F. 126, 130 (1893).

that must determine the rule to be applied to it." *Id.*

### *2. The Humphreys Admitted Their Intent to Prosecute and Punish Petitioner*

In their First Amended Trial Brief, the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish Petitioner for violating the "licensing law"s by seeking a $930,000 fine/total forfeiture upon him. They claimed that "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

### *3. The Humphreys Lacked Standing Under the California Constitution to Criminally Prosecute Petitioner*

While the California Constitution does not *overtly* have a case or controversy standing requirement like the U.S. Constitution, this standing requirement is implicit its separation of powers provisions.

The Humphreys lacked standing under the Cal. Constitution to prosecute Petitioner for the commission of a public offense because Article V, §1 vests the *entirety* of Executive power *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting

on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a [...] political society, and incorporates into a commonwealth."[62] Therefore, only officials of the Executive branch of California could prosecute Petitioner, not the Humphreys.[63] The "Legislature", therefore, was entirely without any authority to transfer the Executive power of the Governor to private parties.

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights"–rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include [...] general compliance with regulatory law."[64] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[65]

The Humphreys neither alleged nor proved that they were caused any extraordinary damage and no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the

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[62] *Robertson v. Watson*, 560 U.S. 272, 282-3 (2010) citing Locke, Second Treatise §128, at 64. Internal quotations and brackets omitted.

[63] *Robertson v. Watson*, 560 U.S. 272, 273 (2010). See also Cal. Gov't Code §100(b) requiring that all prosecutions be conducted in the name of "The People of the State of California" and by their authority; and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

[64] *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations omitted. Citing Blackstone and Woolhandler & Nelson, 102 Mich. L. Rev. at 693.

[65] *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations and brackets omitted. Citing Blackstone.

Superior "Court" with personal and subject matter jurisdiction[66] to prosecute and punish Petitioner.

"A lack of standing is a jurisdictional defect."[67] As a result, Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[68] Instead, he arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no Lawful authority whatsoever to do so, thereby committing fraud upon Petitioner and his estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of his fraudulent *ultra vires* "Judgment Order".

### *4. The Humphreys Lacked Standing Under the U.S. Constitution to Criminally Prosecute Petitioner*

Because the U.S. Constitution is the "supreme Law of the Land" (Art. VI, §2), the judicial power of the United States must be capable of acting upon *all* State action which comes into conflict with its superior authority. For how could a State and the Judges which are bound thereby transcend its authority by creating claims that the Article III power could not reach? This would especially be true when a defendant in State Court invokes the concurrent jurisdiction of the United States by claiming rights secured by the U.S. Constitution requiring the State Court Judge to sit in that

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[66] "[J]urisdiction of all justiciable matters can only be exercised [...] through the filing of pleadings which are sufficient to invoke the power of the court to act." *Buis v State*, 1990 OK CR 28, p.4 (1990). Internal quotations omitted. "A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court." *Albrecht v. United States*, 273 U.S. 1, 8 (1923). See also Cal. Penal Codes §949, §959.

[67] *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). Citation, brackets and internal quotation omitted.

[68] Cal. Penal Code §1382.

concurrent jurisdictional capacity. All State judicial action therefore, must meet the standing requirements of Article III. The same guarantee is made by Article I, §10 requiring a *judicial* proceeding.

The Humphreys claim under §7031(b) fails to meet even one of the Article III standing requirements as declared in *Steel Co. v. Citizens for a Better Env't*[69]. They presented no evidence of an injury in fact that was concrete and actual; no evidence of a fairly-traceable connection between their non-existent injury and Petitioner's conduct; and no evidence that their non-existent injury would be redressed by fining him $930,000.

The fact that the Humphreys claims fails to meet any of the Article III standing requirements is directly linked to all of the other standing issues raised by Petitioner. Had these Article III requirements been carefully considered by the Cal. "Legislature" and "Courts", §7031's unconstitutionality would have been blatantly obvious from the outset.

The deliberate refusal to abide Constitutional standing requirements–namely by creating claims for relief with hypothetical or fictitious injuries–appears to be one of the core issues at the heart of the implementation of the total State and its "public policies". Historically, claims at common Law (on Land)[70] were for actual injuries because they could be readily determined by witnesses and evidence. In stark contrast, claims involving presumptive injuries and *liquidated* damages were found in Admiralty or Maritime jurisdictions because they arose on the open sea (liquid) where there was likely to be no evidence of the incident or any witnesses to determine

[69] *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 102-3 (1998).

[70] The Constitution is the "supreme Law of the Land". Article VI, §2.

who to attribute fault to.

To specifically prevent against the abuses of Admiralty jurisdiction coming onto Land and being used to overthrow the Constitutional standing and due process requirements of claims at common Law, cases in Admiralty were specifically excluded from arising *under* the U.S. Constitution. State Courts were also forbidden from exercising Admiralty jurisdiction.[71] This is specifically why States cannot create claims such as those in Admiralty that transcend the case or controversy standing requirements of Article III that arise *under* the Constitution. Admiralty claims don't arise *under* the Constitution, they arise extra–Constitutionally under international law. See especially section II(4)(b)(i), *infra*.

This Court has repeatedly declared that the judicial power of the United States is "limit[ed] [...] to the resolution of cases and controversies[.]" "otherwise the power is not judicial."[72] As the power exercised against Petitioner is not judicial, it is clearly arbitrary and lawless.

### c. Post "Trial" Acts of Fraud and Treason to Steal Petitioners Property and Further Punish Him by Restraining Him from Earning a Living in His Profession as a General Contractor

#### *1. The Humphreys Filed a False and Fraudulent Abstract of Judgment and Commercial Lien*

Following "trial", the Humphreys continued the conspiracy with their Attorney, William Bissell, and Chaffee, to steal Petitioner's money, property, and liberty by filing a false and fraudulent "Abstract of Judgment" with the Clerk-

[71] Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).
[72] *Valley Forge Christian College v. American United for Separation of Church & State*, 454 US. 464, 472 (1982). Internal quotations and citations omitted.

Recorder for the County of Orange on April 27, 2017 (Exhibit [D] pp.5249-5253) and a "commercial lien" with the Cal. Sec. of State on April 28, 2017 (file 177582830223). Exhibit [D] p.5439. The "Abstract" and "commercial lien" were false and fraudulent because they were based upon Chaffee's "Judgment Order" they collectively knew, or reasonably should of known, was without any Lawful authority whatsoever.

The "Abstract" became attached to the real property at 818 Spirit Costa Mesa, California held in Petitioner's living trust and thereby operated to unlawfully restrain him and his mother (the true and beneficial owner of the property) from their rights to the free and unrestricted use of the property and the equitable assets therein. This included their inability to sell or refinance the property to avoid the foreclosure sale or to meet other needs.

### *2. Petitioner's Vested Licensing Right Was Summarily Suspended/Revoked Without Any Hearing or Means of Appeal*

As previously stated, Petitioner contends that he had an inalienable right to his time and labor in construction as recognized by Article 1, §1 of the Cal. Constitution. As a result, he could not be required to obtain a license and pay a recurring fee for the privilege of earning a living in an ordinary avocation of life.[73] The Cal. "Legislature" was therefore without authority to arbitrarily convert his inalienable (not lienable, non-commercial) right into a revocable commercial public privilege in interstate commerce. Even if this were not the case, the fact that he became a qualifying individual of a general contractor license was a vested right that

[73] See e.g. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

also could not be taken without judicial process[74] pursuant to Article I, §10.

The "State" had also previously determined Petitioner "competent" as a general contractor. It therefore remains unknown how he could be magically transformed "incompetent" by Chaffee at "trial" simply because he allegedly didn't have a license in his own name and/or didn't pay the licensing tax.[75] As the qualifying individual of a general contractor license, Petitioner was a licensee.[76]

Ninety days after the fraudulent "Judgment Order" was issued on April 20, 2017, Petitioner's vested right was summarily suspended/revoked by operation of Cal. Business and Professions Code §7071.17 without a hearing or any known appeal process because he was unable to pay the unlawful "Judgment" or meet any of the other requirements of §7071.17 to obtain or maintain a license. He was consequently deprived of all of the heightened protections of judicial criminal proceedings and the right to trial by jury on this issue, resulting in a bill of pains and penalties.

See also Appendix [S]– Questions Presented: 7, 11, 12.

### 2. Petitioner Has Exhausted All Apparent Remedies in the "Courts" of California and the United States and Has Been Denied a Judicial Determination of His Rights in Every Instance.

#### *a. Denial of Judicial Remedy in All "Courts" of California*

See Procedural History, *ante* pp.4-12.

#### *b. Denial of Judicial Remedy in All "Courts" of the United States*

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[74] *Ex Parte Garland*, 71 U.S. 333, 378 (1866). See also *Schomig v. Keiser*, 189 Cal. 596, 598 (Cal. Supreme Ct. 1922) holding that "[t]he portion of the act which authorizes the [Registrar of Contractors] to forfeit the license of a [contractor] and take it away from him is highly penal in its nature."

[75] See e.g. *Vlandis v. Kline*, 412 U.S. 441, 446-8, 452 (1973).

[76] Cal. Business and Professions Code §7096.

### i. The "Justices" of this "Court" Breached Their Mandatory Duty to Exercise Jurisdiction by Refusing to Granting Petitioner's Petition for Writ of *Certiorari* and to Affordi Him Relief Mandated by Law

After a §7031 defendant discovers that there is no judicial remedy available in *any* "Court" of California, they might believe they had a right under the U.S. Constitution to an appeal in the U.S. Supreme Court. But this would be delusional.

Even though Article III of the Constitution *mandates* that the judicial power of the United States "**shall** extend to **all** Cases in Law and Equity" the "Justices" have created and enforced a "policy" whereby they believe they can arbitrarily vote on whether or not to hear a case and thereby determine who will or won't receive the protections guaranteed by the Constitution. [77] [78] Nowhere in Article III is there an arbitrary voting provision and "Congress" and this "Court" is without authority to amend the Constitution in violation of Article V to create one.

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[77] Emphasis added. See Commentaries on the Constitution (1833), Joseph Story §1584 "The judicial power, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose under the sanctions of the Constitution, they might defeat the Constitution itself. A construction which would lead to this result cannot be sound;" §1585-1589; *Martin v. Hunters, Lessee*, 14 U.S. 304, 331 (1816); Article 1, 9 (Bill of Attainder clause mandating the right to a judicial determination of rights); the First and Fifth Amendments (rights to Petition for Redress of Grievance and due process); and A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction by Akhil Reed Amar; Boston University Law Review Volume 65, Number 2, March 1985; p230.

[78] See e.g. https://www.supremecourt.gov/orders/courtorders/100719zor_m648.pdf. See also Office of the Clerk, Guide for Prospective Indigent Petitioners for Writs of Certiorari, July 2019 stating "It is important to note that review in this Court by means of a writ of certiorari is **not a matter of right**, but of judicial discretion. The primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved." Bolded emphasis added. While this policy may be lawful if the applicant had a full, fair, and impartial judicial determination of rights in the first instance in State or Federal Court, it absolutely is not if this did not happen and the applicant has been deprived of Constitutionally protected rights. In such a case, review by the Supreme Court becomes mandatory and *not* discretionary pursuant to at least Article I, §9 or §10 and fundamental due process. Petitioner has never had a judicial determination of rights by any Court of California or the United States acting with Lawful subject matter jurisdiction/ within Constitutional bounds.

As declared by this Court more than two hundred years ago, "[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. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."[79]

On October 7, 2019, Petitioner's Petition for Writ of *Certiorari* was summarily denied without any Lawful authority.

### ii. The U.S. District "Court" "Judge" Breached Her Mandatory Duty to Exercise Jurisdiction to Grant Petitioner Relief

In concert with this "Court's" "policy" to arbitrarily refuse to hear cases, the "Judges" of the U.S. District "Court" for the Central District of California and the U.S. "Court" of Appeals for the Ninth Circuit have arbitrarily created and enforced another "policy" whereby they also summarily deny all rights and protections guaranteed by the U.S. Constitution on the ground that they have no authority to provide relief in at least cases challenging State "Court" "judgments" that violate the U.S. Constitution.

The "policies" of this "Court" and the Ninth Circuit "Courts" not only result in giving the full faith and credit of the United States to the Lawless acts of State "officials", but also deny the People their right to a judicial determination of their rights under the U.S. Constitution. In this Court's own words, these "policies" amount

[79] *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821). Bolded emphasis added.

to "treason"[80] to the Constitution.[81] Without access to any judicial Court, every single "law" or "statute" whether lawfully enacted or not is a bill of attainder or pains and penalties and totally unenforceable pursuant to Article I sections 9 or 10.

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After this "Court" refused to grant his Petition for Writ of *Certiorari*, Petitioner filed a verified complaint in the form of an Independent Action in Equity in the United States District "Court" for the Central District of California. His First Amended Complaint rebutted the presumptive validity of the State "Court" "Judgements" and included a request for the assistance of counsel, declaratory relief, injunctive relief, and restitution. The case was assigned to District "Court" "Judge" Consuelo B. Marshall.

In response to his Complaint, the Humphreys filed a Motion to dismiss pursuant to FRCP Rules 12(b)(1), 12(b)(6), and 12(b)(7). Notably, they failed to address any of the issues relating to Petitioner's challenges to the lack of subject matter jurisdiction of the "Judgments" that rebutted their presumptive validity.

Assuming Marshall retained subject matter jurisdiction based upon her denial of Petitioner's request for assistant counsel (Appendix [F] pp.39), she had a mandatory, non-discretionary, ministerial duty to investigate Petitioner's claims that he was not given a full, fair, and impartial trial or appeal. Under this Court's precedents "the requirement of determining whether the party against whom an

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

[81] See also *Heck v. Humphrey*, 512 U.S. 477 (1994) whereby if anyone has been harmed as a result of an unconstitutional conviction or imprisonment, they are denied a claim for damages unless the sentence has first been declared invalid.

estoppel is asserted [has] had a full and fair opportunity to litigate is a most significant safeguard,"[82] and "collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case."[83] "If a defendant were convicted and punished for an act that the law does not make criminal, there can be no room for doubt that such a circumstance inherently results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief."[84]

Marshall refused to abide her sworn duty to perform the mandatory investigation and arbitrarily granted the Humphreys Motion to Dismiss *with prejudice* based on the collateral estoppel and Rooker-Feldman doctrines. Appendix [G] pp.41-50. Marshall's "ruling" declared that "[t]he purpose of the [Rooker-Feldman] doctrine is to protect state judgements from collateral federal attack," (Appendix [F] p.45, lines 19-20) and "[that Petitioner's] action is barred pursuant to the Rooker-Feldman doctrine because [he] seeks relief from the state court judgment and alleges legal error by the state trial and appellate court." Appendix [F] p.47, lines 25-28.

Marshall's "ruling" would be Lawful if the word "valid" were included, such that "the purpose of the Rooker-Feldman doctrine was to protect *valid* state judgements from collateral attack"– not just any State judgment, and certainly not one that is void for lack of personal and/or subject matter jurisdiction and in violation of the U.S. Constitition. "Unless a court has jurisdiction, it can never make a record

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[82] *Blonder-Tongue Labs v. University of Illinois Found.*, 402 U.S. 313, 329 (1971).

[83] *Allen v. McCurry*, 449 U.S. 90, 95 (1980). Internal quotations and citations omitted.

[84] *United States v. Stoneman*, 870 F.2d 102, 104 (3d. Cir. 1989). Internal brackets, quotations, and citation omitted.

which imports uncontrollable verity to the party over whom it has usurped jurisdiction, and he ought not, therefore, to be estopped from proving any fact which goes to establish the truth of a plea alleging the want of jurisdiction."[85] "The constitutional provision that full faith and credit shall be given in each state to the judicial proceedings of other states, does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered over the subject matter or the parties affected by it, nor into the facts necessary to give such jurisdiction."[86] The Federalist Papers also make mandatory Federal relief abundantly clear by declaring that "[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress."[87]

Marshall acknowledged Petitioner's claims: (1) that the State trial and appellate "Courts" violated due process; (2) lacked subject matter jurisdiction; and, (3) that §7031 was unconstitutional because it is penal in nature. Despite this, she declared that each of these issues "were actually litigated by [him] in the state court action[s] and necessarily decided in a final judgment," (Appendix [F] p.49, lines 16-17) concluding as a result that he was "collaterally estopped from bringing [the Federal Court] action." *Id.* p.49, lines 20-23. Despite these conclusions, her opinion fails to include any independent analysis, investigation, or resolution of these issues demonstrating that they were fully, fairly, and impartially adjudicated by the State trial and appellate "Courts" acting with personal and subject matter jurisdiction to

[85] *Harris v. Hardeman*, 55 U.S. 334, 341 (1853).

[86] *Simmons v. Saul*, 138 U.S. 439 (1891). citing *Thompson v. Whiteman*, 85 U.S. 457, 467 (1873) and *Cole v. Cunningham*, 133 U.S. 107 (1890).

[87] Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

render and affirm these "Judgments" and thereby make them "final". It is also unknown how the personal and/or subject matter jurisdiction of these "Courts" (if ever lawfully acquired) was also not lost through subsequent egregious due process violations and/or fraud committed during the proceedings in the procurement of subject matter jurisdiction.

Marshall's "ruling" also fails to cite any authority whereby an arbitrary void judgment in violation of the California and U.S. Constitutions can be collaterally estopped or is subject to the Rooker-Feldman doctrine. Because judgments rendered without personal or subject matter jurisdiction are void and not entitled to full faith and credit elsewhere, the doctrines of collateral estoppel and Rooker-Feldman do not apply and cannot be used to overrule or supersede the Constitution.[88] A fake "trial" put on by a "Judge" acting *coram non judice* cannot in any manner be considered a *judicial* proceeding whose fraudulent "Judgment Order" results in finality or full faith and credit. "[T]he principle of finality rests on the premise that the proceeding had the sanction of law [...]."[89] Furthermore, the supremacy clause *mandates*, and this Court has declared, that "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them–[including the doctrines of collateral estoppel and Rooker-Feldman]."[90]

As "[a] court is a place where justice is legally administered, [where a court lacks subject matter jurisdiction] the defendant has had no trial under the laws of

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[88] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877). "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere."

[89] *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) citing Restatement (second) of Judgments §12, Comment a.

[90] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

the land."[91] This Court has also held that it is a "universal principle" that judgments can be collaterally attacked when questions of *power in the officer* or fraud in the party are raised.[92] A State can't transcend the U.S. Constitution and then claim its judgment is *res judicata* and/or collaterally estopped. But this is exactly what the freewheeling Ninth Circuit Enterprise "policy" and arbitrary Constitutional "Amendment" Marshall's edict intends.

This Court has repeatedly made it clear that District Courts can entertain independent actions that attack State Court judgments as void. See *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post *Rooker*); and *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre *Rooker*). See also *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 608–9 (1990) and *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

District Courts can also entertain independent actions to vacate void judgments when such claims are also authorized by State law. In *Parsons Steel Inc. v. First Alabama Bank*,[93] this Court held that pursuant to 28 U.S.C. §1738 (the Full Faith and Credit Act), a "federal court *must* give the judgment *the same effect* that it would have in the courts of the State in which it was rendered."[94] Under California law a void judgment is subject to attack at any time, either directly or by way of an independent action in equity.[95] See also Cal. Code of Civil Procedure §1916 whereby

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[91] *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

[92] *Vorhees v. Jackson*, 35 U.S. 449, 478 (1836) citing *U.S. v. Arredondo*, 31 U.S. 691 (1832).

[93] *Parsons Steel Inc. v. First Alabama Bank*, 474 U.S. 518 (1986).

[94] *Id.* at 523. Italicized emphasis added.

[95] *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998). Italicized emphasis original. Citations omitted.

"[a]ny judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."

On this issue, Marshall's "ruling" relies on the holding of the Supreme Court of California in the case of *DKN Holdings LLC v. Faerber,*[96] where the Court declared the circumstances in which collateral estoppel and issue preclusion apply: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." Not one of these constitutes a holding that collateral estoppel/issue preclusion applies to an arbitrary judgment by a "Court" acting without personal and/or subject matter jurisdiction. And none of these overrule Art. 6, §2 of the Constitution– "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."[97]

Marshall also arbitrarily denied Petitioner's challenges to the Constitutionality of Business and Professions Codes §7031(a), §7031(b), and §7071.17 on the grounds that the relief he sought was an "order vacating or voiding the state court judgment."[98] While Petitioner's prayer for relief admittedly requested vacating and declaring the State "Judgment" void, Marshall *omitted* the fact that his request also included "any other relief [that] the Court determine[d] reasonable and just." "[U]nder [a] general prayer, other relief may be granted than that which is

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[96] *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 825 (2015).

[97] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (1990) (Citations omitted). *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

[98] *Id.* p.47, lines 10-11.

particularly prayed for."[99]

Contrary to Marshall's arbitrary edict, *Feldman actually* held that the facial challenge to the constitutionality of a State statute could not be precluded because it "[does] not require review of a judicial decision in a particular case" and "is a challenge to the validity of the rule rather than a challenge to an application of the rule."[100] Petitioner therefore had a right to challenge the Constitutionality of these statutes and to a judicial remedy. "Whenever the legislature passes an act which transcends the limits of the police power, it is the duty of the judiciary to pronounce it invalid."[101] Furthermore, "an unconstitutional law is void and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment. [...] If laws are unconstitutional and void, the [...] Court acquired no jurisdiction of the causes [...]."[102]

Therefore, if §7031(a) or §7031(b) were found to be unconstitutional, declaring the judgments void would be the precise relief Marshall had a *mandatory* non-discretionary, ministerial duty to grant. "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy."[103]

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[99] *English v. Foxall*, 27 U.S. 595, 612 (1829).

[100] *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

[101] *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

[102] *Ex parte Siebold*, 100 U.S. 371, 376-7 (1879).

[103] *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 89 (1998).

Finally, while Petitioner's complaint was not captioned as a Petition for *non-statutory* writ of *habeas corpus* (Art. I, §9, Cl. 2), the *substance* was in fact a challenge to the jurisdiction of the State Courts to bind him indefinitely in constructive custody without remedy and financially destroy him amounting to civil capital punishment with prejudice. "The writ of *habeas corpus* is the fundamental instrument for safeguarding individual liberty against arbitrary and lawless state action."[104] *Habeas* relief is also not barred by any of the estoppel doctrines asserted by the Marshall or the Humphreys.[105]

But Marshall's lawless assault on Petitioner's rights, liberty, and property did not stop there. On February 26, 2020, he filed a timely notice of appeal of her *ultra vires* "Order" granting the Humphreys Motion to Dismiss. In response, she filed another arbitrary and *ultra vires* "Order" on February 27, 2020, revoking his previously granted *in forma pauperis* status and declaring his appeal "frivolous". Appendix [H] pp.51-52. According to this Court, an appeal is frivolous if it lacks any arguable issue in law or fact.[106] As Petitioner's appeal contained arguable issues of law, it was clearly not frivolous.

### iii. The Judges of the Ninth Circuit Court of Appeals Breached Their Mandatory Duty to Exercise Jurisdiction to Hear Petitioner's Appeal and Grant Him Relief Mandated by Law

On March 20, 2020, Petitioner filed a Motion for the Appointment of Assistant Counsel and to proceed *in Forma Pauperis* on appeal in the United States Court of

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[104] *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969); *Ex parte Siebold*, supra.

[105] *Noel v. Hall*, 341 F.3d 1148, 1151 (9th Cir. 2003).

[106] *Nietzke v. Williams*, 490 U.S. 319, 325 (1989).

Appeals for the Ninth Circuit. Exhibit [A38]. He also filed a "Statement of Why This Appeal Should Go Forward." Exhibit [A39]. His request for counsel was ignored.

While Petitioner's appeal was pending, this Court issued its decision in *Liu v. SEC*, supra, a case in which it vacated the Ninth Circuit's affirmation of the District "Court's" judgment imposing yet another *ultra vires* penal forfeiture disguised as "equitable disgorgement".[107] Pursuant to *Liu*, Petitioner immediately filed a Notice/Request for Consideration of Additional Authorities. Exhibit [A41].

Despite the resounding clarity evidencing the purported nature of "disgorgement" declared in *Liu*, and that Petitioner had in fact been subject to a penal forfeiture without Lawful authority, "Chief Judge" Sidney Thomas and "Associate Judges" Atsushi Tashima and William Fletcher arbitrarily dismissed his appeal as "frivolous" with no further explanation. Appendix [I] p.53.

See also Appendix [S]– Questions Presented: 18, 19.

### 3. There is a Complete and Total Absence of Any State or Federal Corrective Processes

In addition to there being no apparent judicial Constitutional "Courts" in California or the United States, and consequently no judicial remedies, Petitioner filed Petitions for Redress of Grievance with the following State and Federal agencies and officials, who, without authority either: (1) refused to perform a full, fair, impartial, and independent investigation of his criminal and/or deprivation of rights complaints; and/or, (b) refused to intervene to protect his rights, liberty, money, and property; and/or, (c) created and/or enforced an unwritten Enterprise "policy": (1) to

[107] See *SEC v. Liu*, 262 F. Supp. 3d 957 (2017) and *SEC v. Liu*, 754 Fed. Appx. 505 (9th Cir. 2018).

not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; and/or (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by the California and U.S. Constitutions; and/or, (3) to not investigate State and Federal "Court" "Judges" and members of the Cal. "Legislature" for criminal behavior and deprivation of Constitutionally protected rights.

***a. City of Santa Ana Police Department***
*and Chief David Valentin, "Commander" Roberto Rodriguez, "Sergeant" Abel Alcanter, "Sergeant" Gil Hernandez, "Sergeant" Michelle Macchiaroli*

See Appendix [K] p.56, Exhibits [E4. E5, E6, E7, E21]. Exhibit [C] pp.:1818-1836, 1856-1894, 1894-2106, 2120-2153, 2660-2673. Exhibit [D] pp.4205-4263, 4507-4509. With the exception of the Chief of Police, none of the officials acting in a supervisory capacity have subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 yet are acting in official capacities and accepting compensation from the public treasury.

***b. City of Newport Beach, Newport Beach Police Department,***
*and Chief Jon Lewis, Deputy Chief Joseph Cartwright, Lieutenant Keith Krallman, City Attorney Aaron Harp, "Sergeant" Darrin Joe*

See Appendix [M] pp.68-71, Exhibits: [E24-E27], [D], including pp. 4571-4904, 4796-4821, 5060-5068.

***c. City of Irvine Police Department***
*and "Sergeant" Sean Paul Crawford*

See Exhibits [D], including pp.5159-5202; [E31]. Crawford has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for the position of any office within the IPD (Exhibit [D] p.5200) and the IPD has an unwritten policy to "move away from signing Oaths of Office". Exhibit [D] pp.5159-5161.

***d. City of Costa Mesa Police Department***
*and Chief Ronald Lawrence, "Lieutenant" Brian Wadkins, "Sergeant" Michael Manson, City Attorney Gregory Palmer*

See Exhibits [E29, E30], Exhibit [D], including pp.5110-5158. Wadkins and Manson have not subscribed an oath of office pursuant to Cal. Const. Art. XX, §3 for the position of Sergeant (no records exist).

***e. Orange County Sheriff–Coroner Department***
*and Sheriff Don Barnes, "Assistant Sheriff" Ross Caouette, "Under Sheriff" Jeff Hallock, "Lieutenant" Gary Knutson, Investigator Mike Leeb, "Sergeant" Alejandro Salceda, Deputy Sherry Demaio,*

See Appendix [L] pp.57-67, Exhibits [E9, E11, E12, E13, E17, E18] [D], including pp.4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 4540 [C], including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691. With of the Sheriff, none of the officials acting in a supervisory capacity have subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 yet are acting in official capacities and accepting compensation from the public treasury.

***f. Orange County District Attorney***
*and Deputy District Attorneys, Christopher Duff, Bill Feccia, Clyde Von Der Ahe*

See Appendix [L] pp.57-6, [M] pp.68-71; Exhibits: [E9, E11, E12, E13, E17, E18, E24-E27]; [C], including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691; [D], including pp. 4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 45404571-4904, 5060-5068, 5204-5208.

***g. California Highway Patrol***
*and Sergeant Ed Moran, Officer Ernesto Mejia*

See Exhibit [D], including pp.4905-5010, 5069-5095; [E28].

***h. California Commission on Judicial Performance***
*and Attorney Anjuli Fiedler*

See Appendix [J] pp.54-55, Exhibit [D] including pp.4168-4201.

***i. California Governor***
*and Gavin Newsom*

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

***j. California Department of Justice***
*and Attorney General Rob Bonta, Investigator Bill Wagner*

See Appendix [P] p.80, Exhibit [C], [D] including pp. 4403-4411, 5378-5399 and all Exhibits under Orange County Sheriff-Coroner Dept.

***k. Federal Bureau of Investigation***
*and Christopher Wray, unknown employees and agents thereof*

See Exhibit [C], [D], [E3, E14, E19].

***l. United States Department of Justice***
*and unknown agents thereof*

See Exhibits [C], [D], including pp.4106-4166.

***m. Contractors State License Board***
*and Registrar David Fogt, Arbitrator Don Fobian, Arbitration Mediation Conciliation Center, Inc, Karen Smith*

See Exhibit [F]; Appendix [O] pp.73-79.

***n. California Assembly and Senate***
*and Assemblywoman Cottie Petrie-Norris, fmr. Senator John M.W. Moorlach*

See Exhibits [E2, E10, E15]; [C], including pp.2369-2381; [D], including pp.4164-S4166, 4335-4347, 4412-4467, 4552.

### *o. Superior Court of California- County of Orange*

On August 16, 2022, Petitioner filed a judicial complaint with the Superior Court-County of Orange that was delivered to Presiding "Judge" Erick Larsh. Exhibit [D] pp.5511-5524.

The complaint alleged criminal activity, egregious deprivations of rights, and damages and irreparable harm directly caused by the unlawful behavior of Chaffee and the "Justices" of the Fourth District. The complaint was directed by Larsh to Layne Melzer, the Supervising "Judge" for the "Court's" civil panel. *Id.* p.5503.

Melzer responded in a letter dated October 31, 2022. *Id.* p.5503-5505.

Melzer told Petitioner that "each judicial officer of the court exercises independent judicial authority, and no judge – even judges who exercise some degree of supervisory authority – has the authority to review, overrule, intervene in, or otherwise affect the outcome of any matter proceeding before another judicial officer" (*Id.* p.5504), that "the Court is powerless to afford [...] the relief [he] requested", and "[t]he judgment is therefore final". *Id.* p.5505.

Melzer breached his mandatory, non-discretionary duty to conduct a full, fair, and impartial investigation into Petitioner's claims and to intervene to stop the irreparable harm and damages being perpetrated upon him. Notably, his response fails to acknowledge let alone address the substantive violations of Constitutional law evidenced by Petitioner.

Melzer's response and refusal to abide his sworn duties further evidences that even in the face of clear and unequivocal violations of Constitutional rights, it is not the will of the People and the Constitution that is the "supreme Law of Land", but the arbitrary and lawless acts of "officials" of the Enterprise, fraudulently purporting to be "Judges".

The Enterprise "policy" Melzer admits to is that either there is no Constitution of California or the United States, or that if there is, Enterprise "Judges" are not bound by it and therefore above it. The truth is "[t]he judiciary is but the creature of the Constitution [...]. It can not [sic] rise above the source of its own existence. If it could do this, it could annul the Constitution, instead of simply declaring what it means."[108] "[A Judge] must act judicially in all things, and cannot transcend the power conferred by law."[109] "[W]here the language of the Constitution is express and the intent plain, there is *no power* in the judicial department to set it aside [...]."[110] If a court transcends the limits of its authority, the resulting judgment would not be merely erroneous, but absolutely void.[111] Moreover, violating due process is a crime[112] and a crime cannot be committed to procure or maintain personal or subject matter jurisdiction.

The fraud, deceit, and treason being advocated by Melzer is not the Law under

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[108] *Ex parte Newman*, 9 Cal. 503, 511-512 (Cal. Sup. Ct. 1858).

[109] *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876), *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

[110] *Nougues v. Douglas*, 7 Cal. 65, 66 (Cal. Sup. Ct. 1857). Italicized emphasis added.

[111] *Bear v. Smith*, 201 Cal. 87, 100 (Cal. Supreme Ct. 1927).

[112] 18 U.S.C. §242, Cal. Penal Code §211.

a Constitutional government of defined and limited powers–where exceptions from a power mark its extent [...]"[113]–but one under a different form of government entirely–a despotic and totalitarian form of government.

The root of this issue appears to stem from this "Court's" entire history of jurisprudence concerning the nature of subject matter jurisdiction and immunity doctrines in attempt to guarantee omnipotence to "Judges" and other Enterprise "officials" by transcending the sovereignty of the American People to grant immunity to "officials" who commit crimes and treason upon them.

The California and U.S. Constitutions were carefully crafted to provide absolute immunity too all officials who follow the Law. To create the Enterprise immunity "policies" that transcend Law, this "Court" has repeatedly violated the doctrine of separation of powers by exercising powers that are exclusively conferred upon Congress. The "Justices" even openly admit that their "qualified immunity precedents [...] represent precisely the sort of freewheeling policy choices that [they] have previously disclaimed the power to make."[114] Without the power to make a Law, there can consequently be no power to enforce it. Either would be a clear act of treason.

To obtain the omnipotence inherent in the fraudulent doctrine of "judicial immunity", this "Court" took the doctrines of subject matter jurisdiction and judicial immunity from a different Country ruled by a monarchy and no written Constitution,

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[113] *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824).

[114] *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1871 (2017), Thomas, J. concurring. Internal brackets, quotations, and citation omitted.

and, without any authority, "legislated" them into our nation's jurisprudence. In other words, this "Court" took the edicts of an arbitrary, despotic form of a government[115] and forced them into the "Laws" of our Republican form of government of defined and limited powers.

The purpose of the doctrine of judicial immunity when it was created in Britain was to end the collateral attacks on judgments and to remodel the Court system to match that of the hierarchical ecclesiastic Courts.[116] "The attractiveness of the ecclesiastical model lay in its hierarchical structure. [...The] hierarchical system enable[d] the [King's Courts] to authoritatively ascertain and declare legal precepts [...in] relation to the local courts[.] [To accomplish this,] they needed to monopolize the existing means of correcting errors"[117] by removing the complaint of false judgment against a Judge that could be brought by the People. A statute was thereby enacted which made the claim of false judgment a royal plea, which could only be heard in the King's Courts.[118]

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[115] "The British Constitution differs from our American Constitutions in one great leading feature. It only classifies and distributes, but does not limit the powers of government; while our Constitutions do both." *Ex parte Newman*, 9 Cal. 502, 512 (Cal. Supreme Ct. 1858). Burnett, J. concurring.

[116] "In the twelfth century, under the influence of the canon law, English- men became familiar with appeals *(appelationes)* of a quite other kind [than criminal appeals of felony]; they appealed from the archdeacon to the bishop, from the bishop to the archbishop, from the archbishop to the pope. The graduated hierarchy of ecclesiastical courts became an attractive model. The king's court profited by this new idea; the king's court ought to stand to the local courts in somewhat the same relation as that in which the Roman curia stands to the courts of the bishops." Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882 citing 2 F. Pollock and F. Maitland, The History of English Law 665, (2d ed 1898) p.664. Footnotes omitted.

[117] Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882. Citation omitted.

[118] Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882-3 citing Statute of Marlborough, 1267, 52 Hen. 3, c. 19 "None from henceforth, except our Lord the King, shall hold in his Court any Plea of false Judgement, given in the Court of his Tenants; for such Plea specially belongeth to the Crown and Dignity of our Lord the King."

Ending collateral attacks on false judgments and limiting the correction of errors to the hierarchical system were only the first two steps in the culmination of the judicial immunity doctrine. The third step involved extending the doctrine of sanctity of records to all the King's Courts. The doctrine of sanctity of records originated as a royal edict of the King known as a "prerogative" whereby whatever the King said happened in his presence in Court was "indisputable".[119] "When this [arbitrary] privilege was extended from the King to his judges, the court of record was born and the foundation for limited judicial immunity was set. Since the record of a court of record was incontrovertible, no party could allege that an act noted therein was wrong, and thus the source of the record–the judge–could not be subject to civil or criminal liability for an abuse of power."[120] "The record was a potent weapon to use in the political struggle because of the unimpeachable authority of its origins, the King himself. Impugning the integrity of the record verged on impugning the integrity of the monarch."[121]

The doctrine of the sanctity of records was clearly based on the delusional regal maxim that "the king can do wrong" and the divine right of Kings whereby Kings are only answerable to God. These delusions clearly were not intended to survive the

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[119]Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.206. See also Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5 p.883.

[120] Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.206. See also Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5 p.883.

[121] Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.207, citing 77 Eng. Rep. 1305, 1306 (Star Chamber 1607) "And the records are of so high a nature, that for their sublimity they import verity in themselves, and none shall be received to aver anything against the record itself."

American revolution. As poignantly recognized by this Court in the case of *Chisholm v. Georgia*[122], contemporaneously with this Country's founding:

> It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the Sovereign, and the people as his Subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial controul [sic] and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the Courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are Sovereigns without Subjects (unless the African slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.
>
> From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Soverignty [sic] is the right to govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the Government; here, never in a single instance; our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns. Their Princes have personal powers, dignities, and pre-eminences, our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens.

"Judge" Melzer has it backwards. David Chaffee is not King and is answerable to Petitioner and the American People. In America "if [a Judge] act[s] without authority, [her] judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a

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[122] *Chisholm v. Georgia*, 2 U.S. 419, 471-72 (1793).

reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."[123]

This "Court" and the "Courts" of the Ninth Circuit's attempt to transplant the British doctrine of sanctity of records and the divine right of kings to this Country to amend the Constitution by ending the collateral attack of State judgments is without authority and void. The provisions of the California and U.S. Constitutions are mandatory and prohibitory (Cal. Const. Art. I, §26; Art. VI, 2). As emphatically declared by Alexander Hamilton in Federalist No. 28 "[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress."[124] Article III, §2 also mandates that "[t]he judicial Power of the United States "**shall** extend to **all** Cases, in Law and Equity, arising under this Constitution". (Bolded emphasis added).

See also Appendix [S]– Questions Presented: 14, 36-37.

**4. There is No Judicial Constitutional Court in the State of California Vested with Subject Matter Jurisdiction Upon Which Petitioner Can Present These Claims**

***a. California "Courts" Repeatedly Admit That They Lack Subject Matter Jurisdiction to Hear and Determine Cases Involving Federal Questions.***

See Exhibit [D] p.5438, pp.5441-5447, a Declaration and Exhibits provided to Petitioner by William Henshall. Henshall's Petition for Writ of *Habeas Corpus* to the

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[123] *Elliott v. Lessee Peirsol*, 26 U.S. 328, 340 (1828).

[124] Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

Supreme "Court" of California was returned *unfiled* and thereby summarily denied by the Clerk of "Court" on the ground that "[t]he question raised by the petition are beyond the jurisdiction of California Courts [parenthetically all of them] as they appear to raise Federal issues. *Id.* p.5448.[125]

1. State Courts have had concurrent Federal Court jurisdiction since the inception of this Country. See e.g. *Claflin v. Houseman*,[126] declaring "State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it[.]"
2. Pursuant to the Cal. Constitution of 1849, which, according to the Cal. Secretary of State has never been repealed, Exhibit [K] p.98, the District Courts have original general jurisdiction in cases at common Law and Equity (Art. I, §6). Petitioner, however, has been unable to locate any "District Courts" or any other Courts of California vested with common Law general jurisdiction as these Courts appear to have been abolished. See section b below. It is also unknown how a litigant can possibly exhaust State *habeas* relief and raise Federal issues as purportedly required by 28 U.S.C. §2254, when there is no jurisdiction to do so.
3. There is nothing in the California Constitution that vests any of the judicial power of California in the Clerk of the Supreme "Court" to deny Petitions for Writs of *Habeas Corpus*. Nor has the Clerk been appointed to serve as a

[125] See also his Petition submitted to the Superior Court of California- County of San Mateo dismissing the Writ on the same grounds. *Id.* p 5443. See also p.5446 another dismissal on the same ground by the Superior Court of California- County of San Francisco.

[126] *Claflin v. Houseman*, 93 U.S. 130, 136 (1876).

Justice of the Court.

When Henshall was unable to obtain *habeas* relief, he filed a Petition for Redress of Grievance with California Assemblyman Kevin Mullin and asked that he submit the Petition to the floor of the Assembly. Mullin refused, citing the Clerk of the Supreme "Court's" "determination" (p.5448) while adding that the issues presented were also "beyond the jurisdiction [of the] California Assembly." *Id.* p.5447.

### *b. The Cal. "Constitution of 1879" does not vest any Court with subject matter jurisdiction at Law or Equity as mandated by the U.S. Constitution*

While the States admitted to the union of States known as the United States of America were purportedly comprised of separate sovereign bodies politic, as a unified entity, the States surrendered certain immunities to Federal supervision like those in Article I, §10 as another check and balance protection to guard against State official abuses of power. There is also a lesser-known limitation on the judicial power of the States found in Article III. Under Article III, there are *only* two jurisdictions that arise *under* the Constitution, Laws of the United States, and Treaties made *under* their authority. Those jurisdictions are Law and Equity.

At the time of America's founding, it was proceedings "according to the course of the common Law" [127] where the rights to jury trial by jury, due process of law, and many other rights, privileges, and immunities were recognized and later became enshrined in the Constitution. It was also why every State in the Union (with the

[127] Section 14, Article II Northwest Ordinance 1787 declaring "[t]he inhabitants of the said territory shall always be entitled to [...] judicial proceedings according to the course of the common law[.]"; 7th Amendment.

exception of Louisiana) was admitted under the common Law and not Roman civil law. California specifically repealed all Roman civil law in effect prior to its admission as a State.[128]

Another jurisdiction known as Admiralty (based on Roman civil law) was specifically excluded as a direct result of the abuses by King George III that became one of the principle causes of the American Revolution.[129] Consequently, the States were deprived of all judicial power to exercise Admiralty jurisdiction as it was vested exclusively in the Courts of the United States.[130] As States also had no authority to transcend the Constitution and subject the People thereof to a jurisdiction foreign to their Constitution, they are *only* empowered to vest their Courts with jurisdiction in cases at Law and Equity. Additionally, State Courts must have concurrent jurisdiction with the Courts of the United States to be so empowered to answer Federal questions arising in State cases. If State Courts are not vested with these jurisdictions, they cannot entertain Federal questions, as recognized by this Court in the case of *Claflin v. Houseman*, 93 U.S. 130, 136 (1876).

Up until recently, the California Constitution of 1849 and the purported Cal. "Constitution of 1879" vested the Courts of California with the separate and distinct jurisdictions of Law and Equity. However, as part of the Enterprise scheme to (1) abolish proceedings according to the course of the common Law (section II(D)(6),

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[128] *Fowler v. Smith*, 2 Cal. 568 (Cal. Supreme Ct. 1862).

[129] "He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation". Declaration of Independence. The British parliament "claiming a power, of right, to bind the people of America by statutes in all cases [...] and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county". Declaration of Resolves of the First Congress, October 14, 1774.

[130] Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).

*infra*); (2) amalgamate Law, Equity, and Admiralty into one "civil action" (section II(D)(6), *infra*); and, (3) to impose Roman civil law upon the People of California and the United States, common Law jurisdiction was removed from the "Constitution of 1879" by the repeal of Article VI, §5. (Please confirm that there is no Article VI, §5 in the current version of the "Constitution of 1879"). This "repeal" is akin to removing Article III, §2, Cl. 1 from the U.S. Constitution.

Today, the "Constitution of 1879" vests the Superior "Courts" of California with jurisdiction in "all other causes". "All other causes" is not a jurisdiction known to the Constitution, history and laws of California or the United States and does not reveal the form or nature of the proceedings by which the Superior "Courts" exercise subject matter jurisdiction. "All other causes" is also not defined anywhere in the "Constitution of 1879" or by Lawfully enacted statute.

Consequently, there is no Court in California with subject matter jurisdiction in any case at Law or Equity arising *under* the U.S. Constitution in order grant Petitioner any relief thereby, including by Writ of *Habeas Corpus*. See *Cleveland Trust Co. v. Nelson*, [131] holding that "[a] mere assumption of jurisdiction by a court, however long continued, cannot confer a jurisdiction otherwise nonexistent under the constitutional grant of judicial power" and *State ex rel Wernmark v. Hopkins*, 213 Ore. 669 (Supreme. Ct. 1958).

See also Appendix [S]– Questions Presented: 15, 24, 26.

### i. Superior Courts of California Lack Subject Matter Jurisdiction in Cases of Admiralty Jurisdiction

[131] *Cleveland Trust Co. v. Nelson*, 51 F.2d 276, 277 (1931).

As all competent jurists know, money and Law operate as opposite sides of the same coin. In other words, there are different forms of money and each of these circulates under different modes of proceedings or subject matter jurisdictions of law. Therefore, one's choice of money determines what rights, privileges, and immunities as well as the means and methods of adjudicating disputes that arise thereunder. For this reason, the Founding Fathers specifically chose gold and silver coin (also known as "specie") as the *only* "tender for payment of debts" under the Constitution and laws of the United States.[132] Another form of tender such as checks, money orders, promissory notes, and other negotiable instruments also known as "commercial paper" were specifically excluded.

Unlike gold and silver coin that circulate according to the course of the common Law, commercial paper circulates in commerce/Admiralty[133] and international law and *not* under the Constitution and Laws of the United States. See Art. III, §2 carefully noting that (1) cases in Admiralty jurisdiction do not arise *under* the Constitution and laws of the United States;[134] and, (2) that the judicial power for all cases arising under the Constitution and Laws of the United States extends *only* to cases in Law and Equity.

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[132] See especially Exhibit [G]– Memorandum of Law: The Money Issue by Larry Becraft, the 7th Amendment whereby "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved", and *Calder v. Bull*, 3 U.S. 386, 390 (1798) declaring that "[t]he prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted [in the Constitution] to secure private rights [...]." Underlined and italicized emphasis added.

[133] "The exclusive jurisdiction in admiralty cases was conferred on the national government, as closely connected with the grant of the commercial power." *New Jersey Steam Navigation Co. v. Merchants' Bank*, 47 U.S. 344, 392 (1848). "The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, 2 Burr. R. 883, 887, to be in a great measure, not the law of a single country only, but of the commercial world." *Swift v. Tyson*, 41 U.S. 1, 19 (1842).

[134] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

Because commerce involves the relationship between debtors and creditors, commercial paper (ie Federal Reserve Notes) *cannot* be made tender for the *payment* of a debt *under* the Constitution because commercial paper can only *discharge* an obligation.[135] But most importantly, in cases arising at Law or Equity *under* the Constitution the judicial power of all State and United States Courts is incapable of acting upon any case involving commercial paper because it does not circulate at Law or Equity.[136]

Article I, §8, Cl.5 gives Congress the power to "coin money" which means to "stamp pieces of metal for use as a medium of exchange [...] according to fixed standards of value."[137] It does *not* give "Congress" or this "Court" the power: (1) to unilaterally Amend the Constitution in violation of Article V by making commercial paper (such as Federal Reserve Notes) legal tender; (2) to delegate this non-existent power to the President or to a private banking institution such as the Federal Reserve Bank; or, (3) to subject the American People to a jurisdiction foreign to their Constitution and unacknowledged by its laws. Furthermore, the People's contracts cannot be impaired by forcing them to accept debt instruments or to be bound to a currency in which they cannot Lawfully pay their debts, and by virtue thereof, become indentured servants or slaves to an ever expanding "national debt" upon which they have not consented to and purportedly cannot question (e.g. section 4 of the "14th

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[135] "Let it be that the act of discharging the debt is a mere nullity and that it is still due". *Cohens v. Virginia*, 19 U.S. 264, 403 (1821). See also *Bank of Columbia v. Okely*, 17 U.S. 235 (1819).

[136] "The case of a State which pays off its own debts with paper money, no more resembles this than do those to which we have already adverted. The Courts have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation." *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

[137] The General Principles of Constitutional Law in the United States of America by Thomas M. Cooley, Little Brown and Company 1880, p.79.

Amendment"). Not only was there no Lawful representative "Congress" to authorize the "Federal Reserve Act of 1913" or the "14th Amendment", there is no Lawful representative "Congress" to authorize *any* expenditures on behalf of the American People to bind them in any way whatsoever.

Federal Reserve Notes (that can *only* discharge an obligation) are not Lawful money and cannot be made legal tender like gold and silver coin that actually pay a debt.[138] Federal Reserve Notes are also *undefined* in American law and are not "dollars" as defined by the Coinage Act of 1792.

Federal Reserve Notes have no intrinsic value as true "credit" and are only evidence of the so-called "national debt". According to Marriner S. Eccles, former chairman of the Federal Reserve Board "if there were no debt in our money system [...] [t]here wouldn't be any money."[139] See also Congressional Record– House, August 19, 1940, pp.10548-10555 stating that "the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone's debt [...]") *Id.* p.10550. In other words, if the national debt were "repaid," there wouldn't be any "money".

With the exception of Louisiana, all of the American States were admitted to the Union under English/American common Law, not Interstate Commerce/ Admiralty/ Roman civil law. Absent an unequivocal knowing, voluntary, and intelligent waiver of rights and Constitutional Amendment, neither Petitioner nor

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[138] See H.J.R. 192 and the Coinage Act of 1792 (1 Stat. 246) defining dollar "to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver."

[139] Hearings Before the Committee on Banking and Currency, House of Representatives, Seventy-Seventh Congress, First Session on H.R. 5479, Revised, Part 2, p.1338.

any of the American People can have their Republican form of government based on the rule of common Law altered to be subjected to Roman civil law/Interstate Commerce/Admiralty. Petitioner has not made any such waiver of rights, including to be subjected to the modern codified version of the law merchant/Interstate Commerce in the form of the Uniform Commercial Code.

Based on the facts that: (1) all of the transactions involved in this case involved negotiable instruments circulating in Interstate Commerce/Admiralty; (2) claims for setoff that are recognized in cases at common Law and Equity were denied; (3) Admiralty cannot entertain pleas of setoff;[140] (4) the proceedings were not according to the course of the common Law or Equity (and thereby *not* a case arising *under* the Constitutions of California or the United States); and, (5) Petitioner was subjected to strict liability akin to claim for *liquidated* damages, the case against him clearly arose and proceeded according to the course of Roman civil law in Admiralty jurisdiction for which the State of California lacks subject matter jurisdiction. "The case of a State which pays off its own debts with paper money [...has] no jurisdiction over the contract. They cannot enforce it, nor judge of its violation."[141]

See also Appendix [S]– Questions Presented: 38, 39.

### *c. The Cal. "Constitution of 1879" Does Not Grant the Legislature Any Power to Create Lower Courts or to Vest Them with Any Statutory Jurisdiction Including Jurisdiction Over the Statutes Involved in This Case*

Another structural jurisdictional issue is that the "Constitution of 1879" does not vest the "Legislature" with any authority to create lower or inferior statutory

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[140] *Bains v. James and Catherine*, 2 F. Cas 410, 412 (1832).

[141] *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

Courts or to vest them with any special statutory jurisdiction.[142] Article VI, §1 of the *original* "Constitution of 1879" which purportedly conferred judicial power on inferior Courts established by the Legislature, and Article VI, §13, which vested power in the Legislature to define the subject matter jurisdiction of these Courts,[143] have both been repealed.

Unless the power or authority of a Court to perform a contemplated act can be found in the Constitution or laws enacted thereunder, the "legislature cannot either limit or extend that jurisdiction."[144] Consequently, the Superior "Courts" of California lack subject matter jurisdiction in all cases arising under Business and Professions Code §7031 (and apparently all other statutory cases whatsoever).

Furthermore, the aforementioned "Amendments" to the "Constitution of 1879", and many others substantively altering California's form of government, have not, in Petitioner's research, been approved by "Congress" pursuant to Article IV, §3. Nor is there any apparent Lawful "Congress" to approve such changes.

See also Appendix [S]– Questions Presented: 16, 17

### 5. The Contractor's State Licensing Board's "Mandatory Arbitration" Program is Treason to the Constitutions of California and the United States

On November 21, 2014, Petitioner was subjected to a "mandatory arbitration" proceeding by another conspiracy of the Enterprise to deprive him of his rights to

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[142] "Article VI, §10 is silent to any jurisdiction-setting power of the Legislature" *Communities for a Better Environment v. Energy Resources Conservation & Development Com.*, 57 Cal. App. 5th, 786, 798 (2020).

[143] See also *In re Application Guerrero*, 69 Cal. 88, 99 (Cal. Supreme Ct. 1886).

[144] *Pacific Tel. & Tel. Co. v. Eshleman*, 166 Cal. 640, 647 (Cal. Supreme Ct. 1913). Citations omitted.

judicial proceedings, trial by jury, and his money, property, and liberty without Lawful authority. Appendix [O] pp.73-79, Exhibit [F]. According to the arbitrary "Award", Appendix [O] p.73, the proceeding occurred under the authority of Cal. Business and Professions Code §7085. Appendix [Q] pp.86-87.

§7085 does *not* authorize the Contractors State License Board and the Arbitration Mediation Conciliation Center, Inc. ("AMCC"), to create and/or enforce a "mandatory arbitration" proceeding. Rather, it purports to authorize a *voluntary* arbitration process requiring "the concurrence of both the licensee and the complainant".[145] Petitioner did not and has never made any knowing, voluntary, or intelligent waiver of any rights to be subjected to this or any other "mandatory arbitration" proceeding as recognized by the CSLB in a document it apparently created stating "THE CONTRACTOR DID NOT RETURN A "SUBMISSION TO MANDATORY ARBITRATION". Appendix [O] p.74.

When Petitioner failed to comply with the "Award", his vested right to remain the qualifying individual of a general contractor license was arbitrarily suspended without a judicial hearing or known process of appeal by operation of Cal. Business and Professions Code §7085.6. Appendices [O] pp.75-78 and [Q] pp. 87-88. He has thereby been restrained from earning a living in his profession as a general contractor ever since with no apparent remedy and no access to a judicial Court.

In comparison, when members of the State Bar of California[146] are faced with

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[145] The CSLB admits to referring 8,275 mandatory arbitration cases to the AMCC since January 1, 2006. Appendix [O] p.79.

[146] Another vehicle of the Enterprise by and through which it creates and executes its "policies" is membership by "Legislators", "Executives", and "Judges", whether active or not, in the malevolent monopolies of Bar Associations like the State Bar of California. For example, §7031(b) was: proposed to the Cal "Legislature" by an attorney serving as a "Judge" (Quentin Kopp); ratified by attorneys in

discipline or a licensing suspension or revocation, there is a full-time State Bar "Court" comprised of trial judges and a three-judge appellate "Court" that makes recommendations to the Supreme "Court" of California who is the final arbiter of attorney discipline.[147] No such substantive and equal protections exist for contractors–or any other known regulated profession–in Commiefornia. Nor is review by the Supreme "Court" of California mandatory prior to licensee discipline like it is for attorneys.

See also Questions Presented: 13 Appendix [S].

### a. The Contractors State License Board is Unconstitutional

The separation of powers of the California Constitution flatly forbids the Cal. "Legislature" from combining the Legislative, Executive, and Judicial powers of California in any way to create a fourth branch of government in the form of the agency known as the Contractors State License Board. This fundamental change to California's Republican form of government has not, in Petitioner's research, ever been authorized by a Lawful quorum in either the "Legislature" of California or "Congress" in violation of Article IV, §3 Article IV, §4 and Article I, §10.

The "Legislature" was also without any authority to transfer the judicial power

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the "Legislature"; signed into law by an attorney occupying the office of Governor (Gray Davis); prosecuted by attorneys, (such as William Bissell) and adjudicated by "Judges" (such as David Chaffee). The State Bar of California and its members, along with the Orange County Bar Association, have also played an active role in the creation of the Civil Jury Instructions. Exhibit [C] pp.1621-1642, 2625-2651. §7031(b) "Judgments" are enforced by the office of the Governor (such as fmr. Governor Edmund G. Brown, Jr.). Members of the Bar also sit on the Contractors State License Board (Kevin Albanese) and prosecute "mandatory arbitration" proceedings (Jamie Handrick). They also occupy seats in "Congress" (Adam Schiff). As officers of the "Court", Bar members are flatly forbidden by the doctrine of separation of powers from serving in multiple branches of government intentionally designed to be separated as a check and balance, whether their status in the Bar is active or not.

[147] Cal. Business & Professions Codes §6078, §6097.1 and §6086.65.

of California to the AMCC to conduct arbitration hearings, especially by unelected and unappointed "arbitrators" who don't hold public office.

**6. Congress Has Not Vested Any Inferior Court of the United States with Subject Matter Jurisdiction at Law or Equity as Defined by the U.S. Constitution to Hear and Determine Petitioner's Claims**

28 U.S.C. §1331 also known as "Federal question jurisdiction" declares that: "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." According to the United States House of Representatives Committee on Revision of the Laws,[148] the "[w]ords 'all civil actions' were substituted for 'all suits of a civil nature, at common law or in equity' to conform with Rule 2 of the Federal Rules of Civil Procedure, ["FRCP"]". FRCP Rule 2 states "There is one form of action—the civil action."

In further explanation of the meaning of "the civil action", the 1966 Amendment to the FRCP in the Notes of the Advisory Committee on Rules, declares that "[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."[149]

The obvious problem here is that the Constitution does not confer the judicial power of the United States in any jurisdiction known as "the civil action". The principles and distinctions between Law, Equity, and Admiralty upon which the judicial power of the United States is vested and *separately* and *exclusively*

[148] Revision of Title 28, United States Code, Report from the Committee on Revision of the Laws, House of Representatives, 79th Congress, 2d Session, House Report No. 2646. p. A111.

[149] https://www.law.cornell.edu/rules/frcp/rule_1; US Code.

distributed by Article III cannot be "abolished", "unified", or blended together in one suit known as "the civil action". This is not only because "[a] case in Admiralty does not [...] arise under the Constitution or laws of the United States,"[150] but also because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures have *not* been followed. Moreover, "Congress" is without any authority to delegate its law-making power to the Judicial branch to create and enact these "rules" that have the force and effect of law.[151]

"The Constitution of the United States [...] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity [...] according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."[152] See also *Mc Faul v. Ramsey*,[153] holding that "[i]n those States where the courts of the United States administer the common law,[154] they cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either." "While in many of the states statutes exist which permit the joinder

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[150] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

[151] On June 19, 1934, "Congress" (the one allegedly without a lawful representative quorum to do any business) purportedly enacted the Rules Enabling Act, (48 Stat. 1064, Pub. Law 73-416) to give the U.S. Supreme Court the power to promulgate the Federal Rules of Practice and Procedure to "govern the conduct of traila, appeals, and cases under Title 11 of the United States Code." The creation and revision of these rules, "which have the force and effect of law[,]" is usually carried out by the Judicial Conference's Committee on Rules of Practice and Procedure and it's five advisory committees. https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works.

[152] *Thompson v. R.R. Cos.*, 73 U.S. 134, 137 (1867); See also *Scott v. Neely*, 140 U.S. 106, 111 (1891). Superseded on other grounds; *Robinson v. Campbell*, 16 U.S. 212 (1818); *Fenn v. Holme*, 62 U.S. 481 (1858).

[153] *McFaul v. Ramsey*, 61 U.S. 523, 526 (1857).

[154] California was admitted as a free State under English common Law having repealed the Roman civil law then in effect, as held by the Supreme Court of California case of *Fowler v. Smith*, 2 Cal. 568, 568-9 (1852).

of causes of action at law and in equity in the same suit, this course is not permissible in the federal courts. In truth, the difference between causes of action at law and in equity is matter of substance and not of form, and no legislative enactment can really remove it. In the national courts this meradicable [sic eradicable] difference is as sedulously preserved in the forms and practice available for their maintenance as it is in the natures of the causes themselves and in the principles upon which they rest."[155]

"Courts created by the general Government [of the United States other than the U.S. Supreme Court] possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general Government will authorize them to confer."[156] Without being vested with a jurisdiction as precisely declared by the Constitution (either Law or Equity), "the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."[157] See also *Mayor v. Cooper*,[158] holding that "two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and a [Constitutional] act of [Congress] must have supplied it. Their concurrence is necessary to vest it. [...] It can be brought into activity in no other way."

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[155] *Schurmeier v. Connecticut Mut. Life Insurance Co.*, 171 F. 1 16-17 (8th Cir. 1909). Numerous citations omitted.

[156] *United States v. Hudson & Goodwin*, 11 U.S. 32, 33 (1812). See also *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) holding that federal courts, being courts of "limited jurisdiction," "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Citations omitted.

[157] *Ex Parte McCardle*, 74 U.S. 506, 512 (1869).

[158] *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

The means of properly conferring subject matter jurisdiction vested by the Constitution upon an inferior Court can be found in section 11 of the Judiciary Act of 1789 (1 Stat. 73), whereby the Circuit Courts of the United States were vested with subject matter jurisdiction of all suits of a civil nature "[...] at common law or in equity[...]" with omitted exceptions.[159]

Finally, the Federal Rules of Civil Procedure which "have the force and effect of law"[160] were not given "any affirmative consideration, action, or approval of the rules by Congress or by the President"[161] as required by Article I, §7, Cl.2.

Consequently, Congress has not vested any inferior Court of the United States with the judicial Power of the United States in any case at Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case. See also section II(b)(ii-iii), *infra*, whereby even if the District "Court" were, despite the foregoing, vested with jurisdiction at Law or Equity, the "Court" claimed it lacked subject matter jurisdiction to vacate a void judgment of a State in violation of the U.S Constitution, which are fundamental powers of both Courts of Law and Equity.

See also Appendix [S]– Questions Presented: 23, 27.

**7. There is No Lawful Representative Quorum in the "Legislature" of California or the "Congress" of the United States**

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[159] By no coincidence Circuit Courts have been abolished as part of this scheme.

[160] https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works Accessed 8/16/22.

[161] 374 U.S. 865-66.

Since at least 1929, "Congress" has refused to apportion the number of representatives in the House to the population of the People of the States leaving them without any representative government based on the rule of Law or consent of the governed.

One of the chief complaints of the American colonists at the time of the Revolution was that they believed they were not represented in British Parliament that consistently took adverse actions to their interests and without their consent. The famous political slogan "no taxation without representation" originated at this time. Consequently, the Declaration of Independence declared that the newly established governments of the thirteen united States of America were to "deriv[e] their just powers from the consent of the governed[.]"

As one of the checks and balances subsequently framed into the Constitution to ensure this consent and the representation of the People, Article I, §2, Cl. 3 clearly and unambiguously set forth a minimum and maximum ratio of representation in the House of Representatives of Congress. In 1929 however, "Congress", acting without any lawful representative quorum, arbitrarily decided to "amend" the Constitution in violation of the procedures set forth in Article V by fixing the number of "representatives" at 435. Consequently, there has been no Lawful representative quorum in "Congress" for nearly 100 years. Today, with a population nearing 330,000,000 People, a proper ratio of representation in the House of Representatives would be close to 11,000 members, not 435. Cf. Section 14, Article II of The Northwest Ordinance of 1787 guaranteeing that even the inhabitants territories "shall always be entitled to [...] a proportionate representation of the people in the legislature[.]

A similar situation has occurred in the "Legislature" of California with its 80 "representatives" for nearly 40 million people. No apportionment according to population has been made since at least 1879 despite being mandated by Article I, §14 of the Constitution of 1849 declaring that "representation shall be apportioned according to population."

See also Appendix [S]– Questions Presented: 29-34

**8. The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief***

Upon the filing of Petitioner's verified *Ex parte* Application for Emergency Stay and Petition for Writ of *Habeas Corpus*, Superior "Court" "Judges" Leal, and subsequently, Cramin, had a mandatory, non-discretionary, ministerial duty to (1) fully, fairly, and impartially investigate his claims; and, (2) upon determination of their validity, to grant him all requested relief as mandated by Law. The refusal/ "denial" to abide these sworn mandatory duties is not a Lawful action because all Judge's lack discretion and subject matter jurisdiction to violate the Constitution.

**a. First National Bank of Omaha ("FNBO")**

On April 12, 2022, FNBO was given notice of the issues pertaining to Petitioner and his estate's inability to discharge the alleged mortgage obligation due to the crimes being perpetrated upon him and his estate by public "officials" and private parties in conspiracy therewith, in a recorded phone call he made to FNBO. During the call, Petitioner provided the address to his website, http://www.thespiritoflaw.com, where FNBO could find and verify his claims.

Despite providing this evidence to FNBO, FNBO directed its attorneys, The Dunning Law Firm, APC ("Dunning Firm") and the Dunning Firm's apparent employees, Donald Dunning and James MacLeod, to sue Petitioner in the Superior "Court" of California-County of Orange on or about July 25, 2022. In other words, FNBO and its attorneys intended to obtain relief from the same entity accused of committing crimes against Petitioner that were the direct and proximate cause of his inability to meet his private obligation with FNBO.

Upon being served with FNBO's complaint, Petitioner filed a timely Challenge to Jurisdiction/ Petition for Writ of *Habeas Corpus* and *Ex Parte* Application for Emergency Stay. Exhibits [A46 and A47].

Amongst numerous claims, the Petition and Application challenged FNBO's standing on the grounds that: (1) because the State of California had deprived Petitioner of due process and was actively engaged in depriving him of his liberty, the judicial power of California could not be used to further take his money or property until he was afforded due process on the previous claims that were the proximate cause of damages in the alleged claim by FNBO; (2) that because all of the purported transactions occurred in interstate commerce, the State of California was entirely without subject matter jurisdiction over the case; and, (3) that even if Petitioner had failed to discharge the alleged obligation that it could not result in the claim of "damages" made by FNBO (Exhibit [D] p.5483) because, as this Court has declared, "the act of discharging the debt is a mere nullity and that it is still due."[162]

[162] *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

FNBO's opposition and MacLeod/ Dunning Firm's declaration in support thereof (Exhibit [D] pp.5461-5467) failed to meaningfully and substantively address these issues and thereby failed to sustain FNBO's burden of proof to standing on direct jurisdictional attack.

Based upon the *verified* claims and evidence filed by Petitioner, FNBO had two apparent options so as not to violate its ordinary duty of care[163] owed to Petitioner, or to become complicit in the conspiracy against him. FNBO could either (a) present authenticated evidence that Petitioner's claims were false and the Court thereby lacked a mandatory duty to fully, fairly, and impartially investigate his claims and grant him the mandatory relief he requested; or, (b) to (1)unequivocally declare that it had no intention of using the Court's jurisdiction as a means of causing Petitioner harm; (2) by affirming that the Court had a mandatory duty to investigate Petitioner's claims; and, (3) by refusing to exercise the Court's jurisdiction until the requisite fair and impartial due process was afforded to Petitioner. The position to effectively support Petitioner in achieving a Lawful resolution that could also lead to the Lawful resolution of FNBO's claims would in no way hinder the Dunning Firm or MacLeod or Dunning's duty to represent FNBO. On the contrary, it would have protected them and FNBO from aiding and abetting the conspiracy.

The Superior "Court's" jurisdiction cannot be used as a sword on the one hand to commit crimes and deprivations of Petitioner's rights, while on the other, as a shield to refuse to grant him the relief mandated by Law. Put differently the "Court"

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[163] See e.g. Cal. Civil Code §1714(a). In this same light, private parties can be liable under 42 U.S.C. §1983 when they conspire with State officials in the deprivation of rights secured by the U.S. Constitution. *Lugar v. Edmundson Oil Co., Inc.*, 457 U.S. 922 (1982).

cannot use its authority to unlawfully restrain Petitioner while consequently finding him guilty of the "damages" resulting from that restraint that he didn't cause.

As officers of the Court, Dunning and MacLeod also had a sworn mandatory duty to support the Constitutions of California and the United States (Cal. Bus. & Prof. Code §6067) and not to war against them by either directly or indirectly advocating the fraud, treason, and other crimes being perpetrated upon Petitioner or by being involved in additional substantive due process violations to violate his rights and take his money or property without Lawful authority.

FNBO, The Dunning Firm, Dunning, and MacLeod (collectively hereafter "FNBO") decided war to against Petitioner and the California and U.S. Constitutions by: (1) advocating that Petitioner had no right to the relief he sought (Exhibit [D] pp.5461-5467); (2) by violating due process in failing to meaningfully and substantively respond to the direct jurisdictional attack and substantiate each of the issues raised by Petitioner to evidence their standing and the Court's subject matter jurisdiction[164] to award the relief they sought and were eventually awarded. (At the very least this included providing competent authority that none of the alleged transactions occurred in interstate commerce and by substantiating exactly what jurisdiction they occurred in, if not interstate commerce); (3) by MacLeod lying to the "Court" under oath, on the Dunning Firm and FNBO's behalf, that Petitioner had not presented authenticated evidence of his claims (Exhibit [D] p.5467, line 8) even

[164] See e.g. *McNutt v. Gen. Motors Accep. Corp.*, 298 U.S. 178 (1936). Additionally, having not been vested with common Law general jurisdiction, the Superior "Court" could not be sitting in that capacity and thereby its jurisdiction had to be affirmatively stated, proved, and on the record. See *Ex Parte Knowles*, 5 Cal. 300, 306 (Cal. Supreme Ct. 1855), *Parsons v. Tuolumne Co. Water Co.*, 5 Cal. 43 (Cal. Supreme Ct. 1855), *In re Estate of Strong*, 119 Cal. 663, 666-7 (1898), *Estate of Scarlata*, 193 Cal. App. 2d 35, 41 (1961), *Cohen v. Barrett*, 5 Cal. 195, 210 (Cal. Supreme. Ct. 1855), *Cent. Ill. Pub. Serv. Co. v. Indus. Comm'n*, 293 Ill. 62, 65-6 (Ill. Supreme Ct. 1920).

though Petitioner had (Proc. Hist. Exhibit [A46] pp.8-9); (4) by MacLeod/The Dunning Firm violating due process by failing to provide Petitioner with a Declaration and Exhibits filed in the "Court" to support FNBO's "damages" claim when Petitioner directly notified MacLeod that he never received service of the documents (Exhibit [D] pp.5499-5502) and still has not; (5) by MacLeod/ The Dunning Firm requesting the "Court" to award judgment in FNBO's favor even though they knew, that Petitioner never received a full, fair and impartial judicial determination of his rights, not to mention on his *Ex Parte* Application and *Habeas* petition hearings (Exhibit [D] pp.5452-5459) and in the action commenced by FNBO;[165] (6) by MacLeod/ The Dunning Firm falsely and fraudulently telling Petitioner that final "Judgment" had been entered by the Court when he/they knew that due process had not been followed for all of the above reasons, including the fact that Petitioner was not given any opportunity to meet the evidence of FNBO's "damages" claim because the Deputy Clerk issued "Judgement" *on the same day* (October 21, 2022) that FNBO filed its Declaration and supporting evidence. Exhibit [D] pp.5450-51. This was this same evidence that MacLeod/ The Dunning Firm refused to provide Petitioner a copy of after he informed them that he had never received service. MacLeod/ Dunning Firm refused to provide Petitioner copies of the Declaration and supporting evidence on the grounds that "default ha[d] [already] been entered[,] [he (Petitioner)] was not before the Court", and his "fee waiver was denied." *Id.* None of these responses preclude

[165] "[I]f [a Court] act[s] without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers." *Elliott v. Lessee Persol*, 26 U.S. 328, 329 (1828).

Petitioner's fundamental due process right to be served process and to have an opportunity to meet and oppose all claims against him.

By conspiring with State "officials" to violate due process to receive a "Judgment" in its favor FNBO has become directly involved in the conspiracy to take Petitioner's money and property without Lawful authority.

By denying Petitioner mandatory relief yet exercising jurisdiction to award FNBO relief "Judges" Leal and Cramin also aided and abetted the conspiracy by amongst other crimes, committing treason by refusing to exercise the "Court's" jurisdiction to fully, fairly, impartially, investigate his claims and to grant him the relief mandated by Law.

In a final apparent act to silence Petitioner and prevent him from continuing to defend himself because he was unable to afford to pay the "Court" filing fees, "Judicial Officer" June Jee An denied his Fee Waiver request on the ground that his "savings account amounts may cover [the Court] fees." Exhibit [D] p. 5480. Petitioner does not have a savings account and did not indicate anywhere on the Fee Waiver form that he had any money in a savings account. Exhibit [D] pp.5471-5478. His monthly income was listed at $4,721.60 while his monthly expenses totaled more than $9,000. There is no known process to appeal a Fee Waiver denial. It should also be noted that all of Petitioner's previous Fee Waiver applications had been approved in every State action.

**b. Citibank N.A. Not in its Individual Capacity But Solely as Owner Trustee For New Residential Mortgage Loan Trust 2018-2[166] ("Citibank N.A.")**

On March 7, 2022, shellpoint–a company purporting to be the servicer (Exhibit [D] pp.5040-1) of the mortgage pertaining to the "Deed of Trust" (*Id.* pp.5288-5303) and "Promissory Note" (*Id.* pp.5330-5331) allegedly executed by Petitioner–was given notice of the issues pertaining to Petitioner and his estate's inability to discharge the alleged mortgage obligation due to the crimes being perpetrated upon them by public "officials" and private parties in conspiracy therewith, in a recorded phone call. During the call, Petitioner provided the address to his website, http://www.thespiritoflaw.com, where shellpoint could find and verify his claims.

Despite the foregoing notice, Prestige Default Services, LLC, ("Prestige") the purported "Trustee" of the Deed of Trust (*Id.* p.5222) initiated non-judicial foreclosure proceedings by filing a "Notice of Default" in the Office of the Clerk-Recorder for the County of Orange pursuant to Cal. Civil Code §2924 on July 7, 2022. Exhibit [D] p.5225-5230.

In response, Petitioner filed a Petition for Writ of *Habeas Corpus* and Application for Emergency *Ex parte* hearing. Proc. Hist. Exhibits [A46 and A47]. Amongst numerous claims, the Petition and Application challenged Prestige's standing on the grounds that: (1) because the State of California had deprived Petitioner of due process and was actively engaged in depriving him of his liberty, the judicial power of California could not be used to further take his money or property

[166] Exhibit [D] pp.5218-19.

until he was afforded due process on the previous claims that were the proximate cause of "damages" in the alleged claim by Prestige[167]; (2) because all of the purported transactions occurred in interstate commerce, the State of California was entirely without subject matter jurisdiction over the case; and, (3) Petitioner could not be subjected to non-judicial foreclosure proceedings in violation of Article 1, §10 because he never made a knowing, voluntary, or intelligent waiver of rights.

Prestige failed to oppose Petitioners direct jurisdictional challenges entirely.

Shellpoint, Citibank N.A., and Prestige have also all refused to substantively respond to Petitioner's repeated requests under the Fair Debt Collection Practices Act and the Freedom of Information Act for information and documentation pertaining to the alleged "loan" and mortgage at issue in the foreclosure proceedings. Exhibit [D] pp.5334-5339, 5503.

Petitioner is not in possession of any authenticated evidence: (1) that Citibank N.A. or any other bank "loaned" him anything; or (2) that Citibank N.A. has standing to foreclose on the "Deed of Trust" given the facts that (a) the alleged security Prestige relies upon is not the "Deed of Trust" executed by Petitioner, but an entirely different security instrument listed on the U.S. Stock Exchange[168], that not only does not secure the "Promissory Note" but is also not secured by the real property located at 818 Spirit Costa Mesa, California; (b) the "Promissory Note" has become separated from the "Deed of Trust", by repeated transfers that were all made without the "Note"

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[167] Pursuant to the obligations of the "Promissory Note", Petitioner and/or his estate have a duty "to keep of the promises made in [the] Note, including the promise to pay the full amount owed." Exhibit [D] p.5331.

[168] https://sec.report/Document/0000891092-18-003130/

(Exhibit [D] p.5218-19, 5287) that by Law cannot be rejoined. See e.g. *Carpenter v. Longan*,[169] declaring that "[a]n assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity" and Restatement (Third) of Property (Mortgages) §5.4 (1997) March 2019 Update:

> "[I]t is nearly always sensible to keep the mortgage and the right of enforcement of the obligation it secures in the hands of the same person. This is so because separating the obligation from the mortgage results in a practical loss of efficacy of the mortgage [...]. When the right of enforcement of the note and the mortgage are split, the note becomes, as a practical matter, unsecured."

The "Deed of Trust" that purports to be secured by the real property located at 818 Spirit Costa Mesa, California is not listed on the U.S. Stock Exchange.Whomever the beneficiaries of the New Residential Mortgage Loan Trust 2018-2 are, they do not have a known beneficial interest in the "Deed of Trust" secured by the real property located at 818 Spirit Costa Mesa, California. What they apparently have is a limited partnership interest in a completely separate security instrument on the U.S. Stock Exchange. The "Deed of Trust" is also not a security for the security listed on the U.S. Stock Exchange.

In the same way that a stockholder *only* possesses a property interest in the shares held, the owner(s) of the security held by New Residential Mortgage Loan Trust 2018-2 *only* possess an interest in the instrument it holds, which is not the "Deed of Trust" Prestige has sought to foreclose on.

There is also no known authority under California or Federal statute by which a mortgage created under California statute can be converted into and governed by

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[169] *Carpenter v. Longan*, 83 U.S. 271, 274 (1872).

Federal statute and traded on the U.S. Stock Exchange. Any conversion of the "Deed of Trust" into different security instrument or foreign venue renders the original a nullity.

Despite the foregoing, Patricia Sanchez, "Trustee Sale Officer" for Prestige filed a "Notice of Trustee Sale" in the Office of the Clerk-Recorder for the County of Orange on October 31, 2022. Exhibit [D] pp.5508-5510. The sale date is scheduled for December 12, 2022.

Petitioner has no apparent remedy in any other Court of California or the United States. Even filing bankruptcy will not afford him any protection as the United States Bankruptcy Court for the Ninth Circuit has repeatedly been involved in the fraud surrounding §7031 actions and is not empowered to adjudicate his Article III claims. And the District "Court" has already dismissed his claims with prejudice on the grounds it lacked subject matter jurisdiction to adjudicate them.

See also Appendix [S]– Questions Presented: 40.

**9. The Constitutions of California and the United States Mandate a Judicial Determination of Rights and Redress of Grievance in the *First Instance*, Not a Multi-year Expedition to Find An Official Willing to Abide Their Sworn Duties. Petitioner Cannot be Subjected to Involuntary Servitude to Continue to Seek Relief From "Government" Agencies and "Officials" Who Have *Repeatedly* Demonstrated Their Engagement in Crimes and Acts of Treason**

**10. The Entity Purporting To Be The Lawful De Jure State: California Is Not California and Has Never Been Admitted To The Union of States Known As The United States of America In Violation of Article IV, §3 and §4**

Based on all of the issues presented, Petitioner contends: (1) there is no judicial Constitutional Court of California and no apparent judicial officer willing to abide

their sworn duties pertaining to at least the issues presented in this case; (2) no Lawful representative quorum in the "Legislature"; (3) no apparent Executive official willing to abide their sworn duties pertaining to at least the issues presented in this case (from the "Governor", Gavin Newsom, to any other "official" in State or local law enforcement); (4) that the Republican form of government of California admitted as a State under English/American common Law has been overthrown or replaced by a municipal form of government under Roman civil law[170] without the consent of the People, a Lawful representative quorum in the Cal. "Legislature" and "Congress" and is currently operating without the required system of checks and balances outside of the California and U.S. Constitutions; (5) that the Republican form of government of California in the "City of Costa Mesa" where Petitioner is domiciled has been overthrown or replaced by a municipal "council-manager form of government"[171] based on Roman civil law that operates outside of the California and U.S. Constitutions; (6) that none of the sovereign People of California appear to occupy any office of California "government" or Congress, having been denied access (Appendix [S] Questions:29-31); (7) that only another foreign body politic known as a "citizen of the United States" or "United States citizen" that has no recognized

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[170] CIVIL LAW. The "Roman Law" and the "Civil law" are convertible phrases, meaning the same system of jurisprudence; it is not frequently denominated the "Roman Civil Law."

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

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

[171] Charter of the City of Costa Mesa:
https://www.costamesaca.gov/home/showpublisheddocument/6014/636490563866670000

sovereign inalienable rights appears to occupy all offices of "California" and United States "government" (Appendix [S] Questions:29-31 and e.g. U.S.A. The Republic Is The House That No One Lives In); (7) that the entity pretending to be the Lawful de jure State: California, has, without any Lawful authority, either been overthrown or unadmitted from the union of States known as the United States of America; (8) that these issues result in a violation of all six Articles of the U.S. Constitution; and, (9) that Petitioner has been denied all applicable protections of the California and United States Constitutions.

## III. CONCLUSION

Ernst Huber, a leading Nazi theorist, in a definitive presentation of the Nazi political-legal position wrote:

> "The authority of the Fuhrer is complete and all-embracing; it unites in itself all the means of political direction; it extends into all fields of national life; it embraces the entire people, which is bound to the Fuhrer in loyalty and obedience. The authority of the Fuhrer is not limited by checks and controls, by special autonomous bodies or individual rights, but is free and independent, all-inclusive and unlimited."[172]

On what happens to personal liberty in the "total state", Huber stated:

> "Not until the nationalistic political philosophy had become dominant could the liberalistic idea of basic rights be really overcome. The concepts of personal liberties of the individual as opposed to the authority of the state had to disappear; it is not to be reconciled with the principle of the nationalistic Reich. There are no personal liberties of the individual which fall outside the realm of the state and which must be respected by the state ... There can no longer be any question of a private sphere, free of state influence, which is sacred or untouchable before the political unity. The constitution of the nationalistic Reich is therefore

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[172] National Socialism: Basic Principles, Their Application by the Nazi Party's Foreign Organization, and the Use of Germans Abroad for Nazi Aims" U.S. Department of State, U.S. Govt. Printing Office (1943) as cited in the Objectivist Newsletter February 1969, p.37, 50

> not based upon a system of inborn and inalienable rights of the individual... *Id.* p.50.

In such regimes "there is no longer any distinction between private matters and public matters"; there are no private matters. "The only person who is still a private individual in Germany," declared Robert Ley, a member of the Nazi hierarchy, ... "is somebody who is asleep."[173]

## IV. RELIEF

Pursuant to Article III of the Constitution this Court has a mandatory, non-discretionary ministerial duty to exercise jurisdiction over this case. "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution."[174]

You will please grant this Application for the Emergency Stay of: (1) the "foreclosure proceedings" of the "Deed of Trust" secured by the real property located at 818 Spirit Costa Mesa, California; and (2) enforcement of the "Judgement" in Superior "Court" of California-County of Orange case #30-2022-01271693; pending this Court's Lawful adjudication of all of the issues presented in Petitioner's Petition for Original Writs of *Quo Warranto, Mandamus, and Habeas Corpus* to be sent to the Court within forty days of the date of the Stay Order. Petitioner should also be allowed to present his Petition in 8.5 x11 format without any page restrictions with all applicable fees waived.

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[173] The Fascist New Frontier, The Ayn Rand Column, 98.

[174] *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

This Court will please also exercise its inherent Equity powers or those of supplemental jurisdiction to grant Petitioner emergency restitution so that he will be able to fully meet his needs and obligations; be fairly compensated for a preliminary portion of his time and all expenses having been forced into involuntary servitude to perform this multiyear forensic investigation.

Petitioner has spent an average of eight hours per day, five days per week, for 291 weeks (the week of April 3, 2017 through November 4, 2022) conducting this investigation. The rate he should reasonably be paid is the same rate for legal services provided by a lawyer, such as Mr. Bissell (the Humphreys counsel), whose customary rate is $300 per hour (Exhibit [A3] p.123). At this rate, the compensation due Petitioner is about $3,540,000.

Petitioner has also incurred a *preliminary* estimate of $350,000 in expenses that include "Court" and attorney's fees; office expenses (paper, toner, postage, envelopes, printers, scanner, filing cabinets, 3-ringed binders, computer, software, paper cutter, website and domain hosting, cloud storage, part time assistant, etc...); research (law and history books, repeated consultations with expert legal historians); and medical (regular psychotherapy, acupuncture, and other specialist visits and professional consultations to help cope and treat extreme levels of stress resulting from the intentional infliction of emotional distress by "officials").

Pending further adjudication, which will incur additional time and expenses, Petitioner feels it is fair and reasonable that he be immediately compensated ten percent of the balance for his time (approx. $354,000) and all expenses (to be accounted for in a Motion sent within five calendar days upon granting the Stay). The

Court will equitably apportion the amount due between Respondents Karen and Gary Humphreys, William Bissell, the Law Offices of William Bissell, David Chaffee, Kathleen O'Leary, Richard Aronson, and Thomas Goethals. All payments are to be made in Lawful money and are not in any way to way be considered as settlement or waiver of any of Petitioner's claims at Law or in Equity against these People or any others. The amounts paid will however be deducted from any additional claims upon which they are found to be liable.

## DECLARATION

I, Adam Bereki, declare under penalty of perjury of the laws of California and the United States of America that: (1) the foregoing statements of fact are true and correct to the best of my knowledge and belief: and, (2) that all Exhibits and Appendix documents referenced herein and/or found on http://www.thespiritoflaw.com are true and correct copies with the exception of any non-substantive notes, numbering, redactions, or other marks I may have made thereon.

Signed on the 5th day of November, 2022 in Orange County, California.



Adam Bereki

# Judicial Notice Exhibit 12

**Information to identify the case:**

| | | |
|---|---|---|
| Debtor 1 | **Adam Alan Bereki**<br>First Name Middle Name Last Name | Social Security number or ITIN **xxx-xx-4758**<br>EIN __-_____ |
| Debtor 2<br>(Spouse, if filing) | First Name Middle Name Last Name | Social Security number or ITIN ____<br>EIN __-_____ |

United States Bankruptcy Court **Central District of California**

Case number: **8:22-bk-12076-SC**

## Order of Discharge – Chapter 7

**12/15**

**IT IS ORDERED:** A discharge under 11 U.S.C. § 727 is granted to:

Adam Alan Bereki

[include all names used by each debtor, including trade names, within the 8 years prior to the filing of the petition]

Debtor 1 Discharge Date: 3/27/23

**Dated:** 3/27/23

**By the court:** Scott C Clarkson
United States Bankruptcy Judge

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**Explanation of Bankruptcy Discharge in a Chapter 7 Case**

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

**Creditors cannot collect discharged debts**
This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

**Most debts are discharged**
Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

**32/AUTU**

**For more information, see page 2 >**

**Some debts are not discharged**
Examples of debts that are not discharged are:

- ♦ debts that are domestic support obligations;
- ♦ debts for most student loans;
- ♦ debts for most taxes;
- ♦ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ♦ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ♦ some debts which the debtors did not properly list;
- ♦ debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- ♦ debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**

**NoFeeRequired, REOPENED**

# U.S. Bankruptcy Court
# Central District of California (Santa Ana)
# Bankruptcy Petition #: 8:22-bk-12076-SC

*Assigned to:* Scott C Clarkson
Chapter 7
Voluntary
No asset

*Date filed:* 12/08/2022
*Date reopened:* 04/25/2025
*Debtor discharged:* 03/27/2023
*341 meeting:* 01/18/2023
*Deadline for objecting to discharge:* 03/20/2023
*Deadline for financial mgmt. course:* 03/20/2023

*Debtor disposition:* Standard Discharge

***Debtor***
**Adam Alan Bereki**
3649 N Metter St
Las Vegas, NV 89129
ORANGE-CA
949-241-6693
SSN / ITIN: xxx-xx-4758

represented by **Adam Alan Bereki**
PRO SE

***Trustee***
**Karen S Naylor (TR)**
Karen Sue Naylor, Trustee
4910 Birch Street, Suite 120
Newport Beach, CA 92660
(949) 748-7936

***U.S. Trustee***
**United States Trustee (SA)**
411 W Fourth St., Suite 7160
Santa Ana, CA 92701-4593
(714) 338-3400

| Filing Date | # | Docket Text |
|---|---|---|
| | 1 (13 pgs; 3 docs) | Chapter 7 Voluntary Petition for Individuals . Fee Amount $338 Filed by Adam Alan Bereki Statement of Intention for Individuals Filing Under Chapter 7 (Form 108) due 1/9/2023. Summary of Assets and Liabilities (Form 106Sum or 206Sum ) due 12/22/2022. Schedule A/B: Property (Form 106A/B or 206A/B) due 12/22/2022. Schedule C: The Property You Claim as Exempt (Form 106C) due 12/22/2022. |

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| 12/08/2022 | | Schedule D: Creditors Who Have Claims Secured by Property (Form 106D or 206D) due 12/22/2022. Schedule E/F: Creditors Who Have Unsecured Claims (Form 106E/F or 206E/F) due 12/22/2022. Schedule G: Executory Contracts and Unexpired Leases (Form 106G or 206G) due 12/22/2022. Schedule H: Your Codebtors (Form 106H or 206H) due 12/22/2022. Schedule I: Your Income (Form 106I) due 12/22/2022. Schedule J: Your Expenses (Form 106J) due 12/22/2022. Declaration About an Individual Debtors Schedules (Form 106Dec) due 12/22/2022. Statement of Financial Affairs (Form 107 or 207) due 12/22/2022. Chapter 7 Statement of Your Current Monthly Income (Form 122A-1) Due: 12/22/2022. Statement of Exemption from Presumption of Abuse (Form 122A-1Supp) Due: 12/22/2022. Chapter 7 Means Test Calculation (Form 122A-2) Due: 12/22/2022. Statement of Related Cases (LBR Form F1015-2) due 12/22/2022. Declaration by Debtors as to Whether Income was Received from an Employer within 60-Days of the Petition Date (LBR Form F1002-1) due by 12/22/2022. Verification of Master Mailing List of Creditors (LBR Form F1007-1) due 12/22/2022. Incomplete Filings due by 12/22/2022. (VN) (Entered: 12/08/2022) |
| 12/08/2022 | 2 | Statement About Your Social Security Number (Official Form 121) Filed by Debtor Adam Alan Bereki . (VN) (Entered: 12/08/2022) |
| 12/08/2022 | 3 (1 pg) | Certificate of Credit Counseling Filed by Debtor Adam Alan Bereki . (VN) (Entered: 12/08/2022) |
| 12/08/2022 | 4 (3 pgs) | Meeting of Creditors with 341(a) meeting to be held on 1/18/2023 at 09:00 AM at TR 7, TELEPHONIC MEETING. FOR INSTRUCTIONS CONTACT THE TRUSTEE. for Debtor and Joint Debtor (if joint case) Cert. of Financial Management due by 3/20/2023. Last day to oppose discharge or dischargeability is 3/20/2023. (Scheduled Automatic Assignment, shared account) (Entered: 12/08/2022) |
| 12/08/2022 | | Receipt of Chapter 7 Filing Fee - $338.00 by 16. Receipt Number 80076423. (admin) (Entered: 12/08/2022) |
| 12/10/2022 | 5 (5 pgs) | BNC Certificate of Notice (RE: related document(s)4 Meeting (AutoAssign Chapter 7)) No. of Notices: 5. Notice Date 12/10/2022. (Admin.) (Entered: 12/10/2022) |
| 12/10/2022 | 6 (2 pgs) | BNC Certificate of Notice (RE: related document(s)1 Voluntary Petition (Chapter 7) filed by Debtor Adam Alan Bereki) No. of Notices: 1. Notice Date 12/10/2022. (Admin.) (Entered: 12/10/2022) |
| 12/10/2022 | 7 (2 pgs) | BNC Certificate of Notice (RE: related document(s)1 Voluntary Petition (Chapter 7) filed by Debtor Adam Alan Bereki) No. of Notices: 1. Notice Date 12/10/2022. (Admin.) (Entered: 12/10/2022) |

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| 12/21/2022 | 8 (4 pgs) | Debtor's Motion To Extend Time To File Case Opening Documents (With Supporting Declaration) [FRBP 1007(c), LBR 1007-1(b)] Filed by Debtor Adam Alan Bereki (NB8) (Entered: 12/21/2022) |
| 12/28/2022 | 9 (1 pg) | Order RE: Debtor's Motion To Extend Time To File Case Opening Documents. IT IS ORDERED: The Court GRANTS The Motion. The Remainder Of Debtor's Case Opening Documents Shall Be Due January 10, 2023. The Failure To File The Remainder Of The Case Opening Documents May Result In The Case Being Dismissed Without Further Notice. (BNC-PDF) (Related Doc # 8) Signed on 12/28/2022. (NB8) (Entered: 12/28/2022) |
| 12/30/2022 | 10 (2 pgs) | BNC Certificate of Notice - PDF Document. (RE: related document(s)9 Order on Motion to Extend Deadline to File Schedules and/or Plan (Case Opening Documents - All Chapters) (BNC-PDF)) No. of Notices: 1. Notice Date 12/30/2022. (Admin.) (Entered: 12/30/2022) |
| 01/10/2023 | 11 (50 pgs) | Statement of Related Cases (LBR Form 1015-2.1) , Summary of Assets and Liabilities for Individual (Official Form 106Sum or 206Sum) , Schedule A/B Individual: Property (Official Form 106A/B or 206A/B) , Schedule C: The Property You Claimed as Exempt (Official Form 106C) , Schedule D Individual: Creditors Who Have Claims Secured by Property (Official Form 106D or 206D) , Schedule E/F Individual: Creditors Who Have Unsecured Claims (Official Form 106F or 206F) , Schedule G Individual: Executory Contracts and Unexpired Leases (Official Form 106G or 206G) , Schedule H Individual: Your Codebtors (Official Form 106H or 206H) , Schedule I Individual: Your Income (Official Form 106I) , Schedule J: Your Expenses (Official Form 106J) , Declaration About an Individual Debtor's Schedules (Official Form 106Dec) , Chapter 7 Statement of Your Current Monthly Income (Official Form 122A-1) (BNC Option) , Statement of Financial Affairs for Individual Filing for Bankruptcy (Official Form 107 or 207) , Verification of Master Mailing List of Creditors (LBR Form F1007-1) Filed by Debtor Adam Alan Bereki (RE: related document(s)1 Voluntary Petition (Chapter 7)). [EDB] (TL) (Entered: 01/10/2023) |
| 01/10/2023 | 12 (1 pg) | Declaration by Debtor as to Whether Debtor(s) Received Income From an Employer Within 60 Days of Petition (LBR Form F1002-1) Filed by Debtor Adam Alan Bereki (RE: related document(s)1 Voluntary Petition (Chapter 7)). [EDB] (TL) (Entered: 01/10/2023) |
| 01/11/2023 | 13 (2 pgs) | Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 108) Filed by Debtor Adam Alan Bereki (RE: related document(s) Set Statement of Intent Deadline). [EDB](VN) (Entered: 01/11/2023) |

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| 01/11/2023 | 14 (2 pgs) | Certification About a Financial Management Course for Debtor 1 (Official Form 423) Filed by Debtor Adam Alan Bereki (RE: related document(s)4 Meeting (AutoAssign Chapter 7)). \|EDB\| (VN) (Entered: 01/11/2023) |
| 01/11/2023 | 15 (293 pgs) | Declaration Of Adam Bereki And Supporting Exhibits Filed by Debtor Adam Alan Bereki. \|EDB\| (NB8) (Entered: 01/11/2023) |
| 01/18/2023 | | Chapter 7 Trustee's Report of No Distribution: I, Karen S Naylor (TR), having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 1 months. Assets Abandoned (without deducting any secured claims): $ 0.00, Assets Exempt: Not Available, Claims Scheduled: $ 0.00, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $ 0.00. . (Naylor (TR), Karen) (Entered: 01/18/2023) |
| 02/03/2023 | 16 (38 pgs) | Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee Amount $188, Filed by Creditor Citizens Bank NA (Khil, Christina) (Entered: 02/03/2023) |
| 02/03/2023 | | Receipt of Motion for Relief from Stay - Real Property( 8:22-bk-12076-SC) \|motion,nmrp\| ( 188.00) Filing Fee. Receipt number A55111447. Fee amount 188.00. (re: Doc# 16) (U.S. Treasury) (Entered: 02/03/2023) |
| 02/03/2023 | 17 | Hearing Set (RE: related document(s)16 Motion for Relief from Stay - Real Property (RE: 818 Spirit, Costa Mesa, CA 92626 filed by Creditor Citizens Bank NA) The Hearing date is set for 3/1/2023 at 10:00 AM at Crtrm 5C-Virtual, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson (NB8) (Entered: 02/03/2023) |
| | 18 (44 pgs) | Amended Summary of Assets and Liabilities for Individual (Official Form 106Sum or 206Sum), Amended Schedule A/B Individual: Property (Official Form 106A/B or 206A/B), Amended Schedule C: |

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| 02/15/2023 | | The Property You Claimed as Exempt (Official Form 106C), Amended Schedule D Individual: Creditors Who Have Claims Secured by Property (Official Form 106D or 206D), Amended Schedule E/F Individual: Creditors Who Have Unsecured Claims (Official Form 106F or 206F), Amended Statement of Financial Affairs for Individual Filing for Bankruptcy (Official Form 107 or 207), Amended Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 108), Amended Verification of Master Mailing List of Creditors (LBR Form F1007-1), Amended List of Creditors (Master Mailing List of Creditors) with Proof of Service Filed by Debtor Adam Alan Bereki . (TS) (Entered: 02/15/2023) |
| 02/15/2023 | 19 (23 pgs) | Debtor's Responses And Objections To Citizen Bank N.A.'s Motion For Relief From Stay With Supporting Declaration (Real Property) (RE: related document 16 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee Amount $188, filed by Creditor Citizens Bank NA) Filed by Debtor Adam Alan Bereki (NB8) (Entered: 02/15/2023) |
| 02/15/2023 | | Receipt of Amendment Filing Fee - $32.00 by 12. Receipt Number 80076530. (admin) (Entered: 02/15/2023) |
| 02/22/2023 | 20 (4 pgs) | Reply to (related document(s): 19 Response to motion for order to terminate, annul, modify or condition the automatic stay and declaration(s) in support filed by Debtor Adam Alan Bereki) Filed by Creditor Citizens Bank NA (Khil, Christina) (Entered: 02/22/2023) |
| 02/22/2023 | 21 (26 pgs) | Request for judicial notice Filed by Creditor Citizens Bank NA (RE: related document(s)20 Reply). (Khil, Christina) (Entered: 02/22/2023) |
| 02/23/2023 | 22 (2 pgs) | Request for special notice Filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2. (Covey, Theron) (Entered: 02/23/2023) |
| 03/01/2023 | 28 | Hearing Continued On Motion (RE: related document(s)16 Motion for Relief from Stay - Real Property - RE: 818 Spirit, Costa Mesa CA 92626 filed by Creditor Citizens Bank NA) - HEARING ON MOTION CONTINUED TO APRIL 12, 2023 AT 10:00 A.M. IN COURTROOM 5C-VIRTUAL, LOCATED AT 411 WEST FOURTH STREET, SANTA ANA, CA 92701. The case judge is Scott C Clarkson (NB8) (Entered: 03/09/2023) |
| | 23 (2 pgs) | Notice of Hearing *Notice of Continued Hearing* Filed by Creditor Citizens Bank NA (RE: related document(s)16 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee |

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| 03/03/2023 | | Amount $188, Filed by Creditor Citizens Bank NA). (Khil, Christina) - Warning: See docket entry no.: 25 for corrections - Modified on 3/3/2023 (NB8). (Entered: 03/03/2023) |
| 03/03/2023 | 24 (2 pgs) | Proof of service *Supplemental Proof of Service* Filed by Creditor Citizens Bank NA (RE: related document(s)16 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee Amount $188,). (Khil, Christina) (Entered: 03/03/2023) |
| 03/03/2023 | 25 | Notice to Filer of Error and/or Deficient Document **Incorrect hearing date/time/location was selected In PDF. THE FILER IS INSTRUCTED TO FILE AN AMENDED NOTICE OF MOTION/HEARING WITH THE CORRECT HEARING INFORMATION, WHICH IS: APRIL 12, 2023 AT 10:00 A.M. IN COURTROOM 5C, LOCATED AT 411 WEST FOURTH STREET, SANTA ANA, CA 92701.** (RE: related document(s)23 Notice of Hearing (BK Case) filed by Creditor Citizens Bank NA) (NB8) (Entered: 03/03/2023) |
| 03/06/2023 | 26 (3 pgs) | Debtor's Additional Proof Of Service Of Document For: Debtor's Reponses And Objections To Citizen Bank N.A.'s Motion For Relief From Stay With Supporting Declaration (Real Property) Filed by Debtor Adam Alan Bereki (RE: related document(s)16 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee Amount $188,). [EDB] (NB8) (Entered: 03/06/2023) |
| 03/07/2023 | 27 (2 pgs) | Errata *Notice of Errata re: Notice of Continued Hearing* Filed by Creditor Citizens Bank NA (RE: related document(s)23 Notice of Hearing (BK Case)). (Khil, Christina) (Entered: 03/07/2023) |
| 03/09/2023 | 29 (3 pgs) | Debtor's Response And Objections To Citizen Bank N.A.'s Request For Judicial Notice (related document(s): 21 Request For Judicial Notice; And 16 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee Amount $188, filed by Creditor Citizens Bank NA) Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 03/09/2023) |
| 03/22/2023 | 30 (49 pgs; 2 docs) | Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit Costa Mesa, CA 92626 . Fee Amount $188, Filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2 (Attachments: # 1 Exhibit) (Wan, Fanny) (Entered: 03/22/2023) |
| | | Receipt of Motion for Relief from Stay - Real Property( 8:22-bk- |

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| 03/22/2023 | | 12076-SC) \|motion,nmrp\| ( 188.00) Filing Fee. Receipt number A55266146. Fee amount 188.00. (re: Doc# 30) (U.S. Treasury) (Entered: 03/22/2023) |
| 03/22/2023 | 31 | Hearing Set (RE: related document(s)30 Motion for Relief from Stay - Real Property RE: 818 Spirit, Costa Mesa, CA 92626 filed by Creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing As Servicer For Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) The Hearing date is set for 5/3/2023 at 10:00 AM at Crtrm 5C, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson (NB8) (Entered: 03/22/2023) |
| 03/27/2023 | 32 (2 pgs) | ORDER OF DISCHARGE (BNC) (SM2 ) (Entered: 03/27/2023) |
| 03/29/2023 | 33 (4 pgs) | BNC Certificate of Notice (RE: related document(s)32 ORDER OF DISCHARGE - Chapter 7 (CACB AutoDischarge) (BNC)) No. of Notices: 10. Notice Date 03/29/2023. (Admin.) (Entered: 03/29/2023) |
| 04/10/2023 | 34 (35 pgs) | Supplemental *Supplement To Request For Judicial Notice In Support Of Citizens Banks Reply To Debtors Responses And Objections To Motion For Relief From Stay* Filed by Creditor Citizens Bank NA. (Khil, Christina) (Entered: 04/10/2023) |
| 04/11/2023 | 35 (6 pgs) | Declared Statement Of Intent Of Adam Bereki To Commence Adversary Proceedings And Request For Extension Of Time Filed by Debtor Adam Alan Bereki. \|EDB\| (NB8) (Entered: 04/11/2023) |
| 04/11/2023 | 36 (4 pgs) | Respondent's Request For An Extension Of Time To Respond To Newrez LLC's Motion For Relief From Stay, (Real Property) Filed by Debtor Adam Alan Bereki (RE: related document 30 Motion for Relief from Stay - Real Property RE: 818 Spirit, Costa Mesa, CA 92626 filed by Creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing As Servicer For Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) (NB8) (Entered: 04/12/2023) |
| 04/12/2023 | 37 (24 pgs) | Respondent's Responses And Objections To NEWREZ LLC's Motion For Relief From Stay With Supporting Declaration (Real Property) : 30 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit Costa Mesa, CA 92626 . Fee Amount $188, filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) Filed by Debtor Adam Alan Bereki \|EDB\| (NB8) (Entered: 04/12/2023) |
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| 04/12/2023 | 38 (178 pgs) | Exhibits To: Respondent's Responses And Objections To NEWREZ LLC's Motion For Relief From Stay With Supporting Declaration (Real Property) Filed by Debtor Adam Alan Bereki (RE: related document(s)37 Response to motion for order to terminate, annul, modify or condition the automatic stay and declaration(s) in support). [EDB] (NB8) (Entered: 04/12/2023) |
| 04/12/2023 | 55 | Hearing Held On Motion (RE: related document 16 Motion for relief from stay [Real Property] - RE: 818 Spirit, Costa Mesa CA 92626 Filed By Citizens Bank, N.A., And Its Successors And/Or Assignees - DEFAULT - MOTION GRANTED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) - ORDER BY ATTORNEY (NB8) (Entered: 04/26/2023) |
| 04/17/2023 | 39 | Hearing Held On Motion (RE: related document(s)16 Motion for Relief from Stay - Real Property - RE: 818 Spirit, Costa Mesa CA 92626 - filed by Creditor Citizens Bank NA)) - MOTION GRANTED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) - ORDER BY ATTORNEY - (NB8) (Entered: 04/17/2023) |
| 04/17/2023 | 40 (3 pgs) | Notice Of Appeal And Statement Of Election To United States District Court - Fee $298 Not Paid - [Order Not Entered Yet] Filed by Debtor Adam Alan Bereki (RE: related document(s) 39 Hearing Held On Motion (RE: related document(s)16 Motion for Relief from Stay - Real Property - RE: 818 Spirit, Costa Mesa CA 92626 - filed by Creditor Citizens Bank NA)) - MOTION GRANTED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) - ORDER BY ATTORNEY - [EDB] (NB8)). APPEAL FEE DUE. See order denying application for waiver, # 43. Modified on 4/18/2023 (HC). (Entered: 04/17/2023) |
| 04/17/2023 | 41 (3 pgs) | Application for Waiver of the Appellate Filing Fee in a Chapter 7 Case Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 04/17/2023) |
| | 42 (1 pg) | Deficiency letter to Appellant: Appeal Is Deficient For the Following Reasons: $298.00 Filing Fee For Appeal Was Not Paid; Does Not Include The Entered Date Of Order, Judgment, Or Decree; Does Not Include Entered Stamped Copy Of Order, Judgment, Or Decree; Filed by Debtor Adam Alan Bereki (RE: related document(s)40 Notice Of Appeal And Statement Of Election To United States District Court - Fee $298 Not Paid - [Order Not Entered Yet] Filed by Debtor Adam Alan Bereki (RE: related document(s) 39 Hearing Held On Motion (RE: related document(s)16 Motion for Relief from Stay - Real Property - RE: 818 Spirit, Costa Mesa CA 92626 - filed by Creditor Citizens Bank NA)) - MOTION GRANTED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) - ORDER BY ATTORNEY - [EDB] (NB8)).). (NB8) (Main Document 42 replaced on 4/18/2023) (NB8). (Main Document 42 replaced on 4/18/2023) (SD8). (Entered: |

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| 04/17/2023 | | 04/17/2023) |
| 04/17/2023 | | Receipt of Appeal Late Noticing Filing Fee - $0.00 by 16. Receipt Number 80076644. (admin) (Entered: 04/17/2023) |
| 04/17/2023 | | Receipt of Appeal Late Filing Fee - $0.00 by 16. Receipt Number 80076644. (admin) (Entered: 04/17/2023) |
| 04/18/2023 | 43 (2 pgs) | Order Denying Application For Waiver Of Appellant Filing Fee. IT IS ORDERED: Debtor Does Not Meet The Reduced Income Level Required To Obtain A Waiver Of Fees And The Application Is DENIED. (SEE ORDER FOR FURTHER RULING) (BNC-PDF) (Related Doc # 41 ) Signed on 4/18/2023 (NB8) (Entered: 04/18/2023) |
| 04/19/2023 | 44 (49 pgs; 2 docs) | Amended Motion (related document(s): 30 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit Costa Mesa, CA 92626 . Fee Amount $188, filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) , Motion for Relief from Stay . Fee Amount $188, Filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2 (Attachments: # 1 Exhibit) (Wan, Fanny) - See docket entry no.: 45 for corrections - Modified on 4/19/2023 (NB8). (Entered: 04/19/2023) |
| 04/19/2023 | | Receipt of Motion for Relief From Stay( 8:22-bk-12076-SC) [motion,mrlfsty] ( 188.00) Filing Fee. Receipt number A55363519. Fee amount 188.00. (re: Doc# 44) (U.S. Treasury) (Entered: 04/19/2023) |
| 04/19/2023 | 45 | Notice to Filer of Error and/or Deficient Document **New hearing date/time/location was selected for the Amended Motion. THE FILER IS INSTRUCTED TO WITHDRAW THE MOTION FOR RELIEF FROM STAY (DOCKET NO. 30 THAT IS SCHEDULED FOR MAY 3, 2023 AT 10:00 A.M. IF THAT IS DONE, THEN THE AMENDED NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY [DOCKET NO. 44 WILL BE SET FOR MAY 17, 2023 AT 10:00 A.M. IN COURTROOM 5C-VIRTUAL, LOCATED AT 411 WEST FOURTH STREET, SANTA ANA, CA 92701.** (RE: related document(s)44 Amended Motion filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2, Motion for Relief From Stay) (NB8) (Entered: 04/19/2023) |

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| 04/20/2023 | 46 (3 pgs) | BNC Certificate of Notice - PDF Document. (RE: related document(s)43 Order on Application For Waiver of the Appellate Filing Fee in a Chapter 7 Case (BNC-PDF)) No. of Notices: 1. Notice Date 04/20/2023. (Admin.) (Entered: 04/20/2023) |
| 04/21/2023 | 47 (2 pgs; 2 docs) | Voluntary Dismissal of Motion *for Relief from Stay (new motion has been filed with service on junior lien holders)* Filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2 (RE: related document(s)30 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit Costa Mesa, CA 92626 . Fee Amount $188,). (Attachments: # 1 Proof of Service) (Wan, Fanny) (Entered: 04/21/2023) |
| 04/21/2023 | 48 | Hearing Set (RE: related document(s)44 Amended Motion for Relief from Stay - Real Property RE: 818 Spirit, Costa Mesa, CA 92626 filed by Creditor NewRez LLC d/b/a Shellpoint Mortgage Servicing As Servicer For Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) The Hearing date is set for 5/17/2023 at 10:00 AM at Crtrm 5C-Virtual, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson (NB8) (Entered: 04/21/2023) |
| 04/24/2023 | 49 (6 pgs) | Notice of lodgment Filed by Creditor Citizens Bank NA (RE: related document(s)16 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit, Costa Mesa CA 92626 . Fee Amount $188, Filed by Creditor Citizens Bank NA). (Khil, Christina) (Entered: 04/24/2023) |
| 04/24/2023 | 50 (7 pgs) | Debtor's Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys Filed by Debtor Adam Alan Bereki 'EDB' (JL) - See docket entry no.: 52 for corrections - Modified on 4/25/2023 (NB8). (Entered: 04/25/2023) |
| 04/24/2023 | 51 (292 pgs) | Debtor's Exhibits to Notice of Motion and Motion to Avoid Lien Under 11 U.S.C> Section 522(f) (Real Property) Filed by Debtor Adam Alan Bereki (RE: related document(s)50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys). 'EDB' (JL) (Entered: 04/25/2023) |
| | 52 | Notice to Filer of Error and/or Deficient Document **Incorrect hearing date/time/location was selected. THE FILER IS INSTRUCTED TO FILE AN AMENDED NOTICE OF MOTION/HEARING WITH THE CORRECT HEARING** |

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| 04/25/2023 | | **INFORMATION.** (RE: related document(s)50 Motion to Avoid Lien filed by Debtor Adam Alan Bereki) (NB8) (Entered: 04/25/2023) |
| 04/26/2023 | 53 (2 pgs) | Notice of Hearing - Motion To Avoid Lien Filed by Debtor Adam Alan Bereki (RE: related document(s)50 Debtor's Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys Filed by Debtor Adam Alan Bereki 'EDB' (JL) - See docket entry no.: 52 for corrections - Modified on 4/25/2023 (NB8).). The Hearing date is set for 5/16/2023 at 11:00 AM at Crtrm 5C-Virtual, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson [EDB] (NB8) (Entered: 04/26/2023) |
| 04/26/2023 | 54 | Hearing Set (RE: related document(s)50 Motion To Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) filed by Debtor Adam Alan Bereki) The Hearing date is set for 5/16/2023 at 11:00 AM at Crtrm 5C-Virtual, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson (NB8) (Entered: 04/26/2023) |
| 04/27/2023 | 56 (2 pgs) | Notice of Hearing - Motion To Avoid Lien Filed by Debtor Adam Alan Bereki (RE: related document(s)50 Debtor's Motion to Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys Filed by Debtor Adam Alan Bereki 'EDB' (JL) - See docket entry no.: 52 for corrections - Modified on 4/25/2023 (NB8).). The Hearing date is set for 5/16/2023 at 11:00 AM at Crtrm 5C-Virtual, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson [EDB] (NB8) (Entered: 04/27/2023) |
| 05/01/2023 | 57 (4 pgs) | Order Granting Motion for relief from the automatic stay REAL PROPERTY To Citizens Bank, N.A., And Its Successors And/Or Assignees - (RE: 818 Spirit, Costa Mesa, CA 92626) (BNC-PDF) (Related Doc # 16 ) Signed on 5/1/2023 (NB8) (Entered: 05/01/2023) |
| 05/03/2023 | 58 (24 pgs) | Respondent's Responses And Objections To NewRez LLC's Motion For Relief From Stay With Supporting Declaration (Real Property) (related document(s): 36 Motion to Extend Time filed by Debtor Adam Alan Bereki) Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 05/03/2023) |
| 05/03/2023 | 59 (5 pgs) | BNC Certificate of Notice - PDF Document. (RE: related document(s)57 Motion for relief from the automatic stay REAL PROPERTY (BNC-PDF)) No. of Notices: 1. Notice Date 05/03/2023. (Admin.) (Entered: 05/03/2023) |
| | 60 | Hearing Held (RE: related document(s)30 Motion for relief from stay [Real Property] [RE: 818 Spirit Costa Mesa, CA 92626]) OFF |

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| 05/03/2023 | | CALENDAR PER NOTICE OF WITHDRAWAL FILED 4-21-2023 - (DOCKET NO. 47|) (JL) (Entered: 05/09/2023) |
| 05/03/2023 | 67 | Hearing Held On Motion (RE: related document 30 Motion for relief from stay [Real Property] - RE: 818 Spirit Costa Mesa, CA 92626 Filed By NewRez LLC d/b/a Shellpoint Mortgage Servicing As Servicer For Citibank, N.A., Not In Its Individual Capacity But Solely As Owner Trustee For New Residential Mortgage Loan Trust 2018-2) HEARING ON MOTION OFF CALENDAR PER NOTICE OF WITHDRAWAL FILED 4-21-2023 - (DOCKET NO. 47|) (NB8) (Entered: 05/18/2023) |
| 05/16/2023 | 61 (12 pgs) | First Amended Debtor's Notice Of Motion And Motion To Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) With Karen Humphreys, Gary Humphreys (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki) Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 05/16/2023) |
| 05/16/2023 | 62 (3 pgs) | Notice Of Hearing -Motion To Avoid Lien Filed by Debtor Adam Alan Bereki (RE: related document(s)61 First Amended Debtor's Notice Of Motion And Motion To Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) With Karen Humphreys, Gary Humphreys (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki) Filed by Debtor Adam Alan Bereki [EDB] (NB8)). The Hearing date is set for 6/13/2023 at 11:00 AM at Crtrm 5C, 411 W Fourth St., Santa Ana, CA 92701. The case judge is Scott C Clarkson [EDB] (NB8) (Entered: 05/16/2023) |
| 05/16/2023 | 63 (29 pgs) | Amended Proof Of Service - (Motion To Avoid Lien) -Declaration Of Adam Bereki In Support Of Amended Proof Of Service Filed by Debtor Adam Alan Bereki (RE: related document(s)61 Amended Motion (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki)). [EDB] (NB8) (Entered: 05/16/2023) |
| 05/16/2023 | 68 | Hearing Held On Motion (RE: related document(s)50 Debtor's Motion To Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) With Karen Humphreys And Gary Humphreys filed by Debtor Adam Alan Bereki) - HEARING ON MOTION CONTINUED TO JUNE 13, 2023 AT 11:00 A.M. IN COURTROOM 5, LOCATED AT 411 WEST FOURTH STREET, SANTA ANA, CA 92701. STATUS REPORT DUE 14 DAYS IN ADVANCE. (NB8) (Entered: 05/19/2023) |

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| 05/17/2023 | 69 | Hearing Held On Amended Motion (RE: related document(s)44 Amended Motion for relief from stay [Real Property] RE: 818 Spirit Costa Mesa, CA 92626 filed by Creditor Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2) - ORDER BY ATTORNEY - MOTION DENIED (NB8) (Entered: 05/19/2023) |
| 05/18/2023 | 64 (2 pgs) | Proof Of Service - (Notice Of Bankruptcy And Notice Of Discharge) Filed by Debtor Adam Alan Bereki. [EDB] (NB8) (Entered: 05/18/2023) |
| 05/18/2023 | 65 (4 pgs) | Notice Of Lodgment Of Order In Bankruptcy Cae RE: Motion For Relief From The Automatic Stay, 11 U.S.C. Section 362 (Real Prop.) Filed by Debtor Adam Alan Bereki (RE: related document(s)30 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 818 Spirit Costa Mesa, CA 92626 . Fee Amount $188,, 47 Voluntary Dismissal of Motion). [EDB] (NB8) (Entered: 05/18/2023) |
| 05/18/2023 | 66 (3 pgs) | Notice Of Errata (Pertaining To Notice Of Lodgment Of Order) Filed by Debtor Adam Alan Bereki (RE: related document(s)65 Notice of Lodgment). [EDB] (NB8) (Entered: 05/18/2023) |
| 05/19/2023 | 70 (219 pgs) | Exhibit D2/[A4] Reporter's Transcript Filed by Debtor Adam Alan Bereki. [EDB] (NB8) (Entered: 05/19/2023) |
| 05/19/2023 | 71 (241 pgs) | Exhibit D3/[B]Legislative History Filed by Debtor Adam Alan Bereki. [EDB] (NB8) (Main Document 71 replaced on 5/19/2023) (NB8). (Entered: 05/19/2023) |
| | 72 | Trustee Certification of Services Rendered Under 11 U.S.C. Section 330(e). I rendered the following service in the case and am eligible for payment under 11 U.S.C. Section 330(e): Filed a Report of No Distribution. I declare under penalty of perjury that the foregoing is true and correct. (Executed on 5/19/2023). Filed by Trustee Karen S Naylor (TR) (RE: related document(s) Chapter 7 Trustee's Report of No Distribution: I, Karen S Naylor (TR), having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case |

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| 05/19/2023 | | record: This case was pending for 1 months. Assets Abandoned (without deducting any secured claims): $ 0.00, Assets Exempt: Not Available, Claims Scheduled: $ 0.00, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $ 0.00.. (Naylor (TR), Karen)). (Naylor (TR), Karen) (Entered: 05/19/2023) |
| 05/19/2023 | 73 (8 pgs) | Exhibits D1 - D5 - First Amended Motion To Avoid Lien (Real Property) Notice; Declaration In Support Of Exhibits Filed by Debtor Adam Alan Bereki (RE: related document(s)61 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys). \|EDB\| (NB8) (Entered: 05/19/2023) |
| 05/20/2023 | 74 (600 pgs) | Exhibit D1/\|A3\| Clerk's Transcript - Part 1 Of 3 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 75 (601 pgs) | Exhibit D1/\|A3\| Clerk's Transcript - Part 2 Of 3 Filed by Debtor Adam Alan Bereki. \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 76 (506 pgs) | Exhibit D1/\|A3\| Clerk's Transcript - Part 3 OF 3 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 77 (600 pgs) | Exhibit D4/\|C\| Public Records Act Request - Part 1 Of 3 Filed by Debtor Adam Alan Bereki. \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 78 (300 pgs) | Exhibit D4/\|C\| Public Records Act Requests - Part 2 of 3 Filed by Debtor Adam Alan Bereki. \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 79 (384 pgs) | Exhibit D4/\|C\| Public Records Act Requests - Part 3 Of 3 Filed by Debtor Adam Alan Bereki. \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 80 (500 pgs) | Exhibit D5/\|D\| Official Complaints - Part 1 Of 5 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 81 (251 pgs) | Exhibit D5/\|D\| Official Complaints - Part 2 Of 5 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 82 (251 pgs) | Exhibit D5/\|D\| Official Complaints - Part 3 Of 5 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 83 (301 pgs) | Exhibit D5/\|D\| Official Complaints - Part 4 Of 5 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |
| 05/20/2023 | 84 (228 pgs) | Exhibit D5/\|D\| Official Complaints - Part 5 Of 5 Filed by Debtor Adam Alan Bereki . \|EDB\| (NB8) (Entered: 05/22/2023) |

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| 05/30/2023 | 85 (113 pgs) | Opposition to (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki) Filed by Respondents Karen Humphreys, Gary E Humphreys (Bissell, William) (Entered: 05/30/2023) |
| 06/02/2023 | 86 (4 pgs) | Movant's Objections To Humphreys' Request For Judicial Notice - Movant's Request For Hearing (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki, 85 Opposition filed by Respondent Gary E Humphreys, Respondent Karen Humphreys) Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 06/02/2023) |
| 06/02/2023 | 87 (13 pgs) | Movant's Responses And Objections To Humphreys' Opposition To Motion To Avoid Lien - (Real Property) - Declaration Of Adam Bereki (related document(s): 61 Amended Motion (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki) filed by Debtor Adam Alan Bereki) Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 06/02/2023) |
| 06/13/2023 | 89 | Hearing Held On Motion (RE: related document 50 Debtor's Motion To Avoid Lien Under 11 U.S.C. Section 522(f) (Real Property) With Karen Humphreys And Gary Humphreys) - ORDER BY CHAMBERS MOTION GRANTED (NB8) (Entered: 06/20/2023) |
| 06/15/2023 | 88 (7 pgs) | Opposition To Entry Of Judgment/Order-First Amended Motion To Avoid Judicial Lien (Real Property); Declaration Of Adam Bereki In Support Of Opposition (related document(s): 61 Amended Motion (related document(s): 50 Motion to Avoid Lien 818 Spirit Costa Mesa, Orange County California with Karen Humphreys, Gary Humphreys filed by Debtor Adam Alan Bereki) filed by Debtor Adam Alan Bereki) Filed by Debtor Adam Alan Bereki [EDB] (NB8) (Entered: 06/15/2023) |
| 06/22/2023 | 90 (5 pgs) | Order: (1) Granting In Part And Denying In Part Motion To Avoid Lien And (2) Overruling Opposition To Entry Of An Order. IT IS ORDERED: The Court Hereby GRANTS The Motion To Avoid The Lien That Impaired Debtor's Exemption, But DENIES The Remaining Relief Requested Which Sought A Determination That The Underlying Judgment Was Void. Debtor's Opposition To Entry Of An Order On The Motion, Filed June 15, 2023 (Docket 88 ("Opposition"), Is OVERRULED. (SEE ORDER FOR FURTHER RULING) (BNC-PDF) (Related Doc # doc ) Signed on 6/22/2023 (NB8) (Entered: 06/22/2023) |

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| 06/24/2023 | 91 (7 pgs) | BNC Certificate of Notice - PDF Document. (RE: related document(s)90 Order on Motion to Avoid Lien (BNC-PDF)) No. of Notices: 1. Notice Date 06/24/2023. (Admin.) (Entered: 06/24/2023) |
| 07/14/2023 | 92 (137 pgs; 2 docs) | Adversary case 8:23-ap-01075. Complaint by Plaintiff Adam Bereki against Defendant Citibank N.A., $350.00 (Fee Not Required). (Attachments: # 1 part 1) Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)) (TS) (Entered: 07/14/2023) |
| 07/26/2023 | 93 (2 pgs) | Order Denying Without Prejudice Motion For Relief From The Automatic Stay Under 11 U.S.C. Section 362 To NewRez LLC d/b/a Shellpoint Mortgage Servicing As Servicer For Citibank N.A., Not In Its Individual Capacity But Solely As Owner Trustee For New Residential Mortgage Loan Trust 2018-2 (RE: 818 Spirit, Costa Mesa, California) (BNC-PDF) (Related Doc # 44) Signed on 7/26/2023. (NB8) (Entered: 07/26/2023) |
| 07/28/2023 | 94 (4 pgs) | BNC Certificate of Notice - PDF Document. (RE: related document(s)93 Order on Amended Motion (BNC-PDF)) No. of Notices: 1. Notice Date 07/28/2023. (Admin.) (Entered: 07/28/2023) |
| 09/15/2023 | 95 (44 pgs) | Amending Schedules (E/F) , Amended Summary of Assets and Liabilities for Individual (Official Form 106Sum or 206Sum) , Amended Schedule A/B Individual: Property (Official Form 106A/B or 206A/B) , Amended Schedule C: The Property You Claimed as Exempt (Official Form 106C) , Amended Statement of Financial Affairs for Individual Filing for Bankruptcy (Official Form 107 or 207) , Amended Verification of Master Mailing List of Creditors (LBR Form F1007-1) , Amended List of Creditors (Master Mailing List of Creditors) with proof of service. Filed by Debtor Adam Alan Bereki . (VN) (Entered: 09/15/2023) |
| 09/15/2023 | 96 (1 pg) | Debtor's Request to Activate Electronic Noticing (DeBN) Filed by Debtor Adam Alan Bereki . (VN) (Entered: 09/15/2023) |
| 09/15/2023 | 97 (9 pgs) | Notice Of Bankruptcy Filing Filed by Debtor Adam Alan Bereki. (NB8) (Entered: 09/15/2023) |
| 09/15/2023 | 98 | Receipt of Amendment Filing Fee - $32.00 by TN. Receipt Number 81000050. (admin) (Entered: 09/15/2023) |
| 11/03/2023 | 99 (17 pgs) | Amended Schedule C: The Property You Claimed as Exempt (Official Form 106C), Amended Schedule E/F for Individual: Creditors Who Have Unsecured Claims (Official Form 106F or 206F) with Proof of Service of Document Filed by Debtor Adam Alan Bereki . (TS) (Entered: 11/03/2023) |
| 11/03/2023 | 100 (8 pgs) | Notice Of Bankruptcy Filing Filed by Debtor Adam Alan Bereki . (NB8) (Entered: 11/03/2023) |

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| 11/03/2023 | 101 | Receipt of Amendment Filing Fee - $32.00 by TS. Receipt Number 81000124. (admin) (Entered: 11/03/2023) |
| 11/27/2023 | 102 (2 pgs) | Notice Of Intent - Request To Keep Case Open Filed by Debtor Adam Alan Bereki. [EDB] (NB8) (Entered: 11/27/2023) |
| 01/31/2024 | 103 (9 pgs) | Amended Notice Of Intent - Request To Keep Case Open; Supporting Declaration Of Adam Bereki Filed by Debtor Adam Alan Bereki . [EDB] (NB8) (Entered: 01/31/2024) |
| 10/18/2024 | 104 (34 pgs) | Amended Schedule A/B for Individual: Property (Official Form 106A/B or 206A/B) , Amended Schedule C: The Property You Claimed as Exempt (Official Form 106C), Amended Schedule D for Individual: Creditors Who Have Claims Secured by Property (Official Form 106D or 206D), Amended Schedule E/F for Individual: Creditors Who Have Unsecured Claims (Official Form 106F or 206F), Amended Verification of Master Mailing List of Creditors (LBR Form F1007-1), Amended List of Creditors (Master Mailing List of Creditors) with Proof of Service Filed by Debtor Adam Alan Berek. (TS) (Entered: 10/18/2024) |
| 10/18/2024 | 105 (12 pgs) | Motion to compel trustee to abandon interest in property of estate. Incorporated declaration of Adam Bereki in support. Fee Amount $199, Filed by Debtor Adam Alan Bereki (AM) [Notice to Filer docket number 108] Modified on 10/21/2024 (AM). (Entered: 10/18/2024) |
| 10/18/2024 | 106 | Receipt of Amendment Filing Fee - $34.00 by TS. Receipt Number 81000691. (admin) (Entered: 10/18/2024) |
| 10/18/2024 | 107 | Receipt of Motion Filing Fee - $199.00 by TS. Receipt Number 81000692. (admin) (Entered: 10/18/2024) |
| 10/21/2024 | 108 | Notice to Filer of Error and/or Deficient Document **Incorrect/incomplete/unreadable PDF was attached to the docket entry. THE FILER IS INSTRUCTED TO RE-FILE THE DOCUMENT WITH THE CORRECT HEARING DATE PDF IMMEDIATELY.** (RE: related document(s)105 Motion to compel trustee to abandon property (fee) filed by Debtor Adam Alan Bereki) (AM) (Entered: 10/21/2024) |
| 10/23/2024 | 109 (3 pgs) | Notice Of Errata (Pertaining To Motion To Compel Trustee To Abandon Property) Filed by Debtor Adam Alan Bereki (RE: related document(s)105 Motion to compel trustee to abandon interest in property of estate. Fee Amount $199,). [EDB] (NB8) (Entered: 10/23/2024) |
| | 110 (12 pgs) | Notice Of Lodgment Of Order In Bankruptcy Case RE: Motion To Compel Trustee To Abandon Property Filed by Debtor Adam Alan Bereki (RE: related document(s)105 Motion to compel trustee to abandon interest in property of |

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| 12/02/2024 | | estate. Fee Amount $199,) [EDB]. (NB8) (Entered: 12/02/2024) |
| 12/02/2024 | 111 (7 pgs) | Declaration That No Party Requested A Hearing RE: Motion To Compel Trustee To Abandon Property (LBR 9013-1(o)(3)) Filed by Debtor Adam Alan Bereki (RE: related document(s)105 Motion to compel trustee to abandon interest in property of estate. Fee Amount $199,). [EDB] (NB8) (Entered: 12/02/2024) |
| 12/31/2024 | 112 (1 pg) | Order RE: Motion To Compel Trustee To Abandon Property Of The Estate. IT IS ORDERED: The Court Finds Good Cause To GRANT The Motion. The Estate's Interest In Following Property Is Hereby Deemed Abandoned: 1. 818 Spirit, Costa Mesa, California; And 2. Unprosecuted Lawsuit Claims, As Described In The Motion. (BNC-PDF) (Related Doc # 105 ) Signed on 12/31/2024 (NB8) (Entered: 12/31/2024) |
| 01/02/2025 | 113 (3 pgs) | BNC Certificate of Notice - PDF Document. (RE: related document(s)112 Order on Motion to Compel (BNC-PDF)) No. of Notices: 0. Notice Date 01/02/2025. (Admin.) (Entered: 01/02/2025) |
| 01/29/2025 | 114 | Bankruptcy Case Closed - DISCHARGE. Order of Discharge in the above referenced case was entered and notice was provided to parties in interest. Since it appears that no further matters are required that this case remain open, or that the jurisdiction of this Court continue, it is ordered that the Trustee is discharged, bond is exonerated, and the case is closed. (JL) (Entered: 01/29/2025) |
| 04/18/2025 | 115 (2 pgs) | Notice of Change of Address or Adam Bereki 3649 N Metter St Las Vegas, NV 89129 Filed by Debtor Adam Alan Bereki . [EDB] (VN) (Entered: 04/18/2025) |
| 04/20/2025 | 116 (9 pgs) | Motion To Reopen Case Filed by Debtor Adam Alan Bereki - [EDB] (NB8) (Entered: 04/21/2025) |
| 04/20/2025 | 117 (1 pg) | Letter To Clerk Of The United States Bankruptcy Court Filed by Debtor Adam Alan Bereki (RE: related document(s)116 Motion to Reopen Case filed by Debtor Adam Alan Bereki) [EDB] (NB8) (NB8). (Entered: 04/25/2025) |
| 04/25/2025 | 118 (1 pg) | Order Granting Motion To Reopen Case. IT IS ORDERED: 1. The Above-Captioned Chapter 7 Case Is Reopened Pursuant To 11 U.S.C. Section 350(b) And Fed. R. Bankr. P. 5010. 2. No Filing Fee Is Required, As The Motion Addresses A Discharge Violation Under 11 U.S.C. Section 727, Per The Central District Of California Bankruptcy Court's Fee Schedule. 3. The Clerk Of The Court Is Directed To Refund The $260 Money Order Submitted In Error With The Motion. (BNC-PDF) (Related Doc # 116) Signed on 4/25/2025. (NB8) (Entered: 04/25/2025) |
| | 119 | BNC Certificate of Notice - PDF Document. (RE: related document(s)118 |

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| 04/27/2025 | (3 pgs) | Order on Motion to Reopen Case (BNC-PDF)) No. of Notices: 1. Notice Date 04/27/2025. (Admin.) (Entered: 04/27/2025) |
| 05/17/2025 | 120 (7 pgs) | Notice Of Related Cases And Clarification Of Automatic Stay Scope Filed by Debtor Adam Alan Bereki . [EDB] (NB8) (Entered: 05/22/2025) |
| 05/17/2025 | 121 (2 pgs) | Amended Proof Of Service (Notice Of Related Cases) Filed by Debtor Adam Alan Bereki (RE: related document(s)120 Notice). [EDB] (NB8) (Entered: 05/22/2025) |
| 05/17/2025 | 122 (2 pgs) | Amended Proof Of Service (Notice Of Related Cases) Filed by Debtor Adam Alan Bereki . [EDB] (NB8) (Entered: 05/22/2025) |

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**PACER Service Center**

**Transaction Receipt**

05/25/2025 18:45:26

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|---|---|---|---|
| **PACER Login:** | Adammantt | **Client Code:** | |
| **Description:** | Docket Report | **Search Criteria:** | 8:22-bk-12076-SC Fil or Ent: filed From: 12/1/2022 To: 5/27/2025 Doc From: 0 Doc To: 99999999 Term: included Format: html Page counts for documents: included |
| **Billable Pages:** | 12 | **Cost:** | 1.20 |

# Judicial Notice Exhibit 13

COURT OF APPEAL - SECOND DIST.
FILED
Jul 02, 2024
EVA McCLINTOCK, Clerk
Angelica Lopez Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 1

ZALE DESIGN STUDIO et al.,
Cross-complainants and Respondents,
v.
MARK LEEVAN,
Defendant, Cross-complainant and Appellant.
*Cons w/B326780 and B328264*

B324871
Los Angeles County Super. Ct. No. SC120709

THE COURT:

The application for permission to file amicus curiae brief in support of respondent, filed by Adam Alan Bereki and Pier Pjerin Prenga, has been read and considered. The application is denied.

Wiegant
Acting Presiding Justice

# Judicial Notice Exhibit 14

RECORDING REQUESTED BY:

WHEN RECORDED MAIL DEED
AND TAX STATEMENT TO:

CANJIAN HOU
19709 CALLE LASUEN
WALNUT, CA 91789

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
24.00
*$R001538735 9$*
2025000040781 8:27 am 01/30/25
48 414A T09 5 15
204.60 204.60 0.00 0.00 12.00 0.00 0.000.000.00 0.00

APN: 141-513-55 TS No: CA13000044-22-2 TO No: 240282878

# TRUSTEE'S DEED UPON SALE

**A copy of the affidavit or declaration pursuant to Code of Civil Procedure section 2015.5 delivered to the trustee by the high bidder and grantee herein is attached hereto as Exhibit "B" and incorporated herein as if set forth in full. Said 1 page affidavit or declaration is required to be attached as an exhibit to the trustee's deed and recorded pursuant to Civil Code section 2924m(d).**

The undersigned Grantor, under penalty of perjury, declares:

1) The Grantee herein was not the foreclosing beneficiary.
2) The amount of the unpaid debt together with costs was: **$62,523.24**
3) The amount paid by the Grantee at the trustee sale was: **$371,688.00**
4) The documentary transfer tax is: **$409.20**
5) Said property is in the city of: COSTA MESA
6) A.P.N. 141-513-55

and **MTC Financial Inc. dba Trustee Corps**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **CANJIAN HOU**, herein called "Grantee", the real property in the County of Orange, State of California, described as follows: **SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated October 30, 2006, made to ADAM BEREKI, SINGLE MAN and recorded on December 14, 2006, as Instrument No. 2006000838019 of Official Records in the office of the Recorder of Orange County, CA, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on **November 18, 2024** at the place specified in said Notice, to Grantee who was the highest bidder therefore, for **$371,688.00**, in lawful money of the United States, which has been paid.

Dated: 1-22-25

MTC Financial Inc. dba Trustee Corps

By: Bernardo Sotelo, Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1-22-25 before me, Bobbie LaFlower, a Notary Public, personally appeared BERNARDO SOTELO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

BOBBIE LAFLOWER
Notary Public - California
Orange County
Commission # 2377601
My Comm. Expires Oct 5, 2025

## EXHIBIT "A"

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

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

APN: 141-513-55 TS No: CA13000044-22-2 TO No: 240282878

## EXHIBIT "B"

**This 1 page affidavit/declaration, hereto attached as Exhibit "B", pursuant to Code of Civil Procedure section 2015.5 is required to be attached as an exhibit to the Trustee's Deed Upon Sale for recording pursuant to Civil Code section 2924m(d) and shall not be removed.**

# AFFIDAVIT OF ELIGIBLE BIDDER

(Cal. Civ. Code § 2924m)

| | |
|---|---|
| State of California<br>County of Orange | TS #: CA13000044-22-2<br>Property: 818 SPIRIT, COSTA MESA, CA 92626 |

I, CANJIAN HOU, do hereby state and declare as follows:

1. I am a natural person and a prospective owner-occupant as defined in Section 2924m of California Civil Code.
2. I will occupy the property as my primary residence within 60 days of the trustee's deed being recorded, and I will maintain my occupancy for at least one year.
3. I am not any of the following:
    a. The Mortgagor or trustor
    b. The child, spouse, or parent of the mortgagor or trustor;
    c. The grantor of a living trust that was named in the title to the property when the notice of default was recorded;
    d. An employee, officer, or member of the mortgagor or trustor;or
    e. A person with an ownership interest in the mortgagor, unless the mortgagor is a publicly traded company.
4. I am not acting as the agent of any other person or entity in purchasing the real property.
5. My current residence address is 19709 Calle Lasuen, Walnut CA 91789
6. My current phone # is (626)389-7124
7. My current email address is angushou0823@gmail.com

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed in Riverside, California on December 30th, 2024.

CANJIAN HOU

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER

DATE: Feb 24, 2025

CERTIFICATION FEE 6.00




COUNTY CLERK-RECORDER

ORANGE COUNTY
STATE OF CALIFORNIA

# Judicial Notice Exhibit 15

(SH) ~~FILED ON DEMAND~~

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
MAR 14 2025
DAVID H. YAMASAKI, Clerk of the Court
BY:_____,DEPUTY

Adam A. Bereki
818 Spirit
Costa Mesa, CA 92626
949.241.6693
abereki@gmail.com
www.thespiritoflaw.com

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

Adam Bereki

Defendant, Cross-Complainant, Plaintiff

vs.

Karen Humphreys and Gary Humphreys,

Plaintiffs/ Cross-Complainants, Cross-Defendants

vs.

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

Does 1-100;

[New/Additional] Defendants/ Interested Parties

Main Case No.: 30-2015-00805807

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

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

**DATE:** (SH) ~~Mon. March 17, 2025~~ 03/18/25
**TIME:** (SH) ~~8:30 AM~~ 9:00 AM
**DEPT:** Dept. C23
**JUDGE:** D. Hesseltine

**WITH INCORPORATED:**

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

**VERIFIED MOTION TO VACATE VOID JUDGMENT BASED ON NEW EVIDENCE OF EXTRINSIC FRAUD;**
**1) REQUEST FOR RESTITUTION AND DAMAGES;**
**2) EQUITABLE ACTION TO VACATE FORECLOSURE SALE;**
**3) CONSTITUTIONAL CHALLENGE TO:**
**a) CAL. BUSINESS AND PROFESSIONS CODE SECTIONS: §7028, §7031, §7071.17;**
**b) THE JUDICIALLY CREATED DOCTRINES OF ABSOLUTE JUDICIAL IMMUNITY; QUALIFIED IMMUNITY; AND SUBJECT MATTER JURISDICTION**

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

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

**REQUEST FOR COMMON LAW TRIAL BY JURY**

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

**REQUEST FOR COURT APPOINTED OFFICIAL COURT REPORTER**

**REQUEST FOR JUDICIAL NOTICE**

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

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

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

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

## NOTICE OF CONFLICT OF INTEREST

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

## OVERVIEW

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

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

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

## PROCEDURAL OVERVIEW OF THIS ACTION

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

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

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

## NOTICE: EX PARTE APPLICATION FOR THE EMERGENCY STAY OF UNLAWFUL DETAINER PROCEEDINGS

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

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

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

Dated: 3/14/25

By: _____
Adam Bereki

**DECLARATION OF NOTICE**

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

Henry Paloci
PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com
805.279.1225

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

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



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wbissell@wgb-law.com
949.287.4503

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

David Chaffee
ADR Services
19000 Mac Arthur Blvd., Suite 550
Irvine, CA 92612
judgechaffee@adrservices.com
949.863.9800

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

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

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

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

Dated: 3/14/25

By: _____
Adam Bereki

**SPECIAL REQUEST FOR OFFICIAL COURT REPORTER**

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

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## REQUEST FOR FEE WAIVER

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

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

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

Dated: 3/14/25

By: _____
Adam Bereki

## REQUEST FOR JUDICIAL NOTICE

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

## INCORPORATION OF DOCUMENTS AND EXHIBITS

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

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

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

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

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

**ADDITIONAL DEFENDANTS AND INTERESTED PARTIES**

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

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

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

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

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

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

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

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

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

**B. William Bissell's Role in the Conspiracy**

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

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

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

### C. Henry Paloci's Role in the Conspiracy

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

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

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

### D. Concerted Action and Financial Motive

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

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

## PROPERTY

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

> LOT 55 of TRACT NO 15211, AS SHOWN ON A MAP RECORDED IN BOOK 733, PAGES 33 TO 37 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.
>
> EXCLUDING THEREFROM ONE-HALF OF ALL OIL AND MINERALS, BUT WITHOUT THE RIGHT OF ENTRY, AS RESERVED BY ETTA C. DAVIES, A WIDOW, IN DEED RECORDED JUNE 1, 1959 IN BOOK 4737, PAGE 511 OF OFFICIAL RECORDS.

### Ownership

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

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

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

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## EX PARTE APPLICATION FOR EMERGENCY STAY

### Introduction

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

### Legal Standard for Emergency Stay

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

### Argument

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

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

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

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

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

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

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

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



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

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

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

### Conclusion

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

### ANSWER TO UNLAWFUL DETAINER COMPLAINT
### (Case No.: 30-2025-01459684)

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

Dated: 3/14/25

By: _____

Adam Bereki

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

Please take notice that Plaintiff moves this Court for orders:

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

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

Dated: 3/14/25

By: _____
Adam Bereki

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## MOTION TO VACATE VOID JUDGMENT

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

### I. Factual Background

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

### II. Extrinsic Fraud and Structural Jurisdictional Errors

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

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



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

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

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

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

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

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



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

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

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

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

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

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

**III. Harms Suffered**

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

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

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

## IV. Procedural Basis and Authorities

This Motion relies on:

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

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

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

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

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## I. Civil and Criminal Actions at the Founding

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

## II. Absence of Public Welfare Offenses

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

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### III. Judicial Protection of Private Rights and Franchises

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

### IV. Relevance to This Case

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

## CONVERSION OF PRIVATE RIGHTS INTO PUBLIC PRIVILEGES: A CONSTITUTIONAL HIJACKING

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

### I. Private Rights at the Founding

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

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## II. The Regulatory Shift: From Rights to Privileges

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

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

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

- **Legislative Power:** It promulgates licensing regulations (Cal. Bus. & Prof. Code § 7008), acting as a quasi-legislature.

- **Executive Power:** It enforces these rules, investigating and prosecuting violations (§ 7011).

- **Judicial Power:** It adjudicates disputes, holding hearings and issuing decisions (§ 7099.5), bypassing judicial courts.

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

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## IV. Constitutional Implications and Relevance

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

## CONSTITUTIONAL CRISIS MANDATING RELIEF

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

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

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

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

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

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

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

**MOTION TO VACATE VOID JUDGMENT**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**Overview**

"A private citizen lacks a judicially cognizable interest in the [criminal] prosecution [...] of another."
– *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)

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

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

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

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

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

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

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

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

"A court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree—a void order."
– *MacMillan Petroleum Corp. v. Griffin*, 99 Cal. App. 2d 523, 533 (1950)

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

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

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

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

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

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

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

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

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

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

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

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

## Conclusion

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

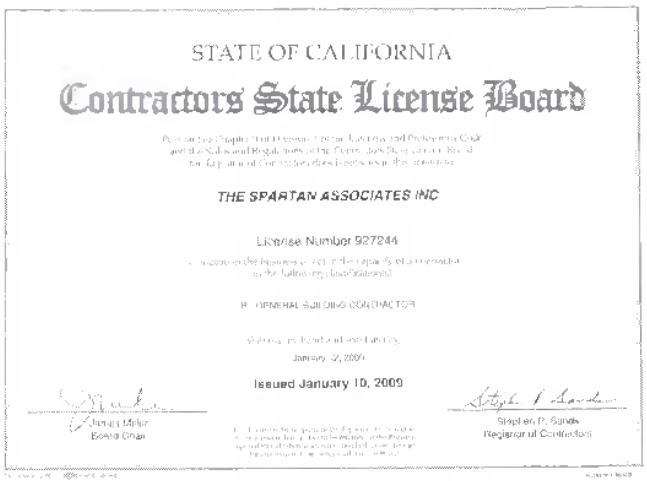
## II. Factual Background

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

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

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



STATE OF CALIFORNIA

Contractors State License Board

THE SPARTAN ASSOCIATES INC

License Number 927244

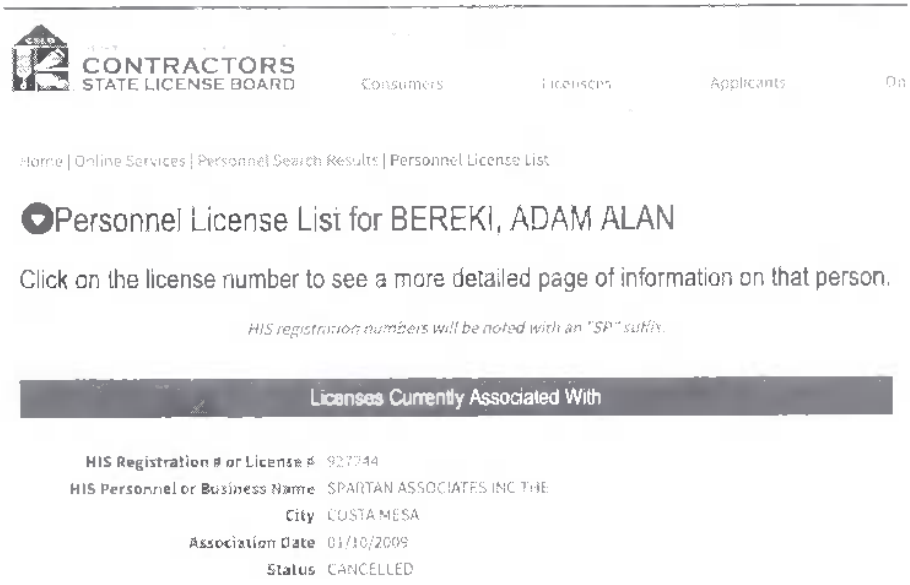
GENERAL BUILDING CONTRACTOR

January 12, 2009

Issued January 10, 2009

Board Chair

Registrar of Contractors



CONTRACTORS STATE LICENSE BOARD

Consumers Licensees Applicants On

Home | Online Services | Personnel Search Results | Personnel License List

Personnel License List for BEREKI, ADAM ALAN

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

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

Licenses Currently Associated With

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

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

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

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

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

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

City of Newport Beach - Building Division
Inspection Card
3300 Newport Blvd.
Inspection RequestsTelephone (949) 644-3255

Date : 11-14-2012

Permit # : X2012-2116
Job Address: 436 VIA LIDO NORD NB
Owner : HUMPHREYS GARY
Contractor : SPARTAN ASSOCIATES INC THE
Description : 800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE

Plan Check # : 1552-2012
MFP / ELEC
MECH / PLUM



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




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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Requested Declaratory Relief**

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

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

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

**Requested Declaratory Relief**

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

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

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

**Requested Declaratory Relief**

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

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

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

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

**Conclusion**

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

***i. Additional Issues at "Trial" Depriving this Court of Subject Matter Jurisdiction- Failure to Address Defendant's Affirmative Defenses***

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

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

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

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

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



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

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

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

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

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

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

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

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

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

***Beyond Legislatures: The Broader Threat***

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



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

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

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



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

**Requested Declaratory Relief**

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

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

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

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

**Introduction**

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

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

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

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

**II. State-Created Danger Doctrine**

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

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

**III. Application to Plaintiff's Claim**

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

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

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

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



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

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

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

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

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

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

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

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

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## VII. Constitutional Implications of the Disparity

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

## Conclusion

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

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

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***I. The California Legislature and Ultimately Defendant Chaffee, Was Without Authority to Convert Plaintiff's Inalienable Rights into A Revocable Privilege and Declare His Exercise of That Right Illegal Unless He First Obtained a License and Paid A Recurring Fee***

*"The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power."*
– Alexander Hamilton, 1775

Article I, Section 1 of the California Constitution declares that: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Plaintiff contends that each of these inalienable rights was violated by the Legislature of California upon the enactment of Business and Professions Code § 7028 and by Judge David Chaffee (and later the Fourth District Justices) through his/their enforcement of §§ 7028, 7031 and 7071.17 against Plaintiff, transforming his inherent right to labor into a state-controlled privilege without Constitutional authority.

**I. Historical Liberty: A Right, Not a Privilege**

*"Private property creates for the individual a sphere in which he is free of the state. It sets limits to the operation of authoritarian will..."*
– Ludwig von Mises

Based on Plaintiff's research thus far, from California's admission as a state in 1850 until 1929—a span of 79 years—it was lawful for any individual to perform construction work without first obtaining a license or paying a recurring fee. This freedom was not a mere convenience but a recognized absolute right to private contract and to receive compensation for one's time and labor in an ordinary vocation of life, such as Plaintiff's work as a general contractor. This right finds its roots in the organic founding documents and principles of the United States, including the Declaration of Independence, natural law, English and American common law (upon which California's legal system was built, *People v. Woody*, 61 Cal. 2d 716, 723 (1964)), Article I, § 1 of the California Constitution, Article I, § 10 of the U.S. Constitution, and the Ninth Amendment. Sir Edward Coke, a foundational figure in common law, affirmed this liberty in *The Case of Monopolies* (1602), declaring that monopolies

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

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

**II. The 1929 Usurpation: A Legislative Coup**

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

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

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

### III. Licenses: Feudal Chains, Not Rights

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

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

### IV. Chaffee's Enforcement: Judicial Overreach

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

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

## V. Constitutional Violations and Plaintiff's Harm

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

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

#### A. Introduction

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



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

**B. CSLB Determination of Competence**

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

**C. Judgment's Presumption of Incompetence**

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

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

### D. Presumption of Harm Violates Common Law Principles

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

### E. Due/ Judicial Process Violation

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

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**F. Infringement of Inalienable Rights**

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

**Conclusion**

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

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

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

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

#### A. Background

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

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

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

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

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

*ii. Failure to Credit Value Delivered*

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

*iii. Inconsistency with Justices' Prior Rulings*

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

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

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

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

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

### *o. The Fraud of Judicial Process at "Trial" and "Appeal"*

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

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### *p. Extrinsic Fraud & Fraud on the Court*

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

### A. Legal Standards

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

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

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

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

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

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

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

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**4. Extrinsic Fraud by Appellate Justices Aronson, Goethals, and O'Leary**. The appellate justices—Richard Aronson, Thomas Goethals, and Kathleen O'Leary—also committed extrinsic fraud by affirming all of Judge Chaffee's actions, as well as those of the Humphreys and Bissell, affirming the judgment, and ordering costs on appeal, despite being presented with clear evidence of the underlying fraud and jurisdictional defects. In Plaintiff's appellate briefs, he explicitly raised the Humphreys' lack of standing, the mischaracterization of the action as civil rather than criminal, and the denial of due/judicial process rights. Nevertheless, the Justices recklessly disregarded these critical issues, choosing to affirm all of Judge Chaffee's fraudulent rulings and the Humphreys and Bissell's deceptive conduct without addressing the foundational flaws. By doing so, they perpetuated the fraud, effectively concealing the true nature of the proceedings and preventing Plaintiff from obtaining a fair and impartial review. Their actions denied Plaintiff his right to a meaningful appeal, constituting extrinsic fraud under California law (*Estate of Sanders*, 40 Cal. 3d at 614). Furthermore, by ordering costs on appeal, they compounded the injustice, penalizing Plaintiff for seeking to correct a void judgment.

### C. Fraud on the Court

The combined actions of the Humphreys, Bissell, Judge Chaffee, and the appellate justices also constitute fraud on the court by undermining the judicial process:

**1. Presentation of a False Claim and Judicial Complicity**. By disguising a criminal prosecution as a civil action, the Humphreys and Bissell misled the trial court into applying civil procedures. Judge Chaffee's acquiescence and the appellate justices' affirmation of this deception further corrupted the judicial process (*Clark v. Clark*, 64 Cal. App. 2d at 329). This led to a judgment the court lacked authority to enter (*Caldwell v. Taylor*, 218 Cal. at 476).

**2. Judicial Officers' Failure to Act.** Judge Chaffee and the appellate justices recklessly disregarded their duty to intervene after being notified of the action's true nature, perpetuating the fraud on the court that continues today (*Martinez v. Bank of America*, 82 Cal. App. 4th 883 (2000)).

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

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

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

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

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

**E. Meritorious Defense**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Extrinsic Fraud

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



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

ii. Fraud on the Court

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

## II. SUPREME COURT OF CALIFORNIA

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

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

**III. UNITED STATES SUPREME COURT**

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

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

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

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

**i. Introduction:**
**Hamilton and the Federal Policy Undermining Checks and Balances**

Alexander Hamilton, in *Federalist No. 28*, enshrined a cornerstone of the United States Constitution: "The general government will at all times stand ready to check the usurpations of the state governments... If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress" (Avalon Project, Yale Law School). This federal court oversight, rooted in Article I, Section 10's ban on state bills of attainder and laws impairing contracts, guarantees a check against state overreach. Plaintiff asserts that the California Court of Appeal's judgment (Case No. G055075) violated these protections through executive usurpation and lack of subject matter jurisdiction, imposing unlawful penalties without authority. After the United States Supreme Court denied certiorari in 2019 (Case No. 18-1416), Plaintiff filed an independent action in equity under Federal Rule of Civil Procedure 60(d) to void this judgment. On February 6, 2020, Judge Consuelo B. Marshall dismissed Plaintiff's First Amended Complaint with prejudice (Doc. 31), invoking the Rooker-Feldman doctrine and collateral estoppel. This dismissal reflects not merely an individual judicial error but a pervasive federal policy—driven by the misapplication of Rooker-Feldman and the "deciding not to decide" reconfiguration of Supreme Court jurisdiction under the Judiciary Act of 1925—that in this case destroyed the constitutional check on state action. This policy, condemned as "treason to the Constitution" in *Cohens v.*

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

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

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

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

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



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

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

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

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

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

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

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

**iv. Marshall's Void Ruling**

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

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

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



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

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

**Conclusion**

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

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

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

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



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

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

**VI. COMMISSION ON JUDICIAL PERFORMANCE**

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

**VII. SANTA ANA POLICE DEPARTMENT**

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

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

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

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**IX. NEWPORT BEACH POLICE DEPARTMENT**

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

**X. UNITED STATES SUPREME COURT**

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

**XI. CONTRACTORS STATE LICENSE BOARD**

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

**XII. CALIFORNIA ATTORNEY GENERAL**

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

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

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

**XIV. UNITED STATES SUPREME COURT**

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

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

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

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

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

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

**XVI. ORANGE COUNTY DISTRICT ATTORNEY**

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

**XVII. CALIFORNIA HIGHWAY PATROL**

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

**XVIII. FBI**

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

**XXIX. SECOND DISTRICT COURT OF APPEAL**

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

**XXX. COMPLAINTS TO GOVERNOR GAVIN NEWSOM**

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

**XXXI. IRVINE POLICE DEPARTMENT**

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

**XXXII. COSTA MESA POLICE DEPARTMENT**

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

**XXXIII. CALIFORNIA ASSEMBLY AND SENATE**

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



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

**XXXIV. UNITED STATES DEPARTMENT OF JUSTICE**
Exhibits C, D, including pp.4106-4166.

**XXXIV. PRESIDENT OF THE UNITED STATES**

**XXXV. DOCUMENTARY SERIES VIDEO- TREASON BY JUDGE**
Part 1– Published on YouTube, April 8, 2024.
See https://www.youtube.com/watch?v=kqN3tt9-Hiw&t=21s or search @thespiritoflaw

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

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

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

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

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

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

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

**B. Statutory Authority Under California Law**

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

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

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

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

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

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

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

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

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

**D. Scope and Limitations of Equitable Relief**

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

**E. Application to Plaintiff's Case**

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

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

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

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

**Conclusion and Requested Relief**

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

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

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

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

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

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

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

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

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

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## I. Judicial Immunity's Feudal Roots and Constitutional Collapse

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

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

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

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

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

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

- **Unauthorized Prosecution Not Cognizable Before Any Judge in America**: Chaffee allowed private citizens Karen and Gary Humphreys to prosecute under §7031(b)—a penal remedy—without executive authority. *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("a private citizen lacks a judicially cognizable interest in the [criminal] prosecution [...] of another"). No record shows such power; *County of Ventura v. Tillett*, 152 Cal. App. 3d 178, 185 (1984) voids jurisdiction absent lawful basis.

- **Excessive Fine**: Chaffee's $930,000 penalty—40 times Plaintiff's qualifying net worth—skipped due/ judicial process (counsel, jury, hearing) required by *Aulisio v. Bancroft*, 230 Cal. App. 4th 1516, 1523 (2014), and breached the Eighth Amendment and Cal. Const. Art. I, § 17. *Volkswagen v. Superior Ct.*, 139 Cal. App. 4th 1481, 1490 (2006): jurisdiction fails when unconstitutional.

- **Retaliatory Fines**: Chaffee fined Plaintiff for jurisdictional challenges (bill of particulars, writ of error), violating First Amendment petition rights (Cal. Const. Art. I, § 3). *Elliott v. Lessee Peirsol*, 26 U.S. 328, 340 (1828): acts without authority are "nullities."



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

### III. Ministerial Acts: No Immunity for Constitutional Duties

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

Chaffee, Di Cesare and the Justices flouted these duties:

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

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

### IV. Private Capacity Liability: Trespassers, Not Judges

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



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

**V. Administrative Capacity Exception: No Immunity for Tribunal Acts**

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

**Conclusion**

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

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

## CITIZENS BANK EXPLOITED FRAUD AND STATE MISCONDUCT TO PLUNDER DEFENDANT'S HOME

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

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

### Overview

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

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

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

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

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

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

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

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

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

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

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

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

### Background

#### a. The Mortgage Agreement with Citizens Bank

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Plaintiff's Schedules Including a Declaration and the Incorporation of U.S. Supreme Court Case 22A426: "FILING OF BANKRUPTCY UNDER EXTREME DURESS AND COERCION
    a. In 2017, I was maliciously criminally prosecuted in the Superior Court of California-County of Orange by private parties, Karen and Gary Humphreys, and their attorney, William Bissell, for allegedly performing construction work without a contractor license even though I was the licensee of a general contractor license in the name of my former solely owned and operated company, The Spartan Associates, Inc. See license #927244 and case 30-2015-00805807, and U.S. Supreme Court Case 22A426.
    b. During the 'trial' I was denied assistant counsel, trial by jury, and all of the heightened protections of criminal proceedings and then excessively, cruelly, and unusually fined about $930,000. See Exhibit [A] - Minute Order and 'Judgment'. I was denied ALL Constitutional

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protections and all Constitutional protections continue to be denied to me."

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

> Adam Bereki ("Debtor"), in the above-captioned matter responds and objects to Citizens Bank N.A.'s, ("Citizens"), Motion seeking an Order lifting the automatic stay.
>
> There are extraordinary circumstances in this case requiring this Court's mandatory non-discretionary duty to intervene and deny Citizens' Motion sua sponte. Debtor's right to fundamental due process continues to be actively denied resulting in irreparable harm and damages.
>
> ¶1: On 12/8/22 Debtor was involuntarily forced to file bankruptcy as a direct result of fraud and other State and Federal crimes being perpetrated upon him by purported "Creditors" Karen and Gary Humphreys, ("the Humphreys"), and their attorney, William Bissell, in conspiracy with State and Federal Officials to steal his money, property, and liberty under color of law but without lawful authority.
>
> ¶4: The "Judgment" is fraudulent and void because it was rendered in direct violation of the California and United States Constitutions by a State Court acting without subject matter jurisdiction. The "Judgment" is at the heart of the conspiracy of why Debtor has been forced into bankruptcy to begin with and cannot be used as a means to allow any purported Creditors, including Citizens, to take Debtor's property without lawful authority.
>
> ¶11: As a direct consequence of these egregious and unconscionable circumstances, Debtor's private contracts and obligations became impaired (another violation of Art. 1, §10) that has resulted in his inability to discharge Claims 1 and 2 and nearly all the unsecured claims in his Schedules.

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

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

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

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

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

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

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

Hi Christina,

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

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

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

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

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

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

Sincerely,
Adam Bereki

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

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

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

> Good day,
>
> In my previous complaint(s) to your office, I shared that as a result of a criminal conspiracy by State and Federal officials and private parties to steal my money, property, and liberty under Color of State law but without lawful authority, I was unlawfully restrained from earning a living in my profession as a general contractor for at least five years. This resulted in millions of dollars of lost earnings and the unlawful impairment of my private contracts and obligations. Several of these purported contracts and obligations may involve Deeds of Trust allegedly secured by my real property and my inability to pay them (to the extent they are valid) as a direct result of the criminal conspiracy.
>
> In December 2022, I was forced to file bankruptcy as a direct result of the criminal conspiracy. See case #8:22-bk-12076, In re Adam Alan Bereki, and especially Docket 15. See also U.S. Supreme Court case 22A426.
>
> During the bankruptcy case (which remains open), the Judge refused to acknowledge the existence of the criminal conspiracy to force me into bankruptcy and unlawfully allowed one purported creditor, Citizens Bank, relief

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

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

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

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

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

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

Sincerely,
/s/Adam Bereki

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

To: Trustee Corps.

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

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

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

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

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

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

Sincerely,
AdamBereki
949.241.6693

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

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

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

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

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

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

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

**e. The Mortgage Contract Was Unconscionable**

**i. Unconscionability Analysis**

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

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

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

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

*a. The Contract Was Procedurally Unconscionable*

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

The Oppressive Component

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

The contract was oppressive because:

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

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

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

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

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

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

The Surprise Component

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

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

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

*b. The Contract Was Substantively Unconscionable*

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

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

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

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

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2. *Lack of Mutuality*: Unlike *Stirlen* (51 Cal.App.4th at 1541), where the employer retained court access while restricting employees, here Citizens retained foreclosure rights while Plaintiff had no reciprocal remedy against their reliance on fraud. This one-sidedness is egregious given the $1.18 million equity loss, a windfall for Citizens/Hou absent commercial justification (*Armendariz*, 24 Cal.4th at 120).

3. *Illegal Purpose Renders Provision Void*: The use of "default" to abet crimes (e.g., aiding Primary Defendants' fraud) violates public policy (Civ. Code § 1668; *Wong v. Tenneco, Inc.*, 39 Cal.3d 126, 135 (1985)). This illegality nullifies Citizens' authority (*Lewis & Queen v. N.M. Ball Sons*, 48 Cal.2d 141, 150 (1957)).

4. *Equity Theft as Evidence of Harshness*: The sale's outcome—$371,688 versus $1.5 million—demonstrates a grossly disproportionate penalty, akin to *Saika v. Gold*'s "heads I win, tails you lose" scenario (49 Cal.App.4th 1074, 1079 (1996)).

**f. Citizens' and Trustee Corps' Interpretation Resulted in Using the Contract for an Unlawful Act**

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

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

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

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

**g. Plaintiff Denied Redemption**

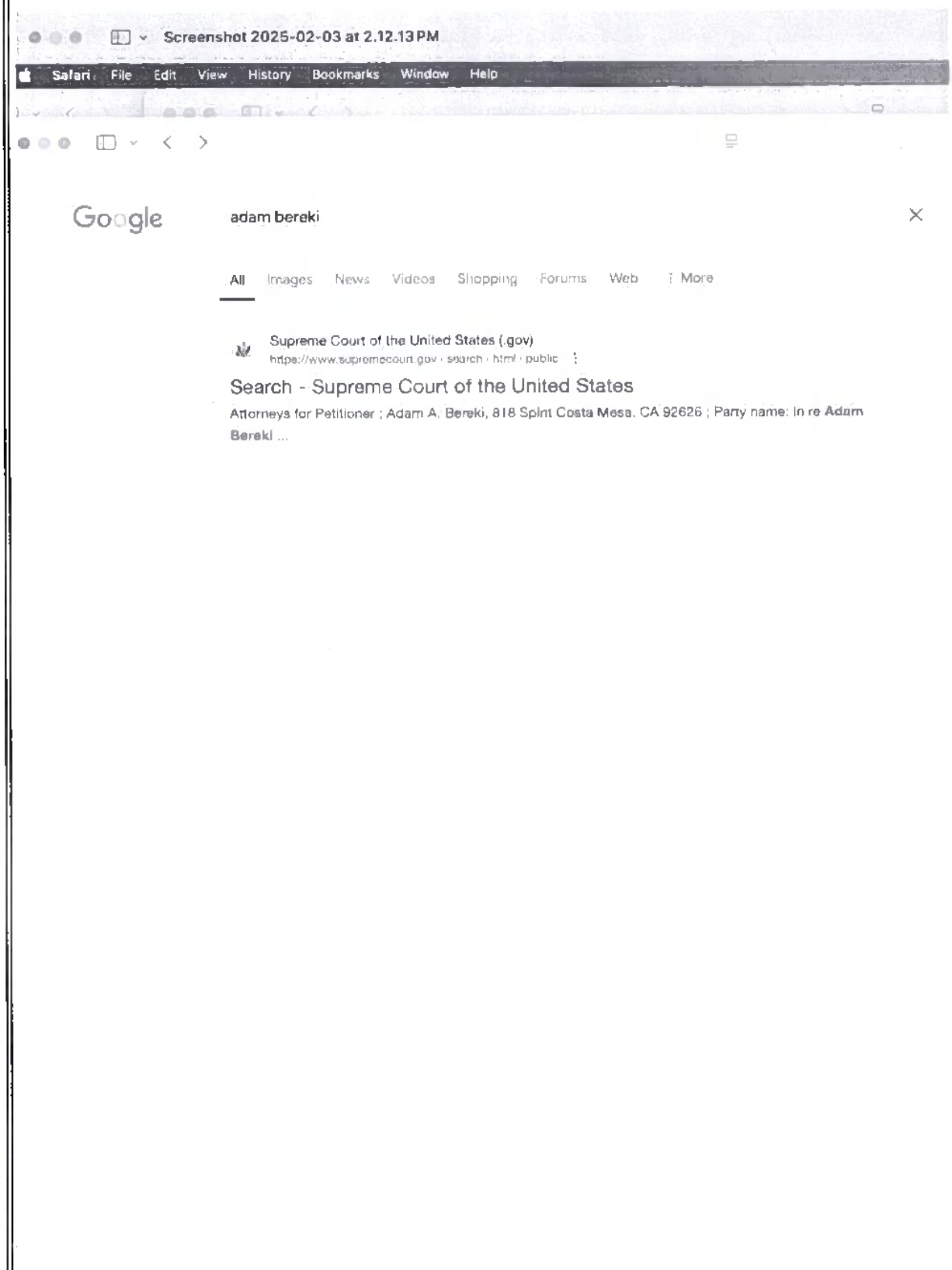
Under California Civil Code § 2924c, a debtor has the right to cure a default and reinstate the loan by paying the delinquent amounts within three months of the notice of default. However, in this case, the crimes perpetrated against Plaintiff rendered the three-month redemption period a farce. Plaintiff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

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

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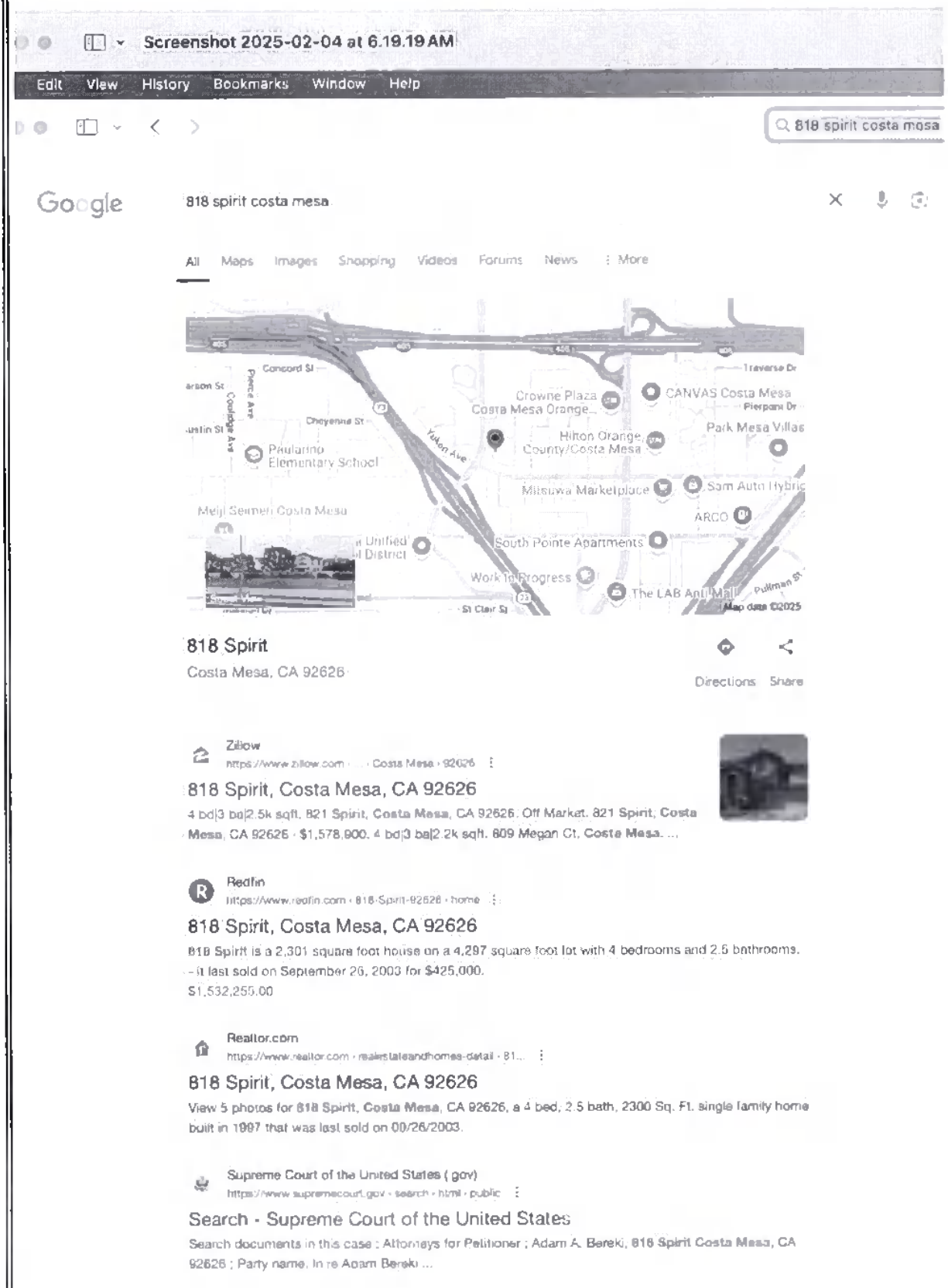
Recall that Paloci told Plaintiff Hou had no notice of the crimes herein before bidding on the property. On February 4, 2025, Plaintiff sent Paloci an email with two screenshots from Google searches he had made on February 3, 2025. The first was a search of "818 Spirit Costa Mesa" (the foreclosure property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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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iii. Defendant Has Standing to Challenge the Wrongful Foreclosure Sale

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

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

iv. Hou is Not a Bona Fide Purchaser

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

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

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

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

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

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

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

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

*a. Distinction Between Actual and Constructive Knowledge*

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

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

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

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

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

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

1. ***Equity Theft***: The sale resulted in a loss of approximately $1.18 million in home equity, as the property, valued at $1.5 million, was sold for $371,688. If the Court refuses to reverse the sale, Plaintiff requests leave of Court to have a professional appraisal conducted for evidentiary purposes before the Court determines the exact amount of damages. If the Court refuses to reverse the sale, Plaintiff contends these damages should be attributed to Primary Defendants and that this amount should be considered an additional penalty or forfeiture in the chain of causation to punish him for violating the licensing laws.

2. ***Loss of Property***: Plaintiff lost constructive possession of his home due to the unlawful foreclosure.

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

**a. Time and Expenses**

Plaintiff's Time

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

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

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

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

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

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Expenses

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

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

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

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

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

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

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



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

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

Offsets

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

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

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

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

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

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

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

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**The Alternative**

Paloci previously asserted to Plaintiff by email that Hou is entitled to the property and that the proper remedy for Plaintiff is to seek damages against Primary Defendants. The absurdity of this assertion becomes obvious with a simple inquiry into how it would play out.

While reversing the sale may result in some minor financial harm to Hou – which is arguable given his knowledge of the situation yet his decision to purchase the property given the risky business of buying foreclosure sales and his refusal to do equity with Plaintiff – the alternative of upholding the sale results in serious irreparable harm and damages to Plaintiff and significant financial implications for the Primary Defendants. In addition to the previously alleged of over 1.18 million dollars for home equity theft, Plaintiff also seeks damages for: (1) $200,000 (an amount to be proved upon further evidence) for his loss in tax base value over the next thirty years, as replacing the Spirit home (purchased for around $600,000) would require purchasing a comparable home at $1.5 million, significantly increasing his tax rate; and, (2) $5,000 for moving expenses. The total damages are estimated to be in excess of 1.38 million dollars. There is no need for this Court to create this harm when it can be avoided by simply reversing what has been done. Plaintiff remains in his home and would not suffer any loses other than those alleged. Hou would suffer minor financial harm as determined by the Court and be entitled to a complete refund under equity.

**Request for Declaratory Relief**

Plaintiff requests the Honorable Judge assigned to this case make the following findings of fact and/or conclusions of law and issue the following Orders:

1. declare under the circumstances Plaintiff is not required to post bond or other security;
2. declare that mortgage contract between Plaintiff and Citizens is a contract of adhesion;
3. declare that defining the mortgage contract term "default" to include the crimes as alleged herein was: (1) arbitrary; (2) without Plaintiff's consent; (3) procedurally and substantively unconscionable; and, (4) in violation of a law resulting in a void and

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unenforceable contract provision as a means to authorize a non-judicial foreclosure sale of Plaintiff's property;

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

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Trustee Corps breached this duty for all the reasons the Court finds reasonable and just; (3) that as a result, Trustee lacked authority sell Plaintiff's home;

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

**COMPLAINT & CROSS-COMPLAINT**

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

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

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

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

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

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

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

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

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

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

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

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

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

**FIRST CLAIM FOR RELIEF:**

**WRONGFUL FORECLOSURE AGAINST TRUSTEE CORPS AND CITIZENS**

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

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

**1. Illegal, Fraudulent, or Willfully Oppressive Sale**

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**Allegations from Motion to Vacate:** Plaintiff alleged that Citizens Bank and Trustee Corps caused an illegal, fraudulent, and willfully oppressive sale by declaring a default based on extrinsic fraud and state misconduct that impaired his income stream, which they knew about through repeated notices previously alleged (ie bankruptcy proceedings and emails). Citizens relied on this fraud—detailed as a conspiracy involving Primary Defendants—to trigger a non-judicial foreclosure sale on November 18, 2024, despite lacking authority due to an unconscionable contract (see: "The Contract Was Unconscionable"). Trustee Corps executed the sale, selling the property for $371,688, far below its $1.5 million fair market value. The Motion also asserts this was fraudulent under Civil Code § 1572 for suppressing known facts and oppressive under Civil Code § 1708 by exploiting Plaintiff's inability to pay due to crimes Citizens could not lawfully rely upon.

**2. Prejudice or Harm**

**Allegations from Motion to Vacate:** Plaintiff suffered significant harm, including the loss of approximately $1.18 million in home equity (property valued at $1.5 million sold for $371,688), loss of his home, and $151,200 (Citizens and Trustee Corps) + 64,800 (Hou, Henry D. Paloci, III P.A, Henry D. Paloci) =$216,000 in time defending against the foreclosure and eviction attempts (see "The Second Element: Prejudice or Harm"). The sale's predatory nature—enabled by Citizens and Trustee Corps—inflicted additional emotional distress and financial ruin, compounding the harm from the underlying fraud and other crimes.

**3. Tender or Excuse from Tender**

**Allegations from Motion to Vacate:** Plaintiff is excused from tender because the sale was void due to Citizens' and Trustee Corps' lack of authority, rooted in fraud, conspiracy to commit crimes/unlawful acts with Primary Defendants and an unconscionable contract (see "The Third Element: Tender or Excuse from Tender"). The Motion cites *Lona v. Citibank, N.A.*, 202 Cal. App. 4th 89, 112-13 (2011), noting no tender is required for a void

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

**Damages Sought**

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

**SECOND CLAIM FOR RELIEF:**

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

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

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



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

**1. Duty of Care**

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

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

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

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

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

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

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

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



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

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

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

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



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

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

### 3. Proximate Causation

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

### 4. Resulting Damages

**Allegations from Complaint**: Plaintiff suffered:

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



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

*Alternative: Negligence Per Se*

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

*Why Gross Negligence Applies*

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

*Damages Sought*

Plaintiff seeks compensatory damages of:

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

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

## CIVIL CONSPIRACY

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

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

### *Agreement Among Defendants*

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

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

***Wrongful Acts***

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

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

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***Overt Acts in Furtherance***

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

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

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

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

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

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

***Deprivation of Constitutional Rights***

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

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

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

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

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

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

***Causation and Injury***

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



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

***Damages Sought***

Plaintiff seeks compensatory damages of:

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

***Why § 1983 Applies***

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

**FIFTH CLAIM FOR RELIEF:**
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

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

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

***Extreme and Outrageous Conduct***

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

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

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

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

***Intent or Reckless Disregard***

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

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

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

***Severe Emotional Distress***

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

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

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***Causation***

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

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

***Why IIED Applies***

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

***Damages Sought***

Plaintiff seeks:

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

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

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

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

***Introduction***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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***Conclusion***

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

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

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

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

**a. Standing to Challenge the CSLB's Structural Integrity**

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

**B. Legal Standard for Standing in California**

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



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

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

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

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

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

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

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

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

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

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



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

***iv. Redressability***

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

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

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

***vi.Conclusion***

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

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**Overview**

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

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

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

### A. Legislative Powers

The CSLB wields legislative authority through expansive rulemaking:

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

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

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## B. Executive Powers

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

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

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

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

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

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



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

***ii. Punishments for Noncompliance***

Failure to pay a fine or comply with a citation triggers additional penalties, enforced administratively without mandatory judicial intervention:

1. **License Suspension**:
   - **Section 7090.1**: Noncompliance with a citation allows the Registrar to suspend a license until payment or correction is made, effective upon the citation's finality.
   - **Section 7125.2**: Automatic suspension occurs for lapses in workers' compensation insurance, with no judicial hearing unless appealed.
2. **License Revocation**:
   - **Section 7106**: The Registrar may revoke a license for noncompliance or other violations (e.g., abandonment under § 7107) after an administrative hearing, if requested. Absent appeal, revocation proceeds unilaterally.
   - **Section 7102**: Revoked licensees face a one-to-five-year reapplication bar and potential bonding requirements (§ 7071.5).
3. **Criminal Penalties**:
   - **Section 7028**: Unlicensed contracting is a misdemeanor, with fines up to $5,000 and/or six months in jail (first offense), escalating for repeats. While prosecuted judicially, the CSLB initiates these via citation, influencing outcomes.
4. **Additional Costs**:
   - **Section 7118**: Restitution or investigation costs may be ordered, enforceable administratively if unpaid.

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### *iii. Appellate Remedies and Their Extent*

Post-citation remedies are primarily in-house, with limited judicial recourse:

- **In-House Appeals**:
  - **Section 7099.5**: A cited party may request an informal conference with the Registrar or a formal hearing under the Administrative Procedure Act (Government Code §§ 11500 et seq.), conducted by an administrative law judge (ALJ). The CSLB retains final authority over the ALJ's recommendation, per § 7099.6, keeping the process internal.
- **Judicial Review**:
  - After exhausting administrative remedies, a party may petition a superior court for a writ of administrative mandamus under Code of Civil Procedure § 1094.5. This review is deferential, limited to determining if the CSLB abused discretion, lacked substantial evidence, or violated due process. No de novo judicial trial is guaranteed, and the burden rests on the petitioner to overturn the CSLB's decision violating due process by reversing the burden of proof. This optional, post-hoc remedy does not equate to a mandatory judicial process following an allegation.

### *iv. Due Process and Excessive Fines Concerns*

The absence of a mandatory judicial process post-allegation violates California's due process guarantee and the California and United States Constitutions prohibitions against bills of pains and penalties, as punishment is imposed and enforced by the CSLB without automatic court review. Moreover, the CSLB's penalty structure implicates the Excessive Fines Clause (California Constitution, Article I, § 17; U.S. Constitution, Eighth Amendment). In *People v. Cowan* (2022) 47 Cal. App. 5th 32, the California Court of Appeal held that fines must be proportional to the offense and the offender's ability to pay, requiring a judicial analysis of factors like culpability, harm, and financial capacity. The CSLB lacks any statutory or regulatory mechanism to conduct this analysis:

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- **No Proportionality Review**: Section 7099.2 and 16 CCR § 884 provide penalty ranges but do not mandate consideration of offense gravity relative to the fine, as required by *Cowan*.
- **No Ability-to-Pay Assessment**: The CSLB has no process to evaluate a licensee's financial circumstances, a judicial function critical to avoiding excessive fines.
- **Administrative Overreach**: By imposing fines up to $15,000 without judicial oversight, the CSLB usurps a role reserved for courts, rendering its penalties constitutionally suspect.

### *v. Statutory References*

- **§ 7000.5**: CSLB establishment.
- **§ 7028**: Misdemeanor penalties for unlicensed contracting.
- **§ 7090.1**: Suspension for noncompliance.
- **§ 7099**: Citation issuance authority.
- **§ 7099.2**: Penalty range ($200–$15,000).
- **§ 7099.4**: Citation finality within 15 days.
- **§ 7099.5–7099.6**: In-house appeal process.
- **§ 7102**: Reapplication restrictions.
- **§ 7106**: Revocation grounds.
- **§ 7118**: Restitution and costs.
- **§ 7125.2**: Insurance-related suspension.
- **16 CCR § 884**: Penalty guidelines.

### *vi. Conclusion*

The CSLB's power to allege violations, impose fines ($200–$15,000), and enforce penalties like suspension or revocation—without a mandatory judicial process post-allegation—creates an unconstitutional administrative scheme. Appellate remedies are predominantly in-house, with judicial review available only through a discretionary, deferential writ process. Compounding this, the CSLB's failure to assess proportionality or ability to pay under *People v. Cowan* standards highlights its lack of judicial authority to impose fines. This enforcement power, fused with other roles, breeds despotism. Hewart decried such executive overreach: "The Executive has been armed with new and formidable

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weapons, enabling it to coerce the subject without accountability" (Hewart, 1929, p. 14). He added, "What we see is the Executive taking unto itself powers which properly belong elsewhere [in this instance in the judiciary as a check and balance]" (Hewart, 1929, p. 52). Lawson labels this a "structural assault on the Constitution," noting, "When agencies enforce their own rules, they become judge, jury, and executioner" (Lawson, 1994, p. 1241). Thomas, in *Department of Transportation v. Association of American Railroads*, 575 U.S. 43, 61 (2015) (concurring) questions agency accountability (575 U.S. at 61).

### C. Judicial Powers

The CSLB usurps judicial authority, most egregiously through its delegation of adjudicative power to itself and private arbitrators under Section 7085:

- **Hearings**: Section 7090 allows the CSLB to adjudicate complaints.
- **Disciplinary Actions**: Section 7090 imposes fines, suspensions, or revocations.
- **Restitution**: Section 7090 orders remedies.
- **Arbitration**: Section 7085 mandates CSLB-run arbitration, delegating judicial power to private arbitrators.
- **Appeals**: Section 7090 permits self-review.

This is a judicial travesty, compounded by the CSLB's arbitration program, which violates the separation of powers in multiple dimensions. Hewart thundered against administrative tribunals: "They are not Courts at all, but merely departments of the Executive, intended to secure departmental convenience at the expense of justice" (Hewart, 1929, p. 35). He added, "This is a persistent and well-contrived system for placing administrative action beyond the reach of the Courts" (Hewart, 1929, p. 14). Lawson insists, "The judicial power is vested in the courts, not in administrative agencies—any deviation is a constitutional betrayal" (Lawson, 1994, p. 1246). Thomas, in Michigan v. EPA, 576 U.S. 743, 763 (2015) (concurring), Thomas critiques agency judicial power (576 U.S. at 763). *McHugh v. Santa Monica Rent Control Board*, 49 Cal. 3d 348 (1989), demands robust judicial review, not the CSLB's deferential "substantial evidence" sham (Cal. Code Civ. Proc. § 1094.5).

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### *i. Unconstitutional Delegation of Judicial Power to the CSLB and Private Arbitrators*

The California Legislature has granted the CSLB authority under Section 7085 to establish and oversee an arbitration program to resolve disputes under state licensing laws, delegating judicial power to an executive agency and, subsequently, to a private arbitration company. This violates Article VI, Section 1 of the California Constitution, which vests judicial power exclusively in the state's courts: "The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts..." Judicial power encompasses the authority to adjudicate disputes, interpret laws, and issue binding decisions—functions the CSLB and its appointed private arbitrators perform when resolving contractor licensing disputes, such as those implicating Plaintiff's rights.

Justice Clarence Thomas has forcefully rejected such delegations. In his concurrence in *Department of Transportation v. Association of American Railroads*, 575 U.S. 43, 61 (2015), he defined judicial power as "the power to render dispositive judgments" and asserted it must reside with the judiciary, rejecting the notion of "quasi-judicial" power exercisable by executive or private actors: "The Constitution does not expressly grant to agencies the power to issue rules with the force of law, much less the quasi-judicial authority they often exercise in practice" (*Perez v. Mortgage Bankers Association*, 575 U.S. 92, 115 (2015) (Thomas, J., concurring)). Here, the CSLB's authority to appoint private arbitrators who issue binding rulings crosses a constitutional boundary. Thomas emphasized in *Association of American Railroads* that delegating governmental power—especially judicial power—to private entities is impermissible because it undermines accountability and the constitutional structure. By vesting the CSLB with judicial authority and allowing it to outsource that power to a private company, the legislature has violated the separation of powers at both state and federal levels, rendering the system unconstitutional.

### *ii. Contractor-Customer Disputes as Private Rights Disputes*

Disputes between contractors and their customers, such as those between Plaintiff and the Humphreys, are private rights disputes, not public rights or privileges, and must be adjudicated by Courts, not administrative agencies or their delegates. Justice Thomas's opinions, particularly in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 138 S. Ct. 1365 (2018), clarify the distinction:



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- **Private Rights**: Disputes between private parties over traditional common law matters—like contracts, property, or torts—historically require judicial resolution.
- **Public Rights**: Matters between the government and individuals, such as taxation or public benefits, may be assigned to executive agencies.

Contractor-customer disputes, like Plaintiff's with the Humphreys, typically arise from contractual relationships over payment, quality of work, or breach of contract—classic contract law matters rooted in private rights, not public interests. While the state purports to have a regulatory interest in licensing contractors, this does not transform the dispute into a public right. The state's role is regulatory, not proprietary, and the dispute remains a private contractual conflict. Thomas dissents, arguing private rights require Article III courts (138 S. Ct. at 1380). He distinguished public privileges—government-conferred benefits that can be conditioned or adjudicated administratively—from private rights, which exist independently of statutory creation and demand judicial protection. The adjudication of a dispute over private contract is not about the privilege of licensure but about enforcing private obligations, making it a private right that may cannot be subjected to CSLB arbitration.

Submitting these disputes to administrative arbitration usurps judicial power and violates the separation of powers. Historically, contract disputes have been resolved by Courts, not administrative bodies, and Thomas's emphasis on the original understanding of judicial power supports maintaining this tradition.

***iii. Mandatory Arbitration Under Section 7085: A Historical Echo of Tyranny***

Section 7085(b) mandates arbitration for disputes involving potential violations of specified licensing laws where the contract price or damages are equal to or less than the bond amount ($25,000): "In all cases in which a possible violation... exists and the contract price, or the demand for damages is equal to or less than the amount of the bond required under Section 7071.6... the complaint shall be referred to arbitration..." The use of "shall" imposes a compulsory process, echoing the tyranny of King George III's admiralty courts, which the American Revolution rejected. The *Declaration of Independence* (1776) denounced the King for depriving colonists "in many cases, of the benefits of Trial by Jury," a grievance rooted in the *Declaration of Resolves of the First Continental Congress* (1774), which protested admiralty courts' denial of jury trials as an assault on "the rights of



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Englishmen." These crown-appointed tribunals were instruments of oppression, fueling revolutionary fervor. Section 7085 resurrects this injustice by mandating arbitration without party consent, relegating contractors' claims to an unelected CSLB bureaucrat or private arbitrator, bypassing the judicial system and denying the right to a jury trial.

***iv. Absence of Explicit Waiver and Coercive Nature of Licensing***

Section 7085 imposes mandatory arbitration without explicit waiver language in either the Business and Professions Code §§ 7000 et seq. or the "Application for Original Contractor License," which Plaintiff completed (see "Factual Background and Arguments at Law: Plaintiff Qualifies for a General Contractor License"). The application contains no mention of arbitration or the forfeiture of judicial rights, nor does it require contractors to acknowledge this condition of licensure. In *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), the U.S. Supreme Court held that waiving a constitutional right requires "an intentional relinquishment or abandonment of a known right or privilege." Without explicit notice, Plaintiff could not knowingly waive his right to a judicial forum. The case *SEC v. Jarkesy*, 603 U.S. ___ (2024) reinforces this, ruling that administrative adjudication of fraud (a common law claim) seeking civil penalties violates the Seventh Amendment absent consent, as it denies a jury trial.

Moreover, the mandatory licensing framework (Sections 7000 et seq.) transforms any implicit waiver into a coercive condition. Plaintiff has no practical alternative but to comply to earn his livelihood, undermining voluntariness. The doctrine of unconstitutional conditions prohibits conditioning a benefit (a license) on the surrender of a constitutional right absent informed consent (*Fuentes v. Shevin*, 407 U.S. 67, 80 (1972)). *Jarkesy* struck down the SEC's in-house tribunals for lacking consent, a defect mirrored in Section 7085's unconsented mandate.

***v. Violation of the Non-Delegation Doctrine***

Even if some delegation were permissible, the CSLB's arbitration system lacks the legislative standards required by the non-delegation doctrine. California courts demand clear guidelines to prevent arbitrary authority (*Kugler v. Yocum*, 69 Cal. 2d 371 (1968); *People v. Wright*, 30 Cal. 3d 705 (1982)):

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- **No Arbitrator Qualifications**: The statute specifies no requirements for expertise, impartiality, or ethical conduct.
- **No Procedural Safeguards**: The process lacks rules governing hearings, evidence, or appeals.
- **No Oversight Framework**: There are no mechanisms to ensure consistency or review decisions.

This unfettered discretion violates the non-delegation doctrine. Thomas's concurrence in *Association of American Railroads* cautions that delegations to private entities are particularly suspect due to their lack of accountability, a flaw evident in the CSLB's outsourcing of judicial power which it has no power to exercise to begin with.

### *vi. Lack of Executive Oversight Under Seila Law*

The U.S. Supreme Court in *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (2020), ruled that agency structures violating separation of powers—such as insulation from executive removal—are unconstitutional. Thomas, joining the majority and writing separately, argued that executive power must remain under the President's control for accountability. Under Cal. Const. art. V, § 1, the Governor ensures the faithful execution of laws, yet the CSLB's appointment of private arbitrators operates without gubernatorial supervision. These arbitrators, exercising judicial power, are insulated from the Governor's authority, undermining the executive's role and mirroring the accountability deficit condemned in *Seila Law*.

### *vii. Absence of an Oath of Office*

The California Constitution requires public officers to take an oath to uphold the U.S. and California Constitutions (Cal. Const. art. XX, § 3). While CSLB arbitrators are not formally public officers, their exercise of judicial power makes them de facto officials. Their failure to take an oath—unlike arbitrators in California's judicial arbitration program (Cal. Rules of Court, rule 3.814)—highlights their lack of accountability and the system's disregard for Constitutional norms, further evidencing its unconstitutionality.

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### D. Concentration of Powers and Lack of Accountability

The CSLB's appointed board (Section 7001) merges all powers without democratic tether, a fourth branch run amok, exacerbated by its arbitration program. Hewart's indictment is blistering: "The whole scheme is one for the conferring of arbitrary power on the executive, unanswerable to Parliament or the Courts" (Hewart, 1929, p. 14). He warned, "This is despotism in action, cloaked as administration" (Hewart, 1929, p. 77). Lawson echoes, the concentration of powers in agencies like the CSLB is the very definition of tyranny—a rejection of the framers' design (Lawson, 1994, p. 1248). Thomas, in *Kisor v. Wilkie*, 139 S. Ct. 2400, 2447 (2019) (dissenting), stated, "This amalgamation of powers obliterates the Constitution's tripartite structure." Philip Hamburger, in Is Administrative Law Unlawful?, adds, "Such agencies are a return to the absolute power of kings, repugnant to liberty" (Hamburger, 2014, p. 2). Justice Thomas further condemned this in Seila Law: "The Constitution does not vest the Federal Government with an undifferentiated 'governmental power.' It vests three distinct types of power in three different branches... The Constitution's vesting clauses do not mention 'quasi-legislative' or 'quasi-judicial' power" (140 S. Ct. at 2212 (Thomas, J., concurring)). The CSLB's consolidation, including its judicial delegation to private arbitrators, operates outside this framework, directly contributing to the structural errors in the CSLB's entire being as unlawful fourth branch of government.

### E. Denial of Inalienable Rights: The CSLB's Licensing Scheme

The CSLB's licensing regime tramples the right to earn a living, protected by California Constitution Article I, Section 1.

#### *i. Right to Work*

The right to labor is sacrosanct. John Locke proclaimed, "The labor of his body and the work of his hands... are properly his" (Locke, 1689, Second Treatise, Chap. V, § 27). The U.S. Supreme Court upheld this in Meyer v. Nebraska, 262 U.S. 390, 399 (1923), and Truax v. Raich, 239 U.S. 33, 41 (1915). The CSLB's licensure mandate (§§ 7028, 7031) and administrative penalties—like fines or license suspensions—strip this right absent state consent. Hewart warned of such overreach: "To place the subject at the mercy of administrative caprice is to destroy his liberty" (Hewart, 1929, p. 17).

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### *ii. Plaintiff's Case: Fee Non-Payment, Not Incompetence*

The plaintiff met all substantive qualifications under Section 7068 but faced penalties due to a fee lapse (Section 7137). *Pena v. Municipal Court*, 96 Cal.App.3d 77, 82 (1979), and *State v. Bates*, 305 N.W.2d 426, 429 (Iowa 1981), reject sanctions for fee lapses when competence is proven. The Licensing Laws response—including license suspension (§ 7071.17)—lacks a public safety basis, violating due process. Lawson notes, "When agencies punish without public purpose, they wield power for power's sake (Lawson, 1994, p. 1241).

### *iv. Strict Liability and Excessive Penalties*

The CSLB's strict liability penalties, such as fines under Section 7028.7 or license revocation under Section 7090, lack *mens rea*, defying *Staples v. United States*, 511 U.S. 600, 618 (1994) (Thomas, J.), and *People v. Simon*, 9 Cal.4th 493, 522 (1995). *Lambert v. California*, 355 U.S. 225, 228 (1957), bars strict liability without notice—here absent. Thomas recognized, "Severe sanctions without intent erode justice itself" (*Staples*, 511 U.S. at 618).

## F. The CSLB's Licensing Laws as Unconstitutional Public Welfare Offenses

Public welfare offenses—regulatory crimes aimed at protecting public health, safety, and welfare—impose strict liability without requiring intent (*mens rea*). Typically involving minor penalties and lacking the moral stigma of *malum in se* crimes (Witkin, *Cal. Crim. Law 5th Elements* § 20 (2024); *Morissette v. United States*, 342 U.S. 246, 249 (1952)), these offenses underpin all CSLB licensing laws (Business and Professions Code §§ 7000–7170). However, when the CSLB imposes criminal-like penalties—such as administrative fines or license revocations—without due/judicial process protections, it exceeds constitutional limits under the California Constitution (Cal. Const. Art. I, §§ 7, 9) and the U.S. Constitution (U.S. Const. Art. 1 § 10). This section argues that public welfare offenses are unconstitutional because they fall outside the recognized categories of civil and criminal actions and fail to provide requisite safeguards.

### *i. All CSLB Licensing Laws as Public Welfare Offenses*

The CSLB's licensing laws operate as public welfare offenses:



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- **Section 7028.7**: Authorizes fines up to $5,000 for unlicensed contracting without proving intent.
- **Section 7031**: Authorizes effectively unlimited fines for unlicensed contracting without proving intent.
- **Section 7090**: Permits license revocation or suspension for violations, adjudicated administratively without *mens rea*.
- **Section 7028**: Imposes misdemeanor penalties for regulatory breaches, bypassing intent.

These strict liability measures purportedly aim to protect consumers (*Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal.3d 988, 995 (1991)), but their criminal-like penalties exceed traditional public welfare offense bounds and there is no known proof that consumers are actually protected from harm (e.g. thousands of CSLB arbitrations even after it deems contractors competent).

***iii. Constitutional Framework and Limitations***

The U.S. and California Constitutions recognize only civil and criminal actions, leaving public welfare offenses in a constitutional limbo:

- **California Code of Civil Procedure Section 22**: Defines an "action" as "an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, or the redress or prevention of a wrong" (Cal. Code Civ. Proc. § 22). This governs civil proceedings, excluding administrative enforcement.
- **California Penal Code Section 15**: Defines a "crime or public offense" as "an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or 5. Disqualification to hold and enjoy any office of honor, trust, or profit" (Cal. Penal Code § 15). This categorizes public welfare offenses as crimes or public offenses, implying they must adhere to criminal due process protections.
- **Constitutional Conflict**: Public welfare offenses, enforced administratively by the CSLB, fit neither category cleanly. They impose penalties akin to criminal

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sanctions (fines, license revocation) without *mens rea* or judicial oversight, violating due process and resulting in a bill of pains and penalties (*Lambert v. California*, 355 U.S. 225, 228 (1957); *Staples v. United States*, 511 U.S. 600, 618 (1994)).

- **Precedents**:
  - *Staples v. United States*: Justice Thomas held that severe penalties require mens rea, stating, "punishing a violation as a felony is simply incompatible with the theory of the public welfare offense" absent intent (511 U.S. at 618-19).
  - *United States v. Bajakajian*, 524 U.S. 321 (1998): Thomas ruled that punitive forfeitures must be proportional (524 U.S. at 334).
  - *People v. Simon*, 9 Cal.4th 493 (1995): Rejected strict liability for harsh penalties (9 Cal.4th at 522).
- **Scholarly Critique**: Richard Epstein argues, "Strict liability in regulatory offenses, when coupled with severe penalties, undermines the moral foundation of the law" (*Simple Rules for a Complex World*, 1995, p. 102). Randy Barnett adds, "The administrative state's reliance on strict liability erodes the presumption of innocence and due process" (*Restoring the Lost Constitution*, 2004, p. 154).

***iv. Argument: Unconstitutionality of Public Welfare Offenses***

Public welfare offenses, as enforced by the CSLB, are unconstitutional:

- **Lack of Constitutional Authority**: The U.S. Constitution (Art. III) and California Constitution (Art. I, § 7; Art. VI) recognize only civil and criminal actions. Cal. Code Civ. Proc. § 22 defines civil actions, while Cal. Penal Code § 15 classifies public welfare offenses as crimes or public offenses, requiring criminal protections like *mens rea* and judicial process. The CSLB's administrative enforcement bypasses both, operating outside constitutional bounds.
- **Due Process Violation**: Strict liability penalties – e.g., fines (Section 7028.7) or license revocation (Section 7090 – lack *mens rea*,

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contravening *Staples* and *Simon*. Penal Code § 15's inclusion of fines and disqualification as criminal punishments mandates these safeguards, which the CSLB omits.

- **Criminal Nature Without Safeguards**: By Penal Code § 15, public welfare offenses are crimes or public offenses, yet the CSLB imposes them administratively without intent, notice, or proportionality (*Lambert*; *Bajakajian*), rendering them unconstitutional.

Moreover, recent court decisions have expanded the CSLB's ability to impose disciplinary actions for minor infractions, as seen in *Tellis v. Contractors' State License Board*, 79 Cal. App. 4th 153 (2000). In *Tellis*, the court upheld a citation for substandard work despite damages being only 2% of the contract price—approximately $5,286 out of $226,000—interpreting materiality broadly as "substantial, as opposed to trivial" (*Tellis*, 79 Cal. App. 4th at 163). This expansive definition allows the CSLB to punish contractors disproportionately for relatively minor issues, turning regulatory actions into punitive sanctions. As noted in *"Hammering the Contractor"* (Los Angeles Lawyer Magazine, Jan. 2001), "the Tellis decision... should strike fear into the hearts of all contractors" due to its "far-reaching implications," enabling discipline even when damages are minimal compared to the overall project (*Hammering the Contractor*, p. 1).

Additionally, the *Tellis* court's interpretation of "willfulness" lowers the threshold for finding a violation. It permitted an inference of knowledge based on the contractor's experience, holding that Tellis, a seasoned licensee, must have known his tile work was substandard (*Tellis*, 79 Cal. App. 4th at 159-60). This approach effectively eliminates the need to prove specific intent, undermining due process by transforming regulatory offenses into strict liability crimes. The article critiques this shift, arguing that "by allowing an inference of knowledge, [the *Tellis* court] has made the willful element... illusory," enabling the CSLB to discipline contractors whenever "problems with a contractor's work" arise (*Hammering the Contractor*, p. 13).

The burden of proof in citation hearings further exacerbates this issue. For citations like the one in *Tellis*, the CSLB need only prove its case by a preponderance of the evidence, a lower standard than the clear and convincing evidence required for accusations seeking

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license suspension or revocation (*Hammering the Contractor*, p. 9). Combined with broad interpretations of "materiality" and "willfulness," this lax standard makes it alarmingly easy for the CSLB to impose penalties—up to $5,000 per citation since the Legislature increased the maximum civil penalty post-2001 (*Hammering the Contractor*, p. 1)—without sufficient evidence or due process protections.

The *Tellis* court also distinguished *Terminix Co. v. Contractors' State License Board*, 84 Cal. App. 2d 167 (1948), which held that a good-faith offer to correct work could preclude discipline if it prevented material injury (*Terminix*, 84 Cal. App. 2d at 174). In *Tellis*, despite the contractor's willingness to repair defects, the court limited *Terminix* to pre-payment scenarios, rejecting the defense post-payment (*Tellis*, 79 Cal. App. 4th at 161). This narrowing enhances the CSLB's power, as the article notes: "The Tellis court wrongly examined Terminix," reducing contractors' ability to mitigate discipline through remedial efforts (*Hammering the Contractor*, p. 11).

These disciplinary actions, imposed with minimal safeguards, are effectively criminal penalties masquerading as regulation. The *Tellis* ruling exemplifies how the CSLB's framework—bolstered by judicial deference—violates contractors' constitutional rights by enabling arbitrary and excessive enforcement.

***v. Conclusion***

The CSLB's public welfare offenses violate the constitutional framework by imposing criminal-like penalties outside civil or criminal processes, as defined by Cal. Code Civ. Proc. § 22 and Cal. Penal Code § 15. Relief is warranted under § 473(d).

**G. The Punitive Nature of License Suspension: A Disproportionate and Unconstitutional Penalty**

One of the most severe disciplinary measures imposed under the Business and Professions Code, including by the CSLB, is the suspension or revocation of a contractor's license, as authorized by Sections 7085.6 and 7071.17. While license suspensions are often framed as regulatory tools to ensure compliance and protect the public, this section argues that they are highly punitive, particularly when applied to minor, so-called "public welfare"

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infractions. The authority to deprive someone of their right to earn a living transforms suspension into a disproportionate penalty that, when paired with administrative fines or other remedies, exacerbates its penal nature, violating due/judicial process and the right to pursue a lawful occupation.

### *i. License Suspension as a Punitive Measure*

Though suspensions are often justified as furthering regulatory goals, their practical effect is undeniably punitive:

- **Deprivation of Livelihood**: A suspended license prohibits contractors from practicing their profession, effectively stripping them of their ability to earn a living. In *Schomig v. Keiser*, 189 Cal. 596, 598 (1922), the California Supreme Court recognized that revoking a professional license "is in effect a prohibition against the licensee's engaging in his chosen occupation," highlighting its penal character over mere regulation.
- **Severe Consequences**: Beyond temporary income loss, suspension can lead to financial ruin, loss of professional reputation, and long-term career damage—outcomes far more severe than typical regulatory measures like warnings or corrective actions.
- **Combined with Administrative Fines**: The CSLB frequently imposes suspensions alongside administrative fines (e.g., under Section 7028.7). While fines are often labeled "remedial," their conjunction with suspension—a sanction that destroys livelihoods—renders the combined penalty highly penal, not merely corrective.

### *ii. Disproportionality for Minor Infractions*

The CSLB's use of license suspension is often disproportionate to the offense, especially for minor violations:

- **Statutory Examples**:
  - **Section 7085.6**: Allows suspension for failure to comply with arbitration awards, regardless of the underlying issue's severity.

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- **Section 7071.17**: Mandates automatic suspension for unpaid judgments, even if minor or unrelated to contractor competence.

- **Public Welfare Infractions**: Many suspensions stem from administrative errors—e.g., fee lapses (Section 7137) or paperwork delays—rather than fraud or incompetence. Such minor infractions do not justify the drastic penalty of barring someone from their occupation.
- **Constitutional Standard**: The U.S. Supreme Court in *United States v. Bajakajian*, 524 U.S. 321, 334 (1998), held that punitive sanctions must be proportional to the offense. Justice Thomas wrote, "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality." Suspension for trivial violations fails this test.

***iii. Violation of Due Process and the Right to Earn a Living***

License suspension infringes on fundamental constitutional protections:

- **Right to Work**: The U.S. Supreme Court has affirmed the right to pursue a lawful occupation as a liberty interest (*Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Truax v. Raich*, 239 U.S. 33, 41 (1915)). California Constitution Article I, Section 1, similarly protects this right. Requiring licensing in the first place, and/or suspension, by destroying a contractor's ability to work, directly violates this principle.
- **Due/Judicial Process**: U.S. Const. Art. I, § 10 and Cal. Constitution Art. I, § 9 require that punishment be imposed only after a judicial determination of rights in the first instance and Cal Const. Art I, §7 requires penalties be imposed with due process, including proportionality and intent considerations. In *Staples v. United States*, 511 U.S. 600, 618 (1994), Justice Thomas warned that "severe sanctions without intent erode justice itself." The CSLB's strict liability suspensions for minor infractions lack these safeguards.

***iv. Conclusion***

The CSLB's suspension authority, as codified in Sections 7085.6 and 7071.17, is unconstitutional. License suspension under these sections is a highly punitive,



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disproportionate penalty that, especially when combined with administrative fines, exceeds regulatory bounds and violates due/ judicial process and the right to work. It further proves the CSLB's unconstitutionality.

**H. Administrative Officials' Lack of Constitutional Oversight Authority**

The California Constitution establishes a tripartite system of government—legislative, executive, and judicial—with each branch serving as a check on the others to ensure constitutional fidelity (Cal. Const. art. III, § 3). However, administrative officials within agencies like the CSLB, operating under the executive branch, lack the authority to question the constitutionality of the statutes they enforce, stripping them of any meaningful role as checks and balances against legislative overreach. See Cal. Const. Art. 3 § 3.5: "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
> (b) To declare a statute unconstitutional;
> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

This structural limitation exacerbates the CSLB's unconstitutionality by allowing it to wield unchecked power, free from internal constitutional scrutiny, thereby violating due process and separation of powers principles. CSLB officials must blindly apply statutes, even if they infringe on rights or exceed legislative bounds. This creates a "rubber stamp" system, amplifying the CSLB's despotic tendencies. If a licensee faces penalties (e.g., suspension under Section 7071.17) for a fee lapse, CSLB officials cannot consider whether such a penalty violates due process or the right to work—they must enforce it, regardless of its fairness or legality. Lord Hewart warned of such unchecked power: "The Executive has been armed with new and formidable weapons, enabling it to coerce the subject without

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accountability" (Hewart, 1929, p. 14). Without the ability to question statutes, the CSLB becomes a tool of legislative overreach, not a balanced enforcer.

### *i. Constitutional Implications*

This structural flaw compounds the CSLB's unconstitutionality:

- **Separation of Powers Violation**: By denying administrative officials the power to check statutory validity, the executive branch (CSLB) merges with legislative intent, undermining the Cal. Constitution's division of powers.
- **Due/Judicial Process Violations**: Enforcing potentially unconstitutional statutes without scrutiny denies contractors fair process, as required by Cal. Const. Art. I, §§ 7, 9 and U.S. Const. Art. I, §10.

## IX. Conclusion and Requested Relief

The CSLB's fusion of powers (Cal. Const. art. III, § 3), assault on rights (Cal. Const. art. I, § 1), lack of jurisdiction over public welfare offenses, punitive, disproportionate use of penalties, license suspension under Sections 7085.6 and 7071.17 render it unconstitutional. Plaintiff's case proves this. Backed by Hewart, Lawson, Thomas, Madison, Locke, and Hamburger, he urges the Court to examine its structural integrity and declare each violation thereof unconstitutional.

Dated: March 14, 2025

By: _____

Adam Bereki[1]
www.thespiritoflaw.com

[1] Plaintiff, under duress and coercion, used AI to assist in the preparation of this complaint so it would be timely. AI particularly assisted in the claims pertaining to Citizens, Trustee Corps, Hou, and Paloci. Plaintiff has done his best to verify the cases cited but he has not, as in many of the other cases cited against Primary Defendants, had the time to read each case and assure the precise accuracy. Nevertheless, he stands on the reasoning provided herein even if the citation isn't precise. In time, Plaintiff will spend additional time verifying additional authorities he hasn't yet confirmed. He should be notified of any inaccuracies immediately so that they may be corrected in the interests of truth and justice. Plaintiff has no intent of deceiving anyone.



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## DEDICATION TO P'Nut

Peanut (c. 2017 – October 30, 2024), also known as P'Nut, was a male eastern gray squirrel rescued as an orphaned kit by Mark Longo in 2017 after its mother was killed, later becoming the star of a popular Instagram account. On October 30, 2024, the New York State Department of Environmental Conservation (NYSDEC) seized Peanut from Longo's home due to his lack of a required wildlife license and euthanized the squirrel for rabies testing, prompted by a bite during the seizure. The results were negative, sparking widespread outrage. The incident, rooted in Longo's failure to a license to keep Peanut, drew condemnation from lawmakers, fueled a social media firestorm, and inspired a proposed bill to prevent such state actions, forming the basis for a lawsuit alleging abuse of power by the NYSDEC over the licensure issue.

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Adam A. Bereki
818 Spirit
Costa Mesa, CA 92626
949.241.6693
abereki@gmail.com

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

| | |
|---|---|
| Adam Bereki<br><br>Defendant, Cross-Complainant, Plaintiff<br><br>vs.<br><br>Karen Humphreys and Gary Humphreys,<br><br>Plaintiffs, Cross-Complainants, Cross-Defendants<br><br>vs.<br><br>Canjian Hou; MTC Financial, Inc., d/b/a Prestige Default Services, LLC; Fourth District Court of Appeal of California (Interested Party); Superior Court of California for the County of Orange (Interested Party); David Chaffee; James Di Cesare; Richard Aronson; Thomas Goethals; Kathleen O'Leary; William Bissell; Henry D. Paloci III, P.A., Henry D. Paloci; Office of the Clerk-Recorder for the County of Orange (Interested Party);<br><br>Does 1-100; | Case No.: 30-2015-00805807<br><br>~~Related Case No.: 30-2025-01459684 (Unlawful Detainer)~~ |

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| 1/9/20 | Judicial Council: §7031 Records/ §4560 | | 12 |
| 1/9/20 | Gov. Newsom… §7031 Records | | 13 |
| 1/20/20 | CA State Library: §7031 Records, SB204 | | 14 |
| 1/23/20 | County of Orange: County not a Corp. | | 15 |
| 1/25/20 | Legislative Counsel: §7031 Records | | 16 |
| 1/26/20 | CA Secretary of State: §7031 Records, Gray Davis Profile, Governors Records | | 17 |
| | Blank | | 18 |
| 1/26/20 | Emails with Paul Bardos | | 19 |
| 1/29/20 | 4th District Court of Appeal: Abandoned | | 20 |
| 1/23/20 | Email Cottie Petrie-Norris and Communication with Jess Huang | | 21 |
| 1/31/20 | Complaint to FBI. Agent Hung up. | | 22 |
| 1/30/20 | Assembly Rules Committee: §7031 Records N/A | | 23 |
| 1/23/20 | Supreme Court of CA: No Reply Public Policy for Disgorgement or Unjust Enrichment– Claims Request is for Legal Research; Bissell Oath of Office pp. 1747-8. | | 24 |
| 2/4/20 | CA Lawyers Assoc | | 25 |
| 2/7/20 | CA Secretary of State: AB 678/ §7031 Signed by Gray Davis | | 26 |
| 2/7/20 | Call to SAPD Sgt Alcantar | | 27 |
| 2/9/20 | Letters to Gray Davis Requesting Clarification. No Reply. See 2/21/20. | | 28 |
| 2/9/20 | Letter to Bissell/The Humphreys | | 29 |
| 2/10/20 | US DOJ How to File a Complaint: Contact Your Local FBI Field Office | | 30 |
| | Call with FBI | | 31 |
| 2/11/20 | Files Received From Paul Bardos. See 1/26/20. | | 32 |
| 2/11/20 | Assembly Rules Committee: SB263 and AB249 | | 33 |
| 2/21/20 | Email to Gray Davis F/U. No Reply. | | 34 |
| 2/21/20 | Request for Sen. Mornings Bill Files *No Bill Files Included* | | 35 |

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|---|---|---|---|---|
| 2/27/20 | US GSA FOIA: Definition of Federal Citizen and Citizen. No Reply. | | | 36 |
| 4/7/20 | Judicial Council: Judicial Council v. Jacobs; $3,307,408.78 p.1815 | | | 37 |
| 5/2/20 | SAPD: Request for Audio Tape of Call with Alcantar; Complaint to Rodriguez. | | 1818-1836 | |
| 5/2/20 | Superior Courts of CA: Requests for All §7031 Case Records | | | 38 |
| 7/13/20 | SAPD: Oaths of Office for Hernandez and Alcantar, Internal Affairs Investigation Policy | | 1856-1879 | 39 |
| 7/29/20 | SAPD: Blank Oaths of Office and Compliance with Article XX Cal. Const. | | 1880-1891 | 40 |
| 8/6/20 | SAPD: Objection to 7/13/20 Request Re: Oaths for Alcantar and Hernandez, | | 1892-1894 | 41 |
| 8/7/20 | OCSD: Oaths of Office Salceda, Demaio, POST Training, Policies that Judges Aren't Bound by Constitutional Provisions or Subject to Investigation. Learning Domain 2 | | | 42 |
| 8/5/20 | SAPD: Training Records, Oaths of Office: Alcantar p.1993, Hernandez, p.1994, Rodriguez p.1995. Macchiaroli Refused; Position Assignments p.1997 | | 1894-2106 | 43 |
| | **PRA REQEUSTS 2** | | | 44 |
| 8/13/20 | CSLB: Large Doc. Request. See Exhibit [K] for doc request and Digital Exhibit [H] for response. | 2107-2115 | | 45 |
| 8/18/20 | CAL ASSEMBLY: Request for Info on Filing Petition for Redress of Grievance- Unable to Provide Response. | 2116-2119 | | 46 |
| 8/18/20 | SAPD: Duties of Police Officer, Corporal, Sergeant, Etc...No Policy Declaring Judges are Immune from Criminal Investigation | 2120-2153 | | 47 |
| 8/19/20 | FBI: Req. for Record of 1st Complaint Call and Associated Notes; Policy for Handling Complaints for Deprivation of Rights; FBI Website Printouts. No Records of Call, Policies, etc... | 2154-2177 | | 48 |
| 8/20/20 | POST: Basic Police Academy Training, Police Officer Duties | 2178-2226 | | 49 |
| 8/31/20 | SAPD: Oaths of Office/Notification SAPD Out of Compliance w/ Constitution; No Records of Correction | 2227-2245 | | 50 |
| 9/4/20 | OCSD: Response to 8/31/20 Request; Internal Memorandum, Duties of Deputy Sheriff, Investigator, Sergeant, Lieutenant, Captain, Commander, Assistant Sheriff, Undersheriff, Oath Salceda, Constitutional Policing Training: Qualified Immunity | 2246-2351 | | 51 |

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|---|---|---|---|---|
| 9/4/20 | POST: 11 CCR 103 Law Enforcement Code of Ethics | 2352-2363 | | 52 |
| 9/7/20 | PAJAR: Goethals Oath | 2364-2368 | | 53 |
| 9/11/20 | NORRIS: Petition for Redress of Grievance to Conlon, Set up Call; Stopped Responding | | 2369-2381 | 54 |
| 9/17/20 | MULTI ADMIN. AGENCY Req. for Civil, Criminal, and Admin Penalties for Professional Licenses | | 2382-2549 | 55 |
| 8/16/20 | OCDA: Prosecutions for §7028 | | 2550-2555 | 56 |
| 11/25/20 | OCSD: Notes of Call w/ Leeb Declined Investigation/Prosecution | | 2558 | 57 |
| | Left Blank | | | 58 |
| 11/25/20 | OCSD: Req. for Information Report 20-029161 | | 2559-2568 | 59 |
| 11/26/20 | OCSD: Oath Leeb, All Records of Leeb's Investigation and Audio Recordings of Calls, Emails with Sims, Anderson, Duff, Wagner, Supplemental Reports, No Criminal Activity Able to Be Discovered (p. 2585) | | 2569-2594 | 60 |
| 11/29/20 | CAL. SUPREME CT: Oaths Russo, Cantil-Sakouye, Chin, Liu, Cuellar, Kruger, Groban, Corrigan, | | 2595-2608 | 61 |
| 11/29/20 | 9TH CIRCUIT: Req. for Oaths for Thomas, Tashima, W.Fletcher. No Reply. | | 2609 | 62 |
| 11/29/20 | FDC- Oath Marshall. No Reply | | 2610 | 63 |
| 11/29/20 | Oath of Office Gavin Newsom | | 2620-2623 | 64 |
| 12/14/20 | PAJAR: Judicial Council Modification of CACI §4560 | | 2625-2651 | 65 |
| 12/14/20 | CLSB: Req. for Records of Tamberly Complaint. Refused to Provide | | 2652-2654 | |
| 12/17/20 | OFFICE OF ADMIN. HEARINGS: Req. for Records of Mandatory Arbitration Statutes | | 2655-2659 | 66 |
| 12/27/20 | SAPD: Req for Records of Citizen Complaint. Refused. | | 2660-2673 | 67 |
| | See pp. 2595-2608. | | | 68 |
| 2/11/20 | OCSD: Oath of Office Don Barnes, Code of Ethics Knutson, Weidenkeller, Hallock, Caouette | | 2676-2683 | 69 |
| 2/5/20 | OCSD: Complaint/ Req. for Records of Investigation Into Complaint Against Leeb/Knutson. Response not included- See pp.2694-2779 | | 2684-2691 | 70 |
| 2/24/21 | DEPT GENERAL SVCS: Req. for Records of Complaints Filed and Email Req. 2/7/21 | | 2692-2693 | 71 |


**PRA REQUESTS 3**

| | | | Binder Tab |
|---|---|---|---|
| 2/25/21 | OCSD: Response to 2/5/20 Complaint/Req. Emails re Investigation into Complaint, Oath Hallock, Knutson, Weidenkeller, | | |
| 2/27/21 | OCDA: Req. for Oath of Office for Christopher Duff. No Response. | 2780 | 1 |
| 2/27/21 | OCSD: Oath Kurimay, Chain of Custody of Evidence | 2781-2789 | 2 |
| 2/27/21 | CAL DOJ: Oath Bill Wagner and Copy of Complaint September 2020. Refused. | 2790-2797 | 3 |
| 3/14/21 | OCSD: Jail Grievances | 2798-2856 | |
| 3/14/21 | LASD: Jail Grievances | 2857-2871 | 4 |
| **Date** | **Exhibit D– Complaints/ Government Tort Claims** | **Pages** | 5 |
| 7/27/17 | Criminal Complaint to Orange County District Attorney Office | 4000-4083 | |
| 10/2/17 | Served Motion to Disqualify Judge Chaffee on Presiding Judge | 4084-4087 | 26 |
| 12/7/18 | Criminal Racketeering Complaint to Xavier Becerra. See also Exhibit [F] binder tab 5. (Attached Docs Missing From Exhibit File) | 4088 | |
| 12/7/18 | See Ex. [F] State Bar Criminal Racketeering Complaint Against Gov. Edmund Brown, Jr., Kevin J. Albanese, Jamie Handrick. (Attached docs missing from Exhibit File) | | 6 |
| 12/13/18 | See Ex. [F] Gov't Tort Claim Re: 7085 Illegal Mandatory Arbitration | Ex. [F] 6056-6156 | 7 |
| 8/25/19 | Complaint to Governor Gavin Newsom to Ensure Law Faithfully Executed (See Letter Dated 8/25/19 Below). | 4089 | 8 |
| 8/25/19 | Request For Communication/Settlement Letter to Judges/ Justices in Their Individual Capacities: Kathleen O'Leary, Thomas Goethals, Richard Aronson, David Chaffee, James Di Cesare; and William Bissell, Karen and Gary Humphreys. Response From Fourth District Court of Appeal "No Jurisdiction". Response From Superior Court of California, County of Orange Presiding Judge Kirk H. Nakamura. | 4090-4105 | 9 |
| 1/31/20 | Complaint to FBI. Agent Refused to take Complaint 310.477.656 | See Audible Exhibit [E3] and Exhibit p.1733 | 10 |
| 1/31/20 | California Legislature Complaint to Assemblywoman Cottie Petrie-Norris. See also Exhibit ** pp.1725- | See Digitial Exhibit [H] for the Complaint | 11 |

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| 2/7/20 | Complaint to Santa Ana Police Department Sergeant Abel Alcantar via Phone. Alcantar Refused to Investigate, Take Report, or Protect Against Deprivation of Rights by Public Officials. | See Audible Exhibit [E4], [E5] and Exhibit [C] pp. 1756-1758, pp. 1818-1836. | 12 |
| 2/12/20 | Gov't Tort Claim Complaint to Office of Risk and Ins. Mgmt, Judicial Council of California, cc: US Dept. of Justice, Certified Mail Receipts, USPS Tracking Info. | 4106-4128 | 13 |
| 2/21/20 | 2nd Complaint Cottie Petrie-Norris/ Amended Complaint to Office of Risk and Ins. Mgmt., Judicial Council, Superior Court of California- County of Orange, Fourth District Court of Appeal, California Supreme Court US Dept. of Justice. Certified Mail Receipts, USPS Tracking Info. | 4129-4155 | 14 |
| 3/12/20 | US Dept. of Justice Reply to Complaint | 4156 | 17 |
| 3/13/20 | Letter to Justice Kagan Re: Original Jurisdiction and Reply From Clerk. | 4157-4163 | 15 |
| 4/15/20 | Public Records Act Request to California State Legislature for Receipt of Complaint Documents to Cottie Petrie-Norris. (No reply received). | 4164 | 16 |
| 4/15/20 | Complaint and Follow-up to Complaint Dated 2/21/20, Public Records Act Requesting Findings of Investigation, Complaint for Failure to Investigate to: Office of Risk and Ins. Mgmt., Judicial Council, Superior Court of California–County of Orange, Fourth District Court of Appeal, California Supreme Court, Cottie Petrie-Norris, US Dept. of Justice. | 4165-4166 | |
| 6/2/20 | Complaint to FBI | See Audible Exhibits [E19], [E14] | 17 |
| 6/3/20 | Complaint to Commission on Judicial Performance (Complaint Dismissed Without Investigation). | 4168-4202 | 18 |
| 6/3/20 | Complaint to Mack Jenkins US Dept. of Justice via email | 4203-4204 | 18 |
| 6/29/20 | Complaint to California Governor Gavin Newsom and Chief Justice Tani Cantil-Sakouye. (See 17 Below). No Response. | 4309-4334 | 22 |
| 7/20/20 | Citizen Complaint to Santa Ana Police Department Chief Valentin for Failure to Investigate and Protect Bereki from Deprivations of Rights by Public Officials; 6/5/2020 Complaint to Santa Ana Police Department Commander Rodriguez 4221-4226; Receipt of Complaint Letter From SAPD 4235; SAPD Mission Statements SAPD Dismiss IA Complaint p.4507 | 4205-4263 | 19 |

| | | | |
|---|---|---|---|
| 7/7/20 | Petition to US Supreme Court Justices Regarding Liu v.SEC Requesting Their Reconsideration of Liu and/or Permission to File Late Amicus Brief. (All Letters Returned by Clerk). | 4266-4308 | 18 |
| 8/2/20 | Interview by Santa Ana Police Department Internal Affairs Investigator Sgt.Michelle Macchiaroli. Macchiaroli stated SAPD Was Not Going to Investigate My Claims for Deprivations of Rights. | See Audible Exhibit [E7] | 20 |
| | Complaint to California Governor Gavin Newsom and Chief Justice Tani Cantil-Sakouye. (See 17 Below). No Response. | 4309-4334 | 23 |
| 8/17/20 | Call to California Senator Moorlach Office Regarding Petition For Redress of Grievance. Bereki Was Told Mooorlach Was "Really Busy and Not Accepting Appointments by Phone or in Person" and to Send Correspondence by Mail. Petition for Redress of Grievance Sent Same Day. USPS Certified Mail Receipts. | 4335-4347 | 21 |
| 8/17/20 | Call With Senator Moorlach's Chief of Staff Lance Christensen: 22:52 Bereki: "If someone comes and presents evidence that there is an unconstitutional bill or an unconstitutional law" Christensen: [talking over Bereki- "which is like?] ninety percent of the bills they pass out of this building. I've frankly just got... everything they pass out of this building is unconstitutional. I can't tell you how many bills... how many issues almost on a daily basis that are unconstitutional. But in the end unless a court finds it unconstitutional and requires some sort of remedy there is literally nothing we can do about it." | See Audible Exhibit [E10] | 24 |
| 8/18/20 | Public Records Act Request to California Agencies Regarding All Documents Under Constitution or Statute Pertaining to their Duties and Execution Thereof | 4373-4402 | (Exhibit [C] Binder Tab 47) |
| 9/2/20 | Complaint Orange County Sheriff's Department. Information Report Taken Case# 20-029161. | 4348-4352 | (Exhibit [C] Binder Tabs 32 and 33) |
| 9/4/20 | Resent Petition for Redress of Grievance to Sen. Moorlach's Chief of Staff, Lance Christensen via email. Complaint dismissed. | 4341-4347 | p. 4468, See Audible Exhibit [E16] |
| 9/8/20 | Complaint to Sen. Moorlach Regarding His Dismissal of Bereki's Complaint. No Reply. | 4353-4355 | |

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|---|---|---|---|
| 9/8/20 | Letter To California Attorney General Xavier Becerra Requesting Information For How to File a Criminal Complaint Regarding Corruption by Public Officials. Reply: Contact District Attorney or Grand Jury. | 4403-4411 | |
| 9/8/2020 | Public Records Act Request Orange County Sheriffs Department For Copy of Police Report | 4356-4363 | 26 |
| 9/11/20 | Complaint to Office of Legislative Counsel Adam Silver Regarding Non-Response By Assemblywoman Cottie Petrie-Norris (4413). Senate Ethics Committee Rules. | 4412-4467 | 27 |
| 9/17/20 | Complaint to Claire Conlon, Cottie Petrie-Norris Chief of Staff | See Audible Exhibit [E15], Exhibit [C] pp. 2369-2381; Exhibit [K] pp. | |
| 9/15/20 | Call With Orange County Sheriff Department Investigator Andersen Regarding Report | (Exhibit [C] Binder Tabs 32 and 33)p. 4360, See Audible Exhibit [E13], Exhibit [C] pp. 2559-2594 | |
| 9/21/20 | Calll with Senator Monning Staff Requesting Appt. As Monning Was Head of Business and Professions Committe. No Response. | 25 | |



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|---|---|---|
| 12/17/20 | Complaint to OCSD- Knutson, Weidenkeller, Caouette, Assist Sheriff Jeff Hallock | 4469-4506 |
| 12/22/20 | SAPD: Citizen Complaint Disposition Letter from Rodriguez | 4507-9 |

| **Date** | **Exhibit E– Audible Exhibits** | **Exhibit Number** |
|---|---|---|
| 3/15/19 | Trial Court- Motion to Vacate Hearing Post Appeal | E1 |
| 1/31/20 | California Legislature- Complaint to Jess Huang Cottie Petrie-Norris' Office | E2 |
| 1/31/20 | FBI- Complaint To FBI, Refused to Investigate | E3 |
| 2/7/20 | SAPD- Complaint to Sgt. Abel Alcantar. Refused to Investigate (Part 1) | E4 |
| 2/7/20 | SAPD- Complaint to Sgt. Abel Alcantar. Refused to Investigate (Part 2) | E5 |
| 7/31/20 | SAPD- Complaint to Sgt. Gilbert Hernandez. Refused to Investigate. | E6 |
| 8/5/20 | SAPD- Citizen Complaint Against Alcantar and Hernandez, Interview by Sgt. Michelle Macchiaroli | E7 |
| 8/6/20 | OCSD– Watch Commander Complaint- Go to Court | E8 |

| | | | |
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| 8/6/20 | OCSD- Complaint to Salceda and Demaio at Court. Refused to Investigate | E9 | |
| 8/17/20 | CAL. LEGISLATURE- Complaint to Lance Christensen of Sen. Moorlach's Office. Refused to Investigate. | E10 | |
| 9/1/20 | OCSD- Call with Commander Ross Caouette | E11 | |
| 9/2/20 | OCSD- Interview for Report at OCSD | E12 | |
| 9/15/20 | OCSD- Call with Inv. Anderson. Additional Complaint | E13 | |
| 9/15/20 | FBI- Additional Info. Refused to Provide Update | E14 | |
| 9/17/20 | CAL. LEGISLATURE- Complaint to Claire Conlon/ Cottie Petrie-Norris | E15 | |
| 9/21/20 | CAL. LEGISLATURE- Req for Appt. with Sen. Monning. No Reply. | E16 | |
| 11/25/20 | OCSD- Call with Inv. Leeb (Part 1) | E17 | |
| 11/25/20 | OCSD- Call with Inv. Leeb (Part 2) | E18 | |
| 6/2/20 | FBI- Complaint to Duty Agent | E19 | |
| 2/28/21 | COUNTY COUNSEL- Call with Nicole Sims | E20 | |
| 12/15/20 | SAPD- Call with Sgt. Macchiaroli | E21 | |

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0455

| Date | Exhibit F– Arbitration | Pages |
|---|---|---|
| | Blackrock Arbitration File (CSLB) | |
| | Blackrock Arbitration File (AMCC) | |
| 12/13/18 | Tort Claim Sent to CSLB, Attorney General, State Bar of California, AMCC, Fobian, Handrick. | |
| 12/7/18 | State Bar Criminal Racketeering Complaint Against Gov. Edmund Brown, Jr., Kevin J. Albanese, Jamie Handrick. (Attached docs missing from Exhibit File) | |
| 12/7/18 | Criminal Racketeering Complaint to Attorney General/DOJ. Attached Docs Missing From Exhibit | |
| | CSLB Public Records Request For Obligations Attached to Contractors License | |
| | CSLB Public Records Request For Obligations; Definitions of Natural Person, Individual; AMCC Contracts; Blackrock Arbitration File | |
| | AMCC Website Screenshots | |

**Exhibit L- Property**

Adam A. Bereki
818 Spirit
Costa Mesa, CA 92626
949.241.6693
abereki@gmail.com

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

Adam Bereki

Defendant, Cross-Complainant, Plaintiff

vs.

Karen Humphreys and Gary Humphreys,

Plaintiffs, Cross-Complainants, Cross-Defendants

vs.

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

Does 1-100;

Case No.: 30-2015-00805807

~~Related Case No.: 30-2025-01459684~~ 96
(Unlawful Detainer)

# Exhibits 1-4

# Exhibit 1

Gmail

# License Agreement 01/22/21

**Adam** <abereki@gmail.com> Fri, Jan 22, 2021 at 12:06 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Bill,

Based upon my research it seems that pursuant to Business and Professions Code §7071.17 if I were to work out "an accord" with the Humphreys, the licensing board would likely reinstate my license that is suspended indefinitely pursuant for failure to pay the judgement awarded to the Humphreys. My question is, under what terms and conditions would the Humphreys consider "an accord". If I understand their most recent offer, would it mean payment to them of the $300k? I don't have $300k. Additionally, are there any other agreements they are open to that don't involve compensation that would allow me to get my license back and earn a living as a contractor?

Thanks for your help.

Sincerely,

Adam Bereki

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Fri, Jan 22, 2021 at 2:09 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

I will check with the Humphreys but last indication is that any accord/satisfaction of judgment would require payment of $300,000.00.

**Law Office of William G. Bissell**

14 Corporate Plaza Drive, Suite 120

Newport Beach, CA 92660

**(949) 719-1159**

wbissell@wgb-law.com

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---

**Adam** <abereki@gmail.com> Fri, Jan 22, 2021 at 4:06 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you for checking with them. I just wanted to be sure of the exact terms.

---

**Adam Bereki** <abereki@gmail.com> Thu, Feb 4, 2021 at 12:35 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill. Any word back?

Thanks

Adam.

Sent from my iPhone

> On Jan 22, 2021, at 4:06 PM, Adam <abereki@gmail.com> wrote:

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Thu, Feb 4, 2021 at 2:34 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam Bereki <abereki@gmail.com>

Adam, The Humphreys are firm on a minimum accord and satisfaction amount of $300,000.

---

**Adam Bereki** <abereki@gmail.com> Thu, Feb 4, 2021 at 2:54 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you.

Sent from my iPhone

> On Feb 4, 2021, at 2:34 PM, wbissell wgb-law.com <wbissell@wgb-law.com> wrote:

Gmail

# Offer 02/10/21

**Adam** <abereki@gmail.com> Wed, Feb 10, 2021 at 11:37 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill,

I'm writing to propose another offer between the Humphreys, Spartan, and I:

As I'm sure you're aware, on January 1, 2021 the California homestead exemption increased to $600,000. Here's a link to the CCP:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=704.730&lawCode=CCP

Assuming the Court found I was the legal and beneficial owner of the Spirit property, the maximum exemption of $600,000 would apply. The exemption would fully shield all of the equity in the property as the equity is less than the homestead when taking into account the balance due on the mortgage. If I then filed bankruptcy to discharge the judgment, the Humphreys would not receive any money from the sale of the property.

Alternatively, if the Court found my mother was the true owner, the Humphreys would not receive any money from the sale of the property and would have to remove the lien.

Obviously litigating who owned the property would seem to be a further expense to both the Humphreys, my mom, and I and would not result in them receiving any money on the judgment no matter what the determination.

Additionally, the Humphreys are aware of my belief about the unconstitutional and unlawful nature of the judgment. As they are also aware, I have been unduly harmed in a myriad of ways including suspension of my ability to act as a contractor resulting in hundreds of thousands of dollars in lost income.

I understand the Humphreys may not agree with me on any level. But I believe I have valid meritorious claims on these and other damages and deprivation of rights issues and that there are remedies still available to me to pursue against them. For example, while the litigation between the Humphreys and I has continued, I have also perfected government tort claims against the State of California in which California has waived sovereign immunity. I can therefore bring a damages claim in federal court for deprivation of rights. The unconstitutional judgment (as I see it) obtained by the Humphreys and the damages and deprivation of rights issues associated therewith would absolutely be germain to this litigation.

I understand that it appears I have "lost" at every attempt I have made to obtain justice under the Constitution and law as I see it, but that does not mean the same would be true in any proceeding action(s). In fact I believe the contrary would be true and that not only would the judgment be vacated, but that I would also be awarded damages and potentially punitive damages against the Humphreys and others for blatant violations of constitutional law resulting in deprivations of my rights and liberty.

I would like to move forward in my life without suffering further irreparable harm by filing bankruptcy to discharge the judgment and without continuing litigation with the Humphreys. Therefore, the offer I'm proposing is for the Humphreys and I and Spartan to completely walk away from any and all claims and move on with our lives. This would involve a complete and full dismissal of the judgment so that I could get my license back and earn a living. It would also require the Humphreys tp remove the lien on the Spirit property. Spartan would in turn dismiss it's claim against the Humphreys and the Humphreys would dismiss all remaining claims against Spartan and I. I would also dismiss all claims against the Humphreys. Filing bankruptcy and the irreparable harm associated therewith that I

believe would be attributed at least in part to the unlawful actions of the Humphreys would also be avoided.

I remain open and available to any further ideas, discussions, offers, or resolutions the Humphreys may have as well.

Sincerely,

Adam

Gmail

# Offer 2/10/21- Confirmation

**Adam** <abereki@gmail.com> Wed, Feb 17, 2021 at 10:51 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Bill,

Could you please confirm that you received my offer to the Humphreys that I sent via email on 2/10/21 and that you delivered it to them?

Sincerely,

Adam Bereki

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Wed, Feb 17, 2021 at 11:09 AM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

Yes as to both.

**Law Office of William G. Bissell**

14 Corporate Plaza Drive, Suite 120

Newport Beach, CA 92660

**(949) 719-1159**

wbissell@wgb-law.com

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**Adam** <abereki@gmail.com> Wed, Feb 17, 2021 at 11:10 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you.

# Exhibit 2

RECORDING REQUESTED BY
**Prestige Default Services, LLC**

AND WHEN RECORDED MAIL TO:
**Prestige Default Services, LLC**
**1920 Old Tustin Ave.**
**Santa Ana, California 92705**
**Phone: 949-427-2010**

Recorded In Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
93.00
*$R00153799365*
**2025000036842 1:58 pm 01/24/25**
**9 NC-5 N34 2**
**0.00 0.00 0.00 0.00 3.00 0.00 0.000.0075.00 3.00**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. No.: **22-7030** Loan No.: ******1091
APN: **141-513-55**

# NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED
注：本文件包含一个信息摘要
참고사항: 본 첨부 문서에 정보 요약서가 있습니다
NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 7/1/2005. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.**

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

Trustor: **ADAM BEREKI, A SINGLE MAN**
Duly Appointed Trustee: **Prestige Default Services, LLC**
Recorded **7/7/2005** as Instrument No. **2005000525690** in book , page of Official Records in the office of the Recorder of **Orange County, California,**
Date of Sale: **3/3/2025 at 9:00 AM**
Place of Sale: **Auction.com room, Doubletree by Hilton Hotel Anaheim – Orange County, 100 The City Drive, Orange, California 92868**
Amount of unpaid balance and other charges: **$575,064.98**
Street Address or other common designation of real property: **818 SPIRIT COSTA MESA California 92626**
A.P.N.: **141-513-55**

T.S. No.: 22-7030 Loan No.: ******1091
APN: 141-513-55

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property. **All checks payable to Prestige Default Services, LLC.**

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (800) 793-6107 or visit this Internet Website www.auction.com, using the file number assigned to this case 22-7030. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

NOTICE TO TENANT: You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer," you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call (800) 793-6107, or visit this internet website www.auction.com, using the file number assigned to this case 22-7030 to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase.

Date: 1/23/2025

**Prestige Default Services, LLC**
**1920 Old Tustin Ave.**
**Santa Ana, California 92705**
**Questions: 949-427-2010**
**Sale Line: (800) 793-6107**

**Patricia Sanchez Foreclosure Manager**

**Summary of Notice of Sale**

NOTICE OF SALE
SUMMARY OF KEY INFORMATION

The attached notice of sale was sent to ADAM BEREKI, A SINGLE MAN, in relation to 818 SPIRIT, COSTA MESA California 92626 .

YOU ARE IN DEFAULT UNDER A DEED OF TRUST OR MORTGAGE DATED 7/1/2005. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE.

IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

The total amount due in the notice of sale is $575,064.98.

Your property is scheduled to be sold on 3/3/2025 at 9:00 AM at Auction.com room, Doubletree by Hilton Hotel Anaheim – Orange County, 100 The City Drive, Orange, California 92868.

However, the sale date shown on the attached notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (800) 793-6107 or visit this Internet Web site address www.auction.com, using the file number assigned to this case 22-7030. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

If you would like additional copies of this summary, you may obtain them by calling 949-427-2010.



出售通知
關鍵信息摘要

本文中包含的有關 818 SPIRIT, COSTA MESA California 92626

的出售通知發送給ADAM BEREKI, A SINGLE MAN。

你的 DEED OF TRUST OR MORTGAGE 於7/1/2005 已經逾期違約。

除非你採取行動保護你的房產，否則該房產將被公開出售。

如果你需要了解對你的訴訟程序的性質，應該聯系一名律師。

法拍書面通知的總金額是$575,064.98 。

你的房產預計出售的時間3/3/2025。你的房產預計出售的時間9:00 AM 出售地點 Auction.com room, Doubletree by Hilton Hotel Anaheim – Orange County, 100 The City Drive, Orange, California 92868。

然而，根據加州民法第2924g，本文中包含的法拍書面通知上顯示的出售日期可能會被抵押權人，受益人，受托人，或法院一次或多次推遲。該法規定，作為對不在法拍現場人士的一種寬限，有關受托人推遲出售的信息要提供給你和公眾。如果你想了解你的房產出售日期是否已被推遲，以及（如適用）重新安排的法拍時間和日期，可致電(800) 793-6107 或訪問互聯網網址www.auction.com，用指定的檔案編號 22-7030 查找。

關於推遲法拍的信息，持續時間會很短，或僅在預定法拍時間前不久發布，可能不會立即反映在電話信息或互聯網的網址上。最好驗証推遲信息的方法是，出席預定的拍賣。

如果你想獲得更多的本摘要副本，請撥打下列電話949-427-2010。

shellpoint.

DO NOT SEND MAIL OR PAYMENTS TO THIS ADDRESS
P.O. Box 619063 • Dallas, TX 75261-9063

3-511-40841-0000000-001-1-000-000-000-000

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

# MORTGAGE STATEMENT

Statement Date: 02/21/2025

| | |
|---|---|
| Account Number | 0675931091 |
| Next Due Date | 03/01/2025 |
| **Reinstatement Amount** | **$4,215.03** |

Phone: 800-365-7107
Website: www.shellpointmtg.com

## Explanation of Amount

| | |
|---|---|
| **Accelerated Amount** | $383,380.32 |

The loan is in default for failure to pay amounts due, and the entire unpaid principal balance and all other amounts due under the Note and security instruments are now due and payable in full. As of the date of this letter, this is the amount that is now due in full. Please note that this is not a payoff statement and the amounts due may change due to additional or unrelated costs or fees. Contact us for a payoff or reinstatement quote.

| | |
|---|---|
| **Reinstatement Amount** | $4,215.03 |

As of the date of this letter, we are willing to accept this amount to reinstate your loan. Please note that the amounts due may change due to additional or unrelated costs or fees. Contact us at 800-365-7107 for an accurate reinstatement amount.

## Past Payments Breakdown

| | Paid Last Month | Paid Year to Date |
|---|---|---|
| Principal | $75,319.62 | $75,319.62 |
| Interest | $71,031.68 | $71,031.68 |
| Escrow | $31,765.05 | $31,765.05 |
| Fees/Late Charges | $8,833.46 | $8,833.46 |
| **Total** | **$186,949.81** | **$186,949.81** |

## Bankruptcy Message

**Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.**

**We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.**

**If you want to stop receiving statements, write us.**

## Account Information

| | |
|---|---|
| Outstanding Principal | $319,873.41 |
| Deferred Balance* | $62,500.68 |
| Interest Rate | 5.7500% |
| Prepayment Penalty | None |
| Property Address: | 818 SPIRIT<br>COSTA MESA CA 92626 |
| Contractual Due Date: | March 1, 2025 |
| Current Escrow Balance | $8,725.11 |
| Deferred Principal | $62,500.68 |
| Deferred Interest | $0.00 |
| Assistance Balance | $0.00 |
| Reserve Balance | $0.00 |
| Maturity Date | 08/01/2035 |

## Important Messages

*Partial Payments: Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply those funds to your mortgage.

## Additional Messages

For questions regarding the servicing of your loan, please contact us at 800-365-7107 Monday-Friday 8:00AM-8:00PM, and Saturday 10:00AM-2:00PM Eastern Time.

Federal law requires us to tell you how we collect, share, and protect your personal information. Our Privacy Policy has not changed. You can review our policy and practices with respect to your personal information at www.shellpointmtg.com or request a copy to be mailed to you by calling us at 800-365-7107.

See Total Payment Amount Breakdown on page 2.

**For information about your payments, total amount due, and any additional payment history, see reverse side.**

Detach and return with payment.

shellpoint.

Loan Number: 0675931091
ADAM BEREKI

Property Address:
818 SPIRIT
COSTA MESA CA 92626

SHELLPOINT MORTGAGE SERVICING
P.O. BOX 650840
DALLAS, TX 75265-0840

## Payment Amount

| | |
|---|---|
| Payment Date | 03/01/2025 |
| Reinstatement Amount | $4,215.03 |

Please write clearly inside space provided

| | |
|---|---|
| Payment Amount | $ |
| Additional Principal | $ |
| Late / Other Charges | $ |
| Additional Escrow | $ |
| **Total Amount Enclosed** (Please do not send cash) | $ |

0100127949360001264509004215030043686406759310911030125031625 8

Account Number 0675931091

## Total Payment Breakdown

| | | | |
|---|---|---|---|
| Total of all Payments Due | $0.00 | Other Fee Balance (details below)** | $0.00 |
| Total Principal Balance | $319,673.41 | Total Deferred Principal Balance | $62,508.25 |
| Total Interest Balance | $1,007.82 | Total Deferred Interest Balance | $0.00 |
| Default Interest | $0.00 | Total Additional Balance | ($1.59) |
| Late Charge Balance | $0.00 | Unapplied Amount | $0.00 |
| Insufficient Funds Balance | $0.00 | | |
| Legal Fee Balance (details below)* | $0.00 | Total | $383,388.32 |

## Principal Breakdown

| | Unpaid Balance |
|---|---|
| Principal Balance | $319,673.41 |

## Interest Breakdown

| | Unpaid Balance |
|---|---|
| Interest to 02/21/2025 | $1,007.82 |

## Additional Breakdown

| | Unpaid Balance |
|---|---|
| Initial Escrow Pmt | ($1.59) |

## Transaction Activity (01/18/2025 - 02/20/2025)

| Date | Description | Charges | Payments |
|---|---|---|---|
| 01/27/2025 | Property Inspection Disbursement | $30.00 | $0.00 |
| 02/18/2025 | Regular Payment - (Due 10/1/2021) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 11/1/2021) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 12/1/2021) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 1/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 2/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 3/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 4/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 5/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 6/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 7/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 8/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 9/1/2022) | $0.00 | $3,472.26 |
| 02/18/2025 | Regular Payment - (Due 10/1/2022) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 11/1/2022) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 12/1/2022) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 1/1/2023) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 2/1/2023) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 3/1/2023) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 4/1/2023) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 5/1/2023) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 6/1/2023) | $0.00 | $5,379.87 |
| 02/18/2025 | Regular Payment - (Due 7/1/2023) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 8/1/2023) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 9/1/2023) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 10/1/2023) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 11/1/2023) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 12/1/2023) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 1/1/2024) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 2/1/2024) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 3/1/2024) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 4/1/2024) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 5/1/2024) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 6/1/2024) | $0.00 | $4,193.46 |
| 02/18/2025 | Regular Payment - (Due 7/1/2024) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 8/1/2024) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 9/1/2024) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 10/1/2024) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 11/1/2024) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 12/1/2024) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 1/1/2025) | $0.00 | $4,215.03 |
| 02/18/2025 | Regular Payment - (Due 2/1/2025) | $0.00 | $4,215.03 |
| 02/18/2025 | Attorney Cost Payment | $0.00 | $1,058.00 |

## Address, Phone, and Name Changes

Type of change (check all that apply)

___ Address ___ Phone ___ Name** ___ Email Address

**Please note that Name changes require us to review and keep a copy of a legal document stating the new name. Examples of legal documents are marriage licenses and divorce decrees.

Your Account #: _____ Social Security Number: _____

Old Borrower Name: _____ New Borrower Name: _____

Old Co-Borrower Name: _____ New Co-Borrower Name: _____

Borrower Signature: _____ Co-Borrower Signature: _____

New Mailing Address: _____

_____

_____

_____

New Phone Number: Day (___ ___-____ Evening _____

shellpoint.

Statement Date: 02/21/2025

Account Number: 0675931091

3-911-13131-000/003-001-2-250 0-0-000-000
ADAM BEREKI
819 SPIRIT
COSTA MESA CA 92626-3089

Continued from previous page

**Transaction Activity (01/18/2025 - 02/20/2025) - continued**

| Date | Description | Charges | Payments |
|---|---|---|---|
| 02/18/2025 | FC Costs Payment | $0.00 | $4,567.40 |
| 02/18/2025 | Postponement Fee Payment | $0.00 | $600.00 |
| 02/18/2025 | Property Inspection Payment | $0.00 | $845.00 |
| 02/18/2025 | Certified Mail Cost Payment | $0.00 | $333.06 |
| 02/18/2025 | Recording Cost Payment | $0.00 | $270.00 |
| 02/18/2025 | BPO/Apprs Cost Payment | $0.00 | $260.00 |
| 02/18/2025 | Partial Payment Unapplied* | $0.00 | $3,988.64 |
| 02/18/2025 | Partial Payment Unapplied* | $0.00 | -$3,988.64 |
| 02/18/2025 | Principal Only Payment | $0.00 | $3,988.64 |

Payments made by check are processed electronically by using the information listed on the check. Payments by check authorize us to create a one-time electronic funds transfer and process the payment as either a paper check or electronic draft. The check will not be returned to you. Allowable fees may apply for returned or rejected payments.

Newrez LLC dba Shellpoint Mortgage Servicing is a debt collector. This is not an attempt to collect a debt due to your bankruptcy filing. Newrez LLC dba Shellpoint Mortgage Servicing's NMLS ID is 3013.

**Important Notice:** Please be advised that post-petition fees, expenses or charges reflected on this statement might be subject to additional disclosure to the bankruptcy court under Rule 3002.1 of the Federal Rules of Bankruptcy Procedure. In the event such post-petition fees, expenses or charges are disallowed by the bankruptcy court, a subsequent waiver will be applied to your account.

**Amount Due on Accounts in Foreclosure or Bankruptcy:** If your account is in foreclosure or bankruptcy, the amount listed as the Amount Due may not be the full amount necessary to bring your account current. To obtain up-to-date amount due information, please contact us at the number listed on the statement.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt; please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code.

**Notice of Error or Information Request Address**
You have certain rights under Federal law related to resolving errors in the servicing of your loan and requesting information about your loan. If you want to request information about your loan or if you believe an error has occurred in the servicing of your loan and would like to submit an Error Resolution or Informational Request, please write to us. Additionally, if you believe we have furnished inaccurate information to credit reporting agencies, please write to us with specific details regarding those errors and any supporting documentation that you have and we will assist you. Error Resolution, including concerns of inaccurate information sent to credit reporting agencies, or requests for information should be sent to the following address:

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603

**Housing Counselor Information:** If you would like counseling or assistance, you can contact the following:
U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

Shellpoint Mortgage Servicing may assess a returned check fee consistent with the laws for your state and your loan documents on all checks returned by your financial institution.

**¿Habias español?** Esta carta contiene información importante sobre su préstamo hipotecario. Si usted no entiende el contenido de esta carta, por favor contacte a uno de nuestros representantes que hablan español al número **800-365-7107**.

If you prefer to receive communication in a language other than English, please contact us at 800-365-7107 to speak with a translator in your preferred language about the servicing of your loan or a document you received.

A successor in interest is someone who acquires an ownership interest in a property secured by a mortgage loan by transfer upon the death of a relative, as a result of a divorce or legal separation, through certain trusts, between spouses, from a parent to a child, or when a borrower who is a joint tenant or tenant by the entirety dies. If you are a successor in interest, or you think you might be, please contact by phone, mail or email to start the confirmation process.

**The deferred amount is due on your last mortgage payment date or earlier if you sell your home, refinance, or otherwise pay off your loan.**

shellpoint.

DO NOT SEND MAIL OR PAYMENTS TO THIS ADDRESS
P.O. Box 619063 · Dallas, TX 75261-9063

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3099

# MORTGAGE STATEMENT

Statement Date: 01/18/2025

| | |
|---|---|
| Account Number | 0675931091 |
| Payment Date | 02/01/2025 |
| **Reinstatement Amount** | **$182,931.17** |

Phone: 800-365-7107
Website: www.shellpointmtg.com

## Explanation of Amount

| | |
|---|---|
| **Accelerated Amount** | $565,340.67 |
| **Reinstatement Amount** | $182,931.17 |

## Bankruptcy Message

**Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.**

**We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.**

**If you want to stop receiving statements, write us.**

## Important Messages

***Partial Payments:** Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply those funds to your mortgage.

## Additional Messages

For questions regarding the servicing of your loan, please contact us at 800-365-7107 Monday-Friday 8:00AM-9:00PM, and Saturday 10:00AM-2:00PM Eastern Time.

Federal law requires us to tell you how we collect, share, and protect your personal information. Our Privacy Policy has not changed. You can review our policy and practices with respect to your personal information at www.shellpointmtg.com or request a copy to be mailed to you by calling us at 800-365-7107.

**For information about your payments, total amount due, and any additional payment history, see reverse side.**

## Past Payments Breakdown

| | Paid Last Month | Paid Year to Date |
|---|---|---|
| Principal | $0.00 | $0.00 |
| Interest | $0.00 | $0.00 |
| Escrow | $0.00 | $0.00 |
| Fees/Late Charges | $0.00 | $0.00 |
| **Total** | **$0.00** | **$0.00** |

## Account Information

| | |
|---|---|
| Outstanding Principal | $395,193.03 |
| Deferred Balance* | $62,500.68 |
| Interest Rate | 5.7500% |
| Prepayment Penalty | None |
| Property Address | 818 SPIRIT<br>COSTA MESA CA 92626 |
| Contractual Due Date: | October 1, 2021 |
| Current Escrow Balance | -$22,039.94 |
| Deferred Principal | $62,500.68 |
| Deferred Interest | $0.00 |
| Assistance Balance | $0.00 |
| Reserve Balance | $0.00 |
| Maturity Date | 09/01/2025 |

## "Account History"

**Recent Account History**

Payment due 08/01/24: unpaid balance of $157,040.99
Payment due 09/01/24: unpaid balance of $4,215.03
Payment due 10/01/24: unpaid balance of $4,215.03
Payment due 11/01/24: unpaid balance of $4,215.03
Payment due 12/01/24: unpaid balance of $4,215.03
Payment due 01/01/25: unpaid balance of $4,215.03
Payment due 02/01/25: current payment due

**Total: $182,931.17 unpaid amount that, if paid, would bring your loan current.**

**If You Are Experiencing Financial Difficulty:** See back for information about mortgage counseling or assistance.

See Total Payment Amount Breakdown on page 2.

Detach and return with payment.

shellpoint.

Loan Number: 0675931091
ADAM BEREKI

Property Address:
818 SPIRIT
COSTA MESA CA 92626

SHELLPOINT MORTGAGE SERVICING
P.O. BOX 650840
DALLAS, TX 75265-0840

## Payment Amount

| | |
|---|---|
| Payment Date | 02/01/2025 |
| Reinstatement Amount | $182,931.17 |

(Please write clearly, inside space provided)

| | |
|---|---|
| Payment Amount | $ |
| Additional Principal | $ |
| Late / Other Charges | $ |
| Additional Escrow | $ |
| Total Amount Enclosed (Please do not send cash) | $ |

010015807721000126450900421503004386406759310911020125021625 1

Account Number 0675931091

| Total Payment Breakdown | | | |
|---|---|---|---|
| Total of All Payments Due | $0.00 | Other Fee Balance (details below)** | $2,278.00 |
| Total Principal Balance | $358,101.03 | Total Deferred Principal Balance | $62,540.69 |
| Total Interest Balance | $78,803.56 | Total Deferred Interest Balance | $0.00 |
| Default Interest | $0.00 | Total Additional Balance | $22,039.04 |
| Late Charge Balance | $0.00 | Unapplied Amount | $0.00 |
| Unsufficient Funds Balance | $0.00 | | |
| Legal Fee Balance (details below)* | $6,525.40 | Total | $565,340.37 |

**Fee Details**

Legal fee components*

| | | | | | |
|---|---|---|---|---|---|
| Attorney Cost | $1,659.00 | FC Costs | $4,587.40 | | |

Other fee components**

| | | | | | |
|---|---|---|---|---|---|
| BPO/Appr Cost | $260.00 | Prepayment Fee | $660.00 | Recording Cost | $270.00 |
| Certified Mail Cost | $333.00 | Property Inspection | $515.00 | | |

**Principal Breakdown**

| | Unpaid Balance |
|---|---|
| Principal Balance | $358,101.03 |

**Interest Breakdown**

| | Unpaid Balance |
|---|---|
| Interest to 01/18/2025 | $78,803.56 |

**Additional Breakdown**

| | Unpaid Balance |
|---|---|
| Escrow Balance | $22,039.04 |

**Transaction Activity (12/18/2024 - 01/17/2025)**

| Date | Description | Charges | Payments |
|---|---|---|---|
| 12/31/2024 | Property Inspection Disbursement | 530.00 | 50.00 |

Payments made by check are processed electronically by using the information listed on the check. Payments by check authorize us to create a one-time electronic funds transfer and process the payment as either a paper check or electronic draft. The check will not be returned to you. Allowable fees may apply for returned or rejected payments.

Newrez LLC dba Shellpoint Mortgage Servicing is a debt collector. This is not an attempt to collect a debt due to your bankruptcy filing. Newrez LLC dba Shellpoint Mortgage Servicing's NMLS ID is 3013.

**Important Notice:** Please be advised that post-petition fees, expenses or charges reflected on this statement might be subject to additional disclosure to the bankruptcy court under Rule 3002.1 of the Federal Rules of Bankruptcy Procedure. In the event such post-petition fees, expenses or charges are disallowed by the bankruptcy court, a subsequent waiver will be applied to your account.

**Amount Due on Accounts In Foreclosure or Bankruptcy:** If your account is in foreclosure or bankruptcy, the amount listed as the Amount Due may not be the full amount necessary to bring your account current. To obtain up-to-date amount due information, please contact us at the number listed on the statement.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt; please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code.

**Notice of Error or Information Request Address**
You have certain rights under Federal law related to resolving errors in the servicing of your loan and requesting information about your loan. If you want to request information about your loan or if you believe an error has occurred in the servicing of your loan and would like to submit an Error Resolution or Informational Request, please write to us. Additionally, if you believe we have furnished inaccurate information to credit reporting agencies, please write to us with specific details regarding those errors and any supporting documentation that you have and we will assist you. Error Resolution, including concerns of inaccurate information sent to credit reporting agencies, or requests for information should be sent to the following address:

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603

**Housing Counselor Information:** If you would like counseling or assistance, you can contact the following:
U.S. Department of Housing and Urban Development (HUD). For a list of homeownership counselors or counseling organizations in your area, go to https://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

## Address, Phone, and Name Changes

Type of change (check all that apply)

___ Address ___ Phone ___ Name** ___ Email Address

**To add or remove a name, you must provide a copy of a legal document listing the new name. Examples of legal documents are marriage licenses and divorce decrees.

Your Account #: _____ Social Security Number: _____

Old Borrower Name: _____ New Borrower Name: _____

Old Co-Borrower Name: _____ New Co-Borrower Name: _____

Borrower Signature: _____ Co-Borrower Signature: _____

New Mailing Address: _____

_____

_____

_____

New Phone Number: (___) ___-____ Email Address: _____

Gmail

## History

**noreply@shellpointmtg.com** <securetransfer@shellpointmtg.com> Mon, Mar 3, 2025 at 2:13 PM
Reply-To: romario.gooden@newrez.com
To: abereki@gmail.com

newrez

# You have been sent a secure message

Access message

To create your account and access the message

1 In the email, click "Access message".

2 On the sign in page, enter your email address, and then click Next.

3 On the Create Account page, create a password, and then click Next.

4 Check your email for an account verification link. In the email, click "Activate account".

5 On the sign in page, enter your email address, and then click Next.

6 Enter your password, and then click "Sign in".

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | UnapplL Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 02/25/25 | 03/01/25 | BPO/Apral Cost Disb | 0 | 0 | (145.00) | | 319,873.41 | | | 9,725.11 | | 0.00 | $0.00 | ACH |
| 02/23/25 | ACH Ref.#:242393 | | Payee: eStreet Appraisal Management LLC Batch ID:1599308 Collateral ID:0 | | | | | | | | | | | |
| | Invoice Number: 251-07723 | | | | | | | | | | | | | |
| 02/18/25 | 02/01/25 | Principal Only Payment | 0 | 0 | 3,988.64 | 3,988.64 | 319,873.41 | | | 9,725.11 | | 0.00 | $0.00 | Unapplied |
| | | | Batch ID:1594135 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Unapplied Payment | 0 | 0 | (3,988.64) | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Unapplied |
| | | | Batch ID:1594135 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Unapplied Payment | 0 | 0 | 3,988.64 | | 323,862.05 | | | 9,725.11 | | 0.00 | $3,988.64 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | BPO/Apral Cost Pmt | 0 | 0 | 260.00 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Recording Cost Pmt | 0 | 0 | 270.00 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Certified Mail Cost Pmt | 0 | 0 | 333.06 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Property Inspection Pmt | 0 | 0 | 845.00 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Postponement Fee Pmt | 0 | 0 | 600.00 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | FC Costs Pmt | 0 | 0 | 4,567.40 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 03/01/25 | Attorney Cost Pmt | 0 | 0 | 1,958.00 | | 323,862.05 | | | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |
| 02/18/25 | 02/01/25 | Regular Payment | 0 | 0 | 4,215.03 | 1,911.26 | 323,862.05 | 1,561.00 | 742.77 | 9,725.11 | | 0.00 | $0.00 | Wire |
| | | | Batch ID:1593313 | | | | | | | | | | | |

Exhibit 2, p.11

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 02/18/25 | 01/01/25 | Regular Payment | 0 | 0 | 4,215.03 | 1,802.15 | 325,773.31 | 1,570.11 | 742.77 | 8,982.34 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 12/01/24 | Regular Payment | 0 | 0 | 4,215.03 | 1,893.08 | 327,675.46 | 1,579.18 | 742.77 | 8,239.57 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 11/01/24 | Regular Payment | 0 | 0 | 4,215.03 | 1,884.05 | 329,568.54 | 1,588.21 | 742.77 | 7,496.80 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 10/01/24 | Regular Payment | 0 | 0 | 4,215.03 | 1,875.08 | 331,452.59 | 1,597.20 | 742.77 | 6,754.03 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 09/01/24 | Regular Payment | 0 | 0 | 4,215.03 | 1,866.12 | 333,327.65 | 1,606.14 | 742.77 | 6,011.26 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 08/01/24 | Regular Payment | 0 | 0 | 4,215.03 | 1,857.22 | 335,193.77 | 1,615.04 | 742.77 | 5,268.49 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 07/01/24 | Regular Payment | 0 | 0 | 4,215.03 | 1,848.37 | 337,050.99 | 1,623.89 | 742.77 | 4,525.72 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 06/01/24 | Regular Payment | 0 | 0 | 4,193.46 | 1,839.55 | 338,899.36 | 1,632.71 | 721.20 | 3,782.95 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 05/01/24 | Regular Payment | 0 | 0 | 4,193.46 | 1,830.78 | 340,738.91 | 1,641.48 | 721.20 | 3,061.75 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 04/01/24 | Regular Payment | 0 | 0 | 4,193.46 | 1,822.05 | 342,569.69 | 1,650.21 | 721.20 | 2,340.55 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 03/01/24 | Regular Payment | 0 | 0 | 4,193.46 | 1,813.36 | 344,391.74 | 1,658.90 | 721.20 | 1,619.35 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 02/01/24 | Regular Payment | 0 | 0 | 4,193.46 | 1,804.71 | 346,205.10 | 1,667.55 | 721.20 | 898.15 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 01/01/24 | Regular Payment | 0 | 0 | 4,193.46 | 1,796.11 | 348,009.81 | 1,676.15 | 721.20 | 176.95 | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |

Exhibit 2, p.12

0476

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 02/18/25 | 12/01/23 | Regular Payment | 0 | 0 | 4,193.46 | 1,787.64 | 349,805.92 | 1,684.72 | 721.20 | (544.25) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 11/01/23 | Regular Payment | 0 | 0 | 4,193.46 | 1,779.02 | 351,593.46 | 1,693.24 | 721.20 | (1,265.45) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 10/01/23 | Regular Payment | 0 | 0 | 4,193.46 | 1,770.53 | 353,372.48 | 1,701.73 | 721.20 | (1,986.65) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 09/01/23 | Regular Payment | 0 | 0 | 4,193.46 | 1,762.09 | 355,143.01 | 1,710.17 | 721.20 | (2,707.85) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 08/01/23 | Regular Payment | 0 | 0 | 4,193.46 | 1,753.69 | 356,905.10 | 1,718.57 | 721.20 | (3,429.05) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 07/01/23 | Regular Payment | 0 | 0 | 4,193.46 | 1,745.32 | 358,658.79 | 1,726.94 | 721.20 | (4,150.25) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 06/01/23 | Regular Payment | 0 | 0 | 5,379.87 | 1,737.00 | 360,404.11 | 1,735.28 | 1,907.61 | (4,871.45) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 05/01/23 | Regular Payment | 0 | 0 | 5,379.87 | 1,728.72 | 362,141.11 | 1,743.54 | 1,907.61 | (6,779.06) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 04/01/23 | Regular Payment | 0 | 0 | 5,379.87 | 1,720.47 | 363,869.83 | 1,751.79 | 1,907.61 | (8,686.67) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 03/01/23 | Regular Payment | 0 | 0 | 5,379.87 | 1,712.27 | 365,590.30 | 1,759.99 | 1,907.61 | (10,594.28) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 02/01/23 | Regular Payment | 0 | 0 | 5,379.87 | 1,704.10 | 367,302.57 | 1,768.16 | 1,907.61 | (12,501.89) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 01/01/23 | Regular Payment | 0 | 0 | 5,379.87 | 1,695.98 | 369,006.67 | 1,776.26 | 1,907.61 | (14,409.50) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 12/01/22 | Regular Payment | 0 | 0 | 5,379.87 | 1,687.89 | 370,702.65 | 1,784.37 | 1,907.61 | (16,317.11) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |

Exhibit 2, p.13

0477

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 02/18/25 | 11/01/22 | Regular Payment | 0 | 0 | 5,379.87 | 1,679.64 | 372,380.54 | 1,792.42 | 1,907.61 | (18,224.72) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 10/01/22 | Regular Payment | 0 | 0 | 5,379.87 | 1,671.83 | 374,070.38 | 1,800.43 | 1,907.61 | (20,132.33) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 09/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,663.88 | 375,742.21 | 1,808.40 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 08/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,655.92 | 377,406.07 | 1,816.34 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 07/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,648.02 | 379,061.99 | 1,824.24 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 06/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,640.17 | 380,710.01 | 1,832.09 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 05/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,632.34 | 382,350.18 | 1,839.92 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 04/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,624.56 | 383,982.52 | 1,847.70 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 03/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,616.81 | 385,607.08 | 1,855.45 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 02/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,609.10 | 387,223.89 | 1,863.16 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 01/01/22 | Regular Payment | 0 | 0 | 3,472.26 | 1,601.43 | 388,832.99 | 1,870.83 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 12/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,593.79 | 390,434.42 | 1,878.47 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 02/18/25 | 11/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,586.19 | 392,028.21 | 1,886.07 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |

Exhibit 2, p.14

0478

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 02/18/25 | 10/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,578.63 | 393,614.40 | 1,893.63 | | (22,039.94) | | 0.00 | $0.00 | Wire |
| | | Batch ID:1593313 | | | | | | | | | | | | |
| 01/27/25 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (22,039.94) | | 0.00 | $0.00 | ACH |
| | ACH Ref.#:237742 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1571262 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0034072696 | | | | | | | | | | | | | |
| 12/31/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (22,039.94) | | 0.00 | $0.00 | ACH |
| 12/30/24 | ACH Ref.#:233658 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1547641 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0033833329 | | | | | | | | | | | | | |
| 12/11/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (22,039.94) | | 0.00 | $0.00 | ACH |
| 12/02/24 | ACH Ref.#:230075 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1531330 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0033603730 | | | | | | | | | | | | | |
| 11/18/24 | 12/10/24 | County Tax Bill 1 | 0 | 0 | (4,599.03) | | 395,193.03 | | (4,599.03) | (22,039.94) | | 0.00 | $0.00 | None |
| | ACH Ref.#:226229 | | | | Payee: ORANGE COUNTY | | Batch ID:1502829 | Collateral ID:0 | | | | | | |
| 11/01/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 10/27/24 | ACH Ref.#:223740 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1494705 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0033365585 | | | | | | | | | | | | | |
| 10/07/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 09/24/24 | ACH Ref.#:219414 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1469595 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0033088811 | | | | | | | | | | | | | |
| 09/09/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 08/26/24 | ACH Ref.#:215007 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1444899 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0032818853 | | | | | | | | | | | | | |
| 07/31/24 | 10/01/21 | Property Inspection Pmt | 0 | 0 | 30.00 | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | Reclassified |
| | | Batch ID:1413084 | | | | | | | | | | | | |
| 07/31/24 | 10/01/21 | Property Inspection Pmt | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | Reclassified |
| | | Batch ID:1413084 | | | | | | | | | | | | |

Exhibit 2, p.15

0479

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 07/30/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 07/25/24 | ACH Ref.#:208505 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1411185 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0032562754 | | | | | | | | | | | | | |
| 07/09/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 06/27/24 | ACH Ref.#:205048 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1394855 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0032308081 | | | | | | | | | | | | | |
| 06/11/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 05/29/24 | ACH Ref.#:201348 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1376138 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0032060550 | | | | | | | | | | | | | |
| 05/07/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 05/02/24 | ACH Ref.#:198687 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1351620 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0031827191 | | | | | | | | | | | | | |
| 04/19/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (17,440.91) | | 0.00 | $0.00 | ACH |
| 03/27/24 | ACH Ref.#:194379 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1339837 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0031580322 | | | | | | | | | | | | | |
| 03/19/24 | 04/10/24 | County Tax Bill 2 | 0 | 0 | (4,456.62) | | 395,193.03 | | (4,456.62) | (17,440.91) | | 0.00 | $0.00 | None |
| | ACH Ref.#:189446 | | | | Payee: ORANGE COUNTY | | Batch ID:1311089 | Collateral ID:0 | | | | | | |
| 03/19/24 | 10/01/21 | Document Retrieval Disb | 0 | 0 | (13.50) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 01/01/24 | ACH Ref.#:189882 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. | | Batch ID:1315844 | Collateral ID:0 | | | | | | |
| | Invoice Number: 183A-SPTDA | | | | | | | | | | | | | |
| 03/19/24 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (5.88) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 01/01/24 | ACH Ref.#:189882 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. | | Batch ID:1315844 | Collateral ID:0 | | | | | | |
| | Invoice Number: 183A-SPTDA | | | | | | | | | | | | | |
| 03/06/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 02/29/24 | ACH Ref.#:187483 | | | | Payee: GUARDIAN ASSET MANAGEMENT | | Batch ID:1305727 | Collateral ID:0 | | | | | | |
| | Invoice Number: T0031335637 | | | | | | | | | | | | | |

Exhibit 2, p.16

0480

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 01/30/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 01/27/24 | ACH Ref.#:182624 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1277327 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0031092950 | | | | | | | | | | | | | |
| 01/28/24 | 10/01/21 | Client Auth Expense Disb | 0 | 0 | (0.09) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 10/30/23 | ACH Ref.#:182254 | | | | Payee: TRANS UNION LLC Batch ID:1276131 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 22552706-0 | | | | | | | | | | | | | |
| 01/27/24 | 10/01/21 | Client Auth Expense Disb | 0 | 0 | (0.09) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 07/29/23 | ACH Ref.#:182250 | | | | Payee: TRANS UNION LLC Batch ID:1275853 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 19826126-0 | | | | | | | | | | | | | |
| 01/04/24 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 12/31/23 | ACH Ref.#:179059 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1259388 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0030852656 | | | | | | | | | | | | | |
| 01/02/24 | 10/01/21 | FC Costs Disb | 0 | 0 | (50.00) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 12/01/23 | ACH Ref.#:178651 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1257015 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 121985 | | | | | | | | | | | | | |
| 01/02/24 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (2.46) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 12/01/23 | ACH Ref.#:178651 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1257015 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 121985 | | | | | | | | | | | | | |
| 01/02/24 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (19.56) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 12/01/23 | ACH Ref.#:178651 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1257015 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 121985 | | | | | | | | | | | | | |
| 12/26/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 11/01/23 | ACH Ref.#:177349 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1253495 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202311E | | | | | | | | | | | | | |
| 12/12/23 | 10/01/21 | Litigation Cost Disb | 0 | 0 | (91.50) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 11/20/23 | ACH Ref.#:175330 | | | | Payee: KLINEDINST PC Batch ID:1245023 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 215247 | | | | | | | | | | | | | |

Exhibit 2, p.17

0481

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12/08/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (12,984.29) | | 0.00 | $0.00 | ACH |
| 12/02/23 | ACH Ref.#:174764 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1242414 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0030608382 | | | | | | | | | | | | | |
| 12/04/23 | 12/10/23 | County Tax Bill 1 | 0 | 0 | (4,456.62) | | 395,193.03 | | (4,456.62) | (12,984.29) | | 0.00 | $0.00 | None |
| | ACH Ref.#:173925 | | | | Payee: ORANGE COUNTY Batch ID:1238072 Collateral ID:0 | | | | | | | | | |
| 11/25/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/01/23 | ACH Ref.#:172922 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1232448 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202310A | | | | | | | | | | | | | |
| 11/20/23 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/31/23 | ACH Ref.#:172193 | | | | Payee: ASSETVAL Batch ID:1228770 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1127-00508 | | | | | | | | | | | | | |
| 11/13/23 | 10/01/21 | Litigation Cost Disb | 0 | 0 | (2,562.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/27/23 | ACH Ref.#:171292 | | | | Payee: KLINEDINST PC Batch ID:1223368 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 212034 | | | | | | | | | | | | | |
| 11/13/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/31/23 | ACH Ref.#:171201 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1223353 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0030377406 | | | | | | | | | | | | | |
| 10/30/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/02/23 | ACH Ref.#:169222 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1212605 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0030116468 | | | | | | | | | | | | | |
| 10/27/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 09/01/23 | ACH Ref.#:169112 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1211501 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202309B | | | | | | | | | | | | | |
| 10/19/23 | 10/01/21 | Postponement Fee Disb | 0 | 0 | (100.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/06/23 | ACH Ref.#:167816 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1204976 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 116215 | | | | | | | | | | | | | |

Exhibit 2, p.18

0482

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 10/19/23 | 10/01/21 | Postponement Fee Disb | 0 | 0 | (100.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/06/23 | ACH Ref.#:167816 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1204976 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 116215 | | | | | | | | | | | | | |
| 10/19/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (44.04) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/06/23 | ACH Ref.#:167816 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1204976 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 116215 | | | | | | | | | | | | | |
| 10/19/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (22.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 10/06/23 | ACH Ref.#:167816 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1204976 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 116215 | | | | | | | | | | | | | |
| 10/16/23 | 10/01/21 | Litigation Cost Disb | 0 | 0 | (1,220.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 09/25/23 | ACH Ref.#:167244 | | | | Payee: KLINEDINST PC Batch ID:1202667 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 210379 | | | | | | | | | | | | | |
| 10/10/23 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (9.50) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 09/01/23 | ACH Ref.#:168514 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:1198168 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 161-SPTDA | | | | | | | | | | | | | |
| 10/02/23 | 10/01/21 | Litigation Cost Disb | 0 | 0 | (4,758.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/18/23 | ACH Ref.#:165278 | | | | Payee: KLINEDINST PC Batch ID:1191896 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 208489 | | | | | | | | | | | | | |
| 09/26/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 09/01/23 | ACH Ref.#:163808 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1187294 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0029832244 | | | | | | | | | | | | | |
| 09/22/23 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/31/23 | ACH Ref.#:163403 | | | | Payee: ASSETVAL Batch ID:1185485 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1125-0449 | | | | | | | | | | | | | |
| 09/21/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/01/23 | ACH Ref.#:163367 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1185110 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202308A | | | | | | | | | | | | | |

Exhibit 2, p.19

0483

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0875931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 08/30/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 07/01/23 | ACH Ref.#:125835 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1169146 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202307G | | | | | | | | | | | | | |
| 08/08/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 07/31/23 | ACH Ref.#:122563 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1151175 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0029565944 | | | | | | | | | | | | | |
| 07/30/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/01/23 | ACH Ref.#:121766 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1146924 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202308I | | | | | | | | | | | | | |
| 07/27/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 07/02/23 | ACH Ref.#:121483 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1145112 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0029322109 | | | | | | | | | | | | | |
| 07/25/23 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.83) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/30/23 | ACH Ref.#:121080 | | | | Payee: ASSETVAL Batch ID:1143086 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1123-01912 | | | | | | | | | | | | | |
| 07/21/23 | 10/01/21 | Postponement Fee Disb | 0 | 0 | (100.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/29/23 | ACH Ref.#:120732 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1141103 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 107114 | | | | | | | | | | | | | |
| 07/21/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (21.30) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/29/23 | ACH Ref.#:120732 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1141103 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 107114 | | | | | | | | | | | | | |
| 06/29/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 05/01/23 | ACH Ref.#:118323 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1127752 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202305G | | | | | | | | | | | | | |
| 06/29/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (0.83) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 05/01/23 | ACH Ref.#:118188 | | | | Payee: FEDEX Batch ID:1127478 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 813209182 | | | | | | | | | | | | | |

Exhibit 2, p.20

0484

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 08/12/23 | 10/01/21 | Recording AOM Disb | 0 | 0 | (88.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 05/31/23 | ACH Ref.#:116266 | | | | Payee: FIRST AMERICAN MORTGAGE SOLUTIONS Batch ID:1115772 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: AAM-42130 | | | | | | | | | | | | | |
| 08/12/23 | 10/01/21 | Recording AOM Disb | 0 | 0 | (2.50) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 05/31/23 | ACH Ref.#:116266 | | | | Payee: FIRST AMERICAN MORTGAGE SOLUTIONS Batch ID:1115772 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: AAM-42130 | | | | | | | | | | | | | |
| 08/12/23 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (12.50) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 05/31/23 | ACH Ref.#:116266 | | | | Payee: FIRST AMERICAN MORTGAGE SOLUTIONS Batch ID:1115772 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: AAM-42130 | | | | | | | | | | | | | |
| 08/05/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 08/01/23 | ACH Ref.#:115322 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1110886 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0029067154 | | | | | | | | | | | | | |
| 05/28/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 04/01/23 | ACH Ref.#:114639 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1108736 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-2023E | | | | | | | | | | | | | |
| 05/16/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| 05/08/23 | ACH Ref.#:113127 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1095929 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0028818710 | | | | | | | | | | | | | |
| 04/30/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 0.00 | $0.00 | ACH |
| | ACH Ref.#:111250 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1085130 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-2023D | | | | | | | | | | | | | |
| 04/28/23 | 10/01/21 | Late Charge Waive | 0 | 0 | 694.44 | | 395,193.03 | | | (8,527.67) | 694.44 | 0.00 | $0.00 | None |
| 04/25/23 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | (8,527.67) | | 694.44 | $0.00 | ACH |
| 03/31/23 | ACH Ref.#:110850 | | | | Payee: ASSETVAL Batch ID:1080475 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1120-00832 | | | | | | | | | | | | | |

Exhibit 2, p.21

0485

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 04/25/23 | 10/01/21 | Postponement Fee Disb | 0 | 0 | (100.00) | | 395,193.03 | | | (8,527.67) | | 694.44 | $0.00 | ACH |
| 04/20/23 | ACH Ref.#:110875 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1080475 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 100998 | | | | | | | | | | | | | |
| 04/25/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (21.30) | | 395,193.03 | | | (8,527.67) | | 694.44 | $0.00 | ACH |
| 04/20/23 | ACH Ref.#:110875 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1080475 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 100998 | | | | | | | | | | | | | |
| 04/19/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (30.00) | | 395,193.03 | | | (8,527.67) | | 694.44 | $0.00 | ACH |
| 04/08/23 | ACH Ref.#:110017 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1076418 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0028572531 | | | | | | | | | | | | | |
| 04/17/23 | 10/01/21 | BPO/Aprsl Cost Disb | 0 | 0 | (145.00) | | 395,193.03 | | | (8,527.67) | | 694.44 | $0.00 | ACH |
| 04/14/23 | ACH Ref.#:109638 | | | | Payee: eStreet Appraisal Management LLC Batch ID:1074303 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 23008089 | | | | | | | | | | | | | |
| 03/31/23 | 10/01/21 | Skip Trace Disb | 0 | 0 | (0.02) | | 395,193.03 | | | (8,527.67) | | 694.44 | $0.00 | ACH |
| | ACH Ref.#:107882 | | | | Payee: TRANSUNION RISK & ALTERNATIVE DATA SOLUT Batch ID:1064151 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1316097-202302-D | | | | | | | | | | | | | |
| 03/28/23 | 04/10/23 | County Tax Bill 2 | 0 | 0 | (4,327.20) | | 395,193.03 | | (4,327.20) | (8,527.67) | | 694.44 | $0.00 | None |
| | ACH Ref.#:107216 | | | | Payee: ORANGE COUNTY Batch ID:1053760 Collateral ID:0 | | | | | | | | | |
| 03/27/23 | 10/01/21 | Attorney Cost Disb | 0 | 0 | (950.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 03/22/23 | ACH Ref.#:107162 | | | | Payee: ROBERTSON, ANSCHUTZ, SCHNEID, CRANE Batch ID:1058707 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 500-423549 | | | | | | | | | | | | | |
| 03/27/23 | 10/01/21 | Filing Cost Disb | 0 | 0 | (188.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 03/22/23 | ACH Ref.#:107162 | | | | Payee: ROBERTSON, ANSCHUTZ, SCHNEID, CRANE Batch ID:1058707 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 500-423549 | | | | | | | | | | | | | |
| 03/15/23 | 10/01/21 | Property Inspection Disb | 0 | 0 | (20.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 03/07/23 | ACH Ref.#:105818 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:1050754 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0028341478 | | | | | | | | | | | | | |

Exhibit 2, p.22

0486

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 03/07/23 | 10/01/21 | Postponement Fee Disb | 0 | 0 | (100.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 03/02/23 | ACH Ref.#:104814 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1044825 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 98764 | | | | | | | | | | | | | |
| 03/07/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (31.02) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 03/02/23 | ACH Ref.#:104814 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1044825 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 98764 | | | | | | | | | | | | | |
| 02/24/23 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/31/23 | ACH Ref.#:103640 | | | | Payee: ASSETVAL Batch ID:1037098 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1118-00880 | | | | | | | | | | | | | |
| 02/17/23 | 10/01/21 | Late Charge Waive | 0 | 0 | 173.61 | | 395,193.03 | | | (4,200.47) | 173.61 | 694.44 | $0.00 | None |
| 02/17/23 | 02/01/23 | Late Charge Assess | 0 | 0 | (173.61) | | 395,193.03 | | | (4,200.47) | (173.61) | 868.05 | $0.00 | None |
| 02/13/23 | 10/01/21 | Late Charge Waive | 0 | 0 | 173.61 | | 395,193.03 | | | (4,200.47) | 173.61 | 694.44 | $0.00 | None |
| 02/12/23 | 01/01/23 | Late Charge Assess | 0 | 0 | (173.61) | | 395,193.03 | | | (4,200.47) | (173.61) | 868.05 | $0.00 | None |
| 01/17/23 | | | | | | | | | | | | | | |
| 02/09/23 | 10/01/21 | Attorney Cost Disb | 0 | 0 | (35.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 02/07/23 | ACH Ref.#:101939 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1027226 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI- 93867 | | | | | | | | | | | | | |
| 01/18/23 | 10/01/21 | Postponement Fee Disb | 0 | 0 | (100.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/18/23 | ACH Ref.#:99131 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1010827 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: Bereki - 91360 | | | | | | | | | | | | | |
| 01/18/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (31.02) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/18/23 | ACH Ref.#:99131 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1010827 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: Bereki - 91360 | | | | | | | | | | | | | |
| 01/12/23 | 10/01/21 | Attorney Cost Disb | 0 | 0 | (480.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/05/23 | ACH Ref.#:98634 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:1007702 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI- 92303 | | | | | | | | | | | | | |

Exhibit 2, p.23

0487

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 01/06/23 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (5.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/01/23 | ACH Ref.#:98106 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:1004268 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 118-SPTDA | | | | | | | | | | | | | |
| 01/06/23 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (9.50) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/01/23 | ACH Ref.#:98106 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:1004268 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 118-SPTDA | | | | | | | | | | | | | |
| 01/06/23 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (1.77) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/01/23 | ACH Ref.#:98106 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:1004268 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 118-SPTDA | | | | | | | | | | | | | |
| 01/06/23 | 10/01/21 | Recording AOM Disb | 0 | 0 | (1.00) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/01/23 | ACH Ref.#:98106 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:1004268 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 118-SPTDA | | | | | | | | | | | | | |
| 01/06/23 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (9.50) | | 395,193.03 | | | (4,200.47) | | 694.44 | $0.00 | ACH |
| 01/01/23 | ACH Ref.#:98106 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:1004268 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 118-SPTDA | | | | | | | | | | | | | |
| 12/31/22 | 10/01/21 | Int on Escrow Pmt | 0 | 0 | 0.40 | | 395,193.03 | | 0.40 | (4,200.47) | | 694.44 | $0.00 | Other |
| | | | | | Batch ID:1000910 | | | | | | | | | |
| 12/28/22 | 10/01/21 | Recording AOM Disb | 0 | 0 | (88.00) | | 395,193.03 | | | (4,200.87) | | 694.44 | $0.00 | ACH |
| 12/28/22 | ACH Ref.#:97104 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:997883 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 117-SPTDA | | | | | | | | | | | | | |
| 12/27/22 | 10/01/21 | Skip Trace Disb | 0 | 0 | (2.00) | | 395,193.03 | | | (4,200.87) | | 694.44 | $0.00 | ACH |
| 12/07/22 | ACH Ref.#:95914 | | | | Payee: EXPRESS CAPITAL SERVICES Batch ID:997241 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 11302022(SP) | | | | | | | | | | | | | |
| 12/12/22 | 10/01/21 | Assignment Prep Disb | 0 | 0 | (13.44) | | 395,193.03 | | | (4,200.87) | | 694.44 | $0.00 | ACH |
| 12/01/22 | ACH Ref.#:95040 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:988726 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 113-SPTDA | | | | | | | | | | | | | |

Exhibit 2, p.24

0488

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12/12/22 | 10/01/21 | Document Retrieval Disb | 0 | 0 | (13.50) | | 395,193.03 | | | (4,200.87) | | 694.44 | $0.00 | ACH |
| 12/01/22 | ACH Ref.#:95040 | | | | Payee: NATIONWIDE TITLE CLEARING, INC. Batch ID:988726 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 113-SPTDA | | | | | | | | | | | | | |
| 12/07/22 | 10/01/21 | Attorney Cost Disb | 0 | 0 | (803.00) | | 395,193.03 | | | (4,200.87) | | 694.44 | $0.00 | ACH |
| 12/05/22 | ACH Ref.#:94292 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:985528 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI- 80014 | | | | | | | | | | | | | |
| 12/05/22 | 12/10/22 | County Tax Bill 1 | 0 | 0 | (4,327.20) | | 395,193.03 | | (4,327.20) | (4,200.87) | | 694.44 | $0.00 | None |
| | ACH Ref.#:93845 | | | | Payee: ORANGE COUNTY Batch ID:983170 Collateral ID:0 | | | | | | | | | |
| 11/30/22 | 10/01/21 | FC Costs Disb | 0 | 0 | (180.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/21/22 | ACH Ref.#:93408 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:980935 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-89406 | | | | | | | | | | | | | |
| 11/30/22 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (65.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/21/22 | ACH Ref.#:93406 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:980935 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-89406 | | | | | | | | | | | | | |
| 11/30/22 | 10/01/21 | FC Costs Disb | 0 | 0 | (2,702.40) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/21/22 | ACH Ref.#:93406 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:980935 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-89406 | | | | | | | | | | | | | |
| 11/30/22 | 10/01/21 | FC Costs Disb | 0 | 0 | (125.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/21/22 | ACH Ref.#:93408 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:980935 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-89406 | | | | | | | | | | | | | |
| 11/30/22 | 10/01/21 | Recording Cost Disb | 0 | 0 | (85.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/21/22 | ACH Ref.#:93408 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:980935 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-89406 | | | | | | | | | | | | | |
| 11/30/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/22/22 | ACH Ref.#:93408 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:980935 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0027497263 | | | | | | | | | | | | | |

Exhibit 2, p.25

0489

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/28/22 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 10/31/22 | ACH Ref.#:93099 | | | | Payee: ASSETVAL Batch ID:978944 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1113-00572 | | | | | | | | | | | | | |
| 11/04/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 10/24/22 | ACH Ref.#:90671 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:868508 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0027241184 | | | | | | | | | | | | | |
| 11/03/22 | 10/01/21 | BPO/Aprsl Cost Disb | 0 | 0 | (115.00) | | 395,193.03 | | | 126.33 | | 694.44 | $0.00 | ACH |
| 11/01/22 | ACH Ref.#:90523 | | | | Payee: eStreet Appraisal Management LLC Batch ID:865853 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 22050897 | | | | | | | | | | | | | |
| 10/28/22 | 10/01/21 | Tax Refund No Report | 0 | 0 | 1,259.25 | | 395,193.03 | | 1,259.25 | 126.33 | | 694.44 | $0.00 | Check |
| 10/21/22 | | | | | Batch ID:960296 | | | | | | | | | |
| 10/26/22 | 10/01/21 | Tax Refund No Report | 0 | 0 | 8,422.60 | | 395,193.03 | | 8,422.60 | (1,132.92) | | 694.44 | $0.00 | Check |
| 10/21/22 | | | | | Batch ID:960296 | | | | | | | | | |
| 09/29/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | (9,555.52) | | 694.44 | $0.00 | ACH |
| 09/19/22 | ACH Ref.#:77020 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:944480 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0026988976 | | | | | | | | | | | | | |
| 08/31/22 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (15.13) | | 395,193.03 | | | (9,555.52) | | 694.44 | $0.00 | ACH |
| | ACH Ref.#:73716 | | | | Payee: FEDEX Batch ID:926225 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 781142645 | | | | | | | | | | | | | |
| 08/30/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | (9,555.52) | | 694.44 | $0.00 | ACH |
| 08/25/22 | ACH Ref.#:73503 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:925300 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0026720100 | | | | | | | | | | | | | |
| 08/22/22 | 12/10/22 | County Tax Bill 1 | 0 | 0 | (9,555.52) | | 395,193.03 | | (9,555.52) | (9,555.52) | | 694.44 | $0.00 | None |
| | ACH Ref.#:72579 | | | | Payee: ORANGE COUNTY Batch ID:919567 Collateral ID:0 | | | | | | | | | |
| 08/18/22 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 07/31/22 | ACH Ref.#:71862 | | | | Payee: ASSETVAL Batch ID:915542 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1108-00759 | | | | | | | | | | | | | |

Exhibit 2, p.26

0490

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 08/11/22 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (7.33) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 03/04/22 | ACH Ref.#:71571 | | | | Payee: COVIUS DOCUMENT SERVICES, LLC Batch ID:913569 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: S124315 | | | | | | | | | | | | | |
| 08/09/22 | 10/01/21 | Attorney Cost Disb | 0 | 0 | (180.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 08/05/22 | ACH Ref.#:71088 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:910982 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-81389 | | | | | | | | | | | | | |
| 08/09/22 | 10/01/21 | Recording Cost Disb | 0 | 0 | (88.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 08/05/22 | ACH Ref.#:71088 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:910982 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-81389 | | | | | | | | | | | | | |
| 08/09/22 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (75.34) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 08/05/22 | ACH Ref.#:71088 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:910982 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-81389 | | | | | | | | | | | | | |
| 08/09/22 | 10/01/21 | Recording Cost Disb | 0 | 0 | (97.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 08/05/22 | ACH Ref.#:71088 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:910982 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI-81389 | | | | | | | | | | | | | |
| 08/04/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 07/27/22 | ACH Ref.#:70528 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:907749 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0026473901 | | | | | | | | | | | | | |
| 07/26/22 | 10/01/21 | Property Pres Disb | 0 | 0 | (17.40) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 07/21/22 | ACH Ref.#:69392 | | | | Payee: BRON INC Batch ID:901457 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 2324386 | | | | | | | | | | | | | |
| 07/12/22 | 10/01/21 | FC Costs Disb | 0 | 0 | (180.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 07/07/22 | ACH Ref.#:67688 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:892992 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI -78788 | | | | | | | | | | | | | |
| 07/08/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 06/23/22 | ACH Ref.#:67384 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:891349 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0026225911 | | | | | | | | | | | | | |

Exhibit 2, p.27

0491

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 07/05/22 | 10/01/21 | FC Costs Disb | 0 | 0 | (700.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 08/29/22 | ACH Ref.#:66966 | | | | Payee: OLD REPUBLIC DEFAULT MANAGEMENTSERVICES Batch ID:888818 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: OR22006918-013419 | | | | | | | | | | | | | |
| 06/27/22 | 10/01/21 | AVM Advance Disb | 0 | 0 | (1.63) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 05/31/22 | ACH Ref.#:66248 | | | | Payee: ASSETVAL Batch ID:884398 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 1108-00766 | | | | | | | | | | | | | |
| 06/23/22 | 10/01/21 | FC Costs Disb | 0 | 0 | (830.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 06/21/22 | ACH Ref.#:65912 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:882624 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI -77134 | | | | | | | | | | | | | |
| 06/22/22 | 10/01/21 | Attorney Cost Disb | 0 | 0 | (540.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 06/16/22 | ACH Ref.#:65714 | | | | Payee: GHIDOTTI BERGER LLP Batch ID:882177 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: BEREKI -76881 | | | | | | | | | | | | | |
| 06/01/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 694.44 | $0.00 | ACH |
| 05/25/22 | ACH Ref.#:63569 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:870165 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0025990505 | | | | | | | | | | | | | |
| 05/17/22 | 05/01/22 | Late Charge Assess | 0 | 0 | (173.61) | | 395,193.03 | | | | (173.61) | 694.44 | $0.00 | None |
| 05/16/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 04/28/22 | ACH Ref.#:61905 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:860708 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0025744300 | | | | | | | | | | | | | |
| 04/20/22 | 10/01/21 | Skip Trace Disb | 0 | 0 | (30.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 04/13/22 | ACH Ref.#:59437 | | | | Payee: EXPRESS CAPITAL SERVICES Batch ID:844958 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: 3312022 | | | | | | | | | | | | | |
| 03/31/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 03/28/22 | ACH Ref.#:57115 | | | | Payee: GUARDIAN ASSET MANAGEMENT Batch ID:831940 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: T0025515462 | | | | | | | | | | | | | |
| 03/25/22 | 10/01/21 | Certified Mail Cost Disb | 0 | 0 | (10.44) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| | ACH Ref.#:56621 | | | | Payee: SOURCEHOV Batch ID:828744 Collateral ID:0 | | | | | | | | | |
| | Invoice Number: INVLIV00708269 | | | | | | | | | | | | | |

Exhibit 2, p.28

0492

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0575931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 03/17/22 | 10/01/21 | Property Inspection Pmt | 0 | 0 | 15.00 | | 395,193.03 | | | | | 520.83 | $0.00 | Reclassified |
| | | Batch ID:823163 | | | | | | | | | | | | |
| 03/17/22 | 10/01/21 | Property Inspection Pmt | 0 | 0 | (15.00) | | 395,193.03 | | | | | 520.83 | $0.00 | Reclassified |
| | | Batch ID:823163 | | | | | | | | | | | | |
| 03/17/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 02/22/22 | | ACH Ref.#:55679 Payee: GUARDIAN ASSET MANAGEMENT Batch ID:822582 Collateral ID:0 | | | | | | | | | | | | |
| | | Invoice Number: T0025076886 | | | | | | | | | | | | |
| 03/17/22 | 10/01/21 | Property Inspection Disb | 0 | 0 | (15.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 02/24/22 | | ACH Ref.#:55679 Payee: GUARDIAN ASSET MANAGEMENT Batch ID:822582 Collateral ID:0 | | | | | | | | | | | | |
| | | Invoice Number: T0025292748 | | | | | | | | | | | | |
| 03/18/22 | 10/01/21 | Skip Trace Disb | 0 | 0 | (2.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 03/10/22 | | ACH Ref.#:55819 Payee: EXPRESS CAPITAL SERVICES Batch ID:822323 Collateral ID:0 | | | | | | | | | | | | |
| | | Invoice Number: 2282022 | | | | | | | | | | | | |
| 03/11/22 | 10/01/21 | BPO Disb | 0 | 0 | (115.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 03/09/22 | | ACH Ref.#:55074 Payee: eStreet Appraisal Management LLC Batch ID:819087 Collateral ID:0 | | | | | | | | | | | | |
| | | Invoice Number: 22015909 | | | | | | | | | | | | |
| 03/09/22 | 10/01/21 | Tax Search Report Disb | 0 | 0 | (5.00) | | 395,193.03 | | | | | 520.83 | $0.00 | ACH |
| 02/01/22 | | ACH Ref.#:54876 Payee: CoreLogic Tax Services LLC Batch ID:817948 Collateral ID:0 | | | | | | | | | | | | |
| | | Invoice Number: 201-1281230 | | | | | | | | | | | | |
| 01/21/22 | 10/01/21 | New Loan | 0 | 0 | 0.00 | | 395,193.03 | | | | | 520.83 | $0.00 | None |
| 11/24/21 | 09/01/21 | Property Inspection Assess | 0 | 0 | (15.00) | | 395,193.03 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/30/21 | 09/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,571.10 | 395,193.03 | 1,901.16 | | | | 520.83 | $0.00 | PriorServicer |
| 09/30/21 | 09/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 398,764.13 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/30/21 | 08/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 398,764.13 | | | | | 520.83 | $3,472.26 | PriorServicer |
| 09/30/21 | 08/01/21 | Regular Payment | 0 | 7 | 3,472.26 | 1,563.61 | 398,764.13 | 1,908.65 | | | | 520.83 | $6,944.52 | PriorServicer |
| 09/30/21 | 07/01/21 | Unapplied Payment | 0 | 0 | 6,944.52 | | 398,327.74 | | | | | 520.83 | $6,944.52 | PriorServicer |
| 09/30/21 | 07/01/21 | Principal Only Payment | 0 | 0 | (6,944.52) | (6,944.52) | 398,327.74 | | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.29

0493

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0676931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 09/30/21 | 07/01/21 | Principal Only Payment | 0 | 0 | 6,944.52 | 6,944.52 | 391,383.22 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/31/21 | 07/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,556.15 | 398,327.74 | 1,916.11 | | | | 520.83 | $0.00 | PriorServicer |
| 07/31/21 | 07/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 399,883.89 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/31/21 | 06/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,548.73 | 399,883.89 | 1,923.53 | | | | 520.83 | $3,472.26 | PriorServicer |
| 07/31/21 | 06/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 401,432.62 | | | | | 520.83 | $3,472.26 | PriorServicer |
| 07/31/21 | 05/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,541.34 | 401,432.62 | 1,930.92 | | | | 520.83 | $6,944.52 | PriorServicer |
| 07/31/21 | 05/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 402,973.96 | | | | | 520.83 | $6,944.52 | PriorServicer |
| 07/31/21 | 04/01/21 | Unapplied Payment | 0 | 0 | 10,416.78 | | 402,973.96 | | | | | 520.83 | $10,416.78 | PriorServicer |
| 07/31/21 | 04/01/21 | Principal Only Payment | 0 | 0 | (10,416.78) | (10,416.78) | 402,973.96 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/31/21 | 04/01/21 | Principal Only Payment | 0 | 0 | 10,416.78 | 10,416.78 | 392,557.18 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/30/21 | 04/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,533.99 | 402,973.96 | 1,938.27 | | | | 520.83 | $0.00 | PriorServicer |
| 04/30/21 | 04/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 404,507.95 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/30/21 | 03/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 404,507.95 | | | | | 520.83 | $3,472.26 | PriorServicer |
| 04/30/21 | 03/01/21 | Regular Payment | 0 | 7 | 3,472.26 | 1,526.68 | 404,507.95 | 1,945.58 | | | | 520.83 | $6,944.52 | PriorServicer |
| 04/30/21 | 02/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,519.40 | 406,034.63 | 1,952.86 | | | | 520.83 | $6,944.52 | PriorServicer |
| 04/30/21 | 02/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 407,554.03 | | | | | 520.83 | $6,944.52 | PriorServicer |
| 04/30/21 | 01/01/21 | Unapplied Payment | 0 | 0 | 10,416.78 | | 407,554.03 | | | | | 520.83 | $10,416.78 | PriorServicer |
| 04/30/21 | 01/01/21 | Principal Only Payment | 0 | 0 | (10,416.78) | (10,416.78) | 407,554.03 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/30/21 | 01/01/21 | Principal Only Payment | 0 | 0 | 10,416.78 | 10,416.78 | 397,137.25 | | | | | 520.83 | $0.00 | PriorServicer |
| 01/31/21 | 01/01/21 | Regular Payment | 0 | 0 | 3,472.26 | 1,512.15 | 407,554.03 | 1,960.11 | | | | 520.83 | $0.00 | PriorServicer |
| 01/31/21 | 01/01/21 | Unapplied Payment | 0 | 0 | (3,472.26) | | 409,066.18 | | | | | 520.83 | $0.00 | PriorServicer |
| 01/31/21 | 12/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,504.94 | 409,066.18 | 1,967.32 | | | | 520.83 | $3,472.26 | PriorServicer |
| 01/31/21 | 12/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 410,571.12 | | | | | 520.83 | $3,472.26 | PriorServicer |
| 01/31/21 | 11/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 410,571.12 | | | | | 520.83 | $6,944.52 | PriorServicer |
| 01/31/21 | 11/01/20 | Regular Payment | 0 | 7 | 3,472.26 | 1,497.76 | 410,571.12 | 1,974.50 | | | | 520.83 | $10,416.78 | PriorServicer |
| 01/31/21 | 10/01/20 | Unapplied Payment | 0 | 0 | 10,416.78 | | 412,068.88 | | | | | 520.83 | $10,416.78 | PriorServicer |
| 01/31/21 | 10/01/20 | Principal Only Payment | 0 | 0 | (10,416.78) | (10,416.78) | 412,068.88 | | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.30

0494

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 01/31/21 | 10/01/20 | Principal Only Payment | 0 | 0 | 10,416.78 | 10,416.78 | 401,652.10 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/31/20 | 10/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,490.62 | 412,068.88 | 1,981.64 | | | | 520.83 | $0.00 | PriorServicer |
| 10/31/20 | 10/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 413,559.50 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/31/20 | 09/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,483.51 | 413,559.50 | 1,988.75 | | | | 520.83 | $3,472.26 | PriorServicer |
| 10/31/20 | 09/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 415,043.01 | | | | | 520.83 | $3,472.26 | PriorServicer |
| 10/31/20 | 08/01/20 | Unapplied Payment | 0 | 0 | 6,944.52 | | 415,043.01 | | | | | 520.83 | $6,944.52 | PriorServicer |
| 10/31/20 | 08/01/20 | Principal Only Payment | 0 | 0 | (6,944.52) | (6,944.52) | 415,043.01 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/31/20 | 08/01/20 | Principal Only Payment | 0 | 0 | 6,944.52 | 6,944.52 | 408,098.49 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/27/20 | 08/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,476.44 | 415,043.01 | 1,995.82 | | | | 520.83 | $0.00 | PriorServicer |
| 08/27/20 | 08/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 416,519.45 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/27/20 | 07/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,469.40 | 416,519.45 | 2,002.86 | | | | 520.83 | $3,472.26 | PriorServicer |
| 08/27/20 | 07/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 417,988.85 | | | | | 520.83 | $3,472.26 | PriorServicer |
| 08/27/20 | 06/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 417,988.85 | | | | | 520.83 | $6,944.52 | PriorServicer |
| 08/27/20 | 06/01/20 | Regular Payment | 0 | 7 | 3,472.26 | 1,462.39 | 417,988.85 | 2,009.87 | | | | 520.83 | $10,416.78 | PriorServicer |
| 08/27/20 | 05/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,455.42 | 419,451.24 | 2,016.84 | | | | 520.83 | $10,416.78 | PriorServicer |
| 08/27/20 | 05/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 420,906.66 | | | | | 520.83 | $10,416.78 | PriorServicer |
| 08/27/20 | 04/01/20 | Unapplied Payment | 0 | 0 | (3,472.26) | | 420,906.66 | | | | | 520.83 | $13,889.04 | PriorServicer |
| 08/27/20 | 04/01/20 | Regular Payment | 0 | 7 | 3,472.26 | 1,448.47 | 420,906.66 | 2,023.79 | | | | 520.83 | $17,361.30 | PriorServicer |
| 08/27/20 | 03/01/20 | Unapplied Payment | 0 | 0 | 17,361.30 | | 422,355.13 | | | | | 520.83 | $17,361.30 | PriorServicer |
| 08/27/20 | 03/01/20 | Principal Only Payment | 0 | 0 | (17,361.30) | (17,361.30) | 422,355.13 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/27/20 | 03/01/20 | Principal Only Payment | 0 | 0 | 17,361.30 | 17,361.30 | 404,993.83 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/16/20 | 03/01/20 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 422,355.13 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/16/20 | 03/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,441.55 | 422,357.87 | 2,030.71 | | | | 520.83 | $0.00 | PriorServicer |
| 02/17/20 | 02/01/20 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 423,799.42 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/17/20 | 02/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,434.55 | 423,827.16 | 2,037.71 | | | | 520.83 | $0.00 | PriorServicer |
| 12/30/19 | 01/01/20 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 425,261.71 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/30/19 | 01/01/20 | Regular Payment | 0 | 0 | 3,472.26 | 1,427.69 | 425,264.45 | 2,044.57 | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.31
0495

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/30/19 | 12/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 426,692.14 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/30/19 | 12/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,420.87 | 426,694.88 | 2,051.39 | | | | 520.83 | $0.00 | PriorServicer |
| 11/14/19 | 11/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 428,115.75 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/14/19 | 11/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,414.08 | 428,118.49 | 2,058.18 | | | | 520.83 | $0.00 | PriorServicer |
| 10/14/19 | 10/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 429,532.57 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/14/19 | 10/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,407.33 | 429,535.31 | 2,064.93 | | | | 520.83 | $0.00 | PriorServicer |
| 09/12/19 | 09/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 430,942.64 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/12/19 | 09/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,400.60 | 430,945.38 | 2,071.66 | | | | 520.83 | $0.00 | PriorServicer |
| 08/05/19 | 08/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 432,345.98 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/05/19 | 08/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,393.91 | 432,348.72 | 2,078.35 | | | | 520.83 | $0.00 | PriorServicer |
| 06/30/19 | 07/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 433,742.63 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/30/19 | 07/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,387.25 | 433,745.37 | 2,085.01 | | | | 520.83 | $0.00 | PriorServicer |
| 06/07/19 | 06/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 435,132.62 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/07/19 | 06/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,380.62 | 435,135.36 | 2,091.64 | | | | 520.83 | $0.00 | PriorServicer |
| 05/07/19 | 05/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 436,515.98 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/07/19 | 05/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,374.02 | 436,518.72 | 2,098.24 | | | | 520.83 | $0.00 | PriorServicer |
| 04/08/19 | 04/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 437,892.74 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/08/19 | 04/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,367.46 | 437,895.48 | 2,104.80 | | | | 520.83 | $0.00 | PriorServicer |
| 03/11/19 | 03/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 439,262.94 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/11/19 | 03/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,360.92 | 439,265.68 | 2,111.34 | | | | 520.83 | $0.00 | PriorServicer |
| 02/04/19 | 02/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 440,626.60 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/04/19 | 02/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,354.42 | 440,629.34 | 2,117.84 | | | | 520.83 | $0.00 | PriorServicer |
| 12/28/18 | 01/01/19 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 441,983.76 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/28/18 | 01/01/19 | Regular Payment | 0 | 0 | 3,472.26 | 1,347.95 | 441,986.50 | 2,124.31 | | | | 520.83 | $0.00 | PriorServicer |
| 12/07/18 | 12/01/18 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 443,334.45 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/07/18 | 12/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,341.51 | 443,337.19 | 2,130.75 | | | | 520.83 | $0.00 | PriorServicer |
| 10/31/18 | 11/01/18 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 444,678.70 | | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.32

0496

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 10/31/18 | 11/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,335.10 | 444,681.44 | 2,137.16 | | | | 520.83 | $0.00 | PriorServicer |
| 09/30/18 | 10/01/18 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 446,018.54 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/30/18 | 10/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,328.72 | 446,019.28 | 2,143.54 | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/18 | 09/01/18 | Principal Only Payment | 0 | 0 | 0.74 | 0.74 | 447,348.00 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/18 | 09/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,322.38 | 447,348.74 | 2,149.88 | | | | 520.83 | $0.00 | PriorServicer |
| 08/03/18 | 08/01/18 | Principal Only Payment | 0 | 0 | 0.74 | 0.74 | 448,671.12 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/03/18 | 08/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,316.07 | 448,671.86 | 2,156.19 | | | | 520.83 | $0.00 | PriorServicer |
| 06/30/18 | 07/01/18 | Principal Only Payment | 0 | 0 | 0.74 | 0.74 | 449,987.93 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/30/18 | 07/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,309.79 | 449,988.67 | 2,162.47 | | | | 520.83 | $0.00 | PriorServicer |
| 06/30/18 | 07/01/18 | Regular Payment | 7 | 0 | (3,472.26) | (1,309.79) | 451,298.46 | (2,162.47) | | | | 520.83 | $0.00 | PriorServicer |
| 06/30/18 | 07/01/18 | Principal Only Payment | 0 | 0 | (0.74) | (0.74) | 449,988.67 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/29/18 | 07/01/18 | Principal Only Payment | 0 | 0 | 0.74 | 0.74 | 449,987.93 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/29/18 | 07/01/18 | Regular Payment | 0 | 7 | 3,472.26 | 1,309.79 | 449,988.67 | 2,162.47 | | | | 520.83 | $0.00 | PriorServicer |
| 06/11/18 | 06/01/18 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 451,298.46 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/11/18 | 06/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,303.53 | 451,301.20 | 2,168.73 | | | | 520.83 | $0.00 | PriorServicer |
| 05/03/18 | 05/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,297.31 | 452,604.73 | 2,174.95 | | | | 520.83 | $0.00 | PriorServicer |
| 03/30/18 | 04/01/18 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 453,902.04 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/30/18 | 04/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,290.99 | 453,929.78 | 2,181.27 | | | | 520.83 | $0.00 | PriorServicer |
| 03/30/18 | 04/01/18 | Regular Payment | 7 | 0 | (3,472.26) | (1,290.99) | 455,220.77 | (2,181.27) | | | | 520.83 | $0.00 | PriorServicer |
| 03/30/18 | 04/01/18 | Principal Only Payment | 0 | 0 | (27.74) | (27.74) | 453,929.78 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/30/18 | 04/01/18 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 453,902.04 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/30/18 | 04/01/18 | Regular Payment | 0 | 7 | 3,472.26 | 1,290.99 | 453,929.78 | 2,181.27 | | | | 520.83 | $0.00 | PriorServicer |
| 03/01/18 | 03/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,284.84 | 455,220.77 | 2,187.42 | | | | 520.83 | $0.00 | PriorServicer |
| 02/09/18 | 02/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,278.71 | 456,505.61 | 2,193.55 | | | | 520.83 | $0.00 | PriorServicer |
| 12/29/17 | 01/01/18 | Regular Payment | 0 | 0 | 3,472.26 | 1,272.61 | 457,784.32 | 2,199.65 | | | | 520.83 | $0.00 | PriorServicer |
| 12/04/17 | 12/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,266.54 | 459,056.93 | 2,205.72 | | | | 520.83 | $0.00 | PriorServicer |
| 11/01/17 | 11/01/17 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 460,323.47 | | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.33

0497

# Shellpoint Mortgage Servicing
## Loan History Summary



**Loan ID** 0675931091 **Borrower Name** ADAM BEREKI

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/01/17 | 11/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,260.49 | 460,326.21 | 2,211.77 | | | | 520.83 | $0.00 | PriorServicer |
| 09/29/17 | 10/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,254.48 | 461,586.70 | 2,217.78 | | | | 520.83 | $0.00 | PriorServicer |
| 09/11/17 | 09/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,248.50 | 462,841.18 | 2,223.76 | | | | 520.83 | $0.00 | PriorServicer |
| 08/08/17 | 08/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,242.54 | 464,089.68 | 2,229.72 | | | | 520.83 | $0.00 | PriorServicer |
| 07/10/17 | 07/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,236.62 | 465,332.22 | 2,235.64 | | | | 520.83 | $0.00 | PriorServicer |
| 06/05/17 | 06/01/17 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 466,568.84 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/05/17 | 06/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,230.71 | 466,571.58 | 2,241.55 | | | | 520.83 | $0.00 | PriorServicer |
| 05/01/17 | 05/01/17 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 467,802.29 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/01/17 | 05/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,224.71 | 467,830.03 | 2,247.55 | | | | 520.83 | $0.00 | PriorServicer |
| 04/03/17 | 04/01/17 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 469,054.74 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/03/17 | 04/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,218.73 | 469,082.48 | 2,253.53 | | | | 520.83 | $0.00 | PriorServicer |
| 03/13/17 | 03/01/17 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 470,301.21 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/13/17 | 03/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,212.79 | 470,328.95 | 2,259.47 | | | | 520.83 | $0.00 | PriorServicer |
| 02/06/17 | 02/01/17 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 471,541.74 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/06/17 | 02/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,206.87 | 471,569.48 | 2,265.39 | | | | 520.83 | $0.00 | PriorServicer |
| 01/09/17 | 01/01/17 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 472,776.35 | | | | | 520.83 | $0.00 | PriorServicer |
| 01/09/17 | 01/01/17 | Regular Payment | 0 | 0 | 3,472.26 | 1,200.99 | 472,804.09 | 2,271.27 | | | | 520.83 | $0.00 | PriorServicer |
| 12/05/16 | 12/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 474,005.08 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/05/16 | 12/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,195.13 | 474,032.82 | 2,277.13 | | | | 520.83 | $0.00 | PriorServicer |
| 11/07/16 | 11/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 475,227.95 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/07/16 | 11/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,189.29 | 475,255.69 | 2,282.97 | | | | 520.83 | $0.00 | PriorServicer |
| 10/03/16 | 10/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 476,444.98 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/03/16 | 10/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,183.49 | 476,472.72 | 2,288.77 | | | | 520.83 | $0.00 | PriorServicer |
| 09/09/16 | 09/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 477,656.21 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/09/16 | 09/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,177.71 | 477,683.95 | 2,294.55 | | | | 520.83 | $0.00 | PriorServicer |
| 08/05/16 | 08/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 478,861.66 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/05/16 | 08/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,171.97 | 478,889.40 | 2,300.29 | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.34

0498

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 07/07/16 | 07/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 480,061.37 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/07/16 | 07/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,168.24 | 480,089.11 | 2,306.02 | | | | 520.83 | $0.00 | PriorServicer |
| 06/07/16 | 06/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 481,255.35 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/07/16 | 06/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,160.55 | 481,283.09 | 2,311.71 | | | | 520.83 | $0.00 | PriorServicer |
| 05/04/16 | 05/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 482,443.64 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/04/16 | 05/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,154.88 | 482,471.38 | 2,317.38 | | | | 520.83 | $0.00 | PriorServicer |
| 04/04/16 | 04/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 483,626.26 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/04/16 | 04/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,149.24 | 483,654.00 | 2,323.02 | | | | 520.83 | $0.00 | PriorServicer |
| 03/09/16 | 03/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 484,803.24 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/09/16 | 03/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,143.63 | 484,830.98 | 2,328.63 | | | | 520.83 | $0.00 | PriorServicer |
| 02/03/16 | 02/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 485,974.61 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/03/16 | 02/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,138.05 | 486,002.35 | 2,334.21 | | | | 520.83 | $0.00 | PriorServicer |
| 12/31/15 | 01/01/16 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 487,140.40 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/31/15 | 01/01/16 | Regular Payment | 0 | 0 | 3,472.26 | 1,132.49 | 487,168.14 | 2,339.77 | | | | 520.83 | $0.00 | PriorServicer |
| 12/04/15 | 12/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 488,300.63 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/04/15 | 12/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,126.95 | 488,328.37 | 2,345.31 | | | | 520.83 | $0.00 | PriorServicer |
| 11/05/15 | 11/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 489,455.32 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/05/15 | 11/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,121.45 | 489,483.06 | 2,350.81 | | | | 520.83 | $0.00 | PriorServicer |
| 10/06/15 | 10/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 490,604.51 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/06/15 | 10/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,115.97 | 490,632.25 | 2,356.29 | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/15 | 09/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 491,748.22 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/15 | 09/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,110.51 | 491,775.96 | 2,361.75 | | | | 520.83 | $0.00 | PriorServicer |
| 08/04/15 | 08/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 492,886.47 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/04/15 | 08/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,105.08 | 492,914.21 | 2,367.18 | | | | 520.83 | $0.00 | PriorServicer |
| 07/07/15 | 07/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 494,019.29 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/07/15 | 07/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,099.68 | 494,047.03 | 2,372.58 | | | | 520.83 | $0.00 | PriorServicer |
| 06/03/15 | 06/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 495,146.71 | | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.35

0499

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 06/03/15 | 06/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,094.31 | 495,174.45 | 2,377.95 | | | | 520.83 | $0.00 | PriorServicer |
| 05/06/15 | 05/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 496,268.76 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/06/15 | 05/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,088.95 | 496,296.50 | 2,383.31 | | | | 520.83 | $0.00 | PriorServicer |
| 04/06/15 | 04/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 497,385.45 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/06/15 | 04/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,083.63 | 497,413.19 | 2,388.63 | | | | 520.83 | $0.00 | PriorServicer |
| 03/06/15 | 03/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 498,498.82 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/06/15 | 03/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,078.33 | 498,524.56 | 2,393.93 | | | | 520.83 | $0.00 | PriorServicer |
| 02/05/15 | 02/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 499,602.89 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/05/15 | 02/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,073.05 | 499,630.63 | 2,399.21 | | | | 520.83 | $0.00 | PriorServicer |
| 01/05/15 | 01/01/15 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 500,703.68 | | | | | 520.83 | $0.00 | PriorServicer |
| 01/05/15 | 01/01/15 | Regular Payment | 0 | 0 | 3,472.26 | 1,067.81 | 500,731.42 | 2,404.45 | | | | 520.83 | $0.00 | PriorServicer |
| 11/30/14 | 12/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 501,799.23 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/30/14 | 12/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,062.58 | 501,826.97 | 2,409.68 | | | | 520.83 | $0.00 | PriorServicer |
| 11/04/14 | 11/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 502,889.55 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/04/14 | 11/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,057.38 | 502,917.29 | 2,414.88 | | | | 520.83 | $0.00 | PriorServicer |
| 10/02/14 | 10/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 503,974.67 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/02/14 | 10/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,052.21 | 504,002.41 | 2,420.05 | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/14 | 09/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 505,054.62 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/14 | 09/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,047.08 | 505,082.36 | 2,425.20 | | | | 520.83 | $0.00 | PriorServicer |
| 08/07/14 | 08/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 506,129.42 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/07/14 | 08/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,041.93 | 506,157.16 | 2,430.33 | | | | 520.83 | $0.00 | PriorServicer |
| 07/02/14 | 07/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 507,199.09 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/02/14 | 07/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,036.83 | 507,226.83 | 2,435.43 | | | | 520.83 | $0.00 | PriorServicer |
| 06/06/14 | 06/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 508,263.66 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/06/14 | 06/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,031.75 | 508,291.40 | 2,440.51 | | | | 520.83 | $0.00 | PriorServicer |
| 05/07/14 | 05/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 509,323.15 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/07/14 | 05/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,026.70 | 509,350.89 | 2,445.56 | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.36

0500

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0875831091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 04/04/14 | 04/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 510,377.59 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/04/14 | 04/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,021.67 | 510,405.33 | 2,450.59 | | | | 520.83 | $0.00 | PriorServicer |
| 03/06/14 | 03/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 511,427.00 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/06/14 | 03/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,016.67 | 511,454.74 | 2,455.59 | | | | 520.83 | $0.00 | PriorServicer |
| 02/07/14 | 02/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 512,471.41 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/07/14 | 02/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,011.69 | 512,499.15 | 2,460.57 | | | | 520.83 | $0.00 | PriorServicer |
| 12/30/13 | 01/01/14 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 513,510.84 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/30/13 | 01/01/14 | Regular Payment | 0 | 0 | 3,472.26 | 1,006.73 | 513,538.58 | 2,465.53 | | | | 520.83 | $0.00 | PriorServicer |
| 11/30/13 | 12/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 514,545.31 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/30/13 | 12/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 1,001.80 | 514,573.05 | 2,470.46 | | | | 520.83 | $0.00 | PriorServicer |
| 11/06/13 | 11/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 515,574.85 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/06/13 | 11/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 996.89 | 515,602.59 | 2,475.37 | | | | 520.83 | $0.00 | PriorServicer |
| 10/03/13 | 10/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 516,599.48 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/03/13 | 10/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 992.00 | 516,627.22 | 2,480.26 | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/13 | 09/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 517,619.22 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/04/13 | 09/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 987.14 | 517,646.96 | 2,485.12 | | | | 520.83 | $0.00 | PriorServicer |
| 08/02/13 | 08/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 518,634.10 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/02/13 | 08/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 982.30 | 518,661.84 | 2,489.96 | | | | 520.83 | $0.00 | PriorServicer |
| 07/11/13 | 07/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 519,644.14 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/11/13 | 07/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 977.48 | 519,671.88 | 2,494.78 | | | | 520.83 | $0.00 | PriorServicer |
| 06/04/13 | 06/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 520,649.36 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/04/13 | 06/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 972.69 | 520,677.10 | 2,499.57 | | | | 520.83 | $0.00 | PriorServicer |
| 05/06/13 | 05/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 521,649.79 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/06/13 | 05/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 967.92 | 521,677.53 | 2,504.34 | | | | 520.83 | $0.00 | PriorServicer |
| 04/11/13 | 04/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 522,645.45 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/11/13 | 04/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 963.17 | 522,673.19 | 2,509.09 | | | | 520.83 | $0.00 | PriorServicer |
| 03/12/13 | 03/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 523,636.36 | | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.37

0501

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Rev Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 03/12/13 | 03/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 958.44 | 523,664.10 | 2,513.82 | | | | 520.83 | $0.00 | PriorServicer |
| 02/08/13 | 02/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 524,622.54 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/08/13 | 02/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 953.74 | 524,650.28 | 2,518.52 | | | | 520.83 | $0.00 | PriorServicer |
| 01/08/13 | 01/01/13 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 525,604.02 | | | | | 520.83 | $0.00 | PriorServicer |
| 01/08/13 | 01/01/13 | Regular Payment | 0 | 0 | 3,472.26 | 949.06 | 525,631.76 | 2,523.20 | | | | 520.83 | $0.00 | PriorServicer |
| 12/12/12 | 12/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 526,580.82 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/12/12 | 12/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 944.40 | 526,608.56 | 2,527.86 | | | | 520.83 | $0.00 | PriorServicer |
| 11/06/12 | 11/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 527,552.96 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/06/12 | 11/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 939.77 | 527,580.70 | 2,532.49 | | | | 520.83 | $0.00 | PriorServicer |
| 10/04/12 | 10/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 528,520.47 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/04/12 | 10/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 935.15 | 528,548.21 | 2,537.11 | | | | 520.83 | $0.00 | PriorServicer |
| 09/10/12 | 09/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 529,483.36 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/10/12 | 09/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 930.58 | 529,511.10 | 2,541.70 | | | | 520.83 | $0.00 | PriorServicer |
| 08/13/12 | 08/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 530,441.68 | | | | | 520.83 | $0.00 | PriorServicer |
| 08/13/12 | 08/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 925.99 | 530,469.40 | 2,546.27 | | | | 520.83 | $0.00 | PriorServicer |
| 07/06/12 | 07/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 531,395.39 | | | | | 520.83 | $0.00 | PriorServicer |
| 07/06/12 | 07/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 921.44 | 531,423.13 | 2,550.82 | | | | 520.83 | $0.00 | PriorServicer |
| 06/08/12 | 06/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 532,344.57 | | | | | 520.83 | $0.00 | PriorServicer |
| 06/08/12 | 06/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 916.92 | 532,372.31 | 2,555.34 | | | | 520.83 | $0.00 | PriorServicer |
| 05/09/12 | 05/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 533,289.23 | | | | | 520.83 | $0.00 | PriorServicer |
| 05/09/12 | 05/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 912.41 | 533,316.97 | 2,559.85 | | | | 520.83 | $0.00 | PriorServicer |
| 04/09/12 | 04/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 534,229.38 | | | | | 520.83 | $0.00 | PriorServicer |
| 04/09/12 | 04/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 907.93 | 534,257.12 | 2,564.33 | | | | 520.83 | $0.00 | PriorServicer |
| 03/12/12 | 03/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 535,165.05 | | | | | 520.83 | $0.00 | PriorServicer |
| 03/12/12 | 03/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 903.47 | 535,192.79 | 2,568.79 | | | | 520.83 | $0.00 | PriorServicer |
| 02/06/12 | 02/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 536,096.26 | | | | | 520.83 | $0.00 | PriorServicer |
| 02/06/12 | 02/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 899.02 | 536,124.00 | 2,573.24 | | | | 520.83 | $0.00 | PriorServicer |

Exhibit 2, p.38

0502

# Shellpoint Mortgage Servicing
## Loan History Summary



| Loan ID | Borrower Name |
|---|---|
| 0675931091 | ADAM BEREKI |

| Trans Date / Eff Date | Due Date | Trans Desc | Code | Rev Flag | Trans Amount | Principal Amount | Principal Balance | Interest Amount | Escrow Amount | Escrow Balance | Late Charge Amount | Late Charge Balance | Unappl. Balance | Money Type |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12/31/11 | 01/01/12 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 537,023.02 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/31/11 | 01/01/12 | Regular Payment | 0 | 0 | 3,472.26 | 894.60 | 537,050.76 | 2,577.66 | | | | 520.83 | $0.00 | PriorServicer |
| 12/08/11 | 12/01/11 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 537,945.36 | | | | | 520.83 | $0.00 | PriorServicer |
| 12/08/11 | 12/01/11 | Regular Payment | 0 | 0 | 3,472.26 | 890.21 | 537,973.10 | 2,582.05 | | | | 520.83 | $0.00 | PriorServicer |
| 11/10/11 | 11/01/11 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 538,863.31 | | | | | 520.83 | $0.00 | PriorServicer |
| 11/10/11 | 11/01/11 | Regular Payment | 0 | 0 | 3,472.26 | 885.83 | 538,891.05 | 2,586.43 | | | | 520.83 | $0.00 | PriorServicer |
| 10/07/11 | 10/01/11 | Principal Only Payment | 0 | 0 | 2.74 | 2.74 | 539,776.88 | | | | | 520.83 | $0.00 | PriorServicer |
| 10/07/11 | 10/01/11 | Regular Payment | 0 | 0 | 3,472.26 | 881.59 | 539,779.62 | 2,590.67 | | | | 520.83 | $0.00 | PriorServicer |
| 09/15/11 | 09/01/11 | Principal Only Payment | 0 | 0 | 27.74 | 27.74 | 540,661.21 | | | | | 520.83 | $0.00 | PriorServicer |
| 09/15/11 | 09/01/11 | Regular Payment | 0 | 0 | 3,472.26 | 877.26 | 540,688.95 | 2,595.00 | | | | 520.83 | $0.00 | PriorServicer |
| | | | | | | $221,692.80 | | $346,803.52 | $9,725.11 | | | | | |

Exhibit 2, p.39

0503

# Exhibit 3

| | |
|---|---|
| Adam Benoit<br><br>818 Spirit<br>Costa Mesa, CA 92626<br><br>Borrower's Name and Address<br>"You" or "Borrower" means each borrower above, jointly and severally | CHARTER ONE BANK, N.A.<br>1215 Superior Ave.<br>Cleveland, OH 44114<br><br>Lender's Name and Address<br>"We" or "us" means the lender named above |

| | | |
|---|---|---|
| No. _____<br>Date 10/30/2006<br>Line of Credit $ $110,783.00 | Initial Advance $ 24,341.00<br>Draw Period 10 years<br>Repayment Period 15 years | Maturity Date: 300 months<br>Billing Cycle: Ends the 3rd of every month<br>Payment Date: The 23rd of every month |

## CREDIT LINE AGREEMENT

**GENERALLY:** This Credit Line Agreement ("Agreement") is an agreement about your home equity line of credit ("Credit Line Account"). Many of the terms we use in this Agreement have special meanings. The term "this plan" means your home equity line of credit. The term "loan account balance" means the sum of the unpaid principal of loans made under this plan, plus unpaid but earned finance charges. "Line of Credit" or "Credit Limit" means the maximum amount of principal we will ordinarily allow you to owe us under this plan at any time. In addition, we will use the following terms for this plan: "Initial Advance" means the amount of the loan you request at the closing.

**TERM:** The term of your Credit Line Account will begin as of the date of the Agreement and will continue until termination of your Credit Line Account. All indebtedness under this Agreement, if not already paid pursuant to the payment provisions below, will be due and payable upon termination. The "Draw Period" is ten 10) years from the date your Credit Line Account is activated. Activation is defined as the earlier of i) the date of the initial disbursement on your Credit Line Account; or (ii) the date the Credit Line Account is set up on our servicing system ("Activation"). After the Draw Period ends, you will no longer be able to obtain loans and you must repay the outstanding balance over fifteen (15) years (the "Repayment Period"). The end of the Repayment Period is known as the "Maturity Date". You agree that, at our sole discretion, we may renew or extend the period during which you may obtain advances or make payments.

**REQUESTING A LOAN:** You request a loan under this Agreement by writing a special check that we have given you for this purpose.

**VARIABLE RATE:** The **ANNUAL PERCENTAGE RATE** may change, and will be -0.50000 % ( Index ) the following index: the highest Prime Rate most recently published in the Money Rates section of The Wall Street Journal determined on the last business day of each month ("Index"). Any increase or decrease in the Annual Percentage Rate will take effect on the first day of the next billing cycle. The Annual Percentage Rate may increase if this index increases and may decrease if this index decreases. An increase will result in an increase in the Finance Charge and it may have the effect of increasing your periodic minimum payment. A decrease will result in a decrease in the Finance Charge and it may have the effect of decreasing your periodic minimum payment. The Annual Percentage Rate will not change more often than once a month.

If the index changes more frequently than the Annual Percentage Rate, we will always use the index in effect on the last day of the billing cycle to determine the new Annual Percentage Rate. In such cases, we will ignore any changes in the index that occur between Annual Percentage Rate adjustments.

The "Annual Percentage Rate" referred to in this section is the annual rate which corresponds to the periodic rate applied to the balance as described above. The corresponding **ANNUAL PERCENTAGE RATE** will never exceed 18 % and will never exceed the highest allowable rate for this type of agreement as determined by applicable state or federal law.

***HOW THE LOAN IS ADVANCED:*** When you request a loan, we will, subject to any limitations contained in this Agreement, advance exactly the amount you request. We will make the advance by depositing the amount in your transaction account, by advancing the money directly to you, or by paying a designated third person or account, depending on how we agree to make the advance. We will record the amount as a loan in your loan account.

However, we will not ordinarily grant any request for a loan which would cause the unpaid principal of your loan account balance to be greater than the Line of Credit listed in this Agreement. We may, at our option, grant such a request without obligating ourselves to do so in the future. If we allow you to exceed your Line of Credit amount, we may demand the immediate payment of any amount in excess of the Line of Credit amount or refuse advances as long as the principal balance exceeds the Line of Credit amount.

**PERIODIC FINANCE CHARGES.** You will pay a periodic **FINANCE CHARGE** on the outstanding amount of the principal balance under your Credit Line, each billing cycle during the Draw Period and the Repayment Period. The periodic **FINANCE CHARGE** will begin to accrue on the date Credit Advances are posted to your Credit Line Account. There is no "grace period" which would allow you to avoid a periodic **FINANCE CHARGE** on your Credit Advances.

**Method Used to Determine the Balance on Which the Periodic FINANCE CHARGE Will Be Computed.** We calculate the periodic **FINANCE CHARGE** on your Credit Line Account by determining the average daily balance of your Credit Line Account and multiplying that amount by the applicable daily periodic rate, then by the number of days in the billing cycle. To get the average daily balance, we take the beginning unpaid principal balance of your Credit Line Account each day and add new Credit Advances and subtract any credits and any principal repaid with any payments. This gives us the daily principal balance each day. Then we add up all the daily principal balances for the billing cycle and divide the total by the number of days in the billing cycle (the number of days since your last statement). This gives us the average daily balance. The average daily balance does not include finance charges, insurance premiums, annual fees or other charges.

**How You May Compute the Periodic Finance Charges on Your Line of Credit Account.** When the average daily balance has been computed, we multiply the average daily balance by the daily periodic rate, which is arrived at by dividing the Annual Percentage Rate by the number of days in the year. The result is multiplied by the number of days in the billing cycle. This figure is the periodic **FINANCE CHARGE** assessed for the billing cycle.

On the day of the preparation of this Agreement, the daily periodic **FINANCE CHARGE** was 0.02110 % which corresponds to an **ANNUAL PERCENTAGE RATE** of 7.70000 %. The Annual Percentage Rate includes interest and no other costs.

**ADDITIONAL FINANCE CHARGES:** You agree to pay the following additional **FINANCE CHARGES:**

**Annual Fee** $100.00 will be due annually during the Draw Period after the expiration of twenty four (24) months from the date of Activation of the Credit Line Account. The Annual Fee shall be waived for each year that it is due if, for the immediately preceding twelve (12) months, the average outstanding balance on your Credit Line Account during each twelve (12) months is 20% or more of the Line of Credit.

**Prepayment Fee:** The lesser of $350 or one percent (1%) of the Credit Limit if you cancel this Agreement within three (3) years of the Activation of the Agreement.

**HOW YOU REPAY YOUR LOANS:**

a) **Draw Period:** On or before each payment due date, you agree to make a minimum payment. The minimum payment is the accrued Finance Charges on the last day of the billing cycle and other charges imposed during the billing cycle. You must also pay any past due amounts and any amount that exceeds your Line of Credit. You can pay off all or any part of what you owe at any time. However, as long as you owe any amount you must continue to make the minimum payment

b) **Repayment Period:** During the Repayment Period, your regular payment will consist of principal and interest. The principal portion of your payment will be a

constant equal amount based on the amortization of your outstanding principal balance at the inception of your Repayment Period over a 180 month period or $20.00, whichever is greater. In calculating the regular payment, we will use the applicable variable Annual Percentage Rate in effect on the day we calculate your regular payment. Your payments will be due monthly. Your "Minimum Payment" will be the regular payment, plus any amount past due and all other charges. In any event, if your Credit Line Account balance falls below $20.00, you agree to pay your balance in full. You agree to pay not less than the Minimum Payment on or before the payment due date indicated on your periodic billing statement.

c) Payments: All payments must be made by a check, money order, or other instrument in U.S. dollars and must be received by us at the remittance address shown on your periodic billing statement. Loans issued pursuant to the terms of the Agreement shall not be used for payments due hereunder, or for any sums of money due to the holder of any mortgage or security interest affecting your home that is given for security for this Agreement.

**SECURITY:** We have secured your obligations under this Agreement by taking a security interest, by way of a separate security agreement, mortgage or other instrument dated 10/30/2008, ("Security Instrument") in the following property ("Property"), described by item or type:

818 Split, Costa Mesa, CA 92626

**ADDITIONAL CHARGES:** *You agree to pay the following additional charges:*

Overlimit Fee: A fee of $28.50 in each billing cycle during which the balance due exceeds the maximum Credit Limit.

Returned Check Fee: A fee of $28.50 for each return of a dishonored check or other payment instrument.

Stop Payment Fee: A fee of $28.50 for each check on which you stop payment.

The Overlimit Fee, Returned Check Fee and Stop Payment Fee will increase by $2.00 on each anniversary date of this plan for the 12 month period thereafter.

Late Charge: The lesser of $40 or ten percent (10%) of the payment not paid within 15 days of the payment due date.

Check Reorder Fee: $6.00 for each check reorder (25 checks per reorder).

Copy of Periodic Billing Statement Fee: $2.00 for each copy of your monthly periodic billing statement that you request.

Appraisal $ N/A ; Official Fees $ N/A ; Doc. Fees $ N/A ; Title Search $ N/A ; (Other) N/A $ .

**INSURANCE:** You must obtain insurance on the Property through any company of your choice that is reasonably satisfactory to us. The insurance you maintain must provide for ten (10) days notice of cancellation to us. If the Property is located in an area identified by the Federal Emergency Management Agency as having special flood hazards under the National Flood Insurance Act of 1994, as amended, you must also maintain flood insurance on the Property. Subject to applicable law, if you fail to obtain or maintain insurance as required hereby or in the Security Instrument, we may purchase insurance to protect our own interest, add the premium to your balance, pursue any other remedies available to us, or do any one or more of these things.

In the event you fail to obtain and maintain any insurance on the Property required by us, you understand and agree that we may, at our option (unless required to do so by applicable law), obtain and maintain the required insurance and pay the premium(s) for such insurance, and either: (a) add the cost of the insurance to the unpaid principal balance owed under this Agreement (in which case you agree to repay the cost of the insurance in accordance with the repayment terms of this Agreement), or (b) bill you separately (in which case you agree to pay the bill immediately). You agree to pay interest on any such amounts at the interest rate provided in this Agreement until such amounts are repaid in full. You understand and acknowledge that any insurance obtained and maintained by us may (i) only protect the interests of us and any other creditor with a prior mortgage on the Property, and (ii) be more expensive than insurance obtained and maintained by you.

**CHARGES TO YOUR CREDIT LINE:** We may charge your Credit Line Account to pay other fees and costs that you are obligated to pay under this Agreement, under the Security Instrument or under any other document related to your Credit Line Account. In addition, we may charge your Credit Line Account for funds required for continuing insurance coverage as described in this Agreement or as described in the Security Instrument. We may also, at our option, charge your Credit Line Account to pay any costs or expenses to protect our security interest in the Property. Those costs or expenses include, without limitation, payments to cure defaults under any existing liens on the Property. If you do not pay your property taxes, we may pay the delinquent taxes and charge your Credit Line Account the amount of such payment. Any amounts so charged to your Credit Line Account will be a loan and will decrease the funds available, if any, under the Credit Line Account. However, we have no obligation to provide any of the loans referred to in this paragraph.

**INITIAL PERIODIC BILLING STATEMENT:** Your initial periodic billing statement will be issued on the first billing date after your Credit Line Account is set up on our system.

**SUSPENSION OR REDUCTION:** *We may temporarily prohibit you from obtaining additional extensions of credit, or reduce your Credit Limit if:*

(1) The value of the Property securing this plan declines significantly below the Property's appraised value for purposes of this Credit Line Account. This includes, for example, a decline such that the initial difference between your Credit Limit and the available equity is reduced by fifty percent (50%) and may include a smaller decline depending on the individual circumstances;
(2) We reasonably believe that you will not be able to meet the repayment requirements under this plan due to a material change in your financial circumstances;
(3) You are in default of a material obligation of this Agreement or any agreement securing this Agreement. We consider all of your obligations to be material. Categories of material obligations include the events and conditions described in the Termination and Acceleration provision, obligations to pay fees and charges, obligations and limitations on the receipt of loans, obligations concerning maintenance or use of the Property, obligations to pay and perform the terms of any other deed of trust, mortgage or deed to secure debt on the Property, obligations to notify us and to provide documents or information to us (such as updated financial information), obligations to comply with applicable law (such as zoning restrictions), and obligations of any consumer;
(4) A government action prevents us from imposing the annual percentage rate provided for in this Agreement;
(5) The action of a governmental body adversely affects our security interest to the extent that the value of the security interest is less than 120% of the Line of Credit;
(6) The annual percentage rate corresponding to the periodic rate reaches the maximum rate allowed under this plan; or
(7) A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

*We will mail or deliver written notice to you after we suspend your Credit Line Account or reduce your Credit Limit, and this notice will describe the specific reasons for our action.* We are obligated to reinstate your credit privileges when the condition(s) which caused the suspension or reduction has been cured or has changed and you have notified us in writing, explaining how the condition(s) has been cured or has changed, provided no new condition(s) under this provision exists or has occurred.

Before reinstating your right to obtain loans, or restoring your Credit Limit, we may conduct or obtain credit reports, appraisals, lien searches and other evaluations as we consider appropriate. To the extent permitted by applicable law, you agree to reimburse us on demand for any costs we actually incur for obtaining such information.

If an event or condition described in the Suspension or Reduction provision occurs which is also an event or condition described in the Termination and Acceleration provision, we have the option of exercising any or all of the remedies described in the Suspension or Reduction provision or Remedies provision.

**TERMINATION AND ACCELERATION:** We may take the actions listed in the Remedies provision if any of the following events or conditions occur:
(1) You engage in fraud or material misrepresentation in connection with this plan;
(2) Failure to meet the payment terms of this Agreement, such as your failure to make any payments on or before the payment due date; or
(3) Your action or inaction adversely affects the Property or our rights in the Property. This can include, for example, failure to maintain required insurance, waste or destructive use of the Property, failure to pay taxes, death of all persons liable on your Credit Line Account or the death of any one of you if the Property is adversely affected by such death, transfer of title or sale of the Property, the Property is taken through eminent domain, creation of a senior lien on the Property without

our permission, foreclosure by the holder of a prior lien, use of the Property for prohibited purposes and such use subjects the Property to seizure, you move out of the Property or you break any promise made in this Agreement or in the Security Instrument.

If your Credit Line Account is terminated, you must immediately destroy all checks and any other access devices. Any use of checks or other access devices following termination may be considered fraudulent. You will also remain liable for any further use of such checks or other Credit Line Account access devices not destroyed.

**REMEDIES:** If an event or condition described in the Termination and Acceleration provision occurs, subject to any notice or other limitation of applicable law, we may do any combination of the following things:

(1) We may terminate any of your rights under your Credit Line Account;
(2) We may temporarily or permanently refuse to make any additional loans;
(3) We may declare all sums owing under this Agreement and any other agreement you have made with us to be immediately due and payable;
(4) We may foreclose the Security Instrument;
(5) We may reduce your Credit Limit; and
(6) We may take any other action permitted by this Agreement, by law or in equity.

**SET-OFF:** You agree that we may set-off any amount due and payable under this Agreement against any right you may have to receive money from us. Your right to receive money from us includes:

(1) Any deposit account balances you have with us;
(2) Any money owed to you on an item presented to us or in our possession for collection or exchange; and
(3) Any repurchase agreement or other similar obligations.

"Any amount due and payable under this Agreement" means the total amount to which we are entitled to demand payment under the terms of this Agreement at the time we set off. This total includes any balance due that we properly accelerate under this Agreement. If your right to receive money from us is also owned by someone who has not agreed to pay this Agreement, our right of set-off will apply to your interest in the obligation and to any other amounts you could withdraw on your sole request or endorsement.

Our right of set-off does not apply to an account or other obligation where your rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account. We will not be liable for the dishonor of any check when the dishonor occurs because we set off this debt against any of your accounts. You agree to hold us harmless from any such claims arising as a result of our exercise of our right of set-off.

**ATTORNEYS' FEES:** If permitted by law, you agree to pay all our costs, including reasonable attorneys' fees, that we incur in legal proceedings to collect or enforce this debt should you be in default.

**TAX DEDUCTIBILITY:** You should consult a tax advisor regarding the deductibility of interest and charges under this plan.

**FREEZING THE CREDIT LINE ACCOUNT:** We shall have the right to freeze the Credit Line Account upon the written request of any of you. You shall have the right to remove the freeze upon written request signed by all of you unless other conditions exist that permit us to continue the suspension.

**OWNER OCCUPANCY:** You must occupy the Property that is the security for this Agreement at all times that this Agreement is in effect.

**MORE THAN ONE BORROWER:** If more than one person has signed this Agreement, all such persons agree that any individual person may request loans under this Agreement.

**CONVERSION TO CLOSED END LOAN:** In the event this Agreement expires or is cancelled or terminated, we may elect to administer your Credit Line Account as a fixed rate closed end mortgage loan.

**CANCELLATION OF AGREEMENT:** You may cancel your Credit Line Account at any time. If two or more persons are obligated under this Agreement, any one of them may provide us with a written request to cancel the Credit Line Account. If such cancellation occurs, all persons obligated under this Agreement must provide us with a written request to reinstate draw privileges. We are under no obligation to reinstate draw privileges once this Agreement is cancelled.

Upon cancellation, you must immediately destroy all checks and any other access devices. Any such cancellation shall not relieve you of any of your obligations to us, including, but not limited to, the prepayment fee, and the terms and conditions of this Agreement shall continue to apply to the outstanding balance on your Credit Line Account until paid in full.

**CREDIT INFORMATION:** You agree to supply us with whatever information we reasonably believe we need to decide whether to continue this plan. We agree to make requests for this information without undue frequency, and to give you reasonable time in which to supply the information.

You authorize us to obtain financial information about you from time to time from third parties, including, but not limited to, a credit bureau, your employer, or another financial institution. You also authorize us to disclose information about your creditworthiness and your Credit Line Account to consumer reporting agencies. In addition, you authorize us to disclose information about you to other third parties in accordance with our privacy policy: Charter One Bank's Pledge Regarding the Responsible Use and Protection of Customer Information.

**APPRAISAL:** We may require a new appraisal of the Property which secures your Credit Line Account at any time, including an internal inspection, at our sole option and expense, except you must reimburse us for any costs we actually incur in obtaining an appraisal in connection with reinstating your right to obtain loans or restoring your Credit Limit as provided in the Suspension or Reduction provision.

**HOLD HARMLESS AGREEMENT:** In order to induce us to enter into this Agreement, you hereby agree, that if, for any reason a spouse or co-owner of the Property who is not a Borrower should access the Credit Line Account and, as a result thereof, receive funds that are charged against the Credit Line Account, you do hereby release and forever discharge us from any and all liability associated therewith. You further agree that your sole remedy and recourse shall be against such spouse or co-owner who wrongfully received funds through the Credit Line Account.

**NOTICES:** All notices will be sent to your address as shown in this Agreement unless you notify us in writing of any change in your address within thirty (30) days of the change. On joint accounts, notices sent to one will be considered notice sent to all.

**DOCUMENTATION:** You agree to execute or re-execute any document that we request in order to correct any error or omission in the original Agreement, Security Instrument, or other Credit Line Account related documents, including, but not limited to, confirmatory or corrective security instruments.

**PERIODIC BILLING STATEMENTS:** Each periodic billing statement shall be conclusively presumed correct unless you notify us in writing of an error within 60 days of your receipt of such periodic billing statement.

**CHANGING THE TERMS OF THIS AGREEMENT:** Generally, we may not change the terms of this Agreement. However, we may change the terms in the following circumstances:

(1) If this is a variable rate plan, we may change the index and margin if the original index described in this Agreement becomes unavailable. Any new index will have a historical movement similar to the original, and, together with a new margin, will produce a similar interest rate.
(2) We may make changes that you have agreed to in writing.
(3) We may make changes that unequivocally benefit you.
(4) We may make changes to insignificant terms of this Agreement.

If we are required to send notice of a change in terms, we will send the notice to your address listed in this Agreement. (You should inform us of any change in address.)

**INTERPRETATION:** The names given to paragraphs or sections in this Agreement are for reference purposes only. They are not to be used to interpret or define the

provisions of this Agreement. You agree that this Agreement, together with the Security Instrument, is the best evidence of your agreement with us. If a court finds that any provision of this Agreement is not valid or should not be enforced, that fact by itself will not mean that the rest of this Agreement will not be valid or enforced. Therefore, a court may enforce the rest of the provisions of this Agreement even if a provision of this Agreement may be found to be invalid or unenforceable. If we go to court for any reason, we can use a copy, filmed or electronic, of any periodic billing statement, this Agreement, the Security Instrument, or any other document to prove what you owe us or that a transaction has taken place. The copy, microfilm, microfiche, or optical image will have the same validity as the original.

**GOVERNING LAW:** This agreement is governed by federal law and to the extent pre-empted by federal law, the law of Ohio shall apply. Matters related to the enforcement of our lien on your real property shall be governed by the law of the state in which the property is located.

**SIGNATURES:** By signing below, you agree to the terms of this Agreement and you promise to pay any amounts you owe under this Agreement. You also state that you received a complete copy of the Agreement on today's date.

Borrower Adam Bereki

Borrower

Borrower

Borrower

Fair and Accurate Credit Transaction Act of 2003 Notice

**WE MAY REPORT INFORMATION ABOUT YOUR ACCOUNT TO CREDIT BUREAUS. LATE PAYMENTS, MISSED PAYMENTS, OR OTHER DEFAULTS ON YOUR ACCOUNT MAY BE REFLECTED IN YOUR CREDIT REPORT.**

**YOUR BILLING RIGHTS**
**KEEP THIS NOTICE FOR FUTURE USE**

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

*Notify us in case of errors or questions about your bill.* If you think your bill is wrong, or if you need more information about a transaction on your bill, write us at Chase One Bank, N.A., Loan Servicing Department, P.O. Box 91358, Cleveland, Ohio 44101-9713. Write to us as soon as possible. We must hear from you no later than 60 days after we send you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserves your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your bill automatically from your savings or checking account, you can *stop* the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

*Your rights and our responsibilities after we receive your written notice.* We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50.00 of the questioned amount, even if your bill was correct.

This document was prepared by
Casey Schrum/Charter One Bank, N.A.
When recorded mail to:
*FIRST AMERICAN TITLE INSURANCE*
*LENDERS ADVANTAGE*
*1100 SUPERIOR AVENUE, SUITE 200*
*CLEVELAND, OHIO 44114*
*ATTN: FT1120*

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
24.00
2006000838019 11:06am 12/14/06
117 63 011 7
0.00 0.00 0.00 0.00 10.00 0.00 0.00 0.00

State of California — Space Above This Line For Recording Data

10531310

# DEED OF TRUST
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is 10/30/2006 and the parties, their addresses and tax identification numbers, if required, are as follows:
TRUSTOR:
Adam Bareki, Single Man
818 Spirit, Costa Mesa, CA 92626

☐ If checked, refer to the attached Addendum incorporated herein, for additional Trustors, their signatures and acknowledgments.

TRUSTEE:
First American Title Insurance Company
1 First American Way
Santa Ana, CA 92707

LENDER:
Charter One Bank, N.A.
1215 Superior Avenue
Cleveland, OH 44114

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:
See exhibit "A" attached hereto and by this reference made a part hereof.

The property is located in Orange (County) at
818 Spirit (Address), Costa Mesa (City), California 92626 (ZIP Code)
Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed $ 110,798.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(Include items such as borrowers' names, note or contract amounts, interest rates (whether variable), maturity dates, etc.)*
The Credit Line Agreement in the amount of $110,798.00, executed by the Mortgagor/Grantor and dated the same day as this Security Instrument, which, if not paid earlier, is due and payable in full 360 months from the due date of the first payment.


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B. All future advances from Lender to Trustor or other future obligations of Trustor to Lender under any promissory note, contract or guaranty, or other evidence of debt executed by Trustor in favor of Lender after this Security Instrument if this Security Instrument is specifically referenced on the evidence of other debt. If more than one person signs this Security Instrument, each Trustor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Trustor, or any one or more Trustor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument.

C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

D. Performance of every obligation in this Security Instrument (including any subsequent instrument amending this Security Instrument) and any instrument now or later evidencing or securing any indebtedness secured by this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of rescission with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Trustor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

5. **DEED OF TRUST COVENANTS.** Trustor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Trustor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Trustor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

**Payments.** Trustor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

**Prior Security Interests.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Trustor agrees to make all payments when due and to perform or comply with all covenants. Trustor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

**Claims Against Title.** Trustor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Trustor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Trustor's payment. Trustor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Trustor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Trustor may have against parties who supply labor or materials to maintain or improve the Property.

**Property Condition, Alterations and Inspection.** Trustor will keep the Property in good condition and make all repairs that are reasonably necessary. Trustor shall not commit or allow any waste, impairment, or deterioration of the Property. Trustor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Trustor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Trustor will notify Lender of all demands, proceedings, claims, and actions against Trustor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Trustor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Trustor will in no way rely on Lender's inspection.

**Authority to Perform.** If Trustor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Trustor appoints Lender as attorney in fact to sign Trustor's name or pay any amount necessary for performance. Lender's right to perform for Trustor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.



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**Leaseholds; Condominiums; Planned Unit Developments.** Trustor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Trustor will perform all of Trustor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

**Condemnation.** Trustor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Trustor authorizes Lender to intervene in Trustor's name in any of the above described actions or claims. Trustor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

**Insurance.** Trustor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Trustor subject to Lender's approval, which shall not be unreasonably withheld. If Trustor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Trustor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Trustor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Trustor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Trustor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Trustor. If the Property is acquired by Lender, Trustor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

**Financial Reports and Additional Documents.** Trustor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Trustor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Trustor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Trustor warrants that Trustor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Trustor also warrants that the Property is unencumbered, except for encumbrances of record.

7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

8. **DEFAULT.** Trustor will be in default if any of the following occur:

**Fraud.** Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.

**Payments.** Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

**Property.** Any action or inaction by the Borrower or Trustor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Trustor fails to maintain required insurance on the Property; (b) Trustor transfers the Property; (c) Trustor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Trustor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Trustor dies; (f) if more than one Trustor, any Trustor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Trustor and subjects Trustor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

**Executive Officers.** Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.



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9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Trustor is in default. In some instances, federal and state law will require Lender to provide Trustor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If Lender elects to foreclose by exercise of the power of sale, Lender will declare the entire Secured Debts due and payable by delivering to Trustee this Security Instrument and any evidence of the Secured Debts, receipts and evidence of expenditures made and secured, as Trustee requires. When the legally prescribed time passes after Trustee or Lender duly records a notice of default, the Trustee, Lender or other person authorized to take the sale will give a notice of sale as required by law and will cause the Property to be sold at the time and place fixed in the notice of sale. Lender may rescind any notice of default at any time before the Property's sale. Rescission will occur when Lender executes and records a notice of rescission that cancels any prior notice of default and any related acceleration of the Secured Debts. Lender's rescission will not waive any default then existing or subsequently occurring or preclude Lender exercising its remedies, including the power of sale, at another time.

The Property can be sold as a whole or in separate parcels and in any order that Trustee decides. The Property will be sold to the highest bidder for cash in lawful money of the United States, payable at sale time. The Property can be sold to anyone, including Trustor, Trustee or Lender. Trustee may postpone the sale of any part of the Property by public announcement at the time and place of this sale and afterwards at the time fixed by the preceding postponement. Upon any sale of the Property, Trustee will make and deliver a special or limited warranty deed that conveys the property sold to the purchaser or purchasers. Under this special or limited warranty deed, Trustee will covenant that Trustee has not caused or allowed a lien or an encumbrance to burden the Property and that Trustee will specially warrant and defend the Property's title to the purchaser or purchasers at the sale against all lawful claims and demand of all persons claiming by, through or under Trustee. The deed's recital of facts will be conclusive proof of the truthfulness of these facts.

The proceeds from the Property's sale will be applied to the sale expenses, Trustee's expenses, Lender's attorneys' fees due on Trustor's default, sums that Trustee or Lender paid for procuring a title search of the Property's title subsequent to the execution of this Security Instrument, all outstanding amounts due under this Security Instrument and the remainder to anyone legally entitled to the remaining amounts due.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Trustor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Trustor breaches any covenant in this Security Instrument, Trustor agrees to pay all expenses Lender incurs in performing such covenants (including but not limited to advances and expenses described in the DEED OF TRUST COVENANTS section) or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Trustor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Trustor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Trustor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Trustor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.

B. Except as previously disclosed and acknowledged in writing to Lender, Trustor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.

C. Trustor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Trustor shall take all necessary remedial action in accordance with any Environmental Law.

D. Trustor shall immediately notify Lender in writing as soon as Trustor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Trustor will not be required to pay to Lender funds for taxes and insurance in escrow.

13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Trustor signs this Security Instrument but does not sign an evidence of debt, Trustor does so only to mortgage Trustor's interest in the Property to secure payment of the Secured Debt and Trustor does not agree to be personally liable on the Secured Debt. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Trustor and Lender.

14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

15. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.

16. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one trustor will be deemed to be notice to all trustors. Lender and Trustor request that copies of any notice of default or notice of sale under a superior security instrument be sent to Lender and Trustor at the addresses listed in the DATE AND PARTIES section.

17. **WAIVERS.** Except to the extent prohibited by law, Trustor waives all appraisement or marshalling of assets relating to the Property.

18. **SPOUSE'S SEPARATE PROPERTY.** Any Trustor who is a married person expressly agrees that recourse may be had against his or her separate property.

19. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

20. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.

21. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
☐ Assignment of Leases and Rents ☐ Other .....
22. ☐ **ADDITIONAL TERMS.**

23. **REQUEST FOR NOTICE.** In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded ....., ....., in book ..... page ....., records of Orange County, (or filed for record with recorder's serial number .....), Orange County) California, executed by .....
Adam Bereki, Single Man ..... as trustor (or mortgagor) in which First Horizon ....., is named as beneficiary (or mortgagee) and ..... as trustee be mailed to:
Name Charter One Bank, N.A. ..... at
Address 1215 Superior Avenue Cleveland, OH 44114 .....

**NOTICE:** A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.

Signature on behalf of the requester named above:
Signature .....
(Include the requester's name, by the signer, among those acknowledging below, or use a separate acknowledgment form.)

**SIGNATURES:** By signing below, Trustor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Trustor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

..... 10/30/06 .....
(Signature) Adam Bereki (Date) (Signature) (Date)

**ACKNOWLEDGMENT:**
STATE OF California, COUNTY OF Orange ) ss.
On this 30th day of October, 2006 before me Gail N. Martin
a notary public, personally appeared .....
Adam Bereki, Single Man .....
..... personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
**WITNESS** my hand and official seal.

GAIL N. MARTIN
Comm. # 1428559
NOTARY PUBLIC-CALIFORNIA
Orange County
My Comm. Expires July 30, 2007

Signature Gail N. Martin - Notary Public
Name (typed or printed) GAIL N. MARTIN
My commission expires: July 30, 2007

**REQUEST FOR FULL RECONVEYANCE**

To Trustee: The undersigned is the holder of the note or notes secured by this Deed of Trust, which was recorded in the office of the Recorder of ..... County, State of California, in book .....,
page ..... of official records. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated: ..... .....

Assessor's Identification Number 141-513-55 .....

ExpressDocs ©1994 Bankers Systems, Inc., St. Cloud, MN Form SCP-SEDT-CA 8/10/2004

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

LOT 55 OF TRACT NO 15211, AS SHOWN ON A MAP RECORDED IN BOOK 733, PAGES 33 TO 37 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.EXCEPTING THEREFROM ONE-HALF OF ALL OIL AND MINERALS, BUT WITHOUT THE RIGHT OF ENTRY, AS RESERVED BY ETTA G. DAVIES, A WIDOW, IN DEED RECORDED JUNE 1, 1959 IN BOOK 4737, PAGE 511 OF OFFICIAL RECORDS.

141-B13-55
810 SPIRIT; COSTA MESA, CA 92626-3089

114488
30372569/£

BEREKI
10521310
CA
FIRST AMERICAN LENDERS ADVANTAGE
DEED OF TRUST

Certified Copy of Document number 2006000838019

7/3/2018
8.00

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE:_____

CERTIFICATION FEE:_____

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

91.00

A $R001503792 8$A

2024000173067 3:24 pm 07/10/24

486 412A N15 3

0.00 0.00 0.00 0.00 6.00 0.00 0.000.0075.00 3.00

RECORDING REQUESTED BY:

ServiceLink

WHEN RECORDED MAIL TO:

Trustee Corps
17100 Gillette Ave
Irvine, CA 92614

APN: 141-513-55 TS No: CA13000044-22-2 TO No: 240282878

## NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

**NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED**

**注：本文件包含一个信息摘要**

**참고사항: 본 첨부 문서에 정보 요약서가 있습니다**

**NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO**

**TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP**

**LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY**

**(The above statement is made pursuant to CA Civil Code Section 2923.3(c)(1). The Summary will be provided to Trustor(s) and/or vested owner(s) only, pursuant to CA Civil Code Section 2923.3(c)(2).)**

## IMPORTANT NOTICE

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION**, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this Notice of Default may be recorded (which date of recording appears on this notice).

This amount is **$31,901.33** as of **July 9, 2024**, and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the Note and Deed of Trust or Mortgage, the Beneficiary or Mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the Beneficiary or Mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the Beneficiary or Mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Beneficiary or Mortgagee may mutually agree in writing prior to the time the Notice of Sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

# COUNTY OF ORANGE

## COURTESY NOTICE

HUGH NGUYEN
CLERK-RECORDER
601 N. Ross Street
Santa Ana, CA 92701
(714) 834-2500

TODD SPITZER
DISTRICT ATTORNEY
300 N. Flower Street
Santa Ana, CA 92703
(714) 834-3600

BEREKI ADAM TR
818 SPIRIT
COSTA MESA CA 92626-3089

July 23, 2024

**SUBJECT: NOTICE OF DEFAULT RECORDING CONFIRMATION**

Dear Orange County Homeowner,

The Clerk-Recorder and the District Attorney of Orange County are working together to protect Orange County homeowners from potential fraudulent and illegal activities involving official property records.

This courtesy notice regarding a recent property recording transaction is being sent to you to ensure the legitimacy and accuracy of all records filed with the Clerk-Recorder.

**The Clerk-Recorder's records indicate that a Notice of Default affecting the title to your real property was recently recorded. A copy of the first page of that document is enclosed for your reference.**

You may be contacted by people who offer to assist you in your real estate matters. These offers may not be in your best interest, and they may be deceptive, fraudulent, or illegal. You should be especially cautious of people who seek money by cash, check or credit card from you in advance of performing services, such as a loan modification. Once a Notice of Default is recorded, it is illegal for anyone who meets the definition of a "foreclosure consultant," including licensed agents and brokers, to collect fees in advance of performing these services. (Cal. Civil Code Section 2945.1.)

**IF THE TRANSACTION IS CORRECT, NO ACTION IS REQUIRED ON YOUR PART.**

If you are unaware of this Notice of Default, or suspect fraudulent or illegal activity, you may contact the Orange County District Attorney's Real Estate Fraud Unit by sending an email to REFraud@da.ocgov.com or by calling the Real Estate Fraud Hotline at (714) 664-3931. You may also fill out a Real Estate Fraud Complaint Form, which can be accessed at: www.orangecountyda.org/howdoi/reportfraud.asp. Click on the "Real Estate Fraud Report Form." Once you fill out the form, you will be able to submit it electronically by clicking "submit by email" at the bottom of the form. You will also have the option to print the form and mail it.

If you have any questions about real property records, please contact the Clerk-Recorder Department at (714) 834-2500. For more information regarding real property fraud, visit: www.ocrecorder.com/services/documents/fraud.

HUGH NGUYEN
ORANGE COUNTY CLERK-RECORDER

20 MCKINLEY ST. STE 111-392, CORONA, CA 92879
WWW.OCRECORDER.COM

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
LOS ANGELES, CA
PERMIT NO. 898

MAILED FROM ZIP CODE 90053

FEB 2025 926 25

RECORDING REQUESTED BY:

WHEN RECORDED MAIL DEED
AND TAX STATEMENT TO:

CANJIAN HOU
19709 CALLE LASUEN
WALNUT, CA 91789

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
24.00
*$R00153873595*
2025000040781 8:27 am 01/30/25
48 414A T09 5 15
204.60 204.60 0.00 0.00 12.00 0.00 0.000.000.00 0.00

APN: 141-513-55 TS No: CA13000044-22-2 TO No: 240282878

## TRUSTEE'S DEED UPON SALE

**A copy of the affidavit or declaration pursuant to Code of Civil Procedure section 2015.5 delivered to the trustee by the high bidder and grantee herein is attached hereto as Exhibit "B" and incorporated herein as if set forth in full. Said 1 page affidavit or declaration is required to be attached as an exhibit to the trustee's deed and recorded pursuant to Civil Code section 2924m(d).**

The undersigned Grantor, under penalty of perjury, declares:

1) The Grantee herein was not the foreclosing beneficiary.
2) The amount of the unpaid debt together with costs was: $62,523.24
3) The amount paid by the Grantee at the trustee sale was: $371,688.00
4) The documentary transfer tax is: $409.20
5) Said property is in the city of: COSTA MESA
6) A.P.N. 141-513-55

and **MTC Financial Inc. dba Trustee Corps**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **CANJIAN HOU**, herein called "Grantee", the real property in the County of Orange, State of California, described as follows: **SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated October 30, 2006, made to ADAM BEREKI, SINGLE MAN and recorded on December 14, 2006, as Instrument No. 2006000838019 of Official Records in the office of the Recorder of Orange County, CA, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on **November 18, 2024** at the place specified in said Notice, to Grantee who was the highest bidder therefore, for **$371,688.00**, in lawful money of the United States, which has been paid.

Dated: 1-22-25

MTC Financial Inc. dba Trustee Corps

By: Bernardo Sotelo, Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1-22-25 before me, Bobbie LaFlower, a Notary Public, personally appeared BERNARDO SOTELO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

BOBBIE LAFLOWER
Notary Public - California
Orange County
Commission # 2377601
My Comm. Expires Oct 5, 2025

## EXHIBIT "A"

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

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

**EXHIBIT "B"**

**This 1 page affidavit/declaration, hereto attached as Exhibit "B", pursuant to Code of Civil Procedure section 2015.5 is required to be attached as an exhibit to the Trustee's Deed Upon Sale for recording pursuant to Civil Code section 2924m(d) and shall not be removed.**

# AFFIDAVIT OF ELIGIBLE BIDDER

(Cal. Civ. Code § 2924m)

| | |
|---|---|
| State of California<br>County of Orange | TS #: CA13000044-22-2<br>Property: 818 SPIRIT, COSTA MESA, CA 92626 |

I, CANJIAN HOU, do hereby state and declare as follows:

1. I am a natural person and a prospective owner-occupant as defined in Section 2924m of California Civil Code.
2. I will occupy the property as my primary residence within 60 days of the trustee's deed being recorded, and I will maintain my occupancy for at least one year.
3. I am not any of the following:
    a. The Mortgagor or trustor
    b. The child, spouse, or parent of the mortgagor or trustor;
    c. The grantor of a living trust that was named in the title to the property when the notice of default was recorded;
    d. An employee, officer, or member of the mortgagor or trustor;or
    e. A person with an ownership interest in the mortgagor, unless the mortgagor is a publicly traded company.
4. I am not acting as the agent of any other person or entity in purchasing the real property.
5. My current residence address is 19709 Calle Lasuen, Walnut CA 91789
6. My current phone # is (626)389-7124
7. My current email address is angushou0823@gmail.com

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed in Riverside, California on December 30th, 2024.

CANJIAN HOU

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE: Feb 24, 2025

CERTIFICATION FEE: 6.00

COUNTY CLERK-RECORDER

ORANGE COUNTY
STATE OF CALIFORNIA

HUGH NGUYEN, CLERK-RECORDER
County of Orange
* 601 N. Ross Street * Santa Ana, CA 92701
Recorder (714) 834-2500 * Fax (714) 834-2675

# ORDER DETAILS

Report Date & Time
02/24/2025 12:17

**Order Number:** 295873

**Ordered By:** Adam Bereki

## Documents

| Document No. | Title Name | Recording Date/Time | Purchase Type | Copies | Pages | Total Pages | Amount | No Fee |
|---|---|---|---|---|---|---|---|---|
| 2025000040781 | TRUSTEES DEED | 01/30/2025 00 00 AM | Certified Copy | 1 | All | 5 | $6 00 | No |
| | | | | | **Documents Total:** | | | **$6.00** |

## PrintLists

| County | State | Copies | Amount | No Fee |
|---|---|---|---|---|
| | | | **Print Lists Total:** | |

**Total Amount:** **$6.00**

Exhibit 3, p.22

0526

# County of Orange

601 N. Ross St.
California 92701
714 667 9615
www.OCPublicWorks.com

Receipt 1167/1032/803 02/24/25 12:36:36

010100 Pay Parking Ticket 4.00 $
02/24/25 11:45 - 02/24/25 12:36
Length of stay: 0 Days, 00:51

| | |
|---|---|
| Total Amount | 4.00 $ |
| Credit Mastercard | 4.00 $ |
| Total Revenue | 4.00 $ |

| | |
|---|---|
| | MASTERCARD |
| AID | A0000000041010 |
| APP LABEL | CAPITAL ONE |
| CARD | **********7862 |
| PAN SEQ Number | 01 |
| AUTHORIZATION | 02532Z |
| TOTAL | USD$4.00 |

APPROVED

| | |
|---|---|
| UID | 51058 |
| TRAN | 0000000246b91952 |

**********
** Thank you **
** **
**********

Orange County
Clerk-Recorder
Hugh Nguyen
601 N. Ross Street
Santa Ana, CA 92701
(714) 834-2500

Receipt No.: RPT20250000021241

Finalization No.: 20250000052001

Cashier: 501

Register: CLERKWIN3A

Date/Time: 02/24/2025 12:16 PM

| Item | Title | Count |
|---|---|---|
| 1 | PCOPY | 1 |
| Public Copy | | |
| Document ID | | Amount |
| Doc# n/a | | $6.00 |
| Time Recorded 12:16 PM | | |

| | |
|---|---|
| Total Amount Due: | $6.00 |
| Total Paid | |
| Credit Card Tendered: | $6.00 |
| #042012 | |
| Amount Due: | $0.00 |

THANK YOU
PLEASE RETAIN THIS RECEIPT
FOR YOUR RECORDS
www.ocrecorder.com

Gmail

# RE: In re Adam Bereki 22-10276– MOTION FOR RELIEF FROM STAY; Case: B71087-2

**Christina Khil** <Christinao@mclaw.org> Wed, Feb 15, 2023 at 3:28 PM
To: Erica Pedraza <Erica@mclaw.org>, "abereki@gmail.com" <abereki@gmail.com>

Good Afternoon Mr. Bereki –

You indicate below that you wish to discuss a potential resolution to the motion for relief from stay. What did you have in mind?

Thanks,

Christina Khil
Managing Attorney, Bankruptcy

MALCOLM CISNEROS
A LAW CORPORATION

2112 Business Center Drive
Irvine, CA 92612
949-252-9400, Ext. 219
949-252-1032 (fax)
www.malcolmcisneros.com

Follow our firm at:

Certified Minority Owned Corporation
Malcolm ◆ Cisneros, A Law Corporation, is an AV rated, regional commercial and civil litigation firm with offices across the Western United States in Phoenix, AZ; Irvine and Riverside, CA; Las Vegas, NV; Lake Oswego, OR; Dallas, TX; Seattle, WA.

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privileged. It is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

**From:** Erica Pedraza <Erica@mclaw.org>
**Sent:** Thursday, February 9, 2023 11:32 AM
**To:** abereki@gmail.com
**Cc:** Christina Khil <Christinao@mclaw.org>
**Subject:** FW: In re Adam Bereki 22-10276– MOTION FOR RELIEF FROM STAY; Case: B71087-2

Hello –

Pursuant to your request, attached is a full copy of the MFR. Thank you.

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Erica Pedraza
Paralegal/Bankruptcy Department Supervisor

MALCOLM CISNEROS
A LAW CORPORATION

2112 Business Center Drive
Irvine, CA 92612
949-252-9400, Ext. 399
949-252-1032 (fax)
www.malcolmcisneros.com

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Malcolm ♦ Cisneros, A Law Corporation, is an AV rated, regional commercial and civil litigation firm with offices across the Western United States in Phoenix, AZ; Irvine and Riverside, CA; Las Vegas, NV; Lake Oswego, OR; Dallas, TX; Seattle, WA.

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this communication is strictly prohibited.

**From:** Adam <abereki@gmail.com>
**Sent:** Thursday, February 9, 2023 9:57 AM
**To:** Christina Khil <christinao@mclaw.org>
**Subject:** In re Adam Bereki 22-10276– MOTION FOR RELIEF FROM STAY

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Christina,

I received service of your Motion For Relief From Stay by mail. Could you please send me a digital version of your Motion? I am unable to easily read the copies you sent whereby two pages have been transposed onto one. Please email a full sized copy asap as it is necessary to complete my Motion. In the future, please also serve me by email at this address.

I've included an incomplete/unedited version of my responses and objections as an invitation to resolve the issues in your motion without wasting the Court's resources. I remain open and available to any communication either here or on my cell phone at 949.241.6693.

Sincerely

Adam Bereki

---

**Adam** <abereki@gmail.com> Wed, Feb 15, 2023 at 3:55 PM
To: Christina Khil <Christinao@mclaw.org>

Hi Christina,

Thanks for your message. First, my intent isn't to cause any harm to your client. I want to ensure it is paid all the money it is rightfully owed. As you discovered, I'm not in this situation by choice. I will be bringing Adversary Proceedings against the Humphreys and others as soon as possible as well as asking for emergency equitable relief so that claims can be repaid as a result of this mess. I am not sure how that process will work in bankruptcy but perhaps the trustee would have access over those funds to make payments to creditors- I'll have to see how that all works out. I'd like to work together with you and Citizen, not against you. As far as the Motion For Relief goes, it doesn't seem to have any merit. If you feel I'm wrong and have some authority(ies) to present to the contrary, please let me know and we can work through it together.

Sincerely,

Adam

---

**Christina Khil** <Christinao@mclaw.org> Wed, Feb 22, 2023 at 4:54 PM
To: Adam <abereki@gmail.com>
Cc: Erica Pedraza <Erica@mclaw.org>

Good Afternoon Adam –

We have prepared a reply as we oppose any request for sanctions or other award. We filed our Motion because you had indicated in your schedules that there were liens secured against the Property in excess of the value of the Property. I understand that you may dispute the judgment lien, however, it appears that the lien is still secured against the Property. If I am incorrect, please do let me know.

Thank you,

Christina Khil
Managing Attorney, Bankruptcy

MALCOLM CISNEROS
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949-252-9400, Ext. 219
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**From:** Adam <abereki@gmail.com>
**Sent:** Wednesday, February 15, 2023 3:56 PM
**To:** Christina Khil <Christinao@mclaw.org>
**Subject:** Re: In re Adam Bereki 22-10276– MOTION FOR RELIEF FROM STAY; Case: B71087-2

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Christina,

Thanks for your message. First, my intent isn't to cause any harm to your client. I want to ensure it is paid all the money it is rightfully owed. As you discovered, I'm not in this situation by choice. I will be bringing Adversary Proceedings against the Humphreys and others as soon as possible as well as asking for emergency equitable relief so that claims can be repaid as a result of this mess. I am not sure how that process will work in bankruptcy but perhaps the trustee would have access over those funds to make payments to creditors- I'll have to see how that all works out. I'd like to work together with you and Citizen, not against you. As far as the Motion For Relief goes, it doesn't seem to have any merit. If you feel I'm wrong and have some authority(ies) to present to the contrary, please let me know and we can work through it together.

Sincerely,

Adam

On Wed, Feb 15, 2023 at 3:28 PM Christina Khil <Christinao@mclaw.org> wrote:

> Good Afternoon Mr. Bereki –
>
> You indicate below that you wish to discuss a potential resolution to the motion for relief from stay. What did you have in mind?
>
> Thanks,

Christina Khil
Managing Attorney, Bankruptcy

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2112 Business Center Drive
Irvine, CA 92612
949-252-9400, Ext. 219
949-252-1032 (fax)
www.malcolmcisneros.com

Follow our firm at:

---

**Adam** <abereki@gmail.com> Wed, Feb 22, 2023 at 5:12 PM
To: Christina Khil <Christinao@mclaw.org>

Hi Christina,

Thanks for your message. As I indicated in my response, there is a presumptive validity to the Judicial lien, which is why it was listed on the schedule in that way. However, I also submitted a declaration with the schedules, (Dkt. 15) that rebutted its presumptive validity and gave notice that it was a void judgment along providing the legal basis for those assertions. Under California statute if the underlying judgment is void, so is the lien. As I interpret bankruptcy law so far, that lien - whether valid or not – is entirely irrelevant because your alleged lien is senior and there is a near 60% equity cushion. Therefore, your claim is adequately protected and there is no cause for relief from stay. Please let me know if I'm missing something.

Gmail

# In Re Adam Bereki 22-12076: Declared Statement of Intent of Adam Bereki

**Adam** <abereki@gmail.com> Tue, Apr 11, 2023 at 10:43 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>, tcovey@raslg.com, Christina Khil <christinao@mclaw.org>, Erica Pedraza <Erica@mclaw.org>, fwan@raslg.com

Good day,

Please see attached.

Also, for Theron and Fanny, I will be filing a request this afternoon for an extension of time to respond to your Motion. Please also note that you did not serve Karen and Gary Humphreys as required, so the hearing will have to be rescheduled anyway.

Sincerely,

Adam Bereki

**DECLARED STATEMENT OF INTENT OF ADAM BEREKI.pdf**
928K

Gmail Adam Bereki - ...

# In re Adam Bereki 22-12076 | Relief From Automatic Stay

**Adam** <abereki@gmail.com> Sun, Apr 16, 2023 at 10:25 AM
To: Christina Khil <christinao@mclaw.org>

Hi Christina,

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

I respect the law, not the *ultra vires* determinations of a rogue Judge. For these reasons, I am informing you and your client that I will hold you both legally accountable if foreclosure proceedings are commenced as a result of Judge Clarkson's "order". I am confident you know and understand exactly what I'm saying here and that using a Judge's *ultra vires* order as an excuse to commit crimes (the unlawful taking/seizure of my and my mothers property) will not work as a "nuremberg defense" to civil liability and/or criminal punishment.

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

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

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

Sincerely,

Adam Bereki

MALCOLM EISENBERG
2112 Business Center Drive
Irvine, CA 92612

7021 2720 0002 3101 0758

Adam Berndt
818 Spruit
Costa Mesa, CA 92626

Citizens

VAM-360
10561 Telegraph Rd
Glen Allen, VA 23059

January 30, 2024

***Via Certified Mail***
Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Notice of Intent to Foreclose
Account: 8000123235 (the "Loan")
Property Address: 818 Spirit Costa Mesa, CA 92626 (the "Property")

Dear Adam Bereki:

Under the terms of the Mortgage or Deed of Trust (Security Instrument) securing your Loan and serviced by Citizens Bank, please note the following:

The loan is in default and is now due is now due and payable as Citizens Bank has elected to declare the indebtedness due and owing under the promissory note and deed of trust based on the borrower's failure to make payments on the loan.

As of February 16, 2024, the total amount needed to reinstate the above referenced mortgage loan (including principal, interest, and escrow if applicable), late fees, insufficient funds (NSF) fees, and other fees and advances due under the terms of your loan documents is $26,593.26. This amount is itemized below. If applicable, your account may have additional escrow amounts that have been paid out and are due on the Loan.

If you have any questions about the amounts detailed below, please contact Citizens at (800)234-6002 to discuss this matter and to confirm the amount prior to remitting any payment.

| | |
|---|---|
| Payment Amount Due | $21,548.50 |
| Accrued Late Charge | $540.89 |
| Late Charge Forecasted | $30.87 |
| Mtgr Rec Corp Adv | $4,473.00 |
| Total Reinstatement Due as of February 16, 2024 | $26,593.26 |

*Other Fees and Advances include those amounts assessed in accordance with your loan documents, and/or permitted by applicable law, or that were authorized for services rendered. If you need additional information regarding any of these amounts, please contact us at the number provided below.

1. You are also responsible for paying any amounts that become due from the date of this letter through the expiration date set forth in Paragraph 3 below. These amounts may include, but are not limited to, taxes, insurance, inspection fees, and other fees, as permitted by applicable law.

Citizens

VAM-360
10561 Telegraph Rd
Glen Allen, VA 23059

2. If you have any reason to dispute the past-due amount listed above, or if you believe your Loan is current, please contact us at the number provided below.

3. Action required to cure the default: You must pay the Total Monthly Payments listed in Paragraph 3 within 30 days from the date of this notice in order to cure this default. All late fees, NSF fees, and other fees and advances are still valid and will need to be repaid under the terms of your loan documents.

4. If you fail to cure the default within 30 days from the date of this notice, Citizens will accelerate the maturity of the Loan, terminate your credit line if the Loan provides for revolving advances, declare all sums secured by the Security Instrument immediately due and payable, and commence foreclosure proceedings, all without further notice to you. If this happens, Citizens will be entitled to collect its expenses incurred in pursuing the remedies provided in the Security Instrument, which may include, but not be limited to, allowable foreclosure/attorney fees, and other expenses permitted by applicable law.

5. If permitted by applicable law, you have the right to reinstate after acceleration of the Loan and the right to bring a court action to assert the nonexistence of a default, or any other defense to acceleration, foreclosure, and sale. However, the amount required to reinstate may be higher than what is owed under Paragraph 3 above due to additional fees and charges that we are entitled to collect under the loan documents, including attorney fees related to any foreclosure action we initiate.

6. Kindly remit the total amount due, shown in Paragraph 3 above, to the remittance address listed below. Please refer to the addresses below for payment information or contact us if you have any questions. Except as required by law, we are under no obligation to accept less than the full amount owed. If you send us less than the full amount owed, we may in our sole discretion apply such partial payment to your Loan without waiving any default or waiving our right to accelerate the Loan and continue with foreclosure proceedings in accordance with Paragraph 4 above.

7. If you are unable to pay the amount past due, Citizens has a variety of homeowners' assistance programs that might help you resolve your default and keep your home; however, we need to talk with you to discuss these options and determine which of them might be appropriate for your circumstances. Please call us as soon as possible at (1-800)234-6002.

8. While the Loan remains in default, we will perform certain tasks to protect our interest in the Property, including visits to your Property at regular intervals during the default. This will be done to determine, as of the date of the inspection, the property condition, occupancy status, and possibly your plans for curing the default and paying this Loan on time. You should anticipate that any costs incurred by Citizens Bank will be added to the amount you now owe if permitted by your loan documents or applicable law. Counseling is also available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling HUD toll-free at (800) 569-4287 or at www.hud.gov.

9. If you are a qualifying federal worker, tribal worker, state worker or a household member or landlord of such a worker, you may be entitled to certain protections (when applicable) during a period in which there is a lapse in appropriations for a federal or state agency or tribal government that continues through any

Citizens

VAM-380
10581 Telegraph Rd
Glen Allen, VA 23059

unpaid payday for a federal worker, state worker or tribal worker employed by that agency or tribal government. For additional information and to determine eligibility please contact Citizens toll free at 800-234-6002.

Sincerely,

Citizens Bank

IMPORTANT NOTICE TO SERVICEMEMBERS AND THEIR DEPENDENTS

If you are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law. SCRA and state military benefits and protections also may be available if you are the dependent of an eligible servicemember. Eligible service may include:

- ☐ Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- ☐ Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- ☐ Active service as a commissioned officer of the Public Health Service, or
- ☐ Service with the forces of a nation with which the United States is allied in a war or military action, or
- ☐ Service with the National Guard of a state militia under a state call of duty, or
- ☐ Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

An important reminder for all our customers: As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Loan modification scams should be reported to PreventLoanScams.org, or by calling 888-995-HOPE; 888-995-4673. Please call us immediately at (949) 252-8300, to discuss your options. The longer you delay, the fewer options you may have.

We are attempting to collect a debt, and any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such verification or judgment. Upon your written request within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

The Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission toll-free at 877-

Citizens

VAM-380
10561 Telegraph Rd
Glen Allen, VA 23059

FTC-HELP; 877-382-4357 or www.ftc.gov. If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorneys name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

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

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

| | |
|---|---|
| In re Adam Alan Bereki<br><br>Alleged Debtor | Case No. 8:22-BK-12076<br><br>Chapter 7<br><br>**DECLARED STATEMENT OF INTENT OF ADAM BEREKI TO COMMENCE ADVERSARY PROCEEDINGS AND REQUEST FOR EXTENSION OF TIME** |

To the Honorable Scott C. Clarkson, United States Bankruptcy Judge, the Office of the United States Trustee, and all interested parties:

Adam Bereki, ("Declarant"), hereby provides the following Statement of Intent to file two adversary proceedings challenging the validity of two purported "liens" listed on the First-Amended Schedules in the case of *In re Adam Alan Bereki*, case number 8:22-BK-12076. Declarant is providing this Statement of Intent because of certain parties' intent to obtain relief from the emergency stay and the Court's tentative ruling, made on or about April 10, 2023, stating its inclination to grant that relief, which he believes constitutes prejudicial error.

Declarant believes he and the estate will be prejudiced and continue to be irreparably harmed and damaged if the Court ultimately grants the relief allowing the party to commence foreclosure proceedings for reasons already alleged on the record and the fact that the stay relief is based upon the validity and extent of certain purported "liens" that he reasonably believes to be void or unsecured. (Declarant has previously provided substantial evidence to demonstrate that this claim pertaining to the "Judicial lien" being void is not smoke and mirrors, intended harm creditors or unnecessarily delay the administration of the estate. See Dkt. 15).

Declarant believes any relief granted on the stay would be premature and highly prejudicial because he has not had the opportunity to challenge the validity of the "liens" upon which the equity calculations for stay relief and the Court's tentative ruling are based. According to the Tentative for the scheduled hearing on April 12, 2023, the "Court is inclined to GRANT relief from stay under 11 U.S.C. Section 362(d)(2) for Debtor's lack of equity in the property."

If the "liens" at issue are either void or unsecured as Declarant reasonably believes, then they cannot be used as evidence upon which to base the equity calculations of the stay relief. Because the First-Amended Schedules indicate the "liens" in question are disputed and the fact that Declarant intends to commence adversary proceedings to determine their validity and extent, the Court must first determine their validity and extent before they can be used as material, reliable, and trustworthy evidence in the equity calculations. See e.g. *In re Ahn*, 804 Fed. Appx. 541,543 (9th Cir. 2020) (finding bankruptcy court was first required to determine the validity of a lien before avoiding it). "It makes sense that a court must first ensure that a valid lien exists, because, if no valid judicial lien attached to the debtor's property, then there is no lien to avoid and the lien avoidance cause of action would be moot. In other words, if there is a question as to a lien's validity, the bankruptcy court would err by assuming the validity of the lien and proceeding to the merits of the lien avoidance action, because there may be no injury in fact that the §522(f) action could remedy. Therefore, if the validity of a lien is disputed or becomes disputed, the court must determine, as a necessary predicate to resolving the lien avoidance action under §522(f), whether there is a valid judicial lien to avoid." *Anh*, at fn3. See also *Wiget v. Nielsen (In re Nielsen)*, 197 B.R. 665, 667-8 (9th Cir. B.A.P 1996) (superseded on other grounds).

In this case, basing stay relief upon the validity and security of "liens" that either don't exist or are unsecured would also be error. Because the "liens" at issue are clearly indicated as "disputed" in the First-Amended Schedule, the Court must first determine their validity and extent before relying upon them as evidence for relief. Presumptions are not evidence (Cal. Evidence Code §600) and cannot be used as a means of avoiding the Constitutional requirement of due process. *Bailey v. Alabama*, 219 U.S. 219, 239 (1911).

Presently, the two "liens" Declarant intends to commence adversary proceedings upon are listed in the First-Amended Schedules as (1) "Citibank N.A. Owner Trustee", ("Citibank N.A."), in the updated amount of approx. $502,000; and, (2) "Karen and Gary Humphreys", ("Judicial lien") in the amount of $848,000. If the "Judicial Lien" alone is found to be void, there would be approximately $592,946.29 in equity. Hypothetically assuming the validity and security of the "Citibank N.A." "lien", this would result in at least a 55% equity cushion, according to calculations listed in "Debtor's Responses and Objections to Citizens Bank N.A.'s Motion for Relief From Stay".

Declarant initially listed the aforementioned "liens" on the Schedules as "secured" based on reasonable belief of their *presumptive* validity. With reference to the Judicial lien, however, he also provided a sworn declaration and authenticated evidence to rebut that presumption because the underlying Judicial Judgment violates the California and United States Constitutions and is therefore void. See Dkt. 15. Based upon these facts, Declarant subsequently felt it would be more accurate to amend the initial Schedule and list this "claim" in the First-Amended Schedule as unsecured and disputed. His intent was not deceitful or malevolent.

Upon further investigation of the purported claim titled "Citibank N.A.", Declarant, who is a retired police officer and expert forensic investigator with a specialty in fraud cases, discovered a series of issues pertaining to the validity and enforceability of the alleged obligation that, based on his training and experience, indicate serious fraud. Similar elements of fraud are well known in this Circuit. See e.g. *Deutsche Bank Nat'l Trust Co. v. Tarantola (In re Tarantola)*, 2010 Bankr. LEXIS 2435, exhibiting a near carbon copy of the issues discovered by Declarant. Consequently, Declarant also changed the "Citibank N.A." "lien" from secured to unsecured and disputed.

Declarant intends to file adversary proceedings to challenge the validity and extent of each of the aforementioned "liens" and has been diligently working to that end since filing bankruptcy. In the process of writing the complaints and conducting an ongoing investigation to further discover the nature and extent of the fraud pertaining to the "Citibank N.A." "lien", two purported "creditors", including "NewRez", allegedly acting on behalf of "Citibank N.A.", filed Motions for relief from the stay. Declarant has thus far spent about twenty days and over 160 hours responding to those Motions, which required a significant diversion of his time and attention from the investigation and writing the adversary complaints.

The Court should also be aware of another apparent error overlooked by Declarant and the Court pertaining to Declarant's actual interest in the subject property. Declarant stated in the Schedules that he has only a legal and no beneficial interest therein. See also Declaration, Dkt. 15. The "Judicial Lien" therefore, can *only* attach to the extent of his beneficial interest, accord: *Riverdale Mining Co v. Wicks, 14 Cal. App 526, 536 (1910)*, holding "[t]he law is well settled that the lien of a judgment does not attach to a naked title, but only to the judgement debtor's interest in the real estate; and if he has no interest, though possessing the naked title, then no lien attaches." For this reason alone, the validity and extent of the purported "Judicial Lien" cannot be relied upon in the equity calculations because Declarant has only "naked title". This issue can also be addressed in the adversary proceedings.

Declarant requests this Court take the aforementioned facts and his intent into consideration and allow him twenty-five days to continue his investigation and to complete and file the complaints so (1) the true validity and extent of the liens can be determined first before granting relief from the stay; (2) the estate will be effectively administered; (3) Declarant will be given a true fresh start; and, (4) all void and/or unsecured liens wrongfully recorded and/or attached to property he holds legal title to, will be removed.

I, Adam Bereki, declare under penalty of perjury of the laws of the United States of America that the foregoing statements of fact are true and correct to the best of my knowledge and belief. [28 U.S.C. §1746(1) and (2)].

Dated: April 11, 2023

By: _____
Adam Bereki

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and am not a party to this bankruptcy case or adversary proceeding. My address is:

Virginia Wells
P.O. Box 9033
Fountain Valley, CA 92728-9033

A true and correct copy of the foregoing document entitled: **DECLARED STATEMENT OF INTENT OF ADAM BEREKI TO COMMENCE ADVERSARY PROCEEDINGS AND REQUEST FOR EXTENSION OF TIME** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 4/11/23, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

CHAPTER 7 TRUSTEE: Karen S. Naylor (TR) alane@ringstadlaw.com
US TRUSTEE: United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
ALLEGED LIENHOLDER: Malcom & Cisneros, c/o Citizen's Bank N.A., christinao@mclaw.org
ALLEGED LIENHOLDER: Theron S Covey and Fanny Zhang Wan c/o Citibank N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2; tcovey@raslg.com, fwan@raslg.com (respectively)

☐Service information continued on additional page.

**2. SERVED BY UNITED STATES MAIL:**
On_____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐Service information continued on additional page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 4/11/23, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

HONORABLE BANKRUPTCY COURT JUDGE: Scott S. Clarkson, 411 West Fourth St, Santa Ana, CA 92701
ALLEGED LIENHOLDER: Law Office of William Bissell, c/o Karen and Gary Humphreys, wbissell@wgb-law.com

☐Service information continued on additional page.

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

| 4/11/23 | Virginia Wells | Virginia Wells |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

Gmail

# In re Adam Bereki 22-12076 | Relief From Automatic Stay

**Adam** <abereki@gmail.com> Sun, Apr 16, 2023 at 10:25 AM
To: Christina Khil <christinao@mclaw.org>

Hi Christina,

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

I respect the law, not the *ultra vires* determinations of a rogue Judge. For these reasons, I am informing you and your client that I will hold you both legally accountable if foreclosure proceedings are commenced as a result of Judge Clarkson's "order". I am confident you know and understand exactly what I'm saying here and that using a Judge's *ultra vires* order as an excuse to commit crimes (the unlawful taking/seizure of my and my mothers property) will not work as a "nuremberg defense" to civil liability and/or criminal punishment.

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

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

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

Sincerely,

Adam Bereki

Gmail

# Public Official Corruption Complaint– Notice of Intent to Foreclose (Adam Bereki)

**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 1:15 PM
To: Christina Khil <christinao@mclaw.org>
Bcc: "Mejia, Ernesto@CHP" <ernesto.mejia@chp.ca.gov>, "Bradley, Rick" <rick.bradley@ocdapa.org>, brett.brian@ocdapa.org, "Barnachia, Matthew@CHP" <mbarnachia@chp.ca.gov>

Good day,

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

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

During the bankruptcy case (which remains open), the Judge refused to acknowledge the existence of the criminal conspiracy to force me into bankruptcy and unlawfully allowed one purported creditor, Citizens Bank, relief from the emergency stay to commence foreclosure proceedings. I notified Citizens Bank of the situation and until now, Citizens has not taken any steps toward foreclosure action.

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

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

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

While I cannot be sure who sent this unsigned letter from the law office of Malcom Cisneros (see envelope), the attorney assigned to my bankruptcy case from that office is Christina Khil. Please include her, Malcolm Cisneros, and Citizens Bank as part of the civil conspiracy evidenced in 22A426 and your investigation. Additionally, Citizens Bank has refused to comply with the provisions of the Cal. Commercial Code (§3501(b)(2) and (3)) which afford me the right to refuse to pay without being subjected to foreclosure. I have included Ms. Khl in this email. Notice to Agent (Christina Kihl) is Notice to Principal (Malcolm Cisneros and Citizens Bank).

Sincerely,

/s/Adam Bereki

**CITIZENS NOTICE OF INTENT TO FORECLOSE 020224.pdf**
884K

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**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 1:19 PM
To: Erica Pedraza <erica@mclaw.org>, rwhite@mclaw.org, tscholtz@mclaw.org

**CITIZENS NOTICE OF INTENT TO FORECLOSE 020224.pdf**
884K

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**Mejia, Ernesto@CHP** <Ernesto.Mejia@chp.ca.gov> Fri, Feb 2, 2024 at 1:20 PM
To: Adam <abereki@gmail.com>

Thanks, Adam. Received on my end.

Get Outlook for iOS

---

**From:** Adam <abereki@gmail.com>
**Sent:** Friday, February 2, 2024 1:15:22 PM
**To:** Christina Khil <christinao@mclaw.org>
**Subject:** Public Official Corruption Complaint– Notice of Intent to Foreclose (Adam Bereki)

[**Warning:** This email originated outside of CHP. Do not click links or attachments unless you recognize the sender and know the content is safe.]

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**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 1:21 PM
To: "Mejia, Ernesto@CHP" <Ernesto.Mejia@chp.ca.gov>

You're welcome. Thank you for responding.

---

**Bradley, Rick** <Rick.Bradley@ocdapa.org> Fri, Feb 2, 2024 at 1:46 PM
To: Adam <abereki@gmail.com>

Just to be clear, we **ARE NOT** currently conducting any investigation. We are in the process of reviewing the information you sent us to determine if there are any grounds to even start an investigation. We first must determine if

1 If there is evidence a prosecutable crime has occurred

2 Who committed the potential crime (a particular individual)

3 Where the potential crime occurred to determine jurisdiction

4 If there is going to be an investigation, which agency has jurisdiction and should handle the case.

When we have a chance to properly review the information and determine the above listed factors, we will contact you advising of the results.

Supervising Investigator Rick Bradley

Orange County District Attorney's Office

Special Prosecutions Unit

Work: (714) 347-0343

Cell (714) 501-2811

Rick.bradley@ocdapa.org

**From:** Adam <abereki@gmail.com>
**Sent:** Friday, February 2, 2024 1:15 PM
**To:** Christina Khil <christinao@mclaw.org>

---

**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 2:19 PM
To: "Bradley, Rick" <Rick.Bradley@ocdapa.org>

Rick,

Thanks for your reply. I can tell you care about doing your job with integrity and being clear.

In my experience, the factors you listed are those that are **inextricably part of and requisite of ALL** investigations. That was my intent on using the word "investigation" in the previous email I sent.

In my experience, you are apparently in the preliminary stages of your investigation and haven't yet arrived at conclusions of fact or law to substantiate my claims/allegations.

I understand and hear you need more time. That's fine. But the crime is ongoing and in progress. Irreparable harm and damages continue to accrue. My intent in the previous email was to provide you more evidence of that information and additional parties that are involved.

To deny that you're conducting an investigation after I've submitted a bonafide complaint would, in this instance, seem to indicate a breach of your sworn duties, which is not what I think you meant to say. While this may seem like semantics, it's definitely not and it's important to me to tell the truth and be clear about this.

Because the provisions of our Constitutions are mandatory and prohibitory, (See Cal. Const. Art. 1, §26), there is no discretion to complete a full, fair, and impartial investigation into complaints involving breach of sworn public official duties. The reason is because if officials could refuse to fully investigate complaints of this nature, they could single-

handedly overrule the entire State and Federal Constitution by simply refusing to investigate/intervene.

Again, thank you for your email and desire to be clear. It is so apparent that you talk you position and duties seriously. I'm thankful you're a part of this.

Sincerely,
/s/ Adam Bereki

---

**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 2:26 PM
To: Adam Bereki <abereki@gmail.com>

--------- Forwarded message ---------
From: **Adam** <abereki@gmail.com>

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**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 2:27 PM
To: "Whitestone Builders inc." <Pier@whitestonebuildersinc.com>

JUST FYI— you might want to read through some of this and see the replies by public officials...

------- Forwarded message -------
From: **Adam** <abereki@gmail.com>
Date: Fri, Feb 2, 2024 at 2:19 PM

---

**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 2:28 PM
To: "Whitestone Builders inc." <Pier@whitestonebuildersinc.com>

Sorry, I think this is the full email I meant to forward, not just that one you received. I hope they all go through.

--------- Forwarded message ---------
From: **Adam** <abereki@gmail.com>
Date: Fri, Feb 2, 2024 at 1:15 PM
Subject: Public Official Corruption Complaint– Notice of Intent to Foreclose (Adam Bereki)
To: Christina Khil <christinao@mclaw.org>

---

**CITIZENS NOTICE OF INTENT TO FORECLOSE 020224.pdf**
884K

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**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 3:29 PM
To: "Bradley, Rick" <Rick.Bradley@ocdapa.org>

Rick,

I just wanted to add one other very important response to your email because it occurred to me you are perceiving my Complaint as only a criminal complaint. While I know one of the primary functions of your office is criminal investigation and prosecution, the Complaint I made to your office is NOT just a criminal complaint. It is a complaint for deprivation of State and Nationally protected Constitutional rights.

While deprivations of rights can in many cases be criminal, the protection of these rights does not depend on whether or not someone is or can be criminally prosecuted or not. It isn't about whether a crime has been committed, but whether a deprivation of protected rights has occurred.

In most cases, the penal code enumerates deprivations of protected rights to liberty and property by describing actions (crimes) that violate those Constitutionally protected rights. In these cases, criminal prosecution may occur. But again, nothing in our Constitutions says that rights depend upon criminal prosecution. The District Attorney can certainly refuse to criminally prosecute a public official. But neither the DA nor any public official has discretion to refuse to investigate and intervene in deprivations of Constitutionally protected rights.

With regard to this aspect of my complaint, it is therefore irrelevant whether items 1-3 of your grounds for an investigation have occurred.

Sincerely,

Adam Bereki

Gmail

# Public Official Corruption Complaint– Notice of Intent to Foreclose (Adam Bereki)

**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 1:15 PM
To: Christina Khil <christinao@mclaw.org>
Bcc: "Mejia, Ernesto@CHP" <ernesto.mejia@chp.ca.gov>, "Bradley, Rick" <rick.bradley@ocdapa.org>, brett.brian@ocdapa.org, "Barnachia, Matthew@CHP" <mbarnachia@chp.ca.gov>

Good day,

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

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

During the bankruptcy case (which remains open), the Judge refused to acknowledge the existence of the criminal conspiracy to force me into bankruptcy and unlawfully allowed one purported creditor, Citizens Bank, relief from the emergency stay to commence foreclosure proceedings. I notified Citizens Bank of the situation and until now, Citizens has not taken any steps toward foreclosure action.

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

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

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

While I cannot be sure who sent this unsigned letter from the law office of Malcom Cisneros (see envelope), the attorney assigned to my bankruptcy case from that office is Christina Khil. Please include her, Malcolm Cisneros, and Citizens Bank as part of the civil conspiracy evidenced in 22A426 and your investigation. Additionally, Citizens Bank has refused to comply with the provisions of the Cal. Commercial Code (§3501(b)(2) and (3)) which afford me the right to refuse to pay without being subjected to foreclosure. I have included Ms. Kihl in this email. Notice to Agent (Christina Kihl) is Notice to Principal (Malcolm Cisneros and Citizens Bank).

Sincerely,

/s/Adam Bereki

CITIZENS NOTICE OF INTENT TO FORECLOSE 020224.pdf
884K

Gmail

## Automatic reply: Public Official Corruption Complaint– Notice of Intent to Foreclose (Adam Bereki)

**Christina Khil** <christinao@mclaw.org> Fri, Feb 2, 2024 at 1:16 PM
To: Adam <abereki@gmail.com>

Hello.

Thank you for your email. I am currently out of office without access to my emails.

Please direct any correspondence regarding bankruptcy matters to Erica Pedraza (erica@mclaw.org), Rhonda White (rwhite@mclaw.org) and Tami Sholtz (tscholtz@mclaw.org).

For all other matters, please direct your correspondence to Quality Control QualityControl@mclaw.org .

Best regards.

Christina Khil
Managing Attorney, Bankruptcy

MALCOLM CISNEROS
A LAW CORPORATION

2112 Business Center Drive
Irvine, CA 92612
949-252-9400, Ext. 219
949-252-1032 (fax)
www.malcolmcisneros.com

Follow our firm at:

Certified Minority Owned Corporation

Malcolm ♦ Cisneros, A Law Corporation, is an AV rated, regional commercial and civil litigation firm with offices across the Western United States in Phoenix, AZ; Irvine and Riverside, CA; Las Vegas, NV; Lake Oswego, OR; Dallas, TX; Seattle, WA.

****CONFIDENTIALITY NOTICE****

This email message is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. It is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

Gmail

# Public Official Corruption Complaint– Notice of Intent to Foreclose (Adam Bereki)

**Adam** <abereki@gmail.com> Fri, Feb 2, 2024 at 1:19 PM
To: Erica Pedraza <erica@mclaw.org>, rwhite@mclaw.org, tscholtz@mclaw.org

**CITIZENS NOTICE OF INTENT TO FORECLOSE 020224.pdf**
884K

Gmail

# RE: Foreclosure Sale 818 Spirit, Costa Mesa, California

**Adam** <abereki@gmail.com> Tue, Oct 8, 2024 at 12:04 PM
To: support@trusteecorps.com
Bcc: steven.m.autieri@citizensbank.com

To: Trustee Corps.

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

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

I'm sure your research has revealed there is plenty of equity in my home to ensure payment should a foreclosure sale become necessary and that you are not in jeopardy of losing any compensation to the extent you are lawfully owed payment. Effecting a foreclosure sale at this time given the circumstances would only force more undue hardship upon me including additional financial and emotional distress as well as having to find a home.

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

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

Sincerely,

Adam Bereki
949.241.6693

---

**Adam** <abereki@gmail.com> Tue, Oct 8, 2024 at 12:04 PM
To: Adam Bereki <abereki@gmail.com>

Gmail Adam Bereki <abereki@gmail.com>

# NOTICE OF INTENT TO FILE EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND COMPLAINT TO QUIET TITLE

Inbox

**Adam** <abereki@gmail.com> Mon, Oct 21, 2024 at 6:43 AM
Bcc: Christina Khil <christinao@mclaw.org>, steven.m.autieri@citizensbank.com, support@trusteecorps.com

Good day,

Pursuant to Local Rules 7-3 and 7-19 of the U.S. District Court for the Central District of California:

On or shortly before Nov. 17, 2024, I will be filing a complaint in the above Court consisting primarily of personal injury/ deprivation of Constitutionally protected rights claims against public officials and private parties surrounding their theft of my rights and property that has impaired my private contracts/obligations (ie my ability to pay you and/or other creditors whom I may owe a debt to). You should already be aware of these circumstances presented on the record of bankruptcy case 22-12076 filed in the bankruptcy Court for the Central District of California. (On 10/18-24, I filed a Motion to Compel the bankruptcy trustee to abandon them so that I will unquestionably have standing to do so.)

Additionally, the complaint will include a claim for quiet title. A Notice of Lis Pendens will also be filed. See Adversary Proceeding 8:23-AP-01075 for details on these issues.

The aforementioned Local Rules require that I give you notice of my intent to file the Ex parte Application seeking a Temporary Restraining Order of the foreclosure proceedings you have commenced pertaining to the real property located at 818 Spirit, Costa Mesa, California. See LR 7-19.

The Local Rules also require that prior to requesting assistance of the Court and using its resources, that I contact you and attempt resolution. See LR 7-3. This is my second attempt.

As I see it, there is no need to use Court resources for a restraining order and injunction regarding a foreclosure sale when there are serious issues surrounding the title of this property giving rise to the quiet title claims, not to mention the extraordinary circumstances surrounding my alleged default. You will not be able to sell the property until the Lis Pendens is removed either. Given the procedural history in my case, you have evidence of my intent to follow through and passionately seek justice, albeit in our terribly corrupt just-us system.

As the time for filing the complaint and the ex parte application nears, I will certainly provide/serve you copies. However, before I use my valuable time and resources in further preparing the Application and additional claims for relief for damages against you for my time in doing so, I am again requesting that you cease and desist the foreclosure proceedings.

Also, please provide the name, email, and direct phone number of counsel so that I may provide that to the Court to comply with the requirements of 7-19.1 and also have a direct line of communication with you. (When I spoke with a member of your Trustee Corps team a few weeks ago they refused to provide their name, and I believe email as well). I don't think the Court will look upon this behavior favorably.

If you would like to further discuss this matter, please call or email.

Sincerely,

Adam Bereki

949.241.6693

Gmail

# Request for Documents

**Adam** <abereki@gmail.com> Tue, Feb 4, 2025 at 8:43 AM
To: documents@trusteecorps.com

Good day,

My name is Adam Bereki. I'm writing to obtain copies of documents pertaining to the recent foreclosure sale of my home at 818 Spirit, costa mesa, california. Could you please provide: 1) a copy of the Deed of Trustee sale (either the unrecorded one that was sent to the new buyer or the recorded one if you have it) 2) any documents or other information that you provided notice of the pending litigation involving the property and/or my rights that effect the property to the potential buyers, including Mr Hou.

Thank you so much.

Adam Bereki
949.241.6693

---

**Adam** <abereki@gmail.com> Tue, Feb 4, 2025 at 8:45 AM
To: "hpaloci@hotmail.com" <hpaloci@hotmail.com>

I'm forwarding this email and will forward you the answer when I receive it. I also just recorded another phone call with Trustee Corps that they did not provide your client (or any of the other potential buyers) notice of the pending litigation involving the property.

---

**Henry Paloci** <henry.paloci@gmail.com> Wed, Feb 5, 2025 at 10:23 AM
To: abereki@gmail.com

Trustee Corps isn't required to provide notice of pending litigation on the property. Your suggestion that Trustee Corps owes a duty to provide this information is without merit.

Merely having filed a lawsuit means nothing. Anyone can sue anyone for anything.

If you had a lis pendens or a stay (either in state court or BK court), then they would have to stop (not have a sale) and inform the public. You admitted to me on the phone yesterday that you had neither of these at the time of the sale.

Henry Paloci, Esq.
805.279.1225

On Feb 5, 2025, at 8:47 AM, Henry Paloci <hpaloci@hotmail.com> wrote:

Sent from my iPhone

Begin forwarded message:

**From:** Adam <abereki@gmail.com>
**Date:** February 4, 2025 at 8:45:19 AM PST
**To:** hpaloci@hotmail.com
**Subject: Fwd: Request for Documents** !

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**Jody Arnett** <jarnett@trusteecorps.com> Fri, Feb 7, 2025 at 3:46 PM
To: Adam <abereki@gmail.com>

Good afternoon, a copy of the Trustee's Deed can be obtained from the county recorder's office. Our office is not required to provide any information related to the property to potential buyers, they must do their own due diligence.

Thanks!

TRUSTEE CORPS

*Providing Default Services in AK, AZ, CA, NV, OR, TX & WA*

**Jody Arnett**

**Foreclosure Manager – California & Texas**

17100 Gillette Ave. Irvine, CA 92614

Tel: 949-252-8300 ext.4119

Fax: 949-252-8330

JArnett@TrusteeCorps.com



**Exhibit 3, p.59**

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

91.00

*$R001503792 8$*

2024000173067 3:24 pm 07/10/24

486 412A N15 3

0.00 0.00 0.00 0.00 6.00 0.00 0.000.0075.00 3.00

RECORDING REQUESTED BY:

ServiceLink

WHEN RECORDED MAIL TO:

Trustee Corps
17100 Gillette Ave
Irvine, CA 92614

APN: 141-513-55 TS No: CA13000044-22-2 TO No: 240282878

## NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

**NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED**

**注：本文件包含一个信息摘要**

**참고사항: 본 첨부 문서에 정보 요약서가 있습니다**

**NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO**

**TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP**

**LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY**

**(The above statement is made pursuant to CA Civil Code Section 2923.3(c)(1). The Summary will be provided to Trustor(s) and/or vested owner(s) only, pursuant to CA Civil Code Section 2923.3(c)(2).)**

## IMPORTANT NOTICE

**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION**, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this Notice of Default may be recorded (which date of recording appears on this notice).

This amount is **$31,901.33** as of **July 9, 2024**, and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your Note and Deed of Trust or Mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the Note and Deed of Trust or Mortgage, the Beneficiary or Mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the Beneficiary or Mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the Beneficiary or Mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Beneficiary or Mortgagee may mutually agree in writing prior to the time the Notice of Sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: **Citizens Bank, N.A. FKA RBS Citizens, N.A. SBM to Charter One Bank, N.A. c/o MTC Financial Inc. dba Trustee Corps** located at 17100 Gillette Ave Irvine, CA 92614 Phone: 949-252-8300 TDD: 711 949.252.8300 Ref No: CA13000044-22-2

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

## REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

**NOTICE IS HEREBY GIVEN THAT:** MTC Financial Inc. dba Trustee Corps is the original Trustee, duly appointed Substituted Trustee, or acting as Agent for the Trustee or Beneficiary under a Deed of Trust dated as of October 30, 2006, executed by ADAM BEREKI, SINGLE MAN, as Trustor(s), to secure obligations in favor of CHARTER ONE BANK, N.A., the original Beneficiary, recorded December 14, 2006 as Instrument No. 2006000838019, of the official records in the Office of the Recorder of Orange County, California, as more fully described on said Deed of Trust. Including a Note(s) for the sum of $110,798.00 that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; that a breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of: **THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE ON October 23, 2021 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST, ALONG WITH LATE CHARGES, PLUS ALL OF THE TERMS AND CONDITIONS AS PER THE DEED OF TRUST, PROMISSORY NOTE AND RELATED LOAN DOCUMENTS.**

That by reason thereof, the present Beneficiary under such Deed of Trust, has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Where required by law, a declaration pursuant to California Civil Code Section 2923.5(b) or California Civil Code Section 2923.55 is attached.

Dated: July 9, 2024

**MTC Financial Inc. dba Trustee Corps**
**as Duly Appointed Successor Trustee**

By: Bernardo Sotelo, Authorized Signatory

**To the extent your original obligation was discharged or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.**

# CALIFORNIA DECLARATION OF COMPLIANCE
## (Civil Code § 2923.55(c))

| | |
|---|---|
| Borrower(s): | ADAM BEREKI |
| Mortgage Servicer: | Citizens Bank, N.A. |
| Property Address: | 818 SPIRIT<br>COSTA MESA, CA 92626 |
| T.S. No: | CA13000044-22-2 |

The undersigned, as an authorized agent or employee of the mortgage servicer named below, declares that:

1. ☐ The mortgage servicer has contacted the Borrower pursuant to California Civil Code § 2923.55(b)(2) to "assess the Borrower's financial situation and explore options for the Borrower to avoid foreclosure". Thirty (30) days, or more, have passed since the initial contact was made.

2. ☑ The mortgage servicer has exercised due diligence to contact the Borrower pursuant to California Civil Code § 2923.55(f) to "assess the Borrower's financial situation and explore options for the Borrower to avoid foreclosure". Thirty (30) days, or more, have passed since these due diligence efforts were satisfied.

3. ☐ No contact was required by the mortgage servicer because the individual did not meet the definition of 'Borrower' pursuant to subdivision (c) of Section 2920.5.

4. ☐ No contact was made with the Borrower pursuant to Civil Code § 2923.55 because the above-referenced loan is not secured by a first lien mortgage or deed of trust on an owner-occupied residential real property. As described in Civil Code § 2924.15(a), "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes and all requirements effective 1/1/2023, pertaining to tenants-occupied conditions have been reviewed.

Additionally, pursuant to California Civil Code § 3273.10, to include all updates effective 1/1/2023:

1. ☑ The mortgage servicer has not denied the borrower a forbearance request on or after 8/312020.

2. ☐ The mortgage servicer was unable to approve the borrower's request for a forbearance on or after 8/31/2020, and a forbearance was not subsequently provided. A copy of the notice is attached.

3. ☐ The mortgage servicer was unable to approve the borrower's request for a forbearance on or after 8/31/2020, however, a forbearance was subsequently provided. A copy of the approval notice is attached.

4. ☐ The requirements of California Civil Code § 2923.55 do not apply because the loan is not secured by a first lien mortgage or deed of trust on "owner-occupied" or qualifying tenant –occupied residential real property as defined by California Civil Code § 2924.15.

5. ☑ The mortgage servicer is in compliance with California Civil Code § 3273.10 because the mortgage servicer has complied with the relevant provisions regarding forbearance in Section 4022 of the federal Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Public Law 116-136), including any amendments or revisions to those provisions, pursuant to California Civil Code § 3273.10(d).

I certify and represent that this mortgage servicer's declaration is accurate, complete and based upon competent and reliable evidence, including my review of the mortgage servicer's business records.

Date: July 1, 2024

Citizens Bank, N.A. , Mortgage Servicer

By: Dylan Watkins

ATTACHMENT TO NOTICE OF DEFAULT

TS No. CA13000044-22-2

**NOTICE OF DEFAULT**
**SUMMARY OF KEY INFORMATION**

The attached notice of default was sent to ADAM BEREKI, SINGLE MAN, in relation to 818 SPIRIT, COSTA MESA, CA 92626. This property may be sold to satisfy your obligation and any other obligation secured by the deed of trust or mortgage that is in default. ADAM BEREKI, SINGLE MAN has, as described in the notice of default, breached the mortgage or deed of trust on the property described above.

IMPORTANT NOTICE: IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date the attached notice of default may be recorded (which date of recordation appears on the notice).

This amount is $31,901.33 as of July 9, 2024 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months after this notice of default is recorded) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Civil Code Section 2923.3(c)(2)



Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Citizens Bank, N.A. FKA RBS Citizens, N.A. SBM to Charter One Bank, N.A.

(Name of beneficiary or mortgagee)

10561 Telegraph Rd., Mailstop: VAM370, Glen Allen, VA 23059

(Mailing address)

(401)255-8345

(Telephone)

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

If you would like additional copies of this summary, you may obtain them by calling 949-252-8300 TDD: 711 949.252.8300.

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

91.00

* $ R 0 0 1 5 1 9 3 9 3 9 $ *

2024000264074 12:54 pm 10/10/24

90 CR-SC06 N34 3

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RECORDING REQUESTED BY:

ServiceLink

WHEN RECORDED MAIL TO:

Trustee Corps
17100 Gillette Ave
Irvine, CA 92614

TS No: CA13000044-22-2 APN: 141-513-55 TO No: 240282878

## NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED
注：本文件包含一个信息摘要
참고사항: 본 첨부 문서에 정보 요약서가 있습니다
NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

**(The above statement is made pursuant to CA Civil Code Section 2923.3(d)(1). The Summary will be provided to Trustor(s) and/or vested owner(s) only, pursuant to CA Civil Code Section 2923.3(d)(2).)**

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED October 30, 2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.**

On **November 18, 2024 at 01:30 PM, at the North front entrance to the County Courthouse at 700 Civic Center Drive West, Santa Ana, CA 92701, MTC Financial Inc. dba Trustee Corps**, as the duly Appointed Trustee, under and pursuant to the power of sale contained in that certain Deed of Trust recorded on December 14, 2006 as Instrument No. 2006000838019, of official records in the Office of the Recorder of Orange County, California, executed by ADAM BEREKI, SINGLE MAN, as Trustor(s), in favor of CHARTER ONE BANK, N.A. as Beneficiary, **WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER**, in lawful money of the United States, all payable at the time of sale, that certain property situated in said County, California describing the land therein as: **AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST**

The property heretofore described is being sold "as is". The street address and other common designation, if any, of the real property described above is purported to be: 818 SPIRIT, COSTA MESA, CA 92626

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

Said sale will be made without covenant or warranty, express or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the Note(s) secured by said Deed of Trust, with interest thereon, as provided in said Note(s), advances if any, under the terms of the Deed of Trust, estimated fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust.

The total amount of the unpaid balance of the obligations secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of this Notice of Trustee's Sale is estimated to be $58,722.21 (Estimated). However, prepayment premiums, accrued interest and advances will increase this figure prior to sale. Beneficiary's bid at said sale may include all or part of said amount. In addition to cash, the Trustee will accept a cashier's check drawn on a state or national bank, a check drawn by a state or federal credit union or a check drawn by a state or federal savings and loan association, savings association or savings bank specified in Section 5102 of the California Financial Code and authorized to do business in California, or other such funds as may be acceptable to the Trustee. In the event tender other than cash is accepted, the Trustee may withhold the issuance of the Trustee's Deed Upon Sale until funds become available to the payee or endorsee as a matter of right. The property offered for sale excludes all funds held on account by the property receiver, if applicable.

**If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee and the successful bidder shall have no further recourse.**

## Notice to Potential Bidders

If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a Trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a Trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same Lender may hold more than one mortgage or Deed of Trust on the property.

## Notice to Property Owner

The sale date shown on this Notice of Sale may be postponed one or more times by the Mortgagee, Beneficiary, Trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about Trustee Sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may visit the Internet Website address www.nationwideposting.com or call Nationwide Posting & Publication at 916.939.0772 for information regarding the Trustee's Sale for information regarding the sale of this property, using the file number assigned to this case, CA13000044-22-2. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Website. The best way to verify postponement information is to attend the scheduled sale.

TS No: CA13000044-22-2 APN: 141-513-55 TO No: 240282878

## Notice to Tenant

NOTICE TO TENANT FOR FORECLOSURES AFTER JANUARY 1, 2021

You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer," you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call 916.939.0772, or visit this internet website www.nationwideposting.com, using the file number assigned to this case CA13000044-22-2 to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase.

Date: October 8, 2024

MTC Financial Inc. dba Trustee Corps
TS No. CA13000044-22-2
17100 Gillette Ave
Irvine, CA 92614
Phone: 949-252-8300
TDD: 711 949.252.8300

By: Loan Quema, Authorized Signatory

**SALE INFORMATION CAN BE OBTAINED ONLINE AT www.nationwideposting.com**
**FOR AUTOMATED SALES INFORMATION PLEASE CALL:**
**Nationwide Posting & Publication AT 916.939.0772**

**To the extent your original obligation was discharged or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.**

TS No. CA13000044-22-2

NOTICE OF SALE
SUMMARY OF KEY INFORMATION

The attached notice of sale was sent to ADAM BEREKI, SINGLE MAN, in relation to 818 SPIRIT, COSTA MESA, CA 92626.

YOU ARE IN DEFAULT UNDER A DEED OF TRUST OR MORTGAGE DATED October 30, 2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE.

IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

The total amount due in the notice of sale is $58,722.21.

Your property is scheduled to be sold on November 18, 2024 at 01:30 PM, at the North front entrance to the County Courthouse at 700 Civic Center Drive West, Santa Ana, CA 92701.

However, the sale date shown on the attached notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call Nationwide Posting & Publication at 916.939.0772 or visit this Internet Web site address www.nationwideposting.com using the file number assigned to this case CA13000044-22-2. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

If you would like additional copies of this summary, you may obtain them by calling 949-252-8300 TDD: 711 949.252.8300.

Civil Code Section 2923.3(d)(2) (Revised 3/28/13)



TS No. CA13000044-22-2

**出售通知**
**關鍵信息摘要**

**本文中包含的有關**

818 SPIRIT, COSTA MESA, CA 92626

**（所涉抵押貸款或產權契約違約的房產描述）**

**的出售通知發送給**

ADAM BEREKI, SINGLE MAN

**（委托人姓名）**

**你的 產權契約或抵押貸款** October 30, 2006 **已經逾期違約。**

**（日期）**

**除非你採取行動保護你的房產 否則該房產將被公開出售。**

**如果你需要了解對你的訴訟程序的性質，應該聯系一名律師。**

**法拍書面通知的總金額是** $58,722.21 。

**你的房產預計出售的時間** November 18, 2024, 01:30 PM **出售地點**

**（出售日期和時間）**

at the North front entrance to the County Courthouse at 700 Civic Center Drive West, Santa Ana, CA 92701

**（出售位置）**

**然而，根據加州民法第 2924g，本文中包含的法拍書面通知上顯示的出售日期可能會被抵押權人，受益人，受托人，或法院一次或多次推遲。該法規定，作為對不在法拍現場人士的一種寬限，有關受托人推遲出售的信息要提供給你和公眾。如果你想了解你的房產出售日期是否已被推遲，以及（如適用）重新安排的法拍時間和日期，可致電**

Nationwide Posting & Publication at 916.939.0772 **或訪問互聯網網址，**

**（關於受托人出售信息的電話號碼）**

www.nationwideposting.com **用指定的檔案編號** CA13000044-22-2 **查找。**

**（互聯網網址提供的出售該房產的信息）** **（案件檔案號）**

Notice of Sale – Chinese (Revised 3/28/13)

Gmail [redacted]

# 818 Spirit Costa Mesa/ Adam Bereki

**Adam** <abereki@gmail.com> Thu, Feb 20, 2025 at 7:15 AM
To: Christina Khil <christinao@mclaw.org>

Good Morning Christina,

Could you please inform me if you or your firm (or both) were in any way involved in the decision or proceedings to non-judicially foreclose upon the Citizens Deed of Trust secured by my home? I'm asking because I'm going to commence a suit against Citizens and I don't want to name you or your company if you had no involvement.

Thank you for your time,

Adam Bereki

Gmail

## 8000123235

**Epps, Kaity J** <Kaitlyn.Epps@citizensbank.com> Mon, Mar 3, 2025 at 7:36 AM
To: "a.bereki@gmail.com" <a.bereki@gmail.com>

Transaction history 3-1/2025 – 3/3/2025

This message is confidential and subject to terms at: https://www.citizensbank.com/account-safeguards/overview.aspx. If you are not the intended recipient, please delete this message and notify the sender immediately. Any unauthorized use is strictly prohibited. California Notice at Collection [illegible]

**BEREKI.pdf**
75K

**Adam** <abereki@gmail.com> Mon, Mar 3, 2025 at 7:51 AM
To: "Epps, Kaity J" <Kaitlyn.Epps@citizensbank.com>

Hi Kaity,

Are you able to tell me what charges, such as late fees, attorneys fees, etc Citizens charged to my account? It's confusing on the spreadsheet you provided.

Thank you

Adam bereki
949.241.6693

Servicing Team

Date: 03/03/2025

Transaction History for Loan Number ******3235

Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

**Property Address:**
818 Spirit
Costa Mesa, CA 92626

**Loan Information**

**Next Payment Due Date:** 10/23/2021
**Total Payment Amount:** $350.41

**Current Principal Balance:** $0.00
**Escrow Balance:** $0.00

**Loan Type:** ConventionalWithoutPMI
**Interest Rate:** 2.7%

**Transaction Detail**

Activity from 03/01/2020 to 03/03/2025

| Date | Due Date | Eff Date | Tran Amt | Principal | Interest | Escrow | Fees | Other | Suspense | Description | Chk# | Payee | Principal Balance | Escrow Balance | Suspense Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 01/27/2025 | | | -$159.12 | | | | | | | Corporate Adjustment | | | | $0.00 | |
| 01/27/2025 | | | -$821.97 | | | | | | | Corporate Adjustment | | | | $0.00 | |
| 01/27/2025 | | | $159.12 | | | | | | | Corporate Adjustment | | | | $0.00 | |
| 01/27/2025 | | | $821.97 | | | | | | | Corporate Adjustment | | | | $0.00 | |
| 01/27/2025 | | | $10,757.58 | | | | | | | Corporate Adjustment | | | | $0.00 | |
| 01/27/2025 | | | $10,757.58 | | | | | | | Corporate Adjustment | | | | $0.00 | |
| 01/23/2025 | 10/23/2021 | | | | | $9,681.85 | | | | Escrow Advance Recovery | | | | $0.00 | |
| 01/23/2025 | 10/23/2021 | 01/23/2025 | $9,681.85 | | | $9,681.85 | | | | Predistributed Payment | | | | $0.00 | |
| 01/17/2025 | 10/23/2021 | | | | | | $812.97 | | | Late Charge Adjustment | | | | -$9,681.85 | |
| 01/17/2025 | 10/23/2021 | | | $34,631.22 | | | | | | Foreclosed | | | | -$9,681.85 | |
| 01/17/2025 | | | | | | | | | | Miscellaneous Corporate Expense | 376646 | CITIZENS | $34,631.22 | -$9,681.85 | |
| 01/17/2025 | | | | | | | | | | Miscellaneous Corporate Expense | 376645 | CITIZENS | $34,631.22 | -$9,681.85 | |
| 01/16/2025 | | | $62,723.24 | | | | | | | Miscellaneous Expense Repayment | | | $34,631.22 | -$9,681.85 | |
| 01/15/2025 | 10/23/2021 | | | | | | $89.77 | | | Late Charge Adjustment | | | $34,631.22 | -$9,681.85 | |
| 01/07/2025 | 10/23/2021 | | | | | | -$29.92 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |



Exhibit 3, p.72

0576

| Date | Due Date | Eff Date | Tran Amt | Principal | Interest | Escrow | Fees | Other | Suspense | Description | Chk# | Payee | Principal Balance | Escrow Balance | Suspense Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 12/30/2024 | | | | | | | | | | Attorney Advance Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 12/30/2024 | | | | | | | | | | Attorney Advance Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 12/09/2024 | 10/23/2021 | | | | | | -$29.47 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 11/22/2024 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 11/22/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 11/12/2024 | | | | | | | | | | Property Preservation Disbursement | 329739 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 11/07/2024 | 10/23/2021 | | | | | | -$30.38 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 10/24/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 10/24/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 10/24/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 10/21/2024 | | | | | | | | | | Property Preservation Disbursement | WIRE | FIRST AMERICAN MORTGAGE | $34,631.22 | -$9,681.85 | |
| 10/18/2024 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | FIRST AMERICAN MORTGAGE | $34,631.22 | -$9,681.85 | |
| 10/17/2024 | | | | | | | | | | Property Preservation Disbursement | 311055 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 10/15/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 309496 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 10/15/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 309496 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 10/08/2024 | 10/23/2021 | | | | | | -$30.38 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 09/19/2024 | | | | | | | | | | Property Preservation Disbursement | 294454 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 09/09/2024 | 10/23/2021 | | | | | | -$29.92 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 08/22/2024 | | | | | | | | | | Property Preservation Disbursement | 274071 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |

| Date | Due Date | Eff Date | Tran Amt | Principal | Interest | Escrow | Fees | Other | Suspense | Description | Chk# | Payee | Principal Balance | Escrow Balance | Suspense Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 08/07/2024 | 10/23/2021 | | | | | | -$31.28 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 08/02/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 08/02/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 08/02/2024 | | | | | | | | | | Attorney Advance Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 08/01/2024 | | | | | | | | | | Property Preservation Disbursement | 257891 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 07/12/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 242628 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 07/12/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 242628 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 07/08/2024 | 10/23/2021 | | | | | | -$29.02 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 07/08/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 239148 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 07/08/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 239148 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 07/02/2024 | | | | | | | | | | Property Preservation Disbursement | 236586 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 06/14/2024 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 06/14/2024 | | | | | | | | | | Attorney Advance Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 06/14/2024 | | | | | | | | | | Attorney Advance Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 06/07/2024 | 10/23/2021 | | | | | | -$30.38 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 06/03/2024 | | | | | | | | | | Miscellaneous Corporate Expense | 215943 | SERVICELINK TITLE CO | $34,631.22 | -$9,681.85 | |
| 06/03/2024 | | | | | | | | | | Property Preservation Disbursement | 215940 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 05/13/2024 | | | | | | | | | | Property Preservation Disbursement | 201728 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 05/08/2024 | 10/23/2021 | | | | | | -$29.47 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 04/17/2024 | | | | | | | | | | Property Preservation Disbursement | 184396 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |

| Date | Due Date | Eff Date | Tran Amt | Principal | Interest | Escrow | Fees | Other | Suspense | Description | Chk# | Payee | Principal Balance | Escrow Balance | Suspense Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 04/08/2024 | 10/23/2021 | | | | | | -$30.38 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 03/28/2024 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 03/19/2024 | | | | | | | | | | Property Preservation Disbursement | 161160 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 03/11/2024 | 10/23/2021 | | | | | | -$30.38 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 02/23/2024 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 02/15/2024 | | | | | | | | | | Property Preservation Disbursement | 133710 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 02/12/2024 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 02/12/2024 | | | | | | | | | | Attorney Advance Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 02/07/2024 | 10/23/2021 | | | | | | -$30.87 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 01/25/2024 | | | | | | | | | | Property Preservation Disbursement | 123413 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 01/16/2024 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 01/08/2024 | 10/23/2021 | | | | | | -$29.51 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 01/05/2024 | | | | | | | | | | Property Preservation Disbursement | 104856 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 12/11/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 12/08/2023 | 10/23/2021 | | | | | | -$29.96 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 12/05/2023 | | | | | | | | | | Property Preservation Disbursement | 84532 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 11/15/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 11/08/2023 | | | | | | | | | | Property Preservation Disbursement | 63156 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 11/07/2023 | 10/23/2021 | | | | | | -$30.87 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 10/10/2023 | 10/23/2021 | | | | | | -$29.53 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 10/05/2023 | | | | | | | | | | Property Preservation Disbursement | 40041 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |

| Date | Due Date | Eff Date | Tran Amt | Principal | Interest | Escrow | Fees | Other | Suspense | Description | Chk# | Payee | Principal Balance | Escrow Balance | Suspense Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 10/03/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 09/07/2023 | 10/23/2021 | | | | | | -$29.53 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 09/06/2023 | | | | | | | | | | Property Preservation Disbursement | 19806 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 08/09/2023 | | | | | | | | | | Property Preservation Disbursement | 999919 | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 08/07/2023 | 10/23/2021 | | | | | | -$29.53 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 07/10/2023 | 10/23/2021 | | | | | | -$29.11 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 07/05/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 06/28/2023 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 06/07/2023 | 10/23/2021 | | | | | | -$29.91 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 06/01/2023 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 05/08/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 05/01/2023 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 03/06/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 02/23/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 02/23/2023 | | | | | | | | | | Statutory Expenses Disbursement | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 02/07/2023 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 12/27/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 12/22/2022 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 12/15/2022 | 10/23/2021 | | | | | | $24.84 | | | Late Charge Adjustment | | | $34,631.22 | -$9,681.85 | |
| 12/08/2022 | 10/23/2021 | | | | | | -$24.84 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 11/28/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |

| Date | Due Date | Eff Date | Tran Amt | Principal | Interest | Escrow | Fees | Other | Suspense | Description | Chk# | Payee | Principal Balance | Escrow Balance | Suspense Balance |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 11/23/2022 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 11/23/2022 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | MALCOLM CISNEROS | $34,631.22 | -$9,681.85 | |
| 11/17/2022 | | | | | | | | | | Miscellaneous Corporate Expense | WIRE | FIRST AMERICAN MORTGAGE | $34,631.22 | -$9,681.85 | |
| 11/15/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | FIRST AMERICAN MORTGAGE | $34,631.22 | -$9,681.85 | |
| 11/07/2022 | 10/23/2021 | | | | | | -$25.12 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 10/19/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 10/11/2022 | 10/23/2021 | | | | | | -$23.80 | | | Late Charge Assesment | | | $34,631.22 | -$9,681.85 | |
| 09/22/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | -$9,681.85 | |
| 09/07/2022 | 10/23/2021 | | | | | | -$22.67 | | | Late Charge Assessment | | | $34,631.22 | -$9,681.85 | |
| 08/30/2022 | 10/23/2021 | | $9,681.85 | | | $9,681.85 | | | | Escrow Advance | | | $34,631.22 | -$9,681.85 | |
| 08/30/2022 | 11/23/2021 | | -$1,259.25 | | | -$1,259.25 | | | | Tax Penalty | WIRE | ORANGE COUNTY | $34,631.22 | -$9,681.85 | |
| 08/30/2022 | 11/23/2021 | | -$8,422.60 | | | -$8,422.60 | | | | County Tax | WIRE | ORANGE COUNTY | $34,631.22 | -$8,422.60 | |
| 08/25/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | $0.00 | |
| 08/08/2022 | 10/23/2021 | | | | | | -$21.09 | | | Late Charge Assessment | | | $34,631.22 | $0.00 | |
| 07/22/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | $0.00 | |
| 06/22/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | $0.00 | |
| 05/18/2022 | | | | | | | | | | Property Preservation Disbursement | WIRE | MORTGAGE CONTRACTING | $34,631.22 | $0.00 | |
| 05/11/2022 | 10/23/2021 | | | | | | -$210.26 | | | Late Charge Adjustment | | | $34,631.22 | $0.00 | |
| 05/11/2022 | 10/23/2021 | | | -$34,631.22 | | | | | | New Loan Setup | | | $34,631.22 | $0.00 | |

# Exhibit 4

# Henry D. Paloci III, P.A.

Attorney at Law

PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com

California Bar No. 268970
Phone 844.398.5500
Fax 866.565.6345


**NOTICE TO ANY RENTERS LIVING AT**

**818 Spirit, Costa Mesa, CA 92626**

INCLUDING ALL UNKNOWN OCCUPANTS

California Civil Code § 1161c(b)

The attached notice means that your house was recently sold in foreclosure and the new owner plans to evict you.

You should talk to a lawyer NOW to assess your rights. You may receive court papers in a few days. If you are named in the court papers it may hurt your credit if you do not respond and/or simply move out because the new owner intends to obtain a judgment in unlawful detainer.

Be advised that if you do not respond within five (5) days of receiving the papers, even if you are not named, you will likely lose any rights you may have. In some cases you can respond without hurting your credit. You are encouraged to seek the counsel of an attorney as to all of these issues.

A tenant may have the right to stay in a home sold in foreclosure for 90 days or longer regardless of any deadlines stated on any attached papers. In some cases and in some cities that have a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services internet website, www.lawhelpca.org, the California Courts Online Self-Help center, www.courtinfo.gov/selfhelp, or by contacting your local court or county bar association.

bona fide purchaser doctrine

**Three Day Notice to Quit**
California Civil Code § 1161a
Post-Foreclosure

TO: **ADAM BEREKI and All Unnamed Occupants**
Owner/Agent: **CANJIAN HOU**
Premises: **818 Spirit, Costa Mesa, CA 92626**

PLEASE TAKE NOTICE that **CANJIAN HOU** has purchased the property identified above at a duly-held Trustee's Sale in accordance with California Civil Code Section 2924. Title has been perfected by the recording of a Trustee's Deed Upon Sale with the County Recorder of Los Angeles County, California.

NOTICE IS HEREBY GIVEN that, within three (3) days after service on you of this Notice, you are required to quit and deliver up the premises to **CANJIAN HOU.**

Delivery of possession of the premises may be accomplished by delivering the keys to **CANJIAN HOU,** c/o Henry D. Paloci III, Esq., 5210 Lewis Road #5, Agoura Hills, California; PO Box 592, Los Alamitos, CA 90720; 805.279.1225; hpaloci@hotmail.com. Keys may be delivered by hand delivery or certified mail; or an agent will arrange to meet you to pick up the keys. Please call to make arrangements.

If you fail to quit and deliver up the premises to its lawful owner, **CANJIAN HOU,** legal proceedings will be instituted against you for unlawful detainer and related causes of action. This lawsuit may result in money damages being awarded against you and that may result in damage to your credit.

If you believe that you are a tenant of the former owner, you must read the attached notice and you must provide evidence of your tenancy to **CANJIAN HOU** within three (3) days of receiving this notice.

This Notice may be executed in counterparts. Facsimile copies shall be admissible for all purposes and deemed an original.

BY: _____ Dated: 1/31/2025

**CANJIAN HOU**
c/o Henry D. Paloci III, Esq., Agent for the Owner
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com
805.279.1225

**Ninety (90) Day Notice to Quit**
California Civil Code § 1161b(a)
Post-Foreclosure

TO: **ADAM BEREKI and All Unnamed Occupants**
Owner/Agent: **CANJIAN HOU**
Premises: **818 Spirit, Costa Mesa, CA 92626**

PLEASE TAKE NOTICE that within ninety (90) days after service of this notice, you must surrender possession of the premises to the undersigned owner or agent identified below if you have established that you are a bona fide tenant of the former owner.

If you are a bona fide tenant, you must also continue to pay rent at the fair market value for rent for this property in order to maintain occupancy for up to ninety (90) days.

Your failure to vacate the premises within the time specified above will cause the undersigned to initiate legal proceedings against you to recover possession of the premises and to seek a money judgment or damages for each day of occupancy after the expiration date of this notice. Such a judgment against you may include attorneys' fees and court costs as allowed by law or contract, and an additional punitive damages award of $600.00 pursuant to California law.

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

This notice supercedes all previous termination notices, if any, given to you.

This notice is intended to be a 90 day notice terminating your tenancy with the previous owner of the property identified above.

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property, and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord or the present owner after being notified that property belonging to you was left behind after you moved out.

This Notice may be executed in counterparts. Facsimile copies shall be admissible for all purposes and deemed an original.

BY: _____ Dated: 1/31/2025
**CANJIAN HOU**
c/o Henry D. Paloci III, Esq., Agent for the Owner
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com
805.279.1225

Gmail

# Notice re: 818 Spirit Costa Mesa/ Adam Bereki

**Adam** <abereki@gmail.com> Mon, Feb 3, 2025 at 2:16 PM
To: Adam Bereki <abereki@gmail.com>

Hi Henry,

Thanks for your time today. As requested I'm sending documents to give you notice of the proceedings and issues affecting the sale of 818 Spirit, costa mesa.

U.S. Supreme Court case 22A426:
https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22a426.html

Bankruptcy Case No: 22-12076-SC (Central Dist. CA)
Adversary Proceeding Re 1st Mortgage- Citibank, Case No: 23-ap-1075-SC

As noted in the Citibank Adv. proceedings, Citibank has refused to provide evidence that it is the holder of a note and therefore that any debt is owed to. Any payments that your client makes to Citibank at this point will not be reimbursed by me or my estate as the amount purportedly owed Citibank may also be my equity in the property that is subject to a damages claim.

If you have any authorities that you'd like to share regarding the bonafide purchaser doctrine that would apply to the facts and circumstances of this case, I would be glad to consider them. In my brief review of the BPD, the purchaser must lack knowledge of any claims affecting the property. Your client had a duty to do due diligence to research the claims involving the me (to the extent they could adversely affect the property) and the property itself. A simple good search of my name will reveal U.S. Supreme Court case 22A426 and all related issues. (I received numerous calls from potential buyers that became aware of this information by their own due diligence and called me to discuss it prior to making an offer). To my knowledge, none of the people I spoke with were your client.

As stated during our call, it is not my intent to cause any harm to your client. I am simply interested in protecting my rights and property and being compensated for harm that has been caused to me. If your client wishes to make a reasonable offer to pay me for the remaining money in addition to what has already been paid for the fair market value of the Spirit property (approx value $1,550,000, I will consider that and will not seek reversal of the foreclosure sale.

Please also note that all conversations will be recorded.

I am willing to work with you and your client to ensure no further harm occurs to either of us and lawful justice is served. Please reach out any time.

Sincerely,
Adam Bereki
949.241.6693

---

**Adam** <abereki@gmail.com> Mon, Feb 3, 2025 at 2:17 PM
To: "hpaloci@hotmail.com" <hpaloci@hotmail.com>

Gmail

# Service of Ex Parte Application / Request for Injunction to Stay 3/3/ Foreclosure Sale

**Adam** <abereki@gmail.com> Mon, Feb 3, 2025 at 2:23 PM
To: "hpaloci@hotmail.com" <hpaloci@hotmail.com>

Henry,

Will you accept email service at this email address on behalf of Mr. Hou for the Ex Parte Application and Request for Injunction to stop the 3/3 foreclosure sale?

Thank you,

Adam Bereki



**Exhibit 4, p.05**

Gmail

## 818 SPIRIT CITIBANK STATEMENT

**Adam** <abereki@gmail.com> Mon, Feb 3, 2025 at 2:47 PM
To: "hpaloci@hotmail.com" <hpaloci@hotmail.com>

Please see the attached statement from Citibank regarding the reinstatement amount you requested. Again, I do not believe any debt is owed to Citibank so any payments made thereto will be at your clients own risk.

Adam Bereki

**818 SPiRIT STATEMENT.pdf**
1047K

shellpoint

DO NOT SEND MAIL OR PAYMENTS TO THIS ADDRESS
P.O. Box 619063 • Dallas, TX 75261-9063

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3060

# MORTGAGE STATEMENT

Statement Date: 01/18/2025

| | |
|---|---|
| Account Number | 0575931091 |
| Payment Date | 02/01/2025 |
| Reinstatement Amount | $182,931.17 |

Phone: 800-365-7107
Website: www.shellpointmtg.com

## Explanation of Amount

| | |
|---|---|
| Accelerated Amount | $565,349.67 |
| Reinstatement Amount | $182,931.17 |

## Bankruptcy Message

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.

We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

If you want to stop receiving statements, write us.

## Past Payments Breakdown

| | Paid Last Month | Paid Year to Date |
|---|---|---|
| Principal | $0.00 | $0.00 |
| Interest | $0.00 | $0.00 |
| Escrow | $0.00 | $0.00 |
| Fees/Late Charges | $0.00 | $0.00 |
| Total | $0.00 | $0.00 |

## Important Messages

*Partial Payments: Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply these funds to your mortgage.

## Account Information

| | |
|---|---|
| Outstanding Principal | $565,925.03 |
| Deferred Balance | $62,500.68 |
| Interest Rate | 5.7500% |
| Prepayment Penalty | None |
| Property Address | 818 SPIRIT COSTA MESA CA 92626 |
| Contractual Due Date | October 1, 2021 |
| Current Escrow Balance | -$22,039.94 |
| Deferred Principal | $62,500.68 |
| Deferred Interest | $0.00 |
| Assistance Balance | $0.00 |
| Reserve Balance | $0.00 |
| Maturity Date | 08/01/2035 |

## Additional Messages

For questions regarding the servicing of your loan, please contact us at 800-365-7107 Monday-Friday 8:00AM-8:00PM, and Saturday 10:00AM-2:00PM Eastern Time.

Federal law requires us to tell you how we collect, share, and protect your personal information. Our Privacy Policy has not changed. You can review our policy and practices with respect to your personal information at www.shellpointmtg.com or request a copy to be mailed to you by calling us at 800-365-7107.

## Account History

Recent Account History

| | |
|---|---|
| Payment due 08/01/24 | unpaid balance of $157,640.93 |
| Payment due 09/01/24 | unpaid balance of $4,215.03 |
| Payment due 10/01/24 | unpaid balance of $4,215.03 |
| Payment due 11/01/24 | unpaid balance of $4,215.03 |
| Payment due 12/01/24 | unpaid balance of $4,215.03 |
| Payment due 01/01/25 | unpaid balance of $4,215.03 |
| Payment due 02/01/25 | current payment due |

Total: $182,931.17 unpaid amount that, if paid, would bring your loan current.

If You Are Experiencing Financial Difficulty See back for information about mortgage counseling or assistance.

See Total Payment Amount Breakdown on page 2

For information about your payments, total amount due, and any additional payment history, see reverse side.

Detach and return with payment.

shellpoint

Loan Number: 0575931091
ADAM BEREKI

Property Address:
818 SPIRIT
COSTA MESA CA 92626

SHELLPOINT MORTGAGE SERVICING
P.O. BOX 650840
DALLAS TX 75265-0840

## Payment Amount

| | |
|---|---|
| Payment Date | 02/01/2025 |
| Reinstatement Amount | $182,931.17 |
| Payment Amount | $ |
| Additional Principal | $ |
| Late / Other Charges | $ |
| Additional Escrow | $ |
| Total Amount Enclosed | $ |

0100150077210001264509004215030043886406759310911020125021625

Account Number: 0675931091

**Total Payment Breakdown**

| Total of all Payments Due | | Other Fee Balance (details below)* | |
|---|---|---|---|
| Total Principal Balance | $0.00 | Total Deferred Principal Balance | $7,278.58 |
| Total Interest Balance | $995,193.00 | Total Deferred Interest Balance | $62,600.00 |
| Default Interest | $76,803.56 | Total Additional Balance | $0.00 |
| Late Charge Balance* | $0.00 | Unapplied Amount | $22,000.00 |
| Insufficient Funds Balance | $0.00 | | $0.00 |
| Legal Fee Balance (details below)* | $6,525.00 | Total | $685,940.07 |

**Fee Details**

Legal fee components*

| | | | |
|---|---|---|---|
| Attorney Cost | $1,050.00 | FC Costs | $4,987.40 |

Other fee components*

| | | | | | |
|---|---|---|---|---|---|
| BPO Amt Paid | $260.00 | Property Inspection | $315.00 | Recurring Cost | $270.00 |
| Certified Mail Cost | $332.08 | Property Preservation | $220.00 | | |

**Principal Breakdown**

| | Unpaid Balance |
|---|---|
| Principal Balance | $995,193.00 |

**Interest Breakdown**

| | Unpaid Balance |
|---|---|
| Interest 2/01/2024 | $76,803.56 |

**Additional Breakdown**

| | Unpaid Balance |
|---|---|
| Escrow Balance | $21,993.64 |

**Transaction Activity (2/1/2024 to 1/17/2025)**

| Date | Description | Charges | Payments |
|---|---|---|---|
| 12/31/2024 | Property Inspection Disbursement | $30.00 | $0.00 |

Payments made by check are processed electronically by using the information listed on the check. Payments by check authorize us to create a one-time electronic funds transfer and process the payment as either a paper check or electronic draft. The check will not be returned to you. Allowable fees may apply for returned or rejected payments.

Nowcz LLC dba Shellpoint Mortgage Servicing is a debt collector. This is not an attempt to collect a debt due to your bankruptcy filing. Nowcz LLC dba Shellpoint Mortgage Servicing's NMLS ID is 2513.

**Important Notice:** Please be advised that post-petition fees, expenses or charges reflected on this statement might be subject to additional disclosure to the bankruptcy court under Rule 3002.1 of the Federal Rules of Bankruptcy Procedure. In the event such post-petition fees, expenses, or charges are disallowed by the bankruptcy court, a subsequent waiver will be applied to your account.

**Amount Due on Accounts in Foreclosure or Bankruptcy:** If your account is in foreclosure or bankruptcy, the amount listed as the Amount Due may not be the full amount necessary to bring your account current. To obtain up-to-date amount due information, please contact us at the number listed on the statement.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt, please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code.

**Notice of Error or Information Request Address**
You have certain rights under Federal law related to resolving errors in the servicing of your loan and requesting information about your loan. If you want to request information about your loan or if you believe an error has occurred in the servicing of your loan and would like to submit an Error Resolution or Informational Request, please write to us. Additionally, if you believe we have furnished inaccurate information to credit reporting agencies, please write to us with specific details regarding these errors and any supporting documentation that you have and we will assist you. Error Resolution, including concerns of inaccurate information sent to credit reporting agencies, or requests for information should be sent to the following address:

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603

**Housing Counselor Information:** If you would like counseling or assistance, you can contact the following:
U.S. Department of Housing and Urban Development (HUD). For a list of homeownership counselors or counseling organizations in your area, go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

**Address, Phone, and Name Changes**

Type of change (check all that apply)

___ Address ___ Phone ___ Name ___ Other Address

Your Account # _____ Best Daytime Phone _____

Old Borrower Name _____ New Borrower Name _____

Old Co-Borrower Name _____ New Co-Borrower Name _____

Borrower Signature _____ Co-Borrower Signature _____

New Mailing Address _____

_____

_____

_____

Property Address _____

Exhibit 4, p.08

Gmail

## 020425

**Adam** <abereki@gmail.com> Tue, Feb 4, 2025 at 7:00 AM
To: "hpaloci@hotmail.com" <hpaloci@hotmail.com>

Good morning Henry (and Mr. Hou),

I trust you've had some time to begin digesting the gravity of the situation and have realized the absurdity of your assertion that there is no causation between the unlawful fine/ revocation of my contractor's license and the fact that as a direct result I became constructively imprisoned/restrained from earning a living in my profession, and, therefore, could not pay my private mortgage obligations that resulted in the unlawful foreclosure sale of my home. How's that for a run-on sentence? Article I, §10 of the U.S. Constitution declares that no State shall impair the obligations of private contracts. That is precisely what has happened and grounds that I believe will easily defeat the bonafide purchaser doctrine, ("BPD"), to the extent it has any application here.

Rather than taking a stand against me and fantasizing that the BPD will stop the reversal of the sale, when it's totally obvious your client didn't perform even basic due diligence – a requisite you know is required to invoke this doctrine – I recommend we work together to get Mr. Hou's investment money returned with interest and that he be compensated for all expenses, including both your time.

I've included two screenshots. The first, I took yesterday after googling my name. You'll notice the first result that shows up is the most recent U.S. Supreme Court case involving a challenge to the foreclosure sale of my home. In the second, a screen shot that I took this morning, you'll notice the same case is on the first page of the search results. Good luck proving your client purchased the property in good faith and without notice of pending claims when a simple Google search reveals otherwise. Additionally, the record I have established evidences that I continue to be denied judicial process. Because a judge's signature is required to file a *lis pendens*, I'm not sure how I could possibly have filed one.

I feel that Trustee Corps (the trustee that commenced the foreclosure sale) had a duty to notify any potential purchaser of the pending lawsuits and claims on the property. I ensured that Citizens Bank (the purported lender) and Trustee Corps were given notice of everything. The bankruptcy case as well as several emails and recorded phone calls I have prove this. They were also made aware of a criminal investigation by the California highway patrol (due to their jurisdiction over the Courts of appeal) pertaining to this case. I'd be glad to share that information with you, including my repeated contacts with Trustee Corps to obtain the names of the potential buyers so that I could personally give them notice. Trustee Corps refused to provide the names and admitted, on a recorded phone call, that they hadn't and weren't going to give anyone notice. Your client's testimony will also evidence he wasn't given notice, if, in

fact, he wasn't.

There is a clear path forward letting the truth and law (as opposed to greed and insanity) lead the way. On the other hand, fighting against the truth and law that are so clearly in favor seems like a futile waste of time and resources. But who knows, maybe he enjoys legal battles? I have no idea. I'm good either way.

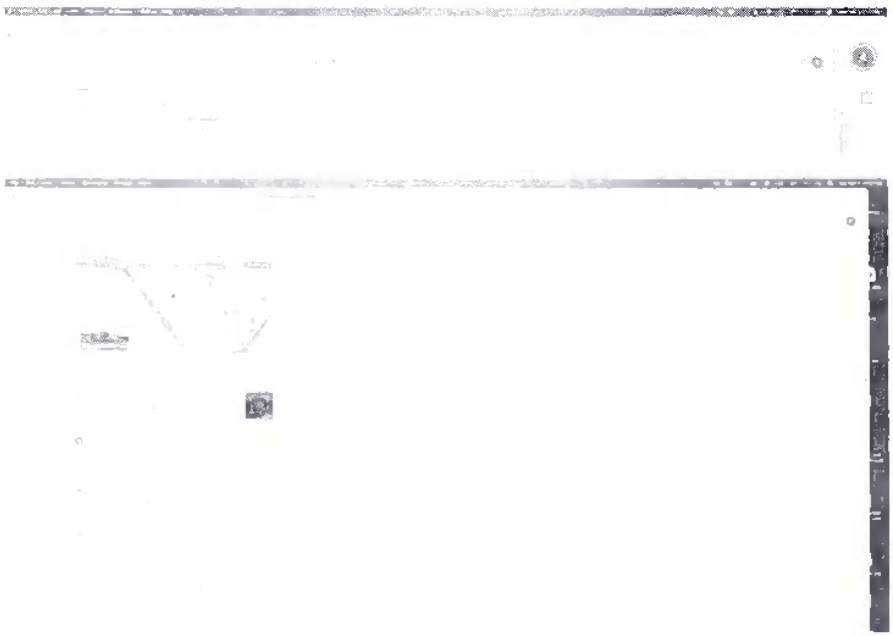
I propose that we work together in the manner described above.

Your client may not get what he wanted as far as this house is concerned without paying a fair market value (commensurate with recent sale comps) for it. But perhaps he values truth and real justice, and in that way, will ultimately get what he wants.

Please inform me of your client's decision ASAP so I can most accurately proceed with this ex parte application.

Sincerely,

Adam Bereki



---

**Henry Paloci** <henry.paloci@gmail.com> Wed, Feb 5, 2025 at 10:37 AM
To: abereki@gmail.com

I took a look at what you sent me and I don't see anything that bolsters your position.

For starters, you made a big deal to me on the phone yesterday (and in this email) about a Supreme

Court case and a letter you wrote to Clarence Thomas. The docket in the case you opened suggest that your application to be heard was denied. That matter appears to be closed without a result for you. If you have some other information on the topic, please provide.

As I said in my other email, Trustee Corps owes no duty to inform people of your lawsuits. Their only relevant duty would be to not conduct the sale if there is a stay or injunction, which you told me that you did not have on the date of the sale. If you did, please provide a copy.

In fact, I would go so far as to say that even if I had read every page of every lawsuit you have open - employing maximum due diligence - it would not dissuade me from buying your house at auction. I might bid less because of the litigation risk, but legally I would believe to be on solid ground. Your position that the foreclosure is connected to your construction litigation lawsuit is simply without merit. You might have a right to sue your former customer for money damages as a consequence of the foreclosure (though probably you do not), but that isn't going to stop a lender unrelated to that lawsuit from foreclosing.

I'm going to file an unlawful detainer action on Friday and would have you begin to consider your options.

Henry Paloci, Esq.
805.279.1225

On Feb 5, 2025, at 8:47 AM, Henry Paloci <hpaloci@hotmail.com> wrote:

Sent from my iPhone

Begin forwarded message:

**From:** Adam <abereki@gmail.com>
**Date:** February 4, 2025 at 7:00:50 AM PST
**To:** hpaloci@hotmail.com
**Subject: 020426**

---

**Adam** <abereki@gmail.com> Wed, Feb 5, 2025 at 1:26 PM
To: Henry Paloci <henry.paloci@gmail.com>, "AngusHou0823@gmail.com" <AngusHou0823@gmail.com>

Henry,

The fact that the Supreme Court didn't grant relief on my application for an emergency stay does not diminish the factual and lawful basis of my allegations made therein. If anything, it evidences a continued pattern to deprive me of due/judicial process.

If you choose not to read the Application and the cases cited therein that prove extrinsic fraud in the Superior and Appellate Court judgments in my case, I can't force you to. I'd highly encourage you to spend the time though. If you'd like me to narrow it down for you, consider reading the Court of Appeal Opinion (Appendix C) and comparing that with

the US Supreme Court ruling in *Liu v. SEC*.

While I appreciate your input regarding your opinion that Citizens/Trustee Corps had no duty to inform your client of the issues in the case, I respectfully disagree. The government can't commit fraud and other crimes upon me, constructively imprison me/restrain me from earning a living in my profession without a hearing/lawful authority, and then declare that a foreclosure sale of my home that occurred as a direct and proximate result of those crimes was fair and valid. That would be egregiously absurd and would violate the plainest principles of law and equity.

I believe that based on the fact that Citizens Bank and Trustee Corps had knowledge of the crimes and deprivation of rights that were being perpetrated on me and my estate, that at the very least, they were required to bring judicial as opposed to non-judicial proceedings to ensure I had the opportunity to be heard given these extraordinary circumstances. While they may have had a right to declare a default under ordinary circumstances, these aren't ordinary circumstances. Based on the Notice they received, they were bound by Cal. Civil Code 1708 from injuring my property and rights. In other words, they can't rely upon the fraud and other crimes that were committed on me as the means to declare the default and foreclosure sale when those actions caused the default and sale. They easily could have sought a judicial determination of rights on these issues bringing everything to the light truth. Instead, they circumvented that process by abusing the non-judicial foreclosure statutes. They knew, given the circumstances, that the sale was unlawful, unfair, willfully oppressive.

I also believe that you and Mr. Hou are bound by Civil Code 1708. You have been given Notice of the fraud and crimes that continue to be perpetrated on me. If you choose not to heed that Notice and invoke the jurisdiction of the Court to use the fraud and crimes that have been perpetrated on me by that same Court to gain a civil advantage and obtain any rights or interest in my property, I will pursue civil and/or criminal causes of action against both of you.

At this juncture, it is very simple for Mr. Hou to receive a refund and compensation for any damages that may have been caused, to find another home, and avoid any involvement in this matter that will likely result in costly litigation and a reversal of the sale. I'm happy to be as supportive as necessary to ensure his success. I hope that you'll reconsider filing any UD suit or otherwise against me and instead work with me to see that justice is served.

Sincerely,

Adam Bereki

---

**Adam** <abereki@gmail.com> Thu, Feb 6, 2025 at 8:36 AM
To: Henry Paloci <henry.paloci@gmail.com>, "AngusHou0823@gmail.com" <AngusHou0823@gmail.com>

The attached Motion to Vacate I'm working on may also help you narrow down the issue of extrinsic fraud and a structural jurisdictional failure of the trial and appeal mechanisms in my case that led to the fraudulent "default" and "sale".

On Wed, Feb 5, 2025 at 10:37 AM Henry Paloci <henry.paloci@gmail.com> wrote:

MOTION TO VACATE INCOMPLETE DRAFT.docx

118K

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**Henry Paloci** <henry.paloci@gmail.com> Thu, Feb 6, 2025 at 8:36 AM
To: Adam <abereki@gmail.com>

Actually, the fact that the Supreme Court didn't grant relief says everything. It says that there is no reason on which the Supreme Court has chimed in that the foreclosure sale to my client was invalid. And yet you keep name dropping them like it's important.

I think that you've made up your own version of the law and keep repeating it to yourself over and over again and have convinced yourself that you are in the right. While this is a trendy thing to do in these times, it never holds up in the end. You aren't the first person to try this.

I noticed that you CC'd my client on the email. Don't do that. All communication goes through me. I understand why you did it - your email reads as a bit of a threat and you hope to gain an advantage by his receiving it - but you aren't to do that. I will forward all relevant communication.

Thank you,
Henry Paloci, Esq.
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
V 844.398.5500
F 866.565.6345
hpaloci@hotmail.com

---

**From:** Adam <abereki@gmail.com>
**Sent:** Wednesday, February 5, 2025 1:26 PM
**To:** Henry Paloci <henry.paloci@gmail.com>; AngusHou0823@gmail.com <AngusHou0823@gmail.com>
**Subject:** Re: 020425

---

**Adam** <abereki@gmail.com> Thu, Feb 6, 2025 at 8:45 AM
To: Henry Paloci <henry.paloci@gmail.com>, "AngusHou0823@gmail.com" <AngusHou0823@gmail.com>

Henry,

You are Mr. Hou's agent, not his principal. He has a duty to supervise your every action. I will include him in all our communication.

You are free to make your own assessments of why the supreme court did or did not do something and whether I am correct or making things up pertaining to the law in my situation.

There were no threats in my previous email. I merely stated that I would take all action available to me to protect myself and my property from your and Mr.Hou's actions that I determine violate law. I have a right to put you on notice.

**Henry Paloci** <henry.paloci@gmail.com> Thu, Feb 6, 2025 at 9:06 AM
To: Adam <abereki@gmail.com>

I agree that you made no explicit threats but your intention is clear.

Thank you,
Henry Paloci, Esq.
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
V 844.398.5500
F 866.565.6345
hpaloci@hotmail.com

**From:** Adam <abereki@gmail.com>
**Sent:** Thursday, February 6, 2025 8:45 AM

**Adam** <abereki@gmail.com> Thu, Feb 6, 2025 at 12:31 PM
To: Henry Paloci <henry.paloci@gmail.com>, "AngusHou0823@gmail.com" <AngusHou0823@gmail.com>

If you decide to do the UD suit, please feel free to serve me by email to this address so you can save the cost and hassle of personal service. I'll respond when I receive it. If you don't get a response, it means I haven't received it.

2/3/25 2:12 pm

Exhibit 4, p.15

adam bereki

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

## Search - Supreme Court of the United States

Attorneys for Petitioner ; Adam A. Bereki, 818 Spirit Costa Mesa, CA 92626 ; Party name: In re **Adam Bereki** ...

2/2

2-4-25 @ 6:19 AM

Exhibit 4, p.17

2/2

Realtor.com
https://www.realtor.com › realestateandhomes-detail › 81...

## 818 Spirit, Costa Mesa, CA 92626

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

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

## Search - Supreme Court of the United States

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

PropertyReach
https://www.propertyreach.com › costa-mesa › 818-spirit

Exhibit 4, p.18

0600

Gmail

# Surplus Funds

**Adam** <abereki@gmail.com> Sun, Feb 9, 2025 at 4:34 PM
To: hpaloci@hotmail.com, AngusHou0823@gmail.com

Hi,

I just received notice of approx. $320k in surplus funds. Would you like to make arrangements to have those returned to your client based on the fraud that was perpetrated to orchestrate the foreclosure sale? Please let me know. I'm happy to help mitigate any damages that may have been caused to him that I can help with.

Sincerely,

Adam

---

**Henry Paloci** <hpaloci@hotmail.com> Mon, Feb 17, 2025 at 5:01 PM
To: Adam <abereki@gmail.com>, "AngusHou0823@gmail.com" <AngusHou0823@gmail.com>

No. There is no way that is going to happen. The foreclosure sale is final and that isn't going to change.

If there are surplus funds, they are yours - after fees and costs are paid. It is worth noting that this amount will likely decrease if you sue the foreclosure trustee or other parties that can make claim to that money. You might want to consider taking the surplus funds and moving on before your judgment creditors realize that there is money that they can attach to.

You misstate and misrepresent the facts to say that my client was a party to the fraud you allege against your business clients who sued you, and you misstate and misinterpret the law to declare that the foreclosure sale to my client can be vacated because of fraud that you allege was committed by persons who have nothing to do with the underlying loan. I submit that you are making a bad situation for yourself worse by stubbornly clinging to concepts of law that are flatly incorrect.

Thank you,
Henry Paloci, Esq.
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
V 844.398.5500
F 866.565.6345
hpaloci@hotmail.com

---

**From:** Adam <abereki@gmail.com>
**Sent:** Sunday, February 9, 2025 4:34 PM
**To:** hpaloci@hotmail.com <hpaloci@hotmail.com>; AngusHou0823@gmail.com

<AngusHou0823@gmail.com>
**Subject:** Surplus Funds



**Exhibit 4, p.20**

Gmail

# 818 Spirit Update 021725

**Adam** <abereki@gmail.com> Mon, Feb 17, 2025 at 9:15 AM
To: hpaloci@hotmail.com, AngusHou0823@gmail.com

Good morning,

Can you please provide an update pertaining to the 1st mortgage. Did you make arrangements for payment to stop the foreclosure sale? Can you provide the details of your arrangement and documents in support thereof?

Thank you for your patience. I am continuing to prepare the Ex parte Application and will need to know whether to seek a preliminary injunction to stop the sale or not as part of the Application.

Sincerely,

Adam

---

**Henry Paloci** <hpaloci@hotmail.com> Mon, Feb 17, 2025 at 4:51 PM
To: Adam <abereki@gmail.com>, "AngusHou0823@gmail.com" <AngusHou0823@gmail.com>

No arrangements have been made at this time.

I'm not in a position to tell you what to do so I can't tell you whether or not you should include the senior lienholder in your ex parte application.

I am of the opinion that in ex parte application to enjoin a foreclosure sale by you is frivolous and wholly without merit. Among other things, you lack standing because you no longer own the property. And as we discussed on the phone (and by past emails), your efforts to unwind the sale to my client are also frivolous and without merit.

However, it doesn't hurt my client for you to try. It just seems like a waste of energy to me.

Thank you.
Henry Paloci, Esq.
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
V 844.398.5500
F 866.565.6345
hpaloci@hotmail.com

---

**From:** Adam <abereki@gmail.com>
**Sent:** Monday, February 17, 2025 9:15 AM

**To:** hpaloci@hotmail.com <hpaloci@hotmail.com>; AngusHou0823@gmail.com <AngusHou0823@gmail.com>
**Subject:** 818 Spirit Update 021725



**Exhibit 4, p.22**

**0604**

Gmail

## Surplus Funds

**Adam** <abereki@gmail.com> Thu, Feb 20, 2025 at 2:52 PM
To: Henry Paloci <hpaloci@hotmail.com>, AngusHou0823@gmail.com

Henry and Canjian,

I never stated that I felt Canjian was a party to the fraud perpetrated on me by my company's former clients and the Courts and other public officials. **That is your invention entirely!** I believed you when you said you and Canjian had no knowledge of the pending litigation and fraud at the time of purchase. This being said, I also feel that Canjian was required to do his own due diligence prior to engaging in the risky business of buying foreclosure sales. Even elementary research on Google would have revealed the fraud and continuing deprivation of my rights associated with the property. Despite Canjian's apparent lack of diligence, I offered (and continue to offer) to do equity with Canjian and return the surplus money to him when I obtain it. I have no interest in harming him or anyone else. I'm interested in fundamental fairness and following the law/equity. All the foregoing being said, you and Canjian have been duly notified of the situation and can choose which avenue you want to take. Either you want to take advantage of the fraud and other crimes that have been perpetrated on me to gain a civil advantage and declare the property yours, or we can work together to obtain justice, with you being compensated for any harm that may have been caused. If you refuse to do adequate research into the fraud and legitimate deprivation of rights claims that I have and decide it's all just bullshit I'm trying to convince myself of, that's your prerogative. As I've shared before, that decision may have consequences as it interferes with my rights and property. In my opinion, if you follow that course, you may become aiders and abettors in the original fraud and other crimes (because you now have notice of the situation and are refusing to do the right thing). I interpreted your last email to mean that you did not wish to do equity with me when you said "there is no way that [doing equity with me by accepting the surplus funds and arranging to reverse the sale] is going to happen". If I misinterpreted, please inform me immediately so that I don't pursue claims against Henry D. Paloci III, P.A., Henry D. Paloci, and Canjian Hou. Please be clear on your intentions so that I can determine how to proceed. I remain open and available to any reasonable settlement discussions.

Sincerely,

Adam Bereki

Gmail

# Request for Documents

**Adam** <abereki@gmail.com> Tue, Feb 4, 2025 at 8:43 AM
To: documents@trusteecorps.com

Good day,

My name is Adam Bereki. I'm writing to obtain copies of documents pertaining to the recent foreclosure sale of my home at 818 Spirit, costa mesa, california. Could you please provide: 1) a copy of the Deed of Trustee sale (either the unrecorded one that was sent to the new buyer or the recorded one if you have it) 2) any documents or other information that you provided notice of the pending litigation involving the property and/or my rights that effect the property to the potential buyers, including Mr Hou.

Thank you so much.

Adam Bereki
949.241.6693

---

**Adam** <abereki@gmail.com> Tue, Feb 4, 2025 at 8:45 AM
To: "hpaloci@hotmail.com" <hpaloci@hotmail.com>

I'm forwarding this email and will forward you the answer when I receive it. I also just recorded another phone call with Trustee Corps that they did not provide your client (or any of the other potential buyers) notice of the pending litigation involving the property.

---

**Henry Paloci** <henry.paloci@gmail.com> Wed, Feb 5, 2025 at 10:23 AM
To: abereki@gmail.com

Trustee Corps isn't required to provide notice of pending litigation on the property. Your suggestion that Trustee Corps owes a duty to provide this information is without merit.

Merely having filed a lawsuit means nothing. Anyone can sue anyone for anything.

If you had a lis pendens or a stay (either in state court or BK court), then they would have to stop (not have a sale) and inform the public. You admitted to me on the phone yesterday that you had neither of these at the time of the sale.

Henry Paloci, Esq.
805.279.1225

On Feb 5, 2025, at 8:47 AM, Henry Paloci <hpaloci@hotmail.com> wrote:

Sent from my iPhone

Begin forwarded message:

**From:** Adam <abereki@gmail.com>
**Date:** February 4, 2025 at 8:45:19 AM PST
**To:** hpaloci@hotmail.com
**Subject: Fwd: Request for Documents**

---

**Jody Arnett** <jarnett@trusteecorps.com> Fri, Feb 7, 2025 at 3:46 PM
To: Adam <abereki@gmail.com>

Good afternoon, a copy of the Trustee's Deed can be obtained from the county recorder's office. Our office is not required to provide any information related to the property to potential buyers, they must do their own due diligence.

Thanks!

TRUSTEE CORPS
*Experience Trust Integrity*

*Providing Default Services in AK, AZ, CA, NV, OR, TX & WA*

**Jody Arnett**

**Foreclosure Manager – California & Texas**

17100 Gillette Ave, Irvine, CA 92614

Tel: 949-252-8300 ext.4119

Fax: 949-252-8330

JArnett@TrusteeCorps.com



**Exhibit 4, p.26**

Electronically Filed by Superior Court of California, County of Orange, 02/24/2025 02:48:55 PM.
30-2025-01459684-CL-UD-CJC - ROA # 10 - DAVID H. YAMASAKI, Clerk of the Court By V. Hammer, Deputy Clerk.

SUM-130

# SUMMONS—EVICTION
## *(CITACIÓN JUDICIAL—DESALOJO)*

**UNLAWFUL DETAINER / FORCIBLE DETAINER / FORCIBLE ENTRY**
***(RETENCIÓN ILÍCITA DE UN INMUEBLE / RETENCIÓN FORZOSA / ENTRADA FORZOSA)***

*FOR COURT USE ONLY*
*(SOLO PARA USO DE LA CORTE)*

**NOTICE TO DEFENDANT:**
***(AVISO AL DEMANDADO):***
Adam Bereki and Does 1-20

**YOU ARE BEING SUED BY PLAINTIFF:**
***(LO ESTÁ DEMANDANDO EL DEMANDANTE):***
Canjian Hou

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 10 days. You have 10 DAYS, not counting Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff.

If this summons was served through the Secretary of State's Safe at Home address confidentiality program, you have 15 days from the date of service, not counting Saturdays and Sundays and other judicial holidays, to respond.

A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the Self-Help Guide to the California Courts (https://selfhelp.courts.ca.gov), your county law library, or the courthouse nearest you. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website (www.lawhelpca.org), the Self-Help Guide to the California Courts (https://selfhelp.courts.ca.gov), or by contacting your local court or county bar association.

**FEE WAIVER:** If you cannot pay the filing fee, ask the clerk for a fee waiver form. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*¡AVISO! Usted ha sido demandado. Si no responde dentro de 10 días, el tribunal puede emitir un fallo en su contra sin una audiencia. Una vez que le entreguen esta citación y papeles legales, solo tiene 10 DÍAS, sin contar sábado y domingo y otros días feriados del tribunal, para presentar una respuesta por escrito en este tribunal y hacer que se entregue una copia al demandante.*

*Si la presente citación le ha sido entregado a través del programa de dirección confidencial del Secretario del Estado Seguro en Casa, tiene 15 días después de la fecha de entrega, sin contar sábado y domingo y otros días feriados del tribunal, para responder.*

*Una carta o una llamada telefónica no lo protege. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en la Guía de Ayuda de las Cortes de California (https://selfhelp.courts.ca.gov/es), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no presenta su respuesta a tiempo, puede perder el caso por falta de comparecencia y se le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpca.org/es), en la Guía de Ayuda de las Cortes de California, (https://selfhelp.courts.ca.gov/es) o poniéndose en contacto con la corte o el colegio de abogados local.*

***EXENCIÓN DE CUOTAS:*** *Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas.* ***AVISO:*** *Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos con un gravamen sobre cualquier monto de $10,000 ó más recibido mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desestimar el caso.*

1. The name and address of the court is:
   *(El nombre y dirección de la corte es):*
   Orange County Superior Court
   700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER *(número de caso):*
30-2025-01459684-CL-UD-CJC

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*
   Henry D Paloci III ; PO Box 592; Los Alamitos, CA 90720; 844.398.5500
   henry.paloci@gmail.com



Form Adopted for Mandatory Use
Judicial Council of California
SUM-130 [Rev. January 1, 2025]

**SUMMONS—EVICTION**
**(Unlawful Detainer / Forcible Detainer / Forcible Entry)**

Code of Civil Procedure, §§ 412.20, 415.46, 1167
www.courts.ca.gov

| PLAINTIFF *(Name)*: Canjian Hou | CASE NUMBER: 30-2025-01459684-CL-UD-CJC |
|---|---|
| DEFENDANT *(Name)*: Adam Bereki and Does 1-20 | |

3. *(Must be answered in all cases)* An **unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415)** [x] did not [ ] did **for compensation give advice or assistance with this form.** *(If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 4 below.)*
4. **Unlawful detainer assistant** *(complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):*
   a. Assistant's name:
   b. Telephone no.:
   c. Street address, city, and zip:
   d. County of registration:
   e. Registration no.:
   f. Registration expires on *(date)*:

Date: *(Fecha)* 02/24/2025 DAVID H. YAMASAKI, Clerk of the Court Clerk, by *(Secretario)* V. Hammer , Deputy *(Adjunto)*

*(For proof of service of this summons, use* Proof of Service of Summons *(form POS-010).)*
*(Para prueba de entrega de esta citatión use el formulario* Proof of Service of Summons *(form POS-010).)*

SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

5. **NOTICE TO THE PERSON SERVED:** You are served
   a. [x] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify):*
   c. [ ] as an occupant.
   d. [ ] on behalf of *(specify):*
      under [ ] CCP 416.10 (corporation). [ ] CCP 416.60 (minor).
      [ ] CCP 416.20 (defunct corporation). [ ] CCP 416.70 (conservatee).
      [ ] CCP 416.40 (association or partnership). [ ] CCP 416.90 (authorized person).
      [ ] CCP 415.46 (occupant). [ ] other *(specify):*
   e. [ ] by personal delivery on *(date):*



For your protection and privacy, please press the Clear This Form button after you have printed the form. Print this form Save this form Clear this form

Electronically Filed by Superior Court of California, County of Orange, 02/11/2025 05:06:34 PM.
30-2025-01459684-CL-UD-CJC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By M. Diaz, Deputy Clerk.

HENRY D. PALOCI III (California State Bar No. 268970)
hpaloci@hotmail.com
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
T: 844.398.5500
F: 866.565.6345
Attorneys for the Plaintiff

**IN THE SUPERIOR COURT OF ORANGE COUNTY, CALIFORNIA**

CANJIAN HOU,
Plaintiff,

-vs-

ADAM BEREKI

-and-

DOES 1-20,

Defendants.
_____/

**COMPLAINT: UNLAWFUL DETAINER POST FORECLOSURE**

**CCP 1161a**

Case No: 30-2025-01459684-CL-UD-CJC

Dept. C-61

Plaintiff sues Defendants and states as follows.

1. This action is a limited civil case for unlawful detainer POST FORECLOSURE under CCP 1161a where the amount demanded does not exceed $10,000.
2. Plaintiff CANJIAN HOU is an individual who owns real property in the County of Orange, State of California.
3. Defendant ADAM BEREKI is an individual over the age of 18 years.
4. Plaintiff is entitled to possession of certain real property (the "Subject Property") whose postal address is 818 Spirit, Costa Mesa, CA 92626, as owner of the Subject Property.
5. The Subject Property is located in the above referenced judicial district and/or county.
6. This Court has jurisdiction.

7. Venue is proper.

8. Plaintiff owns the Subject Property by virtue of a Trustee's Deed Upon Sale recorded 1/30/2025 as Instrument Number 2025-00040781 in the Public Records of Orange County, California and attached hereto as Exhibit 1.

9. The legal description of the Subject Property, as shown also in the attached Trustee's Deed Upon Sale and incorporated by reference, is *Lot 55 of Tract 15211, as shown on a Map recorded in Book 733, Pages 33 through 37, inclusive, of Miscellaneous Maps, Official Records, Orange County, California; excepting therefrom one-half of all oil and minerals, but without the right of entry, as reserved by Etta C. Davies, a widow, in a deed recorded June 1, 1959 in Book 4737, Page 511, Official Records, Orange County, California.*
The APN of the Subject Property is 141-513-55.

10. The Defendants, and all of them, are in possession of the Subject Property.

11. Plaintiff is entitled to possession of the Subject Property. "Where the property has been sold by such person, *or a person under whom such person claims*, and the title under the sale has been duly perfected," a Plaintiff may proceed in unlawful detainer under CCC 1161a(b).

12. It is possible that other unknown people live in the Subject property with Defendant ADAM BEREKI as occupants or tenants. Plaintiff has no knowledge of the true names and capacities of the Defendants sued herein as DOES 1-20, or whether they exist at all, and therefore sues them under these fictitious names. If unknown tenants, former property interest holders, or other occupants come to be known to Plaintiff, Defendant DOES will be substituted accordingly. Any occupant of the Subject Property, known or unknown, is legally responsible to Plaintiff for the claims and damages asserted herein.

13. At the time of the sale to Plaintiff, Defendants were in possession of the Subject Property, and Defendants, all of them, have wrongfully remained in possession of the Subject Property

since the trustee's deed on sale issued on 1/30/2025.

14. Plaintiff is informed, believes, and alleges that at all times relevant to this complaint each Defendant was an agent, servant, employee, bailee, licensee, lessee, assignee, and/or successor in interest and partner and employee of each of the Defendants and was acting within the course and scope of such agency, service, employment, bailment, lease, license, assignment, and/or partnership with the knowledge, permission, and consent of each of the other named Defendants and partners.

15. On February 3, 2025 Plaintiff caused to be served on Defendants, at the Subject Property, a written notice stating that the Plaintiff had purchased the property, that Plaintiff's title had been duly perfected, and demanding that Defendants, each of them, quit the premise after service of three documents, a Notice to Any Renters, a Three Day Notice to Quit, and a Ninety (90) Day Notice to Quit (collectively, the "3/90 Notice"), a copy of which, together with proof of service thereon, is attached hereto as Exhibit 2 (the 3/90 Notice) and Exhibit 3 (the proof of service).

16. The period of time proscribed in the aforementioned 3/90 Notice has expired, but as of this date the Defendants, each of them, have failed and refused to deliver up possession and remain in possession of the Subject Property without Plaintiff's permission or consent.

17. Since the period of time proscribed in the Notice has expired, and since neither Defendant ADAM BEREKI nor any other potential unidentified tenant-claimant, have made a claim to possession as a tenant or paid rent, Plaintiff has been and is entitled to immediate possession of the Subject Property.

18. The reasonable rental value of the Subject Property is $166 per day, and the damages to Plaintiff, proximately caused by the Defendants' own unlawful detention, have accrued at that rate since February 3, 2025, the date of notice, and will continue to accrue at that rate as

long as Defendants remain in possession of the premises.

19. Defendants' continued possession of the Subject Property is willful and malicious, in that it is knowing and voluntary, with full knowledge of the fact of the foreclosure and Plaintiff's title and entitlement to possession, and Plaintiff is entitled to statutory damages of $600 as well as actual damages pursuant to CCP 1174(b).

20. Plaintiff has met all conditions, performed all necessary actions, and given all required notices prerequisite to bringing this action.

21. Plaintiff is represented by counsel. An unlawful detainer assistant did not for compensation give advice or assistance to Plaintiff.

**WHEREFORE**, Plaintiff demands judgment against Defendants, as follows:

A. For possession of the premises;

B. For daily damages at the rate of $166 per day for each day Defendants remain in possession of the Subject Property after February 3, 2025;

C. For statutory damages of $600;

D. For costs of suit; and

E. For such other and further relief as the Court deems just and proper.

Respectfully Submitted:

Dated: __2/11/2025____

HENRY D. PALOCI, III P.A.

By:___/s/ Henry D. Paloci III_____
HENRY D. PALOCI, III
Attorney for the Plaintiff

**VERIFICATION**

STATE OF CALIFORNIA :
COUNTY OF LOS ANGELES :

I have read the foregoing complaint and know its contents.

I am the attorney for the Plaintiff, a party to this action. Plaintiff is absent from the county of aforesaid where I have my law office, and I make this verification on behalf of Plaintiff for that reason. Having reviewed the recorded documents attached hereto, I am informed and believe and on that ground allege that the matters stated in the foregoing complaint are true.

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

Executed this day, 2/11/2024, at Los Alamitos, California.



HENRY D. PALOCI III

RECORDING REQUESTED BY:

WHEN RECORDED MAIL DEED
AND TAX STATEMENT TO:

CANJIAN HOU
19709 CALLE LASUEN
WALNUT, CA 91789

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
24.00
*SR00153873595*
2025000040781 8:27 am 01/30/25
48 414A T09 5 15
204.60 204.60 0.00 0.00 12.00 0.00 0.000.000.00 0.00

APN: 141-513-55 TS No: CA13000044-22-2 TO No: 240282878

## TRUSTEE'S DEED UPON SALE

**A copy of the affidavit or declaration pursuant to Code of Civil Procedure section 2015.5 delivered to the trustee by the high bidder and grantee herein is attached hereto as Exhibit "B" and incorporated herein as if set forth in full. Said 1 page affidavit or declaration is required to be attached as an exhibit to the trustee's deed and recorded pursuant to Civil Code section 2924m(d).**

The undersigned Grantor, under penalty of perjury, declares:

1) The Grantee herein was not the foreclosing beneficiary.
2) The amount of the unpaid debt together with costs was: **$62,523.24**
3) The amount paid by the Grantee at the trustee sale was: **$371,688.00**
4) The documentary transfer tax is: **$409.20**
5) Said property is in the city of: COSTA MESA
6) A.P.N. 141-513-55

and **MTC Financial Inc. dba Trustee Corps**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **CANJIAN HOU**, herein called "Grantee", the real property in the County of Orange, State of California, described as follows: **SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated October 30, 2006, made to ADAM BEREKI, SINGLE MAN and recorded on December 14, 2006, as Instrument No. 2006000838019 of Official Records in the office of the Recorder of Orange County, CA, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

Exhibit 1

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on **November 18, 2024** at the place specified in said Notice, to Grantee who was the highest bidder therefore, for **$371,688.00**, in lawful money of the United States, which has been paid.

Dated: 1-22-25

MTC Financial Inc. dba Trustee Corps

By: Bernardo Sotelo, Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1-22-25 before me, Bobbie LaFlower, a Notary Public, personally appeared BERNARDO SOTELO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

BOBBIE LAFLOWER
Notary Public - California
Orange County
Commission # 2377601
My Comm. Expires Oct 5, 2025

## EXHIBIT "A"

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

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

**EXHIBIT "B"**

**This 1 page affidavit/declaration, hereto attached as Exhibit "B", pursuant to Code of Civil Procedure section 2015.5 is required to be attached as an exhibit to the Trustee's Deed Upon Sale for recording pursuant to Civil Code section 2924m(d) and shall not be removed.**

# AFFIDAVIT OF ELIGIBLE BIDDER

(Cal. Civ. Code § 2924m)

| | |
|---|---|
| State of California<br>County of Orange | TS #: CA13000044-22-2<br>Property: 818 SPIRIT, COSTA MESA, CA 92626 |

I, CANJIAN HOU, do hereby state and declare as follows:

1. I am a natural person and a prospective owner-occupant as defined in Section 2924m of California Civil Code.

2. I will occupy the property as my primary residence within 60 days of the trustee's deed being recorded, and I will maintain my occupancy for at least one year.

3. I am not any of the following:

    a. The Mortgagor or trustor
    b. The child, spouse, or parent of the mortgagor or trustor;
    c. The grantor of a living trust that was named in the title to the property when the notice of default was recorded;
    d. An employee, officer, or member of the mortgagor or trustor;or
    e. A person with an ownership interest in the mortgagor, unless the mortgagor is a publicly traded company.

4. I am not acting as the agent of any other person or entity in purchasing the real property.

5. My current residence address is 19709 Calle Lasuen, Walnut CA 91789

6. My current phone # is (626)389-7124

7. My current email address is angushou0823@gmail.com

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed in Riverside, California on December 30th, 2024.

CANJIAN HOU

# Henry D. Paloci III, P.A.

Attorney at Law

PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com

California Bar No. 268970
Phone 844.398.5500
Fax 866.565.6345


**NOTICE TO ANY RENTERS LIVING AT**

**818 Spirit, Costa Mesa, CA 92626**

INCLUDING ALL UNKNOWN OCCUPANTS

California Civil Code § 1161c(b)

The attached notice means that your house was recently sold in foreclosure and the new owner plans to evict you.

You should talk to a lawyer NOW to assess your rights. You may receive court papers in a few days. If you are named in the court papers it may hurt your credit if you do not respond and/or simply move out because the new owner intends to obtain a judgment in unlawful detainer.

Be advised that if you do not respond within five (5) days of receiving the papers, even if you are not named, you will likely lose any rights you may have. In some cases you can respond without hurting your credit. You are encouraged to seek the counsel of an attorney as to all of these issues.

A tenant may have the right to stay in a home sold in foreclosure for 90 days or longer regardless of any deadlines stated on any attached papers. In some cases and in some cities that have a "just cause for eviction law," you may not have to move at all. But you must take the proper legal steps in order to protect your rights.

How to Get Legal Help

if you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services internet website, www.lawhelpca.org, the California Courts Online Self-Help center, www.courtinfo.gov/selfhelp, or by contacting your local court or county bar association.

Exhibit 2

**Three Day Notice to Quit**
California Civil Code § 1161a
Post-Foreclosure

TO: **ADAM BEREKI and All Unnamed Occupants**
Owner/Agent: **CANJIAN HOU**
Premises: **818 Spirit, Costa Mesa, CA 92626**

PLEASE TAKE NOTICE that **CANJIAN HOU** has purchased the property identified above at a duly-held Trustee's Sale in accordance with California Civil Code Section 2924. Title has been perfected by the recording of a Trustee's Deed Upon Sale with the County Recorder of Los Angeles County, California.

NOTICE IS HEREBY GIVEN that, within three (3) days after service on you of this Notice, you are required to quit and deliver up the premises to **CANJIAN HOU.**

Delivery of possession of the premises may be accomplished by delivering the keys to **CANJIAN HOU,** c/o Henry D. Paloci III, Esq., 5210 Lewis Road #5, Agoura Hills, California; PO Box 592, Los Alamitos, CA 90720; 805.279.1225; hpaloci@hotmail.com. Keys may be delivered by hand delivery or certified mail; or an agent will arrange to meet you to pick up the keys. Please call to make arrangements.

If you fail to quit and deliver up the premises to its lawful owner, **CANJIAN HOU,** legal proceedings will be instituted against you for unlawful detainer and related causes of action. This lawsuit may result in money damages being awarded against you and that may result in damage to your credit.

If you believe that you are a tenant of the former owner, you must read the attached notice and you must provide evidence of your tenancy to **CANJIAN HOU** within three (3) days of receiving this notice.

This Notice may be executed in counterparts. Facsimile copies shall be admissible for all purposes and deemed an original.

BY: _____ Dated: 1/31/2025

**CANJIAN HOU**
c/o Henry D. Paloci III, Esq., Agent for the Owner
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com
805.279.1225

**Ninety (90) Day Notice to Quit**
California Civil Code § 1161b(a)
Post-Foreclosure

TO: **ADAM BEREKI and All Unnamed Occupants**
Owner/Agent: **CANJIAN HOU**
Premises: **818 Spirit, Costa Mesa, CA 92626**

PLEASE TAKE NOTICE that within ninety (90) days after service of this notice, you must surrender possession of the premises to the undersigned owner or agent identified below if you have established that you are a bona fide tenant of the former owner.

If you are a bona fide tenant, you must also continue to pay rent at the fair market value for rent for this property in order to maintain occupancy for up to ninety (90) days.

Your failure to vacate the premises within the time specified above will cause the undersigned to initiate legal proceedings against you to recover possession of the premises and to seek a money judgment or damages for each day of occupancy after the expiration date of this notice. Such a judgment against you may include attorneys' fees and court costs as allowed by law or contract, and an additional punitive damages award of $600.00 pursuant to California law.

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

This notice supercedes all previous termination notices, if any, given to you.

This notice is intended to be a 90 day notice terminating your tenancy with the previous owner of the property identified above.

State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property, and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord or the present owner after being notified that property belonging to you was left behind after you moved out.

This Notice may be executed in counterparts. Facsimile copies shall be admissible for all purposes and deemed an original.

BY: _____ Dated: 1/31/2025

**CANJIAN HOU**
c/o Henry D. Paloci III, Esq., Agent for the Owner
Henry D. Paloci III PA
PO Box 592
Los Alamitos, CA 90720
hpaloci@hotmail.com
805.279.1225

**Declaration of Service**

Documents Served:

- 3/90 NOTICE – termination of tenancy due to foreclosure
- **Three Day Notice to Quit** - California Civil Code § 1161a - Post-Foreclosure
- **Ninety (90) Day Notice to Quit** - California Civil Code § 1161b(a) - Post-Foreclosure

TO: **ADAM BEREKI and All Unnamed Occupants**
Owner/Agent: **CANJIAN HOU**
Premises: **818 Spirit, Costa Mesa, CA 92626**

Date and Time of Service: Mon, Feb 3, 2025, ;Received by AD,

I DECLARE that I served a copy of the above entitled notice by:

[X] Delivering it personally to one or more of the tenants of the above referenced property.

[ ] Leaving a copy with the person named above, who is of suitable age and discretion, at the tenant's premises, and by sending a copy in a sealed envelope, by first class mail, postage prepaid, addressed to the tenant(s) at the premises.

[ ] Affixing a copy to the front door of the tenants premises and by sending a copy in a sealed envelope, by first class mail, postage prepaid, addressed to the tenant(s) at the premises.

[ ] By sending a copy in a sealed envelope, by certified mail, postage prepaid, addressed to the tenant(s) at the premises (30 and 60 day notices only).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the following date and time and the following place:

Date: 2/4 [redacted] /2025

Place: CHINO H, California

BY: Ellas Elhay[redacted]

13089 Peyton Dr C342 Chi
909 855 0000
Registration :1756
County: San Bernardino

Exhibit 3

Electronically Filed by Superior Court of California, County of Orange, 02/24/2025 02:48:00 PM.
30-2025-01459684-CL-UD-CJC - ROA # 8 - DAVID H. YAMASAKI, Clerk of the Court By V. Hammer, Deputy Clerk.

UD-101

| ATTORNEY OR PARTY WITHOUT ATTORNEY | STATE BAR NUMBER: 268970 | FOR COURT USE ONLY |
|---|---|---|
| NAME: Henry D Paloci III | | |
| FIRM NAME: Henry D Paloci III PA | | |
| STREET ADDRESS: PO Box 592 | | |
| CITY: Los Alamitos | STATE: CA ZIP CODE: 91320 | |
| TELEPHONE NO.: 844.398.5500 | FAX NO.: | |
| EMAIL ADDRESS: henry.paloci@gmail.com | | |
| ATTORNEY FOR (name): Canjian Hou | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE | | |
| STREET ADDRESS: 700 Civic Center Drive West | | |
| MAILING ADDRESS: Same | | |
| CITY AND ZIP CODE: Santa Ana, CA 92701 | | |
| BRANCH NAME: Central | | |
| PLAINTIFF: Canjian Hou | | |
| DEFENDANT: Adam Bereki and Does 1-20 | | |

**PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS—UNLAWFUL DETAINER**

CASE NUMBER: 30-2025-01459684-CL-UD-CJC

*All plaintiffs in unlawful detainer proceedings must file and serve this form. Filing this form complies with the requirement in Code of Civil Procedure section 1179.01.5(c).*

- *Serve this form and any attachments to it with the summons.*
- *If a summons has already been served without this form, then serve it by mail or any other means of service authorized by law.*
- *If defendant has answered prior to service of this form, there is no requirement for defendant to respond to the supplemental allegations before trial.*

*To obtain a judgment in an unlawful detainer action for nonpayment of rent on a residential property, a plaintiff must verify that no rental assistance or other financial compensation has been received for the amount demanded in the notice or accruing afterward, and that no application is pending for such assistance. To obtain a default judgment, plaintiff must use* Verification by Landlord Regarding Rental Assistance—Unlawful Detainer *(form UD-120) to make this verification and provide other information required by statute.*

1. PLAINTIFF *(name each)*:

   Canjian Hou

   alleges causes of action in the complaint filed in this action against DEFENDANT *(name each)*:

   Adam Bereki and Does 1-20

2. **Statutory cover sheet allegations** (Code Civ. Proc., § 1179.01.5(c))
   a. This action seeks possession of real property that is *(check all that apply)* [XX] residential [ ] commercial.
      *(If "residential" is checked, complete all remaining items that apply to this action. If only "commercial" is checked, no further items need to be completed except the signature and verification on page 2.)*
   b. This action is based, in whole or in part, on an alleged default in payment of rent or other charges. [ ] Yes [XX] No

3. [XX] **Statements regarding rental assistance** (*Required in all actions based on nonpayment of rent or any other financial obligation. Plaintiff must answer all the questions in this item and, if later seeking a default judgment, will also need to file* Verification Regarding Rental Assistance—Unlawful Detainer *(form UD-120).)*
   a. Has plaintiff received rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? [ ] Yes [XX] No
   b. Has plaintiff received rental assistance or other financial compensation from any other source for rent accruing *after* the date of the notice underlying the complaint? [ ] Yes [XX] No
   c. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source corresponding to the amount demanded in the notice underlying the complaint? [ ] Yes [XX] No
   d. Does plaintiff have any pending application for rental assistance or other financial compensation from any other source for rent accruing *after* the date on the notice underlying the complaint? [ ] Yes [XX] No

| PLAINTIFF: Canjian Hou<br>DEFENDANT: Adam Bereki and Does 1-20 | CASE NUMBER: |
|---|---|

4. [XX] **Other allegations** Plaintiff makes the following additional allegations: *(State any additional allegations below, with each allegation lettered in order, starting with (a), (b), (c), etc. If there is not enough space below, check the box below and use form MC-025, title it Attachment 4, and letter each allegation in order.)* [ ] Other allegations are on form MC-025.

Rent is not at issue.

5. [ ] Number of pages attached *(specify):*

Date: 2/11/2025

Henry D Paloci III
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

**VERIFICATION**

*(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)*

I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: (see attached attorney declaration)

(TYPE OR PRINT NAME)

(SIGNATURE)



For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

**VERIFICATION**

STATE OF CALIFORNIA :

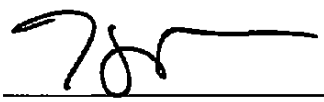
COUNTY OF LOS ANGELES :

I have read the foregoing complaint and know its contents.

I am the attorney for the Plaintiff, a party to this action. Plaintiff is absent from the county of aforesaid where I have my law office, and I make this verification on behalf of Plaintiff for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing complaint are true.

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

Executed this day, 2/11/2025, at Agoura Hills, California.



HENRY D. PALOCI III

**NOTICE: EVERYONE WHO LIVES IN THIS RENTAL UNIT MAY BE EVICTED BY COURT ORDER. READ THIS FORM IF YOU LIVE HERE AND IF YOUR NAME IS NOT ON THE ATTACHED SUMMONS AND COMPLAINT.**

1. If you live here and you do not complete and submit this form, you may be evicted without further hearing by the court along with the persons named in the Summons and Complaint.
2. You must file this form within 10 days of the date of service listed in the box on the right hand side of this form.
   - **Exception:** If you are a tenant being evicted after your landlord lost the property to foreclosure, the 10-day deadline does not apply to you and you may file this form at any time before judgment is entered.
3. If you file this form, your claim will be determined in the eviction action against the persons named in the complaint.
4. If you do not file this form, you may be evicted without further hearing.
5. If you are a tenant being evicted due to foreclosure, you have additional rights and should seek legal advice immediately.

| CLAIMANT OR CLAIMANT'S ATTORNEY (*Name and Address*): TELEPHONE NO.: | *FOR COURT USE ONLY* |
|---|---|
| ATTORNEY FOR (*Name*): | |
| **NAME OF COURT: SUPERIOR COURT OF CALIFORNIA, COUNTY OF** Orange<br>STREET ADDRESS: 700 Civic Center Drive West<br>MAILING ADDRESS: Same<br>CITY AND ZIP CODE: Santa Ana, CA 92701<br>BRANCH NAME: Central | |
| Plaintiff: Canjian Hou<br>Defendant: Adam Bereki | |
| **PREJUDGMENT CLAIM OF RIGHT TO POSSESSION** | CASE NUMBER: |
| **Complete this form only if ALL of these statements are true:**<br>**1. You are NOT named in the accompanying Summons and Complaint.**<br>**2. You occupied the subject premises on or before the date the unlawful detainer (eviction) complaint was filed. (The date is in the accompanying Summons and Complaint.)**<br>**3. You still occupy the subject premises.** | *(To be completed by the process server)*<br>DATE OF SERVICE:<br>*(Date that form is served or delivered, posted, and mailed by the officer or process server)* |

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is *(specify):*
2. I reside at *(street address, unit no., city and ZIP code):*

3. The address of "the premises" subject to this claim is *(address)*:

4. On *(insert date):* , the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. *(This date is in the accompanying Summons and Complaint.)*
5. I occupied the premises on the date the complaint was filed *(the date in item 4)*. I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed *(the date in item 4)*.
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed *(the date in item 4)*.
8. I was not named in the Summons and Complaint.
9. I understand that if I make this claim of possession, I will be added as a defendant to the unlawful detainer (eviction) action.
10. *(Filing fee)* I understand that I must go to the court and pay a filing fee of $ or file with the court an "Application for Waiver of Court Fees and Costs." I understand that if I don't pay the filing fee or file the form for waiver of court fees, I will not be entitled to make a claim of right to possession.

(Continued on reverse)

| Plaintiff: **Adam Bereki** | CASE NUMBER: |
|---|---|
| Defendant: | |

11. If my landlord lost this property to foreclosure, I understand that I can file this form at any time before judgment is entered, and that I have additional rights and should seek legal advice.
12. I understand that I will have *five days* (excluding court holidays) to file a response to the Summons and Complaint after I file this Prejudgment Claim of Right to Possession form.

**NOTICE: If you fail to file this claim, you may be evicted without further hearing.**

13. **Rental agreement.** I have *(check all that apply to you):*
    a. ☐ an oral or written rental agreement with the landlord.
    b. ☐ an oral or written rental agreement with a person other than the landlord.
    c. ☐ an oral or written rental agreement with the former owner who lost the property to foreclosure.
    d. ☐ other *(explain):*

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

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF CLAIMANT)

**NOTICE:** If you file this claim to possession, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

## — NOTICE TO OCCUPANTS —

**YOU MUST ACT AT ONCE if all the following are true:**

1. **You are NOT named in the accompanying Summons and Complaint.**
2. **You occupied the premises on or before the date the unlawful detainer (eviction) complaint was filed.**
3. **You still occupy the premises.**

You can complete and SUBMIT THIS CLAIM FORM WITHIN 10 DAYS from the date of service (on the form) at the court where the unlawful detainer (eviction) complaint was filed. If you are a tenant and your landlord lost the property you occupy through foreclosure, this 10-day deadline does not apply to you. You may file this form at any time before judgment is entered. You should seek legal advice immediately.

If you do not complete and submit this form (and pay a filing fee or file a fee waiver form if you cannot pay the fee), YOU WILL BE EVICTED.

After this form is properly filed, you will be added as a defendant in the unlawful detainer (eviction) action and your right to occupy the premises will be decided by the court. *If you do not file this claim, you may be evicted without a hearing.*

Adam A. Bereki
818 Spirit
Costa Mesa, CA 92626
949.241.6693
abereki@gmail.com

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

| | |
|---|---|
| Adam Bereki<br><br>Defendant, Cross-Complainant, Plaintiff<br><br>vs.<br><br>Karen Humphreys and Gary Humphreys,<br><br>Plaintiffs, Cross-Complainants, Cross-Defendants<br><br>vs.<br><br>Canjian Hou; MTC Financial, Inc., d/b/a Prestige Default Services, LLC; Fourth District Court of Appeal of California (Interested Party); Superior Court of California for the County of Orange (Interested Party); David Chaffee; James Di Cesare; Richard Aronson; Thomas Goethals; Kathleen O'Leary; William Bissell; Henry D. Paloci III, P.A., Henry D. Paloci; Office of the Clerk-Recorder for the County of Orange (Interested Party);<br><br>Does 1-100; | Case No.: 30-2015-00805807<br><br>Related Case No.: 30-2025-01459684<br>(Unlawful Detainer) |

# APPENDIX

# Appendix [A]

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/27/2017 TIME: 09:00:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Shanon Taylor

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

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EVENT ID/DOCUMENT ID: 72514442

**EVENT TYPE:** Jury Trial

---

**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
GARY HUMPHREYS, Defendant is present.
KAREN HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

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All counsel answer ready for trial.

**1st day of trial**

At 9:21 a.m. This being the date set for Court Trial in the above-entitled cause, having been assigned to this department, all parties and counsel appear as noted above and trial commences.

All parties waived jury trial.

The Court and counsels discuss exhibits and pleadings as set forth on the record.

At 9:33 a.m. The Court declared a recess to read the trial briefs.

At 10:19 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Pursuant to Court's ruling on 3/24/2017, the Court to commence a severed Cross Complaint 1st cause of action as against Cross-Defendant, Adam Bereki.

At 10:14 a.m. Mr. William G. Bissell presents an opening statement on behalf of Cross Complainants Karen & Gary Humphreys for the severed Cross complaint 1st cause of action against Mr. Adam Bereki.

At 10:29 a.m. Mr. J. Scott Russo presents an opening statement on behalf of Plaintiffs/Cross-Defendants The Spartan Associates, Inc..

At 10:32 a.m Mr. Adam Bereki presents an opening statement on behalf of himself as the Cross-Defendant.

121 document(s) are ordered pre-marked for identification as Plaintiffs/Cross-Defendants exhibits 1 through 137, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

62 document(s) are ordered pre-marked for identification as Cross-Complainants/Cross-Defendants exhibits 301 through 362, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

**MS. KAREN HUMPHREYS** is sworn and testifies.

At 11:14 p.m. Court declares a recess.

At 11:25 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 11:26 a.m. Ms. Karen Humphreys, previously sworn, resumes the stand for further testimony .

Ms. Karen Humphreys steps down.

**MR. GARY HUMPHREYS** is sworn and testifies.

At 11:58 a.m. Court declares a recess.

At 1:40 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 1:42 p.m. Mr. Gary Humphreys, previously sworn, resumes the stand for further testimony .

Exhibit(s) **32, 302, 303, 304, 305, 306,** having been previously marked for identification are admitted into evidence.

At 2:20 p.m. Mr. Gary Humphreys steps down.

**MR. ADAM BEREKI** is sworn and testifies.

Portions of Mr. Adam Bereki's deposition transcripts of 8/2/2016 read on the record (page 98 lines 10 to 13; page 81 lines 5 to 9)

At 2:34 p.m. Court declares a recess.

2:42 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 2:45 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

Exhibit(s) **34, 35, 33, 351 and 355,** having been previously marked for identification are admitted into

evidence.

At 3:22 p.m. Court declares a recess.

At 3:41 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 3:42 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

**Exhibit(s) 30-1; 348,** having been previously marked for identification are admitted into evidence.

Mr. Adam Bereki steps down.

At 3:55 p.m. Mr. Gary Humphreys, previously sworn, recalls to the stand for further testimony by his counsel.

Mr. Gary Humphreys steps down.

At 4:10 p.m. Court declares a recess.

Court is adjourned until 03/28/2017 at 09:30AM in C-20.

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/28/2017 TIME: 09:30:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Michelle Gallegos

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

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EVENT ID/DOCUMENT ID: 72559889
**EVENT TYPE**: Jury Trial

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**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
KAREN HUMPHREYS, Defendant is present.
GARY HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

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**2nd day of trial**

At 9:55 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 9:57 a.m. Mr. William G. Bissell presents closing argument on behalf of Cross-Complainants/Defendants, Karen & Gary Humphreys.

At 10:12 a.m. Mr. J. Scott Russo presents closing argument on behalf of Cross-Defendant, The Spartan Associates, Inc..

Mr. Adam Bereki waived closing argument.

At 10:19 a.m. Court declares a recess.

At 10:52 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license.

The Court finds judgment for the Cross Complainants, Gary & Karen Humphreys (First Cause of Action,

for Disgorgement of Funds Paid) and against cross-defendant, Adam Bereki.

The Court invites counsels to meet and discuss the plan for the remaining cause of actions and the complaint.

At 11:19 a.m. Court declares a recess.

At 11:37 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Legal discussions held with regards to remaining cross-complaint cause of actions and the complaint as set forth on the record.

Counsels are to resume discussions during lunch hour and report to the Court at 1:45 p.m.

At 11:47 p.m. Court declares a recess.

At 1:48 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Counsels reached an agreement as set forth on the record.

Mr. J. Scott Russo presents an offer of proof on plaintiff's complaint that if called Mr. Adam Bereki would be the witness and the testimony would be that Plaintiff, Spartan Associates had rendered goods and services to the defendants. The fair market value for the services and goods of $82,821.53 to be backed up by invoices and testimony about the reasonable value of those services that would be the first cause of action Quantum Merit. For the 2nd cause of action, go and in hand that it was an open book accounting was rendered to the defendants that they were given the accountings and the sum was $82,821.53 that was still due.

Based on Mr. Russo's offer of proof, the Court understand that those claims are based upon the view of plaintiff Spartan Associates, Inc. was the general contractor on the project. The Court finds that Spartan Associates does not have standing as determined earlier today that Mr.Bereki was the purported general contractor on the contract. Spartan Associates, Inc. may have been apparently substituted but it is certainly not with the permission or agreement of the defendants. Based on that, the **Court finds judgment for the defendants on the complaint.**

The parties have discussed, agreed and stipulates on the record as follows: The entirety of remaining causes of action on the First Amended Cross-Complaint will be dismissed without prejudice. If judgment on the first cause of action becomes final, the dismissal without prejudice will be converted to dismissal with prejudice. Pending judgment on the first cause of action becoming final, the statute of limitations on the re-filing of an action of the dismissed causes of action is waived. If a new action is filed on the dismissed causes of action , discovery deemed completed and will not be re-opened and the newly filed case will be consolidated with the remanded case for trial.

Pursuant to Mr. Bissell's Motion, **the Court orders the remaining causes of action, negligence, fraud, alter ego, penalty, attorney's fees and recovery against the Contractor's license bond be dismissed without prejudice. The judgment on the First Amended Cross Complaint is on the 1st cause of action for discouragement only.**

The Court directs Mr. William G. Bissell to prepare the judgment.

At 2:03 p.m. **Pursuant to oral stipulation set forth on the record, exhibits are released and returned to the submitting parties/counsels for maintenance, custody and safekeeping pending any post-verdict or appeal proceedings. All identification tags and other identifying markings are to remain in place pending this period.**

At 2:05 p.m. The Court is adjourned in this matter.

# Appendix [B]

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/20/2017 at 12:01:00 PM
Clerk of the Superior Court
By Enrique Velez,Deputy Clerk

JUD-100

| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) | FOR COURT USE ONLY |
|---|---|
| William Bissell SBN 93527<br>14 Corporate Plaza Drive, Suite 120<br>Newport Beach, CA 92660<br>TELEPHONE NO.: (949) 719-1159 FAX NO. (Optional)<br>E-MAIL ADDRESS (Optional): wbissell@wgb-law.com<br>ATTORNEY FOR (Name): Gary Humphreys & Karen Humphreys | FILED<br>SUPERIOR COURT OF CALIFORNIA<br>COUNTY OF ORANGE<br>CENTRAL JUSTICE CENTER<br>APR 20 2017<br>DAVID H. YAMASAKI, Clerk of the Court<br>BY: DEPUTY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE<br>STREET ADDRESS: 700 Civic Center Drive West<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Santa Ana, CA 92701<br>BRANCH NAME: Central Justice Center | |
| PLAINTIFF: The Spartan Associates, Inc.<br>DEFENDANT: Gary Humphreys, Karen Humphreys et al | |
| JUDGMENT<br>☐ By Clerk ☐ By Default ☑ After Court Trial<br>☑ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial | CASE NUMBER<br>2015-00805807<br>Judge David Chaffee |

JUDGMENT

1. ☐ **BY DEFAULT**
   a. Defendant was properly served with a copy of the summons and complaint.
   b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
   c. Defendant's default was entered by the clerk upon plaintiff's application
   d. ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)) Defendant was sued only on a contract or judgment of a court of this state for the recovery of money
   e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
      (1) ☐ plaintiff's testimony and other evidence
      (2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**
   a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
   b. ☐ the signed written stipulation was filed in the case
   c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☑ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
   a. The case was tried on *(date and time)*: March 27, 2017 at 9.00 a.m.
   before *(name of judicial officer)*: The Honorable David Chaffee
   b. Appearances by:
      ☑ Plaintiff *(name each)*
      (1) The Spartan Associates, Inc.
      (2)
      ☐ Continued on Attachment 3b
      ☑ Plaintiff's attorney *(name each)*:
      (1) J. Scott Russo esq.
      (2)
      ☑ Defendant *(name each)*:
      (1) Gary Humphreys
      (2) Karen Humphreys
      ☑ Continued on Attachment 3b.
      ☐ Defendant's attorney *(name each)*:
      (1) William Bissell esq.
      (2) William Bissell esq.
   c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
   d. ☑ A statement of decision (Code Civ. Proc., § 632) ☑ was not ☐ was requested.

Electronically Filed by Superior Court of California, County of Orange, 10/16/2025 01:40:00 PM.
30-2025-01482941-CL-UD-CJC - ROA # 45 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

In the Appellate Division of the Superior Court of California
for the County of Orange

Consolidated Case Nos.:
30-2025-1482941 (Lead Case) and 30-2025-01487778

---

Adam Bereki,
Appellant.

v.

Canjian Hou,
Respondent.

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**REQUEST FOR JUDICIAL NOTICE**
**PART 2 OF 4**

---

Adam Bereki
3649 Metter St.
Las Vegas, Nevada 89129
949.241.6693 | abereki@gmail.com

PLAINTIFF The Spartan Associates, Inc.

DEFENDANT Gary Humphreys, Karen Humphreys et al

CASE NUMBER 2015-00805807

JUDGMENT IS ENTERED AS FOLLOWS BY: ☑ THE COURT ☐ THE CLERK

4 ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties

5. **Parties.** Judgment is

a ☐ for plaintiff *(name each)*

and against defendant *(names)*:

☐ Continued on Attachment 5a.

b. ☑ for defendant *(name each)*.
Gary Humphreys & Karen Humphreys

c ☑ for cross-complainant *(name each)*.
Gary Humphreys & Karen Humphreys
and against cross-defendant *(name each)*
Adam Bereki

☐ Continued on Attachment 5a.

d ☐ for cross-defendant *(name each)*:

6 **Amount.**

a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

| | | |
|---|---|---|
| (1) ☐ | Damages | $ |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☐ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

b. ☑ Plaintiff to receive nothing from defendant named in item 5b.
☑ Defendant named in item 6b to recover costs $
☐ and attorney fees $

c ☑ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

| | | |
|---|---|---|
| (1) ☑ | Damages | $ 848,000.00 |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☑ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

7 ☑ Other *(specify)*:
Causes of action two through eight of the first amended cross-complaint are dismissed without prejudice subject to a stipulation by the parties and entered on the record.

Date: APR 2 0 2017

☐ JUDICIAL OFFICER
DAVID R. CHAFFEE

Date ☐ Clerk, by _____, Deputy

(SEAL)

**CLERK'S CERTIFICATE** *(Optional)*

I certify that this is a true copy of the original judgment on file in the court

Date:

Clerk, by _____, Deputy



JUD-100 [New January 1 2002] **JUDGMENT**

1028

0008

0640

# Appendix [C]

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**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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.

---

[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

---

[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

---

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.]"

---

[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**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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

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EVENT ID/DOCUMENT ID: 72990898

**EVENT TYPE:** Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

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

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Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. 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.

Counsel for the Humphreys to give notice.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C16

THE SPARTAN ASSOCIATES, INC.,

Plaintiff,

vs. No. 30-2015-00805807

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual, and DOES 1 THROUGH 25, inclusive,

Defendants

---

GARY HUMPHREYS, an individual and KAREN HUMPHREYS, an individual;

Cross-Complainants,

vs.

ADAM BEREKI, an individual, et al.,

Cross-Defendants.

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HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 15, 2019

APPEARANCES OF COUNSEL:

FOR THE DEFENDANTS, CROSS-COMPLAINANTS: WILLIAM G. BISSELL, ATTORNEY AT LAW

FOR THE CROSS-DEFENDANT: ADAM BEREKI, IN PROPRIA PERSONA

JAMIE JENNINGS, CSR NO. 13434
OFFICIAL COURT REPORTER

INDEX

(NO WITNESSES)

(NO EXHIBITS)

SANTA ANA, CALIFORNIA - MARCH 15, 2019

MORNING SESSION

(PROCEEDINGS IN OPEN COURT:)

* * *

THE COURT: Thank you. Is there an appearance on court call, please.

Someone on court call, please.

THE CLERK: Mr. Bereki?

MR. BEREKI: Your Honor, can you hear me?

THE COURT: We can now. Please state your name.

MR. BEREKI: Adam Bereki in propria persona.

THE COURT: Thank you. Welcome.

MR. BEREKI: Thank you.

THE COURT: And then counsel for the plaintiff.

MR. BISSELL: William Bissell, Your Honor, for the opposing parties, Karen and Gary Humphreys.

THE COURT: Thank you very much. Okay. So we do have a court reporter here. I do want to find out how much time that you wanted to take to argue the matter, then I'll put that into my consideration as to when I'll call the case.

So, Mr. Bissell, did you have a time estimate, if any?

MR. BISSELL: Your Honor, we would submit on

the tentative.

THE COURT: Okay. Mr. Bereki, do you have a time estimate at all?

MR. BEREKI: 10 -- 10 minutes, Your Honor. I just have some questions to ask of you for clarity because my next step is obviously to go to the US Supreme Court, so I just want some clarity on your tentative.

THE COURT: Okay. Do you have -- do you have the tentative? Have you been able to pull it off the internet?

MR. BEREKI: Yes. I'm looking at it, Your Honor.

THE COURT: All right.

Okay. Very good. So I'll come back to you then.

MR. BEREKI: Thank you.

THE COURT: Thank you for your patience.

(Recess.)

THE COURT: Okay. The matter is Spartan Associates versus Humphreys.

MR. BISSELL: Good morning, Your Honor. William Bissell for Respondents, the Humphreys.

THE COURT: Thank you.

Mr. Bereki, would you make your experience.

MR. BEREKI: Yes, Your Honor. Adam Bereki in

propria persona. Your Honor, this case hinges upon whether federal constitutional protections were denied and whether the trial in appellate court had jurisdiction to deny these protections. The matter goes to the jurisdiction of the Court, not the merit as was cited in the tentative.

While the rule that Your Honor cited may be applicable, it cannot be used to overrule the federal constitutional protections that I'm contending were denied here. This is held in Miranda v. Arizona at 384 US 436 at 491. The US Supreme Court stated there: Where rights secured by the Constitution are involved, there shall be no rule-making or legislation that would abrogate them.

The law of case doctrine that was cited in the tentative authority, which is People v. Dutra, does not apply here. It states: Because the rule is merely one of procedure and does not go to the jurisdiction of the Court, the doctrine will not be adhered to where its application will result in an unjust decision. For example, where there has been a manifest misapplication of existing principles resulting in substantial injustice.

That is exactly what I'm claiming here, Your Honor, that there's been a substantial injustice. And so, because this is a motion to vacate a void

judgment, I'm challenging the jurisdiction of the court to issue the Humphreys costs, and they have not substantiated the jurisdiction of the court to violate the Constitution and award the costs or even to have judgment awarded in their favor.

THE COURT: Thank you very much. Thank you.

Counsel, did you want to say something?

MR. BISSELL: I'm not sure how to respond to that, Your Honor. It's clear that the question of jurisdiction has been determined not once but twice: Once at the trial court level, once at the appellate court level, and presented to the California Supreme Court and rejected as a -- as grounds for review at that level. The -- you know, the Superior Court is a court of general jurisdiction; it has jurisdiction over all matters not exclusively reserved to the Courts of Appeal or the California Supreme Court. It had subject matter jurisdiction over this action.

Mr. Bereki appeared at the trial in this matter, he presented his case, he presented evidence, he questioned witnesses, he cross-examined witnesses. So, clearly, he had submitted to personal jurisdiction in this case. So the jurisdiction question is, to me, put to rest. If he wants to raise it, he has to raise it at another level.

Now, Mr. Bereki here is -- he's unhappy with

the Court's ruling, with the Court's decision. He thinks it's in error. Well, that's not a void judgment. That's a judgment you take up on appeal. He's done that. He's lost on appeal. If he's still unhappy, he has another level to go. That's where he has to go. He has no business being in this court today to present this motion.

THE COURT: Thank you.

Mr. Bereki?

MR. BEREKI: Yes, Your Honor. This is not just a matter of me being unhappy with the judgment. The Supreme Court in Kokesh v. SEC recently heard this matter regarding disgorgement. And what the Court -- what the matter was before that court was, I believe, Mr. Kokesh -- there was a judgment awarded, a disgorgement judgment awarded against him for about $40 million. And there was a statute in this case -- the determination was to whether that disgorgement penalty was -- was a penalty or not, because, if it was, then the statute of limitations would apply and he would not be liable for that disgorgement.

So the court heard the matter and determined that the disgorgement in that case was a penalty.

So, in this case, there's been a near-million-dollar disgorgement judgment awarded against me. And I'm claiming that that judgment, based

upon the Kokesh decision by the Supreme Court, is a penalty. And if you apply the same holdings that they did in Kokesh to this case, it clearly evidences that the holding in this case is punitive as well.

So here's where the constitutional protections apply and why I'm challenging the jurisdiction of the court: Because a court does not have jurisdiction to violate either the California Constitution or the Constitution of the United States.

So if the trial in Appellate Court found that this award was not punitive, in spite of the fact that the US Supreme Court held that it was, I'm contending that the 14th Amendment protections for excessive punitive damage awards have to apply here and that essentially due process was violated because the court did not recognize that the judgment was punitive in nature.

So, in my mind, if the constitution's been violated, that's not a judicial act and the court doesn't have jurisdiction to do that, which is why I keep challenging jurisdiction. And, on appeal and in the trial court, I have not yet seen one authority presented by the Humphreys or by the courts that overrule the Supreme Court's authority in Kokesh or the more than 100 years' authority case cited in that case that discuss exactly what a punitive judgment is. And

the judgment in this case, disgorgement, strictly to be nonpunitive under the laws of restitution -- nonpunitive restitutionary disgorgement can only apply to the profits that I made acting as the, quote/unquote, unlicensed contractor in this case. Can't order disgorgement of all the moneys were paid whatsoever, because, once you go beyond profits, as the Court held in Kokesh, it becomes punitive.

So the Humphreys have to be able to substantiate how they got a near-million-dollar award that wasn't punitive. And nowhere in this case and nowhere in any of the decisions of the Appellate Court or anywhere else do they do that. So it's very clear to me that this award that goes beyond any compensation that I received is punitive.

And if you look at the Exhibit B, which is the order for judgment in this case, it lists damages at $848,000. Well, my contention is these are punitive damages. Well, if they are, then the 14th Amendment's protections for excessive punitive damages apply. And if you apply those protections in this case, the maximum award that they could have got is $5,000; not a million.

So, I mean, this is hugely, hugely significant, and the jurisdictional issue is not just me being upset with the Court's judgment. I'm happy to take a lick and keep going on with life, but I want to

see the authorities for the Court to do this, and they just aren't here.

The two cases that the Appellate Court cited are actually SEC versus Huffman. That one was overruled or superseded by Kokesh. And the other one was United States versus Phillip Morris, and that one is also, so to speak, in my favor because it says that it's not in the Court's equity powers to issue punishment. And it -- disgorgement only applies to the ill-gotten gains or profits, not to all of the compensation that was paid for a project.

THE COURT: Thank you very much.

Did you want to retort, for a moment only?

MR. BISSELL: Just for a moment only, Your Honor.

These arguments go to the merits of the case that has been determined as final and remitted to the Superior Court for one purpose only: For the entry of an award of costs. Even a case where the Court has made an error of law, even if the error of law is apparent on its face, which it's not here, that is not a void judgment and cannot be attacked at this level.

THE COURT: Mr. Bereki, you did read the tentative; right?

MR. BEREKI: I did, Your Honor. And what I'm saying is that appears to be a legislative rule that is

attempting to over -- to supersede the Constitution. Because the Miranda v. Arizona decision states, quote: Where rights secured by the Constitution are involved, there shall be no rule-making or legislation that would abrogate them. And under the supremacy clause of Article 6, Section 2, the Constitution has authority here.

So if these are punitive damages and the Court violated the Constitution, it does not have jurisdiction to issue a remittitur and award costs or to affirm the judgment of the Humphreys, period.

THE COURT: Well, what I --

MR. BEREKI: And the authorities that I've established here are -- Kokesh is one. I mean, literally 100 years of precedent of determining what a punitive damage award is, which is clearly punishment because --

THE COURT: No, I got it. No, I understand. Your papers make that clear and your argument makes that clear. The tentative, however, is the present state of the law, and so it will have to be the order of the Court.

I want to thank you very much for your very articulate presentation and --

MR. BEREKI: No problem, Your Honor. Can I ask you a couple of questions?

THE COURT: Well, the Court doesn't really answer questions. The Court reviews the papers and then gives tentatives. So I can really offer no direction. The issues that you're dealing with and have argued involve substantive law, and that is something that really has to be addressed, in this circumstance, with the Court of Appeal. Already been to the Court of Appeal. Petition to the Supreme Court. And you may have other remedies, but I really cannot comment on any of those or offer you any assistance.

MR. BEREKI: I'm not interested in you practicing law or doing that. I just had some questions about how -- the decision that you made to issue the tentative in this case.

THE COURT: Yeah. It is in the tentative. It is in the tentative. So I have other people in the courtroom, and I'm going to have to get to their case, but I really want to appreciate -- tell you that I appreciate your fine argument and that of counsel.

So have a good day. The tentative --

MR. BEREKI: Okay. Your Honor, can I wait until the other people are done so that we can go through this?

THE COURT: Well, I really do not want to get involved in doing any more than I've already done. I cannot give any legal advice or give any direction, and

the --

MR. BEREKI: I'm clearly not asking for that, Your Honor.

THE COURT: Excuse me.

MR. BEREKI: I have questions -- just to give an example, the judgment order says there's damages in $848,000. So I have questions as to what specific type of damages these are.

THE COURT: Yeah, no, I'm not prepared --

MR. BEREKI: I need to know that to be able to prepare a meaningful and substantive petition to the Supreme Court. If no one's going to answer these questions, well, I feel that that's denying me a hearing, and I have a right to know what the actual judgment order is and how the --

THE COURT: The Appellate Court -- excuse me.

As a matter of fact, the Appellate Court, in its opinion, did address those issues. So I do have to move on. The tentative is the order of the Court.

You have a very nice day. Thank you.

MR. BEREKI: Thank you.

THE COURT: Bye-bye.

MR. BISSELL: Thank you, Your Honor.

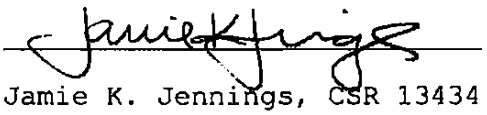
(Proceedings concluded.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )
)SS.
COUNTY OF ORANGE )

I, Jamie K. Jennings, CSR 13434, Official Court Reporter in and for the Superior Court of the State of California, County of Orange, do hereby certify that the foregoing transcript, consisting of Pages 1 through 11, inclusive, is a true and correct transcript of my shorthand notes and is a full, true and correct statement of the proceedings had in said cause.

Dated this 20th day of March, 2019.



Jamie K. Jennings, CSR 13434

# Appendix [E]

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division Three - No. G055075

JAN 30 2019

Jorge Navarrete Clerk

Deputy

S252954

# IN THE SUPREME COURT OF CALIFORNIA

**En Banc**

---

GARY HUMPHREYS et al., Cross-complainants and Respondents,

v.

ADAM BEREKI, Cross-defendant and Appellant.

---

The petition for review is denied.

CANTIL-SAKAUYE

*Chief Justice*

# Appendix [F]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 19-2050-CBM-(ADSx) Date November 12, 2019

Title *Bereki v. Humphreys et al.*

Present: The Honorable CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE

| YOLANDA SKIPPER | NOT REPORTED |
|---|---|
| Deputy Clerk | Court Reporter |
| Attorneys Present for Plaintiff: | Attorneys Present for Defendants: |
| NONE PRESENT | NONE PRESENT |

**Proceedings:** **IN CHAMBERS- ORDER RE: REQUEST FOR ASSISTANCE OF COUNSEL**

The matter before the Court is Plaintiff's Request for Assistance of Counsel (the "Request").

The Request is **DENIED** because the Court does not appoint counsel in civil cases.

The Court, however, advises Plaintiff that the Central District of California offers Pro Se Clinics in Los Angeles, Riverside, and Santa Ana to provide information and guidance to *pro se* litigants, such as Plaintiff, who are not represented by counsel. Below is information regarding the Pro Se Clinics:

Los Angeles Federal Pro Se Clinic
The Edward Roybal R. Federal Building and U.S. Courthouse
255 East Temple Street, Suite 170 (Terrace Level)
Los Angeles, CA 90012
Hours (by appointment only): Mondays, Wednesdays, and Fridays, 9:30 am - 12:00 pm and 2:00 pm - 4:00 pm
To make an appointment, contact Public Counsel at 213-385-2977, Ext. 270.

Riverside Joint Federal Pro Se Clinic
George E. Brown Federal Building
3420 Twelfth Street, Room 125
Riverside, CA 92501
Hours: Tuesdays and Thursdays, 10:00 am – 2:00 pm

Santa Ana Federal Pro Se Clinic
Ronald Reagan Federal Building and United States Courthouse
411 W. 4th Street, Room 1055 (first floor)
Santa Ana, CA 92701
Hours: Tuesdays, 1:00 pm – 4:00 pm; Thursdays, 10:00 am – 12:00 pm and 1:30 pm – 3:30 pm

Plaintiff can find more information about the Pro Se Clinics, including contact information, at http://prose.cacd.uscourts.gov/federal-pro-se-clinics.

**IT IS SO ORDERED.**

# Appendix [G]

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

Adam Bereki,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(B)(1), (6) & (7) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND REQUEST FOR JUDICIAL NOTICE [JS-6]**

The matter before the Court is Defendants Gary Humphreys and Karen Humphreys' (collectively, "Defendants'" or "The Humphreys'") "Motion to Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the Federal Rules of Civil Procedure and Request for Judicial Notice." (Dkt. No. 9 (the "Motion").)[1]

## I. BACKGROUND

This action arises from a state court judgment in favor of Defendants and

[1] Following the hearing on the Motion, Plaintiff filed a document entitled "Additional Authorities and Corrected Testimony To Be Considered By the Court re: Defendants Motion to Dismiss Filed 11/19/19," which has been reviewed by the Court. (Dkt. No. 30 (hereinafter, "Additional Authorities").)

against Plaintiff in connection with remodeling work performed by Plaintiff. On April 20, 2017, following a bench trial, the Superior Court, County of Orange, entered judgment in favor of The Humphreys and against Plaintiff in the amount of $848,000 (plus costs).[2] (FAC Exs. D, G.) The Superior Court found Plaintiff (as opposed to his company Spartan Associates) was the contractor who performed the remodel work for The Humphreys, and found Plaintiff was not a licensed contractor. Accordingly, the superior court awarded The Humphreys disgorgement of all compensation paid by The Humphreys to Plaintiff for the remodel work pursuant to Cal. Bus. & Prof. Code § 7031.[3] Plaintiff appealed the state court judgment. The California Court of Appeals affirmed the judgment in favor of The Humphreys. Plaintiff's request for review by the California Supreme Court was denied, and Plaintiff's writ for certiorari with the United States Supreme Court was also denied.

Plaintiff then commenced this action on October 28, 2019. On November 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this action is "an Independent Action in Equity to relieve a party from a judgment, order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this action "is a direct attack on the jurisdiction of the California trial and appellate Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

## II. STATEMENT OF THE LAW

### A. Fed. R. Civ. Proc. 12(b)(1)

On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction,

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[2] While the superior court judgment reflects judgment entered against Plaintiff in the amount of $848,000, the FAC alleges Plaintiff was "fined $930,000 for allegedly doing remodel construction work without a contractor's license." (FAC at p.16.)

[3] California Business & Professions Code § 7031 provides: "[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."

the party asserting jurisdiction bears the burden of proving jurisdiction exists. *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995). A motion under Rule 12(b)(1) may challenge the court's jurisdiction facially, based on the legal sufficiency of the claim, or factually, based on the legal sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court considers the complaint's allegations to be true, and draws all reasonable inferences in the plaintiff's favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the substance of jurisdictional allegations, the court does not presume the factual allegations to be true, and may consider evidence such as affidavits and testimony to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

**B. Fed. R. Civ. Proc. 12(b)(6)**

Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." Dismissal of a complaint can be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663, (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a cause of action will not suffice. *Twombly*, 550 U.S. at 555. To conform to Federal Rule of Civil Procedure 8, the plaintiff must make more than "an unadorned, the-defendant-harmed me" accusation. *Iqbal*, 556 U.S. at 678. Labels and conclusions are insufficient to meet the Plaintiff's obligation to provide the grounds of his or her entitlement to relief. *Twombly*, 550 U.S. at 555. "Factual allegations must be

enough to raise a right to relief above the speculative level." *Id.* If a complaint cannot be cured by additional factual allegations, dismissal without leave to amend is proper. *Id.* On a motion to dismiss for failure to state a claim, courts accept as true all well-pleaded allegations of material fact and construes them in a light most favorable to the non-moving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031–32 (9th Cir. 2008). A court may only consider the allegations contained in the pleadings, exhibits attached to or referenced in the complaint, and matters properly subject to judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

**C. Fed. R. Civ. Proc. 12(b)(7)**

Rule 12(b)(7) permits a party to move to dismiss the case for "failure to join a party under Rule 19." Fed. R. Civ. Proc. 12(b)(7). Rule 19 requires "[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction" to be joined as a party if:

> **(A)** in that person's absence, the court cannot accord complete relief among existing parties; or
>
> **(B)** that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > **(i)** as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > **(ii)** leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19. If "a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. Proc. 19(b).

## III. DISCUSSION

**A. Request for Judicial Notice**

Defendants request that the Court take judicial notice of the following:

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);
2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);
3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);
4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);
5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);
6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and
7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).[4]

(Hereinafter, "RJN".) The Court grants Defendants' request for judicial notice because the accuracy of Exhibits A-G can be "readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

**B. Rooker-Feldman Doctrine**

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker–Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

[4] Plaintiff did not oppose Defendants' request for judicial notice.

judgment entered against Plaintiff in the superior court action and (2) ordering the superior court to remove the property lien based on the judgment entered against Plaintiff in the superior court action (*id.*, Prayer for Relief). The FAC also alleges the instant federal action "is a direct attack on the jurisdiction of the California trial and appellate Courts in case numbers – 30-2015-00805897, and G055075." (*Id.* at p.17.) Therefore, Plaintiff seeks relief from the state court judgment affirmed by the California Court of Appeals.

The FAC also alleges a legal error by the superior court and California Court of Appeals on the ground that the superior court and appellate court entered and affirmed the judgment against Plaintiff without supporting evidence, and erred in holding disgorgement pursuant to Cal. Bus. & Proc. § 7031 is an equitable remedy rather than a penalty, thereby "resulting in a void judgment." (FAC at p.82, 90.)

**(1) Extrinsic Fraud on the Court**

Where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, Rooker-Feldman does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003). Therefore, the Rooker-Feldman doctrine does not apply where the plaintiff alleges extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud. *Kougasian*, 359 F.3d at 1141.

Plaintiff contends this action is not barred because this Court has the power to set aside or enjoin state-court judgments procured by fraud. The FAC alleges Defendants committed "fraud in the procurement of jurisdiction" in the superior court action because Defendants took one position during summary judgment (i.e., that they had contracted with Spartan (Plaintiff's company) to perform the work) and then took a contrary position during trial (i.e., that they believed they contracted with Plaintiff to perform the work). (FAC at 94-97.) Such alleged conduct does not constitute "extrinsic" fraud on the court since such evidence was

presented by Defendants before the superior court, nor constitute a legal injury caused by Defendants. Rather, the FAC alleges the superior court erred in entering judgment despite Defendants taking contrary positions throughout the state court litigation. Therefore, the extrinsic fraud exception to the Rooker-Feldman doctrine does not apply. *Kougasian*, 359 F.3d at 1141.

**(2) Constitutional Challenge**

Plaintiff also argues the Rooker-Feldman doctrine does not bar this action because the FAC raises a constitutional challenge to California Business & Professions Code §§ 7071.17 and 7031. While the FAC raises a "facial" and "as applied" challenge to the constitutionality of Sections §§ 7071.17 and 7031, the relief sought by Plaintiff is an order vacating or voiding the state court judgment. Moreover, the basis for Plaintiff's constitutional challenge is that the Superior Court and California Court of Appeals lacked subject matter jurisdiction to enter and affirm the judgment against Plaintiff because (1) there is no evidence supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The California Court of Appeals, however, found there was evidence supporting the Superior Court's judgment and held disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus, despite purporting to raise a "constitutional" challenge in his FAC, Plaintiff seeks relief from the state court judgment in this action and asserts legal errors by the Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman doctrine applies to bar Plaintiff's instant action.

* * *

Accordingly, the Court finds Plaintiff's action is barred pursuant to the Rooker-Feldman doctrine because Plaintiff seeks relief from the state court judgment and alleges legal errors by the state trial and appellate court. *See Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

**C. Res Judicata / Collateral Estoppel**

Defendants also move to dismiss the FAC as barred by the res judicata / collateral estoppel doctrines.[5]

Issue preclusion, or collateral estoppel, bars relitigation of issues that have been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824. Pursuant to the doctrine of collateral estoppel, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738. Under California law, collateral estoppel/issue preclusion applies: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." *DKN Holdings LLC*, 61 Cal. 4th at 825.

Here, the FAC alleges the superior court lacked jurisdiction and violated Plaintiff's due process rights because there was no evidence supporting the judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the superior court in a motion to vacate the judgment, which was denied. (FAC at 97-98.)

Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued the Superior Court committed due process violations and lacked subject matter jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals affirmed the Superior Court's judgment, and found Plaintiff's arguments on appeal had "no merit." (*Id.* Ex. C; *see also* FAC at p.19 (alleging California Court of Appeal held the superior court judgment against Plaintiff was a "non-punitive"

[5] "Res judicata" refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007) Since the claims asserted by Plaintiff in this action were not asserted in the state court action, res judicata would not apply to bar Plaintiff's claims here.

"equitable remedy").)

Plaintiff filed a petition for review with the California Supreme Court wherein Plaintiff argued the superior court and California Court of Appeals lacked jurisdiction and violated Plaintiff's due process rights, and argued Cal. Bus. & Prof. Code §§ 7031 and 7071.17 were unconstitutional and authorize imposition of penalties. (RJN, Ex. D.) The California Supreme Court denied Plaintiff's petition for review. (*Id.* Ex. E.) On April 23, 2019, Plaintiff filed a petition for writ of certiorari with the United States Supreme Court, which was denied. (*Id.* Exs. F, G.)

Therefore, the issues raised by Plaintiff in this federal action regarding the Superior Court and California Court of Appeal's lack of jurisdiction and violation of Plaintiff's due process rights, the unconstitutionality of Cal. Bus. & Prof. Code §§ 7031 and 7071.17, Plaintiff's contention that disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and the lack of evidence supporting the Superior Court's judgment and California Court of Appeals decision affirming the judgment, were actually litigated by Plaintiff in the state court action and necessarily decided in a final judgment. *See DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1132 (9th Cir. 2019).

Thus, even if the instant action was not barred pursuant to the Rooker-Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing this action. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th Cir. 2006).

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## IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action.[6] The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.[7]

**IT IS SO ORDERED.**

DATED: February 6, 2020.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

[6] Because Plaintiff's claims are barred on collateral estoppel grounds, leave to amend would be futile. *See Tait v. Asset Acceptance, LLC*, 2013 WL 3811767 (C.D. Cal. July 22, 2013).

[7] Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the superior court and California Court of Appeals which are "indispensable parties." Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine, and finds collateral estoppel would bar Plaintiff from bringing this action, it does not reach the issue of whether the superior court and California Court of Appeals are indispensable parties.

# Appendix [H]

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

Adam Bereki,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: NINTH CIRCUIT'S REFERRAL AND REVOCATION OF PLAINTIFF'S IN FORMA PAUPERIS STATUS [34]**

Plaintiff filed the Complaint in this action on October 28, 2019. (Dkt. No. 1.) On October 31, 2019, the Court granted Plaintiff's Request to Proceed in Forma Pauperis. (Dkt. No. 5.) On February 6, 2020, this Court issued an order granting Defendants' Motion to Dismiss, and dismissed the action with prejudice because Plaintiff is collaterally estopped from bringing this action and the action is barred pursuant to the Rooker-Feldman doctrine. (Dkt. No. 31 (the "Order").)

Plaintiff filed a notice of appeal of the Order on February 10, 2020. (Dkt. No. 32.) On February 24, 2020, the Ninth Circuit referred the matter to this Court "for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith."

(Dkt. No. 34.)

The Court finds Plaintiff's in forma pauperis status should not continue for the appeal because Plaintiff's appeal of the Order is frivolous. Therefore, the Court revokes Plaintiff's in forma pauperis status. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."); *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where the district court finds the appeal to be frivolous).

The clerk of this Court shall provide notice to the Ninth Circuit and the parties of this Order.

**IT IS SO ORDERED.**

DATED: February 27, 2020.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

CC: 9TH COA

# Appendix [I]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

| | |
|---|---|
| ADAM BEREKI,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>GARY HUMPHREYS; KAREN HUMPHREYS,<br><br>Defendants-Appellees. | No. 20-55181<br><br>D.C. No. 8:19-cv-02050-CBM-ADS<br>Central District of California, Santa Ana<br><br>ORDER |

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On March 24, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the responses to the court's March 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

**DISMISSED.**

# Appendix [J]

f: 7/13/20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

July 9, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

At its July 2020 meeting, the Commission on Judicial Performance voted to close your complaint dated June 8, 2020.

Your complaint concerns legal rulings made by the judges. This commission is not a court and does not have the authority to reverse judicial decisions. Even if a judge's decision is later determined to be legally incorrect by an appellate court, that by itself is not a violation of the Code of Judicial Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. The information you have provided is not sufficient to establish any of those factors.

If you wish to provide additional information regarding your complaint, it will be considered. You should provide specific information that fully describes what the judges said or did that you believe was misconduct. You may wish to consult the "Filing a Complaint" and "FAQ's" tabs on the commission's website (http://cjp.ca.gov) for further information about what a complaint should contain.

With respect to the legal proceedings that gave rise to your complaint, you may wish to consult an attorney or legal services provider to see if they can help you. This office cannot provide individuals with legal assistance.

We appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

Anjuli Fiedler
Staff Counsel

AF:aap/L070920Bereki

Confidential under California Constitution,
Article VI, Section 18, and Commission Rule 102

# Appendix [K]

MAYOR
Vicente Sarmiento
MAYOR PRO TEM
David Penaloza
COUNCILMEMBERS
Phil Bacerra
Johnathan Ryan Hernandez
Jessie Lopez
Nelida Mendoza
Thai Viet Phan

CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

# CITY OF SANTA ANA

SANTA ANA POLICE DEPARTMENT
20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

Police Department

December 22, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92646

**Subject: Citizen's Complaint – PSU2020-0035**

Mr. Bereki,

Your complaint regarding the actions of our police employee(s) has been investigated. Your allegations that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct.

The Santa Ana Police Department is committed to providing quality service. You can be assured that your complaint was treated seriously and a thorough investigation was conducted. Should you have any questions about this investigation, you may contact Commander J. Rodriguez at (714) 245-8705.

Sincerely,

David Valentin
Chief of Police

Robert Rodriguez, Commander
Internal Affairs

SANTA ANA CITY COUNCIL

Vicente Sarmiento
Mayor
vsarmiento@santa-ana.org

David Penaloza
Mayor Pro Tem, Ward 2
dpenaloza@santa-ana.org

Thai Viet Phan
Ward 1
tphan@santa-ana.org

Jessie Lopez
Ward 3
jlopez@santa-ana.org

Phil Bacerra
Ward 4
pbacerra@santa-ana.org

Johnathan Ryan Hernandez
Ward 5
jryanhernandez@santa-ana.org

Nelida Mendoza
Ward 6
nmendoza@santa-ana.org

# Appendix [L]

INFORMATION REPORT

ORIGINAL

Reporting Area: North Unine

**EVENT SUMMARY**

Date Occurred: Wednesday, 9/2/2020 08:17

Date Reported: Wednesday, 9/2/2020 08:17

Incident Location: 550 N Flower St, Santa Ana CA 000000000

Naloxone Deployed? ☐ Use of Force ☐

Brief Description of Incident: INFORMATION REPORT

**OTHER**

Name: CHAFFEE, DAVID Age:

Position/Title: JUDGE

Sex: M Race:

**REPORTEE**

Name: BEREKI, ADAM ALAN DOB: 6/18/1979 Age: 41

Address: 818 Spirit , Costa Mesa CA 92626

Email: ABEREKI@GMAIL.COM Cell Phone: (949)241-6693 Home Phone: Other Phone:

Sex: M Race: White

**OTHER**

Name: HUMPHREYS, GARY Age:

Sex: M Race:

**OTHER**

Name: HUMPHREYS, KAREN Age:

Sex: F Race:

**PROPERTY/EVIDENCE**

Related Offense: INFO REPORT

Property Description: PAPERWORK

**NARRATIVE**

On Wednesday, September 2, 2020, Deputy D. Foster #3340 and I were dispatched to Orange County Sheriff's Department Headquarters, located at 550 N. Flower Street in the City of Santa Ana, reference a report.

Upon arrival, we spoke to Adam Alan Bereki (06/18/1979). Adam told us the following: Adam is a former police officer with the Huntington Beach Police Department and was medically retired about 10 years ago. After retiring, Adam started a construction company, Spartan Associates. Adam obtained a contractor's license under Spartan Associates and not under his own name.

From April 2012 to August 2013, Spartan Associates was contracted by Gary and Karen Humphreys

ORIGINAL

Reporting Area: North Unine

(NFD) to remodel a condominium in Newport Beach. In August of 2013, Gary and Karen terminated Spartan Associates. At that time, Gary and Karen had paid Spartan Associates $848,000.00 and still had a pending balance of $82,000.00 that they refused to pay Spartan Associates. Spartan Associates attempted to negotiate the price owed with Gary and Karen but they rejected all negotiations. In August of 2015, Spartan Associates filed a lawsuit [Case#2015-00805807] against Gary and Karen, for the time and materials owed, which amounted to $82,000.00.

On February 16, 2016, Gary and Karen filed a motion for summary judgement. Gary and Karen initially asserted they entered an agreement with Spartan Associates for construction on their condominium. In early 2017, Gary and Karen filed a 1st amended cross complaint with new info. Gary and Karen amended that they contracted with Adam and not Spartan Associates.

On April 20, 2017, the court found that Adam did not have a contracting license in his name, therefore he violated B&P 7031(b). Judge David R. Chaffee ruled that Adam was to pay Gary and Karen $848,000 in Disgorgement. Adam disagreed with the judgement based on the fact that Adam felt they had contracted with his company. Neither Adam nor Spartan Associates ever had a formal contract with Gary and Karen and all agreed to items were in an email chain which Adam did not provide. Adam provided me a statement with a list of checks written by Gary and Karen for all work completed. In this list there are 7 checks written to Adam and 10 checks written to Spartan Associates.

Due to the $848,000.00 owed by Adam, a lien was placed on 818 Sprint, Costa Mesa, CA. 92626. Adam stated in November 2010, his mother Roseanne Bereki (09/25/1953) took over as legal owner of the residence and Adam's name is on the legal title. Adam also lost his business' contractors license.

On March 18, 2017, Adam filed a Writ of Error with the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after, Adam received an email stating they denied the request to vacate judgement.

On June 6, 2017, Adam again went to the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after the court responded and fined Adam approximately $1,500.00, for abuse of discovery. Adam's motion was again denied.

On January 10, 2018, Adam filed an appeal with the Fourth Appellate District Court of Appeal. On October 31, 2018, Adam received the Appeal Court judgement, stating all arguments had no merit

On October 28, 2019, Adam filed a complaint with the US Supreme Court. On February 27, 2020, the court denied Adam's case, due to the appeal being frivolous.

Adam believes that B&P 7031(b) is unconstitutional and the $848,000.00 disgorgement was given to him as a fine and a fine can only be levied if he is charged with a crime. Adam cited MW Erectors Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 36 Cal. 4th 412 and Rambeau v. Barker 2010 Cal. App. Unpub. Lexis S610 to prove that the violation of B&P 7031(b) and subsequent penalties were imposed illegally and unjustly. Adam stated the fine levied under B&P 7031(b) is actually criminal forfeiture. Adam provided a definition of criminal forfeiture under US v. Seifuddin, 820 F 2d 1074, "If the statute under which the forfeiture alleged is penal, it will be treated as criminal

forfeiture." Under People V. Cowan, 47 Cal. App. 5th 32, Adam believes his forfeiture was an excessive fine and his ability to pay was not taken into consideration. The courts rejected these claims stating his amount owed is Disgorgement and not a fine.

Adam also believes the amount was excessive because it did not take into consideration the amount of materials and work completed on the construction project. Adam asserted that his company completed $848,000.00 worth of work therefore he should only have to pay back any profit he made on the project. Adam cited, US Supreme Court Case Liu V. SEC, 2020 Lexis 3374. This case states. "the profit-based measure of unjust enrichment reflects a foundational principle: It would be inequitable that a wrongdoer should make a profit out of his own wrong. At the same time courts recognize that the wrongdoer should not profit by his own wrong, they also recognized the countervailing equitable principle that the wrongdoer should not be punished by paying more than a fair compensation to the person wronged."

Adam stated his rights have been violated under Title 18, U.S.C., Section 242 –Deprivation of Rights under the Color of Law. Adam believes he has been given an excessive fine by the courts that is cruel and unusual punishment. Adam believes his 5th, 6th, 7th, 8th and 14th Amendment Rights have been violated. Adam believes that Judge Chaffee is in violation of CPC 211- Robbery and CPC 484g Theft by False Pretense, by imposing the $848,000.00 fine. At the conclusion of the initial judgment, Adam has subsequently represented himself in every court with self-taught legal knowledge. Adam has met with attorneys regarding his case but does not have the funds necessary to retain them as council. Adam has exhausted all legal avenues in the courts to rectify his perceived constitutional violations.

Adam came to the Sheriff's Department as a last resort in an attempt to prove his Constitutional rights have been violated. As the Sheriff's Department is an agent of the Executive Branch of the State Government, Adam would like to use our agency as Checks and Balances with the Legislative and Judicial Branches of the State Government. Adam stated he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims.

| INVOLVEMENT TYPE | OFFICER NAME | BODY WORN CAMERA | DATE |
|---|---|---|---|
| Reporting Officer | Milbery, B. 09838 | ☐ | 9/6/2020 |
| Assisting Officer | Foster, D. 03340 | ☐ | 9/6/2020 |
| Approving Officer | Castro, M. 05307 | ☐ | 9/6/2020 |

ORANGE COUNTY
SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

# REQUEST AUTHORIZATION FORM
# RELEASE OF CASE INFORMATION

NAME ADAM BEREKI

ADDRESS

CITY STATE CA ZIP

DATE 11/25/2020

CASE # 20-029161

CONTACT PHONE

YOUR INVOLVEMENT supplemental

(ex: victim, witness, suspect, attorney for , insurance for)

REQUESTOR'S SIGNATURE See attachment

---

**BELOW SECTION TO BE COMPLETED BY ORANGE COUNTY SHERIFF PERSONNEL**

RECORDS SIGNATURE reynarg

FEE $ 0.00 CHECK # RECEIPT #

REQUEST ☑ Approved ☐ Approved / Redacted ☐ Denied

*Document(s) released:*

- ☐ Initial Crime Report
- ☐ Initial Crime Rpt Supplemental
- ☐ Deputy Follow Up
- ☐ Initial Follow Up
- ☐ Traffic Accident
- ☐ CHP180
- ☐ TC Property Damage
- ☐ Property Report
- ☐ Casualty Report
- ☐ Supplemental DV Report
- ☐ CAD Report ☐ ID Theft
- ☑ Other Information Report: Two (2) Sup

- ☐ Fees returned 0.00
- ☐ Released pursuant to Family Code Section 6228
- ☐ Released pursuant to Welfare and Institutions Code section 827 and Juvenile Court Administrative Order No. 12/003-903 "Exchange of Information".
- ☐ Released pursuant to Vehicle Code section 20012
- ☐ Released pursuant to Court Authorization and Penal Code Section 1203.097(a)(7)(B)

---

Authorized Signature Jeffrey Deutsch

Mailed ☐ Pick Up ☐ Date 12/01/2020 By jd

Emailed ☑

320 N. FLOWER STREET, SANTA ANA, CA 92703

SUPPLEMENT

ORIGINAL

**Reporting Area:** North Investigations

**NARRATIVE**

**Phone Call from Adam Bereki, 09/15/2020:**

On Tuesday, 09/15/2020, at approximately 1105 hours, I received a telephone call from a male subject verbally identifying himself as Adam Bereki wanting to check on the status of his report and to provide additional details. I recorded the conversation on my department issued digital audio recorder and later placed a copy of the audio recording onto a compact disc which I booked into Sheriff's Evidence in Santa Ana, Sheriff's Evidence Item# OS20-029161.3. I referred to the digital audio recording when preparing the following summary of my phone conversation with Mr. Bereki:

Bereki was advised I had been assigned this case and wanted to know if I was familiar with it. I summarized for Bereki that he was alleging several of his Constitutional Rights had been violated by a judicial officer and that there were additional criminal allegations against the same Judiciary based on judgements occurring in Civil Court. Bereki emphasised that in addition to the specific judicial officer he feels violated his constitutional rights, the "Whole State" of California's "Judicial Branch" has perpetuated a "Policy" in violation of persons constitutional rights. Bereki further stated that this policy, enacted into law by the California Legislature and "Upheld" by the Judicial Branch is supporting an unconstitutional "Policy" or law and one of the only remedies is for the Executive Branch of the government to perform its "Duty to enforce the law". Bereki has reached out to the following:

- California Commission on Judicial Performance
  - Bereki "Filed a complaint" which was returned to him stating he was "Complaining about legal errors by the judge". Bereki told me that in addition to the legal errors, he was also filing the complaint to address his "Deprivation of Rights".
- Federal Bureau of Investigation
  - Bereki has contacted the FBI three times within the last two to three months; however, the first time he called the "Crime Tip Line" and was told "We don't investigate that" and the second time he was told a "Complaint" was taken but no case number was provided to Bereki and the person taking the "Complaint" did not provide their name to Bereki. Bereki called the FBI again approximately two to three weeks after the second call to inquire about the status of his complaint, obtain the case number, and obtain the Agents name and he said, "They refused to give me all of those". Bereki believes he contacted the FBI office in Orange the second time.
    - Bereki served a Public Records Act Request on the FBI to try to obtain a copy of his phone call and was told they did not have a copy of the call.
- California State Assemblywoman Cottie Petrie-Norris
- California State Senator John Moorlach
- California Attorney General's Office
  - Approximately one week ago, Bereki emailed the California Attorney General's Office Public Information Unit. Bereki'sl requested information about how to file a complaint regarding a deprivation of rights complaint regarding a public official and has not yet received a response.

Bereki also wanted to clarify the following information from the initial report taken by deputies on 09/02/2020:

- Where the Initial Information Report reads, "Adam filed a complaint with the US Supreme Court". Bereki clarified that he went to the Federal District Court for The Central District Court of California to attempt to have the Federal District Court "Vacate" the "Void Judgement" from the California Court.
  - Bereki stated the Federal District Court Judge "Dismissed" his case, advising Bereki that the

SUPPLEMENT

ORIGINAL

**Reporting Area:** North Investigations

Federal Court did not have the authority to "Hear and determine the case".
When Bereki attempted to file an Appeal, the same Federal District Court Judge advised the Federal Appeals Court that Bereki's Appeal was "Of bad faith and frivolous".

- In Response to this, In March of 2020, Bereki filed a "Statement" regarding why the Appeal should move forward and he has not yet heard a response.

- Bereki also wanted to note that in the Initial Report's closing sentence where it states "...he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims", that in addition to the Sheriff's Department's "Duty to investigate" it is also the Sheriff's Department's duty to "Protect" him and "Intervene" when his "Rights and property are being violated and unlawfully taken".

I advised Bereki that his initial report was being reviewed and I would be working on attempting to identify the appropriate Executive Branch agency to investigate the matter or defer the matter back for further review through the Judicial Branch in the appeal process.

| INVOLVEMENT TYPE | OFFICER NAME | BODY WORN CAMERA | DATE |
|---|---|---|---|
| Supplementing Officer | Anderson, M. 07279 | ☐ | 9/15/2020 |
| Approving Officer | Weidenkeller, E. 04050 | ☐ | 9/23/2020 |

SUPPLEMENT

ORIGINAL

**Reporting Area:** North Investigations

## NARRATIVE

On Wednesday, November 25, 2020, at approximately 1240 hours, I received a phone call from Sgt. S. Millhollon that he had inadvertently been forwarded a call reference this case from Bereki. Sgt. Millhollon gave me the number Bereki called him from (949-241-6693) and asked that I call him back.

At approximately 1300 hours, I contacted Bereki and asked him how I could help. He told me he was looking for a status update on his case. I advised him that the case had been reviewed by the California Department of Justice and that both they and the Orange County District Attorney's Office would not prosecute the case, or investigate it any further. I provided him with my full name and pin number and we ended the call.

At approximately 1305 hours, Bereki called my office line back, and asked if the Orange County Sheriff's Department was refusing to protect him from, "Lawless actions by government officials acting without authority." I advised him that our investigation into his allegations had ended. Bereki thanked me for my time and the conversation ended.

Both phone calls were recorded. The recordings were placed onto a compact disc and booked into Sheriff's Evidence under this case number.

| INVOLVEMENT TYPE | OFFICER NAME | BODY WORN CAMERA | DATE |
|---|---|---|---|
| Supplementing Officer | Leeb, M. 08787 | ☐ | 11/25/2020 |
| Approving Officer | Weidenkeller, E. 04050 | ☐ | 11/26/2020 |

Gmail

## 20-029161

**Adam** <abereki@gmail.com> Mon, Dec 14, 2020 at 4:06 PM
To: mleeb@ocsd.org

Hi Mike,

I called and left a message for you last week to speak about your findings pertaining to the complaint I filed that you closed and have not received a return call. I am interested in knowing the factual findings and legal basis associated with your determination to close my case. These findings don't appear to be documented in your report and reasonably should be given each of the issues I raised.

My phone number is 949 241 6693.

Thank you for your help.

Sincerely,

Adam Bereki

Gmail

# Bereki Dr 20-029161

**Adam** <abereki@gmail.com> Thu, Dec 17, 2020 at 12:59 PM
To: eweidenkeller@ocsd.org, mleeb@ocsd.org, "Knutson, Gary L" <gknutson@ocsd.org>, jhallock@ocsd.org

Lt. Knutson,

Pursuant to a recent public records act request on your agency, I received a copy of the information report I filed as well as the supplemental investigation reports by Sgt. Andersen and Inv. Leeb pertaining to my allegations of fraud and deprivation of constitutional rights by judges and other public officials that I recently spoke with you and Commander Hallock about.

After receiving the supplemental reports made by Inv. Leeb, I called and left a message to speak with him on 12/2/20 . He has not returned my call. On 12/14/20, I also sent him an email and have not received a reply.

The essence of Inv. Leeb's findings in his supplemental report dated 11/4/20 states: "given that there is no criminal activity able to be discovered from what has been reported, this case will be closed pending any additional information." The report was approved by whom I suspect is Leeb's supervisor, E.Weidenkeller.

My phone message and email specifically asked Inv. Leeb to share the factual findings and legal basis of his conclusions that "there [was] no criminal activity able to be discovered." This information should very reasonably be part of his investigation report but is nowhere to be found. Inv. Leeb needs to explain exactly how he resolved each issue presented in my complaint. This includes but is not limited to how he determined there was constitutional authority for the judge/State of California to fine me $930,000 without any of the heightened protections of the excessive fine clause and in direct violation of the separation of powers declared in Article V of the California Constitution. A person, whether a civilian or public official who takes property without Constitutionally prescribed due process commits theft and/or fraud and potentially robbery if done under the full force of the State as in this case.

The fact that Inv. Leeb contacted the OCDA and CA DOJ who allegedly were not interested in prosecuting the case does not absolve him or the OCSD of their duty to fully and impartially investigate my valid claims and take remedial action including action to protect my liberty and property from unlawful taking.

If the OCSD or Inv. Leeb do not understand the law surrounding the claims I have made, I remain totally willing and available to help. I provided a significant amount of case law to the reporting officer who told me it would be booked into evidence so ti could be reviewed by the investigator. Despite this, there no indication in Inv. Leeb's reports that he read any of the cases or how he determined them to be incorrect or not relevant in relation to my claims. This is also information that should reasonably be included in his investigation report.

While I cannot be sure, it feels to me like Leeb spoke with County Counsel and perhaps the other aforementioned agencies and concluded, with little to no research of the actual law pertaining to the issues in my complaint, that what the judge/Court did was lawful based on the Opinion of the appellate Court that was also involved and then subsequently closed the case. This is not acceptable. How under any rational basis could a $930,000 fine for a simple licensing law violation could be lawful without any of the Constitutional protections of the excessive fines clause that specifically prohibit this behavior?

In another public records act request to your agency, I received copies of police academy training manuals from POST known as Learning Domains ("LD"). LD2 specifically reviews Constitutionally protected rights and Law Enforcement's duties to enforce the law and protect the public against the arbitrary deprivation thereof by government. I have enclosed it for reference. On page 1-5 it says "To be effective leaders, peace officers must be aware of the constitutional rights of all individuals [...] and the role the criminal justice system has in protecting those rights."

Investigator Leeb has clearly not performed an adequate and full investigation before abritrarily closing my case and told me the OCSD is not going to protect me or my property in this situation. Please inform me if this is in fact the official position of the OCSD or order Inv. Leeb to fully perform his sworn duties.

Please feel free to contact me with any questions.

Sincerely,

Adam Bereki
949.241.6693

---

LD_02_V-6.4.pdf
441K

Gmail

## Bereki Dr 20-029161

**Knutson, Gary L** <gknutson@ocsd.org> Fri, Dec 18, 2020 at 9:00 AM
To: Adam <abereki@gmail.com>

Adam,

Thank you for contacting me with this matter. I will look into it and get back to you.

Lieutenant Gary Knutson

Orange County Sheriff's Department

North Patrol Bureau Commander

Chief of Villa Park Police Services

Ofc. (714) 647-4094

**From:** Adam <abereki@gmail.com>
**Sent:** Friday, December 18, 2020 8:55 AM
**To:** Weidenkeller, Ehren J <eweidenkeller@ocsd.org>; Leeb, Michael C <MLEEB@ocsd.org>; Knutson, Gary L <gknutson@ocsd.org>; Hallock, Jeffrey A <JHallock@ocsd.org>; Rcauoette@ocsd.org
**Subject:** [EXTERNAL] Fwd: Bereki Dr 20-029161

Correction, after reviewing my records, I spoke with Commander Caouette not Assist. Sheriff* Hallock before speaking with you, Lt. Knutson. I have therefore included him in this communication.

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links.

# Appendix [M]

# INCIDENT/INVESTIGATION REPORT

| | |
|---|---|
| Agency Name | *Newport Beach Police Department* |
| ORI | *CA0301400* |
| Case# | *21008880* |
| Date / Time Reported | *12/07/2021 10:35 Tue* |
| Last Known Secure | *04/20/2017 09:00 Thu* |
| At Found | *10/28/2021 14:04 Thu* |

**INCIDENT DATA**

| | Location of Incident | Gang Relat | Premise Type | Beat/Tract |
|---|---|---|---|---|
| | *870 SANTA BARBARA DR, Newport Beach CA* | NO | *Other Location* | A3 |

| | Crime Incident(s) | (Att) | Weapon / Tools | Activity |
|---|---|---|---|---|
| #1 | *Suspicious Circumstances 925* | | *NONE* | |
| | | | Entry / Exit / Security | |
| #2 | Crime Incident | ( ) | Weapon / Tools | Activity |
| | | | Entry / Exit / Security | |
| #3 | Crime Incident | ( ) | Weapon / Tools | Activity |
| | | | Entry / Exit / Security | |

**MO**

**VICTIM**

# of Victims *0* | Type: | Injury: | Domestic: N

| | Victim/Business Name (Last, First, Middle) | Victim of Crime # | DOB / Age | Race | Sex | Relationship To Offender | Resident Status | Military Branch/Status |
|---|---|---|---|---|---|---|---|---|
| V1 | | | | | | | | |

Home Address | Home Phone

Employer Name/Address | Business Phone | Mobile Phone

| VYR | Make | Model | Style | Color | Lic/Lis | VIN |
|---|---|---|---|---|---|---|
| | | | | | | |

**OTHERS INVOLVED**

CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: INDIVIDUAL/ NOT LAW ENFORCEMENT | Injury:

| Code | Name (Last, First, Middle) | Victim of Crime # | DOB / Age | Race | Sex | Relationship To Offender | Resident Status | Military Branch/Status |
|---|---|---|---|---|---|---|---|---|
| *IO* | *BEREKI, ADAM ALAN* | | *06/18/1979* Age *37* | *W* | *M* | | *Non-Resident* | |

Home Address: *818 SPIRIT COSTA MESA, CA 92626* | Home Phone: *949-241-6693*

Employer Name/Address: *SELF* | Business Phone: *714-960-8825* | Mobile Phone

Type: | Injury:

| Code | Name (Last, First, Middle) | Victim of Crime # | DOB / Age | Race | Sex | Relationship To Offender | Resident Status | Military Branch/Status |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

Home Address | Home Phone

Employer Name/Address | Business Phone | Mobile Phone

**PROPERTY**

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)

| VI # | Code | Status Frm/To | Value | OJ | QTY | Property Description | Make/Model | Serial Number |
|---|---|---|---|---|---|---|---|---|
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Officer/ID# *JOE, D. (1219)*

Invest ID# *JOE, D. (1219)* | Supervisor *RODRIGUEZ, B. (1208)*

Status | Complainant Signature | Case Status *Cleared Non-crime* *12/10/2021* | Case Disposition: | Page 1

R_CSIIBR | Printed By: MFEAR, REC-SR | Sys#: 272146 | 01/05/2022 15:36

# INCIDENT/INVESTIGATION REPORT

*Newport Beach Police Department*

Case # *21008880*

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

| | IBR | Status | Quantity | Type Measure | Suspected Type | |
|---|---|---|---|---|---|---|
| DRUGS | | | | | | |
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Assisting Officers

Suspect Hate / Bias Motivated

## INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 21008880 *Newport Beach Police Department*

NARRATIVE

The listed Involved Other party contacted NBPD Detectives to report suspicious circumstances.

Alcohol Related: No Involved Location: N/A
Reportable Use of Force: No
Hate Crime Related: No Weapon Involved: N/A
Victims' Bill of Rights Provided to Victim(s): No
Victim Advised of Confidentiality Provisions Per 293 PC: No
Victim Desires Confidentiality: N/A

On 10-28-2021, I was working as a detective sergeant, assigned to the Property Crimes Unit-West of the Newport Beach Police Department. I received a voice message from a subject who identified himself as Adam Bereki. In the message, Bereki stated he was dealing with "some very peculiar circumstances," and that he needed some help with "crimes being perpetrated by judges."

I contacted Bereki, a Costa Mesa resident, by telephone. Over the course of the following four weeks, I had several separate telephone conversations with Bereki, some lasting over an hour in length, where he described his situation. In summary, Bereki had a civil judgment against him in 2017 for $848,000.00 after a court (Orange County Superior Court in Santa Ana) determined he operated as a contractor without a license during a residential remodel project in Newport Beach. In 2018, Bereki appealed the decision to the California Court of Appeals, Fourth Appellate District, Division 3 in Santa Ana. The appellate court affirmed the lower court's decision.

Bereki insisted I investigate this case as a criminal matter, stating as a police officer, I was bound by the Constitution of the United States and the Constitution of the State of California to investigate the violation of his constitutional rights; in this case a violation of the 8th Amendment prohibiting excessive fines. Bereki also stated the crimes of fraud, theft, forgery, and robbery were committed by the judges involved in this decision, based on his interpretation of the judicial process and subsequent case law, as well as his belief the involved judges have been misinterpreting the law for years leading up to his case.

On 12-7-2021, I contacted Orange County Deputy District Attorneys Bill Feccia and Clyde Von Der Ahe to discuss this case. Both DAs were in agreement that criminal courts have no jurisdiction to intervene in sustained civil judgments. They also stated that the Constitution protects people against the deprivation of life, liberty, or property in circumstances when they were not afforded the benefit of due process of law. DDA Feccia advised me to recommend Bereki either file a motion for re-hearing of his case through the appellate court, or petition the Supreme Court of the United States to hear his case.

I relayed this information to Bereki, who adamantly disagreed. Bereki asked if he was permitted to contribute a written statement to this case. I told him he was free to do so. Bereki reminded me that he has contacted numerous different law enforcement agencies and spoken to numerous different police officers about this case, all of whom have refused to assist him. Bereki said a potential next step for him would be to sue all the departments and officers who did not investigate this case further, including me and the Newport Beach Police Department.

This case shall be categorized as a Suspicious Circumstance due to the lack of probable cause to indicate a violation of the California Penal Code has occurred. A printout of the decision from Bereki's appellate case was scanned into this file, along with the emails and attachments sent to me by Bereki.

Gmail

## PDF Version of Brief in Support of Law

**Harp, Aaron** <aharp@newportbeachca.gov> Fri, Dec 10, 2021 at 12:07 PM
To: Adam <abereki@gmail.com>
Cc: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Joe, Darrin" <DJoe@nbpd.org>

Good afternoon Mr. Bereki,

Our office has reviewed this matter and it is our opinion that the Police Department has acted appropriately regarding your complaint. In our view, this is civil dispute that is properly handled by the judiciary and not by the Police Department. Hence, the City of Newport Beach will be taking no action related to this matter.

We appreciate your reaching out to the City of Newport Beach and we sincerely hope that you can resolve this dispute.

**Aaron C. Harp**

City Attorney

City of Newport Beach

100 Civic Center Drive

Newport Beach, CA, 92660

Phone: (949) 644-3131

Fax: (949) 644-3139

Email: aharp@newportbeachca.gov

CONFIDENTIALITY NOTICE: The information in this e-mail message is intended

# Appendix [N]

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

September 22, 2021

Adam A. Bereki
695 Town Center Dr., Ste. 700
Costa Mesa, CA 92626

RE: In Re Bereki

Dear Mr. Bereki:

The above-entitled petition for an extraordinary writ of habeas corpus was received on September 22, 2021. The papers are returned for the following reason(s):

The petition does not follow the form prescribed by Rule 14 as required by Rule 20.2.

The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

No motion for leave to file a petition for an extraordinary writ of habeas corpus is required. However, a petition for an extraordinary writ of habeas corpus may not be combined with any other filing, and the Rules of the Court make no provision for the filing of a petition for a writ of error.

The Rules of the Court make no provision for the filing of documents via digital media.

Please be advised that the Court does not appoint counsel for the purpose of preparing a petition.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:
Jacob Levitan
(202) 479-3392

Enclosures

# Appendix [O]

**Arbitration Award**
**Contractors State License Board Arbitration Program**

**CSLB Case Number: AS2014-087**

Jamie Handrick, Esq.
Tamberly Homeowners Association
8220 University Ave., Suite 100
La Mesa, CA 91942

Adam Alan Bereki
Blackrock General, Inc.,
dba Handyman Connection San Diego
7343 Ronson Rd., Suite H
San Diego, CA 92111
License #: 944018

TO THE ABOVE PARTIES AT INTEREST, IN THE MATTER OF CSLB CASE NO: AS2014-087
The undersigned Arbitrator, in accordance with California Business and Professions Code §7085, has investigated and considered all the material facts and available information pertaining to this case and has decided upon a final and binding Arbitration Award as described below.

| DECISION | REMEDY |
|---|---|
| Respondent shall reimburse Complainant the costs paid to correct balcony/deck repair. The repair performed by Respondent did not meet the minimum workmanship standards of the industry resulting in safety issues. Remedy includes cost of permit never obtained by Respondent. | $ 7,943.46 |
| Complainant's claim for refund of the amount paid to Respondent is denied. | $ 0.00 |
| **TOTAL:** | **$ 7,943.46** |

☒ Respondent shall pay the Complainant the Sum of **$7,943.46.**

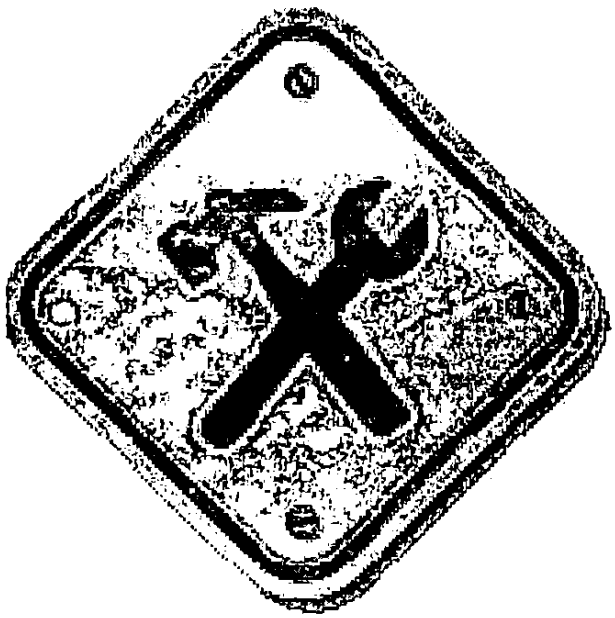
THIS ARBITRATION AWARD SHALL BE VALID AND BINDING UPON ALL PARTIES CONCERNED. PARTIES SHALL HAVE THIRTY (30) DAYS FROM DATE OF THIS AWARD TO SATISFY REMEDIES.

927244 - Associated entity -

**SIGNED:** Don Fobian **DATE:** 11/21/2014

**ARBITRATOR Fobian, Don**

# THE CONTRACTOR DID NOT RETURN A "SUBMISSION TO MANDATORY ARBITRATION"



074

SACRAMENTO CASE MANAGEMENT
9821 BUSINESS PARK DRIVE
P O BOX 26000
SACRAMENTO, CA 95826
(916)255-4832

**DATE:** December 29, 2014

**CSLB ARB CASE NO:**
A S 2014 87

**LICENSE NO:** 944018

HANDYMAN CONNECTION OF SAN DIEGO * BLACKROCK GENERAL INC
7343 RONSON RD STE H
SAN DIEGO, CA 92111

**NOTICE OF AUTOMATIC SUSPENSION OF LICENSING BY OPERATION OF LAW**
(Business and Professions Code Section 7085.6)

The noted arbitration matter has become a final order of the Registrar and you have failed to comply with the provisions of the award as ordered.

Effective **01/28/2015**, the license listed above will be suspended. By the provisions of Business and Professions Code 7097, any additional license issued to you or for which you have provided qualifying experience or appearance under the provisions of Business and Professions Code 7068 will be suspended.

The license(s) will remain under suspension for ninety (90) days. During that time you may end the suspension by complying with the award and have your license reinstated provided you meet all other licensing requirements.

If you do not comply with the arbitration award during the ninety (90) day period of suspension, your license will be automatically revoked. Any other Sole Owner, Partnership, Corporate or Joint Venture license(s) of which you are a member will also be revoked.

**YOU WILL NOT RECEIVE FURTHER NOTICE !**

If you wish to appeal the automatic suspension, you may submit a written statement to the office listed above within 15 days of the date of this notice. Your appeal must contain the specific reasons you did not comply with the arbitration award. You will be notified of the determination by mail.

**REVOCATION IS AUTOMATIC !**

After the license is revoked you must wait from one to five years to reapply for licensure. In addition, before being issued any new license, you will be required to fully comply with the arbitration award. Also, you will be required to post a disciplinary bond for two to five years. You may write to the Legal Action Deputy for the Contractors State License Board for the specific requirements when you wish to re-apply.

Case Management Unit

## ARBITRATION FILE COPY

SACRAMENTO CASE MANAGEMENT
9821 BUSINESS PARK DRIVE
P O BOX 26000
SACRAMENTO, CA 95826
(916)255-4832

DATE: December 29, 2014

SPARTAN ASSOCIATES INC THE
818 SPIRIT
COSTA MESA, CA 92626

CSLB ARB CASE NO:
A S 2014 87

LICENSE NO: 944018

ASSOCIATED LICENSE # 927244

LICENSEE:
HANDYMAN CONNECTION OF SAN DIEGO * BLACKROCK GENERAL INC

**NOTICE OF AUTOMATIC SUSPENSION**
**OF QUALIFIER'S LICENSE**
(Business and Professions Code Section 7097 and 7085.6)

Our records indicate that the above referenced arbitration case has become a final order of the Registrar. The licensee that was named in the arbitration case has failed to comply with the arbitration award. Therefore, effective **01/28/2015** the license number listed above will be automatically suspended by operation of law.

This is also to inform you that, as the qualifier for the above referenced license, your license **927244** will also be suspended effective **01/28/2015**.

The licenses will remain under suspension for ninety (90) days. During that time the suspensions may be lifted by complying with the provisions of the arbitration award. The licenses will then be reinstated, provided that all other licensing requirements are met. If the arbitration award is not complied with during the period of suspension, the licenses will be automatically revoked by operation of law. Other licenses will also be affected.

Case Management Unit

**ARBITRATION FILE COPY**

ARBIT. NO AS 2014 87
LIC 927244

To Whom It May Concern:

I just received the attached letter of license revocation dated 1/14/16.

I have sent multiple letters regarding this matter and seem to receive no response that addresses the situation or fosters resolution.

In short, allegations were made against a license I am the RMO of and an arbitration hearing was conducted. I was NEVER notified as the RMO of these arbitration proceedings and therefore did not attend.

A judgment was made during the arbitration proceedings.

I have NEVER been provided any documentation whatsoever about the claims against this license. What I mean by documentation is any evidence showing the alleged damages and associated costs were actually incurred by the complainant. In fact, the complainant had a year to notify my company of any problems per our contractual agreement and to my best knowledge did not comply.

I have contacted the attorney who is handling the case for the complainant. I have requested they send me documentation of the claim repeatedly however no documentation has been received. I have also negotiated a settlement with the complainant pending their providing of documentation (assuming I was responsible) but have still NOT received any documentation. The CSLB has also not provided any evidence of these claims.

As all of this has been unfolding, the CSLB seems to keep taking actions against my license based upon this arbitration proceeding I was NOT privy to. I was not able to defend myself to something I had no idea was happening. As a result a judgment was filed and my license revoked.

I have telephoned the CSLB numerous times about this matter as well as written several letters to no avail. Can someone please help me? I tried again this morning, to the Sacramento Case Management Division that apparently sent this letter and every mailbox I tried was full. No one answered the phone.

I am truly interested in the integrity of my license and doing the right thing.

If there is some type of rebuttal process I can go through to challenge the arbitration decision please provide that information along with any forms to me.

I think a phone call could resolve things much more expediently. Please feel free to call.

Sincerely,

Adam Bereki
949 241 6693

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, California 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com

STATE OF CALIFORNIA
Governor Edmund G. Brown Jr.

October 15, 2015

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Application Fee # 2014 01 08850

Dear Mr. Bereki:

This responds to your letter dated August 7, 2015, to the Contractors State License Board (CSLB) regarding the status of your license, # 944018.

I hope it will be helpful to provide some background on this matter. CSLB records confirm that you are the qualifier on two licenses, Spartan Associates, license # 927244; and Handyman Connection of San Diego, license # 944018. Handyman Connection is the license that was revoked on April 30, 2015. After a complaint was received against this license on July 25, 2013, the case was sent to mandatory arbitration on September 30, 2014. You are responsible as the qualifier to be aware of and comply with the terms of the arbitration (Business and Professions Code [BPC] section 7068.1). The license of Handyman Connection was revoked on April 30, 2015 per BPC section 7085.6 – failure to comply with an arbitration award.

Regarding the matter at issue, you made application for a license on January 8, 2015, prior to the revocation. You had a case that had been sent to arbitration with an outstanding award during the application process; therefore, your application was returned to provide verification that you had complied with the arbitration award. When you did not provide that verification, your application went void. A letter to that effect was sent to you (copy enclosed) on March 24, 2015.

As is explained in the application documents, the $300 application fee is an earned fee and cannot be refunded because of the expense incurred in handling the application (BPC 7138). For this reason, the following notice is provided at the top of the application form: "The application fee for a single classification ($300) is not refundable once the application has been filed." CSLB staff has initiated a refund of your $180 two-year license fee. I have asked that the processing time be expedited for you. You should receive your refund in a few weeks.

You may reapply on April 30, 2017. However, you will need to show rehabilitation, post a $15,000 disciplinary bond, and resolve any outstanding arbitration award before the license will be issued.

Sincerely,

David Fogt, Chief
Enforcement Division

Enclosure (1)

Gmail

# PRA REQUESTS- BEREKI

**Maier, Ellen@CSLB** <Ellen.Maier@cslb.ca.gov> Mon, Mar 22, 2021 at 3:17 PM
To: Adam <abereki@gmail.com>

Good afternoon Adam,

Please see attached. There was 8275 mandatory arbitration cases referred to AMCC since January 1, 2006.

**2 attachments**

**CSLB Copier_20210322_141609.pdf**
5670K

**CSLB Copier_20210322_141641.pdf**
6128K

# Appendix [P]

*ROB BONTA*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

**PUBLIC INQUIRY UNIT**
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

February 25, 2022

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your correspondence to the Office of the Attorney General.

While we appreciate the time and effort it has taken to contact our office, we are unable to assist you. The role of the Attorney General is to represent the People of California, collectively, in civil and criminal matters before trial courts, appellate courts, and the supreme courts of California and the United States. However, the Attorney General is prohibited by law from representing private individuals or providing legal advice, legal research or legal analysis to private individuals under any circumstances. As a result, the Attorney General cannot represent you in your private litigation or intercede on your behalf.

Therefore, we suggest that you consult with a private attorney to determine any civil remedies that may be available to you. An attorney would directly represent your interests and is the one whose advice would be most helpful to you.

Your complaint about the judge(s) involved in this case should be directed to the Commission on Judicial Performance. The Commission has exclusive jurisdiction over complaints against judges. You may contact the Commission as follows:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
Telephone: (415) 557-1200
Fax: (415) 557-1266
Internet: http://cjp.ca.gov

Your complaint about the attorney(s) involved in this case should be directed to the State Bar. The Bar has exclusive jurisdiction over complaints against attorneys. You may contact the Bar as follows:

State Bar of California
Intake Unit
845 S. Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 765-1000 (outside of CA) or (800) 843-9053 (toll free)
Internet: http://www.calbar.ca.gov

We regret that we are unable to assist you. However, we hope the information we have provided clarifies our restrictions in regard to your request. Thank you again for writing.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For ROB BONTA
Attorney General

# Appendix [Q]

# STATUTES INVOLVED

## Cal. Business and Profession Code §7028

(a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

(1) The person is not licensed in accordance with this chapter.

(2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, or five thousand dollars ($5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars ($5,000) nor more than the greater amount of ten thousand dollars ($10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(f) If the unlicensed person engaging in the business of or acting in the capacity of a contractor has agreed to furnish materials and labor on an hourly basis, "the contract

price" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(g) Notwithstanding any other law, an indictment for any violation of this section by an unlicensed person shall be found, or information or a complaint shall be filed, within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

(h) For any conviction under this section, a person who utilized the services of the unlicensed person is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether he or she had knowledge that the person was unlicensed.

(i) The changes made to this section by the act adding this subdivision are declaratory of existing law.

## Cal. Business and Professions Code §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 1993–94 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.

## Cal. Business and Professions Code § 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.

**Cal. Business and Professions Code §7085**

(a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and

any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), "material damages" means damages greater than the amount of the bond required under subdivision (a) of Section 7071.6, but less than fifty thousand dollars ($50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price, or the demand for damages is equal to or less than the amount of the bond required under Section 7071.6, but, regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

## Cal. Business and Professions Code §7085.6

(a) (1) The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law.

(2) The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice.

(3) The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar.

(4) Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the license and any other contractor's license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the arbitration award. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of that person by another licensee shall constitute grounds for disciplinary action. A qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

# Appendix [R]

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 09/15/2022 TIME: 01:30:00 PM DEPT: C66

JUDICIAL OFFICER PRESIDING: Sandy Leal
CLERK: V. Do
REPORTER/ERM: Olivia Caucas
BAILIFF/COURT ATTENDANT: M. Wright

CASE NO: **30-2022-01271693-CL-CL-CJC** CASE INIT.DATE: 07/25/2022
CASE TITLE: **First National Bank of Omaha vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Rule 3.740 Collections

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EVENT ID/DOCUMENT ID: 73846965

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 09/14/2022

---

**APPEARANCES**
James McCleoud, Plaintiff, present remotely.
Adam Bereki, self represented Defendant, present remotely.
Attorney, Katelyn Burnett for Prestige Default Services appears remotely.

---

Hearing held, all participants appearing remotely.

Case called at 1:46 PM.

Ex-Parte application for Emergency Hearing on Petition for Writ of Habeas Corpus is requested by Defendant, Adam A. Bereki.

The Court hears oral argument.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Ex- Parte Application for Emergency Hearing on Petition for Writ of Habeas Corpus is **DENIED.**

**The Court notes the Petition for Writ set for October 13, 2022 in Judge Corey S. Cramin's Department in C3.**

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 10/13/2022 TIME: 09:30:00 AM DEPT: C03

JUDICIAL OFFICER PRESIDING: Corey S. Cramin
CLERK: M. Dambert
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: K. Thach

CASE NO: **30-2022-01271693-CL-CL-CJC** CASE INIT.DATE: 07/25/2022
CASE TITLE: **First National Bank of Omaha vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Rule 3.740 Collections

---

EVENT ID/DOCUMENT ID: 73841220,116895273

**EVENT TYPE:** Petition for Writ
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Petition - Other For Writ of Habeas Corpus, 09/07/2022

---

**APPEARANCES**
James MacLeod, from The Dunning Law Firm APC, present for Plaintiff(s) remotely.
Adam Bereki, self represented Defendant, present remotely.

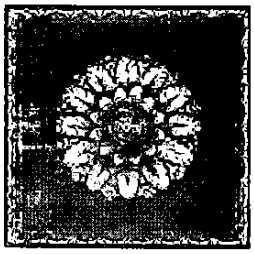
Hearing held, all participants appearing remotely.

The Court, having fully considered the documents submitted, now rules as follows:

Defendant's Petition for Writ of Habeas Corpus is denied.

No further notice was ordered.

# Appendix [S]



Search documents in this case: Search

## No. 22A426

| | |
|---|---|
| Title | In Re Adam Bereki, Applicant |
| Docketed | November 15, 2022 |
| Lower Ct | Superior Court of California, Orange County |
| Case Numbers | (30-2022-01271893) |

| DATE | PROCEEDINGS AND ORDERS |
|---|---|
| Nov 05 2022 | Application (22A426) for a stay submitted to Justice Kagan<br>**Main Document** **Other** |
| Nov 15 2022 | Application (22A426) denied by Justice Kagan |
| Nov 17 2022 | Application (22A426) refiled and submitted to Justice Thomas<br>**Written Request** |
| Dec 14 2022 | Application (22A426) referred to the Court. |
| Dec 14 2022 | DISTRIBUTED for Conference of 1/6/2023 |
| Jan 09 2023 | Application (22A426) denied by the Court |

| NAME | ADDRESS | PHONE |
|---|---|---|
| Attorneys for Petitioner | | |
| Adam A. Bereki | 618 Spirit<br>Costa Mesa, CA 92626 | |
| Party name: In re Adam Bereki | | |

# Appendix [T]

OFFICE OF THE
# DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

February 16, 2024

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Complaint Concerning Public Corruption

Dear Mr. Bereki,

The Orange County District Attorney's Office has received your January 17, 2024, letter as well as your January 19, 2024, electronic mail message within which you allege criminal corruption by "members of the California Legislature, Executive, and Judicial branches" in relation to the establishment and enforcement of California Business and Professions Code section 7031, subdivision (b). Having reviewed your complaint and supporting materials, and based on all available information, we are unable to identify and prove beyond a reasonable doubt that any violations have occurred.

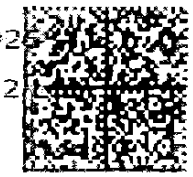
Consequently, no further action will be taken.

Respectfully,

Special Prosecutions Unit

DISTRICT ATTORNEY - PUBLIC ADMINISTRATOR
COUNTY OF ORANGE
Post Office Box 808
Santa Ana, California 92702-0808
Todd Spitzer, District Attorney-Public Administrator

SANTA ANA CA 92
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FIRST-CLASS MAIL
IMI
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02/13/2024 ZIP 92703
US POSTAGE

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

92626-308916

0743

# Appendix U

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

**SYNOPSIS:**

In March 2022, I was assigned to investigate Adam Bereki's complaint against Orange County Superior Court Judge D. Chaffee. Judge Chaffee oversaw a civil case between Adam Bereki and Karen and Gary Humphreys. Adam Bereki alleged grand theft against Judge Chaffee for his judgment and decision on the case.

**Subject 1:**
Judge David Chaffe [redacted]

**Subject 2:**
Adam Bereki (CA / B6970543)
818 Spirit
Costa Mesa, CA 92626
(949) 241-6693

**INVESTIGATION:**

In April 2012, Adam Bereki entered a contract with the Humphreys, Karen and Gary, to complete a remodel of their newly purchased condominium unit in Newport Beach, California. Adam Bereki previously completed work for Gary Humphreys' brother and son. The Humphreys took the recommendations and hired Adam Bereki to complete the remodel. Adam Bereki sent a proposal to the Humphreys through email, and they agreed to the terms of the project. The daily fees for Adam Bereki and his partner, Glenn Overley, along with the prices for parts and labor were also discussed and agreed upon through the emails.

In May 2012, the Humphreys purchased the condominium unit directly above the unit Adam Bereki was hired to remodel. The Humphreys retained Adam Bereki's services for the second unit and ultimately decided to convert it into one unit. Work on the Humphreys' condominium units seized, and the last services were dated August 21, 2013.

Adam Bereki filed a civil suit against the Humphreys on August 21, 2015. He filed the suit after the contract was terminated, and he was not paid the remaining balance of $82,000. On October 13, 2015, the Humphreys filed a cross-complaint against Adam Bereki.

The Humphreys were able to bring a cross-complaint because Business and Professions Code 7031(e) allows for a party who utilizes the services of an unlicensed contractor to may bring an action in ANY court of competent jurisdiction to recover all compensation paid to the unlicensed contractor. The Humphreys were the only people to utilize Adam Bereki's services, so they were able to bring forth an action against him. Adam Bereki claimed he is the sole owner and operator of The Spartans and Associates, Incorporated, a construction company, with a valid contractor license.

The two-day case took place between March 27-28, 2017, and was overseen by Orange County Superior Court Judge David Chaffee. Representing the Humphreys was William G. Bissell, Law Offices of William G. Bissell. Adam Bereki represented himself along with J. Scott Russo, Russo & Duckworth LLP. J. Scott Russo was also defending the Suretec Insurance Company, a contractor license bond.

The cross-complaint sought the disgorgement of the funds paid by the Humphreys to Adam Bereki, The Spartan Associates or Spartan Construction, which was $848,000. The cross-complaint alleged that Adam Bereki worked on the Humphreys condominiums without a valid contractor's license.

The first cause of action in the trial was about who the Humphreys contracted with. Based on emails and lack of written contracts, the court decided the contract was between the Humphreys and Adam Bereki, and not Adam Bereki's company, The Spartan Associates.

J. Scott Russo made the argument that Adam Bereki was a "little lax" for accepting the first few payments under his name and not his company but ultimately the majority of the money accepted was done by The Spartan Associates. Additionally, the building permits were obtained by The Spartan Associates. J. Scott Russo argued the work done was done under a B license and was correctly done.

J. Scott Russo argued that although there was not a written contract, the emails exchanged between the Humphreys and Adam Bereki constituted a contract. J. Scott Russo contended that the emails were from Adam Bereki, on behalf of The Spartan Associates, since Adam Bereki was the sole "shareholder" and employee. The emails that began talking of fees and costs began on April 5, 2012. The emails were sent from Adam Bereki's personal email account. The initial emails mentioned Adam Bereki's partner, Glenn Overley, but he didn't mention The Spartan Associates.

After July 2012, Adam Bereki requested the Humphreys make payments to The Spartan Associates and not to Adam Bereki. From April 2012 to July 2012, payments were made to Adam Bereki. From July 2012 forward, the payments were made to either Spartan or Spartan Construction.

The Humphreys and William G. Bissell argued that Adam Bereki was unlicensed at the time of entering the contract. William G. Bissell argued that although Adam Bereki was The Spartan Associates Responsible Management Officer, he was required to have a contractor's license as an individual. Even the partnership between Glenn Overley and Adam Bereki would have needed a joint venture license. Since Glenn Overley was an independent contractor, he was required to have his own contractor's license.

Judge Chaffee ruled that the contract was made between Adam Bereki and the Humphreys, therefore rendering Adam Bereki as an unlicensed contractor. Judge Chaffee ruled that Adam Bereki would return $848,000 to the Humphreys. Judge Chaffee acknowledged that the emails exchanged between Adam Bereki and the Humphreys met the definition of a contract.

Judge Chaffee referenced three cases to make his decision:

- Ball v. Steadfast (2011), 196 Cal.App.4th p. 694.
- 29 Palms Enterprises Corporation v. Bardos (2012), 210 Cal.App.4th p. 14, 13.
- MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc. (2005), 36 Cal.4th p. 412.

**Ball v. Steadfast (2011), 196 Cal.App.4th p. 694**

In Ball v. Steadfast, a licensed contractor was not licensed as a contractor to do business in the name of "Clark Air Conditioning Heating." Ball sued in his own name to a foreclosure on a mechanic's lien. The foreclosure came from a nonpayment under the contracts entered.

The court held that Ball was not licensed as a contractor to do business under the name Clark Heating and Air Conditioning. Ball appeared on the contractor license as the owner of Clark Heating and Air Conditioning. The license was issued to Clark Heating and Air Conditioning.

The court determined that "Ball entered the contracts on behalf of his sole proprietorship, not on behalf of a separate legal entity that could, and should, have obtained its own license." (Ball, supra, 196 Cal.App.4th at p. 703)

Judge Chaffee interpreted that in Ball v. Steadfast, "the contractor was licensed as a "sole owner" and not as a partnership or corporate entity pursuant to the classification system of B&P code section 7065." Furthermore, Judge Chaffee interpreted that because Ball failed to contract work under the wrong business name, and not the name on his license, it was grounds for disciplinary action, but it did not bar him from attempting to recover payment for the work he performed.

Judge Chaffee stated, "First of all, and foremost, we have no license in the name of Mr. Bereki individually; instead, it appears he was the qualifying corporate officer for the legal entity, Spartan Associates, incorporated."

**29 Palms Enterprises Corporation v. Bardos (2012), 210 Cal.App.4th p. 14, 13**

In 29 Palms Enterprises Corporation v. Bardos, 29 Palms Enterprises Corporation filed a complaint against Cadmus Construction Company. The complaint was because Cadmus Construction Company, and indirectly Bardos were not licensed as contractors in California. The court ordered Cadmus Construction Company to disgorge all of the fees 29 Palms Enterprises Corporation had paid.

It was determined Bardos was the Responsible Managing Officer, and he did not have a license in his personal name. Additionally, the court ruled that Bardos' corporation, Bardos Construction, Inc., was a different entity from his dba (doing business as) Cadmus Construction Company. Cadmus Construction Company was licensed, and Bardos Construction Inc. did hold a license. The court ordered the return of all costs to 29 Palms Enterprises Corporation. Bardos believed the judgment was not an equitable result. The court responded by saying, "It has long been settled that the courts may not resort to equitable considerations in defiance of Section 7031."

Judge Chaffee interpreted that Bardos was the Responsible Managing Officer for a licensed corporation, but he did not hold the corporation's licenses as an individual. Bardos could not perform work under that license using the name of the "sole proprietorship."

Judge Chaffee used the case to establish that either Spartan and Associates was the contracting party or, alternatively, Adam Bereki operated under The Spartan and Associates' license. Because of the ruling in 29 Palms Enterprises Corporation, Adam Bereki "cannot rely on his corporation's license to contract."

**MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc. (2005), 36 Cal.4th p. 412**

In MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc., MW Erectors, a steel contractor was not licensed at the time the contract was made but obtained a license shortly after. Ultimately, the Supreme Court concluded that licensing is required at all times during the performance of the labor. Niederhauser Ornamental & Metal Works Company, Inc. elected not to pay MW Erectors.

Judge Chaffee stated that the California Supreme Court's ruling on the issue of unlicensed contracting is "draconian in its effect" but that was the intent of the legislature. The legislature expects contractors to be

licensed at all times during the times they are contracted and failing to do so, opens a person or company to forfeiture.

**Adam Bereki's Allegations**

1. Business and Professions Code section 7031 action is a criminal prosecution in disguise of a civil action to criminally prosecute and punish an unlicensed contractor for committing the public offense of contracting without a license – a misdemeanor offense as defined by Business and Professions Code section 7028.

   Business and Professions Code section 7028 is defined as:

   (a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

   (1) The person is not licensed in accordance with this chapter.

   (2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

   (b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

2. That as a result of Allegation #1, private parties cannot commence Business and Professions Code section 7031 actions because the Executive Power of California is vested exclusively in the Governor pursuant to California Constitution Article V, Section 1.

3. That as a result of Allegation 1 and Allegation 2, the Humphreys lacked Constitutional Authority to prosecute Adam Bereki. That should have prevented Judge Chaffee of the ability to hear the case and give a judgment.
4. As a result of Allegation 1, Allegation 2, and Allegation 3, Justices O'Leary, Goethals, and Aronson of the Fourth District Court of Appeal lacked Constitutional Authority to affirm Judge Chaffee's judgment.

5. Based the aforementioned allegations, the State of California lacked the Constitutional authority to summarily suspend The Spartan and Associates/Adam Bereki's general contractor license pursuant to Business and Professions Code section 7071.17.

Judge Chaffee returned all the compensation paid to the Humphreys. Adam Bereki believes he already returned the amount that was paid to him through the work that was completed on the Humphrey's property. The work that was completed added value to the Humphrey's home. Adam Bereki believes the punishment was not authorized by Business and Professions Code section 7031(b) because Adam Bereki and The Spartan and Associates returned the money in the form of value.

Adam Bereki cited, Lewis & Queen v. N. M. Ball Sons (1957), 48 Cal 2d. 141, 152. Adam Bereki interpreted the case to state that "Courts may not resort to equitable considerations in defiance of Business and Professions Code section 7031."

Adam Bereki explained that the case demonstrated that the courts are not allowed to consider the value of materials and labor. Adam Bereki believes his interpretation appears to be exactly what the court intended. He stated that if an unlicensed contractor received money but didn't complete the work, then Business and Professions Code section 7031(b) would apply appropriately. However, if the unlicensed contractor returned the money or compensation as value to the homeowner, then a judge would be relieved of his authority to issue any relief through Business and Professions Code section 7031(b) because it would be an "arbitrary" penalty.

In support of this claim, Adam Bereki cited case, Town of Gilbert Prosecutors Office v. Downie (2008), 218 Arizona 466. In this case the Supreme Court of Arizona found that the full amount of payments returned would constitute economic loss for restitution purposes.

In conclusion, Adam Bereki believes he was unfairly punished by having to pay the Humphreys a total of $930,000. Adam Bereki explained that nowhere in the trial where "damages" mentioned. There was no evidence of improper work or damages to the Humphrey's property due to Adam Bereki's work. Due to Judge Chaffee not recognizing any of the work Adam Bereki performed at the property, he was not authorized to order Adam Bereki to return the compensation under Business and Professions Code section 7031(b).

Adam Bereki believes that the punishment, if there was to be one, should be Business and Professions Code section 7028(b), which authorizes a fine not exceeding $5,000 or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Adam Bereki does not agree that he was fined a significant amount more than the $5,000 because it is an excessive fine and in violation of the

Excessive Fines Clause (Eighth Amendment). The fine should have been proportionate to the offense and he should have the ability to pay it. Because Judge Chaffee did not take those things into consideration, he lacked the authority to fine or punish Adam Bereki.

Adam Bereki believes that the Humphreys and their attorney, William Bissel do not have the executive or constitutional authority to commence Business and Professions Code section 7031(b). Additionally, Adam Bereki believes Judge Chaffee should have dismissed the case against him due to California Penal Code section 1382(a), Dismissal of the Action for Want of Prosecution Otherwise.

Adam Bereki believes that because the action against him was intended to be criminal in nature, he was entitled to protections given in a criminal proceeding, such as; assistance of counsel, confrontation of his accusers, and trial by jury. Adam Bereki was not afforded any of these protections.

**Judge Chaffee's Statement**

April 16, 2024, at 1000 hours, I spoke with Judge D. Chaffee on the phone. Judge Chaffee remembered presiding over the case, although he had forgotten some of the names and small details.

I informed Judge Chaffee of Adam Bereki's allegations, and he told me he was aware. Judge Chaffee acknowledged the case was a civil case but "turned" when the Humphreys brought forth the cross-complaint.

Judge Chaffee confirmed that Business and Professions Code section 7031 is not criminal and has "no penalty attached," but it is punitive. Judge Chaffee described section 7031(b) as "draconian" but said the legislature intended the law to work in favor of the consumer.

In response to Adam Bereki's claim that he should have been charged with Business and Professions Code section 7028 because it was his first offense, Judge Chaffee stated, "He was not charged with that."

Adam Bereki filed a civil action against the Humphreys for unpaid contractor fees. The Humphreys filed a cross-complaint against Adam Bereki because they realized he was contracting without a license.

The case that Judge Chaffee oversaw was a civil case, not a criminal case. Judge Chaffee does not believe Adam Bereki was charged by the Orange County District Attorney's office. Adam Bereki brought forth the civil case for civil damages, and in turn, the Humphreys filed for civil damages. Judge Chaffee "was not inviting a criminal prosecution of him. We were limited to civil remedies for a civil action that he brought."

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

Adam Bereki made a claim that his trial was a civil case disguised as a criminal trial. Judge Chaffee confirmed that Adam Bereki did not "raise that issue" at trial, and even if he raised it at his appeal, it would have been barred because it was not raised at trial. Judge Chaffee's judgment was affirmed by the California Court of Appeals, and the review was denied by the California Supreme Court. Ultimately, Adam Bereki's appeal was rejected by the United States Supreme Court.

Judge Chaffee acknowledged he lost any jurisdiction on the case when Adam Bereki filed his Notice of Appeal. Judge Chaffee is retired and has no legal authority to handle the case.

Adam Bereki claimed that Judge Chaffee lacked the Constitutional standing to bring any civil or criminal penalties against him. Since Adam Bereki did not raise the issue at trial, it was waived for the purposes of appeal. Even if Adam Bereki had brought forth the issue at trial, he was "wrong."

Adam Bereki claimed that the Humphreys lacked Constitutional standing to prosecute him, thereby depriving the Orange County Superior Court and Judge Chaffee of Constitutional authority to punish him. Judge Chaffee acknowledged that Adam Bereki's claim is not correct because he was the person who commenced the civil complaint. The Humphreys simply filed a cross-complaint. Since Adam Bereki did not raise the issue at trial, it was not available to him at the appeal.

Adam Bereki claims that the State of California lacked the Constitutional authority to suspend The Spartan and Associates/Adam Bereki's general contractor license. Judge Chaffee confirmed he did not suspend Adam Bereki's license. Judge Chaffee assumes that any suspension would have come from the State Contractor's Board. Judge Chaffee confirmed that the license can only be placed under one name. Adam Bereki chose to place the license with the Spartan and Associates. Adam Bereki chose to contract the job he did for the Humphreys under his name and not the company and, therefore, was found to be contracting without a license.

Judge Chaffee believes that Adam Bereki's mistakes causing this result. Judge Chaffee believes that Adam Bereki's work was not what he promised the Humphreys. Judge Chaffee looked at pictures from the work completed by Adam Bereki and did not complete the work properly.

Adam Bereki stated he should not be forced to pay the fine because he returned the money in the form of work and materials. Judge Chaffee confirmed that the damages are not offset by the work that was completed, and the Humphreys are entitled to receive their money in return for Adam Bereki contracting without a license.

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

**CONCLUSION:**

Adam Bereki brought forth a civil case against the Humphreys for an outstanding balance owed from a contracting job. In turn the Humphreys filed a cross-complaint against Adam Bereki for contracting without a valid contractor license. The judgement by Judge Chaffee from civil case was in favor of the Humphreys. The judgement was based on prior cases with similar contractual situations. Adam Bereki appealed the case with the Fourth District Court of Appeal and the judgement was affirmed. Adam Bereki then filed appeals to the California Supreme Court and the United States Supreme Court, but the appeals were denied.

Adam Bereki's appeals were denied because appellate courts do not consider new evidence. An appeal is not considered a new trial. The allegations Adam Bereki brought forth cannot have been disputed in an appellate court because he did not raise those issues at the original trial. Therefore, he could not present his allegations because it would have been considered new evidence in the eyes of the appellate courts. In order Adam Bereki to present his new allegations, Adam Bereki would be required to file a new lawsuit against the Humphreys.

Contracting without a license is a misdemeanor offense, violation of section 7028 of the Business and Professions Code. During the civil case, no criminal charges were filed on Adam Bereki for contracting without a license by the Orange County District Attorney's office.

Based on this investigation, Adam Bereki's claim of grand theft committed against him by Judge Chaffee was not substantiated. Any additional pertinent information presented at a later date, will be added to a supplemental report. At this time, no further follow up will be conducted and I recommend this investigation be closed.

| PREPARED BY | I.D. NUMBER | DATE | REVIEWER'S NAME | DATE |
|---|---|---|---|---|
| E. Mejia / Officer | 20697 | 9/21/2024 | D. Navarro / Sergeant | 09/21/2024 |

State of California-Transportation Agency GAVIN NEWSOM, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
Border Division
9330 Farnham Street
San Diego, CA 92123
(858) 944-6300
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)

December 30, 2024

File No.: 601.16249.17362.24000442

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

This letter is in response to the concerns you expressed by telephone to our department's Internal Affairs Section on December 16, 2024. You indicated Officer Ernesto Mejia failed to properly investigate your allegation of grand theft against an Orange County Judge. You filed with our Santa Area Office in March 2022. I would like to appraise you of our actions in this matter.

Upon initial review of your allegation, it was determined a thorough investigation was conducted by Officer Mejia into your initial claim and the investigation was reviewed by his direct supervisor and management for completeness and accuracy.

Accordingly, I believe your allegations are without merit, and I have ordered this investigation closed with no further action. A record of this matter has been prepared and will be retained for a period of five years.

Sincerely,

M. MONTEAGUDO, Lieutenant
Acting Commander
Border Division

CERTIFIED MAIL
9589 0710 5270 2346 7536 47
California Highway Patrol
Border Division
9330 Farnham Street
San Diego Ca 92123
FIRST-CLASS
US POSTAGE
ZIP 92123 $ 009.64
DEC 31 2024

# CALIFORNIA HIGHWAY PATROL

601 N 7th St. Sacramento, CA 95811 | 800-735-2929 (TT/TDD) | 800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

CALIFORNIA STATE TRANSPORTATION AGENCY


December 19, 2024

File No.: 031.18424.20589.OTH2024-0139

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

On December 17, 2024, the Internal Affairs Section received your telephone call in which you expressed dissatisfaction with the conduct of a member of this Department previously assigned to the Santa Ana Area.

The Department accepts responsibility for reviewing the conduct of its members. When concerns such as yours come to our attention, an administrative inquiry is conducted by the employee's commander. Accordingly, I have forwarded your concerns to the Santa Ana Area commander, Captain M. A. Salinas, so he may initiate a review to determine what, if any, improprieties exist.

Once the commander receives your complaint, an investigator may contact you to obtain clarifying information. After the inquiry is complete, you will be notified of the findings. Should you have any further questions regarding this matter, you may contact the Santa Ana Area at (714) 338-5500.

Sincerely,

K. WHITE, Captain
Commander
Internal Affairs Section

cc: Border Division
Santa Ana Area

# Appendix V

COURT OF APPEAL - SECOND DIST.
FILED
Jul 02, 2024
EVA McCLINTOCK, Clerk
Angelica Lopez Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 1

ZALE DESIGN STUDIO et al.,
Cross-complainants and Respondents,
v.
MARK LEEVAN,
Defendant, Cross-complainant and Appellant.
*Cons w/B326780 and B328264*

B324871
Los Angeles County Super. Ct. No. SC120709

THE COURT:

The application for permission to file amicus curiae brief in support of respondent, filed by Adam Alan Bereki and Pier Pjerin Prenga, has been read and considered. The application is denied.

Wiegart
Acting Presiding Justice

# Judicial Notice Exhibit 15.1

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/18/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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

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EVENT ID/DOCUMENT ID: 74512542,124753793

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other For Emergency Stay of Unlawful Detainer Action, 03/14/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

Hearing held, all participants appearing remotely.

Ex-Parte application for Emergency Stay of Unlawful Detainer Action is requested by defendant Adam Bereki.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Ex Parte Application is denied by the Court.

The Court will not treat the Ex Parte Application as a new Complaint or an Answer to the Complaint for Case No. 30-2025-01459684. Defendant must file the Answer in the proper case (Case No. 30-2025-01459684) and not in this matter. Any new lawsuits must be filed as a new Complaint.

I hereby certify the foregoing instrument consisting of ____ page(s) is a true and correct copy of the original on file in this court.

ATTEST: (DATE) AUG 0 4 2025

DAVID H. YAMASAKI, EXECUTIVE OFFICER AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

BY _____, DEPUTY

E. BALDERAS

# Judicial Notice Exhibit 15.2

Electronically Filed by Superior Court of California, County of Orange, 05/21/2025 09:34:00 AM.
30-2015-00805807-CU-CO-CJC - ROA # 341 - DAVID H. YAMASAKI, Clerk of the Court By B. Romney, Deputy Clerk.

Adam A. Bereki
3649 Metter St.
Las Vegas, NV 89129
949.241.6693
abereki@gmail.com
www.thespiritoflaw.com

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

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807

Related Case No.: 30-2025-01459684
(Limited Civil Unlawful Detainer)
Appeal Case. No: 30-2025-01482941
(Limited Civil Unlawful Detainer)

**NOTICE OF EMERGENCY EX PARTE APPLICATION AND EMEGRENCY EX PARTE APPLICATION TO:**

1) **VACATE VOID JUDGMENT**
2) **STAY UNLAWFUL DETAINER ACTION**
3) **RESTORE POSSESION OF REAL PROPERTY**

**INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT**

**EMERGENCY EX PARTE HEARING:**
Date: May 22, 2025
Time: 9:00AM
Judge: D. HESSELTINE
Dept.: C23

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

**NOTICE OF EMERGENCY EX PARTE APPLICATION**

Please take notice that on May 22, 2025, at 9:00, or as soon thereafter as the matter may be heard, in Department C23 of the above-entitled court, located at 700 W. Civic Center

Dr, Santa Ana, California, Defendant Adam Bereki, appearing in propria persona, will apply ex parte for an emergency order to:

1. Vacate or set aside the order entered on March 18, 2025, in Case No. 30-2015-00805807, denying Defendant's ex parte application for an emergency stay of the unlawful detainer action (Case No. 30-2025-01459684), pursuant to the Court's inherent equitable jurisdiction as the order is void for violating due process.
2. Grant the relief requested in the March 14, 2025, ex parte application, including:

    a. A stay of the unlawful detainer action, including the writ of possession issued on March 22, 2025, pending resolution of Defendant's Motion to Vacate Void Judgment in Case No. 30-2025-01459684, the imminent Motion to Vacate Void Judgment in Case No. 30-2015-00805807 (addressing the 2017 judgment), and the imminent adversary proceeding in Bankruptcy Case No. 8:22-BK-12076-SC.

    b. Restoration of Defendant to possession of the property at 818 Spirit, Costa Mesa, CA 92626.

This application is made on the grounds that the March 18, 2025, order is void for violating due process by: (1) issuing a one-word denial ("denied") without a reasoned explanation, prioritizing procedural defects and dismissing substantive claims; (2) refusing to address Defendant's evidence of imminent irreparable harm, including risk of eviction and loss of ~$1.2 million in equity; (3) neglecting the Court's mandatory duty to examine imminent injury, given Plaintiff's default request on March 17, 2025, without notice; (4) failing to provide a court reporter or record the hearing, despite Defendant's request due to financial hardship, forcing Defendant to rely on personal notes; and (5) misleading Defendant about available relief while dismissing claims as barred (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires notice and opportunity to be heard); *In re Marriage of Flaherty*, 31 Cal.3d 637, 650-51 (1982) (unexplained decisions impair fairness and hinder appellate review); *Jameson v. Desta*, 5 Cal.5th 594, 608-09 (2018) (failure to provide court reporter for indigent litigant violates due process); *Asuncion v. Superior Court*, 108 Cal. App. 3d 141, 146 (1980) (courts must examine imminent injury in ex parte applications); Bereki Decl., ¶ 11, 18, 20). By refusing judicial relief, Judge Hesseltine has

contributed to the ongoing deprivation of Defendant's constitutional and bankruptcy rights, enabling an unlawful default in Case No. 30-2025-01459684 that caused ~$50,000 in property damage and ~$10,000 in lost personal property, and perpetuating enforcement of a void 2017 judgment, discharged in bankruptcy (*11 U.S.C. § 524(a)(2)*), which led to an invalid foreclosure sale, undermining the UD plaintiff's standing (*Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018) (UD requires duly perfected title); Bereki Decl., ¶ 12-13; Ex. J). Immediate relief is necessary to prevent further irreparable harm (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (courts may vacate void orders tainted by fraud on the court)).

This application is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Adam Bereki, all pleadings and papers on file, including the ex parte application filed March 14, 2025, in Case No. 30-2015-00805807 (Dkt. ROA 306-322), the Motion to Vacate Void Judgment in Case No. 30-2025-01459684 (Ex. J), Jira correspondence with the clerk (May 8-9, 2025), and any further evidence or argument presented at the hearing.

Defendant notified the following parties and interested person of this application in compliance with CRC Rule 3.1203 (Bereki Decl., ¶ 15) on May 21, 2025, at approximately 8:00 AM PDT as follows:

1. by email to: Cross-Complainants Karen Humphreys (kmoehumpherys@aol.com and Gary Humphreys (ghconsult@aol.com) and their attorney of record, William Bissell (wbissell@wgb-law.com) and UD Case Plaintiff Canjian Hou (angushou0823@gmail.com and his attorney, Henry Paloci, III (hpaloci@hotmail.com)

2. by phone call to: William Bissell (949.287.4503) and Henry Paloci, III (844.398.5600)

Dated: May 21, 2025

By: _____
Adam Bereki

## I. EX PARTE APPLICATION TO VACATE ORDER

Defendant Adam Bereki, appearing in propria persona, respectfully applies ex parte for an emergency order to vacate the March 18, 2025, order in Case No. 30-2015-00805807, which denied his March 14, 2025, ex parte application for a stay of the unlawful detainer action (Case No. 30-2025-01459684). The order is void for violating due process by: (1) failing to provide a reasoned explanation, prioritizing procedural defects; (2) refusing to address Defendant's evidence of imminent irreparable harm; (3) neglecting to examine imminent injury; (4) failing to provide a court reporter, forcing Defendant to rely on notes; and (5) misleading Defendant about relief (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires meaningful opportunity to be heard); *In re Marriage of Flaherty*, 31 Cal.3d 637, 650-51 (1982) (unexplained rulings impair fairness and review); *Jameson v. Desta*, 5 Cal.5th 594, 608-09 (2018) (lack of court reporter for indigent litigant violates due process); *Asuncion v. Superior Court*, 108 Cal. App. 3d 141, 146 (1980) (courts must evaluate irreparable harm in ex parte contexts); Bereki Decl., ¶ 20). Judge Hesseltine's refusal to grant relief is part of a systemic failure to uphold Defendant's constitutional and bankruptcy protections, enabling enforcement of a void 2017 judgment, discharged on March 27, 2023 (*11 U.S.C. § 524(a)(2)*), which caused an unlawful default, eviction, ~$50,000 in property damage, and ~$10,000 in lost personal property (*Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018) (invalid title undermines UD standing); Bereki Decl., ¶ 12-13; Ex. J). Defendant seeks: (1) vacatur of the order; (2) a stay of the UD action and writ of possession; and (3) restoration to possession of 818 Spirit, Costa Mesa, CA 92626. Immediate relief is critical to prevent further irreparable harm, including loss of Defendant's home and $1.2 million in equity (Bereki Decl., ¶ 11).

## II. MEMORANDUM OF POINTS AND AUTHORITIES

### A. INTRODUCTION

On March 18, 2025, Judge Hesseltine issued a one-word order ("denied") in Case No. 30-2015-00805807, rejecting Defendant's ex parte application to stay the unlawful detainer action (Case No. 30-2025-01459684). This order is void for violating due process

by failing to provide a reasoned explanation, prioritizing procedural defects, refusing to address Defendant's evidence of imminent irreparable harm (risk of eviction, loss of ~$1.2 million in equity), neglecting the Court's duty to examine imminent injury, failing to provide a court reporter, and misleading Defendant about relief (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires notice and hearing); *In re Marriage of Flaherty*, 31 Cal.3d 637, 650-51 (1982) (summary denials affecting rights violate due process); *Jameson v. Desta*, 5 Cal.5th 594, 608-09 (2018) (no court reporter for indigent litigant impairs access to justice); *Asuncion v. Superior Court*, 108 Cal. App. 3d 141, 146 (1980) (courts must assess irreparable harm in ex parte applications); Bereki Decl., ¶ 20). By denying relief, Judge Hesseltine has contributed to the ongoing deprivation of Defendant's constitutional rights and property, enabling enforcement of a void 2017 judgment, discharged in bankruptcy (*11 U.S.C. § 524(a)(2)*), which led to an unlawful default causing ~$50,000 in property damage and ~$10,000 in lost personal property (*Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018) (UD plaintiff must have valid title); Bereki Decl., ¶ 12-13; Ex. J). The court had a mandatory duty to grant declaratory relief under *CCP § 1060* (*Columbia Pictures Corp. v. DeToth*, 26 Cal.2d 753, 760 (1945) (courts have a non-discretionary duty to grant declaratory relief under CCP § 1060 when facts justify it)). Vacating the order is essential to stay the UD action, restore Defendant to possession, and address the 2017 judgment's defects.

B. STATEMENT OF FACTS

1. **2017 Judgment and Foreclosure**: In 2017, Karen and Gary Humphreys secured a $930,000 judgment against Defendant in Case No. 30-2015-00805807 under *Cal. Bus. & Prof. Code § 7031(a) and (b)*, alleging unlicensed contracting. Defendant contends the judgment is void due to extrinsic fraud (misrepresenting a penal action as civil) and lack of jurisdiction (private parties lacked prosecutorial authority under *Cal. Const. Art. V, § 1*) (amongst other constitutional violations), discharged on March 27, 2023 (Bereki Decl., ¶ 3). The judgment and subsequent unlawful licensing suspension causing Defendants bankruptcy and financial ruin, led to a foreclosure sale on November 18, 2024, by MTC Financial, Inc., unlawfully transferring title to Canjian Hou for ~$1.2 million below market value, imminently challenged in an

adversary proceeding related to Bankruptcy Case No. 8:22-BK-12076-SC (Bereki Decl., ¶ 9; Ex. J).

2. **Unlawful Detainer Action**: On February 11, 2025, Hou filed a UD action (Case No. 30-2025-01459684) based on the foreclosure sale's trustee's deed. Defendant was served on March 1, 2025 (Bereki Decl., ¶ 4).
3. **March 14, 2025, Ex Parte Application**: On March 14, 2025, Defendant filed an ex parte application in Case No. 30-2015-00805807 (Dkt. ROA 306-322) to stay the UD action, presenting evidence of imminent irreparable harm (risk of eviction, loss of ~$1.2 million in equity) and arguing the foreclosure stemmed from the void 2017 judgment, rendering Hou's title defective. Defendant requested a court reporter due to financial hardship (Bereki Decl., ¶ 5, 18; Ex Parte Application Dkt. ROA 306). The clerk rejected the emergency filing consisting of the Ex Parte Application, Motion to Vacate, and Answer in the UD case for procedural defects (Bereki Decl., ¶ 5).
4. **March 18, 2025, Hearing and Order**: On March 17, 2025, Hou's counsel filed a default request without notifying Defendant, violating *CCP § 585.5(a)*. On March 18, 2025, Judge Hesseltine denied the stay with a one-word order ("denied"), refusing to recognize Defendant's filing as an answer, failing to address imminent harm, dismissing the voidness argument, providing no court reporter, and misleading Defendant about relief (Bereki Decl., ¶ 6-7, 18, 20; Ex. A [Minute Order]). Default was entered that day (right after the ex parte hearing) in Case No. 30-2025-01459684, violating *CCP § 1013(a)* (Bereki Decl., ¶ 8; Ex. B [UD Case Dkt. ROA 18).
5. **Post-Denial Harm**: The writ of possession issued on March 22, 2025, led to Defendant's eviction under threat of force by a Deputy of the Orange County Sheriff-Coroner's Department. Hou proceeded to demolish the interior of the kitchen (rendering the property uninhabitable) along with removing bamboo flooring and repainting the interior, causing an estimated $50,000 in property damage. On in formation and belief he has also disposed of $10,000 in Defendant's personal property, (Bereki Decl., ¶ 11-12; Ex. C [Photos, Emails]).
6. **Related Proceedings**: Defendant e-filed a Motion to Vacate Void Judgment in Case No. 30-2025-01459684 on May 19, 2025 (Ex. D) (clerk has not yet accepted at the time of this motion), plans an imminent motion to vacate the 2017 judgment in Case No. 30-2015-00805807, and an adversary proceeding in Bankruptcy Case No. 8:22-

BK-12076-SC to challenge the foreclosure as a violation of the discharge injunction. Defendant is also preparing a motion to consolidate to include this denial in the UD case's appeal (Bereki Decl., ¶ 16, 19).

C. LEGAL STANDARD

1. **Inherent Equitable Jurisdiction**: Courts may vacate void orders at any time for due process violations or lack of jurisdiction (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (equity allows vacatur of orders tainted by fraud); *Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020-22 (2018) (void orders subject to vacatur under inherent authority).
2. **Due Process**: Judicial decisions affecting substantial rights require a reasoned explanation, consideration of evidence, a record for review, and clear guidance on relief (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (fundamental fairness requires opportunity to be heard); *In re Marriage of Flaherty*, 31 Cal.3d 637, 650-51 (1982) (lack of reasoning undermines appellate review); *Jameson v. Desta*, 5 Cal.5th 594, 608-09 (2018) (record absence for indigent litigants violates due process)).
3. **Mandatory Duty for Declaratory Relief**: Courts must grant declaratory relief when facts justifying it are alleged, particularly for constitutional violations (*Columbia Pictures Corp. v. DeToth*, 26 Cal.2d 753, 760 (1945) (non-discretionary duty to provide declaratory relief); *CCP § 1060*).
4. **Judicial Duty**: Courts have a non-discretionary duty to examine imminent injury and evidence of irreparable harm in ex parte applications for stays in UD cases (*Asuncion v. Superior Court*, 108 Cal. App. 3d 141, 146 (1980) (mandatory evaluation of harm in ex parte contexts)).
5. **Ex Parte Relief**: Ex parte applications are warranted to prevent irreparable harm when immediate relief is necessary (*CRC Rule 3.1202(c)*; *CCP § 1167.1*).
6. **Bankruptcy Discharge**: Creditors may not enforce discharged debts, including indirectly through actions based on their effects (*11 U.S.C. § 524(a)(2)*; *In re Kuehn*, 563 F.3d 289, 292 (7th Cir. 2009) (discharge prohibits actions based on discharged judgments)).

D. ARGUMENT

1. **The March 18, 2025, Order Is Void for Violating Due Process:** Judge Hesseltine's one-word denial ("denied") failed to provide a reasoned explanation, prioritized procedural defects, and dismissed substantive claims, contributing to the ongoing deprivation of Defendant's constitutional and bankruptcy rights (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires meaningful hearing)). He stated, "It does, indeed, violate a number of the rules... by combining everything into one document" (Bereki Decl., ¶ 20), and summarily dismissed the voidness argument: "The 473d voidness argument requires the voidness to appear on the face of the record. I don't think that appears in this case" (Bereki Decl., ¶ 20), ignoring new evidence *Trackman v. Kenney*, 187 Cal.App.4th 175, 184 (2010) (extrinsic evidence required for § 473(d) analysis)). Additionally, there is an exception, known as the "Thompson exception", whereby voidness need not appear on the face of the judgment *(Thompson v. Cook,*20 Cal. 2d 564, 569-571 (1942)). This exception applies because the 2017 judgment lacks jurisdiction due to private parties' improper prosecutorial authority under Cal. Const. Art. V, § 1 and other substantive due process violations rendering the judgment void. Moreover, any procedural rules time-barring Defendant from challenging the judgment must be equitably tolled due to the continued denial of due process in his repeated timely attempts to vacate it (Ex Parte Application Dkt. ROA 306-322). In *In re Marriage of Flaherty*, 31 Cal.3d 637, 650-51 (1982), the California Supreme Court held that unexplained decisions affecting substantial rights undermine fairness and appellate review. Similarly, *Fasuyi v. Permatex, Inc.*, 167 Cal.App.4th 681, 694 (2008), held that a summary denial violates due process by preventing understanding of the ruling's basis. The court had a mandatory duty to grant declaratory relief under *CCP § 1060* (*Columbia Pictures Corp. v. DeToth*, 26 Cal.2d 753, 760 (1945) (non-discretionary duty to address constitutional claims)). Hesseltine's refusal to address substantive claims, part of a systemic judicial failure, enabled enforcement of a discharged 2017 judgment, violating *11 U.S.C. § 524(a)(2)* (*In re Kuehn*, 563 F.3d 289, 292 (7th Cir. 2009) (actions based on discharged debts are void)). The UD action relies on a foreclosure sale stemming from the discharged 2017 judgment, violating the discharge injunction.The order is void (*Reid v. Balter*, 14 Cal.App.4th 1186, 1194

(1993) (failure to address material issues in voidness claims renders order void); *Katzberg v. Regents of University of California*, 29 Cal.4th 300, 306-07 (2002) (constitutional violations void orders) *Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020-22 (2018) (orders void for lack of jurisdiction or procedural defects are subject to vacatur); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (leniency for pro se filings); *Gamet v. Blanchard*, 91 Cal.App.4th 1276, 1284 (2001) (pro se litigants entitled to leniency in civil cases)).

2. **The Court Failed to Examine Imminent Injury and Evidence of Harm:** Judge Hesseltine neglected his mandatory duty to examine imminent injury and Defendant's evidence of irreparable harm (risk of eviction, loss of ~$1.2 million in equity), despite Hou's default request on March 17, 2025, without notice (*Asuncion v. Superior Court*, 108 Cal. App. 3d 141, 146 (1980) (courts must evaluate irreparable harm in ex parte applications)). He dismissed the application, stating, "There's not even a hearing ruling set in the UD action yet, so there's not that justification for ex parte relief" (Bereki Decl., ¶ 20), without analyzing the evidence. The denial enabled an unlawful default, causing ~$50,000 in property damage and ~$10,000 in lost personal property (Bereki Decl., ¶ 11-12; Ex. C). In *Lasalle v. Vogel*, 36 Cal.App.5th 127, 135-36 (2019), the Court of Appeal held that failing to engage with evidence in default proceedings violates due process. Similarly, *Tobias v. Alameda County*, 69 Cal.App.5th 1030, 1045-46 (2021) requires courts to consider irreparable harm evidence in injunctive relief proceedings. The refusal to address evidence constitutes a structural error under *Aulisio v. Bancroft*, 230 Cal.App.4th 1516, 1527 (2014) (denying evidence presentation is structural defect). Hesseltine's inaction, enabling enforcement of a discharged judgment, violates *11 U.S.C. § 524(a)(2)* (*In re Kuehn*, 563 F.3d 289, 292 (7th Cir. 2009) (discharge injunction prohibits enforcement)). Procedural violations (e.g., *CCP § 585.5(a)*, *§ 1013(a)*) and the refusal to recognize Defendant's filing as an answer further render the order void (Bereki Decl., ¶ 11-12).
3. **The Court's Failure to Provide a Court Reporter Violates Due Process:** Defendant requested a court reporter for the March 18 hearing due to financial hardship, but none was provided, forcing Defendant to rely on personal notes, impairing immediate review (Bereki Decl., ¶ 18, 20). In *Jameson v. Desta*, 5 Cal.5th 594, 608-09 (2018), the California Supreme Court held that failing to provide a court

reporter for an indigent litigant's trial violates due process when it precludes a record for appeal. Similarly, *Gordon v. Superior Court*, 108 Cal.App.3d 943, 947 (1980), held that denying an indigent party a record for review violates due process. See also *Jameson v. Desta*, 5 Cal.5th 594, 608-09 (2018) (failure to provide a court reporter for an indigent litigant violates due process by impairing appellate review). In *In re Marriage of Sharples*, 223 Cal.App.4th 160, 171 (2014), the Court of Appeal held that failing to provide a court reporter, where requested, can violate due process by limiting the ability to challenge the ruling. Hesseltine's failure exacerbated the systemic deprivation of Defendant's rights, rendering the order void (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires fair hearing)).

4. **The Court Misled Defendant About Available Relief:** Judge Hesseltine misled Defendant by suggesting relief was available through a "properly noticed motion" or "new lawsuit" while insinuating claims would be barred, contributing to the deprivation of Defendant's rights. He stated, "The Court is not able to bar you from filing a properly noticed motion or another lawsuit" (Bereki Decl., ¶ 20), but expressed doubt: "I have serious concerns and doubts that it would be successful" (Bereki Decl., ¶ 20). When Defendant sought a forum to challenge the void judgment, Hesseltine replied, "You've been provided with a forum... It's just that you disagreed with the outcome" (Bereki Decl., ¶ 20), implying no viable remedy exists. Defendant has never been truly heard nor provided a fair and impartial forum in any state or federal court (Ex parte Application/Motion to Vacate Dkt. ROA 306-322). In *In re Marriage of Flaherty*, 31 Cal.3d 637, 650-51 (1982), the California Supreme Court held that judicial actions undermining fairness violate due process. Similarly, *Lasalle v. Vogel*, 36 Cal.App.5th 127, 135-36 (2019), held that misleading pro se litigants about remedies violates due process. Because the California and United States Constitutions mandate Defendant must be afforded the right to judicial proceedings, he had every right to ask Hesseltine where that relief would be found given the systemic failures he evidenced failing to provide that relief. These contradictions foreclosed a meaningful opportunity to be heard, rendering the order void (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires clear opportunity to be heard)).

5. **Immediate Relief Is Necessary to Prevent Further Irreparable Harm:** The UD action threatens Defendant's home and ~$1.2 million in equity, constituting irreparable harm, exacerbated by ~$50,000 in property damage and ~$10,000 in lost personal property caused by the unlawful default post-denial (*Tobias v. Alameda County*, 69 Cal.App.5th 1030, 1045-46 (2021) (property loss constitutes irreparable harm); Bereki Decl., ¶ 11-12; Ex. J). In *Barroso v. Ocwen Loan Servicing, LLC*, 208 Cal.App.4th 1001, 1017 (2012), the Court of Appeal recognized foreclosure-related losses as irreparable harm justifying equitable relief. Similarly, *Bisno v. Sax*, 175 Cal.App.2d 714, 727-28 (1959), held that equity must intervene to prevent forfeiture when hardship outweighs the opposing party's claim. Hesseltine's denial enabled enforcement of a discharged 2017 judgment, violating *11 U.S.C. § 524(a)(2)*, causing eviction and rendering the property uninhabitable (*In re Kuehn*, 563 F.3d 289, 292 (7th Cir. 2009) (discharge prohibits enforcement)). The UD action relies on a foreclosure sale stemming from the discharged 2017 judgment, violating the discharge injunction. Hou suffers minimal prejudice from a stay, given notice of title disputes (Bereki Decl., ¶ 11). The foreclosure stems from a void 2017 judgment, discharged in bankruptcy, rendering Hou's title defective (*Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018) (invalid title undermines UD standing); *Liu v. SEC*, 591 U.S. 71, 79-83 (2020) (disgorgement limited to net profits, not penalties); *Eisenberg Village v. Suffolk Constr.*, 53 Cal.App.5th 1201, 1212-13 (2020) (§ 7031(b) is a penalty, time-barred after one year)).
6. **Equitable Jurisdiction Mandates Vacatur:** The March 18 order is void for due process violations, including failure to provide a reasoned explanation, refusal to address evidence, lack of a court-provided record, and misleading statements (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (equity vacates void orders)). Hesseltine's refusal to grant relief, enabling enforcement of a void and discharged judgment, violates Cal. Const. Art. I, §26, U.S. Const. Art. VI, §2, *11 U.S.C. § 524(a)(2)* and perpetuates systemic deprivation of Defendant's rights (*In re Kuehn*, 563 F.3d 289, 292 (7th Cir. 2009) (discharge prohibits enforcement)). The court's failure to grant declaratory relief violated its mandatory duty under *CCP § 1060* (*Columbia Pictures Corp. v. DeToth*, 26 Cal.2d 753, 760 (1945) (mandatory duty to grant declaratory relief); *Thompson v. Cook*, 20 Cal. 2d 564 (1942)).

Constitutional violations render the order void under *Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020-22 (2018) (orders void for lack of jurisdiction or procedural defects are subject to vacatur); see also *Katzberg v. Regents of University of California*, 29 Cal.4th 300, 306-07 (2002)). The Court must vacate it to address the 2017 judgment's defects, which invalidate the foreclosure and UD standing (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020-22 (2018) (void orders subject to vacatur).

7. **Meritorious Defense Supports Relief:** Defendant's defenses—extrinsic fraud, lack of jurisdiction, and a void foreclosure—establish a likelihood of success, necessitating vacatur (*Lasalle v. Vogel*, 36 Cal.App.5th 127, 139-40 (2019) (meritorious defenses support vacatur); *Tobias v. Alameda County*, 69 Cal.App.5th 1030, 1045-46 (2021) (likelihood of success justifies relief).

E. CONCLUSION

The Court must grant this ex parte application, vacate the void March 18, 2025, order, stay the unlawful detainer action, and restore Defendant to possession pursuant to its inherent equitable jurisdiction. Judge Hesseltine's refusal to grant relief has perpetuated a systemic deprivation of Defendant's rights, enabling enforcement of a void and discharged judgment and causing irreparable harm.

Dated: May 21, 2025

By: _____

Adam Bereki

## III. DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I am the Defendant in Case No. 30-2015-00805807 and Case No. 30-2025-01459684, with personal knowledge of the facts herein.
2. My open bankruptcy case (Case No. 8:22-BK-12076-SC) does not affect this application.
3. In 2017, a $930,000 judgment was entered against me in Case No. 30-2015-00805807, which I believe is void due to extrinsic fraud (misrepresenting a penal action as civil) and lack of jurisdiction (private parties lacked prosecutorial authority, due process violations), discharged on March 27, 2023.
4. On March 1, 2025, I was served with the unlawful detainer complaint (Case No. 30-2025-01459684) at 818 Spirit, Costa Mesa, CA 92626.
5. On March 14, 2025, I filed an ex parte application and answer in Case No. 30-2015-00805807 (Dkt. ROA's 306-322) to stay the UD action, presenting evidence of imminent irreparable harm (risk of eviction, loss of ~$1.2 million in equity) and requesting a court reporter due to financial hardship. The clerk rejected filing it as an answer in the UD case for procedural defects.
6. On March 17, 2025, Plaintiff's counsel filed a default request in Case No. 30-2025-01459684 without notifying me by phone or email, with service by USPS mail (Ex. D [Default Request]).
7. On March 18, 2025, at the ex parte hearing in Case No. 30-2015-00805807, Judge Hesseltine refused to recognize my filing as an answer, failed to address my evidence of imminent harm, dismissed my voidness argument, provided no court reporter, and misled me about relief (Ex. A [Minute Order]; Bereki Decl., ¶ 20).
8. On March 18, 2025, default was entered prematurely in Case No. 30-2025-01459684 (Ex. B [Case Docket, ROA 12, 17-18]). On March 19, 2025, my corrected answer was rejected due to the default (Ex. E [UD Complaint Answer; Exhibit 1- Dkt. ROA 306 omitted for brevity]).
9. On March 22, 2025, a writ of possession issued, leading to my eviction (Ex. F [Writ of Possession]).

10. On May 8-9, 2025, the clerk refused to vacate the default (Ex. G [Jira Correspondence]).
11. Based on my 20 years of construction experience I estimate Plaintiff's demolition after the March 18 denial caused $50,000 in damage (demolished kitchen, removed flooring, repainted interior). Additionally, based on information and belief, Plaintiff disposed of an estimated ~$10,000 in my personal property without my permission and against my specific direction not to. (Ex. C [Photos, Emails]).
12. I face loss of ~$1.2 million in equity due to the invalid foreclosure sale on November 18, 2024, stemming from the void 2017 judgment.
13. The harm is ongoing, and delay will exacerbate the damage.
14. I have notified the parties and interested person as stated above in this Application.
15. The 2017 judgment and foreclosure will be challenged in an imminent Motion to Vacate in Case No. 30-2015-00805807 and an imminent adversary proceeding in related Bankruptcy Case No. 8:22-BK-12076-SC (Ex. H [Rough Draft Adversary Complaint]).
16. I am preparing a motion to consolidate to include this denial in the UD case's appeal.
17. All exhibits are true and correct copies, and third-party documents are believed valid based on multiple sources.
18. I specifically requested a court reporter for the March 18, 2025, hearing due to financial hardship, but no reporter was provided, forcing me to rely on personal notes, impairing appellate review.
19. My notes from the March 18, 2025, hearing include the statements above in this Application.
20. On May 19, 2025, I e-filed a Motion to Vacate Void Judgment in Case No. 30-2025-01459684, detailing the unlawful default, eviction, and resulting harm, incorporated herein (Ex. I [Motion to Vacate, Case No. 30-2025-01459684]). As of the time of filing this Application, it is still under clerk review.
21. I intend that the complete dockets of all cases cited and evidence presented in the Ex Parte Application /Motion to Vacate, Dkt. ROA's 306-322 related to this case be incorporated as if fully set forth herein. I am unable to afford certified copies of the complete dockets at this time.

Dated: May 21, 2025

By: _____
Adam Bereki

# Exhibit A

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/18/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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

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EVENT ID/DOCUMENT ID: 74512542,124753793

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other For Emergency Stay of Unlawful Detainer Action, 03/14/2025

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**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

Hearing held, all participants appearing remotely.

Ex-Parte application for Emergency Stay of Unlawful Detainer Action is requested by defendant Adam Bereki.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Ex Parte Application is denied by the Court.

The Court will not treat the Ex Parte Application as a new Complaint or an Answer to the Complaint for Case No. 30-2025-01459684. Defendant must file the Answer in the proper case (Case No. 30-2025-01459684) and not in this matter. Any new lawsuits must be filed as a new Complaint.

# Exhibit B

Case Summary:

| | |
|---|---|
| Case Id: | 30-2025-01459684-CL-UD-CJC |
| Case Title: | CANJIAN HOU VS. ADAM BEREKI |
| Case Type: | UNLAWFUL DETAINER - RESIDENTIAL |
| Filing Date: | 02/11/2025 |
| Category: | CIVIL - LIMITED |

Register Of Actions:

| ROA | Docket | Filing Date | Filing Party | Document | Select |
|---|---|---|---|---|---|
| 1 | E-FILING TRANSACTION 11433353 RECEIVED ON 02/11/2025 05:06:34 PM. | 02/13/2025 | | | |
| 2 | COMPLAINT FILED BY HOU, CANJIAN ON 02/11/2025 | 02/11/2025 | | 14 pages | |
| 3 | PAYMENT RECEIVED BY ONELEGAL FOR 171 - COMPLAINT OR OTHER 1ST PAPER <=$10K (UNLAWFUL DETAINER) IN THE AMOUNT OF 240.00, TRANSACTION NUMBER 13563278 AND RECEIPT NUMBER 13391458. | 02/13/2025 | | 1 pages | |
| 4 | NOTICE THAT YOU HAVE BEEN SUED OC GENERATED | 02/13/2025 | | 2 pages | |
| 5 | E-FILING TRANSACTION NUMBER 11435923 REJECTED. | 02/18/2025 | | 1 pages | |
| 6 | PAYMENT RECEIVED BY BEREKI, ADAM FOR 44 - COPY OF ANY RECORD (PER SIDE) IN THE AMOUNT OF 8.00, TRANSACTION NUMBER 13568839 AND RECEIPT NUMBER 13397019. | 02/24/2025 | | 1 pages | |
| 7 | E-FILING TRANSACTION 41787066 RECEIVED ON 02/24/2025 02:48:55 PM. | 02/25/2025 | | | |
| 8 | PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS - UNLAWFUL DETAINER FILED BY HOU, CANJIAN ON 02/24/2025 | 02/24/2025 | | 3 pages | |
| 9 | CIVIL CASE COVER SHEET FILED BY HOU, CANJIAN ON 02/24/2025 | 02/24/2025 | | 2 pages | |
| 10 | SUMMONS ISSUED AND FILED FILED BY HOU, CANJIAN ON 02/24/2025 | 02/24/2025 | | 2 pages | |
| 11 | E-FILING TRANSACTION 41794149 RECEIVED ON 03/10/2025 10:28:18 AM. | 03/10/2025 | | | |
| 12 | PROOF OF PERSONAL SERVICE FILED BY HOU, CANJIAN ON 03/10/2025 | 03/10/2025 | | 2 pages | |
| 13 | E-FILING TRANSACTION 11446369 RECEIVED ON 03/10/2025 10:28:20 AM. | 03/10/2025 | | | |
| 14 | PROOF OF SERVICE FILED BY HOU, CANJIAN ON 03/10/2025 | 03/10/2025 | | 2 pages | |
| 15 | E-FILING TRANSACTION NUMBER 41794150 REJECTED. | 03/11/2025 | | 1 pages | |
| 16 | E-FILING TRANSACTION 31620102 RECEIVED ON 03/17/2025 12:20:47 PM. | 03/18/2025 | | | |
| 17 | REQUEST FOR ENTRY OF DEFAULT FILED BY HOU, CANJIAN ON 03/17/2025 | 03/17/2025 | | 3 pages | |

| | | | | | |
|---|---|---|---|---|---|
| 18 | JUDGMENT - UNLAWFUL DETAINER FILED BY HOU, CANJIAN ON 03/18/2025 | 03/18/2025 | | 2 pages | |
| 19 | COMPLAINT DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY CLERK. | 03/18/2025 | | | |
| 20 | CASE DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY CLERK | 03/18/2025 | | | |
| 21 | E-FILING TRANSACTION 41800817 RECEIVED ON 03/20/2025 06:30:49 PM. | 03/22/2025 | | | |
| 22 | APPLICATION FOR WRIT OF POSSESSION FILED BY HOU, CANJIAN ON 03/20/2025 | 03/20/2025 | | 1 pages | |
| 23 | WRIT OF POSSESSION ISSUED ON 03/22/2025 | 03/22/2025 | | 3 pages | |
| 24 | PAYMENT RECEIVED BY ONELEGAL FOR 214 - WRIT IN THE AMOUNT OF 40.00, TRANSACTION NUMBER 13586009 AND RECEIPT NUMBER 13414189. | 03/22/2025 | | 1 pages | |
| 25 | NOTICE OF APPEAL - LIMITED CIVIL FILED | 05/15/2025 | | 3 pages | |
| 26 | DESIGNATION OF RECORD ON APPEAL FILED BY BEREKI, ADAM ON 05/15/2025 | 05/15/2025 | | 20 pages | |
| 27 | NOTIFICATION OF FILING NOTICE OF APPEAL | 05/15/2025 | | 1 pages | |
| 28 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/15/2025 | | 5 pages | |
| 29 | NOTICE OF DEFAULT | 05/15/2025 | | 2 pages | |
| 30 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/15/2025 | | 3 pages | |

Participants:

| Name | Type | Assoc | Start Date | End Date |
|---|---|---|---|---|
| CANJIAN HOU | PLAINTIFF | | 02/13/2025 | |
| HENRY D. PALOCI III PA | ATTORNEY | | 02/13/2025 | |
| ADAM BEREKI | DEFENDANT | | 02/13/2025 | |

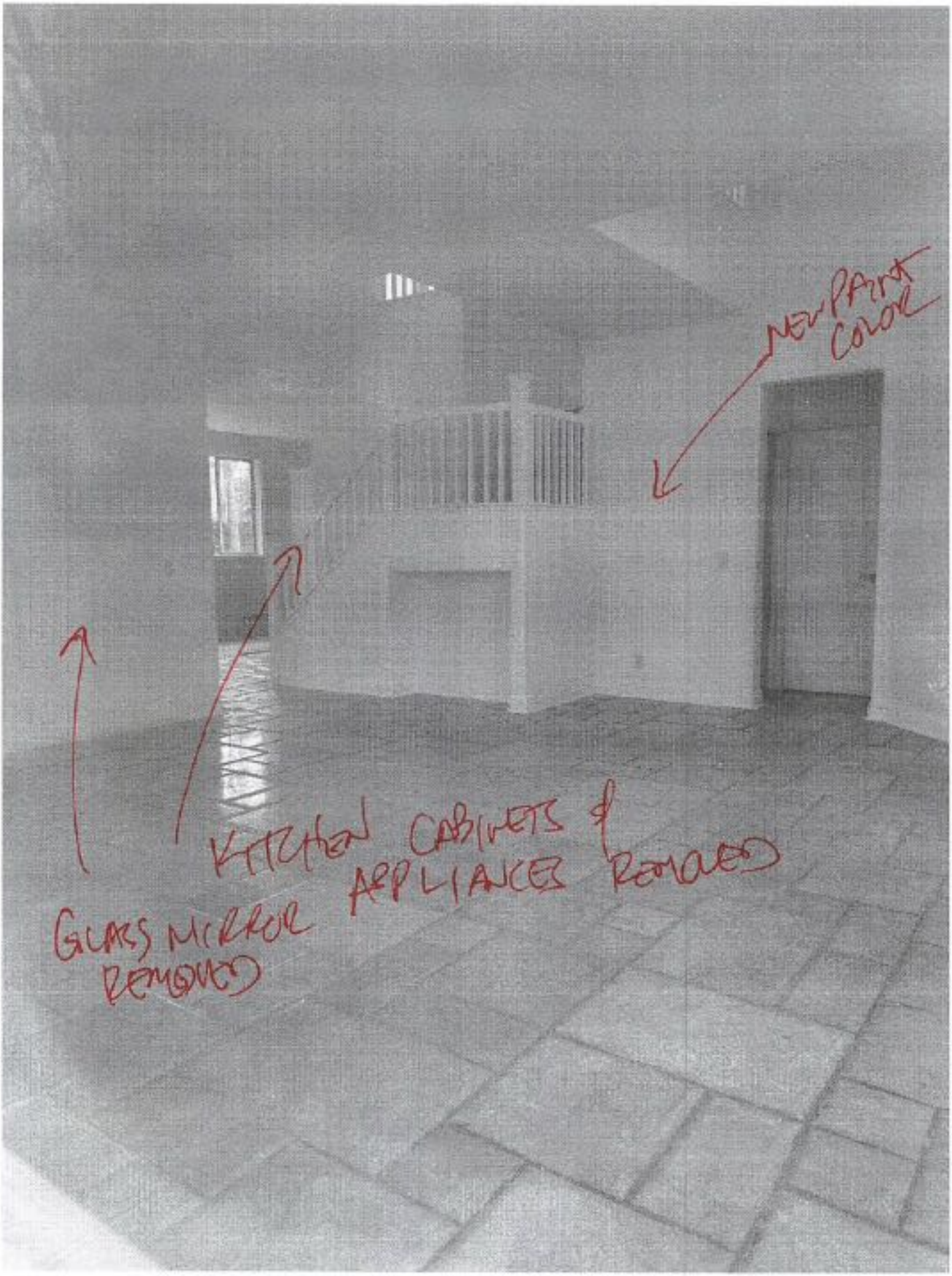
Hearings:

| Description | Date | Time | Department | Judge |
|---|---|---|---|---|

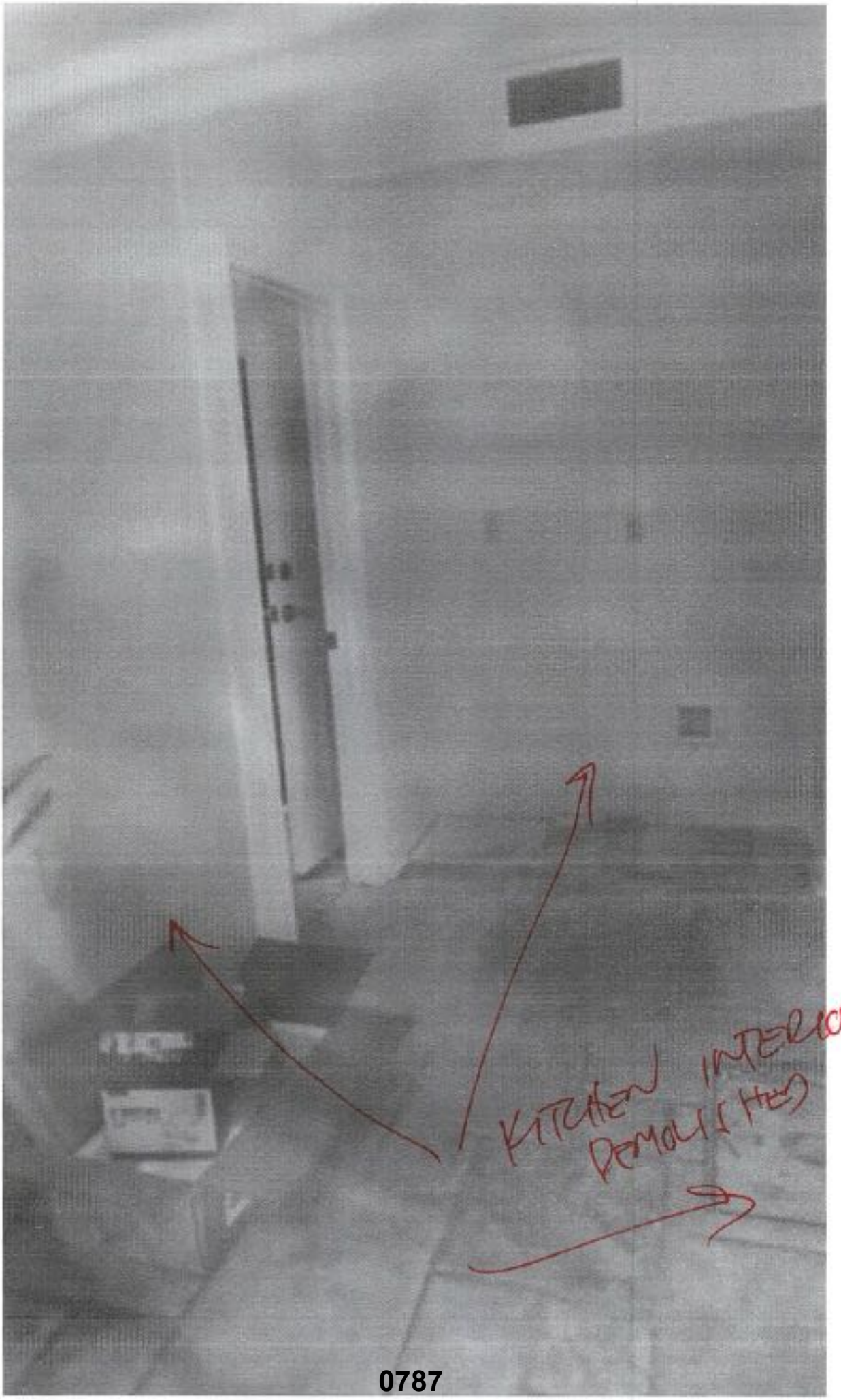
Print this page

# Exhibit C




NEW PAINT COLOR
KITCHEN CABINETS & APPLIANCES REMOVED
GLASS MIRROR REMOVED


WOOD FLOORING REMOVED
KITCHEN INTERIOR DEMOLISHED


KITCHEN INTERIOR
DEMOLITION

# Exhibit D

CIV-100

| ATTORNEY OR PARTY WITHOUT ATTORNEY: | STATE BAR NO: 268970 | FOR COURT USE ONLY |
|---|---|---|
| NAME: Henry D Paloci III | | |
| FIRM NAME: Henry D Paloci III PA | | |
| STREET ADDRESS: PO Box 592 | | |
| CITY: Los Alamitos | STATE: CA ZIP CODE: 90720 | |
| TELEPHONE NO.: 844.398.5500 | FAX NO.: (866) 565-6345 | |
| E-MAIL ADDRESS: henry.paloci@gmail.com | | |
| ATTORNEY FOR (name): Rellion Inc. | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange | | |
| STREET ADDRESS: 700 Civic Center Dr. West | | |
| MAILING ADDRESS: Same | | |
| CITY AND ZIP CODE: Santa Ana, CA 92701 | | |
| BRANCH NAME: Central | | |
| Plaintiff/Petitioner: Canjian Hou | | |
| Defendant/Respondent: Adam Bereki | | |
| **REQUEST FOR (Application)** [XX] **Entry of Default** [XX] **Clerk's Judgment** [ ] **Court Judgment** | | CASE NUMBER: 30-2025-01459684-CL-UD-CJC |

**Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.);** (see form CIV-105)

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date):* February 11, 2025
   b. by *(name):* Canjian Hou
   c. [XX] Enter default of defendant *(names): ADAM BEREKI*

   d. [ ] I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names):*

   *(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)*
   e. [XX] Enter clerk's judgment
      (1) [XX] for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
      [XX] Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) [ ] under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) [ ] for default previously entered on *(date):*

2. **Judgment to be entered.**

| | Amount | Credits acknowledged | Balance |
|---|---|---|---|
| a. Demand of complaint | $ | $ | $ |
| b. Statement of damages* | | | POSSESSION ONLY |
| (1) Special | $ | $ | $ |
| (2) General | $ | $ | $ |
| c. Interest | $ | $ | $ |
| d. Costs *(see reverse)* | $ | $ | $ |
| e. Attorney fees | $ | $ | $ |
| f. **TOTALS** | $ | $ | $ |

   g. **Daily damages were demanded in complaint at the rate of:** $ per day beginning *(date):*
   *(* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*
3. [XX] *(Check if filed in an unlawful detainer case.)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4).*

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

**FOR COURT USE ONLY**
(1) [ ] Default entered as requested on *(date):*
(2) [ ] Default NOT entered as requested *(state reason):*
Clerk, by _____, Deputy



Form Adopted for Mandatory Use
Judicial Council of California
CIV-100 [Rev. January 1, 2023]

**REQUEST FOR ENTRY OF DEFAULT**
**(Application to Enter Default)**

Code of Civil Procedure, §§ 585–587, 1169
www.courts.ca.gov

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |
|---|---|

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant [ ] did [XX] did **not** for compensation give advice or assistance with this form. If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state:
   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date):*

5. [XX] **Declaration under Code Civ. Proc., § 585.5** *(for entry of default under Code Civ. Proc., § 585(a))*. This action
   a. [ ] is [XX] is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
   b. [ ] is [XX] is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
   c. [ ] is [XX] is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
   a. [ ] **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names):*
   b. [x] **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date):* 3/17/2025
      (2) To *(specify names and addresses shown on the envelopes):*
      Adam Bereki
      818 Spirit
      Costa Mesa, CA 92626

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested)*. Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
   a. Clerk's filing fees ..... $
   b. Process server's fees ..... $
   c. Other *(specify):* $
   d. $
   e. **TOTAL** ..... $
   f. [ ] Costs and disbursements are waived.
   g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

money judgment not requested at this time
(possession only)

I declare under penalty of perjury under the laws of the State of California that the foregoing item 7 is true and correct.

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |
|---|---|

8. **Declaration of nonmilitary status** *(required for a judgment)*.
No defendant/respondent named in item 1c is in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that no defendant/respondent named in item 1c is in the U.S. military service because *(check all that apply)*:

a. ☐ the search results that I received from *https://scra.dmdc.osd.mil/* say the defendant/respondent is not in the U.S. military service.
b. ☐ I am in regular communication with the defendant/respondent and know that they are not in the U.S. military service.
c. ☐ I recently contacted the defendant/respondent, and they told me that they are not in the U.S. military service.
d. ☐ I know that the defendant/respondent was discharged from U.S. military service on or about *(date)*:
e. ☐ the defendant/respondent is not eligible to serve in the U.S. military because they are:
☐ incarcerated ☐ a business entity
f. ☒ other *(specify)*:

Undersigned counsel has discussed the case with Mr. Bereki (the one defendant) and is given to understand that Mr. Bereki lives at the property that is the subject of this action. Plaintiff is not in privity with Defendant and as such does not have his SSN or DOB which makes a search on the military database impossible. Given the circumstances, undersigned counsel infers that Mr. Bereki is not active military.

**Note**

- U.S. military status can be checked online at *https://scra.dmdc.osd.mil/*.
- If the defendant/respondent is in the military service, or their military status is unknown, the defendant/respondent is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see *https://selfhelp.courts.ca.gov/military-defaults*.

I declare under penalty of perjury under the laws of the State of California that the foregoing item 8 is true and correct.

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Pilar
1440 W. Rstl 117
Orng Ca 92865

SANTA ANA CA 926
17 MAR 2025




FORWER

FOLD HERE



Adan Bendi
OC Spirit
Costa Mesa, Ca 92626

92626-308918

0792

# Exhibit E

Adam A. Bereki
818 Spirit
Costa Mesa, CA 92626
949.241.6693
abereki@gmail.com
www.thespiritoflaw.com

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

| | |
|---|---|
| Canjian Hou,<br><br>Plaintiff;<br><br>vs.<br><br>Adam Bereki,<br><br>Defendant. | Case No.: 30-2025-01459684<br>(Unlawful Detainer)<br><br>**ADAM BEREKI'S VERIFIED ANSWER TO COMPLAINT**<br><br>Jury Trial Demanded Pursuant to CCP §1171 |

ADAM A. BEREKI
YOU WERE BORN TO BE FREE

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

Defendant Adam Bereki, appearing *in propria persona*, files this Answer to the Unlawful Detainer Complaint filed by Canjian Hou under duress and coercion as follows:

**1. Response to Allegations in the Complaint**

Defendant responds to each paragraph of the Plaintiff's Complaint as follows:

Defendant attempted to file a timely answer to this Complaint on March 14, 2025. The Clerk refused to file the document on grounds that it didn't not comply with rules of Court because each action of the document (i.e. *ex parte* application for stay, answer, and motion to vacate) needed to be filed separately. Defendant was (and remains) under duress and coercion and did not have time to prepare the documents in that manner. At the time he also

did not have multiple copies of the same document to file separately. Defendant contends that rules of court or statutes cannot overrule or supersede rights secured by the Constitution (*Miranda v. Arizona*, 384 U.S. 436, 491 (1938)) including his right to a judicial determination of his rights and to file an answer to this complaint against him. The Clerk required Defendant to cross out the title pertaining to the Answer in this case against his will by stating that his emergency application document would not be filed unless he did so. It was never Defendants intent to waive his right to answer and he did not intend to do so by crossing any words out on the face page(s). He did so only under duress and was thereby prejudiced and denied due process to making a timely answer. Defendant contends the intention of the party is the soul of the instrument (*Animus moninis est anima scripti*) and the substance therein rules differences in form on the face page. Cf. Federal Rules of Civil Procedure Rule 5 "(4) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." A true and correct copy of the document containing the answer and other substantive information he filed is attached hereto as Exhibit 1. See Dkt. 306, Case No. 30-2015-00805807. All statements made in Exhibit 1 and all documents in case 30-2015-00805807 and G055075 (Fourth District Court of Appeal) are incorporated as if fully set forth herein and verified by the declaration below. Defendant Requests this Court take judicial notice of these documents as required by law for the existence of the documents themselves and the statements made thereon, subject to determination for lawfulness and validity by this Court.

Defendant asserts the conflict of interest in this case (Exhibit 1) and requests it immediately be transferred to another County for the reasons stated therein.

In all instances where Defendant uses the word "denies", it is also intended to include "disputes".

**Paragraphs 1, 2, 4, 8, 11, 12, 13, 14, 16, 17, 18, 19, 20:** Defendant denies the allegations in these Paragraphs because Plaintiff is not the lawful owner of the property due to a defective title as evidenced in Exhibit 1 and the Exhibits referenced therein and therefore has no standing to bring this action. Consequently, any allegations related to Plaintiff's standing are without baseless and without merit and a continued fraud upon this Court (Exhibit 1).

ADAM A. BEREK
YOU WERE BORN TO BE FREE

**Paragraph 3:** Defendant denies he is an "individual" as that term is undefined. He appears *in propria persona*.

**Paragraphs 5,7:** Defendant denies the property is within this judicial district as the Superior Court of California is not a judicial Court based on his experience (Exhibit 1). As a result, venue is also improper.

**Paragraph 6:** Defendant denies this Court has subject matter jurisdiction based on Plaintiff's lack of standing and the fact that he has not been afforded a judicial determination of his rights in case 30-2015-00805807 that preceded this case and was a direct and proximate cause of Defendants ongoing injuries that led to the unlawful foreclosure sale.

**Paragraph 9:** Defendant denies the legal description of the property as he has not personally verified this information.

**Paragraph 10:** Defendant admits he is possession of the property.

**Paragraph 15:** Defendant admits he received these documents and immediately notified Plaintiff of fraud and other crimes pertaining to the property (Exhibit 1).

In the event Defendant missed any paragraphs, he intends they be denied.

**2. Affirmative Defenses**

Defendant asserts the following affirmative defenses to bar Plaintiff's claim for possession:

*First Affirmative Defense: Wrongful Foreclosure*

The Plaintiff's claim is barred because the foreclosure sale, upon which their title to the property is based, was wrongful and invalid. The foreclosure stemmed from a judgment in Case No. 30-2015-00805807 (Superior Court of California, County of Orange), which is void due to extrinsic fraud and lack of jurisdiction, as detailed in Exhibit 1. Without a valid foreclosure, Plaintiff's title is defective, and they have no legal right to possession.

ADAM A. BEREKI
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*Second Affirmative Defense: Void Judgment – Extrinsic Fraud*

The judgment in Case No. 30-2015-00805807 is void because it was obtained through extrinsic fraud. Specifically, the plaintiffs in that action, Karen and Gary Humphreys, misrepresented the proceeding by pursuing what was effectively a criminal penalty (disguised as a civil remedy), depriving Defendant of fundamental due/ judicial process rights, including the right to a jury trial and counsel under the California Constitution and U.S. Constitution. This fraud prevented Defendant from having a fair hearing, rendering the judgment a nullity. A void judgment cannot support the subsequent foreclosure or Plaintiff's title.

*Third Affirmative Defense: Void Judgment – Lack of Jurisdiction*

The court in Case No. 30-2015-00805807 lacked subject matter jurisdiction to impose what amounted to a criminal penalty in a civil action. Under Article V, Section 1 of the California Constitution, only the executive branch has authority to prosecute criminal matters, and private parties such as the Humphreys lacked standing to initiate such a proceeding. Absent jurisdiction, the judgment is void *ab initio*, invalidating the foreclosure sale and Plaintiff's claim to the property.

*Fourth Affirmative Defense: Lack of Standing*

Plaintiff lacks standing to bring this unlawful detainer action because their title to the property is defective. Plaintiff's purported ownership derives from a wrongful foreclosure sale based on a void judgment, as described above. Without a valid title, Plaintiff has no legal right to possession, a prerequisite for an unlawful detainer claim under CCP Section 1161 et seq.

*Fifth Affirmative Defense: Violation of the Bankruptcy Discharge*

The Judgments in case 30-2015-00805807, G055075, and license suspension revocation ("Judgments") were all discharged by Defendant's bankruptcy, under duress and coercion in 2022. See Case No. 22-12076 U.S. Bankruptcy Court for the Central District of California. The Judgement and suspension of Defendant's license for over five years, placed him in constructive custody, restraining him from earning a living in his profession as a

ADAM A. BEREKI
YOU WERE BORN TO BE FREE

general contractor. This resulted in impairing his private contracts and obligations, including the second mortgage that was foreclosed which Plaintiff bid on at the unlawful foreclosure sale. Because Defendant was forcibly restrained from earning a living as a general contractor and could not make pay his private contracts and obligations, any enforcement of those obligations (including foreclosure and this action) constitutes unlawful enforcement of the Judgment(s) in violation of 11 U.S.C. § 524. Under § 524 (a)(2) a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived[.]"

*Sixth Affirmative Defense: Additional Defenses*

Defendant incorporates all other defenses stated in Exhibit 1.

**Legal Basis:** These defenses are permissible in unlawful detainer actions where title defects involve fraud or jurisdictional issues, as recognized in *Vella v. Hudgins* (20 Cal.3d 251, 1977). Additionally, a void judgment may be challenged at any time (*People v. American Contractors Indemnity Co.*, 33 Cal.4th 653, 660 (2004)).

**3. Prayer for Relief**

WHEREFORE, Defendant Adam Bereki respectfully requests that the Court:

1. Deny Plaintiff's request for possession of the property and dismiss this suit for lack of standing;
2. Award Defendant costs and all time in defending this frivolous action;
3. Grant such other and further relief as the Court deems just and proper.

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

I, Adam Bereki, declare under penalty of perjury that: 1) I have personal knowledge of the foregoing facts; 2) they are true and correct; 3) all Exhibits/Appendices annexed hereto are true copies of the documents they purport to be, except for organizational markings (e.g., bates numbering); and, 4) that all statements made in Exhibit 1 are true and correct. Legal conclusions or statements on information and belief are not facts made under penalty of perjury.

Dated: 3/19/25

ADAM BEREKI
YOU WERE BORN TO BE FREE

By: _____

Adam Bereki

ADAM BEREKI
YOU WERE BORN TO BE FREE

# Exhibit 1

# Exhibit F

~~UNARMED~~

| TO (Name and Address): | LEVYING OFFICER (Name and Address): |
|---|---|
| OCCUPANT<br>818 Spirit<br>Costa Mesa, CA 92626<br><br>DEPUTY MURILLO #10764<br>Came to Door<br>see video<br><br>EMAIL: | Orange County Sheriff's Department<br>4601 Jamboree Rd, Room 108<br>Newport Beach, CA 92660<br><br>(949) 476-4820<br>Fax: (949) 476-4989<br><br>California Relay Service Number<br>(800) 735-2929 TDD or 711 |
| NAME OF COURT, JUDICIAL DISTRICT or BRANCH COURT, IF ANY:<br>Orange County Superior Court<br>700 W Civic Center Drive<br>Santa Ana, CA 92701 | |
| PLAINTIFF:<br>Canjian Hou<br>DEFENDANT:<br>Adam Bereki | COURT CASE NO:<br>30-2025-01459584-CL-UD-CJC |
| **Notice to Vacate** | LEVYING OFFICER FILE NO:<br>2025101506 |

By virtue of the Writ of Execution for Possession/Real Property (eviction), issued out of the above court, you are hereby ordered to vacate the premises described on the writ.

| | |
|---|---|
| **Eviction Address:** | 818 Spirit<br>Costa Mesa, CA 92626 |
| **Final notice is hereby given that possession of the property must be turned over to the landlord on or before:** | **Wednesday, April 2, 2025 06:01 am** |

Should you fail to vacate the premises within the allotted time, I will immediately enforce the writ by removing you from the premises. All personal property upon the premises at the time will be turned over to the landlord, who must return said personal property to you upon your payment of the reasonable cost incurred by the landlord in storing the property from the date of eviction to the date of payment. If the property is stored on the landlord's premises, the reasonable cost of storage is the fair rental value of the space necessary for the time of storage. If you do not pay the reasonable storage costs and take possession within fifteen (15) days, the landlord may either sell your property at a public sale and keep from the proceeds of the sale the costs of storage and of the sale (1988 CIV), or, if the property is valued at less than $700.00, the landlord may dispose of your property or retain it for his own use. (715.010(b)(3), 1174 CCP)

If you claim a right of possession of the premises that accrued prior to the commencement of this action, or if you were in possession of the premises on the date of the filing of the action and you are not named on the writ, complete and file the attached Claim of Right of Possession form with this office. No claim of right to possession can be filed if the prejudgment claim of right to possession was served as indicated on the writ unless the eviction is the result of a foreclosure.

**Don Barnes**
**Sheriff-Coroner**

By: Shannon #13088
Sheriff's Authorized Agent

**Original** 396699

(c) CountyCare Sheriff Technology, Inc.

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EJ-130

| ATTORNEY OR PARTY WITHOUT ATTORNEY: | STATE BAR NO: 288970 | FOR COURT USE ONLY |
|---|---|---|
| NAME: Henry D Paloci III | | Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g). |
| FIRM NAME: Henry D Paloci III PA | | |
| STREET ADDRESS: PO Box 592 | | |
| CITY: Los Alamitos | STATE: CA ZIP CODE: 90720 | |
| TELEPHONE NO.: 844.396.5500 | FAX NO.: 866.565.6345 | |
| EMAIL ADDRESS: henry.paloci@gmail.com | | |
| ATTORNEY FOR (name): Canjian Hou | | |
| [X] ATTORNEY FOR [X] ORIGINAL JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD | | |

Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

PLAINTIFF/PETITIONER: Canjian Hou
DEFENDANT/RESPONDENT: Adam Bereki

CASE NUMBER: 30-2025-01459684-CL-UD-CJC

WRIT OF
- [ ] EXECUTION (Money Judgment)
- [X] POSSESSION OF
  - [ ] Personal Property
  - [X] Real Property
- [ ] SALE

- [X] Limited Civil Case (including Small Claims)
- [ ] Unlimited Civil Case (including Family and Probate)

1. **To the Sheriff or Marshal of the County of:** Orange County
   You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
2. **To any registered process server:** You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.
3. (Name): Rellian Inc.
   is the [X] original judgment creditor [ ] assignee of record whose address is shown on this form above the court's name.
4. **Judgment debtor** *(name, type of legal entity if not a natural person, and last known address):*
   Adam Bereki
   818 Spirit
   Costa Mesa, CA 92626
   [ ] Additional judgment debtors on next page
5. **Judgment entered** on *(date):* March 18, 2025
   *(See type of judgment in item 22.)*
6. [ ] Judgment renewed on *(dates):*
7. **Notice of sale** under this writ:
   a. [X] has not been requested.
   b. [ ] has been requested *(see next page).*
8. [ ] Joint debtor information on next page.
9. [X] Writ of Possession/Writ of Sale information on next page.
10. [ ] This writ is issued on a sister-state judgment.

For items 11–17, see form MC-012 and form MC-013-INFO.

| | | |
|---|---|---|
| 11. Total judgment *(as entered or renewed)* | $ | |
| 12. Costs after judgment *(CCP 685.090)* | $ | |
| 13. Subtotal *(add 11 and 12)* | $ | |
| 14. Credits to principal *(after credit to interest)* | $ | |
| 15. Principal remaining due *(subtract 14 from 13)* | $ | |
| 16. Accrued interest remaining due per CCP 685.050(b) *(not on GC 6103.5 fees)* | $ | |
| 17. Fee for issuance of writ *(per GC 70626(a)(l))* | $ | 40.00 |
| 18. **Total amount due** *(add 15, 16, and 17)* | $ | 40.00 |

19. **Levying officer:**
    a. Add daily interest from date of writ *(at the legal rate on 15) (not on GC 6103.5 fees)* ..... $
    b. Pay directly to court costs included in 11 and 17 *(GC 6103.5, 68637; CCP 699.520(j))* ..... $
20. [ ] The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

[SEAL]

David H. Yamasaki, Clerk of the Court

Date: 03/22/2025 Clerk, by Richard Clark Deputy

Richard Clark

**NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.**



Form Approved for Optional Use
Judicial Council of California
EJ-130 [Rev. September 1, 2020]

**WRIT OF EXECUTION**

Code of Civil Procedure, §§ 699.520, 712.010, 715.010
Government Code, § 6103.5
www.courts.ca.gov

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER: 30-2025-01459684-CL-UD-CJC |
|---|---|

21. ☐ Additional judgment debtor(s) *(name, type of legal entity if not a natural person, and last known address):*

22. The judgment is for *(check one):*
   a. ☐ wages owed.
   b. ☐ child support or spousal support.
   c. ☒ other.

23. ☐ Notice of sale has been requested by *(name and address):*

24. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)
   a. *on (date):*
   b. name, type of legal entity if not a natural person, and last known address of joint debtor:

   a. *on (date):*
   b. name, type of legal entity if not a natural person, and last known address of joint debtor:

   c. ☐ Additional costs against certain joint debtors are itemized: ☐ below ☐ on Attachment 24c.

25. ☒ (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:
   a. ☒ Possession of real property: The complaint was filed on *(date):* February 11, 2025
   *Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)*
   (1) ☒ The *Prejudgment Claim of Right to Possession* was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
   (2) ☐ The *Prejudgment Claim of Right to Possession* was NOT served in compliance with CCP 415.46.
   (3) ☐ The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a *Claim of Right to Possession* at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a *Prejudgment Claim of Right to Possession* was served.) *(See CCP 415.46 and 1174.3(a)(2).)*
   (4) If the unlawful detainer resulted from a foreclosure (item 25a(3)), or if the *Prejudgment Claim of Right to Possession* was not served in compliance with CCP 415.46 (item 25a(2)), answer the following:
      (a) The daily rental value on the date the complaint was filed was $ 166.00
      (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates *(specify):*
      TO BE DETERMINED BY COURT

*Item 25 continued on next page*

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |
|---|---|

25. b. ☐ Possession of personal property.
☐ If delivery cannot be had, then for the value *(itemize in 25e)* specified in the judgment or supplemental order.
c. ☐ Sale of personal property.
d. ☐ Sale of real property.
e. The property is described ☒ below ☐ on Attachment 25e.

818 Spirit
Costa Mesa, CA 92626

**NOTICE TO PERSON SERVED**

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

** This page intentionally left blank **

# Exhibit G

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Preferences Only necessary ✓ Accept all



# NOTICE OF ENTRY OF JUDGMENT

**abereki@gmail.com** raised this on Yesterday 8:32 AM Hide details

Court Questions **SUBMITTED** •••

Please check your spam/junk folders for replies after submitting a ticket

**Department** *

Appellate
Civil
Criminal / Traffic
Family Law
Juvenile
Small Claims

**For Self-Help Services please visit:** Contact Self-Help

**Title ***

NOTICE OF ENTRY OF JUDGMENT

**Question ***

Good morning. My name is Adam Bereki. I am writing in regard to case#25-01459684. On 3/17/25 the plaintiff filed a request for entry of default. It was served by mail. I believe I had 5 days to receive the request and then several more days to respond. Depsite this, the Clerk entered the default judgment the next day on march 18. On march 19, I came to the court to file an answer in the case and was denied on the gorund that a default had already been entered. i believe this was a violation of due process as I was denied the opportunity to present my claims. I would like to discuss this issue with a supervisor. Please call me as soon as possible. My number is 949-241-6693.

**Contact Phone # ***

9492416693

**Name ***

Adam Bereki

**Case Number**

25-01459684

## Activity

BJ Briana Jurado Yesterday 9:46 AM

Hello, because Unlawful Detainer cases are statutorily sealed, could you please provide the full name of the plaintiff as well as the property address? This will help me locate the case.

Automatic response Yesterday 9:46 AM

Automatic response Yesterday 9:40 AM

Your request status has changed to Waiting for customer.

abereki@gmail.com Yesterday 1:19 PM

Good afternoon. Id be happy to. The full name of the plaintiff is Canjian Hou. The property address is 818 Spirit, Costa Mesa, CA 92626. I have included a summary of the law I believe on this issue and why I believe I have been prejudiced and denied an opportunity to be heard unlawfully. I believe as a result that you, the clerk, have a non-discretionary, ministerial duty to immediately correct the record and notify all parties. Thank you for you time and careful attention in this matter.

**CCP § 587**: Requires that an application for entry of default (e.g., Form CIV-100) be mailed to the defendant's attorney of record or, if none, to the defendant's last known address, and that proof of such mailing be filed with the court. This ensures the defendant is notified before default is entered.

**CCP § 585.5(a)**: Mandates that the plaintiff serve the default request "concurrently with or prior to" filing it with the court, ensuring timely notice. For UD cases, this applies to protect due process (*Green v. Superior Court*, 10 Cal.3d 616, 633, 1974; *Bostanian v. Liberty Savings Bank*, 52 Cal.App.4th 1075, 1080, 1997).

**CRC 2.200–2.306**: These rules specify service methods (e.g., mail, personal delivery) and timing. For mail service (CCP § 1013), used in this case (CIV-100), service is complete upon mailing, but a 5-day delivery delay applies, impacting notice reasonableness (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 1950).

**Clerk's Authority to Enter Default**:

**CCP § 585(a)**: Authorizes the clerk to enter a default ministerially when the defendant fails to answer within the summons period (10 days in this case, ~March 11-13, 2025) and the plaintiff files a

request (CIV-100) with proof of service (CCP § 587).

**CCP § 1169 (UD Specific)**: In UD cases, if the defendant doesn't answer (within the summons period), the clerk may enter a default or, for possession-only judgments, a clerk's judgment, provided the request complies with CCP § 585(a) and includes a nonmilitary status declaration (CIV-100, Item 8). This is ministerial but requires proper notice and timing (*Green*, 10 Cal.3d at 633).

In this case, the plaintiff's March 17, 2025, default request (CIV-100) was mailed on March 17. 2025, ensuring no notice before the March 18 entry. This violates CCP § 585.5(a) and due process (*Mullane*), as I (the defendant) had no chance to respond.

**Automatic response** Yesterday 1:19 PM
Your request status has changed to Waiting for support.

**Briana Jurado** Today 8:27 AM
According to the proof of service, you were personally served a copy of the Complaint, Summons, UD-101, and form CP 10.5 on 3/1/25.

CCP 1167 allows you 10 days to respond to the complaint; you had until 3/14 to respond and because no response was submitted in the allotted time frame, the plaintiff was well within their rights to submit a Request for Clerk Default Judgment on 3/17/25.

If you'd like to discuss your legal options, please consider seeking legal aid or contacting Self-Help Services at 657-622-8511 or via email at SelfHelpCivil@occourts.org. You may also reach out to the Public Law Center at 714-541-1010 or visit their website for more information.

Thank you

**Automatic response** Today 8:27 AM

Your request status has changed to Waiting for customer.

abereki@gmail.com Today 9:11 AM

Dear Clerk of the Court,

The issue is not the plaintiff's right to file a Request for Clerk Default Judgment on March 17, 2025, but the failure to provide notice as required by law. **CCP § 585.5(a)** mandates that "**where a default or default judgment is sought, the plaintiff shall file a request for entry of default or default judgment and serve it upon the defendant ... concurrently with or prior to filing the request with the court.**" The plaintiff's mail service on March 17, 2025 (CIV-100, Item 6), with a 5-day delivery delay (**CCP § 1013**), ensured I received no notice of the proposed default entry before the clerk's default entry on March 18, 2025, violating due process, which requires "notice reasonably calculated, **under all the circumstances**, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). **CCP § 587** requires "**an affidavit stating that a copy of the application has been mailed to the defendant ... and the date on which the copy was mailed**," and while nonreceipt alone is not grounds to set aside a judgment, the premature entry before effective notice violates *Green v. Superior Court*, 10 Cal.3d 616, 633 (1974), **which requires a reasonable opportunity to contest a default order in UD proceedings.**

Additionally, I did attempt to file an answer twice, once on March 14, 2025 (see ex parte application case 30-2015-00805807) but it was rejected by the clerk. I attempted to file another answer on March 19, 2025, and the clerk rejected it on the grounds that a default had been entered. Allowing the required notice time for the request for entry of default clearly would have required the court to accept my answer on March 19. As a result of these due process violations, the Court has used procedural rules to violate due process and silence me from answering. I am bringing this to your attention now in the hope you will ministerially correct this injustice and avoid the need for appellate proceedings and/or other court

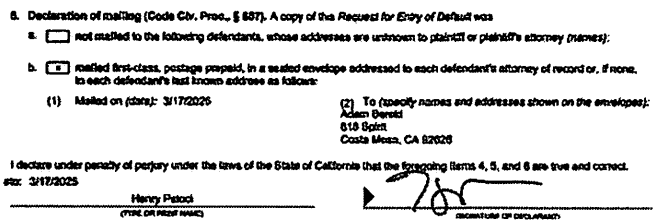
resources in correcting this.

This notice violation renders the default entry invalid, as I was not apprised of the default request in time to respond and have been silenced from answering the complaint. I respectfully request you set aside the default judgment to ensure compliance with statutory and due process requirements.

Sincerely,
Adam A. Bereki

Automatic response Today 9:11 AM
Your request status has changed to Waiting for support.

Briana Jurado Today 9:25 AM
See attached photo, it complies with CCP 587; this is from the Request for Default form on ROA:17



6. Declaration of mailing (Code Civ. Proc., § 587). A copy of the *Request for Entry of Default* was
   a. ☐ not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names)*:
   b. ☒ mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date)*: 3/17/2025
      (2) To *(specify names and addresses shown on the envelopes)*:
      Adam Bereki
      618 Spirit
      Costa Mesa, CA 92626

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
date: 3/17/2025
Henry Petock
(TYPE OR PRINT NAME)
(SIGNATURE OF DECLARANT)

You had 10 days to respond to the complaint, NOT to the Request for Default.

Automatic response Today 9:25 AM
Your request status has changed to Waiting for customer.

abereki@gmail.com Today 9:29 AM
I agree with you. I had 10 days to respond the the complaint. But I also had at least 5 days to respond to the request for entry of default. Here are two court of appeal cases directly on the subject: In *Bank of America, N.A. v. La Salle*, 243 Cal.App.4th 199 (2015), the plaintiff, Bank of America, filed an unlawful detainer action against defendant La Salle to recover possession of a property after a foreclosure sale. La Salle appeared through counsel but failed to timely answer the complaint, and the Bank filed a request

for entry of default without notifying La Salle's attorney, leading to a default judgment on April 10, 2014. The trial court denied La Salle's motion to set aside the default, but the Court of Appeal reversed, holding that "The Bank's failure to provide notice of its intent to seek entry of default, in violation of its statutory and ethical duties, prejudiced La Salle's ability to oppose entry of default" (243 Cal.App.4th at 208). The court found the Bank violated Code of Civil Procedure section 587 by not mailing the default request to La Salle's counsel, breaching due process, and remanded with directions to set aside the default judgment.

In *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198 (2022), plaintiff Shapell filed an unlawful detainer action against defendant Chico's for unpaid rent on a commercial lease. Chico's counsel appeared but did not timely answer, and Shapell filed a default request on September 8, 2020, without notifying Chico's counsel, resulting in a default judgment. The Court of Appeal reversed, holding that "The failure to provide notice to opposing counsel of an intent to seek default constitutes a breach of both ethical and statutory duties under Code of Civil Procedure section 583.130 and section 587, requiring reversal of the default judgment" (85 Cal.App.5th at 212). The court emphasized that the lack of notice violated statutory requirements and prejudiced Chico's ability to defend, mandating reversal to allow a defense on the merits.

I had no notice of the request for entry of default before the Court entered default. That violated my due process right to respond to the request for entry of default.

**Automatic response** Today 9:29 AM

Your request status has changed to Waiting for support.

**Briana Jurado** Today 9:41 AM

We're not going to vacate the default judgment; the attorney did their due diligence and the clerk processed everything correctly. If you want to argue against the judgment you may do so with the judge.

Thank you

Automatic response Today 9:41 AM

Your request status has changed to Waiting for customer.

Automatic response Today 9:42 AM

Your request status has changed to Resolved with resolution Done.

Normal tex

Save

**Status**

**RESOLVED**

Notifications on

**Request type**

Public

**Shared with**

abereki@gmail.com
Creator

# Exhibit H

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:

Adam A. Bereki,

Debtor.

Adam A. Bereki,

Plaintiff,

v.

Citizens Bank N.A.; MTC Financial Inc. d/b/a Trustee Corps; Canjian Hou; Henry D. Paloci; Henry D. Paloci III, P.A.; Citibank N.A.; NewRez LLC; Deputy Murillo; Sergeant X; Karen S. Naylor; Surety Doe; CHP Officer Doe 1; CHP Officer Doe 2; Does 3-12,

Defendants.

Case No. 8:22-BK-12076-SC

Adv. No. [TBD]

Chapter 7

**INTRODUCTION**

1. Plaintiff Adam A. Bereki, a former police officer with over twenty years of forensic investigation experience specializing in fraud and government corruption, brings this adversary proceeding to address egregious violations of his constitutional and bankruptcy rights stemming from a wrongful non-judicial foreclosure sale of his home at 818 Spirit, Costa Mesa, CA (the "Property") on November 18, 2024.

2. The foreclosure, executed by Defendants Citizens Bank N.A. ("Citizens") and MTC Financial Inc. d/b/a Trustee Corps ("Trustee Corps"), was triggered by a void 2017 state court judgment (Case No. 30-2015-00805807, Orange County Superior Court) obtained

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through extrinsic fraud by private parties lacking CRIMINAL prosecutorial authority. This judgment, imposing a $930,000 penalty for alleged unlicensed contracting, caused Plaintiff's financial ruin, enabling Citizens to declare a default and sell the Property for $371,688—far below its $1,142,000 fair market value—resulting in ~$815,241.50 in equity loss.

3. Defendants Canjian Hou, Henry D. Paloci, Henry D. Paloci III, P.A. ("Paloci"), Deputy Murillo, and Sergeant X (name to be provided) furthered this harm by pursuing or enforcing an unlawful detainer action (Case No. 30-2025-01459684, filed February 11, 2025) to evict Plaintiff UNDER THREAT OF FORCEFUL REMOVAL MADE BY THE COUNTY SHERIFF, despite notice of the foreclosure's invalidity.

4. This complaint seeks to void the foreclosure sale, cancel the Trustee's Deed, recover Plaintiff's exempt Property under bankruptcy law, determine the validity of Citibank's lien, address stay violations, and obtain equitable relief for trustee misconduct, asserting violations of the discharge injunction (11 U.S.C. § 524), unauthorized transfers (11 U.S.C. § 549), lien determination (11 U.S.C. § 506), stay violations (11 U.S.C. § 362), and constitutional protections.

**JURISDICTION AND VENUE**

5. Plaintiff intends to commence a separate adversary proceeding to challenge the validity of the 2017 state court judgment (Orange County Superior Court, Case No. 30-2015-00805807) on constitutional grounds, including the lack of executive authority for private CRIMINAL prosecution under Cal. Bus. & Prof. Code § 7031(b), the judgment's imposition of an excessive fine, its operation as a bill of pains and penalties, and its impairment of private contracts, as detailed in Plaintiff's ex parte application filed in the Superior Court on March 17, 2026 (Case No. 30-2015-00805807, Ex. 11). Plaintiff has intentionally separated these issues from the present adversary proceeding to focus exclusively on claims arising under bankruptcy law, including violations of the discharge injunction (11 U.S.C. § 524), unauthorized transfers (11 U.S.C. § 549), lien determination (11 U.S.C. § 506), stay violations (11 U.S.C. § 362), and equitable relief (11 U.S.C. § 105). The claims in this proceeding, particularly Defendant Citizens Bank N.A.'s bad faith foreclosure exploiting the effects of the 2017 judgment and Citibank N.A.'s fraudulent lien, are independent of and do not require a determination of the judgment's validity in the anticipated separate proceeding.

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6. This Court has jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A), (B), (H), (K), (O) as this is a core proceeding concerning the administration of the bankruptcy estate, the validity of liens, stay violations, unauthorized transfers, and equitable relief.

7. Venue is proper in the Central District of California, where the bankruptcy case is pending and the Property is located (28 U.S.C. § 1409).

8. Plaintiff consents to the entry of final orders by this Court (28 U.S.C. § 157(c)).

9. Claims against Henry D. Paloci are exempt from Cal. Civ. Code § 1714.10, as Paloci owed Plaintiff an independent legal duty under Cal. Civ. Code § 1708 and acted for financial gain by pursuing the unlawful detainer action despite notice of the foreclosure's invalidity (Ex. 4, pp. 9–10, 19).

**PARTIES**

10. Plaintiff Adam A. Bereki is the debtor in Case No. 8:22-BK-12076-SC, residing at 3649 Metter St, Las Vegas, NV, due to threats of forcible removal by the county sheriff, and the sole owner of the Property via the Adam Bereki Living Trust.

11. Defendant Citizens Bank N.A. is a national banking association with headquarters in Rhode Island, which initiated the foreclosure sale.

12. Defendant MTC Financial Inc. d/b/a Trustee Corps is a California corporation and the trustee that executed the foreclosure sale.

13. Defendant Canjian Hou is an individual who purportedly purchased the Property at the foreclosure sale. The Superior Court awarded Hou a default judgment in an unlawful detainer action (Case No. 30-2025-01459684). Plaintiff attempted to file an ex parte application as a response, which the Superior Court clerk refused to file, and the Superior Court judge in Case No. 30-2015-00805807 refused to recognize as an answer in the UD

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case. Plaintiff later attempted to file an answer challenging the UD case's subject matter jurisdiction, but the clerk again refused, claiming an answer could not be filed post-judgment.

14. Defendant Henry D. Paloci is an attorney, and Defendant Henry D. Paloci III, P.A. is his professional association, representing Hou and facilitating the unlawful detainer action.

15. Defendant Citibank N.A. is a national banking association claiming a first mortgage lien of $457,693.71 on the Property.

16. Defendant NewRez LLC is a Delaware limited liability company involved in the stay relief motion affecting the Property.

17. Defendant Karen S. Naylor is the Chapter 7 trustee appointed in Case No. 8:22-BK-12076-SC, responsible for administering the bankruptcy estate.

18. Defendant Surety Doe is the unknown surety providing Naylor's bond under 11 U.S.C. § 322(b), to be identified through discovery.

19. Defendants Deputy Murillo and Sergeant X (name to be provided) are Orange County Sheriff's Department officers who enforced the unlawful detainer action by serving an eviction notice on March 27, 2025, at the Property.

20. Defendants CHP Officer Doe 1 and CHP Officer Doe 2 (names to be provided) are California Highway Patrol officers who refused to fully, fairly, impartially, and independently investigate Plaintiff's complaints of the 2017 judgment's fraud and refused to intervene to stop the ongoing crimes/deprivations of rights (Case 22A426, pp. 50–51), aiding and abetting the wrongful foreclosure and unlawful detainer action (Ex. 11, pp. 14–15, 28–30).

21. Defendants Does 3-12 are unknown parties responsible for Plaintiff's damages.

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**FACTUAL BACKGROUND**

22. On August 21, 2015, Plaintiff, through his solely owned company, The Spartan Associates, Inc. ("Spartan"), a previously licensed general contractor (LIC#927244), filed a state court action (Case No. 30-2015-00805807) against Karen and Gary Humphreys for unpaid construction work (~$82,000). The Humphreys, private citizens, cross-complained under Cal. Bus. & Prof. Code § 7031(b), alleging Plaintiff was unlicensed and seeking disgorgement of $848,000 paid to him.

23. On March 28, 2017, Judge David Chaffee ruled Plaintiff was the contractor, not Spartan, and lacked a personal license, awarding the Humphreys $848,000 plus denial of Spartan's $82,000 claim—a $930,000 penalty—despite no evidence of harm or profits (Dkt. 193, Ex. 1).

24. This judgment was void ab initio due to extrinsic fraud and jurisdictional defects: the Humphreys, private citizens, lacked authority to prosecute the penal statute (§ 7031(b)), and the court mischaracterized the action as civil, denying Plaintiff criminal procedural safeguards, such as a jury trial and appointed counsel, required for penal disgorgement ("Liu v. SEC", 591 U.S. 71, 2020; "Linda R.S. v. Richard D.", 410 U.S. 614, 619, 1973).

25. On appeal (Case No. G055075), the Fourth District Court of Appeal affirmed, erroneously labeling the penalty "equitable disgorgement" (Ex. 2), rejecting Plaintiff's due process defenses, including the lack of criminal safeguards, as detailed in the unpublished opinion.

26. The judgment and automatic licensing suspension under Cal. Bus. & Prof. Code § 7071.17, effective June 26, 2017, 90 days after the March 28, 2017, judgment for failure to pay (§ 7031(b)), without a hearing, forced Plaintiff into financial ruin, impairing his ability to pay a $62,523.24 home equity line of credit with Citizens (Ex. 3, pp. 1–12) and necessitating bankruptcy.

27. On December 8, 2022, Plaintiff filed for Chapter 7 bankruptcy (Case No. 8:22-BK-12076-SC) under duress, scheduling the Property and all related claims (Dkt. 11, Ex. 5).

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On October 18, 2024, Plaintiff filed a motion to compel the trustee to abandon the 2017 judgment claims and Property-related claims (Dkt. 105), granted on December 31, 2024 (Dkt. 112), before case closure on January 29, 2025 (Dkt. 114, 11 U.S.C. § 554(c)).

28. On April 12, 2023, Citizens obtained relief from the automatic stay (Dkt. 45), despite Plaintiff's notices of the judgment's fraud (Ex. 3, pp. 37–42; Ex. 7).

29. On July 10, 2024, Citizens declared a default and ordered Trustee Corps to commence a non-judicial foreclosure sale under Cal. Civ. Code § 2924 (Ex. 3, pp. 13–15).

30. On November 18, 2024, Trustee Corps sold the Property for $371,688, far below its $1,142,000 fair market value (¶ 29), to Hou (Ex. 3, pp. 16–23).

31. The sale generated a surplus of $304,758.50 after Citizens' $62,523.24 lien and $4,206.26 in trustee fees, insufficient to cover Plaintiff's $600,000 homestead exemption (Cal. Code Civ. Proc. § 704.730, ¶ 30).

32. Plaintiff suffered ~$815,241.50 in equity loss ($1,142,000 value minus $371,688 sale price, assuming Citibank's $457,693.71 lien is invalid, ¶ 32).

33. Citizens knew of the judgment's fraud via bankruptcy notices (Ex. 3, pp. 37–42; Ex. 7) but proceeded, breaching duties under Cal. Civ. Code § 1708 and good faith.

34. On February 11, 2025, Hou, through Paloci, filed an unlawful detainer action (Case No. 30-2025-01459684, Ex. 4, pp. 27–47; Ex. 8), despite Plaintiff's notices of the sale's invalidity and offer to return surplus funds (Ex. 4, pp. 9–10, 19; Ex. 8).

35. On March 27, 2025, Deputy Murillo, under Sergeant X's supervision, served an eviction notice and threatened physical removal, despite Plaintiff's notice of the unlawful foreclosure and UD case's invalidity, as evidenced by the eviction notice (Ex. 9) and audio/video recordings (Ex. 10). Their failure to investigate violated duties under Cal. Civ.

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Code § 1708, due process, and the First Amendment right to petition for redress (Ex. 11, pp. 38–40).

36. The continued denial of judicial proceedings to adjudicate the void 2017 judgment included the following court actions, which prevented Plaintiff from challenging its fraudulent basis and directly contributed to Plaintiff's insolvency (Ex. 11, pp. 14–15):

37. **March 27–28, 2017**: Superior Court of California, County of Orange (Case No. 30-2015-00805807) entered judgment against Plaintiff for $848,000 in "disgorgement" and denied $82,000 quantum meruit claim, finding Plaintiff an unlicensed contractor under Cal. Bus. & Prof. Code § 7031(b), imposing a penal forfeiture disguised as equitable disgorgement (Ex. 1).

38. **October 31, 2018**: Court of Appeal of California, Fourth Appellate District (Case No. G055075) affirmed the judgment, deeming Plaintiff's claims meritless and upholding the $930,000 fine as equitable, not penal (Ex. 2).

39. **March 15, 2019**: Superior Court of California, County of Orange (Case No. 30-2015-00805807) denied Plaintiff's motion to vacate, citing the appellate court's final decision.

40. **March 27, 2019**: Supreme Court of California (Case No. S252954) denied Plaintiff's petition for review, providing no specific reason despite mandatory review claims.

41. **October 7, 2019**: United States Supreme Court (Case No. 18-1416) denied Plaintiff's petition for writ of certiorari, arbitrarily declining jurisdiction without reason.

42. **February 6, 2020**: United States District Court, Central District of California (Case No. 8:19-CV-02050) dismissed Plaintiff's case with prejudice, citing collateral estoppel and Rooker-Feldman doctrines, claiming lack of jurisdiction to review state court judgments.

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43. **November 12, 2020**: U.S. Court of Appeals for the Ninth Circuit (Case No. 20-55181) dismissed Plaintiff's appeal as frivolous, without addressing substantive claims.

44. **September 22, 2021**: United States Supreme Court (Case No. Unknown, Emergency Petition 2021) returned Plaintiff's emergency petition for writs of error/habeas corpus unfiled, citing improper form despite constitutional rights claims.

45. **September 15, 2022**: Superior Court of California, County of Orange (Case No. 30-2022-01271693) denied Plaintiff's ex parte application for emergency stay, with Judge Leal finding no exigent circumstances and deeming habeas corpus inapplicable.

46. **October 13, 2022**: Superior Court of California, County of Orange (Case No. 30-2022-01271693) denied Plaintiff's petition for writ of habeas corpus and emergency stay, with Judge Cramin providing no lawful authority or reasoning.

47. **November 10, 2022**: United States Supreme Court (Case No. 22A426) denied Plaintiff's application for emergency stay, providing no reason pending further petition filing.

48. Plaintiff was insolvent at the time of the sale (¶ 24), supporting avoidance under 11 U.S.C. § 549(a).

49. The sale was involuntary, as Plaintiff's financial ruin stemmed from the void judgment (¶ 21).

50. If Citibank's lien is invalid, Plaintiff's total equity was ~$647,909.54 ($1,142,000 minus $62,523.24 Citizens' lien and $36,000 other claims, ¶ 29).

51. The Property was disclosed in bankruptcy schedules (Dkt. 11, Ex. 5), enabling avoidance under § 522(h).

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52. The sale's gross inadequacy (~32.5% of market value) and irregularities (e.g., discharge violation, surplus shortfall) rebut the "BFP v. Resolution Trust Corp." presumption (511 U.S. 531, 1994).

53. Plaintiff notified Citizens of the fraud during bankruptcy (Ex. 3, pp. 37–42; Ex. 7), including a February 2, 2024, email (Ex. 7, pp. 49–50).

54. Trustee Corps refused to disclose bidder information or notify them of litigation (Ex. 4, p. 24; Ex. 8).

55. Plaintiff offered to return surplus funds to Hou, who refused (Ex. 4, p. 19; Ex. 8).

56. The sale price ($371,688) was grossly inadequate, causing ~$815,241.50 in damages (¶ 29).

57. Plaintiff spent ~$216,000 in time defending against the foreclosure and unlawful detainer (8 hours/day at $300/hour for 63 weekdays against Citizens/Trustee Corps; 6 hours/day for 36 days against Hou/Paloci, ¶ 29).

58. Additional damages include $19,668.92 in un-itemized Citizens' fees (Ex. 3, p. 72), $5,000 in estimated moving expenses, and $200,000 in tax base loss over 30 years (¶ 29).

59. Plaintiff's emotional distress, to be proven at trial, stems from the loss of his home and livelihood.

60. The unlawful detainer action lacks standing, as Hou's title derives from a void sale (¶ 31).

61. The statute of limitations for Plaintiff's claims is equitably tolled due to Defendants' ongoing fraud, the court's failure to address the 2017 judgment's invalidity (¶ 69), Trustee

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Naylor's inaction (¶ 95–97), the unlawful detainer action (¶ 33), the denial of Plaintiff's ex parte application for stay in California court (Case No. 30-2015-00805807, Ex. 11), and Plaintiff's forced relocation from his home of nearly 20 years out of state, which prevented timely filing despite Plaintiff's diligent efforts (Dkt. 15, Case 22A426, *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 370, 2003).

62. Plaintiff seeks equitable relief to restore his Property and prevent further harm.

63. This Court's intervention is critical to remedy these violations and protect Plaintiff's rights.

64. Plaintiff's bankruptcy schedules (Dkt. 11, Ex. 5) accurately reflect the Property's value and disputed liens.

65. The 2017 lien's enforcement violated Plaintiff's Fourth and Fifth Amendment rights.

66. Citibank's failure to file a proof of claim (¶ 109) negates their lien's validity.

67. The 2017 judgment's fraud is detailed in state court filings (Case 22A426, Ex. 11).

68. Plaintiff's QWRs (Exs. 21, 24) demanded proof of Citibank's debt, unanswered.

69. The foreclosure sale's proceeds were not distributed to the estate, harming creditors.

70. Naylor's inaction violated Local Bankruptcy Rule 4001-1 (Dkt. 15).

71. Plaintiff's adversary proceeding (Adv. No. 8:23-ap-01075-SC) was dismissed without a hearing, violating FRBP 7001.

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72. The district court's denial (Ex. 21) ignored Plaintiff's due process evidence.

**STANDING**

85. **First Cause (Discharge Injunction Violation, 11 U.S.C. § 524(a)(2))**: Plaintiff has standing to challenge Citizens' violation of the discharge injunction, as he suffered an injury-in-fact (~$815,241.50 equity loss, $216,000 in time, ¶ 76) caused by Citizens' bad faith foreclosure exploiting the discharged 2017 judgment (¶ 75), redressable by voiding the sale and awarding damages (Prayer D, *In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009).

86. **Second Cause (Unauthorized Transfer, 11 U.S.C. § 549)**: Plaintiff has standing to seek avoidance of the unauthorized foreclosure transfer, as the injury (~$815,241.50 equity loss, ¶ 80) was caused by Citizens, Trustee Corps, and Hou's actions without court approval (¶ 80), redressable by recovering the Property or its value under § 550 (Prayer B, *In re Gould*, 401 B.R. 415, 426, 9th Cir. BAP 2009).

87. **Third Cause (Wrongful Foreclosure, 11 U.S.C. § 522(h))**: Plaintiff has standing under § 522(h) to avoid the wrongful foreclosure, as the involuntary transfer caused ~$815,241.50 in equity loss and harmed his $600,000 homestead exemption (¶ 85–88), traceable to Defendants' conspiracy (¶ 85), and redressable by voiding the sale and damages (Prayer A, *In re Gebhart*, 621 F.3d 1206, 1210, 9th Cir. 2010).

88. **Fourth Cause (Misuse of Stay Relief, 11 U.S.C. § 105(a))**: Plaintiff has standing to seek equitable relief for Citizens' misuse of the stay relief order, as the injury (~$815,241.50 equity loss, ¶ 91) was caused by Citizens' bad faith foreclosure (¶ 90), redressable by voiding the sale and sanctions (Prayer E, *Marbury v. Madison*, 5 U.S. 137, 177, 1803).

89. **Fifth Cause (Unconstitutionality of Cal. Civ. Code § 2924)**: Plaintiff has standing to challenge § 2924's unconstitutional application, as Defendants' actions caused ~$815,241.50 in equity loss and constitutional violations (¶ 95–96), redressable by declaring § 2924 unconstitutional and voiding the sale (Prayer O, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 1992).

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90. **Sixth Cause (Trustee Negligence, 11 U.S.C. § 105(a))**: Plaintiff has standing to pursue Naylor's gross negligence, as her inaction caused ~$815,241.50 in estate loss and harmed his $600,000 exemption (¶ 101–102), redressable by damages and surcharge (Prayer P, *In re Harris*, 590 F.3d 730, 742, 9th Cir. 2009).

91. **Seventh Cause (Citibank Lien Validity, 11 U.S.C. § 506(a), § 522(f))**: Plaintiff has standing under § 522(h) to challenge Citibank's lien, as its fraudulent claim threatens his $600,000 exemption and estate surplus (~$943,782.76, ¶ 110–111), redressable by invalidating the lien (Prayer S, *In re Reed*, 940 F.2d 1317, 1321, 9th Cir. 1991).

92. **Eighth Cause (Citibank Stay Violation, 11 U.S.C. § 362(k))**: Plaintiff has standing to seek damages for Citibank's stay violation, as its post-petition actions caused ~$216,000 in expenses and distress (¶ 116), redressable by § 362(k) damages and sanctions (Prayer T, *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004).

93. **Ninth Cause (Hou/Paloci Stay Violation, 11 U.S.C. § 362(k))**: Plaintiff has standing to challenge Hou, Paloci, and Paloci III, P.A.'s stay violation, as their UD action caused ~$216,000 in expenses, $5,000 in moving costs, $200,000 in tax base loss, and distress (¶ 129), traceable to their conspiracy with Citizens (¶ 128), and redressable by § 362(k) damages (Prayer U, *In re Kuehn*).

**FIRST CAUSE OF ACTION: Violation of Discharge Injunction (11 U.S.C. § 524(a)(2), Against Citizens)**

73. Plaintiff incorporates paragraphs 1–72 as if fully set forth herein.

74. The 2017 judgment, discharged on March 27, 2023 (Dkt. 32, Ex. 6) and its lien avoided on June 22, 2023 (Dkt. 90), remained unadjudicated due to a continued chain of denial of judicial proceedings, directly and proximately causing Plaintiff's insolvency (Ex. 11, pp. 14–15). This denial included multiple court rejections of Plaintiff's attempts to challenge the void judgment, as detailed in ¶ 36, as void judgments require no time limit for challenge (*People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004). Citizens knew through notices (Dkt. 102, 103; Ex. 7, pp. 43, 49–50; Motion for

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Withdrawal of Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22) that adjudication was required, yet proceeded with default, exacerbating the harm. Citizens' bad faith, breach of Cal. Civ. Code § 1708, and unconstitutional § 2924 conspiracy (¶ 77) were not authorized by the stay relief order, enabled by the court's reckless disregard (Dkt. 15; Case 22A426, pp. 4–47).

75. Citizens' July 10, 2024, default declaration (Ex. 3, pp. 13–15) used the void 2017 judgment, which caused Plaintiff's insolvency, as the basis for declaring default, violating § 524(a)(2) by indirectly enforcing a discharged debt (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). The ~$815,241.50 equity loss assumes Citibank's $457,693.71 lien is invalid, as Plaintiff alleges it was fraudulent and discharged in bankruptcy (Dkt. 32, Ex. 6). Citizens' actions constituted willful contempt of the discharge order (Dkt. 32), as they knowingly violated § 524(a)(2) with no fair ground to believe their default declaration was lawful, given Plaintiff's notices of the 2017 judgment lien's avoidance (Dkt. 90) and fraud (Dkt. 102, 103; Exs. 7, 21–22, *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 2019), warranting punitive damages (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008).

76. Plaintiff suffered damages, including ~$815,241.50 in equity loss and $216,000 in time defending (¶ 29).

77. Plaintiff seeks an order voiding the sale, damages, and sanctions under § 524(a)(2).

78. Alternatively, Plaintiff seeks contempt sanctions under 11 U.S.C. § 105(a).

86. The 2017 judgment, discharged on March 27, 2023 (Dkt. 32, Ex. 6), with its lien avoided on June 22, 2023 (Dkt. 90), remained unadjudicated due to the systemic denial of judicial proceedings outlined in the Judicial Procedural History (¶ 36–47). These denials directly caused Plaintiff's insolvency, as void judgments require no time limit for challenge (*People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004). Citizens was notified of the judgment's fraud through multiple filings, including bankruptcy declarations (Dkt. 102, 103), a February 2, 2024, email (Ex. 7, pp. 43, 49–50), the Motion for Withdrawal of Reference (Case No. 8:23-cv-00711-PA, Ex. 21), and the Ex Parte Application for Temporary Restraining Order (Case No. 8:24-cv-02509-AB-JC, Ex. 22), rendering their foreclosure a willful violation with no fair ground of doubt (*Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 2019).

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87.1 The 2017 judgment's fraud, void for lack of prosecutorial authority and jurisdictional defects (¶ 24, *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004), caused Plaintiff's license suspension (¶ 26), denial of judicial remedy across state and federal courts (¶ 36–47), and insolvency (¶ 48), which were the proximate cause of the default exploited by Citizens' foreclosure (¶ 75), violating § 524(a)(2) by indirectly enforcing a discharged debt (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). Citizens' foreclosure, relying on the void judgment's illegal effects (¶ 24, 48), is unenforceable, as courts will not aid claims founded on illegal acts (*Asher v. Johnson*, 26 Cal.App.2d 403, 79 P.2d 457, 1938; *Lee On v. Long*, 37 Cal.2d 499, 234 P.2d 9, 1951; *Nathan v. Tenna Corp.*, 560 F.2d 761, 1977), violating public policy and bankruptcy's fresh start (*Al-Ibrahim v. Edde*, 897 F.Supp. 620, 1995; *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 1934).

88. Plaintiff suffered damages, including ~$815,241.50 in equity loss and $216,000 in time defending against the foreclosure (¶ 57–58), proximately caused by Citizens' willful violation of the discharge injunction through reliance on the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004). These harms, exacerbated by Citizens' knowledge of the fraud and discharge (¶ 86), warrant compensatory and punitive damages for egregious conduct (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008).

**SECOND CAUSE OF ACTION: Avoidance of Unauthorized Post-Petition Transfer (11 U.S.C. § 549, Against Citizens, Trustee Corps, Hou)**

79. Plaintiff incorporates paragraphs 1–78 as if fully set forth herein.

80. The sale on November 18, 2024, was an unauthorized post-petition transfer of estate property under § 549(a), executed without court approval, as the Property remained in the estate until abandonment on December 31, 2024 (Dkt. 112, Dkt. 11, Ex. 5). The stay relief order (Dkt. 45), granted solely under § 362(d)(2), was invalidly granted, as the court violated its mandatory constitutional duty to ensure Plaintiff's due process by ignoring evidence of substantial equity ($592,946.29, Dkt. 15, ¶ 18) and the void 2017 judgment's fraudulent effects, which caused Plaintiff's alleged default and bankruptcy (¶ 48–49; Dkt. 15; Ex. 11, pp. 38–40). Despite notice of Plaintiff's exhaustion of state court remedies and their fraudulent denials (Case 22A426, pp. 4–12; ¶ 36–47; Motion for Withdrawal of

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Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22), the court, acting as a 'gatekeeper,' directed Plaintiff to seek an injunction in state court during the March 1, 2023, hearing to stop Citizens' attempts to obtain relief from the stay to commence foreclosure proceedings, breaching its duty to examine evidence (*In re Gould*, 401 B.R. 415, 426, 9th Cir. BAP 2009) and provide a remedy (*Marbury v. Madison*, 5 U.S. 137, 177, 1803). This failure, part of a systemic denial of judicial remedy that forced Plaintiff into bankruptcy to seek a fresh start and emergency stay, constituted reckless disregard and fraud on the court, invalidating the order (Ex. 11, pp. 28–30). Even if valid, the order did not authorize Citizens' unconstitutional and illegal acts—bad faith foreclosure, breach of Cal. Civ. Code § 1708 duties, and conspiracy to use Cal. Civ. Code § 2924 to violate constitutional protections (¶ 77)—as these are not 'in accordance with applicable nonbankruptcy law,' rendering the sale unauthorized (Ex. 3, pp. 37–42; Ex. 22). Trustee Corps exacerbated the unauthorized transfer by refusing to provide bidder information or disclose litigation affecting the Property's title (Ex. 4, p. 24), further undermining the sale's legitimacy.

81. The Property was part of the bankruptcy estate (Dkt. 11, Ex. 5), and the sale diminished Plaintiff's exemption (¶ 28).

82. Plaintiff seeks to avoid the transfer and recover the Property or its value ($1,142,000) under § 550.

83. Defendants' actions were willful, warranting damages and costs.

**THIRD CAUSE OF ACTION: Wrongful Foreclosure (11 U.S.C. § 522(h), Against Citizens, Trustee Corps, Hou, Paloci, Paloci III, P.A., Murillo, Sergeant X, CHP Officer Doe 1, CHP Officer Doe 2)**

84. Plaintiff incorporates paragraphs 1–83 as if fully set forth herein.

85. The sale was wrongful, relying on a void judgment (¶ 21), executed at a grossly inadequate price ($371,688 vs. $1,142,000, ¶ 41), and tainted by fraud (Ex. 3, pp. 37–42; Ex. 7). Defendants Citizens and Trustee Corps conspired pre-sale to commit wrongful foreclosure by agreeing to execute the November 18, 2024, sale, despite notice of the

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2017 judgment's fraud and discharge (Ex. 3, pp. 37–42; Ex. 7, pp. 43, 49–50; Ex. 22). Defendants Hou, Paloci, Paloci III, P.A., Murillo, Sergeant X, CHP Officer Doe 1, and CHP Officer Doe 2 aided and abetted the conspiracy post-sale by: Hou and Paloci pursuing the unlawful detainer action after notice on February 4–17, 2025 (Ex. 4, pp. 9–10, 27–47); Murillo and Sergeant X refusing to fully, fairly, impartially, and independently investigate Plaintiff's complaints of the judgment's fraud and refusing to intervene to stop the ongoing crimes/deprivations of rights, instead serving the eviction notice on March 27, 2025, despite notice of the sale's invalidity (Ex. 9–10); and CHP Officer Doe 1 and Doe 2 refusing to fully, fairly, impartially, and independently investigate Plaintiff's fraud complaints and refusing to intervene to stop the ongoing crimes/deprivations of rights (Case 22A426, pp. 50–51, Ex. D, pp. 4905–5010), furthering the wrongful foreclosure's harm to the estate and Plaintiff's exemption (Ex. 11, pp. 28–30, "In re Gebhart", 621 F.3d 1206, 1210, 9th Cir. 2010). Citizens' bad faith, breach of Cal. Civ. Code § 1708, and § 2924 conspiracy violated applicable nonbankruptcy law, unauthorized by the stay relief order and enabled by the court's due process failure (Dkt. 15). Plaintiff's emotional distress includes panic attacks, severe depression, and physical symptoms, as detailed in his bankruptcy declarations (Ex. 5).

86. Plaintiff has standing under § 522(h) to avoid the transfer, as it was involuntary and the Property was exempt (¶ 35).

87. Plaintiff seeks to void the sale, cancel the Trustee's Deed, and recover the Property.

88. Damages include ~$815,241.50 in equity loss, $216,000 in time, and emotional distress (¶ 29). Hou and Paloci's unlawful detainer action (Ex. 4, pp. 27–47) and refusal of surplus funds (Ex. 4, p. 19), Murillo and Sergeant X's eviction notice service (Ex. 9–10), and CHP Officer Doe 1 and Doe 2's refusal to investigate and intervene (Case 22A426, pp. 50–51), furthered the conspiracy, contributing to these damages.

**FOURTH CAUSE OF ACTION: Equitable Relief for Misuse of Stay Relief Order (11 U.S.C. § 105(a), Against Citizens)**

89. Plaintiff incorporates paragraphs 1–88 as if fully set forth herein.

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90. Citizens misused the stay relief order (Dkt. 45) by foreclosing despite notice of the judgment's fraud (Ex. 3, pp. 37–42; Ex. 7). Citizens deliberately chose non-judicial foreclosure, avoiding judicial scrutiny that could have addressed the judgment's fraud (Ex. 3, pp. 37–42). By proceeding with a non-judicial foreclosure without judicial oversight, Citizens' actions, enabled by Cal. Civ. Code § 2924, functioned as a state-sanctioned punishment akin to a bill of pains and penalties, targeting Plaintiff for insolvency caused by the void 2017 judgment and denying Plaintiff due process to contest the sale's validity (Ex. 11, pp. 28–30, 38–40). Citizens' misuse involved bad faith, Cal. Civ. Code § 1708 breaches, and § 2924 conspiracy, unauthorized by the stay relief order's 'applicable nonbankruptcy law' requirement, enabled by the court's due process failure (Dkt. 15). Citizens received multiple notices of the fraud, including bankruptcy declarations (Dkt. 102, 103) and emails (Ex. 7, pp. 43, 49–50), yet proceeded with the sale.

91. This misuse caused irreparable harm, including equity loss and ongoing UD litigation (¶ 31).

92. Plaintiff seeks equitable relief to void the sale, impose sanctions, and prevent further harm.

93. The Court's inherent powers under § 105(a) support this relief.

**FIFTH CAUSE OF ACTION: Declaratory Relief for Unconstitutionality of Cal. Civ. Code § 2924 (As Applied, Against Citizens, Trustee Corps, Hou, Paloci, Paloci III, P.A., Citibank, NewRez, Murillo, Sergeant X, CHP Officer Doe 1, CHP Officer Doe 2)**

94. Plaintiff incorporates paragraphs 1–93 as if fully set forth herein.

95. California Civil Code § 2924, as applied by Defendants Citizens Bank N.A., MTC Financial Inc. d/b/a Trustee Corps, Canjian Hou, Henry D. Paloci, Henry D. Paloci III, P.A., Citibank N.A., NewRez LLC, Deputy Murillo, Sergeant X, CHP Officer Doe 1, and CHP Officer Doe 2 to the November 18, 2024, foreclosure sale of Plaintiff's Property (818 Spirit, Costa Mesa, CA), is unconstitutional under Cal. Const. Art. I, §§ 1, 7, 19, and U.S. Const. Amends. V, XIV, as it facilitated an unauthorized transfer of Plaintiff's home equity—a protected property interest—without due process or just compensation. Trustee Corps

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withheld litigation details from bidders (Ex. 4, p. 24), and Hou refused to return surplus funds despite notice (Ex. 4, p. 19), exploiting § 2924's lack of safeguards. Section 2924's omission of appraisal or fair market value requirements enabled the sale at ~32.5% of value, exacerbating the unconstitutional taking. Section 2924's failure to require promissory note recording facilitated fraud, as Defendants concealed title defects (Ex. 3, pp. 13–23).

96. The Property, valued at approximately $1,142,000, was sold for $371,688, resulting in a loss of ~$815,241.50 in equity (¶ 29), transferred to Defendant Hou without compensation, constituting a taking in violation of Cal. Const. Art. I, § 19 and U.S. Const. Amend. V (*Tyler v. Hennepin County*, 143 S. Ct. 1369, 1377, 2023). Section 2924's failure to mandate fair market value sales or require appraisals enabled this equity theft, violating Plaintiff's inalienable right to acquire, possess, and protect property (Cal. Const. Art. I, § 1).

97. Defendants' reliance on § 2924's non-judicial process, exploiting a void 2017 judgment (¶ 21), denied Plaintiff a pre-deprivation hearing to contest the sale's validity, violating due process under Cal. Const. Art. I, § 7 and U.S. Const. Amend. XIV (*Mathews v. Eldridge*, 424 U.S. 319, 335, 1976). Citizens and Trustee Corps proceeded despite notice of the judgment's fraud (Ex. 3, pp. 37–42; Ex. 7; Ex. 22). Hou, Paloci, Paloci III, P.A., Murillo, Sergeant X, CHP Officer Doe 1, and CHP Officer Doe 2 aided and abetted the conspiracy to violate Plaintiff's due process and takings rights by: Hou and Paloci pursuing the UD action after notice on February 4–17, 2025 (Ex. 4, pp. 9–10, 27–47); Murillo and Sergeant X refusing to fully, fairly, impartially, and independently investigate Plaintiff's complaints of the judgment's fraud and refusing to intervene to stop the ongoing crimes/deprivations of rights, instead serving the eviction notice on March 27, 2025, despite notice (Ex. 9–10); and CHP Officer Doe 1 and Doe 2 refusing to fully, fairly, impartially, and independently investigate Plaintiff's fraud complaints and refusing to intervene to stop the ongoing crimes/deprivations of rights (Case 22A426, pp. 50–51, Ex. D, pp. 4905–5010), contributing to the unconstitutional taking and punishment akin to a bill of pains and penalties (Ex. 11, pp. 38–40). By enabling the foreclosure without judicial oversight and without consideration for Plaintiff's equity interest, § 2924 operated as a state-sanctioned punishment, akin to a bill of pains and penalties, targeting Plaintiff for insolvency caused by the void 2017 judgment's fraud, denying due process and effecting an unconstitutional taking (Ex. 11, pp. 28–30, 38–40). Citizens' bad faith and Cal. Civ. Code § 1708 breaches via § 2924 were unauthorized by the stay relief order, exacerbated by the court's due process denial (Dkt. 15; Case 22A426, pp. 37–52).

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98. Section 2924 constitutes state action, as it delegates coercive power to private parties to foreclose without judicial oversight, implicating constitutional protections (*Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 1982; *Shelley v. Kraemer*, 334 U.S. 1, 20, 1948). The sale's gross inadequacy (~32.5% of market value, ¶ 41) and lack of procedural safeguards caused an erroneous deprivation of Plaintiff's property interest.

99. Plaintiff seeks declaratory relief that § 2924, as applied to the foreclosure sale, is unconstitutional, and an order voiding the sale and Trustee's Deed Upon Sale (Instrument No. 2025000040781, Ex. 3, pp. 16–23) as products of an unconstitutional process, restoring the Property to the bankruptcy estate.

**SIXTH CAUSE OF ACTION: Gross Negligence and Breach of Fiduciary Duty (11 U.S.C. § 105(a), Against Trustee Karen S. Naylor and Surety Doe)**

100. Plaintiff incorporates paragraphs 1–99 as if fully set forth herein.

101. Trustee Karen S. Naylor's gross negligence and breach of fiduciary duty, evidenced by a pattern of inaction on the void 2017 judgment, Citizens' foreclosure, and Citibank's disputed lien, harmed the bankruptcy estate and Plaintiff's $600,000 homestead exemption (*In re Harris*, 590 F.3d 730, 742, 9th Cir. 2009). Her failure to investigate or challenge these issues, despite notice (Dkt. 15, Case 22A426, LBR 4001-1; Motion for Withdrawal of Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22), and declaration of no assets (Dkt. 72, May 19, 2023), enabled the non-judicial foreclosure sale (November 18, 2024, ¶ 30) after the court inconsistently granted Citizens' motion for relief while denying Citibank's (Dkt. 44, ¶ 111), despite similar fraud concerns (Dkt. 15, ¶ 28; Dkt. 58, ¶ 77). This resulted in the theft of ~$815,241.50 in equity and denial of Plaintiff's exemption, undermining his fresh start (*Slaieh v. Simon*, 584 B.R. 28, 40, C.D. Cal. 2018). The court's erroneous dismissal and reconsideration denial (Adv. No. 8:23-ap-01075-SC, Docs. 19, 27), which relied on Naylor's control over estate claims without addressing her inaction, exacerbated this harm. Naylor's failure to oppose Citizens' motion—despite notice of equity ($556,549.54, Dkt. 15, ¶ 18), unproven default (Dkt. 15, ¶ 28), and the fraudulent 2017 lien (Case 22A426, pp. 4–47)—or investigate allowed a sale that destroyed ~$647,909.54 in estate value ($1,142,000 − $494,090.46 in valid liens, Dkt. 15, ¶ 18), contrary to her duty to maximize assets (*In re Gunnison Center Apartments, LP*, 320 B.R. 391, 397, Bankr. D. Colo. 2005).

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102. Surety Doe, as Naylor's bondholder under 11 U.S.C. § 322(b), is liable for losses caused by Naylor's gross negligence (*In re AFI Holding, Inc.*, 525 F.3d 700, 703, 8th Cir. 2008). Damages include ~$815,241.50 in estate value loss and ~$600,000 in exemption loss.

103. Plaintiff seeks damages, surcharge against Naylor, recovery from the bond, and equitable relief under § 105(a).

**SEVENTH CAUSE OF ACTION: Determination of Validity and Secured Status of Alleged Citibank Lien (11 U.S.C. § 506(a), § 522(f), Against Citibank N.A.)**

104. Plaintiff incorporates paragraphs 1–103 as if fully set forth herein.

105. On December 8, 2022, Plaintiff filed for Chapter 7 bankruptcy (Case No. 8:22-BK-12076-SC, Dkt. 1), scheduling Citibank N.A.'s alleged first mortgage lien of $457,693.71 on the Property (818 Spirit, Costa Mesa, CA) as secured (Dkt. 11, Ex. 5). On February 15, 2023, Plaintiff amended his schedules, listing the lien as disputed and unsecured due to evidence of fraud (Dkt. 18; Dkt. 15, ¶ 2; Case 22A426, pp. 14–15).

106. On April 19, 2023, Citibank, through its alleged agent NewRez LLC, filed a Motion for Relief from Stay (Dkt. 44), claiming a $502,238.46 lien based on a July 5, 2005, promissory note ($595,000, First Horizon) and an undated, unattached allonge lacking proof of agency authority (Adv. No. 8:23-ap-01075-SC, Ex. 15, pp. 14–17; Dkt. 58, Ex. 1, p. 4). Plaintiff opposed, alleging fraud and lack of standing (Dkt. 58, ¶ 8–54), and the court denied Citibank's motion, recognizing deficiencies in its claim, unlike its granting of Citizens' motion, which enabled the foreclosure sale (¶ 111). Citibank was notified of these issues through Plaintiff's Motion for Withdrawal of Reference (Case No. 8:23-cv-00711-PA, Ex. 21) and Ex Parte Application for Temporary Restraining Order (Case No. 8:24-cv-02509-AB-JC, Ex. 22).

107. On July 14, 2023, Plaintiff filed an adversary proceeding (Adv. No. 8:23-ap-01075-SC, Doc 1) to determine the validity and enforceability of Citibank's lien, prompted by Citibank's foreclosure attempts (Notice of Default, July 7, 2022; Dkt. 58, ¶ 9) and systemic

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denial of state court remedies, which provided no forum to adjudicate Citibank's claim due to fraudulent denials and jurisdictional defects, forcing Plaintiff into bankruptcy (¶ 36–47, Case 22A426, pp. 4–12; Dkt. 58, ¶ 1).

108. Plaintiff denies the note's validity, signatures, and transfers, alleging Citibank is not a holder/beneficiary (CCC §§ 3309, 9312(b), 9313, 9314) and engaged in fraudulent acts (CCC § 3202(b)). Citibank failed to produce the original note or account statements despite Qualified Written Requests (Adv. No. 8:23-ap-01075-SC, Exs. 20, 24; Dkt. 58, Ex. 6, pp. 1–8), and no proof of claim was filed (Adv. No. 8:23-ap-01075-SC, ¶ 22). Under CCC § 3308(a), Plaintiff is not obligated to pay absent proof of debt, negating default (Dkt. 58, ¶ 49–54). The note, if valid, was discharged on March 27, 2023 (Dkt. 32, Ex. 6). Citibank and NewRez filed fraudulent documents (Notice of Default, Substitution of Trustee, Corporate Assignment of Deed of Trust, Adv. No. 8:23-ap-01075-SC, Exs. 11–13; Dkt. 58, Ex. 1, pp. 22–26), violating Cal. Penal Code §§ 470, 487, 182 (Adv. No. 8:23-ap-01075-SC, ¶ 36–37; Dkt. 58, ¶ 77). The allonge's appearance in Dkt. 44, absent in prior QWRs (Ex. 20; Dkt. 58, Ex. 6), and contradicted by Mr. Cooper's note claim (Dkt. 58, Ex. 3, p. 11, March 20, 2023), evidences fraud. The assignments are nullities without note transfer (Cal. Civ. Code § 1084; "Carpenter v. Longan", 83 U.S. 271, 274, 1872), lack agent authority (Dkt. 58, ¶ 73–76, Cal. Code Civ. Proc. § 1971), and contain redactions (Dkt. 58, ¶ 19). Citibank lacks standing (CCC §§ 3501(b)(2), 9203, 3301; Dkt. 58, ¶ 8–15).

109. The court's dismissal of the adversary for lack of standing (Doc 19, August 31, 2023), followed by denial of reconsideration (Doc 27, October 13, 2023), was erroneous and part of a systemic denial of due process (¶ 36–47, Case 22A426, pp. 4–12; Dkt. 58, ¶ 54, 80). The court noted it would abstain to state court if standing existed (Doc 19, p. 4, n.4) but dismissed without addressing Plaintiff's fraud evidence (Doc 16, Dkt. 58, Exs. 1–6) or holding hearings (Docs. 19, 27), violating FRBP 7001. The district court's denial of Plaintiff's Motion for Withdrawal of Reference (Case No. 8:23-cv-00711-PA, Ex. 21) and inaction on his Ex Parte Application for Temporary Restraining Order (Case No. 8:24-cv-02509-AB-JC, Ex. 22) furthered these denials. Plaintiff has standing under § 522(h), as his $600,000 homestead exemption (Dkt. 11, Cal. Code Civ. Proc. § 704.730), unopposed by March 15, 2023, revested in him under § 522(l) ("In re Reed", 940 F.2d 1317, 1321, 9th Cir. 1991), covering the $457,693.71 lien ("Miller v. Huntington Nat. Bank", 2013 WL 593780, N.D. W. Va. 2013). Plaintiff scheduled a $50,000,000 claim including Citibank (Dkt. 11, Case 22A426, Adv. No. 8:23-ap-01075-SC, ¶ 2), countering the court's "unscheduled" finding (Doc 27, p. 5, n.4). Referral to state court, known to deny remedy

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due to conflicts and jurisdictional defects (¶ 36–47, Dkt. 58, ¶ 1), would violate judicial redress (*Marbury v. Madison*, 5 U.S. 137, 163, 1803).

110. Trustee Naylor's failure to pursue the Citibank claim or challenge the fraudulent 2017 judgment, despite notice (Dkt. 15, Case 22A426, LBR 4001-1; Motion for Withdrawal of Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22), and declaration of no assets (Dkt. 72, May 19, 2023), breached her fiduciary duty (*Slaieh v. Simon*, 584 B.R. 28, 40, C.D. Cal. 2018). This inaction, unaddressed by the court's dismissal (Docs. 19, 27), enabled the non-judicial foreclosure sale (November 18, 2024, ¶ 30) by Citizens, whose motion for relief was granted despite similar fraud concerns, unlike Citibank's denied motion (Dkt. 44), resulting in the theft of ~$815,241.50 in equity, denial of Plaintiff's $600,000 homestead exemption, and loss of his fresh start by preventing a surplus (~$943,782.76, ¶ 101).

111. If invalid, the lien would yield ~$457,693.71 in equity, creating a ~$943,782.76 surplus for Plaintiff's exemption or the estate (*In re Andrews*, 80 F.3d 558, 561, 1st Cir. 1996).

112. Plaintiff seeks a determination under § 506(a) that Citibank's alleged lien is unsecured or invalid, avoidance under § 522(f) to the extent it impairs his exemption, a declaratory judgment that Citibank has no valid lien, and an order striking fraudulent documents (Exs. 11–13) from the Orange County Clerk-Recorder's records.

**EIGHTH CAUSE OF ACTION: Violation of Automatic Stay and False Claim (11 U.S.C. § 362(k), § 105(a), Against Citibank N.A.)**

113. Plaintiff incorporates paragraphs 1–112 as if fully set forth herein.

114. Citibank N.A., through its alleged agent NewRez LLC, violated the automatic stay under 11 U.S.C. § 362(a)(3) by attempting to perfect its alleged $502,238.46 lien post-petition, as detailed in ¶ 106–107. The introduction of an undated allonge in NewRez's Motion for Relief from Stay (Dkt. 44, April 19, 2023; Adv. No. 8:23-ap-01075-SC, Ex. 15, p. 17; Dkt. 58, Ex. 1, p. 4), absent in prior Qualified Written Requests (Adv. No. 8:23-ap-01075-SC, Ex. 20, March 29, 2023; Dkt. 58, Ex. 6, pp. 1–8) and contradicted by Mr.

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Cooper's claim to hold the original note (Dkt. 58, Ex. 3, p. 11, March 20, 2023), was a post-petition act to falsely establish Citibank's lien status.

115. This act constituted a willful violation of the stay, seeking to control estate property without court approval (*In re Del Mission Ltd.*, 98 F.3d 1147, 1151, 9th Cir. 1996), and a false claim misrepresenting Citibank's lien status with intent to deceive the court and estate, violating 18 U.S.C. § 152(4) (false claim), Cal. Penal Code § 115 (false filing), § 132 (offering false evidence), § 134 (preparing false evidence), § 182 (conspiracy), and FRBP 9011 (*In re Eskew*, 573 B.R. 317, 323, Bankr. N.D. Cal. 2017). The court's failure to address this fraud in its dismissal for lack of standing, despite noting hypothetical abstention (Docs. 19, p. 4, n.4; 27), furthered the conspiracy to defraud Plaintiff and the estate (¶ 107, Dkt. 58, ¶ 77).

116. The stay violation, compounded by Trustee Naylor's failure to challenge Citibank's false claim (Dkt. 72, May 19, 2023) and the court's inconsistent granting of Citizens' motion for relief despite denying Citibank's (¶ 111), caused Plaintiff injury, including legal expenses (~$216,000, ¶ 58) and emotional distress (¶ 59). This enabled the non-judicial foreclosure sale (November 18, 2024, ¶ 30), stealing ~$815,241.50 in equity and denying Plaintiff's $600,000 homestead exemption, undermining his fresh start (*In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004).

117. Plaintiff seeks damages under § 362(k), sanctions under § 105(a), and a finding that Citibank's false claim via the allonge invalidates its lien, as part of the conspiracy to deprive Plaintiff of his Property (¶ 107, Dkt. 58, ¶ 77).

**NINTH CAUSE OF ACTION: Violation of Automatic Stay (11 U.S.C. § 362(k), Against Hou, Paloci, Paloci III, P.A.)**

126. Plaintiff incorporates paragraphs 1–117 as if fully set forth herein.

127. Defendants Hou, Paloci, and Paloci III, P.A., willfully violated the automatic stay under 11 U.S.C. § 362(a)(6) by filing and pursuing an unlawful detainer action (Case No. 30-2025-01459684, February 11, 2025, ¶ 34) to collect a discharged debt tied to the 2017 judgment (discharged March 27, 2023, ¶ 86, Dkt. 32) and enforce a void foreclosure sale

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(¶ 30, 75), despite notice of Plaintiff's bankruptcy filing (Case No. 8:22-BK-12076-SC) and the judgment's fraud [Placeholder: Describe Notice Content, e.g., Ex. 4, pp. 9–10, 19; Ex. 8; Case 22A426, pp. 50–51]. Their knowledge of the discharge and fraud left no fair ground of doubt that their actions violated § 524(a)(2) and § 362(a)(6) (*Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 2019).

128. Hou, Paloci, and Paloci III, P.A., acted with knowledge of the bankruptcy, as Plaintiff provided the bankruptcy case number and fraud details [Placeholder: Notice Details], yet conspired with and aided/abetted Citizens' bad faith foreclosure, which violated the discharge injunction by exploiting the discharged judgment's effects (¶ 75, *In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). Their pursuit of the UD action and default judgment [Placeholder: UD Judgment Details] furthered this conspiracy, seeking to control estate interests and enforce a discharged debt (*In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004).

128.1 The 2017 judgment's fraud, void for lack of prosecutorial authority (¶ 24, *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004), caused Plaintiff's license suspension (¶ 26), denial of judicial remedy (¶ 36–47), and insolvency (¶ 48), which were the proximate cause of the default underlying the foreclosure enforced by Hou, Paloci, and Paloci III, P.A.'s UD action (¶ 34, 128), violating § 362(a)(6) and § 524(a)(2) by collecting a discharged debt (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). Their UD action, relying on the void judgment's illegal effects (¶ 24, 48), is unenforceable, as courts will not aid claims founded on illegal acts (*Asher v. Johnson*, 26 Cal.App.2d 403, 79 P.2d 457, 1938; *Lee On v. Long*, 37 Cal.2d 499, 234 P.2d 9, 1951; *Nathan v. Tenna Corp.*, 560 F.2d 761, 1977; *Bassidji v. Goe*, 413 F.3d 928, 2005; *Franklin v. Mortgage Guaranty & Security Co.*, 57 F.2d 834, 1932; *Al-Ibrahim v. Edde*, 897 F.Supp. 620, 1995).

129. This willful violation caused Plaintiff damages, including ~$216,000 in time defending, $5,000 in moving expenses, $200,000 in tax base loss over 30 years, and emotional distress (¶ 57–59), proximately caused by Hou, Paloci, and Paloci III, P.A.'s UD action enforcing the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004). These harms, exacerbated by their knowledge of the fraud and discharge (¶ 127), warrant compensatory and punitive damages for egregious conduct (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008).

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130. Plaintiff seeks damages under 11 U.S.C. § 362(k), including ~$216,000 in legal expenses, $5,000 in moving expenses, $200,000 in tax base loss, and emotional distress, punitive damages for willful misconduct, sanctions under § 105(a), and a finding that the UD action and judgment are void as violations of the automatic stay.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests the following relief:

A. An order voiding the November 18, 2024, foreclosure sale and canceling the Trustee's Deed Upon Sale (Instrument No. 20250000040781).

B. Recovery of the Property (818 Spirit, Costa Mesa, CA) to the bankruptcy estate under 11 U.S.C. § 550.

C. A determination that Citizens' lien is secured only to the extent of the sale proceeds, with surplus due to Plaintiff (11 U.S.C. § 506(a)).

D. Damages for violation of the discharge injunction, including ~$815,241.50 in equity loss, $216,000 in time defending, and all harms proximately caused by the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004), and, if the sale is not voided, a determination that Citizens' lien is secured only to the extent of the debt owed ($62,523.24), with any surplus due to Plaintiff (11 U.S.C. § 524(a)(2), § 506(a)).

E. Sanctions against Citizens for misuse of the stay relief order (11 U.S.C. § 105(a)).

F. Declare the UD judgment (Case No. 30-2025-01459684) void due to Citizens' bad faith violation of 11 U.S.C. § 524, Hou, Paloci, and Paloci III, P.A.'s willful violation of 11 U.S.C. § 362(a)(6) through conspiracy and aiding/abetting, and as independent of any determination in the separate adversary proceeding challenging the 2017 judgment, with damages under § 362(k).

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G. Costs of suit and attorney fees, if applicable.

H. A professional appraisal of the Property to confirm damages, if the sale is not voided.

I. Dismissal of the unlawful detainer action (Case No. 30-2025-01459684) with prejudice.

J. An accounting of all fees and costs charged by Citizens (Ex. 3, p. 72).

K. Emotional distress damages, to be proven at trial.

L. Punitive damages for Defendants' willful misconduct (Cal. Civ. Code § 3294).

M. All other relief the Court deems just and proper.

N. An order requiring surplus funds be returned to Hou, less Plaintiff's awarded damages, within five business days.

O. Declare that Cal. Civ. Code § 2924, as applied by Defendants to the November 18, 2024, foreclosure sale, violated Plaintiff's rights under Cal. Const. Art. I, §§ 1, 7, 19, and U.S. Const. Amends. V, XIV, by enabling the transfer of ~$815,241.50 in home equity without due process or just compensation, and void the sale and Trustee's Deed as unconstitutional.

P. Surcharge Trustee Naylor for ~$815,241.50 in estate losses and ~$600,000 in exemption losses, and recover against her bond under 11 U.S.C. § 322(b).

Q. Punitive damages for Citizens' willful contempt of the discharge injunction under 11 U.S.C. § 524(a)(2).

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R. Injunctive relief to compel the court to adjudicate Plaintiff's claims regarding the 2017 judgment's effects and Citibank's lien validity, preventing further denial of judicial remedy under 11 U.S.C. § 105(a).

S. A determination that Citibank's alleged $457,693.71 lien is invalid or unsecured under 11 U.S.C. § 506(a), avoidance under § 522(f) to the extent it impairs Plaintiff's $600,000 homestead exemption, a declaratory judgment that Citibank has no valid lien, and an order striking fraudulent documents (Notice of Default, Substitution of Trustee, Corporate Assignment of Deed of Trust) from the Orange County Clerk-Recorder's records.

T. Damages under 11 U.S.C. § 362(k) for Citibank's willful violation of the automatic stay, including ~$216,000 in legal expenses and emotional distress damages, sanctions under § 105(a) for Citibank's false claim violating 18 U.S.C. § 152(4), Cal. Penal Code §§ 115, 132, 134, 182 (conspiracy), and a finding that the false allonge invalidates its alleged lien.

U. Damages under 11 U.S.C. § 362(k) for Hou, Paloci, and Paloci III, P.A.'s willful violation of the automatic stay, including ~$216,000 in legal expenses, $5,000 in moving expenses, $200,000 in tax base loss, emotional distress damages, and all harms proximately caused by the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004), punitive damages (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008), and sanctions under § 105(a).

**EXHIBITS**

Ex. 1: State Court Judgment (Case No. 30-2015-00805807, Minute Order, Dkt. 193).

Ex. 2: Appellate Opinion (Case No. G055075).

Ex. 3: Mortgage Agreement, Notice of Default, Trustee's Deed, Transaction History (pp. 1–72).

Ex. 4: Unlawful Detainer Complaint, Notices to Hou/Paloci (pp. 1–47).

Ex. 5: Bankruptcy Schedules (Case No. 8:22-BK-12076-SC, Dkt. 11).

Ex. 6: Discharge Order (Case No. 8:22-BK-12076-SC, Dkt. 32).

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Ex. 7: Citizens Bank N.A. Communications (ex parte Ex. 3, pp. 37–50, including April 16, 2023, February 2, 2024, October 28, 2024 emails).

Ex. 8: Hou/Paloci Communications (ex parte Ex. 4, pp. 9–47, including February 4–17, 2025 emails and UD complaint).

Ex. 9: Eviction Notice (March 27, 2025).

Ex. 10: Audio/Video Recordings of OC Sheriff Deputy Murillo (March 27, 2025).

Ex. 11: Ex Parte Application (Case No. 30-2015-00805807, filed March 17, 2025).

Ex. 12: Citibank Adversary Complaint (Adv. No. 8:23-ap-01075-SC, Doc 1, July 14, 2023).

Ex. 13: Citibank Motion to Dismiss (Adv. No. 8:23-ap-01075-SC, Doc 6, August 11, 2023).

Ex. 14: Plaintiff's Opposition to Citibank Motion to Dismiss (Adv. No. 8:23-ap-01075-SC, Doc 16, August 28, 2023).

Ex. 15: Order Granting Citibank Motion to Dismiss (Adv. No. 8:23-ap-01075-SC, Doc 19, August 31, 2023).

Ex. 16: Plaintiff's Motion for Reconsideration (Adv. No. 8:23-ap-01075-SC, Doc 21, September 6, 2023

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# Exhibit I

ONE LEGAL

# Order #25423563: eFiling & eServe

Submitted: 5/20/2025 10:55 AM PT

## In Progress

**Court Transaction #11485201**

**MESSAGE FROM ONE LEGAL:** The court has received your filing. This status will be updated and you will receive an email immediately upon completion of the court clerk's review. Although court processing times vary, the court filing date for accepted filings will reflect the date this order was submitted.

**MESSAGE FROM THE COURT CLERK:** This Electronic Filing has been received by the Court and has passed technical validations. -

## Documents

**Returned (0)**

Documents will be available here once they are provided by the court's system.

**Your Files (3)**

| Document Title | Document Type | Pages | Status |
|---|---|---|---|
| FEE WAIVER REQUEST (RESUBMITTED) | Order on Court Fee Waiver (Superior Court) | 3 | Uploaded |
| Ex Parte Application For Stay and TRO | Ex Parte Application - Other | 9 | Uploaded |
| MOTION TO VACATE VOID JUDGMENT | Motion to Vacate | 91 | Uploaded |

**Messages**

Messages from One Legal will appear here.

## eServe Recipients

| Name | Email | Status |
|---|---|---|
| Bereki, Adam | abereki@gmail.com | **Notification Sent - 5/20/2025 10:55 AM PT** |
| Henry D Paloci, III, P.A. Attorney for Plaintiff Canjian Hou | hpaloci@hotmail.com | **Notification Sent - 5/20/2025 10:55 AM PT** |
| Plaintiff Canjian Hou | angushou0823@gmail.com | **Notification Sent - 5/20/2025 10:55 AM PT** |
| Gary Humphreys<br>eCopy recipient for Bereki, Adam | ghconsult@aol.com | **Notification Sent - 5/20/2025 10:55 AM PT** |
| Karen Humphreys<br>eCopy recipient for Bereki, Adam | kmoehumphreys@yahoo.com | **Notification Sent - 5/20/2025 10:55 AM PT** |
| William Bissell, Attorney for Karen Humphreys and Gary Humphreys<br>eCopy recipient for Bereki, Adam | wbissell@wgb-law.com | **Notification Sent - 5/20/2025 10:55 AM PT** |

## Related Orders

Bundle Type: eFiling-eService

Adam A. Bereki
3649 Metter St.
Las Vegas, NV 89129
949.241.6693
abereki@gmail.com
www.thespiritoflaw.com

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

Canjian Hou

Plaintiff,

vs.

Adam Bereki,

Defendant.

Case No.: 30-2025-01459684
Appeal Case. No: 30-2025-01482941

Additional Cases in this Court:

Related Case No.: 30-2015-00805807
(Unlimited Civil)

Related Open Case No.: 22-12076: U.S. Bankruptcy Court, Central Dist. of CA

**NOTICE OF MOTION AND MOTION TO VACATE VOID JUDGMENT**

**DECLARATION OF ADAM BEREKI**

**FILED CONCURRENTLY WITH NOTICE OF EMERGENCY EX PARTE APPLICATION AND EMERGENCY EX PARTE APPLICATION FOR:**

1) **TEMPORARY RESTRAINING ORDER,**
2) **STAY OF UNLAWFUL DETAINER ACTION AND RESTORATION OF POSSESSION PENDING RESOLUTION OF MOTION TO VACATE VOID JUDGMENT AND RELATED BANKRUPTCY ADVERSARY PROCEEDING;**

**MOTION HEARING:** (To be assigned at ex parte hearing)
Motion Hearing Date:
Motion Hearing Time:
Dept: C61

**TO ALL PARTIES, THEIR ATTORNEY(S), AND THE COURT:**

**NOTICE OF MOTION AND MOTION TO VACATE VOID JUDGMENT**

Please take notice that on _____ (a date to be assigned by the Court at the ex parte hearing), in Department C61 of the above-entitled court, located at 700 W. Civic Center Dr, Santa Ana, California, Defendant Adam Bereki, appearing in propria persona, will move for an order to:

1. Vacate the void default judgment entered on March 18, 2025, pursuant to CCP § 1916 and the Court's inherent equitable jurisdiction, due to due process violations and lack of subject matter jurisdiction.
2. Quash the writ of possession issued on March 22, 2025, as it derives from a void judgment.
3. Restore Defendant to possession of the property at 818 Spirit, Costa Mesa, CA 92626.
4. Stay the unlawful detainer action pending consolidation with Case No. 30-2015-00805807, resolution of the imminently filed motion to vacate the 2017 judgment, and the imminently filed adversary proceeding related to Bankruptcy Case No. 8:22-BK-12076-SC for fraudulent transfer and violation of the discharge order, as the validity of the 2017 judgment and foreclosure leading to Plaintiff's purported title and the UD case affect Plaintiff's standing and the Court's jurisdiction.
5. Order restitution of all rights and property lost as a result of the default judgment, with an accounting to be submitted after possession is restored, as damages are ongoing and cannot be accurately determined until the property is inspected.
6. Clarify whether Plaintiff Canjian Hou or his agents occupy the property at 818 Spirit, Costa Mesa, CA 92626, given, the property's uninhabitable condition, and the vacatur of the writ of possession issued on March 22, 2025.
7. Issue an immediate eviction order directing the Orange County Sheriff to remove Plaintiff Canjian Hou, his agents, or assigns from the property, as Plaintiff has no lawful claim to possession following vacatur of the void judgment.

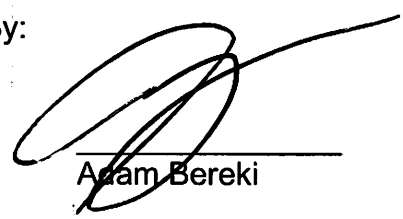
8. Issue a writ of possession in favor of Defendant Adam Bereki, restoring him to exclusive possession of the property at 818 Spirit, Costa Mesa, CA 92626, effective immediately.

This motion is made on the grounds that the default judgment is void due to Plaintiff's counsel's failure to notify Defendant of the default request (*Lasalle v. Vogel*, 36 Cal.App.5th 127, 135-136 (2019)), the clerk's premature entry of default one day after the request, the clerk's refusal to vacate despite notice, and the Court's rejection of Defendant's pro se filings, violating due process (*Haines v. Kerner*, 404 U.S. 519, 520 (1972)). The unlawful detainer action's validity depends on a 2017 judgment (Case No. 30-2015-00805807), alleged to be void due to extrinsic fraud and lack of subject matter jurisdiction (imminently challenged by Motion to Vacate), an unlawful license suspension as a result of the judgement, Defendant being forced into bankruptcy after being repeatedly being denied judicial remedy to vacate the void judgment (see Notice of Related Cases), and wrongful foreclosure sale on November 18, 2024, imminently challenged in an adversary proceeding (Ex. F. [Rough Draft Adversary Complaint]) as an unauthorized post-petition transfer and violation of the discharge order, related to Bankruptcy Case No. 8:22-BK-12076-SC. (See, Ex parte application/ Motion to Vacate, Dkt. ROA's 306-322 filed 3/14/25 in case 30-2015-00805807 for the substantive arguments of the Motion to Vacate Void Judgement, incorporated by reference as if fully set forth herein).

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Adam Bereki, an imminently filed Motion to Consolidate Cases, all pleadings and papers on file in all related cases incorporated as if full set forth herein, including the ex parte application filed March 14, 2025, in Case No. 30-2015-00805807, Bankruptcy Case No. 8:22-BK-12076-SC, the Jira correspondence with the clerk (May 8-9, 2025), and any further evidence or argument presented at the hearing.

Dated: May 19, 2025

By:



Adam Bereki

## I. MEMORANDUM OF POINTS AND AUTHORITIES

### A. INTRODUCTION

The default judgment entered on March 18, 2025, in this unlawful detainer action is void due to due process violations, including Plaintiff's counsel's failure to notify Defendant of the default request, the clerk's premature entry of default, and the Court's rejection of Defendant's pro se filings. The action stems from a 2017 judgment (Case No. 30-2015-00805807), alleged to be void, and a foreclosure sale imminently challenged in an adversary proceeding related to Bankruptcy Case No. 8:22-BK-12076-SC, affecting Plaintiff's standing and the Court's jurisdiction. Defendant seeks vacatur, quashing of the writ, restoration of possession, a stay, restitution with an accounting, clarification of Plaintiff's occupancy status, and an immediate eviction order with a writ of possession in Defendant's favor.

### B. STATEMENT OF FACTS

1. 2017 Judgment and Foreclosure: The unlawful detainer action stems from a 2017 judgment (Case No. 30-2015-00805807), alleged to be void due to extrinsic fraud and lack of jurisdiction, an unlawful license suspension as a result of the judgement, Defendant being forced into bankruptcy after being repeatedly denied judicial remedy (see Notice of Related Cases), and wrongful foreclosure sale on November 18, 2024, which led to a foreclosure sale on November 18, 2024, for $371,688, ~$1.2 million below market value. The foreclosure will be imminently challenged in an adversary proceeding related to Bankruptcy Case No. 8:22-BK-12076-SC as an unauthorized post-petition transfer and violation of the discharge order. (Bereki Decl., ¶ 3-4).
2. UD Complaint and Service: On February 11, 2025, Plaintiff filed a UD complaint based on a trustee's deed resulting from a wrongful foreclosure sale. Defendant was served on March 1, 2025 at his home (the subject of this dispute: 818 Spirit, Costa Mesa, CA 92626). (Bereki Decl., ¶ 5)
3. Defendant's Response Attempt: On March 14, 2025, Defendant's answer was rejected for procedural defects without a rejection notice. (Bereki Decl., ¶ 6; Ex Parte Application to Stay UD Case/ Motion to Vacate/ Answer, filed March 14, 2025, Dkt ROA's.302-344, Case No. 30-2015-00805807).
4. Default and Judgment: On March 17, 2025, Plaintiff's counsel filed a default request without personally notifying Defendant. On March 18, 2025, the clerk entered default

and judgment prematurely, violating CCP § 1013(a). A corrected answer was rejected on March 19, 2025. (Bereki Decl., ¶ 7-9; Ex. A [ UD Complaint Answer (Exhibit 1- Ex Parte Application/ Motion to Vacate/Answer, omitted for brevity (several thousand pages). See 30-2015-00805807 Dkt. ROA'S 306-322]; Ex. B [Case Docket, ROA 12, 17-18].)

5. Writ and Eviction: On March 22, 2025, a writ of possession issued, leading to Defendant's eviction. (Bereki Decl., ¶ 10; Ex. I [Writ of Possession], Case Docket, ROA 23).
6. Clerk's Refusal: On May 8-9, 2025, the clerk breached its ministerial duty to vacate the default despite notice of violations by refusing to vacate the judgment. (Bereki Decl., ¶ 11; Ex. C [Jira Correspondence].)
7. Current Harm: Plaintiff's demolition caused an estimated $50,000 in property damage and $10,000 in lost personal property (based on information and belief). The property is uninhabitable, and Plaintiff is believed not to reside there. (Bereki Decl., ¶ 12-13; Ex. D [Photos, Emails].)
8. Related Cases: The 2017 judgment will be imminently challenged in Case No. 30-2015-00805807, and the foreclosure will be imminently contested in an adversary proceeding in Bankruptcy Case No. 8:22-BK-12076-SC. An appeal of the UD judgment is pending (Case No. 30-2025-01482941). (Bereki Decl., ¶ 14-15.)

C. LEGAL STANDARD

1. Vacating Void Judgment: A court must vacate a void judgment at any time if it lacks jurisdiction or violates due process (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal.App.5th 1009, 1020-1022 (2018)).
2. Non-Discretionary Duty: Courts have a mandatory duty to vacate judgments procured through extrinsic fraud or lacking jurisdiction (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)).
3. Stay of Unlawful Detainer: A stay is warranted when a title dispute affects standing and jurisdiction (*Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146 (1980)).
4. Equitable Relief: Courts may issue eviction orders and writs of possession to restore possession when a judgment is vacated (*Caldwell v. Taylor*, 218 Cal. 471, 476 (1935)).

D. ARGUMENT

A TRO Is Necessary to Prevent Irreparable Harm

Plaintiff's wrongful occupation and demolition, causing an estimated $50,000 in damage (demolished kitchen, removed bamboo flooring, repainted interior) and an estimated $10,000 in personal property disposed of by Plaintiff (on information and belief), constitute irreparable harm (*Tobias v. Alameda County*, 69 Cal.App.5th 1030, 1045-46 (2021)). Defendant faces loss of his home and $1.2 million in equity, while Plaintiff suffers minimal prejudice from a delay (Bereki Decl., ¶ 12-13). A TRO is warranted (CCP § 526(a)).

The Default Judgment Is Void Due to Due Process Violations

1. Plaintiff's Counsel Failed to Notify Defendant of the Default Request

Plaintiff's counsel, Henry D. Paloci III, filed the default request on March 17, 2025, without notifying Defendant, despite Defendant's clear intent to defend as evidenced by his March 14, 2025, attempt to file an answer (Bereki Decl., ¶ 6-7; Dkt. ROA's 306-322 Case. Case No. 30-2105-00805807 [Ex Parte Application for Stay of UD Case/ Motion to Vacate/ Answer in UD Case]). This violates the ethical and statutory duty to warn under CCP § 583.130, which requires cooperation in litigation (*Lasalle v. Vogel*, 36 Cal.App.5th 127, 135-136 (2019); Cal. Prac. Guide Civ. Pro. Before Trial (Rutter Group 2024) ¶ 5:68.1). Courts condemn such "quiet speed" and are inclined to set aside defaults absent prior warning, especially against pro se litigants (*Shapell Socal Rental Properties, LLC v. Chico's FAS*, Inc., 85 Cal.App.5th 198, 216 (2022); Cal. Prac. Guide, supra, ¶ 5:70; *Fasuyi v. Permatex, Inc.*, 167 Cal.App.4th 681, 701 (2008)). Notice must be reasonably calculated to reach the party, and email warnings are inadequate (Cal. Prac. Guide, supra, ¶ 5:69.1). Here, no notice—telephonic or otherwise—was provided at the time the Request for Default was filed. Defendant did not receive Notice until several days after the default had been entered when he received the Request by United States mail.

2. The Clerk's Premature Entry of Default Violated Due Process

The clerk entered the default on March 18, 2025, one day after the mailed default request, violating CCP § 1013(a)'s 5-day mail service extension (*Mullane v. Central Hanover*

*Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The clerk cannot enter a default until 5 calendar days after the request for default is mailed, to ensure the defendant has reasonable time to receive it and respond. The premature entry, without verifying the service method or allowing statutory time, voids the default (*Lasalle v. Vogel*, 36 Cal.App.5th at 136). The clerk's refusal to vacate despite notice exacerbates the violation (Bereki Decl., ¶ 11; Ex. D [Jira Correspondence]).

3. The Court's Refusal to Recognize Defendant's Pro Se Filing Was Error

Defendant's answer, attempted on March 14, 2025, was rejected for procedural defects without a rejection notice, and a corrected answer on March 19, 2025, was refused due to the default (Bereki Decl., ¶ 6, 9). Any filed response, even late or insufficient, precludes default (Cal. Prac. Guide Civ. Pro. Before Trial (Rutter Group 2024) ¶ 5:33, 5:37; *Stevens v. Torregano*, 192 Cal.App. 2d 105, 112-113 (1961)). The clerk lacked authority to assess the answer's sufficiency, which challenged standing and subject matter jurisdiction that can be challenged at any time. Any default entered despite a filed response is void (*Jarvis v. Jarvis*, 33 CA5th 113, 128 (2019)). Courts must ensure pro se litigants are not misled, and the lack of clear guidance or opportunity to correct violated Defendant's rights (Cal. Prac. Guide, supra, ¶ 5:71.5; *Gamet v. Blanchard*, 91 CA4th 1276, 1284 (2001); *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). Defendant's pro se status, compounded by financial constraints from the 2017 judgment and continued denial of judicial remedy (see Related Cases, each case incorporated as if fully set forth herein, 30-2015-00805807 Dkt. ROA's 306-322), warranted accommodation, not dismissal (Bereki Decl., ¶ 6, 9).

4. The UD Action Must Be Stayed Due to the Alleged Void 2017 Judgment and Foreclosure

The UD action stems from a 2017 judgment (Case No. 30-2015-00805807), alleged to be void due to extrinsic fraud, lack of subject matter jurisdiction, and an unconstitutional $930,000 penalty (e.g *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020)). The judgment caused a foreclosure sale on November 18, 2024, imminently challenged in an adversary proceeding in related Bankruptcy Case No. 8:22-BK-12076-SC as an unauthorized post-petition transfer and violation of the discharge order (11 U.S.C. § 549, § 524(a)(2)) (Bereki Decl., ¶ 3-4, 14; Ex. F [Rough Draft of Adversary Complaint]). The trustee's deed does not confer valid title

pending resolution of these challenges, depriving Plaintiff of standing and the Court of jurisdiction (*People ex rel. Becerra v. Superior Court*, 29 Cal.App.5th 486, 496 (2018)). Defendant's imminent motion to vacate the 2017 judgment and the imminent adversary bankruptcy proceeding (involving violation of the discharge order and fraudulent transfer) must be resolved first, necessitating a stay and consolidation (*Vella v. Hudgins*, 20 Cal.3d 251, 256 (1977); *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146 (1980)).

5. The Court Has a Non-Discretionary Duty to Vacate the UD Judgment

The UD judgment is void due to due process violations and reliance on a foreclosure stemming from the 2017 judgment, imminently challenged as void in Case No. 30-2015-00805807 and an adversary proceeding related to Bankruptcy Case No. 8:22-BK-12076-SC (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944); *Caldwell v. Taylor*, 218 Cal. 471, 476 (1935)). Defendant's appeal (Case No. 30-2025-01482941) does not preclude relief (*MacMillan Petroleum Corp. v. Griffin*, 99 Cal.App.2d 523, 533 (1950)).

Defendant Has a Meritorious Defense

Plaintiff lacks standing due to a void foreclosure, as will be evidenced/ alleged in the Motion to Vacate in 15-00805807 (see also Dkt. ROA'2 306-322) and the adversary bankruptcy proceeding. *Lasalle v. Vogel* supports vacatur when a meritorious defense exists (36 Cal.App.5th at 139- 140). Defendant's defenses of extrinsic fraud and jurisdictional defects necessitate a trial on the merits and cannot be summarily denied without a judicial determination of his rights (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal.App.5th 1009 (2018)) (Bereki Decl., ¶ 14).

Restitution and Accounting Are Warranted

Defendant seeks restitution of all rights and property lost due to the void judgment, with an accounting post-restoration, as damages (~$50,000 in property damage, ~$10,000 in lost personal property) are ongoing and require inspection (Bereki Decl., ¶ 12-13).

Clarification of Occupancy and Immediate Relief Are Necessary

Given the forthcoming meritorious challenge to the foreclosure and trustee's deed, the property's uninhabitable condition, and Plaintiff's believed non-residence, the Court

should clarify Plaintiff's occupancy status and issue an immediate eviction order and writ of possession in Defendant's favor to prevent further harm and restore possession without delay (*Tobias v. Alameda County*, 69 Cal.App.5th 1030 (2021)) (Bereki Decl., ¶ 12-13).

The Default Judgment Is Void Due to Due Process Violations

Plaintiff's counsel failed to notify Defendant of the default request, violating CCP § 585.5(a) and ethical duties (*Lasalle v. Vogel*, 36 Cal.App.5th 127, 135-136 (2019)). The clerk's premature entry of default one day after the mailed request violated CCP § 1013(a) (*Mullane v. Central Hanover Bank Trust Co.*, 339 U.S. 306, 314 (1950)). The Court's rejection of Defendant's pro se filings denied due process (*Haines v. Kerner*, 404 U.S. 519, 520 (1972)). (Bereki Decl., ¶ 6-9.)

The UD Action Depends on a Void 2017 Judgment and Foreclosure

The UD action relies on a 2017 judgment, alleged to be void due to extrinsic fraud and lack of jurisdiction, and a foreclosure imminently challenged in an adversary proceeding (Ex. F. [Rough Draft Adversary Complaint]) in related Bankruptcy Case No. 8:22-BK-12076-SC as an unauthorized post-petition transfer and violation of the discharge order. The unvoided trustee's deed does not confer valid title pending resolution of these challenges, depriving Plaintiff of standing and the Court of jurisdiction (Vella v. Hudgins, 20 Cal.3d 251 (1977); People ex rel. Becerra v. Superior Court, 29 Cal.App.5th 486, 496 (2018)). (Bereki Decl., ¶ 3-4, 14.)

Restitution and Accounting Are Warranted

Defendant seeks restitution of all rights and property lost due to the void judgment, with an accounting post-restoration, as damages ($50,000 in property damage, $10,000 in lost personal property) are ongoing and require inspection. (Bereki Decl., ¶ 12-13.)

Clarification of Occupancy and Immediate Relief Are Necessary

Given the imminent wrongful foreclosure challenge to Plaintiff's title, the property's uninhabitable condition, and Plaintiff's believed non-residence, the Court should clarify Plaintiff's occupancy status and issue an immediate eviction order and writ of possession in

Defendant's favor to prevent further harm and restore possession without delay (*Tobias v. Alameda County*, 69 Cal.App.5th 1030 (2021)). (Bereki Decl., ¶ 12-13.)

E. CONCLUSION

The Court must vacate the void judgment, quash the writ, restore possession, stay the action pending related proceedings, order restitution with an accounting, clarify Plaintiff's occupancy status, and issue an immediate eviction order and writ of possession in Defendant's favor.

Dated: May 20, 2025

By:

Adam Bereki

## II. DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I am the Defendant in Case No. 30-2025-01459684 and Case No. 30-2015-00805807, with personal knowledge of the facts herein.
2. My open bankruptcy case (Case No. 8:22-BK-12076-SC) does not affect this motion.
3. The UD action stems from a 2017 judgment, alleged to be void, causing a wrongful foreclosure on November 18, 2024, for an estimated $1.2 million below market value (Ex. E [Trustee's Deed]).
4. The foreclosure will be imminently challenged in Bankruptcy Case No. 8:22-BK-12076-SC for fraudulent transfer and violation of the discharge order (Ex. F [Rough Draft Adversary Complaint]).
5. On March 1, 2025, I was served with the UD complaint.
6. On March 14, 2025, my answer was rejected for procedural defects without a rejection notice.
7. On March 17, 2025, Plaintiff's counsel filed a default request without notifying me by phone or email with service by USPS mail. (Ex. G [Default Request, postmarked 3/17/25]).
8. On March 18, 2025, at the ex parte hearing for stay of the Unlawful Detainer Proceeding, Judge Hesseltine refused to recognize the document I filed in Case No. 30-2015-00805807 (Emergency Ex Parte Application for Stay/ Motion to Vacate/ Answer ROA's 306-322) as an answer in this case, despite my clear and unambiguous intent that it be treated as so. (Ex. H [Minute Order]). I had intended to file the same document in both cases but the clerk refused to do so.
9. On March 18, 2025, shortly after the ex parte hearing the default and judgment were entered prematurely (Ex. B [Case Docket, ROA 12, 17-18]).
10. On March 19, 2025, my corrected answer, which included a challenge to Plaintiff's standing and subject matter jurisdiction, was rejected due to the default. The Supervising Deputy Clerk, Richard A, refused to provide the lawful authority for denying my right to file the answer and to challenge jurisdiction, which can be made at any time.

11. On March 22, 2025, a writ of possession issued, leading to my eviction (Ex. I [Case Docket, ROA 23]). I obtained this document from OC Sheriff Deputy Murillo who handed it to me along with the Notice to Vacate after threatening me with physical force to remove me if I did not vacate.

12. On May 8-9, 2025, the clerk refused to vacate the default (Ex. C [Jira Correspondence]).

13. Based on photographs I have received from a reliable witnesses, including one who lives in the same tract: 1) the entire interior of the kitchen of my home has been demolished rendering my home uninhabitable; 2) thousands of dollars in bamboo wood flooring on the stairs—and suspected throughout the upstairs bedrooms and hallway—has been torn out as partially evidenced in the following image depicting these materials in a heaping pile in the garage; and 3) the interior has been repainted. Based on the information I have received and more than 20 years of experience in construction, I estimate the unauthorized damage to my home caused by this demolition or other work to be $50,000 for repair or replacement. (Ex. D. [Photos]).



14. I believe an estimated $10,000 of my personal property in storage at the Spirit property has also been disposed of by Plaintiff based on emails received from his attorney: "I will instruct [my client] to dispose of these items on May 1 if you do not make arrangements" (Ex. D [Email]).
15. On May 19, 2025 (yesterday) at about 1300 hours, the same witness texted me with a picture of a notice that he had just witnessed someone post on the front property. The notice reads "This property has been determined vacant/abandoned and been reported to the mortgage servicer." I believe this notice was posted on the door at the direction of the purported first mortgage holder, Citibank N.A. as trustee of the New Residential Mortgage Loan Trust 2018-2 (holder status to be challenged in the bankruptcy adversary because it has not produced an endorsed note as required by the Cal. Comm. Code to Defendant). The witness, who is able to observe the property directly from their property, has repeatedly told me that they do not believe anyone is living at the property.
16. Based on all the foregoing, I believe the property is uninhabitable, and I believe Plaintiff does not reside there.
17. The 2017 judgment will be imminently challenged in Case No. 30-2015-00805807, with hearings set for July 3 and 10, 2025, but I seek an expedited hearing on June 19, 2025. (ROA 329).
18. I appealed the UD judgment (Case No. 30-2025-01482941).
19. I will notify Plaintiff's counsel on May 19, 2025, via email and phone.
20. All exhibits annexed hereto are true and correct copies of the documents they purport to be. In the instances where I have received photos or other documents from third parties, I believe the documents to be true and correct and have confirmed their validity from multiple sources.
21. I declare the foregoing is true and correct.

Dated: May 20, 2025

By: 

Adam Bereki

# Exhibit A

Adam A. Bereki
818 Spirit
Costa Mesa, CA 92626
949.241.6693
abereki@gmail.com
www.thespiritoflaw.com

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

| | |
|---|---|
| Canjian Hou,<br><br>Plaintiff;<br><br>vs.<br><br>Adam Bereki,<br><br>Defendant. | Case No.: 30-2025-01459684<br>(Unlawful Detainer)<br><br>**ADAM BEREKI'S VERIFIED ANSWER TO COMPLAINT**<br><br>Jury Trial Demanded Pursuant to CCP §1171 |

ADAM A. BEREKI
YOU WERE BORN TO BE FREE

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

Defendant Adam Bereki, appearing *in propria persona*, files this Answer to the Unlawful Detainer Complaint filed by Canjian Hou under duress and coercion as follows:

**1. Response to Allegations in the Complaint**

Defendant responds to each paragraph of the Plaintiff's Complaint as follows:

Defendant attempted to file a timely answer to this Complaint on March 14, 2025. The Clerk refused to file the document on grounds that it didn't not comply with rules of Court because each action of the document (i.e. *ex parte* application for stay, answer, and motion to vacate) needed to be filed separately. Defendant was (and remains) under duress and coercion and did not have time to prepare the documents in that manner. At the time he also

did not have multiple copies of the same document to file separately. Defendant contends that rules of court or statutes cannot overrule or supersede rights secured by the Constitution (*Miranda v. Arizona*, 384 U.S. 436, 491 (1938)) including his right to a judicial determination of his rights and to file an answer to this complaint against him. The Clerk required Defendant to cross out the title pertaining to the Answer in this case against his will by stating that his emergency application document would not be filed unless he did so. It was never Defendants intent to waive his right to answer and he did not intend to do so by crossing any words out on the face page(s). He did so only under duress and was thereby prejudiced and denied due process to making a timely answer. Defendant contends the intention of the party is the soul of the instrument (*Animus moninis est anima scripti*) and the substance therein rules differences in form on the face page. Cf. Federal Rules of Civil Procedure Rule 5 "(4) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." A true and correct copy of the document containing the answer and other substantive information he filed is attached hereto as Exhibit 1. See Dkt. 306, Case No. 30-2015-00805807. All statements made in Exhibit 1 and all documents in case 30-2015-00805807 and G055075 (Fourth District Court of Appeal) are incorporated as if fully set forth herein and verified by the declaration below. Defendant Requests this Court take judicial notice of these documents as required by law for the existence of the documents themselves and the statements made thereon, subject to determination for lawfulness and validity by this Court.

Defendant asserts the conflict of interest in this case (Exhibit 1) and requests it immediately be transferred to another County for the reasons stated therein.

In all instances where Defendant uses the word "denies", it is also intended to include "disputes".

**Paragraphs 1, 2, 4, 8, 11, 12, 13, 14, 16, 17, 18, 19, 20:** Defendant denies the allegations in these Paragraphs because Plaintiff is not the lawful owner of the property due to a defective title as evidenced in Exhibit 1 and the Exhibits referenced therein and therefore has no standing to bring this action. Consequently, any allegations related to Plaintiff's standing are without baseless and without merit and a continued fraud upon this Court (Exhibit 1).

ADAM A. BEREKI
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**Paragraph 3:** Defendant denies he is an "individual" as that term is undefined. He appears *in propria persona*.

**Paragraphs 5,7:** Defendant denies the property is within this judicial district as the Superior Court of California is not a judicial Court based on his experience (Exhibit 1). As a result, venue is also improper.

**Paragraph 6:** Defendant denies this Court has subject matter jurisdiction based on Plaintiff's lack of standing and the fact that he has not been afforded a judicial determination of his rights in case 30-2015-00805807 that preceded this case and was a direct and proximate cause of Defendants ongoing injuries that led to the unlawful foreclosure sale.

**Paragraph 9:** Defendant denies the legal description of the property as he has not personally verified this information.

**Paragraph 10:** Defendant admits he is possession of the property.

**Paragraph 15:** Defendant admits he received these documents and immediately notified Plaintiff of fraud and other crimes pertaining to the property (Exhibit 1).

In the event Defendant missed any paragraphs, he intends they be denied.

## 2. Affirmative Defenses

Defendant asserts the following affirmative defenses to bar Plaintiff's claim for possession:

*First Affirmative Defense: Wrongful Foreclosure*

The Plaintiff's claim is barred because the foreclosure sale, upon which their title to the property is based, was wrongful and invalid. The foreclosure stemmed from a judgment in Case No. 30-2015-00805807 (Superior Court of California, County of Orange), which is void due to extrinsic fraud and lack of jurisdiction, as detailed in Exhibit 1. Without a valid foreclosure, Plaintiff's title is defective, and they have no legal right to possession.

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*Second Affirmative Defense: Void Judgment – Extrinsic Fraud*

The judgment in Case No. 30-2015-00805807 is void because it was obtained through extrinsic fraud. Specifically, the plaintiffs in that action, Karen and Gary Humphreys, misrepresented the proceeding by pursuing what was effectively a criminal penalty (disguised as a civil remedy), depriving Defendant of fundamental due/ judicial process rights, including the right to a jury trial and counsel under the California Constitution and U.S. Constitution. This fraud prevented Defendant from having a fair hearing, rendering the judgment a nullity. A void judgment cannot support the subsequent foreclosure or Plaintiff's title.

*Third Affirmative Defense: Void Judgment – Lack of Jurisdiction*

The court in Case No. 30-2015-00805807 lacked subject matter jurisdiction to impose what amounted to a criminal penalty in a civil action. Under Article V, Section 1 of the California Constitution, only the executive branch has authority to prosecute criminal matters, and private parties such as the Humphreys lacked standing to initiate such a proceeding. Absent jurisdiction, the judgment is void *ab initio*, invalidating the foreclosure sale and Plaintiff's claim to the property.

*Fourth Affirmative Defense: Lack of Standing*

Plaintiff lacks standing to bring this unlawful detainer action because their title to the property is defective. Plaintiff's purported ownership derives from a wrongful foreclosure sale based on a void judgment, as described above. Without a valid title, Plaintiff has no legal right to possession, a prerequisite for an unlawful detainer claim under CCP Section 1161 et seq.

*Fifth Affirmative Defense: Violation of the Bankruptcy Discharge*

The Judgments in case 30-2015-00805807, G055075, and license suspension revocation ("Judgments") were all discharged by Defendant's bankruptcy, under duress and coercion in 2022. See Case No. 22-12076 U.S. Bankruptcy Court for the Central District of California. The Judgement and suspension of Defendant's license for over five years, placed him in constructive custody, restraining him from earning a living in his profession as a

ADAM A. BEREKI
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general contractor. This resulted in impairing his private contracts and obligations, including the second mortgage that was foreclosed which Plaintiff bid on at the unlawful foreclosure sale. Because Defendant was forcibly restrained from earning a living as a general contractor and could not make pay his private contracts and obligations, any enforcement of those obligations (including foreclosure and this action) constitutes unlawful enforcement of the Judgment(s) in violation of 11 U.S.C. § 524. Under § 524 (a)(2) a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived[.]"

*Sixth Affirmative Defense: Additional Defenses*

Defendant incorporates all other defenses stated in Exhibit 1.

**Legal Basis:** These defenses are permissible in unlawful detainer actions where title defects involve fraud or jurisdictional issues, as recognized in *Vella v. Hudgins* (20 Cal.3d 251, 1977). Additionally, a void judgment may be challenged at any time (*People v. American Contractors Indemnity Co.*, 33 Cal.4th 653, 660 (2004)).

**3. Prayer for Relief**

WHEREFORE, Defendant Adam Bereki respectfully requests that the Court:

1. Deny Plaintiff's request for possession of the property and dismiss this suit for lack of standing;
2. Award Defendant costs and all time in defending this frivolous action;
3. Grant such other and further relief as the Court deems just and proper.

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

I, Adam Bereki, declare under penalty of perjury that: 1) I have personal knowledge of the foregoing facts; 2) they are true and correct; 3) all Exhibits/Appendices annexed hereto are true copies of the documents they purport to be, except for organizational markings (e.g., bates numbering); and, 4) that all statements made in Exhibit 1 are true and correct. Legal conclusions or statements on information and belief are not facts made under penalty of perjury.

Dated: 3/19/25

ADAM A. BEREKI
YOU WERE BORN TO BE FREE

By: _____

Adam Bereki

ADAM A. BEREKI
YOU WERE BORN TO BE FREE

# Exhibit 1

# Exhibit B

Case Summary:

| | |
|---|---|
| Case Id: | 30-2025-01459684-CL-UD-CJC |
| Case Title: | CANJIAN HOU VS. ADAM BEREKI |
| Case Type: | UNLAWFUL DETAINER - RESIDENTIAL |
| Filing Date: | 02/11/2025 |
| Category: | CIVIL - LIMITED |

Register Of Actions:

| ROA | Docket | Filing Date | Filing Party | Document | Select |
|---|---|---|---|---|---|
| 1 | E-FILING TRANSACTION 11433353 RECEIVED ON 02/11/2025 05:06:34 PM. | 02/13/2025 | | *NV* | |
| 2 | COMPLAINT FILED BY HOU, CANJIAN ON 02/11/2025 | 02/11/2025 | | 14 pages | ☐ |
| 3 | PAYMENT RECEIVED BY ONELEGAL FOR 171 - COMPLAINT OR OTHER 1ST PAPER <=$10K (UNLAWFUL DETAINER) IN THE AMOUNT OF 240.00, TRANSACTION NUMBER 13563278 AND RECEIPT NUMBER 13391458. | 02/13/2025 | | 1 pages | ☐ |
| 4 | NOTICE THAT YOU HAVE BEEN SUED OC GENERATED | 02/13/2025 | | 2 pages | ☐ |
| 5 | E-FILING TRANSACTION NUMBER 11435923 REJECTED. | 02/18/2025 | | 1 pages | ☐ |
| 6 | PAYMENT RECEIVED BY BEREKI, ADAM FOR 44 - COPY OF ANY RECORD (PER SIDE) IN THE AMOUNT OF 8.00, TRANSACTION NUMBER 13568839 AND RECEIPT NUMBER 13397019. | 02/24/2025 | | 1 pages | ☐ |
| 7 | E-FILING TRANSACTION 41787066 RECEIVED ON 02/24/2025 02:48:55 PM. | 02/25/2025 | | *NV* | |
| 8 | PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS - UNLAWFUL DETAINER FILED BY HOU, CANJIAN ON 02/24/2025 | 02/24/2025 | | 3 pages | ☐ |
| 9 | CIVIL CASE COVER SHEET FILED BY HOU, CANJIAN ON 02/24/2025 | 02/24/2025 | | 2 pages | ☐ |
| 10 | SUMMONS ISSUED AND FILED FILED BY HOU, CANJIAN ON 02/24/2025 | 02/24/2025 | | 2 pages | ☐ |
| 11 | E-FILING TRANSACTION 41794149 RECEIVED ON 03/10/2025 10:28:18 AM. | 03/10/2025 | | *NV* | |
| 12 | PROOF OF PERSONAL SERVICE FILED BY HOU, CANJIAN ON 03/10/2025 | 03/10/2025 | | 2 pages | ☐ |
| 13 | E-FILING TRANSACTION 11446369 RECEIVED ON 03/10/2025 10:28:20 AM. | 03/10/2025 | | *NV* | |
| 14 | PROOF OF SERVICE FILED BY HOU, CANJIAN ON 03/10/2025 | 03/10/2025 | | 2 pages | ☐ |
| 15 | E-FILING TRANSACTION NUMBER 41794150 REJECTED. | 03/11/2025 | | 1 pages | ☐ |
| 16 | E-FILING TRANSACTION 31620102 RECEIVED ON 03/17/2025 12:20:47 PM. | 03/18/2025 | | *NV* | |
| 17 | REQUEST FOR ENTRY OF DEFAULT FILED BY HOU, CANJIAN ON 03/17/2025 | 03/17/2025 | | 3 pages | ☐ |

| | | | | | |
|---|---|---|---|---|---|
| 18 | JUDGMENT - UNLAWFUL DETAINER FILED BY HOU, CANJIAN ON 03/18/2025 | 03/18/2025 | | 2 pages | |
| 19 | COMPLAINT DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY CLERK. | 03/18/2025 | | NV | |
| 20 | CASE DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY CLERK | 03/18/2025 | | NV | |
| 21 | E-FILING TRANSACTION 41800817 RECEIVED ON 03/20/2025 06:30:49 PM. | 03/22/2025 | | NV | |
| 22 | APPLICATION FOR WRIT OF POSSESSION FILED BY HOU, CANJIAN ON 03/20/2025 | 03/20/2025 | | 1 pages | |
| 23 | WRIT OF POSSESSION ISSUED ON 03/22/2025 | 03/22/2025 | | 3 pages | |
| 24 | PAYMENT RECEIVED BY ONELEGAL FOR 214 - WRIT IN THE AMOUNT OF 40.00, TRANSACTION NUMBER 13586009 AND RECEIPT NUMBER 13414189. | 03/22/2025 | | 1 pages | |
| 25 | NOTICE OF APPEAL - LIMITED CIVIL FILED | 05/15/2025 | | 3 pages | |
| 26 | DESIGNATION OF RECORD ON APPEAL FILED BY BEREKI, ADAM ON 05/15/2025 | 05/15/2025 | | 20 pages | |
| 27 | NOTIFICATION OF FILING NOTICE OF APPEAL | 05/15/2025 | | 1 pages | |
| 28 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/15/2025 | | 5 pages | |
| 29 | NOTICE OF DEFAULT | 05/15/2025 | | 2 pages | |
| 30 | CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE | 05/15/2025 | | 3 pages | |

Participants:

| Name | Type | Assoc | Start Date | End Date |
|---|---|---|---|---|
| CANJIAN HOU | PLAINTIFF | | 02/13/2025 | |
| HENRY D. PALOCI III PA | ATTORNEY | | 02/13/2025 | |
| ADAM BEREKI | DEFENDANT | | 02/13/2025 | |

Hearings:

| Description | Date | Time | Department | Judge |
|---|---|---|---|---|

Print this page

# Exhibit C

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Preferences Only necessary ✓ Accept all









# NOTICE OF ENTRY OF JUDGMENT



**abereki@gmail.com** raised this on Yesterday 8:32 AM Hide details

Court Questions SUBMITTED



Please check your spam/junk folders for replies after submitting a ticket

**Department** *

- Appellate
- Civil
- Criminal / Traffic
- Family Law
- Juvenile
- Small Claims

**For Self-Help Services please visit:** Contact Self-Help

**Title** *

NOTICE OF ENTRY OF JUDGMENT

**Question** *

Good morning. My name is Adam Bereki. I am writing in regard to case#25-01459684. On 3/17/25 the plaintiff filed a request for entry of default. It was served by mail. I believe I had 5 days to receive the request and then several more days to respond. Depsite this, the Clerk entered the default judgment the next day on march 18. On march 19, I came to the court to file an answer in the case and was denied on the gorund that a default had already been entered. i believe this was a violation of due process as I was denied the opportunity to present my claims. I would like to discuss this issue with a supervisor. Please call me as soon as possible. My number is 949-241-6693.

**Contact Phone #** *

9492416693

**Name** *

Adam Bereki

**Case Number**

25-01459684

## Activity

BJ Briana Jurado Yesterday 9:46 AM

Hello, because Unlawful Detainer cases are statutorily sealed, could you please provide the full name of the plaintiff as well as the property address? This will help me locate the case.

Automatic response Yesterday 9:46 AM

Automatic response Yesterday 9:46 AM

Your request status has changed to Waiting for customer.

abereki@gmail.com Yesterday 1:19 PM

Good afternoon. Id be happy to. The full name of the plaintiff is Canjian Hou. The property address is 818 Spirit, Costa Mesa, CA 92626. I have included a summary of the law I believe on this issue and why I believe I have been prejudiced and denied an opportunity to be heard unlawfully. I believe as a result that you, the clerk, have a non-discretionary, ministerial duty to immediately correct the record and notify all parties. Thank you for you time and careful attention in this matter.

**CCP § 587**: Requires that an application for entry of default (e.g., Form CIV-100) be mailed to the defendant's attorney of record or, if none, to the defendant's last known address, and that proof of such mailing be filed with the court. This ensures the defendant is notified before default is entered.

**CCP § 585.5(a)**: Mandates that the plaintiff serve the default request "concurrently with or prior to" filing it with the court, ensuring timely notice. For UD cases, this applies to protect due process (*Green v. Superior Court*, 10 Cal.3d 616, 633, 1974; *Bostanian v. Liberty Savings Bank*, 52 Cal.App.4th 1075, 1080, 1997).

**CRC 2.200–2.306**: These rules specify service methods (e.g., mail, personal delivery) and timing. For mail service (CCP § 1013), used in this case (CIV-100), service is complete upon mailing, but a 5-day delivery delay applies, impacting notice reasonableness (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 1950).

**Clerk's Authority to Enter Default**:

**CCP § 585(a)**: Authorizes the clerk to enter a default ministerially when the defendant fails to answer within the summons period (10 days in this case, ~March 11-13, 2025) and the plaintiff files a

request (CIV-100) with proof of service (CCP § 587).

**CCP § 1169 (UD Specific)**: In UD cases, if the defendant doesn't answer (within the summons period), the clerk may enter a default or, for possession-only judgments, a clerk's judgment, provided the request complies with CCP § 585(a) and includes a nonmilitary status declaration (CIV-100, Item 8). This is ministerial but requires proper notice and timing (*Green*, 10 Cal.3d at 633).

In this case, the plaintiff's March 17, 2025, default request (CIV-100) was mailed on March 17. 2025, ensuring no notice before the March 18 entry. This violates CCP § 585.5(a) and due process (*Mullane*), as I (the defendant) had no chance to respond.

**Automatic response** Yesterday 1:19 PM

Your request status has changed to Waiting for support.

**Briana Jurado** Today 8:27 AM

According to the proof of service, you were personally served a copy of the Complaint, Summons, UD-101, and form CP 10.5 on 3/1/25.

CCP 1167 allows you 10 days to respond to the complaint; you had until 3/14 to respond and because no response was submitted in the allotted time frame, the plaintiff was well within their rights to submit a Request for Clerk Default Judgment on 3/17/25.

If you'd like to discuss your legal options, please consider seeking legal aid or contacting Self-Help Services at 657-622-8511 or via email at SelfHelpCivil@occourts.org. You may also reach out to the Public Law Center at 714-541-1010 or visit their website for more information.

Thank you

**Automatic response** Today 8:27 AM

Your request status has changed to Waiting for customer.

abereki@gmail.com Today 9:11 AM

Dear Clerk of the Court,

The issue is not the plaintiff's right to file a Request for Clerk Default Judgment on March 17, 2025, but the failure to provide notice as required by law. **CCP § 585.5(a)** mandates that "**where a default or default judgment is sought, the plaintiff shall file a request for entry of default or default judgment and serve it upon the defendant ... concurrently with or prior to filing the request with the court.**" The plaintiff's mail service on March 17, 2025 (CIV-100, Item 6), with a 5-day delivery delay (**CCP § 1013**), ensured I received no notice of the proposed default entry before the clerk's default entry on March 18, 2025, violating due process, which requires "notice reasonably calculated, **under all the circumstances**, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). **CCP § 587** requires "**an affidavit stating that a copy of the application has been mailed to the defendant ... and the date on which the copy was mailed**," and while nonreceipt alone is not grounds to set aside a judgment, the premature entry before effective notice violates *Green v. Superior Court*, 10 Cal.3d 616, 633 (1974), **which requires a reasonable opportunity to contest a default order in UD proceedings.**

Additionally, I did attempt to file an answer twice, once on March 14, 2025 (see ex parte application case 30-2015-00805807) but it was rejected by the clerk. I attempted to file another answer on March 19, 2025, and the clerk rejected it on the grounds that a default had been entered. Allowing the required notice time for the request for entry of default clearly would have required the court to accept my answer on March 19. As a result of these due process violations, the Court has used procedural rules to violate due process and silence me from answering. I am bringing this to your attention now in the hope you will ministerially correct this injustice and avoid the need for appellate proceedings and/or other court

resources in correcting this.

This notice violation renders the default entry invalid, as I was not apprised of the default request in time to respond and have been silenced from answering the complaint. I respectfully request you set aside the default judgment to ensure compliance with statutory and due process requirements.

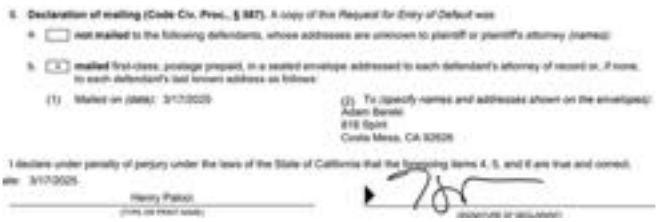
Sincerely,
Adam A. Bereki

**Automatic response** Today 9:11 AM

Your request status has changed to Waiting for support.

**Briana Jurado** Today 9:25 AM

See attached photo, it complies with CCP 587; this is from the Request for Default form on ROA:17



You had 10 days to respond to the complaint, NOT to the Request for Default.

**Automatic response** Today 9:25 AM

Your request status has changed to Waiting for customer.

**abereki@gmail.com** Today 9:29 AM

I agree with you. I had 10 days to respond the the complaint. But I also had at least 5 days to respond to the request for entry of default. Here are two court of appeal cases directly on the subject: In *Bank of America, N.A. v. La Salle*, 243 Cal.App.4th 199 (2015), the plaintiff, Bank of America, filed an unlawful detainer action against defendant La Salle to recover possession of a property after a foreclosure sale. La Salle appeared through counsel but failed to timely answer the complaint, and the Bank filed a request

for entry of default without notifying La Salle's attorney, leading to a default judgment on April 10, 2014. The trial court denied La Salle's motion to set aside the default, but the Court of Appeal reversed, holding that "The Bank's failure to provide notice of its intent to seek entry of default, in violation of its statutory and ethical duties, prejudiced La Salle's ability to oppose entry of default" (243 Cal.App.4th at 208). The court found the Bank violated Code of Civil Procedure section 587 by not mailing the default request to La Salle's counsel, breaching due process, and remanded with directions to set aside the default judgment.

In *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198 (2022), plaintiff Shapell filed an unlawful detainer action against defendant Chico's for unpaid rent on a commercial lease. Chico's counsel appeared but did not timely answer, and Shapell filed a default request on September 8, 2020, without notifying Chico's counsel, resulting in a default judgment. The Court of Appeal reversed, holding that "The failure to provide notice to opposing counsel of an intent to seek default constitutes a breach of both ethical and statutory duties under Code of Civil Procedure section 583.130 and section 587, requiring reversal of the default judgment" (85 Cal.App.5th at 212). The court emphasized that the lack of notice violated statutory requirements and prejudiced Chico's ability to defend, mandating reversal to allow a defense on the merits.

I had no notice of the request for entry of default before the Court entered default. That violated my due process right to respond to the request for entry of default.

Automatic response Today 9:29 AM

Your request status has changed to Waiting for support.

BJ Briana Jurado Today 9:41 AM

We're not going to vacate the default judgment; the attorney did their due diligence and the clerk processed everything correctly. If you want to argue against the judgment you may do so with the judge.

Thank you

Automatic response Today 9:41 AM

Your request status has changed to Waiting for customer.

Automatic response Today 9:42 AM

Your request status has changed to Resolved with resolution Done.

Normal tex

Save

**Status**

RESOLVED

Notifications on

**Request type**

Public

**Shared with**

abereki@gmail.com
Creator

# Exhibit D

GUARDIAN
Asset Management

## FOR EMERGENCIES OR TO REPORT A PROPERTY CONDITION AT THIS HOME REQUIRING IMMEDIATE ATTENTION PLEASE CALL: 888-872-9094

This property has been determined to be vacant/abandoned and been reported to the mortgage servicer. The mortgage servicer intends to protect this property from waste and/or deterioration. This property may have its locks replaced and/or plumbing systems winterized in the next few days.

**If this property is NOT VACANT and ABANDONED, please call**

**Guardian Asset Management: (888) 764-9698**

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## NOTIFICATION:

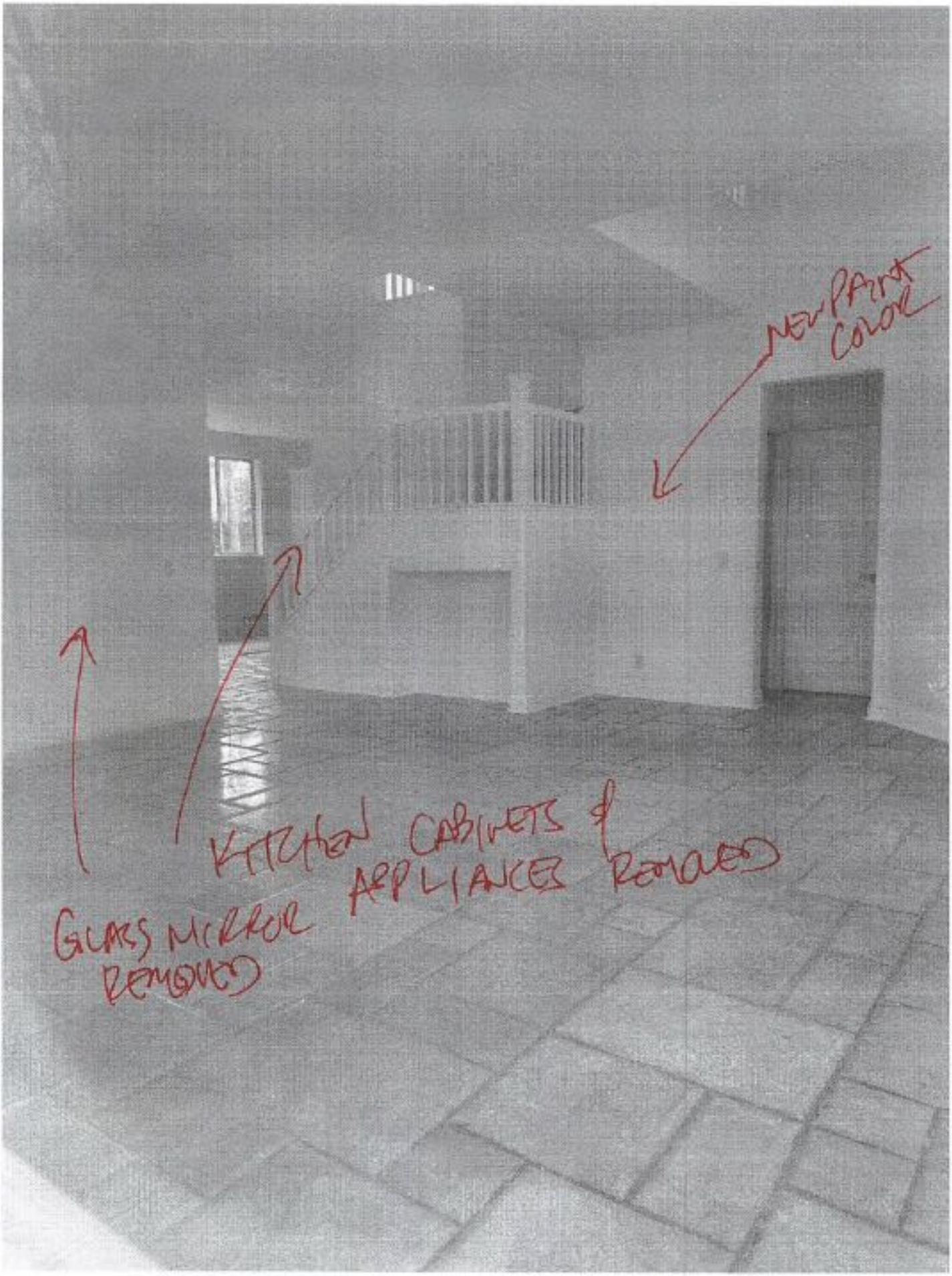
Se ha determinado que esta propiedad está vacante / abandonada. Esto ha sido reportado al administrador de hipotecas. El administrador de la hipoteca tiene la intención de proteger esta propiedad de residuos y / o deterioro. Esta propiedad puede tener sus cerraduras reemplazadas y / o sistemas de plomería invernada en los próximos días.

**Si esta propiedad NO esta VACANTE y ABANDONADA, por favor llame a Guardian Asset Management:(888) 764-9698**

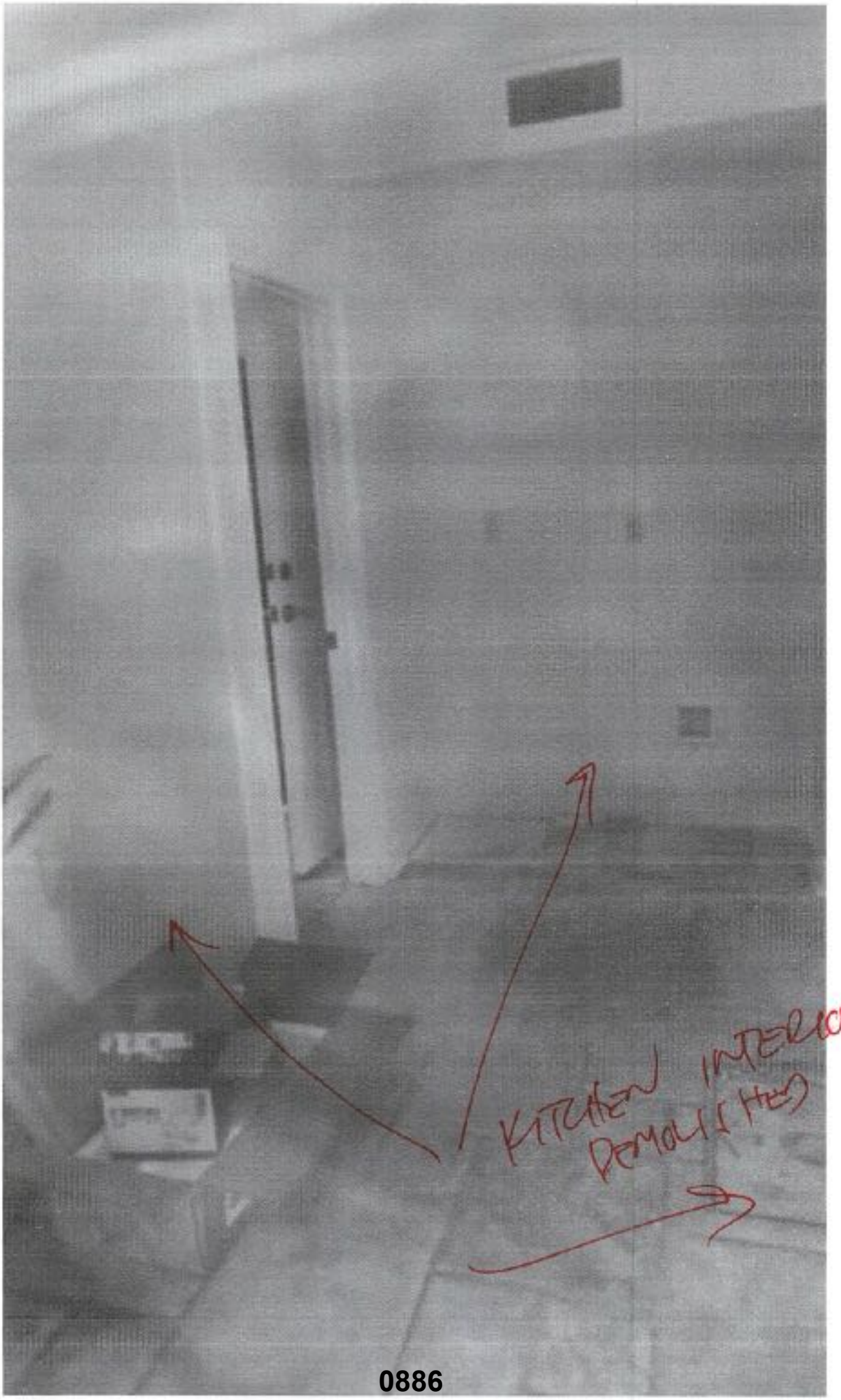
WORK ORDER # 10452096

Guardian Asset Management
2021 Hartel Street Levittown Pa 19057
For Information Text Gam1 to 88000




NEW PAINT COLOR
KITCHEN CABINETS & APPLIANCES REMOVED
GLASS MIRROR REMOVED


WOOD FLOORING REMOVED
KITCHEN INTERIOR DEMOLISHED


KITCHEN INTERIOR
DEMOLITION

Gmail Adam Bereki <abereki@gmail.com>

# notice of unclaimed property: see attachement

**Henry Paloci** <henry.paloci@gmail.com> Fri, Apr 18, 2025 at 10:03 AM
To: Adam <abereki@gmail.com>, angus hou <AngusHou0823@gmail.com>

You have been provided with a sufficient inventory in words and pictures. Please make an appointment to come pick up these items if you wish. The ball is in your court and I will instruct Mr. Hou to dispose of these items on May 1 if you do not make arrangements.

Thank you,
Henry Paloci, Esq.
Henry D. Paloci III PA
1940 N. Tustin Street
Suite 117
Orange, CA 92865
844.398.5500
henry.paloci@gmail.com

---

**From:** Adam <abereki@gmail.com>
**Sent:** Friday, April 18, 2025 8:45 AM
**To:** Henry Paloci <henry.paloci@gmail.com>; angus hou <AngusHou0823@gmail.com>

Gmail Adam Bereki <abereki@gmail.com>

# NOTICE OF APPEAL, DESIGNATION OF RECORD, NOTICE TO CEASE AND DESIST

**Henry Paloci** <hpaloci@hotmail.com> Sat, May 10, 2025 at 6:51 AM
To: Adam <abereki@gmail.com>, angus hou <AngusHou0823@gmail.com>, "wbissell wgb-law.com" <wbissell@wgb-law.com>, Karen Humphreys <kmoehumphreys@yahoo.com>, Gary Humphreys <GHconsult@aol.com>

You neglected to file an answer, and there were things you could have done after the fact that you didn't. As with your big lawsuit, you're looking for other people to blame.

There's really no benefit to engaging you because you don't listen anyway. I don't experience you as looking for solutions. It seems to me that you know that you can't win any of these cases and are looking to inflict the most misery possible on the most people.

For example, I note that you did not make an appointment to pick up the items you left behind at moveout. You could have picked up your stuff or mitigated your loss but instead you picked at the edges and attempted to preserve a record that you could sue on later. Given where we are now, my client is free to discard them if they haven't already.

Thank you,
Henry Paloci, Esq.
Henry D. Paloci III PA
1940 N. Tustin Street
Suite 117
Orange, CA 92865
844.398.5500
henry.paloci@gmail.com

---

**From:** Adam <abereki@gmail.com>
**Sent:** Friday, May 9, 2025 3:32 PM

# Exhibit E

TRUSTEE CORPS
*Experience. Trust. Integrity.*
17100 Gillette Ave. Irvine, CA 92614
Office: 949.252.8300 Fax: 949.252.8330

CANJIAN HOU
19709 CALLE LASUEN
WALNUT, CA 91789

**ATTENTION**

**DO NOT ALTER, CHANGE, OR MODIFY THE ATTACHED TRUSTEE'S DEED UPON SALE. FALSIFYING DOCUMENT(S) PRESENTED FOR RECORDING IS A SERIOUS OFFENSE, WHICH MAY BE SUBJECT TO LEGAL PENALTIES. TRUSTEE CORPS RESERVES THE RIGHT TO REPORT THE RECORDATION OF FRAUDULENT TRUSTEE'S DEED UPON SALE WITH THE APPROPRIATE GOVERNMENT AND ENFORCEMENT AUTHORITIES.**

January 22, 2025

| | |
|---|---|
| Trustee Sale No: | CA13000044-22-2 |
| Title Order No: | 240282878 |
| Property: | 818 SPIRIT, COSTA MESA, CA 92626 |
| County: | Orange |

To whom it may concern:

The above referenced property was sold to **CANJIAN HOU** for the amount of **$371,688.00**

Enclosed is the Trustee's Deed Upon Sale which is being forward to you as of this date, January 22, 2025 for recording.

Sincerely,

Bernardo Sotelo
949-252-8300

RECORDING REQUESTED BY:

WHEN RECORDED MAIL DEED
AND TAX STATEMENT TO:

CANJIAN HOU
19709 CALLE LASUEN
WALNUT, CA 91789

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder




24.00

2025000040781 8:27 am 01/30/25

48 414A T09 5 15
204.60 204.60 0.00 0.00 12.00 0.00 0.000.000.00 0.00

APN: 141-513-55 | TS No: CA13000044-22-2 | TO No: 240282878

# TRUSTEE'S DEED UPON SALE

**A copy of the affidavit or declaration pursuant to Code of Civil Procedure section 2015.5 delivered to the trustee by the high bidder and grantee herein is attached hereto as Exhibit "B" and incorporated herein as if set forth in full. Said 1 page affidavit or declaration is required to be attached as an exhibit to the trustee's deed and recorded pursuant to Civil Code section 2924m(d).**

The undersigned Grantor, under penalty of perjury, declares:

1) The Grantee herein was not the foreclosing beneficiary.
2) The amount of the unpaid debt together with costs was: **$62,523.24**
3) The amount paid by the Grantee at the trustee sale was: **$371,688.00**
4) The documentary transfer tax is: $409.20
5) Said property is in the city of: COSTA MESA
6) A.P.N. 141-513-55

and **MTC Financial Inc. dba Trustee Corps**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **CANJIAN HOU**, herein called "Grantee", the real property in the County of Orange, State of California, described as follows: **SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated October 30, 2006, made to ADAM BEREKI, SINGLE MAN and recorded on December 14, 2006, as Instrument No. 2006000838019 of Official Records in the office of the Recorder of Orange County, CA, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on **November 18, 2024** at the place specified in said Notice, to Grantee who was the highest bidder therefore, for **$371,688.00**, in lawful money of the United States, which has been paid.

Dated: 1-22-25

MTC Financial Inc. dba Trustee Corps

By: Bernardo Sotelo, Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1-22-25 before me, Bobbie LaFlower, a Notary Public, personally appeared BERNARDO SOTELO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

BOBBIE LAFLOWER
Notary Public - California
Orange County
Commission # 2377601
My Comm. Expires Oct 5, 2025

## EXHIBIT "A"

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

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

## EXHIBIT "B"

**This 1 page affidavit/declaration, hereto attached as Exhibit "B", pursuant to Code of Civil Procedure section 2015.5 is required to be attached as an exhibit to the Trustee's Deed Upon Sale for recording pursuant to Civil Code section 2924m(d) and shall not be removed.**

# AFFIDAVIT OF ELIGIBLE BIDDER

(Cal. Civ. Code § 2924m)

| | |
|---|---|
| State of California<br>County of Orange | TS #: CA13000044-22-2<br>Property: 818 SPIRIT, COSTA MESA, CA 92626 |

I, CANJIAN HOU, do hereby state and declare as follows:

1. I am a natural person and a prospective owner-occupant as defined in Section 2924m of California Civil Code.

2. I will occupy the property as my primary residence within 60 days of the trustee's deed being recorded, and I will maintain my occupancy for at least one year.

3. I am not any of the following:

    a. The Mortgagor or trustor
    b. The child, spouse, or parent of the mortgagor or trustor;
    c. The grantor of a living trust that was named in the title to the property when the notice of default was recorded;
    d. An employee, officer, or member of the mortgagor or trustor;or
    e. A person with an ownership interest in the mortgagor, unless the mortgagor is a publicly traded company.

4. I am not acting as the agent of any other person or entity in purchasing the real property.

5. My current residence address is 19709 Calle Lasuen, Walnut CA 91789

6. My current phone # is (626)389-7124

7. My current email address is angushou0823@gmail.com

I declare under penalty of perjury under the laws of California that the foregoing is true and correct and that this declaration was executed in Riverside, California on December 30th, 2024.

CANJIAN HOU

# Exhibit F

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:

Adam A. Bereki,

Debtor.

Adam A. Bereki,

Plaintiff,

v.

Citizens Bank N.A.; MTC Financial Inc. d/b/a Trustee Corps; Canjian Hou; Henry D. Paloci; Henry D. Paloci III, P.A.; Citibank N.A.; NewRez LLC; Deputy Murillo; Sergeant X; Karen S. Naylor; Surety Doe; CHP Officer Doe 1; CHP Officer Doe 2; Does 3-12,

Defendants.

Case No. 8:22-BK-12076-SC

Adv. No. [TBD]

Chapter 7

**INTRODUCTION**

1. Plaintiff Adam A. Bereki, a former police officer with over twenty years of forensic investigation experience specializing in fraud and government corruption, brings this adversary proceeding to address egregious violations of his constitutional and bankruptcy rights stemming from a wrongful non-judicial foreclosure sale of his home at 818 Spirit, Costa Mesa, CA (the “Property”) on November 18, 2024.

2. The foreclosure, executed by Defendants Citizens Bank N.A. (“Citizens”) and MTC Financial Inc. d/b/a Trustee Corps (“Trustee Corps”), was triggered by a void 2017 state court judgment (Case No. 30-2015-00805807, Orange County Superior Court) obtained

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through extrinsic fraud by private parties lacking CRIMINAL prosecutorial authority. This judgment, imposing a $930,000 penalty for alleged unlicensed contracting, caused Plaintiff's financial ruin, enabling Citizens to declare a default and sell the Property for $371,688—far below its $1,142,000 fair market value—resulting in ~$815,241.50 in equity loss.

3. Defendants Canjian Hou, Henry D. Paloci, Henry D. Paloci III, P.A. ("Paloci"), Deputy Murillo, and Sergeant X (name to be provided) furthered this harm by pursuing or enforcing an unlawful detainer action (Case No. 30-2025-01459684, filed February 11, 2025) to evict Plaintiff UNDER THREAT OF FORCEFUL REMOVAL MADE BY THE COUNTY SHERIFF, despite notice of the foreclosure's invalidity.

4. This complaint seeks to void the foreclosure sale, cancel the Trustee's Deed, recover Plaintiff's exempt Property under bankruptcy law, determine the validity of Citibank's lien, address stay violations, and obtain equitable relief for trustee misconduct, asserting violations of the discharge injunction (11 U.S.C. § 524), unauthorized transfers (11 U.S.C. § 549), lien determination (11 U.S.C. § 506), stay violations (11 U.S.C. § 362), and constitutional protections.

**JURISDICTION AND VENUE**

5. Plaintiff intends to commence a separate adversary proceeding to challenge the validity of the 2017 state court judgment (Orange County Superior Court, Case No. 30-2015-00805807) on constitutional grounds, including the lack of executive authority for private CRIMINAL prosecution under Cal. Bus. & Prof. Code § 7031(b), the judgment's imposition of an excessive fine, its operation as a bill of pains and penalties, and its impairment of private contracts, as detailed in Plaintiff's ex parte application filed in the Superior Court on March 17, 2025 (Case No. 30-2015-00805807, Ex. 11). Plaintiff has intentionally separated these issues from the present adversary proceeding to focus exclusively on claims arising under bankruptcy law, including violations of the discharge injunction (11 U.S.C. § 524), unauthorized transfers (11 U.S.C. § 549), lien determination (11 U.S.C. § 506), stay violations (11 U.S.C. § 362), and equitable relief (11 U.S.C. § 105). The claims in this proceeding, particularly Defendant Citizens Bank N.A.'s bad faith foreclosure exploiting the effects of the 2017 judgment and Citibank N.A.'s fraudulent lien, are independent of and do not require a determination of the judgment's validity in the anticipated separate proceeding.

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6. This Court has jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A), (B), (H), (K), (O) as this is a core proceeding concerning the administration of the bankruptcy estate, the validity of liens, stay violations, unauthorized transfers, and equitable relief.

7. Venue is proper in the Central District of California, where the bankruptcy case is pending and the Property is located (28 U.S.C. § 1409).

8. Plaintiff consents to the entry of final orders by this Court (28 U.S.C. § 157(c)).

9. Claims against Henry D. Paloci are exempt from Cal. Civ. Code § 1714.10, as Paloci owed Plaintiff an independent legal duty under Cal. Civ. Code § 1708 and acted for financial gain by pursuing the unlawful detainer action despite notice of the foreclosure's invalidity (Ex. 4, pp. 9–10, 19).

**PARTIES**

10. Plaintiff Adam A. Bereki is the debtor in Case No. 8:22-BK-12076-SC, residing at 3649 Metter St, Las Vegas, NV, due to threats of forcible removal by the county sheriff, and the sole owner of the Property via the Adam Bereki Living Trust.

11. Defendant Citizens Bank N.A. is a national banking association with headquarters in Rhode Island, which initiated the foreclosure sale.

12. Defendant MTC Financial Inc. d/b/a Trustee Corps is a California corporation and the trustee that executed the foreclosure sale.

13. Defendant Canjian Hou is an individual who purportedly purchased the Property at the foreclosure sale. The Superior Court awarded Hou a default judgment in an unlawful detainer action (Case No. 30-2025-01459684). Plaintiff attempted to file an ex parte application as a response, which the Superior Court clerk refused to file, and the Superior Court judge in Case No. 30-2015-00805807 refused to recognize as an answer in the UD

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case. Plaintiff later attempted to file an answer challenging the UD case's subject matter jurisdiction, but the clerk again refused, claiming an answer could not be filed post-judgment.

14. Defendant Henry D. Paloci is an attorney, and Defendant Henry D. Paloci III, P.A. is his professional association, representing Hou and facilitating the unlawful detainer action.

15. Defendant Citibank N.A. is a national banking association claiming a first mortgage lien of $457,693.71 on the Property.

16. Defendant NewRez LLC is a Delaware limited liability company involved in the stay relief motion affecting the Property.

17. Defendant Karen S. Naylor is the Chapter 7 trustee appointed in Case No. 8:22-BK-12076-SC, responsible for administering the bankruptcy estate.

18. Defendant Surety Doe is the unknown surety providing Naylor's bond under 11 U.S.C. § 322(b), to be identified through discovery.

19. Defendants Deputy Murillo and Sergeant X (name to be provided) are Orange County Sheriff's Department officers who enforced the unlawful detainer action by serving an eviction notice on March 27, 2025, at the Property.

20. Defendants CHP Officer Doe 1 and CHP Officer Doe 2 (names to be provided) are California Highway Patrol officers who refused to fully, fairly, impartially, and independently investigate Plaintiff's complaints of the 2017 judgment's fraud and refused to intervene to stop the ongoing crimes/deprivations of rights (Case 22A426, pp. 50–51), aiding and abetting the wrongful foreclosure and unlawful detainer action (Ex. 11, pp. 14–15, 28–30).

21. Defendants Does 3-12 are unknown parties responsible for Plaintiff's damages.

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**FACTUAL BACKGROUND**

22. On August 21, 2015, Plaintiff, through his solely owned company, The Spartan Associates, Inc. ("Spartan"), a previously licensed general contractor (LIC#927244), filed a state court action (Case No. 30-2015-00805807) against Karen and Gary Humphreys for unpaid construction work (~$82,000). The Humphreys, private citizens, cross-complained under Cal. Bus. & Prof. Code § 7031(b), alleging Plaintiff was unlicensed and seeking disgorgement of $848,000 paid to him.

23. On March 28, 2017, Judge David Chaffee ruled Plaintiff was the contractor, not Spartan, and lacked a personal license, awarding the Humphreys $848,000 plus denial of Spartan's $82,000 claim—a $930,000 penalty—despite no evidence of harm or profits (Dkt. 193, Ex. 1).

24. This judgment was void ab initio due to extrinsic fraud and jurisdictional defects: the Humphreys, private citizens, lacked authority to prosecute the penal statute (§ 7031(b)), and the court mischaracterized the action as civil, denying Plaintiff criminal procedural safeguards, such as a jury trial and appointed counsel, required for penal disgorgement (*Liu v. SEC*, 591 U.S. 71, 2020; *Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 1973).

25. On appeal (Case No. G055075), the Fourth District Court of Appeal affirmed, erroneously labeling the penalty "equitable disgorgement" (Ex. 2), rejecting Plaintiff's due process defenses, including the lack of criminal safeguards, as detailed in the unpublished opinion.

26. The judgment and automatic licensing suspension under Cal. Bus. & Prof. Code § 7071.17, effective June 26, 2017, 90 days after the March 28, 2017, judgment for failure to pay (§ 7031(b)), without a hearing, forced Plaintiff into financial ruin, impairing his ability to pay a $62,523.24 home equity line of credit with Citizens (Ex. 3, pp. 1–12) and necessitating bankruptcy.

27. On December 8, 2022, Plaintiff filed for Chapter 7 bankruptcy (Case No. 8:22-BK-12076-SC) under duress, scheduling the Property and all related claims (Dkt. 11, Ex. 5).

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On October 18, 2024, Plaintiff filed a motion to compel the trustee to abandon the 2017 judgment claims and Property-related claims (Dkt. 105), granted on December 31, 2024 (Dkt. 112), before case closure on January 29, 2025 (Dkt. 114, 11 U.S.C. § 554(c)).

28. On April 12, 2023, Citizens obtained relief from the automatic stay (Dkt. 45), despite Plaintiff's notices of the judgment's fraud (Ex. 3, pp. 37–42; Ex. 7).

29. On July 10, 2024, Citizens declared a default and ordered Trustee Corps to commence a non-judicial foreclosure sale under Cal. Civ. Code § 2924 (Ex. 3, pp. 13–15).

30. On November 18, 2024, Trustee Corps sold the Property for $371,688, far below its $1,142,000 fair market value (¶ 29), to Hou (Ex. 3, pp. 16–23).

31. The sale generated a surplus of $304,758.50 after Citizens' $62,523.24 lien and $4,206.26 in trustee fees, insufficient to cover Plaintiff's $600,000 homestead exemption (Cal. Code Civ. Proc. § 704.730, ¶ 30).

32. Plaintiff suffered ~$815,241.50 in equity loss ($1,142,000 value minus $371,688 sale price, assuming Citibank's $457,693.71 lien is invalid, ¶ 32).

33. Citizens knew of the judgment's fraud via bankruptcy notices (Ex. 3, pp. 37–42; Ex. 7) but proceeded, breaching duties under Cal. Civ. Code § 1708 and good faith.

34. On February 11, 2025, Hou, through Paloci, filed an unlawful detainer action (Case No. 30-2025-01459684, Ex. 4, pp. 27–47; Ex. 8), despite Plaintiff's notices of the sale's invalidity and offer to return surplus funds (Ex. 4, pp. 9–10, 19; Ex. 8).

35. On March 27, 2025, Deputy Murillo, under Sergeant X's supervision, served an eviction notice and threatened physical removal, despite Plaintiff's notice of the unlawful foreclosure and UD case's invalidity, as evidenced by the eviction notice (Ex. 9) and audio/video recordings (Ex. 10). Their failure to investigate violated duties under Cal. Civ.

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Code § 1708, due process, and the First Amendment right to petition for redress (Ex. 11, pp. 38–40).

36. The continued denial of judicial proceedings to adjudicate the void 2017 judgment included the following court actions, which prevented Plaintiff from challenging its fraudulent basis and directly contributed to Plaintiff's insolvency (Ex. 11, pp. 14–15):

37. **March 27–28, 2017**: Superior Court of California, County of Orange (Case No. 30-2015-00805807) entered judgment against Plaintiff for $848,000 in "disgorgement" and denied $82,000 quantum meruit claim, finding Plaintiff an unlicensed contractor under Cal. Bus. & Prof. Code § 7031(b), imposing a penal forfeiture disguised as equitable disgorgement (Ex. 1).

38. **October 31, 2018**: Court of Appeal of California, Fourth Appellate District (Case No. G055075) affirmed the judgment, deeming Plaintiff's claims meritless and upholding the $930,000 fine as equitable, not penal (Ex. 2).

39. **March 15, 2019**: Superior Court of California, County of Orange (Case No. 30-2015-00805807) denied Plaintiff's motion to vacate, citing the appellate court's final decision.

40. **March 27, 2019**: Supreme Court of California (Case No. S252954) denied Plaintiff's petition for review, providing no specific reason despite mandatory review claims.

41. **October 7, 2019**: United States Supreme Court (Case No. 18-1416) denied Plaintiff's petition for writ of certiorari, arbitrarily declining jurisdiction without reason.

42. **February 6, 2020**: United States District Court, Central District of California (Case No. 8:19-CV-02050) dismissed Plaintiff's case with prejudice, citing collateral estoppel and Rooker-Feldman doctrines, claiming lack of jurisdiction to review state court judgments.

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43. **November 12, 2020**: U.S. Court of Appeals for the Ninth Circuit (Case No. 20-55181) dismissed Plaintiff's appeal as frivolous, without addressing substantive claims.

44. **September 22, 2021**: United States Supreme Court (Case No. Unknown, Emergency Petition 2021) returned Plaintiff's emergency petition for writs of error/habeas corpus unfiled, citing improper form despite constitutional rights claims.

45. **September 15, 2022**: Superior Court of California, County of Orange (Case No. 30-2022-01271693) denied Plaintiff's ex parte application for emergency stay, with Judge Leal finding no exigent circumstances and deeming habeas corpus inapplicable.

46. **October 13, 2022**: Superior Court of California, County of Orange (Case No. 30-2022-01271693) denied Plaintiff's petition for writ of habeas corpus and emergency stay, with Judge Cramin providing no lawful authority or reasoning.

47. **November 10, 2022**: United States Supreme Court (Case No. 22A426) denied Plaintiff's application for emergency stay, providing no reason pending further petition filing.

48. Plaintiff was insolvent at the time of the sale (¶ 24), supporting avoidance under 11 U.S.C. § 549(a).

49. The sale was involuntary, as Plaintiff's financial ruin stemmed from the void judgment (¶ 21).

50. If Citibank's lien is invalid, Plaintiff's total equity was ~$647,909.54 ($1,142,000 minus $62,523.24 Citizens' lien and $36,000 other claims, ¶ 29).

51. The Property was disclosed in bankruptcy schedules (Dkt. 11, Ex. 5), enabling avoidance under § 522(h).

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52. The sale's gross inadequacy (~32.5% of market value) and irregularities (e.g., discharge violation, surplus shortfall) rebut the *BFP v. Resolution Trust Corp.* presumption (511 U.S. 531, 1994).

53. Plaintiff notified Citizens of the fraud during bankruptcy (Ex. 3, pp. 37–42; Ex. 7), including a February 2, 2024, email (Ex. 7, pp. 49–50).

54. Trustee Corps refused to disclose bidder information or notify them of litigation (Ex. 4, p. 24; Ex. 8).

55. Plaintiff offered to return surplus funds to Hou, who refused (Ex. 4, p. 19; Ex. 8).

56. The sale price ($371,688) was grossly inadequate, causing ~$815,241.50 in damages (¶ 29).

57. Plaintiff spent ~$216,000 in time defending against the foreclosure and unlawful detainer (8 hours/day at $300/hour for 63 weekdays against Citizens/Trustee Corps; 6 hours/day for 36 days against Hou/Paloci, ¶ 29).

58. Additional damages include $19,668.92 in un-itemized Citizens' fees (Ex. 3, p. 72), $5,000 in estimated moving expenses, and $200,000 in tax base loss over 30 years (¶ 29).

59. Plaintiff's emotional distress, to be proven at trial, stems from the loss of his home and livelihood.

60. The unlawful detainer action lacks standing, as Hou's title derives from a void sale (¶ 31).

61. The statute of limitations for Plaintiff's claims is equitably tolled due to Defendants' ongoing fraud, the court's failure to address the 2017 judgment's invalidity (¶ 69), Trustee

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Naylor's inaction (¶ 95–97), the unlawful detainer action (¶ 33), the denial of Plaintiff's ex parte application for stay in California court (Case No. 30-2015-00805807, Ex. 11), and Plaintiff's forced relocation from his home of nearly 20 years out of state, which prevented timely filing despite Plaintiff's diligent efforts (Dkt. 15, Case 22A426, *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 370, 2003).

62. Plaintiff seeks equitable relief to restore his Property and prevent further harm.

63. This Court's intervention is critical to remedy these violations and protect Plaintiff's rights.

64. Plaintiff's bankruptcy schedules (Dkt. 11, Ex. 5) accurately reflect the Property's value and disputed liens.

65. The 2017 lien's enforcement violated Plaintiff's Fourth and Fifth Amendment rights.

66. Citibank's failure to file a proof of claim (¶ 109) negates their lien's validity.

67. The 2017 judgment's fraud is detailed in state court filings (Case 22A426, Ex. 11).

68. Plaintiff's QWRs (Exs. 21, 24) demanded proof of Citibank's debt, unanswered.

69. The foreclosure sale's proceeds were not distributed to the estate, harming creditors.

70. Naylor's inaction violated Local Bankruptcy Rule 4001-1 (Dkt. 15).

71. Plaintiff's adversary proceeding (Adv. No. 8:23-ap-01075-SC) was dismissed without a hearing, violating FRBP 7001.

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72. The district court's denial (Ex. 21) ignored Plaintiff's due process evidence.

**STANDING**

85. **First Cause (Discharge Injunction Violation, 11 U.S.C. § 524(a)(2))**: Plaintiff has standing to challenge Citizens' violation of the discharge injunction, as he suffered an injury-in-fact (~$815,241.50 equity loss, $216,000 in time, ¶ 76) caused by Citizens' bad faith foreclosure exploiting the discharged 2017 judgment (¶ 75), redressable by voiding the sale and awarding damages (Prayer D, *In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009).

86. **Second Cause (Unauthorized Transfer, 11 U.S.C. § 549)**: Plaintiff has standing to seek avoidance of the unauthorized foreclosure transfer, as the injury (~$815,241.50 equity loss, ¶ 80) was caused by Citizens, Trustee Corps, and Hou's actions without court approval (¶ 80), redressable by recovering the Property or its value under § 550 (Prayer B, *In re Gould*, 401 B.R. 415, 426, 9th Cir. BAP 2009).

87. **Third Cause (Wrongful Foreclosure, 11 U.S.C. § 522(h))**: Plaintiff has standing under § 522(h) to avoid the wrongful foreclosure, as the involuntary transfer caused ~$815,241.50 in equity loss and harmed his $600,000 homestead exemption (¶ 85–88), traceable to Defendants' conspiracy (¶ 85), and redressable by voiding the sale and damages (Prayer A, *In re Gebhart*, 621 F.3d 1206, 1210, 9th Cir. 2010).

88. **Fourth Cause (Misuse of Stay Relief, 11 U.S.C. § 105(a))**: Plaintiff has standing to seek equitable relief for Citizens' misuse of the stay relief order, as the injury (~$815,241.50 equity loss, ¶ 91) was caused by Citizens' bad faith foreclosure (¶ 90), redressable by voiding the sale and sanctions (Prayer E, *Marbury v. Madison*, 5 U.S. 137, 177, 1803).

89. **Fifth Cause (Unconstitutionality of Cal. Civ. Code § 2924)**: Plaintiff has standing to challenge § 2924's unconstitutional application, as Defendants' actions caused ~$815,241.50 in equity loss and constitutional violations (¶ 95–96), redressable by declaring § 2924 unconstitutional and voiding the sale (Prayer O, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 1992).

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90. **Sixth Cause (Trustee Negligence, 11 U.S.C. § 105(a))**: Plaintiff has standing to pursue Naylor's gross negligence, as her inaction caused ~$815,241.50 in estate loss and harmed his $600,000 exemption (¶ 101–102), redressable by damages and surcharge (Prayer P, *In re Harris*, 590 F.3d 730, 742, 9th Cir. 2009).

91. **Seventh Cause (Citibank Lien Validity, 11 U.S.C. § 506(a), § 522(f))**: Plaintiff has standing under § 522(h) to challenge Citibank's lien, as its fraudulent claim threatens his $600,000 exemption and estate surplus (~$943,782.76, ¶ 110–111), redressable by invalidating the lien (Prayer S, *In re Reed*, 940 F.2d 1317, 1321, 9th Cir. 1991).

92. **Eighth Cause (Citibank Stay Violation, 11 U.S.C. § 362(k))**: Plaintiff has standing to seek damages for Citibank's stay violation, as its post-petition actions caused ~$216,000 in expenses and distress (¶ 116), redressable by § 362(k) damages and sanctions (Prayer T, *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004).

93. **Ninth Cause (Hou/Paloci Stay Violation, 11 U.S.C. § 362(k))**: Plaintiff has standing to challenge Hou, Paloci, and Paloci III, P.A.'s stay violation, as their UD action caused ~$216,000 in expenses, $5,000 in moving costs, $200,000 in tax base loss, and distress (¶ 129), traceable to their conspiracy with Citizens (¶ 128), and redressable by § 362(k) damages (Prayer U, *In re Kuehn*).

**FIRST CAUSE OF ACTION: Violation of Discharge Injunction (11 U.S.C. § 524(a)(2), Against Citizens)**

73. Plaintiff incorporates paragraphs 1–72 as if fully set forth herein.

74. The 2017 judgment, discharged on March 27, 2023 (Dkt. 32, Ex. 6) and its lien avoided on June 22, 2023 (Dkt. 90), remained unadjudicated due to a continued chain of denial of judicial proceedings, directly and proximately causing Plaintiff's insolvency (Ex. 11, pp. 14–15). This denial included multiple court rejections of Plaintiff's attempts to challenge the void judgment, as detailed in ¶ 36, as void judgments require no time limit for challenge (*People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004). Citizens knew through notices (Dkt. 102, 103; Ex. 7, pp. 43, 49–50; Motion for

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Withdrawal of Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22) that adjudication was required, yet proceeded with default, exacerbating the harm. Citizens' bad faith, breach of Cal. Civ. Code § 1708, and unconstitutional § 2924 conspiracy (¶ 77) were not authorized by the stay relief order, enabled by the court's reckless disregard (Dkt. 15; Case 22A426, pp. 4–47).

75. Citizens' July 10, 2024, default declaration (Ex. 3, pp. 13–15) used the void 2017 judgment, which caused Plaintiff's insolvency, as the basis for declaring default, violating § 524(a)(2) by indirectly enforcing a discharged debt (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). The ~$815,241.50 equity loss assumes Citibank's $457,693.71 lien is invalid, as Plaintiff alleges it was fraudulent and discharged in bankruptcy (Dkt. 32, Ex. 6). Citizens' actions constituted willful contempt of the discharge order (Dkt. 32), as they knowingly violated § 524(a)(2) with no fair ground to believe their default declaration was lawful, given Plaintiff's notices of the 2017 judgment lien's avoidance (Dkt. 90) and fraud (Dkt. 102, 103; Exs. 7, 21–22, *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 2019), warranting punitive damages (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008).

76. Plaintiff suffered damages, including ~$815,241.50 in equity loss and $216,000 in time defending (¶ 29).

77. Plaintiff seeks an order voiding the sale, damages, and sanctions under § 524(a)(2).

78. Alternatively, Plaintiff seeks contempt sanctions under 11 U.S.C. § 105(a).

86. The 2017 judgment, discharged on March 27, 2023 (Dkt. 32, Ex. 6), with its lien avoided on June 22, 2023 (Dkt. 90), remained unadjudicated due to the systemic denial of judicial proceedings outlined in the Judicial Procedural History (¶ 36–47). These denials directly caused Plaintiff's insolvency, as void judgments require no time limit for challenge (*People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004). Citizens was notified of the judgment's fraud through multiple filings, including bankruptcy declarations (Dkt. 102, 103), a February 2, 2024, email (Ex. 7, pp. 43, 49–50), the Motion for Withdrawal of Reference (Case No. 8:23-cv-00711-PA, Ex. 21), and the Ex Parte Application for Temporary Restraining Order (Case No. 8:24-cv-02509-AB-JC, Ex. 22), rendering their foreclosure a willful violation with no fair ground of doubt (*Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 2019).

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87.1 The 2017 judgment's fraud, void for lack of prosecutorial authority and jurisdictional defects (¶ 24, *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004), caused Plaintiff's license suspension (¶ 26), denial of judicial remedy across state and federal courts (¶ 36–47), and insolvency (¶ 48), which were the proximate cause of the default exploited by Citizens' foreclosure (¶ 75), violating § 524(a)(2) by indirectly enforcing a discharged debt (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). Citizens' foreclosure, relying on the void judgment's illegal effects (¶ 24, 48), is unenforceable, as courts will not aid claims founded on illegal acts (*Asher v. Johnson*, 26 Cal.App.2d 403, 79 P.2d 457, 1938; *Lee On v. Long*, 37 Cal.2d 499, 234 P.2d 9, 1951; *Nathan v. Tenna Corp.*, 560 F.2d 761, 1977), violating public policy and bankruptcy's fresh start (*Al-Ibrahim v. Edde*, 897 F.Supp. 620, 1995; *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 1934).

88. Plaintiff suffered damages, including ~$815,241.50 in equity loss and $216,000 in time defending against the foreclosure (¶ 57–58), proximately caused by Citizens' willful violation of the discharge injunction through reliance on the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004). These harms, exacerbated by Citizens' knowledge of the fraud and discharge (¶ 86), warrant compensatory and punitive damages for egregious conduct (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008).

**SECOND CAUSE OF ACTION: Avoidance of Unauthorized Post-Petition Transfer (11 U.S.C. § 549, Against Citizens, Trustee Corps, Hou)**

79. Plaintiff incorporates paragraphs 1–78 as if fully set forth herein.

80. The sale on November 18, 2024, was an unauthorized post-petition transfer of estate property under § 549(a), executed without court approval, as the Property remained in the estate until abandonment on December 31, 2024 (Dkt. 112, Dkt. 11, Ex. 5). The stay relief order (Dkt. 45), granted solely under § 362(d)(2), was invalidly granted, as the court violated its mandatory constitutional duty to ensure Plaintiff's due process by ignoring evidence of substantial equity ($592,946.29, Dkt. 15, ¶ 18) and the void 2017 judgment's fraudulent effects, which caused Plaintiff's alleged default and bankruptcy (¶ 48–49; Dkt. 15; Ex. 11, pp. 38–40). Despite notice of Plaintiff's exhaustion of state court remedies and their fraudulent denials (Case 22A426, pp. 4–12; ¶ 36–47; Motion for Withdrawal of

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Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22), the court, acting as a 'gatekeeper,' directed Plaintiff to seek an injunction in state court during the March 1, 2023, hearing to stop Citizens' attempts to obtain relief from the stay to commence foreclosure proceedings, breaching its duty to examine evidence (*In re Gould*, 401 B.R. 415, 426, 9th Cir. BAP 2009) and provide a remedy (*Marbury v. Madison*, 5 U.S. 137, 177, 1803). This failure, part of a systemic denial of judicial remedy that forced Plaintiff into bankruptcy to seek a fresh start and emergency stay, constituted reckless disregard and fraud on the court, invalidating the order (Ex. 11, pp. 28–30). Even if valid, the order did not authorize Citizens' unconstitutional and illegal acts—bad faith foreclosure, breach of Cal. Civ. Code § 1708 duties, and conspiracy to use Cal. Civ. Code § 2924 to violate constitutional protections (¶ 77)—as these are not 'in accordance with applicable nonbankruptcy law,' rendering the sale unauthorized (Ex. 3, pp. 37–42; Ex. 22). Trustee Corps exacerbated the unauthorized transfer by refusing to provide bidder information or disclose litigation affecting the Property's title (Ex. 4, p. 24), further undermining the sale's legitimacy.

81. The Property was part of the bankruptcy estate (Dkt. 11, Ex. 5), and the sale diminished Plaintiff's exemption (¶ 28).

82. Plaintiff seeks to avoid the transfer and recover the Property or its value ($1,142,000) under § 550.

83. Defendants' actions were willful, warranting damages and costs.

**THIRD CAUSE OF ACTION: Wrongful Foreclosure (11 U.S.C. § 522(h), Against Citizens, Trustee Corps, Hou, Paloci, Paloci III, P.A., Murillo, Sergeant X, CHP Officer Doe 1, CHP Officer Doe 2)**

84. Plaintiff incorporates paragraphs 1–83 as if fully set forth herein.

85. The sale was wrongful, relying on a void judgment (¶ 21), executed at a grossly inadequate price ($371,688 vs. $1,142,000, ¶ 41), and tainted by fraud (Ex. 3, pp. 37–42; Ex. 7). Defendants Citizens and Trustee Corps conspired pre-sale to commit wrongful foreclosure by agreeing to execute the November 18, 2024, sale, despite notice of the

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2017 judgment's fraud and discharge (Ex. 3, pp. 37–42; Ex. 7, pp. 43, 49–50; Ex. 22). Defendants Hou, Paloci, Paloci III, P.A., Murillo, Sergeant X, CHP Officer Doe 1, and CHP Officer Doe 2 aided and abetted the conspiracy post-sale by: Hou and Paloci pursuing the unlawful detainer action after notice on February 4–17, 2025 (Ex. 4, pp. 9–10, 27–47); Murillo and Sergeant X refusing to fully, fairly, impartially, and independently investigate Plaintiff's complaints of the judgment's fraud and refusing to intervene to stop the ongoing crimes/deprivations of rights, instead serving the eviction notice on March 27, 2025, despite notice of the sale's invalidity (Ex. 9–10); and CHP Officer Doe 1 and Doe 2 refusing to fully, fairly, impartially, and independently investigate Plaintiff's fraud complaints and refusing to intervene to stop the ongoing crimes/deprivations of rights (Case 22A426, pp. 50–51, Ex. D, pp. 4905–5010), furthering the wrongful foreclosure's harm to the estate and Plaintiff's exemption (Ex. 11, pp. 28–30, *In re Gebhart*, 621 F.3d 1206, 1210, 9th Cir. 2010). Citizens' bad faith, breach of Cal. Civ. Code § 1708, and § 2924 conspiracy violated applicable nonbankruptcy law, unauthorized by the stay relief order and enabled by the court's due process failure (Dkt. 15). Plaintiff's emotional distress includes panic attacks, severe depression, and physical symptoms, as detailed in his bankruptcy declarations (Ex. 5).

86. Plaintiff has standing under § 522(h) to avoid the transfer, as it was involuntary and the Property was exempt (¶ 35).

87. Plaintiff seeks to void the sale, cancel the Trustee's Deed, and recover the Property.

88. Damages include ~$815,241.50 in equity loss, $216,000 in time, and emotional distress (¶ 29). Hou and Paloci's unlawful detainer action (Ex. 4, pp. 27–47) and refusal of surplus funds (Ex. 4, p. 19), Murillo and Sergeant X's eviction notice service (Ex. 9–10), and CHP Officer Doe 1 and Doe 2's refusal to investigate and intervene (Case 22A426, pp. 50–51), furthered the conspiracy, contributing to these damages.

**FOURTH CAUSE OF ACTION: Equitable Relief for Misuse of Stay Relief Order (11 U.S.C. § 105(a), Against Citizens)**

89. Plaintiff incorporates paragraphs 1–88 as if fully set forth herein.

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90. Citizens misused the stay relief order (Dkt. 45) by foreclosing despite notice of the judgment's fraud (Ex. 3, pp. 37–42; Ex. 7). Citizens deliberately chose non-judicial foreclosure, avoiding judicial scrutiny that could have addressed the judgment's fraud (Ex. 3, pp. 37–42). By proceeding with a non-judicial foreclosure without judicial oversight, Citizens' actions, enabled by Cal. Civ. Code § 2924, functioned as a state-sanctioned punishment akin to a bill of pains and penalties, targeting Plaintiff for insolvency caused by the void 2017 judgment and denying Plaintiff due process to contest the sale's validity (Ex. 11, pp. 28–30, 38–40). Citizens' misuse involved bad faith, Cal. Civ. Code § 1708 breaches, and § 2924 conspiracy, unauthorized by the stay relief order's 'applicable nonbankruptcy law' requirement, enabled by the court's due process failure (Dkt. 15). Citizens received multiple notices of the fraud, including bankruptcy declarations (Dkt. 102, 103) and emails (Ex. 7, pp. 43, 49–50), yet proceeded with the sale.

91. This misuse caused irreparable harm, including equity loss and ongoing UD litigation (¶ 31).

92. Plaintiff seeks equitable relief to void the sale, impose sanctions, and prevent further harm.

93. The Court's inherent powers under § 105(a) support this relief.

**FIFTH CAUSE OF ACTION: Declaratory Relief for Unconstitutionality of Cal. Civ. Code § 2924 (As Applied, Against Citizens, Trustee Corps, Hou, Paloci, Paloci III, P.A., Citibank, NewRez, Murillo, Sergeant X, CHP Officer Doe 1, CHP Officer Doe 2)**

94. Plaintiff incorporates paragraphs 1–93 as if fully set forth herein.

95. California Civil Code § 2924, as applied by Defendants Citizens Bank N.A., MTC Financial Inc. d/b/a Trustee Corps, Canjian Hou, Henry D. Paloci, Henry D. Paloci III, P.A., Citibank N.A., NewRez LLC, Deputy Murillo, Sergeant X, CHP Officer Doe 1, and CHP Officer Doe 2 to the November 18, 2024, foreclosure sale of Plaintiff's Property (818 Spirit, Costa Mesa, CA), is unconstitutional under Cal. Const. Art. I, §§ 1, 7, 19, and U.S. Const. Amends. V, XIV, as it facilitated an unauthorized transfer of Plaintiff's home equity—a protected property interest—without due process or just compensation. Trustee Corps

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withheld litigation details from bidders (Ex. 4, p. 24), and Hou refused to return surplus funds despite notice (Ex. 4, p. 19), exploiting § 2924's lack of safeguards. Section 2924's omission of appraisal or fair market value requirements enabled the sale at ~32.5% of value, exacerbating the unconstitutional taking. Section 2924's failure to require promissory note recording facilitated fraud, as Defendants concealed title defects (Ex. 3, pp. 13–23).

96. The Property, valued at approximately $1,142,000, was sold for $371,688, resulting in a loss of ~$815,241.50 in equity (¶ 29), transferred to Defendant Hou without compensation, constituting a taking in violation of Cal. Const. Art. I, § 19 and U.S. Const. Amend. V (*Tyler v. Hennepin County*, 143 S. Ct. 1369, 1377, 2023). Section 2924's failure to mandate fair market value sales or require appraisals enabled this equity theft, violating Plaintiff's inalienable right to acquire, possess, and protect property (Cal. Const. Art. I, § 1).

97. Defendants' reliance on § 2924's non-judicial process, exploiting a void 2017 judgment (¶ 21), denied Plaintiff a pre-deprivation hearing to contest the sale's validity, violating due process under Cal. Const. Art. I, § 7 and U.S. Const. Amend. XIV (*Mathews v. Eldridge*, 424 U.S. 319, 335, 1976). Citizens and Trustee Corps proceeded despite notice of the judgment's fraud (Ex. 3, pp. 37–42; Ex. 7; Ex. 22). Hou, Paloci, Paloci III, P.A., Murillo, Sergeant X, CHP Officer Doe 1, and CHP Officer Doe 2 aided and abetted the conspiracy to violate Plaintiff's due process and takings rights by: Hou and Paloci pursuing the UD action after notice on February 4–17, 2025 (Ex. 4, pp. 9–10, 27–47); Murillo and Sergeant X refusing to fully, fairly, impartially, and independently investigate Plaintiff's complaints of the judgment's fraud and refusing to intervene to stop the ongoing crimes/deprivations of rights, instead serving the eviction notice on March 27, 2025, despite notice (Ex. 9–10); and CHP Officer Doe 1 and Doe 2 refusing to fully, fairly, impartially, and independently investigate Plaintiff's fraud complaints and refusing to intervene to stop the ongoing crimes/deprivations of rights (Case 22A426, pp. 50–51, Ex. D, pp. 4905–5010), contributing to the unconstitutional taking and punishment akin to a bill of pains and penalties (Ex. 11, pp. 38–40). By enabling the foreclosure without judicial oversight and without consideration for Plaintiff's equity interest, § 2924 operated as a state-sanctioned punishment, akin to a bill of pains and penalties, targeting Plaintiff for insolvency caused by the void 2017 judgment's fraud, denying due process and effecting an unconstitutional taking (Ex. 11, pp. 28–30, 38–40). Citizens' bad faith and Cal. Civ. Code § 1708 breaches via § 2924 were unauthorized by the stay relief order, exacerbated by the court's due process denial (Dkt. 15; Case 22A426, pp. 37–52).

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98. Section 2924 constitutes state action, as it delegates coercive power to private parties to foreclose without judicial oversight, implicating constitutional protections (*Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937, 1982; *Shelley v. Kraemer*, 334 U.S. 1, 20, 1948). The sale's gross inadequacy (~32.5% of market value, ¶ 41) and lack of procedural safeguards caused an erroneous deprivation of Plaintiff's property interest.

99. Plaintiff seeks declaratory relief that § 2924, as applied to the foreclosure sale, is unconstitutional, and an order voiding the sale and Trustee's Deed Upon Sale (Instrument No. 2025000040781, Ex. 3, pp. 16–23) as products of an unconstitutional process, restoring the Property to the bankruptcy estate.

**SIXTH CAUSE OF ACTION: Gross Negligence and Breach of Fiduciary Duty (11 U.S.C. § 105(a), Against Trustee Karen S. Naylor and Surety Doe)**

100. Plaintiff incorporates paragraphs 1–99 as if fully set forth herein.

101. Trustee Karen S. Naylor's gross negligence and breach of fiduciary duty, evidenced by a pattern of inaction on the void 2017 judgment, Citizens' foreclosure, and Citibank's disputed lien, harmed the bankruptcy estate and Plaintiff's $600,000 homestead exemption (*In re Harris*, 590 F.3d 730, 742, 9th Cir. 2009). Her failure to investigate or challenge these issues, despite notice (Dkt. 15, Case 22A426, LBR 4001-1; Motion for Withdrawal of Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22), and declaration of no assets (Dkt. 72, May 19, 2023), enabled the non-judicial foreclosure sale (November 18, 2024, ¶ 30) after the court inconsistently granted Citizens' motion for relief while denying Citibank's (Dkt. 44, ¶ 111), despite similar fraud concerns (Dkt. 15, ¶ 28; Dkt. 58, ¶ 77). This resulted in the theft of ~$815,241.50 in equity and denial of Plaintiff's exemption, undermining his fresh start (*Slaieh v. Simon*, 584 B.R. 28, 40, C.D. Cal. 2018). The court's erroneous dismissal and reconsideration denial (Adv. No. 8:23-ap-01075-SC, Docs. 19, 27), which relied on Naylor's control over estate claims without addressing her inaction, exacerbated this harm. Naylor's failure to oppose Citizens' motion—despite notice of equity ($556,549.54, Dkt. 15, ¶ 18), unproven default (Dkt. 15, ¶ 28), and the fraudulent 2017 lien (Case 22A426, pp. 4–47)—or investigate allowed a sale that destroyed ~$647,909.54 in estate value ($1,142,000 − $494,090.46 in valid liens, Dkt. 15, ¶ 18), contrary to her duty to maximize assets (*In re Gunnison Center Apartments, LP*, 320 B.R. 391, 397, Bankr. D. Colo. 2005).

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102. Surety Doe, as Naylor's bondholder under 11 U.S.C. § 322(b), is liable for losses caused by Naylor's gross negligence (*In re AFI Holding, Inc.*, 525 F.3d 700, 703, 8th Cir. 2008). Damages include ~$815,241.50 in estate value loss and ~$600,000 in exemption loss.

103. Plaintiff seeks damages, surcharge against Naylor, recovery from the bond, and equitable relief under § 105(a).

**SEVENTH CAUSE OF ACTION: Determination of Validity and Secured Status of Alleged Citibank Lien (11 U.S.C. § 506(a), § 522(f), Against Citibank N.A.)**

104. Plaintiff incorporates paragraphs 1–103 as if fully set forth herein.

105. On December 8, 2022, Plaintiff filed for Chapter 7 bankruptcy (Case No. 8:22-BK-12076-SC, Dkt. 1), scheduling Citibank N.A.'s alleged first mortgage lien of $457,693.71 on the Property (818 Spirit, Costa Mesa, CA) as secured (Dkt. 11, Ex. 5). On February 15, 2023, Plaintiff amended his schedules, listing the lien as disputed and unsecured due to evidence of fraud (Dkt. 18; Dkt. 15, ¶ 2; Case 22A426, pp. 14–15).

106. On April 19, 2023, Citibank, through its alleged agent NewRez LLC, filed a Motion for Relief from Stay (Dkt. 44), claiming a $502,238.46 lien based on a July 5, 2005, promissory note ($595,000, First Horizon) and an undated, unattached allonge lacking proof of agency authority (Adv. No. 8:23-ap-01075-SC, Ex. 15, pp. 14–17; Dkt. 58, Ex. 1, p. 4). Plaintiff opposed, alleging fraud and lack of standing (Dkt. 58, ¶ 8–54), and the court denied Citibank's motion, recognizing deficiencies in its claim, unlike its granting of Citizens' motion, which enabled the foreclosure sale (¶ 111). Citibank was notified of these issues through Plaintiff's Motion for Withdrawal of Reference (Case No. 8:23-cv-00711-PA, Ex. 21) and Ex Parte Application for Temporary Restraining Order (Case No. 8:24-cv-02509-AB-JC, Ex. 22).

107. On July 14, 2023, Plaintiff filed an adversary proceeding (Adv. No. 8:23-ap-01075-SC, Doc 1) to determine the validity and enforceability of Citibank's lien, prompted by Citibank's foreclosure attempts (Notice of Default, July 7, 2022; Dkt. 58, ¶ 9) and systemic

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denial of state court remedies, which provided no forum to adjudicate Citibank's claim due to fraudulent denials and jurisdictional defects, forcing Plaintiff into bankruptcy (¶ 36–47, Case 22A426, pp. 4–12; Dkt. 58, ¶ 1).

108. Plaintiff denies the note's validity, signatures, and transfers, alleging Citibank is not a holder/beneficiary (CCC §§ 3309, 9312(b), 9313, 9314) and engaged in fraudulent acts (CCC § 3202(b)). Citibank failed to produce the original note or account statements despite Qualified Written Requests (Adv. No. 8:23-ap-01075-SC, Exs. 20, 24; Dkt. 58, Ex. 6, pp. 1–8), and no proof of claim was filed (Adv. No. 8:23-ap-01075-SC, ¶ 22). Under CCC § 3308(a), Plaintiff is not obligated to pay absent proof of debt, negating default (Dkt. 58, ¶ 49–54). The note, if valid, was discharged on March 27, 2023 (Dkt. 32, Ex. 6). Citibank and NewRez filed fraudulent documents (Notice of Default, Substitution of Trustee, Corporate Assignment of Deed of Trust, Adv. No. 8:23-ap-01075-SC, Exs. 11–13; Dkt. 58, Ex. 1, pp. 22–26), violating Cal. Penal Code §§ 470, 487, 182 (Adv. No. 8:23-ap-01075-SC, ¶ 36–37; Dkt. 58, ¶ 77). The allonge's appearance in Dkt. 44, absent in prior QWRs (Ex. 20; Dkt. 58, Ex. 6), and contradicted by Mr. Cooper's note claim (Dkt. 58, Ex. 3, p. 11, March 20, 2023), evidences fraud. The assignments are nullities without note transfer (Cal. Civ. Code § 1084; *Carpenter v. Longan*, 83 U.S. 271, 274, 1872), lack agent authority (Dkt. 58, ¶ 73–76, Cal. Code Civ. Proc. § 1971), and contain redactions (Dkt. 58, ¶ 19). Citibank lacks standing (CCC §§ 3501(b)(2), 9203, 3301; Dkt. 58, ¶ 8–15).

109. The court's dismissal of the adversary for lack of standing (Doc 19, August 31, 2023), followed by denial of reconsideration (Doc 27, October 13, 2023), was erroneous and part of a systemic denial of due process (¶ 36–47, Case 22A426, pp. 4–12; Dkt. 58, ¶ 54, 80). The court noted it would abstain to state court if standing existed (Doc 19, p. 4, n.4) but dismissed without addressing Plaintiff's fraud evidence (Doc 16, Dkt. 58, Exs. 1–6) or holding hearings (Docs. 19, 27), violating FRBP 7001. The district court's denial of Plaintiff's Motion for Withdrawal of Reference (Case No. 8:23-cv-00711-PA, Ex. 21) and inaction on his Ex Parte Application for Temporary Restraining Order (Case No. 8:24-cv-02509-AB-JC, Ex. 22) furthered these denials. Plaintiff has standing under § 522(h), as his $600,000 homestead exemption (Dkt. 11, Cal. Code Civ. Proc. § 704.730), unopposed by March 15, 2023, revested in him under § 522(l) (*In re Reed*, 940 F.2d 1317, 1321, 9th Cir. 1991), covering the $457,693.71 lien (*Miller v. Huntington Nat. Bank*, 2013 WL 593780, N.D. W. Va. 2013). Plaintiff scheduled a $50,000,000 claim including Citibank (Dkt. 11, Case 22A426, Adv. No. 8:23-ap-01075-SC, ¶ 2), countering the court's "unscheduled" finding (Doc 27, p. 5, n.4). Referral to state court, known to deny remedy

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due to conflicts and jurisdictional defects (¶ 36–47, Dkt. 58, ¶ 1), would violate judicial redress (*Marbury v. Madison*, 5 U.S. 137, 163, 1803).

110. Trustee Naylor's failure to pursue the Citibank claim or challenge the fraudulent 2017 judgment, despite notice (Dkt. 15, Case 22A426, LBR 4001-1; Motion for Withdrawal of Reference, Case No. 8:23-cv-00711-PA, Ex. 21; Ex Parte Application, Case No. 8:24-cv-02509-AB-JC, Ex. 22), and declaration of no assets (Dkt. 72, May 19, 2023), breached her fiduciary duty (*Slaieh v. Simon*, 584 B.R. 28, 40, C.D. Cal. 2018). This inaction, unaddressed by the court's dismissal (Docs. 19, 27), enabled the non-judicial foreclosure sale (November 18, 2024, ¶ 30) by Citizens, whose motion for relief was granted despite similar fraud concerns, unlike Citibank's denied motion (Dkt. 44), resulting in the theft of ~$815,241.50 in equity, denial of Plaintiff's $600,000 homestead exemption, and loss of his fresh start by preventing a surplus (~$943,782.76, ¶ 101).

111. If invalid, the lien would yield ~$457,693.71 in equity, creating a ~$943,782.76 surplus for Plaintiff's exemption or the estate (*In re Andrews*, 80 F.3d 558, 561, 1st Cir. 1996).

112. Plaintiff seeks a determination under § 506(a) that Citibank's alleged lien is unsecured or invalid, avoidance under § 522(f) to the extent it impairs his exemption, a declaratory judgment that Citibank has no valid lien, and an order striking fraudulent documents (Exs. 11–13) from the Orange County Clerk-Recorder's records.

**EIGHTH CAUSE OF ACTION: Violation of Automatic Stay and False Claim (11 U.S.C. § 362(k), § 105(a), Against Citibank N.A.)**

113. Plaintiff incorporates paragraphs 1–112 as if fully set forth herein.

114. Citibank N.A., through its alleged agent NewRez LLC, violated the automatic stay under 11 U.S.C. § 362(a)(3) by attempting to perfect its alleged $502,238.46 lien post-petition, as detailed in ¶ 106–107. The introduction of an undated allonge in NewRez's Motion for Relief from Stay (Dkt. 44, April 19, 2023; Adv. No. 8:23-ap-01075-SC, Ex. 15, p. 17; Dkt. 58, Ex. 1, p. 4), absent in prior Qualified Written Requests (Adv. No. 8:23-ap-01075-SC, Ex. 20, March 29, 2023; Dkt. 58, Ex. 6, pp. 1–8) and contradicted by Mr.

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Cooper's claim to hold the original note (Dkt. 58, Ex. 3, p. 11, March 20, 2023), was a post-petition act to falsely establish Citibank's lien status.

115. This act constituted a willful violation of the stay, seeking to control estate property without court approval (*In re Del Mission Ltd.*, 98 F.3d 1147, 1151, 9th Cir. 1996), and a false claim misrepresenting Citibank's lien status with intent to deceive the court and estate, violating 18 U.S.C. § 152(4) (false claim), Cal. Penal Code § 115 (false filing), § 132 (offering false evidence), § 134 (preparing false evidence), § 182 (conspiracy), and FRBP 9011 (*In re Eskew*, 573 B.R. 317, 323, Bankr. N.D. Cal. 2017). The court's failure to address this fraud in its dismissal for lack of standing, despite noting hypothetical abstention (Docs. 19, p. 4, n.4; 27), furthered the conspiracy to defraud Plaintiff and the estate (¶ 107, Dkt. 58, ¶ 77).

116. The stay violation, compounded by Trustee Naylor's failure to challenge Citibank's false claim (Dkt. 72, May 19, 2023) and the court's inconsistent granting of Citizens' motion for relief despite denying Citibank's (¶ 111), caused Plaintiff injury, including legal expenses (~$216,000, ¶ 58) and emotional distress (¶ 59). This enabled the non-judicial foreclosure sale (November 18, 2024, ¶ 30), stealing ~$815,241.50 in equity and denying Plaintiff's $600,000 homestead exemption, undermining his fresh start (*In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004).

117. Plaintiff seeks damages under § 362(k), sanctions under § 105(a), and a finding that Citibank's false claim via the allonge invalidates its lien, as part of the conspiracy to deprive Plaintiff of his Property (¶ 107, Dkt. 58, ¶ 77).

**NINTH CAUSE OF ACTION: Violation of Automatic Stay (11 U.S.C. § 362(k), Against Hou, Paloci, Paloci III, P.A.)**

126. Plaintiff incorporates paragraphs 1–117 as if fully set forth herein.

127. Defendants Hou, Paloci, and Paloci III, P.A., willfully violated the automatic stay under 11 U.S.C. § 362(a)(6) by filing and pursuing an unlawful detainer action (Case No. 30-2025-01459684, February 11, 2025, ¶ 34) to collect a discharged debt tied to the 2017 judgment (discharged March 27, 2023, ¶ 86, Dkt. 32) and enforce a void foreclosure sale

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(¶ 30, 75), despite notice of Plaintiff's bankruptcy filing (Case No. 8:22-BK-12076-SC) and the judgment's fraud [Placeholder: Describe Notice Content, e.g., Ex. 4, pp. 9–10, 19; Ex. 8; Case 22A426, pp. 50–51]. Their knowledge of the discharge and fraud left no fair ground of doubt that their actions violated § 524(a)(2) and § 362(a)(6) (*Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 2019).

128. Hou, Paloci, and Paloci III, P.A., acted with knowledge of the bankruptcy, as Plaintiff provided the bankruptcy case number and fraud details [Placeholder: Notice Details], yet conspired with and aided/abetted Citizens' bad faith foreclosure, which violated the discharge injunction by exploiting the discharged judgment's effects (¶ 75, *In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). Their pursuit of the UD action and default judgment [Placeholder: UD Judgment Details] furthered this conspiracy, seeking to control estate interests and enforce a discharged debt (*In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004).

128.1 The 2017 judgment's fraud, void for lack of prosecutorial authority (¶ 24, *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660, 2004), caused Plaintiff's license suspension (¶ 26), denial of judicial remedy (¶ 36–47), and insolvency (¶ 48), which were the proximate cause of the default underlying the foreclosure enforced by Hou, Paloci, and Paloci III, P.A.'s UD action (¶ 34, 128), violating § 362(a)(6) and § 524(a)(2) by collecting a discharged debt (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009). Their UD action, relying on the void judgment's illegal effects (¶ 24, 48), is unenforceable, as courts will not aid claims founded on illegal acts (*Asher v. Johnson*, 26 Cal.App.2d 403, 79 P.2d 457, 1938; *Lee On v. Long*, 37 Cal.2d 499, 234 P.2d 9, 1951; *Nathan v. Tenna Corp.*, 560 F.2d 761, 1977; *Bassidji v. Goe*, 413 F.3d 928, 2005; *Franklin v. Mortgage Guaranty & Security Co.*, 57 F.2d 834, 1932; *Al-Ibrahim v. Edde*, 897 F.Supp. 620, 1995).

129. This willful violation caused Plaintiff damages, including ~$216,000 in time defending, $5,000 in moving expenses, $200,000 in tax base loss over 30 years, and emotional distress (¶ 57–59), proximately caused by Hou, Paloci, and Paloci III, P.A.'s UD action enforcing the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004). These harms, exacerbated by their knowledge of the fraud and discharge (¶ 127), warrant compensatory and punitive damages for egregious conduct (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008).

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130. Plaintiff seeks damages under 11 U.S.C. § 362(k), including ~$216,000 in legal expenses, $5,000 in moving expenses, $200,000 in tax base loss, and emotional distress, punitive damages for willful misconduct, sanctions under § 105(a), and a finding that the UD action and judgment are void as violations of the automatic stay.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests the following relief:

A. An order voiding the November 18, 2024, foreclosure sale and canceling the Trustee's Deed Upon Sale (Instrument No. 2025000040781).

B. Recovery of the Property (818 Spirit, Costa Mesa, CA) to the bankruptcy estate under 11 U.S.C. § 550.

C. A determination that Citizens' lien is secured only to the extent of the sale proceeds, with surplus due to Plaintiff (11 U.S.C. § 506(a)).

D. Damages for violation of the discharge injunction, including ~$815,241.50 in equity loss, $216,000 in time defending, and all harms proximately caused by the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004), and, if the sale is not voided, a determination that Citizens' lien is secured only to the extent of the debt owed ($62,523.24), with any surplus due to Plaintiff (11 U.S.C. § 524(a)(2), § 506(a)).

E. Sanctions against Citizens for misuse of the stay relief order (11 U.S.C. § 105(a)).

F. Declare the UD judgment (Case No. 30-2025-01459684) void due to Citizens' bad faith violation of 11 U.S.C. § 524, Hou, Paloci, and Paloci III, P.A.'s willful violation of 11 U.S.C. § 362(a)(6) through conspiracy and aiding/abetting, and as independent of any determination in the separate adversary proceeding challenging the 2017 judgment, with damages under § 362(k).

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G. Costs of suit and attorney fees, if applicable.

H. A professional appraisal of the Property to confirm damages, if the sale is not voided.

I. Dismissal of the unlawful detainer action (Case No. 30-2025-01459684) with prejudice.

J. An accounting of all fees and costs charged by Citizens (Ex. 3, p. 72).

K. Emotional distress damages, to be proven at trial.

L. Punitive damages for Defendants' willful misconduct (Cal. Civ. Code § 3294).

M. All other relief the Court deems just and proper.

N. An order requiring surplus funds be returned to Hou, less Plaintiff's awarded damages, within five business days.

O. Declare that Cal. Civ. Code § 2924, as applied by Defendants to the November 18, 2024, foreclosure sale, violated Plaintiff's rights under Cal. Const. Art. I, §§ 1, 7, 19, and U.S. Const. Amends. V, XIV, by enabling the transfer of ~$815,241.50 in home equity without due process or just compensation, and void the sale and Trustee's Deed as unconstitutional.

P. Surcharge Trustee Naylor for ~$815,241.50 in estate losses and ~$600,000 in exemption losses, and recover against her bond under 11 U.S.C. § 322(b).

Q. Punitive damages for Citizens' willful contempt of the discharge injunction under 11 U.S.C. § 524(a)(2).

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R. Injunctive relief to compel the court to adjudicate Plaintiff's claims regarding the 2017 judgment's effects and Citibank's lien validity, preventing further denial of judicial remedy under 11 U.S.C. § 105(a).

S. A determination that Citibank's alleged $457,693.71 lien is invalid or unsecured under 11 U.S.C. § 506(a), avoidance under § 522(f) to the extent it impairs Plaintiff's $600,000 homestead exemption, a declaratory judgment that Citibank has no valid lien, and an order striking fraudulent documents (Notice of Default, Substitution of Trustee, Corporate Assignment of Deed of Trust) from the Orange County Clerk-Recorder's records.

T. Damages under 11 U.S.C. § 362(k) for Citibank's willful violation of the automatic stay, including ~$216,000 in legal expenses and emotional distress damages, sanctions under § 105(a) for Citibank's false claim violating 18 U.S.C. § 152(4), Cal. Penal Code §§ 115, 132, 134, 182 (conspiracy), and a finding that the false allonge invalidates its alleged lien.

U. Damages under 11 U.S.C. § 362(k) for Hou, Paloci, and Paloci III, P.A.'s willful violation of the automatic stay, including ~$216,000 in legal expenses, $5,000 in moving expenses, $200,000 in tax base loss, emotional distress damages, and all harms proximately caused by the illegal 2017 judgment's effects (*In re Kuehn*, 563 F.3d 289, 292, 7th Cir. 2009; *In re Dawson*, 390 F.3d 1139, 1149, 9th Cir. 2004), punitive damages (*In re Paul*, 534 F.3d 1303, 1306, 9th Cir. 2008), and sanctions under § 105(a).

**EXHIBITS**

Ex. 1: State Court Judgment (Case No. 30-2015-00805807, Minute Order, Dkt. 193).

Ex. 2: Appellate Opinion (Case No. G055075).

Ex. 3: Mortgage Agreement, Notice of Default, Trustee's Deed, Transaction History (pp. 1–72).

Ex. 4: Unlawful Detainer Complaint, Notices to Hou/Paloci (pp. 1–47).

Ex. 5: Bankruptcy Schedules (Case No. 8:22-BK-12076-SC, Dkt. 11).

Ex. 6: Discharge Order (Case No. 8:22-BK-12076-SC, Dkt. 32).

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Ex. 7: Citizens Bank N.A. Communications (ex parte Ex. 3, pp. 37–50, including April 16, 2023, February 2, 2024, October 28, 2024 emails).

Ex. 8: Hou/Paloci Communications (ex parte Ex. 4, pp. 9–47, including February 4–17, 2025 emails and UD complaint).

Ex. 9: Eviction Notice (March 27, 2025).

Ex. 10: Audio/Video Recordings of OC Sheriff Deputy Murillo (March 27, 2025).

Ex. 11: Ex Parte Application (Case No. 30-2015-00805807, filed March 17, 2025).

Ex. 12: Citibank Adversary Complaint (Adv. No. 8:23-ap-01075-SC, Doc 1, July 14, 2023).

Ex. 13: Citibank Motion to Dismiss (Adv. No. 8:23-ap-01075-SC, Doc 6, August 11, 2023).

Ex. 14: Plaintiff's Opposition to Citibank Motion to Dismiss (Adv. No. 8:23-ap-01075-SC, Doc 16, August 28, 2023).

Ex. 15: Order Granting Citibank Motion to Dismiss (Adv. No. 8:23-ap-01075-SC, Doc 19, August 31, 2023).

Ex. 16: Plaintiff's Motion for Reconsideration (Adv. No. 8:23-ap-01075-SC, Doc 21, September 6, 2023

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# Exhibit G

CIV-100

| ATTORNEY OR PARTY WITHOUT ATTORNEY: | STATE BAR NO: 268970 | FOR COURT USE ONLY |
|---|---|---|
| NAME: Henry D Paloci III | | |
| FIRM NAME: Henry D Paloci III PA | | |
| STREET ADDRESS: PO Box 592 | | |
| CITY: Los Alamitos | STATE: CA ZIP CODE: 90720 | |
| TELEPHONE NO.: 844.398.5500 | FAX NO.: (866) 565-6345 | |
| E-MAIL ADDRESS: henry.paloci@gmail.com | | |
| ATTORNEY FOR (name): Rellion Inc. | | |

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF** Orange
STREET ADDRESS: 700 Civic Center Dr. West
MAILING ADDRESS: Same
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central

Plaintiff/Petitioner: Canjian Hou
Defendant/Respondent: Adam Bereki

**REQUEST FOR (Application)** [XX] **Entry of Default** [XX] **Clerk's Judgment** [ ] **Court Judgment**

CASE NUMBER: 30-2025-01459684-CL-UD-CJC

**Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.)**; (see form CIV-105)

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date):* February 11, 2025
   b. by *(name):* Canjian Hou
   c. [XX] Enter default of defendant *(names): ADAM BEREKI*

   d. [ ] I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names):*

   *(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)*
   e. [XX] Enter clerk's judgment
      (1) [XX] for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
      [XX] Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) [ ] under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) [ ] for default previously entered on *(date):*

2. **Judgment to be entered.**

| | Amount | Credits acknowledged | Balance |
|---|---|---|---|
| a. Demand of complaint | $ | $ | $ |
| b. Statement of damages* | | | POSSESSION ONLY |
| (1) Special | $ | $ | $ |
| (2) General | $ | $ | $ |
| c. Interest | $ | $ | $ |
| d. Costs *(see reverse)* | $ | $ | $ |
| e. Attorney fees | $ | $ | $ |
| f. **TOTALS** | $ | $ | $ |

   g. **Daily damages** were demanded in complaint at the rate of: $ per day beginning *(date):*
   *(* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*
3. [XX] *(Check if filed in an unlawful detainer case.)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4).*

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

***FOR COURT USE ONLY***
(1) [ ] Default entered as requested on *(date):*
(2) [ ] Default NOT entered as requested *(state reason):*

Clerk, by _____, Deputy



Form Adopted for Mandatory Use
Judicial Council of California
CIV-100 [Rev. January 1, 2023]

**REQUEST FOR ENTRY OF DEFAULT**
**(Application to Enter Default)**

Code of Civil Procedure, §§ 585–587, 1169
www.courts.ca.gov

**0926**

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |
|---|---|

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant [ ] did [XX] did **not** for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state:
   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date):*

5. [XX] **Declaration under Code Civ. Proc., § 585.5** *(for entry of default under Code Civ. Proc., § 585(a)).* This action
   a. [ ] is [XX] is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
   b. [ ] is [XX] is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
   c. [ ] is [XX] is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
   a. [ ] **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names):*
   b. [x] **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date):* 3/17/2025
      (2) To *(specify names and addresses shown on the envelopes):*
      Adam Bereki
      818 Spirit
      Costa Mesa, CA 92626

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested).* Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
   a. Clerk's filing fees ..... $
   b. Process server's fees ..... $
   c. Other *(specify):* $
   d. $
   e. **TOTAL** ..... $
   f. [ ] Costs and disbursements are waived.
   g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

money judgment not requested at this time
(possession only)

I declare under penalty of perjury under the laws of the State of California that the foregoing item 7 is true and correct.

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |
|---|---|

8. **Declaration of nonmilitary status** *(required for a judgment)*.
No defendant/respondent named in item 1c is in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that no defendant/respondent named in item 1c is in the U.S. military service because *(check all that apply)*:

a. ☐ the search results that I received from *https://scra.dmdc.osd.mil/* say the defendant/respondent is not in the U.S. military service.
b. ☐ I am in regular communication with the defendant/respondent and know that they are not in the U.S. military service.
c. ☐ I recently contacted the defendant/respondent, and they told me that they are not in the U.S. military service.
d. ☐ I know that the defendant/respondent was discharged from U.S. military service on or about *(date)*:
e. ☐ the defendant/respondent is not eligible to serve in the U.S. military because they are:
☐ incarcerated ☐ a business entity
f. ☒ other *(specify)*:

Undersigned counsel has discussed the case with Mr. Bereki (the one defendant) and is given to understand that Mr. Bereki lives at the property that is the subject of this action. Plaintiff is not in privity with Defendant and as such does not have his SSN or DOB which makes a search on the military database impossible. Given the circumstances, undersigned counsel infers that Mr. Bereki is not active military.

**Note**

- U.S. military status can be checked online at *https://scra.dmdc.osd.mil/*.
- If the defendant/respondent is in the military service, or their military status is unknown, the defendant/respondent is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see *https://selfhelp.courts.ca.gov/military-defaults*.

I declare under penalty of perjury under the laws of the State of California that the foregoing item 8 is true and correct.

Date: 3/17/2025

Henry Paloci
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Rebecca
1940 W. Rosti 117
Orange Ca 92865

SANTA ANA CA 926
17 MAR 2025

FOREVER

FOLD HERE

Keep Safety in View as We Drive Into Year

Ada Bendana
810 Spirit
Costa Mesa, Ca 92626

92626-306918

0930

# Exhibit H

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/18/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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: 74512542,124753793

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other For Emergency Stay of Unlawful Detainer Action, 03/14/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

---

Hearing held, all participants appearing remotely.

Ex-Parte application for Emergency Stay of Unlawful Detainer Action is requested by defendant Adam Bereki.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Ex Parte Application is denied by the Court.

The Court will not treat the Ex Parte Application as a new Complaint or an Answer to the Complaint for Case No. 30-2025-01459684. Defendant must file the Answer in the proper case (Case No. 30-2025-01459684) and not in this matter. Any new lawsuits must be filed as a new Complaint.

# Exhibit I

~~MARRIED~~

| TO (Name and Address): | LEVYING OFFICER (Name and Address): |
|---|---|
| OCCUPANT<br>818 Spirit<br>Costa Mesa, CA 92626<br><br>EMAIL: | Orange County Sheriff's Department<br>4601 Jamboree Rd, Room 108<br>Newport Beach, CA 92660<br><br>(949) 476-4820<br>Fax: (949) 476-4980 |
| NAME OF COURT, JUDICIAL DISTRICT or BRANCH COURT, IF ANY:<br>Orange County Superior Court<br>700 W Civic Center Drive<br>Santa Ana, CA 92701 | California Relay Service Number<br>(800) 735-2929 TDD or 711 |
| PLAINTIFF:<br>Canjian Hou<br>DEFENDANT:<br>Adam Bereki | COURT CASE NO:<br>30-2025-01459684-CL-UD-CJC |
| **Notice to Vacate** | LEVYING OFFICER FILE NO:<br>2025101506 |

DEPUTY MURILLO #10764
Came to Door
see video

By virtue of the Writ of Execution for Possession/Real Property (eviction), issued out of the above court, you are hereby ordered to vacate the premises described on the writ.

| | |
|---|---|
| **Eviction Address:** | **818 Spirit**<br>**Costa Mesa, CA 92626** |
| **Final notice is hereby given that possession of the property must be turned over to the landlord on or before:** | **Wednesday, April 2, 2025 06:01 am** |

Should you fail to vacate the premises within the allotted time, I will immediately enforce the writ by removing you from the premises. All personal property upon the premises at the time will be turned over to the landlord, who must return said personal property to you upon your payment of the reasonable cost incurred by the landlord in storing the property from the date of eviction to the date of payment. If the property is stored on the landlord's premises, the reasonable cost of storage is the fair rental value of the space necessary for the time of storage. If you do not pay the reasonable storage costs and take possession within fifteen (15) days, the landlord may either sell your property at a public sale and keep from the proceeds of the sale the costs of storage and of the sale (1988 CIV), or, if the property is valued at less than $700.00, the landlord may dispose of your property or retain it for his own use. (715.010(b)(3), 1174 CCP)

If you claim a right of possession of the premises that accrued prior to the commencement of this action, or if you were in possession of the premises on the date of the filing of the action and you are not named on the writ, complete and file the attached Claim of Right of Possession form with this office. No claim of right to possession can be filed if the prejudgment claim of right to possession was served as indicated on the writ unless the eviction is the result of a foreclosure.

**Don Barnes**
**Sheriff-Coroner**

By: Shannon #13088
Sheriff's Authorized Agent

**Original** **396699**

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EJ-130

| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 266970<br>NAME: Henry D Paloci III<br>FIRM NAME: Henry D Paloci III PA<br>STREET ADDRESS: PO Box 592<br>CITY: Los Alamitos STATE: CA ZIP CODE: 90720<br>TELEPHONE NO.: 844.398.5500 FAX NO.: 866.565.6345<br>EMAIL ADDRESS: henry.paloci@gmail.com<br>ATTORNEY FOR (name): Canjian Hou<br>[x] ATTORNEY FOR [x] ORIGINAL JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD | FOR COURT USE ONLY<br>Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g). |
|---|---|
| Orange County Superior Court<br>Central Justice Center<br>700 Civic Center Drive West<br>Santa Ana, CA 92701 | |
| PLAINTIFF/PETITIONER: Canjian Hou<br>DEFENDANT/RESPONDENT: Adam Bereki | CASE NUMBER: 30-2025-01459681-CL-LD-CJC |
| WRIT OF [ ] EXECUTION (Money Judgment)<br>[x] POSSESSION OF [ ] Personal Property [x] Real Property<br>[ ] SALE | [x] Limited Civil Case (including Small Claims)<br>[ ] Unlimited Civil Case (including Family and Probate) |

1. **To the Sheriff or Marshal of the County of:** Orange County
   You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
2. **To any registered process server:** You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.
3. (Name): Rellion Inc.
   is the [x] original judgment creditor [ ] assignee of record whose address is shown on this form above the court's name.
4. Judgment debtor *(name, type of legal entity if not a natural person, and last known address)*:
   Adam Bereki
   818 Spirit
   Costa Mesa, CA 92626
   [ ] Additional judgment debtors on next page
5. **Judgment entered** on *(date)*: March 18, 2025
   *(See type of judgment in item 22.)*
6. [ ] Judgment renewed on *(dates)*:
7. **Notice of sale** under this writ:
   a. [x] has not been requested.
   b. [ ] has been requested *(see next page)*.
8. [ ] Joint debtor information on next page.
9. [x] Writ of Possession/Writ of Sale information on next page.
10. [ ] This writ is issued on a sister-state judgment.

**For items 11–17, see form MC-012 and form MC-013-INFO.**

| | | |
|---|---|---|
| 11. Total judgment *(as entered or renewed)* | $ | |
| 12. Costs after judgment *(CCP 685.090)* | $ | |
| 13. Subtotal *(add 11 and 12)* | $ | |
| 14. Credits to principal *(after credit to interest)* | $ | |
| 15. Principal remaining due *(subtract 14 from 13)* | $ | |
| 16. Accrued interest remaining due per CCP 685.050(b) *(not on GC 6103.5 fees)* | $ | |
| 17. Fee for issuance of writ *(per GC 70626(a)(4))* | $ | 40.00 |
| 18. **Total** amount due *(add 15, 16, and 17)* | $ | 40.00 |

19. **Levying officer:**
    a. Add daily interest from date of writ *(at the legal rate on 15) (not on GC 6103.5 fees)* . . . . . $
    b. Pay directly to court costs included in 11 and 17 *(GC 6103.5, 68637; CCP 699.520(j))* . . . . . $
20. [ ] The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

[SEAL]

David H. Yamasaki, Clerk of the Court

Date: 03/22/2025 Clerk, by Richard Clark, Deputy

Richard Clark

**NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.**



Form Approved for Optional Use
Judicial Council of California
EJ-130 [Rev. September 1, 2020]

**WRIT OF EXECUTION**

Code of Civil Procedure, §§ 699.520, 712.010, 715.010
Government Code, § 6103.5
www.courts.ca.gov

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bereki | CASE NUMBER: 30-2025-01459684-CL-UD-CJC |
|---|---|

21. ☐ Additional judgment debtor(s) *(name, type of legal entity if not a natural person, and last known address):*

22. The judgment is for *(check one):*
   a. ☐ wages owed.
   b. ☐ child support or spousal support.
   c. ☒ other.

23. ☐ Notice of sale has been requested by *(name and address):*

24. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)
   a. *on (date):*
   b. name, type of legal entity if not a natural person, and last known address of joint debtor:

   a. *on (date):*
   b. name, type of legal entity if not a natural person, and last known address of joint debtor:

   c. ☐ Additional costs against certain joint debtors are itemized: ☐ below ☐ on Attachment 24c.

25. ☒ (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:
   a. ☒ Possession of real property: The complaint was filed on *(date):* February 11, 2025
   *Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)*
   (1) ☒ The *Prejudgment Claim of Right to Possession* was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
   (2) ☐ The *Prejudgment Claim of Right to Possession* was NOT served in compliance with CCP 415.46.
   (3) ☐ The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a *Claim of Right to Possession* at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a *Prejudgment Claim of Right to Possession* was served.) *(See CCP 415.46 and 1174.3(a)(2).)*
   (4) If the unlawful detainer resulted from a foreclosure (item 25a(3)), or if the *Prejudgment Claim of Right to Possession* was not served in compliance with CCP 415.46 (item 25a(2)), answer the following:
      (a) The daily rental value on the date the complaint was filed was $ 166.00
      (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates *(specify):*
      TO BE DETERMINED BY COURT

*Item 25 continued on next page*

| Plaintiff/Petitioner: Canjian Hou<br>Defendant/Respondent: Adam Bercki | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |
|---|---|

25. b. ☐ Possession of personal property.
☐ If delivery cannot be had, then for the value *(itemize in 25e)* specified in the judgment or supplemental order.
c. ☐ Sale of personal property.
d. ☐ Sale of real property.
e. The property is described ☒ below ☐ on Attachment 25e.

818 Spirit
Costa Mesa, CA 92626

**NOTICE TO PERSON SERVED**

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

| Order Type | Order Number | Status |
|---|---|---|
| eFiling | 25423561 | In Progress |
| eFiling | 25423562 | In Progress |
| eServe | 25423564 | Complete |

## Case Information

**Court**
Orange County, Superior Court of California (Central Justice Center Santa Ana)

**Number**
30-2025-01459684-CL-UD-CJC

**Title**
Hou vs. Bereki

**Matter / Billing Code**
30-2025-01459684-CL-UD-CJC

## Message to the Court Clerk

See fee waiver request already on file and resubmitted with this filing

Confirmation Receipt #32463557

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# Judicial Notice Exhibit 15.3

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 05/22/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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

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EVENT ID/DOCUMENT ID: 74569773

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 05/21/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

P Prenga, present remotely on behalf of Defendant.

Hearing held, all participants appearing remotely.

Ex-Parte application for To Vacate Void Judgment; Stay Unlawful Detainer; Restore Possession of Real Property is requested by Defendant.

Upon Court inquiry, Defendant request to record today's hearing.

The Court provides information to Defendant on how to file a proper request for future hearings.

Defendant's Ex-Parte Application to Vacate Void Judgment; Stay Unlawful Detainer; Restore Possession of Real Property is **DENIED**.

Discussions held regarding Defendant's request of Ex-Parte relief.

The Court informs Defendants' irreparable harm presented via oral arguments does not qualify for Ex-Parte relief, however Defendant challenges will be heard on the merits during the 06/26/2025 hearing.

I hereby certify the foregoing instrument consisting of ____ page(s)
is a true and correct copy of the original on file in this court.

ATTEST: (DATE) AUG 0 4 2025
DAVID H. YAMASAKI, EXECUTIVE OFFICER AND CLERK OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

BY _____, DEPUTY
E. BALDERAS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

# Judicial Notice Exhibit 15.4

Electronically Filed by Superior Court of California, County of Orange, 05/28/2025 02:59:00 PM.
30-2015-00805807-CU-CO-CJC - ROA # 361 - DAVID H. YAMASAKI, Clerk of the Court By J. Gomez, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

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

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.: 30-2025-01482941

**NOTICE OF MOTION AND MOTION TO VACATE VOID JUDGMENT**
**Hearing Res.: 74569641**

**INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT OF MOTION TO VACATE**

**FILED CONCURRENTLY WITH REQUEST FOR JUDICIAL NOTICE**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on July 17, 2025 ~~June 26, 2025~~, at 2:00 PM, in Department C23 of the Superior Court of California, County of Orange, located at 700 W. Civic Center Dr., Santa Ana, California, Defendant Adam Bereki ("Defendant") will move this Court for an order to:

1. Vacate the Void Judgment in Case No. 30-2015-00805807, entered on April 20, 2017, and appeal entered on October 31, 2018, Case No. G055075, as a bill of pains and penalties in violation of Cal. Const. Art. I, § 9 and U.S. Const. Art. I, § 10, and excessive fine in violation of Cal. Const. Art. I, § 17, along with other Constitutional violations (listed below) based on new evidence of extrinsic fraud and fraud on the court pursuant to the Court's inherent equitable jurisdiction, Cal. Const. Art. I, § 26,

U.S. Const. Art. VI, § 2. The new evidence includes a U.S. Supreme Court case, *Liu v. SEC*, 591 U.S. 71 (2020) defining the nature and scope of the equitable remedy "disgorgement" used to conceal the penal forfeiture in this case and *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020), recognizing the penal nature of Cal. Business & Prof. Code § 7031.

2. Declare the Law of the Case, Finality, Res Judicata and Collateral Estoppel Doctrines Inapplicable, as the judgment is void ab initio due to lack of personal and subject matter jurisdiction, extrinsic fraud, and constitutional violations, supported by the new evidence.
3. Order Restitution of all rights and property lost and damages incurred in accordance with law. In addition to the deprivation of rights and property evidenced herein and Defendant's Declaration in support, he will submit an accounting upon the Court's award of judgment in his favor for all expenses, rights, damages, and property lost as a result of the judgment. Some of these claims may require an additional opportunity for adversarial proceedings (i.e., emotional distress claims and the loss of his home in foreclosure sale).
4. Grant Declaratory Relief identifying each constitutional violation raised herein rendering the judgment void, including the unconstitutionality of Cal. Bus. & Prof. Code § 7031(a) and (b) as applied.
5. Provide other relief in accordance with law or equity as the Court deems reasonable and just.

This motion is based on the Court's inherent equitable authority, Cal. Const. Art. I, § 26, U.S. Const. Art. VI, § 2, and new evidence proving the judgment's punitive nature and voidness on the face of the record. It is supported by this Notice, the attached Memorandum of Points and Authorities, the Declaration of Adam Bereki, all pleadings in Case No. 30-2015-00805807, and appellate Case No. G055075, the concurrently filed Motion for Judicial Notice (including certified legislative history of Cal. Bus. & Prof. Code § 7031(b) as RJN Ex. 13), Exhibits 1–3 attached hereto, and any further evidence or argument at the hearing.

Dated: May 28, 2025

By: _____

Adam Bereki

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Defendant Adam Bereki moves to vacate the April 20, 2017, judgment in Case No. 30-2015-00805807 and the judgment in Court of Appeal Case No. G055075 issued October 31, 2018, a bill of pains and penalties imposing a ~$930,000 penalty ($848,000 under Cal. Bus. & Prof. Code § 7031(b) and ~$82,000 denied under § 7031(a)) for alleged unlicensed contracting, in violation of Cal. Const. Art. I, § 9, U.S. Const. Art. I, § 10, and other due/judicial process violations. 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 Defendant personally performed construction work, as required by CACI 4560(3), and misapplication of § 7031(a) and (b) when, assuming Defendant violated the licensing laws which he disputes, § 7028.5 would have been the correct statute. Section 7031(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: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020) (§ 7031(b) imposes a punitive forfeiture, not equitable relief) and *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement as an equitable remedy limited to net profits, unlike § 7031(b)'s total forfeiture penalty when value is returned but not offset). As applied, § 7031(b) is unconstitutional, violates due/judicial process, the Excessive Fines Clause, and the prohibition on bills of pains and penalties. The Court has a mandatory, non-discretionary ministerial duty to vacate this facially void judgment pursuant to Cal. Const. Art. I, § 26 and U.S. Const. Art. VI, § 2, as both the letter and spirit of the law require immediate vacatur of judgments lacking jurisdiction (*Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002) (unconstitutional acts are void under Cal. Const.); Courts cannot affirm void judgments, which are nullities subject to direct and collateral attack at any time (*Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898) ("[a] void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one"; *Elliot v. Piersol*, 26 U.S. 328, 340 (1828). The Court must grant restitution of all rights and property lost and damages caused by the effects of the void judgment and the automatic summary penal license suspension under § 7071.17.

## II. FACTUAL BACKGROUND

In 2012, Defendant's company, The Spartan Associates, Inc. (General Contractor License #927244), for which Defendant was the Qualifying Individual and Responsible Managing Officer, contracted with the Humphreys for a condominium remodel in Newport Beach (Ex. 1 [Reporter's Transcript 3/27/17] p.131, Lines 22-24 [Defendant is Qualifying Individual for Spartan's License]). All work on the project was by Spartan and its licensed subcontractors (Ex. 1: p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and sub-contractors performed all work]; p. 129, Lines 12-15 [Spartan obtained building permits]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]). The Humphreys paid Spartan and Defendant $848,000 but disputed ~$82,000 in money Spartan claimed it was owed. Spartan sued (ROA 2), and the Humphreys cross-complained under § 7031(b), alleging Defendant personally contracted without a license (ROA 144 [First Amended Cross-Complaint]). On March 28, 2017, Judge David Chaffee (Ret.) ruled Defendant was the unlicensed contractor, awarding $848,000 for "disgorgement" and denying ~$82,000 (ROA 193 [Minute Order 3/28/17]; RJN Ex. 1), despite no known evidence Defendant performed any work that required a license, as required by CACI 4560(3) (Decl. ¶ 15). The judgment was entered April 20, 2017 for "damages" (ROA 200; RJN Ex.1) despite no known evidence of "damages" presented at trial (Decl. ¶ 10). Defendant, self-represented, was misled about the action's penal nature, waiving jury trial (Decl. ¶'s 6, 7, 8). He was also denied counsel and all other heightened protections required in criminal proceedings (Id.). The ~$930,000 penalty, estimated 40 times his qualifying net worth (Decl. ¶ 12), triggered automatic summary license suspension under § 7071.17 (Decl. ¶'s 3, 12) causing an estimated $3 million in lost earnings. (Decl. ¶'s 2, 12). The Fourth District Court of Appeal (Case No. G055075) affirmed, and relief was denied by the California Supreme Court (Case No. S252954), U.S. Supreme Court (Case No. 18-1416), and U.S. District Court for the Central District of California (Case No. 8:19-CV-02050). (Decl. ¶ 19; RJN Ex.'s 1-12).

## III. LEGAL STANDARD

### A. Definition of a Facially Void Judgment

A judgment is void on its face when the defect rendering it invalid—specifically a lack of personal or subject matter jurisdiction or a fundamental due/judicial process violation—is apparent from the judgment roll or the court's record without requiring extrinsic evidence (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018)). The judgment roll, per CCP § 670, includes the complaint, cross-complaint, judgment, and any documents referred to in the judgment, such as the trial record. *Rochin v. Pat Johnson Mfg. Co.*, 67 Cal. App. 4th 1228, 1239 (1998) defines this standard: "A judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant, is subject to collateral attack at any time. An attack on a void judgment may also be direct, since a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored." (Citations omitted). Voidness arises from: • Lack of Subject Matter Jurisdiction: The court lacked authority, such as by applying an incorrect statute and/or Plaintiff's failure to state a claim under a statute (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 541 (2021) • Lack of Personal Jurisdiction: The court lacked authority over the defendant due to improper service of a criminal complaint (*Albrecht v. United States*, 273 U.S. 1, 8 (1923) (lack of proper service voids judgment)). • Due Process Violations: Fundamental procedural errors, such as imposing a judgment without evidentiary support or criminal safeguards, evident from the record (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018), *Thompson v. Louisville*, 362 U.S. 199 (1960)). The court has a mandatory, non-discretionary ministerial duty to vacate a facially void judgment under Cal. Const. Art. I, § 26 and U.S. Const. Art. VI, § 2, as unconstitutional acts are without authority and void ab initio (*Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002); Courts cannot affirm void judgments, which lack legal effect and are subject to collateral attack at any time (*Bennett, Piersol, supra)*; *Ware v. Stafford*, 206 Cal. App. 2d 232, 239 (1962) (uncontroverted evidence of invalidity mandates vacatur)).

**B. Equitable Jurisdiction to Vacate Void Judgments**

Independent of statutory limits (which are intentionally not cited or relied on as statutes such as CCP § 473 cannot shield void and/or fraudulent judgments), the court's inherent equitable jurisdiction mandates vacatur of void judgments at any time, especially

for extrinsic fraud or fraud on the court, without requiring facial voidness (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942) (equity requires vacatur for fraud)). It is well established that equity will not permit a statute [such as § 7031(a) and/or (b) and/or CCP § 473] to be used as a cloak for fraud as statutes cannot shield fraudulent judgments and equity will not suffer a wrong to be without a remedy. Extrinsic fraud, such as preventing a fair hearing, requires vacatur (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). This is a mandatory non-discretionary ministerial duty as void judgments are nullities (*Thompson v. Cook*, 20 Cal. 2d at 569–73).

**C. The Laws of Finality and of Case Do Not Apply to Void Judgments**

The law of the case doctrine does not apply to void judgments or when new law alters the legal landscape. *People v. Boyer*, 38 Cal. 4th 412, 442 (2006). Additionally, "the doctrine is one of procedure, not jurisdiction, and it will not be applied where its application will result in an unjust decision, e.g., where there has been a manifest misapplication of existing principles resulting in substantial injustice" (Id. at p.441; citations and internal quotations omitted). New authorities (*Liu v. SEC*, 591 U.S. 71 (2020); *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020)) and evidence of fraud and constitutional violations negate its application.

The rule of finality of judgments promotes judicial economy by treating a final judgment as conclusive, but this principle does not shield void judgments, which lack legal sanction due to jurisdictional or procedural defects. The U.S. Supreme Court in *Elliot v. Piersol*, 26 U.S. 328, 340 (1828), California Supreme Court in *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239 (1998), hold that a judgment issued by a court without jurisdiction is void. It "neither binds nor bars any one" (*Rochin* at p.1240) "and form[s] no bar to a remedy sought in opposition [...], even prior to a reversal" (*Piersol* at p.329) and cannot, therefore, support execution or preclude direct or collateral attack.

**E. The Doctrines of Res Judicata and Collateral Estoppel Do Not Apply**

The doctrines of res judicata and collateral estoppel also do not apply, as the judgment was procured by extrinsic fraud through the Humphreys' and Bissell's conspiracy to usurp executive power under Cal. Bus. & Prof. Code § 7031(a) and (b), with judicial

acquiescence, rendering the court without subject matter and personal jurisdiction (*Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th at 1239 (res judicata inapplicable to void judgments). Defendant contends that because the Superior Court lacked personal and subject matter jurisdiction and the appellate Court to affirm, there was no "actual litigation" that occurred and no "issues" were lawfully "decided". As a result, no order, "final and on the merits", was ever made. Applying preclusion would undermine judicial integrity, contrary to *Lucido v. Superior Court*, 51 Cal. 3d 335, 342–43 (1990) (preclusion cannot shield fraud). *People v. Dutra*, 145 Cal. App. 4th 1359, 1365 (2006) limits post-remittitur jurisdiction to valid judgments, not void ones (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)). The judgment's facial voidness (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018)) and prior affirmances do not bar relief.

## IV. THIS COURT HAS A MANDATORY NON-DISCRETIONARY MINISTERIAL DUTY TO GRANT RELIEF

This Court has a mandatory, non-discretionary ministerial duty to grant Defendant's Motion to Vacate the void judgment in Case No. 30-2015-00805807 and appeal in Case No. G055075, as they were procured through extrinsic fraud, lack of subject matter and personal jurisdiction, and violations of fundamental constitutional protections, resulting in irreparable harm. The California Constitution, Article I, Section 26, declares its provisions "mandatory and prohibitory," rendering any action in violation thereof void (*Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002)). *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 308 (1795), reinforces that judicial acts contravening constitutional mandates are "absolutely void," leaving courts no discretion to uphold them.

The judgment's defects constitute structural jurisdictional errors, as defined in *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938), where the U.S. Supreme Court held that denial of the Sixth Amendment right to counsel deprives a court of jurisdiction, rendering the proceeding void. Here, the Humphreys' unauthorized criminal prosecution under Business and Professions Code § 7031(a) and (b), lacking executive authority (Cal. Const. Art. V, § 1), and the fraudulent concealment of the action's penal nature denied Defendant criminal safeguards, including counsel, jury trial, and proof beyond a reasonable doubt, tainting the entire framework of the trial (*Weaver v. Massachusetts*, 582 U.S. 286, 295–96 (2017). These structural jurisdictional errors, compounded by extrinsic fraud, render the judgment void ab

initio, mandating automatic reversal without discretion (*Johnson v. Zerbst*, 304 U.S. at 467–68; *In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)).

The Humphreys' prosecution, misrepresenting a criminal action as civil, constituted extrinsic fraud, denying Defendant a fair hearing (*Olivera v. Grace*, 19 Cal. 2d 570, 575 (1942)). This fraud, compounded by judicial acquiescence, corrupted the judicial process, stripping jurisdiction (*County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982); *Albrecht v. United States*, 273 U.S. 1, 8 (1923)). The court's authority to vacate this void judgment is unaffected by prior appeals, as *MacMillan Petroleum Corp. v. Griffin* held: a court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree—a void order. 99 Cal. App. 2d 523, 533 (1950). A void judgment "neither binds nor bars any one" (*Rochin* at p.1240) "and form[s] no bar to a remedy sought in opposition [...], even prior to a reversal" (*Piersol* at p.329).

*People v. Dutra* clarifies that post-remittitur jurisdiction rests on the law of case doctrine, which is limited to valid judgments. As a void judgment, the judgments in the instant case and appeal are outside this limitation, allowing vacatur at any time (*Olivera v. Grace*, 19 Cal. 2d at 574).

The Court's inherent equitable powers obligate it to set aside this void judgment at any time (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)). The ongoing irreparable harm—foreclosure of Defendant's home, loss of ~$1.2 million in equity, and destruction of his livelihood—underscores the urgency of this duty. Equity demands that this Court grant the motion to vacate, declare the judgment void, and restore Defendant's rights, as any discretion to uphold a void judgment would contravene the Constitution's supremacy as previously evidenced.

## V. ARGUMENT

### A. Section 7031(b) Is a Penal Action, Not a Civil Remedy

**Legislative History Confirms Punitive Intent**: The Legislative History of § 7031(b) (RJN Ex. 13) and specifically bates number page 860 thereof, explicitly confirms its punitive

intent: "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, 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, those using unlicensed contractors 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". See also *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005) (confirming Legislative intent to "impose a stiff all-or-nothing penalty"); (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020); *Smith v. Doe*, 538 U.S. 84, 92 (2003) (punitive intent indicates penal action)). This legislative intent to punish, rather than compensate, underscores the penal nature of § 7031(a) and (b) as applied.

**Punitive Nature Voids Judgment**: The judgment under Cal. Bus. & Prof. Codes § 7031(a) and (b) is void because it imposes a penal sanction without criminal safeguards, as evidenced in *Hale v. Morgan*, 22 Cal. 3d 388, 398–401 (1978). *Hale* holds that a statute is penal if it serves a punitive rather than remedial purpose, requires no proof of harm, and imposes disproportionate sanctions. Section 7031(a) and (b) as applied meet this criteria: they enforce a "stiff all-or-nothing penalty" to deter unlicensed contracting (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005)), require no evidence of harm (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020); see also e.g. *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.,* 232 Cal. App. 4th 1332, 1357, (2015) ("[a]ny provision by which money or property is to be forfeited without regard to the actual damage suffered calls for a penalty and is therefore void")) are intended as deterrents (*White v. Cridlebraugh*, 178. Cal.App. 4th 506, 519 (2009) ("[t]he statute's harsh results are justified by the importance of deterring violations of the licensing requirements" [Citation]), are not remedial/ do not restore the status quo as the Humphreys were unjustly enriched by receiving both the benefit of $930,000 in custom remodel work and a ~$848,000 refund—approximately 40 times Defendant's qualifying net worth and 186 times the maximum $5,000 fine for the same offense under § 7028 (criminal statute)—without proportionality or ability to pay analysis. § 7031(a) and (b) as applied also bypass any judicial discretion evidencing that it functions as a Legislative penalty. By applying this penal statute without executive authority, criminal protections (e.g., jury trial, counsel), or

excessive fines safeguards, the court lacked jurisdiction, rendering the judgment facially void.

**Not Equitable Disgorgement**: Equitable disgorgement is limited to "net profits from wrongdoing" after deducting legitimate expenses (ie value conferred) (*Liu v. SEC*, 591 U.S. 71, 79 (2020)). Offsets were denied and no evidence showed profits or harm (ROA 193 [Minute Order for "disgorgement of funds paid" not profits]; Ex. 1 [Reporter's Transcript); ROA 144- First Cause of Action demanding "all sums paid" without reductions or offsets for expenses; Defendants claim for set off (ROA 166), was ignored making the ~$930,000 award a punitive forfeiture, not equitable disgorgement.

**Private Prosecution Lacks Executive Authority:** Sections 7031(a) and (b) target unlicensed contracting, a misdemeanor under § 7028 (maximum $5,000 fine), but allows private parties to impose penalties 186 times higher without executive authority for the same offense. Criminal prosecutions are exclusively reserved to the executive under Cal. Const. Art. V, § 1. The Humphreys' action was *ultra vires*, stripping jurisdiction.

**Lack of Criminal Safeguards**: By mislabeling § 7031(a) and (b) as civil, the court denied notice of penal consequences, jury trial, counsel, and proof beyond a reasonable doubt, which are required for punitive actions (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006); *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938) (right to counsel in punitive actions)).

**B. The Duplicative Penalty Under § 7031(b) Constitutes Extrinsic Fraud and a Criminal Penalty**

The judgment's imposition of a ~$930,000 penalty ($848,000 awarded under § 7031(b) and ~$82,000 denied under § 7031(a)) is facially void because it fraudulently requires Defendant to return compensation twice, covertly imposing a criminal fine within the definition of a public offense under Cal. Penal Code § 15, with the same elements as § 7028, through extrinsic fraud and without criminal safeguards. This duplicative penalty, misrepresented as a civil remedy (through 'civil' proceedings), denied Defendant a fair hearing and corrupted the judicial process (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)).

Defendant's company, The Spartan Associates, Inc. (License #927244), for which Defendant was the Qualifying Individual and Responsible Managing Officer, contracted with the Humphreys for a condominium remodel, performing all work through Spartan or its licensed subcontractors sub-contractors (Ex. 1 [Reporter's Transcript 3/27/17] p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and subcontractors performed all work]; p. 129, Lines 12-15 [Spartan obtained permit]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]). The Humphreys paid Spartan and Defendant $848,000, receiving equivalent value (Decl. ¶ 15), as no evidence in the judgment roll shows defective work or harm (ROA 144 [First Amended Cross-Complaint First Cause of Action for § 7031(b) alleging no evidence of harm or damages]; ROA 193 [Minute Order]-finding no evidence of harm or damages; (Decl. ¶ 10)). The Humphreys' First Amended Cross-Complaint under § 7031(b) (ROA 144) alleged Defendant personally contracted without a license, seeking "disgorgement" of all compensation paid. The court ordered Defendant to repay $848,000 (ROA 193 [Minute Order] awarding "Disgorgement of funds paid"), requiring him to return the same compensation twice—once through Spartan's licensed work and again through the judgment—without offsets for value provided. Defendants claim for set off (ROA 166), was ignored. This duplicative penalty is not equitable disgorgement, which requires deducting legitimate expenses to limit recovery to "net profits from wrongdoing" (*Liu v. SEC*, 591 U.S. 71, 79 (2020)), but a punitive forfeiture, as the Humphreys retained ~$930,000 in remodel value yet received an $848,000 windfall (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020)). No evidence of Defendant's profits was admitted (Decl ¶11); Ex.1 Reporters Transcript]. Section 7031(b) mirrors § 7028, which criminalizes unlicensed contracting as a misdemeanor (max $5,000 fine), by targeting the same offense: performing or contracting for construction work without a license. Both statutes require identical elements—acting as a contractor without licensure—yet § 7031(b) imposes a penalty 186 times higher (~$930,000 vs. $5,000) without executive authority or criminal safeguards. Cal. Penal Code § 15 defines a crime or public offense as an act punishable by, inter alia, a fine, and *Ex parte Clark*, 24 Cal. App. 389, 394 (1914), holds that "punishment of any kind inflicted by law" is "essentially criminal." The ~$930,000 penalty, labeled "damages" (ROA 200; RJN Ex. 1 [Judgment Order]), is a fine for unlicensed contracting, rendering § 7031(a) and (b) covert criminal actions requiring criminal protections (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)). The Humphreys

and their counsel, William Bissell, committed extrinsic fraud by misrepresenting this penal action as civil, inducing Defendant to waive his jury trial and forgo protections like counsel and proof beyond a reasonable doubt (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). No sworn information or criminal complaint was filed, required to vest the court with subject matter jurisdiction (*Cal. Gov't Code § 100; Albrecht v. United States, 273 U.S. 1, 8 (1923)).* Judge Chaffee's acquiescence, despite knowing § 7031's "draconian" effect *(MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., 36 Cal. 4th 412, 426 (2005);* (Ex. 1 [Reporter's Transcript 3/28/17], p. 29, lines 13-15) entrenched this fraud, denying a fair hearing (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). The term "draconian" means excessively harsh or severe (*Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/draconian, accessed May 17, 2025). Section 7031(a) and (b)'s structure enables this fraud by transferring executive power to private parties, violating separation of powers *(Cal. Const.* Art. III, § 3; Art. V § 1; e.g. *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). The ~$930,000 penalty, approximately 40 times Defendant's qualifying net worth, is grossly disproportionate, imposed without proportionality analysis, and failed to account for his inability to pay it (Art. I, § 17; *People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020). This constitutes a bill of pains and penalties, punishing without judicial process (*Cal. Const.* Art. I, § 9; U.S. Const. Art. I, § 10). The judgment roll confirms these defects: the First Amended Cross-Complaint First Cause of Action (ROA 144) targets the same offense as § 7028, and the judgment (ROA 193 [Minute Order) imposes a fine (total forfeiture) without evidence of harm, Defendant's personal work, profits, or offsets for value conferred. The court lacked subject matter and personal jurisdiction due to this unauthorized prosecution, rendering the judgment facially void.

**C. The Judgment Is Facially Void Under *Pittman* and *Rochin***

The 2017 judgment is void on its face, as the judgment roll demonstrates lack of subject matter and personal jurisdiction and due process violations. The Court has a mandatory, non-discretionary ministerial duty to vacate this fascial void judgment pursuant to *Pittman* and *Rochman*, supported by Cal. Const. Art. I, § 26 and U.S. Const. Art. VI, § 2, as unconstitutional acts are void (*Katzberg, Dorrance, Bennett, Piersol*) for the following reasons:

**Due Process Violation (Penal Nature Without Criminal Safeguards):** The ~$930,000 penalty imposed under § 7031(a) and (b) by a court lacking personal and subject matter jurisdiction (imposed without criminal safeguards) is a bill of pains and penalties, violating due/judicial process. The judgment roll shows: 1) First-Amended Cross-Complaint First Cause of Action (ROA 144): seeks a total forfeiture under § 7031(b) of "all sums paid" (Id. p.4) without offsets for benefits conferred, profits, or allegations of damages, admitting intent to punish Defendant for violating § 7028 in a civil action. See also First Amended Trial Brief ROA 168 ("[Defendant] [...] was unlicensed as a contractor in violation of [...] § 7028. As a consequence, [Plaintiff's are entitled to recover all sums [...]"; 2) Judgment: ([Minute Order] ROA 193; RJN Ex. 1) imposes a $848,000 penalty (and denies ~$82,000 under § 7031(a), totaling ~$930,000) labeled as for "Disgorgement of Funds Paid" and "damages" ([Judgment Order] ROA 200, RJN Ex. 1) without jury trial or counsel. § 7031(b) does not mention or authorize "disgorgement" an equitable remedy (*Liu v. SEC*, 591 U.S. 71 (2020)) or "damages". It imposes a "stiff all-or-nothing penalty" (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005); Legislative History, p.860. RJN Ex. 13 [intending punishment]). Pleadings show: 1) Defendant's self-represented status (ROA 141); 2) Imposition of a duplicative penalty requiring Defendant to repay $930,000 already returned or provided through Spartan's licensed work, covertly imposing a criminal fine under Cal. Penal Code § 15 for the same offense as § 7028, without criminal safeguards (ROA 193; *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th at 1212; *Hale v. Morgan*, 22 Cal. 3d 388, 398–401 (1978); *Ex parte Clark*, 24 Cal. App. 389, 394 (1914) (punitive fines are criminal)). This punitive penalty without safeguards is facially void under *Pittman and Rochin.*

**Due Process Violation (No Evidence Defendant Performed Work):** The judgment violates due process because no known evidence showed Defendant personally performed work, as required by CACI 4560(3) (*Thompson v City of Louisville*, 362 U.S 199, 204 (1960) (judgment without evidence violates due process)). CACI 4560(3) instructs that to establish a violation of § 7031(b) the claimant must prove the defendant "performed work requiring a contractor's license." The judgment roll shows: 1) First-Amended Cross-Complaint First Cause of Action (ROA 144): Focuses on Plaintiff's agreement(s) not Defendant's performance, relying on emails showing communication, not work performed; The Cross-Complaint alleges Defendant orally agreed to perform home improvement work and

"performed services" until August 31, 2013, but also claims he "substitute[d] his corporation [Spartan] as the contractor on the project." This vague "services" allegation lacks specificity about licensed work as required by CACI 4560(3), is unsupported by trial evidence, and contradicted by the proceeding allegation that "[Spartan] [w]as the contractor on the project". The Humphreys' trial strategy, adopted by the court, relied on emails suggesting Defendant contracted, potentially satisfying only CACI 4560(1)(contracting), not CACI 4560(3) (performing licensed work). Previously, the Humphreys also represented in their Motion for Summary Judgment (ROA 66, p. ii) that the "undisputed facts" were that Spartan, a "licensed building contractor," entered the agreement. Their later claim that Defendant acted independently lacks evidence, as the record is void of any work in the emails being performed by Defendant or anyone for that matter because it never was (the project in the emails was abandoned when the Humphreys bought a second unit); 2) Minute Order (ROA 193): Labels Defendant an "unlicensed contractor" without evidence of work performed. 3) Trial Record (Ex. 1 [Reporter's Transcript]): Shows only Spartan and its sub-contractors performed the work (Ex. 1 [Reporter's Transcript 3/27/17] p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and sub-contractors performed all work]; p. 129, Lines 12-15 [Spartan obtained permit]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]); Defendant admittedly received checks payable in his name and did issue some checks payable for work from his named bank account in which these checks were deposited. Banking deposits or withdrawals do not directly evidence work performance (Defendant was the sole owner of Spartan whose profits (and losses) as a subchapter S elected corporation flowed through to him); 4) The Humphreys' failure to present direct evidence that Defendant personally performed work required to be licensed, despite Spartan being listed on the Newport Beach building permits as the contractor (Id.); Spartan's sign posted on the property (Ex. 1 [Reporter's Transcript 3/27/17] p.148 Lines 19 – p.149, Line 15; p. 154, Lines 9-10 Exhibit 30-1 received; Ex.3 (annexed hereto)) and Spartan receiving $758,000 in payments from the Humphreys (Ex. 1 [Reporter's Transcript 3/27/17] p.141 Line 17 – p.143, Line 9) confirms the judgment's lack of evidentiary support (under both the preponderance and beyond reasonable doubt standards) rendering it void. *(Thompson,* supra). This absence of evidence is facially void under *Pittman and Rochin.* Furthermore, Defendant, as the Qualifying Individual (the being who possessed the experience and met the exam requirements; Ex. 1 [Reporter's Transcript 3/27/17] p.131,

Lines 13-24)) for The Spartan Associates, Inc. (License #927244), deemed a "licensee" under § 7096, was competent as a general contractor as determined by the Contractors State License Board and acted under his and Spartan's license. Spartan's license cannot survive without a qualifying individual.

**Lack of Subject Matter and Personal Jurisdiction (Misapplication of § 7031(a) and (b) and Unauthorized Prosecution):** The court lacked subject matter and personal jurisdiction by applying Cal. Bus. & Prof. Codes § 7031(a) and (b), penal statutes imposing a "stiff all-or-nothing penalty" to deter unlicensed contracting (*MW Erectors,* supra). The Humphreys lacked constitutional standing and the capacity to prosecute a penal action under § 7031(b), which requires executive authority (Cal. Const. Art. V, § 1). The judgment roll confirms these defects: 1) No sworn information, indictment, or criminal complaint was served, rendering the prosecution *ultra vires* (*Buis v State*, 1990 OK CR 28, p.4 (1990) ("jurisdiction of all justiciable matters can only be exercised [...] through the filing of pleadings which are sufficient to invoke the power of the court to act" (internal quotations omitted); *Albrecht v. United States*, 273 U.S. 1, 8 (1923) ("[a] person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court"; Cal. Penal Codes § 949, § 959 § 1382 (mandating dismissal). 2) Cross-Complaint (ROA 144) fails to allege specific licensed work by Defendant; 3) Judgment (ROA 193, 200) applies § 7031(b), awarding $848,000 and denying ~$82,000 under § 7031(a) (totaling ~$930,000), without addressing Defendant's licensee status (e.g Ex. 1 [Reporter's Transcript 3/27/17] p.131, Lines 13-24) (RJN, Ex. 1 [Minute Orders and Judgement Order]), orders relief without a criminal complaint filed on behalf of the People or under Executive authority per Cal Const. Art. V, § 1; 3) Trial Record (Ex. 1 [Reporter's Transcript 3/27/17] p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and sub-contractors performed all work]; p. 129, Lines 12-15 [Spartan obtained permit]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]) shows Spartan performed the work and was paid for the work. A Plaintiff must have standing for each type of relief sought (e.g. *Summers v. Earth Island Institute*, 555 U.S. 488 (2009)) and a lack of standing is a jurisdictional defect (*People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018)). Plaintiffs lack the capacity or standing to any relief awarded and never stated (and lawfully cannot) state a claim as § 7031(a) and (b) were applied in this

case. These jurisdictional errors, combined with the unauthorized prosecution, render the judgment facially void (*Pittman, Rochin).*

**Applicability of § 7028.5 (Exemption for Individuals Under Licensed Contractor's Supervision):** Assuming arguendo Defendant violated the licensing laws, which he contests, the court erred by applying § 7031(b) instead of § 7028.5, which exempts individuals acting under a licensed contractor's supervision from such penalties (§ 7028.5(a)). Defendant, as the Qualifying Individual for The Spartan Associates, Inc. (License #927244), deemed a "licensee" under § 7096, was competent as a general contractor as determined by the Contractors State License Board and acted under Spartan's and his license (the license cannot survive without his qualifying it). The trial record and unrebutted testimony confirm all work requiring a license was performed by Spartan or its licensed subcontractors, rendering § 7031(b) inapplicable. To the extent §7028.5 could have applied, the court violated due process by applying the wrong statute *(Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 541 (2021)). However, like § 7031(a) and (b) as applied, civil courts lack jurisdiction to adjudicate § 7028.5 claims, which are enforced by the Contractors State License Board (administrative fines) or criminal courts (misdemeanor prosecution).

**D. Constitutional Violations Rendering the Judgment Void**

Each violation below mandates vacatur under Cal. Const. Art. I, § 26: Due Process Violations (Cal. Const. Art. I, § 7): • Misrepresentation of the action as civil (ROA 144, seeking § 7028 punishment as "disgorgement" and judgment as "damages") (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires fair notice)). • Denial of jury trial due to reliance on misrepresentation (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006); • Denial of counsel (Art. I, § 15; *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938) (right to counsel in punitive actions; • Lack of personal jurisdiction: No criminal complaint filed • Unaddressed statute of limitations and set off defenses (ROA 166). • No evidence Defendant performed work (*Thompson v. Louisville*, 362 U.S. 199 (1960) • No evidence Defendant was a "person" required to be licensed (*Thompson v. Louisville*, 362 U.S. 199 (1960)• No evidence of harm or profits, with "damages" award (*Thompson v. Louisville*, 362 U.S. 199 (1960); ROA 193, 200; RJN Ex. 1) (Decl. ¶ 10)) • Excessive Fines

(Cal. Const. Art. I, § 17;): The ~$930,000 penalty, ~40 times Defendant's qualifying net worth and 186 times § 7028's $5,000 cap, is grossly disproportionate, imposed without proportionality and Defendants ability to pay analysis (*People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020). This bill of pains and penalties, imposed by a court acting *coram non judice* due to lack of jurisdiction, violates constitutional limits. Bill of Pains and Penalties (Cal. Const. Art. I, § 9; U.S. Const. Art. I, § 10): The penalty punished without judicial process, as the court lacked jurisdiction. Separation of Powers (Cal. Const. Art. III, § 3): The Humphreys' penal prosecution violated executive authority (Art. V, § 1, e.g *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). Right to Contract and Liberty (Cal. Const. Art. I, § 1, U.S. Const. Art I, §10): The mandatory summary penal license suspension imposed pursuant to the judgment and §7071.17 when Defendant was unable to pay the judgment (Decl. ¶ 12)) impaired Spartan's contracts with other clients, violating Defendant's right to contract and liberty and vested right to licensure and resulted in another bill of pains and penalties. Inalienable Rights (Cal. Const. Art. I, § 1): The judgment and license suspension, individually and/or collectively violated Defendant's inalienable rights to liberty (right to lawful court access; to pursue employment in an ordinary vocation of life; to a judicial determination of rights in the first instance), property (to pursue employment and earn a living; vested property right in contractor's license), privacy (to not be harassed by lawless claims and *ultra vires* action/punishment sanctioned by state authorities but without authority), and the pursuit of happiness (to not be harassed by lawless claims and ultra vires state action/punishment). Petition for Redress (Cal. Const. Art. I, § 3): The imposition of appellate cost awards (Case No. G055075, RJN Ex. 2) retaliated against Defendant's attempts to seek redress, violating petition rights; additionally, these rights were further violated by refusal of the Cal. Supreme Court, U.S. Supreme Court, and U.S. District Court to exercise jurisdiction to vacate the void judgment (*Elliot v. Piersol*, 26 U.S. 328, 340 (1828) (enforcement of void judgment is trespass).

**E. Due Process Violations in Appeal as Final Judgment**

The appellate judgment in Case No. G055075, issued October 31, 2018, constitutes a further due process violation, rendering it void. Justices Aronson, Goethals, and O'Leary denied Defendant a full, fair, and impartial appeal by affirming a facially void judgment without addressing the Humphreys' lack of prosecutorial authority, the penal nature of §

7031(b), or the absence of evidence supporting the penalty. The trial court's lack of subject matter and personal jurisdiction due to the Humphreys' unauthorized prosecution deprived the appellate court of authority to affirm, mandating dismissal or remand (*Elliot, Barrett*). Their opinion relied on inapposite cases (*S.E.C. v. Huffman*, 996 F.2d 800 (5th Cir. 1993); *U.S. v. Philip Morris USA*, 310 F.Supp.2d 62 (D.D.C. 2004)) irrelevant to state contractor statutes and to support 7031(b) imposes an "equitable remedy" or "disgorgement". This failure to engage with Defendant's arguments (ROA 300 [Memorandum of Points and Authorities in Opposition to Motion to Vacate]- Ex. A- Appellant Adam Bereki's Opening Brief on Appeal) coupled with the imposition of appellate costs, constituted a structural error denying due process (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)). The appellate court lacked subject matter jurisdiction to affirm an unconstitutional judgment (*Piersol, Bennett, Rochin*), making the appeal a bill of pains and penalties. The court must vacate both the trial and appellate judgments as courts cannot affirm void judgments, which are nullities (*Piersol, Bennett, Rochin*, *Thompson, Hill, Ware)*

**F. Denial of Judicial Remedy & Lack of Forum for Relief**

Defendant's exhaustive efforts to vacate this void judgment in state and federal courts have been denied (RJN Ex.'s 1-12) leaving this Court as the sole forum.

## VI. EXTRINSIC FRAUD AND FRAUD ON THE COURT

The Humphreys, their attorney William Bissell, Judge David Chaffee (Ret.), and Appellate Justices Richard Aronson, Thomas Goethals, and Kathleen O'Leary committed extrinsic fraud and fraud on the court by misrepresenting a penal action as civil, preventing a fair hearing and undermining the judicial process. Additionally, Judge James Di Cesare's post-appeal conduct further entrenched this fraud. These actions are cited to demonstrate the judgment's voidness, not to seek personal liability against judicial officers in this Motion.

**A. Legal Standards for Extrinsic Fraud and Fraud on the Court**

Extrinsic Fraud Under California law encompasses "almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing" (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985) (Citations omitted)). It occurs when a party is prevented from presenting

their claim or defense, such as through concealment of material facts, failure to provide proper notice, or misrepresentation of the action's nature (*City and County of San Francisco v. Cartagena*, 35 Cal. App. 4th 1061, 1067 (1995) (concealment of facts constitutes fraud); (Decl ¶'s 5, 13)). Examples include inducing a party to forgo legal representation or misleading them about the proceedings' true character (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969) (misrepresentation of action's nature is fraud)). Relief from a judgment procured by extrinsic fraud is an equitable remedy, requiring vacatur to restore fairness (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)).

Fraud on the court involves conduct that undermines the integrity of the judicial process, such as presenting a false claim or deceiving the court about the proceedings' nature. It includes willful misrepresentations by parties, counsel, or judicial officers that mislead the court into acting without lawful authority (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) When established, fraud on the court renders the judgment void and mandates vacatur to protect judicial integrity (Id.).

**B. Evidence of Extrinsic Fraud**

**Misrepresentations by the Humphreys and Bissell:** The Humphreys, through their attorney William Bissell, filed a cross-complaint under Cal. Bus. & Prof. Code § 7031(b) (ROA 144), presenting it as a civil action for "disgorgement." By misrepresenting the action as civil, they concealed its penal nature, denying Defendant criminal safeguards such as a jury trial, counsel, and proof beyond a reasonable doubt. This deception prevented Defendant from challenging the Humphreys' standing or invoking procedural protections, constituting extrinsic fraud (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). Defendant, self-represented and not trained in civil or criminal procedure (Decl. ¶7), relied on these misrepresentations (Decl. ¶'s 4, 9), appearing at the proceedings, participating, and waiving his jury trial, believing the action was a legitimate civil dispute. The Humphreys further concealed the penal nature by filing a proposed judgment order in favor of their first cause of action (for "disgorgement" ROA 197) and "damages" (ROA 199) and later serving it on Defendant. See signed order ROA 200; RJN Ex. 1) when they failed to present any known evidence of damages at trial, as required California Civil Code § 3281 and *Chaparkas v. Webb* (178 Cal. App. 2d 257, 259 (1960)) (requiring evidence of harm for damages) and

failed to present any evidence Plaintiff profited. This misrepresentation concealed § 7031(b)'s criminal nature, imposing a duplicative fine under Cal. Penal Code § 15 for the same offense as § 7028 (the criminal statute for unlicensed contracting), fraudulently requiring Defendant to repay $848,000 already returned through Spartan's work, denying him a fair and impartial hearing (*Estate of Sanders*, 40 Cal. 3d at 614). When Defendant challenged jurisdiction— through pleadings evidencing his lack of knowledge of procedure and practice—the Humphreys sought and were awarded sanctions with the obvious intent of silencing and/or further punishing him in his attempts to tell truth and expose the fraud: ([Writ of Error], electronically received 4/18/17 (Not Entered on Docket) yet recognized as Motion to Vacate and Denied (Notice of Rejection, 4/18/17), ignored by Humphreys; ROA 244 [Bill of Particulars] challenging jurisdiction, filed on the docket as "Notice-Other" by the Clerk, ignored by Humphreys; ROA 256 [Motion to Compel Production of Bill of Particulars]; ROA 260 [Opposition to Compel and Request for Sanctions] filed by the Humphreys; ROA 263 [Reply to Opposition; Motion to Disqualify Judge]; ROA 269 [Sanctions Award] for abuse of discovery.

**Judicial Complicity by Judge Chaffee:** Judge Chaffee's failure to address the Humphreys' lack of executive authority under Cal. Const. Art. V, § 1 or the statute of limitations under CCP § 340 (ROA 166), despite his knowledge of § 7031(b)'s penal nature (*MW Erectors,* supra), denied Defendant a fair and impartial hearing, constituting a structural error rendering the judgment void. Chaffee, who presided over *MW Erectors*, knew § 7031imposes a "stiff all-or-nothing penalty" and admitted imposing a forfeiture, referring to the statute as the "bellwether case" (Ex. 1 [Reporter's Transcript 3/28/17] p.28, Lines 20-24). He also signed a judgment order for "damages" of $848,000 (ROA 200; RJN Ex. 1) without the Humphreys stating a claim for damages (ROA 144, 160) and despite no evidence of harm, contradicting California Civil Code § 3281 and *Chaparkas v. Webb* (178 Cal. App. 2d 257, 259 (1960)) (requiring evidence of harm for damages). Judge Chaffee acknowledged § 7031(b)'s punitive nature, stating, "The Supreme Court... found that the contractor's license law is draconian in its effect" (Ex. 1 [Reporter's Transcript 3/28/17], p. 29, lines 13-15). He went on to also identify the judgement as a "forfeiture". *Id.* Line 17. The term "forfeit" has, since the beginning of America, been used to refer to a fine and punishment. *Austin v. United States*, 509 U.S. 602, 613-614 (1993). These admissions, yet failure to apply criminal safeguards including denying Defendant counsel, further

misrepresented the action as civil, constituting extrinsic fraud (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)).

**Appellate Justices' Affirmation of Fraud:** Justices Aronson, Goethals, and O'Leary's affirmance of a void judgment in Case No. G055075, despite Defendant's appellate briefs explicitly raising the Humphreys' lack of standing, the action's penal nature, and due process violations, (ROA 300 Ex. A [Opening Brief]; RJN Ex.2 [Appellate Opinion] p.8 "Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such claim must be afforded all criminal rights and protects. Not so. Disgorgement is a civil consequence") denied a fair and impartial appellate hearing, constituting a systemic error (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). Their opinion mischaracterized § 7031(b) as an "equitable remedy", relying on inapposite cases like *S.E.C. v. Huffman*, 996 F.2d 800 (5th Cir. 1993) (federal securities case irrelevant to state contractor law and § 7031(b)'s penal nature), and *U.S. v. Philip Morris USA*, 310 F.Supp.2d 62 (D.D.C. 2004) irrelevant to state contractor statutes and to support 7031(b) imposes an "equitable remedy" or "disgorgement", and also directly evaded Cal. Supreme Court precedent: courts may not resort to equitable considerations in defiance of section 7031 *Lewis & Queen v. N. M. Ball Sons,* 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957); *MW Erectors,* supra (confirming Legislative intent to "impose a stiff all-or-nothing penalty"). Equally troubling, neither § 7031 nor its legislative history mentions anything about "disgorgement" or an "equitable remedy". The Appellate Justices' refusal to engage with Defendant's arguments (ROA 300 Ex. A), including his citation of *Town of Gilbert Prosecutor's Office v. Downie*, 218 Ariz. 466 (2008) (addressing the penal nature of "disgorgement" and limitations of prosecutorial authority), and their dismissal of all his claims as "meritless" (RJN Ex.2 [Opinion], p.2) without meaningful and substantive analysis, denied a full, fair, impartial and independent appellate review and a fair hearing, corrupting the judicial process, perpetuating the extrinsic fraud and jurisdictional defects.

**Judge Di Cesare's Post-Appeal Misconduct:** Judge Di Cesare's refusal to vacate the void judgment, despite Defendant's February 19, 2019, motion citing fraud and lack of jurisdiction (ROA 294), denied a fair and impartial opportunity to challenge the jurisdictional defects, constituting a systemic error. Di Cesare misapplied *People v. Dutra*, 145 Cal. App. 4th 1359 (2006), which limits trial court jurisdiction post-remittitur to valid judgments, not void

ones (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)). By shielding the fraudulent judgment, Di Cesare perpetuated the extrinsic fraud (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). Di Cesare's misapplication of *Dutra*, irrelevant to void judgments, denied Defendant a fair and impartial hearing, as it shielded a jurisdictionally defective judgment and prevented meaningful and substantive review of Defendant's fraud and jurisdictional claims perpetuating the enforcement of a void judgment (*Elliot,* supra).

**C. Evidence of Fraud on the Court**

**False Claim and Judicial Acquiescence:** The Humphreys and Bissell deceived the court by presenting a penal prosecution as a civil action, leading Judge Chaffee to apply civil procedures and impose a ~$930,000 penalty without criminal safeguards. Chaffee's failure to question their authority or the action's nature corrupted the judicial process. The Appellate Justices' affirmance, despite clear evidence of fraud, further undermined judicial integrity by ratifying an unauthorized prosecution (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)). Di Cesare's refusal to vacate post-appeal entrenched this deception, allowing a void judgment to persist (Id.).

**Ongoing Harm and Judicial Failure:** The fraud's impact continues through the foreclosure of Defendant's home on November 18, 2024, loss of ~$1.2 million in equity, and eviction under threat of forceful removal by the County Sheriff rooted in the fraudulent judgment. This ongoing harm underscores the court's duty to vacate to protect its integrity (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)),restore Defendants rights and property, and compensate him for damages as a result of this egregious miscarriage of justice.

**D. Meritorious Defense**

Defendant has a meritorious defense: had the action been properly identified as criminal, he could have challenged the Humphreys' standing, invoked criminal protections, and sought dismissal based on the statute of limitations. The absence of evidence that Defendant performed work or was a person required to be licensed, and the misapplication of § 7031(b) instead of § 7028.5 further support his defense (executive branch enforces § 7028.5)).

**E. Conclusion**

As applied, § 7031(a) and (b) are unconstitutional, enabling private penal prosecutions without due process, violating Cal. Const. Art. I, § 7, and the Excessive Fines Clause Art. I, §17. This is facially void, requiring the court to vacate the judgment.

The extrinsic fraud and fraud on the court denied Defendant a fair hearing and corrupted the judicial process, harming Defendant and others in similar cases. Merely providing a building called a court and characters purporting to play official roles does not constitute a full, fair, impartial and/or independent hearing, trial, or appeal. The appearance of procedurally proper proceedings was a sham, as Defendant's issues and evidence have never been meaningfully addressed, denying him a trial, appeal, and access to judicial proceedings altogether (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)).

The extrinsic fraud and constitutional violations reflect systemic issues with Cal. Bus. & Prof. Code § 7031(a) and (b)'s penal application. See e.g. *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015), an ~$22.7 million forfeiture was sought against a competent contractor for a licensing error, costing taxpayers $3.3 million according to a public records request received by Defendant. Similarly, *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012), imposed a ~$917,043 forfeiture, leading to bankruptcy (In re Bardos, Bankr. No. 10-41455-DS. Other cases include *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412 (2005) (~$1,322,247 forfeiture); *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005) (~$212,821 forfeiture); *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (1991) (~$110,000 forfeiture); *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009) (~$84,621 forfeiture); and *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*, 2010 U.S. Dist. LEXIS 116566 ($168,025 forfeiture). The preliminary analysis of these judgement orders may require further study for accuracy. These cases evidence systemic issues, as courts consistently impose penal forfeitures without criminal safeguards or jurisdictional scrutiny, necessitating vacatur to prevent further harm. Equity demands vacatur of the void judgment to restore Defendant's rights and prevent further harm to him and others. Defendant requests all relief requested in the Notice and Memorandum of this Motion.

Dated: May 5, 2025 By: Adam Pereki

## DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I have personal knowledge of the facts herein, except where stated on information and belief.
2. The 2017 judgment was a bill of pains and penalties, procured through extrinsic fraud and fraud on the court, falsely alleging I personally contracted and performed work, with no known evidence I preformed work as required by CACI 4560(3). The $848,000 penalty under § 7031(b) required me to repay compensation already returned through Spartan's licensed work, constituting a duplicative criminal fine under Cal. Penal Code § 15 for the same offense as § 7028, imposed through extrinsic fraud and fraud on the court. The Humphreys lacked standing and capacity to prosecute a penal action, as no sworn information or indictment was filed and no criminal complaint was served on me. Each constitutional violation listed occurred, causing the summary suspension of my vested right to act as the qualifying individual on a general contractor license under § 7071.17 when I could not afford to pay the judgment. This unlawful suspension, another bill of pains and penalties, resulted in an estimated $3 million in lost earnings. These lost earnings are based on estimated income losses from 2017–2025 and are attributable to earnings that would have flowed through to me as the qualifying individual of a general contractor license whether Spartan's or any other I qualified for. I have incurred additional losses of over $5 million dollars in investigation and defense time to vacate this void judgment, calculated as hours spent at the rate of $300 per hour. This time is partially evidenced by my filings on the dockets of each case included as RJN Ex's 1-12, and the Exhibits attached to the Ex parte Application for Emergency Stay filed on 3/14/25 in this case, (ROA's 306-322). Expenses of approximately $1 million include legal fees, medical bills (emotional, psychological, and physical distress), office and stationary supplies and equipment, gas, court parking, etc. Upon judgment in my favor, or before if time permits, I will file a supplemental declaration with a detailed accounting of all lost rights property, and damages (e.g., ~$1.20 million in home equity), supported by financial records and affidavits.

3. The summary suspension of my contractor's license under Cal. Bus. & Prof. Code § 7071.17, ninety days after the April 20, 2017, judgment (ROA 200), deprived me of my liberty to pursue my livelihood as a general contractor without a judicial hearing or appeal process, constituting a bill of pains and penalties (Cal. Const. Art. I, § 9. U.S. Const. Art I. §10); As the Qualifying Individual for The Spartan Associates, Inc. (License #927244), I held a vested right, which was suspended or revoked despite evidence that Spartan was the contractor, as shown by Newport Beach building permits and the Humphreys' payments of $758,000 to Spartan as provided in the citations of evidence in the Memorandum of Points and Authorities of this Motion. I am not aware of any evidence presented by the Humphreys that I personally performed licensed work rendering the judgment and suspension void.
4. I relied on Karen and Gary Humphreys, William Bissell, and Judge Chaffee's representation that the proceeding in the Superior Court of California for the County of Orange, Case No. 30-2015-00805807 were civil.
5. I was never told I was being subjected to highly penal/criminal proceedings and that my vested right to act as a qualifying individual would be summarily suspended or revoked as additional punishment, thereby denying my right to occupation in my profession as a general contractor.
6. I was never informed of my right to assistance of counsel prior to trial or appeal to prepare a meaningful and substantive defense and did not receive assistant counsel at trial, on appeal, or anytime after, despite my request (RJN, Ex. 6 [Denial of Request for Counsel, U.S. District Court].
7. At the time of the trial I was not able to meaningfully and substantively represent myself because I had not received any formal training or education in civil and criminal procedure before trial or on appeal. I had little if any involved in the criminal aspect of prosecution during my time as a police officer as my duties focused on investigation, apprehension, and reporting, not prosecution.
8. I waived trial by jury, based on my belief and the representations of Karen and Gary Humphreys, William Bissell, and Judge Chaffee, that I was facing civil proceedings and that the proceedings would have the sanction of law and recognize and honor my inalienable and constitutional rights and property.

9. Had I known I was being subjected to highly penal/criminal proceedings include deprivation of my right to earn a living as a general contractor, I would have objected to any such unlawful proceedings prosecuted by the Humphreys and Bissell without lawful authority and in violation of my due/judicial process rights.
10. I am not aware of any evidence of damages that the Humphreys presented at trial that I or Spartan caused.
11. I am not aware of any evidence presented by the Humphreys at trial that I profited from their project and was thereby enriched, unjustly or otherwise.
12. The fine was excessive as my qualifying net worth (independent of disability pension and the ~$82k owed by the Humphreys to Spartan, some which would have passed through to me) at the time was approx. $23,000. The judgment was more than forty times this amount. This excessiveness resulted in the suspended/revoked my vested right to work as a general contractor under § 7071.17, resulting in an additional ~$3 million dollar penalty due to lost work as I was unable to pay the judgment, obtain a payment bond, or obtain vacatur in any court of California or the United States and ultimately was forced into bankruptcy. I repeatedly asked the Humphreys to come to an agreement so that I could notify the licensing board and have my qualifying individual status reinstated and resume work as a general contractor. They offered to settle for $300,000 which was still more than times my qualifying net worth.
13. The Humphreys terminated the project in August 2013. I cannot recall if Spartan received a "Notice of Cessation of Labor", but if not, believe it was produced by the Humphreys in discovery. The Notice, dated August 18, 2013, (Ex.5) addressed to Spartan (not me individually), orders Spartan to cease all construction activities at the Humphreys Project. I have never received a similar notice and believe this further evidences that the Humphreys knew their agreement was with and/or the work was performed by Spartan. See also the Humphreys Motion for Summary Judgment (ROA 66, p.ii) representing to the court that the "undisputed facts" were that "In April of 2012 The Spartan Associates entered into an agreement with the Humphreys for the performance of home improvement work on the Humphreys condominium unit" and that "The home improvement work to be performed by The Spartan Associates, Inc. on the Humphreys condominium unit had a value in excess of $500." I believe the Humphreys and Bissell also knew that they could not support a claim under §7031(b)

unless these "undisputed facts" were swept under the rug. When they lost their Motion for Summary Judgment based on these facts, they simply changed them, with a few days more than a month before trial (ROA 127 scheduled for 1/17/17) they filed for leave to amend their cross-complaint with the new first cause of action under §7031(b) (ROA 139, 12/9/16) to not only defraud me but also ambush me and Spartan.

14. Based on my direct experience at trial and my forensic investigation of this case, I believe the Humphreys conspired with their attorney, William Bissell to use these proceedings disguised as civil with intent to defraud and punish me without lawful authority and destroy me financially over a dispute involving their home remodel. They knew that §7031(b) did not mention or authorize an equitable remedy, disgorgement, or damages. Their repeated representation of civil proceedings including their filings in this case, service of judgments and orders upon me, and the trial, were a lawless sham and fraud to steal money and property from me under force of the legislative, executive, and judicial powers of California and color of law that lack lawful authority. In furtherance of their conspiracy to defraud me and commit fraud and fraud on the court, they filed a Proposed Judgment Order for "damages" knowing no damages had been evidenced at trial. Their Memorandum of Points and Authorities in their Motion for Severance (ROA 160) admitted that "since the amount paid by the Humphreys to Mr. Bereki exceeds the amount of damages they are claiming [est.$350,000 [First Amended Cross-Complaint] if they were to prevail on their first cause of action, the trial of the remaining cause of action for damages would be unnecessary." (Id. p.5). Assuming arguendo, their allegations damages were $350k, the judgment they sought and were awarded, was nearly three times this amount and could, under no reasonable interpretation be considered "damages" when they intentionally severed their claim for damages. (ROA 160). Simply put, the Humphreys wanted something for nothing and thought they could perpetrate fraud on me and the court to get it.

15. Spartan provided $930,000 of custom remodel work including labor and materials to Karen Humphreys and Gary Humphreys that they requested for their home at 436 Via Lido Nord, Newport Beach, California. The Humphreys have not paid the remaining approx. $82,000 for the materials and labor (ROA 2) due at the time of

invoice on or about August 1, 2013 and have not paid the interest due thereon through the date of this filing. If the Humphreys had an issue with Spartan or its sub-contractors work–fine–there is a judicial process to remedy those issues. This fraud and corruption of that process is not it!

16. As a result of the actions of the Humphreys, Bissell, Chaffee, Goethals, Aronson, O'Leary, and all other public officials (RJN Ex. 1-12, ROA's 306-322) who have refused to abide their sworn duty to take action to investigate and/or intervene to stop this lawless violences upon me and my family, I have and continue to suffer severe emotional distress and duress as a direct and proximate result. I began disclosing this emotional distress this in my Declaration filed as a First Amended Reply to Opposition of Motion to Compel Bill of Particulars, Motion to Vacate, and Disqualify Judge Chaffee for cause, dated October, 2, 2017 (ROA 267). The Declaration (p.3) stated:

> "I am experiencing emotional and psychological duress resulting from the domestic terrorism attacks by Plaintiffs, their counsel, and this court acting without lawful authority and in violation of numerous felony criminal codes as evidenced herein. I demand the court, Plaintiffs, and their counsel immediately cease and desist and am requesting an emergency protective order and civil harassment restraining order against William Bissell, and potentially Karen and Gary Humphreys and David Chaffee."
>
> Page 13 stated: "The Elements of Psychological and Emotional Distress I have experienced (and continue to to varying degrees) as a result of the continued unlawful actions of the court and William Bissell on behalf of Plaintiffs are: panic and anxiety attacks, severe depression including suicidal thoughts (no, I am not a danger to myself or others), severe headaches, neck and upper back tension, body tremors, loss of appetite, social inactivity, gut/digestion problems and pain, fear of physical and other harm, loss of liberty, and decreased ability to earn an income. My medical records are obviously confidential but will support thousands of dollars in Emergency Room visits to multiple hospitals, and observations, tests, and treatment by specialists including psychologists. I am currently under the care of a doctor whom I see

three days per week to mitigate the intensity of stress in my body in an attempt to cope."

17. I declared these facts of distress again in a Declaration attached to the Notice of Motion and Motion to Vacate post remittitur (ROA 294, Exhibit E). In paragraphs 1 and 2, I stated:

> 1. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -: fraud, gross negligence, abuse of process, intentional infliction of emotion distress, deprivations of my Rights and violations of due process by Plaintiffs Karen and Gary Humphreys and their Counsel, William Bissell, as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017.
>
> 2. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -; fraud, gross negligence, deprivations of my Rights and violations of due process by David R. Chaffee, Kathleen O'Leary, Richard. M. Aronson, and Thomas M. Goethals, acting coram non judice as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017."

18. Based on my training and experience in law enforcement, I believe I am the victim of the following crimes, (this is not an exhaust list of crimes of Defendants): robbery (Cal. Penal Code § 211- forcible taking of my rights, liberty and property without lawful authority); grand theft (Penal Code § 187); burglary (Cal. Penal Code § 459- entering the Superior courthouse with intent to commit grand theft); conspiracy to commit the foregoing crimes on me by the Humphreys and Bissell (Cal. Penal Code § 182(a)(1)); conspiracy by the Humphreys and Bissell to falsely move and maintain the lawless

proceedings against me under § 7031(b) (Cal. Penal Code § 182(a)(3)); and conspiracy by the Humphreys and Bissell to cheat and defraud me of my rights and property property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises (Cal. Penal Code § 182(a)(4)).

19. I continue to be afraid for my safety and that of my family due to these lawless acts of violence that continue to be perpetrated on us, including most recently the theft of our home and approx. $1.2 million dollars in home equity while all officials of State and government refuse to perform a full, fair, impartial and/or independent investigation and/or refuse to intervene to stop this lawless violence.

20. All exhibits are true copies of the documents they purport to be, with exception of nay bates numbering or other non-substantive marks I, or someone else may have made.

Signed on May 28, 2025, at Las Vegas, Nevada.

By: _____

Adam Bereki

# Exhibit 1

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DEPARTMENT C20

| | | |
|---|---|---|
| THE SPARTAN ASSOCIATES, INC. | ) | |
| | ) | |
| | ) | |
| PLAINTIFF, | ) | CASE NO.: 30-2015-00805807 CU-CO-CJC |
| | ) | |
| GARY HUMPHREYS, | ) | |
| KAREN HUMPHREYS, | ) | |
| | ) | |
| DEFENDANTS. | ) | |
| _____ | ) | |

HONORABLE DAVID CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

3/27/17

APPEARANCES OF COUNSEL:

| | |
|---|---|
| FOR THE PLAINTIFF/ CROSS-DEFENDANT: | BY: J. SCOTT RUSSO<br>RUSSO & DUCKWORTH LLP |
| FOR THE DEFENDANTS/ CROSS-COMPLAINANTS: | BY: WILLIAM G. BISSELL<br>LAW OFFICES OF WILLIAM G. BISSELL |
| FOR THE CROSS-DEFENDANT: | BY: ADAM BEREKI<br>SELF-REPRESENTED |

REPORTED BY:
KELVIN K. DO, CSR #13803
OFFICIAL COURT REPORTER

WITNESS INDEX

WITNESSES FOR

| THE PLAINTIFF: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| (NONE) | | | | |

WITNESSES FOR

| THE DEFENSE: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| KAREN HUMPHREYS | 27 | 43<br>64<br>70 | 71 | |
| GARY HUMPHREYS | 74 | 87<br>92 | 101<br>156 | 103<br>162<br>165 |
| ADAM BEREKI | 109 | 124 | 143 | |

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| PLAINTIFF | IDENTIFIED | RECEIVED |
|---|---|---|
| (NONE) | | |

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| EXHIBIT 303 | 106 | 106 |
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| EXHIBIT 305 | 106 | 106 |
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SANTA ANA, CALIFORNIA; MARCH 27, 2017

MORNING SESSION

*****

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT.)

THE COURT: GOOD MORNING, EVERYBODY. THIS IS THE SPARTAN ASSOCIATES, INC. VERSUS HUMPHREYS.

AND FOR THE RECORD, YOU ARE?

MR. RUSSO: GOOD MORNING, YOUR HONOR. SCOTT RUSSO ON BEHALF OF SPARTAN ASSOCIATES, INC.

THE COURT: MR. RUSSO, WITH YOU IS?

MR. BEREKI: ADAM BEREKI, YOUR HONOR.

THE COURT: MR. BEREKI, SPELL YOUR LAST NAME FOR ME, PLEASE.

MR. BEREKI: B-E-R-E-K-I.

THE COURT: AND YOU PRONOUNCE IT BEREKI?

MR. BEREKI: BEREKI. THE SECOND E IS SILENT.

THE COURT: GIVE ME A COUPLE WEEKS, I WILL GET IT THEN.

MR. BEREKI: SOUNDS GREAT.

MR. BISSELL: GOOD MORNING, YOUR HONOR. WILLIAM BISSELL FOR THE DEFENDANT/CROSS-COMPLAINANTS GARY HUMPHREYS AND KAREN HUMPHREYS.

THE COURT: GOOD MORNING.

MR. BISSELL: YOUR HONOR, I HAVE BEEN REFERRING TO

MR. BEREKI AS "MR. BEREKI" FOR OVER TWO YEARS NOW. SO IF I SAY "MR. BEREKI," IT'S NOT INTENDED TO SLIGHT.

MR. BEREKI: I WON'T BE OFFENDED.

THE COURT: I AM PRETTY SURE I HAVE BEEN SAYING "BEREKI" AS WELL FOR THE LAST COUPLE OF YEARS.

OKAY. SO SINCE REVIEWING, MY UNDERSTANDING IS -- THIS IS A COURT TRIAL OF HOW MANY DAYS?

MR. BISSELL: I WOULD THINK FOUR.

MR. RUSSO: IT WOULD BE FAIR.

THE COURT: AND WHAT HAPPENED TO OLD REPUBLIC SURETY ACCOUNT?

MR. RUSSO: I GUESS I HAVEN'T EVEN THOUGHT ABOUT THAT, YOUR HONOR. I AM ALSO DEFENDING THE SURETIES IN THIS.

THE COURT: I SEE YOU DOWN FOR SURETEC INSURANCE COMPANY, BUT I SEE THE LAW OFFICES OF HAUSMAN & SOSA REPRESENTING OLD REPUBLIC.

MR. BEREKI: YOUR HONOR, WE HAVE HAD DISCUSSIONS WITH BOTH THE SURETIES. THEY FELT I WAS COMPETENT TO HANDLE THE DEFENSE AND THEY DIDN'T WANT TO SPEND THE COST TO SEND AN ATTORNEY HERE. I DON'T HAVE A GREAT ANSWER FOR THAT, BUT THAT'S JUST WHAT HAPPENED.

MR. BISSELL: YOUR HONOR, I WOULD LIKE TO SHED SOME LIGHT ON THAT. THERE WAS A STIPULATION, I BELIEVE, SIGNED BY THE COURT WHERE OLD REPUBLIC -- OLD REPUBLIC ONLY, NOT SURETEC, WE ALL STIPULATED THAT THEY WOULDN'T

HAVE TO APPEAR, THAT THEY WOULD ABIDE BY WHATEVER RULING THE COURT HAD AS FAR AS THE LIABILITY OF THE BOND, THAT THE BOND WAS GOOD. THEY STIPULATED THE BOND HAD BEEN ISSUED, THE BOND WAS GOOD. THERE'S NO ISSUE THERE. AND THEY JUST FELT THAT TO COME IN HERE AND SIT -- AND WE ALL AGREED -- THROUGH FOUR, FIVE DAYS OF TRIAL, WHEN THEIR ISSUE REALLY WASN'T AT ISSUE, OTHER THAN THE LIABILITY, EVERYBODY STIPULATED THAT THEY WOULD GO WITH WHICHEVER WAY THE COURT RULED ON THE LIABILITY ISSUE.

THE COURT: SOUNDS FAMILIAR. HOPE I CAN FIND IT WITHIN THE FILE.

MR. BISSELL: THAT'S TO THE BEST OF MY RECOLLECTION.

MR. RUSSO: YOUR HONOR, THAT'S SURETEC'S POSITION ALSO.

THE COURT: BUT, AGAIN, I SEE YOU AS OF RECORD.

MR. RUSSO: FRANKLY, YOUR HONOR, THAT WAS SO LONG AGO, I FORGOT THERE WERE TWO. BUT THE ANSWER IS YES, I AM COUNSEL FOR SURETEC.

THE COURT: AND IT LOOKS LIKE WE HAVE A RETURN FROM THE CITY OF NEWPORT BEACH COMMUNITY PLANNING DEPARTMENT ON THE SUBPOENA YOU ISSUED.

MR. BISSELL: THERE SHOULD ALSO BE ONE FROM THE LIDO ISLE COMMUNITY ASSOCIATION, YOUR HONOR.

THE COURT: SO THERE IS. HAVE YOU SEEN THE CONTENTS OF THESE?

MR. BISSELL: I HAVE NOT.

THE COURT: DO YOU WANT TO?

MR. BISSELL: I KNOW WHAT THEY ARE. THERE WERE COPIES OF DOCUMENTS OF WHICH WE HAD, SO, I ASSUME THAT'S ALL THEY'RE PRODUCING ALONG WITH THEIR DECLARATION AS TO BEING A BUSINESS RECORD.

THE COURT: LET'S LET MR. BISSELL AND MR. RUSSO HAVE A LOOK AT THE CONTENTS TO MAKE SURE EVERYTHING IS THERE. AND MR. BEREKI, OF COURSE.

MR. BISSELL: THAT'S WHAT WE ASKED FOR.

THE COURT: OKAY. WELL, WE WILL JUST LEAVE IT ON THE CLERK'S CALENDAR, AND WHEN YOU NEED IT, YOU WILL FILL US IN.

AND SO WITH REFERENCE TO THAT WHICH MR. BISSELL INDICATED, I HAVE IN MY HAND THE DOCUMENT ENTITLED "STIPULATION BETWEEN DEFENDANTS AND CROSS-COMPLAINANTS GARY HUMPHREYS, AN INDIVIDUAL, KAREN HUMPHREYS, AN INDIVIDUAL, PLAINTIFF AND CROSS-DEFENDANT SPARTAN ASSOCIATES, INC., A CALIFORNIA CORPORATION, AND CROSS-DEFENDANT OLD REPUBLIC SURETY COMPANY, A CORPORATION, RE: LIABILITY AND DAMAGES" -- AND THE ORDER THEREON. IT WAS FILED ON FEBRUARY 1, 2017. IT WAS -- SUBSTANTIALLY REFLECTS THAT WHICH MR. BISSELL INDICATED. I GUESS WE WON'T WORRY ABOUT OLD REPUBLIC -- SURE TO PAY IF THEY NEED TO.

ALL RIGHT. AND SO LET'S TALK FOR A SECOND

ABOUT EXHIBITS. MY UNDERSTANDING IS YOU ALL HAVE COME HERE TODAY WITH EXHIBITS, THE PLAINTIFFS' EXHIBITS NUMBERED 1 THROUGH 60 AND THE DEFENDANTS' EXHIBITS NUMBERED 1 THROUGH 60, OR SOMETHING ALONG THOSE LINES.

MR. RUSSO: IT'S ACTUALLY PLAINTIFFS' 1 THROUGH 137 AND DEFENDANTS' 1 THROUGH 62.

THE COURT: HOW DO WE FIX THIS PROBLEM?

MR. BISSELL: YOUR HONOR, WE HAD AN AGREEMENT BETWEEN COUNSEL -- AND THIS WAS BEFORE MR. BEREKI SUBSTITUTED OUT -- THAT WE WOULD TAKE NUMBERS 1 THROUGH 100 AND THEY WOULD TAKE NUMBERS 100 ON TO WHATEVER. WE HAVE OUR EXHIBITS KIND OF FINALIZED. WE KNEW THE EXTENT OF THE EXHIBITS. THEY WERE STILL WORKING PUTTING THEIRS TOGETHER. THEY DIDN'T KNOW HOW MANY THEY HAD SO THEY OPTED TO START WITH 100 ON INTO HOWEVER MANY THEY NEEDED.

THE COURT: TO INFINITY AND BEYOND.

MR. BISSELL: TO INFINITY AND BEYOND, YOUR HONOR.

MR. RUSSO: IT'S SIMPLY FIXED BY ADDING A TWO IN THE DEFENDANTS' EXHIBITS AND WE CAN GO FROM THERE. OR 200.

THE COURT: WELL, IF WE PUT A ONE IN FRONT OF YOUR NUMBER 1, I GUESS IT WOULD BE TEN RIGHT.

MR. RUSSO: WELL, WE HAVE 137.

THE COURT: PARDON?

MR. RUSSO: WE HAVE 137. I AM SUGGESTING IF WE

STARTED WITH 200 ON THEIRS, WE WOULD BE FINE.

THE CLERK: I THINK IT'S EASIER IF WE PUT A FIVE OR THREE ON THE DEFENDANTS'.

THE COURT: SO 301 AND SO ON?

THE CLERK: BECAUSE MR. RUSSO HAS MORE THAN 100 AND DEFENSE IS ONLY 75.

THE COURT: SEEMS LIKE A GREAT IDEA.

OKAY. SO THE TWO OF YOU GET TO COLLECTIVELY MARK THOSE EXHIBITS, THE DEFENSE EXHIBITS. SO IT'S GOING TO BE 301 AND FOLLOWING.

MR. BISSELL: SHOULD I DO THAT NOW?

THE COURT: WELL, YOU MIGHT AS WELL BECAUSE I THINK I HAVE NOT HAD A CHANCE TO READ THE TRIAL BRIEFS YOU SUBMITTED. WE WILL TAKE 30 MINUTES, COME BACK AT 10:00 AND RE-JOIN AFTER I READ THAT, AND WE WILL GET ROLLING.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: THANK YOU, YOUR HONOR. AS FAR AS THE READING OF THE BRIEFS, DO YOU RECALL THAT WE HAVE --

THE COURT: WE BIFURCATED.

MR. BISSELL: BIFURCATED. THE FIRST CAUSE OF ACTION WE TRIED FIRST. WE SUBMITTED A SEPARATE BRIEF ON THE FIRST CAUSE OF ACTION ALONE. I DON'T KNOW IF YOU WANT TO JUST FOCUS ON THAT AND WAIT --

MR. RUSSO: YOUR HONOR, MY UNDERSTANDING IS WE'RE NOT NECESSARILY TRYING THE FIRST CAUSE OF ACTION FIRST. WHAT WE'RE TRYING IS THE LICENSING ISSUES AND WHO THE

CONTRACT WAS WITH, AS BETWEEN THE CORPORATION AND MR. BEREKI. THAT WAS MY UNDERSTANDING OF THE BIFURCATION.

MR. BISSELL: THAT IS, IN ESSENCE, THE FIRST CAUSE OF ACTION.

MR. RUSSO: WELL, IF WE GO INTO THE WHOLE FIRST CAUSE OF ACTION, WE ARE TRYING -- THE WHOLE POINT TO NARROW THE CLAIM, AND THAT'S THE WHOLE CASE, WHICH IS SUBSTANTIALLY LONGER THAN THE BIFURCATION OF WHO THE CONTRACTORS WERE.

MR. BISSELL: NOT TRUE, YOUR HONOR. THE FIRST CAUSE OF ACTION ONLY GOES TO THE ISSUE OF WHO THE CONTRACTING PARTIES WERE AND THE LICENSING STATUS OF THOSE PARTIES. THERE'S NO ISSUES INVOLVING QUALITY OF WORKMANSHIP, NEGLIGENCE, FRAUD, NONE OF THE OTHER CAUSES OF ACTION APPEAR OR ARE A PART OF THE FIRST CAUSE OF ACTION. IT'S A DISTINCT SEPARATE CAUSE OF ACTION.

THE COURT: WELL, OKAY. LET ME GO REFRESH MY RECOLLECTION AS I READ THROUGH YOUR BRIEFS.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: SEE YOU IN ABOUT 30.

(RECESS.)

THE COURT: JUST TO CONFIRM, I DID NOT FIND PLAINTIFFS' TRIAL BRIEF IN MY STACK.

MR. RUSSO, DID I MISS IT?

MR. RUSSO: IT GOT FILED LAST NIGHT.
THE CLERK: LAST NIGHT?
MR. RUSSO: THAT'S WHEN I GAVE IT TO MY SECRETARY.
THE COURT: WHAT TIME? MIDNIGHT?
MR. RUSSO: PRETTY LATE, YOUR HONOR.
MR. BEREKI: I HAVE AN E-MAIL I COULD SEND OR I COULD READ IT.
THE COURT: MAYBE MR. RUSSO HAS A SPARE COPY OF HIS OWN.
MR. RUSSO: I DON'T, YOUR HONOR.
THE COURT: WE USUALLY LIKE TO GET COURTESY COPIES. IT'S PROBABLY OUT THERE IN THE BOWELS OF THE COMPUTER. DID YOU KNOW COMPUTERS HAVE BOWELS?
MR. RUSSO: I CAN ORALLY TELL YOU WHAT IT WOULD SAY, YOUR HONOR, IF YOU LIKE.
THE COURT: I WOULD RATHER READ IT. IN THE MEANTIME, JUST A QUICK DISCUSSION. I'M NOT SURE THERE'S A WHOLE LOT OF SUBSTANTIAL DIFFERENCE BETWEEN YOUR RESPECTIVE POSITIONS ON THIS BIFURCATION ISSUE. AT THE END OF THE DAY, MR. BISSELL'S POINT IS THE THRESHOLD ISSUE OF WHETHER OR NOT LICENSURE EXISTED. I HAVE NOT LOOKED AT ANY OF THE DOCUMENTS IN YOUR EXHIBITS YET. WITH RESPECT TO EITHER THE CONTRACT, I SEE REPRESENTATIONS IN MR. BISSELL'S PAPERS OF AN ORAL CONTRACT THAT CAUSES ME TO HAVE SOME CONCERN ALREADY. AND THEN I SEE SPARTAN ASSOCIATES AS A POSSIBLE PLAYER

LURKING ON THE HORIZON.

SO I DON'T THINK THAT WE'RE TRYING THE FIRST CAUSE OF ACTION IN THE SENSE OF DAMAGES SO MUCH AS WE'RE TRYING TO ASCERTAIN THE LICENSURE.

MR. RUSSO: I DON'T THINK THERE'S ANY DISPUTE THAT THE SPARTAN ASSOCIATES, INC. WAS LICENSED. THE QUESTION WAS WHETHER OR NOT THE HUMPHREYS AGREEMENT WAS WITH SPARTAN ASSOCIATES OR MR. BEREKI PERSONALLY.

THE COURT: IS THERE WRITTEN CONTRACT BETWEEN SPARTAN ASSOCIATES AND THE HUMPHREYS?

MR. RUSSO: NO. WE HAVE E-MAILS THAT FORM THE CONTRACT. IT'S FROM MR. BEREKI, AND HE WOULD CONTEND THAT WAS ON BEHALF OF SPARTAN ASSOCIATES.

IS THERE SOMETHING IN THE LETTERHEAD THAT SAYS SPARTAN ASSOCIATES AND HUMPHREYS ENTER INTO ANY AGREEMENT? NO, THERE IS NOT.

THE COURT: OKAY. WE'RE FOLLOWING UP ON THAT BRIEF OF YOURS.

MR. RUSSO: OH, GOOD.

THE CLERK: IT WILL TAKE A COUPLE OF MINUTES.

THE COURT: OKAY. SO ALL RIGHT. I TRIED TO FOCUS ON THE FIRST AMENDED CROSS-COMPLAINT FIRST CAUSE OF ACTION. THIS IS AGAINST CROSS-DEFENDANT MR. BEREKI -- MR. BEREKI.

MR. BEREKI: IT'S FINE.

MR. RUSSO: I HAD IT WRONG FOR TWO YEARS.

MR. BEREKI: IT'S FINE.

MR. BISSELL: LET'S JUST GO WITH "BEREKI."

THE COURT: THE CAUSE OF ACTION SEEKS DISGORGEMENT OF THE FUNDS PAID TO THE TUNE OF $848,000. THE INDICATION IN THE CROSS-COMPLAINT IN APRIL 2012 ORAL CONTRACT WITH LAST SERVICES, AUGUST 21, 2013, THERE IS INDICATED IN THAT CAUSE OF ACTION SOME EFFORTS TO SUBSTITUTE THE SPARTAN ASSOCIATES, INC. AS THE CONTRACTING PARTY, BUT IT'S UNCLEAR AS TO HOW OR WHAT THAT WAS OR HOW IT WOULD WORK. I'M SURE THAT'S WHAT THIS TRIAL WILL CLARIFY FOR ME.

I ALSO SAY, MR. BISSELL, YOUR FILED REQUEST FOR STATEMENT OF DECISION AND WE WILL HAVE TO SEE. IF THIS IS A ONE DAY OR LESS TRIAL, WHICH SEEMS UNLIKELY IN THESE CIRCUMSTANCES, THEN IT WOULD BE TIMELY. IF IT IS MORE THAN A DAY, THEN IT IS PREMATURE.

MR. BISSELL: UNDERSTOOD, YOUR HONOR. I JUST WANTED TO COVER THE BASES.

THE COURT: COVER THE BASES. GOOD MAN, GOOD LAWYER. SO RATHER THAN WAIT FOR THE COMPUTER TO SPEW OUT SOMETHING SOME DAY, THERE PROBABLY ISN'T ANY REASON WHY WE CAN'T GET STARTED SINCE THE PRESENTATION FALLS TO THE CROSS-COMPLAINANTS TO START.

MR. RUSSO: PERFECT. WE CAN START WITH THE CROSS-COMPLAINANTS THEN.

THE COURT: DO YOU ALL FEEL CONSTRAINED TO GIVE ME

AN OPENING STATEMENT, OR DO YOU WANT TO JUST PUT ON YOUR EVIDENCE?

MR. BISSELL: THE OPENING STATEMENT MAY FLUSH OUT SLIGHTLY A BIT MORE THAN WHAT WAS IN THE BRIEF, AS FAR AS BACKGROUND AND FACTS.

THE COURT: IN THAT CASE, RIGHT SIDE, BEGIN.

MR. BISSELL: VERY WELL, YOUR HONOR. THANK YOU.

ONCE AGAIN, YOUR HONOR, WILLIAM BISSELL, REPRESENTING THE HUMPHREYS WHO ARE THE DEFENDANTS, CROSS-COMPLAINANTS IN THIS ACTION.

THIS OPENING STATEMENT IS JUST ADDRESSING, AS THE COURT HAS INDICATED, THE FIRST CAUSE OF ACTION PLED IN THE FIRST AMENDED.

THE COURT: CORRECT. WE WILL HOLD OFF ON THE GENERAL RUN OPENING STATEMENT UNTIL LATER.

MR. BISSELL: THANK YOU, YOUR HONOR. THANK YOU.

FACTUALLY, THE WAY THIS CASE PLAYS OUT IN EARLY -- ACTUALLY, IN APRIL OF 2012, THE HUMPHREYS HAD PURCHASED A SMALL VACATION CONDOMINIUM UNIT IN NEWPORT BEACH. THEY LIVE UP IN CONTRA COSTA COUNTY, BAY AREA. THEY HAVE FAMILY AND FRIENDS DOWN HERE. BOTH HAVE CHILDREN DOWN HERE. THEY WANTED A PLACE WHERE THE FAMILIES COULD GET TOGETHER, KIDS COULD GO AND USE IT, FRIENDS COULD USE IT.

THE PROBLEM WAS THAT IT WAS A BUILDING THAT HAD BEEN BUILT IN 1955. IT WAS A RENTAL UNIT. IT WAS

PROBABLY -- THERE WASN'T A WHOLE LOT THAT HAD BEEN DONE TO IT SINCE 1955. IT WAS OLD.

THE COURT: POSITIVELY ANTIQUE. IT'S ALMOST AS OLD AS I AM.

MR. BISSELL: STILL YOUNGER THAN I AM, YOUR HONOR.

IT NEEDED AN OVERHAUL. GARY HUMPHREYS HAD KNOWN MR. BEREKI THROUGH HIS BROTHER AND SON. MR. BEREKI HAD DONE SOME CONSTRUCTION WORK FOR BOTH OF THEM. AND IN FACT, MR. HUMPHREYS HAD MET MR. BEREKI AT HIS HOUSE WHERE MR. BEREKI WAS INSTALLING AN ENTERTAINMENT SYSTEM IN THE HOME.

THE HUMPHREYS, BEING FROM THE BAY AREA, DIDN'T KNOW ANY OTHER CONTRACTORS IN THE AREA.

THE COURT: ARE WE TALKING ELECTRONICS OR ARE WE TALKING ABOUT STRUCTURE?

MR. RUSSO: ELECTRONICS. WIRING. MAYBE STRUCTURAL TO THE EXTENT THAT YOU'RE INSTALLING A SUPPORT FOR A TV SCREEN, SOMETHING LIKE THAT, AS FAR AS MR. HUMPHREYS UNDERSTOOD. IT WASN'T HIS PROJECT. HE WASN'T VIABLY INVOLVED OR PAYING ATTENTION, BUT THAT WAS HIS UNDERSTANDING.

AGAIN, THE HUMPHREYS DIDN'T KNOW ANY OTHER CONTRACTORS IN THIS AREA. HIS BROTHER SAID, "HEY, WHY DON'T YOU GIVE ADAM BEREKI A CALL. HE DOES GOOD WORK FOR ME."

THE HUMPHREYS CONTACTED MR. BEREKI. THEY

SAID, "HEY, WE BOUGHT THIS CONDOMINIUM UNIT. IT'S SHABBY, IT NEEDS AN OVERHAUL. WOULD YOU BE INTERESTED IN LOOKING AT IT WITH US AND MAYBE DOING THE WORK ON THE PROJECT?

THEY WALKED THE PROJECT. MR. BEREKI COULDN'T BE MORE ENTHUSIASTIC. "AS A LICENSED CONTRACTOR, I HAVE DONE SEVERAL OF THESE TYPES OF JOBS. THIS IS WHAT I DO. I HAVE DONE WORK IN THE CITY OF NEWPORT BEACH. I KNOW THE CITY'S REGULATIONS. THIS IS RIGHT IN MY WHEELHOUSE. THIS IS SOMETHING WE WOULD BE VERY INTERESTED IN DOING. AND I ASSURE YOU YOU WILL BE MORE THAN HAPPY WITH THE RESULTS."

MR. BEREKI, A FEW DAYS LATER, I THINK IT WAS WITHIN THREE OR FOUR DAYS AFTER THEY WALKED THE PREMISES, MR. BEREKI SENT THE HUMPHREYS A PROPOSAL VIA E-MAIL. THIS PROPOSAL WAS ON MR. BEREKI'S PERSONAL ACCOUNT. THE PROPOSAL BASICALLY OUTLINED WHAT MR. BEREKI UNDERSTOOD THAT THE HUMPHREYS WANTED WITH REGARD TO THEIR RENOVATION OF THEIR CONDOMINIUM UNIT.

AND THE HUMPHREYS WENT THROUGH THAT AND THEY RESPONDED BACK VIA E-MAIL TO MR. BEREKI, IN WHICH THEY AGREED TO MANY OF THE ITEMS. AND THERE WAS MANY ITEMS THAT MR. BEREKI PROPOSED, AND NO, WE DON'T WANT TO DO THAT, MAYBE DO THIS INSTEAD. IN OTHER WORDS, HERE'S WHAT I PROPOSE, THE HUMPHREYS LOOKED AT IT AND SAYS "YES, THAT'S FINE. HERE'S THE CHANGES WE WANTED TO

MAKE."

MR. BEREKI'S PROPOSAL, AS FAR AS FEES, WERE $500 A DAY FOR MYSELF AND $500 A DAY FOR MY PARTNER, MR. OVERLEY. MATERIALS WILL BE BILLED TO YOU AT THEIR COST, NO MARK UP, AND OTHER LABOR, AS NECESSARY, WILL BE BILLED AT COST. THE PROJECT WILL TAKE APPROXIMATELY TWO AND A HALF MONTHS AND SHOULD COST AROUND $143,000.

THIS WAS ALL MEMORIALIZED IN THE E-MAIL. WHEN I SAY THERE WAS AN ORAL AGREEMENT, THERE WAS AN ORAL AGREEMENT BUT IT WAS MEMORIALIZED IN THIS E-MAIL, THIS BACK AND FORTH BETWEEN THE HUMPHREYS AND MR. BEREKI. AND THAT IS DATED APRIL 5, 2012.

THE E-MAIL, AGAIN, WAS SENT ON MR. BEREKI'S PERSONAL E-MAIL ACCOUNT. IT WAS SIGNED OFF BY ADAM BEREKI. IT WAS -- IT MENTIONED MR. BEREKI ONLY AND HIS PARTNER, GLENN OVERLEY. THERE WAS ABSOLUTELY NO MENTION OF SPARTAN ASSOCIATES OR SPARTAN CONSTRUCTION IN THAT E-MAIL.

THE HUMPHREYS WILL TESTIFY THAT THERE IS NO MENTION OF SPARTAN ASSOCIATES OR SPARTAN CONSTRUCTION IN ANY OF THEIR CONVERSATIONS LEADING UP TO THE E-MAIL. THERE WAS NO MENTION OF SPARTAN ASSOCIATES WHEN THEY WALKED THE PROJECT. THERE WAS NO MENTION OF SPARTAN PERIOD.

NOW, THIS GOES A LITTLE BIT BEYOND OPENING, BUT UNDER THE LAW, CONTRACTS ARE INTERPRETED AT THE TIME

THEY ARE ENTERED INTO, AND THEY ARE INTERPRETED BY THEIR OBJECTIVE INTENT, NOT SOMEBODY'S UNEXPRESSED INTENT. SO IF THERE WAS AN INTENT TO, HEY, I AM REALLY SPARTAN, WHERE YOU'RE REALLY ENTERING INTO A CONTRACT WITH SPARTAN, THERE WAS INDICATION OF THAT. THE HUMPHREYS HAD ABSOLUTELY NO INDICATION. THEY HAD NEVER HEARD OF SPARTAN AT THIS POINT IN TIME.

NOW, ONCE THE PROJECT STARTED -- AND I SHOULD SAY THAT THE PROJECT INITIALLY WAS ONE SMALL -- I THINK IT WAS A 900 SQUARE FOOT CONDOMINIUM UNIT, AND THE ORIGINAL QUOTE OF $143,000, TWO AND A HALF MONTHS IS BASED ON REFURBISHING THAT ONE UNIT.

WELL, SHORTLY AFTER THAT, THE HUMPHREYS BOUGHT THE ADJACENT UNIT. SO IT'S AN UPSTAIRS UNIT, IF YOU CAN PICTURE IT.

THE COURT: WHEN DID THAT PURCHASE TAKE PLACE? WHAT WAS THE DATE OF THAT PURCHASE?

MR. BISSELL: MAY, I BELIEVE. MAY OF 2012.

THE COURT: THAT WAS THE DATE OF THE PURCHASE WHEN THE ESCROW CLOSED?

MR. BISSELL: OF THE SECOND UNIT, YES, YOUR HONOR.

THE COURT: WHEN DID ESCROW CLOSE ON THAT SECOND UNIT?

MR. BISSELL: MAY OF 2012.

THE COURT: THANK YOU.

MR. BISSELL: SO THE PROJECT BECAME LARGER THAN

ORIGINALLY ESTIMATED. IT WAS GOING TO BE ROUGHLY DOUBLE BECAUSE YOU HAD TWO UNITS OF THE SAME SIZE AND THEY WERE BOTH IN SIMILAR SHAPE, THEY BOTH NEEDED THE SAME STUFF DONE.

FOR THE FIRST THREE MONTHS ON THIS PROJECT, UNTIL JULY OF 2012 -- I SHOULD PREFACE THIS. SHORTLY AFTER THE APRIL 5 AGREEMENT, E-MAIL AGREEMENT, IF WE COULD CALL THAT THE AGREEMENT, MR. BEREKI'S ACKNOWLEDGED THAT WAS THE AGREEMENT, AND THERE WAS NO OTHER AGREEMENT. THAT WAS THE ONLY AGREEMENT.

WITHIN TWO OR THREE DAYS AFTER THAT, MR. BEREKI CONTACTED THE HUMPHREYS. IT COULD HAVE BEEN WITHIN A WEEK AFTER THAT. CONTACTED THE HUMPHREYS AND SAID I AM REALLY EXCITED ABOUT THIS, AND WE'RE GOING FORWARD. I NEED $15,000 AS A DOWN PAYMENT TO PAY -- I'VE GOT A LITTLE BIT OF LABOR ALREADY INVOLVED IN THIS THING AND THIS WILL SEE ME THROUGH FOR ANOTHER WEEK OR TWO. WOULD YOU SEND ME $15,000.

MS. HUMPHREYS E-MAILS BACK AND SAYS FINE. WHO DO YOU WANT IT MADE PAYABLE TO? SHE DIDN'T KNOW WHETHER OR NOT IT SHOULD BE PAYABLE TO MR. BEREKI, MR. BEREKI AND MR. OVERLEY, HIS PARTNER, A COMBINATION OF THE TWO? SHE DIDN'T KNOW. MR. BEREKI RESPONDS BACK, HEY, TO ADAM BEREKI.

SO FOR THE FIRST THREE MONTHS ON THIS PROJECT, UNTIL JULY OF 2012, THE HUMPHREYS PAID MR. BEREKI

PERSONALLY $100,000.

AFTER THE $100,000 IN JULY OF 2012, MR. BEREKI, I THINK THE LIGHTBULB WENT ON IN HIS HEAD THAT I THINK I SHOULD BE RUNNING THIS JOB THROUGH MY CORPORATION. HE HAD A CORPORATION APPARENTLY. IT WAS SPARTAN. HE SENT THE HUMPHREYS AN E-MAIL SAYING WOULD YOU PLEASE MAKE PAYMENTS TO SPARTAN.

NOW, AT THAT SAME TIME, UP UNTIL THAT TIME, MR. BEREKI WAS NOT ONLY REQUESTING AND ACCEPTING PAYMENTS TO HIM PERSONALLY, HE WAS PAYING ALL LABOR AND MATERIAL ON THE JOB IN HIS OWN ACCOUNT, AND ACTUALLY IT WAS SOMEONE'S MOTHER'S ACCOUNT. NOTHING ON THE SPARTAN CONSTRUCTION ACCOUNT. SPARTAN DIDN'T EXIST ON THIS JOB UNTIL JULY WHEN MR. BEREKI SAYS PLEASE START MAKING PAYMENTS TO SPARTAN.

THE HUMPHREYS DIDN'T KNOW WHO SPARTAN WAS OR WHAT SPARTAN WAS. THEY FIGURED IT WAS AN ACCOUNT MR. BEREKI WANTED TO RUN PAYMENTS THROUGH, A DBA, WHATEVER. IT REALLY DIDN'T REGISTER WITH THEM. IT WASN'T EXPLAINED TO THEM, CERTAINLY, WHAT SPARTAN WAS, JUST PLEASE COULD YOU MAKE PAYMENTS TO SPARTAN.

IT WAS IN JULY OF 2012, WHEN MR. BEREKI MADE THIS REQUEST, THAT HE APPLIED TO THE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA FOR SPARTAN TO BE AN EMPLOYER. IT WAS IN JULY OF 2012 WHEN MR. BEREKI APPLIED AS SPARTAN CONSTRUCTION FOR WORKERS'

COMPENSATION INSURANCE ON THIS JOB. SO SPARTAN DIDN'T EVEN EXIST ON THIS JOB UNTIL JULY OF 2012 AFTER THE HUMPHREYS HAD ALREADY ENTERED INTO THE AGREEMENT, AFTER THE HUMPHREYS HAD PAID MR. BEREKI $100,000 PERSONALLY.

AND THEN FROM THAT POINT FORWARD, PAYMENTS WERE MADE BOTH TO MR. BEREKI AND SPARTAN CONSTRUCTION. $188,000 WAS PAID PERSONALLY TO MR. BEREKI AND THE BALANCE OF $848,000 MINUS $184,000 WAS PAID TO SOME COMBINATION OF SPARTAN OR SPARTAN CONSTRUCTION AT MR. BEREKI'S REQUEST.

AGAIN, THE HUMPHREYS THINKING THIS WAS SOME ACCOUNT OR SOME BUSINESS DBA THAT ADAM WANTED TO USE, AND THAT WAS FINE WITH THEM.

BUT THE POINT IS, CONTRACTS ARE INTERPRETED AT THE TIME THEY ARE ENTERED INTO. AT THE TIME THIS CONTRACT WAS ENTERED INTO, AND FOR THE FIRST THREE MONTHS, SPARTAN DIDN'T EXIST ON THIS JOB.

MR. BEREKI, AFTER THE FACT, TRIED TO APPARENTLY -- IT APPEARS THAT HE TRIED TO INSERT SPARTAN INTO THE JOB. IT WAS TOO LATE AT THAT POINT. THERE WAS NO CONTRACT THAT WAS ENTERED INTO BETWEEN SPARTAN AND HUMPHREYS. IT JUST DIDN'T EXIST, THERE ISN'T ONE.

THE CONSEQUENCES, OF COURSE, WERE BRIEF, AND THAT'S THAT MR. BEREKI WASN'T LICENSED. HE HAD NO LICENSE TO ACT AS A CONTRACTOR. MR. BEREKI WAS AN RMO FOR HIS CORPORATION, SPARTAN. THE LAW SAYS WE COULD BE

AN RMO, YOU CAN BE A RESPONSIBLE MANAGEMENT OFFICER, YOU CAN BE A RESPONSIBLE MANAGING EMPLOYEE, YOU CAN BE THE MANAGER, YOU CAN BE WHATEVER OF A PARTNERSHIP, CORPORATION, JOINT VENTURE, WHATEVER, BUT THAT DOESN'T GIVE YOU THE RIGHT TO GO OUT AND CONTRACT AS AN INDIVIDUAL. YOU HAVE TO HAVE A LICENSE AS AN INDIVIDUAL.

THE OTHER KEY HERE IS THAT MR. BEREKI -- MR. OVERLEY. MR. BEREKI REFERRED TO MR. OVERLEY IN THE AGREEMENT AS MY PARTNER, MY PARTNER MR. OVERLEY. MR. OVERLEY WORKED ON THE JOB. HE WAS PAID ON THE JOB FOR AT LEAST THE FIRST THREE MONTHS. THEN WHAT HAPPENED TO MR. OVERLEY, WE DON'T KNOW. THE HUMPHREYS FRANKLY NEVER MET MR. OVERLEY, NEVER SEEN HIM BEFORE. BUT HE WAS REPRESENTED TO BE MR. BEREKI'S PARTNER.

SO, AS HIS PARTNER, THERE WOULD HAVE TO BE, BY LAW, A LICENSE ISSUED TO THE TWO OF THEM AS A JOINT VENTURE OR PARTNERSHIP. EVEN IF BOTH WERE INDIVIDUALLY LICENSED, WHICH THEY WERE NOT, THEY WOULD STILL HAVE TO HAVE A JOINT VENTURE LICENSE. EVEN IF YOU COULD ARGUE THAT SPARTAN ASSOCIATES WAS SOMEHOW INVOLVED IN THIS JOB, OR IF THE HUMPHREYS HAD CONTRACTED WITH SPARTAN -- AND THAT'S THE KEY, IS WHO THEY CONTRACTED WITH, NOT WHETHER OR NOT SPARTAN WAS INVOLVED. SPARTAN COULD BE INVOLVED AS MUCH AS IT WANTS. IT COULD BE A SUBCONTRACTOR OF MR. BEREKI, IT COULD BE A CO-VENTURE

WITH MR. BEREKI AND MR. OVERLEY. IT CAN BE WHATEVER IT WANTS, BUT IT DIDN'T CONTRACT WITH THE HUMPHREYS.

AND IF IT COULD BE ARGUED THAT SPARTAN ASSOCIATES WAS SOMEHOW -- HAD SOMEHOW CONTRACTED WITH THE HUMPHREYS, IT WOULD STILL NEED TO BE A JOINT VENTURE LICENSE BETWEEN SPARTAN AND MR. OVERLEY, MR. BEREKI'S PARTNER. SO BEREKI HAS TESTIFIED UNDER OATH THAT MR. OVERLEY WAS AN INDEPENDENT CONTRACTOR. THAT WAS HIS POSITION ON THIS JOB, INDEPENDENT CONTRACTOR. SO ANY COMBINATION, ANY COMBINATION OF SPARTAN AND MR. OVERLEY, ANY COMBINATION OF MR. BEREKI AND MR. OVERLEY, ANY COMBINATION -- ANY COMBINATION YOU CAN COME UP WITH HAD TO HAVE A LICENSE ISSUED TO IT AS A JOINT VENTURE.

AND THE EVIDENCE WILL SHOW WE HAVE ASKED FOR THE PRODUCTION. THE BURDEN WILL SHIFT -- ONCE THE LICENSURE ISSUE BECOMES IN ISSUE, THE BURDEN SHIFTS TO THE CONTRACTOR TO PROVE LICENSURE. WE HAVE ASKED FOR PRODUCTION TODAY IN THIS TRIAL OF LICENSES ISSUED TO MR. BEREKI, INDIVIDUALLY, MR. OVERLEY, INDIVIDUALLY, OR TO THE TWO OF THEM AS A JOINT VENTURE, OR BETWEEN ANY COMBINATION OF THEM AND SPARTAN AS A JOINT VENTURE. AND I -- I STRONGLY SUSPECT THAT WE'RE NOT GOING TO SEE THAT LICENSE.

THE CONSEQUENCE OF THAT, YOUR HONOR, IS THAT, UNDER THE LAW -- AND IT'S A HARSH REMEDY AND -- THE COURT SHOULD UNDERSTAND THAT THE HUMPHREYS ARE PREPARED,

IF NECESSARY, TO -- YOU KNOW, WE CAN PUT ON EVIDENCE OF 18 MONTHS OF MALFEASANCE BY MR. BEREKI ON THIS JOB. NOT ONLY NEGLIGENCE, BUT OUTRIGHT FRAUD.

SO WE FEEL THAT THE DISGORGEMENT STATUTE, ALTHOUGH HARSH IN SOME INSTANCES, AND IN THIS INSTANCE IT'S NOT THAT HARSH, UNDER THE LAW, THE LAW IS VERY CLEAR THAT HARSH OR NOT, THE HUMPHREYS ARE ENTITLED TO RECOVER FROM MR. BEREKI ALL AMOUNTS PAID BY THEM ON THIS JOB. AND THAT AMOUNT TOTALS $848,000.

THANK YOU.

THE COURT: TURN TO MR. RUSSO.

MR. RUSSO: IF ONLY IT WAS SO SIMPLE, YOUR HONOR.

THERE'S NOT A DISPUTE HERE THAT THE SPARTAN ASSOCIATES, INC. IS LICENSED TO BE A CONTRACTOR WITH THE CONTRACTOR STATE LICENSE BOARD. MR. BEREKI IS -- MR. BEREKI IS THE RMO OF THAT COMPANY. HE'S THE SOLE SHAREHOLDER OF THAT COMPANY.

SPARTAN ASSOCIATES, THIS WAS NOT THEIR FIRST -- IT'S -- IT WAS NOT ITS FIRST WORK WITH THE HUMPHREYS FAMILY. THE HUMPHREYS HAVE FAMILY MEMBERS THAT SPARTAN ASSOCIATES DID PRIOR PROJECTS ON. THERE WERE TWO HOMES THAT WENT THROUGH SOME REMODEL WORK. THERE WAS A COMMERCIAL OFFICE BUILDING THAT MR. HUMPHREYS' BUSINESS IS IN WHERE SPARTAN ASSOCIATES DID THE TENANT IMPROVEMENT WORK ON THAT PRIOR TO THIS PROJECT. SPARTAN ASSOCIATES WAS AN ENTITY KNOWN BY THE

HUMPHREYS PRIOR TO THE HUMPHREYS ENGAGING SPARTAN ASSOCIATES FOR THIS PROJECT.

WAS MR. BEREKI A LITTLE LAX ON THE FIRST COUPLE OF CHECKS GOING TO HIM PERSONALLY? YES. BUT AT ALL TIMES THIS WAS A SPARTAN ASSOCIATES PROJECT. YOU WILL SEE -- THE EVIDENCE WILL SHOW THAT OVER $500,000 OF THE PAYMENTS FOR THIS REMODEL PROJECT FOR THE TWO WATERFRONT HOMES WERE PAYABLE TO THE SPARTAN ASSOCIATES.

WHAT'S BEEN REFERRED TO HERE IN THIS CROSS-COMPLAINT IS THE DISGORGEMENT STATUTE FOR UNLICENSED CONTRACTING. THAT'S WHEN A PERSON WHO DOESN'T HAVE A LICENSE ACCEPTS MONEY FOR WORK WHERE A LICENSE WAS REQUIRED. SPARTAN ASSOCIATES, THE RECIPIENT OF MOST OF THAT MONEY, THE VAST MAJORITY, WAS A LICENSED CONTRACTOR SO THE STATUTE DOESN'T APPLY. IT IS NOT A QUESTION IN MY MIND OF WHO WE ARE CONTRACTED WITH, IT'S WAS THIS UNLICENSED WORK? CERTAINLY IT WAS NOT.

THE BUILDING PERMITS PULLED ON THIS PROJECT WERE PULLED BY SPARTAN ASSOCIATES. THE HUMPHREYS WERE WELL AWARE THAT THE BUILDING PERMITS WERE PULLED BY SPARTAN ASSOCIATES. EVERY SUBCONTRACT ENTERED INTO ON THIS PROJECT WAS ENTERED INTO BY THE SPARTAN ASSOCIATES, INC., NOT MR. BEREKI PERSONALLY. SO WE WILL HAVE THOSE IN EVIDENCE.

AT THE END OF THE DAY, THIS IS NOT TOO DISSIMILAR TO THE FACT THAT OFTEN CLIENTS WILL WRITE TO

AN ATTORNEY -- EVEN THOUGH THEY WANT THE CHECKS WRITTEN TO THE LAW FIRM, THEY WILL WRITE IT TO THE ATTORNEY AND THEY DEPOSIT IT INTO THE LAW FIRM'S ACCOUNT. AT THE END OF THE DAY, THE DISGORGEMENT STATUTE DOES NOT APPLY BECAUSE WE DO HAVE LICENSURE HERE, THE PROPER B LICENSE.

WE WILL GET INTO THE OTHER ISSUES, THE QUALITY OF THE WORK AND WHETHER OR NOT THERE WAS ANY OVERCHARGING AND ALL THAT, BUT THERE WAS A LICENSE. THERE WAS A B LICENSE. THE VAST MAJORITY OF THE MONEY WENT THERE. ALL THE PERMITS, ALL THE ENGAGEMENTS IN THIS WERE WITH THE SPARTAN ASSOCIATES, INC. THE HUMPHREYS WERE WELL AWARE OF THAT THE WHOLE TIME.

THE COURT: MR. BEREKI, TO YOU.

MR. BEREKI: JUST A FEW MINOR THINGS. I JUST WANTED TO TOUCH ON THE WORDS "ORAL AGREEMENT" THAT KEEP COMING UP. THAT BOX DOWN THERE WITH THE 4-INCH BINDERS ARE THE E-MAILS. THERE WAS OVER A THOUSAND OF THEM THAT HAPPENED BETWEEN MYSELF AND THE HUMPHREYS FAMILY, KAREN AND GARY, AND THE ARCHITECTS, ENGINEERS, PEOPLE INVOLVED WITH THE PROJECT. THERE'S HUNDREDS OF PAGES IN THOSE E-MAILS OF AGREEMENTS WHERE SOMETHING HAPPENED ON THE PROJECT AND I SAID, "HEY, WE GOT THIS PROBLEM, WHAT DO YOU WANT TO DO ABOUT IT?" THEY WOULD SAY, "YES, GO AHEAD AND SPEND THIS," OR "NO, DON'T DO THAT." TO ME, THAT WAS EITHER PERMISSION TO DO OR NOT TO DO SOMETHING, AND THAT, IN ITSELF, WAS AN AGREEMENT. SO THERE'S

COUNTLESS OTHER FORMS OF AGREEMENT THAT WENT ON IN ADDITION TO THAT INITIAL ORAL AGREEMENT THAT YOU HAD.

THE COURT: LET ME ASK YOU, DID YOU PREPARE A FINAL TRIAL BRIEF HERE, SIR?

MR. BEREKI: I DID NOT, SIR.

THE COURT: OKAY. HOPEFULLY SOMEBODY ON YOUR SIDE OF THE TABLE, AT SOME POINT, WILL BE ABLE TO GIVE ME SOME LAW WITH RESPECT TO THE ISSUE OF E-MAILS VIS-A-VIS WRITTEN CONTRACTS AND WHETHER AN E-MAIL IN AND OF ITSELF CONSTITUTES A WRITTEN CONTRACT.

MR. BEREKI: YES, YOUR HONOR.

THE COURT: MR. RUSSO IS MAKING NOTES.

MR. RUSSO: YES, I AM, YOUR HONOR.

MR. BEREKI: JUST A NOTE ABOUT THE RESPONSIBLE MANAGING OFFICER ON THE LICENSE. I WASN'T, TO MY KNOWLEDGE, THE RMO. I WAS THE QUALIFIED INDIVIDUAL. I AM THE ONE THAT HAD THE WORK EXPERIENCE AND THE ONE THAT TOOK THE TEST TO OBTAIN THE LICENSE.

AND AS FAR AS GLENN OVERLEY AND MY REFERENCE TO BEING A PARTNER, HE'S A PARTNER THAT I WORK WITH. HE'S A FELLOW RETIRED POLICE OFFICER, LIKE I AM. AND JUST LIKE IN POLICE WORK I REFER TO PEOPLE AS MY PARTNER, HE'S MY PARTNER. HE'S MY MAIN GUY. WE WORK TOGETHER.

IT DOESN'T MEAN THAT I HAVE A LICENSE ISSUE WITH HIM OR A BUSINESS WITH HIM. IN FACT, WE RENTED

SOME SHOP SPACE. HE HAS A DIFFERENT COMPANY, AND I HAVE A DIFFERENT COMPANY. BUT TOGETHER ON THIS PROJECT, WE CAME TOGETHER AND PARTNERED TO DO THE WORK.

THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: THANK YOU. SO LET'S START WITH MR. BISSELL. YOUR FIRST WITNESS, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR. THE CROSS-COMPLAINANTS CALL KAREN HUMPHREYS.

THE COURT: MS. HUMPHREYS, IF YOU WILL STOP RIGHT THERE, FACE THE CLERK, AND RAISE YOUR RIGHT HAND. SHE IS GOING TO SWEAR YOU IN.

THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL IT.

THE WITNESS: KAREN, K-A-R-E-N, MOE, M-O-E, HUMPHREYS, H-U-M-P-H-R-E-Y-S.

THE COURT: GOOD MORNING, MS. HUMPHREYS. HAVE A SEAT RIGHT HERE, PLEASE.

THE WITNESS: THANK YOU.

THE COURT: HOW ARE YOU?

THE WITNESS: I AM OKAY.

THE COURT: LET'S TALK ABOUT THE CLARITY OF THE

RECORD FOR A SECOND. THIS IS FOR EVERYBODY'S BENEFIT HERE. COUPLE THINGS. NUMBER ONE, SPEAK UP. EVERYBODY IN THE COURTROOM NEEDS TO HEAR WHAT YOU SAY. FEEL FREE TO PULL DOWN THE MICROPHONE. I DON'T GUARANTEE IT WORKS VERY WELL. USUALLY, IF YOU'RE CLOSER THAN ABOUT 4 INCHES, WE GET A LOT OF FEEDBACK AND TYPICALLY YOU BLOW EVERYBODY OUT OF THE ROOM. IF YOU'RE FURTHER THAN ABOUT 12 INCHES, IT DOESN'T PICK UP VERY WELL. SO THERE'S A SWEET SPOT IN THERE SOMEWHERE IF YOU NEED IT. I'M NOT SURE YOU REALLY DO. YOU HAVE A GOOD VOICE.

NEXT, IF YOU ARE ASKED A QUESTION THAT CALLS FOR A "YES" OR "NO" ANSWER, IF YOU WOULD USE THE WORD APPROPRIATE, YES OR NO. SOME PEOPLE LIKE TO SAY, "UH-HUH" OR "HUH-HUH." I'M NOT ACCUSING YOU, I DON'T KNOW YOU. I AM JUST LETTING YOU KNOW "UH-HUH" AND "HUH-HUH" LOOK BOTH -- BOTH LOOK THE SAME IN THE TRANSCRIPT FOR THIS TRIAL. THAT LEADS TO CONFUSION, WHICH IS SOMETHING WE CANNOT AFFORD.

THE WITNESS: ALL RIGHT. YES.

THE COURT: GOOD ANSWER. THE COURT REPORTER WHO IS SITTING RIGHT IN FRONT OF YOU, HIS JOB IS TO TAKE DOWN EVERY WORD SPOKEN IN THE COURTROOM. AND SO IT'S IMPORTANT TO KEEP IN MIND THAT EVEN A GOOD COURT REPORTER LIKE THE GENTLEMAN SITTING HERE, MR. DO, CANNOT TAKE DOWN TWO PEOPLE TALKING AT THE SAME TIME. WHAT THIS MEANS IS THAT, WELL, I KNOW YOU CAN ANTICIPATE THE

QUESTIONS, AND LIKE MOST OF US IN LIFE, YOU WOULD LIKE TO GET THIS OVER WITH, LET THE QUESTION BE FULLY POSED BEFORE YOU START RESPONDING TO IT. SIMILARLY, I WILL TRY TO NOT LET THE LAWYERS CUT YOU OFF MIDSTREAM. THAT WAY THE RECORD CAN BE CLEAR AND CLEAN, AND IF ANY REVIEWING COURT NEEDS TO LOOK AT IT, THEY WILL BE ABLE TO UNDERSTAND WHAT HAPPENED HERE.

READY TO GO?

THE WITNESS: I AM.

THE COURT: MR. BISSELL, TO YOU, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BISSELL:

Q GOOD MORNING, MS. HUMPHREYS.

A GOOD MORNING.

Q ARE YOU AND YOUR HUSBAND CURRENTLY THE OWNERS OF THE UPSTAIRS UNIT AT 436 VIA LIDO NORD?

A YES, WE ARE.

Q AND DID THAT PARTICULAR UNIT USED TO BE TWO SEPARATE UNITS?

A YES.

Q DID YOU AND YOUR HUSBAND BUY BOTH OF THOSE UNITS SEPARATELY?

A YES, WE DID.

Q AND WHEN DID YOU BUY EACH OF THOSE UNITS?

A WE BOUGHT THE FIRST UNIT IN NOVEMBER/DECEMBER OF 2011, AND WE BOUGHT THE SECOND ONE IN MAY OF 2012.

Q AND WHAT WAS YOUR PURPOSE FOR BUYING THOSE TWO UNITS?

A WE WANTED TO ESTABLISH A PLACE WHERE WE COULD HAVE SOME VACATION TIME AND SPEND MORE TIME IN OUR RETIREMENT WHERE WE WOULD BE CLOSE TO OUR FAMILY AND FRIENDS IN SOUTHERN CALIFORNIA. MY PERSONAL HOPE WAS THERE WOULD BE GRANDCHILDREN COMING SOON. WITH THE FIELD OF DREAMS IDEA OF BUILD IT AND THEY WILL COME.

THE COURT: HOW DID THAT WORK OUT?

THE WITNESS: NOT YET.

THE COURT: OKAY.

BY MR. BISSELL:

Q AND TO EXPAND ON THE FIELD OF DREAMS CONCEPT, WHERE IS THIS CONDOMINIUM SITUATED?

A IT'S ON LIDO ISLE, AN UPSTAIRS OF A TWO -- NOW A TWO-UNIT DUPLEX. IT HAS THE BEACH RIGHT IN FRONT OF IT.

Q AND AN UNOBSTRUCTED VIEW OF THE BAY?

A YES, IT IS ON THE BAY FRONT FACING BALBOA BAY BEACH CLUB, ACROSS THAT DIRECTION.

Q ARE YOU FAMILIAR WITH ADAM BEREKI?

A YES, I AM.

Q WHEN DID YOU FIRST MEET MR. BEREKI?

A I MET HIM ON APRIL 1ST, 2012.
Q AND WHAT WAS THE OCCASION OF YOUR FIRST MEETING WITH MR. BEREKI?
A GARY AND I MET WITH HIM AT THE SITE OF THE CONDO, INSIDE THE CONDO TO DO A WALK-THROUGH TO TALK ABOUT THE POSSIBILITIES OF UPGRADING IT WITH HIM.
Q AND YOU NEVER MET MR. BEREKI BEFORE THAT?
A I HAD NOT MET HIM BEFORE THAT DAY.
Q HAD YOU EVER SPOKEN TO MR. BEREKI BEFORE THAT DAY?
A I HAD NOT SPOKEN WITH HIM BEFORE THAT DAY.
Q AT THE TIME THAT YOU PURCHASED THE TWO CONDOMINIUM UNITS, HAD MR. BEREKI DONE ANY CONSTRUCTION WORK FOR YOU OR YOUR HUSBAND?
A NO, HE HAD NOT.
Q SO AFTER BUYING UNIT -- THE FIRST OF THE TWO UNITS, YOU HAD A WALK-THROUGH WITH MR. BEREKI ON THE PREMISES?
A YES.
Q AND DID YOU COMMUNICATE WITH MR. BEREKI AND WHAT YOU WERE THINKING OF HAVING HIM DO?
A YES. AS WE WALKED THROUGH, WE POINTED OUT THINGS WE THOUGHT NEEDED TO BE FIXED AND TALKED ABOUT IDEAS FOR UPGRADING IT.
Q CAN YOU DESCRIBE IN GENERAL WHAT YOUR THINKING WAS? WHAT DID YOU WANT TO HAVE DONE TO THE UNIT AT THAT

TIME?

A YES, I CAN. THE UNIT HAD A GREAT LOCATION, BUT IT HAD BEEN USED PRIMARILY FOR A LONG PERIOD OF TIME AS A RENTAL UNIT. SO IT WAS IN BAD REPAIR WITH DIRTY CARPET AND DINGS AND MARKS ON THE WALLS, THAT SORT OF THING, AND IT WASN'T IN SHAPE FOR US TO ENJOY AS A FAMILY HOME YET. SO WE WANTED TO CHANGE OUT THE WINDOWS, WE WANTED TO GET THE ELECTRICAL UP TO CODE. IT WAS STILL IN THE ORIGINAL 1950S CODE ON THAT. AND, BASICALLY, FRESHEN IT UP, MAKE IT FEEL MORE WELCOMING.

Q DID YOU COMMUNICATE THAT TO MR. BEREKI?

A YES.

Q AT THE TIME OF THE WALK-THROUGH?

A YES.

Q DID MR. BEREKI INDICATE TO YOU THAT HE WAS INTERESTED IN DOING THE PROJECT?

A YES, HE DID. HE WAS VERY EXCITED ABOUT THE OPPORTUNITY, AND HE HAD A LOT OF IDEAS OF WHAT HE COULD DO TO HELP US CREATE THAT KIND OF A SPACE.

Q MS. HUMPHREYS, YOU MIGHT HAVE A FEW EXHIBIT BOOKS IN FRONT OF YOU -- I'M NOT SURE -- OR BEHIND YOU. THERE'S ONE THAT INDICATES IT IS DEFENDANTS' TRIAL EXHIBITS.

A YEAH, THIS ONE?

Q YEAH. COULD YOU PUT THAT IN FRONT OF YOU.

A YES.

THE COURT: ALL EXHIBIT BOOKS ARE SIZED AND DESIGNED TO INDUCE HERNIAS, SO BE CAREFUL.

BY MR. BISSELL:

Q IF YOU WILL TURN TO -- IT'S TAB NO. 4 IN YOUR EXHIBIT BOOK, BUT ACTUALLY EXHIBIT 304.

A I CAN. BUT IT'S BLANK.

Q I'M SORRY. LET ME BACKTRACK. IF YOU -- WHAT HAPPENED TO IT?

THE COURT: POINT IT AT ME.

BY MR. BISSELL:

Q WHAT ARE YOU SAYING?

THE COURT: IT IS MISSING AN EXHIBIT.

MR. BISSELL: I HAVE EXTRAS.

THE WITNESS: YOUR HONOR, I FORGOT MY READING GLASSES.

THE COURT: STEP ON OVER AND GET THEM, OR PERHAPS MR. HUMPHREYS CAN HELP YOU OUT.

MR. HUMPHREYS: OH, IS THIS IT?

THE WITNESS: YEAH.

MR. BISSELL: IS ANYBODY ELSE'S EXHIBIT BOOK MISSING NUMBER 4?

MR. RUSSO: MINE IS. THANK YOU.

THE COURT: I HAVE IT.

MR. BISSELL: ALL RIGHT.

THE COURT: LOOKS TO BE A GMAIL OF APRIL 6, 2012.

MR. BISSELL: THAT'S CORRECT.

BY MR. BISSELL:

Q ALTHOUGH I'M GOING TO ASK YOU, INSTEAD OF FLIPPING FIRST TO NUMBER 4, IF YOU WOULD FLIP TO EXHIBIT NUMBER 303, TABBED 3 IN YOUR BOOK.

A YES.

Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

A YES.

Q CAN YOU TELL US WHAT THAT IS?

A THIS IS A COPY OF E-MAILS THAT WERE SENT ON APRIL 5, 2012 FROM ME TO ADAM BEREKI AT HIS PERSONAL GMAIL ACCOUNT, AND IT ALSO INCLUDES THE TEXT OF THE E-MAIL HE HAD SENT TO ME EARLIER IN THE DAY.

Q SO THIS WAS A RESPONSE TO MR. BEREKI'S E-MAIL EARLIER THE SAME DAY?

A YES.

Q AND THIS EXHIBIT NUMBER 303 CONTAINS BOTH MR. BEREKI'S ORIGINAL E-MAIL TO YOU AND YOUR RESPONSE TO HIM?

A YES.

Q AND CAN YOU TELL ME IN GENERAL THE GIST OF WHAT MR. BEREKI'S COMMUNICATION WAS TO YOU IN THIS E-MAIL?

A HE HAD MEMORIALIZED A LOT OF THE CONVERSATION THAT WE HAD AND HE ALSO -- IT WAS HIS PROPOSAL FOR THE SCOPE OF WORK, BASICALLY, AND TALKING ABOUT THINGS THAT HE THOUGHT WE TALKED ABOUT.

Q OKAY. AND DID YOU READ -- DID YOU GO OVER HIS E-MAIL EARLIER IN THE DAY WITH MR. HUMPHREYS?

A YES, I DID.

Q DID THE TWO OF YOU DISCUSS THAT?

A YES, WE DID.

Q AND DID YOU UNDERSTAND IT TO BE MR. BEREKI'S PROPOSAL FOR THE WORK HE WANTED TO DO?

A YES, WE DID.

Q AND DID YOU TALK ABOUT THAT PROPOSAL WITH MR. HUMPHREYS?

A YES, WE TALKED ABOUT IT TOGETHER.

Q DID YOU COME UP WITH A RESPONSE TO MR. BEREKI'S PROPOSAL?

A YES, WE CREATED THIS RESPONSE TOGETHER.

Q IS THAT RESPONSE ALSO INCLUDED IN THIS APRIL 5, 2012, E-MAIL, EXHIBIT 303?

A YES.

Q DOES THE EXHIBIT YOU'RE REFERRING TO NOW, THE EXHIBIT 303, DOES THAT ACCURATELY DESCRIBE WHAT YOUR UNDERSTANDING WAS AS TO WHAT THE PROJECT WOULD ENTAIL AS OF APRIL 5, 2012?

A YES, IT DID.

Q AND IN GENERAL TERMS, WHAT WAS THAT UNDERSTANDING?

A MY UNDERSTANDING IS THAT WE WERE HIRING ADAM AND HIS PARTNER GLENN OVERLEY TO FRESHEN UP THE UNIT BY

UPGRADING THE ELECTRICAL, DOING SOME CABINETRY WORK, REPLACING WINDOWS, PAINTING, THAT SORT OF THING.

Q AND DID MR. BEREKI INDICATE WHO IT WAS THAT HE WAS PROPOSING WOULD DO THIS WORK?

A YES.

Q AND WHO DID HE -- CAN YOU POINT OUT IN THIS EXHIBIT 303 WHERE MR. BEREKI IS INDICATING WHO HE'S PROPOSING TO HAVE -- TO DO THE WORK?

A YES, I CAN. ON PAGE 5, SECOND-TO-THE-LAST PARAGRAPH.

Q COULD YOU READ THAT PARAGRAPH, PLEASE?

A "AS I SHARED WITH YOU ON SUNDAY MY PARTNER GLENN AND I CHARGE $75" --

THE REPORTER: SLOW DOWN.

THE COURT: SLOW DOWN FOR THE COURT REPORTER. WHEN YOU ARE READING YOUR CADENCE PICKED UP BY A FACTOR OF ABOUT 50 PERCENT. HAVE YOU SEEN THAT COMMERCIAL YEARS AGO WITH THE GUY TALKING ABOUT 3,000 MILES AN HOUR ADVERTISING A PRODUCT THAT NOBODY TODAY REMEMBERS? WE WANT TO BE ABLE TO PAY ATTENTION, SO READ SLOWLY.

THE WITNESS: THANKS FOR THE REMINDER.

"AS I SHARED WITH YOU ON SUNDAY, MY PARTNER GLENN AND I CHARGE $75 PER HOUR FOR LABOR (EACH). DUE TO THE NIGHTMARE OF KEEPING TIMECARDS, ET CETERA, WE ALSO HAVE A REDUCED DAILY RATE OF $500 EACH. OUR WORKDAYS ARE USUALLY TEN TO 12 HOURS. WHERE POSSIBLE WE

USE LABORERS TO HANDLE DEMOLITION, CLEAN UP, AND OTHER NON-SKILLED WORK SO WE CAN FOCUS ON THE SKILLED PORTIONS. THE LABORERS MAKE 15 TO $25 PER HOUR AND WE DO NOT MARK UP THEIR PAY. MATERIALS ARE PAID FOR SEPARATELY AND ARE ALSO NOT MARKED UP."

BY MR. BISSELL:

Q BY THE WAY, DID YOU ASK MR. BEREKI AT THIS TIME WHETHER OR NOT THERE SHOULD BE A WRITTEN CONTRACT BETWEEN THE TWO OF YOU?

A YES, I DID.

Q IS THAT IN THIS E-MAIL ALSO?

A YES. IT'S THE LAST PARAGRAPH.

Q AND CAN YOU READ THAT, PLEASE?

A "WE ARE LOOKING FORWARD TO WORKING WITH YOU TOO. DO WE NEED TO SIGN A CONTRACT BEFORE YOU GO AHEAD AND GET STARTED? YOUR DAILY RATE SOUNDS FINE."

Q DID MR. BEREKI RESPOND TO YOUR INQUIRY AS TO WHETHER THERE SHOULD BE ANY FORM OF WRITTEN CONTRACT BETWEEN THE TWO OF YOU?

A YES, HE DID.

THE COURT: EXCUSE ME FOR A SECOND, COUNSEL, I AM A LITTLE CONFUSED. I MUST BE MISSING SOMETHING. THE WAY I AM LOOKING AT THIS E-MAIL STRING, THE FIRST AT THE TOP DATED APRIL 5, 2012, SENT AT 5:41 P.M., SUBJECT, 436 VIA LIDO NORD. AND THIS IS AN E-MAIL FROM MS. HUMPHREYS TO MR. BEREKI, AND IT APPEARS TO BASICALLY BE THREE

SENTENCES LONG.

FOLLOWING THAT, ON APRIL 5, 2012, AT 8:41 A.M., MR. BEREKI WROTE.

AND THEN ALL THE FOLLOWING PAGES GOING TO PAGE 6 APPEAR TO BE ALL PART OF THE E-MAIL MR. BEREKI SENT TO THE HUMPHREYS.

AND SO I WOULD UNDERSTAND THIS LAST PARAGRAPH TO BE MR. BEREKI INQUIRING AS TO WHETHER, QUOTE, WE NEED TO SIGN A CONTRACT BEFORE YOU GO AHEAD AND GET STARTED. THEN IT CLOSES WITH "BEST, ADAM BEREKI." PERHAPS THINGS HAVE BEEN MIXED TOGETHER IN SOME WAY. HELP ME OUT WITH THIS.

MR. BISSELL: IT'S VERY DIFFICULT, YOUR HONOR, AND I UNDERSTAND -- I UNDERSTAND HOW THE COURT SEES THIS BECAUSE A GOOD DEAL OF THE CORRESPONDENCE THAT WENT BACK AND FORTH BETWEEN MR. BEREKI AND THE HUMPHREYS ON THIS WAS ALL OF THIS NATURE. IT WAS MESSAGE SENT AND THEN INSERTED IN THAT MESSAGE WAS A RESPONSE. SOMETIMES IT WAS ALL IN CAPS, WHICH MAKES IT A LITTLE BIT EASIER. SOMETIMES IT WASN'T. BUT THAT WAS THE NATURE OF THE CORRESPONDENCE. I CAN PROBABLY CLEAR THIS UP BY SIMPLY ASKING MS. HUMPHREYS WHETHER OR NOT THAT LAST PARAGRAPH --

THE COURT: GO AHEAD, FIRE AWAY.

BY MR. BISSELL:

Q WHETHER THAT LAST PARAGRAPH -- DID YOU DRAFT

THAT LAST PARAGRAPH, THE PARAGRAPH YOU JUST READ --

A YES.

Q -- OF EXHIBIT 303?

A YES.

MR. BISSELL: DOES THAT HELP, YOUR HONOR?

THE COURT: UNTIL SOMEBODY COMES ALONG WITH FURTHER CLARIFICATION.

MR. BEREKI: I AM HAPPY TO SAY --

THE COURT: YOU'RE NOT TESTIFYING YET.

MR. BEREKI: OKAY.

THE COURT: JUST HOLD YOUR PEACE.

MR. BEREKI: OKAY.

BY MR. BISSELL:

Q YOU HAVE HEARD THE COURT'S CONCERN THAT IT'S DIFFICULT TO TELL WHO'S WRITING WHAT IN THIS E-MAIL, WHICH IS UNDERSTANDABLE.

IS THERE A WAY THAT -- IS THERE A WAY TO DIFFERENTIATE WHAT YOU WROTE VERSUS WHAT HE WROTE, WITHOUT GOING THROUGH EACH LINE AND IDENTIFYING THAT IS YOURS OR HIS?

A I BELIEVE SO.

Q OKAY.

A WHAT I DID WAS INSERT MY ANSWERS AFTER EACH SUGGESTION THAT HE MADE. SO IF WE JUST LOOK AT THE FIRST PAGE OF IT, THE "YES, FOR SURE" WAS MY RESPONSE TO HIS PROPOSAL TO REPLACE THE ELECTRICAL.

THE COURT: NOW IT COMES CLEAR. THANK YOU, MS. HUMPHREYS. NOW I UNDERSTAND.

BY MR. BISSELL:

Q ACTUALLY, I THINK THE FOLLOWING EXHIBIT MIGHT FURTHER CLARIFY AS TO WHO OR WHAT.

WOULD YOU FLIP TO EXHIBIT NO. 4 ON YOUR TAB, WHICH IS 304.

A THAT'S --

Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

A THAT'S THE EXHIBIT MISSING FROM THIS BINDER.

Q NOBODY GOT THAT TO YOU?

MR. BISSELL: MAY I APPROACH --

THE COURT: FEEL FREE TO TAKE IT UP.

MR. BISSELL: I GAVE IT TO MR. HUMPHREYS. I THOUGHT FOR SURE --

THE COURT: IT'S NOW THAT PAPER GLIDER THAT MR. RUSSO IS FLYING ACROSS THE COURTROOM.

MR. BISSELL: THERE YOU GO.

THE WITNESS: YES, I HAVE SEEN THIS BEFORE.

BY MR. BISSELL:

Q CAN YOU TELL US WHAT THIS DOCUMENT IS?

A THIS IS A AN E-MAIL THAT ADAM BEREKI SENT FROM HIS PERSONAL ACCOUNT TO ME ON FRIDAY, APRIL 6, 2012.

Q NOW, IF YOU LOOK AT THE -- THE SECOND-TO-THE-LAST PARAGRAPH BEGINNING WITH, "AS FAR AS," DO YOU SEE THAT?

A YES.

Q IS THAT YOUR DRAFT, OR IS THAT MR. BEREKI'S DRAFT?

A MR. BEREKI'S.

Q COULD YOU READ THAT, PLEASE?

A "AS FAR AS THE CONTRACT GOES, NO, NOTHING NEEDS TO BE SIGNED UNLESS YOU PREFER TO. YOU ARE VERY DEAR FRIENDS AND YOUR WORDS/COMMITMENT IS ENOUGH."

Q NOW, WHEN MR. BEREKI SAYS "YOU ARE VERY DEAR FRIENDS," YOU MET HIM EXACTLY HOW MANY TIMES BEFORE THIS?

A ONCE ON THE WALK-THROUGH.

Q DURING ANY CONVERSATION WITH MR. BEREKI BEFORE HIS APRIL 5, 2012 E-MAIL TO YOU IN WHICH HE COMMUNICATED HIS PROPOSAL FOR THE PROJECT, DID HE EVER MENTION THE SPARTAN ASSOCIATES DEAL?

A NO, HE DIDN'T MENTION SPARTAN.

Q DID HE EVER MENTION SPARTAN AT ALL?

A NO.

Q HAVE YOU EVER HEARD OF SPARTAN ASSOCIATES IN CONNECTION WITH MR. BEREKI AT ANY TIME BEFORE APRIL 5, 2012?

A NO.

Q IN THE APRIL 5, 2012 E-MAIL FROM MR. BEREKI, EXHIBIT 303, IS THERE ANY MENTION IN THERE OF SPARTAN?

A NO.

Q IN APRIL 2012, DID YOU BELIEVE YOU WERE CONTRACTING WITH SPARTAN ASSOCIATES?

A NO.

Q WHO DID YOU BELIEVE YOU WERE CONTRACTING WITH?

A I BELIEVED I WAS CONTRACTING WITH ADAM BEREKI AND HIS PARTNER, GLENN OVERLEY.

Q WHAT WAS THAT UNDERSTANDING BASED ON?

A IT WAS BASED ON THE EXCHANGE OF E-MAILS ON APRIL 5.

Q IF YOU WILL FLIP TO EXHIBIT -- IT'S NUMBERED FIVE IN YOUR BOOKLET THERE, BUT IT'S 305.

HAVE YOU SEEN THIS DOCUMENT BEFORE?

A YES.

Q CAN YOU TELL US WHAT IT IS?

A THIS IS A COPY OF A STRING OF E-MAILS BETWEEN MYSELF AND ADAM BEREKI ON FRIDAY, APRIL 13, 2012.

Q THIS IS ROUGHLY ONE WEEK AFTER THE APRIL 5, 2012 E-MAIL AGREEMENT?

A YES.

Q AND CAN YOU TELL US WHO INITIATED THIS E-MAIL STRING?

A MR. BEREKI.

Q WHAT DID HE ASK IN HIS INITIAL E-MAIL TO YOU?

A HE ASKED FOR A CHECK FOR $15,000 TO COVER MATERIALS AND LABOR.

Q WHAT DID YOU RESPOND?

A I RESPONDED THAT I COULD SEND HIM A CHECK AND I WANTED TO KNOW IF I COULD MAIL IT OR DID HE WANT IT WIRED TO A BANK ACCOUNT AND TO WHOM TO MAKE IT OUT.

Q AND WHY DID YOU WANT TO KNOW TO WHOM TO MAKE IT OUT?

A I WANT TO KNOW IF I SHOULD MAKE IT OUT TO ADAM BEREKI OR ADAM BEREKI AND GLENN OVERLEY.

Q WHAT DID MR. BEREKI RESPOND?

A HE RESPONDED, "YES, TOMORROW IS FINE. MADE OUT TO ADAM BEREKI. MY HOME ADDRESS IS."

Q IF YOU LOOK AT EXHIBIT NO. 6 IN YOUR BOOKLET, BUT IT'S NUMBERED 306, HAVE YOU SEEN THAT DOCUMENT BEFORE?

A YES.

Q CAN YOU TELL US WHAT THIS IS?

A THIS IS AN IMAGE OF A CHECK AND A DEPOSIT WITH CHASE BANK.

Q AND WHEN YOU SAY "AN IMAGE," IS THAT AN IMAGE OF A CHECK?

A YES, THERE'S AN IMAGE OF A CHECK ON THE PAGE.

Q CAN YOU DESCRIBE WHAT THAT CHECK IS?

A THIS IS A CHECK THAT I WROTE TO ADAM BEREKI FOR $15,000 ON APRIL 13, 2012.

Q THAT WAS IN RESPONSE TO HIS REQUEST OF THE SAME DATE?

A YES, IT WAS.

Q WHO WAS THAT CHECK MADE PAYABLE TO?
A ADAM BEREKI.
Q BY THE WAY, ON THE EXHIBIT 5 YOU JUST LOOKED AT, THE STRING E-MAIL, WHOSE E-MAIL ACCOUNT DID MR. BEREKI'S E-MAIL COME TO YOU ON?
A HIS PERSONAL E-MAIL ACCOUNT AT GMAIL.
Q AT SOME POINT, DID YOU HEAR OF SPARTAN CONSTRUCTION?
A YES, I DID.
Q WHEN WAS THAT?
A IT WAS SEVERAL MONTHS INTO THE PROJECT IN JULY OF 2012.
Q HOW DID YOU HEAR OF SPARTAN CONSTRUCTION?
A ADAM ASKED US TO START MAKING THE CHECKS OUT TO SPARTAN INSTEAD OF ADAM BEREKI.
Q DID HE TELL YOU WHY?
A NO.
Q DID HE EXPLAIN WHO SPARTAN WAS?
A NO.
Q DID IT MATTER TO YOU?
A NO, IT DIDN'T.
Q DID YOU HAVE SOME UNDERSTANDING OF WHO SPARTAN CONSTRUCTION WAS?
A I THOUGHT SPARTAN WAS, I GUESS, ANOTHER ACCOUNT THAT HE WANTED TO USE.
Q DID YOU EVER ENTER INTO ANY AGREEMENT WITH

SPARTAN ASSOCIATES ON THIS PROJECT?

A NO.

Q WERE YOU EVER ASKED TO ENTER INTO ANY SORT OF AGREEMENT WITH SPARTAN ASSOCIATES?

A NO.

Q WERE YOU EVER PRESENTED WITH ANY TYPE OF AGREEMENT WITH SPARTAN ASSOCIATES ON THIS PROJECT?

A NO.

MR. BISSELL: THANK YOU. NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO, TO YOU.

CROSS-EXAMINATION

BY MR. RUSSO:

Q MS. HUMPHREYS, WHAT'S HUMPHREYS & ASSOCIATES?

A HUMPHREYS & ASSOCIATES IS A COMPANY THAT DOES EARNED VALUE MANAGEMENT SYSTEM CONSULTING.

Q IS THAT YOUR HUSBAND'S BUSINESS, YOUR BUSINESS, OR A COMBINATION?

A IT'S NOT MY BUSINESS.

Q OKAY.

A MY HUSBAND STARTED THE BUSINESS.

Q OKAY. SO IS IT A CORPORATION, TO YOUR KNOWLEDGE?

A IT'S AN S CORP.

Q OKAY. ISN'T IT TRUE THAT HUMPHREYS & ASSOCIATES MADE SOME OF THE PAYMENTS TOWARDS THE CONSTRUCTION ON THE LIDO PROPERTY?

A NO.

Q YOU'RE SAYING NONE OF THE CHECKS CAME FROM HUMPHREYS & ASSOCIATES?

A ARE YOU ASKING ME --

Q YES.

A -- IF THE CHECKS THAT WE PAID ADAM BEREKI CAME FROM HUMPHREYS & ASSOCIATES?

Q SOME OF THEM, NOT ALL OF THEM.

A I HAVE NO KNOWLEDGE OF THAT.

Q OKAY. HUMPHREYS & ASSOCIATES, WHERE IS THAT BUSINESS LOCATED?

A SOUTHERN CALIFORNIA.

Q RESEARCH AVENUE IN IRVINE; CORRECT?

A IT IS NOW.

Q 9910 RESEARCH AVENUE?

A I DON'T KNOW.

Q OKAY. YOU ARE AWARE THAT SPARTAN ASSOCIATES DID THE TENANT IMPROVEMENTS AT YOUR HUSBAND'S BUSINESS OFFICE PRIOR TO THIS WORK ON LIDO ISLE?

A I HEARD THAT SPARTAN ASSOCIATES, ADAM, DID WORK AT THE OFFICE BUILDING BEFORE HUMPHREYS & ASSOCIATES MOVED INTO IT.

Q OKAY. AND --

THE COURT: WHEN DID YOU HEAR THAT?

THE WITNESS: I HEARD THAT A FEW MONTHS AGO.

THE COURT: AFTER THIS LAWSUIT WAS FILED?

THE WITNESS: YES.

THE COURT: ALL RIGHT. GO ON.

BY MR. RUSSO:

Q ISN'T IT TRUE THAT ONE OF THE REASONS WHY YOU AND YOUR HUSBAND HIRED SPARTAN ASSOCIATES WAS BECAUSE OF ITS FINE WORK ON THE TENANT IMPROVEMENTS ON THE COMMERCIAL OFFICE BUILDING FOR YOUR HUSBAND'S BUSINESS?

MR. BISSELL: OBJECTION, YOUR HONOR. HE'S MISCHARACTERIZING THE WITNESS'S TESTIMONY SAYING ISN'T IT TRUE THAT YOU ENTERED INTO A CONTRACT WITH SPARTAN ASSOCIATES. SHE'S TESTIFIED IT'S HER UNDERSTANDING THAT SHE ENTERED INTO A CONTRACT --

MR. RUSSO: IS THAT AN OBJECTION OR IS THAT A SPEAKING OBJECTION?

MR. BISSELL: IT'S AN OBJECTION.

THE COURT: SEEMS THE LOCAL, LOCAL RULE; I.E., MY RULE, NO SPEAKING OBJECTIONS EVEN IN COURT TRIALS.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: ASIDE FROM THAT, MR. RUSSO, IF YOU WILL KINDLY REPHRASE.

BY MR. RUSSO:

Q ISN'T IT TRUE THE REASON YOU ENTERED INTO ANY RELATIONSHIP WAS BECAUSE OF HIS FINE WORK FOR YOUR

HUSBAND'S OFFICE BUILDING?

A I DIDN'T ENTER INTO AN AGREEMENT WITH SPARTAN ASSOCIATES.

Q DO YOU KNOW HOW MANY ADDRESSES MR. BEREKI USES?

A NO.

Q BECAUSE YOU KEEP REFERRING TO IT AS HIS PERSONAL E-MAIL. DO YOU KNOW IF THAT'S THE SAME AS HIS WORK E-MAIL?

A I ONLY AM FAMILIAR WITH THE ABEREKI@GMAIL.COM.

Q SO YOU DON'T KNOW IF THAT IS HIS PERSONAL BUSINESS OR ANYTHING; CORRECT?

A YES.

Q YOU DON'T KNOW -- YES, YOU DON'T KNOW; CORRECT?

A YES.

Q ISN'T IT TRUE THAT PRIOR TO THE LIDO PROJECT, YOU MET MR. BEREKI AT FAMILY OCCASIONS OF YOURS?

A I HAD NEVER MET MR. BEREKI BEFORE APRIL 1ST.

Q ISN'T IT TRUE THAT HE ATTENDED YOUR MOTHER-IN-LAW'S FUNERAL PRIOR TO THIS?

A I DON'T KNOW.

Q ISN'T IT TRUE THAT HE ATTENDED YOUR BROTHER-IN-LAW'S FUNERAL PRIOR TO THIS?

A I DON'T KNOW.

Q OKAY. HE ATTENDED AND ACTUALLY SAT AT THE

FAMILY TABLE AT YOUR SON'S WEDDING; CORRECT?

A I REMEMBER HIM BEING INVITED TO THAT WEDDING --

Q OKAY.

A -- WHICH WAS AFTER 2012.

Q YOU WOULD AGREE THAT HE WASN'T A FOREIGNER TO YOUR FAMILY; CORRECT?

A I HAD NEVER MET HIM. HE HAD NO FAMILIARITY TO MY FAMILY THAT I WAS AWARE OF PRIOR TO APRIL 1ST.

Q YOU WOULD AGREE, MA'AM, THAT YOU FELT THAT YOUR AGREEMENT WITH WHOEVER YOU WERE HIRING AS A CONTRACTOR WAS ADEQUATELY MEMORIALIZED IN YOUR E-MAILS WHICH ARE EXHIBIT NUMBER 303; CORRECT?

A I FELT THAT -- THAT ADAM PROPOSED A SCOPE OF WORK IN THE FIRST E-MAIL, AND OUR RESPONSE WAS AN ACCEPTANCE OF THAT PROPOSAL.

Q SO YOU HAD A MEETING OF THE MINDS AND IT WAS DOCUMENTED IN THE E-MAILS; CORRECT?

A YES.

Q SO IT'S NOT THAT THERE'S NO WRITING, IT'S JUST THE WRITING IS E-MAILS AS OPPOSED TO SOMETHING SIGNED; CORRECT?

A I HAD A CONCERN WHETHER WE NEEDED MORE THAN THAT, WHICH IS WHY I ASKED HIM ABOUT IT IN MY E-MAIL. BECAUSE I AM FAMILIAR WITH HAVING TO SIGN CONTRACTS WHEN YOU HIRE PEOPLE TO DO WORK FOR YOU.

Q YOU HAVE HIRED CONTRACTORS TO WORK ON OTHER VACATION HOMES; CORRECT?
A YES.
Q OKAY.
A OH, NO -- YES.
Q WELL, YOU HAVE TWO VACATION UNITS ON MAUI; CORRECT?
A YES.
Q OKAY. AND YOU HAVE BEEN THROUGH THE PROCESS OF REMODELING PROJECTS; CORRECT?
A YES.
Q OKAY. AND YOU WANTED A LICENSED CONTRACTOR FOR THE WORK ON YOUR LIDO PROPERTIES; CORRECT?
A YES.
Q OKAY. AND BECAUSE YOU KNEW YOU WERE GOING TO BE DOING PLUMBING AND ELECTRICAL AS WE CAN SEE IN EXHIBIT NO. 303; CORRECT?
A I WANTED LICENSED WORK DONE, YES.
Q OKAY.
A WITH PERMITS.
Q DID YOU, PRIOR TO STARTING THIS RELATIONSHIP, DOUBLE-CHECK TO MAKE SURE THAT THERE WAS A LICENSE FOR THIS SINCE PERMITS HAD TO BE PULLED?
A NO. I TOOK ADAM AT HIS WORD THAT HE HAD A LICENSE.
Q DID MR. BEREKI EVER TELL YOU -- WELL, HE TOLD

YOU HE WAS LICENSED; CORRECT?

A YES.

Q AND YOU'RE SAYING YOU DIDN'T REALIZE THAT THAT LICENSE WAS IN THE NAME OF SPARTAN ASSOCIATES; YOU THOUGHT IT WAS PERSONAL TO HIM?

A I HAD NEVER HEARD OF SPARTAN ASSOCIATES.

Q DID YOU EVER CHECK?

A DID I CHECK WHAT?

Q TO SEE WHETHER OR NOT MR. BEREKI'S LICENSE WAS PERSONAL OR IN HIS BUSINESS NAME.

A NO.

Q I HATE TO DO THIS TO YOU, BUT WE GOT MULTIPLE BINDERS. ONE OF THEM IS MARKED ONE TO 65. I'M GOING TO WORK OFF THAT ONE AS OPPOSED TO THE ONE YOU WERE JUST LOOKING AT.

THE COURT: WELL, SPEAKING OF HERNIA, YOU MAY HAVE SET A NEW RECORD. I THINK THIS IS THE BIGGEST BINDER I HAVE SEEN. THIS MAY INDIVIDUALLY BE THE BIGGEST BINDER I HAVE EVER SEEN IN THIS DEPARTMENT.

MR. RUSSO: I HAD A HARD TIME CARRYING THOSE UP TODAY.

THE COURT: EXHIBIT NUMBER?

MR. RUSSO: 38, THANK YOU.

MR. BISSELL: YOUR HONOR, I DON'T HAVE THE BENEFIT OF THOSE EXHIBITS. IF I COULD TAKE A LOOK.

MR. RUSSO: SURE.

THE COURT: I GUESS MR. RUSSO COULDN'T CARRY A FOURTH BECAUSE THESE WERE TOO HEAVY. THE STRAW THAT BROKE THE CAMEL'S BACK.

MR. RUSSO: WE SEND EACH OTHER DROPBOXES OF THE EXHIBITS.

BY MR. RUSSO:

Q MS. HUMPHREYS, DO YOU RECOGNIZE --

A I HAVEN'T --

Q I'M SORRY, MA'AM.

THE COURT: IT'S ALSO HARD TO WORK WITH.

THE WITNESS: AM I LOOKING FOR 38?

MR. RUSSO: YES, MA'AM.

THE COURT: YOU WEREN'T CONSERVING TREES, I CAN TELL YOU THAT.

BY MR. RUSSO:

Q MS. HUMPHREYS, DO YOU RECOGNIZE EXHIBIT NO. 38 AS THE TERMINATION NOTICE IN WHICH YOU AND YOUR HUSBAND TERMINATED THE SPARTAN ASSOCIATES FROM THIS PROJECT?

A THIS IS THE FIRST TIME I HAVE SEEN THIS.

Q YOU WERE AWARE THAT YOU -- DID YOUR HUSBAND SHARE WITH YOU THAT A TERMINATION NOTICE WAS SENT TO SPARTAN ASSOCIATES?

A NO.

Q YOU WEREN'T AWARE OF IT?

A NO.

Q OKAY. I WOULD LIKE YOU TO TURN TO --

THE COURT: BY THE WAY, JUST SO THE RECORD IS CLEAR, YOU CHARACTERIZED THIS AS A TERMINATION NOTICE. IT'S ACTUALLY STYLIZED AS NOTICE OF CESSATION OF LABOR AND IT INDICATES THE LAST SENTENCE, QUOTE, "THIS NOTICE OF CESSATION OF CONSTRUCTION AND RELATED ACTIVITIES SHALL REMAIN IN EFFECT AND SHALL BE BINDING UNTIL FURTHER NOTICE FROM THE UNDERSIGNED," END QUOTE. IT DOESN'T STRICTLY SOUND LIKE A TERMINATION NOTICE.

BY MR. RUSSO:

Q WAS IT ON OR ABOUT AUGUST 28, 2013, THAT YOU AND YOUR HUSBAND TERMINATED MR. BEREKI FROM THIS PROJECT?

A YES.

Q ARE YOU AWARE OF ANY NOTICE OTHER THAN THIS NOTICE HERE FOR THAT TERMINATION?

A NO.

Q MA'AM, CAN YOU PLEASE TURN TO EXHIBIT NUMBER 34.

A YES.

Q MA'AM, YOU ARE AWARE THAT A BUILDING PERMIT HAD TO BE BULLIED FOR THIS PROJECT?

A YES.

Q AND YOU KNEW THAT ONLY A LICENSED CONTRACTOR COULD PULL A BUILDING PERMIT?

A I DON'T KNOW THAT I KNEW THAT, BUT IT MAKES SENSE.

Q YOU CAN SEE THAT THE BUILDING PERMIT WAS PULLED BY THE SPARTAN ASSOCIATES, INC.?

A YES. IS THIS ON NOVEMBER 14, 2012? THIS ONE?

Q YES, MA'AM.

AS A MATTER OF FACT, MR. BEREKI E-MAILED YOU A COPY OF THE BUILDING PERMIT FOR THIS, DIDN'T HE?

A I DON'T RECALL.

Q MA'AM, CAN YOU TURN TO EXHIBIT NO. 31 IN THAT SAME BINDER.

A YES.

Q WERE YOU WORKING ON INTERIOR PLANS WITH MR. BEREKI FOR THE LIDO PROJECT?

A I'M SORRY, I WAS READING. CAN YOU RESTATE YOUR QUESTION, PLEASE?

Q SURE.

DID YOU WORK WITH MR. BEREKI REGARDING INTERIOR PLANS FOR THE PROJECT?

A YES.

Q OKAY. AND IS THIS AN EXAMPLE OF THE INTERIOR PLANS, WHAT WE SEE IN THIS EXHIBIT 31?

A THIS DATED AUGUST 23RD, 2013?

Q YES, MA'AM.

A I WASN'T WORKING WITH HIM ON PLANS IN AUGUST OF 2013.

Q OKAY. DO YOU KNOW IF YOUR HUSBAND WAS?

A HE WAS NOT.

Q MA'AM, DID IT MATTER TO YOU WHETHER OR NOT YOUR CONTRACTOR WAS ADAM BEREKI VERSUS SPARTAN ASSOCIATES?

A DID IT --

MR. BISSELL: OBJECTION. IRRELEVANT.

THE COURT: SUSTAINED.

BY MR. RUSSO:

Q MA'AM, CAN YOU TURN TO EXHIBIT NO. 32.

A YES.

Q LOOKING AT PAGE 1 OF EXHIBIT NO. 32, MA'AM, IS THAT YOUR E-MAIL TO MR. BEREKI ABOUT PAYMENT TO SPARTAN CONSTRUCTION?

A NO.

Q IS YOUR E-MAIL ADDRESS KMOEHUMPHREYS@YAHOO.COM?

A YES.

Q AND THE JULY 19, 2012, 1:59 P.M. E-MAIL AT THE TOP OF EXHIBIT 32-1, IS THAT FROM YOU?

A YES, TO ADAM BEREKI.

Q OKAY. AND IT SAYS THERE, "I JUST GOT BACK FROM WIRING $45,000 TO THE SPARTAN CONSTRUCTION ACCOUNT"?

A YES.

Q OKAY. SO YOU KNEW AT THIS POINT IN TIME THAT YOUR PAYMENTS WERE GOING TO SPARTAN; CORRECT?

A THIS WAS THE FIRST PAYMENT I MADE TO SPARTAN

CONSTRUCTION AFTER ADAM ASKED ME TO, INSTEAD OF WRITING CHECKS TO HIM, TO WIRE MONEY INTO THIS NEW BANK ACCOUNT.

Q OKAY. THROUGHOUT THIS PROJECT, ENGINEERS HAD TO BE HIRED; CORRECT?

A YES.

Q ARCHITECTS HAD TO BE HIRED?

A YES.

Q AND YOUR AGREEMENT WITH MR. BEREKI WAS THAT WHATEVER THOSE COSTS WERE FOR DESIGN PROFESSIONALS, THAT WAS GOING TO BE A COST PAID FOR BY YOU AND YOUR HUSBAND; CORRECT?

A NO.

MR. BISSELL: OBJECTION. RELEVANCY.

THE COURT: I WILL ALLOW THE QUESTION.

THE ANSWER WAS NO.

BY MR. RUSSO:

Q DO YOU KNOW WHAT THE TERMS WERE FOR YOUR AGREEMENT WITH MR. BEREKI?

A YES.

Q OKAY. AND AMONGST THOSE TERMS WAS THAT HE WAS TO BE REIMBURSED FOR PAYMENTS FOR DESIGN PROFESSIONALS; CORRECT?

A THE TERMS OF OUR CONTRACT AGREEMENT AS OF APRIL 2012 WERE THAT WE HIRE MR. BEREKI AND GLENN OVERLEY FOR $500 A DAY AND WE WOULD PAY FOR ACTUAL COSTS OF LABOR AND MATERIALS. THE LABOR WOULD BE 15 TO $25 AN

HOUR. THAT WAS THE TERMS OF OUR AGREEMENT.

Q SINCE THEN, MA'AM, YOU HAVE DISCUSSED WITH YOUR HUSBAND THE FACT THAT YOU HAD AGREED TO REIMBURSE MR. BEREKI FOR ANY DESIGN PROFESSIONALS EXPENSES; CORRECT?

A NO.

Q WERE YOU AWARE --

THE COURT: THIS IS A GOOD TIME FOR A 10-MINUTE RESTROOM BREAK. WHAT DO YOU THINK?

MR. RUSSO: SURE THING, YOUR HONOR.

THE COURT: MR. BEREKI, SO YOU KNOW, AFTER MR. RUSSO IS COMPLETE, THEN YOU HAVE AN OPPORTUNITY TO ASK SOME QUESTIONS AS WELL.

MR. BEREKI: THANK YOU FOR THAT, YOUR HONOR.

(RECESS.)

THE COURT: MS. HUMPHREYS, COME ON BACK.

THE WITNESS: COME ON DOWN.

THE COURT: MR. RUSSO, BACK TO YOU, PLEASE.

MR. RUSSO: SURE.

BY MR. RUSSO:

Q MS. HUMPHREYS, YOU SAID THAT YOU AND YOUR HUSBAND MADE ALL THE PAYMENTS TO BEREKI & ASSOCIATES; CORRECT?

A YES.

Q YOU OPENED UP THE BINDERS MR. BISSELL WAS ASKING ABOUT RIGHT THERE TO TAB NUMBER 15?

A YES.

THE COURT: THE DEFENSE BOOK?

MR. RUSSO: YOU KNOW, LET ME MAKE IT EASIER. LET ME MAKE A REPRESENTATION. TAB 15 IN THAT BOOK IS THE SAME AS THE FIRST DOCUMENT, TAB 32, WHAT WE HAVE IN FRONT OF YOU, SO WE DON'T HAVE TO OPEN TWO BOOKS.

THE COURT: ALL RIGHT. 32.

MR. RUSSO: YEAH, LET'S MAKE IT EASIER.

BY MR. RUSSO:

Q MS. HUMPHREYS --

MR. BISSELL: THAT'S YOUR 32?

MR. RUSSO: FIRST PAGE.

MR. BISSELL: OH, 32-SOMETHING?

MR. RUSSO: 32-2, I APOLOGIZE.

BY MR. RUSSO:

Q WE WERE TALKING ABOUT 32-1 A MOMENT AGO BEFORE THE BREAK, MS. HUMPHREYS, AND YOU WERE SAYING THAT $45,000 WAS THE FIRST TIME THAT YOU WERE AWARE OF MAKING A PAYMENT TO SPARTAN ASSOCIATES; CORRECT?

A ON JULY 19, 2012, I WIRED $45,000 TO SPARTAN CONSTRUCTION. THAT WAS MY FIRST PAYMENT TO THEM.

Q OKAY. LET'S GO TO 32-2, SAME AS EXHIBIT NUMBER 15 IN THE DEFENDANT'S BOOK -- OR 315 IN THE DEFENDANT'S BOOK.

IS THIS AN ACCURATE LIST OF ALL THE PAYMENTS MADE ON THIS PROJECT, MA'AM?

A I BELIEVE SO.

Q OKAY. LET'S GO THROUGH THE NEXT DOCUMENTS IN THE SAME EXHIBIT, 32.

SO 32-4, THAT'S THE FIRST CHECK FOR THE $15,000 FROM YOU AND YOUR HUSBAND'S JOINT ACCOUNT TO MR. BEREKI; CORRECT?

A NO. THIS CHECK IS DATED MAY 17.

Q OKAY.

THE COURT: WHAT HAPPENED TO 32-3?

MR. RUSSO: I DON'T KNOW.

MR. BISSELL: I THOUGHT THAT WAS A CHECK COMPILATION.

THE COURT: 32-2.

MR. RUSSO: I DON'T KNOW WHAT HAPPENED.

BY MR. RUSSO:

Q BUT 32-4, IS THAT A CHECK PAYABLE TO MR. BEREKI?

A 32-4 IS A CHECK THAT I WROTE TO MR. BEREKI ON MAY 17, 2012.

Q OKAY. IF WE GO BACK A PAGE TO 32-2, WE SEE THAT THERE'S A RUNNING COMPILATION OF HOW MUCH MONEY WAS PAID IN THE RIGHT-HAND COLUMN; CORRECT?

A YES.

Q OKAY. SO WOULD THIS BE THE SECOND CHECK IN THAT COMPILATION DATED MAY 17, 2012, SO THE SECOND $15,000?

A YES.
Q OKAY. NOW I ASK YOU TO TURN TO 32-5.
A I AM THERE.
Q OKAY. AND AT THIS POINT IN TIME, YOU WERE WRITING THIS $50,000 CHECK TO SPARTAN CONSTRUCTION; CORRECT?
A NOVEMBER 15, 2012, SPARTAN CONSTRUCTION, $50,000, SIGNED BY ME.
Q AGAIN, THAT WAS FROM THE JOINT ACCOUNT; CORRECT?
A YES.
Q THE NEXT CHECK, 32-6.
WHAT IS THIS CHECK, MA'AM?
A THIS CHECK IS DATED AUGUST 31, 2012, MADE OUT TO SPARTAN CONSTRUCTION FOR $30,000, AND SIGNED BY GARY HUMPHREYS.
Q AND THIS SEEMS TO BE FROM A DIFFERENT ACCOUNT. DID HE HAVE HIS OWN ACCOUNT?
A WE HAVE SEVERAL DIFFERENT FAMILY BANK ACCOUNTS.
Q OKAY.
A THIS WAS ONE OF OUR PERSONAL BANK ACCOUNTS. AND THAT'S MY WRITING MAKING OUT THE CHECK.
Q ARE YOU A SIGNATORY ON THAT ACCOUNT?
A THEY ARE ALL LINKED TOGETHER, SO I BELIEVE SO, YES.

Q OKAY. GO TO 32-7, MA'AM.
A YES.
Q SO YOU HAD ALREADY -- AT THIS POINT IN TIME YOU HAD ALREADY BEEN WRITING CHECKS TO SPARTAN CONSTRUCTION. AND THEN THIS ONE, 32-7, IS $30,000 PAYABLE TO MR. BEREKI.
DO YOU SEE THAT?
A YES.
Q AT THIS POINT IN TIME, HAD MR. BEREKI TOLD YOU THAT THE PAYMENTS WERE TO BE MADE TO SPARTAN ASSOCIATES?
A HE TOLD US THAT IN JULY OF 2012.
Q OKAY. BUT NEVERTHELESS, YOU WROTE A CHECK TO HIM PERSONALLY IN DECEMBER FOR THE $30,000; CORRECT?
A I DIDN'T WRITE THIS CHECK.
Q DID YOUR HUSBAND WRITE THIS CHECK?
A IT LOOKS LIKE HIS HANDWRITING AND HIS SIGNATURE.
Q OKAY. 32-8, LET'S GO TO THE NEXT CHECK.
THIS IS ANOTHER $30,000 CHECK TO MR. BEREKI; CORRECT?
A YES.
Q AND DID YOU WRITE THIS ONE, OR DID YOUR HUSBAND?
A MY HUSBAND.
Q OKAY. 32-9.
NOW THIS ONE IS A LITTLE BIT DIFFERENT. IS

THIS A CHECK THAT YOU WROTE?

A NO.

Q OKAY. WAS THAT YOUR HUSBAND'S HANDWRITING ON THAT CHECK?

A YES.

Q IT SAYS ADAM BEREKI, SPARTAN ASSOCIATES ON IT; CORRECT?

A MY COPY IS UNCLEAR. I CAN SEE IT SAYS ADAM BEREKI AND SCRIBBLE.

Q OKAY. YOU CAN'T SEE SPARTAN ASSOCIATES IN THE SECOND PART?

A I CAN BELIEVE THAT THAT'S WHAT IT SAYS, BUT I CAN'T READ IT AS THAT.

Q FAIR ENOUGH.

LET'S GO TO 32-10.

IS THIS A WIRE TRANSFER THAT YOU PREPARED OR THIS IS YOUR HUSBAND?

A I PREPARED THIS WITH THE BANKER.

Q OKAY. AND WAS THIS -- HOW MUCH WAS THIS PAYMENT FOR, MA'AM?

A I THINK IT SAYS $30,000.

Q OKAY. AND DO YOU KNOW TO WHICH ACCOUNT THIS WAS WIRED?

A THE RECIPIENT SAYS ADAM BEREKI AND THERE'S AN ACCOUNT NUMBER WRITTEN BELOW IT.

Q DO YOU KNOW IF THAT ACCOUNT WAS FOR SPARTAN

ASSOCIATES OR FOR MR. BEREKI?

A I DON'T.

Q GO TO 32-11.

IS THIS ANOTHER WIRE THAT YOU PREPARED?

A ALONG WITH THE BANKER, YES.

Q OKAY. AND WAS THIS TO THE SAME ACCOUNT AS THE LAST WIRE?

A I WOULD HAVE TO COMPARE THE NUMBERS.

Q OKAY. DO YOU KNOW WHETHER OR NOT THIS WAS TO MR. BEREKI'S PERSONAL ACCOUNT OR THE SPARTAN ASSOCIATES' ACCOUNT?

A THE RECIPIENT IS ADAM BEREKI.

Q OKAY. YOU MENTIONED HUMPHREYS & ASSOCIATES. THAT'S A CORPORATION; CORRECT?

A HUMPHREYS & ASSOCIATES IS AN S CORPORATION --

Q OKAY.

A -- TO MY UNDERSTANDING.

Q OKAY. WHO WERE THE SHAREHOLDERS OF HUMPHREYS & ASSOCIATES?

A NOW?

Q HOW ABOUT --

A WHEN IT WAS FOUNDED?

Q FOUR YEARS AGO.

DO YOU KNOW?

A I APOLOGIZE FOR TALKING IN THE MIDDLE OF THE QUESTION.

THE COURT: IT'S OKAY.

BY MR. RUSSO:

Q DO YOU KNOW, MA'AM, WHO THE SHAREHOLDERS WERE FOR HUMPHREYS & ASSOCIATES?

A AT WHAT PERIOD OF TIME?

Q DO YOU KNOW AT ANY TIME?

A YES.

Q HOW ABOUT IN 2012?

A YES.

Q WHO WAS THE SHAREHOLDERS?

A GARY HUMPHREYS.

Q OKAY. WERE THERE -- AT SOME POINT IN TIME WERE THERE OTHER SHAREHOLDERS OF HUMPHREYS & ASSOCIATES?

A YES.

Q WHEN WAS THAT, MA'AM?

A NOW.

Q OKAY. LET'S TURN TO EXHIBIT 32-12, MA'AM.

DO YOU RECOGNIZE 32-12?

A I HAVE NEVER SEEN IT BEFORE.

Q OKAY. SO IS THAT YOUR -- I SEE A SIGNATURE. IS THAT -- CHRIS HUMPHREYS, IS THAT YOUR SON?

A CHRIS HUMPHREYS IS MY STEPSON.

Q OKAY. AND DO YOU RECOGNIZE HIS SIGNATURE ON THIS CHECK?

A NO.

Q OKAY. DO YOU RECOGNIZE THIS AS A $90,000

CHECK FROM HUMPHREYS & ASSOCIATES, INC., THE CORPORATION, TO SPARTAN ASSOCIATES?

A YES.

Q SO IT WAS, IN FACT, THE CORPORATION THAT PAID SPARTAN ASSOCIATES THIS CHECK ON JULY 31ST, 2013; CORRECT?

MR. BISSELL: OBJECTION.

THE COURT: SUSTAINED.

MR. BISSELL: FOUNDATION.

BY MR. RUSSO:

Q DO YOU KNOW WHO PAID THE $90,000 TO MR. BEREKI AS EVIDENCED BY THIS $90,000 CHECK?

A ARE YOU ASKING ME IF THIS CHECK SAYS IT'S PAYABLE TO ADAM BEREKI?

Q WELL, IT'S FROM A CORPORATION --

A TO SPARTAN ASSOCIATES.

Q SO HUMPHREYS & ASSOCIATES, THE CORPORATION, TO SPARTAN ASSOCIATES; CORRECT?

A YES.

Q LET'S GO TO THE NEXT CHECK, 32-13.

DO YOU RECOGNIZE THIS CHECK?

THE COURT: WHY DON'T WE GO INDIVIDUALLY -- SINCE I NOTICED THAT ALL OF THE FOLLOWING CHECKS APPEAR TO BE DRAWN ON THE HUMPHREYS & ASSOCIATES, INC. ACCOUNT, PERHAPS YOU CAN COLLECTIVELY ASK ABOUT THEM AND SPEED IT UP A LITTLE BIT.

MR. RUSSO: OKAY.

BY MR. RUSSO:

Q OKAY. THE NEXT CHECKS, 90,000, 95,000, 75,000, 60,000, 80,000, ALL OF THE REMAINING CHECKS THAT WERE IN THE ACCOUNTING ARE ALL ACTUALLY PAID BY THE CORPORATION, HUMPHREYS & ASSOCIATES, INC., TO SPARTAN ASSOCIATES; CORRECT?

A YES.

Q AND THOSE ARE THE MONIES THAT YOU AND YOUR HUSBAND ARE TRYING TO SEEK BACK AS PAID BY YOU IN THIS CROSS-CLAIM; CORRECT?

A I DON'T KNOW THAT.

MR. RUSSO: I DON'T HAVE ANY FURTHER QUESTIONS AT THIS TIME.

THE COURT: MR. BEREKI.

CROSS-EXAMINATION

BY MR. BEREKI:

Q HI, KAREN.

YOU TESTIFIED THAT WE HAD A CONTRACT; CORRECT?

A YES.

Q OKAY. AND DID YOU BELIEVE THAT THE SIGNING OF YOUR NAME ON THE E-MAIL AGREEMENT OR ON THE AGREEMENT CONTRACT THAT WE HAD WAS YOUR AGREEMENT TO THE TERMS AND CONDITIONS OF THAT CONTRACT?

MR. BISSELL: OBJECTION. CALLS FOR A LEGAL CONCLUSION.

THE COURT: SUSTAINED.

MR. BISSELL: LACK OF FOUNDATION THAT SHE SIGNED IT.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q WOULD YOU AGREE THAT YOUR TYPING YOUR NAME ON AN E-MAIL CONSTITUTES YOUR SIGNATURE -- CONSTITUTES YOUR SIGNATURE?

MR. BISSELL: OBJECTION. LEGAL CONCLUSION.

THE COURT: SUSTAINED.

I AM AFRAID I MAY HAVE PUT YOU OFF A LITTLE BIT ON THIS PARTICULAR POINT. MY REQUEST IS THAT YOU STATE THE WORD "OBJECTION" AND THEN THE LEGAL BASIS FOR IT WITHOUT THE SPEAKING OBJECTION THAT WOULD FOLLOW THE LEGAL BASIS.

MR. BISSELL: UNDERSTOOD, YOUR HONOR. I WILL TRY TO FIND THAT MIDDLE GROUND.

THE COURT: PERFECT.

BY MR. BEREKI:

Q YOU TESTIFIED THAT, PURSUANT TO OUR CONTRACT, THAT YOU WOULD BE PAYING FOR THE ACTUAL COSTS OF ALL LABOR AND MATERIALS; IS THAT CORRECT?

A I BELIEVE MY TESTIMONY WAS THAT WE AGREED TO PAY YOU AND YOUR PARTNER GLENN $500 A DAY AND THE ACTUAL

COSTS OF LABOR AND MATERIAL, THE LABOR BEING 15 TO $25 AN HOUR. LABOR AND SUPPLIES -- SUPPLIES AND MATERIAL AND THE LABOR, YES.

Q SO WHAT I AM GETTING AT IS YOU WERE AGREEING TO PAY FOR THE ACTUAL COSTS FOR ALL THE LABOR THAT SPARTAN INCURRED, AS WELL AS ALL THE MATERIALS THAT SPARTAN PURCHASED FOR USE IN THE PROJECT?

A NO. MY AGREEMENT WAS WITH ADAM BEREKI AND GLENN OVERLEY. I HADN'T HEARD OF SPARTAN.

Q OKAY. WERE YOU AGREEING TO PAY FOR -- WAS IT YOUR UNDERSTANDING THAT YOU WERE AGREEING TO PAY FOR THE ACTUAL COSTS OF LABOR AND MATERIALS THAT WERE USED ON THE PROJECT?

MR. BISSELL: OBJECTION, YOUR HONOR. RELEVANCY AS TO THIS CAUSE OF ACTION. MIGHT BE RELEVANT --

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q COULD YOU PLEASE TURN TO EXHIBIT 31. IT'S WHAT WE --

THE COURT: IN THE VERY BIG BOOK?

MR. BEREKI: IN THE VERY BIG BOOK, YOUR HONOR.

BY MR. BEREKI:

Q AND WE NEED TO GET TO 31-49.

YOU TESTIFIED THAT YOU HAD NEVER -- OR WERE NOT WORKING ON INTERIOR OR EXTERIOR DESIGN PLANS IN AUGUST 23 OF 2013; IS THAT CORRECT?

A YES.

Q ISN'T IT TRUE IN AUGUST -- ON AUGUST -- IN AUGUST OF 2013 YOU ACTUALLY CAME TO THE JOB SITE TO MEET WITH BOTH MYSELF AND BRYAN LEFEVER PERTAINING TO INTERIOR AND ARCHITECTURAL DESIGN ELEMENTS?

A IN THE BEGINNING OF AUGUST WE MET WITH YOU, YES.

Q AT THAT TIME, HAD YOU RECEIVED THIS -- OR PRIOR TO THAT DATE, HAD YOU RECEIVED THIS COMPILATION OF INTERIOR AND EXTERIOR DESIGN ITEMS?

THE COURT: REFERENCING THE ENTIRETY OF EXHIBIT 31?

MR. BEREKI: YES, YOUR HONOR.

THE WITNESS: WELL, THIS ONE IS DATED AUGUST 23. I HAD RECEIVED SOMETHING SIMILAR TO THIS.

BY MR. BEREKI:

Q PRIOR TO OUR MEETING?

A MY RECOLLECTION IS AT THE MEETING THAT BRYAN SHOWED US SOMETHING THAT HE PUT TOGETHER. PRIOR TO THE MEETING, I RECEIVED SOME THINGS ABOUT FURNITURE AND DESIGN CONSIDERATIONS, YES.

Q OKAY. AND AT THE MEETING, DID WE GO OVER THIS SPECIFIC PRESENTATION STARTING WITH 31-49?

A I DON'T KNOW.

Q OKAY. I'M GOING TO REPRESENT TO YOU THAT WE DID.

AND THEN SUBSEQUENT TO OUR MEETING, DID YOU

RECEIVE A COPY OF THIS AUGUST 23 PRESENTATION?

A IT LOOKS FAMILIAR. I CAN'T BE CERTAIN.

Q OKAY. CAN YOU TELL ME HOW IT LOOKS FAMILIAR?

A IT CONTAINS THINGS THAT WE TALKED ABOUT BUYING, FOR EXAMPLE, THE FAN ON 3161 AND THE CHAIR ON 3166.

Q HOW ABOUT THE SPARTAN CONSTRUCTION LOGO? WAS THAT ON THE PRESENTATION THAT YOU REVIEWED?

A I DON'T KNOW.

Q CAN YOU PLEASE TURN TO EXHIBIT 31-46.

A YES.

Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

A NO.

Q DO YOU KNOW WHAT IT IS?

A IT SAYS IT'S A FLOOR ASSEMBLY.

Q DO YOU THINK THAT WOULD BE THE FLOOR ASSEMBLY BETWEEN THE UPSTAIRS UNIT AND THE DOWNSTAIRS UNIT?

A PROBABLY.

Q OKAY.

THE COURT: OUT OF CURIOSITY -- THIS IS TO MR. BEREKI -- DID THE HALF-INCH LAYER OF PLYWOOD REPRESENT THE SUBFLOOR, OR IS THAT AN EXTRA LAYER, IN YOUR UNDERSTANDING?

MR. BEREKI: THE ACTUAL SUBFLOOR, YOUR HONOR, WAS THE THREE-QUARTER TONGUE-AND-GROOVE STRUCTURAL 1 PLYWOOD, AND THEN THERE WAS ANOTHER LAYER OF HALF-INCH

PLYWOOD ABOVE THAT.

THE COURT: OVER THE GENIEMAT?

MR. BEREKI: YES. THE GENIEMAT WAS THE SOUND ISOLATOR.

BY MR. BEREKI:

Q WERE YOU AWARE THAT I SENT THIS DOCUMENT ON 3146, 3147, AND 3148 TO -- VIA E-MAIL TO GARY?

A NO.

Q GARY NEVER SHARED THESE DOCUMENTS WITH YOU?

THE COURT: TOO MANY FIRST NAMES TEND TO CAUSE CONFUSION. WHEN YOU SAY "GARY," I DON'T KNOW WHO YOU'RE TALKING ABOUT.

MR. BEREKI: I'M SORRY, YOUR HONOR.

THE COURT: SO GIVE A FULL NAME WHEN YOU ASK THAT QUESTION.

MR. BEREKI: YES, YOUR HONOR.

BY MR. BEREKI:

Q SO GARY HUMPHREYS, YOUR HUSBAND, NEVER SENT YOU THESE DOCUMENTS; CORRECT?

A HE DIDN'T SEND ME 3146 AND 47, CORRECT.

Q OKAY. ON EACH -- ON EACH OF THESE DOCUMENTS, IT SAYS SPARTAN CONSTRUCTION; CORRECT?

A YES.

Q DO YOU KNOW THE ADDRESS FOR THE SPARTAN ASSOCIATES, INC.?

A NO.

Q YOU NEVER SENT A CHECK TO THE SPARTAN ASSOCIATES, INC.?

A I DON'T KNOW THE ADDRESS OF SPARTAN ASSOCIATES, INC. I KNOW THE ADDRESS FOR ADAM BEREKI. 818 SPIRIT LANE, I BELIEVE.

Q DID YOU KNOW THAT THE ADDRESS FOR THE SPARTAN ASSOCIATES, INC. IS THE SAME ADDRESS FOR ADAM BEREKI?

A NO.

Q DID YOU EVER MAIL A CHECK TO THE SPARTAN ASSOCIATES, INC. AT 818 SPIRIT, COSTA MESA, CALIFORNIA?

A I DON'T RECALL.

MR. BEREKI: THAT WILL BE ALL. THANK YOU.

THE COURT: MR. BISSELL, BACK TO YOU THEN.

MR. BISSELL: JUST A COUPLE, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BISSELL:

Q YOU WERE GIVEN AN ADDRESS AT WHICH TO SEND CHECKS; CORRECT?

A YES.

Q THAT WAS ALL CHECKS?

A YES.

Q NOW, THAT ADDRESS WAS GIVEN TO YOU BY MR. BEREKI --

A YES.

Q -- BEREKI?
A YES.
Q A 818 SPIRIT LANE, COSTA MESA ADDRESS?
A YES.
Q WERE YOU EVER GIVEN ANOTHER ADDRESS SAYING THIS IS SPARTAN ASSOCIATES' ADDRESS BY MR. BEREKI?
A NO.
Q YOU WERE ASKED TO LOOK AT EXHIBIT 34. THAT WAS THE BUILDING PERMIT, I BELIEVE, FOR THE PROJECT?
A IT'S LABELED INSPECTION CARD.
Q INSPECTION CARD.
AND DOES IT INDICATE WHEN THAT CARD OR THE BUILDING PERMIT WAS ISSUED ON THIS JOB?
A IT'S DATED AT THE TOP, 11/14/2012.
Q NOVEMBER 14, 2012 --
A NOVEMBER 14, 2012.
Q OKAY. AND MR. BEREKI BEGAN ON THIS JOB ON APRIL 2012?
A YES.
MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.
THE COURT: MR. RUSSO.

RECROSS-EXAMINATION

BY MR. RUSSO:
Q MS. HUMPHREYS, CAN YOU TURN TO EXHIBIT 30.

A YES.
Q HOW OFTEN DO YOU VISIT THE JOB SITE, MA'AM?
A HOW MUCH DID I VISIT THE JOB SITE?
Q YES.
A I DON'T RECALL A NUMBER. I WOULD SAY RARELY.
Q OKAY. LOOKING AT EXHIBIT NUMBER 30, THIS IS THE JOB SITE; CORRECT?
THE COURT: TALKING ABOUT 30-1?
MR. RUSSO: YES, YOUR HONOR.
THE COURT: WOULD YOU LIKE TO MAKE A PRELIMINARY OFFER OF PROOF WITH RESPECT TO THE DATE AND PHOTOGRAPHER FOR THIS PHOTOGRAPH?
MR. RUSSO: I WILL MAKE AN OFFER OF PROOF BASED ON WHAT MR. BEREKI JUST TOLD ME THAT THIS WAS TAKEN IN APPROXIMATELY DECEMBER 2012.
THE COURT: BY MR. BEREKI?
MR. BEREKI: YES, YOUR HONOR.
THE COURT: OKAY.
BY MR. RUSSO:
Q MA'AM, ISN'T IT TRUE THAT WHEN THE CONSTRUCTION STARTED ON THIS PROJECT, MR. BEREKI HUNG A SPARTAN ASSOCIATES SIGN, THE SAME SIGN WE SEE HERE IN THE TOP-RIGHT CORNER OF EXHIBIT 30-1, ON THE PROJECT?
A I DON'T KNOW THAT.
Q OKAY. YOU SAID YOU VISITED THE PROJECT SPARINGLY. WHEN YOU WERE THERE, DIDN'T YOU SEE A

SPARTAN ASSOCIATES SIGN ON THE PROJECT?

A I DON'T RECALL.

Q WAS THERE CONSTRUCTION FENCING AROUND THE PROJECT?

A I DON'T RECALL.

Q OKAY.

MR. RUSSO: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI?

MR. BEREKI: NOTHING FURTHER, YOUR HONOR.

MR. BISSELL: NO QUESTIONS, YOUR HONOR.

THE COURT: OKAY. IN THAT CASE, THANK YOU. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

THE COURT: WHO IS YOUR NEXT WITNESS?

MR. BISSELL: NEXT WITNESS IS GARY HUMPHREYS, YOUR HONOR.

THE COURT: MR. HUMPHREYS. WELL, WE CAN GO FOR FIVE -- EIGHT MINUTES, AND THEN CONTINUE ON UNTIL LUNCH, THAT IS.

THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: GARY, G-A-R-Y, C., HUMPHREYS. H-U-M-P-H-R-E-Y-S.

THE CLERK: THANK YOU, SIR.

THE WITNESS: GRAB MY WATER, IS THAT ALL RIGHT?

THE COURT: THAT'S PERFECTLY FINE. BRING IT WITH YOU. AND GOOD MORNING, MR. HUMPHREYS. HOW ARE YOU?

THE WITNESS: HOW ARE YOU?

THE COURT: BETTER THAN EVER. THANKS.

MR. BISSELL, TO YOU, PLEASE.

DIRECT EXAMINATION

BY MR. BISSELL:

Q MR. HUMPHREYS, YOU HAVE HEARD YOUR WIFE TESTIFY AS TO THE TWO OF YOU BUYING THIS CONDOMINIUM UNIT ON LIDO ISLE AND THE REASONS YOU BOUGHT IT.

IS THAT CONSISTENT WITH YOUR UNDERSTANDING, OR IS ANYTHING DIFFERENT THAN YOU UNDERSTOOD IT?

A NO, THAT'S EXACTLY THE WAY I UNDERSTOOD IT.

Q ARE YOU FAMILIAR WITH ADAM BEREKI?

A YES, I AM.

Q WHEN DID YOU FIRST MEET MR. BEREKI?

A I THINK IT WAS IN THE FALL OF 2011.

Q AND WHAT WAS THE CIRCUMSTANCES?

A I WAS VISITING MY BROTHER IN VILLA PARK, AND HE WAS PUTTING IN A KIND OF A SOUND SYSTEM.

Q AND DID YOU SPEAK TO HIM AT THAT TIME?
A NOT MORE THAN HELLO, NICE TO MEET YOU, THAT KIND OF THING. I REALLY DIDN'T SPEAK WITH HIM.
Q BEFORE YOU PURCHASED THE CONDOMINIUM UNITS IN NEWPORT BEACH WITH YOUR WIFE, HAD MR. BEREKI DONE ANY CONSTRUCTION FOR YOU?
A NO, HE DID NOT. HOWEVER, HE CLEARLY DID SOME FOR MY BROTHER AND MY SON.
Q THAT WOULD BE BOTH -- WITH REGARD TO YOUR SON, YOUR SON OWNS THE BUILDING, YOU RENT SPACE -- YOUR BUSINESS RENTS SPACE FROM?
A YES.
Q THE CONSTRUCTION WORK THAT MR. BEREKI DID FOR YOUR SON WAS -- PART OF THAT WAS ON THAT BUILDING?
A YES, IT WAS.
Q THAT WAS PRESUMABLY UNDER SOME SORT OF AGREEMENT WITH MR. BEREKI AND/OR SPARTAN AND YOUR SON?
A YES.
Q DID YOU HAVE ANY INVOLVEMENT IN ANY OF THOSE DISCUSSIONS BETWEEN YOUR SON AND MR. BEREKI CONCERNING WORK TO THE PREMISES WHERE YOUR OFFICES ARE LOCATED?
A NO.
Q WERE YOU EVER PRESENT DURING CONVERSATIONS BETWEEN MR. BEREKI AND YOUR SON CONCERNING WORK DONE TO THE PREMISES WHERE YOUR OFFICES ARE LOCATED?
A NO.

THE COURT: PERHAPS WE COULD EXPLORE A LITTLE BIT. I AM SURE I HEARD MS. HUMPHREYS TESTIFY THAT THE OFFICE FOR HUMPHREYS & ASSOCIATES MOVED INTO THIS BUILDING SOMETIME AFTER THAT CONSTRUCTION WAS DONE. PERHAPS I AM MISTAKEN ON THAT, BUT I WOULD LIKE TO HAVE SOME IDEA ON THE PROXIMITY AND LOCATION AND SO ON TO THE MOVE, IF THERE WAS A MOVE.

MR. BISSELL: UNDERSTOOD, YOUR HONOR.

BY MR. BISSELL:

Q THERE WAS A POINT IN TIME WHERE HUMPHREYS & ASSOCIATES WAS NOT OCCUPYING THE PRESENT LOCATION ON RESEARCH -- IS IT RESEARCH DRIVE IN IRVINE?

A CORRECT.

Q AND WHEN DID IT MAKE THE MOVE -- FIRST OF ALL, WHERE WAS IT LOCATED PRIOR TO ITS MOVE TO RESEARCH DRIVE?

A ON TUSTIN AVENUE IN THE CITY OF ORANGE.

Q OKAY. AND WHEN DID IT MOVE FROM TUSTIN AVENUE, CITY OF ORANGE, TO RESEARCH DRIVE IN IRVINE?

A I WOULD BE GUESSING. I CAN'T SAY FOR SURE. I DIDN'T HANDLE -- I WASN'T INVOLVED IN IT OR I COULD PROBABLY TELL YOU, BUT I CAN'T REMEMBER EXACTLY WHEN.

Q WHEN IT MOVED INTO THE PREMISES ON RESEARCH DRIVE, HAD TENANT IMPROVEMENT WORK BEEN DONE, TO YOUR KNOWLEDGE, TO THE BUILDING PRIOR TO YOUR MOVING IN?

A IT WAS SET UP LIKE WE WANTED IT. I DON'T KNOW

IF THAT MEANT IT NEEDED MODIFICATION BEFORE WE MOVED.

Q DO YOU REMEMBER MR. BEREKI DOING TENANT IMPROVEMENT WORK AFTER YOU MOVED YOUR BUSINESS TO THE RESEARCH DRIVE LOCATION?

A NO, I DON'T.

Q OKAY.

THE COURT: GENERALLY, I DON'T WANT MR. HUMPHREYS TO GUESS. SO THERE MAY BE AN OPPORTUNITY LATER TO GET MORE INFORMATION.

BY MR. BISSELL:

Q YOU SAY YOU CAN'T RECALL EXACTLY WHEN YOU MOVED FROM TUSTIN AVENUE IN ORANGE TO RESEARCH DRIVE. IS THERE A REASON WHY YOU CAN'T RECALL? WERE YOU NOT INVOLVED IN THE MOVE?

A I WAS NOT INVOLVED IN THE MOVE AT ALL. MY PRIMARY ROLE WAS TO BE OUT ON THE ROAD CONSULTING. I DO VERY LITTLE AROUND THE OFFICE AND EVERYTHING ASSOCIATED WITH THE PHYSICAL PLANT.

Q SO --

A SO --

Q SO THERE'S A POINT IN TIME WHERE YOU SHOWED UP TO WORK IN TUSTIN -- ON TUSTIN AVENUE, AND THEN THERE WAS A PERIOD OF TIME WHERE YOU JUST STARTED SHOWING UP TO WORK IN IRVINE DRIVE; IS THAT CORRECT?

A YES. THEY TOLD ME WE HAD MOVED AND WHERE IT WAS LOCATED.

Q BUT YOU'RE NOT EXACTLY SURE WHEN THAT MOVE TOOK PLACE BECAUSE YOU WERE ON THE ROAD?

A EXACTLY.

Q DO YOU RECALL THE YEAR AT LEAST?

A 2010 TO '12. I AM JUST TOTALLY GUESSING.

Q OKAY. DO YOU RECALL WHEN YOU FIRST DISCUSSED WITH MR. BEREKI THE POSSIBILITY OF HIM DOING CONSTRUCTION WORK ON YOUR CONDOMINIUM UNIT?

A YES. THAT WAS IN SPRING OF 2012.

Q ALL RIGHT. AND CAN YOU DESCRIBE THE CIRCUMSTANCES OF THAT DISCUSSION?

A I BELIEVE HE CALLED ME A NUMBER OF TIMES. WE FINALLY SPOKE FOR A FEW MINUTES TO JUST SAY HELLO TO EACH OTHER. THE REAL MEETING OCCURRED ON THAT DAY WE MET ON APRIL OF 2012 AT THE JOB SITE. WE HAD A RENTER IN THERE PRIOR TO THAT. WE COULDN'T GO IN VERY EASILY, SO THAT'S WHY WE WAITED UNTIL THEN.

Q WAS THE RENTER NO LONGER THERE AS OF APRIL 1, 2012?

A I THINK THAT'S CORRECT.

Q OKAY. AND YOU HEARD -- YOU HEARD MS. HUMPHREYS TESTIFY AS TO WHAT WAS DISCUSSED AT THE MEETING ON THE SITE AND THAT MR. BEREKI EXPRESSED ENTHUSIASM FOR THE JOB.

DO YOU CONCUR WITH THAT TESTIMONY?

A ABSOLUTELY. HE WAS HIGHLY EXCITED; SAID THAT

WHAT I SAW AT MY BROTHER'S IS NOTHING COMPARED TO WHAT HE'S DONE BEFORE IN NEWPORT BEACH; THAT HE WAS REALLY EXCITED ABOUT TAKING THIS JOB ON. GIDDY. CLEARLY EAGER.

THE COURT: LET'S STOP THERE AND GO TO LUNCH ON THE SIDE NOTE OF HUSBAND AGREEING WITH WIFE.

THE WITNESS: GOOD.

THE COURT: ON THE CONTRARY, I THINK WE WILL PROBABLY SEE -- WE SEE IT A FAIR AMOUNT AT MY HOUSE. WHY NOT? ALL RIGHT, EVERYBODY. SEE YOU BACK AT 1:30. HAVE A GOOD LUNCH.

THE WITNESS: THANKS. YOU TOO.

(RECESS.)

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SANTA ANA, CALIFORNIA; MARCH 27, 2017

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AFTERNOON SESSION

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT.)

THE COURT: SORRY FOR THE DELAY. I HAD TO TRACK DOWN THE BUSINESS AND PROFESSIONS CODE SECTION APPLICABLE TO OUR CASE.

SIR, COME ON DOWN.

THE WITNESS: THANKS.

THE COURT: MR. BISSELL, BACK TO YOU, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

BY MR. BISSELL:

Q MR. HUMPHREYS, BEFORE THE BREAK, YOU JUST TESTIFIED THAT THE TESTIMONY THAT YOUR WIFE HAD GIVEN THIS MORNING AS FAR AS WHAT YOU WANTED DONE TO THE UNIT, WHAT WAS DISCUSSED WITH MR. BEREKI, THAT WAS BASICALLY --

THE COURT: HE ABSOLUTELY AGREED WITH EVERYTHING SHE SAID. WE HAVE THAT DOWN.

THE WITNESS: EXACTLY RIGHT.

BY MR. BISSELL:

Q DID MR. BEREKI TELL YOU AT ANY TIME PRIOR TO APRIL 5, 2012, WHAT HIS QUALIFICATIONS WERE FOR DOING THIS PROJECT?

A YES, HE DID.

Q WHAT DID HE TELL YOU?

A HE TOLD ME HE HAD DONE A NUMBER OF PROJECTS IN NEWPORT BEACH, SPECIFICALLY, AND WEST COVINA, ORANGE COUNTY, SOUTHERN CALIFORNIA IN GENERAL THAT WERE EVEN MORE COMPREHENSIVE THAN THIS PROJECT. AND I FELT GOOD WHEN HE FINISHED TELLING ME THE STORY THAT HE WAS MORE THAN QUALIFIED TO HANDLE THIS JOB.

Q DID HE TELL YOU HE WAS A LICENSED CONTRACTOR?

A YES, HE DID.

Q HOW DID THAT COME UP?

A I THINK I ASKED HIM, ARE YOU A LICENSED CONTRACTOR, JUST TO MAKE SURE. AND HE AFFIRMED THAT HE WAS.

Q DID YOU BELIEVE HIM WHEN HE TOLD YOU HE WAS A LICENSED CONTRACTOR?

A YES, I DID.

Q WOULD YOU HAVE HAD MR. BEREKI DO THIS JOB FOR YOU IF YOU BELIEVED THAT HE WAS NOT A --

A ABSOLUTELY NOT. I HAVE HEARD SOME TERRIBLE HORROR STORIES ABOUT THOSE SITUATIONS.

Q IF YOU WILL TURN --

A I HAVE TWO BOOKS HERE.

Q IT'S THE ONE THAT'S DEFENDANTS' EXHIBITS.

A IS THAT THE BIG ONE?

THE COURT: IT MAY BE BEHIND YOU, SIR.

MR. BISSELL: I THINK IT'S THAT ONE.

MR. RUSSO: THAT ONE.

THE WITNESS: DEFENDANTS' TRIAL EXHIBITS.

MR. BISSELL: YES.

BY MR. BISSELL:

Q IF YOU WILL TURN TO WHAT'S TABBED IN YOUR BOOK --

A I COULDN'T HEAR, SORRY.

THE COURT: TURN TO TAB 3.

BY MR. BISSELL:

Q TAB 3.

A OKAY. I'M THERE.

Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

A YES, I HAVE.

Q AND YOU HEARD YOUR WIFE TESTIFY THIS MORNING THAT -- EXCUSE ME.

YOUR HONOR, IS IT ALL RIGHT TO QUESTION HIM ALONG THOSE LINES, OR DO YOU WANT ME TO GO THROUGH THE WHOLE SCENARIO OF ASKING HIM EVERY QUESTION THAT I ASKED MS. HUMPHREYS ABOUT THE UNDERSTANDING OF WHAT THIS WAS?

THE COURT: TAKE YOUR BEST SHOT.

MR. BISSELL: THANKS, YOUR HONOR.

THE COURT: WHICHEVER WAY YOU LIKE.

BY MR. BISSELL:

Q YOU HAVE SEEN THIS DOCUMENT BEFORE, HAVE YOU NOT?

A YES, I HAVE.
Q WHEN DID YOU FIRST SEE THIS?
A ON THAT DATE OF APRIL 5TH OF 2012.
Q AND THIS DOCUMENT HAS BEEN IDENTIFIED AS A -- KIND OF A TWO-STRING E-MAIL BETWEEN YOURSELF AND MR. BEREKI. IS THAT YOUR UNDERSTANDING?
A MR. BEREKI, MYSELF, AND MY WIFE.
Q COULD YOU TELL US WHAT YOUR UNDERSTANDING OF THIS DOCUMENT WAS?
A IT WAS KIND OF OUR ACCEPTANCE, AND IN SOME CASES A REJECTION OR ASKING FOR CLARITY OF THE SUGGESTIONS HE MADE IN WHAT I HAVE CHARACTERIZED AS A PROPOSAL IN THE PRIOR TAB.
Q DID -- THE E-MAIL FROM MR. BEREKI AND YOU AND YOUR WIFE'S RESPONSE TO MR. BEREKI, IT WAS ALL CONTAINED IN THIS ONE DOCUMENT. DID THAT SET FORTH WHAT YOUR UNDERSTANDING WAS AS FAR AS THE PROJECT WAS CONCERNED FROM APRIL 5, 2012?
A YES, IT DOES.
Q DURING ANY OF YOUR CONVERSATIONS WITH MR. BEREKI, LEADING UP TO THE APRIL 5, 2012, E-MAIL CORRESPONDENCE, DID MR. BEREKI EVER MENTION SPARTAN TO YOU?
A NO, HE DIDN'T.
Q YOU'VE READ THE EXHIBIT -- THE E-MAIL EXCHANGE BETWEEN YOU AND YOUR WIFE AND MR. BEREKI, EXHIBIT 303.

DOES THE NAME SPARTAN APPEAR ANYWHERE IN THAT E-MAIL?

A NO, IT DOESN'T.

Q AT ANY TIME BEFORE MR. BEREKI STARTED WORK ON THE PROJECT, HAD YOU EVER HEARD OF SPARTAN?

A NO, I HADN'T.

Q WHO DID YOU BELIEVE YOU WERE CONTRACTING WITH AS OF APRIL 5, 2012, FOR THIS PARTICULAR PROJECT?

A ADAM BEREKI AND HIS PARTNER, GLENN OVERLEY.

Q NOW, YOU HAD NEVER MET MR. OVERLEY BEFORE; IS THAT CORRECT?

A THAT'S CORRECT.

Q DID MR. BEREKI EXPLAIN ANYTHING ABOUT HIS PARTNER, WHAT HIS QUALIFICATIONS WERE?

A I DON'T RECALL THAT HE DID.

Q YOUR UNDERSTANDING THAT YOU WERE CONTRACTING WITH MR. HUMPHREYS (SIC) AND HIS PARTNER IS BASED ON WHAT, THEN?

A WITH MR. BEREKI AND HIS PARTNER IS BASED ON THIS E-MAIL AND EXHIBIT 3. YOU SAID HUMPHREYS. THAT'S WHY I SAID --

Q I'M SORRY.

A -- BEREKI AND HIS PARTNER, GLENN OVERLEY. IT WAS BASED ON THIS E-MAIL, YES.

Q I WILL DO THAT OFF AND ON. I APOLOGIZE.

MS. HUMPHREYS HAS ALREADY TESTIFIED AS TO EXHIBIT 306, WHICH WAS THE MAY 13, 2012 CHECK. IT'S OUR

EXHIBIT, NUMBER 6.

YOU'VE SEEN THAT CHECK BEFORE; CORRECT?

A YES, I HAVE.

Q AND YOU AND YOUR WIFE MADE FURTHER PAYMENTS TO MR. BEREKI ON THIS JOB; CORRECT?

A YES, WE DID.

Q IF YOU WILL FLIP TO TAB NUMBER 15 IN THE EXHIBIT BOOK YOU HAVE IN FRONT OF YOU.

A OKAY. I'M THERE.

Q CAN YOU IDENTIFY THAT DOCUMENT FOR US?

A YES. IT'S AN EXTRACT OF CHECKS AND WIRE TRANSFERS FROM KAREN AND ME, SOMETIMES HUMPHREYS & ASSOCIATES TO ADAM BEREKI OR SPARTAN.

Q IS THIS CHECK EXTRACT A COMPILATION PREPARED BY YOU UNDER YOUR DIRECTION?

A PREPARED UNDER MY DIRECTION.

Q BY WHO?

A MY ACCOUNTANT.

Q AND DOES THIS EXHIBIT REFLECT ALL PAYMENTS MADE BY YOU AND YOUR WIFE ON THIS JOB?

A I BELIEVE IT DOES.

Q WHAT WAS THE DATE OF THE FIRST PAYMENT TO SPARTAN CONSTRUCTION?

A JULY 19, 2012.

Q SO AT SOME POINT, HAD YOU HEARD OF SPARTAN CONSTRUCTION?

A YES. IN THE JULY TIME FRAME, A FEW MONTHS INTO THE PROJECT.

Q AND HOW DID YOU HEAR OF SPARTAN CONSTRUCTION?

A ADAM ASKED US TO START MAKING CHECKS TO SPARTAN.

Q DID HE EXPLAIN TO YOU WHY?

A NO.

Q DID YOU ASK HIM WHY?

A NO.

Q DID HE EXPLAIN TO YOU WHO SPARTAN CONSTRUCTION WAS?

A NO.

Q DID YOU HAVE ANY SORT OF UNDERSTANDING OF WHO YOU THOUGHT SPARTAN CONSTRUCTION WAS?

A I JUST FIGURED IT WAS A SEPARATE ACCOUNT OR DBA THAT HE WAS USING. I DIDN'T THINK ABOUT IT, QUITE FRANKLY.

Q AT ANY TIME DURING MR. BEREKI'S INVOLVEMENT ON THIS PROJECT, DID HE EVER APPROACH YOU WITH A PROPOSED CONTRACT FROM SPARTAN CONSTRUCTION?

A NO.

Q DID HE APPROACH YOU WITH ANY TYPE OF PROPOSAL FROM SPARTAN CONSTRUCTION?

A NO.

Q WAS THERE ANY POINT DURING MR. BEREKI'S INVOLVEMENT IN THIS PROJECT IN WHICH YOU THOUGHT THAT

YOU HAD CONTRACTED WITH SPARTAN CONSTRUCTION?

A NO.

MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO.

CROSS-EXAMINATION

BY MR. RUSSO:

Q WHEN YOU WENT TO THE PROJECT AND SAW THE SPARTAN CONSTRUCTION SIGN IN FRONT OF IT, DID YOU ASK QUESTIONS ABOUT THAT?

MR. BISSELL: OBJECTION, YOUR HONOR. ASSUMES FACTS NOT IN EVIDENCE.

THE COURT: SUSTAINED.

BY MR. RUSSO:

Q HOW MANY TIMES DID YOU GO TO THE PROJECT, SIR?

A THREE TO FIVE.

Q IN THE YEAR AND A HALF?

A THAT'S ABOUT RIGHT.

Q OKAY. AND YOU SAW THE SPARTAN ASSOCIATES SIGN ON THE PROJECT?

A NO.

Q DID YOU WALK AROUND THE WHOLE PROJECT WHEN YOU GOT THERE?

A NOT NECESSARILY.

Q DID YOU LOOK FROM THE STREET AND NOT GO SEE

WHAT WAS GOING ON WITH THE WORK?

A I WENT AND SAW WHAT WAS GOING ON WITH THE WORK.

Q OKAY. CAN YOU TURN TO EXHIBIT 30. IT'S THE OTHER BINDER, SIR.

A OH, OKAY. 30. I'M THERE.

Q I WILL ADDRESS YOUR ATTENTION TO PAGE 30-1, THE FIRST PAGE.

A OKAY.

Q DO YOU SEE IN THE TOP-RIGHT CORNER OF THE PICTURE, THE SPARTAN ASSOCIATES SIGN?

A I SEE THAT NOW.

Q YOU ARE SAYING YOU NEVER SAW THAT?

A NEVER SAW IT.

THE COURT: PERHAPS WE CAN GET SOME ORIENTATION.

BY MR. RUSSO:

Q SIR, CAN YOU TELL ME WHAT IS DEPICTED IN 30-1?

A IT LOOKS LIKE THE FRONT END OF THE CONDOMINIUM ON THE BEACH SIDE THAT HAD BEEN OPENED UP.

Q OKAY. SO IF WE ARE INSIDE LOOKING TOWARDS ME ON THIS PICTURE --

A YES.

Q -- AM I LOOKING AT WATER OR TOWARDS THE STREET?

A YOU'RE LOOKING AT WATER.

Q OKAY.

THE COURT: SO IS THERE A STREET BETWEEN THE WATER AND THE FRONT OF THIS HOUSE?

THE WITNESS: NO.

THE COURT: SIDEWALK?

THE WITNESS: YES.

BY MR. RUSSO:

Q WERE YOU AWARE, SIR, THAT THAT SIGN WAS ORIGINALLY POSTED ON THE FRONT OF THE HOUSE WHEN CONSTRUCTION BEGAN, BUT THE OWNER'S ASSOCIATION REQUIRED THAT IT BE REMOVED?

A NO.

Q YOU WEREN'T AWARE OF THAT?

A I WAS NOT AWARE OF THAT.

Q OKAY. SIR, DID YOU LOOK INTO THE LICENSURE OF MR. BEREKI?

A NO.

Q SO YOU DIDN'T CHECK TO SEE WHETHER OR NOT MR. BEREKI HAD A LICENSE HIMSELF; CORRECT?

A NO.

Q CAN YOU TURN, SIR, TO EXHIBIT NO. 32 IN THE BOOK BEFORE YOU.

A OKAY. I'M THERE.

Q SIR, CUTTING TO THE CHASE, ARE ALL THE CHECKS THAT ARE IN EXHIBIT NO. 32 THE CHECKS THAT MAKE UP THE CHECK REGISTER THAT WE HAVE DISCUSSED BEFORE, WHICH IS 32-2, WITH THE EXCEPTION OF THE FIRST $15,000 CHECK

MISSING?

A YES.

MR. RUSSO: OKAY. I WILL MOVE INTO ADMISSION EXHIBIT 32.

THE WITNESS: SORRY?

THE COURT: ANY OBJECTION?

MR. BISSELL: LET ME JUST MAKE SURE.

THE COURT: THIRTY-TWO CONSISTS OF PAGE 1 OF AN E-MAIL STRING DATED VARIOUSLY. AT THE TOP, JULY 19, 2012, THE NEXT ONE, JULY 19, 2012; THE NEXT ONE, JULY 20, 2012; THE LAST AT THE BOTTOM, FEBRUARY 1, 2017.

PAGE 2 IS THAT WHICH YOU PREVIOUSLY SHOWED, EXHIBIT 315, THE EXTRACTED CHECKS, PREPARED AT MR. HUMPHREYS' BY HIS ACCOUNTANT.

FOLLOWING THAT, 32, PAGE 4 -- THERE IS NO 32-3 BY THE WAY.

32-4 THROUGH 32-17, COPIES OF CHECKS PAYABLE EITHER TO MR. BEREKI AT VARIOUS TIMES OR TO SPARTAN ASSOCIATES, INCORPORATED. SOME CHECKS DRAWN ON THE HUMPHREYS' PERSONAL ACCOUNT. SOME REFLECTED AS WIRE TRANSFER. AND THEN TOWARDS THE END, A SERIES OF CHECKS DRAWN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES, INCORPORATED.

MR. RUSSO: COULDN'T HAVE DONE IT BETTER MYSELF, YOUR HONOR.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

YOUR HONOR, DO YOU PREFER TO HAVE EXHIBITS ENTERED ALL AT ONCE AT THE END OF THE CASE?

THE COURT: IN A COURT TRIAL, I REALLY DON'T CARE. AND FOR OUR PURPOSES ON THIS PARTICULAR BIFURCATED MATTER, PROBABLY BETTER IF WE JUST DO THEM AS THEY COME.

SO 32 RECEIVED.

(EXHIBIT NO. 32 WAS ADMITTED INTO EVIDENCE.)

BY MR. RUSSO:

Q SIR, WERE YOU AWARE THAT A BUILDING PERMIT HAD TO BE PULLED ON THIS PROJECT?

A THE BUILDING PERMIT HAD TO DO WHAT?

Q THAT A BUILDING PERMIT HAD TO BE PULLED ON THIS PROJECT.

A I'M ASSUMING --

THE COURT: MIGHT BE PULLED -- PULLED IS ALMOST A TERM OF ART FOR THE CONSTRUCTION BUSINESS. SO PROBABLY THE QUESTION REPHRASED AS, WERE YOU AWARE OF WHETHER OR NOT THE CITY REQUIRED A PERMIT TO BE ISSUED FOR THE PERFORMANCE OF THIS WORK.

BY MR. RUSSO:

Q WERE YOU AWARE THAT THE CITY REQUIRED A BUILDING PERMIT TO BE ISSUED FOR THE PERFORMANCE OF THIS WORK?

A I AM NOW.

THE COURT: GOOD QUESTION.

BY MR. RUSSO:

Q AND WERE YOU AWARE, SIR, THAT SPARTAN ASSOCIATES WAS THE APPLICANT FOR THAT BUILDING PERMIT?

A NO.

Q WERE YOU AWARE, SIR, THAT ARCHITECTS OR CIVIL ENGINEERS HAD TO BE HIRED FOR THIS PROJECT?

A I BELIEVE SO LATER.

Q AND WERE YOU AWARE, SIR, THAT IT WAS SPARTAN ASSOCIATES THAT HAD TO CONTRACT WITH THE CIVIL ENGINEERS?

A NO.

Q WERE YOU AWARE, SIR, THAT -- WHAT DESIGN PROFESSIONALS WERE YOU AWARE OF ON THIS PROJECT, SIR?

A I THINK THE ONLY NAME I REMEMBER IS WONG.

Q OKAY. AND DO YOU KNOW WHAT HIS PROFESSION WAS?

A I DO NOT.

Q WERE YOU AWARE, SIR, THAT EVERY SUBCONTRACT TO A PROJECT WAS WITH SPARTAN ASSOCIATES?

A I WAS NOT.

Q OKAY.

MR. RUSSO: NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI?

MR. BEREKI: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BEREKI:

Q YOU MENTIONED A LITTLE BIT EARLIER ABOUT HEARING TERRIBLE WAR STORIES ABOUT CONSTRUCTION. CAN YOU GIVE US AN IDEA ABOUT WHAT YOU HEARD ABOUT --

THE COURT: LET'S NOT GO THERE.

MR. BISSELL: OBJECTION. RELEVANCY, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q DID ALL YOUR FAMILY MEMBERS TELL YOU THAT SPARTAN HAD DONE A GOOD JOB ON THEIR PROJECTS?

A NO.

Q THEY DIDN'T?

A NO.

Q WHAT DID THEY SAY?

A ADAM BEREKI DID A GOOD JOB. I NEVER HEARD THE NAME SPARTAN ASSOCIATES.

Q OKAY. SO THEY TOLD YOU THAT ADAM BEREKI HAD DONE A GOOD JOB ON ALL THEIR PROJECTS?

A YES.

Q AND YOUR BUSINESS OFFICE, THE WORK THAT YOU SAW DONE THERE, DID YOU FEEL THAT A GOOD JOB HAD BEEN DONE?

A YES.

Q OKAY. WERE THERE ANY COMPLAINTS ABOUT THE WORK PRODUCT ITSELF?

MR. BISSELL: OBJECTION. VAGUE.

THE COURT: WELL, IT'S COMPOUND BECAUSE WE ARE NOW WELL AWARE THERE ARE MULTIPLE PROJECTS. SO I WILL SUSTAIN ON COMPOUND AT THIS POINT.

YOU CAN FOLLOW UP, MR. BEREKI.

MR. BEREKI: MR. --

THE COURT: LET ME CLARIFY SINCE I KNOW YOU'RE NOT A LAWYER. BASICALLY IF YOU WANT TO ASK A QUESTION LIKE THAT, YOU NEED TO ASK PROJECT BY PROJECT AND ANOTHER COLLECTIVELY.

MR. BEREKI: OKAY.

BY MR. BEREKI:

Q WERE THERE ANY COMPLAINTS ABOUT THE WORK THAT SPARTAN DID ON YOUR -- AT THE HUMPHREYS & ASSOCIATES OFFICE BUILDING ON RESEARCH?

A I NEVER HEARD SPARTAN ASSOCIATES. SO I HAVE TO SAY NO, THERE WERE NO COMPLAINTS.

Q OKAY. WERE THERE ANY COMPLAINTS ABOUT THE WORK THAT ADAM BEREKI DID AT YOUR -- AT THE HUMPHREYS & ASSOCIATES OFFICE ON RESEARCH?

A NO.

Q OKAY. DO YOU HIRE CONTRACTORS IN YOUR BUSINESS?

A NOT CONSTRUCTION CONTRACTORS. CONSULTANTS, MANAGEMENT CONSULTANTS, ACCOUNTANTS, PEOPLE, EXPERTS IN NUCLEAR PHYSICS, THAT KIND OF THING.

Q OKAY. BUT YOU REFER TO THEM AS CONTRACTORS; CORRECT?

A CONSULTANTS, ASSOCIATES, THOSE KIND OF TITLES.

Q OKAY. COULD YOU PLEASE TURN TO EXHIBIT 40.

A OKAY. I'M THERE.

Q OKAY. AND THEN I ASK YOU TO GO TO EXHIBIT A WHICH BEGINS ON 40-8.

A OKAY. I'M THERE.

Q CAN YOU READ THE TITLE OF THIS PAGE THAT'S IN BOLD FOR US, SIR?

A HUMPHREYS & ASSOCIATES, INC., INDEPENDENT CONTRACTOR AGREEMENT.

Q SO IN YOUR COMPANY, WHAT DOES THIS INDEPENDENT CONTRACTOR AGREEMENT APPLY TO?

MR. BISSELL: RELEVANCY, YOUR HONOR. OBJECTION.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q WAS YOUR TESTIMONY THAT YOU DON'T HIRE CONTRACTORS IN YOUR COMPANY?

A I AM SAYING THAT WE REFER TO THEM AS CONSULTANTS OR ASSOCIATES. I WASN'T SURE WHAT THE EXACT AGREEMENT NAME IS. IN FACT, I'M CONFIDENT IT'S CHANGED.

Q WOULD THOSE CONSULTANTS BE HIRED UNDER THIS INDEPENDENT CONTRACTOR AGREEMENT?

MR. BISSELL: SAME OBJECTION. RELEVANCE.

THE COURT: SUSTAINED. LET ME INDICATE TO YOU,

MR. BEREKI, I CONSIDER THERE TO BE SOME DIFFERENTIATION. I UNDERSTAND YOUR POINT IN TERMS OF TITLE, INDEPENDENT CONTRACTOR CONTAINED ON THIS ATTACHED EXHIBIT TO EXHIBIT 40, BUT IT WOULD BE RELEVANT AND GERMANE IF THIS WAS A CONTRACT TO PERFORM CONSTRUCTION-TYPE CONTRACTING WORK. HIRING SOMEBODY TO DO THE FUNCTION OF A MANAGEMENT CONSULTANT IN THE REALM OF MR. HUMPHREYS' BUSINESS, I THINK, IS AN ENTIRELY DIFFERENT THING, AND, THEREFORE, NOT RELEVANT.

MR. BEREKI: WHERE I'M COMING FROM IS THAT MR. HUMPHREYS, IN MY KNOWLEDGE, IS A MANAGEMENT CONSULTANT. HE WROTE THE BOOK ON PROJECT MANAGEMENT. AND IT -- HE MAY NOT BE INVOLVED IN CONSTRUCTION PROJECTS LIKE THIS AS MUCH, BUT HE DOES STATE THAT IN HIS WORK, THAT HIS MANAGEMENT PRINCIPLES, THAT HE BOTH TEACHES AND IS A SELF-PROCLAIMED EXPERT IN --

THE COURT: ASK HIM ABOUT THAT.

MR. BEREKI: OKAY.

THE COURT: I KNOW YOU'RE JUST ABOUT TO DO THAT.

MR. BEREKI: YES, I WAS, SIR.

BY MR. BEREKI:

Q OKAY. I'M GOING TO HOLD UP WHAT HAS NOT YET BEEN MARKED. WELL, IT IS ON THIS EXHIBIT -- ON THE LIST, BUT THIS BLUE BOOK. IT SAYS, "PROJECT MANAGEMENT USING EARNED VALUE," BY HUMPHREYS & ASSOCIATES.

DID YOU WRITE THIS BOOK, SIR?

MR. BISSELL: OBJECTION. RELEVANCY.
THE COURT: YOU CAN ANSWER YES OR NO.
THE WITNESS: YES.
BY MR. BEREKI:
Q AND IN THIS BOOK, ARE THERE PRINCIPLES RELATING TO THE HANDLING OF CONTRACTS?
A YES.
Q WOULD YOU AGREE THAT YOU HAVE EXTENSIVE EXPERIENCE IN VARIOUS TYPE OF CONTRACTS?
A FOR GOVERNMENT FUNDED CONTRACTS OVER $100 MILLION WHERE THERE'S A VERY SPECIFIC REQUIREMENT FOR A THING CALLED EARNED VALUE MANAGEMENT SYSTEMS.
Q OKAY. SO HOW ABOUT AN ACTUAL COST OR A COST-PLUS CONTRACT, DO YOU HAVE EXPERIENCE IN THAT?
A MANY OF MY CLIENTS HAVE COST PLUS CONTRACTS.
Q OKAY. AND WOULD YOU AGREE THAT YOU HAVE EXTENSIVE EXPERIENCE IN PROJECT MANAGEMENT?
A IN EARNED VALUE PROJECT MANAGEMENT SYSTEMS, YES.
Q OKAY. SO DURING THE PROJECT, DID I EVER ASK YOU TO MAKE A CHECK OUT TO LEGOLAND TO BUILD YOUR PROPERTY?
A I DON'T THINK SO.
Q OKAY. DID I ASK YOU TO MAKE A CHECK OUT TO JUDGE CHAFFEE?
THE COURT: WELL, LET'S NOT BE FACETIOUS.

BY MR. BEREKI:

Q HOW ABOUT PINKBERRY, THE ICE CREAM MANUFACTURER?

MR. BISSELL: OBJECTION. RELEVANCE.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q SO YOU HAVE STATED THAT YOU HAVE EXPERIENCE IN CONTRACTS AND PROJECT MANAGEMENT, YET YOU ARE ALLEGING THAT A SUBSTITUTION OCCURRED OF SPARTAN ASSOCIATES INTO THE PROJECT, AND DESPITE ALL OF THIS EXPERIENCE, WOULD YOU AGREE THAT THAT DID NOT SEND UP A RED FLAG TO YOU?

THE COURT: I WILL SUSTAIN MY OWN OBJECTION AS TOO MANY WORDS.

MR. BEREKI: OKAY.

THE COURT: SEE IF YOU CAN GO BACK AND REFRAME THE QUESTION. USUALLY, QUESTIONS, SINCE YOU'RE CROSS-EXAMINING -- LET ME EXPLAIN. SINCE YOU'RE CROSS-EXAMINING, YOU GET TO ASK LEADING QUESTIONS. I DON'T KNOW IF MR. RUSSO HAS GIVEN YOU THE LECTURE ON LEADING AND NON-LEADING QUESTIONS.

MR. RUSSO: WE HAD A FULL NIGHT OF IT LAST NIGHT.

THE COURT: OKAY.

MR. BEREKI: I AM JUST A ROOKIE, THOUGH.

THE COURT: A LEADING QUESTION IS ANY QUESTION THAT'S DESIGNED OR INTENDED TO PUT WORDS INTO THE MOUTH OF THE WITNESS THAT ADOPTS THE QUESTION BY SAYING YES.

MR. BEREKI: OKAY.

THE COURT: LEADING QUESTION. YOU WENT TO THE STORE LAST NIGHT, DIDN'T YOU? THE ANSWER WILL BE YES OR NO. PRESUMPTIVELY, THE ANSWER IS GOING TO BE YES. WHILE YOU WERE AT THE STORE, YOU BOUGHT A SIX PACK OF BEER, CORRECT? PRESUMPTIVELY, THE ANSWER WILL BE YES.

SO WHAT'S THE NON-LEADING FORM? NOT THAT YOU NEED TO KNOW THIS RIGHT NOW, BUT I WILL CLOSE THE BIG PICTURE. THE NON-LEADING FORM IS ANY QUESTION THAT EMPLOYS THE JOURNALIST'S TOOLS. WHAT ARE THE JOURNALIST TOOLS? WHO, WHAT, WHEN, WHERE, WHY, HOW. WHERE DID YOU GO LAST NIGHT? CAN'T BE ANSWERED JUST YES OR NO. I WENT TO THE STORE. WHAT, IF ANYTHING, DID YOU BUY WHILE YOU WERE AT THE STORE? NOTICE I STUCK AN EXTRA CLAUSE IN THERE, "IF ANYTHING." THERE IS A TECHNICAL REASON FOR THAT, BUT YOU DON'T NEED TO WORRY ABOUT THAT. ANSWER, CAN'T BE YES OR NO. ANSWER, I BOUGHT A SIX PACK OF BEER.

THE REASON I AM SAYING THIS TO YOU IS THAT, TYPICALLY, LEADING QUESTIONS ARE SHORT, TO THE POINT. PREFACING WITH LONG PARAGRAPHS OF INFORMATION IS BASICALLY TESTIMONIALS THAT DON'T REALLY WASH VERY WELL AROUND HERE. YOU WANT TO ASK SHORT QUESTIONS, ALLOW THE WITNESS TO SAY YES OR NO. THE LONGER THE QUESTION IS, THE MORE I START GOING, I'M NOT GOING TO REQUIRE A "YES" OR "NO" ANSWER. I'M GOING TO LET THE WITNESS TAKE OFF

AND GIVE SEVERAL PARAGRAPHS OF RESPONSE TO THAT.

BECAUSE, OFTENTIMES, WITH THE LONGER QUESTION, THERE ARE CERTAIN BUILT-IN ASSUMPTIONS THAT MAY OR MAY NOT BE ACCURATE. AND AS WE HAVE ALREADY SEEN, MR. HUMPHREYS AND MRS. HUMPHREYS HAVE DONE A GOOD JOB OF DIFFERENTIATING TO LEADING QUESTIONS. YOU HAD A CONTRACT WITH SPARTAN, DIDN'T YOU? THAT'S THE SHORT VERSION OF WHAT ACTUALLY WAS ASKED. THE ANSWER, I DIDN'T HAVE A CONTRACT WITH SPARTAN AT ALL. I HAD A CONTRACT WITH MR. BEREKI.

MR. BEREKI: THANK YOU.

THE COURT: IT COULDN'T BE ANSWERED YES OR NO. THAT IS THE PROBLEM.

MR. BEREKI: I UNDERSTAND.

THE COURT: NOW, TO GET THE CHAFFEE FULL COURSE, YOU'RE GOING TO HAVE TO READ THE COUNTY BAR JOURNAL NEXT MONTH, BUT IN THE MEANTIME -- OR LAST QUARTER. MR. RUSSO PROBABLY GAVE YOU A COPY OF THE ARTICLE I WROTE ON LEADING QUESTIONS. IN THE MEANTIME, IT'S JUST IMPORTANT TO KEEP IN MIND THAT IT'S BEST TO HAVE YOUR QUESTION WRITTEN OUT. AND I KNOW IT'S A LITTLE LATE IN THE GAME FOR THAT, BUT AS WE GO THROUGH THIS TRIAL, YOU WANT TO WRITE OUT YOUR QUESTIONS SO THAT YOU WILL HAVE A GOOD FLOW. THERE'S NOTHING WRONG WITH READING QUESTIONS OR AT LEAST REFERRING TO NOTES SO YOU KNOW WHERE YOU'RE GOING.

MR. BEREKI: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

MR. BEREKI: I WILL TAKE THAT TO HEART.

THE COURT: ALL RIGHT. BACK TO IT, SIR.

BY MR. BEREKI:

Q DID IT SEND UP A RED FLAG TO YOU WHEN YOU WERE ASKED TO WRITE A CHECK TO SPARTAN CONSTRUCTION?

A NOT REALLY.

Q WOULD IT SEND UP A RED FLAG TO YOU IF YOU THOUGHT YOU HAD A CONTRACT WITH ADAM BEREKI AND YET ADAM BEREKI IS ASKING YOU TO PAY SOMEONE ELSE?

A NO. I THINK THAT'S THE SAME QUESTION.

MR. BEREKI: I THINK I WILL BE DONE FOR NOW.

THE COURT: OKAY. MR. BISSELL, BACK TO YOU.

MR. BISSELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BISSELL:

Q MR. HUMPHREYS, MR. RUSSO, NOT SO MUCH BY YOUR TESTIMONY, BUT INDICATED TO YOU, REPRESENTED TO YOU THAT ALL SUBCONTRACTS ENTERED INTO ON THIS PROJECT WERE BY SPARTAN CONSTRUCTION. I ASK YOU TO FLIP TO TAB NUMBER 51 --

A OF THE BIGGER BOOK --

Q -- OF THE DEFENDANTS' BOOK, THE SMALLER OF THE

TWO.

A YOU SAID 51?

Q 51, YES.

THE COURT: "SMALL" IS SUCH A RELEVANT TERM.

MR. BISSELL: SMALLER OF THE TWO.

THE WITNESS: OKAY. I'M AT 51.

BY MR. BISSELL:

Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

A I THINK I HAVE.

Q IS THIS A DOCUMENT THAT WAS PRODUCED BY MR. BEREKI IN CONJUNCTION WITH THIS LAWSUIT?

A YES.

Q THIS PURPORTS TO BE A WORK AUTHORIZATION TO WONG & ASSOCIATES?

A YES.

Q AND YOU MENTIONED THAT WONG WAS A NAME THAT YOU RECOGNIZE AS BEING ONE OF THE CONSULTANTS ON THIS PROJECT?

A I DO NOW, AND I SEE THE TITLE CONSULTING ENGINEER.

Q WHO IS THIS WORK AUTHORIZATION DIRECTED TO? WHO'S THE CLIENT? UP AT THE TOP, UPPER LEFT.

A OH, CLIENT, SORRY. ADAM BEREKI.

Q AND WHO AT THE BOTTOM RIGHT-HAND PORTION, WHO'S THIS WORK ORDER APPROVED BY?

A ADAM BEREKI.

MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO?

RECROSS-EXAMINATION

BY MR. RUSSO:

Q I DON'T WANT TO DO TIT FOR TAT, BUT CAN YOU TURN TO EXHIBIT 33, SIR.

A IN THE OTHER BOOK?

Q YES, SIR.

A 33?

Q YES, SIR.

A I'M AT 33.

Q LOOKING AT 33-1, SIR, DO YOU SEE THE CONTRACT OF RUSSELL'S CRANE SERVICE?

A I SEE RUSSELL CRANE SERVICE IN THE UPPER LEFT-HAND CORNER.

Q WHO IS THE CLIENT OUT HERE, BILLED TO?

A BILLED TO IS SPARTAN CONSTRUCTION AND THE DATE IS JANUARY OF 2013.

Q OKAY. MOVING TO PAGE 3-2, SIR, THE GEOLOGIST FOR THIS PROJECT?

A HARRINGTON GEOTECHNICAL ENGINEERING, INC.

Q WHO WAS THE CONTRACTOR FOR THIS?

A IT'S THE JULY 25 OF 2013, MR. ADAM BEREKI, SPARTAN CONSTRUCTION.

Q MOVING ON, SIR. EXHIBIT 33-3, THE NEXT PAGE --

A YES.

Q -- INVOICE FOR THE WINDOWS?

A CALIFORNIA GLASS AND WINDOW.

Q SOLD TO WHO, SIR?

A ON MARCH 26 OF 2013, SPARTAN CONSTRUCTION.

Q SIR, TURN TO 33-5. CONTRACTED WITH ANAHEIM HEATING AND AIR CONDITIONING. WHO'S THE CONTRACT WITH?

A DATED MAY 27, 2013, SPARTAN CONSTRUCTION. AND IT SAYS "EQUALS ADAM."

Q NEXT PAGE, 33-6, SIR.

PROCOAT, INC. WHAT DID THEY DO ON THIS PROJECT?

A PROCOAT, INC., IT'S DATED, AGAIN, MARCH 22 OF 2013. IS THERE A SCOPE OF WORK ON HERE SOMEPLACE I SHOULD BE FINDING?

Q DO YOU KNOW WHAT THIS WAS FOR, SIR?

A I DO NOT.

Q DID YOU HAVE TO HAVE A WATERPROOFING SUBCONTRACTOR?

A I DON'T KNOW.

Q NEXT PAGE, 33-7,SIR. SHORELINE FABRICATORS, WHAT DID THEY DO FOR YOU?

A IT SAYS TO FABRICATE AND INSTALL ONE 10-FOOT LONG GUTTER. GUTTER TO BE MADE FROM 24-GAUGE STAINLESS

STEEL AND TWO, THREE-INCH LONG NO-HUB THUNDERBIRD DRAINS AT EACH END.

Q AGAIN, THIS WAS FOR SPARTAN CONSTRUCTION; CORRECT?

A IN APRIL OF 2013, SPARTAN CONSTRUCTION.

Q OKAY. LAST ONE, 33-8. HELIX ENVIRONMENTAL PLANNING, WHAT DID THEY DO FOR YOU, SIR?

A PROVIDE ENVIRONMENTAL CONSULTING SERVICES FOR THE RESIDENTIAL REMODEL OF NEWPORT BEACH. AGAIN, DATED JANUARY 16 OF 2013. I ASSUME THE SUBJECT COVERS.

Q AGAIN, THIS WAS WITH SPARTAN; CORRECT?

A SORRY. YES --

Q THANK YOU --

A -- IT'S WITH SPARTAN.

Q -- SIR.

MR. RUSSO: NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI.

MR. BEREKI: NOTHING FURTHER, YOUR HONOR.

MR. BISSELL: YOUR HONOR, I WOULD REQUEST TO -- I WOULD MOVE INTO EVIDENCE EXHIBITS 302, 303 --

THE COURT: HOLD ON A SECOND. START OVER AGAIN.

MR. BISSELL: 302, 303, 304, 305, 306, AND 315.

THE COURT: ANY OBJECTION TO 302?

MR. RUSSO: NO, YOUR HONOR.

THE COURT: MR. BEREKI?

MR. BEREKI: NO.

THE COURT: YOU'RE A PART OF THIS TOO.
MR. BEREKI: NO.
THE COURT: ALL RIGHT. 302 RECEIVED.
(EXHIBIT NO. 302 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 303.
MR. RUSSO: NO OBJECTION.
MR. BEREKI: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 303 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 304.
MR. RUSSO: NO OBJECTION.
MR. BEREKI: NO OBJECTION.
THE COURT: ALSO RECEIVED.
(EXHIBIT NO. 304 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 305.
MR. RUSSO: NO OBJECTION.
MR. BEREKI: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 305 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 306 IS THE COPY OF THE CHASE CHECK, $50,000. ANY OBJECTION?
MR. BEREKI: NO OBJECTION.
MR. RUSSO: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 306 WAS ADMITTED INTO EVIDENCE.)
THE COURT: LASTLY, 315, THIS IS THE SUMMARY OF

CHECKS PAID OVER THE COURSE OF THE RUN OF THIS EVENT. ANY OBJECTION?

MR. RUSSO: IT'S -- I OBJECT THAT IT'S DUPLICATIVE OF THREE -- I'M SORRY -- OF 32. AND I BELIEVE THERE'S AN ABSENCE OF FOUNDATION FOR IT.

THE COURT: SO DID YOU MOVE 32?

MR. RUSSO: I DID.

THE COURT: THERE IT IS. I JUST DIDN'T NOTE IT IN MY BOOK. WELL, CONSIDERING THE FACT THAT 32 IS IN EVIDENCE, DO WE NEED TWO OF THEM?

MR. BISSELL: AGAIN, YOUR HONOR, I DON'T HAVE THEIR EXHIBIT BOOK. I'M GOING TO HAVE TO TAKE A --

THE COURT: TAKE A LOOK.

MR. BISSELL: AS LONG AS IT'S TRULY DUPLICATIVE --

MR. RUSSO: IT IS.

MR. BISSELL: -- WE DON'T.

THE COURT: WELL, ONE DIFFERENCE I CAN TELL YOU RIGHT NOW. 32-2, WHICH IS THE PAGE IN QUESTION, ON MY BOOK, THERE ARE A SERIES OF RED CHECKMARKS. THEN THERE ARE SOME BLUE INITIALS NEXT TO, IT LOOKS LIKE, THE BEREKI ENTRIES AND THEN SOMEONE IN BLUE HAS CIRCLED THE BALANCE OF 848,000.

MR. BISSELL: TO ME, THOSE ARE INSIGNIFICANT. SO I HAVE NO OBJECTION TO 32 COMING IN.

THE COURT: OKAY. WE WON'T DOUBLE DOWN ON THAT ONE.

MR. BISSELL: ALL RIGHT.

THE COURT: THANK YOU, SIR, YOU CAN STEP DOWN.

THE WITNESS: THANK YOU, SIR.

MR. BISSELL: YOUR HONOR, AT THIS TIME, CROSS COMPLAINANTS CALL ADAM BEREKI TO THE STAND.

THE COURT: MR. BEREKI.

MR. BEREKI: YOUR HONOR, MAY I RUN TO THE BATHROOM REALLY QUICK?

MR. BISSELL: ABSOLUTELY.

MR. BEREKI: THANK YOU. I WILL BE RIGHT BACK.

THE COURT: WE WILL GO OFF THE RECORD FOR A SECOND.

(OFF THE RECORD.)

THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: ADAM, A-D-A-M, ALAN, A-L-A-N, BEREKI, B-E-R-E-K-I.

THE CLERK: THANK YOU.

THE COURT: COME ON DOWN, MR. BEREKI. HAVE A SEAT. NOW, I NEED TO EXPLAIN SOMETHING TO YOU SINCE I HAVE JUST GIVEN YOU A LITTLE BIT OF CHAFFEE ON EVIDENCE ALREADY. BECAUSE YOUR POSITION IS ADVERSE TO

MR. BISSELL'S CLIENTS, EVEN THOUGH MR. BISSELL IS CALLING YOU, HE GETS TO ASK LEADING QUESTIONS OF YOU. ON, QUOTE, CROSS-EXAMINATION, MR. RUSSO IS GOING TO HAVE TO ASK YOU NON-LEADING QUESTIONS. AND TO THE EXTENT YOU WANT TO ASK YOURSELF QUESTIONS, I JUST WILL UNDERSTAND THAT YOU'RE GOING TO BASICALLY ASK YOURSELF NON-LEADING QUESTIONS. AGAIN, THOSE ARE THE WHO, WHAT, WHEN, WHY, AND HOW QUESTIONS.

THE WITNESS: IS IT MY UNDERSTANDING THAT YOU'RE GOING TO GIVE ME A PERIOD OF TIME AFTER THIS TO ASK MY OWN QUESTIONS --

THE COURT: OH, SURE.

MR. BEREKI: -- TO HAVE A SMALL DIATRIBE OF MY OWN.

THE COURT: YOU'RE GOING TO BE UNDER OATH ASKING YOURSELF QUESTIONS TO WHICH YOU HAVE TO GIVE TRUTHFUL ANSWERS.

MR. BEREKI: YES, SIR. THAT WILL BE --

THE COURT: THERE IS A CERTAIN IRONY THERE. I DON'T KNOW WHY.

ALL RIGHT. MR. BISSELL, TO YOU, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BISSELL:

Q MR. BEREKI, IF YOU WILL TURN TO TAB NUMBER 2

IN DEFENDANTS' EXHIBIT BOOK, EXHIBIT 302.

A I'M THERE, SIR.

Q YOU RECOGNIZE THAT DOCUMENT?

A YOU SAID 302; CORRECT?

Q 202.

THE COURT: NO, 302. TAB --

MR. BISSELL: I'M SORRY. SORRY.

BY MR. BISSELL:

Q 302, TAB NUMBER 2.

A I DO RECOGNIZE THIS DOCUMENT.

Q AND DID YOU DRAFT THAT?

A YES.

Q AND ON WHOSE E-MAIL ACCOUNT WAS THAT DOCUMENT SENT TO THE HUMPHREYS?

A THE ADAM BEREKI E-MAIL ACCOUNT.

Q DID SPARTAN HAVE AN E-MAIL ACCOUNT AT THIS TIME?

A I BELIEVE IT DID.

Q OKAY.

A HOWEVER, ADAM BEREKI WAS THE E-MAIL ACCOUNT THAT I USED FOR SPARTAN.

Q IF YOU WILL FLIP TO EXHIBIT -- YOUR EXHIBIT NOW, IN YOUR EXHIBIT BOOK, 39 -- 35-13.

A I'M SORRY. SAY AGAIN.

Q EXHIBIT 35-13.

A OKAY.

OKAY.

Q DO YOU RECOGNIZE THAT DOCUMENT, SIR?

A I DO.

Q WHAT IS THAT?

A THIS IS A CONTRACT WITH -- BETWEEN THE SPARTAN ASSOCIATES AND ADP AND GUARD. ADP PROVIDED PAYROLL SERVICES AND GUARD PROVIDED WORKERS' COMP SERVICES.

Q AND WERE THOSE SERVICES TO BE PROVIDED IN CONNECTION WITH THE PROJECT YOU WERE DOING FOR THE HUMPHREYS?

A YES, SIR.

Q WHEN I SAY "THE HUMPHREYS," I'M TALKING ABOUT THE HUMPHREYS PROJECT ON LIDO NORD. DO YOU UNDERSTAND THAT, SIR?

A YES.

THE COURT: LET'S BE CLEAR. THE CONTRACT ITSELF ENCOMPASSES PAGE 35-11 THROUGH -13; IS THAT RIGHT?

THE WITNESS: YOUR HONOR, I BELIEVE IT ENCOMPASSES 35-1 THROUGH -- MAYBE THE ENTIRE 35 EXHIBIT. IT IS.

BY MR. BISSELL:

Q SO IF YOU LOOK AT THE BOTTOM OF PAGE 35-13, THERE'S AN E-MAIL ACCOUNT THERE, IS THERE NOT?

A YES.

Q AND THAT E-MAIL ACCOUNT IS ADAM@THESPARTANASSOCIATES.COM?

A YES.

Q AND YOU WERE USING THAT E-MAIL IN CONJUNCTION WITH THE HUMPHREYS PROJECT?

A YES, SOMETIMES, I DID.

Q WELL, DID YOU JUST NOT TESTIFY THAT YOU ALWAYS USE THE ADAM BEREKI E-MAIL IN CONJUNCTION WITH SPARTAN ASSOCIATES FOR THIS PROJECT?

A I DID NOT USE THE WORD "ALWAYS."

Q BACK TO EXHIBIT 302. TURN TO PAGE 5 OF THAT EXHIBIT.

ARE YOU THERE?

A I'M THERE, SIR.

Q OKAY. NOW, AT THE LAST COMPLETE PARAGRAPH, YOU MENTIONED WHAT YOU AND YOUR PARTNER PROPOSED TO CHARGE THE HUMPHREYS ON THIS PROJECT; CORRECT?

A IN RELATING TO THIS DOCUMENT, IT'S NOT ON THIS DOCUMENT, NO.

Q ARE YOU -- I'M SORRY. PAGE 4, 302, PAGE 4.

A NO. IT WOULD BE 304; RIGHT?

Q NO.

A OKAY. 302, PAGE 4, YES. I'M HERE NOW.

Q SECOND TO THE -- THE LAST COMPLETE PARAGRAPH ON THE PAGE, THAT'S A PROPOSAL BY YOU AND YOUR PARTNER AS TO WHAT YOU TWO INTEND TO CHARGE THE HUMPHREYS ON THIS PROJECT?

A NO. IT'S A PROPOSAL FROM SPARTAN ABOUT WHAT THE LABOR RATE OF ADAM BEREKI AND GLEN CHARGE ON THE

PROJECT.

Q OKAY. CAN YOU POINT TO ANYWHERE IN THAT DOCUMENT WHERE THE NAME SPARTAN IS MENTIONED?

A IT'S NOT.

Q NOW, THE COST OF THE WORK THAT YOU ESTIMATED AT THAT TIME, UNDERSTANDING THAT THE SCOPE CHANGED, IT WAS $143,000?

A ACTUALLY, THERE WERE TWO PROJECTS, WHAT WE DESCRIBED IN THIS E-MAIL AS PHASE ONE AND PHASE TWO. PHASE ONE WAS TO BE SOMEWHAT OF A COSMETIC REMODEL OF THE UNIT ITSELF, AND THAT WAS TO BE ABOUT $68,000, IS WHAT I ESTIMATED.

AND THEN THERE WAS ANOTHER PHASE OF THE PROJECT THAT WE SPOKE ABOUT, WHICH WAS PUTTING A DECK ON TOP OF THE UNIT BECAUSE THE HUMPHREYS INDICATED THEY WANTED TO HAVE LARGER DECK ENTERTAINMENT SPACE, AND THAT WOULD BE SOMETHING THAT WOULD BE RESEARCHED AND DISCUSSED OR AGREED UPON LATER. AND THAT AMOUNT WAS 75,000.

SO I THINK IF YOU ADD THE 68 AND 75, IT'S 143. BUT THE 75, TO MY RECOLLECTION, WASN'T YET AGREED UPON. IT WAS SOMETHING WE WERE GOING TO RESEARCH ON.

Q IT WAS YOUR ESTIMATE?

A YES.

Q IN THE LAST PAGE OF THIS E-MAIL, HOW DO YOU SIGN OFF?

A BEST, ADAM BEREKI.

Q NOW, YOUR PARTNER, MR. -- YOU TESTIFIED THAT -- YOU MENTIONED IN YOUR OPENING STATEMENT THAT MR. OAKLEY -- MR. OVERLEY WAS YOUR PARTNER ON THIS PROJECT?

A YES.

Q HE WAS AN INDEPENDENT CONTRACTOR?

A NO. WELL, AN INDEPENDENT LICENSED CONTRACTOR, OR JUST AN INDEPENDENT CONTRACTOR IN THE TERMS OF HOW YOU WOULD FILE A TAX RETURN FOR HIM?

Q HOW YOU WOULD FILE A TAX RETURN?

A YES, HE WAS TREATED AS AN INDEPENDENT CONTRACTOR.

Q HE HAD NO INVOLVEMENT WITH SPARTAN OTHER THAN PARTNERING WITH YOU; CORRECT?

A ARE YOU REFERRING TO ME AS SPARTAN OR ME AS ADAM BEREKI?

Q EITHER/OR.

A OKAY. I THINK TO MAKE IT CLEAR, I'M UP HERE AS A REPRESENTATIVE OF THE SPARTAN ASSOCIATES. AND TO NOT DIFFERENTIATE THOSE ISSUES, I WOULD APPRECIATE IF YOU WOULD CLARIFY IN YOUR QUESTIONS WHICH ONE YOU'RE REFERRING TO OR JUST ASSUME THAT I'M ALWAYS TALKING FROM THE PLACE OF SPARTAN.

THE COURT: THE WITNESS'S COMPOUND OBJECTION IS SUSTAINED.

REPHRASE.

BY MR. BISSELL:

Q READING FROM THE DEPOSITION THAT YOU GAVE IN THIS MATTER AT PAGE -- BEGINNING OF PAGE -- I'M SORRY -- 98, BEGINNING LINE 10 --

THE COURT: ALL RIGHT. HOLD ON A SECOND. 98, LINE 10. GOING TO WHERE?

MR. BISSELL: TO LINE -- I'M SORRY -- LINE 10 -- I'M SORRY -- TO LINE 13.

THE COURT: ANY OBJECTION?

MR. RUSSO: NO.

THE COURT: GO AHEAD AND READ.

MR. BISSELL: LET'S SEE.

BY MR. BISSELL:

Q "QUESTION: MR. OVERLEY, WAS HE -- DID HE HAVE ANY INVOLVEMENT WITH SPARTAN?

"ANSWER: HE WAS AN INDEPENDENT CONTRACTOR, YOU MIGHT SAY."

IF YOU WILL FLIP TO EXHIBIT 303, THE -- I'M SORRY. 305, IF YOU WOULD, SIR.

A OKAY. I'M HERE.

Q DO YOU RECOGNIZE THAT DOCUMENT?

A YES.

Q AND IN THIS DOCUMENT, YOU'RE COMMUNICATING WITH THE HUMPHREYS AND YOU'RE ASKING THEM TO CUT YOU A CHECK FOR $15,000; CORRECT?

A YES.

Q AND MS. HUMPHREYS, IN RESPONSE TO YOUR REQUEST, ASKS YOU WHO SHE SHOULD MAKE THE CHECK OUT TO.

DO YOU SEE THAT?

A I DO.

Q WHO IS IT THAT YOU'RE ASKING TO MAKE THE CHECK OUT TO?

A ADAM BEREKI.

Q IS THERE ANYTHING IN THE EXHIBIT 3 -- EXHIBIT 303 AGREEMENT THAT WOULD -- YOU CONTEND WOULD PUT THE HUMPHREYS ON NOTICE THAT THEY WERE CONTRACTING WITH ANYONE OTHER THAN YOU AND YOUR PARTNER, MR. OVERLEY? CAN YOU POINT TO THAT?

A IN THESE DOCUMENTS, NO.

Q IS THERE ANYTHING IN THE E-MAIL YOU SENT TO THE HUMPHREYS ON APRIL 13, THAT'S EXHIBIT 305, WHERE YOU'RE ASKING FOR PAYMENT AND ASKING THE PAYMENT BE MADE PAYABLE TO ADAM BEREKI, THAT WOULD PUT THE HUMPHREYS ON NOTICE THEY HAVE CONTRACTED WITH ANYONE OTHER THAN YOU?

A NO.

YOU'RE SPEAKING DOCUMENT SPECIFIC ONLY?

Q WELL, DID YOU HAVE CONVERSATIONS WITH THE HUMPHREYS PRIOR TO APRIL 5, 2012 WHERE YOU INDICATED TO THEM THAT YOU WERE GOING TO BE DOING THIS JOB WITH SPARTAN CONSTRUCTION AND NOT ADAM BEREKI?

A I BELIEVE THEY UNDERSTOOD IT WAS WITH SPARTAN

CONSTRUCTION.

Q ANY CONVERSATIONS TO THAT EFFECT?

A YEAH, I TOLD THEM THAT THAT'S WHAT MY COMPANY IS, SPARTAN CONSTRUCTION.

Q WHEN DID YOU TELL THEM THAT?

A DURING THE DAY WE MET THERE ON LIDO. I BELIEVE, AS MR. HUMPHREYS SAID, HE DID ASK FOR -- IF I WAS LICENSED AND I DID SAY THAT I WAS AS SPARTAN AND REFERRED HIM TO THE CALIFORNIA STATE LICENSE BOARD TO CHECK THE LICENSE NUMBER.

Q READING AGAIN FROM YOUR DEPOSITION OF PAGE 61, LINES 5 THROUGH 9.

"QUESTION" --

THE COURT: HOLD ON.

MR. BISSELL: I'M SORRY.

THE COURT: ANY OBJECTION?

MR. RUSSO: NO OBJECTION.

THE COURT: GO AHEAD.

BY MR. BISSELL:

Q "QUESTION: ASIDE FROM TELLING YOU WHAT THEY WANTED, DID THE HUMPHREYS EVER MANAGE THE PROJECT?

"ANSWER: OH, YES.

"QUESTION: DID THEY HIRE CONTRACTORS?

"ANSWER: ME.

NOW, YOU REQUESTED AND RECEIVED PAYMENTS FOR A NUMBER OF MONTHS AND ACCEPTED PAYMENTS MADE OUT TO ADAM

BEREKI ON THIS JOB; CORRECT?

A CAN YOU STATE THAT AGAIN, PLEASE.

Q FOR A NUMBER OF MONTHS INTO THIS PROJECT, YOU ACCEPTED PAYMENTS FROM THE HUMPHREYS MADE OUT TO ADAM BEREKI; IS THAT CORRECT?

A YES.

Q FOR A NUMBER OF MONTHS ON THIS PROJECT, YOU PAID YOUR LABOR AND MATERIALS WITH CHECKS DRAWN ON THE PERSONAL ACCOUNT OF ADAM BEREKI AND/OR YOUR MOTHER; IS THAT CORRECT?

A CAN YOU ASK THOSE QUESTIONS ONE AT A TIME, PLEASE.

Q UNTIL JULY OF 2012, YOU PAID YOUR OWN LABOR AND MATERIALS ON THIS PROJECT ON CHECKS DRAWN ON EITHER YOUR PERSONAL ACCOUNT OR THEY WERE PAID ON CHECKS DRAWN ON YOUR MOTHER'S ACCOUNT; IS THAT CORRECT?

A NO.

Q NOW, YOU HAVE A -- YOU BROUGHT VOLUMES OF DOCUMENTS. CAN YOU POINT TO EVIDENCE OF A SINGLE PAYMENT MADE IN CONNECTION WITH THIS JOB TO ANYBODY, LABOR, MATERIALS, CONTRACTOR, THAT WAS PAID ON AN ACCOUNT BY SPARTAN CONSTRUCTION?

A I BELIEVE THE PAYMENTS FOR THE SHOP SPACE RENT WERE FROM SPARTAN CONSTRUCTION.

Q SHOP SPACE RENT?

A YES.

Q YOU BELIEVE THAT YOU PAID THE SHOP SPACE RENT ON CHECKS DRAWN FROM SPARTAN CONSTRUCTION?

A AT THIS MOMENT I BELIEVE I DO. I HAVE TO CHECK TO VERIFY THAT.

Q YOU HAVE BEEN ASKED TO PRODUCE THOSE DOCUMENTS. DO YOU HAVE THOSE DOCUMENTS?

A I HAVE THE CHECKS THAT SPARTAN WROTE, YES.

MR. BISSELL: CAN WE HAVE THE WITNESS PRODUCE THOSE DOCUMENTS? WE HAVE ASKED HIM TO PRODUCE THOSE. THEY WERE NOT PROVIDED IN DISCOVERY. WE DON'T BELIEVE THEY EXIST.

THE COURT: I WILL VACATE. YOU GUYS CAN SPEND ABOUT TEN MINUTES, THE THREE OF YOU, GO OVER THE PRODUCTION. LET MS. BOLCE KNOW WHEN YOU ARE READY TO RESUME.

MR. BISSELL: THANK YOU, YOUR HONOR.

(RECESS.)

THE COURT: MR. BISSELL.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: HOW ARE WE DOING?

MR. BISSELL: I THINK WE'RE READY.

THE COURT: PROCEED.

BY MR. BISSELL:

Q MR. BEREKI, YOU HAVE HAD A CHANCE TO SIT DOWN WITH MR. RUSSO, CORPORATION'S COUNSEL, TO LOOK OVER THE CHECKS YOU HAVE. YOU HAVE BEEN ASKED TO PRODUCE ANY

CHECKS PAYABLE ON THE -- A SPARTAN CONSTRUCTION ACCOUNT TO ANYBODY INVOLVED ON THIS PROJECT BEFORE, SAY, JULY 15, 2012.

YOU'VE MADE A SEARCH OF YOUR RECORDS?

A THE ONES THAT I HAVE AVAILABLE, YES. IT WASN'T UNTIL YOU ASKED THE QUESTION THAT I REALIZED THAT THAT CHECKBOOK I USED ON THIS PROJECT ACTUALLY BEGAN WITH CHECK 001 IN JULY. SO THERE MUST BE ANOTHER CHECKBOOK THAT IS OUTSTANDING THAT I DON'T HAVE BECAUSE THE BANK ACCOUNT HAS BEEN CLOSED DOWN FOR AT LEAST THREE YEARS NOW.

Q BOTTOM LINE IS YOU CAN'T PRODUCE A SINGLE RECORD OF PAYMENT TO ANYBODY ON THIS JOB ON A SPARTAN CONSTRUCTION ACCOUNT PRIOR TO JULY OF 2012; IS THAT CORRECT?

A I'M NOT SAYING I CAN'T PRODUCE IT. I'M SAYING I DON'T HAVE THAT INFORMATION AVAILABLE TO ME RIGHT NOW.

Q YOU WERE ASKED TO PRODUCE IT AND YOU HAVEN'T PRODUCED IT.

A I WASN'T AWARE THAT IT EXISTED.

Q ISN'T IT TRUE THAT SPARTAN -- AS FAR AS THIS PROJECT WAS CONCERNED, SPARTAN DIDN'T EVEN EXIST UNTIL JULY OF 2012?

A THAT'S NOT TRUE.

Q YOU DIDN'T APPLY TO THE BOARD OF EQUALIZATION FOR -- TO REGISTER SPARTAN AS AN EMPLOYER UNTIL JULY OF

2012; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND YOU DIDN'T APPLY FOR WORKERS' COMPENSATION ON THIS JOB WITH SPARTAN CONSTRUCTION UNTIL JULY OF 2012; IS THAT CORRECT?

A THAT IS CORRECT, BECAUSE --

Q BOTH --

A -- SPARTAN DID NOT OPERATE WITH EMPLOYEES PRIOR TO THAT -- PRIOR TO THE NECESSITY TO DO SO ON THIS PROJECT. THIS PROJECT DEEMED EMPLOYEES WITH WORKERS' COMPENSATION NECESSARY.

Q AND IF YOU FLIP TO TAB NUMBER 51 IN THE BOOK, DEFENDANTS' BOOK IN FRONT OF YOU, DO YOU SEE THAT DOCUMENT?

A I BELIEVE I DO. 51?

Q TAB 51 IS DEFENDANTS' EXHIBIT 351. THAT IS YOUR TAB 51.

A YES.

Q DO YOU RECOGNIZE THAT DOCUMENT?

A I DO.

Q AND WHAT IS THAT?

A IT IS A WORK ORDER AUTHORIZATION TO BEGIN -- FOR WONG & ASSOCIATES TO BE A CONSULTING ENGINEER ON THE PROJECT.

Q WHAT'S THE DATE OF THAT?

A 8/14/2012.

Q AND WHO'S THE CLIENT ON THAT?
A ADAM BEREKI.
Q AND WHO APPROVED THAT?
A ADAM BEREKI.
Q IF YOU WILL TURN TO EXHIBIT --
A AND I WOULD ALSO LIKE YOU TO LOOK AT THE ADDRESS THAT SAYS 436 VIA LIDO NORD, AND THAT'S WHERE SPARTAN'S BUSINESS LICENSE WAS REGISTERED AS WELL, IS AT 436 VIA LIDO NORD.
Q THANK YOU.
A SURE.
Q IF YOU WILL TURN TO TAB 55, CROSS-COMPLAINANTS' EXHIBIT 355.
A OKAY.
Q THIS IS A COLLECTION OF 36 DIFFERENT CHECKS.
A OKAY.
Q YOU CAN THUMB THROUGH THOSE. DO YOU RECOGNIZE THOSE CHECKS? LET ME KNOW WHEN YOU'RE READY.
A YES, I APPEAR TO RECOGNIZE THEM.
Q OKAY. THESE ARE ALL CHECKS THAT WERE IN PAYMENT OF SOME COST INCURRED IN CONNECTION WITH THE HUMPHREYS PROJECT?
A YES. THEY APPEAR TO BE.
Q AND ON WHOSE ACCOUNT WERE EACH OF THESE CHECKS DRAWN?
A CAN YOU JUST LET ME KNOW IF THERE ARE ANY THAT

SAYS ROSE AND BEREKI AT THE TOP. OTHERWISE, I WILL JUST SAY THEY ARE ALL FROM ADAM'S ACCOUNT.

Q IN THIS PARTICULAR EXHIBIT, I WILL REPRESENT TO YOU THAT NONE OF --

A OKAY. THESE ALL CAME FROM THE ACCOUNT OF ADAM BEREKI.

Q MR. BEREKI, AT THE TIME THAT YOU CONTRACTED WITH THE HUMPHREYS, DID YOU POSSESS A CONTRACTOR'S LICENSE ISSUED IN YOUR NAME?

A ISSUED IN MY NAME, NO.

Q AT THE TIME THAT YOU PERFORMED WORK ON THIS PROJECT, DID YOU POSSESS A CONTRACTOR'S LICENSE ISSUED IN YOUR NAME?

A NO.

Q AT THE TIME THAT YOU CONTRACTED WITH THE HUMPHREYS, DID YOU AND MR. OVERLEY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED TO THE TWO OF YOU AS A JOINT VENTURE?

A NO.

Q AT THE TIME -- AT ANY TIME WHEN YOU WORKED ON THIS PROJECT, DID YOU AND YOUR PARTNER, MR. OVERLEY, POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED TO THE TWO OF YOU?

A NO.

Q AT THE TIME THAT YOU CONTRACTED -- ENTERED INTO THE CONTRACT WITH THE HUMPHREYS ON THIS PROJECT,

DID SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A JOINT VENTURE LICENSE ISSUED TO THE TWO OF THEM?

A CAN YOU SAY THAT AGAIN, PLEASE.

Q AT THE TIME THAT YOU -- THAT YOU CONTRACTED WITH THE HUMPHREYS, DID THE SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED BY THE CALIFORNIA CONTRACTOR'S LICENSE BOARD?

A WELL, YOUR QUESTION ASSUMES THAT I CONTRACTED WITH THE HUMPHREYS AND I AM SAYING THAT SPARTAN ASSOCIATES CONTRACTED WITH THE HUMPHREYS. SO.

Q ALL RIGHT. LET'S USE THE DATE. AS OF APRIL 5 -- AS OF APRIL 5, 2012, DID SPARTAN ASSOCIATES AND MR. OVERLEY JOINTLY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED BY THE CALIFORNIA CONTRACTOR'S LICENSE BOARD?

A NO.

Q AT ANY TIME DURING -- AT ANY TIME BETWEEN APRIL 5, 2012 AND SEPTEMBER 31, 2013, DID THE SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A CONTRACTOR'S LICENSE ISSUED TO THEM AS JOINT VENTURES?

A NO.

MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO.

CROSS-EXAMINATION

BY MR. RUSSO:

Q MR. BEREKI, WHO PERFORMED THE WORK AT THE VIA LIDO NORD PROJECT?

A THE SPARTAN ASSOCIATES.

Q WERE YOU EVER DOING ANY OF THE WORK IN YOUR PERSONAL CAPACITY AS OPPOSED TO ON BEHALF OF SPARTAN ASSOCIATES?

A NO.

Q LET'S GO TO EXHIBIT 32, SIR.

A IN OUR BOOK?

Q YES.

A OKAY. OKAY.

Q DIRECTING YOUR ATTENTION TO 32-2, WHICH IS THAT REGISTER.

A OKAY.

Q THE FIRST $100,000 IN CHECKS WERE PAYABLE TO ADAM BEREKI; CORRECT?

A CORRECT.

Q AND THEN AFTER THAT, WAS ALL THE MONEY PUT INTO SPARTAN ASSOCIATES' ACCOUNTS AFTER THAT FIRST $100,000?

A YES.

Q OKAY. SO EVEN IF THE CHECK WAS PAYABLE TO ADAM BEREKI LATER ON, IT STILL WENT TO SPARTAN; CORRECT?

A CORRECT.

Q OKAY.

A AND EVEN THOUGH I ASKED THEM TO MAKE THE CHECK TO SPARTAN, THEY STILL MADE IT TO ADAM BEREKI, BUT IT STILL WENT IN THE SPARTAN ACCOUNT.

Q DURING THIS FIRST PERIOD, IT LOOKS LIKE THAT LAST CHECK BEFORE THINGS SWITCHED OVER WAS JUNE 22, 2012. WHAT WAS THE WORK THAT WAS GOING ON ON THIS PROJECT?

A PRIMARILY -- WELL, THE FIRST THING WE DID WAS TO GET THEM PACKED UP AND MOVED. SO I HAD TO BUY ALL THE MOVING SUPPLIES AND PAY FOR THE LABOR TO HAVE EVERYONE PACK UP ALL OF THE BELONGINGS THAT BELONGED TO THE HUMPHREYS -- THEIR PERSONAL BELONGINGS WERE THERE -- AND ALL OF THE FURNITURE. AND THEN WE TOOK THAT VIA TRAILER TO THE SHOP THAT HAD BEEN RENTED FOR USE ON THIS PROJECT AND PUT UP STEEL VERTICAL SHELVING, WRAPPED THE FURNISHINGS AND OTHER THINGS IN PLASTIC TO THEN BE PALLETIZED AND PUT IN STORAGE WHILE WE WERE WORKING ON THE PROJECT.

Q SO YOU HAD TO RENT STORAGE FOR ALL THEIR STUFF?

A I HAD THE STORAGE, AND, YES, I USED THAT TO STORE THEIR STUFF.

Q OF THIS $100,000, BEFORE EVERYTHING WAS TRULY SPARTAN ASSOCIATES, A PORTION OF IT WAS FOR RENTING A PLACE FOR THEIR STUFF AND MOVING IT THERE; CORRECT?

A THAT'S ONE ASPECT, YES.

Q OKAY. TO YOUR KNOWLEDGE, DOES THAT REQUIRE A CONTRACTOR'S LICENSE?

A NO.

Q OKAY. WHAT ELSE DID YOU DO?

A THERE WAS SIGNIFICANT COMMUNICATION BETWEEN THE HUMPHREYS AND I AND MY TEAM ABOUT DESIGN ISSUES. I WAS GOING TO BUILD THEM A CUSTOM MARQUIS, AND THERE WAS OTHER DESIGN FACETS THAT WERE DISCUSSED GOING BACK AND FORTH. SO A SIGNIFICANT AMOUNT OF TIME WAS SPENT ON THAT.

Q WAS THAT ANYTHING THAT REQUIRED A CONTRACTOR'S LICENSE?

A NO.

Q WHAT ELSE DID YOU DO?

A WE STARTED DEMOLITION.

Q OKAY. NOW, TELL ME ABOUT THE DEMOLITION OR TELL THE COURT ABOUT THE DEMOLITION. WAS THERE ANYTHING AS FAR AS A REMOVAL OF THE FOUNDATION DURING THIS PERIOD?

A NO.

Q WAS THERE ANY REMOVAL OF STRUCTURAL WALLS DURING THIS PERIOD, PART OF ANYTHING GOING ON WITH SPARTAN ASSOCIATES?

A IF YOU MEAN A LOAD-BEARING WALL BY STRUCTURAL WALL, NO. WE TORE DRY WALL OR PLASTER OFF THE WALL AND THAT IS A STRUCTURAL ELEMENT. BUT AS FAR AS PULLING OUT

THE WALL AND MOVING THE STRUCTURE OR ANYTHING LIKE THAT, NONE OF THAT OCCURRED.

Q WAS THERE ANYTHING YOU DID DURING THIS FIRST PERIOD THAT REQUIRED A CONTRACTOR'S LICENSE?

MR. BISSELL: OBJECTION. LACK OF FOUNDATION.

THE COURT: SUSTAINED.

BY MR. RUSSO:

Q DO YOU KNOW, SIR, WHETHER OR NOT ANY OF THE WORK YOU PERFORMED REQUIRED A CONTRACTOR'S LICENSE?

MR. BISSELL: SAME OBJECTION.

THE COURT: TO THIS QUESTION, YOU CAN ANSWER YES OR NO.

THE WITNESS: AT THIS MOMENT, I RECALL THAT MOST EVERYTHING WE WERE DOING WAS DEMOLITION, THAT THERE WAS NOT ACTUAL CONSTRUCTION GOING ON. I HAVE TO REALLY LOOK BACK AT THE PICTURES AND REALLY GET A FEEL. BUT IF THERE WAS ANY WORK GOING ON, IT WAS VERY, VERY MINUTE.

BY MR. RUSSO:

Q YOU ARE FAMILIAR WITH A C21 CONTRACTOR'S LICENSE FOR DEMOLITION?

A IT'S -- YES.

Q OKAY. THAT'S WHEN STRUCTURAL ELEMENTS ARE REMOVED; CORRECT?

A CORRECT.

Q OKAY.

A OR BUILDINGS ARE MOVED OR SIGNIFICANT SHORING

IS INVOLVED.

Q TO THE BEST OF YOUR RECOLLECTION, DID ANY OF THE DEMOLITION WORK THAT YOU PERFORMED FALL WITHIN THE REQUIREMENTS OF THE C21 LICENSE?

A NO.

Q LATER ON IN THE PROJECT, WERE THERE MORE STRUCTURAL ELEMENTS INVOLVED?

A YES.

Q AND BY THEN, YOU HAD STRUCTURAL ENGINEERS AND DESIGN PROFESSIONALS?

A YES.

Q AND A PERMIT WAS PULLED; CORRECT?

A YES.

Q WHO PULLED THE PERMIT?

A SPARTAN ASSOCIATES.

Q NOW, YOU SAID THAT DURING YOUR MEETING WITH THE HUMPHREYS, THE ISSUE OF LICENSURE CAME UP; CORRECT?

A YES.

Q AND WHAT DID YOU TELL THEM?

A THAT I HAD A LICENSE. THAT I, SPARTAN, HAD A LICENSE.

Q DID YOU ASK THEM TO LOOK IT UP?

A I THINK HOW IT HAPPENED WAS THERE WAS A MENTION OF IT BY GARY HUMPHREYS, AS HE HAD SAID, AND THAT THERE WAS -- WHEN HE SAID THAT, IT TRIGGERED MY MEMORY THAT I HAD SAID TO HIM THAT HE COULD LOOK IT UP

ON THE STATE'S LICENSE BOARD TO VERIFY THAT, IN FACT, SPARTAN DID HAVE A LICENSE.

Q THE PRIOR PROJECTS, INCLUDING THE OFFICE BUILDING WHERE MR. HUMPHREYS' BUSINESS IS, WHO PERFORMED THAT WORK?

A THE SPARTAN ASSOCIATES.

Q WHO WAS PAID FOR THAT WORK?

A THE SPARTAN ASSOCIATES.

Q WHO CONTRACTED FOR THAT WORK?

A THE SPARTAN ASSOCIATES.

Q IN JULY OF 2012, YOU APPLIED FOR THE WORKERS' COMP FOR THIS PROJECT; CORRECT?

A CORRECT.

Q AND WHO APPLIED FOR THAT?

A THE SPARTAN ASSOCIATES.

Q AND WHY DID YOU NEED TO APPLY FOR IT THEN AS OPPOSED TO NOT HAVING IT BEFORE?

A THE WAY THAT THIS PROJECT ENDED UP, I WAS GOING TO BE USING A LOT OF UNSKILLED LABOR. USUALLY, GENERALLY SPEAKING, SKILLED LABOR YOU CAN 1099 AND TREAT AS AN INDEPENDENT SUBCONTRACTOR. HOWEVER, IN THIS CASE, BECAUSE I WAS HIRING PEOPLE THAT WERE UNSKILLED, I NEEDED TO TREAT THEM LEGALLY AS AN EMPLOYEE, AND SO THAT'S WHY THE EMPLOYEE ACCOUNT WAS SET UP.

Q WHEN MR. HUMPHREYS PAID YOU OR WHEN YOU WERE BEING PAID BY HUMPHREYS & ASSOCIATES, DID THAT RAISE ANY

RED FLAGS WITH YOU?

A NO.

Q WITH THE EXCEPTION OF -- THERE WAS ONE ENGINEER, I BELIEVE, THAT THE CONTRACT WAS WITH YOU PERSONALLY; CORRECT?

A NO. IT HAS MY NAME ON IT, BUT THERE WERE SOME ISSUES WHERE PEOPLE PUT MY NAME ON CONTRACTS EVEN THOUGH IT WAS SPARTAN CONSTRUCTION. JUST LIKE THE HUMPHREYS WROTE CHECKS TO ADAM BEREKI, AND I ASKED THEM TO PUT SPARTAN ON THERE. IT'S JUST A REAL -- YOU KNOW, IT WASN'T -- I WASN'T -- THE WORD USUALLY COMES TO MIND AS ABLE ABOUT IT. I JUST WENT WITH THE FLOW.

Q WHAT KIND OF LICENSE DOES SPARTAN HAVE?

A A B.

Q WHAT'S ITS LICENSE NUMBER?

A 927244.

Q WAS IT ACTIVE DURING THE ENTIRE TIME OF THIS PROJECT?

A YES.

Q WHO'S THE RESPONSIBLE MANAGING OFFICER OF SPARTAN ASSOCIATES?

A I DON'T THINK I'M CLASSIFIED AS THE RMO, BUT ADAM BEREKI IS THE QUALIFYING INDIVIDUAL, THE ONE WHO HAD THE WORK EXPERIENCE AND TOOK THE EXAM.

Q THE BUILDING PERMIT FOR THE PROJECT, IS THAT FOR UNIT 34?

A THIS IS ONE OF THEM, YES.
Q OKAY. DID YOU SHARE -- WELL, 34 IS ONE OF THE BUILDING PERMITS?
A YES.
Q HOW MANY WERE THERE, SIR?
A THREE THAT SPARTAN HAD ISSUED.
Q DID ADAM BEREKI INDIVIDUALLY EVER APPLY FOR A BUILDING PERMIT FOR THIS PROJECT?
A NO.
Q OKAY.
MR. RUSSO: MOVE INTO ADMISSION EXHIBIT 34.
MR. BISSELL: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 34 WAS ADMITTED INTO EVIDENCE.)
THE COURT: THIRTY-FOUR IS ONE OF SEVERAL. WHICH ONE IS THIS IN ORDER? IS IT THE FIRST? THE LAST?
BY MR. RUSSO:
Q LOOKING AT EXHIBIT 34, SIR, IS THERE MORE THAN ONE BUILDING PERMIT HERE, SIR?
A YES. THERE ARE TWO AND A THIRD IS IN ANOTHER LOCATION.
Q WHAT IS THE OTHER LOCATION, IF YOU KNOW?
A I BELIEVE IT'S UP IN THE BEGINNING.
NO. I DON'T HAVE AN EXHIBIT LIST HERE IN THIS BINDER.
Q IT'S ALL RIGHT.

A IT'S UNDER SCE, WHICH IS A DOWNSTAIRS --

Q OKAY. SO THREE BUILDING PERMITS WERE PULLED AND IT WAS ALL BY SPARTAN ASSOCIATES; CORRECT?

A YES.

MR. RUSSO: WELL, AGAIN, MOVE INTO ADMISSION EXHIBIT 34, THE COMPLETE EXHIBIT.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

THE COURT: WELL, 34 IS RECEIVED. BUT LET'S BE CLEAR. 34-1 APPEARS TO HAVE BEEN ISSUED ON NOVEMBER 14, 2012. AM I CORRECT?

MR. BISSELL: YES.

THE COURT: MR. RUSSO?

MR. RUSSO: THAT'S WHAT IT SAYS. IT'S ACTUALLY THE INSPECTION.

THE COURT: 34-2, IT LOOKS LIKE A MECHANICAL, ELECTRICAL, PLUMBING COMBINATION PERMIT, AND IT APPEARS TO HAVE BEEN ISSUED ON NOVEMBER 14, 2012. LEFT-HAND COLUMN, TOWARDS THE MIDDLE OF THE PAGE.

MR. RUSSO: YES.

THE COURT: AND THEN 34-3 LOOKS TO BE A PLUMBING SEWER LINE PERMIT. AND I'M HAVING TROUBLE FINDING A DATE OF ISSUANCE.

MR. RUSSO: 4/11/2013. IT'S MIDWAY ON THE LEFT.

THE COURT: OKAY. ARE THERE ANY OTHER PERMITS ISSUED FOR THIS PROPERTY OTHER THAN THESE THREE FOR THIS PROJECT?

THE WITNESS: THERE ARE ONLY TWO. AND THE SECOND PAGE, YOUR HONOR, THAT SAYS "CANCELED/EXPIRED," THIS IS -- ULTIMATELY WHAT HAPPENED WAS WHEN THE NEXT CONTRACTOR TOOK OVER, THEY CANCELED THIS PERMIT. SO THAT PAGE ISN'T AN ACTUAL PERMIT.

SO JUST TO BE A LITTLE BIT MORE CLEAR, THE YELLOW PAGE THAT YOU SEE, 34-1, THAT'S ONE PERMIT. THE SECOND ONE IS THE CANCELLATION OF THAT. AND 34-3 IS THE SECOND PERMIT ITSELF FOR PLUMBING AND SEWER LINE. AND THE THIRD PERMIT WAS FOR THE SOUTHERN CALIFORNIA EDISON TO PUT A BIG PIPE UNDERGROUND AND RUN IT TO A NEW POWER UNIT AT THE BUILDING.

THE COURT: GOING FROM WHAT, 100 AMP TO 200 AMP SERVICE?

THE WITNESS: ABOUT THAT, YES.

THE COURT: GO AHEAD.

BY MR. RUSSO:

Q MR. BEREKI, EXHIBIT 35, ARE THESE ALL THE DOCUMENTS PERTAINING TO THE PAYROLL AND WORKERS' COMP FOR THE PROJECT?

A YES.

MR. RUSSO: I MOVE INTO ADMISSION EXHIBIT 35.

THE COURT: ANY OBJECTION ON PAYROLL?

MR. BISSELL: I'M NOT SURE I HAVE SEEN IT. LET ME TAKE A QUICK LOOK.

THE COURT: TAKE A LOOK, OF COURSE.

MR. RUSSO: SURE.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

THE COURT: RECEIVED.

(EXHIBIT NO. 35 WAS ADMITTED INTO EVIDENCE.)

BY MR. RUSSO:

Q MR. BEREKI, CAN YOU TURN TO EXHIBIT 33, PLEASE.

A I'M HERE.

Q CAN YOU TELL ME IN SUMMARY, ALTHOUGH WE HAVE ALREADY BEEN OVER THESE DOCUMENTS, WHAT IS EXHIBIT 33?

A I WENT THROUGH SOME OF THE WORK ORDERS. I PICKED OUT A HANDFUL OF THEM. THESE ARE BASICALLY WORK ORDERS OR CONTRACTS BETWEEN SPARTAN AND OTHER COMPANIES THAT WERE HIRED TO DO WORK SPECIFICALLY ON THE LIDO PROJECT.

MR. RUSSO: MOVE INTO ADMISSION EXHIBIT 33.

MR. BISSELL: NO OBJECTION.

THE COURT: RECEIVED.

(EXHIBIT NO. 33 WAS ADMITTED INTO EVIDENCE.)

THE WITNESS: ACTUALLY, THERE'S ANOTHER EXHIBIT IN THERE, A TIMECARD.

THE COURT: WHICH PAGE WILL THAT BE?

THE WITNESS: 33-4, YOUR HONOR.

BY MR. RUSSO:

Q MR. BEREKI, DID YOU PROVIDE ACCOUNTINGS TO THE HUMPHREYS FOR THIS PROJECT?

A I DID.

Q OKAY. AND THE ACCOUNTINGS, WERE THEY -- DID THEY DESIGNATE SPARTAN ASSOCIATES AS THE ONE BILLING THEM?

A YES.

Q OKAY.

A ALL WITH THE EXCEPTION OF THE FIRST ONE, I THINK IT WAS -- THE FIRST THREE MONTHS THERE WAS SOME SORT OF -- THIS IS AN EXCEL SPREADSHEET. JUST HOW I HAD ALWAYS DONE IT IN THE PAST, BUT SINCE IT BECAME -- THIS JOB BECAME EXTREMELY COMPLEX, I SWITCHED OVER TO QUICKBOOKS AND QUICKBOOKS STARTED GENERATING THIS OUTPUT, AND THE OUTPUT SAYS THE SPARTAN ASSOCIATES ON IT.

THE COURT: NOW, MR. RUSSO, WHAT I'M HEARING IS THERE WERE AT LEAST TWO ACCOUNTINGS.

MR. RUSSO: I THINK THERE WERE A LOT OF THEM.

THE COURT: MAYBE WE NEED TO GO OVER IT.

MR. RUSSO: SURE.

BY MR. RUSSO:

Q MR. BEREKI, CAN YOU TURN TO EXHIBIT NUMBER 39.

A SURE.

OKAY.

Q CAN YOU TELL ME WHAT EXHIBIT 39 IS, SIR?

A THIRTY-NINE IS A PARTIAL INVOICE BY THE SPARTAN ASSOCIATES TO HUMPHREYS & ASSOCIATES, INC.

THE COURT: WHAT'S THE DATE?

THE WITNESS: THERE IS NO DATE ON HERE, YOUR HONOR. BUT I CAN GIVE YOU -- IT WAS PRIOR IN FEBRUARY OF 2012. TWO MONTHS PRIOR TO THE LIDO PROJECT.

THE COURT: THIS IS AN ACCOUNTING WITH RESPECT TO THE WORK DONE ON RESEARCH DRIVE?

THE WITNESS: YES, SIR.

THE COURT: OKAY.

THE WITNESS: THIS WAS A PROJECT HUMPHREYS & ASSOCIATES BUSINESS HIRED SPARTAN TO DO AT THEIR BUSINESS OFFICE.

THE COURT: OKAY. GO AHEAD.

BY MR. RUSSO:

Q SO DID YOU UNDERSTAND MR. HUMPHREYS TO BE THE PRESIDENT OF HUMPHREYS & ASSOCIATES?

A YES.

Q OKAY. SO SPARTAN ASSOCIATES HAD ALREADY DONE THIS PROJECT AND INVOICED HIS BUSINESS FOR IT; CORRECT?

A YES.

MR. RUSSO: MOVE INTO ADMISSION NUMBER 39.

MR. BISSELL: OBJECTION. RELEVANCE, YOUR HONOR.

THE COURT: OBJECTION SUSTAINED.

BY MR. RUSSO:

Q MR. BEREKI, DID YOU INTERACT AT ALL WITH MR. HUMPHREYS REGARDING THE PROJECT AT 9910 RESEARCH DRIVE?

A THAT WOULD DEPEND UPON WHAT YOU MEAN BY INTERACT. I BELIEVE HE SHOWED UP THERE ONE DAY WITH CHRIS WHILE I WAS WORKING ON THE PROJECT. I SAID HI TO HIM AND THIS AND THAT. I THINK THAT WAS OUR ONLY INTERACTION ABOUT THIS --

Q OKAY.

A -- ABOUT THAT PROJECT.

Q CAN YOU TURN TO EXHIBIT NO. 18, SIR.

A SURE.

Q FINALLY FOUND THE ACCOUNTING. WHAT IS EXHIBIT 18?

A EXHIBIT 18 APPEARS TO BE ALL OF THE ACCOUNTINGS AND ASSOCIATED E-MAILS FOR THE PROJECT.

Q WAS THIS SOMETHING THAT YOU SUBMITTED TO MR. AND MRS. HUMPHREYS?

A YES.

Q OKAY.

A VIA E-MAIL.

Q WHEN YOU STARTED --

THE COURT: WHAT DATE?

THE WITNESS: EACH ONE OF THEM IS A DIFFERENT DATE, YOUR HONOR. THEY WERE SPACED OUT ABOUT A MONTH EACH.

BY MR. BEREKI:

Q SO WHAT WAS YOUR PROCEDURE AS FAR AS PROVIDING ACCOUNTINGS TO THE HUMPHREYS?

A I WOULD, GENERALLY SPEAKING, INCUR WORK IN THE

FORM OF -- OR DO WORK IN THE FORM OF LABOR AND PURCHASE MATERIALS FOR THE PROJECT, AND THEN I WOULD PUT THEM INTO EITHER WHAT BEGAN AS THE SPREADSHEET. AND LATER I HIRED MY MOM, WHO'S AN ACCOUNTANT OR BOOKKEEPER, I SHOULD SAY, VERY EXPERIENCED IN THIS TO THEN DO THE PAYROLL AND PUT THE APPROPRIATE CHARGES TO BILL THEM, TO BILL THE HUMPHREYS.

Q HOW WOULD THESE ACCOUNTINGS BE SENT TO THE HUMPHREYS?

A VIA E-MAIL.

Q OKAY. SO LET'S LOOK AT THE SIXTH PAGE OF EXHIBIT 18.

A OKAY.

Q I SEE NEAR THE HOLE PUNCH, THE MIDDLE, IT SAYS "THE SPARTAN ASSOCIATES."

A CORRECT.

Q OKAY. FROM THIS POINT FORWARD, DID ALL THE ACCOUNTINGS THAT YOU PROVIDED TO THE HUMPHREYS HAVE THE SPARTAN ASSOCIATES ON IT?

A I BELIEVE -- I BELIEVE SO, YES.

Q DID THE HUMPHREYS EVER ASK YOU ABOUT THAT OR QUESTION IT?

A NO. I THOUGHT IT WAS CLEAR AS DAY, THEY UNDERSTOOD.

Q TOWARDS THE END OF EXHIBIT 18, STARTING ROUGHLY AT PAGE 49, WE NOW HAVE E-MAILS AS PART OF THIS

EXHIBIT.

A CORRECT.

Q WERE THESE -- AND THEN YOU GOT A NUMBER OF PAGES, PERHAPS MAYBE ANOTHER 60 PAGES.

A CORRECT.

Q WERE THESE E-MAILS ASSOCIATED WITH THE TRANSMITTAL OF THE ACCOUNTING WITH THE SPARTAN ON IT TO THE HUMPHREYS?

A YES.

Q DID YOU HIRE DESIGNERS FOR THE HUMPHREYS PROJECT? OR HOW DID THAT GO AS FAR AS THE INTERIOR DESIGNING?

A I PRIMARILY DID IT, BUT I ALSO HIRED PEOPLE TO HELP ME OUT ON CERTAIN ASPECTS ON THAT.

Q AND THE DESIGNERS WHO WERE HIRED, WERE THEIR INVOICES PASSED ON THROUGH YOUR ACCOUNTING TO THE HUMPHREYS?

A YES.

Q HOW ABOUT THE ENGINEERING SERVICES, WERE THOSE PASSED ON?

A YES.

Q WERE THERE ANY OTHER DESIGN PROFESSIONALS ENGAGED WITH THIS?

A YES.

Q WHO ELSE WAS THERE?

A BRYAN LEFEVER.

Q WHAT WAS HIS PROFESSION?
A HE'S AN INTERIOR DESIGNER.
Q OKAY. AND DID BRYAN CONTRACT WITH THE SPARTAN ASSOCIATES OR THE HUMPHREYS DIRECTLY?
A THE SPARTAN ASSOCIATES.
Q OKAY. AND THEN HE PASSED THAT ALONG?
A YES.
Q WHO ELSE DID YOU HAVE TO HIRE FOR THIS?
A I HIRED A PLUMBER, AN ELECTRICIAN, NUMEROUS UNSKILLED WORKERS. I HIRED A FOREMAN, AN ENGINEER, AN ARCHITECT, CRANE OPERATORS, METAL FABRICATORS, PEOPLE TO RE-ALIGN THE SEWER DRAIN UNDERNEATH THE HOUSE BECAUSE IT WAS ROTTEN. OTHER PEOPLE, OTHER CARPENTERS. A CONCRETE EXPERT. A CONCRETE SUBCONTRACTOR. A FIRE SPRINKLER SUBCONTRACTOR AND PAVING SUBCONTRACTOR. THAT'S WHAT'S COMING TO MIND.
Q OKAY. SIR, OF THE MONIES THAT WERE PAID, HOW MUCH OF IT WAS PAID THROUGH THE SPARTAN ASSOCIATES ACCOUNT?
A I BELIEVE THAT NUMBER IS $758,000.
Q AND --
A GO AHEAD.
Q FINISH. I'M SORRY.
A OH, THAT'S FINE. THAT'S IT. $758,000.
Q OKAY. SO SOME OF IT YOU HAVE -- SOME OF THE FIRST $100,000 WENT INTO YOUR PERSONAL ACCOUNT. DID

SOME OF IT GO INTO THE SPARTAN ACCOUNT?

A 10,000 DID, YES.

Q SO 90 WENT IN YOUR PERSONAL ACCOUNT, 10 WENT INTO THE SPARTAN ACCOUNT; CORRECT?

A CORRECT.

Q AND THEN ALL THAT MONEY WAS SPENT BY SPARTAN ASSOCIATES, THE LICENSE CONTRACTOR ON THIS PROJECT; CORRECT?

A YES.

Q OF THE MONIES THAT THE HUMPHREYS SPENT ON THIS PROJECT, HOW MUCH OF IT WENT TO ADAM BEREKI, ALTHOUGH -- EVEN THOUGH YOU PAID IT OUT FOR WORKERS ON THIS?

A I'M SORRY. CAN YOU SAY THAT AGAIN?

Q SURE.

YOU HAD $100,000 IN CHECKS IN THE BEGINNING OR WIRES THAT WENT INTO -- THAT WAS MADE PAYABLE TO ADAM BEREKI; CORRECT?

A CORRECT.

Q OKAY. AND ALL THE REST OF THIS WAS ULTIMATELY MADE PAYABLE TO SPARTAN ASSOCIATES, OR THE CHECKS WERE, EVEN THOUGH YOU REQUESTED THAT SPARTAN ASSOCIATES WOULD DEPOSIT IT IN THE SPARTAN ASSOCIATES BANK ACCOUNT; CORRECT?

A YES.

Q AND SPARTAN ASSOCIATES PERFORMED ALL THE WORK ON THIS PROJECT; CORRECT?

A YES. WELL, WITH THE EXCEPTION OF THESE SUBCONTRACTORS THAT WERE HIRED, YES.

Q OKAY. THROUGH ITS SUBCONTRACTORS?

A I'M SORRY?

Q THROUGH ITS SUBCONTRACTORS --

A YES, YES. YES.

MR. RUSSO: I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: MR. BISSELL?

MR. BISSELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BISSELL:

Q JUST A POINT OF CLARIFICATION, MR. BEREKI. YOU TESTIFIED THAT THE SPARTAN ASSOCIATES IS A LICENSED CONTRACTOR.

A YES.

Q ISN'T IT TRUE THAT THE --

A EXCUSE ME.

Q -- THE LICENSE FOR THE SPARTAN ASSOCIATES HAS BEEN REVOKED BY THE CONTRACTOR'S LICENSE BOARD?

A WHAT I TESTIFIED TO WAS AT THE TIME OF THE PROJECT THE LICENSE WAS IN GOOD STANDING OR VALID, YES.

Q AND SINCE THEN IT'S BEEN REVOKED; CORRECT?

A WELL, IT WAS EXPIRED BECAUSE THE COMPANY DISSOLVED. AND WHEN THERE'S A DISSOLUTION OF A COMPANY,

THE LICENSE GOES WITH IT.

Q SIR, YOU'RE AWARE THAT THE LICENSE HAS BEEN REVOKED, AREN'T YOU?

A IT SHOWS A REVOKED STATUS, YES.

Q YOU KNOW WHY IT WAS REVOKED; CORRECT?

A I --

Q AND IT'S NOT BECAUSE THE CORPORATION IS DISSOLVED; CORRECT?

A CORRECT.

Q SO YOU HAD CONVERSATIONS WITH AN ATTORNEY IN SAN DIEGO ABOUT THE PROBLEM INVOLVING THE LICENSE. IT HAD NOTHING TO DO WITH A CORPORATION BEING DISSOLVED; IS THAT TRUE?

A I'M SORRY. SAY THAT AGAIN.

Q AS FAR AS THE REASON FOR THE LICENSE BEING REVOKED, IT HAD NOTHING TO DO WITH THE CORPORATION BEING DISSOLVED --

A NO. THE LICENSE IS NOT REVOKED BECAUSE THE CORPORATION IS DISSOLVED. I SAID THE LICENSE WAS EXPIRED BECAUSE THE CORPORATION DISSOLVED. AS OF RIGHT NOW, THE LICENSE SHOWS REVOKED, HOWEVER.

Q CORRECT.

AND THAT WAS BECAUSE OF SOME ILLEGAL ACTION TAKEN AGAINST THE LICENSE; CORRECT?

A I WOULD SAY IT WAS ILLEGAL ACTION TAKEN AGAINST THE LICENSE. AN ARBITRATION PROCEEDING WAS

CONDUCTED WITHOUT MY PRESENCE, AND AN AWARD WAS ISSUED WITHOUT SPARTAN BEING ALLOWED TO ATTEND IT TO DEFEND ITSELF. THAT'S AN ILLEGAL PROCEEDING IN MY BOOK.

Q AND AS LONG AS WE ARE ON THE AREA OF THE LAW, YOU TESTIFIED TO WHAT'S REQUIRED AND WHAT ISN'T REQUIRED AS FAR AS A CONTRACTOR'S LICENSE, WHAT TYPE OF WORK REQUIRES A LICENSE, WHAT TYPE OF WORK DOESN'T. YOU HAVE TESTIFIED TO THAT.

CAN YOU TELL US BRIEFLY -- CAN YOU EXPLAIN TO US WHAT YOUR UNDERSTANDING IS OF WHAT WORK IS A LICENSE REQUIRED FOR.

A IT DEPENDS ON WHICH LICENSE YOU'RE TALKING ABOUT.

Q SAY A GENERAL BUILDING LICENSE, B LICENSE.

A A GENERAL BUILDING LICENSE, I BELIEVE YOU HAVE TO DO TWO OR MORE TRADES TO BE ABLE TO USE YOUR LICENSE ON A PROJECT. IF YOU'RE DOING THAT SINGLE TRADE, IT HAS TO BE DONE BY THAT LICENSEE.

Q DO YOU HAVE ANY KNOWLEDGE AS YOU SIT HERE TODAY AS TO WHAT TYPE OF WORK IS A LICENSE REQUIRED FOR?

A WHAT TYPE OF WORK A LICENSE IS REQUIRED FOR. I'M NOT SURE I'M UNDERSTANDING YOUR QUESTION, SIR.

Q OKAY. WELL, YOU HAVE TESTIFIED TO AS CERTAIN AREAS OF THE WORK THAT YOU SAY SPARTAN ASSOCIATES DID THAT DIDN'T REQUIRE A LICENSE.

A OKAY.

Q WELL, IF YOU KNOW WHAT A -- IF YOU KNOW THAT A LICENSE WAS NOT REQUIRED, OR YOU BELIEVE THAT YOU KNOW THAT A LICENSE WAS NOT REQUIRED FOR CERTAIN WORK, THEN THE QUESTION IS: DO YOU HAVE AN UNDERSTANDING OF WHAT KIND OF WORK A LICENSE IS REQUIRED FOR?

A YES.

Q CAN YOU TELL US?

A FRAMING, PLUMBING, ELECTRICAL, DRYWALL, ROOFING, STUCCO, CONCRETE. THOSE ARE THE ONES THAT ARE COMING TO MIND RELATIVE TO THIS PROJECT.

Q AND AS FAR AS -- HOLD ON ONE SECOND, PLEASE.

HAVE YOU EVER READ THE CONTRACTOR'S LICENSE LAW OR ANY SECTIONS OF THE CONTRACTOR'S LICENSE LAW THAT EXPLAINS WHEN A LICENSE IS REQUIRED?

A I'M SURE I HAVE, SIR.

Q OKAY. AND DO YOU KNOW -- ARE YOU FAMILIAR WITH THE TERM OF "THE WORK OF IMPROVEMENT" IN CONNECTION WITH CONTRACTING WORK?

A IMPROVEMENT?

Q HAVE YOU EVER HEARD THAT TERM BEFORE?

A HOME IMPROVEMENT I HAVE HEARD.

Q OKAY. ARE YOU FAMILIAR WITH ANY KIND OF MONETARY THRESHOLD THAT CAN'T BE CROSSED WITHOUT HAVING A CONTRACTOR'S LICENSE FOR ONE DOING HOME IMPROVEMENT WORK?

A THAT DEPENDS WHAT -- IT DEPENDS WHAT HOME

IMPROVEMENT WORK IS DEFINED AS. AND YOU CAN'T -- GO AHEAD.

Q CAN YOU TELL ME WHAT YOUR DEFINITION OF "HOME IMPROVEMENT WORK" IS?

A I REALLY HAVEN'T THOUGHT ABOUT IT BEFORE.

Q YOU HAVE MENTIONED THAT THE -- YOU SENT ACCOUNTINGS TO THE HUMPHREYS UNDER A SPARTAN ASSOCIATES HEADING. BUT THIS ALL OCCURRED SOMETIME IN JULY OF 2012?

A ALL THE INVOICES WERE NOT SENT IN JULY, NO.

Q BUT I'M TALKING ABOUT INVOICES WHERE -- THAT SHOW ANY INDICATION OF SPARTAN ASSOCIATES ON IT.

A I BELIEVE BEFORE THEN, THERE WEREN'T. IT WAS JUST AN EXCEL SPREADSHEET. AND I NOTIFIED THEM THAT I WAS DOING A ACCOUNTING CUTOVER TO THE QUICKBOOKS.

Q AND THIS ACCOUNTING CUTOVER TO THE QUICKBOOKS, THAT COINCIDED WITH THE SPARTAN ASSOCIATES APPLYING TO THE BOARD OF EQUALIZATION TO REGISTER WITH THE BOARD OF EQUALIZATION AND IT COINCIDED WITH THE SPARTAN ASSOCIATES APPLYING FOR WORKERS' COMP INSURANCE ON THIS JOB?

A YES.

MR. BISSELL: YOUR HONOR, I HAVE NO FURTHER QUESTIONS, BUT I MOVE INTO -- REQUEST TO BE MOVED INTO EVIDENCE EXHIBITS 341, 351, 355 -- I'M SORRY. I RETRACT EXHIBIT 341. WE DID NOT REFER TO THAT.

MR. RUSSO: SO 351, 355?
MR. BISSELL: YES.
MR. RUSSO: OKAY. I HAVE NO OBJECTION.
THE COURT: ALL RIGHT. 351 RECEIVED.
(EXHIBIT NO. 351 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 355 ALSO RECEIVED.
(EXHIBIT NO 355 WAS ADMITTED INTO EVIDENCE.)
THE COURT: I WOULD GO AHEAD AND TAKE TEN MINUTES, RESTROOM BREAK, AND THEN COME BACK. AND MR. BEREKI MAY HAVE SOME QUESTIONS OF HIMSELF.
(RECESS.)
THE COURT: OKAY. PRESSING ON.
MR. BEREKI?
MR. BEREKI: I WOULD JUST LIKE TO GO OVER EXHIBIT 30 IN THE PLAINTIFFS' BOOK.
THE COURT: THE PHOTOGRAPHS?
MR. BEREKI: THE PHOTOGRAPH, JUST THE 30-1, SIR.
THE COURT: OKAY. I'M AT 30-1.
MR. BEREKI: I HAD TWO SIGNS, TWO SPARTAN SIGNS. ONE WAS PUT UP ON THE WATER SIDE OF THE BUILDING, THE OTHER WAS ON THE STREET SIDE. THE ASSOCIATION ASKED ME TO TAKE DOWN OR TURN DOWN THE SIGN ON THE STREET SIDE.
THE COURT: APPROXIMATELY WHAT DATE WAS THAT THAT IT WENT DOWN?
MR. BEREKI: WITHIN A COUPLE OF DAYS AFTER SPARTAN BEING ON THE PROJECT.

THE COURT: OKAY.

MR. BEREKI: THE WOMAN PATROLS THE PLACE LIKE IT'S NOBODY'S BUSINESS.

SO THEN THIS SIGN WASN'T ALWAYS ON THE OUTSIDE OF THE BUILDING HERE. IT WAS AS LONG AS I REMEMBERED IT OR OFTEN COULD TO PUT IT UP, BUT THE OTHER SIGN THAT HAD GONE ON THE FRONT OF THE BUILDING WAS INSIDE THE GARAGE.

THE COURT: WHEN YOU SAY "INSIDE THE GARAGE," YOU MEAN IT WAS HUNG ON THE WALL INSIDE THE GARAGE, OR IT WAS JUST LEFT STANDING --

MR. BEREKI: IT WAS HUNG ON THE WALL INSIDE THE GARAGE. AND ON-SITE THERE WAS ALSO --

THE COURT: WAS THE GARAGE OPEN OR CLOSED ALL THE TIME?

MR. BEREKI: DURING BUSINESS TIME, OPEN.

THE COURT: OKAY.

MR. BEREKI: WE HAD TURNED IT INTO A BARN DOOR TYPE OF THING AFTER REMOVING THE GARAGE DOORS.

ALSO ON THE SITE WAS IN-CASE-OF-AN-EMERGENCY WRITING, AND IT HAD MY PERSONAL CELL PHONE NUMBER ON IT, BUT IT SAID THE SPARTAN ASSOCIATES.

THE COURT: OKAY.

MR. BEREKI: OR SPARTAN CONSTRUCTION, I'M SORRY.

I WOULD LIKE TO ALSO REFER TO EXHIBITS -- I BELIEVE IT'S -- THERE WAS A LEASE FOR A SHOP SPACE THAT WAS USED IN CONJUNCTION WITH THIS PROJECT. THAT LEASE

BEGAN IN MARCH OF 2012. AND THE PAYMENTS FOR THAT SHOP -- WELL, THE HUMPHREYS' FURNISHINGS WERE STORED IN THAT BUILDING BEGINNING THE DAY THAT WE BEGAN WORK ON THE PROJECT.

THE COURT: SO WAS I TO UNDERSTAND THERE WAS A SHOP AND A STORAGE SPACE?

MR. BEREKI: CORRECT.

THE COURT: GO ON.

MR. BEREKI: AND THAT SHOP SPACE WAS RENTED IN SPARTAN'S NAME.

AND FINALLY, TO SHOW SPARTAN'S HISTORY, CAN WE TURN TO EXHIBIT 39. MR. HUMPHREYS -- OR MR. RUSSO HAD ALREADY GONE OVER 39-1.

THE REMAINING EXHIBITS HERE ARE EACH OF THE SPARTAN INVOICES THAT I HAVE IN RECORD FOR ALL OF THE WORK THAT SPARTAN HAD DONE FOR THE HUMPHREYS' FAMILY MEMBERS, INCLUDING THEIR EXTENDED FAMILY MEMBERS. AND ON ALL OF THESE INVOICES, YOU WILL SEE THE SPARTAN ASSOCIATES LOGO. ON MANY OF THEM, YOU WILL SEE GENERAL BUILDING CONTRACTOR WITH THE LICENSE NUMBER DOWN BELOW. THESE WERE PRIMARILY FOR MR. HUMPHREYS' SON, HUMPHREYS & ASSOCIATES' OFFICE BUILDING, CHRIS HUMPHREYS' MOTHER, CHRIS HUMPHREYS' MOTHER- AND FATHER-IN-LAW. AND ON EVERY PROJECT THIS IS HOW THEY WERE INVOICED.

THE COURT: OKAY. I SEE IT. NEXT.

MR. BEREKI: THAT'S ALL, YOUR HONOR.
THE COURT: MR. RUSSO, ANY FOLLOW-UP?
MR. RUSSO: NO, YOUR HONOR.
THE COURT: MR. BISSELL, HOW ABOUT YOU?
MR. BISSELL: I THINK JUST ONE OR TWO QUESTIONS, YOUR HONOR.
BY MR. BISSELL:
Q MR. BEREKI, YOU REFERENCE THE EXHIBIT, I THINK IT WAS 30.1, SHOWING A SIGN ON THE CONSTRUCTION SITE.
AND YOU'VE BEEN ON CONSTRUCTION SITES BEFORE; CORRECT?
A HAVE I BEEN ON CONSTRUCTION SITES?
Q YES. YOU'RE FAMILIAR WITH CONSTRUCTION SITES, ARE YOU NOT?
A YES.
Q IT'S PRETTY COMMON FOR ALL SORTS OF CONTRACTORS TO -- WHOEVER IS INVOLVED WITH THE JOB USUALLY CAN OR DOES HANG THEIR SIGN ON THE PROTECTIVE -- EITHER THE PROTECTIVE FENCING AT THE CONSTRUCTION SITE OR THE SITE ITSELF, ALL THE VARIOUS SUBCONTRACTORS, PAINTERS --
A THAT'S NOT BEEN MY EXPERIENCE, ACTUALLY. MOST PROJECTS THAT I HAVE SEEN, THE GENERAL IS THE ONLY ONE THAT PUTS THEIR SIGN UP BECAUSE THEY WANT THE BUSINESS TO SUBCONTRACT ALL THE OTHER SUBS.
Q SO FROM YOUR EXPERIENCE, IT'S NOT -- IT'S NOT

USUAL OR IT'S UNUSUAL FOR A SUBCONTRACTOR TO HAVE HIS SIGN ON THE PROJECT?

A I CANNOT RECALL A PROJECT WHERE I HAVE SEEN A SUBCONTRACTOR'S SIGN ON THE PROJECT. THE ONES THAT ARE COMING TO MIND RIGHT NOW ARE -- ESPECIALLY ONE AT MY GYM, SNYDER LANGSTON, THERE ARE PROBABLY 20 SUBCONTRACTORS WORKING THERE AND NOT ONE HAS A SIGN UP EXCEPT FOR SNYDER LANGSTON BECAUSE THEY'RE THE GENERAL.

Q IF YOU WILL FLIP TO EXHIBIT 48 IN THE DEFENDANTS' -- TAB 48, EXHIBIT 348 IN THE DEFENDANTS' BOOKLET.

A 48 YOU SAID, SIR?

Q YES. TAB 48. ACTUALLY EXHIBIT 348.

A OKAY.

I'M HERE.

Q FLIPPING TO PAGE 048-002.

A OKAY.

Q DO YOU RECOGNIZE THIS DOCUMENT?

A I BELIEVE SO.

Q YOU TESTIFIED THAT YOU ENTERED IN A SHOP LEASE AS THE SPARTAN ASSOCIATES, OR DID I MISUNDERSTAND YOU?

A NO, I DID. I BELIEVE I DID.

Q IF YOU WILL FLIP TO PAGE 048-006 --

A RIGHT.

Q -- PARAGRAPH 1.1. CAN YOU TELL US WHO IT SAYS THE LESSEES ARE.

A GLENN OVERLEY AND ADAM BEREKI, JOINTLY AND SEPARATELY, GO DOORS AND SPARTAN ASSOCIATES.

Q DOING BUSINESS AS; CORRECT? YOU FORGOT THE DBA.

A DBA GO DOORS/SPARTAN ASSOCIATES. GO DOORS IS GLEN'S COMPANY AND SPARTAN ASSOCIATES IS -- I'M THE SHAREHOLDER. IT'S MY COMPANY, SPARTAN ASSOCIATES.

Q AND IF YOU FLIP TO PAGE 48-039.

A 039?

Q 039, THE SAME EXHIBIT.

A OKAY.

Q THE BOTTOM OF THE PAGE FOR LESSEES, WHO IS SIGNING THIS LEASE?

A ADAM BEREKI ON BEHALF OF SPARTAN.

Q ARE YOU -- DO YOU HAVE A DIFFERENT PAGE THAN I HAVE? I DON'T SEE "ON BEHALF OF SPARTAN." DO YOU SEE "ON BEHALF OF SPARTAN" THERE?

A WELL, AS THE SPARTAN ASSOCIATES REPRESENTATIVE, YES. I SIGN MY NAME ON THE BACK OF THE SPARTAN CHECKS TOO. SAME THING. IT SAYS ABOVE, "THE SPARTAN ASSOCIATES."

THE COURT: I'M SORRY. WHERE ARE YOU POINTING WHEN YOU SAY IT SHOWS ABOVE THE SPARTAN ASSOCIATES?

THE WITNESS: AT THE VERY TOP OF THE DOCUMENT, IT SAYS "LEASE MODIFICATION AGREEMENT, GLENN OVERLEY AND ADAM BEREKI, JOINT AND SEPARATELY, GO DOORS, DBA SPARTAN

ASSOCIATES."

THE COURT: THANK YOU.

MR. BISSELL: THANK YOU. NO FURTHER QUESTIONS, YOUR HONOR.

MR. RUSSO: JUST MOVE INTO ADMISSION EXHIBIT 30-1.

THE COURT: ANY OBJECTION FOR 30-1?

MR. RUSSO: THE PICTURE WITH THE SIGN.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

THE COURT: 30-1 IS RECEIVED.

(EXHIBIT NO 30-1 WAS ADMITTED INTO EVIDENCE.)

MR. BISSELL: YOUR HONOR, WE REQUEST MOVING INTO EVIDENCE EXHIBIT --

THE COURT: WAIT A SECOND. LET ME GET TO -- AND MR. BISSELL?

MR. BISSELL: EXHIBIT 348.

THE COURT: IN ITS ENTIRETY.

MR. BISSELL: YES.

THE COURT: ANY OBJECTION?

MR. RUSSO: NO OBJECTION.

MR. BEREKI: NO OBJECTION.

THE COURT: 348 RECEIVED.

(EXHIBIT NO. 348 WAS ADMITTED INTO EVIDENCE.)

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

MR. BISSELL: YOUR HONOR, CROSS-COMPLAINANTS REST ON THE FIRST CAUSE OF ACTION --

THE COURT: WELL, HOLD ON A SECOND. I'M LOOKING FOR A LITTLE CLARIFICATION BEFORE YOU CAN SAY REST --

MR. BISSELL: THANK YOU.

THE COURT: -- BECAUSE WHAT I SEE CONTAINED -- GIVE ME A SECOND TO FIND IT.

EXHIBIT 32-2, THIS IS THE PLAINTIFFS' VARIATION OR THE PLAINTIFFS' ITERATION OF THE EXHIBIT YOU OFFERED, BUT WE DIDN'T WANT TO DOUBLE DOWN.

MR. BISSELL: THE COMPILATION OF CHECKS?

THE COURT: COMPILATION OF CHECKS WHICH WE WENT OVER IN SOME DETAIL. AND SO WHAT I SEE ARE BASICALLY A SERIES OF CHECKS WRITTEN DIRECTLY ON THE ACCOUNT OF YOUR CLIENTS. AND THEN I SEE A SERIES OF CHECKS WRITTEN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES, INC. WHICH IS NOT A PARTY IN THIS ACTION. WHILE THERE'S TESTIMONY AT THIS TIME MR. HUMPHREYS IS THE SOLE SHAREHOLDER OF THE CORPORATION, ADMITTEDLY AN S CORPORATION, ALTHOUGH AN S CORPORATION ONLY HAS CERTAIN TAX RAMIFICATIONS, IT DOESN'T REALLY CHANGE THE NATURE OF THE CORPORATE ENTITY, PER SE, IN TERMS OF ITS PERSONHOOD.

SO THE QUESTION IS: HOW DO YOUR CLIENTS FIT INTO THE PICTURE IN TERMS OF RECOVERY? SHOULD THEY RECOVER FOR CHECKS THAT A SEPARATE LEGAL ENTITY WROTE?

MR. BISSELL: I CAN HAVE MR. HUMPHREYS ADDRESS THAT ISSUE. WOULD YOU LIKE HIM TO RE-TAKE THE STAND AND I CAN ASK HIM ABOUT THAT?

THE COURT: WELL, IT'S YOUR CASE. I AM NOT TRYING TO TRY YOUR CASE.

MR. BISSELL: IF THE COURT HAS A QUESTION, I WOULD LIKE TO ADDRESS --

THE COURT: I THINK MR. RUSSO HAS RAISED THE ISSUE. THAT IS CERTAINLY WHAT I WAS HEARING FROM THE TEN OR SO QUESTIONS MR. RUSSO WAS ASKING. IT'S A FAIR QUESTION THAT NEEDS TO BE ADDRESSED EITHER IN TERMS OF TESTIMONY OF MR. HUMPHREYS AND/OR, I DON'T KNOW, MAYBE YOU WANT TO CONSIDER AMENDING THE COMPLAINT. THAT'S NOT WITHIN MY PURVIEW OF THIS. AND I'M SURE MR. RUSSO WOULD HAVE AN OBJECTION TO THAT, OR MR. BEREKI.

MR. BISSELL: I AM REQUESTING THAT I RECALL MR. HUMPHREYS TO THE STAND SO THAT WE CAN CLARIFY THAT ISSUE FOR THE COURT.

THE COURT: LET'S DO THAT.

MR. BISSELL: OKAY. GO AHEAD.

THE COURT: COME ON DOWN, MR. HUMPHREYS. YOU'RE STILL UNDER OATH. IT DIDN'T WEAR OFF.

FURTHER DIRECT EXAMINATION

BY MR. BISSELL:

Q MR. HUMPHREYS, IF YOU WILL TURN TO, IN THE DEFENDANTS' EXHIBIT BOOK --

A OURS?

Q THAT'S OURS.

-- EXHIBIT 315.

A 15?

THE COURT: TAB 15.

THE WITNESS: TAB 15, I'M THERE.

BY MR. BISSELL:

Q ARE YOU THERE?

A YES.

Q AND YOU HAVE TESTIFIED THAT THIS WAS A COMPILATION OF CHECKS THAT YOU PREPARED UNDER YOUR DIRECTION ON YOUR ACCOUNT; CORRECT?

A YES.

Q NOW, YOU WILL SEE BEGINNING WITH CHECK DESIGNATED AS NUMBER 11 --

THE COURT: YOU KNOW WHAT, LET'S TAKE THE EXHIBIT THAT WAS RECEIVED, WHICH IS EXHIBIT 32.

THE WITNESS: OUT OF THE OTHER BOOK?

THE COURT: OUT OF THE BIG BOOK.

MR. BISSELL: OKAY.

THE COURT: MR. RUSSO WILL BE HAPPY TO SHARE THAT BOOK WITH YOU. IN PARTICULAR, 32 HAS THE BACKUP IN TERMS OF COPIES OF THE CHECKS THAT WERE WRITTEN. SO IT'S A LITTLE EASIER TO DELINEATE WHICH ONES WERE WRITTEN ON THE HUMPHREYS' PERSONAL ACCOUNT AND WHICH ONES WERE WRITTEN -- WERE DONE VIA A WIRE TRANSFER, WHICH ONES WERE DONE VIA CHECKS ON THE

HUMPHREYS & ASSOCIATES, INCORPORATED ACCOUNT.

BY MR. BISSELL:

Q ARE YOU WITH ME ON --

A I'M AT 32 --

Q DASH TWO?

A DASH TWO.

Q OKAY. NOW, DOES THAT APPEAR TO BE -- ASIDE FROM RED CHECKMARKS AND SOME BLUE INK NOTATIONS, DOES THAT APPEAR TO BE THE SAME CHECK COMPILATION THAT YOU HAD PREPARED UNDER YOUR DIRECTION?

A YES.

Q IF YOU WILL NOTICE, BEGINNING WITH CHECK 11 THROUGH -- SORRY.

THE COURT: 17?

BY MR. BISSELL:

Q IF YOU FLIP TO EXHIBIT 32-12, SAME EXHIBIT, JUST THE BACKUP --

A OKAY. I'M THERE.

Q ALL RIGHT. YOU WILL SEE THAT THAT'S A CHECK DATED JULY 31ST, 2013, AND THAT'S DRAWN ON HUMPHREYS & ASSOCIATES' BANK ACCOUNT?

A YES.

Q ALL RIGHT. IS THERE A REASON WHY THIS CHECK WAS DRAWN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES?

A YES.

Q CAN YOU TELL US WHY THAT WAS?

A QUITE A FEW OF THE TIMES. THIS WAS WHEN I HAD A LARGE PROJECT GOING IN TEXAS. I WASN'T IN TOWN. AND ADAM WOULD CALL AND SAY, "I NEED MONEY RIGHT AWAY." AND I WOULD SAY, "SEND IT, OFFICE," AND EITHER BOB OR CHRIS, THE TWO THAT HAVE SIGNATURE AUTHORITY, WOULD SEND IT. AND THEN THEY WOULD FACTOR IT UP AND THROW IT ON MY W-2. SO IT'S JUST AN EXPEDIENCY MEANS.

Q LET'S NOT GO QUITE SO FAST THROUGH THAT BECAUSE I DIDN'T QUITE FOLLOW THAT.

THE COURT: I AM GLAD I WASN'T THE ONLY ONE.

THE WITNESS: OKAY.

BY MR. BISSELL:

Q YOU ARE SAYING THERE WAS TIMES WHEN YOU WERE OUT OF TOWN AND MR. BEREKI WOULD CALL AND SAY I NEED PAYMENT?

A YES.

Q AND YOU WEREN'T AVAILABLE TO ISSUE A CHECK ON YOUR OWN ACCOUNT?

A THAT'S RIGHT.

Q SO YOU CALL SOMEBODY FROM HUMPHREYS & ASSOCIATES AND SAY I NEED YOU TO CUT A CHECK TO MR. BEREKI OR SPARTAN ASSOCIATES?

A EXACTLY.

Q AND THEY WOULD DO THAT?

A YES.

Q AND WAS THERE A RECONCILIATION AS FAR AS THE

PAYMENT MADE BY THE COMPANY AND YOU REIMBURSING THE COMPANY FOR ANY PAYMENTS MADE BY THEM AT MR. BEREKI'S REQUEST?

A YES. EVERY QUARTER THEY HAVE TO FACTOR IT UP FOR TAXES AND PAY THE IRS AND THE STATE.

Q SO --

A SO IT WAS JUST AN EXPEDIENCY MEANS.

Q I UNDERSTAND IT'S EXPEDIENCY.

BUT IS IT TRUE THAT, FOR INSTANCE, CHECK NUMBER 32-12 MADE PAYABLE TO THE SPARTAN ASSOCIATES FOR $90,000, YOU, MR. HUMPHREYS, AND YOUR WIFE, MRS. HUMPHREYS, PERSONALLY ENDED UP PAYING THAT AMOUNT?

A THAT'S CORRECT.

Q WOULD THE SAME BE TRUE FOR CHECK NUMBER 32-13?

A YES.

Q ANY CHANGE IN THAT? ANY DIFFERENCE IN THE PROCESS?

A SAME PROCESS EVERY TIME.

Q DID YOU, IN FACT, PAY HUMPHREYS & ASSOCIATES $95,000 AS REIMBURSEMENT FOR THEIR CHECK NUMBER 16819 PAYABLE TO SPARTAN ASSOCIATES?

THE COURT: PERHAPS A BETTER QUESTION WOULD BE, DEFINE OR DESCRIBE WHAT FACTORING IT UP WOULD ENTAIL, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

BY MR. BISSELL:

Q OKAY. FACTORING IT UP --

A SO TO YIELD --

Q NO. JUST TELL US WHAT FACTORING IT UP IS, PLEASE.

A FOR ME TO HAVE A $95,000 CHECK, I PROBABLY HAD -- I'M THROWING OUT A NUMBER -- 140,000 OF TAXABLE INCOME, AND THE DIFFERENCE WENT TO THE IRS OR STATE AT THE END OF EACH QUARTER. AM I MAKING SENSE NOW? IN OTHER WORDS, KAREN AND I PAID FOR EVERY BIT OF THESE THAT SAY HUMPHREYS & ASSOCIATES AT THE END OF EACH QUARTER.

Q HOW WAS THAT DONE?

A ON MY QUARTERLY INCOME TAX ESTIMATED PAYMENTS.

Q WELL, THAT'S YOUR QUARTERLY INCOME TAX ESTIMATED PAYMENTS. HOW IS HUMPHREYS & ASSOCIATES REIMBURSED FOR THE $95,000 REPRESENTED ON THEIR CHECK TO SPARTAN ASSOCIATES THAT'S EXHIBIT 32-13? HOW WERE THEY REIMBURSED?

A BY KAREN AND I EARNING THE INCOME, 140,000 OR WHATEVER. AND THEN 45 WENT TO THE STATE OR FEDS AND THE REST WENT TO HUMPHREYS & ASSOCIATES.

Q SO WHEN YOU SAY "FACTOR UP," ARE YOU SAYING THAT PAYMENT TO YOU THAT YOU EARNED, INCOME TO YOU FROM HUMPHREYS & ASSOCIATES, WAS DEDUCTED FROM YOUR PAY BASED ON CHECKS THEY HAD WRITTEN TO SPARTAN ASSOCIATES AND

MR. HUMPHREYS (SIC)?

A YES.

Q IS THAT WHAT "FACTORING IT UP" MEANS?

A THAT'S A TERM THAT I HAVE USED. SORRY. YES.

Q AND WAS THAT THE SAME ACROSS THE BOARD WITH ALL CHECKS WRITTEN ON HUMPHREYS & ASSOCIATES, INC. CHECKS TO MR. HUMPHREYS -- TO MR. BEREKI OR SPARTAN ASSOCIATES?

A YES, IT IS.

Q AND ON EACH OF THOSE CHECKS, WAS THERE WHAT YOU CALL FACTORING UP; I.E., THEY DEDUCTED FROM YOU INCOME THAT YOU HAD EARNED WORKING FOR THE COMPANY AND APPLIED THE INCOME TO THEMSELVES AS REIMBURSEMENT?

A YES, THAT'S EXACTLY RIGHT. AM I EXPLAINING IT VERY WELL? ARE WE OKAY?

MR. BISSELL: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: WE WILL FIND OUT AFTER MR. RUSSO AND MR. BEREKI HAVE THEIR CHANCE TO ASK YOU QUESTIONS.

FURTHER CROSS-EXAMINATION

BY MR. RUSSO:

Q WHY DO YOU HAVE A CORPORATION, SIR?

A WHY DO I HAVE A CORPORATION?

MR. BISSELL: OBJECTION. RELEVANCY.

THE COURT: YOU CAN ANSWER.

THE WITNESS: TO PROVIDE CONSULTING SERVICES TO MY CLIENTS.

BY MR. RUSSO:

Q AND AS THE SHAREHOLDER, THAT SHIELDS YOU FROM PERSONAL LIABILITY; CORRECT?

A IN A SMALL FASHION, YES.

Q OKAY. AND THE HUMPHREYS & ASSOCIATES FILES ITS OWN TAX RETURNS EVERY YEAR?

A AS AN S CORP, I BELIEVE THEY FLOW IT THROUGH TO ME.

Q SO THE COMPANY FILES A TAX RETURN AND YOU GET A K-1; CORRECT?

A I DON'T REMEMBER THE NUMBER, BUT I KNOW I GET A FORM.

Q OKAY.

A OKAY.

Q YOUR PROFITS; CORRECT?

A SAY AGAIN?

Q YOUR PROFITS FROM THE COMPANY; CORRECT?

A PROFITS OR LOSSES.

Q AND YOU ALSO GET A W-2 FROM THE COMPANY AS AN EMPLOYEE FOR YOUR SALARY; CORRECT?

A CORRECT.

Q OKAY. AND AT NO POINT IN TIME DID YOU EVER WRITE A CHECK BACK TO HUMPHREYS & ASSOCIATES FOR ANY OF

THESE CHECKS THAT WERE WRITTEN TO SPARTAN ASSOCIATES; CORRECT?

A WELL, BECAUSE THEY HANDLED IT IN THE ACCOUNTING.

Q OKAY. ULTIMATELY ALL YOU'RE SAYING IS YOU HAD TO ACCOUNT FOR IT AS REVENUE; CORRECT?

A SAY AGAIN?

Q ULTIMATELY, ALL YOU'RE SAYING IS YOU HAD TO ACCOUNT FOR IT AS REVENUE; CORRECT?

A REVENUE?

Q YES.

A I DON'T UNDERSTAND. TRY ME AGAIN.

Q YOU'RE SAYING THAT YOU -- THIS MONEY THAT HUMPHREYS & ASSOCIATES PAID ULTIMATELY WAS ATTRIBUTED TO YOU AS REVENUE ON YOUR W-2; CORRECT?

A WHEN YOU SAY "REVENUE," PART OF MY PAYROLL? IS THAT WHAT YOU'RE SAYING?

Q YES.

A OKAY.

Q BUT AT NO POINT IN TIME DID YOU WRITE A CHECK BACK TO HUMPHREYS & ASSOCIATES FOR THESE PAYMENTS IT MADE TO SPARTAN ASSOCIATES; CORRECT?

A I HAVE AN INDEPENDENT CONTRACTOR. THEY LOOK AT EVERY LITTLE NUMBER EVERY QUARTER AND SIGN OFF. THERE'S NO GAIN -- I WORK IN THE UNITED STATES GOVERNMENT BUSINESS. THERE ARE NO GAMES TO BE PLAYED

EVEN IF ONE WAS SO INCLINED TO DO SO.

Q THE ANSWER TO THE QUESTION IS NO, YOU DID NOT WRITE CHECKS BACK TO HUMPHREYS & ASSOCIATES FOR THE MONIES PAID TO SPARTAN ASSOCIATES; CORRECT?

A OKAY.

MR. RUSSO: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI, HOW ABOUT YOU?

MR. BEREKI: I DO, JUST A COUPLE, YOUR HONOR.

FURTHER CROSS-EXAMINATION

BY MR. BEREKI:

Q DO YOU CARRY YOUR PERSONAL CHECKBOOK WITH YOU WHEN YOU TRAVEL?

A NO.

Q DO YOU CARRY A BUSINESS CHECKBOOK WITH YOU WHEN YOU TRAVEL?

A NO.

Q HOW DO YOU PAY FOR CORPORATE EXPENSES WHEN YOU TRAVEL?

A WITH A CREDIT CARD OR CASH.

Q OKAY. DURING THE PROJECT, DID WE EVER HAVE DISCUSSIONS ABOUT SETTING UP A REGULAR PAY SCHEDULE SO THAT THERE WOULDN'T BE ISSUES AROUND EXPEDIENCY, AS YOU CALL THEM?

A I DON'T REMEMBER IF WE DID.

Q THERE WAS NUMEROUS TIMES. I WILL REPRESENT TO YOU THAT WE SPOKE ABOUT --

THE COURT: YOU'RE NOT TESTIFYING YET.

MR. BEREKI: OKAY. NO FURTHER QUESTIONS.

THE COURT: MR. BISSELL?

MR. BISSELL: PARDON ME?

THE COURT: ANY MORE ON YOUR SIDE?

MR. BISSELL: NO, YOUR HONOR.

THE COURT: THANK YOU, MR. HUMPHREYS. YOU CAN STEP DOWN.

THE WITNESS: THANKS.

THE COURT: AND WITH THAT, I TAKE IT --

MR. BISSELL: WE REST, YOUR HONOR.

THE COURT: REST AS TO THIS PHASE?

MR. BISSELL: AS TO THE FIRST PHASE.

THE COURT: MR. RUSSO?

MR. RUSSO: SPARTAN ASSOCIATES RESTS AS TO THIS PHASE.

THE COURT: MR. BEREKI?

MR. BEREKI: I REST, YOUR HONOR.

THE COURT: I WISH I COULD REST. LET'S DO THIS. I NEED TO THINK ABOUT THIS A LITTLE BIT AND LOOK AT YOUR EXHIBITS. LET'S RE-JOIN TOMORROW MORNING, 9:30.

MR. RUSSO: YOUR HONOR --

THE COURT: LET'S SEE WHERE WE GO AFTER THAT.

MR. RUSSO: OKAY.

MR. BEREKI: THANK YOU, YOUR HONOR.

THE COURT: GOOD NIGHT, EVERYBODY.

(OFF THE RECORD.)

//

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )

) SS

COUNTY OF ORANGE )

I, KELVIN K. DO, CSR #13803, COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 11, 2017.

Certified Copy; Adam Bereki

Kelvin Khuong Do

Digitally signed by Kelvin Khuong Do
DN: cn=Kelvin Khuong Do, o, ou=Court Reporter, email=kelvinkdo@gmail.com, c=US
Date: 2017.12.12 17:48:17 -08'00'

KELVIN K. DO, CSR #13803

OFFICIAL COURT REPORTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DEPARTMENT C20

| | | |
|---|---|---|
| THE SPARTAN ASSOCIATES, INC. | ) | |
| | ) | |
| | ) | |
| PLAINTIFF, | ) | CASE NO.: 30-2015-00805807 |
| | ) | CU-CO-CJC |
| GARY HUMPHREYS, | ) | |
| KAREN HUMPHREYS, | ) | |
| | ) | |
| DEFENDANTS. | ) | |
| | ) | |

HONORABLE DAVID CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

3/28/17

APPEARANCES OF COUNSEL:

| | |
|---|---|
| FOR THE PLAINTIFF/ CROSS-DEFENDANT: | BY: J. SCOTT RUSSO<br>RUSSO & DUCKWORTH LLP |
| FOR THE DEFENDANTS/ CROSS-COMPLAINANTS: | BY: WILLIAM G. BISSELL<br>LAW OFFICES OF WILLIAM G. BISSELL |
| FOR THE CROSS-DEFENDANT: | BY: ADAM BEREKI<br>SELF-REPRESENTED |

REPORTED BY:
KELVIN K. DO, CSR #13803, CSR
OFFICIAL COURT REPORTER

SANTA ANA, CALIFORNIA; MARCH 28, 2017

MORNING SESSION

*****

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT.)

THE COURT: GOOD MORNING, EVERYBODY.

MR. RUSSO: GOOD MORNING, YOUR HONOR.

MR. BISSELL: GOOD MORNING, YOUR HONOR.

THE COURT: PRETTY BAD ON THE FREEWAY, MR. RUSSO?

MR. RUSSO: NORTH OF JEFFREY, IT WAS A PARKING LOT. THERE WAS AN ACCIDENT. I AND EVERYONE ELSE TRIED TO DRIVE AROUND IT, ALL THE SIDE STREETS. IT WAS JUST ONE OF THOSE DAYS.

THE COURT: DID YOU USE THE WAZE PROGRAM ON YOUR PHONE?

MR. RUSSO: NO, I DIDN'T. ONCE I GOT ON AND I REALIZED IT WAS STOPPED, I JUST PUT THE GOOGLE MAPS ON AND SAW IT WAS RED FROM WHERE I WAS ALL THE WAY, MID-WAY BETWEEN JEFFREY AND CULVER. SO I DROVE AROUND AND GOT BACK ON AT CULVER AND IT WAS FINE, BUT IT TOOK A WHILE.

THE COURT: ON THE 5?

MR. RUSSO: I GOT OFF THE 5 BECAUSE I REALIZED AFTER TEN MINUTES WE WEREN'T GOING ANYWHERE.

THE COURT: ALL RIGHT. SO WHAT I AM ABOUT TO DO AT THIS TIME IS TO INVITE ARGUMENT WITH RESPECT TO THE

FIRST CAUSE OF ACTION ISSUE, AND WE WILL SEE WHERE WE GO AFTER THAT.

SO MR. BISSELL, WE WILL START WITH YOU.

MR. BISSELL: THANK YOU, YOUR HONOR.

YOUR HONOR, CIVIL CODE SECTION 1636 PROVIDES THAT A CONTRACT MUST BE INTERPRETED AS TO GIVE EFFECT TO THE MUTUAL INTENTION OF THE PARTIES AS IT EXISTED AT THE TIME OF THE CONTRACTING. THE CASE OF SHAW VERSUS REGENTS OF UNIVERSITY OF CALIFORNIA 58 CAL.APP.4TH 44 STATES, "ALTHOUGH UNDER CIVIL CODE SECTION 1636 AND 1638 THE INTENT OF THE PARTIES DETERMINES THE MEAN OF THE CONTRACT, THE RELEVANT INTENT IS OBJECTIVE. THAT IS, THE OBJECTIVE INTENT IS EVIDENCED BY THE WORDS OF THE INSTRUMENT, NOT A PARTY'S OBJECTIVE INTENT. THE TRUE INTENT OF THE CONTRACTING PARTY IS IRRELEVANT IF IT REMAINS UNEXPRESSED."

IN THE CASE OF TRAVELERS -- I'M SORRY -- AUGBURN VERSUS TRAVELERS INSURANCE COMPANY, 207 CAL.APP. 50 STATED, "AS TO HARDSHIPS, ADVANTAGES, OR DISADVANTAGES, WHICH MAY RESULT FROM SUCH CONSTRUCTION, COURTS HAVE NOTHING TO DO."

SO WHAT WAS THE OBJECTIVE EXPRESSED INTENT OF THE PARTIES AT THE TIME THAT THEY ENTERED INTO THIS CONTRACT? FIRST OF ALL, WE ALL HAVE TO DEFINE WHAT THE CONTRACT IS. THE ONLY CONTRACT WE HAVE BETWEEN THE HUMPHREYS AND MR. BEREKI IS OUR EXHIBIT 303, WHICH WAS

THE APRIL 5, 2012 E-MAIL STRING IN WHICH MR. BEREKI COMMUNICATED HIS PROPOSAL FOR THE WORK ITEMIZING EACH ITEM OF WORK. MS. HUMPHREYS RESPONDED TO THAT PROPOSAL AND AGREED TO THE TERMS OF THE AGREEMENT AND HIRING MR. BEREKI AND MR. OVERLEY TO DO THE JOB.

THERE SIMPLY WAS NO OTHER CONTRACT. THERE WAS NO CONTRACT AT ANY TIME PROPOSED, OFFERED, SUGGESTED BY SPARTAN ASSOCIATES AND THE HUMPHREYS OR PROPOSED TO THE HUMPHREYS.

NOW, IT IS APPARENT THAT MR. BEREKI, AT SOME POINT, DEVELOPED AN UNEXPRESSED INTENT THAT THE CONTRACTING PARTY BE SPARTAN ASSOCIATES INSTEAD OF HIMSELF. HOWEVER, THE EVIDENCE IS CLEAR THAT THAT UNEXPRESSED INTENT DIDN'T EVEN DAWN ON MR. BEREKI UNTIL SEVERAL MONTHS INTO THE JOB.

THE EVIDENCE THAT SUPPORTS THAT IS MR. BEREKI AFTER THE -- SHORTLY AFTER THE EXHIBIT 303 CONTRACT WAS PROPOSED AND AGREED TO, HE REQUESTED THAT THE PAYMENTS BE MADE PAYABLE TO HIM PERSONALLY. MR. BEREKI PAID ALL OF THE JOB COSTS ON THIS PROJECT UP UNTIL JULY OF 2012 ON HIS PERSONAL ACCOUNT OR ON HIS MOTHER'S PERSONAL ACCOUNT, NOT ON THE SPARTAN ACCOUNT.

MR. BEREKI NEVER SENT AN INVOICE TO THE HUMPHREYS BEFORE JULY OF 2012 ON ANY DOCUMENT THAT WOULD EVEN HAVE THE NAME SPARTAN ON IT, MUCH LESS A LOGO OR ANYTHING THAT WOULD ALERT THE HUMPHREYS THAT SPARTAN WAS

PART OF THIS JOB.

MR. BEREKI DIDN'T SET UP SPARTAN AS A -- AN EMPLOYER UNTIL JULY OF 2012. THAT'S WHEN HE REGISTERED WITH THE BOARD OF EQUALIZATION AND THAT'S WHEN HE APPLIED FOR WORKERS' COMPENSATION INSURANCE FOR THIS JOB AS SPARTAN.

THE HUMPHREYS PAID MR. BEREKI $100,000 BEFORE MR. BEREKI EVEN BROUGHT UP THE NAME SPARTAN. PURE AND SIMPLY, SPARTAN WANTED PRESENCE IN THIS JOB IN ANY WAY, SHAPE, OR FORM BEFORE JULY OF 2012. AND, AGAIN, A CONTRACT'S INTERPRETED BY THE OBJECTIVE EXPRESSED INTENT AT THE TIME THE PARTIES ENTER INTO IT.

MR. BEREKI OFFERED AS EVIDENCE EXHIBIT 30-1 SHOWING A SPARTAN SIGN ON THE PROJECT AT SOME UNDISCLOSED DATE. BUT MR. BEREKI HAS TESTIFIED THAT FOR THE FIRST SEVERAL MONTHS, EVEN THOUGH HE HAD BEEN PAID $100,000, THE HUMPHREYS PAID HIM $100,000 ON THIS JOB, HE BASICALLY JUST HAD BEEN PUTTERING AROUND. EXHIBIT 30-1 SHOWS THE CONDOMINIUM IN A VIRTUALLY DEMOLISHED STATE. SO CLEARLY THAT PICTURE WASN'T TAKEN AT ANY EARLY STAGE OF MR. BEREKI'S INVOLVEMENT IN THE PROJECT.

WHAT WAS THE EVIDENCE OFFERED AS TO THE OBJECTIVE INTENT OF THE PARTIES AT THE TIME THAT THE CONTRACT WAS ENTERED INTO THAT SPARTAN WAS ONE OF THE CONTRACTING PARTIES? YOUR HONOR, THERE WAS ABSOLUTELY NONE. THERE IS NOTHING THERE THAT SUGGESTS SPARTAN

OBJECTIVELY WAS A CONTRACTING PARTY. IN FACT, IT WAS CLEAR FROM THE TESTIMONY OF MR. BEREKI WHEN HE WAS TALKING ABOUT -- FIRST HE TESTIFIED THAT HE HAD ENTERED INTO THIS SHOP RENTAL LEASE AS SPARTAN CONSTRUCTION. WELL, WHEN WE LOOKED AT THE LEASE, IT WAS CLEAR THAT HE DID NOT ENTER THE LEASE AS SPARTAN CONSTRUCTION. HE ENTERED IT AS ADAM BEREKI, DBA SPARTAN. IT'S CLEAR ADAM BEREKI NEVER UNDERSTOOD THE DIFFERENCE BETWEEN A CORPORATION AND HIMSELF. HE JUST DIDN'T UNDERSTAND. HE THOUGHT -- HE FELT THE CORPORATION WAS HIM, HE WAS THE CORPORATION. AND THAT'S NOT THE WAY IT WORKS UNDER THE LAW.

WHAT'S THE SIGNIFICANCE OF THE CONTRACTING? THE SIGNIFICANCE IS THE CONTRACTOR HAS TO BE LICENSED. MR. BEREKI SEEMED TO BE UNDER THE IMPRESSION THAT UNLESS HE WAS DOING SOMETHING STRUCTURAL, HE DIDN'T NEED A LICENSE. IN LIGHT OF WHAT TRANSPIRED ON THIS JOB, IT IS NOT SURPRISING THAT MR. BEREKI THINKS THAT, BUT HE'S CLEARLY WRONG.

A FUNDAMENTAL SECTION OF THE CONTRACTOR'S LICENSE LAW, BUSINESS AND PROFESSIONS CODE SECTION 7026 DEFINES A CONTRACTOR VERY BROADLY AS INCLUDING ANY PERSON WHO UNDERTAKES TO CONSTRUCT, ALTER, REPAIR OR IMPROVE ANY BUILDING OR STRUCTURE.

EXHIBIT 303, THE AGREEMENT THAT THE PARTIES ENTERED INTO, IS EVIDENCE OF SUCH UNDERTAKING. IT IS

CLEAR A LICENSE IS REQUIRED. NO QUESTION ABOUT THAT.

MR. BEREKI WAS NOT LICENSED. HE'S TESTIFIED THAT HE HAD NO LICENSE ISSUED TO HIM AT ANY TIME, EITHER AT THE TIME THE CONTRACT WAS ENTERED INTO OR AT ANY TIME THE WORK WAS BEING PERFORMED BY MR. BEREKI. HE TESTIFIED THAT THE PARTNERSHIP OF HE AND MR. OVERLEY WERE NOT LICENSED AT THE TIME THE CONTRACTING WAS ENTERED INTO OR AT ANY TIME DURING THE WORK. IN FACT, THEY COULD NOT HAVE BEEN LICENSED BECAUSE MR. BEREKI DIDN'T HAVE A LICENSE. A JOINT VENTURE LICENSE REQUIRES THAT BOTH PARTIES TO THE JOINT VENTURE, OR IF IT'S MORE THAN TWO, HOWEVER MANY PARTIES TO THE JOINT VENTURE, EACH BE INDIVIDUALLY LICENSED. MR. BEREKI TESTIFIED THAT HE WAS NOT LICENSED.

EVEN IF ONE WERE TO SUBSCRIBE TO THE THEORY THAT SPARTAN ASSOCIATES HAD CONTRACTED WITH THE HUMPHREYS, SPARTAN ASSOCIATES AND MR. OVERLEY, AND MR. BEREKI HAS TESTIFIED IT WAS AN INDEPENDENT CONTRACTOR HE PARTNERED WITH ON THIS JOB, THAT PARTNERSHIP WAS NOT LICENSED. THERE WAS NO COMBINATION OR PERMUTATION OF INDIVIDUALS OR ENTITIES THAT PARTICIPATED ON THIS JOB THAT HAD THE REQUISITE LICENSE.

THE COURT RAISED THE QUESTION YESTERDAY AS TO THE QUESTION OF WHAT IS THE IMPACT, WHAT IS THE EFFECT OF THE FACT THAT NOT ALL PAYMENTS ON THIS JOB CAME TO MR. BEREKI DIRECTLY FROM THE HUMPHREYS. WHAT IS THE

EFFECT OF THAT? CAN THE HUMPHREYS STILL RECOVER ON DISGORGEMENT?

THE KEY STATUTE WHICH HAS BEEN BRIEFED, AND I AM SURE THE JUDGE HAS READ, IS BUSINESS AND PROFESSIONS CODE SECTION 7031, SUBSECTION E, "A PERSON WHO UTILIZES THE SERVICES OF AN UNLICENSED CONTRACTOR MAY BRING AN ACTION IN ANY COURT OR COMPETENT JURISDICTION IN THIS STATE TO RECOVER ALL COMPENSATION PAID TO THE UNLICENSED CONTRACTOR FOR PERFORMING -- PERFORMANCE OF ANY ACT OR CONTRACT."

NOW, THE COURT SUGGESTED YESTERDAY THAT MAYBE HUMPHREYS & ASSOCIATES SHOULD BE A CO-PARTY TO THE ACTION TO RECOVER THE FUNDS THAT THEY -- BASICALLY THEY WERE A CONDUIT, BUT -- THE FUNDS THAT WERE CONDUITED THROUGH THEM TO MR. BEREKI. THEY COULDN'T BE A PARTY TO THIS ACTION. THIS STATUTE IS LIMITED TO A PERSON WHO UTILIZES THE SERVICES OF AN UNLICENSED CONTRACTOR.

THE ONLY PEOPLE WHO UTILIZED THE SERVICES OF THE UNLICENSED CONTRACTOR OF MR. BEREKI AND MR. OVERLEY WERE THE HUMPHREYS. THEY WERE THE ONLY PERSONS THAT CAN BRING THIS ACTION. THERE IS NO LANGUAGE IN THAT CODE SECTION THAT LIMITS OR RESTRICTS WHERE THE SOURCE OF THE FUNDS COME FROM. IT'S JUST ALL COMPENSATION.

NOW THAT MAKES SENSE. IT MAKES SENSE THAT THERE'S NO LIMITATION BECAUSE I ASSUME THAT THE LEGISLATURE WAS -- TOOK SOME SORT OF CUE FROM THE

CONSTRUCTION INDUSTRY THAT, HEY, WAIT A MINUTE, WE HAVE CONSTRUCTION LENDERS OUT HERE WHO ARE DISBURSING FUNDS ON PROJECTS ALL THE TIME. WE HAVE THIRD-PARTY CONSTRUCTION CONTROL AGENTS WHO ARE DISBURSING CONSTRUCTION FUNDS ON PROJECTS ALL THE TIME. WE HAVE CONSTRUCTION FUND ESCROW ACCOUNTS WHERE FUNDS ARE DISBURSED ALL THE TIME.

SO THERE ARE A MYRIAD OF EXAMPLES OR SITUATIONS WHERE PAYMENT DOESN'T HAVE TO COME OR DOESN'T COME DIRECTLY FROM THE PARTY WHO CONTRACTED WITH THE UNLICENSED CONTRACTOR. THERE ARE OTHER CONDUITS FOR THAT PAYMENT AND THE STATUTE MAKES NO DIFFERENTIATION OR NO RESTRICTIONS ON WHERE THAT MONEY COMES FROM. IT'S PURE AND SIMPLY ALL COMPENSATION PAID.

IF YOU LOOK AT THE INTENT, THAT SECTION OF 7031 WAS NOT AN ORIGINAL SECTION. THAT WAS APPLIED AFTER -- SEVERAL YEARS AFTER SECTION 7031 WAS ENACTED. SECTION 7031 WAS INITIALLY SIMPLY A SECTION THAT SAID AN UNLICENSED CONTRACTOR CANNOT BRING AN ACTION IN ANY COURT OF LAW TO RECOVER ON ANY JOB THAT HE'S PERFORMED WORK ON THAT REQUIRED A LICENSE.

WELL, THE LEGISLATURE UNDERSTOOD -- AT SOME POINT THEY UNDERSTOOD THAT, WAIT A SECOND, WE NEED TO TREAT PEOPLE EQUALLY HERE. THERE'S PEOPLE THAT HAVE PAID AN UNLICENSED CONTRACTOR AND THERE'S PEOPLE THAT HAVEN'T PAID AN UNLICENSED CONTRACTOR.

NOW, IF THE HUMPHREYS HADN'T PAID MR. BEREKI A DIME AND MR. BEREKI CLAIMED -- THE HUMPHREYS PAID HIM 848,000. SAY MR. BEREKI CLAIMS, HUMPHREYS, YOU DIDN'T PAY ME A DIME. I DID ALL THIS WORK. YOU OWE ME $848,000. WELL, HE WOULD BE OUT OF LUCK. HE'S NOT ENTITLED TO DIME ONE UNDER THE ORIGINAL SECTION OF 7031. NOW, UNDER THE ORIGINAL SECTION OF 7301, THOSE WHO HAD PAID THE UNLICENSED CONTRACTOR, THE PEOPLE IN THE HUMPHREYS POSITION, THEY COULDN'T RECOVER. SO THERE WAS AN UNEQUAL TREATMENT OF PARTIES DEALING WITH UNLICENSED CONTRACTORS UNDER SECTION 7031. WELL, THE LEGISLATURE RECOGNIZED THAT AND HE EQUALIZED THE IMPACT THAT SOMEBODY WHO DOESN'T PAY OR SOMEBODY WHO DOES PAY IS GOING TO BE TREATED THE SAME AS SOMEBODY WHO DOESN'T PAY; I.E., IF YOU OWE THE GUY 100 PERCENT OF WHAT WOULD OTHERWISE BE DUE ON THIS JOB, HE'S NOT ENTITLED TO IT. IF YOU PAID HIM 100 PERCENT OF WHATEVER HE IS ENTITLED TO ON THE JOB, YOU'RE ENTITLED TO RECOVER 100 PERCENT.

IN THE CASE ALATRISTE VERSUS CESAR'S EXTERIOR DESIGNS, INC. 183 CAL.APP.4TH 656, THE COURT STATED 7031(B) WAS DESIGNED TO TREAT PERSONS WHO HAVE UTILIZED UNLICENSED CONTRACTORS CONSISTENTLY REGARDLESS OF WHETHER THEY HAVE PAID THE CONTRACTOR FOR THE UNLICENSED WORK. THE ONLY WAY THAT 7031(B) CAN BE APPLIED IN THIS CASE WOULD BE CONSISTENT WITH NOT ONLY THE LANGUAGE OF THE STATUTE ITSELF -- THROUGH LANGUAGE OF THE STATUTE,

WHICH IS NOT VAGUE AND NOT AMBIGUOUS. AND THE INTERPRETATION OF THAT STATUTE IS FOUND IN THE ALATRISTE CASE, IS THAT THE HUMPHREYS ARE ENTITLED TO RECOVER ALL COMPENSATION PAID. THAT DOESN'T MATTER IF IT CAME FROM THEIR PERSONAL ACCOUNT OR IF IT CAME FROM A CONDUIT THROUGH WHICH THEY MADE PAYMENT OR WHETHER IT CAME FROM A RICH UNCLE. IT JUST MAKES NO DIFFERENCE. THE STATUTE IS CLEAR. ALL COMPENSATION.

THE EVIDENCE IS UNCONTROVERTED THAT THE HUMPHREYS PAID AS COMPENSATION TO MR. BEREKI ON THIS PROJECT $848,000. MR. BEREKI WAS REQUIRED TO HAVE A LICENSE. HE HAD NO LICENSE. UNDER THE LAW, THE HUMPHREYS ARE ENTITLED TO $848,000.

THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. MR. RUSSO.

MR. RUSSO: YES, YOUR HONOR.

IF ONLY IT WERE SO SIMPLE. YOUR HONOR, THE BACKGROUND ON ALL THIS IS MR. BEREKI WAS WORKING IN THE POLICE FORCE WITH MR. HUMPHREYS' BROTHER.

THE COURT: WHICH POLICE FORCE WAS THAT?

MR. RUSSO: HUNTINGTON BEACH.

THE COURT: HB?

MR. RUSSO: YES. HE WENT OUT ON DISABILITY FROM THE POLICE FORCE. SO THAT WAS HOW THE RELATIONSHIP STARTED WITH THE BROTHER. HE JUST WENT INTO CONTRACT. THAT BUSINESS HAS NOW BEEN DISSOLVED. SO IT'S GONE.

DOESN'T HAVE ANY MONEY. HE'S OUT WITH HIS DISABILITY TRYING TO EARN A LIVING. THE COMPANY HAS NO MONEY. THE COMPANY HAS NO MONEY TO PAY THEIR ATTORNEY IN THIS CASE, BUT HERE WE ARE CLOSE TO TRIAL SO HERE I AM.

THE COURT: GOD, WE LOVE THE VOLUNTEERS.

MR. RUSSO: IT IS THAT. SO THE BOTTOM LINE IS WE'RE AT A POINT WHERE THROUGH SOME CREATIVE LAWYERING THIS NEW ISSUE CAME UP AT THE LAST MINUTE. THEY SAID THIS DISPUTE HAS BEEN GOING ON SINCE AUGUST OF 2013. THIS LAWSUIT HAS BEEN PENDING SINCE AUGUST OF 2015. AND THEN IN JANUARY OF THIS YEAR, THE CROSS-COMPLAINT WAS AMENDED TO ADD THIS CLAIM FOR DISGORGEMENT. SO IT'S NOT SOMETHING THAT WAS ON THEIR MINDS, IT'S NOT SOMETHING THAT THEY CARED ABOUT, IT'S NOT SOMETHING THEY CARED ABOUT WHEN I TOOK THEIR DEPOSITIONS. THIS WAS A LAST MINUTE, HEY, LET'S GIVE THIS ONE A SHOT.

SO SHOULD THERE BE SYMPATHY FOR THE HUMPHREYS IN LOSING THIS CLAIM WHEN WE HAVE BIGGER ISSUES IN THIS CASE? ABSOLUTELY NOT. THIS IS SOME GOOD, CREATIVE LAWYERING BY A GOOD LAWYER TO COME UP WITH THIS TECHNICAL ISSUE. AND IT'S A BIG FORFEITURE ISSUE. WE KNOW THE LAWS OF FORFEITURE. I HAVE BEEN ON THE OTHER SIDE OF THIS STATUTE AND ARGUED IT, AND IT'S DRACONIAN. IT IS. BUT THIS CASE DOES NOT FIT THE PIECES OF PUZZLE FOR FORFEITURE. THIS IS NOT AN UNLICENSED CONTRACTOR CASE.

WHAT DO WE HAVE HERE? WE HAVE PAYMENTS OVER $800,000. AND OF THAT, OVER 700,000 OF IT WAS PAID TO A LICENSED CONTRACTOR. THE LICENSED CONTRACTOR WHO PERFORMED THE WORK. THE STATUTE AT ISSUE 7031(B) TALKS ABOUT REPAYMENT FOR COMPENSATION PAID TO THE UNLICENSED CONTRACTOR FOR PERFORMANCE OF ANY ACT OR CONTRACT, WORK THAT HAD TO HAVE A LICENSE. OKAY. SO COMPENSATION TO THE UNLICENSED CONTRACTOR.

YOU HAVE SEEN THE CHECKS, EXHIBIT 32. AFTER THE FIRST $100,000, THE CHECKS WERE MADE TO THE CONTRACTOR WHO PERFORMED THE WORK WHO WAS LICENSED. INTERSPERSED LATER ON THERE WERE SOME PAYMENTS, THEY WERE DIRECTED TO MR. BEREKI, DESPITE THE TESTIMONY THAT HE ASKED THAT THEY BE PAID TO SPARTAN ASSOCIATES. THEY GOT DEPOSITED INTO THE SPARTAN ASSOCIATES' ACCOUNT AND SPARTAN ASSOCIATES DID THE WORK.

SO IT'S NOT EVEN AN ISSUE UNDER THE SUBSTANTIAL COMPLIANCE RULES THAT WENT ON. AND I UNDERSTAND, WITH THE CHANGES TO 7031, MOST OF THAT WAS -- SUBSTANTIAL COMPLIANCE WAS, FOR THE MOST PART, THE PAST. WE DON'T HAVE THAT REALLY, NOR DOES THIS FIT NEATLY WITHIN THE CONFINES OF SUBSTANTIAL COMPLIANCE. THIS IS JUST PURE INAPPLICABILITY IN THIS CASE OF 7031 BECAUSE IT'S NOT ABOUT THAT ORAL AGREEMENT, THE E-MAIL, THE STATUTE IS ABOUT UNLICENSED WORK. WE DON'T HAVE THAT HERE. THAT FIRST CONVERSATION, WHETHER OR NOT THEY

THOUGHT IT WAS SPARTAN ASSOCIATES OR MR. BEREKI, THAT'S NOT WHAT THE STATUTE SPEAKS TO. IT'S PAYMENTS TO AN UNLICENSED CONTRACTOR FOR WORK THAT NEEDED TO BE LICENSED. AND THE PAYMENTS, THEY KNEW WHO THEY WERE WRITING THE CHECKS TO WHEN THEY WERE WRITING TO SPARTAN ASSOCIATES, LICENSED CONTRACTOR, THIS DID NOT APPLY.

NOW WE DO HAVE THE FIRST $100,000 OF PAYMENTS WHICH WERE PAYABLE TO MR. BEREKI. WHAT I WOULD SUBMIT ON THAT, YOUR HONOR, IS IT'S -- IT DOESN'T REALLY MATTER WHO THOSE PAYMENTS WENT TO. THE POINT IS THERE'S BEEN A FAILURE OF PROOF BY THE HUMPHREYS ON THIS AS TO THAT WORK FOR WHICH THAT $100,000 WAS PAID WAS REQUIRED TO BE LICENSED. THERE'S BEEN NO EVIDENCE. TO THE CONTRARY, THE ONLY EVIDENCE YOU HAVE IS THAT BASED ON WHAT WAS GOING ON AT THAT TIME, DURING THE FIRST $100,000, THE TESTIMONY OF MR. BEREKI WAS THAT WE WERE LOADING UP THINGS, WE WERE GETTING STORAGE UNITS, WE WERE DOING THOSE THINGS, DOING SOME DEMOLITION. BUT IF YOU WERE TO LOOK AT THE C11 LICENSURE FOR DEMOLITION WORK, STRUCTURAL WORK, AT THAT POINT IN TIME, THERE'S NO EVIDENCE AT THAT POINT IN TIME THAT THIS WORK REQUIRED A LICENSE FROM HIM PERSONALLY. SO THAT'S A FAILURE OF PROOF ON THEIR PART.

THEN WE TURN TO THE ISSUE OF THE REAL PARTY IN INTEREST. THE FACT OF THE MATTER IS THAT A CORPORATION PAID $495,000 OF THE PAYMENTS TO SPARTAN ASSOCIATES.

THE CASES ON THAT ISSUE, ON REAL PARTY IN INTEREST, ARE THE DION VERSUS PELAYO CASE, 2006 145.CAL.APP.4TH 347 AND THE GANTMAN VERSUS UNITED PACIFIC INSURANCE CASE, 1999 232 CAL.APP.3RD 1560. THIS IS JUST FUNDAMENTAL STUFF. THE CLAIM HAS TO BE PROSECUTED BY THE REAL PARTY IN INTEREST, NOT SOMEBODY WHO'S INTERESTED, BUT THE ACTUAL REAL PARTY. THEY FAILED, AT LEAST AS TO $495,000 OF THE CHECKS, BECAUSE THEY WERE WRITTEN BY A CORPORATION WHO SHOULD HAVE BEEN JOINED IN THIS ACTION, SHOULD HAVE DONE AN ASSIGNMENT, SHOULD HAVE DONE SOMETHING LONG BEFORE NOW. IT'S LATE AND THERE COULD BE STATUTE OF LIMITATIONS ISSUES ASSOCIATED WITH THAT PARTY COMING IN. IT'S NOW A SIMPLE AMENDMENT AT THIS POINT IN TIME.

SO THE FACT OF THE MATTER IS IT'S NOT A LITTLE ISSUE. THIS IS NOT THE SAME AS A CONSTRUCTION LENDER DISBURSING FUNDS. IN THE CASE OF CONSTRUCTION LENDER DISBURSING FUNDS, THAT MONEY IS THE BORROWER'S MONEY. YOU HAVE GOT THIS CONDUIT, BUT THAT'S THE BORROWER'S MONEY. THIS WAS THE CORPORATION'S MONEY. PERHAPS MR. HUMPHREYS GOT TAXED ON IT IN THE FUTURE, BUT AT THE TIME THE PAYMENTS WERE MADE, THE CORPORATION'S MONEY. SO THIS IS ANOTHER GLITCH IN THEIR CASE. SO FOR ALL THOSE REASONS, 7031 NOT APPLYING. REAL PARTY IN INTEREST. AND -- WELL, FOR THOSE TWO REASONS. THEY FAILED TO ULTIMATELY PROVE, AS THEY HAD TO WITH THEIR

BURDEN, THAT FIRST CAUSE OF ACTION IN THAT CROSS-COMPLAINT.

WE'VE GOT BIGGER ISSUES IN THIS CASE. WE GOT THE COMPLAINT. WE GOT THEIR CROSS-COMPLAINT FOR THE WORK BEING DEFICIENT. WE GOT OTHER ISSUES, BUT THIS IS NOT THE VEHICLE FOR THE HUMPHREYS TO GET WHAT THEY WANT. WE GOT THE REST OF THE CASE TO TRY.

THANK YOU.

THE COURT: THANK YOU, MR. RUSSO.

MR. BEREKI?

MR. BEREKI: NOTHING, YOUR HONOR.

THE COURT: YOU WILL RELY ON MR. RUSSO'S ARGUMENT?

THE COURT: HE WAS BRILLIANT, YES, SIR. THANK YOU.

THE COURT: I WILL TAKE 15 MINUTES, GO COLLECT MY THOUGHTS, REVIEW MY NOTES. SORRY FOR THE DELAY, BUT IT SEEMS LIKE GOOD IDEA. SO FEEL FREE TO TAKE A WALK ABOUT, RUN UP AND DOWN THE HALLWAYS, SWIM A COUPLE OF LAPS. WE WILL BE BACK.

MR. BISSELL: THANK YOU.

(RECESS.)

THE COURT: THANK YOU, OFFICER GINO.

MR. RUSSO.

MR. RUSSO: YES, YOUR HONOR.

THE COURT: ARE YOU BY ANY CHANCE A STUDENT OF ANCIENT GREEK HISTORY?

MR. RUSSO: WELL, IT SO HAPPENS THAT MY FAVORITE

PROFESSOR AT UC DAVIS WAS A GUY NAMED SPYRIDAKIS. HE TAUGHT ANCIENT --

THE COURT: HE DOESN'T SOUND TOO ANCIENT.

MR. RUSSO: HE TAUGHT ANCIENT HISTORY AND I TOOK ALL THREE OF HIS COURSES. GREEK HISTORY IS THE FIRST ONE, AND THEN A COUPLE -- WE DID ANCIENT ROME, MESOPOTAMIA. SO THE ANSWER IS, IT WAS MY FAVORITE COURSE.

THE COURT: EXCELLENT. THEN YOU'RE PROBABLY FAMILIAR WITH THE STORY FROM THE CITY-STATE OF SPARTA IN ANCIENT GREECE IN THE NAME OF THE COMPANY OPERATED BY MR. BEREKI. AS YOU KNOW, SPARTA WAS A VERY WARLIKE CIVILIZATION. THEIR YOUNG MEN WERE TRAINED AT A VERY EARLY AGE TO BASICALLY PREPARE AND FIGHT A NUMBER OF BATTLES BECAUSE IT WAS A WARLIKE CIVILIZATION THAT WENT ON. SO THE LINE FROM THE MOTHERS AND TWO SONS GOING OFF TO BATTLE ON BEHALF OF THE CITY-STATE OF SPARTAN. COME BACK VICTORIOUS OR COME BACK DEAD OVER YOUR SHIELD. LET'S HOPE THAT DOESN'T APPLY TO SOMEBODY HERE TODAY.

MR. RUSSO: ONE ANECDOTE. ONE OF MY FAVORITE THINGS ABOUT THAT -- AND I ALSO TOOK MILITARY HISTORY FOR A YEAR -- WAS THE INVENTION THAT MADE THE GREEKS SUCCESSFUL -- NOT THE SPARTANS BUT THE GREEKS -- WAS LENGTHENING THE PHALANX SO WHEN THEY ALL RAN INTO EACH OTHER, THEIRS WAS A FEW FEET LONGER. I THOUGHT THAT WAS A KIND OF AN INTERESTING DEVELOPMENT.

THE COURT: I THOUGHT YOU WERE GOING TO TELL ME IT WAS THE WHEEL.

MR. RUSSO: NO.

THE COURT: OR THE CATAPULT.

MR. RUSSO: NO, LENGTHENING THE PHALANX.

THE COURT: A LONGER SPEAR. I THINK THE ENGLISH CAME UP WITH ANOTHER LINE CALLED "HOISTED BY THEIR OWN PETARD." WHAT IS A PETARD?

MR. RUSSO: I DON'T RECALL WHAT A PETARD IS.

THE COURT: IT'S ANOTHER VERSION OF A SPEAR. ALL RIGHT. WELL, YOU ALL CAUSED ME TO HAVE A FEW MOMENTS OF CONSIDERATION HERE. MY INITIAL COMMENT, YOU KNOW, FINE LAWYERS AND GOOD LAWYERING, AS WE HAVE SEEN HERE, MAKES THIS DECISIONAL PROCESS ALL THE HARDER. I WANT TO THANK THE LAWYERS, BOTH OF YOU, FOR GOOD WORK, GOOD PRESENTATIONS. STILL, YOU KNOW, I HAVE TO SAY, AT THE BOTTOM, THE FACT IS THE FACTS WIN OR LOSE CASES. PEOPLE THAT THINK, HEY, YOU KNOW, I WANT CLARENCE DARO (PHONETIC) -- A NAME FROM THE PAST -- I WANT THE TOUGHEST LAWYER IN TOWN, SO ON AND SO FORTH. MY EXPERIENCE IS THAT BAD LAWYERING CAN LOSE CASES BECAUSE THE FACTS DON'T GET IN. ULTIMATELY, GOOD LAWYERING, WHICH IS WHAT I HAVE SEEN HERE, ACCOUNTS FOR THE FACT, AGAIN, THAT IT MAKES THE DECISION HARDER. AGAIN, IT'S THE FACTS THAT CONTROL, NOT THE LAWYERS THAT CONTROL. AN INTERESTING EXERCISE FOR ME, FROM THE STANDPOINT OF

JUST REVIEWING AND CONSIDERING WHAT'S REQUIRED UNDER THE CONTRACTOR LICENSE LAW, AND IN SOME WAYS, IT'S A LITTLE BIT OF A TRIP INTO ALICE IN WONDERLAND.

I TURN FIRST TO BUSINESS PROFESSIONS CODE SECTION 7159, WHICH IS ENTITLED "HOME IMPROVEMENT; HOME IMPROVEMENT GOODS OR SERVICES DEFINITIONS." WELL, THIS DEFINES THE -- UNDER -- SUBSECTION B DEFINES THE HOME IMPROVEMENT CONTRACT AS MEANING ANY AGREEMENT, WHETHER ORAL OR WRITTEN, BETWEEN THE CONTRACTOR AND THE OWNER FOR THE PERFORMANCES OF A HOME IMPROVEMENT, AS DEFINED BY SECTION 7151.

SECTION 7551 DEFINES A HOME IMPROVEMENT AS BEING THE REPAIRING, REMODELING, ALTERING, CONVERTING OR MODERNIZING UP OR ADDING TO RESIDENTIAL PROPERTY AND SHALL INCLUDE, BUT NOT BE LIMITED TO, THE CONSTRUCTION, ERECTION, REPLACEMENT, OR IMPROVEMENT OF DRIVEWAYS, SWIMMING POOLS, INCLUDING SPAS, HOT TUBS, TERRACES, PATIOS, AWNINGS, STORM WINDOWS, LANDSCAPING, FENCES, PORCHES, GARAGES, FALLOUT SHELTERS, BASEMENTS, AND OTHER IMPROVEMENTS OF THE STRUCTURE OR LAND WHICH IS ADJACENT TO A DWELLING. HOME IMPROVEMENT SHALL ALSO MEAN THE INSTALLATION OF HOME IMPROVEMENT GOODS OR THE FURNISHING OF HOME IMPROVEMENT SERVICES.

I THINK THAT THAT INCLUDES THE REMODELING PROJECT THAT WAS DONE ON THIS PROPERTY. ALTHOUGH I SUSPECT, AS AN ARGUMENT, THAT IT COULD BE LIMITED TO

THINGS OUTSIDE OF THE STRUCTURE ITSELF. IF THAT WERE THE CASE, THEN I SUSPECT THAT SECTION 7164 WOULD APPLY WITH RESPECT TO THIS.

WHY AM I TALKING ABOUT THIS? BECAUSE IF YOU LOOK AT SECTION 7159(C), IT REQUIRES THAT THE LICENSEE SHALL COMPLY WITH ALL OF THE FOLLOWING. IT SPELLS OUT, IN GREAT DETAIL, THE REQUIRED CONTENTS OF THE CONTRACT BETWEEN THE CONTRACTOR AND THE CONTRACTING PARTIES. AS WE HAVE SEEN NONE OF WHICH ARE PRESENT HERE, BUT JUST SO THAT WE'RE ON THE SAME PAGE, IT REQUIRES, AMONG OTHER THINGS -- AND THIS IS WHERE IT'S CONFUSING BECAUSE IT SAYS, FOR PURPOSES OF THIS SECTION, SUBSECTION B OF 7159, FOR PURPOSES OF THIS SECTION, HOME IMPROVEMENT CONTRACT MEANS AN AGREEMENT, WHETHER ORAL OR WRITTEN, OR CONTAINED IN ONE OR MORE DOCUMENTS, ET CETERA.

SO THERE SEEMS TO BE SOME ACKNOWLEDGMENT THAT IT CAN BE ORAL OR WRITTEN, BUT THEN IT GOES ON IN SUBSECTION C TO SAY, "IN ADDITION TO THE SPECIFIC REQUIREMENTS LISTED UNDER THIS SECTION, EVERY HOME IMPROVEMENT CONTRACT AND ANY PERSON SUBJECT TO LICENSURE UNDER THIS CHAPTER SHALL COMPLY WITH ALL OF THE FOLLOWING:

"ONE, THE WRITING SHALL BE LEGIBLE." THAT DENIES AN ORAL CONTRACT.

"TWO, ANY PRINTED FORM SHALL BE READABLE;

"THREE, BEFORE ANY WORK STARTED, THE

CONTRACTOR SHALL GIVE THE BUYER A COPY OF THE CONTRACT SIGNED AND DATED BY BOTH THE CONTRACTOR AND THE BUYER," WHICH SEEMS TO BELIE THE CONCEPT OF THE EXCHANGE OF E-MAILS AS BEING SOME FORM OF WRITTEN SIGNED AGREEMENTS, AS HAS BEEN ARGUED IN THIS CASE. SO I WON'T GO ON WITH ANY MORE OF THE DETAILS FOR THIS CODE SECTION.

SO NUMBER ONE, I HAVE CONCERNS ABOUT THE NATURE OF THE CONTRACT BETWEEN THE PARTIES;

NUMBER TWO, JUST DEALING WITH AN ISSUE THAT APPEARS TO BE INCIDENTAL TO THIS LITIGATION; THAT IS, WHETHER OR NOT HUMPHREYS & ASSOCIATES, INCORPORATED SHOULD HAVE BEEN, COULD HAVE BEEN, OUGHT TO HAVE BEEN A PARTY TO THIS LAWSUIT, THE EVIDENCE HERE IS HUMPHREYS & ASSOCIATES IS A SUBCHAPTER S CORPORATION. THAT HAS NOT ONLY TAX SIGNIFICANCE, BUT IT HAS OTHER SIGNIFICANCE WITH RESPECT TO COMPENSATION OF EMPLOYEES TO THE CORPORATION, OF WHICH MR. HUMPHREYS IS BOTH AN OFFICER AND AN EMPLOYEE OF THE CORPORATION, AS I UNDERSTAND FROM THE EVIDENCE. WITH AN S CORPORATION, IT SERVES SIMPLY AS A CONDUIT AND PASSTHROUGH SO THE CORPORATION ITSELF PAYS NO TAXES. INSTEAD, ITS INCOME IS PASSED TO ITS EMPLOYEES AND OFFICERS TO THE EXTENT THAT THEY'RE COMPENSATED AND THEY PAY THE TAXES.

SO THE EVIDENCE SHOWS HERE THE PAYMENTS THAT WERE MADE THROUGH HUMPHREYS & ASSOCIATES, INCORPORATED'S BANK ACCOUNT WERE ESSENTIALLY DEBITED AGAINST

MR. HUMPHREYS' COMPENSATION; EFFECTIVELY MAKING THE PAYMENT DIRECTLY FROM MR. HUMPHREYS TO WHETHER IT'S MR. BEREKI OR SPARTAN AT THIS POINT IS OF NO PARTICULAR MOMENT. IN THE COURT'S OPINION, THE COURT FINDS THAT THE HUMPHREYS & ASSOCIATES, INCORPORATED ENTITY IS NOT A NECESSARY PARTY TO THIS LITIGATION OR EVEN AN APPROPRIATE PARTY GIVEN THESE FACTS.

TURNING TO THE CROSS-DEFENDANTS' ARGUMENT OF -- WITH RESPECT TO WHAT THE HUMPHREYS KNEW OR UNDERSTOOD WHEN THE CHECKS STARTED GOING TO THE SPARTAN ASSOCIATES, I THINK THAT THE ARGUMENT PRESUPPOSES A CERTAIN LEVEL OF SOPHISTICATION AND EXPERIENCE THAT I CANNOT AND DO NOT ASCRIBE TO MR. HUMPHREYS. SURE, THEY REMODEL OTHER PROPERTIES. THEY OWN OTHER PROPERTIES. BUT NOTHING IN THE EVIDENCE SUGGESTS THAT THEY ARE KNOWLEDGEABLE ABOUT CONTRACTORS, KNOWLEDGEABLE ABOUT CONTRACTING, KNOWLEDGEABLE ABOUT CONTRACTING IN A SENSE OF BUILDING STRUCTURES. MR. HUMPHREYS' EXPERIENCE DEALING AS A CONSULTANT ON LARGE GOVERNMENT CONTRACTS DID NOT STRIKE ME AS FALLING WITHIN BUILDING CONTRACTS, BUT SOMETHING ELSE. AND, AGAIN, I THINK THAT THEY ARE ENTIRELY DIFFERENT DISCIPLINES, WHICH REQUIRE DIFFERENT LEVELS OF UNDERSTANDING AND EXPERIENCE.

THE PROBLEM FOR THE UNINITIATED IN DEALING WITH BILLING CONTRACTORS IS THE USE OF SUBCONTRACTORS, THE USE OF CORPORATE ENTITIES, SOMETIMES, TO REFLECT

PAYMENTS. I DON'T BLAME -- I DON'T FIND THAT MR. HUMPHREYS AND MRS. HUMPHREYS WERE IN SOME FASHION REQUIRED TO EXPLORE IN ANY PARTICULAR DETAIL WHAT SPARTAN ASSOCIATES, INCORPORATED WAS THAT THEY WERE MAKING PAYMENTS TO UNDER THESE CIRCUMSTANCES.

TURNING TO MY OWN RESEARCH, I FOUND TWO CASES THAT I THINK ARE ANALOGOUS TO OUR CASE AND REQUIRE SOME CONSIDERATION. FIRST CASE IS BALL VERSUS STEADFAST-BLK. THIS IS A 2011 CASE RECORDED AT 196 CAL.APP.4TH 694.

HERE, JUST TO GIVE YOU THE SUMMARY, THE TRIAL COURT IN THIS INSTANCE SUSTAINED WITHOUT LEAVE TO AMEND THE PROPERTY OWNER'S DEMURRER TO A CAUSE OF ACTION FOR CLOSURE -- FOR FORECLOSURE OF A MECHANIC'S LIEN IN AN INDIVIDUAL LICENSED CONTRACTOR'S COMPLAINT. THE COURT FOUND THAT THE CONTRACTOR WAS NEVER LICENSED AS A CONTRACTOR TO DO BUSINESS UNDER THE FICTITIOUS BUSINESS NAME HE USED AND THUS WAS PRECLUDED, AS A MATTER OF LAW, UNDER BUSINESS PROFESSIONS CODE SECTION 7031, SUBDIVISION A FROM PURSUING THIS CAUSE OF ACTION.

AND JUST TO BE CLEAR, WHAT WE HAVE IS AN INDIVIDUAL CONTRACTOR, MR. BALL, WHO WAS DOING BUSINESS UNDER A DBA OF CLARK HEATING AND AIR CONDITIONING. AND AS IT HAPPENED, THIS DBA WAS NOT A CORPORATION; IT WAS JUST A DBA. AND SO WHEN BALL SUED, THE HOMEOWNER SAID, WELL, WAIT, WE HAVE THIS CONTRACT WITH CLARK HEATING AND AIR CONDITIONING AND THIS GUY IS NOT CLARK, WE DON'T

THINK, AND THE TRIAL COURT AGREED.

THE COURT OF APPEAL REVERSED. THE COURT FOUND THAT THE TRIAL COURT HAD CONFUSED THE INDIVIDUAL OWNER TO WHOM THE CONTRACTOR'S LICENSE WAS ISSUED WITH THE NAME UNDER WHICH THE INDIVIDUAL CONDUCTED HIS CONTRACTING BUSINESS; I.E., THE FICTITIOUS BUSINESS NAME. THE CONTRACTOR WAS LICENSED AS A, QUOTE, SOLE OWNER, END QUOTE, AND NOT AS A PARTNERSHIP OR CORPORATE ENTITY PURSUANT TO THE CLASSIFICATION SYSTEM OF B&P CODE SECTION 7065. THE FICTITIOUS BUSINESS NAME HE USED WAS NOT AN ENTITY THAT COULD BE LICENSED; RATHER, IT WAS THE BUSINESS NAME UNDER WHICH THE INDIVIDUAL LICENSEE DID BUSINESS. NOT ONLY WAS THE FICTITIOUS BUSINESS NAME NOT A DISTINCT LEGAL ENTITY, IT WAS NOT AMONG THE CATEGORIES OF INDIVIDUALS OR ENTITIES DEFINED BY THE CONTRACTOR'S STATE LICENSE LAW, B&P CODE SECTION 7000, TO WHOM A CONTRACTOR'S LICENSE MAY ISSUE.

ACCORDINGLY, BECAUSE THE CONTRACTOR WAS A LICENSED CONTRACTOR, HE WAS ENTITLED TO PERFORM CONTRACTING WORK UNDER THE FICTITIOUS BUSINESS NAME. HIS FAILURE TO CONTRACT IN THE EXACT SAME NAME SET FORTH IN HIS LICENSE WAS, AT MOST, GROUNDS FOR DISCIPLINARY ACTION, BUT IT DID NOT BAR HIM FROM RECOVERING FOR WORK PERFORMED UNDER THE CONTRACTS.

SO NOW WE CONTRAST THE BALL OPINION WITH THE FACTS OF THIS CASE. AND I THINK OUR CASE HERE IS

DISTINGUISHABLE. FIRST OF ALL, AND FOREMOST, WE HAVE NO LICENSE IN THE NAME OF MR. BEREKI INDIVIDUALLY; INSTEAD, IT APPEARS HE WAS THE QUALIFYING CORPORATE OFFICER FOR THE LEGAL ENTITY, SPARTAN ASSOCIATES, INCORPORATED. THAT WAS THE ENTITY TO WHICH THE CONTRACTOR'S LICENSE WAS ISSUED, AS OPPOSED TO OUR OTHER CASE. YOU KNOW, HERE, AS A MATTER OF LAW, THE CORPORATE ENTITY WAS ENTITLED TO BE LICENSED, WHICH IT WAS. THIS WILL TAKE US TO MORE CONSIDERATION LATER ON.

SO SECONDLY, I TURN TO THE OTHER CASE, 29 PALMS ENTERPRISES CORPORATION VERSUS BARDOS. THIS IS A 2012 CASE RECORDED AT 210 CAL.APP.4TH STARTING AT PAGE 14, 13. THIS CASE ACTUALLY APPEARS TO BE DIRECTLY ON POINT.

AND JUST TO GIVE YOU THE OVERVIEW, HERE WHAT WE HAVE IS A TRIBAL CORPORATION THAT SUED THE CONTRACTOR TO RECOVER MONEY PAID FOR WORK ON TRIBAL LAND ALLEGING B&P CODE SECTION 7031 17200 AND THAT THE CONTRACTOR WAS UNLICENSED AND THAT ITS PERFORMANCE OF WORK WITHOUT A LICENSE WAS UNFAIR COMPETITION.

HERE THE TRIAL COURT GRANTED THE SUMMARY JUDGMENT FOR THE TRIBAL CORPORATION. IN AFFIRMING THAT SUMMARY JUDGMENT, THE COURT OF APPEAL REJECTED THE CONTRACTOR'S ARGUMENT THAT B&P CODE SECTION 7031 WAS NOT ENFORCEABLE IN A CONTRACT MADE WITH THE TRIBAL ENTITY FOR WORK DONE ON TRIBAL LAND.

ALL RIGHT. WE DON'T HAVE A TRIBAL LAND ISSUE. WE ALL UNDERSTAND THAT, SO I WILL SKIP OVER THE CONSIDERATIONS THE DCA MADE WITH RESPECT TO THE TRIBAL LAND ISSUE AND THE TRIBAL CONTRACT AND INSTEAD TURN TO THE ISSUES THAT ARE GERMANE TO US.

THE COURT HELD THAT THE CONTRACT DID NOT CREATE A FACT ISSUE AS TO WHETHER IT SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF 7031 BECAUSE THERE WAS NOTHING INDICATING THAT THE CONTRACTOR ACTED REASONABLY AND IN GOOD FAITH TO MAINTAIN PROPER LICENSURE. AND THE EVIDENCE REFLECTED THAT THE CONTRACTOR KNEW IT WAS UNLICENSED AND DID NOT ACT PROMPTLY TO OBTAIN ITS LICENSE. ALTHOUGH THE OWNER OF THE UNLICENSED SOLE PROPRIETORSHIP WAS ALSO THE RESPONSIBLE MANAGING OFFICER FOR A CORPORATION THAT HAD BEEN LICENSED, THE OWNER DID NOT HOLD THE CORPORATION'S LICENSES AS AN INDIVIDUAL AND, THEREFORE, COULD NOT PERFORM WORK UNDER THAT LICENSE USING THE NAME OF THE SOLE PROPRIETORSHIP. THE CONTRACTOR COULD NOT RELY ON EQUITABLE ESTOPPEL TO CIRCUMVENT SECTION 7031.

AGAIN, I THINK THAT THE ARGUMENT ADVOCATED HERE IS THAT EITHER SPARTAN WAS THE CONTRACTING PARTY OR, ALTERNATIVELY, THAT MR. BEREKI WAS OPERATING UNDER SPARTAN'S LICENSE. THE SECOND PART OF THAT ARGUMENT IS UNDONE BY THE 29 PALMS CASE, WHICH BASICALLY HOLDS THAT AN INDIVIDUAL, SUCH AS MR. BEREKI, CANNOT RELY -- IF

HE'S CONTRACTING ON HIS OWN, CANNOT RELY ON HIS CORPORATION'S LICENSE TO CONTRACT.

SO WE HAVE TO NOW TURN TO THE ULTIMATE FACTUAL ISSUE THAT THE COURT MUST DECIDE. AND SO THAT REALLY TURNS ON JUST WHO WERE THE CONTRACTING PARTIES TO WHATEVER THIS AGREEMENT WAS, HARKENING BACK TO MY INITIAL DISCUSSION ABOUT THE NECESSARY ELEMENTS FOR A CONTRACT.

CLEARLY, THE HUMPHREYS INTENDED TO ENGAGE SOMEONE TO DO THE WORK ON THEIR SINGLE UNIT IN OR ABOUT APRIL OF 2012. I HAVE BEEN TOLD AND THE EVIDENCE IS A LITTLE UNCLEAR HERE, BUT WHAT I UNDERSTAND IS THAT WHAT HAPPENED IS THAT A SECOND UNIT WAS PURCHASED BY MR. AND MRS. HUMPHREYS APPROXIMATELY TWO TO FOUR MONTHS AFTER THIS APRIL 2012 E-MAIL EXCHANGE OCCURRED. AND THAT WHATEVER WORK IN ROLLING THAT SECOND UNIT INTO THE INITIAL UNIT WERE, THAT WAS ALSO SUBJECT TO WHATEVER THE AGREEMENT WAS BETWEEN THE PARTIES.

AND I HAVE TO SAY, IT WAS AT A CERTAIN LEVEL OF CONCERN THAT -- WHEN I SAY "WHATEVER THE AGREEMENT WAS," IT'S BECAUSE ULTIMATELY IT'S STILL, EVEN TO THIS DAY AFTER ALL THE EVIDENCE, STILL NOT CLEAR WHAT THE AGREEMENT WAS. JUST A LESSON IN OR COMMENT ON THE FACT THAT THESE TYPES OF CONTRACTS, PARTICULARLY WE'RE DEALING WITH TENS OF THOUSANDS, ULTIMATELY HUNDREDS OF THOUSANDS OF DOLLARS, NEED TO BE NAILED DOWN IN DETAIL,

IN WRITING. THAT WRITING SUBSCRIBED TO WITH THE SIGNATURES OF THE PARTIES THAT ARE CONTRACTING.

WITH RESPECT TO THE SECOND PROPERTY, I FIND NO WRITING THAT ACTUALLY DETAILS WHAT WAS TO BE DONE ON THE SECOND PROPERTY OR HOW IT WAS TO BE INCLUDED IN THE INITIAL CONTRACT. I SUPPOSE IT COULD BE CONSIDERED AS SOME FORM OF A CHANGE ORDER THAT THE CODE EVEN REQUIRES CHANGE ORDERS BE IN WRITING AND BE ATTACHED TO THE ORIGINAL CONTRACT.

WHAT I DO FIND HERE IS THAT NOTHING IN THE APRIL 2012 E-MAILS OR THE MEETINGS AND DISCUSSIONS REVEALS SPARTAN AS THE CONTRACTING PARTY WITH THE HUMPHREYS. ALL OF THE LANGUAGE RELATES TO MR. BEREKI INDIVIDUALLY.

MY CONCERN HERE -- AND I AM SORRY IF THIS SOUNDS POLITICAL, BUT I WILL BORROW FROM SOMETHING THAT THEN-SPEAKER OF THE HOUSE NANCY PELOSI SAID WITH RESPECT TO THE ACA, THE AFFORDABLE CARE ACT. WE NEED TO PASS IT SO YOU CAN FIND OUT WHAT'S INSIDE OF IT. HERE WE HAVE A SITUATION WHERE, IN HINDSIGHT, IT -- THE CONTRACT, IN SOME FORM OR FASHION, NEEDED TO BE SIGNED BEFORE WE COULD FIND OUT WHO THE CONTRACTING PARTIES WERE. THAT'S SILLY.

THE ULTIMATE FINDING HERE IS THAT, AS WE SEE, ALL THE PAYMENTS INITIALLY OVER SEVERAL MONTHS WERE MADE TO MR. BEREKI INDIVIDUALLY. MR. BEREKI'S ACCOUNTS

PERSONALLY PAID FOR THE WORK ONCE HE WAS COMPENSATED BY THE HUMPHREYS. THE PAYMENTS TO SPARTAN SHOW UP SOME MONTHS LATER AND THEY DO NOT REFLECT ANY SORT OF RETROSPECTIVE MODIFICATION OF THE INITIAL AGREEMENT OR A SUBSTITUTION OF SPARTAN AS THE CONTRACTOR HERE. AGAIN, THIS IS THE PROBLEM WITH TRYING TO DO THINGS ON AN AD HOC BASIS.

THE COURT NOW FINDS THAT THIS CONTRACT WAS BETWEEN MR. HUMPHREYS AND MR. BEREKI INDIVIDUALLY. THERE WAS NO CONTRACT WITH SPARTAN, NOR WAS THERE ANY MECHANISM OR FORM WITHIN WHICH THE HUMPHREYS COULD UNDERSTAND THAT SPARTAN WAS THE ACTUAL CONTRACTING PARTY AS IS ASSERTED BY MR. BEREKI. GIVEN THOSE CIRCUMSTANCES, SINCE WE KNOW MR. BEREKI DID NOT AND DOES NOT POSSESS A CONTRACTOR'S LICENSE -- AND, ULTIMATELY, I WOULD JUST TELL YOU LAWYERS TO TAKE A LOOK AT A CASE ENTITLED MW ERECTORS VERSUS NIEDERHAUSER. IT'S A CASE OF 2005. I DON'T HAVE THE CITE IN FRONT OF ME AT THE MOMENT. I THINK IT'S REPORTED AT 34 CAL. 4.

THE REASON I CITE TO THE CASE, NUMBER ONE, IT'S A CALIFORNIA SUPREME COURT CASE. NUMBER TWO, IT IS CONSIDERED BY MANY TO BE THE BELLWETHER CASE ON THE ISSUE OF CONTRACTOR RESPONSIBILITY OR UNLICENSED CONTRACTOR RESPONSIBILITY. MW ERECTORS DID NOT HAVE A LICENSE AT THE TIME THAT IT WAS TO DO THE HEAVY STEEL CONSTRUCTION FOR A HOTEL OVER BY DISNEYLAND. SPENT

$2 MILLION PUTTING UP HEAVY STEEL. THERE WAS A DISPUTE BETWEEN THE GENERAL CONTRACTOR OR THE CONTRACTING PARTY, NIEDERHAUSER, AND MW ERECTORS, SO NIEDERHAUSER ELECTED NOT TO PAY THE $2 MILLION TO MW ERECTORS. IT TURNED OUT THAT MW ERECTORS LEARNED IN HINDSIGHT THAT THEY DIDN'T HAVE THEIR LICENSE AT THE TIME AND HAD LOST ITS LICENSE OR DROPPED THEIR LICENSE BY EXPIRATION OF TIME, SO THEY WENT AND GOT THE LICENSE. I DON'T THINK THE WORK HAD BEEN ENTIRELY COMPLETED AT THE TIME THAT IT DID RE-OBTAIN THE LICENSE.

THE SUPREME COURT IN REVERSING THE COURT OF APPEAL ON THIS ISSUE FOUND THAT THE CONTRACTOR'S LICENSE LAW IS DRACONIAN IN ITS EFFECT, BUT THAT'S THE INTENT OF THE LEGISLATURE. THE LEGISLATURE EXPECTS CONTRACTORS TO BE LICENSED AT ALL TIMES DURING THE PERFORMANCE OF WORK ON A PROJECT, AND IN FAILING TO BE SO LICENSED AT ANY POINT IN TIME, SUBJECT TO THE FORFEITURE.

AND SO IN MY OPINION, THE FORFEITURE IS REQUIRED HERE, AND THAT IS DISGORGEMENT. AND I KNOW MR. BISSELL CITED A CASE. I WOULD CITE TO YOU ALATRISTE VERSUS CESAR'S EXTERIOR DESIGNS, INC. THIS IS A CASE AT 183 CAL.APP.4 656, WHICH STANDS FOR THE PROPOSITION UNDER THE STATUTE AUTHORIZING RECOVERY OF ALL COMPENSATION PAID TO AN UNLICENSED CONTRACTOR. THE UNLICENSED CONTRACTOR WAS REQUIRED TO RETURN ALL COMPENSATION RECEIVED WITHOUT REDUCTIONS OR OFFSETS FOR

THE VALUE OF MATERIALS USED IN THE PROJECT.

THERE ARE PLENTY OF OTHER CASES IN THIS PARTICULAR AREA ALL SAYING ROUGHLY THE SAME THING, WHETHER IT COMES TO PAYMENTS FOR MATERIALS OR PAYMENTS TO SUBCONTRACTORS. AS INDICATED BY EXHIBIT 32, THE DISGORGEMENT AMOUNT IS THE $848,000.

THAT, I THINK, TAKES CARE OF THE CROSS-COMPLAINT, THE FIRST CAUSE OF ACTION. NOW, I INVITE COUNSEL TO MEET TOGETHER AND SEE WHERE WE GO FROM HERE.

MR. RUSSO: THANK YOU, YOUR HONOR.

THE COURT: COME BACK AND LET ME KNOW IF YOU CAN DO THAT IN THE NEXT 20 MINUTES. I WOULD APPRECIATE THAT.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: OKAY. THANK YOU, YOUR HONOR.

THE COURT: OKAY.

MR. RUSSO: BY THE WAY, I USED THAT MW ERECTORS CASE RIGHT AFTER IT WAS DECIDED IN ANOTHER CASE WITH JUDGE JOHNSTON FOR DISGORGEMENT, AND I REMEMBER IT BEING THAT CASE AT THE TIME.

THE COURT: IT'S STILL CITED IN AT LEAST ONE OF THE TWO CASES THAT I JUST READ FROM.

MR. RUSSO: YEAH.

THE COURT: I WAS RELATING THE STORY TO ONE OF OUR OUT-OF-COUNTY ASSIGNED JUDGES YESTERDAY IN THE LUNCH ROOM TO WHICH SHE SAID THANK YOU. SHE HAD ALSO USED

THAT CASE ON A NUMBER OF OCCASIONS.

MR. RUSSO: MINE WAS AFFIRMED ALSO IN THIS COURTROOM.

THE COURT: PARDON ME?

MR. RUSSO: THAT ONE WENT UP ON APPEAL AND IT WAS AFFIRMED ON DISGORGEMENT, BUT I REPRESENTED THE PERSON WANTING THE DISGORGEMENT AT THE TIME.

THE COURT: I UNDERSTAND.

(RECESS.)

THE COURT: ALL RIGHT. WHAT'S THE PLAN?

MR. RUSSO: WELL, WE'RE IN MUTUAL AGREEMENT THAT THE REMAINING CLAIMS SHOULD BE STAYED AS THIS ONE PRETTY MUCH CUTS THE LEGS OUT FROM UNDERNEATH EVERYTHING. THE QUESTION WE HAVE, AND I DON'T KNOW THE ANSWER, BUT WE'RE HOPING THAT MAYBE YOU DO, IS, IS THERE A WAY TO HAVE AN ORDER STAY IN THE REMAINING CLAIMS AND HAVE SOME SORT OF JUDGMENT BE ENTERED ON WHAT WE HAVE SO FAR SO THAT COULD POSSIBLY BE TAKEN UP ON APPEAL AT THIS POINT?

THE COURT: I THINK YOU'RE GOING TO END UP HAVING TO DO IT ALL OR NOTHING.

MR. BISSELL: IT WOULD BE SIMILAR TO I THINK IT'S CCP 637, WHICH ALLOWS FOR STAYING OF THE TRIAL OF THE DEFENSE PENDING THE ENTRY OF FINAL JUDGMENT ON OTHER CAUSES OF ACTION. THERE IS CAUSES OF ACTION, BUT THE THINKING IS IT'S JUST SORT OF THE OTHER SIDE OF THE COIN. TO THINK -- OUR THINKING IS THAT WE COULD SPEND

THE NEXT THREE DAYS PUTTING ON EVIDENCE OF DAMAGES THAT AREN'T GOING TO AMOUNT TO THE AMOUNT OF DISGORGEMENT. SO THERE'S REALLY NO POINT OF THAT, BUT THOSE ARE GOOD CAUSES OF ACTION.

NOW, IF THE COURT'S JUDGMENT ON THE FIRST CAUSE OF ACTION IS TAKEN UP ON APPEAL, AND SOMEHOW I DON'T BELIEVE IT WOULD BE, BUT IF IT HAPPENED TO BE OVERTURNED, WE DON'T WANT TO HAVE TO COME BACK AND BE LIMITED TO ONLY TRYING THAT ONE CAUSE OF ACTION, HAVING DISMISSED WHAT ARE ALSO, WE BELIEVE, GOOD MERITORIOUS CAUSES OF ACTION. BUT AS WE SIT HERE TODAY, IT JUST MAKES NO SENSE TO GO FORWARD AT THIS TIME ON ANY OF THOSE CAUSES OF ACTION.

MR. RUSSO: FUNDAMENTALLY, YOUR FINDINGS WOULD ALSO BE THE DEFENSE TO THE PLAINTIFFS' CLAIM IN ITS COMPLAINT. BECAUSE YOU FOUND THAT BEREKI WAS THE CONTRACTOR, HE'S UNLICENSED, AND, THEREFORE, THE GOODS AND MATERIALS SUPPLIED BY SPARTAN, WHICH IS THE CLAIM, WE LOSE BASED ON THAT FINDING. BUT WE HAVEN'T TRIED THAT CAUSE OF ACTION. THAT'S ESSENTIALLY WHAT WE GET. WE'RE IN TOTAL AGREEMENT THAT IT DOES NOT MAKE SENSE TO PROCEED.

MR. BISSELL: AND IT DOESN'T MAKE SENSE TO DISMISS PREMATURELY WHILE THERE IS STILL ANY UNCERTAINTY AS TO THE FINALITY OF THE COURT'S RULING IN THE FIRST CAUSE OF ACTION.

THE COURT: WELL, I'M NOT SURE THAT YOUR APPELLATE PRACTICE IS GOING TO BE SUSCEPTIBLE IN THAT KIND OF PROCEDURE. MY CONCERN IS WHAT THE COURT OF APPEAL EXPECTS IS BASICALLY A JUDGMENT ON ALL OF THE ISSUES. IF THERE'S SOME MECHANISM; I.E., A STAY, I'D LIKE TO KNOW WHAT THE AUTHORITY IS FOR THAT. I AM GOING TO HAVE TO LEAVE THAT TO YOU, BUT IN MY OWN APPELLATE EXPERIENCE, I HAVE, IN ONE CASE, HAD A TRIAL WHERE THE LEAD PLAINTIFF WAS BIFURCATED OUT, CASE TRIED, I LOST. FILED A NOTICE OF APPEAL. MEANWHILE, WE HAD TO COME BACK FOR A SECOND BITE OF THE APPLE WITH RESPECT TO THE BALANCE OF THE CLASS. AND WHAT I DID IS I STIPULATED A JUDGMENT IN FAVOR OF THE CLASS AND AGAINST MY CLIENT, SUBJECT TO REVIEW ON APPEAL OF BOTH HALVES OF THIS CASE. AND THE COURT OF APPEAL, IN THAT PARTICULAR CASE, SUBSCRIBED TO THE APPROACH AND SAID, NO, THIS WAS AN ACCEPTABLE PROCESS. BUT WE HAVE RESOLVED THROUGH THAT PROCESS BOTH THE LEAD PLAINTIFFS' CLAIMS AND THE CLASS CLAIMS. SO EVERYTHING WAS THERE READY FOR THE COURT OF APPEAL TO DECIDE. ULTIMATELY, THAT CASE WENT TO THE STATE SUPREME COURT.

YOU GUYS WANT TO CHECK -- DO MORE RESEARCH THIS AFTERNOON AND COME BACK AND TELL ME IN THE MORNING?

MR. RUSSO: I AM ASSUMING WE COULD CRAFT SOME SORT OF STIPULATION THAT ULTIMATELY --

THE COURT: WHAT YOU SAY MAKES PERFECT SENSE.

MR. RUSSO: MAKE FINDINGS SUCH THAT IT IS THAT YOU FOUND FOR THE AFFIRMATIVE DEFENSE ON THE COMPLAINT ALSO.

MR. BISSELL: WELL, IF I UNDERSTAND YOUR HONOR CORRECTLY, I THINK THE CONCERN IS THAT THE COURT OF APPEALS IS NOT GOING TO BE INTERESTED IN ANYTHING SHORT OF A FINAL JUDGMENT ON THIS, AND THE FINAL JUDGMENT HAS TO INCLUDE ALL CAUSES OF ACTION. IS THAT CORRECT?

THE COURT: PRECISELY. AND, AGAIN, YOU KNOW, I AM ALL FOR SAVING YOUR CLIENTS ON BOTH SIDES AS MUCH MONEY AS POSSIBLE.

MR. BISSELL: I'M NOT SURE A STIPULATION ON OUR PART, EVEN IF -- IT'S GOING TO DO IT. BECAUSE WE WOULD CERTAINLY STIPULATE --

THE COURT: I GUESS THE QUESTION IS WHAT'S THE WORST THAT COULD HAPPEN. IT GOES TO THE DCA, THEY GO WE'RE NOT GOING TO ACCEPT THE IDEA OF THE BALANCE OF A CASE BEING STAYED, SEND IT BACK TO COMPLETE THE CASE AND THEN WE WILL REVIEW IT ON APPEAL.

MR. BISSELL: YEAH.

THE COURT: FINE. IT COMES BACK IN PROBABLY NINE MONTHS TO A YEAR, AND WE GO ON AND TRY THE BALANCE OF THE CASE. I SUPPOSE THAT'S ONE POSSIBILITY. ON THE OTHER HAND, OF COURSE, THAT SUBJECTS ALL OF US TO SOME CRITICISM FROM OUR FRIENDS ACROSS THE STREET AT THE DCA.

MR. BISSELL: I DON'T WANT TO DO THAT.

THE COURT: WELL, I WOULD LIKE TO THINK THAT THEY

WOULD APPRECIATE THE CONCEPT OF NOT CONSUMING A LOT OF EXTRA COURTROOM TIME THAT COULD BE PUT TO OTHER PURPOSES; NOT CONSUMING ANY MORE OF YOUR CLIENT'S MONEY I GUESS IS THE ULTIMATE ISSUE THAT RESOLVES THE CASE. I DON'T HAVE A GOOD SENSE AS TO WHAT A PANEL OF THE DCA WOULD DO OVER THIS.

MR. BISSELL: FRANKLY, YOUR HONOR, I'M NOT OVERLY CONCERNED ABOUT THE PROSPECT OF APPEAL. I BELIEVE THAT THE COURT'S STATEMENT, THE DECISION IS SOUND. AND I HAVE SPOKEN TO MY CLIENTS ABOUT THAT AND WE TALKED ABOUT THE RISK, YOU KNOW, IF YOU DO DISMISS, WHAT ARE THE RISKS? WE HAVE AGREED THAT THE RISK IS MINIMAL. IF NECESSARY, WE WILL DISMISS. WE WOULD JUST PREFER NOT TO.

THE COURT: ALL RIGHT. LET'S ALL BE PRAGMATIC LAWYERS AROUND HERE. AND PRAGMATISM CALLS FOR TRYING TO KEEP THIS AS INEXPENSIVE AS POSSIBLE. TO DO ANOTHER SEVERAL DAYS OF TRIAL, FOR PARTICULARLY NO GOOD REASON, SEEMS TO ME TO BE THROWING IN GOOD MONEY AFTER BAD AT THIS POINT. IT MAY BE THAT THE DCA WILL TURN IT RIGHT AROUND, AS I SAID. IT MAY BE THAT THEY WILL AFFIRM AND THAT WILL BE EFFECTIVELY THE END OF IT.

I LIKE THE IDEA. MAYBE YOU FOLKS, INSTEAD OF COMING BACK TOMORROW, COULD WORK ON SOMETHING OVER THE NOON HOUR AND SEE WHAT YOU PUT TOGETHER.

MR. RUSSO: I AM THINKING ALONG THE LINES OF AN

OFFER OF PROOF ON THE PLAINTIFFS' CLAIMS AND THEN YOU FIND FOR THE DEFENSE ON THAT SO WE WOULD HAVE EFFECTIVELY LAID THAT OUT.

THE COURT: WELL, ON THE PLAINTIFFS' CLAIMS, YEAH, IT'S GOING TO BE A LACK OF STANDING --

MR. RUSSO: SURE.

THE COURT: -- AND THE 7031 ISSUE, THE FACTUAL FINDING THAT SPARTAN WAS NOT THE CONTRACTING PARTY AND HAS NO STANDING IN AND OF ITSELF.

MR. RUSSO: YES, THAT'S WHERE I WAS GOING.

THE COURT: ON THE DEFENSE CROSS-COMPLAINANTS' SIDE, THERE ARE OTHER REMAINING ISSUES WITH RESPECT TO THE TERMINATIONS THAT THE CROSS-COMPLAINANT MAY WISH OR MAY NOT WISH TO HAVE ADJUDICATED AT THIS POINT.

MR. BISSELL: IT'S CLEARLY EXPEDIENCY AT THIS POINT. WE HAVE NOTHING TO GAIN BY GOING FORWARD WITH THE CROSS-COMPLAINT. IT'S JUST A MATTER OF BEING CAUTIOUS AND NOT LETTING GOOD CAUSES OF ACTION GO BY THE BOARD IF -- UNTIL THEY BECOME NECESSARY.

THE COURT: EXCUSE ME FOR A SECOND. I HAVE TO GO. IF YOU WOULDN'T MIND COMING BACK AT 1:45 TO FILL ME IN ON WHERE YOU'RE GOING. MAYBE WE WILL GO ON THE RECORD AT THAT POINT IN TIME. MY APOLOGIES.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: THE TRAIN IS LEAVING THE STATION AT THE

MOMENT.

(RECESS.)

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SANTA ANA, CALIFORNIA; MARCH 28, 2017

*****

AFTERNOON SESSION

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT.)

THE COURT: ALL RIGHT. DO WE HAVE AN ANSWER TO THE GORDIAN KNOT PROBLEM?

MR. BISSELL: WE MIGHT, YOUR HONOR. WE HAVE COME UP WITH SOMETHING THAT'S ACCEPTABLE TO BOTH OF US.

THE COURT: THAT'S HALF THE BATTLE.

MR. BISSELL: IT'S ACCEPTABLE TO THE TWO OF US, BUT THAT DOESN'T NECESSARILY MEAN IT'S GOING TO FLY. WE WILL RUN IT BY YOU.

MR. RUSSO: WE GOT HOUSEKEEPING ON THE COMPLAINT ITSELF, AND WHAT I WOULD LIKE TO DO IS THEN MAKE AN OFFER OF PROOF OF WHAT THE EVIDENCE WOULD BE. THEY ACCEPT THE OFFER OF PROOF, BUT YOU RULE BASED ON THE DEFENSES OF THE LICENSURE AND STANDING AGAINST THE PLAINTIFF ON THAT.

THE COURT: OKAY.

MR. RUSSO: THAT WAY WE HAVE A JUDGMENT ON A COMPLAINT FOR THE SAME REASONS.

THE COURT: OKAY.

MR. RUSSO: AND THEN WE HAVE THE OTHER HOUSEKEEPING.

MR. BISSELL: AS TO THE REMAINING CAUSES OF ACTION ON THE FIRST AMENDED CROSS-COMPLAINT, EVERYBODY IS IN AGREEMENT THAT WE HANDLE IT THIS WAY:

THOSE CAUSES OF ACTION WOULD BE DISMISSED WITHOUT PREJUDICE.

IF JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMES FINAL, THE DISMISSAL WITHOUT PREJUDICE WILL CONVERT TO DISMISSAL WITH PREJUDICE.

PENDING JUDGMENT BECOMING FINAL ON THE FIRST CAUSE OF ACTION, THE STATUTE OF LIMITATIONS ON THE RE-FILING OF THE DISMISSED CAUSES OF ACTION IS WAIVED.

IF THE NEW -- IF A NEW ACTION IS FILED ON THE DISMISSED CAUSES OF ACTION, DISCOVERY IS DEEMED COMPLETED AND WILL NOT BE RE-OPENED.

THE NEWLY FILED CASE WILL BE CONSOLIDATED WITH THE REMANDED CASE FOR TRIAL.

THE COURT: I THINK IT MAKES SENSE. DO YOU?

MR. BISSELL: I THINK IT COVERS IT.

THE COURT: I THINK THAT KEEPS THE DOOR FROM BEING SLAMMED IN YOUR FACE SHOULD IT FOR SOME REASON COME BACK, ON ONE HAND. ON THE OTHER HAND, IT SHOULD COME BACK PER STATUS QUO.

MR. BISSELL: THAT WAS THE INTENT.

THE COURT: AS TO -- TO BE SURE OF WHERE I AM GOING, I HAVE PULLED OUT THE PLAINTIFF'S COMPLAINT, THE COMMON COUNT, AND SERVICES RENDERED, AND COMMON ACCOUNT

OPEN BOOK ACCOUNT. AND I HAVE ALSO IN HAND THE FIRST AMENDED CROSS-COMPLAINT FOR DAMAGES FOR NEGLIGENCE, FRAUD, ALTER EGO, PENALTY, ATTORNEY'S FEES, DISCOURAGEMENT AND RECOVERY AGAINST CONTRACTOR'S LICENSE BOND. I PRESUME YOU TWO WANT PART OF THAT RECOVERY FROM CONTRACTOR'S LICENSE BOND.

MR. BISSELL: WE WANT TO SAY THAT, YOUR HONOR.

THE COURT: OKAY. IS THAT NOT SOMETHING WE SHOULD DEAL WITH NOW AS OPPOSED TO LATER, OR IS THAT AN ISSUE THAT MIGHT BE SUBSUMED BY THIS DETERMINATION OF THE LICENSE?

MR. BISSELL: HERE IS MY THINKING, YOUR HONOR. THE CONTRACTOR'S LICENSE BONDS WERE ISSUED TO SPARTAN CONSTRUCTION.

THE COURT: WHICH I DETERMINED WAS NOT THE CONTRACTING PARTY.

MR. BISSELL: WAS NOT THE CONTRACTOR. NOW SPARTAN DID PERFORM WORK ON THE JOB. AND IF NECESSARY, WE'RE PREPARED TO PUT ON EVIDENCE THAT SPARTAN CONSTRUCTION, ALONG WITH MR. BEREKI, VIOLATED PROVISIONS OF THE CONTRACTOR'S LICENSE LOG, WHICH WOULD MAKE THOSE BONDS LIABLE. AT THIS POINT, WE'RE PREPARED TO DEFER THAT ALONG WITH THE OTHER CAUSES OF ACTION.

THE COURT: ALL RIGHT.

MR. RUSSO: IT'S KIND OF LIKE I FORGOT THEY EXISTED IN THE BEGINNING. IT'S ANOTHER ISSUE.

THE COURT: WELL, WELCOME TO THE BAR EXAM.

MR. RUSSO: YOUR HONOR, SO I THINK THE FIRST STEP WOULD BE THE OFFER OF PROOF.

THE COURT: PHASE ONE.

MR. RUSSO: YES, YOUR HONOR.

THE COURT: THE RUSSO PRESENTATION OFFER OF PROOF. SIR, IF YOU PLEASE.

MR. RUSSO: EXCUSE ME, YOUR HONOR.

THE COURT: IF YOU PLEASE.

MR. RUSSO: IF IT PLEASE THE COURT.

YOUR HONOR, THE PLAINTIFF, SPARTAN ASSOCIATES, WOULD MAKE AN OFFER OF PROOF THAT, IF CALLED, ADAM BEREKI WOULD BE THE WITNESS, AND THE TESTIMONY WOULD BE THAT SPARTAN ASSOCIATES HAD RENDERED GOODS AND SERVICES TO THE HUMPHREYS, THE DEFENDANTS, AT THE FAIR MARKET VALUE FOR THE SERVICES AND GOODS OF $82,821.53 TO BE BACKED UP BY INVOICES AND TESTIMONY ABOUT THE REASONABLE VALUE OF THOSE SERVICES. THAT WOULD BE ON THE FIRST CAUSE OF ACTION, QUANTUM MERUIT.

AND THEN FOR THE SECOND CAUSE OF ACTION, GO HAND IN HAND THAT IT WAS AN OPEN BOOK ACCOUNT. ACCOUNTING WAS RENDERED TO THE HUMPHREYS AS DEFENDANTS THAT -- THEY WERE GIVEN THE ACCOUNTINGS AND THE SUM WAS $82,821.53 THAT WAS STILL DUE. IT WOULD BE CLAIMED ON THE SECOND CAUSE OF ACTION.

THE COURT: AND THOSE CLAIMS, I UNDERSTAND, ARE

BASED UPON THE VIEW OF PLAINTIFF SPARTAN THAT IT WAS THE GENERAL CONTRACTOR ON THE PROJECT?

MR. RUSSO: THAT'S CORRECT, THAT SPARTAN ASSOCIATES WAS THE GENERAL CONTRACTOR, AND THAT IT WAS DULY LICENSED AT ALL TIMES TO PERFORM IN THAT WAY.

THE COURT: OKAY. AND SO BASED ON THAT OFFER OF PROOF, AS WE HAVE JUST RECENTLY DISCUSSED, I WOULD FIND THAT SPARTAN DOES NOT HAVE STANDING, AS I DETERMINED EARLIER TODAY THAT MR. BEREKI WAS THE PURPORTED GENERAL CONTRACTOR ON THE CONTRACT. SPARTAN MAY HAVE BEEN APPARENTLY SUBSTITUTED, BUT IT IS CERTAINLY NOT WITH THE PERMISSION OR AGREEMENT OF MR. AND MRS. HUMPHREYS.

SO BASED ON THAT, I WOULD INDICATE JUDGMENT FOR DEFENDANT ON THE COMPLAINT. DEFENDANTS, PLURAL ON THE COMPLAINT.

THEN MR. BISSELL, I GUESS WE NEED YOUR RECORD WITH RESPECT TO WHAT YOU WANT TO DO OFFICIALLY WITH RESPECT TO THE BALANCE OF THE CAUSES OF ACTION.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE PARTIES HAVE DISCUSSED AND HAVE AGREED AND ARE WILLING TO STIPULATE TO HANDLING THE REMAINING CAUSES OF ACTION ON THE FIRST AMENDED CROSS-COMPLAINT AS FOLLOWS:

THE MANY CAUSES OF ACTION IN THE ENTIRETY WILL BE DISMISSED -- ARE BEING DISMISSED WITHOUT PREJUDICE. IF JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMES FINAL,

THE DISMISSAL WITHOUT PREJUDICE WILL BE CONVERTED TO DISMISSAL WITH PREJUDICE. PENDING JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMING FINAL, THE STATUTE OF LIMITATIONS ON THE RE-FILING OF AN ACTION ON THE DISMISSED CAUSES OF ACTION IS WAIVED.

THE COURT: OR TOLLED?

MR. BISSELL: WELL, ACTUALLY, WE DISCUSSED THAT. I THINK -- I DON'T KNOW THAT TOLLING HELPS BECAUSE, AT THIS POINT IN TIME, ALL OF THE STATUTES WOULD HAVE RUN. WE COULDN'T -- I THINK TOLLING STOPS IT AS OF NOW, AND NOW WOULD BE TOO LATE TO RE-FILE.

THE COURT: UNDERSTOOD. OKAY.

MR. BISSELL: IF A NEW ACTION IS FILED ON THE DISMISSED CAUSES OF ACTION, DISCOVERY IS DEEMED COMPLETED AND WILL NOT BE RE-OPENED. THE NEWLY FILED CASE WILL BE CONSOLIDATED WITH THE REMANDED CASE FOR TRIAL. AND THAT'S -- THAT IS THE STIPULATION.

THE COURT: DOES THAT COMPORT WITH YOUR UNDERSTANDING, MR. RUSSO?

MR. RUSSO: YES, YOUR HONOR. ON BEHALF OF SPARTAN ASSOCIATES, SO STIPULATED.

THE COURT: MR. BEREKI, HOW ABOUT YOU?

MR. BEREKI: SO STIPULATED.

THE COURT: THE COURT ACCEPTS THE STIPULATION. PURSUANT THEN TO MR. BISSELL'S MOTION, THE COURT WILL ORDER THE REMAINING CAUSES OF ACTION, NEGLIGENCE, FRAUD,

ALTER EGO, PENALTY, ATTORNEY'S FEES, AND RECOVERY AGAINST THE CONTRACTOR'S LICENSE BOND TO BE DISMISSED WITHOUT PREJUDICE. THE JUDGMENT WILL BE ON THE SOLE REMAINING CAUSE OF ACTION FOR DISCOURAGEMENT; CORRECT?

MR. BISSELL: CORRECT.

THE COURT: AND THE COURT UNDERSTANDS AND ADOPTS THE CONDITIONAL WAIVER OF THE STATUTE OF LIMITATIONS, THAT CONDITION BEING WHETHER OR NOT THE -- TRULY THE DCA RETURNS THIS CASE FOR RE-TRIAL ON A REVERSAL OF THE COURT'S DETERMINATION.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: GOOD WORK.

MR. RUSSO: THANK YOU VERY MUCH, YOUR HONOR.

THE COURT: SO MR. BISSELL, YOU'RE GOING TO PREPARE THE PROPOSED JUDGMENT. CIRCULATED, OF COURSE, TO MR. RUSSO AND MR. BEREKI.

MR. BISSELL: WILL DO.

THE COURT: SEND IT OVER HERE. I THINK THERE'S AN APPROPRIATE PERIOD OF TIME WE CAN HOLD IT JUST TO MAKE SURE IF THERE'S SOME OBJECTION, THAT THAT OBJECTION CAN BE MADE AND FILED.

AND WE WILL TAKE IT FROM THERE.

MR. BISSELL: I WILL DO SO. THANK YOU. THANK YOU FOR YOUR ATTENTION TO THIS CASE.

THE COURT: I JUST COMMENT -- I DON'T OFTEN SAY THIS. ONE OF THE INTERESTING THINGS USUALLY IN A TRIAL

OF THIS NATURE, THERE'S A, QUOTE, BAD GUY AND A GOOD GUY. I WOULD SAY ALL THREE OF YOU ARE VERY NICE PEOPLE. I'M SORRY IT CAME TO THIS FOR A LOT OF REASONS. AND SO THE JUDGMENT, YOU KNOW, IS WHAT IT IS. IT'S NOT A REFLECTION ON YOUR HUMANITY OR PERSONHOOD. I WISH YOU WELL.

MR. BISSELL: UNDERSTOOD, YOUR HONOR.

THE COURT: ALL OF YOU.

MR. BISSELL: THANK YOU, YOUR HONOR.

MR. HUMPHREYS: THANK YOU.

THE COURT: TAKE CARE. OH, CAN WE STIPULATE TO THE EXHIBITS BEING RETURNED TO YOU ALL FOR SAFEKEEPING?

MR. RUSSO: I THOUGHT THE COURT WANTED TO KEEP THE EXHIBITS.

THE COURT: GUESS AGAIN.

MR. RUSSO: YES, YOUR HONOR.

MR. BISSELL: YES, YOUR HONOR. OFF THE RECORD.

(OFF THE RECORD.)

//

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )

) SS

COUNTY OF ORANGE )

I, KELVIN K. DO, CSR #13803, COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 11, 2017.

Certified Copy; Adam Bereki

Kelvin Khuong Do

Digitally signed by Kelvin Khuong Do
DN: cn=Kelvin Khuong Do, o, ou=Court Reporter, email=kelvinkdo@gmail.com, c=US
Date: 2017.12.12 17:49:20 -08'00'

KELVIN K. DO, CSR #13803

OFFICIAL COURT REPORTER

# Exhibit 2

# City of Newport Beach - Building Division
## Inspection Card

3300 Newport Blvd
Inspection RequestsTelephone (949) 644-3255

Date : 11-14-2012

Permit # : X2012-2116
Job Address: 436 VIA LIDO NORD NB
Owner : HUMPHREYS GARY
Contractor : SPARTAN ASSOCIATES INC THE
Description : 800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE

Plan Check # : 1552-2012
MFP / ELEC
MECH / PLUM

| TYPE | ITEM# | DESCRIPTION | DATE | SIGNATURE |
|---|---|---|---|---|
| COMB | 2200 | Pre-Grade Meeting | | |
| COMB | 2210 | Soil Pipe | | |
| COMB | 2220 | Sewer | | |
| COMB | 2230 | Water Pipe Underground | | |
| COMB | 2240 | Gas Pipe Underground | | |
| COMB | 2250 | Underslab/Floor Mechanical | | |
| COMB | 2260 | Ufer Ground | | |
| COMB | 2270 | Underground Electrical | | |
| COMB | 2280 | Rough Grade Approval | | |
| COMB | 2290 | WQ-Best Management Practices | | |
| COMB | 2300 | Erection Pads | | |
| COMB | 2310 | Foundation/ Setbacks/Footings | | |
| COMB | 2330 | Slab on Grade | | |
| COMB | 2340 | Area Drains | | |
| | | DO NOT COVER/POUR CONCRETE UNTIL ABOVE IS SIGNED OFF | | |
| | | ROUGH | | |
| COMB | 2360 | Masonry Pre-Grout/Wall Steel | | |
| COMB | 2370 | Slab or Deck | | |
| COMB | 2380 | Rough Plumbing | | |
| COMB | 2390 | Gas Pipe | | |
| COMB | 2400 | Rough HVAC | | |
| COMB | 2410 | Hood | | |
| COMB | 2420 | Fireplace Throat | | |
| COMB | 2430 | Under Floor Plumbing | | |
| COMB | 2440 | Under Floor Electrical | | |
| COMB | 2450 | Rough Electric Residential | | |
| COMB | 2455 | Rough Circuit Walls - Commercial | | |
| COMB | 2475 | Rough Wiring Ceilings - Commercial | | |
| COMB | 2480 | Rough Electrical Service | | |
| COMB | 2490 | Floor Framing & Sheathing | | |
| COMB | 2500 | Rough Wall Framing - Commercial | | |
| COMB | 2510 | Roof Framing, Sheathing & Building Ht | | |
| COMB | 3005 | Exterior Shear & Hold Downs | | |
| COMB | 2520 | COMPLETE FRAMING | | |
| | | DO NOT COVER WORK UNTIL ABOVE SIGNED OFF | | |
| | | INTERIOR & EXTERIOR | | |
| COMB | 2540 | Insulation/Densglass | | |
| COMB | 2550 | Drywall | | |
| COMB | 2560 | Suspended Ceiling | | |
| COMB | 2570 | Shower Lath | | |
| COMB | 2580 | Exterior Lath | | |
| COMB | 2590 | Plaster-Scratch | | |
| COMB | 2530 | Other Electrical | | |
| COMB | 2350 | Other Plumbing | | |
| COMB | 2425 | Other Mechanical | | |
| COMB | 2600 | Other Building | | |
| COMB | 2610 | Gas Pressure Test | | |
| COMB | 2617 | Grading / Drainage Final | | |
| COMB | 3000 | Electrical Final | | |
| COMB | 3001 | Mechanical Final | | |
| COMB | 3002 | Plumbing Final | | |
| COMB | 3004 | Fire Dept Final 949/644-3105 | | |
| COMB | 2620 | FINAL BUILDING | | |
| | | DO NOT OCCUPY UNTIL FINAL INSPECTIONS ARE SIGNED OFF | | |

call the inspection request line at 949/644-3255 or visit the City website at http://www.newportbeachca.gov and select Online Services
Inspections (only for permits in approved status) must be requested before 8:00 A.M. the day of the inspection

Please use the following list of permit code when calling for an inspection
PRESS:
'0' for **combination / X permit**
'1' for building / B permit
'3' for electrical / E permit
'4' for mechanical / H permit
'5' for grading / G permit
'6' for harbor / M permit
'7' for pool and spa / S permit
'8' for fire / F permit

7/12/13 PARTIAL FOOTINGS SEE PLANS BJ.

Inspector Notes are located on the reverse side.

34-1

# City of Newport Beach — Building Division

PO Box 1768 Newport Beach, California 92658-8915, Permit Counter Telephone (949)644-3288 Inspection Requests/Telephone (949)644-3255

**COMB Permit No: X2012-2116**
PROJECT NUMBER: 1552-2012

Combination Type - MFP/ ELEC/ MECH/ PLUM/

**Job Address:** 436 VIA LIDO NORD NB
**Description:** 800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE 2ND FLOOR UNITS (B & C) TO CREATE 1, REROOF THE ENTIRE HOUSE "WORK IN PROGRESS"

**Inspector Area:** 1
TOGETHER

Legal Desc.: P M 105-43 PAR 1 UNIT 3 OF PROJECT LOCATED ON AP 423-191-08

INSPECTOR

| | | | | | |
|---|---|---|---|---|---|
| Owner: | HUMPHREYS GARY | Contractor: | SPARTAN ASSOCIATES INC THE | Architect: | OVERLEY RICK |
| Address: | 505 AUGUSTA DR<br>MORAGA CA 94556 | Address: | 436 VIA LIDO NORD #B<br>NEWPORT BEACH CA 92663 | Address: | 13221 SAFFORD ST<br>GARDEN GROVE CA 92843 |
| Phone: | | Phone: | 949-241-6693 | Phone: | 714-537-2132 State Lic:9858 |
| Applicant: | BEREKI ADAM | Con State Lic: | 927244 | Engineer: | WONG ARIV NATHANIEL |
| Address: | 436 VIA LIDO NORD #B<br>NEWPORT BEACH CA 92663 | Lic Expire: | 01/31/2013 | Address: | 180 S PROSPECT AVE #110<br>TUSTIN CA 92780 |
| Phone: | 949-241-6693 | Bus Lic: | BT30039638 | Phone: | 714-389-9898 State Lic:C-055045 |
| | | Lic Exp Date: | 06/30/2013 | | |
| | | Workers Compensation Insurance | | Designer: | |
| | | Carrier: | NORGUARD INS | Address: | |
| | | Policy No: | SCWC599550 | | |
| | | Expire: | 07/05/2013 | Phone: | |

Code Edit : 2010
Type of Construction: V - B
Occupancy Group: B
Added /New sq.ft. Bldg: -188
Added /New sq. ft. Garage: 0
No of Stories: 2
No. Units : 2
Bldg Height: .0
Bldg Sprinklers: N
Flood Zone:
Issued Date: **11/14/2012**

Building Setbacks: Rear: / Front: / Left: / Right: /
Use Zone:
Parking Spaces: 0
Special Conditions: C2012-014 CARBON MONOXIDE DETECTORS ARE EXISTING PER CRCR 314.1 & [illegible]
Fire Hazard Zone : N

Date: 10-24

☒ CANCEL
☐ EXPIRED

Non-refundable:
☐ 80% or ☐ 100% refund to whom: INSTALL OR VERIFY SMOKE AND CARBON

☐ Scan plan ☒ Discard plan
(work started) (no work started)

Date to Inspection

2851 for

Insp. initials:

| | | | | | |
|---|---|---|---|---|---|
| Construction Valuation: | $400,000.00 | | | | |
| Building Permit Fee: | $2,806.00 | Solar System PC: | $0.00 | Planning Department | Fire Department |
| Plan Check Fee: | $2,020.32 | Excise Tax: | $0.00 | Plan check Fee : | $1[illegible].20 Fire Inspection: $[illegible].00 |
| Overtime Plan Ck: | $0.00 | | | Fair Share : | $0.00 Fire Plan Rev: $[illegible].00 |
| Investigation Fee: | $2,806.00 | | | SJH Trans : | $0.00 Demolition Fee: |
| Record Management : | $240.00 | | | In-lieu Housing Fee : | $0.00 Building Dept Adm $[illegible].00 |
| Energy Compliance: | $240.00 | Grading Permit Fee: | $0.00 | Public Works Department - | General Service $[illegible].00 |
| CA Seismic Safety : | $0.00 | Grading PC Fee: | $0.00 | Park Dedication : | $0.00 Refund Deposit $[illegible].00 |
| Disabled Access : | $0.00 | WQ Insp. Fee : | $0.00 | P/W Plan Check : | $0.00 |
| Fee Increase: Fee: | $0.00 | Electrical %: | $392.84 | San Dist : | $0.00 |
| Additional Fee : | $0.00 | Mechanical %: | $280.60 | NMUSD Fee: | $0.00 $[illegible].00 |
| Hazardous Mat : | $0.00 | Plumbing %: | $561.20 | | $[illegible].00 |
| Building Green Fee : | $16.00 | | | | |
| TOTAL FEE : | $9,394.21 | Plan Check Fee : | $2,020.32 | Fee Due at Permit Issuance : | $7,373.89 |

PROCESSED BY: LD
ZONING APPROVAL: BMZ
GRADING APPROVAL:

PUBLIC WORKS APPROVAL:
PLAN CHECK BY: AN
APPROVAL TO ISSUE: LY/AN

*PERMITS EXPIRE 180 DAYS AFTER ISSUANCE OR LAST VALID INSPECTION.*

R 34145

2-14

1195

City of Newport Beach — Buildi.. ivision — PLUMBING Permit No: P2013-0

PO Box 1768 Newport Beach, California 92658-8915 Permit Counter Telephone (949)644-3288 Inspection Requests/Telephone (949)644-3255

UTC ON SPREADSHEET 4/11/13

INSPECTOR

) Address: 436 VIA LIDO NORD Bldg: 1 Floor: Suite:
scription of Work: PLUM - SEWER LINE RPR
X2012-2116
pector Area: 1 Code Edit 2010
gal Description: P M 105-43 PAR 1 UNIT 3 OF PROJECT LOCATED ON AP 423-191-08
GETHER

'ner: HUMPHREYS GARY
dress: 505 AUGUSTA DR
MORAGA CA 94556
one:
ued Date: 04/11/2013
cessed By:

Contractor: SPARTAN ASSOCIATES INC THE
Address: 818 SPIRIT
COSTA MESA CA 92626
Phone: 949-241-6693
Con State Lic: 927244
Lic Expire: 01/31/2015
Bus Lic: BT30039638
Lic Exp Date: 06/30/2013

Worker's Compensation Insurance -
Carrier : NORGUARD INS
Policy No: SPWC359950
Expire : 07/05/2013

34-3

1196

FEES

| Bathroom Fixtures | | | Kitchen Fixtures | | | Misc. | | | Misc. | | | Other | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| oilet: | 0 | $0.00 | Kitchen Sink: | 0 | $0.00 | Water Piping: | 0 | $0.00 | Roof Drain: | 0 | $0.00 | | $0.00 |
| idet | 0 | $0.00 | Garbage Disp: | 0 | $0.00 | Water Softener: | 0 | $0.00 | Grease Trap: | 0 | $0.00 | | $0.00 |
| rinal | 0 | $0.00 | Bar Sink: | 0 | $0.00 | Water Heater: | 0 | $0.00 | Grease Interceptor: | 0 | $0.00 | | |
| ath Tub: | 0 | $0.00 | Vegetable Sink: | 0 | $0.00 | Gas up to 4 outlets: | 0 | $0.00 | P-Trap: | 0 | $0.00 | Record Mgmt Fee: | $1.00 |
| hower Stall: | 0 | $0.00 | Ice Maker: | 0 | $0.00 | Gas over 4 outlets: | 0 | $0.00 | Sewer | | | Investigation: | $0.00 |
| Vash Basin: | 0 | $0.00 | Dishwasher: | 0 | $0.00 | Backflow up to 2": | 0 | $0.00 | Sewer: | 0 | $0.00 | Plan Check: | $0.00 |
| ydro-Mass Tub: | 0 | $0.00 | Lndry/Trap: | 0 | $0.00 | Backflow over 2": | 0 | $0.00 | Sewer Alter/Repair: | 1 | $32.00 | Issuance: | $0.00 |
| loor Sink: | 0 | $0.00 | Regulator: | 0 | $0.00 | Hose Bibb: | 0 | $0.00 | Sewer Abandon: | 0 | $0.00 | Supplemental Fee: | $9.00 |
| loor Drain: | 0 | $0.00 | Lawn Sprinkler: | 0 | $0.00 | Drinking Fountain: | 0 | $0.00 | | | | | |

TOTAL: $42.00 Plan Check Fee : $0.00 Fee Due at Permit Issuance : $42.00

*PERMITS EXPIRE 180 DAYS AFTER ISSUANCE OR LAST VALID INSPECTION*

# Exhibit 3

1-04




1198

# Exhibit 4

1/11/13

# Work Order

**Russell's Crane Service, Inc.**

1645 W. Orangewood Avenue
Orange, CA 92868

Phone: 714-771-8522
Fax: 714-771-7083

| Date | Work Order # |
|---|---|
| 1/11/2013 | 39758 |

| Bill To: | Job Location: |
|---|---|
| Spartan Construction<br>818 Spirit<br>Costa Mesa, CA 92626 | Friday, 10:30 AM<br>Humphries Residence Pg. 888 J-7<br>436 Via Lido Nord<br>(xst: Via Jucar)<br>Newport Beach, CA 92663 |

| P.O. # | Originating Office | Terms | Time Required | Ordered By |
|---|---|---|---|---|
| | Orange | C.O.D. | 2-3 hrs. | Adam |

| Equipment | Description of Work | Amount |
|---|---|---|
| T-30 | Lift 5 each beams up, 1,000#, 22' up, 60' back | |

RELEASE OF LEGAL LIABILITY - READ CAREFULLY. The undersigned hereby releases and further agrees to indemnify and hold harmless Russell's Crane Service Inc., its owners, agents & employees from all liability or claims resulting from damages or injury to persons or personal property resulting from any action or failure to act by R.C.S. Inc., its equipment and/or personnel on or near the site of the requested work, including but not limited to all underground utilities, installations or obstructions. This release applies to all possible claims or litigation except those arising through the sole negligence or willful misconduct of R.C.S. Inc., except those waived, and R.C.S. Inc. is not responsible for damages occurring from rigging, loading or damages to sidewalks, lawns, driveways or other real/ personal property adjacent thereto.

Returned checks for any reason are subject to a $25 service charge.

Date:

Signature at Start of Job:

Signature at Job Completion:

110 - $130 per hr., 2 hr. minimum. All time charged port to port.

**Total** $0.00

33-1

Harrington Geotechnical Engineering, Inc.

July 25, 2013

Mr. Adam Bereki
**SPARTAN CONSTRUCTION**
818 Spirit
Costa Mesa, CA 92626

**Subject:** **Preliminary Geotechnical Investigation for Remodel and Addition to Existing Two-Story Residential Structure at 436 Via Lido Nord, Newport Beach, CA**

**HGEI Project No. 13-01-3181**

Dear Mr. Bereki:

This report presents the results of a geotechnical investigation of the subject site. The investigation was conducted in accordance with generally accepted geotechnical engineering practice in this area.

Preliminary plans and information furnished to this office were used in outlining the scope of the investigation.

Based on analysis and evaluation of the data obtained it has been concluded that construction of the subject improvements are feasible from a geotechnical engineering standpoint provided the recommendations presented herein are incorporated into the design and construction.

Thank you for this opportunity to be of service. If you have any questions concerning this report or if we can be of further assistance, please call at your convenience.

Very truly yours,

**HARRINGTON GEOTECHNICAL ENGINEERING, INC.**

Joseph L. Welch, P.E., G.E.
Senior Geotechnical Engineer

REGISTERED PROFESSIONAL ENGINEER
JOSEPH L. WELCH
No. GE2239
EXP. 7/31/14
GEOTECHNICAL
STATE OF CALIFORNIA

Distribution: (1) file *3181 Prelim Rpt.docx*
(5) US Mail

1590 N. Brian Street, Orange, CA 92867-3406 FAX (714) 637-3096 PHONE (714) 637-3093
Please visit our website at www.harringtongeotechnical.com

33-2

# INVOICE

California GLASS & WINDOW CORPORATION

2915 Red Hill Avenue, Bldg. D-100
Costa Mesa, California 92626
Phone: (714) 434-3800
Contractor's Lic #508502

| | |
|---|---|
| Date: | March 26, 2013 |
| CGW Control #: | **20130098** |
| P.O. #: | Sparten-Humphreys Downstairs |
| Salesperson: | Jeff Conkle |
| Mfg/Shipper #: | "Milgard" #1391541 |
| Mfg/Shipper #: | |
| Mfg/Shipper #: | |

**SOLD TO:**

Spartan Construction ATT: Adam Bereski
818 Spirit
Costa Mesa, CA 92626

(949)241-6693

**JOB ADDRESS IF DIFFERENT:**

Manufacturers projected delivery date to the job-site is 4/24/13.

**436 Via Lido Nord**
**Newport Beach, CA 92663**

## Contract Description

*Contract* for 8 windows and 1 door by *"Milgard"* all being dual pane, espresso color vinyl exterior and white color vinyl interior with options as listed. These units have SunCoat glass with accessory package and glass breakage warranty.

**Style Line Series** nail-on double vent above 3 picture windows
1- 89 1/8 X 71 XOX/O-O-O with bottom being tempered
**Style Line Series** nail-on single hung window
1- 23 ½ X 38 3/4 with matelux obscure glass, bottom being tempered
**Style Line Series** nail-on double vent sliding windows
1- 100 ½ X 26 XOX
1-100 ½ X 39 XOX
**Style Line Series** nail-on horizontal sliding windows
1- 34 ½ X 25 XO with tempered matelux obscure glass
1- 71 ½ X 26 OX
1- 44 1/4 X 23 3/4 XO
**Style Line Series** nail-on awning window
1- 28 3/4 X 26 with tempered matelux obscure glass
**Tuscany Series** nail-on sliding patio door
1- RO 72 X 80 OX with a keyed lock

*X - sliding panel as viewed from the exterior of the home*

| | | |
|---|---|---|
| $6,067.44 | **Total Amount of Contract** | |
| $6,067.44 | **Payment With Order** | Pd Ck #1129 |
| | **Payment Due At:** | |
| | **Payment Due At:** | |
| $0.00 | **Paid In Full:** | |

**I acknowledge the satisfactory completion of the above described work :**

33-3

THE SPARTAN ASSOCIATES, INC.

Employee Name: MEI [redacted]

| Week: 3-8-12 | Log In | Log Out | Log In | Log Out | Hrs Worked | |
|---|---|---|---|---|---|---|
| Monday 12-3 | 8:00 | 12:30 | 12:30 | 4:30 | 8 | |
| Tuesday 12-4 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Wednesday 12-5 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Thursday 12-6 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Friday 12-7 | 8:00 | 12:00 | 12:30 | 2:00 | ~~5.5~~ 6.0 | 38.0 |
| Saturday — | | | | | | |
| Sunday — | | | | | | |
| Week: 12-10 - 12-14 | | | | | | |
| Monday 12-10 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Tuesday 12-11 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Wednesday 12-12 | 8:00 | 12:30 | 1:00 | 4:30 | 8 | |
| Thursday 12-13 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Friday 12-14 | 8:00 | 12:15 | 12:45 | 4:30 | 8 | 40.0 |
| Saturday | | | | | | |
| Friday | | | | | | |
| | | | | Total: | 78.0 ✓ | |

33-4

1203

32-5-R

Anaheim Heating & Air Conditioning
With an Eye on Excellence
est. 1962

1418 South Central Park Avenue
Anaheim, California 92802
(714) 772-9699 Ph
(714) 772-0668 Fx
www.AnaheimHtgClg.com
License: #784141

# PROPOSAL NUMBER 5566

| | | | |
|---|---|---|---|
| **Submitted To:** | SPARTAN CONSTRUCTION = ADAM | **Date:** | 3/27/2013 |
| **Street:** | 818 SPIRIT | **Job Name:** | KAREN & GARY HUMPHREYS |
| **City, ST Zip:** | COSTA MESA CA 92626 | **Job Location:** | 436 VIA LIDO NORD #B NEWPORT BCH. |
| **Phone:** | 949-241-6693 **FAX:** N / A | **Job Phone:** | |

**We hereby submit specifications and estimates for:**

INSTALLATION OF CENTRAL GAS FORCED AIR HEATING. INSTALLED EQUIPMENT & SCOPE OF WRK. AS FOLLOWS;

_ TRANE XB90, TUC1B060A9361A ( 60K BTU / 92% AFUE / SINGLE STG. HTG. ) CONDENSING GAS FURNACE
_ WHITE RODGERS 1F80-261 ELECTRONIC / PROGRAMABLE THERMOSTAT.

_ CITY BUILDING PERMITS, FURNACE CLOSET CONSTRUCTION AND ASBESTOS DUCT WRK. ABATEMENT BY OTHERS. WILL REMOVE AND DISPOSE OF OLD EQUIPMENT & ALL WRK. REL;ATED TRASH. WILL FABRICATE & INSTALL STATIONARY SUPPLY PLENUM & TRANSITION SLEEVE. INSTALL NEW FURNACE ON AFTER MARKET FILTER BASE W/ THROW AWAY FILTER. REPLACE GAS SHUT-OFF VALVE, GAS CONNECTOR AND LINE CORD. INSTALL CONDENSATE PUMP WITH COPPER DRAIN LINE TO APPROVED DRAIN SITE. INSTALL FURNACE VENT PIPE AND WALL TERMINATION KIT ( PRE-DETERMINED LOCATION ). ENLARGE ( 3 ) REGISTER BOX OUTLETS. RE-DUCT SYSTEM FOR PROPER AIR-FLO USING JPL , R-4.2 RATED TYPE FLEXIBLE DUCT, RELATED METAL FITTINGS & CONNECTORS. INSTALL AJUSTABLE BAR STYLE REGISTERS THRU-OUT HM. / BAR STYLE RETURN AIR GRILLES. INSTALL THERMOSTAT ( FAU CLOSET WALL ) SYSTEM COMPLETELY INSTALLED AND READY TO OPERATE WITH 1 YR. PARTS AND LABOR WARRANTY. TRANE WARRANTYS OF 5 YRS. FUNCTIONAL SMALL PARTS, LIMITED LIFE-TIME HEAT EXCHANGER.

**We propose to furnish material and labor, complete in accordance as specificied above for the sum of: $4, 638.00**
**Payment to be made as follows: 100% On Completion**

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications in involving extra costs will be executed only upon written orders, and will become and extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyound our control. The owner to cary fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. This proposal may be withdrawn by us if not accepted in 30 days.

**Authorized Signature:** Seth Siegel

**NOTICE TO OWNER:** Contractors are required by law to be licensed and regulated by the contractor's state license board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:
Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95827.

Acceptance of Proposal:The above prices are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Any changes or alterations to the above will be an "Extra" to theis contract, and no further work will be performed until a "Change Order" has been signed. You the buyer, may cancel this transaction at any time prior to the third business day after the date of this transaction.
**Authorized Signature:** _____ **Date of Acceptance:** _____

**NOTICE TO OWNER:** (Section 7019 Contractors License Law) Under the Mechanics' Lien Law, any contractor, subcontractor, laborer, materialman or other person who helps to improve your property and is not paid for his labor, services, or material, has a right to enforce his claim against your property. Under the law, you may protect yourself against such claims by filing, before commencing such work of improvement, and original contract for the work of improvement of a modification hereof, in the office of the county recorder of this county where the property is situated and requiring that a contractor's payment bond be recorded in such office. Such bond shall be in an amount not less than fifty percent (50%) of the contract price and shall, in addition to any conditions for the performance of the contract, be conditioned for the payment in full of the claims of all persons furnishing labor, services, equipment or materials for the work described in said contract.
**CALIFORNIA PRELIMINARY NOTICE:** Section 1193(c) California Code of Civil Procedure requires us to notify you "that if bills are not paid in full for Labor, Services, Equipment or Materials furnished, or to be furnished, the improved property (which is described hereon) may be subject to mechanics' liens."



33-5

License # 826141
Proposal By: Jay C. Bagnall

# Pro Coat, Inc.

## Contract Proposal

**INSURED** **BONDED**

1131 North Citrus Street, Orange, Ca 92867 888.3.PRO.COAT 714.639.7403 ph. 714.639.7405 fax

Waterproof Deck Coatings Below Grade Waterproofing Concrete Repair and Resurfacing Concrete Coatings, Sealing, Staining, and Polishing

**Bid #:** _____

**Date:** 03/22/13

**Submitted to:** Spartan Construction

**Address:** 818 Spirit

**City:** Costa Mesa **State:** CA **Zip:** 92626

**Contact:** Adam Bereki **Office Phone:** _____ **Fax:** _____

**Email Address:** adam@thespartanassociates.com **Mobile Phone:** (949) 241-6693

**Job Name:** Humphreys Residence

**Job Address:** 436 Via Lido Nord

**City:** Newport Beach **State:** CA **Zip:** _____

**Superintendent:** Lyman Emmer **Mobile Phone:** (714) 749-5400 **Job Phone:** _____

For California Preliminary 20-Day Notice (See Civil Code Section 3097 & 3098)

**Owner Name:** _____

**Owner's Address:** _____

**City:** _____ **State:** CA **Zip:** _____

**Mobile Phone:** _____ **Office Phone:** _____ **Fax:** _____

**Standard Notations:**

When proposals are made from plans, field measurement of application shall prevail and contract pricing will be adjusted accordingly.

Any alteration or deviation from the signed contract will become an extra charge over and above the contract price. Any item such as sloping, drains, crickets, or other items not directly contained in the specific specification is additional unless outlined in this contract.

Specifications are available for any contract proposal. It is the General Contractor's and homeowner responsibility to request, read and understand these specifications (especially note items regarding sloping, flashing details, railing impediments and plywood gapping).

Pro Coat will not be responsible for any damage or cracking that may occur due to structural inadequacies, abuse, deterioration, or leakage due to contiguous material failure.

Because of seismic activity, unknown soil conditions, and methods used in installing original surfaces, Pro Coat cannot warrant crack repairs and cannot be held responsible should cracks reappear, although every effort is made by Pro Coat to make said repairs permanent.

Pro Coat requires periodic inspection and, if necessary, repairs and/or reseal to maintain specified warranty.

Proposal is subject to an approved credit check that is hereby authorized. Prices, specifications & conditions of this proposal set forth in the attached "Description of Work To Be Performed" are satisfactory & hereby accepted. Pro Coat is authorized to do the work specified. Payment terms are satisfactory. Prices are subject to change SIXTY (60) DAYS after bid date. Proposal prices are subject to revision 1-year after the contract is awarded; or upon notification of a material price increase of 10% or more from a Pro Coat vendor or manufacturer; or as a result of a 5% or more increase in Pro Coat's insurance or labor costs.

**Customer Initials**_____

*Shoreline Fabricators, Inc.*

5267 Warner Ave., Suite #137
Huntington Beach, Ca. 92649
Ph. 562 424-4744, Fax 562 424-4997
Contractors License # 641234

# Invoice

| DATE | INVOICE # |
|---|---|
| 4/19/2013 | 9395 |

| BILL TO |
|---|
| Spartan Construction<br>818 Spirit<br>Costa Mesa, Ca. 92626<br>Attn: Lyman Emmer |

| PROJECT |
|---|
| 436 Via Lido Nord<br>Newport Beach, Ca. |

| P.O. NO. | PROJECT |
|---|---|
| | |

| ITEM | AMOUNT |
|---|---|
| To fabricate and install one 10' long deck gutter. Gutter to be made from 24 Ga. stainless steel with two 3" long no-hub thunderbird drains at each end. | 1,025.00 |

Please remit to above address.

**Total** $1,025.00

Please Pay By Invoice.
1.5% per month interest will be charged on all past due accounts. Buyer agrees that in the event collection becomes necessary, Buyer shall pay all collection costs including court cost and reasonable attorney fees.

33-7

HELIX Environmental Planning, Inc.
7578 El Cajon Boulevard
Suite 200
La Mesa, CA 91942
619.462.1515 tel
619.462.0552 fax
www.helixepi.com

HELIX Environmental Planning

January 16, 2013

Adam Bereki
Spartan Construction
818 Spirit
Costa Mesa, CA 92626

**Subject:** **Letter Proposal/Agreement to Provide Environmental Consulting Services for the Residential Remodel in Newport Beach**

Dear Mr. Bereki:

HELIX Environmental Planning, Inc. (HELIX) is pleased to submit this letter proposal/ agreement (Agreement) to Adam Bereki (Client) to provide acoustical consulting services for the remodel of a multi-family residence (Project).

## PROJECT UNDERSTANDING

HELIX understands that the Project involves the remodel of a single building with stacked separate family residences sharing a common floor/ceiling. The Project site is located at 436 Via Lido Nord in Newport Beach, California.

## SCOPE OF SERVICES

**Task 1**:

- Conduct a telephone consultation on floor/ceiling design methods (completed)
- Conduct a field inspection of the residential unit to look at the floor/ceiling assembly, which has the upper floor deck removed.
- Discuss methods for controlling noise impacts from the upper unit to the lower unit with the final installation of a hard surface flooring assembly in the upper unit. Included in the discussion will be maintaining the assembly effectiveness with the installation of "canned lighting" and air conditioning duct drops in the downstairs ceiling.

33-8

# Exhibit 5

NOTICE OF CESSATION OF LABOR

To: The Spartan Associates, Inc.
Attn: Adam Bereki President
818 Spirit
Costa Mesa, CA 92626

Re: 436 Via Lido Nord, Newport Beach CA 92663

Dear Mr. Bereki:

In light of the current and pending "red tagged" status of the above referenced project as initiated by the City of Newport Beach, and the pending project reconciliation/audit currently being undertaken by Bryan Nickel with your anticipated cooperation:

NOTICE IS GIVEN, that effective immediately, all construction related work and design work provided by you either directly or indirectly to the project, including the furnishing of labor and/or materials and/or professional services shall cease. This notice of cessation of construction and related activities shall remain in effect and shall be binding until further notice from the undersigned.

Dated: August 28, 2013

_____
Owner

000134

38-1

0176.5

# Judicial Notice Exhibit 15.4A

Electronically Filed by Superior Court of California, County of Orange, 06/04/2025 04:02:00 PM.
30-2015-00805807-CU-CO-CJC - ROA # 369 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

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

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.: 30-2025-01482941

**FIRST AMENDED DECLARATION OF ADAM BEREKI WITH SUPPORTING EXHIBITS 6-13 (FILED IN SUPPORT OF MOTION TO VACATE ROA 361)**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

The following Declaration and the Exhibits annexed hereto present additional evidence of the extrinsic fraud and fraud on the court alleged in this case. They Declaration and Exhibits are intended to be incorporated in the Motion to Vacate Void Judgment I filed on May 28, 2025. These Declaratory statements shall overrule those of my previous Declaration incorporated in the Motion.

Date: June 4, 2025

By: _____
Adam Bereki

## FIRST-AMENDED DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I have personal knowledge of the facts herein, except where stated on information and belief.
2. This declaration is fully incorporated in the Motion to Vacate (ROA 361).
3. While the Motion is titled "Motion to Vacate" my intent is that it is an Independent Action in Equity and invokes the inherent equity jurisdiction of the Superior Court of California as stated therein.
4. The 2017 judgment was a bill of pains and penalties, procured through extrinsic fraud and fraud on the court, falsely alleging I personally contracted and performed work, with no known evidence I preformed work as required by CACI 4560(3). The $930,000 penalty under § 7031(a) and (b) required me to repay compensation already returned through Spartan's licensed work, constituting a duplicative criminal fine under Cal. Penal Code § 15 for the same offense as § 7028, imposed through extrinsic fraud and fraud on the court. The Humphreys lacked standing and capacity to prosecute a penal action, as no sworn information or indictment was filed and no criminal complaint was served on me. Each constitutional violation listed occurred, causing the summary suspension of my vested right to act as the qualifying individual on a general contractor license under § 7071.17 when I could not afford to pay the judgment. This unlawful suspension, another bill of pains and penalties, resulted in an estimated $3 million in lost earnings. These lost earnings are based on estimated income losses from 2017–2025 and are attributable to earnings that would have flowed through to me as the qualifying individual of a general contractor license whether Spartan's or any other I qualified for. I have incurred additional losses of over $5 million dollars in investigation and defense time to vacate this void judgment, calculated as hours spent at the rate of $300 per hour. This time is partially evidenced by my filings on the dockets of each case included as RJN Ex's 1-12, and the Exhibits attached to the Ex parte Application for Emergency Stay filed on 3/14/25 in this case, (ROA's 306-322). Expenses of approximately $1 million include legal fees, medical bills (emotional, psychological, and physical distress), office and stationary supplies

and equipment, gas, court parking, etc. Upon judgment in my favor, or before if time permits, I will file a supplemental declaration with a detailed accounting of all lost rights property, and damages (e.g., ~$1.20 million in home equity), supported by financial records and affidavits.

5. The summary suspension of my contractor's license under Cal. Bus. & Prof. Code § 7071.17, ninety days after the April 20, 2017, judgment (ROA 200), deprived me of my liberty to pursue my livelihood as a general contractor without a judicial hearing or appeal process, constituting a bill of pains and penalties (Cal. Const. Art. I, § 9. U.S. Const. Art I. §10); As the Qualifying Individual for The Spartan Associates, Inc. (License #927244), I held a vested right, which was suspended or revoked despite evidence that Spartan was the contractor, as shown by Newport Beach building permits and the Humphreys' payments of $758,000 to Spartan as provided in the citations of evidence in the Memorandum of Points and Authorities of this Motion. I am not aware of any evidence presented by the Humphreys that I personally performed licensed work rendering the judgment and suspension void.
6. I relied on Karen and Gary Humphreys, William Bissell, and Judge Chaffee's representation that the proceedings in the Superior Court of California for the County of Orange, Case No. 30-2015-00805807 were civil as opposed to criminal.
7. I was never told I was being subjected to highly penal/criminal proceedings and that my vested right to act as a qualifying individual would be summarily suspended or revoked as additional punishment, thereby denying my right to occupation in my profession as a general contractor.
8. I was never informed of my right to assistance of counsel prior to trial or appeal to prepare a meaningful and substantive defense and did not receive assistant counsel at trial, on appeal, or anytime after, despite my request (RJN, Ex. 6 [Denial of Request for Counsel, U.S. District Court].
9. At the time of the trial, I was not able to meaningfully and substantively represent myself because I had not received any formal training or education in civil and criminal procedure before trial or on appeal. I had little if any involvement in the criminal aspect of prosecution during my time as a police officer as my duties focused on investigation, apprehension, and reporting, not prosecution/criminal procedure.

10. I waived trial by jury, based on my belief and the representations of Karen and Gary Humphreys, William Bissell, and Judge Chaffee, that I was facing civil proceedings and that the proceedings would have the sanction of law and recognize and honor my inalienable and constitutionally recognized rights to liberty, property, privacy etc.
11. Had I known I was being subjected to highly penal/criminal proceedings including the deprivation of my right to earn a living as a general contractor, I would have objected to any such unlawful proceedings prosecuted by the Humphreys and Bissell without lawful authority and in violation of my due/judicial process rights.
12. I am not aware of any evidence of damages that the Humphreys presented at trial that I or Spartan caused.
13. I am not aware of any evidence presented by the Humphreys at trial that I profited from their project and was thereby enriched, unjustly or otherwise.
14. The fine was excessive as my qualifying net worth (independent of disability pension and the ~$82k owed by the Humphreys to Spartan, some which would have passed through to me) at the time was approx. $23,000. The judgment was more than forty times this amount. This excessiveness resulted in the suspension/revocation my vested right to work as a general contractor under § 7071.17, resulting in an additional ~$3 million dollar penalty due to lost work as I was unable to pay the judgment, obtain a payment bond, or obtain vacatur in any court of California or the United States and ultimately was forced into bankruptcy. I repeatedly asked the Humphreys to come to an agreement so that I could notify the licensing board and have my qualifying individual status reinstated and resume work as a general contractor. They offered to settle for $300,000 which was still more than times my qualifying net worth.
15. The Humphreys terminated Spartan from the project in August 2013. I cannot recall if Spartan received a "Notice of Cessation of Labor". But if not, I believe it was produced by the Humphreys in discovery (Ex. 5). The Notice, dated August 18, 2013, addressed to Spartan (not me individually), orders Spartan to cease all construction activities at the Humphreys Project. I have never received a similar notice and believe this further evidences the Humphreys knew their agreement was with and/or the work was performed by Spartan. See also the Humphreys Motion for Summary Judgment (ROA 66, p.ii) representing to the court that the "undisputed facts" were that "In April of 2012 The Spartan Associates entered into an agreement with the Humphreys for

the performance of home improvement work on the Humphreys condominium unit" and that "The home improvement work to be performed by The Spartan Associates, Inc. on the Humphreys condominium unit had a value in excess of $500." I believe the Humphreys and Bissell also knew that they could not support a claim under §7031(b) unless these "undisputed facts" were swept under the rug/altered. When they lost their Motion for Summary Judgment based on these facts, they simply changed them. With a few days more than a month before trial (ROA 127 scheduled for 1/17/17) and after discovery had already been completed, they filed for leave to amend their cross-complaint with a new first cause of action under §7031(b) (ROA 139, 12/9/16) to not only defraud me and the court but also ambush me and Spartan with these surprise accusations.

16. Based on my direct experience at trial and my forensic investigation of this case, I believe the Humphreys conspired with their attorney, William Bissell to use these proceedings disguised as civil with intent to defraud and punish me (and deny Spartan compensation) without lawful authority and destroy me financially over a dispute involving their home remodel. They knew that §7031(b) did not mention or authorize an equitable remedy, "disgorgement", or "damages". Their repeated representation of civil proceedings including their filings in this case, service of judgments and orders upon me, and the trial, were a lawless sham and fraud to steal money and property from me under force of the legislative, executive, and judicial powers of California and color of law without lawful authority. In furtherance of their conspiracy to defraud me and the court, they filed a Proposed Judgment Order for "damages" knowing no damages had been evidenced at trial. Their Memorandum of Points and Authorities in their Motion for Severance (ROA 160) admitted that "since the amount paid by the Humphreys to Mr. Bereki exceeds the amount of damages they are claiming [est.$350,000 [First Amended Cross-Complaint] if they were to prevail on their first cause of action, the trial of the remaining cause of action for damages would be unnecessary." (Id. p.5). Assuming arguendo, their damages were $350k, the judgment they sought and were awarded, was nearly three times this amount and could, under no reasonable interpretation, be considered "damages", when they intentionally severed their claim for damages. (ROA 160). Simply put, the

Humphreys wanted something for nothing and thought they could perpetrate fraud on me and the court to get it.

17. Spartan provided $930,000 of custom remodel work including labor and materials to Karen Humphreys and Gary Humphreys that they requested for their home at 436 Via Lido Nord, Newport Beach, California. The Humphreys have not paid the remaining approx. $82,000 for the materials and labor (ROA 2) due at the time of invoice on or about August 1, 2013 and have not paid the interest due thereon through the date of this filing. If the Humphreys had an issue with Spartan or its sub-contractors work, fine, there is a judicial process to remedy those issues. This fraud and corruption of that process is not it!

18. As a result of the actions of the Humphreys, Bissell, Chaffee, Goethals, Aronson, O'Leary, and all other public officials (RJN Ex. 1-12, ROA's 306-322) who have refused to abide their sworn duty to take action to investigate and/or intervene to stop this lawless violence upon me and my family, I have and continue to suffer severe emotional and economic distress as a direct and proximate result. I began disclosing this emotional distress this in my Declaration filed as a First Amended Reply to Opposition of Motion to Compel Bill of Particulars, Motion to Vacate, and Disqualify Judge Chaffee for cause, dated October, 2, 2017 (ROA 267). The Declaration (p.3) stated: "I am experiencing emotional and psychological duress resulting from the domestic terrorism attacks by Plaintiffs, their counsel, and this court acting without lawful authority and in violation of numerous felony criminal codes as evidenced herein. I demand the court, Plaintiffs, and their counsel immediately cease and desist and am requesting an emergency protective order and civil harassment restraining order against William Bissell, and potentially Karen and Gary Humphreys and David Chaffee." Page 13 stated: "The Elements of Psychological and Emotional Distress I have experienced (and continue to to varying degrees) as a result of the continued unlawful actions of the court and William Bissell on behalf of Plaintiffs are: panic and anxiety attacks, severe depression including suicidal thoughts (no, I am not a danger to myself or others), severe headaches, neck and upper back tension, body tremors, loss of appetite, social inactivity, gut/digestion problems and pain, fear of physical and other harm, loss of liberty, and decreased ability to earn an income. My medical records are obviously confidential but will support thousands of dollars in Emergency

Room visits to multiple hospitals, and observations, tests, and treatment by specialists including psychologists. I am currently under the care of a doctor whom I see three days per week to mitigate the intensity of stress in my body in an attempt to cope."

19. I declared these facts of distress again in a Declaration attached to the Notice of Motion and Motion to Vacate post remittitur (ROA 294, Exhibit E). In paragraphs 1 and 2, I stated: I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -: fraud, gross negligence, abuse of process, intentional infliction of emotion distress, deprivations of my Rights and violations of due process by Plaintiffs Karen and Gary Humphreys and their Counsel, William Bissell, as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -; fraud, gross negligence, deprivations of my Rights and violations of due process by David R. Chaffee, Kathleen O'Leary, Richard. M. Aronson, and Thomas M. Goethals, acting coram non judice as evidenced in the Motion to Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017.

20. Based on my training and experience in law enforcement, I believe I am the victim of the following crimes, (this is not an exhaust list of crimes or Defendants): robbery (Cal. Penal Code § 211- forcible taking of my rights, liberty and property without lawful authority); grand theft (Penal Code § 187); burglary (Cal. Penal Code § 459- entering the Superior courthouse with intent to commit grand theft); conspiracy to commit the foregoing crimes on me by the Humphreys and Bissell (Cal. Penal Code § 182(a)(1)); conspiracy by the Humphreys and Bissell to falsely move and maintain the lawless proceedings against me under §7031(b) (Cal. Penal Code § 182(a)(3)); and conspiracy by the Humphreys and Bissell to cheat and defraud me of my rights and property, by any means which are in themselves criminal, or to obtain money or

property by false pretenses or by false promises with fraudulent intent not to perform those promises (Cal. Penal Code § 182(a)(4)).

21. I continue to be afraid for my safety and that of my family due to these lawless acts of violence that continue to be perpetrated on us, including most recently the theft of our home and approx. $1.2 million dollars in home equity while all officials of State and government refuse to perform a full, fair, impartial and/or independent investigation and/or refuse to intervene to stop this lawless violence.

22. All exhibits are true copies of the documents they purport to be, with exception of any bates numbering or other non-substantive marks I, or someone else may have made.

23. I submit Exhibit 6 (Report by Bryan Nickel, dated December 15, 2013 (contemporaneous with Spartan's termination in August 2013) to further demonstrate that The Spartan Associates, Inc., ("Spartan"), performed the construction work at 436 Via Lido Nord, Newport Beach, and was paid $758,000 by the Humphreys. The report confirms that Spartan was engaged to perform all construction work, including design, demolition, framing, plumbing, and electrical work, with approximately $505,000 in labor and materials and $758,000 in payments.

24. This "Report on Spartan Construction Work in Place and Costs" was prepared by Bryan Nickel and/or his construction company that was hired by the Humphreys to finish the project after Spartan's termination. Prior thereto, Nickel and/or his company was/were directed by the Humphreys and/or Bissell to investigate Spartan's work and prepare this report. In the report, Nickel states "Spartan was engaged to do the work" and "Spartan proceeded to design the new space and start work in April of 2012." "Spartan did purchase finish fixtures and appliances during this period, additionally Spartan engaged an acquaintance who worked at a commercial architecture firm to moonlight and draw up plans to secure a building permit. Building Permit number x2012-2116 was issued on November 14, 2012." (Ex .2 Building Permit). "For the period November 2012 to May 2013 Spartan proceeded to demolish and reframe the entire second floor, except for the street facing wall, and substantial amounts of the first-floor unit as he discovered, attempted to fix and rebuild old, deteriorated and water damaged portions of the structure." "We do know from the Owners banking records that Spartan has been paid $758,000."

25. The Humphreys and Bissell concealed this report in their First Amended Cross-Complaint (ROA 144) and at trial and never called Nickel as an expert witness to testify at trial, which would have defeated their claim. This constitutes extrinsic fraud and fraud on the court (*Estate of Sanders*, 40 Cal. 3d 607 (1985)).

26. Exhibit 8 (Declaration of William G. Bissell, dated June 1, 2016) and Exhibit 9 (Deposition of Robert Brockway, September 13, 2016) further support the claims of extrinsic fraud and fraud on the court. In Ex. 8, Bissell declared that expert witness Robert Brockway was prepared to testify at trial about "the services which were to be performed and which were performed by Adam Bereki and/or The Spartan Associates" on the Humphreys' project (Ex. 8, ¶ 5). In Brockway's deposition, attended by Bissell and Gary Humphreys (Ex. 9, p. 2, Lines 17–23), Brockway confirmed that The Spartan Associates, Inc. performed the work, stating, "I went over payroll records provided by Spartan, and I went over the W-2s to analyze the number of men, how long they were there, and what tasks they were doing" (Ex. 9, p. 7, Lines 2–10). He further noted, "Spartan was terminated on or about 8-28 of 2013" (Ex. 9, p. 39, Lines 9–10), indicating Spartan was the contractor (see also Ex.2 Notice of Cessation of Labor for Spartan). Brockway created an "invoice matrix" from "documents [receipts] that Spartan provided" (Ex. 9, p. 21, Lines 1–2) to assess expenses, reinforcing Spartan's role. Significantly, Brockway did not state that I personally performed any construction work, focusing instead on Spartan's operations and my work as Spartan's manager. Bissell's decision not to call Brockway, despite designating him as an expert and knowing his testimony would undermine the §7031(b) claim, was a deliberate concealment of evidence. I intend to question Bissell at the June 26, 2025, hearing about his failure to call Brockway, as his testimony is critical to establishing intent to conceal evidence central to the Humphreys' burden under Evidence Code § 500.

27. **Non-Hearsay Purpose: Evidence of Defendants' Knowledge and Concealment** The deposition testimony of expert witnesses Robert Brockway and Bryan Nickel are offered to demonstrate that the Humphreys and Bissell, were aware of material evidence confirming Spartan performed the work, but intentionally concealed this evidence at trial to defraud the court and me and secure a void judgment under § 7031(a) and (b). The testimony is not offered for the truth of the experts' statements

but to show the Humphreys and Bissell's knowledge and fraudulent concealment, making it non-hearsay under California Evidence Code § 1200. Nickel's report confirms Spartan was paid $758,000 for work, and Brockway's deposition verifies Spartan's performance through payroll records and invoices (Ex. 9, p. 7, Lines 2–10). The Humphreys failure to call these experts, despite commissioning their reports, evidences extrinsic fraud and fraud on the court.

28. **Supporting Authority**: *People v. Montes* (2014) 58 Cal.4th 809, 863 (out-of-court statements admissible to show knowledge or effect on listener, not for truth); *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 591 (statements admissible to show concealment or state of mind); *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471 (concealment of material evidence constitutes extrinsic fraud).

29. **Adoptive Admissions: Defendants' Prior Reliance on Expert Findings** The deposition testimony Brockway and statement of Nickel in his report are admissible as adoptive admissions under California Evidence Code § 1221 because the Humphreys previously relied on these experts' findings in their Motion for Summary Judgment (ROA 66, p. ii), stating the "undisputed facts" were that Spartan contracted and performed the work. By adopting these facts, which align with the experts' testimony that Spartan was the licensed contractor, the Humphreys admitted their truth. Their subsequent concealment of this evidence at trial, by not calling Nickel or Brockway and amending their cross-complaint to falsely claim Adam Bereki individually performed unlicensed work (ROA 139, 144), does not negate their prior adoption and supports the claim of extrinsic fraud. These adoptive admissions are not hearsay and are admissible to show the defendants' fraudulent intent.

30. **Supporting Authority**: *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 316 (statements adopted by a party in prior filings are admissible as non-hearsay); Evid. Code § 1221; *Estate of Sanders* (1985) 40 Cal.3d 607, 618 (concealment of evidence known to party supports fraud on the court).

31. **Impeachment: Prior Inconsistent Statements Contradicting Trial Claims** The deposition testimony Brockway and report statements by Nickel are admissible under California Evidence Code § 1235 to impeach the defendants' trial position that Adam Bereki individually performed unlicensed work, as it contradicts their prior representations and trial omissions. In their Motion for Summary Judgment, the

defendants admitted Spartan contracted and performed the work (ROA 66, p. ii), consistent with Nickel's report (Ex. 7) and Brockway's deposition (Ex. 9, p. 39, Lines 9–10). At trial, they concealed this evidence and failed to call the experts, allowing their attorney, William Bissell, to misrepresent that Bereki was the unlicensed contractor. The experts' testimony, showing Spartan's performance, is offered to demonstrate this inconsistency, not for its truth, and thus is not hearsay. This impeachment evidence further establishes the defendants' intent to defraud me and the court.

32. **Supporting Authority**: *People v. Johnson* (2018) 6 Cal.5th 541, 582-3 (prior inconsistent statements admissible for impeachment); Evid. Code § 1235; *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* (1944) 322 U.S. 238, 246 (concealment of evidence to mislead court constitutes fraud).

33. Bissell misrepresented that I was an unlicensed contractor under BPC § 7031, stating at trial: "SECTION 7026 DEFINES a CONTRACTOR... as INCLUDING ANY PERSON who UNDERTAKES to CONSTRUCT... EXHIBIT 303... is EVIDENCE of such UNDERTAKING" (Ex. 1, p. 5, Lines 20–26). This is legally flawed, as § 7026 defines a "contractor" without imposing liability, whereas § 7031(b) requires proof that I performed unlicensed work: "a person who utilizes the services of an unlicensed contractor may bring an action... to recover all compensation paid to the unlicensed contractor for **performance** of any act or contract" (BPC § 7031(b). CACI 4560(3) mandates evidence that I performed licensed work, yet no evidence shows I performed tasks like framing or plumbing (Ex. 5, 6, 8, 9). Instead, Spartan performed all work, as confirmed by the Notice of Cessation to Spartan (Ex. 5), Nickel's report (Ex. 6), Brockway's deposition (Ex. 9), and the Humphreys' own Motion for Summary Judgment admitting Spartan contracted (ROA 66, p. ii). As Spartan's Responsible Managing Officer (RMO) and Qualifying Individual (Ex. 7), I supervised under Spartan's license, not as an individual (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 517 (2009); *WSS Industrial Construction, Inc. v. Great West Contractors*, Inc., 162 Cal. App. 4th 581, 591 (2008)). The Humphreys and Bissell may argue I "hired" Spartan, but this is irrelevant, as § 7031(b) liability hinges on unlicensed performance, not contracting, and Spartan's licensed work negates their claim (*WSS Industrial*, 162 Cal. App. 4th at 591). To the extent the emails could be considered an agreement,

the work stated thereon was never evidenced to have been performed. Reason being, the email project was abandoned. The court and Court of Appeal's reliance on my initial emails, which omitted Spartan, ignored that these were preliminary negotiations for Spartan, not a personal contract (Civ. Code § 1550; *Lewis v. Fletcher*, 101 Cal. App. 3d 459, 465 (1980); *Donovan v. RRL Corp.*, 26 Cal. 4th 261, 280–81 (2001)). My intent, as Spartan's RMO since securing its license years before the Humphreys project, was always for Spartan to perform, as shown by the building permit in Spartan's name (Ex. 2) and payments to Spartan (Ex. 6). The Humphreys, family of my friend (Gary's brother), exploited my trust in the informal emails, knowing Spartan was the contractor (ROA 66, p. ii). Bissell's concealment of Spartan's performance (Ex. 6, 8, 9) and misrepresentation that my emails triggered § 7031(b) liability, despite no evidence of my performance, misled the court and exploited my pro se status, constituting extrinsic fraud and denying a fair hearing.

34. The Humphreys and Bissell's fraud was deliberate. The Humphreys' Motion for Summary Judgment admitted Spartan contracted (ROA 66, p. ii), but after losing, they amended their cross-complaint to target me (ROA 144), ambushing me before trial. This aligns with their Notice of Cessation addressed to Spartan (Ex. 5) and Bissell's designation of Brockway, confirming they knew Spartan performed the work.

35. Exhibit 11 (CHP Incident Report, dated September 21, 2024) and Exhibit 12 (Bill of Particulars, filed June 28, 2017) confirm the extrinsic fraud, fraud on the court, and jurisdictional defects in the 2017 judgment through Judge Chaffee's admissions on April 16, 2024. During an interview with the California Highway Patrol, Chaffee acknowledged the case was civil but "turned" with the Humphreys' cross-complaint under Business and Professions Code §7031(b) (Ex. 11, p. 7, Lines 19-21), reinforcing my reliance on his representations that the proceedings were civil, while concealing their punitive nature. Contradictorily, he stated §7031(b) is "not criminal and has 'no penalty attached,' but it is punitive" and "draconian" (Ex. 11, p. 7, Lines 23–24), failing to specify civil remedies and admitting the penal character of the ~$930k penalty, imposed without counsel or jury trial, violating due process. Chaffee ruled I contracted individually, stating, "we have no license in the name of Mr. Bereki individually; instead, it appears he was the qualifying corporate officer for the legal entity, Spartan Associates, incorporated" (Ex. 11, p. 4, Lines 1-3), based on initial

emails from my personal account (Ex. 11, p. 2, Lines 17-19). This ignored evidence that The Spartan Associates, Inc. was the contractor, including payments to Spartan after July 2012 (Ex. 11, p. 2, Lines 33-25), the Notice of Cessation to Spartan (Ex. 5), building permits (Ex. 2). Even if I were the contracting party, Spartan, a licensed contractor, performed all work through its employees and subcontractors satisfying CACI 4560(3). Chaffee's reliance on *Ball v. Steadfast* (2011) (Ex. 11, p. 3, Lines 12–36) was erroneous, as *Ball* involved a sole proprietor with a personal license, unlike Spartan's corporate license and my RMO and Qualifying Individual Role under BPC §7096. Chaffee denied suspending my license, stating, "Judge Chaffee assumes that any suspension would come from the State Contractor's Board" (Ex. 11, p. 8, Lines 22–23), but the judgment's financial burden directly triggered the mandatory summary suspension under BPC §7071.17, a bill of pains and penalties. Chaffee falsely claimed I did not raise constitutional issues (Ex. 11, p. 8, Lines 1-2), despite my Bill of Particulars challenging jurisdiction and the Humphreys' standing (Ex. 12, Questions 4, 8, 14, 51; ROA's 244, 256, 260, 263), suppressed through fines for abuse of discovery, reflecting my pro se status and Bissell's concealment. Chaffee admitted, "the damages are not offset by the work that was completed" (Ex. 11, p. 8, Lines 32-33), refusing to consider Spartan's $930,000 in value, despite no evidence of damages, enabled by Bissell's fraud.

36. Exhibit 11 is admissible under California Evidence Code § 1280 as a public record, as it was prepared by a CHP officer in the course of official duties, records contemporaneous observations from an April 16, 2024, interview, and is trustworthy. Chaffee's statements are further admissible under Evidence Code § 1200 as non-hearsay, offered not for their truth but to show his representations that the proceedings were civil, which misled me into waiving protections like a jury trial, and his knowledge of the case's punitive nature. Additionally, these statements are admissible under § 1250 to reflect Chaffee's state of mind and judicial reasoning. Chaffee's acknowledgment that the case "turned" with the Humphreys' § 7031(b) cross-complaint and his contradictory claim that the ~$930,000 penalty was "punitive" yet "not criminal" demonstrate he concealed the proceedings' punitive character, enabling the Humphreys and Bissell's extrinsic fraud to secure a void judgment without due process safeguards. His false statement that I did not raise constitutional

issues, despite my Bill of Particulars (Ex. 12), further evidences suppression of my jurisdictional challenges, corrupting the judicial process.

37. As Spartan's Responsible Managing Officer (RMO) and Qualifying Individual, I was required to supervise its construction operations under Business and Professions Code § 7068.1(a), as defined in Exhibit 7 (Application for Original Contractor License, CSLB). The qualifying individual "meets the experience and examination requirements for the license and is responsible for exercising supervision and control... to secure compliance with CSLB's laws" (BPC § 7068.1(a)). The CSLB determined I was Spartan's qualifying individual, making me a licensee under BPC § 7096 and inseparable from Spartan's license (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 517 (2009)). I performed the functions as RMO of Spartan's license on the Humphreys project.

38. Judge David Chaffee had a duty to ensure all CACI 4560 elements were met for a §7031(b) claim (*Thompson v. Louisville*, 362 U.S. 199 (1960)): (1) the Humphreys contracted with me, (2) a license was required, and (3) they paid me for work I performed. No known evidence was presented for Element 3. Chaffee's finding that I was unlicensed (ROA 193) without addressing Spartan's performance violated due process, enabling the Humphreys' fraud *(Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)).

39. The Humphreys' fraud corrupted the judicial process. Bissell's concealment and § 7026 misuse, exploiting my pro se status, convinced Chaffee to order the ~930,000 penalty without evidence I performed work, actualizing their intent to corrupt the process (*Kulchar*, 1 Cal. 3d at 471; *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

40. The judgment is void for lack of jurisdiction. The Humphreys had no standing. Their failure to prove CACI 4560(3) and my licensee status (BPC § 7096) negate their claim (ROA 144). My inalienable right to gainful employment cannot be presumed incompetent without a judicial determination (*Estate of Buchman*, 123 Cal. App. 2d 546 (1954)), and BPC § 7026 does not define a "person" as a "natural person," exempting me from licensing requirements. Chaffee's false claim that I did not raise standing issues (Ex. 11, p. 8, Lines 1-2) ignores my Bill of Particulars challenging the Humphreys' standing and court jurisdiction (Ex. 12, Questions 4, 8, 14, 51), suppressed through fines, enabled by my pro se status and Bissell's concealment.

41. On September 20, 2017, I had the following email conversation with William Bissell:

1. **Email from Adam Bereki to William G. Bissell**
   **Date:** September 20, 2017, 3:14 PM
   **Subject:** Phone Call
   **From:** Adam Bereki abereki@gmail.com
   **To:** wbissell@wgb-law.com

   Hi Bill,

   I hope this finds you well. I called your office today to speak with you about what I believe to be a huge miscarriage of justice happening in this case surrounding the challenge to jurisdiction I filed on 4/18/17 before judgement was ordered in this case. If you have any interest in discussing this matter with me, I'd welcome that.

   If so, please let me know when would be a good time to call you and I'll do so.

   Sincerely,
   Adam Bereki

2. **Email from William G. Bissell to Adam Bereki**
   **Date:** September 20, 2017, 3:50 PM
   **From:** wbissell@wgb-law.com
   **To:** Adam Bereki abereki@gmail.com

   Mr. Bereki: I reviewed your "Writ of Error" at the time it was filed with the court. I saw nothing in it that would cause me to question the validity of the judgment entered by the court. You have appealed the judgment and presumably you will be giving it your best shot with the Court of Appeal. Because appellate procedure is very deadline sensitive I suggest that your time might be better spent focusing on your argument to be made to the court than discussing your theories with me.

   Sincerely,
   Law Office of William G. Bissell

3. **Email from Adam Bereki to William G. Bissell**
   **Date:** September 20, 2017, 4:09 PM
   **From:** Adam Bereki abereki@gmail.com
   **To:** wbissell@wgb-law.com

   Thank you Bill, I appreciate your reply. It's just that since the "writ of error" was a direct jurisdictional challenge before the entry of judgement. The judgement is void because you didn't prove the factual sufficiency of subject matter jurisdiction as you were required to do upon direct attack. At that point and until subject matter jurisdiction was proved, the court was want of jurisdiction to issue an order. You'll see the jurisdictional challenge was served two days

before the judgement. I don't believe it's in judicial process for the court or other parties to just ignore and/or reject my documents however foreign or out of statutory procedure they may be. While I understand your position that you might think what I'm sharing is a legal "theory" I obviously believe otherwise and we can disagree. If I'm right though, you and the judge could be in a lot of trouble which is why I reached out to you first to see if you wished to speak with me humbly.

Sincerely,
Adam Bereki

4. **Email from William G. Bissell to Adam Bereki**
**Date:** September 20, 2017, 4:24 PM
**From:** wbissell@wgb-law.com
**To:** Adam Bereki abereki@gmail.com

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

42. Exhibit 13, consisting of email correspondence between myself and William G. Bissell dated September 20, 2017, further substantiates the extrinsic fraud and fraud on the court perpetrated by the Humphreys and Bissell. These emails demonstrate that Bissell was aware of my jurisdictional challenge filed on April 18, 2017, two days prior to the entry of judgment on April 20, 2017 (ROA 200). In my initial email, I invited Bissell to discuss the challenge, which asserted the court lacked subject matter jurisdiction. Bissell's dismissive reply, acknowledging he reviewed my "Writ of Error" but refusing to engage and urging me to focus on my appeal, reflects his deliberate avoidance of addressing the unproven jurisdictional foundation of the case (Decl. ¶ 38). His failure to contest the challenge's claims at the time, despite knowing its significance, evidences his intent to conceal jurisdictional defects, thereby corrupting the judicial process to secure a void judgment. These emails are admissible as non-hearsay under California Evidence Code § 1221, as adoptive admissions, and § 1200, as they are offered to show Bissell's knowledge and concealment, not for the truth of the statements contained therein.

43. Exhibits 1, 2, 3, 4, 5, 6, 8, 9, and 13 demonstrate the Humphreys and Bissell's efforts to secure a claim against me despite lacking standing, corrupting the judicial process. Their fabrication of a claim that I personally contracted and performed unlicensed

work (ROA 144), when they knew Spartan performed the work (Ex. 5; ROA 66, p. ii; Ex. 9), constitutes extrinsic fraud. By fabricating this claim to fraudulently invoke the court's jurisdiction, knowing they had no capacity or standing, they prevented a fair hearing (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). This lack of capacity and standing is a jurisdictional defect, rendering the judgment void (*Albrecht v. United States*, 273 U.S. 1, 8 (1923); *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018)).

44. The Court of Appeal opinion (RJN Ex. 2, Case No. G055075, filed October 31, 2018) supports my claim that no evidence showed I personally performed licensed construction work, as required by CACI 4560(3) (Decl. ¶ 5), by failing to identify substantial evidence for this element. The court found substantial evidence only that (1) I, not Spartan Associates, contracted with the Humphreys, based on their testimony about my initial representations and emails (RJN Ex. 2, pp. 10–11), and (2) payments from Gary Humphreys' corporation were attributable to the Humphreys personally, based on his testimony about income deductions (RJN Ex. 2, p. 12). These findings address the contractual relationship and payment source, not whether I performed licensed work such as framing or plumbing. The opinion's assumption that I "performed all the remodel work" (RJN Ex. 2, p. 4) lacks supporting evidence, as it cites no testimony or documents showing my performance, contrary to my evidence that Spartan performed the work. This gap, enabled by the Humphreys and Bissell's extrinsic fraud in concealing evidence that Spartan was the contractor (Ex. 5, 6, 9; Decl. ¶¶ 15–16, 25–27) and misrepresenting me as an unlicensed contractor (Ex. 1; Decl. ¶ 32), renders the judgment void for lack of jurisdiction, as the Humphreys failed to prove all elements of their § 7031(b) claim (Decl. ¶¶ 33, 37–41).

45. I respectfully request the Court vacate the void judgment (ROA 200) and grant relief as prayed in my motion, filed May 28, 2025.

Signed on June 4, 2025 at Las Vegas, Nevada.

By: _____

Adam Berek

# Exhibit 6

December 15, 2013

# 436 Via Lido Nord
# Report on Spartan Construction Work in Place and Costs

## Overview

The initial scope of the project was to combine two condominium units at 436 Via Lido Nord in Newport Beach, CA on the second floor into one unit on a design build basis. Spartan was engaged to do the work on a verbal agreement to be paid "actual cost of the work plus $500 per day fee for supervision, contractor overhead and profit". Spartan proceeded to design the new space and start work in April of 2012. Spartan did not get a building permit for the work. On or about the first of June 2012 The City of Newport Beach cited (C2012-0143) the project for "Construction without B,E,M,P permits" Actual work on the project slowed for the next four and one half months with only two to three workers on site possibly demolishing some of the existing structure. Spartan did purchase finish fixtures and appliances during this period, additionally Spartan engaged an acquaintance who worked at a commercial architecture firm to moonlight and draw up plans to secure a building permit. Building Permit number x2012-2116 was issued on November 14, 2012. The scope of the permitted work allowed was limited to combining the units and reroofing the building. This scope involved limited access to the lower unit to pour pads for structural columns and reroute some plumbing.

For the period November 2012 to May 2013 Spartan proceeded to demolish and reframe the entire second floor, except for the street facing wall, and substantial amounts of the first floor unit as he discovered, attempted to fix and rebuild old, deteriorated and water damaged portions of the structure. Significant work was done, again, without design drawings and building permits. The plumbing and electrical systems were substantially modified and rebuilt, some of this mechanical work was permitted (P2013-0125, N2013-0061). Spartan was also the subject of three written City of Newport Beach code enforcement violations in February, March and April of 2013.

During this period Spartan never completed, as evidenced by City inspection sign off, any portion of he permitted work, most notably the foundation work.

Spartan seemed unaware of the various City of Newport Beach and Building Code thresholds of remodeling that trigger updating the existing structure to current building codes. In the first week of June 2013 the City of Newport Beach issued and posted a "Stop Work" Notice on the project (Red Tagged) for exceeding the scope of work allowed in the existing building permit. Spartan, however, notwithstanding the City's position, continued to work on the project. Concurrently, Spartan engaged a drafting company in Riverside to prepare plans reflecting the work put in place and the new worked now required to bring the structure current with the building code. This design and engineering work continued until Spartan was excused from the project in September 2013.

Spartan billed the Owner, Gary Humphreys $826,094 in total for work on the project and was paid $758,000 as of the date of this report. Spartan has provided a detail spreadsheet summary of the billed amounts and copies of various invoices and receipts related to the project but not a comprehensive cost and payment backup.

- Spartan Associates Inc. is a licensed California general contractor License # 927244 issued in 2009
- Adam Alan Bereki is listed as the Responsible Managing Officer
- Workman's Compensation coverage through Norguard Insurance Co.
- Limited construction experience, prior to 2009 employed as a policeman

## Scope of Review of the Project and Costs.

The project will be reviewed in two parts, Performance/Value delivered and Cost of the Work.

**Performance**

On so many levels Spartan violated the trust and duty to the Owner to perform work on the property in a professional, knowledgeable and industry standard quality of work manner that this analysis should be used as a starting point to document further legal actions for recovery of damages based on the quality of the work and services performed by Spartan. Unfortunately, the author believes that Spartan, a corporation, and Adam Bereki, the Responsible Managing Officer, are largely uncollectable should a judgment be entered over the amount of the contractors bond ($12,000). A partial listing of the areas that could be further explored are as follows;

- Lost opportunity to improve the structure design
- Defective design and construction work both latent and patent
- Poor Management, Inefficient scheduling and use of the Owners funds
- Breech of fiduciary duty as a licensed contractor to secure permits prior to performing Work
- Damage to First Floor Unit (unpermitted work, loss of occupancy)
- No written Contract for the project
- No Evidence of Liability Insurance protecting the Owner from consequences of Spartan's actions.
- Exposing the building to code upgrade requirements

**Cost of the Work Plus Fee**

This portion of the project analysis is based on a review of Spartan supplied cost summary Excel spreadsheet and a collection of copies of receipts and invoices. It should be cautioned that the invoice copies are not supported by any banking / check copy information nor any reporting from a cost accounting software system. The information supplied is not sufficient to provide an opinion of an exact cost of the work but is adequate to provide a reasonable estimate of monies spent on items stored or incorporated into the building. Our estimate is that Spartan expended approximately $505,000 on labor and material that the industry would consider "Cost of the Work." The value received as discussed above under Performance is significantly less.

Spartan's billing for other costs include parking tickets, gas for Mr Bereki and his site supervisor, software, a vehicle lease and repairs, rentals on a "shop" and other owned tools, accounting and other contractor overhead, labor for site supervision, and a fee for Mr. Bereki. We estimate that these charges add up to approximately $321,000.

**Days worked**

Apparently, Spartan is unable to produce copies of a daily log of attendance and activities on the site. Our "days worked" estimate is based on a five day work week less federal holidays for the period April 2012 thru June 6th 2013 (Ordered by City of Newport to stop work.) We estimate 239 working days on the project.

**Contractor's Overhead and Fee**

At the discussed, but unwritten, $500 per day compensation beyond the cost of the work Spartan would be entitled to bill $119,500 in addition to the Cost of the Work for a total contract value estimated at $624,500 before credits for damages from poor performance. This would represent a fee mark up of approximately 23%. This is at the higher end, but within the industry range, for this type of work.

We do know from the Owners banking records that Spartan has been paid $758,000.

Based on our estimates of the Cost of the Work plus a $500 per day overhead and fee, Spartan has been OVERPAID approximately $133,500.

# Exhibit 7

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, CA 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com



# IMPORTANT NOTICE

Dear Applicant:

Enclosed is the application from the Contractors State License Board (CSLB).

**Please be aware that nearly half of all applications submitted to CSLB are inaccurate or incomplete and must be returned for correction.**

## Please complete your application in its entirety to ensure that your application is accepted for processing by CSLB.

After an application has been accepted by CSLB as complete (also known as "posted"), the applicant will be sent instructions on the process for obtaining and submitting fingerprints, as required by law. (*Business and Professions Code sections 144 and 7069*)

An incomplete application can needlessly delay your license. Delays can last several weeks or even months and possibly result in the application being deemed abandoned and becoming void and the application fee being forfeited. (*Business and Professions Code sections 7074 and 7138 and Title 16, California Code of Regulations section 813*)

## Spending a few extra minutes now may save you weeks or months later!

Before you submit your application, follow these simple directions.

- **Sign the form.**
- **Fill out all applicable information.**
- **Make sure you submit Certification of Work Experience forms that have been filled out completely, ensuring that you have provided four (4) years of applicable experience in the classification for which you are applying.**

**Carefully read the General Information and Instructions** that immediately precede the application package and follow the specific instructions that are contained throughout the application to help ensure that your application is complete and accurate.

**Please be aware that there are no schools or application preparation organizations that are affiliated with or agents of CSLB, although some may have company names that are confusingly similar to CSLB.** If you discover that an organization has misrepresented itself as being associated with CSLB, you should submit a complaint to CSLB or the California Department of Consumer Affairs. However, official CSLB examination study guides are available free of charge on CSLB's website.

# IMPORTANT NOTICE REGARDING CONVICTIONS PLEASE READ CAREFULLY

As part of the Contractors State License Board (CSLB) application process and as required by law, the applicant must be fingerprinted if they have not been fingerprinted by CSLB before or if the applicant's previous fingerprint record was purged by CSLB due to a voided application; disassociated, revoked, or cancelled license or registration; or for some other reason. After an application is accepted by CSLB as complete (also known as "posted"), the applicant will be sent instructions on the process for obtaining and submitting fingerprints, usually via live scan electronic transmission.

The applicant's fingerprints will be compared to the records of the California Department of Justice and the Federal Bureau of Investigation. **If an applicant has ever been convicted of a crime, their criminal record information will be reported to CSLB.** This includes DUIs and other Vehicle Code violations resulting in a conviction. Even if you pled "no contest," had the conviction set aside, or judgment deferred pursuant to Penal Code sections 1000 or 1203.4 (commonly understood as "expunged"), the past conviction will still be reported to CSLB.

Under certain circumstances, CSLB may request that an applicant provide mitigating information regarding their criminal history by completing and submitting the Disclosure Statement Regarding Criminal Plea/Conviction form that is available on CSLB's website on the Forms and Applications page. CSLB's Criminal Background Unit will contact the applicant if it is requesting this additional information. If so, the applicant can complete the disclosure and send an email scan of it to CBU@cslb.ca.gov or fax to 916-255-4135. Please note, completing the form or any other disclosure of mitigating evidence is voluntary, and the applicant may choose not to disclose any information. An applicant's choice not to disclose information shall not be a factor in a board's decision to grant or deny an application for licensure. (See Bus. & Prof. Code, § 480(f)(2).

Applicants with criminal convictions are not automatically denied licensure – each applicant is reviewed individually based on the applicable sections of law. When reviewing criminal convictions, CSLB considers factors such as the nature and severity of the crimes, the amount of time that has passed since the convictions, and any evidence of rehabilitation submitted by the applicant. CSLB has several regulations to review criminal convictions, including Title 16 of the California Code of Regulations sections 868, 868.1, and 869. Section 868 guides how to evaluate whether a crime is substantially related to the qualifications, duties, or functions of a licensee or registrant. Section 868.1 guides whether a felony financial crime is directly and adversely related to the fiduciary qualifications, duties, or functions of a licensee or registrant; and Section 869 guides whether an applicant has made a showing of rehabilitation.

For rehabilitation evaluation, in addition to other evidence of rehabilitation, CSLB is generally looking at how much time has passed since the conviction without further violations of law.

# APPLICATION FOR ORIGINAL CONTRACTOR LICENSE
## General Information and Instructions

### GENERAL INFORMATION

Listed below is general information to assist you as you complete the attached application. Detailed instructions are also provided that address the content of the application section by section. Please refer to the Applicants page on the Contractors State License Board's (CSLB) website (www.cslb.ca.gov) for more detailed information about the licensing process.

**Do not submit this General Information and Instructions portion with your completed application** – the actual application begins immediately following this section on Application – Page 1 of 4 and includes the Certification of Work Experience and the Owner-Builder B-General Building Construction Project Experience form, if needed. Before you submit your application, please review and be sure you have complied with the following items.

- **Enclose the nonrefundable $450 application fee with your completed application for licensure in a single classification.** CSLB cannot process your application without the appropriate fee made payable to the Registrar of Contractors. The initial license fee ($200 for sole owner and $350 for non-sole owner) should be submitted separately after you pass the examination. If approved for the military expedite and initial license fee reduction provision (see instructions under Military), these initial license fees will be reduced by 50%. (*Business and Professions Code [BPC] sections 7137 and 7138*) Examination fees are paid directly to CSLB's approved testing vendor when the examinations are scheduled.
- **Your application may be returned to you if it is insufficient or incomplete.** You must provide any missing information, make corrections, and resubmit your completed application to CSLB within **90 days** after the date that it was returned to you, or your application will be deemed abandoned and become void. You cannot reinstate an abandoned application – you must submit a new application and $450 application fee if you wish to pursue licensure. (*BPC 7074 and Title 16, California Code of Regulations [T16 CCR] section 813*)

**Complete the application and all accompanying forms legibly in black or dark blue ink or on CSLB's website using the Easy-Fill feature.** Please make sure that you and other authorized individuals sign and date the forms, where applicable.

- **Leave no space blank.** If a particular question or request for information does not apply to you, write "N/A" in the blank space to indicate that you have read the question and determined that it is not applicable.
- The "#" symbol is used interchangeably with the word "number" where space is limited on the application.
- If you need additional copies of forms (e.g., Certification of Work Experience, Section 4 – Personnel Full Legal Names and Addresses), please make copies of the blank forms before you begin or print additional copies from the CSLB website, under the Forms and Applications page.

### SECTION 1 – BUSINESS NAME AND ADDRESS

**Business Name Styles** (Box 1)

In accordance with BPC section 7059.1, the business name for a contractor license **must not be misleading in relation to the classification(s) issued to the license and must be compatible with the type of business entity licensed** (*see Section 2 on next page*). For example, it would not be acceptable for ABC123 Tile to apply for a C-10 Electrical contractor license, but it would be acceptable for ABC123 Construction to apply for a B-General Building contractor license or for ABC123 Tile to apply for a C-54 Ceramic and Mosaic Tile contractor license. In addition, it would not be acceptable for a sole ownership or proprietorship to use the words "partners" or "incorporated" in its business name.

**Business Addresses, Phone and Email** (Boxes 3a – 3c)

- You **must** provide an address of record (mailing address) for your business that will be made available to the public if you become licensed. This address will be published on CSLB's website and will also be used for all official correspondence, notices, and orders from CSLB, such as renewal notices. P.O. boxes and private mailboxes (PMB) are acceptable for the address of record.
- You **must also** provide a business street address that will be used only for CSLB's internal administrative purposes – it will not be published on CSLB's website. P.O. boxes and PMBs are **not** acceptable for the business street address.

# APPLICATION FOR ORIGINAL CONTRACTOR LICENSE
## General Information and Instructions *(continued)*

- You are also asked to provide business phone and business fax numbers and a business email address. The business phone number is published on CSLB's website. If you have an email address at which you are currently receiving emails, you must provide it (BPC 7083.2). The email provided will not be part of your public license record. CSLB emails important license updates and changes to the law that may affect your license. All emails CSLB sends to the email address you provided are presumed to be received.

**Classification Requested** (Box 2)

Listed below are the contractor license classifications. **Only one classification may be requested on an original application when an examination is required.** For a complete description of the classifications, refer to the License Classifications link on the Applicants page of CSLB's website.

A General Engineering Contractor
B General Building Contractor
B-2 Residential Remodeling Contractor C-2 Insulation and Acoustical Contractor
C-4 Boiler, Hot Water Heating and Steam Fitting Contractor
C-5 Framing and Rough Carpentry Contractor
C-6 Cabinet, Millwork and Finish Carpentry Contractor
C-7 Low Voltage Systems Contractor
C-8 Concrete Contractor
C-9 Drywall Contractor
C-10 Electrical Contractor
C-11 Elevator Contractor
C-12 Earthwork and Paving Contractors
C-13 Fencing Contractor
C-15 Flooring and Floor Covering Contractors
C-16 Fire Protection Contractor
C-17 Glazing Contractor
C-20 Warm-Air Heating, Ventilating and Air-Conditioning Contractor
C-21 Building Moving/Demolition Contractor
C-22 Asbestos Abatement Contractor
C-23 Ornamental Metal Contractor
C-27 Landscaping Contractor
C-28 Lock and Security Equipment Contractor
C-29 Masonry Contractor
C-31 Construction Zone Traffic Control Contractor
C-32 Parking and Highway Improvement Contractor
C-33 Painting and Decorating Contractor
C-34 Pipeline Contractor
C-35 Lathing and Plastering Contractor
C-36 Plumbing Contractor
C-38 Refrigeration Contractor
C-39 Roofing Contractor
C-42 Sanitation System Contractor
C-43 Sheet Metal Contractor
C-45 Sign Contractor
C-46 Solar Contractor
C-47 General Manufactured Housing Contractor
C-49 Tree and Palm Contractor
C-50 Reinforcing Steel Contractor
C-51 Structural Steel Contractor C-53 Swimming Pool Contractor
C-54 Ceramic and Mosaic Tile Contractor
C-55 Water Conditioning Contractor
C-57 Well Drilling Contractor
C-60 Welding Contractor
C-61 Limited Specialty Classification (see below)

The C-61 Limited Specialty classification is for contractors who specialize in work not listed above (for example, C-61/D-50 Suspended Ceilings) or who perform work that is a specialized part of an existing classification (for example, C-61/D-29 Paper Hanging). The License Classifications link on the CSLB website contains a full listing of the subcategories of the C-61 classification.

**SECTION 2 – BUSINESS ENTITY** (Box 4)

Applicants must designate their business entity. Below is information on the five business entity types that are covered by this application. Contractor licenses are also issued to joint ventures – such applicants must submit the separate Application for Joint Venture License, available at CSLB's website on the Forms and Applications page.

Corporations and LLCs must be registered and in good standing (not suspended or otherwise restricted) with California Secretary of State (SOS) in order to be licensed and remain licensed with CSLB. California SOS can be reached by calling (916) 653-6814 or by visiting their website at www.sos.ca.gov. Applicants who wish to change their business entity after the application is posted should withdraw their application and submit a new one.

**Sole Owner**

Check the "Sole Owner" box if the business is owned by only one individual person and is not a corporation or an LLC.

**Partnership**
Check the "Partnership" box if the business is a partnership. Partnerships must provide their federal employer identification number (FEIN), which is available from the U.S. Internal Revenue Service (IRS). The IRS can be reached by calling (800) 829-1040. Personal Social Security numbers are **not** acceptable for the FEIN. Limited Partnerships must be registered with the California SOS and in good standing prior to being issued a contractor license.

**Corporation**
Check the "California Corporation" box if the business is a corporation. Corporations must be registered with the California SOS and in good standing prior to being issued a contractor license. Corporations must provide a current and active California SOS registration number where indicated in Section 2 of the application.

**Limited Liability Company**
Check the "Limited Liability Company" box if the company is a limited liability company. LLCs must be registered with the California SOS, must be in good standing, and have filed their statement of information prior to being issued a contractor license. LLCs must provide a current and active registration number where indicated in Section 2 of the application.

If your business entity is an LLC, before you submit your application, please be aware that the following additional requirements apply to LLC licenses (*please refer to CSLB's website for more information*):

- **$100,000 Surety Bond.** LLC licenses are required to file a $100,000 surety bond (in addition to the $25,000 contractor's bond) for the issuance, reissuance, reinstatement, reactivation, and renewal of an LLC license for the benefit of any employee or worker damaged by the LLC's failure to pay wages, interest on wages, or fringe benefits, as well as other contributions. (*BPC sections 7071.6 and 7071.6.5*)
- **$1 Million Liability Insurance Minimum.** LLC licenses are required to carry liability insurance with the aggregate limit of $1 million for licensees with five or fewer persons and/or companies listed as personnel of record, plus an additional $100,000 required for each additional personnel, not to exceed $5 million total. (*BPC section 7071.19*)
- **Personnel of Record.** Every person and/or company that is an officer, responsible manager, member, or director of an LLC must be listed as personnel of record on LLC applications. All individuals who are members of the personnel of record are subject to fingerprinting. LLC officers and members must be listed on the LLC's record with California SOS. LLCs may also have additional officers who may not be included on the official California SOS record, but who must be listed on this application and who will become part of the contractor license (*BPC section 7065*).

**Tribal Business**
Check the "Tribal Business" box if the business is a federally recognized tribe under BPC 7025.1

A tribal business can be verified by submitting any one of the following three documents along with the application.
- A resolution that ratifies the charter for this tribal business under federal law ("IRA Section 17 corporation").
- A resolution authorizing this tribal corporation under tribal laws ("tribally chartered corporation").
- Articles of incorporation or by-laws for this tribal corporation.

**SECTION 3 – QUALIFYING INDIVIDUAL FULL LEGAL NAME AND ADDRESS**
The terms **"qualifying individual"** and **"qualifier"** are used interchangeably. The qualifying individual is the person who meets the experience and examination requirements for the license and who is responsible for exercising **supervision and control** of their employer's or principal's construction operations to secure compliance with CSLB's laws, rules, and regulations. (*BPC section 7068.1 (a)*) "Supervision and control" means "direct supervision or control" or monitoring and being available to assist others to whom "direct supervision and control" has been delegated. "Direct supervision or control" means supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, and/or supervision on construction sites.

A qualifying individual is required for every classification on every license issued by CSLB. The qualifying individual may or may not be the owner of the business.

You must complete the personnel information requested in Sections 3 and 4 of the application for each individual and company that will be listed on the license.

- Line 5a – **Full legal names are required.** You must provide the full legal name of all personnel. If an individual does not have a middle name, write "None" or "No Middle Name" in the space provided. If an individual has only an initial for their first or middle name, write "(Initial Only)" after the initial.
- Provide qualifier's date of birth where requested.

## APPLICATION FOR ORIGINAL CONTRACTOR LICENSE
### General Information and Instructions *(continued)*

- **All applicants are required to provide their U.S. Social Security number (SSN) or individual taxpayer identification number (ITIN) if an individual does not have an SSN.**
- Box 5b – You must **also** provide a residence street address for the qualifier that will be used only for CSLB's internal administrative purposes – it will not be published on CSLB's website unless it is also the business address. P.O. boxes and PMBs are **not** acceptable for the qualifier's residence street address.
- Line 6 – Please enter any previous or current license numbers held by the qualifier in the provided box. Also enter the percentage of the new business owned/held by the qualifier (ranging between zero and 100%), the qualifier's driver's license number, and the qualifier's home phone number.
- Box 7 – Check the appropriate box that identifies the title/position of the qualifying individual. The **title/position must be compatible with the business entity type**, as entered in Section 2 above. Please be sure your selected title/position complies with the following:
  - **Sole owner entity** = either Owner or Responsible Managing Employee (RME) – see below
  - **Partnership entity** = either Qualifying Partner or RME
  - **Corporation entity** = either Responsible Managing Officer (RMO) or RME
  - **LLC entity** = any one of RMO, Responsible Managing Manager, Responsible Managing Member, or RME
  - **Tribal Business entity** = either RMO or RME
- An **RME is a bona fide employee** who is permanently employed by the applicant and is actively engaged in the operation of the applicant's contracting business for at least 32 hours or 80% of the total hours per week such business is in operation, whichever is less.
- Box 8 – You **must** print and sign your name and indicate the date below the certification statement at the bottom of Page 1 of the application. Failure to sign your application will result in the application being returned to you for correction.

**SECTION 4 – PERSONNEL FULL LEGAL NAMES AND ADDRESSES** (Other than Qualifying Individual)

**You must complete the personnel information requested in Section 4 of the application for each individual and company that will be listed as personnel on the license**, other than the qualifier listed in Section 3. Be sure to include the applicant's business name at the top of the page where requested.

- See Section 3 above for instructions on how to complete the specific fields of this section. If more than four (4) personnel must be reported, please make a copy of the blank form. All personnel **must** print and sign their names below the certification statement and include the date that the form was signed.
- Every person who is an officer, member, responsible manager, or director of a corporation, tribal business, or limited liability company seeking licensure under this chapter shall be listed on the application as a member of the personnel of record. (BPC 7065 (b) (1)
- LLCs can have managers or members that are corporations or other LLCs, as opposed to individual people. When an LLC has corporate or LLC managers or members, complete Section 4 for those companies, omitting the fields that do not apply (e.g., date of birth, SSN/ITIN, and driver license number). Since corporations and LLCs are incapable of signing documents (e.g., applications, renewals, etc.), you must also report at least one individual person who will be an authorized signer for that company. To do this, you must complete a portion of Section 4 using this individual person's personal information. Identify that person as the "Authorized Signer for _____" (inserting the name of the corporation or LLC on behalf of which the individual person will sign). This individual person will not be part of the official license personnel of record (unless they are also an actual responsible manager, member, or officer of the applicant LLC), but their information will be maintained by CSLB for signing purposes only.

## SECTION 5 – REQUIRED APPLICATION QUESTIONS

Be sure to include the applicant's business name at the top of the page where requested. **All** questions must be answered, unless otherwise indicated, and all requested explanations and documentation must be provided, or the application will be returned for correction. Failure to thoroughly and accurately complete this section of the application can delay the licensure process or result in denial of the application.

### Fingerprint Requirement

**Please be sure to read the Important Notice Regarding Convictions on the front of this application packet.** All applicants for licensure are required to submit a full set of fingerprints for the purpose of conducting a criminal background check. Fingerprints will be compared to the records of the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) to determine whether a criminal history exists. Your license will not be issued until CSLB receives fingerprint results from both DOJ and FBI. Even though you may have been fingerprinted previously for an employer or another regulatory body, you will need to undergo the fingerprinting and criminal history check process again specifically for CSLB. California Penal Code section 11142 prohibits criminal history information from being released to any entity other than the requesting agency that you have authorized to receive it.

After an application has been accepted by CSLB as complete (also known as "posted"), each individual listed on the application who needs to fingerprint will be sent instructions on the process for obtaining and submitting fingerprints. Individuals in California are required to fingerprint by electronic live scan; individuals outside of California can fingerprint either by electronic live scan in California or by submitting hard card fingerprints that are completed in the applicant's location, as explained in the instructions that are sent after the application has been posted. Please note that submitting hard card fingerprints can significantly delay the licensure process due to the extra processing needed at DOJ and FBI. For more information, please visit CSLB's website and view information on the Applicants page.

### Translator for Examination (Question 15)

Check the "Yes" box if you have difficulty understanding or reading the English language and you would like to use a translator to read the examination to you. Complete question #15 by listing in what language your translator will read the examination. The translator you choose must be approved in advance by CSLB. If you check the "Yes" box, information will be sent to you regarding the translator process. Some of CSLB's examinations have been translated into Spanish. If the applicant selects "Spanish" as their preferred language and there is an examination available in that language, they will be scheduled for that examination.

## SECTION 6 – QUALIFIER EDUCATION, APPRENTICESHIP, LICENSURE, AND MILITARY SERVICE

### Education and Apprenticeship (Question 16)

CSLB may grant up to three years of credit toward the four-year experience requirement for completed training in an accredited school and/or apprenticeship program in the construction trade for which the applicant is applying. (*T16 CCR section 825*). For formal education, request a certified official transcript from the applicant's educational institution. Include the sealed official transcript with the application when submitting. Degrees obtained outside of the United States must be translated, if in a language other than English, and evaluated by an accredited evaluation service in the U.S. before being submitted to CSLB.

For apprenticeship programs, the applicant must submit a copy of their apprenticeship certificate and indicate the dates of the program where requested on the application.

### Reciprocity (Question 17)

Applicants who are seeking licensure in California and who are licensed in the same classification in another state may be eligible for the waiver of the trade examination if the qualifier meets the requirements for reciprocity (*BPC section 7065.4*). Please see CSLB's website (www.cslb.ca.gov) for more information. If you are licensed in a state and classification recognized by the Board, please have the licensing agency from your state complete a "License Verification Request" form and submit it with this application. The California Law and Business Examination will still be required if the applicant has not passed California Law and Business Examination within the last five (5) years. (*See CSLB's website for more information on reciprocity on the Applicants page.*)

**Military Service** (Questions 18 and 19)

**Expedited Processing and 50% reduction of Initial License fee for Military Personnel**
CSLB will expedite the licensure process and reduce the initial licensing fee by 50% for an applicant who is a current active-duty member of the Armed Forces or who was not dishonorably discharged after having served as an active-duty member of the United States Armed Forces or the National Guard or Reserves. Please provide the following documentation: Evidence of your current military duty (copy of your military orders) or your previous military service (copy of your latest DD 214 long form – Certificate of Release or Discharge from Active Duty showing discharge status or a copy of a current and valid driver's license or identification card issued by this state or another state with the word "Veteran" printed on its face) or for National Guard discharge status (copy of your NGB 22 form), or for Reserves discharge status (copy of your DD256 form).

**Expedited Licensure Application Processing for Service Members Enrolled in Skillbridge**
CSLB will expedite the licensure process for service members who are enrolled in a Skillbridge program. Please provide documentation of enrollment in a Skillbridge program, such as an official letter from a commanding officer, in order to qualify for expedited processing.

**Expedited Processing and Fee Waiver for Military Personnel Spouses or Domestic Partners**
CSLB will expedite the licensure process and waive the application fee and initial license fee for an applicant who:

- Is married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active-duty military orders.
  **AND**
- Holds a current license in another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license from the board.

If you answer "Yes" to question 19 and you would like to be considered for this expedited processing and waiver of licensure fees, please provide a copy of your current license from the other state, district, or territory of the United States documenting a contractor license, registration, permit, or certificate in the same classification for which you are seeking licensure **AND** documentation of your marriage or legal union **AND** your spouse's or partner's active military duty. For example, in addition to the licensure documentation, attach a copy of the marriage certificate or certified declaration/registration of domestic partnership filed with the Secretary of State **AND** military orders establishing a duty station in California. For other forms of "legal union" not recognized by California, you may submit other documentary evidence of legal union issued by the state that recognizes your legal union for consideration by CSLB in meeting this requirement.

**If all of the above-mentioned requirements are met and all the required documentation is submitted with the application, the application fee and the initial license fee will be waived. All other fees will still be required.**

**Credit for Military Experience and Training**
CSLB may grant credit toward licensure requirements for applicable work experience and training received while the applicant was an active-duty member of the Armed Forces of the United States performing duties in the classification for which they are applying. This work experience and training must be reported on a Certification of Work Experience form and must be supported by acceptable documentation. Include a copy of your Joint Service Transcripts (military transcripts) for evaluation. You may also provide evidence of current military duty (copy of applicant's military orders) or previous military service (copy of applicant's DD 214 – Certificate of Release or Discharge from Active Duty). If you are claiming military experience, please be sure to check the "Yes" box for Question 18 on the application, as discussed above.

**Immigration Status Expedites** (Question 20)

CSLB will expedite the licensure process for an applicant who immigrated to the United States of America in certain circumstances. Please check the "yes" box to question 20 on this application if:

- You were admitted to the United States as a refugee pursuant to section 1157 of title 8 of the United States Code;
- You were granted asylum by the Secretary of Homeland Security or the United States Attorney General pursuant to section 1158 of title 8 of the United States Code; or,
- You have a special immigrant visa and were granted a status pursuant to section 1244 of Public Law 110-181, Public Law 109-163, or section 602(b) of title VI of division F of Public Law 111-8, relating to Iraqi and Afghan translators/interpreters or those who worked for or on behalf of the United States government.

If you selected YES, you must attach evidence of your status as a refugee, asylee, or special immigrant visa holder. Failure to do so may result in application review delays. Acceptable evidence includes:

- Form I-94, Arrival/Departure Record, with an admission class code such as "RE" (Refugee) or "AY" (Asylee) or other information designating the person a refugee or asylee.
- Special immigrant visa that includes "SI" or "SQ."
- Permanent Resident Card (Form I-551), commonly known as a "Green Card," with a category designation indicating that the person was admitted as a refugee or asylee.
- An order from a court of competent jurisdiction or other documentary evidence that provides reasonable assurance that the applicant qualifies for expedited licensure.

## MISCELLANEOUS INFORMATION

### Experience and Examination Information

Applicants for licensure must meet specific experience and examination requirements, as explained below. Waivers of the trade examination may be granted under certain circumstances, as indicated on the next page. **If you qualify for examination waiver or exemption, do not use this application** – please instead use the Application for Original Contractor License – Waiver (7065) (form 13A-1A).

**Experience Requirements**

To be eligible for licensure, the qualifying individual must have had, within the last 10 years, at least four (4) years of experience in the classification for which they are applying. The experience must be at no less than a journeyman level, or as a foreman, supervising employee, contractor, or owner-builder. Owner-builder experience can only be used to qualify for a B-General Building classification, and certain requirements must be met. Please see the general information page of the Certification of Work Experience form for more information. A "journeyman" is defined as an experienced worker who is fully qualified (as opposed to a trainee) and is able to perform the trade without supervision, or one who has completed an apprenticeship program. **Experience is documented on the Certification of Work Experience form**. (*T16 CCR section 825*)

**Examination Eligibility Requirements**

The qualifying individual for a contractor license is required to pass the written Law and Business Examination and a specific trade examination if required (BPC section 7065) unless they meet the requirements for a waiver (see next page for information regarding examination waivers). These examinations are administered by an approved testing vendor and fees for the examinations are paid directly to the vendor by the applicant. Information about scheduling examinations will be mailed to you once the application is posted. Official CSLB examination study guides are available free of charge on CSLB's website under the Applicants tab. These study guides are available in English and Spanish.

**Re-Examination**

If you are required to take an examination, subject to some limitations, you have 18 months after the approval of your application to achieve a passing score on the examinations(s). During that time, you may take the examinations(s) as many times as needed within retesting guidelines. These re-examinations are administered by an approved testing vendor and the fee for the re-examinations are paid directly to the vendor by the applicant each time you reschedule an examination. Scheduling re-examinations will be done through the PSI Exams account. If a candidate fails one or both of their examinations, they must go to their PSI account to select the date, time, and location for their next examination. Candidates must wait 21 days after taking an examination before they may try it again. *(See BPC section 7074 for more detailed information on re-examinations).*

*Please detach this General Information and Instructions portion before submitting the completed application package to CSLB.*

**Reasonable Accommodation – The Americans with Disabilities Act**

In compliance with the Americans with Disabilities Act (ADA), CSLB provides reasonable accommodation for applicants with disabilities that may affect their ability to take the required examinations. Applicants wishing to request reasonable accommodation pursuant to the ADA must complete the Special Accommodation Request for Examination form (available on the Forms and Applications page on CSLB's website) and submit it to CSLB with the appropriate supporting documentation. In order to make the necessary arrangements to accommodate candidate needs, the form and supporting documentation should be submitted as soon as possible. As soon as the reasonable accommodation is approved, candidates may contact PSI Exams to schedule and pay for their examination(s).

**Examination Waivers and Exemptions**

The examination may be waived if the qualifying individual is currently or has been in the last five (5) years, actively engaged in the construction business and meets specific waiver requirements as mandated by law or has been actively licensed in good standing or has passed the required examinations in the classification for which they are applying. *(See BPC sections 7065 – 7065.4 for a complete list.)* If you are applying for licensure based on waiver of or exemption from the trade and Law and Business examinations, you should complete the Application for Original Contractor License – Examination Waiver (7065) instead of this application.

In addition, the trade examination may be waived if the qualifier meets the requirements for reciprocity. Please see CSLB's website (www.cslb.ca.gov) for more information. If you are licensed in a state and classification recognized by the Board, have the licensing agency from your state complete a "License Verification Request" form and submit it with this application. The Law and Business Examination will still be required if the applicant has not passed that examination within the last five (5) years. (See CSLB's website for more information on reciprocity on the Applicants page.)

**Random Application and Experience Review**

By law, CSLB must randomly review three percent (3%) of applications, including the experience claimed on Certifications of Work Experience forms that must be verifiable through payroll records or similar documents. In the event that your application is selected for review, please see CSLB's website for a Summary of Acceptable Documentation (*located at CSLB's website on the Applicants page*) that may be submitted to CSLB to support claimed experience. In addition, CSLB staff may contact the certifier of experience or other parties to verify experience. *(BPC section 7068 and T16 CCR 824)*

**C-22 Asbestos Abatement Contractor License**

The C-22 – Asbestos Abatement contractor performs abatement, including containment, encapsulation, or removal, and disposal of asbestos containing construction materials, as defined in Section 6501.8 of the Labor Code, in and on buildings and structures. All work performed and all documentation prepared by an asbestos abatement contractor shall be done in accordance with DOSH regulations and requirements.

The Board shall not issue an asbestos abatement contractor license unless the applicant or contractor is duly registered with DOSH pursuant to Section 6501.5 of the Labor Code or has an active application for registration in process with DOSH. All holders of the C-22 – Asbestos Abatement classification shall have completed DOSH registration training requirements, as contained in Section 1529 of Title 8 of the California Code of Regulations.

You may wish to contact DOSH prior to applying for the asbestos certification or the C-22 – Asbestos Abatement classification to be sure that you understand their requirements for registration since DOSH registration is required in order to perform asbestos-related work. DOSH's Asbestos Contractors' Registration Unit (ACRU) can be reached at (916) 574-2993 or ACRU@dir.ca.gov, or you can visit their website at http://www.dir.ca.gov/dosh/ACRU/ACRUhome.htm.

**C-47 General Manufactured Housing Contractor License**

Prior to obtaining a C-47 – General Manufactured Housing contractor classification, you must complete a federally approved initial installer training. Along with your application, please submit a "Certificate of Completion of Training" from a qualified trainer approved by the U.S. Department of Housing and Urban Development (HUD). The license applicant is responsible for ensuring the training program is approved by HUD. Existing C-47 license holders are exempt from the requirement.

## Bond, Insurance, and Other Licensure Requirements

**All contractors** must meet specified bond, insurance, and other requirements for licensure with CSLB, as indicated below. Failure to maintain a required bond or insurance may result in the suspension of the license. For information on bonds, see *A Guide to Contractor License Bonds*, available on CSLB website under the Resources tab and then choose CSLB Publications. Bonds may be submitted to CSLB electronically by the issuing surety company.

### Contractor's Bond

**All contractors** must have a $25,000 contractor's bond on file with CSLB. (*BPC section 7071.6*)

### Bond of Qualifying Individual

An **additional** $25,000 qualifying individual's bond must be filed for **all** contractors that are qualified by an RME, or under certain other circumstances for corporate and LLC contractors when the qualifying individual (RMO, responsible managing manager, or responsible managing member) holds less than 10 percent of the voting stock of the corporation or membership interest in the LLC. (*BPC section 7071.9*). Tribal businesses are exempt from this specific requirement.

### LLC Employee/Worker Bond

**All** LLC licenses are required to have an **additional** $100,000 employee/worker bond on file with CSLB for the benefit of workers employed by or contracted to work for an LLC. (*BPC section 7071.6.5*)

### Disciplinary Bond

A license that has been disciplined may be required to have an **additional** disciplinary bond on file with CSLB in an amount fixed by the Registrar at not less than $25,000 or more than $250,000. (*BPC section 7071.8*)

### Workers' Compensation Insurance

Workers' compensation is required when a contractor has employees, including an RME and/or home improvement salespersons. It is also required for all contractors applying for the C-8 Concrete, C-20 Warm-Air Heating, Ventilating, and Air Conditioning, C-22 Asbestos Abatement, C-39 Roofing, and C-61/D-49 Tree Service classifications, whether or not they have any employees. The Certificate of Insurance must be issued in the business name shown on this application. Contractors that have no employees and are not otherwise required to have workers' compensation insurance must complete the Exemption from Workers' Compensation form, available on CSLB website's Forms and Applications page. (*BPC section 7125*)

### LLC Liability Insurance

**All** LLC licenses are required to have liability insurance in an amount that is not less than one million dollars ($1,000,000) or more than five million dollars ($5,000,000). The amount is determined based on the number of personnel of record on the license. For five (5) or fewer personnel, the amount is $1 million. For each additional member of personnel, the amount increases by $100,000, up to a maximum of $5 million. For example, an LLC that has eight (8) personnel would be required to carry a $1,300,000 liability insurance policy. (*BPC section 7071.19*)

### Asbestos Open Book Examination

**All** qualifiers must complete the Asbestos Open Book Examination as part of the licensure process. Information about this examination and the link to take it can be found on CSLB's website at www.cslb.ca.gov. (*BPC section 7058.5*) Completion of this required open book examination does not authorize the licensee to engage in asbestos-related work.

## Reissuance or Reassignment of License Number

If the qualifier has previously been licensed, it may be possible to have the previous license number reissued or reassigned under certain circumstances. Sole owner numbers may be reissued to corporations or LLCs, and corporate license numbers may be reissued to LLCs. To request the reissuance of a license number, the applicant must complete and submit with their application the Request for License Number Reissuance form (13A-1h), available on the Forms and Applications page on CSLB's website. (*BPC section 7075.1*)

**Construction Management Education Account**

A grant program was established in 1991 to provide funds for qualified public post-secondary schools that teach construction management. You may voluntarily contribute to the account when paying the application fee or the license renewal fee. If you would like to make a voluntary contribution, please mark the box on the top portion of Page 1 of the application, write in the dollar amount in the space provided, and include that dollar amount in the total amount paid with your application, or submit a separate check or money order made payable to CSLB/Construction Management Education Account. *(See BPC sections 7139.2 and 7139.4.)*

**Collection of Social Security Numbers, Individual Taxpayer Identification Numbers, and Federal Employer Identification Numbers**

With the exception of the driver's license number, all information requested on the application is mandatory, including disclosure of U.S. Social Security numbers (SSN), individual taxpayer identification numbers (ITIN), and federal employer identification numbers (FEIN). Collection of the SSN, ITIN, and FEIN is authorized by BPC sections 30, 31, and 7145.5. SSNs, ITINs, and FEINs are used exclusively for the purpose of tax enforcement, compliance with any judgment or order for family support in accordance with Family Code section 17520, measurement of employment outcomes of students who participate in career technical education programs offered by the California Community Colleges as required by BPC section 30, and investigation of tax evasion and violations of cash-pay reporting laws as set forth in Section 329 of the Unemployment Insurance Code. If you fail to disclose your SSN, ITIN, or FEIN, your application will not be processed, and you will be reported to the Franchise Tax Board; they may assess a $100 penalty against you.

**Collection of Personal Information**

CSLB collects the personal information requested on the following form as authorized by BPC sections 30, 31, 114.5, 115.5, 141, 480, 7066, 7069, 7072, 7073, and 7145.5 and T16 CCR section 816. CSLB uses this information to identify and evaluate applicants for licensure, issue and renew licenses, and enforce licensing standards set by law and regulation. Submission of the requested information is mandatory. CSLB cannot consider your application for licensure unless you provide all of the requested information. You may review the records maintained by CSLB that contain your personal information, unless the records are identified as confidential information and exempted from disclosure by the Information Practices Act, including Civil Code section 1798.40. CSLB makes every effort to protect the personal information you provide us; however, it may be disclosed in response to a Public Records Act request as allowed by the Information Practices Act; to another government agency as required by state or federal law or as provided in Civil Code section 1798.24; or in response to a court or administrative order, a subpoena, or a search warrant. The Custodian of Records is responsible for maintaining the information on this form and may be contacted at the address and telephone number listed in the letterhead at the top of this General Information and Instructions portion for questions about this notice or access to records.

**Resources on the Licensing Process**

CSLB has a variety of publications available to help you become a licensed contractor and to maintain your license. You can order free publications from or view documents on CSLB's website (www.cslb.ca.gov), by writing to CSLB at the address listed below, or by calling the 24-hour automated phone system at (800) 321-CSLB (2752). Please visit CSLB's website or call the toll-free phone number to find out how to order the current edition of the *California Contractors License Law & Reference Book* or other publications.

**Application Processing – Follow Your Application Status Online**

When CSLB receives your application, an acknowledgement letter will be sent to you that explains how to check the status of your application online at www.cslb.ca.gov or by calling (800) 321-CSLB (2752) using the Application Fee Number and Personal Identification Number (PIN) provided in the acknowledgement letter.

Please include your Application Fee Number in any correspondence. All correspondence should be sent to:

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827-1703
Mailing Address: P.O. Box 26000, Sacramento, CA 95826-0026

*Please detach this General Information and Instructions portion before submitting the completed application package to CSLB.*

## CERTIFICATION OF WORK EXPERIENCE FORM

Following the application in this packet, you will find the Certification of Work Experience form that must be completed by the qualifying individual on the application and certified by a **qualified and responsible person** who has **direct knowledge of the experience and time period listed**. The experience must be verifiable through payroll records or similar documents. **Corrections on the certification forms must be initialed by the certifier.** Forms containing strikeouts or modifications that may compromise the validity of the work experience certification may not be accepted.

To assist the certifier in completing Part 2 of the Certification of Work Experience form, a listing of the License Classifications is available through a link on the Applicants page of CSLB's website (www.CSLB.ca.gov). This document may be used as a reference when listing the specific trade duties that the qualifier has performed or supervised in the classification for which they are applying.

The Certification of Work Experience form may not be required if the qualifier has ever served as the qualifier on a license in the same classification for which they are currently applying.

## OWNER-BUILDER B-GENERAL BUILDING CONSTRUCTION PROJECT EXPERIENCE FORM

Pursuant to BPC section 7044, owners who build or improve structures on their own property are exempt from the licensure laws for contractors under certain circumstances. The Owner-Builder B-General Building Construction Project Experience form **must** be completed by the qualifier on the application if they are claiming experience as an owner-builder working on projects on their own property. The experience must be verifiable through building permits, final inspections, or similar documents. Please see CSLB's website for the listing of Acceptable Supporting Experience Documentation (*located at CSLB's website on the Applicants page*) that may be submitted to CSLB to support claimed experience. *(BPC section 7068 and T16 CCR section 824)* A separate form is required for each project on the owner-builder's property. A Certification of Work Experience form must also be completed by the qualifying individual on the application and certified by a qualified and responsible person who has direct knowledge of the experience performed on the project.

**CONTRACTORS STATE LICENSE BOARD** STATE OF CALIFORNIA
9821 Business Park Drive, Sacramento, CA 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800-321-CSLB (2752) | *www.cslb.ca.gov* | *CheckTheLicenseFirst.com*

# Application for Original Contractor License

Application Fees
- **Single classification application** ..... **$450**
- Initial license fee (sole owner) * ..... $200
- Initial license fee (non-sole owner) * ..... $350
- **Total fees required (sole owner)** ..... **$650**
- **Total fees required (non-sole owner)** ..... **$800**
- Initial license fee to be paid after examinations
- *** Military Veterans see question #18**

The application fee for a single classification ($450) is not refundable once the application has been filed.
Attach a money order or a personal, business, certified, or cashier's check made payable to the Registrar of Contractors. Do not send cash.
There is a $25 service charge for each dishonored check.
☐ **Voluntary contribution to Construction Management Education Account $____**

**Please type or print neatly and legibly in black or dark blue ink.**

## SECTION 1 –BUSINESS NAME AND ADDRESS

**Business Name:** The legal business name will appear on the license and is the actual name under which the contracting business will operate. The full business name must be provided. The business name must not be misleading in relation to the classification(s) issued for that license and must be compatible with the type of business entity licensed. Please refer to the General Information and Instructions for information on business name styles.

| 1. FULL NEW BUSINESS NAME | 2. CLASSIFICATION REQUESTED *(Only one classification may be requested on the original application if an exam is required.)* |
|---|---|
| | |

| 3a. BUSINESS MAILING ADDRESS Number/Street or P.O. Boxes | City | State | ZIPCode |
|---|---|---|---|
| | | | |

| 3B. BUSINESS STREET ADDRESS Number/Street Only – NO P.O. Boxes or PMBs | City | State | ZIPCode |
|---|---|---|---|
| | | | |

| 3c. BUSINESS PHONE NUMBER | BUSINESS FAX NUMBER | BUSINESS EMAIL ADDRESS |
|---|---|---|
| ( ) | ( ) | |

## SECTION 2 – BUSINESS ENTITY

**Corporations** must provide a current and active California Secretary of State corporate registration number below. Please be sure to write the corporate titles (president, secretary, and treasurer) in the space provided for the appropriate personnel in Sections 3 and 4. **Partnerships** must list their federal employer identification number (FEIN) below (personal Social Security numbers and individual taxpayer identification numbers [ITIN] are not acceptable). **Limited liability companies** (LLC) must provide a current and active California Secretary of State registration number below. If this LLC has officers, please be sure to write the titles (president, secretary, and treasurer) in the space provided for the appropriate personnel in Sections 3 and 4. **Tribal businesses** must list the tribe under which they are incorporated as a business and list the qualifying individual and officers for their company. (*See the General Information and Instructions for more information.*)

4. NEW BUSINESS WILL OPERATE AS A (check only one)
- ☐ Sole Ownership (not a corporation or LLC)
- ☐ California Corporation # _____
- ☐ Federally recognized tribe _____
- ☐ Partnership – Federal Employer ID # _____
- ☐ Limited Liability Company # _____

## SECTION 3 – QUALIFYING INDIVIDUAL FULL LEGAL NAME AND ADDRESS

**Qualifying Individual (Qualifier):** A qualifying individual is required for every classification on every license issued by CSLB. You must provide **full legal names** of all individuals. (*See the General Information and Instructions for more information on completing this section.*)

| 5a. QUALIFIER'S FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| 5b. RESIDENCE ADDRESS Number/Street Only – NO P.O. Boxes or PMBs | City | State | ZIP Code |
|---|---|---|---|
| | | | |

| 6. QUALIFIER'S EXISTING / PREVIOUS CSLB LICENSE NUMBER(S) (If none, enter "N/A") | PERCENTAGE OF NEW BUSINESS OWNED BY THE QUALIFIER | DRIVER LICENSE NUMBER | RESIDENCE PHONE NUMBER |
|---|---|---|---|
| | _____% | | ( ) |

7. TITLE OR POSITION (check only one) For LLC and corporations qualified by a Responsible Managing Officer, the corporate title you provide in this section must exactly match the corporate title listed on SOS records.
- ☐ Owner (sole ownership only)
- ☐ Qualifying Partner
- ☐ Responsible Managing Employee (RME)*
- ☐ Responsible Managing Member
- ☐ Responsible Managing Manager
- ☐ Responsible Managing Officer (RMO) – Title(s): _____

** RMEs are prohibited from having an active sole owner license. Please visit CSLB's website for an Application to Inactivate Contractor's License, if needed.*

8. I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I certify that I agree to the Examination Security Acknowledgement (see the General Information and Instructions for more information). I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to Business and Professions Code (BPC) section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

APP - EXAM

FOR CSLB USE ONLY

Applicant's Business Name (as listed in Section 1 of this application): _____

*(If additional space is needed, please make a copy of this blank page.)*

## SECTION 4 – PERSONNEL FULL LEGAL NAMES AND ADDRESSES (Other than Qualifying Individual)

The following must be **completed by all individuals and companies that will be listed on the license.** You must provide **full legal names** of all individuals. Each individual must sign the certification statement under penalty of perjury. *(See the General Information and Instructions regarding company personnel.)*

| 9a. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ Owner ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

| 9b. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

| 9c. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

| 9d. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

FOR CSLB USE ONLY

Applicant's Business Name (as listed in Section 1 of this application): _____

## SECTION 5 – REQUIRED APPLICATION QUESTIONS

**All questions in this section must be answered.** Questions 10 - 12 pertain to **all** individuals listed on this application (qualifying individual and **all** personnel listed in Section 4), and Questions 13 – 15 pertain to the qualifying individual only.

**10. To the best of your knowledge, is anyone listed on this application (or any company the person is or was a part of) named in or responsible for any unsatisfied final judgments, liens, and/or claims against any bond or cash deposit pertaining to a construction project?**

If you checked "Yes" for this question, you are required to attach a statement identifying all judgments (pending or on record), liens, past due unpaid bills, claims, or suits and a detailed explanation of the situation. Include the names and addresses of the parties involved. If the obligation was or is being discharged in bankruptcy, attach a copy of the bankruptcy filing and a copy of the creditors list.

❑ Yes ❑ No

**11. To the best of your knowledge, has anyone on this application (or any company the person is or was a part of, or any immediate family member of the applicant) ever received a citation from CSLB or had a contractor license or other professional or vocational license or registration denied, suspended, revoked, or otherwise disciplined by this state or elsewhere (i.e., other U.S. state, U.S. territory, agency of the federal government, or other country)?**

For the purposes of responding to this question, "disciplined" is an administrative action that resulted in a restriction or penalty being placed on any license you have or have possessed, such as a revocation, suspension, probation, or reprimand.

(Check "No" if the license or registration was suspended due to lack of a bond, workers' compensation or other required insurance, a qualifier, or family support.)

If you checked "Yes" for this question, you are required to attach a statement detailing the events leading to this action.

❑ Yes ❑ No

**12. To the best of your knowledge, has anyone on this application failed to resolve any outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by CSLB, the Department of Industrial Relations, the Employment Development Department, the Franchise Tax Board, or the State Board of Equalization (BOE)?**

If you checked "Yes" for this question, you are required to attach a statement regarding the outstanding liabilities. In relation to BOE liabilities, you must indicate if you have entered into an installment payment agreement for that liability with the BOE and provide verification that you are in compliance with the terms of that agreement, if applicable.

❑ Yes ❑ No

**13.** ***(This question must be answered by the qualifying individual.)*** Direct supervision and control over construction operations includes any one or a combination of the following activities: supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, or direct supervision on construction job sites. **Will you, as the qualifying individual, perform one or more of these duties?**

❑ Yes ❑ No

**14.** ***(This question must be answered only if the qualifying individual is a responsible managing employee [RME].)*** Business and Professions Code Section 7068 (c) states in part that a RME is a bona fide employee that is permanently employed by the applicant and is actively engaged in the operation of the business, meaning working at least 32 hours per week or 80% of the total hours per week that the applicant's business is in operation. **Will you, as the responsible managing employee, meet the requirements of Business and Professions Code Section 7068 (c)?**

❑ Yes ❑ No

**15. The examinations are administered in English.** Will you require the use of a CSLB-approved translator?

**If yes**, in what language will your translator read the examination? _____

❑ Yes ❑ No

Applicant's Business Name (as listed in Section 1 of this application): _____

*(If additional space is needed, please make a copy of this blank page.)*

## *SECTION 6 – QUALIFIER EDUCATION, APPRENTICESHIP, LICENSURE, AND MILITARY*

*Applicants must answer the following questions and may be granted credit toward licensure requirements or receive expedited processing as noted below. Please refer to the General Information and Instructions for more information. If you checked "Yes" in response to any question, please provide the requested documentation.*

**16. Have you completed an educational or apprenticeship program?**

If you checked "Yes" for this question, you may be granted credit for **completed training in an accredited school** if you:

- Submit transcripts for a four-year degree, two-year degree (or less), technical training (must include course hours and descriptions), and all other degrees in a business or construction-related field.

**Transcripts must be certified official and received directly from the educational institution in a sealed envelope.** (If you received your degree outside the United States, your transcripts must be translated, if in a language other than English, and evaluated by an accredited evaluation service that does business within the United States.)

❑ Yes ❑ No

You may be granted credit for a **completed apprenticeship program** if you:

- Submit a copy of your apprenticeship certificate; **AND**
- Enter the beginning and ending dates of your completed apprenticeship program:

From_____ to _____
Month/Day/Year Month/Day/Year

(The apprenticeship period cannot overlap the journeyman-level experience period being certified on the Certification of Work Experience.)

**17. Are you licensed in another state in the same classification for which you are seeking licensure?** If you checked "Yes" for this question, you must provide a License Verification Request form that is completed by the licensing agency from the other state, please see CSLB's website to see if your state and classification qualifies.

❑ Yes ❑ No

**18. Are you serving in, or have you previously served in, the United States Armed Forces?**

If you checked "Yes" for this question, please provide the following documentation for review to potentially receive expedited processing and a 50% reduction in the initial license fee:

❑ Yes ❑ No

- Evidence of your current military duty (copy of your military orders) or your previous military service (copy of your latest DD 214 long form – Certificate of Release or Discharge from Active Duty showing discharge status or Copy of Driver's License with "Veteran" endorsement) or National Guard discharge (form NGB 22), Reserves discharge (form DD 256), or proof of enrollment in Skillbridge. See instructions section under **Military**.

**19. The CSLB will expedite the licensure process and waive the license application fee and the initial license fee charged by the board for an applicant who is the spouse of an active-duty member of the Armed Forces stationed in California and meets both of the following requirements:**

Are you married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active-duty military orders?

❑ Yes ❑ No

**AND**

Do you hold a current license in another state, district, or territory of the United States in the profession or vocation for which you seek a license from the board?

If you checked "Yes" for this question, please provide documentation of current licensure AND marriage, partnership or legal union AND active-duty military orders as described in the instructions under **Military**.

If all required documentation is submitted with the application the application fee and initial license fee will be waived. All other fees will still be required.

**20. Were you admitted to the United States of America under one of the circumstances described below?**

❑ Yes ❑ No

1. Admitted as a refugee pursuant to section 1157 of title 8 of the United States Code; 2. Granted asylum by the Secretary of Homeland Security or the United States Attorney General pursuant to section 1158 of title 8 of the United States Code; 3. You have a special immigrant visa and were granted a status pursuant to section 1244 of Public Law 110-181, Public Law 109-163, or section 602(b) of title VI of division F of Public Law 111-8, relating to Iraqi and Afghan translators/interpreters or those who worked for or on behalf of the United States government.

If you checked "Yes" for this question, please provide documentation as described in the instructions.

***STATE TAX AND OTHER OBLIGATIONS NOTICE***

*The State Board of Equalization and Franchise Tax Board may share taxpayer information with CSLB. You are obligated to pay your state tax obligation. CSLB may suspend or refuse to issue, reactivate, reinstate, or renew a license if your state tax obligation, child support obligation, or any outstanding final liability to CSLB, the Department of Industrial Relations, or the Employment Development Department is not paid. (BPC sections 30, 31, and 7145.5)*

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# CERTIFICATION OF WORK EXPERIENCE
## General Information

- **This form must be filled in completely in order to document the applicant's work experience, or the application will be returned for correction or completion. The qualifying individual on the application (as listed on Page 1 of the application) and certifier (a qualified and responsible person who verifies the experience in the classification for which the applicant is seeking licensure) must type or print neatly and legibly in black or dark blue ink – pencil is not acceptable.**
- FORMS CONTAINING STRIKEOUTS OR MODIFICATIONS MAY NOT BE ACCEPTED.
- Corrections on the Certification of Work Experience forms must be initialed by the certifier.
- Original signatures are required – faxed, photocopied, or stamped signatures are not acceptable.
- All qualifying individuals and certifiers must be at least 18 years old.
- All Certification of Work Experience forms must be submitted with the application.
- The Certification of Work Experience form, when filed with an application, becomes the property of CSLB and is kept as a matter of record. **Keep a copy of the completed and signed form for your records** – you may be asked to provide further documentation or testimony to verify your experience. A random three percent (3%) of applications are subject to review, and experience must be verifiable through payroll records and similar documents. CSLB staff may contact the certifier or other parties to verify experience.
- If you have ever served as a qualifier on a license in the classification for which you are now applying, you may not need to complete this form. However, if you are applying for a waiver of the examination pursuant to Business and Professions Code (BPC) sections 7065.1(b) or 7065.1(c), you do need to complete this form. *(Please refer to CSLB's website for more information on examination waivers.)* **NOTE: If you had a previous application that was denied on the basis of a lack of qualifying work experience, you must complete this form, regardless of whether or not you passed the examination.**
- Anyone who knowingly procures or offers false or forged documents to be filed, registered, or recorded in any public office in California is guilty of a felony. *(Penal Code section 115)*

### PART 1 – QUALIFYING INDIVIDUAL (APPLICANT) INFORMATION

- The qualifying individual (qualifier) must complete Part 1 in its entirety before the certifier completes Part 2.
- Lines 2 and 3 request the business name of company, license number of company, and company's business street address of the place where your experience was gained, which may or may not have been your employer.

### PART 2 – WORK EXPERIENCE AND CERTIFICATION STATEMENT

- The certifier must complete Part 2 in its entirety after the qualifying individual has completed Part 1.
- **The qualifying individual must document at least four (4) years of journey-level or higher experience in the classification for which they are applying. The experience must have been obtained within the last 10 years.**
- **The qualifying individual's work experience must have been completed at the level of journeyman, foreman, supervising employee, or contractor**, as defined below *(Title 16, California Code of Regulations [T16 CCR] section 825)*. Also defined below are "owner-builder" and "self-employed individual."
  - A **"journeyman"** is an experienced worker who is fully qualified (as opposed to a trainee) and is able to perform the trade without supervision, or a person who has completed an apprenticeship program. *(T16 CCR section 825)*
  - A **"foreman"** or **"supervising employee"** is a person who has the knowledge and skills of a journeyman and directly supervises construction projects.
  - A **"contractor"** is an individual who is currently a licensed California contractor, a former licensed California contractor, or an out-of-state licensed contractor. A contractor has the skills necessary to manage the daily activities of a construction business, including field supervision.
  - An **"owner-builder"** (a person who performs B-General Building classification work solely on their own property, pursuant to BPC section 7044) or a **"self-employed individual"** must have the knowledge and skills of a journeyman as listed above and the skills necessary to manage the daily activities of a construction business, including field observation. Owner-builders must complete and submit an Owner-Builder B-General Building Construction Project Experience form for each owner-builder project on their own property, in addition to the Certification of Work Experience form.
- The Description of Classifications document may be used as a reference only and is available through a link on the Applicants page of CSLB's website.
- **The certifier (a qualified, responsible person who is able to verify the work experience of the qualifier) must complete, date, and sign under the certification statement on line 9 at the bottom of the form.** The certifier can be an employer, fellow employee, journeyman, union representative, contractor, or business associate. This form will help CSLB determine whether the qualifier has the experience necessary to become a qualified contractor.
- **The certifier must have direct knowledge of the qualifier's experience during the time period listed.** "Direct knowledge" means personal knowledge of the experience that does not depend on outside information or hearsay. The certifier must be able to certify that the qualifier demonstrated a level of knowledge and skills expected of a journeyman or higher in the classification for which they are applying.
- Any licensee whose signature appears on a falsified Certification of Work Experience form, or who otherwise certifies false or misleading experience claims submitted by an applicant to obtain a contractor license, will be subject to disciplinary action. *(BPC section 7114.1)*

*Please detach this General Information and Instructions portion before submitting the completed application package to CSLB.*

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# Certification of Work Experience

Please read the General Information on the previous page before beginning this form.

The qualifying individual from Page 1 of the application must complete the information in Part 1 below; then, the certifier (person certifying the experience) must complete Part 2. The experience must be verifiable through payroll records or similar documents. If additional space is needed to list the trade duties, please attach a separate sheet that must also be signed under the same certification statement contained below in line 9.

Use a separate form for each employer or work setting. If you need additional forms, please make a copy of this blank form or visit CSLB's website to print the form.

**Please type or print neatly and legibly in black or dark blue ink – pencil is not acceptable.**

FORMS CONTAINING STRIKEOUTS OR MODIFICATIONS MAY NOT BE ACCEPTED. Corrections must be initialed by the certifier.

## PART 1 – QUALIFYING INDIVIDUAL (APPLICANT) INFORMATION

**The qualifying individual must complete Part 1 in its entirety before the certifier completes Part 2.**

1. QUALIFIER'S FULL LEGAL NAME Last First Middle

2. BUSINESS NAME OF COMPANY WHERE EXPERIENCE WAS GAINED – OR, IF YOU WERE SELF-EMPLOYED, LEAVE THIS SPACE BLANK AND CHECK THIS BOX ☐ *(If you checked the box, skip line 3 and go to line 4.)* | LICENSE NUMBER OF COMPANY WHERE EXPERIENCE WAS GAINED

3. COMPANY'S BUSINESS STREET ADDRESS Number/Street Only – **NO** P.O. Boxes City State ZIP Code

4. WAS THE EXPERIENCE OBTAINED WORKING ON YOUR OWN PROPERTY AS AN **OWNER-BUILDER** *(see previous page for definition)*? ☐ Yes ☐ No
*If you checked "Yes" above, use the Owner-Builder B-General Building Construction Project Experience form to provide information on completed projects.*

## PART 2 – WORK EXPERIENCE AND CERTIFICATION STATEMENT

**The certifier must complete Part 2 in its entirety after the qualifying individual (applicant) has completed Part 1.**

5. APPLICANT'S **JOURNEYMAN-LEVEL OR HIGHER** TIME-BASE WORKED IN SPECIFIC TRADE DUTIES (check one):
☐ FULL-TIME
☐ PART-TIME
} FROM _____ TO _____ = FOR A TOTAL OF _____ YEAR(S) and _____ MONTH(S)
Month/Day/Year Month/Day/Year
(List **ONLY** journeyman-level or higher experience that was obtained in the applicable classification.)
*(Do not claim credit for full-time work if applicant worked only part-time or if trade duties in requested classification were only one component of entire job. For example, if applicant worked half-time in specific trade duties for six (6) years, write "3 years" in the space above.)*

6. IN THE SPACE BELOW, LIST ALL SPECIFIC TRADE DUTIES APPLICANT PERFORMED OR SUPERVISED IN THE CLASSIFICATION FOR WHICH THEY ARE APPLYING. ***PLEASE REFER TO THE DESCRIPTION OF CLASSIFICATIONS DOCUMENT FOR ASSISTANCE.*** *(Do not list office work or individual project names.)*

7. My business relationship to _____ is or was *(check all that apply)*:
Name of Qualifying Individual *(Applicant)*
☐ Employer ☐ Contractor (License Number _____) ☐ Foreman or Supervisor
☐ Journeyman ☐ Fellow Employee ☐ Union Representative ☐ Business Associate

8. CERTIFIER'S STREET ADDRESS Number/Street Only – NO P.O. Boxes City State ZIP Code

PHONE NUMBER ( ) | FAX NUMBER ( ) | EMAIL ADDRESS

9. **I certify that I have direct knowledge of the work covering the time period outlined above.** I certify under penalty of perjury, under the laws of the State of California, that the information stated above is true and correct.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

Note: For information on the collection of personal information, please refer to the General Information and Instructions at the beginning of this application package, under the heading "Collection of Personal Information."

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STATE OF CALIFORNIA
Governor Gavin Newsom

# Owner-Builder B-General Building Construction Project Experience

**This form must be completed ONLY if the qualifying individual indicates on the Certification of Work Experience form that they obtained B-General Building classification experience working on their own property as an owner-builder.**

Use a separate form for each project. If you need additional forms, please make a copy of this blank form or visit CSLB's website to print the form.
**Please type or print neatly and legibly in black or dark blue ink. Incomplete forms are not accepted.**

| 1. QUALIFIER'S (OWNER-BUILDER) FULL LEGAL NAME Last | First | Middle | PHONE NUMBER ( ) |
|---|---|---|---|
| | | | |

| 2. PROJECT STREET ADDRESS Number/Street Only – **NO** P.O. Boxes | City | State | ZIP Code |
|---|---|---|---|
| | | | |

3. DO/DID YOU PERSONALLY OWN THE PROPERTY LISTED IN NUMBER 2 ABOVE? ☐ Yes ☐ No If you did not own the property, the work is not owner-builder. Business and Professions Code section 7044 describes an owner-builder as "an owner who builds or improves a structure on his or her property."

| 4. START DATE Month/Day/Year | COMPLETION DATE Month/Day/Year | How much time did you actually work on this project? |
|---|---|---|
| | | _____ YEARS and _____ MONTHS |

5. STRUCTURE/PROJECT SQUARE FOOTAGE: (You must provide the square footage of the project improvement, or the entire structure built, whichever applies.)

Square Footage: _____

6. BUILDING PERMIT NUMBER (Attach a copy of your building permit and final inspection record to this project document.)

Permit #: _____

7. DESCRIBE THE FULL SCOPE OF THIS PROJECT: (For example: remodel, new construction, room addition, and list in detail the full scope of all trade work performed)

8. LIST ALL THE TRADE DUTIES *YOU PERSONALLY* PERFORMED: (For example: I installed sheetrock, I installed 4-ton HVAC unit, I installed 2500 sf concrete tile roof)

9. EXPLAIN HOW YOUR PAST EXPERIENCE, TRAINING, AND/OR EDUCATION PREPARED YOU TO PERFORM WORK ON THIS PROJECT:

10. PROVIDE THE NUMBER OF LABORERS USED AND THE TRADES THEY PERFORMED:

11. PROVIDE THE NUMBER OF GENERAL CONTRACTORS OR SUBCONTRACTORS USED AND THE TRADES THEY PERFORMED:

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OB-PROJ-LIST

# Exhibit 8

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys
and Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC.<br><br>Plaintiff<br><br>vs<br><br>GARY HUMPHREYS an individual; KAREN HUMPHREYS, an individual; and DOES 1 through 25 inclusive,<br><br>Defendants<br><br>and Related Cross-Action | Case No.: 30-2015-00805807<br><br>**DECLARATION - RE EXPERT WITNESS - ROBERT BROCKWAY**<br><br>Assigned to Judge David Chaffee Dept. C-20<br><br>Complaint Filed: Aug. 21, 2015<br><br>Trial Date: Sept. 26,2016 |

1. I, the undersigned, am the attorney of record in this action for Gary Humphreys and Karen Humphreys.

2. Accompanying this declaration is a list of the persons whose expert or opinion testimony the parties I represent intend to offer at the trial of this action, either orally or by deposition testimony. The list includes Robert Brockway to whom this declaration refers.

3.Mr. Brockway has agreed to testify at trial.

4. Attached to this declaration is the curricula vitae of Mr.Brockway containing a summary of the qualifications of Mr Brockway to render an opinion on the matters set forth in this declaration.

5. The following is a brief narrative statement of the general substance of the opinion testimony that Mr. Brockway is expected to give at trial:

Mr.Brockway will testify as to the standards and practices of the construction industry as they relate both to the services which were to be performed and which were performed by Adam Bereki and/or The Spartan Associates on the subject construction project; the adequacy of the services furnished by Adam Bereki and/or The Spartan Associates on and for the subject project; the standards and practices of the construction industry as they relate to contracts for home improvement work; the standards and practices of the construction industry as they relate to reimbursable construction costs and the extent to

which Adam Bereki and/or The Spartan Associates met or failed to meet those standards; The cause and extent of cost overruns on the subject project; The cause, extent, and impact of delays experienced by the project; The extent, and impact of the management of Adam Bereki on the project.

6. Mr. Brockway will be sufficiently familiar with the pending action to submit a meaningful oral deposition concerning the testimony described above, including his expert opinion and the basis therefor. Mr. Brockway's hourly fee for testimony is $420,00 per hour.

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

Dated: June 1,2016

LAW OFFICES OF WILLIAM G. BISSELL

William G. Bissell
Attorney for Defendants, Cross-Complainants Gary Humphreys & Karen Humphreys

Bert L. Howe & Associates, Inc.
Construction Consultants
Construction and Design Professionals

www.berthowe.com
800.482.1822

# Robert Brockway

**Expert Consultant Construction Litigation**
Estimating, Project Management
Scheduling, Delay Claims
OSHA Compliance

robertbrockway@berthowe.com
800.482.1822
Civil Engineering Technologies at Temple University,
Philadelphia, Pennsylvania



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*Senior Construction Estimator*
*Senior Construction Scheduler*
*Adjunct Instructor, Colleges, Technical Schools*
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Corporate Offices
5415 E. La Palma Ave.
Anaheim Hills, CA 92807
714.701.9180

Sacramento
2520 Venture Oaks Way
Suite 435
95833
916.569.8400

San Antonio
17806 IH 10
Suite 300
78257
210.540.9017

San Diego
402 W. Broadway
Suite 400
92101
619.890.7782

Las Vegas
3960 Howard Hughes Parkway
Suite 500
89169
800.928.1822

Phoenix
2375 East Camelback Road
Suite 600
85016
800.305.6440

Salt Lake City
2150 South 1300 East
Suite 500
84106
800.482.1822

Denver
4600 South Syracuse
9th Floor
80237-2719
800.248.4096

Houston
800 Town and
Country Boulevard
Suite 300
77024
713.264.8221

Miami
1111 Lincoln Road
Suite 400
33139
800.783.1822

## EXPERIENCE

Mr. Brockway is an expert consultant with over 34 years of experience in construction planning, scheduling, estimating, and project management. He has amassed vast experience in every aspect of a multitude of project delivery systems. From carpenter to contract manager and director of preconstruction, Robert Brockway has personally constructed, planned, scheduled, estimated, coordinated, supervised, and managed over $1.7 billion of in-place construction.

Robert Brockway's professional career in commercial and industrial construction commenced in 1982 with Mr. Brockway filling the role of utility man in the fabrication and installation of industrial iron work, and then progressed through training to carpentry which ultimately led to employment as a journeyman carpenter. By 1987 Mr. Brockway achieved the position of Project Estimator with Delran Builders Company, Inc. in Wyndmoor, Pennsylvania. He advanced to Chief Estimator in 1992, and through 2016 held a senior management position with multiple construction firms nationally. During his time with these firms, he scheduled, managed, and created estimates for various public, private, and negotiated projects, including new and renovated residential, commercial, hospitality, industrial, educational, and institutional facilities.

Mr. Brockway has developed a mastery of the construction, materials, processes, and protocols necessary to plan, bid, and build, various types of structures for a multitude of end-users including high rise, multi-unit residential, mixed-use, retail, malls, site development, infrastructure, rail, airports, laboratory, hospitals, parking structures, sports complexes, mass transit, Federal Aviation, Department of Energy, Department of Defense, Army Corps of Engineers, and historic restorations.

While at Delran Builders Mr. Brockway scheduled and estimated various urban renewal projects in the Mid-Atlantic region which included interface with local, state, and federal contracting entities as well has local historical societies. Projects ranged in price exceeding $12MM.

Robert Brockway continued his career trajectory by accepting positions as Vice President of Estimating and Chief Estimator for J.J. Deluca and Daniel J. Keating Company of Narberth, Pennsylvania. This period included work on educational, institutional, commercial, condominiums, high-rise, mass transit, airports, hospitals, stadiums, and urban construction ranging in value to $45MM.

In 1999 Mr. Brockway expanded his knowledge base by providing specialized consulting services which included providing pre-construction and project management services on a per project basis for several contractors lacking the experience to enter commercial construction projects. Additional endeavors included providing on-site training to construction personnel in the areas of estimating, project management, construction-scheduling, and field supervision.

During this same time period, Mr. Brockway custom tailored, prepared, implemented, administered, and presented comprehensive marketing and business plans to bonding companies and potential investors. Further consultations included providing services to a major bonding company reviewing potential client's business structure and analyzing the potential risks. This led to the opportunity to be engaged to compile and estimate damages caused by a hurricane to an entire school district for use in insurance settlements.

From 2004 through 2011 Mr. Brockway was able to leverage his considerable body of experience into participation in the construction of dozens of significant projects in the Mid-Atlantic region with the area's top firms. While working for Jeffery M. Brown Associates of Huntingdon Valley, Pennsylvania he maintained and nurtured the Class "A" commercial portfolio of a Fortune 500 development company and prepared estimates for, and managed, several Class "A" retail, commercial, and condominium projects. As a construction management department head for IMC Construction, Inc., in Malvern, Pennsylvania, Mr. Brockway was responsible for the total management of all project activities from project inception to closeout including: Pre-Construction, Bid Compilation, Estimating, Scheduling and Planning, and Project Management. He was personally responsible for management and assignment of project managers, estimators, and field personnel, establishment and implementation of project management and estimating procedures, fiscal responsibility for all assigned projects and departmental expenditures, administration of subcontracts (including preparing of same), budget management of projects, schedule preparation and execution, and negotiation of contracts with owners and subcontractors. While at IMC Construction Mr. Brockway was able to successfully lead new market penetration efforts in a stagnant economy, and craft a multi-pronged approach to minimizing risk and increasing profits on zero margin projects. He also established and implemented company-wide project management software protocols and procedures. During his tenure in Pennsylvania, Mr. Brockway worked on projects across the nation that ranged in value to $454 MM.

Mr. Brockway was not only an estimator and manager; beginning in 1988, he took on the role of educator, instructor, and guest lecturer at various colleges and technical schools, including the American Builders and Contractors Association, The United Brotherhood of Carpenters and Joiners of America, Metropolitan Regional Council, Villanova University, Community College of Philadelphia, and Penn State University. Mr. Brockway's parallel 21 year career teaching in trade schools and colleges included teaching accredited carpenter apprenticeship training for the first year module, journeyman upgrade courses that included scheduling, and core required college level courses including estimating, construction management, and job site management.

In 2011, Mr. Brockway relocated to California and McCormick Construction Company, Inc., in Burbank, and continued to estimate and provide construction management expertise for several commercial projects in excess of $100MM. Work included providing expert level conceptual estimating reports for various end users for use in commercial development proforma and design build proposals including Municipal lease-back developments. He has also worked with a world renowned engineer to prove concept of emerging technologies in high rise residential construction. He continued through 2013 with Tri-Technic, Inc. of Sonora, California estimating and competitively bidding various life critical public utility and industrial projects in excess of $50MM. Projects included power plants, transmission lines, substations and switch yards, solar and wind power generation, HVDC converter stations and, water treatment facilities.

Mr. Brockway became a consultant with Bert L. Howe & Associates, Inc., in Anaheim Hills, California in 2013. He has demonstrated exceptional communication, organizational, and technical writing skills, and can effectively interact with design professionals, owners, attorneys, municipal officials, and tradesmen with full comprehension on any construction-related issue.

Due to his diverse and comprehensive operational background in multiple construction disciplines, Mr. Brockway has been designated for expert testimony over twenty times, and has been deposed multiple times in five States. He has participated in arbitration, mediation, trial preparations, and made presentations for cases that were won or settled successfully.

# PROFESSIONAL TEACHING EXPERIENCE

2008 – 2009 Adjunct Instructor
Penn State University
Pennsylvania College of Technology

All classes are core course requirements to qualify for a B.S. degree in Construction Management. Classes taught: Scheduling, Construction Management, and Job Site Management

2007 – 2009 Adjunct Instructor
Community College Of Philadelphia
Department of Architecture, Design and Construction

All classes are core course requirements to qualify for the A.A.S. (Associate in Applied Science) degree in Construction Management. Classes taught: Construction Cost Estlmating I and Construction Cost Estimating II

2006 – 2007 Guest Lecturer
American Society of Professional Estimators Chapter 61
Subject presented: Pre-Construction Management

1994 – 2003 Instructor
The United Brotherhood of Carpenters and Joiners of America
Metropolitan Regional Council
Philadelphia Carpenters Joint Apprenticeship Committee

All classes are for journeyman carpenters who are training to be superintendents, supervisors, and project managers. Classes taught: Scheduling

1996 – 1997 Guest Lecturer
Villanova University
Center for Engineering Education and Research
Subject presented: Application of Engineering Principles in Construction Management

1988 – 1992 Instructor
American Builders and Contractors Association (ABC)
National Center for Construction Education and Research (NCCER)
Central Montgomery County Area Vocational Technical School

All classes are core course requirements to qualify to be a Journeyman Carpenter. Classes taught: Carpenter's Apprenticeship Training – Year 1

# AREAS OF SPECIALIZATION

Mr. Brockway is considered a veteran in hard-bid compilation and construction management for projects located throughout the United States. He provides a professional level of expertise with regard to the principals of, estimating, construction management, planning, OSHA protocols, and knowledge of in-place construction systems. His background and experience are well suited to assignments wherein he provides expert opinion relative to matters of budget, construction, standard of care, standard of practice, and OSHA Regulations.

Mr. Brockway also provides forensic schedule analysis. His experience encompasses all universal scheduling concepts, including all forms of observational and modeling methodologies. His extensive experience in the field of schedule creation, management, and analysis as practitioner, teacher, and delay claim analyst allows the client to benefit from his unique combination of skills in development and execution of appropriate claim strategies relative to desired results.

Mr. Brockway possesses the business acumen and technical expertise necessary to navigate the assorted challenges that influence the complicated environment of men, materials and equipment of an active job site. He also is familiar with state and local building code criteria, union agreements, contract documentation, including specifications and details of construction.

Mr. Brockway is proficient in many software applications, including Sage, Timberline, Primavera, Microsoft, Prolog, and Oracle. He has knowledge of office systems, databases, word processing, and spreadsheet programs, including on-screen take-off software and web-based applications. He has pioneered, designed, and implemented a proprietary computer-based construction costing software program, as well as a program created specifically for contract control systems.

Specialized Expert Support in:

- Mediation and Trial Support
- Allocation of Subcontractor Liability
- Forensic Schedule Analysis
- AIA Contract Analysis
- Subcontract Agreement Analysis
- Scope of Work Determination
- Change Order Analysis
- Construction Means and Methods
- RFI Analysis
- Billing Procedure Standards
- Personal Injury Claims
- Contractor and Carrier Liability
- Site Investigation Reports
- OSHA Standards
- Jobsite Safety Analysis
- General Contractor Responsibilities
- Subcontractor Responsibilities and Standards of Care
- Project Management Standards of Care
- Schedule Compliance
- Delay Claims
- Federal Project Contract Administration
- Performance Assessment
- New Construction Estimating
- Repair Estimating
- Fire Reconstruction Estimates
- Industry Breach of Standards Care
- LEED Compliance Analysis
- ADA Compliance

# CONSTRUCTION MANAGEMENT AND FORENSIC EXPERIENCE

- Federal, State, DoE, and DoD Project Experience
- Institutional Projects
- Forward Planning and Entitlement
- Site Development
- Commercial Projects
- Sports Complexes
- Educator - Estimating, Scheduling, Construction Management
- Estimate Preparation
- Scope of Work Documents
- Contracts and Proposal Preparation
- Construction Management
- Scheduling
- Risk Management
- Infrastructure Development
- Educational and Institutional Projects
- Medical Facility Construction
- Airports and FAA Projects
- Rail Expansion Projects
- Multi-Unit Residential Projects
- Laboratory Facilities
- Parking Structures
- Retail Development and Tenant Improvement Projects
- Public Utility Projects
- Educational Renovation Projects
- Institutional Renovation Projects
- Report Preparation
- Software Development and Implementation
- Professional Consultant Coordination
- Staff Management
- Project Monitoring and Protocol Development

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

September 8, 2016, I served the within:

**Declaration re Expert Witness - Robert Brockway**

in said action by placing a true copy thereof, enclosed in a sealed envelope with postage, certified, return receipt requested thereon fully prepaid, in the United States mail at Newport Beach, California addressed as follows:

J. Scott Russo, Esq.
Russo & Duckworth LLP
9090 Irvine Center Drive, 2nd Floor
Irvine, CA 92618

Carlos E. Sosa Esq.
Law Office of Hausman & Sosa
18757 Burbank Blvd. Ste 305
Tarzana, CA 91356-6329

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

Executed on September 8, 2016, at Newport Beach, California.

William Bissell

# Exhibit 9

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC., | |
| Plaintiff, | |
| vs. | Case No.: 30-2015-00805807 |
| GARY HUMPHREYS an individual; KAREN HUMPHREYS, an individual; and DOES 1 through 25 inclusive, | |
| Defendants. | |
| And Related Cross-Action | |

DEPOSITION OF ROBERT BROCKWAY
Taken on Tuesday, September 13, 2016, 12:58 p.m.

REPORTED BY:
Grace A. DiBernardo
CSR No. 10322

Deposition of Robert Brockway, taken before Grace A. DiBernardo, Certified Shorthand Reporter No. 10322, for the State of California, with the principal office in the County of Orange, commencing at 12:58 p.m., Tuesday, September 13, 2016, in the Law Offices of Russo & Duckworth, LLP, at 9090 Irvine Center Drive, Second Floor, Irvine, California.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:
RUSSO & DUCKWORTH, LLP
9090 Irvine Center Drive
Second Floor
Irvine, California 92618
(949) 752-7106
BY: J. Scott Russo, Esq.
jsrusso@russoandduckworth.com

FOR THE DEFENDANT:
LAW OFFICES OF WILLIAM G. BISSELL
14 Corporate Plaza Drive
Suite 120
Newport Beach, California 92660
(949) 719-1159
BY: William G. Bissell, Esq.

ALSO PRESENT: Adam Bereki
Gary Humphreys

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2 Master Timeline (11 pages) 42

QUESTIONS NOT ANSWERED

(None)

DOCUMENTS REQUESTED

(None)

INFORMATION REQUESTED

(None)

Robert Brockway,
having been first duly sworn by the
Certified Shorthand Reporter, was called as a witness,
examined, and testified as follows:

EXAMINATION

BY MR. RUSSO:

Q Mr. Tolman, you've had your deposition taken before, haven't you?

A Mr. Brockway.

Q My mistake. Okay. Mr. Brockway, you and Mr. Tolman, you guys work together?

A Yes.

Q Okay. For this assignment, originally Mr. Tolman was designated. When did you learn that you were going to be a witness in this case?

A Around the exact same time, and it had to do with John's schedule at the time. So, I took it over almost from inception.

Q When did that begin?

A I'm going to estimate that it was in 2014.

Q So, you've been on this project for a couple of years?

A Since its inception, yes.

Q You've given depositions before, haven't you?
A Yes.
Q Many times?
A Enough times.
Q Any reason for me to go over the rules?
A No, I understand them.
Q Any reason why your deposition can't go forward today?
A No.
Q Who were you hired by in this case?
A William Bissell, attorneys.
Q Had you done any work for him before?
A I have not personally, no.
Q Had your firm done work for his firm before?
A I don't know. I don't have knowledge of that.
Q What did he tell you about what your assignment was going to be in this case?
A I was -- we were hired or I was instructed to examine and analyze the performance on the work onsite, how it was performed, means and methods, et cetera about the management and management practices that were appropriate for a job like that, to give an approximation or estimate of the cost of what something like that would have cost, and to opine on what was spent versus what was needed.

Q Okay. So, was any part of your assignment determining whether or not the construction was done appropriately?

A Well, if you consider means and methods, I do. I guess the answer would be yes.

Q How about whether or not the work was substandard or defective?

A Not defective as an architectural opinion, no. It's more or less means and methods, which is how you go about doing something, the standards that you follow, the management, and then the cost. So, as far as code, architectural defects, things like that, no, I will not be opining on that.

Q So, were the items you were looking at is how long it took and the cost?

A And how the means and methods, again how they went about performing the work and management techniques applied to carry out the work.

Q Where did you get your understanding as to what means and methods were actually used and what to help form your opinion?

A In the documents that I turned over to you, there's a series of e-mails that describe things. There is a lot of photographs and some letters that went along the way. In that there was no daily job logs. It's

common in a job. I didn't have any day-to-day records. What I had to do was take -- I went over payroll records provided by Spartan, and I went over the W-2s to analyze the number of men, how long they were there, and what tasks they were doing. I would match up the timing of the payroll records with the photographs that Spartan provided, and there was a lot of photographs. So, I got an idea of how long things went. There was some descriptions in e-mails that gave me clues to what means and methods were or were not applied to the job.

Q And by means and methods, what do you mean?

A An example would be, there's several primary areas that jump out to me. No. 1, at the beginning of the project, standard means and methodology for carrying out what I consider a residential renovation of this type at this location. Standard procedures are, you get building permits and you get working drawings. What I was able to determine through -- I'm sorry. I also examined Mr. Bereki's deposition testimony for additional information as far as means and methods go.

An example to me would be, at the beginning of demolition to the property without building permits, the need to demolish, beginning demolition without a set of working drawings, that's abnormal. That's not in the standards of how you do those kinds of things. The other

example of means and methods, I saw a multitude from photographs of occurrences of unsafe practices. According to OSHA, things such as lack of shoring when demolishing structural elements, lack of PPE, which is personal protective equipment, inappropriate like that. Those are two examples of that. I was able to discern that largely from the photographs and descriptions in the deposition testimony and e-mail communications.

Q Why did you believe that looking at safety issues and OSHA-type stuff was important to what you were doing?

A Well, it is common in the industry, any builder, anybody who has gotten a license in California or spends any time performing construction work, OSHA goes over it all. You look at a job site and get an idea of how they go about doing work.

I'm going to give you a specific example that concerned me. There's a photograph of somebody sawing a structural element, which is a post, a vertical post, at the very bottom of it, trying to saw it. That's inherently dangerous without protective shoring, meaning if they saw that and it falls down, that person is going to be injured. That gives me an example as far as training goes of somebody on the job site.

I also looked at the progression of the work. In the beginning of the job, for the first several months

because there was a stop-work order for lack of permit, there was a whole bunch of demolition that continued to go on. There's a lot of payroll records of a whole bunch of folks there. In my opinion, in examining the project itself, voluminous photographs, and video, that there's way too many men do to too limited amount of work. These gave me clues as to how they were proceeding. Meaning, when you approach a job, when you start a job, means and methods, you get a permit, you get a set of drawings, and you start to work.

The original -- according to the original agreement, which was an e-mail, which is what I'm basing it on, dated April 5th of 2012, the original work was what I'm going to call a cosmetic renovation, which is go in there, update some outlets, do some painting, do some finish-type work with the second part of that being for a future rooftop patio. That's a relatively contained, finite scope of work, pretty easy to get a set of drawings for that.

Standard procedure to get drawings on a renovation project, you go out to the existing building. First of all, you can go to City Hall and try to pull up permit drawings from the past if it is an existing building of what is already built.

Q Do you know whether or not there were any

existing plans for this property?

A I do not, and what I was about to say is, there is not. I do that as a builder and somebody who does this all of the time because it help you with field measurements. It gives you a basis to go check the building. If that does not exist, and that's not uncommon, they can't find it or if the building is really old, you go to the building and field measure it. You field measure the building. It's common practice, and you come up with an architectural drawing, something that you can get a permit off of. You can have a licensed professional prepare the drawing, seal the drawing, and get a permit and then you begin. You don't need to perform demolition to prepare the drawings. It's not standard.

Q Does the City issue demolition permits?

A They issue demolition permits for building teardowns.

Q On remodeling, isn't it true that the City of Newport Beach does not issue demolition building permits?

A The selective demolition required for this project falls under the building permit. That is also not uncommon.

Q So, in this case, as I understand it, there were a lot of unknowns about what was going on. How is a

contractor supposed to find out what the current state of things are without doing some demolition to figure it out?

A First of all, I don't know what you mean by "unknowns."

Q Structural integrity.

A Well, that could be the case with anything that has ever been built, whether it has an unknown. It's standard practice. You don't demolish a building to find out if it is structurally stable. That is not the right thing to do. It is unsafe. It is not standard practice. You prepare a drawing of what is known, that's existing conditions. You don't do a whole exploratory. I have done innumerable projects, similar renovation-type projects with such unknowns. If you can't visually see it with the eye, you don't see it. You get the permits so you can proceed.

Once you begin to proceed with the set of drawings with no information, No. 1, I'm going to go back to the original scope was not a destructive demolition in phase one. It was a cosmetic job. It was not structural. If during the course of your renovations, you discover something based on your experience or knowledge of residential construction, if something comes to you that you feel is unsafe or just doesn't look right, the common thing, the standard thing to do is, because you get an

architect or engineer to examine it, and they will say, "This is good. That's not good." They may come up with a sketch, maybe they won't. They'll address the problem. If there's significant changes that have to be made based on an inspection, you stop the work. The architect prepares a document or writes a letter or describes what you need to do. You inform the City, and you continue working. So, that's kind of a standard process of how that works.

Q So, he should have gotten the general building permit on the project, and then during the progress, done exploratory work and see if things needed to be changed?

A I do know there was originally a plan for a patio on the roof. Ultimately, that work did not happen. During the course -- well, first of all, anybody with a little bit of framing experience, this is basic framing. There is basically three types of framing in California in general. There's post and beam, there's balloon framing, and western platform framing.

Houses built in that era are generally built with one of those standards, one of those type of wood framing. It's relatively simple. You would have an inherent knowledge of what is likely in those walls just by examining it. You can look at the building and probably poke one hole in a piece of drywall if you had a question.

If you had a post and beam, you can see where it is or you can measure off and be able to determine where that is, and if it was balloon framing, which means you frame one stud that passes all floors. Western platform framing, you have a stud wall with a platform floor and another stud wall and a roof. It's going to fall into one of those three categories. You would know that by knowing the era it was done, by looking at the building, you can tell that.

Q What was the state of the construction when you first went there?

A If it would have been -- I did not go there. I sent somebody with videos and photographs which I turned over to you.

Q When you said you reviewed photographs, were those Mr. Bereki's photographs that he turned over in discovery or ones that your own client had?

A I reviewed both. I got Spartan's photographs at a much, much later date. So, the initial -- when Bert L. Howe initiated the project, there was an inspection scheduled. John Tolman was there on that day. I was unavailable. So, he took extensive videos of walking the site, and he took extensive photographs, a lot, and I produced those to you. I had the additional photographs that Spartan provided at a later date.

Q Is that at the end of 2013, beginning of 2014?
A It was what then?
Q When the first photographs were taken.
A I would guess the photographs were dated. Like I said, my recollection is '14.
MR. BISSELL: Are you talking about the Tolman photographs?
MR. RUSSO: Yeah.
THE WITNESS: I would be guessing because I don't remember. It could have been in '14. Could have been in '13. I don't know. I could guess, but the documents will -- the photographs are dated.
BY MR. RUSSO:
Q And you said you reviewed correspondence. Was that between Mr. Humphreys and Mr. Bereki?
A I reviewed limited. There's a couple kinds of correspondence. There's letters from an architect and from the City or whatever. The correspondence I am referring to now is e-mail communication, very few that I had. One was the original agreement, the April 5th, 2012 date. Another was an exchange with Mr. Bereki explaining his point of view on what happened when I guess this matter started to come to a head, and maybe a couple of more. I certainly didn't see anything in the file that was provided to me that there was voluminous e-mails. I

was not provided with those.

Q So, one of your thoughts was, there was a lack of communication?

A I didn't say that.

MR. BISSELL: Objection; mischaracterizes his testimony.

BY MR. RUSSO:

Q Well, do you know how they communicated?

A Well, I wasn't there. I can tell you what Mr. Bereki testified to because I read his deposition. I can tell you how he explained it.

Q Did you feel that Mr. Humphreys' involvement was too limited in this situation?

A That's a difficult question to answer, what too limited means. He could be not involved at all, and the project would still be okay.

Q I believe in his deposition, he testified he only went to the project three or four times.

A That's not unusual.

Q So, you went or you or Mr. Tolman went to get a current state of events when you took on the project; correct?

A I'm sorry?

Q You went or Mr. Tolman went to determine what the current state of the situation was at the beginning?

A Mr. Tolman went to the site and took extensive video and photographs of the site, yes.

Q Was your understanding of what the agreement was as to the scope of work limited to those e-mails or did you do anything else to determine what the scope was?

A First of all, the original agreement I'm going to use that in quotes, "the April 5th e-mail communication," defines what I will call considered very loosely, what the scope of work is, certainly what the intent of Spartan was when they started the project.

Through the scant e-mails that I was able to review, it become apparent that issues came up through somebody's opinion that there's structural work that needed to be done. It also came up that there was a stop-work order because of no permit. It's not unusual and is not surprising. There was a set of architectural drawings that were prepared. Wong is the name of the architect. It is the original drawings, and that showed what the scope of work was, the original scope of work was. When I say original, I'm going to refer to the April 5th e-mail, which is renovation and possible roof patio.

Q Was that when it was just a single unit though?

A Correct, and then drawings were prepared after, and then the project was expanded to include another unit and drawings were prepared, and it has footings on it. It

has some supplemental wood framing, et cetera, on it.

So, the scope changed from what the original intent was.

Q And did you believe there was adequate documentation regarding the change in the scope?

A I believe that the architectural documents speak for themselves. When you say "adequate," as any builder or licensed contractor or anybody who does this professionally, we rely on the licensed professionals to tell us what needs to be done. I have a lot of experience, but I always rely on that for liability reasons, No. 1. The licensed architect or engineer is going to tell me what is needed. I'm going to follow that exactly, and I will be safe. That's a standard practice we do.

If you proceed with work that's not shown on the architect's drawings, and let's say there's a structural failure, you're now at fault. That's negligence. You don't do that. I've never done that. It's not standard practice to do that.

Q As a big picture, you haven't found any fault in Mr. Bereki's work or Spartan's work; correct?

A What do you mean by "fault"?

Q Anything wrong with it. It sounds to me you're addressing the costs, the timing, but not whether or not

the work was appropriate; is that correct?

A "Appropriate" is a loose term, and when you say I'm just addressing the costs and things like that, what I'm -- by looking at the photographs, an e-mail, and the payroll records and the material purchased, invoices provided by Spartan, you can develop a timeline of what was bought, when, and how long it took to do that.

In my opinion, for example, at the beginning of the project, which started on or about the second week of April, the first week April, on the 9th, I believe -- I'm basing on that the photograph -- until the time they actually got the permit was a very long time, and all of the photographs don't show the work proceeding very quickly. Removing drywall to expose a building, it's quick. It's a relatively small building. Overall, it's about 3200 square feet approximately. That work should take no more than two weeks, especially with the number of men they had on the project.

So, what I'm talking about with Bereki's work or Spartan's work, it took way longer. I can't justify in my mind how it took months and months to peel drywall off and do various pieces of cabinetry. That's what I'm talking about that it took too long.

Q Did you believe that it was appropriate or inappropriate for Spartan to do the exploratory work

downstairs?

A It was inappropriate without a permit.

Q Okay. So, you're not saying it didn't need to be done. It's that it should have been permitted first?

A I don't know why they did exploratory renovation. It was cosmetic. I see no documents that tell me why that was done, other than they needed to demolish the building to prepare the drawings, which I already opined on.

Q Do you know what remodel work happened on the first floor shortly before the Humphreys' project started?

A There's not enough detailed information for me to say what happened. I just have brief descriptions of things. I don't know. You talking about the downstairs, Laugharns?

Q It doesn't sound like it's spelled.

MR. BISSELL: Laugharn.

THE WITNESS: If you're talking about that property, there's not enough information in the project file that I saw to make me with certainty know what that was, other than some brief description I got from either Mr. Bereki's testimony or his e-mail communications.

BY MR. RUSSO:

Q Did you speak with the Laugharns at all?

A No.

Q So, have you reviewed anything for this project

of yours in this case outside of the documents exchanged from the parties? Have you gone to any outside sources?

A Yes. What I do in the standard practice, I go and use electronically public information. For example, the California State Licensing Board. I go there. They have public records. So, I can see what the licenses are, when they were obtained, things like that. I went to the Newport Beach City Hall records electronically and pulled out permitting information and everything I could that they had. I also examined their standards of practice. I'm sorry. Each municipality has a little bit differing permitting procedures, which is not unusual. So, I reviewed all of their standards and procedures for doing work in Newport Beach on Lido Island. Also the California State Board, all of the rules and regulations, I do that once in awhile to refresh specifics on a specific project. I also contacted places such as Home Depot for lumber prices to get an idea what the market rate for certain materials are. As far as outside documents, in my recollection right now, that's probably it.

Q Was there anything you felt was overcharged on this project? And I also understand you say it took too long. Was there, whether it be a subcontractor cost or a material cost, anything like that which you felt was far too much?

A Yes, and what I did was, the documents that Spartan provided, I took and made a matrix of all of the receipts. There was a lot. It was very painstaking of everything, made a description of what it was, and I put it in categories, power tools, hand tools, subcontractor, lumber, office supplies, et cetera.

Before I did that, I did an estimate of the Wong drawings. So, I did a take-off. I did a quantity survey, we call it, to count of the materials that's required, and then I developed pricing for that as far as materials. I developed labor pricing for that. I came up with a baseline for me of around what the project like this should cost.

When I finished my analysis, at a later date, because I didn't have the Spartan documents originally, I put all of these together and categorized everything, and I had trouble making the ends meet. By that, there's only so much material that can go into the building. For example, wood. The building is only so big. I got a price which is reasonable. Home Depot was a good enough barometer or any lumber yard. I took the price of materials spent and it was vastly different. So --

Q Because he came in so low?

A No.

Q Okay.

A It was vastly different.

MR. BISSELL: It was a good attempt.

THE WITNESS: Probably 300 percent, 400 percent higher that I couldn't justify where it went or why that was necessary. There's only so much that went into the building. By looking at the photographs, after a point, after Spartan had been terminated from the project, I looked at what was in place, and I can compare that to the drawings to my take-off, my quantity survey and receipts, and I don't want to say it makes no sense to me, but it literally was a 400 percent difference that I don't know where it went.

BY MR. RUSSO:

Q Well, the receipts are what they are. You're saying too much material was ordered or too high of a price was paid? What is your opinion on that?

A My opinion is when you look at the project and estimate the standard, there's what I refer to as bricks and sticks, lumber, drywall, flooring, cabinets, appliances, electrical outlets. Those are finite items that you can count and put a value on, a market rate value on. I obtain those through getting material prices, using experience and reference guides to put labor to, and you come up with a price, and the price of what was ultimately spent to the date when Spartan was terminated was 400

percent higher than that.

So, when you say were the prices too high, there was what I considered inappropriate charges, unusual, improper charges for a project of this nature on the project.

Q Inappropriate because too much was charged for it?

A Unnecessary. I saw thing like truck leases and shop rentals and power tool purchases and hand tool purchases and furniture and furnishing such as pillows and blankets and things like that.

Q So, there were charges that you felt were not necessary or appropriate; correct?

A Improper.

Q Well, we're talking about materials, and you said the materials came in 400 percent more. Are you throwing in these other costs into materials?

A Let me clarify. When I say the 400 percent, I'm talking about the overall cost, which includes the basic four categories of construction, labor, materials, subcontractor, and equipment. Overhead which are soft costs. Four basic categories. What I'm telling you is what I believe those four categories should have cost and what I examined for the information available to me was approximately 400 percent high.

Q Altogether; correct?
A Yes, all of those.
Q Labor, material, equipment, and what?
A Subcontract.
Q Did you determine that any of the subcontracting was at an unreasonable cost?
A Without having specific details of scope, meaning no written contract with details, it's common to provide a contract, for example, to an air-conditioning HVAC contractor, who will say, "I will put in one unit and all the duct work and thermostats for X," and he gives you a price. I didn't see that. I did it without knowing all of the details. For me to tell you whether that was inappropriate, I don't have enough information to determine that.

I do believe that the amount labor that was used on the project is -- I'm going to use the term wildly inappropriate for the number of man-hours spent on a project of this type, including the revisions that took place, the structural things, extra pieces of wood, things like that that had to take place.
Q As far as equipment, were there equipment charges you felt were unreasonable?
A Yes. Well, I thought they were inappropriate or improper, I should say, for a project of this nature. If

this was, I don't believe it was a true time and material cost, in the definition, the licensing board definition, it was kind of not legal how they did this. I'm not an attorney, but my experience tells me it's not legal to proceed like this.

On a labor and material or time and material-type project, when you hire somebody to do this work, it's inherent that they have a car, that they own the power tools. It's much like when I go to Pep Boys. I'm not buying the mechanic's tools. I'm paying for that service. He has all the equipment he needs to do that project.

So, for what appears to me, the quantity of hand tools, power tools, things like that purchased for the project is improper. It's not normal. It's not a standard of practice, standard of care. It is often -- in my experience how this is addressed, if this was a proper time and material cost plus-type contract, which it is not, what is common is, is that because a project when you have unknowns, it's not uncommon for that. You have a baseline to start with.

For example, in the e-mail agreement, Mr. Bereki provided some timeframes and provided dollar values. I have no idea how they were derived at. It's common to estimate what is known and then apply the cost to perform the work, and you start with the baseline. You say, "I

believe it's going to be between X and Y, the value of the project." You proceed. What is common is that you keep records. It's very important that you keep records for time and materials.

For example, when you were paying somebody for X-number of hours to do something, it's common at the end of the day, people in construction, you keep daily logs. You have to because OSHA requires that you do it to protect yourself. At the end of the day, you summarize that you worked here for three hours, the agreed upon rate is X, and we used so much material. Here are the receipts for the material. You have a labor and material, whatever agreed upon management fee or other fee. That's the appropriate way to do that.

If you need a specialized piece of equipment, not everybody has a concrete saw. Not everybody has a dump truck. If you feel like you need a specialized tool or equipment for the project, you would rent it for the time period, and you would turn the receipt over to the owner or whoever you're contracted to. It's a common procedure. You wouldn't buy everything that you need for an indefinite period of time.

I saw many instances where there was equipment, in my opinion, on a job site that was not necessary to stay there for months on end. Yes, you need a concrete

saw. You rent a concrete saw for a finite amount of time, pass along the rental charges. You need to dump things, you make arrangements with the dumpster to rent or pay for that service. You do it for a finite period of time. If you need something delivered, you don't buy a truck. If you feel you need to have your own truck, you go to U-Haul and rent one for $50 a day or $30 a day and turn it back. That's common. You don't load up everything you may or may not need for the entire duration of the project and charge the owner for something you used for a couple of finite pieces of work.

Q Would you agree that if you can buy a piece of equipment for less than the expected rental rate of that equipment for when that equipment would be on the job, that it's okay to buy the equipment?

A That's depends significantly.

Q On what?

A An example, I saw an example of when -- one that comes to mind is a paint sprayer, over a thousand dollars, somewhere north of a thousand dollars for that. I know that you can rent a paint sprayer for less than $80 a day. I looked at this project, there is certainly no more possible work to be done than a week, the painting would be done in a week. Painting is very quick. It's just labor. Especially if you're spraying, the whole building

can be sprayed in two days, detail work done in three or four days.

There's an example I saw where my opinion is to buy even more than one sprayer was inappropriate. If there is a case or the builder wants to make a case that it's cheaper to buy it, you need some sort of analysis. There's nothing on this project that took so long that you needed to buy a piece of equipment. This is residential construction. It's relatively not complex. It's a residential building. There's wood, concrete, drywall, and finishes. It's pretty simple. I saw no need for purchasing specialized equipment.

Q I understand that dumpsters were not allowed due to the confinement on Lido. When you have to haul away stuff on a daily basis, what is the appropriate way to do it and who pays for it?

A Well, there's more than one way to do that. In the photographs, I saw dumpsters. You can -- if they're not allowed, if you can't get a special permit for it, sometimes you can and you have to pay a fee for that, you get a dumpster and haul it off. If that's not appropriate, a way you could do it, let's say you need a dump truck or larger truck to carry debris. How I've done it in the past, how it's common to do it, you do the demolition. You get the rubbish, you get it together.

You rent a truck or you hire a truck, hire a guy that hauls junk or debris to load it and get it out and do that repeatedly if you need to, but that's not unusual to do that. You don't need to buy a truck. Me, I would hire somebody who hauls junk. If I needed a dump truck or a larger truck, I would rent a U-Haul for a day or two or three days.

Q Did you feel it was appropriate or inappropriate for Mr. Bereki to charge for the use of his truck if, in fact, it would have cost more to lease one than what he was charging?

A That's a confusing question. You're trying to say if he bought in lieu of leasing and it's cheaper?

Q He charged Mr. Humphreys part his payment on his truck because it was being used at the project as opposed to him going to rent a truck and charging the whole thing.

A It's wholly improper to put any cost of that truck, to pass it onto Mr. Humphreys.

Q It would have been appropriate for him to rent a truck instead; is that correct?

A No, that's not what I said. It's improper and wholly improper to charge a personal vehicle to Mr. Humphreys. If Spartan had used that truck 24 hours a day for the length of the project at whatever the cost came out to, you don't pass that along on a labor,

material, and cost plus job.

Q Is there some definitive place that you could look to determine what the scope of costs are for purposes of a cost plus a fee contract?

A I'm not sure what you're asking.

Q Sure. Is there a definitive place to look to determine what is an appropriate cost of a job for purposes of an agreement such as this?

A You said cost of a job?

Q Yes.

A That's where expertise and experience comes in and building standards. You're talking about an estimate?

Q No, what costs can be passed along to the customer if not otherwise delineated in a written agreement that we all wish we had here?

A The standards in the industry, and I will say, California State Licensing Board and their building codes are very closely in line to AIA documents. What you will find in the AIA documents, it's common. They list, they give you categories of what cost plus items are. It's a pretty specific listing what that is and also a range of markups, what an appropriate markup is. That's one document where I would start with.

Q In this case, Mr. Bereki didn't mark anything up whereas in contracts such as the successor, who did work

on this, marked up a percentage on the cost. Why is it acceptable to mark up a percentage on a cost versus making sure every possible cost is included?

A That's a compound, difficult question. I have no idea that Mr. Bereki or Spartan did not mark up their cost. I don't know that. There's not enough evidence to say they did or did not. All I know is what was stated in the April 5th e-mail as far as fees or to cover their costs of labor, management or expertise that you're paying for. There is an enormous difference in what I found in project records dollarwise to what was appropriate to pay for that work.

An example would be the project, taking X-number of days, you multiply that by $500 a day, as I recall in this e-mail for the number of days he's on the project compared with what the record indicates is 200,000 plus dollars that Mr. Bereki received for that work or Spartan received for that work. So, I don't know that he didn't mark it up.

I looked at the payroll records in the agreement. When you look at the payroll records that we have for number of hours worked, you do a simple function of division. You will see that some folks are making $30 an hour when maybe they were going to make a range of 15 to 25. So, I can't say that's not a markup. There's an

irregularity that I can't justify.

Q You had prepared a report. Is the one I have right here the right one?

A Yes, it has a print date of 9-12-16.

Q Is this as far as your damage analysis for taking too long or for charges that you thought were excessive or inappropriate, does this accurately summarize your conclusions on this?

A To date, it summarizes my conclusions, yes.

Q Was there something you haven't done that you wish you had done that would change that report?

A No.

Q Okay. You said "to date."

A When I say "to date," because there's always a possibility that new information can become available.

Q Did you look at what the subsequent contractor Mr. Nickel did after he started on the job?

A I would say I looked at the documentation. I did not analyze it. I was not hired to analyze those, but yes, I looked at it.

Q In your conclusions, is there some reliance on what Mr. Nickel did after he started on the job?

A What do you mean by "reliance"? I didn't look at Mr. Nickel's enough to tell you right, wrong, left, right, what it stood for. I didn't rely it on it whatsoever for

a couple of reasons. I was not paid or engaged to analyze Nickel's project. The information became available to me. We looked at it real quick.

Q I understand, for instance, he testified earlier today that he had a new set of architectural plans. Did you see the new set of architectural plans?

A I did see those.

Q Did that at all influence your opinion?

A That work is -- my opinion is going from the time of April 5th, 2012 to approximately on or about August 28, 2014, I think was the termination date.

Q Okay.

MR. RUSSO: Was it 2013?

MR. BEREKI: Yeah.

BY MR. RUSSO:

Q It sounds like we have a disparity in dates. I think the termination date was actually in 2013.

A I believe you're correct.

Q You're looking at things in the snapshot as of the time of termination; is that correct?

A I'm looking at the timeframe from April 5th of '12 to August 28 of '13. I will say, I did notice in Spartan's records that there was payroll after that date. So, it went into September a little bit.

Q So, anything that happened after August of 2013

didn't weight into the opinions that you're here to testify about; correct?

A No.

Q Okay. We've got your report. We will mark it as Exhibit 1 to your deposition.

(Whereupon Plaintiff's Exhibit 1 was marked for identification.)

BY MR. RUSSO:

Q Are there any other reports that summarize your opinions?

A No. This a worksheet that collects all of that. I'm sorry. Maybe I spoke too soon. I did some estimating spreadsheets and additional schedules, if you want to consider that a report.

Q Okay. I see next to your left hand, there seems to be some scheduling.

A Yes. These are just -- what this is, is simply a timeline this plots events and plots payrolls and things of that nature. This is for reference.

Q Okay. You gave me a flash drive with a bunch of documents. Are all of these reports on there?

A It's all on there. These are not reports. They're to help the deposition if we needed it. They've been provided.

Q Let's go through Exhibit 1. The run date is

November 12th --

A September 12th.

Q Sorry. September 12th, 2016.

MR. BISSELL: Do you happen to have another copy of it?

MR. RUSSO: I'll get you a copy.

MR. BISSELL: Thanks.

(Recess held.)

BY MR. RUSSO:

Q Apparently, the engineering was Wong, and the architect was Overly.

A That's correct. I used the Wong drawings because he's the licensed professional.

Q Okay. Do you know how long into the project it was that the Wong drawings were prepared?

A Yes.

Q When is that?

A Seventy days after the agreement of April 5th.

Q And you're basing what things should have cost in your opinion and how long it took based on the Wong drawings; correct?

A No. I'm basing it on everything. There's four aspects I considered. The two aspects are the original agreement, which was a renovation with the potential roof patio, there was the Wong drawings, and then there was

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In the Appellate Division of the Superior Court of California
for the County of Orange

Consolidated Case Nos.:
30-2025-1482941 (Lead Case) and 30-2025-01487778

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Adam Bereki,
Appellant.

v.

Canjian Hou,
Respondent.

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**REQUEST FOR JUDICIAL NOTICE**
**PART 3 OF 4**

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Adam Bereki
3649 Metter St.
Las Vegas, Nevada 89129
949.241.6693 | abereki@gmail.com

Spartan/Bereki mentioned work at the Laugharns, however you pronounce that, and the soil pipe, and so I take all of those things into consideration. I recognized the project changed from what was conceived until what the Wong drawings illustrated.

Q Did you feel that in those first 70 days before the plans were prepared that things were not moving quick enough?

A Things should not have been moving at all.

Q You're saying because there was no permit?

A For two reasons, yes. A, there's no permit, and so he shouldn't be there, and Wong produced the drawings 70 days later. What are you doing if you don't know what the architectural drawings are going to say? When you found out that you needed a permit or you needed drawings, what were you doing in the meantime? Payroll records indicate work was going on. Photographs tell me a little bit of demolition is all that was done.

So, the proper thing to do, you're not supposed to proceed without a permit. They did. Spartan did. You go there, and you have the stop work order. You should stop until you obtain the permit. He obtained the permit sometime well after the drawings were prepared. No work should have been taking place there.

Q Do you know why it took so long to get the

permit?

A I know there were several review cycles, which is not common with any municipality.

Q Do you know whether or not -- do you have an opinion as to whether or not the architectural plans were prepared promptly from when Mr. Overly was engaged?

A Not having specific, rock hard evidence of when specifically Mr. Overly was engaged, just some hearsay on e-mails, to say it's an appropriate amount of time, I can't opine on that without additional information. I only can opine on that 70 days after you started the project, which is slightly over two months, that's a long time to produce drawings.

Q Okay. Let's go through your report. Do you break up what you contend the damages are into components here?

A Yes.

Q Okay. The first one, scheduled delay --

A Yes.

Q -- what are you intending to convey here?

A What I did -- and that's why I brought this visual aid here. I can give you a copy of this. What we did is, the multiple phases of the project, Phase 1, interior renovation, in the April 5th e-mail, Mr. Bereki estimates that's going to take 30 days. Phase 2 in that

April 5th e-mail, Mr. Bereki says it's going to take approximately 45 days. That's approximately a month and a half. For what I call the structural remodeling and all that work with the Wong drawings, there was no schedule provided by Mr. Bereki or Spartan. So, I did one to estimate how long that should take, and I came up with a duration of 154 days or 153 days.

Q So, that's to do the -- if nothing else, just the interior renovations that were originally planned back on April 5th, 2012 and then expanded when the new unit came in?

MR. BISSELL: Objection; mischaracterizes his testimony.

THE WITNESS: No.

MR. BISSELL: It's the Wong drawings.

THE WITNESS: It's the Wong drawings and everything else that occurred, meaning modifications to the Laugharns and mentioning of an underground drain, but that didn't delay the project. That 153 days encompasses all work necessary.

BY MR. RUSSO:

Q Okay. When the original, somewhat vague scope started to the additional unit to Wong getting involved and deciding what needed to be down below that you included, you believe that the whole project should have

taken 153 days?

A Yes.

Q Are those workdays or calendar days?

A Calendar days.

Q So, that includes Saturdays and Sundays?

A Correct.

Q And based on this, you believe it took 157 days too long to get to where he was?

A No, 357 days too long. Spartan was terminated on or about 8-28 of 2013. If you subtract the difference of when he should have been done at 9-5 of '12, that's 357 days. That's a mathematical function.

Q And the chart you have to your left, can I see that?

A (Witness complies.)

Q (Counsel peruses document.)

Is this a source that you go to to decide how long these things should have taken or is it just your experience?

A Well, it's a method. As a side, I have decades of experience. I have a lot of experience with this practicality application and instruction. You go through a process, which is a standard to come up with a bar chart that accompanies those 84 days that I went through the process. I also used -- did a takeoff for quantity survey

of all of the materials and labor required for the project, and we come up with a number of days. That's another analysis for coming up with workdays. So, I believe I went through a thorough process for developing days.

Q Okay.

A Creating a schedule.

Q Were you aware that the property has never been rented since the completion of construction?

A I don't know whether it's been rented or not.

Q So, why have the rental value if the intent of the owner was never to rent the property?

A I have no idea. The potential to rent the property was lost. I don't know what is in the owner's mind or what events could have occurred or how long they were going to be here or if they could have rented it. If they could have rented it, they lost that opportunity, in my analysis, of 357 days worth of opportunity to rent the property.

Q Do you know how often the Humphreys actually go to the property?

A No.

Q Okay. Did you ever ask Mr. Humphreys if his intent was to actually rent the property out?

A I don't believe I asked him that specifically,

no.

Q Let's look at the next category, Supervision Compensation.

A Yes.

Q Can you tell me how you came up with that?

A Essentially, it's the same mathematics as in the Schedule Delay. What I'm saying here is, it should have taken 153 days to do all of this work. The supervision rate or day rate assuming he worked every single day including weekends, and I'm not saying that's true. I erred on the conservative side, giving the benefit of the doubt that Spartan was there every single day, seven days a week. At $500 a day, an acceptable fee for that would have been 76,500, as I have listed. From the records, I was able to glean right around $201,000. So, my opinion is the delta between that is $124,500 of unnecessary costs.

Q Okay. The next item is Tools.

A Yes. What I did, I will show you visually, this is an Excel worksheet that is part of this, and I took from Spartan's deposit, all of their records, which is all of the invoices, and on this piece of paper, along this column, I listed, these are the vendors, here is the description, and it's dated, and I put in categories. For example, Labor, Material, Subcontract, Equipment, Power

Tools, Hand Tools, Administration, Gas, Furniture, Automotive Expenses, Appliances, Architecture, Engineering, City Fees, et cetera. I came up with this matrix, what I'm showing you here, and under the category of Hand Tools is hammers, wrenches, tape measures, common carpentry tools. I came up with a purchase that I have listed here of 20,042 -- I'm sorry -- 2,042.

Q That's each actual item listed on the spreadsheet?

A Yes.

Q Are the items on the spreadsheet based on what Spartan charged or how did you get that number?

A By the receipts provided, receipts or invoices.

Q If I wanted to know what tools you thought he should have owned and not charged Mr. Humphreys for, it's on that spreadsheet?

A It's on here. I color coded it so it's easy to find.

MR. BISSELL: Do you want to mark that as Exhibit 2 since he's talking about this?

MR. RUSSO: Sure. I will mark it as Exhibit 2. Let me take that.

(Whereupon Plaintiff's Exhibit 2 was marked for identification.)

///

BY MR. RUSSO:

Q What would you call the document we just marked as 2, sir?

A Invoice matrix. We will call it that.

Q It specifically has to do with hand tools or is it more general?

A All invoices.

Q Okay. The next item is Power Tools.

A Yes.

Q How did you decide what power tools -- are those power tools purchased and charged for?

A Yes.

Q And is there a standard in the industry when you do have to buy a power tool about who keeps it at the end?

A It's highly unusual who keeps it. What I'm paying for when I hire a tradesman, they come with a hammer, tape measure. They come with hand tools and the basic power tools. In the case of carpentry, they would need a saw, maybe some drills, and possibly some screwdrivers. They come with that. That's what you're buying.

Q Okay. The subsequent contractor, Mr. Nickel, came with nothing. He was more of an administrative general contractor and didn't do any of the labor. Why is it that if he charges for these items for his

subcontractors, it's okay, but yet Mr. Bereki who's on the job charging for these things is not okay?

MR. BISSELL: Objection; incomplete and inaccurate hypothetical.

THE WITNESS: And what I was going to say is, it's two completely different scenarios. No. 1, I did not have access to whatever agreement Mr. Nickel came to. I do have access to what the understanding of Mr. Bereki or Spartan was, and I don't know if I should speculate what Mr. Nickel did, but what is not uncommon is if I hire a subcontractor like Mr. Bereki did for $3,000 to do electrical work, this electrician isn't charging back for his wire cutters, his -- whatever he might need, an amp meter or any specialized piece of equipment.

BY MR. RUSSO:

Q Is there within the AIA guidelines or any guidelines, is there anything that sets forth the industry standard on what power tools can be charged for and what cannot?

A Going off of my memory, they list -- they describe. Power tools are different than equipment. I want to make that distinction. A power tool is a power screwdriver, a drill, a reciprocating saw, something like that. Equipment is something specialized. Equipment is like scaffolding. Equipment is a crane. Equipment is a

forklift. I want to make that distinction, first of all.

So, small tools, hand tools, it's all considered by AIA, including power tools like I described, saw, screwdriver, et cetera, that's all considered under tools, and that is a part of the labor rate. Equipment above and beyond that is charged separately.

Q Okay. So, were there particular power tools charged for that you took issue with?

A All of them. Without looking at them, power tools -- when I'm paying for a carpenter, I pay for that. Same thing when I take my car to Pep Boys, I'm not paying for the wrenches. I bought that when I am paying his hourly rate.

Q Where would I look at on what I marked as Exhibit 2 to see where the power tool list is or is it incorporated within everything else?

A When you look across the top of the first page, PT is power tools. It's $118.74, and that's a Ryobi screwdriver, and if you go down there, the next entry is $156, a Dewalt screw gun. Then screwdriver kits, et cetera, et cetera. That's how you'll track it.

Q I got it. Would it have been appropriate for Mr. Bereki to hire a tradesman that had the tools and charged more than Mr. Bereki purchasing these power tools and includes it within his daily rate?

A According to the agreement, Mr. Bereki or Spartan forgive me, if I'm mispronouncing it or Spartan sold the owner that he is the tradesman. So, he should have had the tools. When you say it would have been cheaper or appropriate to hire a tradesman, it's so hypothetical, I don't know how to address it.

Q Next, Equipment.

A Again, on the sheet that I provided you where it says E, that's equipment. So, the first expense is a stylus for an iPad and propane tanks and different types of supplies that you can follow if you go down the column.

Q If these items needed to be rented, would that have been appropriate?

A If they were necessary.

Q Was there any equipment that you determined was not necessary?

A My determination was that the equipment that's listed here, any reasonable contractor would possess those. They would possess a broom and dust pan and things like that.

Q So, would it be fair to summarize your position on the equipment is that Mr. Bereki should have owned this already?

A Any contractor would own those things, a broom, ladder, trash cans, at least some. If there was a whole

bunch necessary, a multitude of trash cans or ladders or different things likes that, there would have to be a reason for that.

Q Is it your opinion that the charges themselves were unreasonable outside of the fact you're saying there shouldn't have been a charge at all?

A The receipts speak for themselves. If there's a receipt that came from whatever store, that's what the market rate is.

Q The next item is Vehicle Cost.

A Yes.

Q You're saying categorically, there shouldn't have been any vehicle costs?

A Categorically is a strong term. As I said earlier in my testimony that if there was an absolute necessity for a specialized vehicle to be used on this project and Spartan deemed it appropriate to use it on the project, then you can rent something. You wouldn't outright purchase one. If I needed to dump things or to deliver some stone, if I couldn't hire a driver with a truck, which is common, then I would rent one from U-Haul or Ryder or some other reputable rental outfit for the period of time necessary.

Q Was there a period of time when a truck was necessary for this job for hauling purposes?

A I will say that it's not uncommon at some point that something will have to be hauled. I would add, for material deliveries, the materials are delivered by the suppliers in all cases. There may come a time when something came up and you were short a couple of two-by-fours. You can call them to redeliver that. Everything is else is delivered, you can get delivered to you.

Q It's okay to charge the client to have it delivered, but it's not okay to pick it up and charge him for that?

A That's an interesting question because it's compound.

Q Okay.

A Okay. What the owner is being charged for is Mr. Bereki's time and the time it takes to perform the work. So, if it takes him two hours to go pick that up, that's included in what the negotiated or stated day rate of $500 is. You wouldn't charge above and beyond that.

Q If he needs to use his work truck for that to go get materials, you believe any charge for that use of the truck is inappropriate?

A No. 1, I would have it delivered. All of the supply is delivered. If you made a mistake and you are short and they're going to charge you an extra delivery

charge of 50 bucks or something, you can pass that along to the owner.

MR. BISSELL: Even if it's your own mistake?

THE WITNESS: If it's a mistake, no. I'm trying to use the example, let's say it was not a mistake and it's newly discovered that you needed material and you have to have it delivered, it's a short load. That's when it's less than a full load and they charge you for that, that is an example of an equipment charge. It goes with the materials. When you get lumber from the lumber yard, the cost of delivery is sometimes built into the cost. Sometimes they charge extra. It's an expected cost. That type of cost is appropriate to charge.

BY MR. RUSSO:

Q For purposes of your analysis, you categorically found that the charges for the use of the automobile and everything associated with it was unreasonable; correct?

A Categorically do I say it's unreasonable? Yes.

Q So, the $22,910.38, that was all of the charges for the automobile; correct?

A I don't know if that was all of the charges. That was all I was able to glean from the documents.

Q You excluded from reasonable every charge associated with the auto you were aware of?

A Repeat that.

Q Sure. You determined that every charge associated with the automobile was unreasonable at least as to the charges you saw; correct?

A Of all the charges I saw, yes.

Q Next is Labor Overpayment.

A Yes.

Q Can you tell me what you're trying to convey here?

A Okay. What I was able to examine is, I had the payroll records and I had W-2 statements, which is a federal form you turn into taxes for the people that worked on this project. I will take the first category. I take Wolf Construction consulting fees. As is described, Wolf Construction is either an associate of Spartan or was somehow was going to be the foreman on the project. Somewhere along the line, it was determined to be around $300 a day to pay him. Assuming he was on the job every single day, 7 days a week, which I do not believe he was, you take that rate and multiply it by the 153 days. You come up with $45,900. That's what was agreed to pay him for what was agreed to. The amount I have there is $63,744.

Q Let me stop you one second. 153 days. If work was not done on the weekends, is it still 153?

A We use calendar days. So, there's -- I don't

know what days they work. We have to use calendar days. What I'm saying is, I'm giving everything in this case, Spartan, Wolf Construction, the benefit of the doubt that we're paying you for seven days a week.

Q You're basing the number of days that Spartan or Wolf Construction worked on their charges?

A No, should have done this project in 153 days.

Q What I'm saying is, in determining how long it did take -- I'm trying to figure out -- if they only worked Monday through Friday, then would the project have taken more than 153 calendar days?

A No.

Q Why not?

A Well, I would ask you why.

Q Well, if they worked every Saturday and Sunday, is it still 153 calendar days?

A The answer is yes. I'm going to tell you why. In standard practice for scheduling, we use calendar days for a reason. There's seven days in a week. It's an actuality we can measure. During the calendar days, we are assuming there's nonworking days, holidays, probably a weather day, maybe it rains or something. That's taken into account, which is why when those things happen, and maybe you can do it on Saturday. Saturday is a workday. The 153 days is assuming you have five days a week at the

bear minimum to get it done. That's how we're basing the 153 days on. I hope that answered your question.

Q Do you know or conclude whether or not there were any weather days?

A I didn't study that, meaning, how I would study that, I would go the National Weather Service. There's plenty of websites that's acceptable in legal proceedings that I used in the past. They give me that information. The case in this project was an enclosed building. There could have been occasional weather days. It doesn't snow in Newport Beach, at least I've never seen it. They get occasional moisture in the air. That would not have stopped construction.

Q Okay. Wolf Construction, you determined that Wolf Construction should have been paid for 153 labor days. Is that what you're saying?

A Yes.

Q Times 300, that's where you get the 43,900; correct?

A Correct, and the consulting fees, 63,744, I got from the records that were provided by Spartan. I totaled those up. The number could be a little different, but that's the records I could find where he was compensated. It appears he was compensated both for materials and labor. The materials he was compensated for is not

included in this figure. This is just labor. These are some things he was reimbursed for like getting lumber. That is not in this number. It is in the material numbers. I want to make that clear.

Q Is it somewhere else in your damage analysis?

A This would be listed in the matrix I provided.

Q Did you find that all of the materials Wolf Construction charged for that were passed along to Mr. Humphreys, was any of that unreasonable?

A I'm glad you asked that because I know in some cases, by that I mean, I'm going pick a number at random, $300, with a description of what it is, not necessarily an invoice backing it up. When I'm doing my analysis, I'm giving Spartan and Wolf the benefit of the doubt that what they said it cost was true. I'm giving them the benefit of the doubt. Meaning, I could not necessarily coordinate an invoice for what Mr. Wolf was compensated for.

Q This payroll, is that based on the invoices from Mr. Bereki? Where does that number come from?

A The 236,842 comes from the payroll records provided by Spartan.

Q Okay.

A If you want, I have another matrix I used for that. I titled this sheet "Cost Worksheet - Payroll" and before I hand it to you, this is the payroll records, this

is the W-2 records (indicating).

Q (Counsel peruses document.)

So, were the W-2 records actually from Wolf Construction?

A I'm talking all labor. Wolf Construction is outside of the labor in this payroll. Wolf was paid in addition to this figure.

Q In addition to the -- so, what makes up the 236?

A The payroll you have in your hand, which is the payroll that Spartan provided. I painstakingly went through every single one, listed the person's name, what the compensation was, how it was described, the number of hours, when it was described, the rate of pay, did some math to figure out what the rate of pay was, if it wasn't listed, what it was based on the hours and gross pay and I made that sheet to determine it.

Q Are you questioning whether or not these sums were actually paid to these people?

A When you say questioning, I can only go off evidence. The evidence I have is the W-2 is to me the concrete evidence. It is a federal document. That is the hardest evidence of what was paid to those workmen listed there. In my analysis, I only found 165,386 that went to those guys, not the 236 plus thousand listed on the payroll records. I don't have any evidence to cover that

gap.

Q From Spartan's records, you showed 236,000 in payroll not including Wolf Construction fees; correct?

A Correct.

Q And of the 236, you then looked for those individual employees and you found W-2s from Spartan to them only for 165,386; is that correct?

A Correct.

Q So, you believe there was possibly overcharging of roughly $70,000; is that correct?

A That's not what I believe. That's what the evidence shows that I have examined. So, there's a difference that I can't account for.

Q Okay. We have two issues here on the labor overpayment. One, you thought Wolf Construction worked an excessive number of days; correct?

A No. Stay with the delay. 153 days was appropriate. I said an excessive number of days. I'm saying, the project should have taken 153 days, and his compensation should have been 45,900. I'm saying, at the time of Spartan's termination, I could determine he was paid at least $63,000, and that's an overcharge of whatever the delta is of that number, 17,000 or so.

Q That's because he was on the job more days than what you felt was appropriate?

A To complete the work, yes.
Q Aside from that, you have the payroll charge not matching up with W-2s?
A Yes.
Q And the last item is Accounting. Why did you put Accounting down?
A Because it's not for a time and material type of arrangement. You wouldn't -- it's not appropriate or proper. Assuming again, if we have a contract that was legal and proper, you wouldn't charge that to a job of this nature.
Q Why not?
A I would ask back why? It's unusual. I would ask why. Why do you need an accountant?
Q If you're being paid for all costs, why wouldn't the accountant be part of the costs?
A That is an indirect cost.
MR. BISSELL: It's an inappropriate and inaccurate hypothetical.
BY MR. RUSSO:
Q Did the agreement between Spartan and Humphreys differentiate between direct and indirect costs?
MR. BISSELL: It doesn't mention costs.
THE WITNESS: The e-mail which you call an agreement, which I don't, but that's all we have, doesn't get to that

specificity. It implies that we're paying, the Humphreys are paying for Bereki's or Spartan's expertise and supervision and management and skill in his daily rate. Some tasks to me are implied, which includes accounting. Accounting on a job like this is pretty much simple. You count how many hours you worked and what the invoices are for the materials you spent. This, agree or not, disagree, it's unusual, it's improper. You don't add an accountant's cost to a time and material project.

BY MR. RUSSO:

Q Okay. Next item is Material Overpayment. Is this where you did a takeoff on what you thought the material should be and what the charges were?

A Yes. What I did as best I could from the matrix that I previously handed to you --

Q That's in the first matrix?

A Yes.

Q Exhibit No. 2?

A Yes. That's what it appears was spent on total materials. I did a quantity survey, and that's the estimate as I described to you before, how much lumber was required, what the market rate is, and came up with a price, and it's $56,753. You will see the next line, Construction Material Contingency, it's 10 percent of the original 56,000. I am giving the benefit of the doubt for

the 10 percent of the materials. So, my opinion in my analysis, the cost of materials is approximately $62,000 based on everything I looked at.

So, I looked at that $62,000. I looked at the $141,000, approximately a hundred percent difference, and I don't know how that is justified.

Q Were the actual materials specified such that you knew what they were supposed to be?

A There's two things I need to add to this. The materials I came up with was for everything on the job. It was to complete the job according to the Wong drawings, Overly may have assisted in preparing them. My material takeoff includes of all of that 100 percent. It's very important to note, on August 28, the work -- I can estimate it was approximately 25 to a third percent complete on those drawings.

So, the reality, that number should be a third of $62,000. Do you follow what I'm trying to say? The project wasn't complete at the time of termination. My estimate of materials is for all the materials required. I'm giving the benefit of the doubt as far as my numbers. If I got down into it, I would probably cut my material price in half.

Q So, the approximately $62,000 was to complete the work under the -- what you called the Wong drawings?

A Correct.
Q Okay. And is that all materials of every kind or more lumber, concrete type stuff?
A All materials.
Q Including all finish materials?
A Yes. All materials, yes.
Q And does that include things like fixtures and everything?
A Correct. Let me clarify that. The subcontract invoices that I saw in here, I let those go, meaning, I didn't reduce those costs any. If he paid an electrician or plumber to do the work because I didn't have the scope of work, if there's any fixtures or materials in those prices, I didn't discount that, if you will.
Q Okay. In coming up with the 141,000 you're saying?
A Right.
Q Okay. So, there might have been other materials built into the contractor's fees?
A There could have been. I don't have enough information to know for sure.
Q Okay. And again, is that in the spreadsheet?
A Yes.
Q Exhibit No. 2?
A The materials, yes.

Q Is that under NT?

A No, under M, the second column from the left. You see 141? You see the matching number there.

Q So, that's ultimately adding up what the actual costs were?

A The materials from what I could determine from the invoices, yes.

Q Is there somewhere within your files where you did the takeoff on what the material costs should have been?

A Yes. This one here is two sheets entitled "Estimate Takeoff," and it's self-explanatory.

Q (Counsel peruses document.)

Did you go out and do some research on the cost of the materials or are they built within a program that you have?

A No, there's no program. What we generally do or I do, I will say, and what I do for a living, literally do, I don't know if hundreds, but it's certainly dozens of cost estimates a year, and we have a historical database. What I always do and what I did in this case, we go look for pricing. Lumber is a -- you go to Home Depot, Lowes or some lumberyard. I would have done that. I didn't pull it out of a program. This is just an Excel spreadsheet. It's not a specialized, proprietary program.

Q Next, Business Equipment.

A What I have here is furniture, shelves, computer, printers, software, things like that. Again, if this was a legally executed contract, you wouldn't have that anyway, but to pass on the price of the computer software, stuff like that to the owner is highly unusual and improper. If I needed -- No. 1, I go back to, we're paying for specialty services from Spartan to do this work. To buy a computer, to buy a bunch of software for design work is inappropriate for this scenario. If I wanted to demonstrate different designs in 3D, things like that, anywhere you buy the stuff, they have the software, and you can tell them what you want and they will print out the sketches for free. You don't need to buy a computer and all of the software. It's highly unusual. It's unnecessary.

Q Again, you're not questioning the actual charge. You're saying it wasn't necessary to begin with?

A Again, my opinion on a charge, if it says it on the invoice, if there's an invoice from a vendor, then I accept it as market rate. If it's just a number listed in a ledger somewhere with no backup, I gave them the benefit of the doubt, but looking at the equipment under that line item, it looks appropriate, and if the invoice backed it up, I put it on there.

Q Overhead. What about Business License and Insurance?

A That's the cost of doing business that Spartan takes care of. That's their business. They don't pass that onto the owner, and the overhead with the excessive stationery and how-to books and things like that, you don't pass it onto the owner. Bottom line is, when it comes to reference books, whatever you come across, we don't go out and buy the book and pass it on. The wonderful thing with the world today is that we have the internet. The information is free on the website. If you need a page, you can print it. If you want to know how to do something, we don't need to buy all of these things to keep around in case something comes up. Plus, I'm assuming that the professional has inherent knowledge on how do those things.

Q Business License.

A That's a cost of why I'm doing business. It's inappropriate to charge the owner for that.

Q Okay. I believe the last item is Shop.

A I have two other categories. Shop/Office Rental and Equipment Rentals. I pulled -- that's for the forklift specifically, and I have probably $300, like 15 months, whatever the amount of months was. The forklift wasn't necessary. It surely wasn't required for 15 months

or however long it was kept at the site nor was it required to outfit a shop office to do the project.

Q Why not have the place to, for instance, make the cabinets?

A Why or why not do it in the house?

Q So, your opinion is that it wasn't necessary to have a shop because it should have been done on the premises?

A No, that's not what I said. I would go back to, why did you have to have a shop to do the cabinet, and were the cabinets requested to be custom made or would it have been better to buy them off the shelf? You can get any number of cabinets relatively economic to hand-building them from the store, I mean from a cabinet maker, a cabinet supplier. You don't need a shop to make the cabinets or anything for that matter.

Q If it was cheaper to make the cabinet including the shop rental than buying them, would this be an inappropriate charge?

A That's a loaded question. I will put it like this: I see no evidence in the reports that an analysis was done that we shopped for cabinets, this is what I came up with. I propose to build them for less. That's a hypothetical question we can't answer. There was no -- as far as I can tell, the Humphreys weren't given a choice.

Q Is it unusual for there to be a rental as a staging area to store materials and equipment for a project like this?

A When you go to normal procedure, I'm going to go back to that this is a relatively simple piece of residential construction. Yes, it's on Lido Island, space is at a premium. That is not unusual, like working in any urban center or anywhere else there's no room. What's common practice is, if I need stuff on the project, I have it delivered when I can use it. For example, if I have a whole bunch of lumber, I will have the amount delivered that I can get put up in a reasonable amount of time. In this case, you had a garage that existed at the property or you can store it in the work area. If I had all of these kitchen cabinets and I wanted them, I would bring them to the site when I needed them. I wouldn't get them six months ahead of time and have them sit and pay for rent. That's kind of silly. What we do, we set delivery dates to make sure we are ready to receive them so they're not sitting.

I put forth in my experience, I've done projects with zero staging area, zero delivery area. It comes down to managing your deliveries. If there's an extraordinary circumstance, I would bring it up with the owner. In this case with this type of construction for this building,

nothing I've seen in the records would not have fit somewhere on this project if it had to stay for a day or two.

Q What was wrong with the forklift rental?

A I don't know what the forklift was used for. If a forklift was required, he didn't need it for the duration of the project.

MR. RUSSO: Okay. I'm going to ask my client if I have any more questions, and I'll be right back.

(Recess held.)

BY MR. RUSSO:

Q Can you tell me what the date of Wong drawings is that you're referring to?

A 6-14-12.

Q Can you tell me on what we marked as Exhibit No. 2, your spreadsheet, can you tell me what the different categories are, for example, S, what is that?

A Subcontract.

Q E, that's equipment?

A Equipment.

Q PT again?

A Power tools.

Q HT?

A Hand tools.

Q Administration?

A That's --

Q Just as it sounds. Gas, that was associated with the car?

A Fuel.

Q Furniture, what's wrong with that?

A I had to have a category for it. Furniture is furnishing. It's not part of the construction. It's part of the category.

Q A&E?

A Architectural and engineering fees.

Q Did you feel any of those fees were inappropriate?

A I saw the receipts of what they cost. That appears to be market rate. That's what he paid for it.

Q Does the customer or contractor pay for building permits?

A Depends on the agreement, but it's not uncommon for the owner to pay for the building permits.

MR. RUSSO: Thank you. I have no further questions. Any questions?

MR. BISSELL: No questions here.

MR. RUSSO: I propose that relieve the reporter of her duties under the Code of Civil Procedure; the original of the transcript can be sent to Defense counsel; a certified copy can be used for all purposes; he will let me know by

the time of trial of any changes by the witness who will sign it under penalty of perjury; and if for any reason the original is not available, a certified copy can be used for all purposes.

MR. BISSELL: So stipulated.

(Whereupon the deposition adjourned at 2:35 p.m.)

*****

DECLARATION UNDER PENALTY OF PERJURY

I do solemnly swear under penalty of perjury under the laws of the State of California that the foregoing is my deposition under oath; are the questions asked of me and my answers thereto; that I have read same and have made the necessary corrections, additions, or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this _____ day of _____, 20_____.

_____

Robert Brockway

CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

* * * *

The undersigned Certified Shorthand Reporter of the State of California does hereby certify:

That the foregoing Deposition was taken before me at the time and place therein set forth, at which time the Witness was duly sworn by me.

That the testimony of the Witness and all objections made at the time of the Deposition were recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy of the proceedings thereof.

That the dismantling of the original transcript will void the reporter's certificate.

In witness whereof, I have subscribed my name, this date:

_____

Grace A. DiBernardo, CSR No. 10322

# Exhibit 10

# Exhibit 11

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

**SYNOPSIS:**

In March 2022, I was assigned to investigate Adam Bereki's complaint against Orange County Superior Court Judge D. Chaffee. Judge Chaffee oversaw a civil case between Adam Bereki and Karen and Gary Humphreys. Adam Bereki alleged grand theft against Judge Chaffee for his judgment and decision on the case.

**Subject 1:**
Judge David Chaffe [redacted]

**Subject 2:**
Adam Bereki (CA / B6970543)
818 Spirit
Costa Mesa, CA 92626
(949) 241-6693

**INVESTIGATION:**

In April 2012, Adam Bereki entered a contract with the Humphreys, Karen and Gary, to complete a remodel of their newly purchased condominium unit in Newport Beach, California. Adam Bereki previously completed work for Gary Humphreys' brother and son. The Humphreys took the recommendations and hired Adam Bereki to complete the remodel. Adam Bereki sent a proposal to the Humphreys through email, and they agreed to the terms of the project. The daily fees for Adam Bereki and his partner, Glenn Overley, along with the prices for parts and labor were also discussed and agreed upon through the emails.

In May 2012, the Humphreys purchased the condominium unit directly above the unit Adam Bereki was hired to remodel. The Humphreys retained Adam Bereki's services for the second unit and ultimately decided to convert it into one unit. Work on the Humphreys' condominium units seized, and the last services were dated August 21, 2013.

Adam Bereki filed a civil suit against the Humphreys on August 21, 2015. He filed the suit after the contract was terminated, and he was not paid the remaining balance of $82,000. On October 13, 2015, the Humphreys filed a cross-complaint against Adam Bereki.

The Humphreys were able to bring a cross-complaint because Business and Professions Code 7031(e) allows for a party who utilizes the services of an unlicensed contractor to may bring an action in ANY court of competent jurisdiction to recover all compensation paid to the unlicensed contractor. The Humphreys were the only people to utilize Adam Bereki's services, so they were able to bring forth an action against him. Adam Bereki claimed he is the sole owner and operator of The Spartans and Associates, Incorporated, a construction company, with a valid contractor license.

The two-day case took place between March 27-28, 2017, and was overseen by Orange County Superior Court Judge David Chaffee. Representing the Humphreys was William G. Bissell, Law Offices of William G. Bissell. Adam Bereki represented himself along with J. Scott Russo, Russo & Duckworth LLP. J. Scott Russo was also defending the Suretec Insurance Company, a contractor license bond.

The cross-complaint sought the disgorgement of the funds paid by the Humphreys to Adam Bereki, The Spartan Associates or Spartan Construction, which was $848,000. The cross-complaint alleged that Adam Bereki worked on the Humphreys condominiums without a valid contractor's license.

The first cause of action in the trial was about who the Humphreys contracted with. Based on emails and lack of written contracts, the court decided the contract was between the Humphreys and Adam Bereki, and not Adam Bereki's company, The Spartan Associates.

J. Scott Russo made the argument that Adam Bereki was a "little lax" for accepting the first few payments under his name and not his company but ultimately the majority of the money accepted was done by The Spartan Associates. Additionally, the building permits were obtained by The Spartan Associates. J. Scott Russo argued the work done was done under a B license and was correctly done.

J. Scott Russo argued that although there was not a written contract, the emails exchanged between the Humphreys and Adam Bereki constituted a contract. J. Scott Russo contended that the emails were from Adam Bereki, on behalf of The Spartan Associates, since Adam Bereki was the sole "shareholder" and employee. The emails that began talking of fees and costs began on April 5, 2012. The emails were sent from Adam Bereki's personal email account. The initial emails mentioned Adam Bereki's partner, Glenn Overley, but he didn't mention The Spartan Associates.

After July 2012, Adam Bereki requested the Humphreys make payments to The Spartan Associates and not to Adam Bereki. From April 2012 to July 2012, payments were made to Adam Bereki. From July 2012 forward, the payments were made to either Spartan or Spartan Construction.

The Humphreys and William G. Bissell argued that Adam Bereki was unlicensed at the time of entering the contract. William G. Bissell argued that although Adam Bereki was The Spartan Associates Responsible Management Officer, he was required to have a contractor's license as an individual. Even the partnership between Glenn Overley and Adam Bereki would have needed a joint venture license. Since Glenn Overley was an independent contractor, he was required to have his own contractor's license.

Judge Chaffee ruled that the contract was made between Adam Bereki and the Humphreys, therefore rendering Adam Bereki as an unlicensed contractor. Judge Chaffee ruled that Adam Bereki would return $848,000 to the Humphreys. Judge Chaffee acknowledged that the emails exchanged between Adam Bereki and the Humphreys met the definition of a contract.

Judge Chaffee referenced three cases to make his decision:

- Ball v. Steadfast (2011), 196 Cal.App.4th p. 694.
- 29 Palms Enterprises Corporation v. Bardos (2012), 210 Cal.App.4th p. 14, 13.
- MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc. (2005), 36 Cal.4th p. 412.

**Ball v. Steadfast (2011), 196 Cal.App.4th p. 694**

In Ball v. Steadfast, a licensed contractor was not licensed as a contractor to do business in the name of "Clark Air Conditioning Heating." Ball sued in his own name to a foreclosure on a mechanic's lien. The foreclosure came from a nonpayment under the contracts entered.

The court held that Ball was not licensed as a contractor to do business under the name Clark Heating and Air Conditioning. Ball appeared on the contractor license as the owner of Clark Heating and Air Conditioning. The license was issued to Clark Heating and Air Conditioning.

The court determined that "Ball entered the contracts on behalf of his sole proprietorship, not on behalf of a separate legal entity that could, and should, have obtained its own license." (Ball, supra, 196 Cal.App.4th at p. 703)

Judge Chaffee interpreted that in Ball v. Steadfast, "the contractor was licensed as a "sole owner" and not as a partnership or corporate entity pursuant to the classification system of B&P code section 7065." Furthermore, Judge Chaffee interpreted that because Ball failed to contract work under the wrong business name, and not the name on his license, it was grounds for disciplinary action, but it did not bar him from attempting to recover payment for the work he performed.

Judge Chaffee stated, "First of all, and foremost, we have no license in the name of Mr. Bereki individually; instead, it appears he was the qualifying corporate officer for the legal entity, Spartan Associates, incorporated."

**29 Palms Enterprises Corporation v. Bardos (2012), 210 Cal.App.4th p. 14, 13**

In 29 Palms Enterprises Corporation v. Bardos, 29 Palms Enterprises Corporation filed a complaint against Cadmus Construction Company. The complaint was because Cadmus Construction Company, and indirectly Bardos were not licensed as contractors in California. The court ordered Cadmus Construction Company to disgorge all of the fees 29 Palms Enterprises Corporation had paid.

It was determined Bardos was the Responsible Managing Officer, and he did not have a license in his personal name. Additionally, the court ruled that Bardos' corporation, Bardos Construction, Inc., was a different entity from his dba (doing business as) Cadmus Construction Company. Cadmus Construction Company was licensed, and Bardos Construction Inc. did hold a license. The court ordered the return of all costs to 29 Palms Enterprises Corporation. Bardos believed the judgment was not an equitable result. The court responded by saying, "It has long been settled that the courts may not resort to equitable considerations in defiance of Section 7031."

Judge Chaffee interpreted that Bardos was the Responsible Managing Officer for a licensed corporation, but he did not hold the corporation's licenses as an individual. Bardos could not perform work under that license using the name of the "sole proprietorship."

Judge Chaffee used the case to establish that either Spartan and Associates was the contracting party or, alternatively, Adam Bereki operated under The Spartan and Associates' license. Because of the ruling in 29 Palms Enterprises Corporation, Adam Bereki "cannot rely on his corporation's license to contract."

**MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc. (2005), 36 Cal.4th p. 412**

In MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc., MW Erectors, a steel contractor was not licensed at the time the contract was made but obtained a license shortly after. Ultimately, the Supreme Court concluded that licensing is required at all times during the performance of the labor. Niederhauser Ornamental & Metal Works Company, Inc. elected not to pay MW Erectors.

Judge Chaffee stated that the California Supreme Court's ruling on the issue of unlicensed contracting is "draconian in its effect" but that was the intent of the legislature. The legislature expects contractors to be

licensed at all times during the times they are contracted and failing to do so, opens a person or company to forfeiture.

**Adam Bereki's Allegations**

1. Business and Professions Code section 7031 action is a criminal prosecution in disguise of a civil action to criminally prosecute and punish an unlicensed contractor for committing the public offense of contracting without a license – a misdemeanor offense as defined by Business and Professions Code section 7028.

   Business and Professions Code section 7028 is defined as:

   (a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

   (1) The person is not licensed in accordance with this chapter.

   (2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

   (b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

2. That as a result of Allegation #1, private parties cannot commence Business and Professions Code section 7031 actions because the Executive Power of California is vested exclusively in the Governor pursuant to California Constitution Article V, Section 1.

3. That as a result of Allegation 1 and Allegation 2, the Humphreys lacked Constitutional Authority to prosecute Adam Bereki. That should have prevented Judge Chaffee of the ability to hear the case and give a judgment.
4. As a result of Allegation 1, Allegation 2, and Allegation 3, Justices O'Leary, Goethals, and Aronson of the Fourth District Court of Appeal lacked Constitutional Authority to affirm Judge Chaffee's judgment.

5. Based the aforementioned allegations, the State of California lacked the Constitutional authority to summarily suspend The Spartan and Associates/Adam Bereki's general contractor license pursuant to Business and Professions Code section 7071.17.

Judge Chaffee returned all the compensation paid to the Humphreys. Adam Bereki believes he already returned the amount that was paid to him through the work that was completed on the Humphrey's property. The work that was completed added value to the Humphrey's home. Adam Bereki believes the punishment was not authorized by Business and Professions Code section 7031(b) because Adam Bereki and The Spartan and Associates returned the money in the form of value.

Adam Bereki cited, Lewis & Queen v. N. M. Ball Sons (1957), 48 Cal 2d. 141, 152. Adam Bereki interpreted the case to state that "Courts may not resort to equitable considerations in defiance of Business and Professions Code section 7031."

Adam Bereki explained that the case demonstrated that the courts are not allowed to consider the value of materials and labor. Adam Bereki believes his interpretation appears to be exactly what the court intended. He stated that if an unlicensed contractor received money but didn't complete the work, then Business and Professions Code section 7031(b) would apply appropriately. However, if the unlicensed contractor returned the money or compensation as value to the homeowner, then a judge would be relieved of his authority to issue any relief through Business and Professions Code section 7031(b) because it would be an "arbitrary" penalty.

In support of this claim, Adam Bereki cited case, Town of Gilbert Prosecutors Office v. Downie (2008), 218 Arizona 466. In this case the Supreme Court of Arizona found that the full amount of payments returned would constitute economic loss for restitution purposes.

In conclusion, Adam Bereki believes he was unfairly punished by having to pay the Humphreys a total of $930,000. Adam Bereki explained that nowhere in the trial where "damages" mentioned. There was no evidence of improper work or damages to the Humphrey's property due to Adam Bereki's work. Due to Judge Chaffee not recognizing any of the work Adam Bereki performed at the property, he was not authorized to order Adam Bereki to return the compensation under Business and Professions Code section 7031(b).

Adam Bereki believes that the punishment, if there was to be one, should be Business and Professions Code section 7028(b), which authorizes a fine not exceeding $5,000 or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Adam Bereki does not agree that he was fined a significant amount more than the $5,000 because it is an excessive fine and in violation of the

Excessive Fines Clause (Eighth Amendment). The fine should have been proportionate to the offense and he should have the ability to pay it. Because Judge Chaffee did not take those things into consideration, he lacked the authority to fine or punish Adam Bereki.

Adam Bereki believes that the Humphreys and their attorney, William Bissel do not have the executive or constitutional authority to commence Business and Professions Code section 7031(b). Additionally, Adam Bereki believes Judge Chaffee should have dismissed the case against him due to California Penal Code section 1382(a), Dismissal of the Action for Want of Prosecution Otherwise.

Adam Bereki believes that because the action against him was intended to be criminal in nature, he was entitled to protections given in a criminal proceeding, such as; assistance of counsel, confrontation of his accusers, and trial by jury. Adam Bereki was not afforded any of these protections.

**Judge Chaffee's Statement**

April 16, 2024, at 1000 hours, I spoke with Judge D. Chaffee on the phone. Judge Chaffee remembered presiding over the case, although he had forgotten some of the names and small details.

I informed Judge Chaffee of Adam Bereki's allegations, and he told me he was aware. Judge Chaffee acknowledged the case was a civil case but "turned" when the Humphreys brought forth the cross-complaint.

Judge Chaffee confirmed that Business and Professions Code section 7031 is not criminal and has "no penalty attached," but it is punitive. Judge Chaffee described section 7031(b) as "draconian" but said the legislature intended the law to work in favor of the consumer.

In response to Adam Bereki's claim that he should have been charged with Business and Professions Code section 7028 because it was his first offense, Judge Chaffee stated, "He was not charged with that."

Adam Bereki filed a civil action against the Humphreys for unpaid contractor fees. The Humphreys filed a cross-complaint against Adam Bereki because they realized he was contracting without a license.

The case that Judge Chaffee oversaw was a civil case, not a criminal case. Judge Chaffee does not believe Adam Bereki was charged by the Orange County District Attorney's office. Adam Bereki brought forth the civil case for civil damages, and in turn, the Humphreys filed for civil damages. Judge Chaffee "was not inviting a criminal prosecution of him. We were limited to civil remedies for a civil action that he brought."

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
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| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

Adam Bereki made a claim that his trial was a civil case disguised as a criminal trial. Judge Chaffee confirmed that Adam Bereki did not "raise that issue" at trial, and even if he raised it at his appeal, it would have been barred because it was not raised at trial. Judge Chaffee's judgment was affirmed by the California Court of Appeals, and the review was denied by the California Supreme Court. Ultimately, Adam Bereki's appeal was rejected by the United States Supreme Court.

Judge Chaffee acknowledged he lost any jurisdiction on the case when Adam Bereki filed his Notice of Appeal. Judge Chaffee is retired and has no legal authority to handle the case.

Adam Bereki claimed that Judge Chaffee lacked the Constitutional standing to bring any civil or criminal penalties against him. Since Adam Bereki did not raise the issue at trial, it was waived for the purposes of appeal. Even if Adam Bereki had brought forth the issue at trial, he was "wrong."

Adam Bereki claimed that the Humphreys lacked Constitutional standing to prosecute him, thereby depriving the Orange County Superior Court and Judge Chaffee of Constitutional authority to punish him. Judge Chaffee acknowledged that Adam Bereki's claim is not correct because he was the person who commenced the civil complaint. The Humphreys simply filed a cross-complaint. Since Adam Bereki did not raise the issue at trial, it was not available to him at the appeal.

Adam Bereki claims that the State of California lacked the Constitutional authority to suspend The Spartan and Associates/Adam Bereki's general contractor license. Judge Chaffee confirmed he did not suspend Adam Bereki's license. Judge Chaffee assumes that any suspension would have come from the State Contractor's Board. Judge Chaffee confirmed that the license can only be placed under one name. Adam Bereki chose to place the license with the Spartan and Associates. Adam Bereki chose to contract the job he did for the Humphreys under his name and not the company and, therefore, was found to be contracting without a license.

Judge Chaffee believes that Adam Bereki's mistakes causing this result. Judge Chaffee believes that Adam Bereki's work was not what he promised the Humphreys. Judge Chaffee looked at pictures from the work completed by Adam Bereki and did not complete the work properly.

Adam Bereki stated he should not be forced to pay the fine because he returned the money in the form of work and materials. Judge Chaffee confirmed that the damages are not offset by the work that was completed, and the Humphreys are entitled to receive their money in return for Adam Bereki contracting without a license.

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

**CONCLUSION:**

Adam Bereki brought forth a civil case against the Humphreys for an outstanding balance owed from a contracting job. In turn the Humphreys filed a cross-complaint against Adam Bereki for contracting without a valid contractor license. The judgement by Judge Chaffee from civil case was in favor of the Humphreys. The judgement was based on prior cases with similar contractual situations. Adam Bereki appealed the case with the Fourth District Court of Appeal and the judgement was affirmed. Adam Bereki then filed appeals to the California Supreme Court and the United States Supreme Court, but the appeals were denied.

Adam Bereki's appeals were denied because appellate courts do not consider new evidence. An appeal is not considered a new trial. The allegations Adam Bereki brought forth cannot have been disputed in an appellate court because he did not raise those issues at the original trial. Therefore, he could not present his allegations because it would have been considered new evidence in the eyes of the appellate courts. In order Adam Bereki to present his new allegations, Adam Bereki would be required to file a new lawsuit against the Humphreys.

Contracting without a license is a misdemeanor offense, violation of section 7028 of the Business and Professions Code. During the civil case, no criminal charges were filed on Adam Bereki for contracting without a license by the Orange County District Attorney's office.

Based on this investigation, Adam Bereki's claim of grand theft committed against him by Judge Chaffee was not substantiated. Any additional pertinent information presented at a later date, will be added to a supplemental report. At this time, no further follow up will be conducted and I recommend this investigation be closed.

| PREPARED BY | I.D. NUMBER | DATE | REVIEWER'S NAME | DATE |
|---|---|---|---|---|
| E. Mejia / Officer | 20697 | 9/21/2024 | D. Navarro / Sergeant | 09/21/2024 |

# Exhibit 12

**FW-003** **Order on Court Fee Waiver (Superior Court)**

Clerk stamps date here when form is filed

**FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 21 2017

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

(1) **Person who asked the court to waive court fees:**
Name: Adam Bereki
Street or mailing address: 818 Spirit
City: Costa Mesa State: CA Zip: 92626

(2) **Lawyer, if person in (1) has one** *(name, address, phone number, e-mail, and State Bar number):* _____

(3) A request to waive court fees was filed on *(date):* 6-20-17

☐ The court made a previous fee waiver order in this case on *(date):* _____

*Fill in court name and street address:*
**Superior Court of California, County of**
Orange
700 Civic Center Dr. W.
Santa Ana, CA 92701

*Fill in case number and case name:*
Case Number: 30-2015-00805807
Case Name: The Spartan Ass. US Humphries

***Read this form carefully. All checked boxes ☑ are court orders.***

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for $10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

(4) After reviewing your *(check one):* ☑ *Request to Waive Court Fees* ☐ *Request to Waive Additional Court Fees* **the court makes the following orders:**

a. ☑ The court grants your request, as follows:

(1) ☑ **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. *(Cal Rules of Court, rule 3.55.)* You do not have to pay the court fees for the following:
- Filing papers in Superior Court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Reporter's daily fee *(for up to 60 days following the fee waiver order at the court-approved daily rate)*
- Preparing and certifying the clerk's transcript on appeal
- Giving notice and certificates
- Sending papers to another court department
- Court-appointed interpreter in small claims court
- Court fees for phone hearings

(2) ☐ **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. *(Cal. Rules of Court, rule 3.56.)* You do not have to pay for the checked items.
- ☐ Jury fees and expenses
- ☐ Fees for court-appointed experts
- ☐ Reporter's daily fees *(beyond the 60-day period following the fee waiver order)*
- ☐ Other *(specify):* _____
- ☐ Fees for a peace officer to testify in court
- ☐ Court-appointed interpreter fees for a witness

(3) ☐ **Fee Waiver for Appeal.** The court grants your request and waives the fees and costs checked below, for your appeal. *(Cal. Rules of Court, rules 3.55, 3 56, 8.26, and 8.818.)* You do not have to pay for the checked items.
- ☐ Preparing and certifying clerk's transcript for appeal
- ☐ Other *(specify):* _____

Your name: Adam Bereki

Case Number: 30-2015-00805807

b. ☐ The court denies your request, as follows:

**Warning!** If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) ☐ The court denies your request because it is incomplete. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- File a new revised request that includes the items listed below *(specify incomplete items):*

(2) ☐ The court denies your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested *(specify reasons):*

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about *(specify questions regarding eligibility):*

☐ Bring the following proof to support your request if reasonably available:

**Hearing Date** → Date: Time: Name and address of court if different from page 1:
Dept.: Rm.:

**Warning!** If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: 6-21-17

*Signature of (check one):* ☑ *Judicial Officer* ☐ *Clerk, Deputy*

TIMOTHY J. STAFFORD

**Request for Accommodations.** Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

## Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

☑ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from *(city):* Santa Ana, California on the date below.

Date: 6/22/17 Clerk, by Rochelle McAdams, Deputy

Revised July 1, 2009

This is a Court Order. R. McADAMS



**Order on Court Fee Waiver (Superior Court)**

Adam Bereki
c/o postal service address
818 Spirit
Costa Mesa, California CF 92626 CF
The united States of America

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
06/28/2017 at 12:37:00 PM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

Served on this date: 6/28/17

To: Orange County Superior Court Administrator Clerk
Central Justice Center
700 Civic Center Drive West
Santa Ana, California 92702

Ref: Alleged Superior Court Case; 30-2015-00805807
SPARTAN v HUMPHREYS

Re: Preacipe to take notice of and file responsive notice(s).

Greetings,

This writ shall constitute formal response to alleged notice of judgement filed in your office in the above Case. You will please take notice of and enter into said Case the hereto annexed true copy of the two Demands for Bill of Particulars served on this date to William G. Bissell, Esq. and the Hon. David Chaffee.

You will please take further notice of and place a minute entry into said Case file that jurisdiction, as to proper venue, subject matter in personam and in rem, is being challenged; and that presentment of said Demand for Bill of Particulars to Mr. Bissell and Mr. Chaffee, constitute, inter alia, demand upon him for actual production and entry of conclusive evidence of same; and

That presentment hereof for filing does not constitute express or implied submission to jurisdiction; and

That Adam Bereki is in the process of investigating potential Federal RICO, treason, and other crimes and said investigation is still in progress as of this date.

Duly executed this twenty eighth day of the sixth month, anno domini two thousand and seventeen.

Adam Bereki

Adam Bereki
c/o postal service address:
818 Spirit
Costa Mesa, California CF 92626 CF
The united States of America

Date: 6/28/17

To: Hon. David Chaffee
Central Justice Center
700 Civic Center Drive West
Santa Ana, California 92702

Re: 30-2015-00805807/ SPARTAN v HUMPHREYS

Demand for Bill of Particulars
Nature and Cause of Accusation
(U.S. Constitution 6th Amendment & California Civil Code 454)

THIS IS NOT A DISCOVERY MOTION!

The reason for this Demand for Bill of Particulars is so that Adam Bereki might be able to prepare for a meaningful and substantive appeal and defense in order that he not be deprived of life, liberty, or property without judicial process in the above matter, hereafter "Case", or "Action".

To this end, the following questions are specifically posed, to wit, and do not represent an exhaustive list:

**SECTION 1**

1. The above referenced Case was brought against Adam Bereki as a: (check one)
( ) Criminal Action
( ) Civil Action
( ) Administrative Action
( ) Other Action: (specify)_____

2. The nature of the process by which judgment was rendered against Adam Bereki is: (check all that apply)
( ) Criminal
( ) Civil
( ) Other: (specify)_____

3. That with which judgement was rendered against Adam Bereki in this action is:
( ) A crime, described as:_____
( ) Not a crime, described as:_____

4. The *constitutionally authorized* **jurisdiction** under which judgement was rendered against Adam Bereki is:
( ) Law ("in pursuance of" the Constitution)
( ) Equity
( ) Administrative ("statutory")
( ) Admiralty
( ) Quasi or Colorable Admiralty
( ) Military/ Martial Law Rule
( ) Other: (specify)_____

5. The *constitutionally cognizable* **body of law** applied to this Action against Adam Bereki (under the aforesaid jurisdiction) is:
( ) Constitutional Law
( ) Contract Law
( ) Administrative Law
( ) Commercial Law (domestic)
( ) Martial Law
( ) Law Merchant (international)
( ) "Statutory" Law, generally classified as:
( ) Remedial Code ( ) Civil Code ( ) Business and Professions Code
( ) Political Code ( ) Penal Code
( ) Other Law: (specify)_____

6. The organic Constitution for The State of California (1879) authorizes the particular application of legislative power in Case against Adam Bereki:
( ) Yes, under Article_____, Section_____, Clause_____
( ) No

7. The *published* **Rules** governing the type of action indicated above (under "constitutionally authorized jurisdiction" [4] are entitled: (specify)_____
_____
and are available for inspection at:_____

8. This action was brought against Adam Bereki by: (check all that apply)
( ) "The State of California" in its servitor (to the People) capacity
( ) The "STATE OF CALIFORNIA" in its corporate/commercial capacity
( ) The "state of Washington" as an agent for an unregistered foreign principal
( ) Karen and Gary Humphreys as "individuals", therefore "persons" as described in Business and Professions Code Section 7025.
( ) Karen and Gary Humphreys as State California de jure Citizens
( ) Other: (specify)_____

9. The corpus delicti of this Action against Adam Bereki is:
( ) Actual injury or damage to the protected Rights of another, under Law
( ) Fictional "injury", under color of law
( ) Other: (specify)_____

10. The nature of the actual damage or injury alleged by the witnesses in support of this action against Adam Bereki is:
( ) Bodily injury:(specify)_____
( ) Property Damage: (specify)_____
( ) Libel: (specify)_____
( ) Violation of Private Rights: (specify)_____
( ) Breach of a valid, binding and subsisting contract
( ) Breach of a voluntary consent agreement
( ) Other: (specify)_____

11. The name of the witness(es) claiming and possessing evidence of the actual damage or injury in support of the action is/are:_____
_____

12. Said witness(es) in [11] allege a valuation of $_____ in actual damages or injury against Adam Bereki in this Action.

13. If different than the said witness(es) above, the real parties of or in interest to this action against Adam Bereki are: (specify)_____
which is evidenced by: (specify)_____

14. The elements which, in the face of challenge, the Fundamental Law obligates your office to ensure are met in this action against Adam Bereki are: (check all that apply)
( ) Jurisdiction over the subject matter.
( ) Jurisdiction in personam over Adam Bereki
( ) Proper venue (territorial jurisdiction)
( ) The constitutional authority of the "law" alleged to have been violated by the accused.
( ) The actual harm, damage, or injury being alleged as a violation of Law by the above named witness(es).
( ) Positive identification of the witness(es), victim(s), injured party(ies) in Fact, real party(ies) in interest, or holder(s) in due course who gave you or anyone else authority to bring this action against Adam Bereki.
( ) Other: (specify)_____
( ) None of the above.

15. Judgement was in Fact rendered in this Action against Adam Bereki in order to: (check all that apply)
( ) Redress actual injury to constitutionally secured private Rights.
( ) Enforce political/administrative codes to collect revenue.
( ) Circumvent one or more constitutional obligations and/or restraints.
( ) Arbitrarily compel specific performance of purely political codes regardless of individual status and standing in Fact.
( ) Silence political dissidence.
( ) Protect the purely commercial interests of the corporate "STATE OF CALIFORNIA".
( ) Enforce political/administrative codes to obfuscate or prevent public exposure of alter ego activities in connection with or in the name of The State of California.
( ) Diminish or abrogate the true character, status, standing and/or reputation of Adam Bereki.
( ) Covertly wage mixed war upon Adam Bereki.
( ) Other:_____

16. Judgement in this action was rendered against Adam Bereki in a tribunal that acted:
( ) Judicially
( ) Ministerially (administratively)
( ) Other: (specify)_____

17. The tribunal in which this Action was brought and judgement rendered possesses the Lawful capacity to grant pecuniary award/relief in full compliance with the mandates of Article VI and Article I, Section 10 of the Supreme Law of the Land [1787-1791]. (check one)
( ) Yes
( ) No

18. The action brought against Adam Bereki is:
( ) Bonded by the accuser in Fact.
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
Policy No.: (specify)_____
Underwritten by: (specify)_____
whose principal place of business is:(specify)_____
( ) Not Bonded.
( ) Other: (specify)_____

19. A "person" as described in Business & Professions Code 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

19.1. A "person" as described in Business & Professions Code 7025 means the same thing as a "Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

20. An "individual" as described in Business & Professions Code Section 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

21. A Citizen as recognized in the Constitution for the united States [1787-1791] is a fiction at law.
( ) Yes
( ) No

22. In what way does the "person" of Adam Bereki attach to the statute(s) enforced against him?

_____
_____
_____
_____

23. Was there a right to effective assistance of counsel in Case?
( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No
24. Was there a right to trial by jury at common law in case?

( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No

25. From what pool(s) are members of the Grand or petit juries summoned?

_____

_____

26. Do the juries mentioned in [25] function at common law?
( ) Yes
( ) No. Specify to what law they do function:_____

_____

27. What constitutes the consent of the governed [See e.g. Declaration of Independence 1776] of any members of the de jure body politic to be regulated other than by the common law of England? _____

_____

_____

28. What form of payment is accepted to pay the judgment, or more accurately, to discharge the obligation in Case? _____

_____

29. What jurisdiction does the payment method described in [28] circulate?_____

_____

_____

**SECTION 2**

30. The Orange County Superior Court is:
( ) a court of general jurisdiction.
( ) a court of limited jurisdiction.
( ) a court of special or pro temper jurisdiction.
( ) Other: (specify)_____

31. The Orange County Superior Court is:
( ) A judicial court of record.
( ) Not a judicial court of record.
( ) Not a judicial court.
( ) Other: (specify)_____

31.1. The officers and staff of the Orange County Superior Court receive compensation for their labor/services from:
( ) The City of Santa Ana
( ) The County of Orange
( ) The State of California
( ) An office of agency of the United States
( ) Other: (specify)_____

31.2. The officers and staff of the Orange County Superior Court are:
( ) Liability bonded individually (privately).
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
( ) Bonded by an office of agency of the United States.
( ) Otherwise bonded by: (specify)_____
under Policy No.:_____ in the amount of $: _____.

31.3. You and your appointed deputies are compensated for your labor/services by:
( ) The city of Santa Ana.
( ) The County of Orange.
( ) The State of California.
( ) An office of agency of the United States.
( ) Other:_____

31.4. You and your appointed deputies are:
( ) Liability bonded individually (privately).
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
( ) Bonded by an office of agency of the United States.
( ) Otherwise bonded by: (specify)_____
under Policy No.:_____ in the amount of $: _____.

31.5. You and your appointed deputies are officers of the Orange County Superior Court:
( )Yes
( ) No

31.6 You and your appointed deputies are officers of the Superior Court of California in and for the County of Orange:
( ) Yes
( ) No

**SECTION 3**

32. Willliam Bissell, Esq. is an officer of:
( ) The Orange County Superior Court
( ) The State of California
( ) Other: (specify):_____

33. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to exercise judicial power(s) in the performance of executive duties:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

34. The organic Constitution for the State of California (1879) authorizes the State legislature to blend or mix the legislative, executive, and judicial powers by statute or code:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

35. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to signature authorize and issue instruments of judicial process in the name of and on behalf of the Orange County Superior Court:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

**SECTION 4**

36. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "U.S. citizen" or "person" within the meaning of the so-called "14th Amendment":
( ) Yes: (specify):_____
( ) No

37. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "person" within the meaning of Business and Profession Code Section 7025:
( ) Yes: (specify):_____
( ) No

38. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "citizen" or "resident" of the "state of California" (aka: "STATE OF CALIFORNIA"):
( ) Yes: (specify):_____
( ) No

39. Your office has in actual possession conclusive evidence that Adam Alan Bereki is contractually obligated to perform or is otherwise subject to the political codes of the "state of California", including but not limited to the Business & Professions Code:
( ) Yes: (specify):_____
( ) No

40. Your office has in actual possession any application form, contract or other similar document or Instrument bearing the unrestricted signature/autograph of Adam Alan Bereki:
( ) Yes: (specify):_____
( ) No

41. Your office has in actual possession any registration document or similar item, bearing the unrestricted signature/autograph of Adam Alan Bereki, which evidences his voluntary, knowing, and intelligent Consent to or authorization of majority (mob) rule or "public policy":
( ) Yes: (specify):_____
( ) No

42. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a natural-born, flesh and blood man, long since past the age of Consent:
( ) Yes: (specify):_____
( ) No

43. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a man of sound mind and body, in full possession of his faculties:
( ) Yes: (specify):_____
( ) No

44. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has, at any time, affirmatively and voluntarily surrendered, waived or in any way and to any degree impaired the exercise of any of his secured Rights, Privileges, Immunities, and Remedies:
( ) Yes: (specify):_____
( ) No

45. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is in Fact a "trustee" or "subrogee" or "surety" or any other similar characterization in connection with any state created legal fiction entity:
( ) Yes: (specify):_____
( ) No

46. Your office has in actual possession any document, bearing the unrestricted signature/autograph of Adam Alan Bereki, whereby he has directly or indirectly authorized the creation of any legal fiction entity which is identified by his own Lawful name or any orthographic variation thereof:
( ) Yes: (specify):_____
( ) No

47. Your office has in actual possession any document bearing the unrestricted signature/autograph of Adam Alan Bereki, which in any way authorizes a departure from the long established Rules of English grammar governing spelling, capitalization and structuring of proper noun names generally of his own Lawful name specifically:
( ) Yes: (specify):_____
( ) No

48. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact expressly granted power of attorney or procuratorial authority to "United States", "UNITED STATES", "U.S.", "state of California", "STATE OF CALIFORNIA", "COUNTY OF ORANGE", "CITY OF SANTA ANA" or any officer(s) thereof:
( ) Yes: (specify):_____
( ) No

49. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact surrendered, waived or otherwise impaired or forfeited his authority to make direct presentment in and to any public office of court of The State of California or The united States of America for any Lawful purpose whatsoever:
( ) Yes: (specify):_____
( ) No

50. It is a long and firmly established precept of Fundamental American Law that an accused (wo)man is presumed innocent until proven guilty of any wrong doing. Your office has in actual possession conclusive evidence that Adam Alan Bereki has in Fact surrendered, waived, or otherwise forfeited or impaired his Right to enjoy the benefit of this presumption of Law:
( ) Yes: (specify):_____
( ) No

51. It is a long and firmly established precept of Fundamental American Law that jurisdiction, in any of its elements, may be challenged at any time and, once challenged, it must be proven by he who bears the burden of proof, as "mere assertion is not enough". Your office has in actual possession conclusive evidence that Adam Alan Bereki has in fact surrendered, waived or otherwise forfeited or impaired his Right to enjoy the benefit of this precept of American Law:
( ) Yes: (specify):_____
( ) No

52. Your office, as the moving party, carries the burden of proof in this action, including the proof of jurisdiction. Your office has in actual possession conclusive evidence that Adam Alan Bereki has waived or has otherwise relieved your office of that burden:
( ) Yes: (specify):_____
( ) No

53. Other heretofore undisclosed assumptions, presumptions, hypothecations and similar tacitly noticed fictions of law affecting or material to the status, standing and/or capacity of Adam Alan Bereki in Case are fully disclosed as follows:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The disclosures/particulars provided herein above are hereby Certified, under the pains and penalties of Perjury of organic American Law, to be true, correct and complete. Witness my hand:

_____ _____

Date Hon. David Chaffee

CAVEAT

It is common knowledge that only criminals and perverts require a cloak of secrecy with which to hide their activities. This Bill of Particulars for immediate and full disclosure is mandatory and has been formatted as a multiple choice questionnaire as a time saving convenience to your office.

Failure to complete the foregoing Bill of Particulars Questionnaire and return the same to Adam Bereki within ten (10) days of date of delivery/service may result in measures being taken to compel you to do so. Further obstruction may result in one or more criminal charges being brought against you in a Court of Justice. By your Oath, you will be held accountable for all acts of commission or omission, as the case may be. In the alternative, you may file a formal notice of vacated judgment into Case. These things you will faithfully do or come forth in writing and show good and Lawful cause why you could not do that which is commanded herein.

All responses sent by U.S. Post to Adam Bereki are to be sent/mailed exactly as shown at the head of this document, without alteration, deletion, addition or substitution, which has been specially arranged for that purpose. All secured Rights, Privileges, Immunities, and Remedies explicitly reserved to Adam Bereki by restricted signature given below:

..... 6/28/17 .....

Adam Bereki
c/o postal service address:
818 Spirit
Costa Mesa, California CF 92626 CF
The united States of America

Date: 6/28/17

To: William G. Bissell, Esq.
14 Corporate Plaza Drive, Suite 120
Irvine, California 92660

Re: 30-2015-00805807/ SPARTAN v HUMPHREYS

Demand for Bill of Particulars
Nature and Cause of Accusation
(U.S. Constitution 6th Amendment)

THIS IS NOT A DISCOVERY MOTION!

The reason for this Demand for Bill of Particulars is so that Adam Bereki might be able to prepare for a meaningful and substantive appeal and defense in order that he not be deprived of life, liberty, or property without judicial process in the above matter, hereafter "Case", or "Action".

Your office brought this Action against Adam Bereki where jurisdiction was alleged to exist and consequently judgement was allegedly found against him. To this end, the following questions are specifically posed, to wit, and do not represent an exhaustive list:

**SECTION 1**

1. The above referenced Case was brought against Adam Bereki as a: (check one)
( ) Criminal Action
( ) Civil Action
( ) Administrative Action
( ) Other Action: (specify)_____

2. The nature of the process by which this action was brought against Adam Bereki is: (check all that apply)
( ) Criminal
( ) Civil
( ) Other: (specify)_____

3. That with which judgement was rendered against Adam Bereki in this action is:
( ) A crime, described as:_____
( ) Not a crime, described as:_____

4. The *constitutionally authorized* **jurisdiction** under which Case was brought against Adam Bereki is:
( ) Law ("in pursuance of" the Constitution)
( ) Equity
( ) Administrative ("statutory")
( ) Admiralty
( ) Quasi or Colorable Admiralty
( ) Military/ Martial Law Rule
( ) Other: (specify)_____

5. The *constitutionally cognizable* **body of law** being applied to this action against Adam Bereki (under the aforesaid jurisdiction) is:
( ) Constitutional Law
( ) Contract Law
( ) Administrative Law
( ) Commercial Law (domestic)
( ) Martial Law
( ) Law Merchant (International)
( ) "Statutory" Law, generally classified as:
( ) Remedial Code ( ) Civil Code ( ) Business and Professions Code
( ) Political Code ( ) Penal Code
( ) Other Law: (specify)_____

6. The organic Constitution for The State of California (1879) authorizes the particular application of legislative power of Case against Adam Bereki:
( ) Yes, under Article_____, Section_____, Clause_____
( ) No

7. The *published* **Rules** governing the type of action indicated above (under "constitutionally authorized jurisdiction" [4] are entitled: (specify)_____
_____
and are available for inspection at:_____

8. This action was brought against Adam Bereki by: (check all that apply)
( ) "The State of California" in its servitor (to the People) capacity
( ) The "STATE OF CALIFORNIA" in its corporate/commercial capacity
( ) The "state of Washington" as an agent for an unregistered foreign principal
( ) Karen and Gary Humphreys as "individuals", therefore "persons" as described in Business and Professions Code Section 7025.
( ) Karen and Gary Humphreys as State California de jure Citizens
( ) Other: (specify)_____

9. The corpus delicti of this action against Adam Bereki is:
( ) Actual injury or damage to the protected Rights of another, under Law
( ) Fictional "injury", under color of law
( ) Other: (specify)_____

10. The nature of the actual damage or injury alleged by the witnesses in support of this action against Adam Bereki is:
( ) Bodily injury:(specify)_____
( ) Property Damage: (specify)_____
( ) Libel: (specify)_____
( ) Violation of Private Rights: (specify)_____
( ) Breach of a valid, binding and subsisting contract
( ) Breach of a voluntary consent agreement
( ) Other: (specify)_____

11. The name of the witness(es) claiming and possessing evidence of the actual damage or injury in support of the action is/are:_____
_____

12. Said witness(es) in [11] allege a valuation of $_____ in actual damages or injury against Adam Bereki in this action.

13. If different than the said witness(es) above, the real parties of or in interest to this action against Adam Bereki are: (specify)_____
which is evidenced by: (specify)_____

14. The elements which, in the face of challenge, the Fundamental Law obligates your office to **prove** in this action against Adam Bereki are: (check all that apply)
( ) Jurisdiction over the subject matter.
( ) Jurisdiction in personam over Adam Bereki
( ) Proper venue (territorial jurisdiction)
( ) The constitutional authority of the "law" alleged to have been violated by the accused.
( ) The actual harm, damage, or injury being alleged as a violation of Law by the above named witness(es).
( ) Positive identification of the witness(es), victim(s), injured party(ies) in Fact, real party(ies) in interest, or holder(s) in due course who gave you or anyone else authority to bring this action against Adam Bereki.
( ) Other: (specify)_____
( ) None of the above.

15. This action was in Fact being brought against Adam Bereki in order to: (check all that apply)
( ) Redress actual injury to constitutionally secured private Rights.
( ) Enforce political/administrative codes to collect revenue.
( ) Circumvent one or more constitutional obligations and/or restraints.
( ) Arbitrarily compel specific performance of purely political codes regardless of individual status and standing in Fact.
( ) Silence political dissidence.
( ) Protect the purely commercial interests of the corporate "STATE OF CALIFORNIA".
( ) Enforce political/administrative codes to obfuscate or prevent public exposure of alter ego activities in connection with or in the name of The State of California.
( ) Diminish or abrogate the true character, status, standing and/or reputation of Adam Bereki.
( ) Covertly wage mixed war upon Adam Bereki.
( ) Other:_____

16. This action was brought against Adam Bereki in a tribunal that acted:
( ) Judicially
( ) Ministerially (administratively)
( ) Other: (specify)_____

17. The tribunal in which this action was brought possesses the Lawful capacity to grant pecuniary award/relief in full compliance with the mandates of Article VI and Article I, Section 10 of the Supreme Law of the Land [1787-1791]. (check one)
( ) Yes
( ) No

18. The action brought against Adam Bereki is:
( ) Bonded by the accuser in Fact.
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
Policy No.: (specify)_____
Underwritten by: (specify)_____
whose principal place of business is:(specify)_____
( ) Not Bonded.
( ) Other: (specify)_____

19. A "person" as described in Business & Professions Code 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

20. An "individual" as described in Business & Professions Code Section 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

21. A State Citizen as recognized in the Constitution for the united States [1787-1791] is a fiction at law.
( ) Yes
( ) No

22. In what way does the "person" of Adam Bereki attach to the statute(s) enforced against him?

_____
_____
_____
_____

23. Is there a right to effective assistance of counsel in Case?
( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No

24. Was there a right to trial by jury at common law in case?
( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No

25. From what pool(s) are members of the Grand or petit juries summoned?

_____

_____

26. Do the juries mentioned in [25] function at common law?
( ) Yes
( ) No. Specify to what law they do function:_____

_____

27. What constitutes the consent of the governed [See e.g. Declaration of Independence 1776] of any members of the de jure body politic to be regulated other than by the common law of England? _____

_____

_____

28. What form of payment is accepted to pay the judgment, or more accurately, to discharge the obligation in Case? _____

_____

29. What jurisdiction does the payment method described in [28] circulate?_____

_____

_____

**SECTION 2**

30. The Orange County Superior Court is:
( ) a court of general jurisdiction.
( ) a court of limited jurisdiction.
( ) a court of special or pro temper jurisdiction.
( ) Other: (specify)_____

31. The Orange County Superior Court is:
( ) A judicial court of record.
( ) Not a judicial court of record.
( ) Not a judicial court.
( ) Other: (specify)_____

**SECTION 3**

32. Willliam Bissell, Esq. is an officer of:
( ) The Orange County Superior Court
( ) The State of California
( ) Other: (specify):_____

33. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to exercise judicial power(s) in the performance of executive duties:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

34. The organic Constitution for the State of California (1879) authorizes the State legislature to blend or mix the legislative, executive, and judicial powers by statute or code:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

35. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to signature authorize and issue instruments of judicial process in the name of and on behalf of the Orange County Superior Court:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

**SECTION 4**

36. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "U.S. citizen" or "person" within the meaning of the so-called "14th Amendment":
( ) Yes: (specify):_____
( ) No

37. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "person" within the meaning of Business and Profession Code Section 7025:
( ) Yes: (specify):_____
( ) No

38. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "citizen" or "resident" of the "state of California" (aka: "STATE OF CALIFORNIA"):
( ) Yes: (specify):_____
( ) No

39. Your office has in actual possession conclusive evidence that Adam Alan Bereki is contractually obligated to perform or is otherwise subject to the political codes of the "state of California", including but not limited to the Business & Professions Code:
( ) Yes: (specify):_____
( ) No

40. Your office has in actual possession any application form, contract or other similar document or Instrument bearing the unrestricted signature/autograph of Adam Alan Bereki:
( ) Yes: (specify):_____

( ) No
41. Your office has in actual possession any registration document or similar item, bearing the unrestricted signature/autograph of Adam Alan Bereki, which evidences his voluntary, knowing, and intelligent Consent to or authorization of majority (mob) rule or "public policy":
( ) Yes: (specify):_____
( ) No

42. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a natural-born, flesh and blood man, long since past the age of Consent:
( ) Yes: (specify):_____
( ) No

43. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a man of sound mind and body, in full possession of his faculties:
( ) Yes: (specify):_____
( ) No

44. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has, at any time, affirmatively and voluntarily surrendered, waived or in any way and to any degree impaired the exercise of any of his secured Rights, Privileges, Immunities, and Remedies:
( ) Yes: (specify):_____
( ) No

45. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is in Fact a "trustee" or "subrogee" or "surety" or any other similar characterization in connection with any state created legal fiction entity:
( ) Yes: (specify):_____
( ) No

46. Your office has in actual possession any document, bearing the unrestricted signature/autograph of Adam Alan Bereki, whereby he has directly or indirectly authorized the creation of any legal fiction entity which is identified by his own Lawful name or any orthographic variation thereof:
( ) Yes: (specify):_____
( ) No

47. Your office has in actual possession any document bearing the unrestricted signature/autograph of Adam Alan Bereki, which in any way authorizes a departure from the long established Rules of English grammar governing spelling, capitalization and structuring of proper noun names generally of his own Lawful name specifically:
( ) Yes: (specify):_____
( ) No

48. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact expressly granted power of attorney or procuratorial authority to "United States", "UNITED STATES", "U.S.", "state of California", "STATE OF CALIFORNIA", "COUNTY OF ORANGE", "CITY OF SANTA ANA" or any officer(s) thereof:
( ) Yes: (specify):_____
( ) No

49. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact surrendered, waived or otherwise impaired or forfeited his authority to make direct presentment in and to any public office of court of The State of California or The united States of America for any Lawful purpose whatsoever:
( ) Yes: (specify):_____
( ) No

50. It is a long and firmly established precept of Fundamental American Law that an accused (wo)man is presumed innocent until proven guilty of any wrong doing. Your office has in actual possession conclusive evidence that Adam Alan Bereki has in Fact surrendered, waived, or otherwise forfeited or impaired his Right to enjoy the benefit of this presumption of Law:
( ) Yes: (specify):_____
( ) No

51. It is a long and firmly established precept of Fundamental American Law that jurisdiction, in any of its elements, may be challenged at any time and, once challenged, it must be proven by he who bears the burden of proof, as "mere assertion is not enough". Your office has in actual possession conclusive evidence that Adam Alan Bereki has in fact surrendered, waived or otherwise forfeited or impaired his Right to enjoy the benefit of this precept of American Law:
( ) Yes: (specify):_____
( ) No

52. Your office, as the moving party, carries the burden of proof in this action, including the proof of jurisdiction. Your office has in actual possession conclusive evidence that Adam Alan Bereki has waived or has otherwise relieved your office of that burden:
( ) Yes: (specify):_____
( ) No

53. Other heretofore undisclosed assumptions, presumptions, hypothecations and similar tacitly noticed fictions of law affecting or material to the status, standing and/or capacity of Adam Alan Bereki in Case are fully disclosed as follows:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The disclosures/particulars provided herein above are hereby Certified, under the pains and penalties of Perjury of organic American Law, to be true, correct and complete. Witness my hand:

_____ _____

Date William G. Bissell

CAVEAT

It is common knowledge that only criminals and perverts require a cloak of secrecy with which to hide their activities. This Bill of Particulars for immediate and full disclosure is mandatory and has been formatted as a multiple choice questionnaire as a time saving convenience to your office.

Failure to complete the foregoing Bill of Particulars Questionnaire and return the same to Adam Bereki within ten (10) days of date of delivery/service may result in measures being taken to compel you to do so. Further obstruction may result in one or more criminal charges being brought against you in a Court of Justice. By your Oath, you will be held accountable for all acts of commission or omission, as the case may be. In the alternative, you may file a formal notice of retraxit of suit and vacated judgment into Case. These things you will faithfully do or come forth in writing and show good and Lawful cause why you could not do that which is commanded herein.

All responses sent by U.S. Post to Adam Bereki are to be sent/mailed exactly as shown at the head of this document, without alteration, deletion, addition or substitution, which has been specially arranged for that purpose. All secured Rights, Privileges, Immunities, and Remedies explicitly reserved to Adam Bereki by restricted signature given below:

4/24/17

# Exhibit 13

Gmail Adam Bereki <abereki@gmail.com>

# Phone Call

4 messages

**Adam** <abereki@gmail.com> Wed, Sep 20, 2017 at 3:14 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill,

I hope this finds you well. I called your office today to speak with you about what I believe to be a huge miscarriage of justice happening in this case surrounding the challenge to jurisdiction I filed on 4/18/17 before judgement was ordered in this case. If you have any interest in discussing this matter with me, I'd welcome that.

If so, please let me know when would be a good time to call you and I'll do so.

Sincerely,

Adam Bereki

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Wed, Sep 20, 2017 at 3:50 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

Mr. Bereki: I reviewed your "Writ of Error" at the time it was filed with the court. I saw nothing in it that would cause me to question the validity of the judgment entered by the court. You have appealed the judgment and presumably you will be giving it your best shot with the Court of Appeal. Because appellate procedure is very deadline sensitive I suggest that your time might be better spent focusing on your argument to be made to the court than discussing your theories with me.

Sincerely.

[Quoted text hidden]

**Law Office of William G. Bissell**

14 Corporate Plaza Drive, Suite 120

Newport Beach, CA 92660

(949) **719-1159**

wbissell@wgb-law.com

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain information that is confidential or legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone at 949.719.1159 or return e-mail and delete the original transmission and its attachments without reading or saving in any manner. Thank you.

---

**Adam** <abereki@gmail.com> Wed, Sep 20, 2017 at 4:09 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you Bill, I appreciate your reply. It's just that since the "writ of error" was a direct jurisdictional challenge before the entry of judgement. The judgement is void because you didn't prove the factual sufficiency of subject matter jurisdiction as you were required to do upon direct attack. At that point and until subject matter jurisdiction was proved, the court was want of jurisdiction to issue an order. You'll see the jurisdictional challenge was served two days before the judgement. I don't believe it's in judicial process for the court or other parties to just ignore and/or reject my documents however foreign or out of statutory procedure they may be. While I understand your position that you might think what I'm sharing is a legal "theory" I obviously believe otherwise and we can disagree. If I'm right though, you and the judge could be in a lot of trouble which is why I reached out to you first to see if you wished to speak with me humbly.

Sincerely,

Adam Bereki

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Wed, Sep 20, 2017 at 4:24 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

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

# Judicial Notice Exhibit 15.4B

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

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

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.: 30-2025-01482941

**SECOND AMENDED DECLARATION OF ADAM BEREKI (FILED IN SUPPORT OF MOTION TO VACATE ROA 361)**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

The following Second Amended Declaration is submitted in support of the Motion to Vacate Void Judgment filed on May 28, 2025 (ROA 361). It addresses new information discovered after my First Amended Declaration and corrects any prior statements in any official record regarding the licensed status of The Spartan Associates, Inc. This declaration does not restate prior declarations but focuses solely on the new facts relevant to the Motion.

Date: June 9, 2025

By:

Adam Bereki

## SECOND-AMENDED DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California the following is true and correct:

1. I have personal knowledge of the facts stated herein and am competent to testify thereto if called as a witness.
2. After filing my First Amended Declaration on June 4, 2025, I was suddenly moved to review licensing records for The Spartan Associates, Inc. (Spartan) to ensure accuracy in my statements. I discovered that in July 2012, a bonding company cancelled Spartan's license bond, citing unmet underwriting requirements, resulting in an automatic suspension of Spartan's contractor's license (License #927244) by the Contractors State License Board until reinstatement in October 2012.
3. I had no recollection of this suspension likely due to the 13-year gap, and that the fact that at the time it occurred, the litigation in this case wouldn't happen for another ~2.5 years. I disclose this in good faith to correct any prior statements in any official records that could be interpreted to mean that Spartan was licensed throughout the entirety of the Humphreys' project (e.g., First Amended Declaration ¶ 5, 23).
4. Spartan definitely had a valid contractor's license when it began work on the Humphreys project and obtained building permits from the City of Newport Beach (Motion Ex. 2). Whether some statute retroactively annuls this due to a bond issue, resulting in a total penal forfeiture of the value of all the work, is a matter for another day.
5. This suspension is irrelevant to the Humphreys' claim in their First Amended Cross-Complaint (ROA 144), which alleged I personally contracted and performed unlicensed construction work under Cal. Bus. & Prof. Code § 7031(b), not Spartan. No trial evidence shows I performed work requiring a contractor's license, as required by CACI 4560(3) (Motion: Ex. 1 [Reporter's Transcript 3/27/17], p. 125, Lines 2–8; Second Amended Declaration: Ex. 6 [Nickel Report]; Ex. 9 [Brockway Deposition]). The Humphreys' own admissions confirm Spartan was the contractor (ROA 66, p. ii; Motion Ex. 5 [Notice of Cessation]).
6. My core arguments in the Motion to Vacate—that the court lacked personal and subject matter jurisdiction due to the penal nature of § 7031(a) and (b), the

Humphreys' lack of standing to prosecute, and the absence of evidence that I performed unlicensed work—remain unaffected by Spartan's suspension. The judgment is void ab initio for these reasons, independent of Spartan's licensed status.

7. To the extent the suspension might seem relevant, I assert all arguments in the Motion, (with exception of the §7028.5 issue which may now be moot), including that the Humphreys' § 7031(b) claim against me, filed in December 2016 (ROA 144), was untimely under the one-year statute of limitations (Cal. Code Civ. Proc. § 340(a)), as the project ended in August 2013 (Ex. 5), depriving the court of subject matter jurisdiction (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 541 (2021) ("where a party purports to bring a statute-based cause of action that does not satisfy its statutory prerequisites, a trial court lacks subject matter jurisdiction.") Spartan's suspension is irrelevant, as the Humphreys claim targeted me personally, not Spartan, and no evidence shows I performed unlicensed work (CACI 4560(3))."

Signed on June 9, 2025 at Las Vegas, Nevada.

By:

Adam Bereki

# Judicial Notice Exhibit 15.5

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949)287-4503
wbissell@wgb-law.com

Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.
And Related Cross-Action

Case No.30-2015-00805807

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDGEMENT AND REQUEST FOR SANCTIONS - C.C.P. §128.5**

Date: June 26, 2025
Time: 2:00 p.m.
Dept: C-23

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

Defendants/Cross-Complainants/Judgment Creditors Gary Humphreys and Karen Humphreys in opposition to the motion of Cross-Defendant/Judgment Debtor Adam Bereki to vacate the judgement entered in this matter submits the following memorandum of points and authorities.

I.

## INTRODUCTION

This motion is in all substantive respects nothing more than a refiling and rehash of virtually the same motion to vacate judgment brought by Mr. Bereki in February of 2019 in this case and in which the court in denying the motion aptly noted *"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..."*

Despite the trial courts crystal clear admonition to Mr. Bereki advising him that upon the appellate court's affirming the judgment the trial court has no jurisdiction to entertain new arguments attacking the merits of the judgment, Mr. Bereki persists in ignoring both the courts rulings and procedural law and continues to harass the Humphreys, denigrate this Court and waste judicial resources by filing motions patently lacking in merit and seeking public support for the motion through inflammatory emails.

II.

## BRIEF HISTORY OF THE CASE

This case , judgment in which has long been final, arose out of a home remodel project which began in April of 2012 in Newport Beach, California. The parties

opposing this motion, Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and the moving party Adam Bereki (Mr. Bereki) was the contractor, albeit unlicensed, with whom the Humphreys contracted to perform the work.

A dispute arose between the Humphreys and Mr. Bereki over the quality of the work performed by Mr. Bereki and other disturbing aspects of Mr. Bereki's activities and performance on the project resulting in a civil complaint being filed in this matter by Mr. Bereki's corporation and a cross complaint being filed by the Humphreys. On motion of the Humphreys the first cause of action of their first amended cross-complaint for disgorgement under California Business & Professions Code Section 7031, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading.

The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 before Judge David Chaffee in Department C-20 of this Court and concluded on March 28, 2017. At the conclusion of the presentation of evidence, the Trial Court ruled in favor of the Humphreys on both the complaint and the first cause of action of the first amended cross-complaint and entered judgment accordingly.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. As with the instant motion, both Mr. Bereki's opening brief and his reply brief raised and addressed his claim that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution. Oral argument was heard on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of

jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal.

On or about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Court of Appeals decision, once again raising as grounds for review the claimed lack of jurisdiction of the trial court and claimed denial of due process. The petition for review was denied on January 30, 2019 and the case was remitted to this Court for entry of costs on Appeal.

On February 19, 2019 Mr. Bereki filed with this Court the motion to vacate the judgment in this matter mentioned above , which was denied on March 15, 2019.

In October of 2019 Mr. Bereki filed a petition for writ of certiorari with the United States Supreme Court seeking to have the judgment here overturned. That petition was denied.

In addition to the above there have been an assortment of misguided collateral attacks on the judgment brought by Mr. Bereki in both the federal court and again to the U.S. Supreme Court all of which have been summarily denied.

Mr. Bereki, who after repeatedly raising the issues of jurisdiction and due process and having been heard on those issues multiple times in multiple venues is apparently incapable of accepting the fact that in the vast majority of trials there is a loser and in this one that is he. There is no basis, either procedurally or substantively which would allow this court, at this juncture to so much as entertain Mr. Bereki's motion much less grant it.

## III.

## MOVING PARTY'S CLAIM IS BARRED UNDER THE DOCTRINE OF RES JUDICATA

The doctrines of res judicata and judicial estoppel rest on the ground that a party who has litigated a matter or has had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation Busick v. Workmen's **Comp. Appeals Bd. (1972) 7 Cal. 3d 967, 972; Rubenstein v. Rubenstein (2000) 81 Cal.** App. 4th 1131, 1144. The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues that **were or could have been** raised in the original suit Torrey Pines Bank v. Superior Court (1989) 216 Cal. App. 3d 813, 821. *"A final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in the action"* Federated Dept. Stores, Inc. v. Moitie 452 U.S. 394, 398 (1981).

The "issues" on which Mr. Bereki is basing his latest motion have either been raised numerous times before or are issues which could have been raised and litigated at the 2017 trial. Mr. Bereki has asserted the same tired and strained arguments in his post judgment motions to the trial court, in his appeal of the trial courts judgment, in his petition for review filed with the State Supreme Court and his petition for writ of certiorari filed with the U.S. Supreme Court .As to those issues which have not already been raised and rejected as ill founded, there is not one that could not have been asserted at the time of trial or in Mr. Bereki's appeal.

## IV.

## THE JUDGMENT IS NOT VOID

Mr. Bereki argues that the holding in Eisenberg Village v. Suffolk Constr. Co.53 CA 5th 1201 (2020) somehow voids the judgment in this case. It does nothing of the sort. The holding in the Eisenberg v. Suffolk case did not invalidate the disgorgement provisions of Business & Professions Code §7031 which remains unchanged and enforceable today as it was when the judgment in this case was entered. Eisenberg v. Suffolk merely identified the period in which an action under the disgorgement clause of that statute must be brought. Mr. Bereki argues that under the decision in the Eisenberg v, Suffolk supra case the Humphrey's disgorgement cause of action was untimely and the that consequently the judgment is void. In so arguing, Mr. Bereki ignores the fact that the burden of proving a statute of limitations defense lies with the party asserting the defense. Although it was within his power to assert the defense and put on evidence to try to establish it at trial Mr. Bereki failed to do either.

There has been no substantive change in the law under which the judgment in this case was entered and Mr. Bereki has certainly not pointed the court to any such change which would warrant a deviation here from the principals of res judicata.

## V.

## THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.

In the event the Court determines that the instant motion warrants consideration, the facts of this case establish that the trial court had both personal jurisdiction over Mr. Bereki

and subject matter jurisdiction over the case and that the judgment entered by the trial court and affirmed by the court of Appeal was proper and beyond attack at this level.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const, Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

***Superior courts have original jurisdiction in all other causes****....*"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the action. As for personal jurisdiction over Mr. Bereki, Cal Code Civ Proc § 410.50 states *"(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10).* ***A general appearance by a party is equivalent to personal service of summons on such party****.*"

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102. Mr. Bereki by substituting in

as his own attorney in this matter in propria persona, filing his answer to the Humphrey's cross-complaint seeking a determination of the issues and appearing at and presenting his case in defense at the trial of this matter , has made a general appearance and thus has voluntarily submitted to the trial court exercising personal jurisdiction over him.

## VI.

## SANCTIONS UNDER CODE OF CIVIL PROCEDURE SECTION 128.5 ARE WARRANTED

A trial court may order a party to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. C.C.P §128.5 (a).

For purposes of C.C.P §128.5 (a) "actions or tactics" includes the making of a motion and "frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. C.C.P §128.5 (b) (1) & (2).

A request for sanctions under C.C.P §128.5 (a) may be made in a party's responding papers. C.C.P §128.5 (c) . Lesser v. Huntington Harbor Corp. 173 CA3rd 922 (1985).

An action is deemed frivolous or in bad faith if it is prosecuted for improper motive (including harassment or delay) or if it is totally and completely devoid of any merit. Finnie v. Town of Tiburon, 199 Cal. App. 3d 1, 12 (1988).

As set forth above, Mr. Bereki has been informed by this Court in terms which are crystal clear and not subject to interpretation, that the trial court has no jurisdiction to entertain attacks on the judgment entered in this case. In other words, Mr. Bereki has been

advised by this Court that any new attempt by him to attack the judgment in this venue is frivolous. Despite being on notice of the frivolousness of this motion Mr. Bereki persists in ignoring the court's admonishment and continues to harass the Humphreys. Worse still, Mr. Bereki in a display of shocking disrespect to the Court attempts to bait this Court by such emails as the following sent on June 4, 2025:

> *"Good day, Let us all patiently await the discovery of whether supervising Superior Court Judge, David Hesseltine, will tell the truth, exposing nearly 100 years of legislative, executive, and judicial tyranny in Commiefornia involving Cal. Business and Profession Code §7031 (unlicensed contracting) or will lie to shield his brethren and other officials involved in the corruption...*
> *Please join us, Thursday, June 26, at 2:00PM in his courtroom or by zoom (visit* ***occourts.org****, click on remote appearance, select civil unlimited, civil unlimited again, and Department C23 Judge Hesseltine) for the 'hearing', where, if my personal experience is any indication, no one will actually be heard. Perhaps the 26th will be a dawn of integrity for the Judge where he will honor his oath of office so that we can rightfully refer to him as "Honorable" (it would my honor to do so)....*
>
> *Kindly forward this email to your co-workers, friends, and family in support of me and many others across America who are exposing the fraud, deceit, and treason perpetrated by members public office (and especially bar ASSociations ie Donna Kirkner, William Bissell) upon us under color of law....*
>
> *Thank you for listening.*
> *Sincerely,*
> *Adam Bereki"*

These actions of Mr. Bereki warrant a finding of contempt of court and at a minimum, demand that Mr. Bereki be sanctioned under C.C.P. §128.5 in an amount which will compensate the Humphreys for the costs of defending this motion as set forth in the

accompanying declaration and hopefully dissuade Mr. Bereki from further frivolous and bad faith actions.

## VII.

## CONCLUSION

Although Mr. Bereki couches his motion to vacate the judgment as being grounded in a claimed lack of jurisdiction by both the trial court to have rendered judgment and the court of appeal to have affirmed that judgment, in reality the motion is nothing more than an attempt to relitigate the same issues he has raised in his appeal of the trial court's judgment and in his petition to the State Supreme Court and the United States Supreme court. While Mr. Bereki correctly points out that a motion to challenge a judgment on the basis it is void may be brought at any time, he clearly fails to understand that once that challenge has been brought and has been determined to be without merit, he is barred from reasserting that challenge except to a court of review at a higher level of which in this matter there is now none.

This case may stand as the poster child for why public policy demands that there be an end to litigation and an end to the losing party's harassment of the prevailing parties by continuing to bring spurious motions and proceedings. Mr. Bereki has been heard, reheard and heard again on the same issues and he has lost at every juncture at every possible level of review. Although it has been stressed before by the trial court, Mr. Bereki should be re-admonished in the strongest possible terms that he is pursuing course to which he has no rights and that must end now. Simply put, Mr. Bereki has been heard on this issue at all levels of review and for that reason this motion should be removed from the law and motion calendar as having been improperly filed or alternatively, denied and in either case sanctions

assessed against Mr. Bereki and in favor of the Humphreys as set forth in the accompanying declaration.

Respectfully Submitted:

Date: June 12 , 2025

*william bissell*

William G. Bissell,
Attorney for Defendants Cross-Complainants
Gary Humphreys and Karen Humphreys

# PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

*-The Spartan Assoc. Inc. vs .Gary Humpherys. et al*
30-2015-00805807

I am employed in the County of Orange, California. I am over the age of eighteen (18) years and not a party to the case. My business address is 23 Corporate Plaza Drive, Suite 150 Newport Beach CA 92660.

On April 14, 2025, I served electronically via email MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDFGMENT AND REQUEST FOR SANCTIONS – C.C.P 128.5 and SUPPORTING DECLARATION in this matter upon the following legal counsel and parties:

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
Abereki@gmail.com

Judgment Debtor in Pro Per

Executed on June 13, 2025, at Newport Beach, California

william bissell

William Bissell

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949)287-4503
wbissell@wgb-law.com

Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC.<br><br>Plaintiff,<br><br>vs.<br><br>GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive<br><br>Defendants.<br>And Related Cross-Action | Case No.30-2015-00805807<br><br>**DECLARATIONIN OPPOSITION TO MOTION TO VACATE JUDGEMENT AND REQUEST FOR SANCTIONS - C.C.P. §128.5**<br><br>Date: June 26, 2025<br>Time: 2:00 p.m.<br>Dept: C-23<br><br>Action Filed: August 21, 2015<br><br>Judgment Entered: April 20, 2017<br><br>Judgment Affirmed on Appeal: Oct. 21,2018<br><br>Cal. Supreme Court Review Denied: Jan. 30, 2019 |

I William Bissell declare as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration and could competently testify to the same.

2. I am presently and have been from the initial stages of this case the attorney of record for Karen and Gary Humphreys, the defendants/cross-complaints/judgment creditors in this matter and have acted as such in both the trial and post trial proceedings referred to in this declaration.

3. On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff, The Spartan Associates, Inc. (Spartan) against Gary and Karen Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

4. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017. Judgment in this matter and the entry thereof is reflected in the court's file of this matter and is attached to Mr. Bereki's request for judicial notice as Exhibit #1. Judicial Notice thereof the is requested under Evidence Code Section 452 (d).

5. On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three. The notice of appeal is

contained in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d)

6. On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims, as they relate to the trial courts jurisdiction over the action and Mr. Bereki's due process arguments, were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal. The opinion of the Court of Appeal and the Court's denial of Mr. Bereki's petition for rehearing is attached as Exhibit #2 to Mr. Bereki's Request for Judicial Notice filed in this motion.

7. On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition.

8. On January 30, 2019 the California Supreme Court denied the petition for review. Attached to Mr. Bereki's Request for Judicial Notice filed in this motion as Exhibit #4 is notice of California Supreme Court's En Banc denial of Mr. Bereki's petition for review.

9. On February 19, 2019 Mr. Bereki filed with this Court a motion to vacate the judgment in this matter, the hearing on which was held on March 15, 2019 in Department C16 before the Honorable James J. Di Cesare. In denying the motion the court noted "... *"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".* The Court's minute order on the March 15, 2019 motion to vacate is attached as Exhibit #3 to Mr. Bereki's Request for Judicial Notice filed in this motion..

10. In the fall of of 2019 Mr. Bereki filed a petition for writ of certiorari with the United States Supreme Court seeking to have the judgment in this case overturned. On October 7, 2019 the U.S. Supreme Court denied the petition for certiorari. Attached to Mr. Bereki's Request for Judicial Notice filed in this motion as Exhibit #5 is notice of The U.S. Supreme Court's denial of Mr. Bereki's petition for certiorari.

11. In addition to the above, there have been an assortment of collateral attacks on the judgment in this case brought by Mr. Bereki in both the federal court and again to the U.S. Supreme Court all of which have been summarily denied.

12. In reviewing the onslaught of moving papers notices to appear and subpoenas filed and/or served by Mr. Bereki, the records of the various court proceedings and in preparing the opposition to the pending motion, I have spent 8.5 hours. I anticipate spending an additional 1.5 hour in appearing at the hearing on this motion for a total of 10 hours. My billing rate is $360.00 per hour for a total cost to the Humphreys in defending against this spurious and frivolous motion of $3,600.00.

13. On June 4, 2025 I received the following email from Mr. Bereki:

*"Good day, Let us all patiently await the discovery of whether supervising Superior Court Judge, David Hesseltine, will tell the truth, exposing nearly 100 years of legislative, executive, and judicial tyranny in Commiefornia involving Cal. Business and Profession Code §7031*

*(unlicensed contracting) or will lie to shield his brethren and other officials involved in the corruption...*

*Please join us, Thursday, June 26, at 2:00PM in his courtroom or by zoom (visit **occourts.org**, click on remote appearance, select civil unlimited, civil unlimited again, and Department C23 Judge Hesseltine) for the 'hearing', where, if my personal experience is any indication, no one will actually be heard. Perhaps the 26th will be a dawn of integrity for the Judge where he will honor his oath of office so that we can rightfully refer to him as "Honorable" (it would my honor to do so)....*

*Kindly forward this email to your co-workers, friends, and family in support of me and many others across America who are exposing the fraud, deceit, and treason perpetrated by members public office (and especially bar ASSociations ie Donna Kirkner, William Bissell) upon us under color of law....*

*Thank you for listening.*
*Sincerely,*
*Adam Bereki"*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 12 , 2025 at Newport Beach, California.

william bissell

William Bissell
Attorney for Gary Humphreys
and Karen Humphreys

# PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

*-The Spartan Assoc. Inc. vs .Gary Humpherys. et al*
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Judgment Debtor in Pro Per

Executed on June 13, 2025, at Newport Beach, California

william bissell

William Bissell

# Judicial Notice Exhibit 15.6

Electronically Filed by Superior Court of California, County of Orange, 06/16/2025 03:03:00 PM.
30-2015-00805807-CU-CO-CJC - ROA # 386 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

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

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.: 30-2025-01482941

**REPLY TO OPPOSITION OF MOTION TO VACATE VOID JUDGMENT (INDEPENDENT ACTION IN EQUITY)**

**INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT OF REPLY TO OPPOSITION**

**Hearing**
Date: June 26, 2025
Time: 2:00PM
Dept: C23
Judge: D. Hesseltine

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

Defendant Adam Bereki submits this Reply in support of the Motion to Vacate Void Judgment (Independent Action in Equity) filed May 29, 2025 (ROA 361), addressing the opposition filed by Defendants/Cross-Complainants Gary and Karen Humphreys on or about June 13, 2025. The Opposition fails to refute the Motion's equitable grounds for vacating the April 17, 2017, judgment (ROA 200) and the October 31, 2018, appellate affirmation (Case No. G055075) as void ab initio due to lack of jurisdiction, extrinsic fraud, and constitutional violations. The Humphreys' absurd request for sanctions under CCP § 128.5, accusing

Defendant of vexatious litigation, is baseless and deflects from their egregious misconduct. The court is respectfully requested to vacate the void judgment and deny sanctions.

## I. INTRODUCTION

The Motion is an **independent action in equity** invoking the court's inherent equity jurisdiction to vacate a void judgment at any time, pursuant to *Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942) and *Rose v Fuqua,* 200 Cal.App.2d 719 (1962). The Opposition misconstrues this equitable action as a statutory motion subject to procedural bars, erroneously relying on *People v. Dutra* (2006) 145 Cal. App. 4th 1359, 1365–1366. A prior motion to vacate is not a bar to an independent action in equity. Such an action is an entirely distinct and separate proceeding when new facts are raised, and the defendant did not receive a full hearing on the prior motion, including the taking of oral testimony. (*Rose v. Fuqua*, 200 Cal.App.2d 719, 724 (1962)).

The Humphreys' counsel, William Bissell, deliberately misleads the Court by:

1. Omitting *Liu v. SEC*, 591 U.S. 71 (2020);
2. Mischaracterizing *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020);
3. Arguing that this independent action in equity "is in all substantive respects nothing more than a refiling and rehash of virtually the same [previous] motion to vacate," despite it presenting new case law and evidence of extrinsic fraud; and
4. Asserting that the court had personal and subject matter jurisdiction when he knows—or reasonably should know—this is untrue in fact and law.

These actions violate:

**a.** Cal. Bus. & Prof. Code § 6068(c), by counseling and maintaining actions, proceedings, or defenses that he knows, or reasonably should know, are not legal or just;

**b.** Cal. Bus. & Prof. Code § 6068(d), by employing means inconsistent with truth to mislead the judge through artifice or false statements of fact or law to gain a civil advantage and procure subject matter jurisdiction through fraud;

**c.** Cal. Bus. & Prof. Code § 6068(a), by failing to support the Constitution and laws of the United States and California;

**d.** California Rules of Professional Conduct, Rule 3.3(a)(1), by lacking candor toward the tribunal; and

**e.** Penal Code § 182(a)(1)-(5), by engaging in criminal conspiracy to commit crimes and maintain unlawful causes of action.

The Humphreys' failure to prove standing and capacity, despite Defendant's jurisdictional challenges, violates due process by shifting the burden to Defendant, exacerbating the judgment's voidness due to the penal nature of § 7031(a) and (b) and absence of a criminal complaint.

With over thirty years of legal practice, Bissell either deliberately misleads the court to defraud Defendant and the court through misrepresentations regarding subject matter jurisdiction or lacks a fundamental understanding of how a court derives its authority to act. Bissell's claim that subject matter jurisdiction stems solely from one provision of the California Constitution (Art. VI, § 10) is incorrect. While this article initially vests jurisdiction in a superior court, it is subject to other constitutional provisions governing judicial power. As recognized in *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824), "the exceptions from a power mark its extent." Simply put, a court lacks authority to act in ways prohibited by the Constitution (Cal. Const. Art I, § 26–constitutional provisions are mandatory and prohibitory). Put bluntly, no court has subject matter jurisdiction to violate constitutional protections.

Subject matter jurisdiction is not established merely by an initial vesting of power but requires pleadings sufficient to invoke the court's authority (*Buis v. State*, 1990 OK CR 28, p.4 (1990)). A party seeking judicial relief must have standing for each type of relief requested (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal. 4th 352 (1999); *Summers v. Earth Island Institute*, 555 U.S. 488 (2009)). A lack of standing constitutes a jurisdictional defect (*People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018)).

The Opposition declares "the trial court had the requisite subject matter and personal jurisdiction to render judgment in this matter" yet fails to address any of the substantive arguments evidencing the opposite. In this case, Humphreys and Bissell lacked both the capacity and standing to exercise California's executive power to criminally prosecute the Defendant. This power is exclusively vested in the Governor under Art. V, § 1. As noted in

*Robertson v. Watson*, 560 U.S. 272, 282-83 (2010), citing Locke's Second Treatise, "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting on behalf of all the people." Additionally, they lack standing to seek an award that violates the constitutional protections outlined in the Motion.

Finally, the public policy of finality of judgments and/or the doctrine of res judicata cannot overrule Constitutional protections: "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them" (*Miranda v. Arizona,* 384 U.S. 436, 491 (1966); Cal. Const. Art I. § 26). Plaintiff's rights to liberty, property, privacy, and due/judicial process are protected by Cal. Const. Art. §§ 1, 7, 9, 17, U.S. Const. Art. I, § 10, and the Ninth and Tenth Amendments thereto, and clauses 20, 34, 39, 40 of the Magna Carta of 1215, all of which have been violated by the Humphreys, Bissell, and the Judges/Justices *ultra vires* and *coram non judice* actions.

## II. OPPOSITION ARGUMENTS AND COUNTERARGUMENTS

### A. Opposition Argument: The Motion Is a Repetitive Refiling of the 2019 Motion to Vacate, Lacking Merit

**Humphreys' Position:**

The Opposition contends that the Motion is a rehash of a February 2019 motion denied by Judge Di Cesare, who held that arguments were previously raised and rejected, and the trial court lacks jurisdiction post-remittitur to entertain attacks on the judgment's merits, citing *People v. Dutra* (2006) 145 Cal. App. 4th 1359, 1365–1366 (Opposition, p. 2).

**Counterargument:**

1. **Nature of the Motion**: The Motion is an independent action in equity, not a statutory motion under CCP § 473, invoking the Court's inherent equitable power to vacate void judgments at any time due to lack of jurisdiction or extrinsic fraud (Motion p.2; First Amended Declaration [Decl.] ¶ 3). A prior motion to vacate is not a bar to an independent action in equity which is an entirely distinct separate proceeding when new facts are raised and Defendant never received a full, fair, and impartial hearing in any related proceeding before this court or the court of appeal as evidenced in the 2025

Motion. Additionally, the trial of an issue on a motion must be as comprehensive as the trial of the same issue if the former is to bar the latter. (*Rose v Fuqua,* 200 Cal.App.2d 719, 724 (1962)). Defendant's 2025 action presents substantial new evidence which was never heard at the prior Motion. More importantly, the prior Motion is no bar to this action because it itself is void as it rests on two void judgments (trial and appeal) and cannot, therefore, be a bar to this action. "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. **Being worthless in itself, <u>all proceedings founded upon it are equally worthless</u>. It neither binds nor bars any one"** (*Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898)(Bolded underlined emphasis added); *Elliot v. Piersol*, 26 U.S. 328, 340 (1828)). Additionally: 1) *Dutra* applies to valid judgments, not void ones, which are nullities subject to direct and collateral attack (*Rochin v. Pat Johnson Mfg. Co.,* 67 Cal. App. 4th 1228, 1239 (1998)); and 2) the Humphreys failed to meet their burden to sustain the Court's jurisdiction on direct attack at the prior Motion violating due process. In sum, the order denying the Motion to Vacate, like the "judgements" at "trial" and "appeal", is an abomination of justice and utterly void/ "worthless".

2. **Legal Authorities**:
    - *Olivera v. Grace,* 19 Cal. 2d 570, 574 (1942): Courts possess inherent equitable jurisdiction to vacate void judgments, independent of statutory limits.
    - *Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018): A judgment void on its face due to jurisdictional defects is subject to attack at any time.
    - *Elliot v. Piersol*, 26 U.S. 328, 340 (1828): Void judgments "neither bind nor bar any one" and may be challenged prior to reversal.
    - *Carr v. Kamins*, 151 Cal. App. 4th 929, 933–934 (2007): An independent action in equity is permissible even after prior motions to vacate, particularly with new evidence of fraud.
3. **New Evidence and Law**: The Motion presents new evidence, including Bryan Nickel's report (Ex. 6), Robert Brockway's deposition (Ex. 9), and Judge Chaffee's CHP interview (Ex. 11) (First Am. Decl. ¶¶ 23-32, 35), which demonstrate extrinsic fraud by the Humphreys and Bissell in concealing The Spartan Associates, Inc.'s role as the

licensed contractor. Defendant did not present this evidence at the 2017 trial due to the following:

a. **Humphreys' Concealment**: Under California Evidence Code § 500, the Humphreys bore the burden to prove all elements of their § 7031(b) claim, including that Defendant personally performed unlicensed work (CACI § 4560(3)) and a was a "person" required to be licensed. Their failure to disclose evidence confirming Spartan's role and their false assertion that Defendant acted individually constituted extrinsic fraud and fraud on the court (see B3, infra), relieving Defendant of any obligation to disprove a negative (*People v. Montes*, 58 Cal. 4th 809, 863(2014)).

b. **Spartan's Counsel's Failure**: Counsel for The Spartan Associates, Inc. failed to elicit testimony introducing the Nickel and Brockway reports (Ex. 6, 9), which would have disproved the Humphreys' claim, and failed to raise the Humphreys' Motion for Summary Judgment (ROA 66, p. ii), which admitted Spartan was the contractor (Decl. ¶ 9). Defendant relied on counsel's representation of the corporation, and these omissions prejudiced his defense.

c. **Emotional Distress**: Defendant's severe anxiety and emotional distress during the trial, documented in prior declarations (ROA 267, p. 3; ROA 294, Ex. E; Decl. ¶¶ 16–19), impaired his ability to form coherent questions or present evidence effectively. The trial record, especially the Clerk's Transcript (Ex.1), reflects this distress, limiting his capacity to mount a defense.

d. **Post-Trial Acquisition**: Certain evidence, such as the CHP interview with Judge Chaffee dated April 16, 2024 (Ex. 11), was obtained post-trial, rendering it impossible to present in 2017.

These factors negate any procedural bar, including the failure to raise the statute of limitations defense, as addressed below, as independent actions in equity permit new evidence and issues to establish fraud or jurisdictional defects (*Carr v. Kamins,* 151 Cal. App. 4th 929, 933–934 (2007); *Rochin v. Pat Johnson Mfg. Co.,* 67 Cal. App. 4th 1228, 1239 (1998)). New law, including *Liu v. SEC,* 591 U.S. 71 (2020)

and *Eisenberg Village v. Suffolk Constr. Co.,* 53 Cal. App. 5th 1201 (2020), supports the penal nature of § 7031(a) and (b), rendering *Dutra* inapposite.

**Conclusion:**

The Motion's equitable basis, supported by new evidence and law, distinguishes it from the 2019 motion, warranting relief. The Opposition's reliance on *Dutra* misapplies a rule for valid judgments to a void one.

**B. Opposition Argument: Res Judicata Bars the Motion**

**Humphreys' Position:**

The Opposition asserts that res judicata and judicial estoppel preclude the Motion, as issues were raised or could have been raised in the 2017 trial, appeal, and subsequent petitions.

**Counterargument:**

1. **Void Judgments Lack Preclusion**: Res judicata and collateral estoppel do not apply to void judgments, which lack legal effect due to jurisdictional defects or extrinsic fraud. The Humphreys' unauthorized penal prosecution under § 7031(b) and concealment of its criminal nature constituted extrinsic fraud, preventing a fair hearing (Decl. ¶¶ 2-5,). It is the general rule that a court lacking jurisdiction in its most fundamental sense—that is, jurisdiction over the subject matter or the parties—has no power to hear or determine the case, and any judgment or order it may render is void. Defendant is baffled as to how—as Bissell and the Humphreys assert— a court acting without authority could possibly produce a valid final judgment. "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one" *Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898); *Elliot v. Piersol*, 26 U.S. 328, 340 (1828). Due process of law requires that a court have jurisdiction over the person and the subject matter before it may act, and

any action taken without such jurisdiction violates the constitutional guarantee of a fair hearing. There has been no fair hearing before this court or the court of appeal because both courts acted without personal and subject matter jurisdiction (Motion pp.18-23 "Extrinsic Fraud and Fraud on the Court").

2. **Legal Authorities**:
    - *Rochin v. Pat Johnson Mfg. Co.*, 67 Cal. App. 4th 1228, 1239 (1998): Res judicata is inapplicable to void judgments lacking jurisdiction.
    - *Caldwell v. Taylor, 218 Cal. 471 (1933)*: Preclusion cannot shield fraudulent judgments, as it undermines judicial integrity; Judgments procured by fraud on the court are not entitled to res judicata.
3. **New Evidence and Law**: The Motion also introduces new evidence (Ex. 6, 9, 11; First Amen. Decl. ¶¶ 23-32, 35) and new law (*Liu v. SEC*, *Eisenberg Village*; Motion, pp. 10-11), which also negates res judicata by altering the legal landscape (*People v. Boyer*, 38 Cal. 4th 412, 442 (2006)). As previously addressed, Defendant did not present this evidence at trial due to: 1) his emotional distress; 2)Spartan's counsel's failure to introduce these critical reports or raise the Humphreys' prior "undisputed" factual admissions; 3) it wasn't his obligation to prove a negative; and, 4) post-trial acquisition, all justifying equitable relief. While some of this evidence could be seen as intrinsic fraud pertaining to adjudication of the merits within the proceedings, Defendant argues that it is actually extrinsic fraud because it was part of Humphreys and Bissell conspiracy to fraudulently procure subject matter jurisdiction and obtain relief by concealing material evidence that would have negated their right to relief by failing to state a claim, assuming arguendo they had the capacity to state the § 7031 claim. The court lacks subject matter jurisdiction to award a party relief when they have failed to state a claim (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528 (2021)). Additionally, Bissell's deliberate misrepresentation of the legal landscape, omitting *Liu v. SEC* and mischaracterizing *Eisenberg Village*'s punitive holding, as addressed below, further supports vacatur by continuing to perpetuate fraud on the court and conceal evidence of the extrinsic nature of the fraud.
4. **Defendant Has Never Been Heard**: While proceedings have indeed taken place in buildings called courts, Defendant has never in truth been heard. No judge has ever

met Defendants arguments meaningfully and substantively by providing a competent analysis to affirmatively evidence under law that the court had personal and subject matter jurisdiction to allow a criminal prosecution disguised as a civil case to proceed without any of the mandatory heightened protections and then fine him $930,000. Surely if Defendant's arguments to the contrary were so incorrect, it should be relatively easy to provide competent authority he is wrong. Instead, every "judge" has refused to offer this meaningful and substantive response, denying Defendant full, fair, impartial trial (and independent appeal and vacate hearings when sitting in review/appellate capacity). "Due process of law does not mean according to the whim, caprice, or will of a judge, [citation]; it means according to law" *In re Buchman's Est.*, 123 Cal. App. 2d 546, 559–60 (1954).

5. **Response to Cited Cases**: *Busick* and *Federated Dept. Stores* address valid judgments, not void ones. *Torrey Pines* and *Rubenstein* do not involve extrinsic fraud or jurisdictional defects, rendering them inapposite.

**Conclusion:**

The Opposition's preclusion argument fails, as the judgment's voidness and extrinsic fraud exempt it from res judicata. New evidence and law also justify renewed scrutiny.

## C. Opposition Argument: The Judgment Is Not Void

**Humphreys' Position:**

The Opposition argues that *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020) does not void the judgment, as it only clarified the statute of limitations for § 7031 actions, and Defendant failed to raise this defense at trial. No substantive change in law invalidates § 7031(b).

**Counterargument:**

1. **Penal Nature of § 7031(b)**: The Motion establishes that the judgment is void because § 7031(b) imposes a penal forfeiture, not equitable disgorgement, as confirmed

by *Eisenberg Village*, 53 Cal. App. 5th 1201, 1212 (2020). *Liu v. SEC*, 591 U.S. 71, 79 (2020) limits equitable disgorgement to net profits, unlike the $848,000 award, which included no offsets, rendering it an unconstitutional bill of pains and penalties.

2. **Lack of Evidence and Jurisdiction**: The judgment violates due/judicial process, as no evidence demonstrated Defendant personally performed licensed work, as required by CACI 4560(3) (Decl. ¶¶ 12–13, 15) or was a "person" required to be licensed (*United States v. Bass*, 784 F.2d 1282, 1284 (5th Cir. 1986) (whether person/entity is subject to the statutory requirement is an essential element of the offense).The Humphreys' unauthorized prosecution lacked executive authority and the court had no authority to impose an excessive fine in violation of Art. I. § 7, further voiding the judgment.
3. **Legal Authorities**:
    - *Eisenberg Village v. Suffolk Constr. Co.,* 53 Cal. App. 5th 1201, 1212 (2020): § 7031(b) is a punitive forfeiture, not an equitable remedy.
    - *Liu v. SEC,* 591 U.S. 71, 79 (2020): Disgorgement requires deduction of expenses, unlike § 7031(b)'s total forfeiture.
    - *Hale v. Morgan*, 22 Cal. 3d 388, 398–401 (1978): Penal statutes impose disproportionate sanctions without proof of harm.
    - *Thompson v. Louisville,* 362 U.S. 199, 204 (1960): Judgments lacking evidentiary support violate due process.
    - *People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020), Excessive fines require proportionality and ability to pay analysis, absent here (Decl. ¶ 14).
4. **Response to *Eisenberg Village***: The Opposition's claim that *Eisenberg* only addressed the statute of limitations and that Defendant had a duty to raise it at trial is meritless. The Motion relies on *Eisenberg*'s recognition of § 7031(b)'s punitive nature, not its statute of limitations holding, to argue the judgment is void as an unauthorized criminal penalty (Motion, pp. 9-10). As an independent action in equity, the Motion is not subject to procedural bars like waiver of affirmative defenses, as void judgments lack legal effect (*Rochin v. Pat Johnson Mfg. Co.,* 67 Cal. App. 4th 1228, 1239 (1998); *Olivera v. Grace,* 19 Cal. 2d 570, 574 (1942)). Moreover, *Eisenberg* was decided in 2020, three years after the 2017 trial, and its clarification of the one-year statute of limitations under CCP § 340(a) was not established law at the time,

excusing any failure to plead it (*People v. Boyer*, 38 Cal. 4th 412, 442 (2006)). The answer to the Humphreys' First Amended Cross-Complaint (ROA 166) was drafted by counsel for The Spartan Associates, Inc., who included Defendant's name, but Defendant had little knowledge of applicable defenses, relying on counsel's expertise (Decl. ¶ 9). This reliance, coupled with counsel's failure to plead the statute of limitations, negates any waiver in an equitable action. The Humphreys' concealment of evidence (Ex. 6, 9; Frist Amen. Decl. ¶¶ 23-26) and misrepresentation of the action as civil (Decl. ¶¶ 4-11) constituted extrinsic fraud, preventing a fair hearing and relieving Defendant of any duty to raise procedural defenses (*Estate of Sanders,* 40 Cal. 3d 607, 614 (1985). Defendant's severe emotional distress during trial (Decl. ¶¶ 18–19; ROA 267, 294) further impaired his ability to assert defenses, as addressed in Section II.A.3, supra.

5. **Liu v. SEC and Bissell's Deliberate Misrepresentation**:
    - The Opposition's assertion of "no substantive change in law" (Opposition, p. 7) is a deliberate attempt to mislead the Court, violating Bissell's ethical duties under Cal. Bus. & Prof. Code § 6068 (d), which prohibits misleading the judge by false statements of law, and California Rules of Professional Conduct, Rule 3.3(a)(1), which requires candor regarding material legal authority (Decl. ¶¶ 16, 25–27). First, Bissell entirely omits *Liu v. SEC* (2020) 591 U.S. 71, which defined disgorgement as limited to net profits after deducting legitimate expenses, directly undermining the appellate court's 2018 ruling (RJN Ex. 2) that § 7031(b) is an equitable remedy. Second, Bissell mischaracterizes *Eisenberg Village* (2020) 53 Cal. App. 5th 1201 by claiming it only addressed the statute of limitations, ignoring its published holding that § 7031(b) imposes a punitive forfeiture, not an equitable remedy (53 Cal. App. 5th at 1212). These omissions and misrepresentations are not mere errors but a calculated effort to conceal material law supporting Defendant's claim that the $848,000 award is a punitive forfeiture, not disgorgement, rendering the judgment void as an unauthorized criminal penalty. Bissell's conduct, coupled with the concealment of evidence addressed in Section II.A.3, supra, perpetuates the Humphreys' extrinsic fraud in mislabeling a penal action as civil, denying Defendant criminal safeguards (Decl. ¶¶ 4–10). This corrupts the

judicial process, mandating vacatur to protect the Court's integrity (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.* (1944) 322 U.S. 238, 246).

**Conclusion:**

The judgment is void due to its penal nature, lack of evidentiary support, and unauthorized prosecution. *Liu* and *Eisenberg* provide new legal grounds, and Bissell's deliberate misrepresentation exacerbates the fraud.

## D. Opposition Argument: The Trial Court Had Subject Matter and Personal Jurisdiction

**Humphreys' Position:**

The Opposition claims this court had subject matter jurisdiction under Cal. Const. Art. VI, § 10, as a civil action, and personal jurisdiction over Defendant due to his general appearance, per CCP § 410.50 and *Pfeiffer v. Ash*, 92 Cal. App. 2d 102 (1949) (Opposition, pp. 7–8).

**Counterargument:**

1. **Lack of Subject Matter Jurisdiction**: The trial court lacked subject matter jurisdiction, as the Humphreys' § 7031(b) action was an unauthorized penal prosecution requiring executive authority under Cal. Const. Art. V, § 1. No sworn criminal complaint was filed, rendering the action ultra vires (Motion, p. 12). As held in *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 543 (1949) "subject matter jurisdiction may not be conferred by consent, waiver, agreement, acquiescence or estoppel" and a lack of subject matter jurisdiction is so fundamental that it may be raised at any time (internal quotations and citations omitted). The court, proceeding under § 7031(b), exercised statutory, not common law general jurisdiction, which must appear on the record. Since § 7031(b) is penal, imposing a "stiff all-or-nothing penalty" (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005)), and no criminal

complaint was filed, jurisdiction was absent, rendering the judgment void (*Albrecht v. United States*, 273 U.S. 1, 8 (1927)). The Humphreys' reliance on Cal. Const. Art. VI, § 10 for general civil jurisdiction fails to address specific defects in this case, including the penal nature, absence of a criminal complaint, and constitutional violations (e.g., due process, excessive fines; Motion, pp. 15-18).

2. **Lack of Personal Jurisdiction**: Personal jurisdiction was absent due to no service of a criminal complaint and misrepresentation of the action as civil, inducing Defendant's participation without criminal safeguards (Motion, pp. 15–16; Decl. ¶¶ 4–10).
3. **Due Process Violation by Burden-Shifting**: The Humphreys' failure to prove their standing and capacity to prosecute a § 7031(b) action, despite Defendant's jurisdictional challenges at trial (e.g., ROA 244, Bill of Particulars), on appeal (ROA 300- Ex. A), and in the Motion, constitutes an additional due process violation. The Humphreys bore the burden to establish standing and capacity, including executive authority to seek penal relief under § 7031(b), yet failed to address these issues in their Opposition, on appeal, or at trial (e.g *McNutt v. General Motors Acceptance Corp.,* 298 U.S. 178, 189 (1936)). Their reliance on Cal. Const. Art. VI, § 10 for general civil jurisdiction evades specific defects, such as the penal nature of § 7031(b), absence of a criminal complaint, and constitutional violations, which deprived the court of jurisdiction (*Drink Tank Ventures LLC*, supra). The California Supreme Court defines standing as the legal right to sue, requiring a plaintiff to show (1) a concrete and particularized injury-in-fact, (2) a causal link to the defendant's conduct, and (3) a likelihood of redress by the court, as articulated in cases like *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (21 Cal. 4th 352, 1999) and *California Medical Association v. Aetna Health of California Inc.* (14 Cal. 5th 1075, 2023). Unlike the federal Constitution, the California Constitution does not explicitly impose a "case or controversy" requirement; however, these standing elements effectively incorporate similar principles to ensure only parties with a genuine stake—demonstrating actual harm, not hypothetical grievances—may litigate, as clarified in *Associated Builders* (1999). The Humphreys cross-complaint, the judgment roll itself, and trial evidence, fail to meet a single element of standing. The Humphreys failure to sustain their burden of proof on this issue improperly shifts

the burden to Defendant to disprove their authority, violating due process by denying a fair opportunity to contest jurisdiction and forcing Defendant to litigate under an unlawful framework. The Humphreys' silence entrenches the judgment's voidness.

4. **Legal Authorities**:
   - *Albrecht v. United States*, 273 U.S. 1, 8 (1927): Lack of a formal criminal accusation voids jurisdiction.
   - *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018): Lack of standing is a jurisdictional defect.
   - *In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006): Denial of criminal safeguards in punitive actions voids judgments.
5. **Response to Cited Cases**: *Pfeiffer v. Ash* assumes a valid civil action, not a covert penal prosecution. Defendant's appearance was induced by extrinsic fraud (Decl. ¶¶ 4–10), negating consent (*Kulchar v. Kulchar,* 1 Cal. 3d 467, 471 (1969). Cal. Const. Art. VI, § 10 does not authorize adjudication of ultra vires prosecutions. The Humphreys ignore that Art. VI, § 10 is subject to other Constitutional and statutory provisions defining the nature and scope of the Court's jurisdiction, such as Art V, § 1 requiring criminal prosecutions to be brought by and under the authority of the executive. "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). The Court's jurisdiction is not unlimited as they fraudulently imply in further attempt to deceive the court.
6. **Fraud and Standing**: The Humphreys' concealment of evidence (Ex. 6, 9; First Amen. Decl. ¶¶ 23-26) and false claim that Defendant performed unlicensed work (Ex. 5, 6, 9) constitute fraud on the court, stripping jurisdiction (*Hazel-Atlas Glass Co.* 322 U.S. 238, 246 (1944)).

**Conclusion:**

The trial court lacked jurisdiction due to the Humphreys' unauthorized prosecution, fraud-induced appearance, and failure to prove standing, violating due process. The Opposition's reliance on general jurisdiction principles is misplaced. The court of appeal also lacked personal and subject matter jurisdiction to affirm this court's judgment.

**E. Both this Court and the Court of Appeal Lacked Subject Matter Jurisdiction to Impose an Excessive Fine**

The Humphreys failed to provide any authority to sustain their burden of proof that they have standing to receive the ~$930,000 penalty imposed by this Court and affirmed on appeal.

This court lacked subject matter jurisdiction to impose the $930,000 penalty under California Business and Professions Code § 7031(a) and (b), as it constituted an excessive fine in violation of Cal. Const. Art. I, § 17, rendering the judgment void. Under the *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), factors adopted in *People v. Gonzalez*, 241 Cal.App.4th 1103 (2015), § 7031(a) and (b) are criminal due to their punitive intent and effect. Legislative history (RJN Ex. 13, p. 860) reveals a punitive purpose, imposing a "stiff all-or-nothing penalty" (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005)) without offsets, unlike equitable disgorgement (*Liu v. SEC*, 591 U.S. 71, 79 (2020)), as confirmed by *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020). The penalty, 186 times § 7028's $5,000 fine and 40 times Defendant's net worth (Decl. ¶ 12), promotes retribution and deterrence (factor 4), targets criminal unlicensed contracting (factor 5), and is historically punitive (factor 2) (*Hale v. Morgan*, 22 Cal. 3d 388, 398-401 (1978) (statutory penalties that are disproportionate and lack remedial purpose are invalid, reinforcing § 7031's punitive nature), It imposes severe economic restraint via license suspension (factor 1) (Decl. ¶ 2), lacks scienter requirement (factor 3), and is excessive (factor 7) without remedial purpose (factor 6), unjustly enriching claimants with $930,000 in remodel value plus $848,000 (ROA 193; Decl. ¶¶ 10-11). This disproportionate fine, imposed without proportionality or ability-to-pay analysis (*People v. Cowan*, 47 Cal. App. 5th 32, 44, (2020)), meets *Gonzalez*'s "clearest proof" standard, constituting a criminal penalty. The court, lacking jurisdiction to impose such a fine absent executive authority (Cal. Const. Art. V, § 1) and a criminal complaint (*Albrecht v. United States*, 273 U.S. 1, 8 (1927)), acted ultra vires, mandating vacatur (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 541 (2021)).

## F. Opposition Argument: Sanctions Are Warranted Under CCP § 128.5

**Humphreys' Position:**

The Opposition requests sanctions under CCP § 128.5, alleging the Motion is frivolous, filed in bad faith, and intended to harass, citing Defendant's June 4, 2025, email as disrespectful. The Humphreys seek $3,600 in attorney fees (Opposition, pp. 8–10; Bissell Decl. ¶ 12).

**Counterargument:**

1. **Merit of the Motion**: The Motion is not frivolous, as it raises legitimate claims of constitutional violations, extrinsic fraud, and jurisdictional defects, supported by new evidence (Ex. 6, 9, 11; First Amen. Decl. ¶¶ 23-26, 35) and law (*Liu*, *Eisenberg*). It is brought in good faith to redress a void judgment.
2. **Audacious Sanctions Request**: The Humphreys' and Bissell's accusations of vexatious litigation and harassment, coupled with their sanctions request, are audacious given their egregious misconduct in pursuing an unauthorized penal action under § 7031(b), concealing evidence (Ex. 6, 9; First Amen. Decl. ¶¶ 23-26), and misrepresenting the action as civil to deprive Defendant of criminal safeguards (First Amen. Decl. ¶¶ 6–10). Their attempt to sanction Defendant for exposing their fraud deflects from their own bad faith, which corrupted the judicial process and unlawfully deprived Defendant of property (Decl. ¶¶ 4, 14, 16–19). This conduct, not Defendant's Motion, warrants scrutiny (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.* 322 U.S. 238, 246. (1944)).
3. **Protected Speech**: The June 4, 2025, email expresses Defendant's belief in systemic judicial corruption based on personal experience and his forensic seven-year investigation thereof (First. Amen. Decl. ¶¶ 16, 20), constituting protected speech under the First Amendment, not harassment.
4. **Legal Authorities**:
   - *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913–915 (1982): Public advocacy is protected unless it incites imminent lawless action.
   - *In re Marriage of Flaherty*, 31 Cal. 3d 637, 650 (1982): Sanctions require clear evidence of bad faith; colorable arguments preclude sanctions.

5. **Bissell's Misconduct**: Bissell's concealment of *Liu v. SEC* and evidence (Ex. 6, 9; Decl. ¶¶ 25–27), and his deliberate misrepresentation of *Eisenberg*'s punitive holding (Section II.C.5, supra), violate Cal. Bus. & Prof. Code § 6068(a)(c) and (d) and Rule 3.3(a)(1), undermining his standing to seek sanctions (*Shelton*, supra).
6. **Conclusion**: The Motion's merit, protected speech, and the Humphreys' misconduct preclude sanctions. Bissell's audacious request deflects from their fraud, warranting denial.

## III. CONCLUSION

The Motion is a meritorious independent action in equity to vacate a void judgment, supported by new evidence and law. The Opposition fails to refute the judgment's voidness due to lack of jurisdiction, extrinsic fraud, and constitutional violations, exacerbated by Bissell's deliberate misrepresentation of *Liu v. SEC* and *Eisenberg Village*, and the Humphreys' failure to prove standing, violating due process. The audacious sanctions request is baseless, reflecting the Humphreys' bad faith. The Court is respectfully requested to vacate the void judgment (ROA 200), deny sanctions, and grant all relief prayed in the Motion, including restitution of all rights and property lost as a result of the judgment, licensing suspension, and declaratory relief. Additionally, if the court determines it lacks authority to vacate the void appellate judgment, this would not preclude it from vacating its own judgment as "a court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree—a void order" (*MacMillan Petroleum Corp. v. Griffin*, 99 Cal. App. 2d 523, 533 (1950)).

Dated: June 16, 2025

By:

Adam Bereki

**DECLARATION OF ADAM BEREKI IN SUPPORT OF REPLY TO OPPOSITION TO MOTION TO VACATE VOID JUDGMENT**

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I have personal knowledge of the facts herein, except where stated on information and belief.
2. This declaration supplements my First Amended Declaration filed in support of the Motion to Vacate Void Judgment, addressing why I did not present certain evidence or raise the statute of limitations defense at the 2017 trial, responding to the Opposition's misrepresentations, and addressing the Humphreys' failure to prove standing.
3. Under California Evidence Code § 500, the Humphreys bore the burden to prove all elements of their § 7031(b) claim, including that I personally performed unlicensed work. They failed to disclose evidence like the Nickel and Brockway reports, falsely alleging I acted individually, which was not my duty to disprove.
4. Counsel for The Spartan Associates, Inc., representing the corporation, drafted my answer to the Humphreys' First Amended Cross-Complaint (ROA 166) and included my name on it. At the time, I had little knowledge of the defenses I could assert, relying on counsel's expertise. Counsel failed to plead the statute of limitations under CCP § 340(a) and failed to elicit testimony at trial introducing the Nickel and Brockway reports (Ex. 6, 9), which would have disproved the Humphreys' claim, or raise the Humphreys' Motion for Summary Judgment (ROA 66, p. ii), which admitted Spartan was the contractor. These omissions prejudiced my defense (First Amen Decl. ¶ 9).
5. During the trial, I suffered severe anxiety and emotional distress, as documented in prior declarations (ROA 267, p. 3; ROA 294-Ex. E; First Amen. Decl. ¶¶ 18–19). The trial record reflects my inability to form coherent questions or present evidence effectively, further limiting my defense.
6. The one-year statute of limitations under CCP § 340(a), clarified by *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020), was not established law in 2017. My reliance on Spartan's counsel, the Humphreys' misrepresentation of the action as civil, and my emotional distress prevented me from raising this defense (Decl. ¶¶ 6–10, 18–19).

7. Bissell's statement in the Opposition that there is "no substantive change in law" is a deliberate misrepresentation, as it omits *Liu v. SEC*, 591 U.S. 71 (2020), which defined disgorgement, and mischaracterizes *Eisenberg Village* as addressing only the statute of limitations, ignoring its published holding that § 7031(b) is punitive, not equitable (First Amen. Decl. ¶¶ 16). This misrepresentation misleads the Court and perpetuates the fraud in this case.
8. The Humphreys' accusation of vexatious litigation and request for sanctions are audacious, as they pursued an unauthorized penal action, concealed evidence, and misrepresented the action as civil to deprive me of rights and property, corrupting the judicial process (Decl. ¶¶ 16, 18–20). Their attempt to sanction me for exposing their misconduct is egregious and in bad faith.
9. The Humphreys failed to prove their standing and capacity to prosecute a § 7031(b) action, despite my jurisdictional challenges at trial (ROA 244), on appeal (ROA 300–Ex. A), in the prior Motion to Vacate, and in this Independent Action in Equity. Their reliance on Cal. Const. Art. VI, § 10 for general civil jurisdiction does not address the penal nature of § 7031(b), absence of a criminal complaint, or constitutional violations, improperly shifting the burden to me to disprove their authority, violating due process (Decl. ¶¶ 40–44).
10. Certain evidence, such as the CHP interview with Judge Chaffee dated April 16, 2024 (Ex. 11), was obtained post-trial and could not have been presented in 2017.
11. I do not believe Karen Humphreys, Gary Humphreys, and/or William Bissell were vested with any executive power of the State of California at the time of their complaint under §7031(b) and never have been at any time during this case. I intend to take the testimony of William Bissell at the hearing on this action to establish this belief as fact.
12. As a natural person, I am endowed with inalienable rights to life, liberty, and property as recognized by California Constitution, Article I, § 1. I reject any legal framework that binds me through fraud or duress, asserting my inalienable rights against any unknown summary and arbitrary jurisdiction claiming authority without my informed consent and in violation of the Constitutions of California and the United States.
13. I unequivocally revoke all consent, express or implied, to the California contractor licensing laws (Cal. Bus. & Prof. Code § 7000 et seq.), the proceedings in Case Nos.

30-2015-00805807 and G055075, and the $930,000 judgment entered on April 20, 2017 (ROA 193, 200). My consent was obtained through systemic fraud and duress by the state's statutory framework and the actions of Karen and Gary Humphreys, William Bissell, and David Chaffee, rendering it void under California Civil Code §§ 1566–1568.

14. The state's contractor licensing laws, particularly § 7031(a) and (b), misrepresent penal sanctions as civil remedies (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020)). These laws coerced my participation in the licensing system and court proceedings by concealing their punitive intent, imposing a $930,000 penalty without evidence of harm, profit, or my personal performance of licensed work (Decl. ¶¶ 10, 15; ROA 144). The absence of executive authority for this private prosecution (Cal. Const. Art. V, § 1) and lack of criminal safeguards misled me into waiving my rights to a jury trial and counsel (Decl. ¶¶ 6–8). The U.S. Supreme Court has held that a waiver of rights must be knowing, voluntary, and intelligent (e.g. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). I have not knowingly, voluntarily, or intelligently waived any rights. Any consent procured through systemic statutory deception is void. Civil Code § 1567 confirms that my consent, induced by fraud and duress, is invalid.

15. The Humphreys' cross-complaint (ROA 144) and the court's judgment, labeling a $930,000 penalty as "disgorgement" and "damages" (ROA 193, 200), perpetuated the state's fraud by concealing § 7031(b)'s punitive purpose (RJN Ex. 13, p. 860). I participated in the proceedings, waived my jury trial, and proceeded without counsel under the mistaken belief that this was a civil action, not a penal prosecution (Decl. ¶¶ 6–9). Civil Code § 1568 recognizes my consent is void as I would not have consented had I known the true nature of the action. The state's licensing laws, with threats of license suspension (§ 7071.17) and forfeiture, compelled my participation in this unknown summary and arbitrary jurisdiction, which I reject ab initio.

16. The court's judgment imposed a fraudulent constructive trust, presuming I held $930,000 unjustly, despite no evidence of funds traceable to my possession, a prerequisite for such a remedy (*Day v. Greene*, 59 Cal. 2d 404, 411 (1963); *Heckmann v. Ahmanson*, 168 Cal. App. 3d 119, 136 (1985); *Communist Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 990 (1995)). Moreover, constructive trusts

created by fraud, such as the misrepresentation of § 7031(b) as a civil remedy, are void. The absence of traceable funds or proven harm (Decl. ¶¶ 10–11) and the fraudulent imposition of the trust render it void under Civil Code § 1567, further invalidating my coerced consent.

17. I demand that this court vacate the $930,000 judgment as void for lack of jurisdiction, procured through fraud and duress (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018)). I assert my non-consent to the California contractor licensing laws and all related proceedings, rescinding my participation pursuant to Civil Code §§ 1566–1568. The court must recognize this revocation, as consent obtained through systemic coercion and fraud is null and void. I seek restoration of my inalienable rights, free from this unknown summary arbitrary jurisdiction imposed by the licensing laws, this court, and the Fourth District Court of Appeal.

Signed on June 16, 2025, at Las Vegas, Nevada.

By:

Adam Bereki

# Judicial Notice Exhibit 15.7

**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

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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

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**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.

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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.

I hereby certify the foregoing instrument consisting of 3 page(s)
is a true and correct copy of the original on file in this court.

ATTEST: (DATE) AUG 0 4 2025
DAVID H. YAMASAKI, EXECUTIVE OFFICER AND CLERK OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

BY _____, DEPUTY

E. BALDERAS

# Judicial Notice Exhibit 15.8A

Electronically Filed by Superior Court of California, County of Orange, 07/03/2025 10:43:00 AM.
30-2015-00805807-CU-CO-CJC - ROA # 415 - DAVID H. YAMASAKI, Clerk of the Court By B. Romney, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

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

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.'s:
30-2025-01482941
30-2025-01487778

Open Bankruptcy Case No: 22-12076 (Central District of California)

**VERIFIED STATEMENT TO DISQUALIFY JUDGE DAVID HESSELTINE**

Dept: C23

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

**NOTICE IS HEREBY GIVEN** that Adam Bereki, Defendant, in pro per, moves to disqualify Judge David J. Hesseltine under Code of Civil Procedure (CCP) § 170.1(a)(6)(A)(iii) for an appearance of bias, actual bias, violations of due/judicial process under California Constitution, Article I, Section 7, and bills of pains and penalties under California Constitution, Article I, Section 9, and U.S. Constitution, Article I, Section 10, pursuant to CCP § 170.3(c)(1). This motion is based on: (1) Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-01259274 (Ex. 1), creating a pecuniary interest due to potential liability for structural

jurisdictional errors depriving him of civil damages immunity; (2) his knowledge of this conflict prior to my Motion to Vacate Void Judgment filed May 28, 2025 (ROA 361, 356, 360, 386) and refusal to recuse himself; (3) his refusal to correct substantive errors in his tentative and final rulings denying my motion (Exs. 2–4); (4) his incorrect claims that my oral disqualification motion was untimely and improper; (5) his prior role as Senior Appellate Attorney at the Fourth District Court of Appeal, Division 3, suggesting professional and likely personal relationships with Justices Aronson, Goethals, and/or O'Leary, whom I allege committed structural jurisdictional errors that would also subject them to liability; (6) his potential relationships with retired Superior Court for the County of Orange Judges Di Cesare and/or Chaffee, also alleged to have committed jurisdictional errors subjecting them to liability; (7) his conduct constituting fraud on the court and perpetuating a conspiracy to procure an unlawful judgment through the unlawful enforcement of § 7031 actions; (8) his false Minute Order statement that my arguments were rejected by higher courts, despite no full, fair, or impartial judicial determination thereof; (9) his refusal to allow testimony from attorney William Bissell, critical to proving extrinsic fraud and conspiracy; (10) his enforcement of a discharged judgment, violating federal bankruptcy law; (11) his denial of my Ex Parte Application for Emergency Stay of Unlawful Detainer Action (ROA 306), filed March 14, 2025, on March 18, 2025, and Ex Parte Application for Reconsideration, filed May 21, 2025, despite notice of the bankruptcy discharge, perpetuating the harm of the void judgment and denying me restitution (Exs. 7–9); and, (12) his refusal to provide a court reporter or allow recording of proceedings, obstructing my due/judicial process right to preserve the record for appeal.

Due to systemic unlawful § 7031(b) rulings in the Superior Court of California, County of Orange (and all rulings involving public welfare and/or public regulatory and/or quasi criminal, and/or strict liability offenses where punishment of any kind is imposed in all courts throughout California)[1], I request the Judicial Council assign an impartial judge without prior § 7031(b) or rulings involving public welfare and/or public regulatory and/or quasi-criminal and strict liability offenses where punishment of any kind is imposed to avoid pecuniary

[1] Section 24 of the California Code of Civil Procedure recognizes only two kinds of actions: civil and criminal. Public regulatory, public welfare, strict liability, and/or quasi-criminal actions like § 7031(a) and (b) that impose punishment without the heightened protections required in criminal proceedings are not recognized. *Ex parte Clark*, 24 Cal.App. 389 (1914).

conflicts and vacate the judgment due to bias. I have filed a notice of appeal in the event this motion is not granted.

This statement is supported by Exhibits 1–13, the record in Case No. 30-2015-00805807, all § 7031(a) and (b) cases incorporated as if fully set forth herein, and any further evidence at a hearing, if ordered. I request judicial notice of Exhibits 1–13 and all documents in Fourth District Court of Appeal Case No. G055075, and all document in UD Case No. (30-2025-01459684) under Cal. Evid. Code § 452(d). This statement has been served on Judge Hesseltine, Presiding Judge Maria D. Hernandez, the Judicial Council of California by U.S.P.S. first-class mail, and on opposing parties Karen and Gary Humphreys through their attorney, William Bissell, by email (see Proofs of Service).

**FACTUAL BASIS FOR DISQUALIFICATION**

I, Adam Bereki, have personal knowledge of the facts herein, except where stated on information and belief, and declare them true under penalty of perjury under the laws of the State of California:

1. On May 28, 2025, I filed a Motion to Vacate Void Judgment, Case No. 30-2015-00805807 (ROA 361) arguing the $930,000 judgment under Cal. Bus. & Prof. Code § 7031(a) and (b) is void due to extrinsic fraud (Humphreys' misrepresentation of § 7031(a) and (b) as civil, causing jury trial waiver), structural jurisdictional defects (no standing, usurpation of executive authority, denial of counsel, and all heightened protections required in criminal proceedings), and unconstitutionality (excessive fine, denial of criminal protections) accord: *Albrecht v. United States*, 273 U.S. 1, 8 (1927) (no standing for private parties to enforce penal statutes); *People v. Cowan*, 47 Cal.App.5th 32, 43 (2020) (penalties violate excessive fines clause if disproportionate and ability to pay not considered); *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (courts lack power to affirm void judgments). My intent was to invoke the court's equitable jurisdiction as an independent action in equity (ROA 361, First Am. Decl. ¶ 3 (ROA 369). *Bacon v. Bacon*, 150 Cal. 477, 482 (1907) (courts have equitable jurisdiction to vacate judgments for fraud). My restitution claim, including vacatur and damages minimally $5 million, was abandoned to me on December 31, 2024, in bankruptcy

Case No. 8:22-BK-12076-SC (Ex. 6, Abandonment Order and Motion to Compel Abandonment). New evidence and law support my claims: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020) (Bus. & Prof. Code § 7031(b) is a penalty); *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement limited to net profits, not penalties).

2. On June 26, 2025, I orally moved to disqualify Judge Hesseltine, citing his rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-01259274 (Ex. 1) applying § 7031(b) as civil and awarding $280,037.49, and his refusal to correct structural jurisdictional errors in the tentative ruling (Ex. 2). He denied the motion as improper and untimely, stating, "The court had already ruled in this matter, so in terms of disqualification for the ruling on this particular motion, that is not appropriate since it was not made until after the ruling was made" (Ex. 3- Minute Order, Ex. 4 Reporter's Transcript). This is incorrect, as it was a good-faith effort to prevent due/judicial process violations, followed by this statement. The *Moorefield* ruling conflicts with my motion's arguments that § 7031(b) is penal, creating a duty to recuse, CCP § 170.3(a)(1), in addition to the duty not to violation due/ judicial process, Cal. Const; Art. I, §§ 7, 9, 26, U.S. Const. Art. I, § 10.

3. Approximately ten days before the June 26, 2025, hearing, I discovered the *Moorefield* conflict but allowed Hesseltine the opportunity to abide his sworn duties and to rule honorably and lawfully. Upon receiving his tentative ruling prior to the hearing, I identified structural jurisdictional errors, raised them at the hearing, and moved to disqualify him when he refused to correct them because they deprived him of subject matter jurisdiction to affirm a void judgment pursuant to *Elliot v. Lessee of Piersol,* 26 U.S. 328, 341 (1828)[2] and/or to violate due process *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (judgments in violation of due process are void); Art. I, §§ 7, 9, 26, U.S. Const.

[2] "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers."

Art. I, § 10. He denied the motion to disqualify as untimely and improper (Ex. 3), despite my timely raising bias after his ruling showed partiality.

4. Judge Hesseltine was informed of my bankruptcy discharge, Case No. 8:22-BK-12076-SC (Ex. 5) issued March 27, 2023, via my Ex Parte Application for Emergency Stay, (ROA 306) filed March 14, 2025, and by opposing counsel William Bissell at the June 26, 2025, hearing (Ex. 4, Transcript pending). He denied my Motion to Vacate, refusing to vacate the discharged and void judgment and denied restitution (Ex. 3), resulting in a bill of pains and penalties (denial of judicial determination of rights (judge acting coram non judice and imposing punishment– denial of rights to liberty and property and ~$5 million dollars in restitution).
5. On March 14, 2025, I filed an Ex Parte Application for Emergency Stay of Unlawful Detainer Action (Case No. 30-2025-01459684) (ROA 306), in the instant case, arguing the UD, initiated by Canjian Hou, stemmed from a wrongful foreclosure sale (November 18, 2024) caused by enforcement of the void $930,000 judgment. The moving papers contained a combined Ex Parte Application, a Motion to Vacate the Void Judgment in the instant case, and an answer in the UD case. While I understand this combination is procedurally improper, the papers were filed under duress as the unlawful taking/theft of my home was imminent and I had been denied relief in all branches of state and federal government (ROA 306). The Deputy Clerk gave me the choice to file certain aspects of document (Ex Parte Application/ Motion to Vacate) in the instant case, or the answer to the UD complaint in the UD case, but not both, despite my demand, forcing me to file only in the instant case. On March 17, 2025 (the day of the Ex Parte hearing) Hou's counsel filed a default request without notice. The clerk then prematurely entered default on March 18, 2025 after the request in violation of CCP § 1013.I attempted to file an answer in the UD Case on March 19, 2025, however it was again rejected by the Deputy Clerk on the grounds that a default had already been issued.
6. In the moving papers, I notified Hesseltine of the bankruptcy discharge, judgment lien avoidance, and my restitution claim, and requested a court reporter or permission to record due to financial hardship (ROA 306). At the Ex Parte hearing on March 18, 2025, Judge Hesseltine denied my Application for a stay of the

unlawful detainer action with a one-word minute order ("denied"), stating my arguments, including the claim that the 2015 judgment was void, were rejected by higher courts and barred by the law of the case doctrine (Ex. 7, Transcript, p. 4, ll. 10–20). He minimally addressed the merits, dismissing my voidness argument as unsupported by the record (Ex. 7, Transcript, p. 4, ll. 15–25 – p. 5 ll. 1-4; p. 9, ll. 18–23), and did not engage with my citations of new case law evidencing the voidness, *Eisenberg* and *Liu v. SEC* (Ex. 7, Transcript, p. 8, ll. 15–21; p. 9, ll. 1–5). Despite my claims of exhausted remedies and requests for a forum for relief, he offered no specific guidance, citing his inability to provide legal advice (Ex. 7, Transcript, p. 5, ll. 15–25; p. 7, l. 18 to p. 8, l. 14; p. 10, ll. 12–18).

7. On May 21, 2025, I filed an Ex Parte Application for Reconsideration (ROA 341) to vacate the March 18, 2025, order, stay the UD action, and restore possession, arguing the March 18th order was void for due/judicial process violations (one-word denial, failure to address harm, lack of court reporter, misleading statements) and that the UD default was unlawful due to lack of notice premature entry and lack of standing. On June 22,2025, Judge Hesseltine denied the motion (Ex. 9), again refusing to address the merits of the stay, such as irreparable harm, and deferring judgment challenges to a later hearing, while mischaracterizing the March 18 ruling as substantive when it focused on procedural issues (Ex. 8[3],

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[3] Despite Judge Hesseltine's denials of a court reporter and/or to allow me to create an audio recording of the ex parte proceedings, I recorded them anyway to prevent spoliation of evidence for appeal and/or other relevant proceedings, such as this, and to ensure my rights to due/judicial process would be fully protected. See especially *Jameson v. Desta*, 5 Cal. 5th 594, 608–09, (2018) ("Under current California law, in most civil proceedings the presence of a court reporter is required in order to obtain a verbatim record of trial court proceedings and, ultimately, the preparation of an officially recognized reporter's transcript for use on appeal. The inclusion of court reporter fees in the original court rules setting forth the categories of costs and fees to which an economically needy litigant is entitled to a waiver, as well as the explicit legislative codification of such entitlement in section 68086(b) in 2013, reflect the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California. As the Court of Appeal decision in the present case aptly demonstrates, the absence of a court reporter at trial court proceedings and the resulting lack of a verbatim record of such proceedings will frequently be fatal to a litigant's ability to have his or her claims of trial court error resolved on the merits by an appellate court. This is so because it is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error

Transcript, p. 3, ll. 15–25; p. 4, ll. 1–4; p. 5, ll. 4–8; p. 8, ll. 12–14). He provided no guidance on alternative forums for relief despite my claims of due process violations, including the March 18 default and rejected answer on March 19, 2025, directing UD issues to the UD department (Ex. 8, Transcript, p. 5, ll. 15–25; p. 6, ll. 1–20; p. 6, l. 21 to p. 7, l. 5) despite the fact that I continued to be denied a full, fair, and impartial hearing on these issues in the UD case. He reiterated that recording is not allowed in unlimited civil matters, citing statutory limits and resource constraints, despite my fee waiver and Cal. Rules of Court, Rule 1.150(d). Ex. 8, Transcript, p. 1, ll. 10–25; p. 2, ll. 1–19; p. 3, ll. 1–2.

8. At the Motion to Vacate hearing on June 26, 2025, Judge Hesseltine refused to correct errors in his tentative ruling, including misapplication of res judicata, ignoring fraud and conspiracy by the Humphreys and Bissell,and failing to address § 7031(a) and (b)'s penal nature and new case law: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020); *Liu v. SEC*, 591 U.S. 71, 79 (2020). He dismissed *Eisenberg* as a statute of limitations case (even though it held § 7031(b) imposed a penal forfeiture), stating, "I'm positive that I would never be able to convince you of anything." Shortly thereafter he closed the Zoom proceeding, refusing to engage in these substantive issues either at the hearing on in the tentative (Ex.'s 2, 3, 4).
9. Judge Hesseltine's refusal to recognize my Motion to Vacate as an independent action in equity, despite my intent (ROA 361, First Amen. Decl. ¶ 3), denied my right to invoke equitable jurisdiction. *Bacon v. Bacon*, 150 Cal. 477, 482 (1907);

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that justifies reversal of the judgment."). (Footnote and citations omitted.). Based on over 25 years of experience in civil and criminal investigations as former police officer and expert forensic investigator, my experience has shown that people who desire to tell the truth ordinarily have nothing to hide, exhibit a strong desire to be heard and to answer questions, and have no problem being recorded. On the other hand, those who seek to hide and/or conceal the truth and/or their unlawful behavior, do the opposite. I'm unable to conceive any reason why Judge Hesseltine would deny me the right to personally record the proceedings or to a court reporter other than to conceal his egregiously unconstitutional and criminal behavior.

*Olivera v. Grace*, 19 Cal.2d 570, 576 (1942); *Rose v. Fuqua*, 200 Cal.App.2d 719, 724 (1962); *Bloniarz v. Roloson*, 70 Cal.2d 143, 147 (1969).

10. Judge Hesseltine's stay, reconsideration, and Motion denials perpetuate the harm of the void judgment, enabling an unlawful default, eviction, ~$60,000 in property damage/loss, and continued involuntary servitude where I am forced to perform forensic investigation and reporting services without pay to expose the fraud and corruption that continues to be perpetrated on me to defend my rights and property.
11. To further evidence my allegations of extrinsic fraud, fraud on the court, and conspiracy between cross-complainants and their counsel, I subpoenaed their attorney, William Bissell, to appear at the Motion to Vacate/ Independent Action hearing and produce documents, but Hesseltine refused, denying critical evidence. *Rosenthal v. Great Western Fin. Sec. Corp.*, 14 Cal.4th 394, 414 (1996) (testimony required to resolve fraud).
12. Judge Hesseltine's prior role as Senior Appellate Attorney (2010–2017, per Orange County Bar Association online records) suggests relationships with Justices Aronson, Goethals, O'Leary, and retired Judges Di Cesare and Chaffee, whom I allege committed structural jurisdictional errors. I requested Judicial Council records to evidence his relationships with the Court of Appeal Justices, but they were deemed non-disclosable.
13. Judge Hesseltine's Minute Order (Ex. 3) falsely stated my arguments were rejected by the Court of Appeal, California Supreme Court, U.S. Supreme Court, U.S. District Court, and Ninth Circuit, when no full, fair, or impartial determination occurred. His conduct constitutes fraud on the court, perpetuating the Humphreys' and Bissell's conspiracy to misrepresent § 7031(a) and (b) as civil.
14. All § 7031(a) and (b) cases are incorporated as if fully set forth herein.
15. Exhibits 1–13 are true copies, except for non-substantive marks. Ex. 4 is pending from the court reporter.

Dated: July 3, 2025

By: _____

Adam Bereki

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

I, Adam Bereki, move to disqualify Judge David J. Hesseltine under CCP § 170.1(a)(6)(A)(iii) for an appearance of bias, actual bias, violations of due/judicial process under California Constitution, Article I, Section 7, and bills of pains and penalties under California Constitution, Article I, Section 9, and U.S. Constitution, Article I, Section 10. Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-01259274 (Ex. 1) applying Cal. Bus. & Prof. Code § 7031(b) as civil and awarding $280,037.49, conflict with my Motion to Vacate Void Judgment, filed May 28, 2025 (ROA 361) which argues § 7031(a) and (b) are penal and unconstitutional, creating a pecuniary interest due to potential liability. *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

Judge Hesseltine's refusal to correct errors in his tentative and final rulings (Exs. 2–4), false Minute Order statements, denial of Bissell's testimony, enforcement of a discharged judgment despite notice of my bankruptcy (Exs. 5–6), denial of my Ex Parte Application for Emergency Stay and Ex Parte Application for Reconsideration (ROA 306; Exs. 7–8), and refusal to provide a court reporter or allow recording demonstrate bias and violations of due/judicial process.

Judge Hesseltine's prior role as Senior Appellate Attorney (2010–2017) suggests personal and/or professional relationships with Justices Aronson, Goethals, O'Leary, and with retired Superior Court Judges Di Cesare and Chaffee who served in the same Superior Court, whom I allege are a part of the conspiracy to commit extrinsic fraud, fraud on the court, and perpetuate an unlawful judgment with structural jurisdictional errors, exacerbating the appearance of bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

Judge Hesseltine's conduct perpetuates a conspiracy to procure an unlawful judgment. Due to systemic unlawful § 7031(b) rulings in the Superior Court of California, County of Orange (and all rulings involving public welfare and/or public regulatory and/or quasi criminal, and/or strict liability offenses where punishment of any kind is imposed in all

courts throughout California), I request the Judicial Council assign an impartial judge without prior § 7031(b) or rulings involving public welfare and/or public regulatory and/or quasi-criminal and strict liability offenses where punishment of any kind is imposed to avoid pecuniary conflicts and vacate the judgment due to bias. I have filed a notice of appeal in the event this motion is not granted.

I have filed a notice of appeal in the event this motion is not granted.

A complaint is separately filed with the Commission on Judicial Performance, but this motion independently seeks disqualification.

## II. LEGAL STANDARD

CCP § 170.1(a)(6)(A)(iii) requires disqualification if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. *United Farm Workers of America v. Superior Court*, 170 Cal.App.3d 97, 103-104 (1985).

Actual bias or egregious conduct violating due/judicial process, Cal. Const. Art. I, § 7, or imposing bills of pains and penalties, Cal. Const. Art. I, § 9; U.S. Const. Art. I, § 10, mandates disqualification. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *People v. Freeman*, 47 Cal.4th 993, 1000 (2010).

A judge's unconstitutional application of a penal statute as civil is ultra vires. *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (courts lack power to affirm void judgments). Fraud on the court or pecuniary interests from prior rulings creates an appearance of bias. *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

Res judicata does not apply to void judgments lacking subject matter jurisdiction, as this would elevate a judge above the Constitution. *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 317 (1795). *Ex parte Giambonini*, 177 Cal. 573, 576 (1897) (judges must act within conferred power).

CCP § 170.3(a)(1) mandates recusal upon determining disqualification, and § 170.3(c)(1) allows a written verified statement after refusal, filed at the earliest practicable

opportunity. Oral motions are permissible to raise disqualification sua sponte to prevent due/judicial process violations, followed by a written statement.

## III. ARGUMENT

### A. Pecuniary Interest from *Moorefield* Conflict

Judge Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield*, Ex. 1, applying § 7031(b) as civil and awarding $280,037.49, conflict with my Motion to Vacate, which argues § 7031(b) is penal and criminal, imposing a fine. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020); *Liu v. SEC*, 591 U.S. 71, 79 (2020); *People v. Estes*, 218 Cal.App.4th Supp. 14 (2013); *Ex parte Clark*, 24 Cal.App. 389, 393 (1914) (penal statutes require criminal safeguards). His knowledge of this conflict imposed a duty to recuse under CCP § 170.3(a)(1), Cal. Const. Art.'s 1 and 9 and U.S. Const. Art. I, § 10. His failure to do so, risking liability for jurisdictional errors in the Moorefield case (and potentially others not yet known), creates an appearance of bias. *Rankin v. Howard*, 633 F.2d 844, 849 (1980) (judicial liability for jurisdictional errors); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

Judge Hesseltine faced a dilemma: ruling in my favor risked exposing himself and other judicial officers to civil liability for acting without subject matter jurisdiction, while ruling against me exposed him to similar liability for jurisdictional errors. This conflict created a duty to recuse under CCP § 170.3(a)(1). His failure to do so raises concerns about bias and impartiality. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Rankin v. Howard*, 633 F.2d 844, 849 (1980).

Judge Hesseltine's enforcement of a discharged judgment, denial of the UD stay and reconsideration to determine the judgment's validity prior to forced eviction and irreparable harm, and refusal to allow recording further risk liability for violating federal bankruptcy law and due/judicial process, exacerbating this interest (see Section III.F).

### B. Bias from Relationships with Judicial Officers

Judge Hesseltine's service as Senior Appellate Attorney at the Fourth District Court of Appeal, Division 3 (2010–2017, per Orange County Bar Association records), suggests professional and personal relationships with Justices Aronson, Goethals, and O'Leary,

whom I allege committed structural jurisdictional errors in affirming the void judgment. I requested public records from the Judicial Council to evidence these relationships, but they were deemed non-disclosable. His likely relationships with retired Superior Court Judges Di Cesare and Chaffee, also alleged to have committed jurisdictional errors, and his role as a supervising judge create an appearance of bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

**C. Fraud on the Court**

Judge Hesseltine's conduct constitutes unequivocal fraud on the court, perpetuating the Humphreys' and Bissell's conspiracy to misrepresent § 7031(a) and (b) as civil, despite their penal nature, and upholding a judgment lacking personal and subject matter jurisdiction due to no criminal complaint being filed and structural jurisdictional errors. My Motion to Vacate and Ex Parte Application, argued that § 7031(b) imposes a punitive forfeiture, requiring executive authority and criminal safeguards. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020). *Liu v. SEC*, 591 U.S. 71, 79 (2020). *Ex parte Clark*, 24 Cal.App. 389, 393 (1914); *People v. Estes*, 218 Cal.App.4th Supp. 14 (2013). Hesseltine's refusal to engage with these authorities, dismissal of *Eisenberg* as a statute of limitations case, false Minute Order statements that my arguments were rejected by the Court of Appeal, California Supreme Court, U.S. Supreme Court, U.S. District Court, and Ninth Circuit (Ex. 3), denial of the UD stay and Ex Parte Application for Reconsideration despite notice of the void judgment's connection to the foreclosure (Exs. 7–9), and refusal to address UD due process violations (e.g., lack of notice for default request, premature entry, lack of standing) entrenched this fraud, undermining judicial integrity. His actions shielded the Humphreys' and Bissell's conspiracy to procure the judgment through a civil action for a criminal offense.

**D. Misapplication of Res Judicata**

Judge Hesseltine's tentative, final rulings, stay denial, and reconsideration denial misapplied res judicata and law of the case to shield a void judgment, ignoring new evidence and law demonstrating extrinsic fraud and fraud on the court by the Humphreys, their attorney William Bissell, Judges David Chaffee and James Di Cesare, and Appellate Justices Aronson, Goethals, and O'Leary, which arose during the court proceedings and

were not part of the original complaint or litigated in the prior action. *Allied Fire Protection v. Diede Constr., Inc.*, 127 Cal. App. 4th 150, 155 (2005) (res judicata does not bar claims arising after the initial complaint; such rights may be asserted in a subsequent action); *Yager v. Yager*, 7 Cal.2d 213, 217 (1936) (rights acquired pendente lite, not raised by supplemental pleading, are not foreclosed in later actions); *Kettelle v. Kettelle*, 110 Cal.App. 310, 312 (1930) (res judicata inapplicable to new rights acquired during action not required to be litigated). These fraud claims, involving misrepresentations of the penal nature of Cal. Bus. & Prof. Code § 7031(a) and (b), denying me criminal safeguards and a fair hearing, are supported by new evidence and law. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020) (§ 7031(b) imposes a punitive forfeiture, not equitable relief); *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement limited to net profits, unlike § 7031(b)'s total forfeiture); *Trackman v. Kenney*, 187 Cal.App.4th 175, 184 (2010) (extrinsic evidence supports voidness claims); *Estate of Sanders*, 40 Cal.3d 607, 614 (1985) (extrinsic fraud denies a fair hearing); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (fraud on the court undermines judicial integrity).

Res judicata also does not apply to void judgments lacking subject matter jurisdiction, as this would elevate a judge above the Constitution. *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304 (1795); *Bennett v. Wilson*, 122 Cal. 509, 513-14 (1898); *Nelson*, 35 San Diego L. Rev. 555, 559 (1998). Hesseltine's reliance on *Torrey Pines Bank v. Superior Court*, 216 Cal.App.3d 813 (1989), is misplaced, as it involved a voluntary dismissal, not structural jurisdictional defects or fraud. His claim that voidness must appear "on the face of the record" under CCP § 473(d) (Ex. 7) is erroneous, as void judgments can be attacked at any time, including via the Thompson exception. *Thompson v. Cook*, 20 Cal.2d 564, 569 (1942) (voidness need not appear on the record if jurisdictional defects exist). His refusal to recognize my Motion to Vacate as an independent action in equity, despite my intent (ROA 361, First Amen. Decl. ¶ 3), denied my right to invoke equitable jurisdiction. *Bacon v. Bacon*, 150 Cal. 477, 482 (1907); *Olivera v. Grace*, 19 Cal.2d 570, 576 (1942); *Rose v. Fuqua*, 200 Cal.App.2d 719, 724 (1962); *Bloniarz v. Roloson*, 70 Cal.2d 143, 147 (1969). His refusal to address fraud, conspiracy, and structural errors demonstrates bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

**E. Denial of Witness Testimony**

Judge Hesseltine's refusal to allow testimony from Bissell, despite my subpoena and supplementary brief, prevented me from proving extrinsic fraud and conspiracy critical to my Motion to Vacate. *Rosenthal v. Great Western Fin. Sec. Corp.*, 14 Cal.4th 394, 414 (1996) (testimony required to resolve fraud). Bissell's testimony was necessary to reveal his intent in misrepresenting § 7031(b) as civil and conspiring with the Humphreys to procure an unlawful judgment, constituting extrinsic fraud and fraud on the court. This denial suggests prejudgment of my claims and denial of the due process right to present evidence of my claims, further evidencing bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). *People v. Freeman*, 47 Cal.4th 993, 1000 (2010).

**F. Violation of Bankruptcy Discharge Order**

Judge Hesseltine's denial of my Motion to Vacate/Independent Action on June 26, 2025, Ex Parte Application for Emergency Stay on March 18, 2025, and Ex Parte Application for Reconsideration effectively enforced a $930,000 judgment discharged in bankruptcy, violating 11 U.S.C. § 524(a) and demonstrating actual bias under CCP § 170.1(a)(6)(A)(iii). On March 27, 2023, the U.S. Bankruptcy Court for the Central District of California issued a discharge order in Case No. 8:22-BK-12076-SC, voiding the judgment as a personal liability under 11 U.S.C. § 524(a)(1) and enjoining enforcement under § 524(a)(2) (Ex. 5, Discharge Order). The judgment lien was avoided under 11 U.S.C. § 522(f) on June 15, 2023 (Ex. 6, Motion to Compel, ¶ 15). My restitution claim—vacatur and damages minimally $5 million—is a property interest among "unprosecuted lawsuit claims" abandoned to me on December 31, 2024, under 11 U.S.C. § 554(b). *In re DeVore*, 223 B.R. 193, 198 (1998) (B.A.P. 9th Cir.) (abandoned claims revert to debtor).

Hesseltine was informed of the discharge via my Ex Parte Application, ROA 306, and by Bissell at the June 26, 2025, hearing (Ex. 4, pending). Despite this, he denied my motion, stay, and reconsideration (Exs. 3, 7–9), refusing to vacate the judgment and denying restitution, effectively enforcing a void judgment in violation of 11 U.S.C. § 524(a)(2). *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (willful violation of discharge injunction incurs liability). *In re Kuehn*, 563 F.3d 289, 292 (2009) (7th Cir.) (actions based on discharged debts are void). The stay and reconsideration denials allowed the UD action, Case No. 30-2025-01459684, stemming from a wrongful foreclosure caused by the void judgment, to proceed, enabling an unlawful default, eviction, ~$1.18 million equity loss, $50,000 property damage,

and $10,000 lost property. This favored the Humphreys by preserving an improper advantage—the judgment's unvacated status, which avoids restitution and maintains a false appearance of validity—and Canjian Hou, whose UD relies on a defective title, over my property interest, suggesting bias, potentially to protect his *Moorefield* ruling (Ex. 1) and the liability of his friends and/or colleagues. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006). *Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018) (UD requires valid title). This violation risks liability for disregarding federal law. *Rankin v. Howard*, 633 F.2d 844, 849 (1980). It perpetuates the Humphreys' and Bissell's conspiracy. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

**G. Procedural Propriety of Oral Motion and Ex Parte Application and Due Process Violation by Denial of Stay**

Judge Hesseltine's rulings violated due/judicial process by incorrectly deeming my oral disqualification motion untimely and improper and by denying my Ex Parte Application for Emergency Stay of Unlawful Detainer Action (ROA 306, filed March 14, 2025) and Ex Parte Application for Reconsideration (filed May 21, 2025), prioritizing form over substance and causing irreparable harm, thus evidencing bias under CCP § 170.1(a)(6)(A)(iii).

While CCP § 170.3(c)(1) requires a written verified statement, my oral motion on June 26, 2025, was a good-faith effort to prevent due/judicial process violations, followed by this verified statement, and was timely raised after bias emerged at the hearing. *Christie v. City of El Centro,* 135 Cal.App.4th 767, 776 (2006).

Similarly, Hesseltine's denial of my Ex Parte Application and Reconsideration for filing in the 2015 case (Case No. 30-2015-00805807) and combining documents ignored their substantive connection to the void $930,000 judgment, which caused the wrongful foreclosure (November 18, 2024; see ROA 306) and UD action (Case No. 30-2025-01459684). These denials prevented me from defending against eviction based on fraud and structural jurisdictional defects, violating due/judicial process by undermining the fairness of the judicial process. *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146 (1980) (due process requires homeowners be permitted to raise fraud defenses in eviction actions tied to title disputes); *Mehr v. Superior Court*, 139 Cal.App.3d 1044, 1050 (1983) (denial of

stay in UD action pending appeal is abuse of discretion when substantial title issues exist and eviction causes irreparable harm). My applications sought to stay the UD action, which stemmed from a foreclosure enabled by the void judgment, to preserve my home and ~$1.2 million in equity. Hesseltine's one-word denial of the stay ("denied," Ex. 7) and cursory denial of reconsideration (Ex. 8, p. 3, ll. 15–25; p. 4, ll. 1–4), without addressing irreparable harm or the bankruptcy discharge (Exs. 5–6), allowed an unlawful default and forced sheriff eviction, despite my showing of substantial issues (e.g., fraud, lack of jurisdiction supported by new case law (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201 (2020); *Liu v. SEC*, 591 U.S. 71 (2020)) and minimal prejudice to the UD plaintiff, Canjian Hou, who holds defective title (*Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018)). These denials, favoring the Humphreys and Hou by preserving the void judgment's effect, demonstrate bias, potentially to protect Hesseltine's ruling in *Moorefield Construction, Inc. v. Pantalemon* (Ex. 1) and his colleagues from liability. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Asuncion*, 108 Cal.App.3d at 146 (courts must evaluate harm in ex parte contexts to ensure due process).

**H. Judge Hesseltine's Failure to Declare the Judgment Void Despite Uncontroverted Evidence of Jurisdictional Defects and the Humphreys' Failure to Sustain Their Burden of Proof on Standing**

Judge Hesseltine had a mandatory, non-discretionary, ministerial duty to declare the April 20, 2017, judgment in Case No. 30-2015-00805807 void due to the Humphreys' failure to sustain their burden of proof of standing in response to my direct jurisdictional challenges, their failure to counter my evidence in the Motion to Vacate/Independent Action in Equity (ROA 361, 369) and prior proceedings, and the prior courts' lack of subject matter jurisdiction, rendering his refusal to do so evidence of bias under CCP § 170.1(a)(6)(A)(iii). In *Thompson v. Cook*, 20 Cal.2d 564, 569–73 (1942), the California Supreme Court held that when a party challenges a judgment as void with uncontroverted evidence of jurisdictional defects and the opposing party fails to offer proof to sustain jurisdiction, the court must declare the judgment void as a matter of law. My Motion to Vacate (ROA 361, 369), prior Writ of Error (April 18, 2017, ROA 244), and Bill of Particulars (ROA 256, 263) constituted direct attacks, presenting uncontroverted evidence that the Humphreys lacked standing to prosecute a penal action under Cal. Bus. & Prof. Code § 7031(b) without executive authority (Cal. Const. Art. V, § 1; *Albrecht v. United States*, 273 U.S. 1, 8 (1923)),

that no sworn information or criminal complaint was filed to vest jurisdiction (*Buis v. State*, 1990 OK CR 28, p.4; Cal. Gov't Code 100), and that no evidence showed I personally performed licensed work as required by CACI 4560(3) and § 7031(a) and (b). The Humphreys' opposition to my 2019 Motion to Vacate (Ex. 11 (exhibits B, C, D omitted- not relevant), ROA 300), their Respondent's Brief on appeal (Ex. 10), and their 2025 opposition (ROA 381, Ex. 13) failed to rebut these claims or provide evidence of their standing, executive authority, or my performance of licensed work, relying solely on res judicata, general jurisdictional assertions, and procedural bars. Specifically, they did not address the absence of a criminal complaint, their lack of prosecutorial authority, or my evidence that The Spartan Associates, Inc. (my company) performed all work instead citing my emails and testimony about contracting (Ex. 10) without evidence of performance. Their mischaracterization of *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020), as addressing only the statute of limitations (ROA 381, Ex 13) ignored its holding that § 7031(b) imposes a punitive forfeiture requiring criminal safeguards, and they failed to engage with *Liu v. SEC*, 591 U.S. 71, 79 (2020), which limits disgorgement to net profits, not the ~$930,000 penalty awarded. The trial and appellate courts' failure to establish subject matter jurisdiction, due to the unauthorized penal prosecution and lack of evidence, rendered the judgment void ab initio as a result of structural jurisdictional errors (e.g. violation of separation of powers, usurpation of executive authority, no criminal complaint filed, no counsel appointed, all heightened protections required in criminal proceedings denied). *Elliot v. Piersol*, 26 U.S. 328, 340 (1828); *Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898).

Judge Hesseltine's refusal to vacate the judgment, despite the Humphreys' failure to counter my evidence or prove standing, as reflected in their deficient briefs (Exs. 10, 11, 13) and the prior court's similar error (Ex. 12– Minute Order– prior Motion to Vacate), demonstrates bias by shielding a jurisdictionally defective judgment, potentially to protect his rulings in *Moorefield Construction, Inc. v. Pantalemon* (Ex. 1) or to align with the alleged judicial conspiracy involving Justices Aronson, Goethals, O'Leary, and Judges Chaffee and Di Cesare to protect them from civil liability for damages. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006). This failure to fulfill his mandatory duty under *Thompson v. Cook* constitutes a structural error,

violating due/judicial process and necessitating disqualification to ensure an impartial hearing. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

**I. Grounds for Commission on Judicial Performance Complaint**

Judge Hesseltine's conduct violates the California Code of Judicial Ethics, warranting a complaint to the Commission on Judicial Performance:

1. **Bias or Prejudice (Canon 3B(5))**: His refusal to engage with controlling authorities (e.g., *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201 (2020); *Liu v. SEC*, 591 U.S. 71 (2020)), denial of attorney William Bissell's testimony critical to proving extrinsic fraud (*Rosenthal v. Great Western Fin. Sec. Corp.*, 14 Cal.4th 394, 414 (1996)), enforcement of a judgment discharged in bankruptcy (Case No. 8:22-BK-12076-SC, Ex. 5), denial of my Ex Parte Application for Emergency Stay (ROA 306) and Reconsideration (Exs. 7–8), and refusal to provide a court reporter or allow recording despite my fee waiver and Cal. Rules of Court, Rule 1.150(d), suggest bias, potentially to protect his prior ruling in *Moorefield Construction, Inc. v. Pantalemon* (Ex. 1) and colleagues involved in this conspiracy. CJEO Formal Opinion 2021-016 (p. 8) notes that actions undermining impartiality violate Canon 3B(5). *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).
2. **Failure to Uphold the Law (Canon 3B(2))**: Hesseltine misapplied res judicata and law of the case to shield a void judgment, ignored *Eisenberg* and *Liu* establishing § 7031(a) and (b)'s penal nature, and failed to address the bankruptcy discharge (11 U.S.C. § 524(a)) and unlawful detainer (UD) due process violations (e.g., lack of notice, premature default, CCP § 1013). These actions violate constitutional and federal law. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires notice and opportunity to be heard).
3. **Fraud on the Court (Canon 3B(1))**: False Minute Order statements claiming my arguments were rejected by higher courts (Ex. 3), despite no full, fair, or impartial determination, perpetuation of a conspiracy to misrepresent § 7031(a) and (b) as civil, and dismissal of UD issues without addressing merits undermine judicial integrity. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (fraud on the court undermines judicial integrity).

4. **Improper Denial of Disqualification (Canon 3C(1))**: Denying my oral disqualification motion as untimely (Exs. 3–4) violates his duty to recuse under CCP § 170.3(a)(1), given his pecuniary interest from *Moorefield* and potential relationships with Justices Aronson, Goethals, O'Leary, and Judges Di Cesare and Chaffee. CJEO Oral Advice Summary 2015-015 (p. 2) confirms judges must decide their own disqualification. *Caperton*, 556 U.S. 868.
5. **Abuse of Authority (Canon 2A)**: Affirming a void judgment, denying the UD stay and reconsideration despite notice of the bankruptcy discharge (Exs. 5–6), and obstructing record preservation erode public confidence in the judiciary. CJEO Formal Opinion 2021-016 (p. 8) notes that actions undermining impartiality violate Canon 2A. *Jameson v. Desta*, 5 Cal.5th 594, 608 (2018) (denial of court reporter for indigent litigant violates due process).
6. **Failure to Provide Forum Guidance**: Refusing to identify a forum for relief despite my exhaustion of remedies (Exs. 7–9) and pro se status exacerbates systemic bias, denying due process. *Mullane*, 339 U.S. 306, 314. Canon 3B(8) Commentary encourages reasonable steps to enable self-represented litigants to be heard.
7. **Obstruction of Record Preservation**: Denying a court reporter or recording permission, despite my fee waiver and Rule 1.150(d) discretion, limits my appeal rights, suggesting bias. *Jameson v. Desta*, 5 Cal.5th 594, 608 (2018); CJEO Formal Opinion 2013-002 (pp. 7–8) (judges must ensure accurate record documentation).

## IV. CONCLUSION

I request disqualification of Judge Hesseltine for appearance of bias, actual bias, violations of due/judicial process under California Constitution, Article I, Section 7, and bills of pains and penalties under California Constitution, Article I, Section 9, and U.S. Constitution, Article I, Section 10, that the Judicial Council assign an impartial judge under CCP § 170.3(c)(5) to rehear the Motion to Vacate, and that the judgment be vacated due to bias and structural jurisdictional defects. *Christie v. City of El Centro,* 135 Cal.App.4th 767, 776 (2006). Systemic unlawful rulings on § 7031(b) claims by Superior Court judges, including in the Orange County Superior Court, exacerbate this bias, as evidenced by pervasive misapplication of § 7031(b) as civil rather than penal. See e.g. *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal.4th 412, 426 (2005) (misapplied §

7031 as civil); all § 7031(a) and (b) cases are incorporated as if fully set forth herein. A particularly egregious example is *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal.App.4th 882, 895 (2015), where the Judicial Council pursued a $22.7 million forfeiture against a contractor for an unintentional licensing issue during corporate reorganization, despite satisfactory performance, and incurred over $3.3 million in legal costs debited from the public treasury, demonstrating systemic misuse of § 7031(b) to impose disproportionate penalties without regard for fairness or harm caused. This pattern of systemic bias necessitates Judicial Council intervention to assign a judge without prior § 7031(b) rulings to ensure impartiality.

## VERIFICATION

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that the foregoing statements of fact are true and correct to the best of my knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true. Signed on July 3, 2025, at Las Vegas, Nevada.

By: _____

Adam Bereki

# Exhibit 1

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 08/06/2024 TIME: 03:31:00 PM DEPT: C23

JUDICIAL OFFICER PRESIDING: David J. Hesseltine
CLERK: R. Burns
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: D. Muldoon

CASE NO: **30-2022-01259274-CU-FR-CJC** CASE INIT.DATE: 05/12/2022
CASE TITLE: **Moorefield Construction, Inc. vs. Pantalemon**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

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EVENT ID/DOCUMENT ID: 74355541

**EVENT TYPE:** Under Submission Ruling

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**APPEARANCES**

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There are no appearances by any party.

The Court, having taken the Court Trial under submission on 7-18-24 makes its ruling following Court Trial as follows:

**Ruling Following Court Trial**
*. (Moorefield Construction, Inc. v. Steve Pantalemon, etc., et al., Case No. 2022-01259274)*

After completing various pretrial proceedings, including ruling on a motion in limine, the court conducted a two-day bench trial on July 2 and 3, 2024. At the conclusion of the proceedings on July 3, 2024, the court set a briefing schedule for the parties to submit their closing arguments in writing. The court received the parties' briefs on July 17, 2024, and took this matter under submission at that time. Having now considered all testimony and exhibits admitted at trial, any judicially noticed matters, the credibility of all witnesses and other evidence, the arguments of counsel, and the governing law, the court now rules as set forth below.

The complaint of plaintiff Moorefield Construction, Inc. (Plaintiff) alleges the following two causes of action against defendant Steve Pantalemon, individually and doing business as Custom Wine Cellar (Defendant): (1) intentional misrepresentation, and (2) violation of contractor's state licensing law. Both causes of action implicate the requirements of the Contractors' State License Law (Bus. & Prof. Code, § 7000, et seq.; CSLL), including whether the CSLL required Defendant to have a license and whether Defendant is entitled to retain any of the deposit Plaintiff paid to Defendant. Accordingly, a brief discussion of the CSLL is an appropriate starting point.

**Contractors' State License Law (Bus. & Prof. Code, § 7000, et seq.)**

"The CSLL provides 'a comprehensive scheme which governs contractors doing business in California.' [Citation.] 'The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [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.' [Citation.]" (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 894 (*Judicial Council*).)

For purposes of the CSLL, "a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, . . . add to, . . . improve, move, . . . any building, . . . or other structure, project, development or improvement, or to do any part thereof . . . and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. 'Contractor' includes subcontractor and specialty contractor." (Bus. & Prof. Code, § 7026.) "'Person' . . . includes an individual, a firm, partnership, corporation, limited liability company, association or other organization, or any combination thereof." (*Id.* at § 7025, subd. (b).)

"[Business and Professions Code s]ection 7026 plainly states that both the person who provides construction services himself and one who does so 'through others' qualifies as a 'contractor.' The California courts have also long held that those who enter into construction contracts must be licensed, even when they themselves do not do the actual work under the contract. [Citations.]" (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 941 (*Vallejo Development*).) Moreover, "[t]he mere execution of such a contract is an act 'in the capacity of a contractor,'" and makes an unlicensed person subject to the provisions of Business and Professions Code section 7031 discussed below. (*Vallejo Development, supra*, 24 Cal.App.4th at p. 940.)

"The two provisions of the CSLL of concern here are designed to enforce compliance with the CSLL's licensing requirements. [Business and Professions Code s]ection 7031, subdivision (a) provides that no person 'engaged in the business or acting in the capacity of a contractor' can bring an action for compensation for work requiring a contractor's license if the person was not properly licensed at all times during the performance of the work. [Business and Professions Code s]ection 7031, subdivision (b) goes further, permitting a person 'who utilizes the services of an unlicensed contractor' to bring an action for disgorgement of 'all compensation paid to the unlicensed contractor.' Although the language of the two provisions is somewhat different, they are interpreted 'in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant.' [Citation.]" (*Judicial Council, supra*, 239 Cal.App.4th at p. 895, fns. omitted.)

"The statutory intent behind [Business and Professions Code] section 7031, subdivisions (a) and (b) is 'to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay.' [Citation.]" (*Judicial Council, supra*, 239 Cal.App.4th at p. 895.) "Because it denies all compensation for a contractor's work, regardless of the quality of the work or the reasons for the failure of licensure, section 7031 can have harsh and seemingly unfair effects." (*Ibid.*)

"Courts have taken their cue from the Legislature in enforcing the letter of the law, consoled by the Legislature's ""determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties."" [Citation.] Accordingly, if a contractor is unlicensed for any period of time while delivering construction services, the contractor forfeits all compensation for the work, not merely compensation for the period when the contractor was unlicensed. [Citation.] Although construction contractors often make substantial payments to others for materials and labor, an unlicensed contractor forfeits all money paid, without offsets for such payments to third parties. [Citation.] Because [Business and Professions Code] section 7031 is held to apply '" [r]egardless of the equities"' [citation], unlicensed contractors are prohibited from asserting equitable defenses, such as estoppel, to forfeiture. [Citation.] On the contrary, ""[c]ourts may not resort to equitable considerations in defiance of [Business and Professions Code] section 7031."" [Citation.] As a result, an unlicensed contractor is subject to forfeiture even if the other contracting party was aware of the contractor's lack of a license, and the other party's bad faith or unjust enrichment cannot be asserted

by the contractor as a defense to forfeiture. [Citation.] For a contractor failing to qualify under the statutory safe harbor of subdivision (e), [Business and Professions Code] section 7031 is truly a strict liability statute." (*Judicial Council, supra*, 239 Cal.App.4th at pp. 896-897.)

"Nothing in [Business and Professions Code] section 7031 either limits its application to a particular class of homeowners or excludes protection of 'sophisticated' persons. Reading that limitation into the statute would be inconsistent with its purpose of '"deterring unlicensed persons from engaging in the contracting business."' [Citation.] Indeed, in *Hydrotech [Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988], the court rejected the argument that [Business and Professions Code] section 7031 should not be applied to a lawsuit by a subcontractor against a contractor because the subcontractor 'did not hold itself out to the public.' [Citation.] The court applied [Business and Professions Code] section 7031 even though the suit was against a general contractor for a large commercial construction project who allegedly was aware of the subcontractor's unlicensed status. [Citation.]" (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 849-850 (*Phoenix Mechanical*).)

**Second Cause of Action (Violation of CSLL)**

Plaintiff's second cause of action is brought under Business and Professions Code section 7031, subdivision (b), and seeks to recover all sums Plaintiff paid to Defendant on the ground Defendant at no time was a licensed contractor and both the CSLL and the parties' contract required Defendant to be licensed.

The elements of this claim are set forth in CACI jury instruction no. 4560 as follows: "1. That [name of plaintiff] [[engaged/hired]/ [or] contracted with] [name of defendant] to perform services for [name of plaintiff]; [¶] 2. That a valid contractor's license was required to perform these services; and [¶] 3. That [name of plaintiff] paid [name of defendant] for services that [name of defendant] performed." CACI no. 4561 further provides: "A person who pays money to an unlicensed contractor may recover all compensation paid to the unlicensed contractor. [¶] If you decide that [name of plaintiff] has proved that [he/she/nonbinary pronoun/it] paid money to [name of defendant] for services and that [name of defendant] has failed to prove that [he/she/nonbinary pronoun/it] was licensed at all times during performance, then [name of plaintiff] is entitled to the return of all amounts paid, not just the amounts paid while [name of defendant] was unlicensed. The fact that [name of plaintiff] may have received some or all of the benefits of [name of defendant]'s performance does not affect [his/her/nonbinary pronoun/its] right to the return of all amounts paid."

Here, there is no dispute the parties entered into the "Sub Contract" (Exhibit 7) in January 2022. The parties to the contract are "Moorefield Construction, Inc." and "Custom Wine Cellar." Hal Moorefield signed the contract on Plaintiff's behalf of January 28, 2022. Steve Pantalemon signed the contract on behalf of Custom Wine Cellar, as its CEO, on January 20, 2022.

The description of the work Defendant contracted to perform is described as follows in paragraph 2: "ALL FURNISH/INSTALL WINE DISPLAY PER PLANS, SPECIFICATIONS & HELL'S KITCHEN REQUIREMENTS, CLIMATE CONTROLLED CUSTOM BUILT UNITS WITH MULTIPLE DOORS, WINE RACKS, GLASS WALL, REFRIGERATION/HUMIDTY UNITS, CHEF'S TABLE CELLAR & SEISMIC REQUIREMENTS TO INCLUDE ENGINEERING & PERMITTED PLANS FOR THESE UNITS INCLUDING BUT NOT LIMITED TO ALL LABOR, MATERIALS, AND EQUIPMENT TO COMPLETE. This is to be done in strict accordance with the contract documents as listed in Exhibit 'B'." Exhibit "D" to the contract further elaborated upon the scope of work Defendant contracted to perform.

The court finds this is a contract subject to the CSLL, and Defendant was required to have a contractor's state license to enter into this contract and perform the work it required, because the work described in the contract falls within the scope of Business and Professions Code section 7026. Mr. Pantalemon

testified the contract does not accurately describe the work to be performed because Plaintiff did not understand how Defendant provides its product and services. That contention will be more fully addressed below in connection with Defendant's argument its work is exempt from Business and Professions Code section 7031 under section 7045. At this point, however, it is sufficient to note the contract Defendant undisputably signed controls and dictates whether a contractor's license was required. Moreover, the court credits the testimony of Hal Moorefield over Mr. Pantalemon as to what Plaintiff was contracting to obtain from Defendant.

The undisputed evidence also established Custom Wine Cellar at no time held a contractor's license (Exhibit 20), Steve Pantalemon at no time held a contractor's license (Exhibit 21), and Steven Pantalemon, dba Custom Wine Cellar, at no time held a contractor's license (Exhibit 22). Finally, the undisputed evidence established Plaintiff paid Defendant $230,400 on January 28, 2022, as a deposit on the work to be performed under the contract. (Exhibits 8, 9, 10.) Accordingly, the court finds the evidence establishes all the necessary elements for Plaintiff's claim for disgorgement under Business and Professions Code section 7031, subdivision (b), and Plaintiff is entitled to recover the full amount it paid to Defendant—i.e., $230,400.

Defendant makes several arguments as to why Business and Professions Code section 7031 does not apply in this case, but each of them lacks merit. First, Defendant contends Plaintiff made a mistake in preparing the contract and identifying with whom it was contracting, and therefore the contract should be reformed to state it is with the person or entity who holds the contractor's license identified in the contract, or at least the contract should be construed against Plaintiff. Specifically, Defendant contends the contract should have been with William Tassie dba Wine Cellar Designers Construction—i.e., the holder of license number 894458—rather than Custom Wine Cellar, and that Plaintiff cannot benefit from this error because it is the one who prepared the contract. Neither the evidence nor the law supports this argument.

Defendant's proposal for the project at issue was submitted to Plaintiff by Custom Wine Cellar. (Exhibit 3.) The proposal makes no mention of Wine Cellar Designers Construction or William Tassie. Based on Defendant's proposal, Plaintiff prepared the letter of intent with the name Custom Wine Cellar. Mr. Pantalemon signed the letter of intent as CEO without making any changes to the name of the entity with whom Plaintiff would contract. (Exhibit 4, p. 1.) Plaintiff then prepared the contract using the same name that was used on the proposal and letter of intent without any objection from Defendant, and indeed Mr. Pantalemon signed the contract on behalf of Custom Wine Cellar.

Defendant points to the certificates of insurance and W-9 forms Defendant submitted to Plaintiff after the letter of intent but before the contract (Exhibits 37, 39, 40) as evidence Plaintiff should have realized Custom Wine Cellar was not the proper entity. Specially, Defendant contends Plaintiff should have realized these documents did not identify Custom Wine Cellar, but rather, Wine Cellar Designers Group, LLC, and Wine Cellar Designers Construction, LLC, and therefore Plaintiff should have prepared the contract in the name of one of those entities. According to Defendant, Plaintiff's "compliance team" at least should have realized there was confusion about the party with whom Plaintiff was about to contract and they should have clarified things.

Defendant, however, fails to acknowledge that he never brought any of this to Plaintiff's attention. Defendant submitted the proposal under the name Custom Wine Cellar and that is the name Plaintiff used. Indeed, Plaintiff acknowledges it prepared the contract in the name of Custom Wine Cellar, but Defendant fails to acknowledge he signed the contract as the CEO of Custom Wine Cellar without raising any issue about the identity of the person or entity with whom Plaintiff was contracting. Mr. Pantalemon testified he has been in the business for over 20 years and has taken care over the course of his career to make sure he only submits bids and bills for products and services that do not require a contractor's license, and has a licensed contractor submit separate bids and bills for any installation work that requires a license. Moreover, Mr. Pantalemon certainly was aware of the significance of having a

contractor's license as demonstrated by the citation he acknowledged receiving from the California Contractors State License Board in 2021 (i.e., before the events of this case) for contracting without a license. (Exhibit 53.) It was Defendant who should have brought it to Plaintiff's attention if the contract named the wrong person or entity; the obligation did not fall on what Defendant characterizes as Plaintiff's compliance team on the facts presented.

The court finds there was no mistake in the contract's preparation and there is no basis for construing the contract as anything other than what it says—i.e., the contract is between Plaintiff and Custom Wine Cellar. Mr. Pantalemon knew the importance of the contract being in the name of a licensed contractor, but nonetheless signed the contract on behalf of Custom Wine Cellar, a non-licensed entity.

Along a similar line, Defendant argues the use of a fictitious business name that slightly varies from the name of the contractor's license does not preclude the licensee's recovery under the contract. To support this argument, Defendant cites *Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694 (*Ball*). *Ball*, however, is distinguishable and does not apply to the facts of this case.

In *Ball*, the plaintiff David E. Ball was licensed as the sole owner who did business under the fictitious name Clark Heating and Air Conditioning, but he sought to recover for work under a contract he entered into under the name Clark Air Conditioning & Heating. The trial court sustained a demurrer to the plaintiff's complaint seeking to recover on the contract because the party that contracted was not licensed. The Court of Appeal reversed, explaining as follows: "The trial court has confused the individual owner to whom the contractor's license was issued with the name under which the individual conducted his contracting business. Ball was licensed as a 'Sole Owner,' and not as a partnership or corporate entity, pursuant to the classification system of [Business and Professions Code] section 7065. The 'doing business as' name 'Clark Heating and Air Conditioning' was not an entity that could be licensed; rather it was the business name under which the individual licensee did business. Not only is Clark Heating and Air Conditioning not a distinct legal entity, it is not among the categories of individuals or entities defined by the Contractors' State License Law (CSLL), section 7000 et seq., to whom a contractor's license may issue. [Citations.]" (*Ball, supra*, 196 Cal.App.4th at p. 697.)

The *Ball* court further elaborated as follows: "The CSLB licenses 'individual owners, copartnerships, and corporations.' [Citation.] Ball received a license under the 'License Type' as a 'Sole Owner,' i.e., an individual owner. A sole owner is a sole proprietorship and a sole proprietorship is not a legal entity separate from its individual owner. [Citation.] As a sole proprietorship, Clark Heating and Air Conditioning does not, and cannot, hold a contractor's license independent from Ball. Not only is Clark Heating and Air Conditioning not a distinct legal entity, it is not among the categories of 'persons' defined by the CSLL to whom a contractor's license may issue. [Citations.] Thus, although the name 'Clark Heating and Air Conditioning' appears on the license, it is David Edward Ball, an individual, who is the licensee as the owner of Clark Heating and Air Conditioning. That license entitles him, as the owner of Clark Heating and Air Conditioning, to perform contracting work under the name Clark Heating and Air Conditioning. [Citation.] [¶] . . . 'Use of a fictitious business name does not create a separate legal entity' distinct from the person operating the business. [Citation.] '"The business name is a fiction, and so too is any implication that the business is a legal entity separate from its owner."' [Citation.] Thus, like Clark Heating and Air Conditioning, Clark Air Conditioning & Heating is legally indistinguishable from Ball. [Citation.] While Ball entered into the contracts as 'David E. Ball, dba Clark Air Conditioning & Heating,' Ball was the contracting party, and it is Ball who is entitled to pursue an action to collect for the work done pursuant to the contract." (*Ball, supra*, 196 Cal.App.4th at p. 701.)

*Ball* potentially would apply in this case if Mr. Pantalemon was licensed as the sole owner who did business under the name Wine Cellar Designers Construction, and he contracted using his license but contracted as Mr. Pantalemon doing business and Custom Wine Cellar. Those, however, are not the facts of this case. The contract is in the name of Custom Wine Cellar, and it is executed by Mr. Pantalemon—no dba or fictitious parties are identified. The evidence shows neither Mr. Pantalemon nor

Custom Wine Cellar nor Mr. Pantalemon dba Custom Wine Cellar is a licensed contractor. (Exhibits 20, 21, 22.) The license number Mr. Pantalemon inserted on the contract—i.e., 894458—is in the name of William Tassie dba Wine Cellar Designers Construction and it is listed as a sole ownership type of license. (Exhibit 23.) There is no credible evidence Mr. Tassie, however, had any involvement in the matter. He clearly did not sign the contract, and only the licensee can sign. Moreover, although Mr. Pantalemon testified Mr. Tassie had some involvement in this matter, Mr. Moorefield testified he had no contact with Mr. Tassie and never even heard of him until this lawsuit. Mr. Tassie's name appears nowhere in any of the documents regarding this project. Mr. Pantalemon's testimony to the contrary is not credible and nonetheless is not relevant because Mr. Tassie did not contract with Plaintiff. As such, *Ball* does not apply here and provides Defendant no assistance.

Defendant next argues Mr. Pantalemon and Mr. Tassie formed an LLC named Wine Cellar Designers Construction, LLC of which they were both members, and so Mr. Pantalemon had the authority to contract on behalf of that LLC. This argument too does not help Defendant. The license is in the name of William Tassie dba Wine Cellar Designers Construction as a sole ownership license; it is not a license in the name of Wine Cellar Designers Construction, LLC. Mr. Pantalemon sought to testify the LLC applied to obtain a license, but he did not testify, and did not present any evidence showing, the LLC ever obtained a license or that he thought the LLC obtained a license. More importantly, the contract in this case is not in any form of the name Wine Cellar Designers Construction. Rather, as explained above, it is in the name of Custom Wine Cellar. To avoid Business and Professions Code section 7031, the contract must be in the name of the entity or person who holds the license. (*Opp v. St. Paul Fire & Marine Ins. Co.* (2007) 154 Cal.App.4th 71 (*Opp*).)

In *Opp*, the individual plaintiff, William Opp, held a California contractor's license. He also was president of Mountain Connection, Inc., a Montana corporation, that did not hold a California contractor's license. Mr. Opp, as president of Mountain Connection, Inc., entered into a building contract and inserted his individual contractor's license number on the contract. He later sued to enforce the contract, but the trial court granted summary judgment against him because the contract was entered into by Mountain Connection, Inc., and that corporation was not licensed. (*Opp*, *supra*, 154 Cal.App.4th at pp. 72-73.) The court of appeal affirmed that decision, explaining it did not matter Mr. Opp as an individual held a valid contractor's license because he did not contract as an individual. Rather, the contracting party was Mountain Connection, Inc.—an unlicensed corporation—and therefore Business and Professions Code section 7031 prevented the corporation from recovering on the contract, and Mr. Opp could not recover because he did not contract in his individual capacity. (*Id.* at pp. 74-76.)

Defendant also argues a license was not required because the contract at issue was exempt from the contractor license requirement under Business and Professions Code 7045, which states "This chapter does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure, nor shall it apply to a material supplier or manufacturer furnishing finished products, materials, or articles of merchandise who does not install or contract for the installation of those items." Defendant contends this case is analogous to *Walker v. Thornsberry* (1979) 97 Cal.App.3d 842 (*Walker*).)

In *Walker*, the plaintiff was a manufacturer of metal prefabricated restrooms that did not hold a contractor's license. The plaintiff contracted to furnish, assemble, and install one of its units upon a concrete foundation the defendant prepared. When the defendant did not pay, the plaintiff sued, and the defendant asserted plaintiff's claim was barred under Business and Professions Code section 7031. The trial court ruled a contractor's license was not required based on Business and Professions Code section 7045, and the appellate court agreed. (*Walker*, *supra*, 97 Cal.App.3d at pp. 843-844.)

The *Walker* court explained, implicit in the trial court's decision was a determination the prefabricated unit did not become a fixed part of the structure, and whether the goods installed become a fixed part of the structure is a question of fact. (*Walker*, *supra*, 97 Cal.App.3d at p. 847.) The *Walker* court determined

the record supported the application of Business and Professions Code section 7045's exemption because "[t]he contract between [plaintiff] and defendant did not require [plaintiff] to undertake the installation of concrete foundation, rough plumbing, or installation of plumbing fixtures, stalls, wood roofing, and painting upon which to place the prefabricated restroom. [Plaintiff's] employees merely assembled the pieces and bolted the structure to the foundation. Their contribution of labor to the finished restroom was at most minor and incidental." (*Id.* at p. 848.)

*Walker* was distinguished and found inapplicable by the court in *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1046 (*Banis*): "Here, in contrast, plaintiff's services involved more than incidental labor. The contract called for plaintiff to provide drawings for electrical, plumbing, and ceiling plans. Plaintiff was also to coordinate work with architects as well as structural, mechanical, and electrical engineers. The work plaintiff was hired to do cannot be compared with that in *Walker*."

Here, the court finds this case to be much more analogous to *Banis* than *Walker*, and Business and Professions Code section 7045 does not apply so as to exempt Defendant from the requirement of having a contractor's license. The contract in this case did not simply require Defendant to show up with a prefabricated unit, do some assembly, bolt it in place, and be done. Indeed, unlike in *Walker*, the evidence shows the parties' contract called for the wine coolers, especially the red wine cooler, to become a fixed part of the structure. As noted, that is a question of fact for this court to determine. (*Walker, supra*, 97 Cal.App.3d at p. 847.) Among other things, the evidence showed the contract required Defendant to specifically design the concept the project architect developed. Defendant had to do the design and engineering work to come up with functioning coolers. The contract called for Defendant to install glass walls, doors, climate controls, refrigeration and humidity units, and much more. Defendant had to comply with seismic requirement and many other things. Mr. Pantalemon's testimony that it would be a plug-and-play unit is not consistent with the contract. Indeed, he acknowledged as much by testifying the contract did not accurately describe his work, but the contract is what Defendant contracted to do. Moreover, the photos of the final product, which Mr. Pantalemon testified used a lot of his work, are not consistent with a plug-and-play unit that did not become a fixed part of the structure. Again, the court finds Business and Professions Code section 7045 does not exempt Defendant from the requirement of having a contractor's license.

Defendant also argues it substantially complied with the licensing requirements under Business and Professions Code section 7031, subdivision (e). Originally, in an effort to mitigate the harsh consequences of Business and Professions Code section 7031, subdivisions (a) and (b), the courts developed a substantial compliance doctrine to create exceptions to those provisions. The Legislature, however, amended section 7031 to override those decisions and strictly limit when a claim of substantial compliance may be asserted to avoid the forfeiture otherwise compelled by section 7031, subdivisions (a) and (b). Compliance with section 7031, subdivision (e), is now the exclusive means of avoiding forfeiture based on substantial compliance. (*Judicial Council, supra*, 239 Cal.App.4th at p. 896.)

Professions Code section 7031, subdivision (e), states as follows: "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."

Defendant does not meet these requirements. As stated above, the contracting party was Custom Wine Cellar, and it never has been licensed. Likewise, Mr. Pantalemon individually or doing business as Custom Wine Cellar never has been licensed. As such, the substantial compliance doctrine does not

apply. Defendant may not rely on Mr. Tassie's license for all the reasons set forth above.

Finally, Defendant asserts a host of arguments as to why he should be able to retain at least a portion of the amount paid, including, but not limited to, Plaintiff terminated the contract for convenience, not for cause; Plaintiff did not raise any licensing issue until well after it terminated the contract; and Defendant performed work under the contract worth at least $98,000. All these arguments, however, are irrelevant under the authorities discussed above. Business and Professions Code section 7031, subdivision (b), is a strict liability statute that prevents an unlicensed contractor, such as Defendant, from retaining any of the money it received regardless of any equities that otherwise may come into play. (See, e.g., *Judicial Council*, *supra*, 239 Cal.App.4th at pp. 895-897.)

Based on the foregoing, the court finds for Plaintiff and against Defendant on the second cause of action for violation of CSLL and awards Plaintiff $230,400, i.e., the full amount Plaintiff paid to Defendant.

**First Cause of Action (Intentional Misrepresentation)**

On this cause of action, Plaintiff contends Defendant committed fraud by misrepresenting Defendant was licensed under license no. 894458, and thereby inducing Plaintiff to enter into the contract and pay Defendant the $230,400 deposit that Defendant had no right to keep (regardless of what work was performed) because Defendant was not licensed.

The elements of a claim for fraud based on intentional misrepresentation are set forth in CACI no. 1900: "1. That [name of defendant] represented to [name of plaintiff] that a fact was true; [¶] 2. That [name of defendant]'s representation was false; [¶] 3. That [name of defendant] knew that the representation was false when [he/she/nonbinary pronoun] made it, or that [he/she/nonbinary pronoun] made the representation recklessly and without regard for its truth; [¶] 4. That [name of defendant] intended that [name of plaintiff] rely on the representation; [¶] 5. That [name of plaintiff] reasonably relied on [name of defendant]'s representation; [¶] 6. That [name of plaintiff] was harmed; and [¶] 7. That [name of plaintiff]'s reliance on [name of defendant]'s representation was a substantial factor in causing [his/her/nonbinary pronoun/its] harm."

As explained, Defendant contracted with Plaintiff under the name Custom Wine Cellar. When signing the contract as Custom Wine Cellar's CEO, Mr. Pantalemon inserted in the signature block the contractor's state license number 894458. By inserting that license number in the contract, Mr. Pantalemon represented Custom Wine Cellar (or at least Mr. Pantalemon) was/were the contractor licensed under that number and entitled to do contractor work under that number. Defendant argues Mr. Pantalemon never told Mr. Moorefield or anyone else that either he or Custom Wine Cellar were licensed. That argument assumes the only way Defendant could have represented it was licensed was if Mr. Pantalemon orally made that statement to someone. That is incorrect. Inserting the number into the contract he executed as Custom Wine Cellar's CEO is a representation Custom Wine Cellar and/or Mr. Pantalemon are licensed under that license. Defendant also argues the certificates of insurance and other documents Defendant submitted to Plaintiff bearing names other than Custom Wine Cellar show Defendant did not represent Custom Wine Cellar and/or Pantalemon were licensed. Again, the court disagrees. Those documents do not change the facts, as the court finds them, that Mr. Pantalemon signed the contract as Custom Wine Cellar's CEO without changing the name or otherwise raising any issue, and in doing so he inserted this license number.

Defendant's representation about licensure was false. As explained above, license number 894458 was in the name of William Tassie dba Wine Cellar Designers Construction. That license is a Sole Owner license authorizing Mr. Tassie, and Mr. Tassie alone, to contract using that license. There is nothing showing Custom Wine Cellar was a fictitious name used by Mr. Tassie, and more importantly, Mr. Tassie is not the one who signed the contract. Defendant's arguments about Mr. Pantalemon forming Wine Cellar Designers Construction, LLC with Mr. Tassie do not change that Defendant represented either

Custom Wine Cellar or Mr. Pantalemon were licensed under license no. 894458, and that representation was false.

The evidence also showed Defendant knew the representation was false when it was made. Indeed, Mr. Pantalemon testified about his practice for conducting business over the more than 20 years he has been in the industry. He explained he acted as the designer for the wine rooms and racks, he took care to design the products in a way that they could be installed by a separate contractor, he took care to submit bids and invoices for his services and products separate from the bids and services of any contractor, and he took care to ensure a contractor submitted the bids and bills for all work requiring a contractor's state license. Mr. Pantalemon testified he works with a large number of contractors who would sell and install his products. This testimony shows Mr. Pantalemon was aware of the requirement to have a contractor's license to bid, contract, bill, and collect for installing his wine rooms and racks, and that he did not have such a license. Why else would he allegedly structure his business this way?

Moreover, Mr. Pantalemon acknowledged he was cited and fined by the California State Contractor's Licensing Board in August 2021, for contracting without a license. (Exhibit 53.) He sought to explain the circumstances surrounding that incident and how it was an unusual circumstance for how he conducts his business. The significance of that citation, however, is not whether it arose from a unique set of circumstance. Rather, the significance of the citation is it shows he was well aware of the requirement and obligation to have a contractor's license when Defendant contracted with Plaintiff just a few months after the citation, and that Defendant did not have a license. Plaintiff seeks to emphasize this point by citing to a citation from the Nevada State Contractor's Board and the testimony by Mr. Lemore. Those events, however, postdate the contract between Plaintiff and Defendant, and the court has not found them to be significant.

Next, the evidence shows, or at least supports the inference, Defendant intended Plaintiff rely on the representation about licensure. The contract itself required Defendant to be licensed. (Exhibit 7, ¶22.) Moreover, as described above, the evidence shows Defendant was aware of the requirement to be licensed to contract for and perform the work described in the contract. The contract had blanks in the signature block for Defendant to insert the license number and its expiration date, and Mr. Pantalemon inserted that information. If he did not intend for Plaintiff to rely on the contractor's license number, why did Mr. Pantalemon insert it? He could have just left it blank.

The evidence also shows Plaintiff reasonably relied on Defendant's representation. Indeed, Mr. Moorefield testified he would never have signed the contract with Defendant if Defendant had not provided a contractor's license number and expiration date showing the contract was current. Plaintiff prepared the contract with the blanks for this information and included those blanks, not buried somewhere in the contract, but right at the signature block. In a perfect world, would Plaintiff have investigated to confirm the validity and the holder of that license? Yes. But no one presented any evidence or authority that required Plaintiff to do so, and the court finds it was reasonable for Plaintiff to rely on the representation of what it thought to be a fellow contractor. In reliance on the representation, not only did Plaintiff sign the contract with Defendant, Plaintiff also paid Defendant the $230,400 deposit.

Next, the evidence shows Plaintiff was harmed by its reliance on Defendant's false representation. As stated, Plaintiff paid Defendant the deposit. Under the governing law, Defendant had no right to collect, let alone retain the deposit. Nonetheless, over two and one-half years later, Defendant still retains the entire deposit Plaintiff paid. Defendant's argument it performed about $98,000 in services before Plaintiff terminated the contract, and that Plaintiff did not mention any licensure issue when terminating the contract, does not eliminate or reduce the harm. Defendant had no right to receive or retain any of the deposit. As explained above, Business and Professions Code section 7031 denies Defendant, as an unlicensed contractor, the right to receive or keep any payment.

Finally, the evidence shows Plaintiff's reliance on Defendant representation was a substantial factor in causing Plaintiff's harm. Again, Mr. Moorefield testified he never would have signed the contract and authorized the payment to Defendant if Mr. Pantalemon had not provided a contractor's license number on the contract or if he knew Defendant was unlicensed.

Based on the foregoing, the court finds the evidence presented establishes all the essential elements of Plaintiff's fraud claim, and Plaintiff is entitled to judgment against Defendant on the fraud claim. The evidence shows Plaintiff's damages are the full amount of the deposit—i.e., $230,000. No evidence was presented as to any other damages Plaintiff may have suffered based on Defendant's misrepresentations.

**Punitive Damages**

Plaintiff seeks punitive damages on both causes of action based on Plaintiff's claim Defendant engaged in the foregoing conduct with fraud. Plaintiff seeks $50,000 in punitive damages and presented Mr. Pantalemon's bankruptcy petition as evidence of his financial condition.

CACI no. 3940 explains the law on punitive damages to juries. In relevant part, it provides as follows:

"If you decide that [name of defendant]'s conduct caused [name of plaintiff] harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

"You may award punitive damages only if [name of plaintiff] proves by clear and convincing evidence that [name of defendant] engaged in that conduct with malice, oppression, or fraud.

[¶] . . . [¶]

"'Fraud' means that [name of defendant] intentionally misrepresented or concealed a material fact and did so intending to harm [name of plaintiff].

"There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. . . ."

Although the court finds Defendant committed fraud as described above, the court does not find Plaintiff has shown by clear and convincing evidence Defendant committed that fraud with the intent to harm Plaintiff.

Moreover, our Supreme Court has long held a plaintiff has no entitlement to punitive damages even after establishing they would be permissible. The decision whether to grant or withhold punitive damages is wholly within the control of the fact finder. Indeed, as the Supreme Court explained in *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, "a jury's 'imposition of punitive damages is an expression of its moral condemnation.' [Citation.] . . . [A] plaintiff is not '"entitled, as of right"' to an award of punitive damages [citation], even if the jury finds the defendant 'guilty of oppression, fraud, or malice' [citation]." (*Id.* at pp. 1048-1049; see *Brewer v. Second Baptist Church of Los Angeles* (1948) 32 Cal.2d 791, 801 ["a plaintiff is never entitled as a matter of right to exemplary damages. [Citations.] . . . 'A plaintiff, upon establishing his case, is always entitled of right to compensatory damages. But even after establishing a case where punitive damages are permissible, he is never entitled to them. The granting or withholding of the award of punitive damages is wholly within the control of the jury . . . . Upon the clearest proof of malice in fact, it is still the exclusive province of the jury to say whether or not punitive damages shall be awarded. A plaintiff is entitled to such damages only after the jury, in the exercise of its untrammeled discretion, has made the award.'"].)

Accordingly, the court declines to award Plaintiff any punitive damages.

**Conclusion**

Based on the foregoing, the court finds Plaintiff is entitled to judgment against Defendant on both the first cause of action for intentional misrepresentation and the second cause of action for violation of contractor's state licensing law. Plaintiff is entitled to judgment in the total principal amount of $230,400. Any request for prejudgment interest, costs, or attorney fees shall be made by separate motion or memorandum to the extent appropriate. Plaintiff is ordered to serve and submit a proposed judgment.

The clerk is directed to serve a copy of this ruling on all parties and counsel of record.

Judge David J. Hesseltine
Orange County Superior Court

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, address, and State Bar number)*:
After recording, return to:
Christopher M. Bunge, Esq. (SBN 258780)
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
4 Park Plaza, Suite 1000
Irvine, CA 92614

TEL NO.: 949-852-6700 FAX NO. (optional):
E-MAIL ADDRESS *(Optional)*: cbunge@watttieder.com
[X] ATTORNEY FOR [ ] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD
MOOREFIELD, CONSTRUCTION, INC.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 W. CIVIC CENTER DRIVE
MAILING ADDRESS: 700 W. CIVIC CENTER DRIVE
CITY AND ZIP CODE: SANTA ANA, CA 92702
BRANCH NAME: CENTRAL JUSTICE CENTER

*FOR RECORDER'S USE ONLY*

PLAINTIFF: MOOREFIELD, CONSTRUCTION, INC.,
DEFENDANT: STEVE PANTALEMON individually and doing business as CUSTOM WINE CELLAR

CASE NUMBER:
30-2022-01259274-CU-FR-CJC

# ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

[ ] Amended

*FOR COURT USE ONLY*

Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g).

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's
      Name and last known address
      STEVE PANTALEMON individually and doing business as Custom Wine Cellar
      35 Hallcrest Drive
      Ladera Ranch, CA 92694
   b. Driver's license no. [last 4 digits] and state: [X] Unknown
   c. Social security no. [last 4 digits]: [X] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to *(name and address)*:
      STEVE PANATALEMON, individually and doing business as CUSTOM WINE CELLAR
      35 HALLCREST DR., LADERA RANCH, CA 92694
2. [ ] Information on additional judgment debtors is shown on page 2.
3. Judgment creditor *(name and address)*:
   Moorefield Construction, Inc. c/o
   Watt Tieder Hoffar & Fitzgerald, L.L.P.
   4 Park Plaza, Suite 1000, Irvine CA 92614
   Date: May 28, 2025
   CHRISTOPHER M. BUNGE
   (TYPE OR PRINT NAME)
4. [ ] Information on additional judgment creditors is shown on page 2.
5. [ ] Original abstract recorded in this county:
   a. Date:
   b. Instrument No.:

   (SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed: $280,037.49
7. All judgment creditors and debtors are listed on this abstract.
8. a. Judgment entered on *(date)*: 03/25/2025
   b. Renewal entered on *(date)*:
9. [ ] This judgment is an installment judgment.
10. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
    a. Amount: $
    b. In favor of *(name and address)*:
11. A stay of enforcement has
    a. [X] not been ordered by the court.
    b. [ ] been ordered by the court effective until *(date)*:
12. a. [X] I certify that this is a true and correct abstract of the judgment entered in this action.
    b. [X] A certified copy of the judgment is attached.

[SEAL]

This abstract issued on *(date)*: 6.9.2025

David H. Yamasaki, Clerk of the Court
Clerk, by A. Gill, Deputy

| PLAINTIFF: MOOREFIELD, CONSTRUCTION, INC., DEFENDANT: STEVE PANTALEMON individually and doing business as CUSTOM WINE CELLAR | COURT CASE NO.: 30-2022-01259274-CU-FR-CJC |
|---|---|

**NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:**

13. Judgment creditor *(name and address):*

14. Judgment creditor *(name and address):*

15. ☐ Continued on Attachment 15.

**INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:**

16. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

17. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

18. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

19. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

20. ☐ Continued on Attachment 20.

Christopher M. Bunge, Esq. (SBN 258780)
cbunge@watttieder.com
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
4 Park Plaza, Suite 1000
Irvine, CA 92614
(949) 852-6700

Attorneys for Plaintiff
MOOREFIELD CONSTRUCTION, INC.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
MAR 25 2025
DAVID H. YAMASAKI, Clerk of the Court
BY: J. Phu, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

MOOREFIELD CONSTRUCTION, INC.,

Plaintiff,

v.

STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR; and ~~DOES 1 through 10, inclusive,~~

Defendants.

CASE NO.: 30-2022-01259274-CU-FR-CJC

ASSIGNED FOR ALL PURPOSES TO:
HONORABLE DAVID J. HESSELTINE
DEPARTMENT C23

**AMENDED JUDGMENT AFTER HEARING ~~AND ORDER~~**

Date: February 27, 2025
Time: 2:00 p.m.
Dept.: C23

This case came on regularly for trial on July 1, 2024 in Department C23 of the above-entitled court, the Honorable David J. Hesseltine Judge Presiding. Richard A. Soll of the law firm of Mahoney & Soll LLP appeared on behalf of Plaintiff MOOREFIELD CONSTRUCTION, INC. Joe O'Connor of the law firm of J.M. O'Connor Law Group, PLLC appeared on behalf of Defendant STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR.

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A jury trial having been duly waived, the Court having heard and considered the testimony, evidence and argument of counsel, the Court having taken the matter under submission on July 18, 2024, and the Court having issued its decision on August 6, 2024 finding in favor of Plaintiff and against Defendant on the first cause of action for intentional misrepresentation and the second cause of action for violation of Contractor's State Licensing law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff MOOREFIELD CONSTRUCTION, INC. shall recover from Defendant STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR the principal amount of $230,400.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any request for prejudgment interest, costs or attorney's fees shall be made by separate motion or memorandum to the extent appropriate.

Thereafter, on February 27, 2025, in Department 23 of the above-entitled court, before the Honorable David J. Hesseltine, the following matters were heard:

1. Plaintiff's Motion for Attorney's Fees; and

2. Defendant's Motion for Reconsideration.

Christopher M. Bunge of Watt, Tieder, Hoffar & Fitzgerald, L.L.P. ~~appeared~~ on behalf of Plaintiff, Moorefield Construction, Inc. and Joe O'Connor of the law firm of J.M. O'Connor Law Group, PLLC, ~~appeared~~ on behalf of Defendant Steve Pantalemon, individually and dba Custom Wine Cellar. DH Submitted on the Court's tentative ruling.

The Court having considered the documents on file in this matter, evidence and argument of counsel, the Court issued its ruling as follows:

1. Plaintiff's Motion for Attorney's Fees is DENIED in part and GRANTED in part:

   A. Plaintiff's request for Attorney's Fees is DENIED.

   B. Plaintiff's request for costs of $8,187.27 is GRANTED.

   C. Plaintiff's request for prejudgment interest of $41,450.22 is GRANTED.

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Reconsideration

2. Defendant's Motion for ~~Consideration~~ is DENIED.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff MOOREFIELD CONSTRUCTION, INC. shall recover from Defendant STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR, the following sums:

| | | |
|---|---|---|
| 1. | The principal sum of: | $ 230,400.00 |
| 2. | Costs in the sum of: | $ 8,187.27 |
| 3. | Prejudgment interest in the sum of: | $ 41,450.22 |
| | TOTAL: | $ 280,037.49 |

IT IS SO ORDERED.

DATED: 03/25/25

Hon. David J. Hesseltine
JUDGE OF THE SUPERIOR COURT

20516361.1 104761.00007

**PROOF OF SERVICE**
**Moorefield Construction, Inc. v. Steve Pantalemon, et al.**
**OCSC Case No. 30-2022-01259274**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 4 Park Plaza, Suite 1000, Irvine, CA 92614.

On March 5, 2025, I served true copies of the following document(s) described as **AMENDED JUDGMENT AFTER HEARING [PROPOSED]** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

☐ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Watt, Tieder, Hoffar & Fitzgerald, L.L.P. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address jbenton@watttieder.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

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

Executed on March 5, 2025, at Irvine, California.

*/s/ Julie Benton*
JULIE BENTON

**SERVICE LIST**
**Moorefield Construction, Inc. v. Steve Pantalemon, et al.**
**OCSC Case No. 30-2022-01259274**

Joseph O'Connor, Esq.
J.M. O'Connor Law Group, PLLC
120 Newport Center Drive
Newport Beach, CA 92660
Tel: (949) 459-3380
Email: joe@jmoclaw.com

***Attorneys for Defendant***
***STEVE PANTALEMON, individually and dba CUSTOM WINE CELLAR***

20397188.1 104761.00007

I hereby certify the foregoing instrument consisting of 5 page(s)
is a true and correct copy of the original on file in this court.

ATTEST: (DATE) MAY 28 2025
DAVID H. YAMASAKI, EXECUTIVE OFFICER AND CLERK OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

BY _____ DEPUTY
H. LICEA

# Exhibit 2

***Superior Court of the State of California***
***County of Orange***

***Tentative Rulings***
***Law and Motion Calendar***
***Department C23***
***Honorable David J. Hesseltine***

***Hearing Date and Time: June 26, 2025, at 2:00 p.m.***

**Court Reporters:** Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: **Civil Court Reporter Pooling**. For additional information regarding court reporter availability, please visit the court's website at **Court Reporter Interpreter Services**.

**Tentative Rulings:** The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.**

**Submitting on Tentative Rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

**Non-Appearances:** If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**Appearances:** Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

**https://www.occourts.org/media-relations/civil.html** before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at **https://www.occourts.org/media-relations/aci.html**. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at **https://www.occourts.org/media-relations/aci.html**. Those procedures and guidelines will be strictly enforced.

**Public Access:** The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

**NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150 AND ORANGE COUNTY SUPERIOR COURT RULE 180.**

| # | Case Name | Tentative |
|---|---|---|
| 1. | **Ren v. Luo**<br><br>*2025-01472867* | Before the court is the unopposed petition to confirm arbitration award filed by petitioners Xiao Ren and Hua An Group, Inc. (collectively, Petitioners) against respondents Hai Luo and Great Power Capital Holdings, LLC (collectively, Respondents). The Petition is **GRANTED** as set forth below.<br><br>This case arises from an arbitration at JAMS which was conducted pursuant to paragraph 38 of the Vacant Land Purchase Agreement and Joint Escrow Instructions. On February 19, 2025, Judge Luis Cardenas (Ret.), issued a Final Award of $131,795.55 in favor of Hua An Group, Inc. (seller) and against Great Power Capital Holdings, LLC (buyer).<br><br>Code of Civil Procedure section 1290.2 provides as follows: "A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the petition shall be given." Once a party to an arbitration files a petition to confirm, correct, or vacate an award, a response must be filed and served within 10 days after service of the petition, unless a judge extends, or both parties agree to extend, this deadline. (Code Civ. Proc., § 1290.6). If a response is not filed by the deadline, |

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| | | *Education Foundation v. UCLA Foundation* (2005) 130 Cal.App.4th 171, 180, fn. 2.)<br><br>Micron's counsel is ordered to give notice of the foregoing rulings. |
| 13. | **Newport Harbor Offices & Marina LLC v. Morris Cerullo World Evangelism**<br><br>*2016-00878807* | The motions to be relieved as counsel of record for defendants and cross-complainants Morris Cerullo World Evangelism and Plaza Del Sol Real Estate Trust filed by G10 Law, APLC and Daniel Watts are **ORDERED OFF CALENDAR AS MOOT** based on the substitution of attorney forms filed on June 24, 2025.<br><br>The clerk is directed to give notice. |
| 14. | **The Spartan Associates, Inc. v. Humphreys**<br><br>*2015-00805807* | 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**.<br><br>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.)<br><br>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'"].) |

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| | | 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.<br><br>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.<br><br>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.<br><br>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.<br><br>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**.<br><br>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.<br><br>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.<br><br>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.<br><br>The Humphreys' counsel is ordered to give notice of this ruling. |
| 15. | | |
| 16. | | |

# Exhibit 3

**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

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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.

# Exhibit 4

# Exhibit 5

| Information to identify the case: | | |
|---|---|---|
| Debtor 1 | **Adam Alan Bereki**<br>First Name Middle Name Last Name | Social Security number or ITIN **xxx-xx-4758**<br>EIN __-_____ |
| Debtor 2<br>(Spouse, if filing) | First Name Middle Name Last Name | Social Security number or ITIN ____<br>EIN __-_____ |
| United States Bankruptcy Court **Central District of California** | | |
| Case number: **8:22-bk-12076-SC** | | |

## Order of Discharge – Chapter 7

12/15

**IT IS ORDERED:** A discharge under 11 U.S.C. § 727 is granted to:

Adam Alan Bereki

[include all names used by each debtor, including trade names, within the 8 years prior to the filing of the petition]

Debtor 1 Discharge Date: 3/27/23

**Dated:** 3/27/23

**By the court:** Scott C Clarkson
United States Bankruptcy Judge

### Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

**Creditors cannot collect discharged debts**
This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

**Most debts are discharged**
Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

32/AUTU

**For more information, see page 2 >**



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**Some debts are not discharged**
Examples of debts that are not discharged are:

- debts that are domestic support obligations;
- debts for most student loans;
- debts for most taxes;
- debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- some debts which the debtors did not properly list;
- debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**

# Exhibit 6

Adam A. Bereki
In Propria Persona
818 Spirit
Costa Mesa, California 92626
949.24.6693
abereki@gmail.com

FILED & ENTERED

DEC 31 2024

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bolte DEPUTY CLERK

CHANGES MADE BY COURT

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

| | |
|---|---|
| In re: Adam Alan Bereki, | Case No. 8:22-BK-12076<br>Chapter 7<br>**ORDER RE: MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY OF THE ESTATE** |

The Court has considered the Motion to Compel Trustee to Abandon Property of the Estate filed by Debtor on October 18, 2024 [Dk. 105] ("Motion"), the docket as a whole, and noting that no objection was filed and that the Chapter 7 Trustee filed a "Report of No Distribution" on January 18, 2023, finds good cause to GRANT the Motion. The Estate's interest in following property is hereby deemed abandoned:

1. 818 Spirit, Costa Mesa, California; and,
2. Unprosecuted lawsuit claims, as described in the Motion.

**IT IS SO ORDERED.**

Date: December 31, 2024

Scott C. Clarkson
United States Bankruptcy Judge

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

FILED
OCT 18 2024
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY: Deputy Clerk

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

In re: Adam Alan Bereki

Case No. 8:22-BK-12076-SC

Chapter 7

**MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY**

**INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT**

Date: December. ,2024
Hearing: 11:00 AM
Courtroom: 5C/ ZOOM

**To Scott C. Clarkson, United States Bankruptcy Judge, the Office of the United States Trustee, Bankruptcy Trustee Karen Sue Naylor, and all interested parties:**

1. Pursuant to 11 U.S.C. §554(b) and FRBP Rules 6007 and 9014, Adam Bereki, ("Petitioner"), in the above-captioned matter requests this Court compel the Bankruptcy Trustee to abandon: a) all interests pertaining to the real property located at 818 Spirit, Costa Mesa, California; and, 2) all interests in the prepetition lawsuit claims because they are of inconsequential value and inconsequential benefit to the estate.

**Incorporated Declaration of Adam Bereki**

2. I, Adam Bereki, declare under penalty of perjury of the laws of the United States of America, that the following statements of fact are true and correct, with exception of any conclusions of law or other statements made on information and belief.

**MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY**

Background

3. This Chapter 7 case was filed on December 8, 2022. (Dkt. 1). Karen Sue Naylor was appointed as the Bankruptcy Trustee. The Meeting of Creditors was conducted on January 18, 2023.

4. The Bankruptcy Trustee filed a "Report of No Distribution" on January 18, 2023, and declared that she "made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law." The Trustee also made a subsequent Certification of Services Rendered declaring the same quoted statements on or about May 19, 2023.

5. A discharge was ordered on March 27, 2023. (Dkt. 32).

Memorandum of Law

6. Property of the estate may be abandoned under §554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." *See* 11 U.S.C. § 554(a)–(b); FRBP Rule 6007(b).

7. Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled. The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999).

8. "In order to approve a motion to abandon property, the bankruptcy court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000) (citing 11 U.S.C. § 554(b) and *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.)*, 816 F.2d 238, 245 (6th Cir.1987)). Further, inconsequential value and inconsequential benefit are two separate elements that must both be satisfied. *In re K.C. Mach. & Tool Co.* 816 F.2d at 245. "Of inconsequential value and inconsequential benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

**1. Abandonment of Interest in Real Property**

9. Petitioner is a Party in Interest. On the date this case was filed, he claimed a legal interest in the real property located at the at 818 Spirit, Costa Mesa, California ("property" or "Spirit Property"). Dkt. 1, Dkt. 15. The value of the property was declared to be $1,142,000 while his equitable interest was declared to be $0. (Dkt. 1). Petitioner also claimed a $600,000 exemption pursuant to Cal. Code of Civil Proc. §704.730. Dkt.1.

10. Initially, Petitioner listed the following three claims against the Spirit property as secured, albeit with certain exceptions stated in his Declaration, (Dkt. 15): 1) 1st Mortgage, Citibank N.A, $457,693.71; 2) Line of Credit, Citizens Bank N.A., $36,396.75; and 3) Judgment Lien, $848,000. For reasons stated in his pleadings and Declarations, each of these claims was subsequently changed to unsecured and disputed. See e.g. Dkt's. 18 and 99 and Declaration of Adam Bereki. (Petitioner's categorization of these claims as "unsecured" was, and continues to be, based on the definition of unsecured being that either the claim does not exist, or if it does, is not secured by property. As a

result, there would also not be a secured claim the bankruptcy context of the term "secured" as defined by 11 U.S.C. §506).

11. As of the time of the filing of this Motion, the Trustee has taken no known action to determinate the nature, extent, or validity of any of these disputed claims, or any other claims Petitioner requests be abandoned herein.

12. Neither the Trustee nor any purported creditor or other party has made an objections to any of Petitioners Schedules, including the Third Amended Schedules filed on 11/3/23.

13. No purported creditor in the case has filed a Proof of Claim.

14. To the extent these claims are valid, their value is estimated to be: $1,309,390.46. This amount is $167,390.46 beyond the declared value of the property (excluding any allowable post-judgment interest for Claim 3 for at least seven years, estimated to be in excess of $800,000).

15. On or about 4/24/23, Petitioner filed a Motion to Avoid Lien under 11 U.S.C. 522(f)– to avoid the purported Judgement lien (Claim 3 above). Judge Clarkson granted Petitioner's Motion on 6/15/23 because the lien impaired his claimed $600,000 exemption. Dkt. 89.

16. Based on the foregoing, Petitioner asserts the property is "of inconsequential value and benefit to the estate" because there is no equity in the property. (Of inconsequential value and benefit to the estate includes assets that have no equity. *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000)). Additionally, Petitioner only holds legal title to the property and therefore no equity became property of the estate. See 11 U.S.C. §541(d) "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, [...] becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." To the extent any equity in the property is considered property of the estate, Petitioner disputes this summary and arbitrary finding.

17. To the extent Claim 1 is invalid and not secured by the property, the amount of Claim 1 could be property of the estate as equity in the Spirit property. However, absent substantial litigation and a judicial determination of the rights of the parties with respect to this disputed claim, there is no way to truthfully determine its validity and whether it became property of the estate or not. As previously alleged, the Bankruptcy Trustee has not taken any action to determine the validity or extent of this disputed claim. Petitioner attempted to do so by commencing an adversary proceeding and was told he lacked standing. His case was dismissed with prejudice. See case no. 8:23-AP-01075-SC.

18. Petitioner therefore requests Judge Clarkson issue an Order compelling the Bankruptcy Trustee to abandon all interest in the Spirit property because it is of inconsequential value and inconsequential benefit to the estate.

**2. Abandonment of Property in Complex Lawsuit Claims**

19. Petitioner is a party in interest. On Schedule A/B, he listed his interest in lawsuit claims that had yet to be commenced, amounting to more than $50 million dollars. Dkt's. 1 (Original Sched.) 18 (1st Amend. Sched.); 95 (2nd Amend. Sched.); 99 (3rd Amend. Sched.), 4th Amend. Sched. filed on or about 10/18/24. See especially the Declarations of Adam Bereki attached as a continuation of Sch.A/B to the 1st-4th Amend. Sched. itemizing the lawsuit claims.

20. The relevant portion of the most recent Declaration states "Paragraph 33 of Schedule A/B includes the expected compensation and/or all other forms of legal, equitable, or lawful relief from a lawsuit of all conceivable legal and equitable claims for deprivations of my rights to life, liberty, property, privacy, and security (and all other Constitutionally protected rights not listed) based upon the deprivation of these rights as described in U.S. Supreme Court case 22A426. In an effort to be more specific about the claims listed in ¶33, the following is a list of causes of action currently known but not limited to: deprivation of all protected rights secured by the California and U.S.

Constitutions including any claims which could be made pursuant to 42 U.S.C. §1983, §1985, §1986, §1994; malicious prosecution; false imprisonment; trespass, denial of a judicial determination of rights; intentional infliction of emotional distress; negligence; fraud; violation of public official duties; wrongful foreclosure; excessive, cruel, and unusual punishment; involuntary servitude; invasion of privacy, damage to reputation and business, deprivation of a representative form of State and National government; theft; robbery; extortion; obstruction of justice; treason; Civil RICO; violations of due process; any conceivably related claims under the Cal. Gov't Tort Claims Act and Federal Tort Claims Act; deprivation of a republican form of State and National government (ie with required checks and balances and separation of powers); denial of the inalienable rights to life, liberty, property, and privacy; conspiracy; conspiracy to violate rights; [...]. These claims include all conceivable forms of legal and equitable relief as allowed by law including compensatory damages, damages for personal injury and/or emotional distress, damages to business and reputation and punitive damages and also include interest, attorney's fees and expert fees and fees for my time and labor in the forensic investigation and prosecution of these claims."

21. To realize the value of this assets there would likely be extensive costly litigation. The estate does not possess any assets to pay any creditors, let alone to commence highly complex litigation.

22. In her Report of No Distribution, the Bankruptcy Trustee declared that she had "made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law." She has also taken no known action to commence prosecution of these claims.

23. Based on the foregoing, Petitioner asserts the lawsuit claims are "of inconsequential value and benefit to the estate" and requests Judge Clarkson issue an Order compelling the Bankruptcy Trustee to abandon all interests therein.

**NOTICE OF DEADLINE FOR FILING OBJECTIONS**

Pursuant to Local Bankruptcy Rule 6007-1, any objection and request for hearing must be filed and served not more than 14 days after service of this Notice.

Dated: October 17, 2024

Respectfully filed,

Adam Bereki

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and am not a party to this bankruptcy case or adversary proceeding. My address is:

Virginia Wells
P.O. Box 9033
Fountain Valley, CA 92728-9033

A true and correct copy of the foregoing document entitled: ~~**SUMMARY OF AMENDED SCHEDULES AND AMENDED SCHEDULES, SUPPLEMENTAL MASTER MAILING LIST, DECLARATION OF ADAM BEREK**~~**, MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 10/18/24, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

CHAPTER 7 TRUSTEE: Karen S. Naylor (TR) alane@ringstadlaw.com
US TRUSTEE: United States Trustee (SA) ustpregion16.sa.ecf@usddoj.gov
ALLEGED LIENHOLDER: Malcom & Cisneros, c/o Citizen's Bank N.A., christinao@mclaw.org
ALLEGED LIENHOLDER: Theron S Covey and Fanny Zhang Wan c/o Citibank N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2; tcovey@raslg.com, fwan@raslg.com (respectively)
ALLEGED LIENHOLDER: Law Offices of William Bissell c/o Karen Humphreys and Gary Humphreys, wbissell@wgb-law.com

☐Service information continued on additional page.

**2. SERVED BY UNITED STATES MAIL:**
On 10/18/24, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒Service information continued on additional page- Master and Supplemental Mailing List Attached.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 10/18/24, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

BANKRUPTCY COURT JUDGE: Scott S. Clarkson by placing a copy in the Judge's dropbox at the Bankruptcy Court.

☐Service information continued on additional page.

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

| 10/18/24 | Virginia Wells | Virginia Wells |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

In re Adam Alan Bereki 22-12076

**Master Mailing List of Creditors**

Citibank N.A. Owner Trustee
55 Beattie Place, Ste. 100
Greenville, SC 29601-2743

Citizens Bank
P.O. Box 2800
Glen Allen, VA 23058

First National Bank of Omaha
P.O. Box 3331
Omaha, NB 68103

Citibank
P.O. Box 6500
Sioux Falls, SD 57117

Chase
P.O. Box 6294
Carol Stream, IL 60197

Goldman Sachs
Lockbox 6112
P.O. Box 7247
Philadelphia, PA 19170

Law Offices of William Bissell
c/o Karen and Gary Humphreys
23 Corporate Plaza Ste. 150
Newport Beach, CA 92660

Phoenix Mgmt. Solutions
10000 N. 31st St. Ave Ste. C-301
Phoenix, AZ 85057

In re Adam Alan Bereki 22-12076

Tamberly Homeowners Association
8220 University Ave. #100
La Mesa, CA 91942

Equinox Holdings, Inc.
895 Broadway 3rd Floor
New York, NY 10003

First Hzn. Mrtge. PT Trust 2005-5
Bank of NY Mellon Trustee
8950 Cypress Waters Blvd.
Coppell, TX 75019

New Residential Mtg. Ln.
Trust 2018-2
1345 Ave. of Americas
New York, Ny 10105

Nationstar Mortgage, LLC
DBA Mr. Cooper
PO Box 65073
Dallas, TX 75625

Mr. Cooper
Attn: Customer Service
PO Box 619098
Dallas, TX 75621-9741

Nationstar Mortgage LLC
8950 Cypress Waters Blvd.
Coppell, TX 75019

First Horizon Mtg. PT Cert. 2005-5
Bank of NY Mellon, Trustee
101 Barclay St. Floor 4W
New York, NY 10286

Shellpoint Mortgage Servicing
P.O. Box 51850
Levonia, MI 48151

First Horizon Home Loan Corp.
165 Madison Ave.
Memphis, TN 38103

In re Adam Alan Bereki 22-12076

Karen Humphreys
505 Augusta Dr.
Moraga, CA 94556

Gary Humphreys
505 Augusta Dr.
Moraga, CA 94556

In re Adam Alan Bereki 22-12076

**Suppplemental Master Mailing List of Creditors**

Superior Court of California
County of Orange
700 W. Civic Center Dr.
Santa Ana, CA 92701

CA Fourth District
Court of Appeal
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

CA Supreme Court
350 McAllister St.
San Francisco, CA 94102

U.S. District Court
Central District of CA
411 W. 4th St. Rm 1053
Santa Ana, CA 92701

Federal Reserve
1850 K St NW
Washington, DC 20006

Georgette Cressend
53 Ledgestone Dr.
Alexander, NC 28730

# Exhibit 7

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/18/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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: 74512542,124753793

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other For Emergency Stay of Unlawful Detainer Action, 03/14/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

Hearing held, all participants appearing remotely.

Ex-Parte application for Emergency Stay of Unlawful Detainer Action is requested by defendant Adam Bereki.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Ex Parte Application is denied by the Court.

The Court will not treat the Ex Parte Application as a new Complaint or an Answer to the Complaint for Case No. 30-2025-01459684. Defendant must file the Answer in the proper case (Case No. 30-2025-01459684) and not in this matter. Any new lawsuits must be filed as a new Complaint.

Phone call between Adam Bereki and Judge

Recording Name:
[EX PARTE APPLICATION FOR STAY DENIAL]

Transcript Prepared By:




(720) 287-3710
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

Judge: -- versus (ph) Humphries (ph) case number 2015. It's 00805807. Could we please have the appearances?

Bereki: Uh, Adam Bereki, Your Honor, on behalf of myself. Adam Bereki, Your Honor, on behalf of myself.

Judge: And one other appearance?

Bereki: If you're think- -- looking at the, uh, the Pringa (ph), Your Honor, that's -- that's someone with me. He's just here as a, uh, observer.

Judge: All right. Then, uh, if -- if we have no other, uh, appearances at this time, so -- now this application was, uh, filed by, uh, you, Mr. Bereki and it has an entirely new, uh, caption, uh, that our case that it, again, was filed in is the Spartan Associates, Inc. vs. Humphries case, which is the 2015. Uh, the caption states, "This application is, uh, related to the unlawful detainer action that was recently filed, which is case number 2025-01459684, and the title of, uh, unlawful detainer action is -- I believe it's Hou, H-O-U, vs., uh, Bereki. And, again, although it states that it's, uh, related there has been no determination of relatedness and no notice of related case had, uh, (inaudible - 0:01:41). Uh, now this application is, uh, 189 pages long and purports to combine a number of different, uh, documents, uh, into one, uh, document and, uh, some of them apply to, uh -

- or applies to multiple different, uh, cases. It was filed on a demand late last week and, uh, does indeed violate a number of the rules of court and the, uh, governing statutes for these documents by combining everything into one document. Uh, and it's, uh -- greatly exceeds the (inaudible - 0:02:20) the case for any sort of, uh, motion, uh, or application, uh, in addition to the 189-page, uh -- I guess, well, application. Uh, then we've got looking at probably three to four feet additional (inaudible - 0:02:36) and everything. Uh, so just letting you know that we did receive all these various materials. That's what we, uh, have received here in the department. Now in terms of what it purports to do, or asks for, I think we (inaudible - 0:02:51) has four pages. It's an ex parte application, uh, this department, stating unlawful detainer action that's, uh, pending in another department. Uh, it, uh, states that it includes an answer to the unlawful, uh, detainer action. Uh, it, uh, is a motion to vacate what it, uh -- (inaudible - 0:03:11) void judgment in the 2015 case, based on new, uh, evidence of extrinsic fraud. And then finally, it includes a complaint and cross complaint, uh, challenging the -- the, uh, underlying judgment in the 2015 case. Uh, the, uh, foreclosure,

uh, sale, uh, foreclosure process that recently, uh, completed, and then it also, uh, uh, attacks, uh, the constitutionality of, uh, multiple, uh, statutes. Uh, so the minutes from today will reflect that this document is not being treated as an answer in the UD (ph) action. It was not filed in a case. It's not being treated as a complaint to start a new case. So it will need to be filed as a separate, independent document, and in the proper case, not in this 2015 case. Any answer, any sort of response in pleading, any sort of re- -- response to the complaint in the UD (ph) action has to file in that action, not in this case, and any new claims, uh, any new lawsuit, uh, any collateral attack on the 2015 judgment, that needs to be filed as a, um, separate lawsuit, getting the summons paid and additional fees, or getting the fee waiver and going through all that process for initiating a, uh, new, uh, lawsuit. So, again, this will not be -- this application should not be construed and treated as either, uh, the, uh, answer to the UD action or the, uh, uh, new complaint. What this is being treated as and, uh, ruled upon as, is the ex parte application can stay, the unlawful detainer action, and the related -- I guess we'll call it motion to vacate the judgment in the 2015 case.

Uh, now treated as such, uh, the, uh, application will be denied. The underlying argument is that, uh, or -- and everything being sought is that the underlying judgment is void for a number of reasons, including that it was, uh, entered in, uh, based upon, or an action that was essentially criminal or penal in nature imposing punishment against you, Mr. Bereki, without providing the constitutional protections that, uh, are, uh, applicable in, uh, criminal proceedings. That, uh, same basic argument has been, uh, made multiple times, uh, and rejected in a number of different courts, including the court of appeal case in this, uh, the Ledruh (ph) called the objection (ph) in the 2015, uh, case. Uh, indeed the court of appeal rejected these, uh, challenges and I am, uh, bound by those determinations at law of the case. Now I understand the contention that a void judgment, uh, can be challenged at any time, but that doesn't allow me to ignore specific rulings that the court of appeal made in this case. Moreover, uh, the 473(d) voidness argument requires a, um, the voidness, uh, to appear on the face of record. I don't think that appears in this case. Uh, there are a number of other, uh, problems with the argument. And then there's also not a sufficient showing for the, uh, granting (ph) the ex

parte relief, setting aside any judgment at this, uh, point in time. Uh, regarding (ph) a -- a hearing earlier set (ph) in the UD action yet, uh, so there is not, uh, that, uh, justification for ex parte relief. So for those and, uh, uh, uh, other reasons, uh, the Court is going to deny the present ex parte application, uh, to the U -- (inaudible - 0:07:07) file the UD action, filing a new lawsuit, filing a notice motion, uh, with, uh, proper, uh, notice and service on it (inaudible - 0:07:15). Uh, so that is, uh, where the Court stands, uh, at this point in time, sir.

Bereki: Okay. Can I speak?

Judge: Yes, you may.

Bereki: Uh, my question for you is, having exhausted all of the -- the remedies that I have in the case that I've presented to the Court, where does the Court recommend that I go now to obtain, uh, uh -- if I can't basically challenge this judgment as, uh, you're saying, where do I go to overrule this, to overrule it? Because it's -- it's completely void.

Judge: Well, two things. First of all, I can't provide you with legal advice, I can't for any party, (inaudible - 0:07:54) with, uh, legal advice in that regard. But, uh, if you're -- there is truly some due basis you can

make your collateral attack, or file your motion, and that will be ruled on the merits. I can't guarantee the outcome of that. But at some point there is finality to matters as well. I understand you're, uh, vehement, and are in disagreement with the many different rulings that have been made. I under- -- uh, I -- I fully understand, uh, your position on that. But, uh, at some point in time thing do become final. But -- and then you have the -- the -- the unlawful detainer action to, uh -- you have every right to participate in that one and see wherever -- whether you can assert whatever claims defense (ph) in that case. Uh, they're -- the Court is, uh, not able to pre- -- you know, bar you from filing a, uh, properly noted (ph) motion or another, uh, lawsuit if that's the -- the pathway that you, uh, wish to follow. Um, but in terms of granting any of this on an ex parte relief I don't, uh, see that being a basis that I -- I have -- I -- I -- I'm not yet convinced, uh, of the merits, uh, even if it was on a notice -- but that doesn't (ph) prevent a notice motion. Uh -- uh, that's --

Bereki: Okay, so did I --

Judge: -- (inaudible - 0:09:07).

Bereki: I'm sorry -- did I understand you to say that

basically the Court's ruling is going to be the same if I, uh -- I know you said that they're being treated differently, but, uh, what will be the difference, so to speak, if I file that motion to vacate in the, so to speak, proper procedure that -- that you're saying, versus, uh, this -- the ex parte action?

Judge: Well, it may well be the same. I can't (inaudible - 0:09:32), you know, it depends. I have to see that, see if they comply with everything and what they're showing but I -- I have serious concerns and doubts that, uh, it, uh, would be successful, but I can't give an advisory (inaudible - 0:09:44), you know, I can't rule on something that isn't properly before me at this point in time. So, uh, it would -- I can't say it with 110 percent certainty, but I can say that there is very strong likelihood the outcome would be the same.

Bereki: Okay, thank you for that. So my earlier question was where do I go, because, uh, I've tried collateral attacks, I've tried direct attacks, I've tried habeas petitions and absolutely there is no remedy that I have, if -- if -- if what I am saying is taken to be true, wha- -- and -- and you said, uh, that you can't give me legal advice. Well, there has to be some forum, in California or the United States, to -- to,

uh, actually be heard. And if the court lacked jurisdiction and it was a void judgment in the first instance and on appeal, um, I -- like I said, I've exhausted every known remedy that I have. Wh- -- where is the fair forum to be actually heard?

Judge: Well, uh, I -- you've been provided with one. Y- -- you disagree with the forum but you've been provided with the forum on multiple -- at multiple levels. So I don't understand your -- like I said, I understand that you vehemently disagree with the rulings that have been made in the case. But that does not mean that you were not provided with a forum. It's just that, you know, you, uh, disagree with the outcomes in those forums.

Bereki: Well, and ap- -- apparently so does, um, our own courts of appeal here, with their recent ruling in the Eisenberg (ph) cases, saying it's a penalty. The U.S. Supreme Court in Lou v. SEC saying that disgorgement only applies to profits, and there were no profits in my case. I mean this isn't just me coming up with a -- with a hypothetical about why I think something's wrong. This is -- this is evidence from -- from other courts and, I mean our entire constitutional history shows that -- that everything I'm saying here is legit.

Judge: I -- again, I understand and, like I said, I -- you -- I cannot say 100 percent what any ruling would be on a future request, uh, and it will -- everything will be considered on its merits. But there -- again, I cannot tell you exactly what to file or how to file or where to file, but, uh --

Bereki: So in -- in essence, what I understand -- and you can correct me, of course, if I'm wrong, is that, um, I -- I filed several different things on the same, uh, document. I indicated that there was a related case, that it was, uh -- that this ex parte hearing was related to, and that essentially, because those procedural, uh, requirements weren't, uh, followed, um, that the -- the Court is putting, uh, form over substance in not recognizing any of those.

Judge: That's not -- listen, I said -- I just pointed out there are a number of problems with the forum, but I've also said that there is not a sufficient showing to justify ex parte relief, setting aside those s- -- uh, procedural, uh, circumstances. And on the current papers I have not been (inaudible - 0:12:36) on the merits of the argument. So it's not just simply form over substance, sir.

Bereki: Okay, I didn't hear you say that putting those things aside that that was the case. So your ruling --

you're saying that the law of case doctrine, essentially, is what it -- you're using to, um, basically deny relief here?

Judge: Well I -- I've explained everything as much as I can here today at this point, sir. So, uh, the -- the Court has (inaudible - 0:12:59) ruling. You can (inaudible - 0:13:00) whatever filings you deem appropriate in the UD action or an independent one. But I've (inaudible - 0:13:05) --

Bereki: Okay.

Judge: -- today.

Bereki: My -- my ultimate question is wh- -- where do I go for relief?

Judge: Well, again, I cannot provide you with any further, uh, uh, uh -- any legal advisement. I can't provide any further guidance than I already have (inaudible - 0:13:18). I'm sorry.

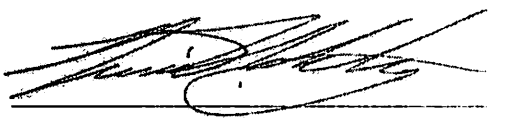
Bereki: Okay. All right.

Judge: Thank you. Best of luck to you.

TRANSCRIBER'S CERTIFICATE

I, Brian T. Henderberg, do hereby certify that the foregoing transcript is a full, true, and correct statement of the audio file provided to me titled "EX PARTE APPLICATION FOR STAY DENIAL".

DATED this 23rd day of June, 2025.



Brian T. Henderberg

Ditto Transcripts
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222
Tel: 720-287-3710
Fax: 720-952-9897

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

# Exhibit 8

Phone call between Adam Bereki and Judge

Recording Name:
[E45 EX PARTE MOTION FOR RECONSIDERATION OF

STAY OF UD]

Transcript Prepared By:




(720) 287-3710
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

Judge: All right, then, good morning. It looks like we're all connected up. We will, uh, the matter for ex parte calendar here this morning in the matter of The Spartan Associates, Inc. vs. Karen Humphries, et al. If we could have the appearances, please?

Bereki: Uh, uh, Judge it's Adam Bereki appearing on behalf of myself. And then there's a friend of mine, Pier Prenga, he's the other person that's here. And, um, before we get started I'd like to ask if the Court can, uh, re- -- record the proceedings, or allow me to, so that I can preserve this, uh, record on appeal.

Judge: Um, no, the Court cannot do a recording of the matter, and it is, uh, not permissible to record court proceedings, uh, online like this. So they're -- uh, in connection with this there is -- you may, uh, with a fee waiver you may request a court reporter but it, uh -- you need to request that in advance and there is a form that must be filed with the court to request, uh, a, uh, court reporter. So, um, that is something that you may have and obtain but, uh, it needs to be properly and timely requested, uh, for, uh, there to be. But uh, y- -- I, uh -- a party with a fee waiver may request a court reporter. There's a -- a -- a court form to fill out that needs to be filed in advance, uh, and it needs to be, uh -- the request

needs to be made in connection with each hearing. There can't be a blanket one that -- for all -- for in perpetuity, uh, have a court reporter. And just like p- -- re- -- parties with a fee waiver in a, uh, unlimited civil matter is on th- -- they're to have a certified court reporter, uh, to the extent that they would like a court exporter. That's, uh, you know, the unfortunate reality of the, uh, resources, uh, that, uh, the court is lacking, uh, at this time. So that's where we --

Bereki: I understand.

Judge: -- stand on that.

Bereki: Um, it's -- from what I understand, other departments, uh, just make a recording of the Zoom proceedings and that those can used on appeal. Is that incorrect?

Judge: Uh, in certain -- in, um, certain limited matters and certain case types, uh, it is statutorily authorized. It is not authorized and permitted in, uh, this type of proceeding.

Bereki: Okay. Thank you for clarifying that.

Judge: Uh, it's not a -- it's a -- yeah, it depends on the case type.

Bereki: Okay.

Judge: And the -- and it's unfortunately some of the statutes are out -- out of date with current reality, but the

statutes are the statutes, w- -- uh, (inaudible - 0:07:11).

Bereki: Okay. So the statute says it's not allowed in -- in ex parte proceeding for this?

Judge: In -- in civil, uh -- in -- in unlimited civil matters, yeah, the -- the audio recording is not permitted.

Bereki: Okay. Thank you.

Judge: Uh, so yes, we do have the ex parte to, uh, uh, vacate the, uh, Court's ruling on a ex parte from a couple months ago and to set aside the, uh, judgment, uh, in this case and make other orders relating to the unlawful detainer, uh, matter as well. Uh, this application, uh, will be denied. Uh, the, uh, challenges to the judgment will be, uh, heard on their merits in connection with the hearing that we sent yesterday, that it will be your opportunity to, uh, provide your briefing and have, uh, the ruling on those matters. Um, there's -- first of all, I think there's a number of inaccuracies in these, uh, papers. There was not simply a one-word, uh, ruling on your ex parte back in the -- March. There was a discussion about that, and indeed, you, uh, purport to paraphrase or quote various things that were made. The minutes are not a verbatim record of the proceedings, they are

a summary of the proceedings to document, uh, the actions and outcomes. They are not a verbatim, uh, record of that. So I don't think that that is an accurate thing. As I indicated, the process for obtaining a court reporter, there is a request that needs to be, uh, provided, uh, but there was, uh, a -- a number of, uh, explanations that were provided. Uh, I understand you may disagree with some of them and think our -- things are inaccurate and we'll get to the merits of those at the, uh, hearing that we scheduled, uh, yesterday. Uh, but I guess I'll also note for the record that statutorily many, uh, ex partes may be decided, uh, in chambers, uh, uh, that, for many things, that -- that a court hearing is not required on an ex parte matter. But the Court is, uh, endeavored to, uh, provide, uh, the explanation, uh, back in March with that. Uh, so this -- I don't see that there's a adequate showing to, uh, justify this, and we'll decide it in that hearing that we scheduled yesterday.

Bereki: Okay. May I respond?

Judge: You may.

Bereki: Okay. Um, I do understand your point about addressing the issues about whether the judgment is void, and I understand that we can address that at the hearing.

But, um, neither the ruling on the 18th, nor anything today, addresses the substantive issues pertaining to, um, staying the UD proceedings, uh, pending resolution of those issues because there I did demonstrate, uh, irreparable harm and imminent injury, and the Court has not, uh, addressed those substantive issues, either at the last hearing or this hearing. And, um, I also have additional, um, information. I don't know if you reviewed the, um, the ex parte that I filed in the UD case as well as the motion to vacate. Did you review that?

Judge: The ex parte that you filed the U- -- that's a separate case, assigned to a separate judge. So I have not seen an ex parte in a UD -- in the UD case.

Bereki: Okay, so are you aware of the issues, um, that I presented in this ex parte, pertaining to the, uh, the -- the, um, attorney in the UD case, he failed to notify me of the default judgment, the request for default. Uh, I believe the Court violated due process by, uh, uh -- awarding the default the next day, even though the attorney served it by mail and I did not get five days. Um, and I -- I was required to have five days' notice and I didn't get that. And then I appeared at the court the next day, after the ex parte, on March 19th to file an answer, based on the

corrections that you gave me in the hearing. And the clerk rejected it because it claimed, um, that the default had already been filed, that I was never given notice of. So essentially I've never, um, been allowed to answer. So I filed a, uh, UD, or a -- a ex parte application for a TRO stay and a motion to vacate in the, uh, UD case yesterday, and the judge, uh, de- -- uh, denied it basically, uh, again, refusing to address any of my substantive issues pertaining to, uh, the void -- the potential void judgment in this case. The, uh, uh, forthcoming imminent adversary proceeding of -- of the judgment violating the discharge order and being a fraudulent transfer. Um, and so, I -- I -- the due process just continues to be denied and -- and I'm trying to do my best to resolve this and to do so within court procedures by, you know, dotting every I and crossing every T to the best of my ability, and it just seems like at every turn, um, there's just another violation of due process that I'm not being heard.

Judge: All right, well I'm -- I'm sorry that you feel that way. In -- in terms of the UD, that -- it all needs to be addressed in the UD department. That is -- I can't order another judge at the trial court level to make a decision or, uh, take a -- a specific action.

That's -- the UD action that is pending in that case. What I can rule upon is the -- your challenges to the judgment. In this case we have set the hearing for that and it'll be addressed at that time.

Bereki: I -- I appreciate that. But what I'm -- I'm -- I'm reporting to you is that there's ongoing due process violations by the court itself, and those -- I'm not asking you to give me an appeal of that judge's orders. What I'm saying is that there's -- there's further irreparable harm, an injury continuing, and that -- that's what I'm --

Judge: Yes, (inaudible - 0:12:50) --

Bereki: -- hear right now for.

Judge: -- yes, well that's not the -- in the -- the analysis, sir. It's a much great- -- uh, the -- much greater, uh -- there's, uh, multi-fa- -- multiple factors that go into granting an ex parte relief. That, in and of itself, is not the sole, uh, factor. So, uh --

Bereki: Oh, okay.

Judge: -- again, the Court's made its ruling here today, uh -

-

Bereki: Can -- can you give me the --

Judge: -- and so --

Bereki: -- substantive reasons of why?

Judge: Okay, sir, I -- I -- the Court has made its ruling

here today. S- -- so we will have that hearing for you on the date that we set yesterday on the merits of your challenge to the judgment.

Bereki: Okay, may I ask one more question?

Judge: Y- -- you may ask one more question, yes, sir.

Bereki: Okay. Um, I hear you, what you're saying, but again, I -- I had not heard any substantive, um, reasoning for you on addressing the issues of irreparable harm and imminent injury, and I need to have those issues addressed so that I can raise them on appeal.

Judge: Yeah, as I just indicated, there are multiple factors. Just, uh, showing what you believe to be irreparable harm does not justify ex parte relief. That is one of many considerations that go into ex parte relief. So thank you very much --

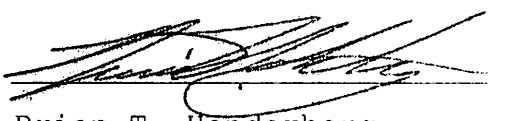
Bereki: Can --

Judge: -- sir, that wi- -- we will conclude the hearing here for today and we will speak again with the next filing. Thank you very much. Have a good day, sir.

TRANSCRIBER'S CERTIFICATE

I, Brian T. Henderberg, do hereby certify that the foregoing transcript is a full, true, and correct statement of the audio file provided to me titled "E45 EX PARTE MOTION FOR RECONSIDERATION OF STAY OF UD".

DATED this 23rd day of June, 2025.



Brian T. Henderberg

Ditto Transcripts
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222
Tel: 720-287-3710
Fax: 720-952-9897

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CAGE Code: 6C7D5
Tax ID #: 27-2983097

# Exhibit 9

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 05/22/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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: 74569773

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 05/21/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

P Prenga, present remotely on behalf of Defendant.

Hearing held, all participants appearing remotely.

Ex-Parte application for To Vacate Void Judgment; Stay Unlawful Detainer; Restore Possession of Real Property is requested by Defendant.

Upon Court inquiry, Defendant request to record today's hearing.

The Court provides information to Defendant on how to file a proper request for future hearings.

Defendant's Ex-Parte Application to Vacate Void Judgment; Stay Unlawful Detainer; Restore Possession of Real Property is **DENIED**.

Discussions held regarding Defendant's request of Ex-Parte relief.

The Court informs Defendants' irreparable harm presented via oral arguments does not qualify for Ex-Parte relief, however Defendant challenges will be heard on the merits during the 06/26/2025 hearing.

# Exhibit 10

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FOURTH APPELLATE DISTRICT
DIVISION THREE

| | |
|---|---|
| The Spartan Associates, Inc. a California Corporation<br>Plaintiff | Court of Appeal No. G055075 |
| vs. | ( Superior Court No. 30-2015-00805807) |
| Gary Humphreys, an individual;<br>Karen Humphreys, an individual;<br>Defendants/Cross-Complainants and Respondents | |
| vs. | |
| Adam Bereki, an individual, et al<br>Cross-Defendant and Appellant, | |

**RESPONDENT'S BRIEF**

Appeal from a Judgment of the
Orange County Superior Court
Honorable David Chaffee, Judge

WILLIAM G. BISSELL
State Bar #93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Attorney for Defendants/Cross-Complainants
/Respondents
GARY HUMPHREYS and
KAREN HUMPHREYS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rule of Ct. 8.208)

Bereki v. Humphreys
App. Case No. G055075

Other than the parties to this appeal, the Respondents know of no entities or persons who have a financial interest in the outcome of these proceedings, or who Respondents reasonably believe the justices should consider in determining whether to disqualify themselves under Cannon 3E of the Code of Judicial Ethics.

Dated: Feb. 1,2018

William Bissell, Attorney for
Respondents, Gary Humphreys
& Karen Humphreys

## I.

## INTRODUCTION

This action arises out of a home remodel project which began in April of 2012 on two units of a three unit condominium located in the Lido Isle community of Newport Beach, California. The project consisted of combining what at the time, were two separate small adjoining units into a single unit. The respondents Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the two units and appellant Adam Bereki (Mr. Bereki) was the contractor with whom the Humphreys contracted to perform the work.

From the beginning, work on the project did not progress smoothly and was shut down on at least two separate occasions by the City of Newport Beach for lack of having the required building permits for the work that was being performed. In August of 2013, a year and a half into the project, with the work once again at a city ordered standstill and the project far from completed, the Humphreys terminated Mr. Bereki and hired another contractor to finish their project.

This action was initiated by The Spartan Associates, Inc. (Spartan), a corporation wholly owned by Mr. Bereki and the alleged general contractor on the project, to recover from the Humphreys amounts Spartan claimed it was owed on an open book account and for work, labor and/or materials provided to the project.

The Humphreys cross-complained against Mr. Bereki, for disgorgement under California Business & Professions Code §7031(b) of the compensation paid by them; against Mr. Bereki

and Spartan for damages for negligence and fraud and against the sureties on Spartan's contractor's license bonds for recovery on the bonds. The basis of the cross-complaint was the alleged unlicensed status of Mr. Bereki at the time the work was performed, negligence on the part of Mr. Bereki in the manner in which he performed the work and fraud in surreptitiously charging the Humphreys over $100,000 for personal expenses and other items which the Humphreys alleged were not chargeable to them under their agreement with Mr. Bereki.

On motion of the Humphreys, which was unopposed, and was heard by the Trial Court on March 24,2017, the first cause of action of the amended cross-complaint, for disgorgement of compensation paid, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading. The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 and concluded on March 28, 2017. At the conclusion of the presentation of evidence which consisted of both the testimony of witnesses and the introduction of documents, the Trial Court found that Mr. Bereki was the party who had contracted with the Humphreys, that the work performed by and under Mr. Bereki required that he possess a license issued by the California State Contractor's License Board and that at no time, either at the time the contract was entered into or when the work was performed, did Mr. Bereki possess such a license. The Trial Court ruled that the Humphreys were the prevailing party on the first cause of action of the amended cross-complaint and as such were entitled to recover from Mr. Bereki all compensation paid by the Humphreys during Mr. Bereki's involvement on the project.

Attempting to comprehend and distill the many, and varied arguments raised by Mr. Bereki in his opening brief, it appears that the gist of his position can be found in the brief's conclusion where he contends the Trial Court committed reversible error in applying section 7031 of the Business and Professions Code to him and ordering disgorgement of the compensation paid by the Humphreys.

Because the Trial Court's actions were necessary, proper and in accordance with the law, Respondents request that the Trial Court's judgement be affirmed.

## II.

## STATEMENT OF THE CASE

The chronology of this case relevant to the pending appeal of the Trial Court's judgment is as follows:

On August 21, 2015 The Spartan Associates Inc. filed its complaint in this matter against the Humphreys alleging the common counts of goods sold and services rendered and open book account, [Clerks Transcript -Vol. 1–Pg. 49-52]. The Clerks Transcript is hereafter referred to as "CT".

On October 13, 2015 the Humphreys filed their answer to the complaint generally denying the material allegations of that pleading and alleging twenty separate affirmative defenses [CT- Vol. 1 Pg. 64-72]. At the same time, the Humphreys filed their cross-complaint in the action against Adam Bereki, The Spartan Associates, Inc. and Suretec Insurance Company alleging causes of action for negligence, fraud, alter ego, penalty for violation of Business & Professions Code §7160 and recovery against contractor's license bond [CT- Vol. 1- Pg. 73-93].

On November 16, 2015 The Spartan Associates, Inc. and Mr. Bereki filed their joint answer to the Humphreys cross-complaint, generally denying all of the material allegations in that pleading and alleging twenty separate affirmative defenses [CT- Vol. 1 Pg. 99-105].

On December 14, 2016, a substitution of attorney was filed in the matter whereby attorney J. Scott Russo, who had been representing both The Spartan Associates, Inc. and Mr. Bereki, substituted out as Mr. Bereki's attorney and remained as attorney of record for The Spartan Associates, Inc. Mr. Bereki at that point undertook his own representation. [CT- Vol. 3- Pg 738]

On February 2, 2016, the Humphreys filed an amendment to their cross-complaint naming Old Republic Surety Company to reflect the true name of the cross-defendant sued under the fictitious name Roe 16 as a cross-defendant in the Humphreys cause of action for recovery against contractor's license bond. [CT- Vol. 1- Pg. 206-207].

By motion filed on December 5, 2016 [CT- Vol. 3 – Pg. 704-736] the Humphreys sought leave of the Trial Court to amend their cross-complaint to add an additional cause of action against Mr. Bereki for disgorgement of funds pursuant to Business & Professions Code §7130. The motion for leave to amend was unopposed and the Trial Court, at the hearing on the motion held on January 6, 2017, granted the Humphreys leave to file their amended cross-complaint [CT- Vol. 3- Pg742-743]. The amended cross-complaint was filed on January 6, 2017 [CT- Vol. 3- Pg. 744-764] and was responded to jointly by The Spartan Associates, Inc. and Mr. Bereki on February 10, 2017, again by way of a general denial and the reassertion of the same previously plead affirmative defenses [CT- Vol. 3- Pg. 822-829].

On motion of the Humphreys, which was unopposed, and heard by the Trial Court on March 24,2017, the first cause of action of the amended cross-complaint, for disgorgement of

compensation paid, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading [CT- Vol. 4- Pg. 904-905].

The trial on the amended cross-complaint's severed first cause of action for disgorgement commenced on March 27, 2017 in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, all parties being present and having waived a jury [CT-Vol. 4 -Pg. 929-931], and was concluded on March 28, 2017 [CT- Vol. 4 – Pg. 950-952]. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled as follows:

> *"Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license. The Court finds judgment for the Cross Complainants Gary and Karen Humphreys (First Cause of Action, for disgorgement of funds paid) and against cross-defendant Adam Bereki."* [CT- Vol. 4-Pg 950-951].

The Trial Court, after an offer of proof by plaintiff's counsel on plaintiff's complaint, further found judgment for the Humphreys on the complaint of The Spartan Associates, Inc. [CT- Vol. 4- Pg. 950-951]

With the Trial Court having ruled in their favor on both the complaint and the first cause of action of the amended cross-complaint, and pursuant to an oral stipulation of the parties placed on the record, the Humphreys dismissed the remaining causes of action in their cross-action, without prejudice and subject to a stipulated waiver of the statute of limitations should it

become necessary to re-file an action on the dismissed causes of action [CT- Vol. 4 – Pg. 950-951].

Judgment on the complaint and on the amended cross-complaint was entered by the Trial Court on April 20, 2017 [CT- Vol. 4- Pg. 1005-1006], and notice of entry of judgment was served by the Humphreys on The Spartan Associates, Inc. and on all cross-defendants including Appellant on April 24, 2017 [CT-Vol. 4- Pg. 1017-1021].

On June 13, 2017 appellant Adam Bereki filed his notice of appeal from the judgment of the court [CT- Vol. 4- Pg. 1074] and notice thereof was given by the clerk of the Trial Court on the same date [CT- Vol. 4- Pg. 1075].

On June 30, 2017, Mr. Bereki filed his Appellant's Notice Designating Record on Appeal designating the Trial Court's file in this action in its entirety to comprise the Clerk's Transcript on appeal and electing to proceed without a reporter's transcript [CT- Vol. 4 – Pg. 1127-1135].

On December 13, 2017, Mr. Bereki filed a motion to augment the Record on Appeal by adding to the previously filed Clerk's Transcript, an additional 382 pages of post-trial filings in the Trial Court [CT- Vol. 4- Pg. 1151-1533] and the Reporter's Transcript of the trial of this matter on March 27 and March 28, 2017. The Reporter's Transcript is hereafter referred to as "RT".

On January 3, 2018 the Court of Appeal ruled on Appellant's motion to augment the record by granting the motion as it pertained to the inclusion of the Reporter's Transcript of the trial proceedings and denying the motion as it pertained to the attempt to include in the Clerk's Transcript the 385 pages of post-trial proceedings.

## III.

## STATEMENT OF APPEALABILITY

To the extent this appeal is from the judgment of the Orange County Superior Court entered in this matter, it is authorized by the Code of Civil Procedure Section 904.1 subdivision (a) (1). As to other matters, such as post trial proceedings, which Appellant has attempted to include in this appeal, no notice of appeal of such has been filed [CT Vol 4 -Pg. 1074] and therefore such matters are not an appropriate subject of this appeal.

## IV.

## ARGUMENT

### 1. NO FALSE OR MISLEADING STATEMENT WAS MADE TO THE TRIAL COURT

### A. New Issues Generally Will Not Be Considered

Appellate courts generally will not consider new issues or theories of law that a party raises for the first time on appeal. Bikkina v. Mahadevan (2015) 241 Cal. App. 4th 70, 92–93. To do so would unfairly deprive the trial court and the opposing parties of their opportunity to decide the issue, Bermudez v. Ciolek (2015) 237 Cal. App. 4th 1311, 1323. When a case is on appeal the parties are bound to the evidence produced in the trial court, and parties opposing or responding to the appeal cannot fairly be expected to disprove factual contentions that were not presented at trial, Strasberg v. Odessey Group, Inc. (1996) 51 Cal. App. 4th 906, 920. Both Mr. Bereki and the attorney for The Spartan Associates sat through the trial of this matter and both had the opportunity to cross-examine the Humphreys regarding any statement made by them in any prior pleadings or papers filed with the court. The Humphreys would have then had the opportunity to give their testimony on such examination and the Trial Court would have had the

opportunity to weigh any conflicting evidence or testimony. Neither Mr. Bereki nor counsel for the Spartan Associates however chose to bring up or question the Humphreys regarding their motion for summary judgment. To allow Mr. Bereki to raise these issues for the first time now would unfairly deprive the trial court and the Humphreys of the opportunity to address the issue and offer evidence to refute Mr. Bereki's claim.

**B. Standard of Review**

Determining whether statements made during trial were misleading is a factual determination to which the substantial evidence standard is applied. Under this standard great deference is given either to the trier of fact and will generally affirm a factual conclusion made by the trier of fact so long as it is supported by substantial evidence in the record, Nestle v. City of Santa Monica (1972) 6 Cal. 3d 920,925.

**C. The Record Proves Appellant's Argument to be False**

If the Court were nonetheless inclined to take Mr. Bereki's argument of false and misleading statements made at trial under consideration, the record puts a lie to that argument. Mr. Bereki argues that facts asserted by the Humphreys in their motion for summary judgment filed in this matter [CT -Vol. 1- Pg. 231-300] contradict facts to which they testified at trial and as a consequence a fraud was perpetrated on the court. Specifically, Mr. Bereki claims that the Humphreys asserted in their motion that they had contracted with The Spartan Associates, Inc. while testifying at trial that they had contracted with Mr. Bereki individually. In so arguing, Mr. Bereki misrepresents to this Court what in fact the Humphreys stated in their motion.

As opposed to Mr. Bereki's representation that the Humphreys, in their motion for summary judgment, acknowledged that they had contracted with The Spartan Associates and not Adam Bereki, the moving papers filed by the Humphreys actually state:

*"In April of 2012, my wife and I entered into an oral agreement with Adam Bereki for remodeling work to be performed by Mr. Bereki on our 436 Via Lido Nord Newport Beach condominium unit. Although I was initially under the impression that our agreement was with Mr. Bereki individually, we were later requested by Mr. Bereki to make our checks for progress payments payable to the The Spartan Associates, Inc."* Declaration of Gary Humphreys [CT - Vol.1 – Pg. 251 Line 15 -19]

*"In April of 2012, my husband and I entered into an oral agreement with Adam Bereki for remodeling work to be performed by Mr. Bereki on our 436 Via Lido Nord Newport Beach condominium unit. Although I was initially under the impression that our agreement was with Mr. Bereki individually, we were later requested by Mr. Bereki to make our checks for progress payments payable to the The Spartan Associates, Inc."* Declaration of Karen Humphreys [CT - Vol.1 – Pg. 273 Line 15 -19].

Clearly, the above declarations of fact of the Humphreys in support of their motion for summary judgment are consistent with the position adopted and the testimony given by the Humphreys at trial to the effect that they believed they were contracting with Mr. Bereki and his partner individually to perform the work on their condominium [RT-Vol-1-Pg 33, L-18 to Pg. 34, L- 2] [RT-Vol-1 – Pg. 84, L6-8].

## 2. THE TRIAL COURT'S APPLICATION OF BUSINESS & PROFESSIONS CODE §7031 TO THE FACTS OF THIS CASE WAS CORRECT.

### A. Appellant has Waived His Right to Attack the Judgment on Constitutional Grounds.

Mr. Bereki attacks the both the validity and the trial court's application of Business & Professions Code §7031 in this matter, on various misapplied legal grounds, relying primarily on

foreign and inapplicable authority. In doing so, Mr. Bereki is again raising issues for the first time on appeal that were neither brought up nor mentioned at the time of trial. Taking this issue under consideration at this stage would unfairly deprive the trial court and the Humphreys of the opportunity to address the issue and offer evidence to refute Mr. Bereki's claim and under the authority of Bikkina v. Mahadevan Supra at 241 Cal. App. 4th pg. 92–93 and Bermudez v. Ciolek Supra at 237 Cal. App. 4th 1323 this Court should decline to undertake the consideration of this issue.

Further, as a general rule, as with most other issues, a constitutional issue in a civil case must be raised at the earliest opportunity or it will be deemed waived. Needelman v. DeWolf Realty Co., Inc. (2015) 239 Cal. App. 4th 750, 763. As the court stated in, People v. Harrison (2013) 57 Cal. 4th 1211, 1229 "*No procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.*"

Beyond the policy of fairness expressed in Bikkina v. Mahadevan Supra and Bermudez v. Ciolek Supra, Mr. Bereki's failure to have raised, at the trial of this matter, the issues he now argues concerning the validity and application of Business & Professions Code §7031 amounts to a waiver of those issues.

**B. Standard of Review**

In the event the Court determines that the issue of the validity and application of Business & Professions Code §7031 by the trial court in this matter has not been waived by Mr. Bereki's failure to raise the issue at trial and is appropriate for its review in this matter, determining whether Business & Professions Code §7031 was a constitutionally valid law is a matter for de

novo review. Determining whether there was a sufficient showing made at trial for the trial court to base its judgment on that code section is a factual determination to which the substantial evidence standard is applied, requiring that deference be given to the trial court and the factual conclusions made by the trier of fact so long as they are supported by substantial evidence in the record, Nestle v. City of Santa Monica Supra at 6 Cal. 3d 925.

**C. Business & Professions Code §7031 (b) is an Appropriate and Valid Exercise of the State's Police Powers.**

The U.S. Constitution, Amend. X reads as follows: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" These are referred to as the states police powers. The police power is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people Keystone Bituminous Coal Ass'n v. DeBenedictis (1987) 480 U.S. 470, 503. In the civil context, the police power is the power of sovereignty or power to govern, i.e., the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare, Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal. 4th 866, 878 (superseded by statute on other grounds).

The validity of Business & Professions Code §7031 (b) as a proper exercise of the State's inherent police power to regulate the contracting industry for the benefit of the public, has been upheld by the California Supreme Court in Hydrotech Systems, Ltd. v. Oasis Waterpark, 52 Cal. 3d 988, 995 (1991) in which it was held;

"*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.* [Citations Omitted]."

The 2001 amendment to Business and Professions Code §7031 (b) adding the "sword" element to subsection (b) of the statute was addressed by this Court's District One in Alatriste v. Cesar's Exterior Designs, Inc. (2010, 4th Dist.) 183 Cal App 4th 656, 665-666 in which the Court stated;

". .*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(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(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...This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid...*

*7031(b) was designed to treat persons who have utilized unlicensed contractors consistently, regardless of whether they have paid the contractor for the unlicensed work. In short, those who have not paid are protected from being sued for payment and those who have paid may recover all compensation delivered..."*

**D. The Elements of the Action**

The elements of an action for disgorgement of compensation paid, brought under Business & Professions Code §7031 are:

1. A person engaged in the business or acting in the capacity of a contractor performing a contract where a license is required - Business & Professions Code §7031 (a);

2. Failure by that person to be duly licensed at all times during the performance of that contract - Business & Professions Code §7031 (a); and

3. Compensation paid to the contractor by the person utilizing the contractor's services - Business & Professions Code §7031 (b).

**E. Evidence Supporting Judgment.**

Each of the elements of a claim for disgorgement under Business & Professions Code §7031 were established at trial.

**1. Appellant was Acting in the Capacity of a Contractor in Both Contracting to Perform and in Performing the Work on the Respondent's Condominium Unit.**

Business & Professions Code §7026 defines "Contractor" for the purpose of division 3, chapter 9 of the code as "... ***any person*** *who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building... other structure, project, development or improvement, or to do any part thereof...*"

Business & Professions Code §7025(b) defines "Person", as the term is used in division 3, chapter 9 of the code, as including "***an individual,*** *a firm, partnership, corporation, limited liability company, association or other organization, or any combination thereof.*"

Despite Mr Bereki's contorted and strained argument to the contrary, there is simply no rational or logical basis for the proposition that Business & Professions Code §7031 does not apply to individuals.

There was ample uncontroverted evidence, both testimony and documentary, at trial establishing that the work undertaken by Mr. Bereki for the Humphreys involved alteration, repair and improvement of their condominium unit. **Exhibit 303**, the April 5, 2012 emails between Mr. Bereki and the Humphreys describes the scope of the project at the time the agreement was entered into. [RT- Vol-1-Pg 33, L-18 to Pg. 34, L- 2]; [RT- Vol-1-Pg 82, L-6 to Pg. 83, L-19]. Mr. Bereki's own testimony establishes that the work involved in the Humphreys project fell within the scope of Business & Professions Code §7026 [RT- Vol-1-Pg 113, L-5-22] [RT-Vol-1-Pg 141, L-8-16], [RT-Vol-1-Pg 146. L-1-10].

Without citing to anything in the record to support it, Mr. Bereki argues that the trial court erred in finding that it was he and not Spartan Associates, Inc. who contracted with the Humphreys and therefore wrongfully applied the disgorgement provision of Business & Professions Code §7031 to him personally. In making this assertion Mr. Bereki ignores the nearly overwhelming evidence which came in at trial on that issue and which supported the trial court's finding that the contract in issue was entered into between the Humphreys and Mr. Bereki individually. [RT-Vol-2-Pg. 28, L-8-13].

Examples of the evidence in support of the trial court's finding are:

Both Mr. and Mrs Humphreys testified that they believed (based on **Exhibit 303**) that they were hiring Mr. Bereki and his partner to perform the work described in the exhibit- [RT-Vol-1-Pg. 33, L-18 to Pg 34, L- 2], [RT-Vol-1-Pg. 84, L-3- 8];

Before the April 5, 2012 agreement, **Exhibit 303**, was entered into, Mr. Bereki never mentioned The Spartan Associates, Inc. to the Humphreys and the Humphreys had never heard of The Spartan Associates, Inc. [RT-Vol-1—Pg. 39, L-13-23], [RT-Vol-1-Pg. 84, L-3- 8].

There is no mention of The Spartan Associates, Inc. in the April 5, 2012 agreement between the parties **Exhibit 303** [RT-Vol-1-Pg. 39, L-24-26];

Mr. Bereki initially requested that the Humphreys checks in payment for the work on the project be made payable to him personally **Exhibit 305** [RT Vol-1- Pg. 41, L-11 to Pg. 42, L- 2].

The Humphreys first heard of Spartan Associates only after several months into the project when Mr. Bereki asked that they start making payments to Spartan Associates [RT-Vol-1- Pg. 42, L-7-25]; [RT-Vol-I-Pg. 85, L-25 to PG 86. L-17].

The Humphreys were never presented with any proposal or contract from The Spartan Associates [RT-Vol-1-Pg 86, L- 18-21.]

Job correspondence from Mr. Bereki to the Humphreys, was without exception, sent on his personal email account even though The Spartan Associates had its own email account [RT-Vol-1- Pg. 110, L- 9-18].

Mr, Bereki paid job costs and expenses from his personal account [RT-Vol-1-Pg 122, L-12 to Pg. 123, L-6] **Exhibit 355.**

In contrast to the above, there is virtually nothing in the record other than Mr. Bereki's unsubstantiated testimony that it was the Spartan Associates and not he that entered into the April 5, 2012 agreement with the Humphreys.

**2. Appellant was Unlicensed Both at the Time He Contracted with the Respondents and at the Time He Performed Work Under that Contract.**

That Mr. Bereki was not licensed either at the time the April 5, 2012 agreement with the Humphreys was entered into or at the time he performed work on the project is evidenced by his own express admission of lack of holding a license. [RT-Pg. 123, L-7-14]. Although admitting that he had no license issued to him in his name, Mr. Bereki argues that because he was allegedly the qualifying individual for The Spartan Associates contractor's license (an alleged fact not established at trial) his failure to hold a license in his own name is a matter of no harm no foul. This argument finds no support however in Business & Professions Code §7028.5, which holds "*It is unlawful for a person who is or has been a partner, officer, director, manager, responsible managing employee, responsible managing member, responsible managing manager, or responsible managing officer of, or an individual who is listed in the personnel of record of, a licensed partnership, corporation, limited liability company, firm, association or other organization to individually engage in the business or individually act in the capacity of a contractor within this state without having a license in good standing to so engage or act.*"

**3. Compensation was Paid to Appellant by the Respondents.**

The Humphreys paid Mr. Bereki a total of $848,000.00 for the work he ostensibly performed on their project. **Exhibit 32-4to17**, [RT-Pg. 85, L-7-21], [RT-Pg. 89, L-20 to Pg. 90, L-26], [Appellants Opening Brief Pg. 22].

Mr. Bereki, while conceding that the compensation was paid, argues that a portion of that compensation were checks from Mr. Humphreys corporation and that therefore the Humphreys had no standing to pursue recovery of those payments. The trial court in its findings held: "*So the evidence shows here the payments that were made through Humphreys & Associates*

*Incorporated's bank account were essentially debited against Mr. Humphrey's compensation, effectively making the payments directly from Mr. Humphreys...*" [RT-Vol-2-Pg, 24 to Pg. 21, L-2]

The evidence to which the trial court was referring above is the testimony given by Mr. Humphreys to the effect that all payments made to Mr. Bereki on Humphreys & Associates, Inc. checks were debited against his compensation and was nothing more than an accommodation to him by his employer for times when Mr. Bereki stated that he needed a payment to keep the job moving and Mr. Humphreys was physically unavailable to make the payment personally. [ RT-Vol-1-Pg, 158, L-16 to Pg. 162, L- 15]. There was no evidence or testimony which controverted Mr. Humphreys testimony in this regard.

And lastly on this point, Mr. Bereki argues that he should be entitled to a credit for or offset against any disgorgement, the value of any materials or equipment he provided to the Humphreys. This argument however was put to rest in Alatriste v. Cesar's Exterior Designs, Inc. Supra 183 Cal App 4th at 672 in which the Court citing White v. Cridlebaugh (2009) 178 Cal.App.4th 506, 517 held "*...the authorization of recovery of 'all compensation paid to the unlicensed contractor for performance of any act or contract' [citation] means that unlicensed contractors are required to return all compensation received without reductions or offsets for the value of material or services provided.' (citation) The court reasoned that this 'interpretation ... is consistent with the usual meaning of the word 'all,' which signifies the whole number and does not admit of an exception or exclusion not specified. [Citation.] In short, 'all compensation paid' does not mean all compensation less reductions for offsets.*"

**3. APPELLANT HAS FAILED TO PERFECT RIGHTS TO APPEAL MATTER OCCURRING POST JUDGMENT.**

Included in Mr. Bereki's opening brief are arguments to overturn the results of a number of various and sundry post trial proceedings he had filed in the trial court. Specifically, Mr. Bereki seeks to compel different results to the trial court's ruling on his post-trial Writ of Error, Demand for Bill of Particulars, Motion to Compel Bill of Particulars and Request for Statement of Decision. [AOB- Pg. 59]. Mr. Bereki has however failed identify in his notice of appeal [CT - Vol-4 Pg. 1074] any of the above post judgment orders as being the subject of his appeal. California Rule of Court 8.100 (a) (2) provides that the notice of appeal "*...is sufficient if it identifies the particular judgment or order being appealed.*" The notice submitted by Mr. Bereki makes no such identification and therefore is insufficient as to the post judgment matters Mr. Bereki now seeks to have determined.

**4. THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.**

The one exception to the bar prohibiting Mr. Bereki from raising, in this appeal, post judgment orders not identified in his notice of appeal, is the question of the trial court's jurisdiction over the matter. While lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal DeTomaso v. Pan American World Airways, Inc. (1987) 43 Cal. 3d 517, 520 there is simply no basis in fact which in any supports Mr. Bereki's claim of lack of jurisdiction.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const., Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior*

*courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

*Superior courts have original jurisdiction in all other causes....*"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the case.

As for personal jurisdiction over Mr. Bereki, Cal Code Civ. Proc § 410.50 states "*(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons on such party.*"

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102, 104. Mr. Bereki by substituting in as his own attorney in this matter in propria persona [CT-Vol 3- Pg. 738], filing his answer to the Humphrey's cross-complaint seeking a determination of the issues [CT-Vol 3- Pg. 822-829]

and appearing at and presenting his case in defense at the trial of this matter [CT-Vol 4- Pg. 929], made a general appearance giving the trial court personal jurisdiction over him

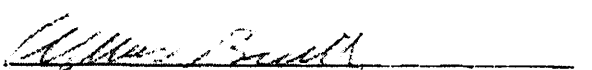
## V.

## CONCLUSION

For the reasons set forth above it is contended that Appellant's appeal is without merit and it is therefore respectfully requested that the judgement of the Trial Court be affirmed and that Respondents be awarded their costs on appeal, the amount of which to be determined by the Trial Court upon application made after remand of this case.

Dated: February 1, 2018

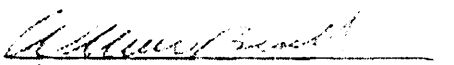
Respectfully Submitted



William G. Bissell
Attorney for Defendants/Cross-Complainants/Respondents Gary Humphreys and Karen Humphreys

## CERTIFICATION OF LENGTH

I, William Bissell, in compliance with Rule 8.204 (c) (1) of the California Rules of Court, do certify that according to the word count of the computer program used to prepare Respondent's Brief, Respondents Brief, exclusive of tables, is 5,536 words in length.



William G. Bissell
Attorney for Defendant/Cross-Complainants/Respondents
Gary Humphreys and Karen Humphreys

CERTIFICATION OF SERVICE & FILING

I, William Bissell, certify:

I am, and at all times mentioned herein was, an active member of the State Bar of California and not a party to the within action. My business address is 14 Corporate Plaza Drive, Suite 120, Newport Beach, CA 92660.

On February 1,2018 I served the **Respondent's Brief**, in this matter by depositing a copy of the Brief in the United States mail in Newport Beach, Orange County, California, in a sealed envelope, with postage fully prepaid, addressed to:

J. Scott Russo, Esq.
Russo & Duckworth LLP
9090 Irvine Center Drive, 2nd Floor
Irvine, CA 92618

Attorney for Plaintiff The Spartan Associates and Cross-Defendant Suretec Insurance Company

Carlos E. Sosa Esq.
Hausman & Sosa LLP
20750 Ventura Blvd
Ste 105
Woodland Hills, CA 91364-6646
Attorney for Cross-Defendant Old Republic Insurance Company.

On February 1,2018 I further served Respondent's Brief electronically on Appellant Adam Bereki by transmitting the brief to Appellant at:

abereki@gmail.com

On February 1, 2018 I further filed, through OneLegal, a court approved provider of electronic filing services, a copy of the brief with the clerk of the Orange County Superior Court, with instructions to deliver the brief to the Honorable David Chaffee,.

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

Executed on February 1,2018, at Newport Beach, California.

William Bissell

# Exhibit 11

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys
Karen Humphreys

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/04/2019 at 10:29:00 AM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.

And Related Cross-Action

Case No.30-2015-00805807

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDGEMENT**

Unlimited Civil- [Amount Exceeds $25,000.00]

Date: March 15, 2019
Time: 9:30 a.m.
Dept: C-16

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

Defendants/Cross-Complainants/Judgment Creditors Gary Humphreys and Karen Humphreys in opposition to the motion of Cross-Defendant/Judgment Debtor Adam Bereki to vacate the judgement entered in this matter submits the following memorandum of points and authorities.

I.

## INTRODUCTION

This action arises out of a home remodel project which began in April of 2012 in Newport Beach, California. The parties opposing this motion, Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and the moving party Adam Bereki (Mr. Bereki) was the contractor with whom the Humphreys contracted to perform the work.

From the beginning, work on the project did not progress smoothly and was "red tagged" i.e. shut down on at least two separate occasions by the City of Newport Beach. In August of 2013, a year and a half into the project, with the work once again at a city ordered standstill and the project far from completed, the Humphreys terminated Mr. Bereki and hired another contractor to finish their project.

This action was initiated by The Spartan Associates, Inc. (Spartan), a corporation wholly owned by Mr. Bereki and the alleged general contractor on the project, to recover from the Humphreys amounts Spartan claimed it was owed by the Humphreys.

The Humphreys filed an amended cross-complaint, the first cause of action of which was against Mr. Bereki, under California Business & Professions Code §7031(b) for disgorgement of the compensation paid by them to Mr. Bereki. The basis of the first cause of action of the amended cross-complaint was the alleged unlicensed status of Mr. Bereki at the time the contract was entered into and at the time the work was performed.

On motion of the Humphreys, which was unopposed, the first cause of action of the amended cross-complaint, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading. The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 before Judge David Chaffee in Department C-20 of this Court and concluded on March 28, 2017. Mr. Bereki appeared, testified and examined witnesses at that trial. At the conclusion of the presentation of evidence which consisted of both the testimony of witnesses on direct and cross examination and the introduction of documents, the Trial Court found that Mr. Bereki was the party who had contracted with the Humphreys, that the work performed by and under Mr. Bereki required that he possess a license issued by the California State Contractor's License Board and that at no time, either at the time the contract was entered into or when the work was performed, did Mr. Bereki possess such a license. The Trial Court ruled that the Humphreys were the prevailing party on both the complaint and the first cause of action of the amended cross-complaint and as such were entitled to recover from Mr. Bereki all compensation paid by the Humphreys during Mr. Bereki's involvement on the project.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. Both Mr. Bereki's opening brief and his reply brief raised and addressed his claim that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution. Oral argument was heard on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their

costs on appeal.

On or about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Court of Appeals decision, once again raising as grounds for review the claimed lack of jurisdiction of the trial court and claimed denial of due process. The petition for review was denied on January 30, 2019 and the case was remitted to this Court for entry of costs on Appeal.

Mr. Bereki, who clearly lacks a sufficiently developed understanding of jurisdictional and constitutional law, has repeatedly raised the issues of jurisdiction and due process and has been heard on those issues multiple times and apparently is unable to accept the fact that his position has no basis in law. There is no basis, either procedurally or substantively which would allow this court, at this juncture of the litigation to so much as entertain Mr. Bereki's motion much less grant it.

II.

## CHRONOLOGY OF THE CASE AS IT PERTAINS TO THIS MOTION

The chronology of this case relevant to the pending motion is as follows:

On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff The Spartan Associates, Inc. (Spartan) against the Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017.

On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three.

On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims as they relate to the trial courts jurisdiction over the action and Mr. Bereki were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal.

On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition.

On January 30, 2019 the California Supreme Court denied the petition for review and on January 31, 2019 the Appellate Court issued its Remittitur of the case back to the trial court for entry of costs on appeal .

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III.

**MOVING PARTY'S CLAIM IS BARRED UNDER**

**THE DOCTRINE OF RES JUDICATA**

The doctrines of res judicata and judicial estoppel rest on the ground that a party who has litigated a matter or has had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation Busick v. Workmen's Comp. Appeals Bd. (1972) 7 Cal. 3d 967, 972; Rubenstein v. Rubenstein (2000) 81 Cal. App. 4th 1131, 1144. The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues that were or could have been raised in the original suit Torrey Pines Bank v. Superior Court (1989) 216 Cal. App. 3d 813, 821.

None of the "issues" on which Mr. Bereki is basing his motion are being raised here for the first time. Mr. Bereki has asserted the same tired and strained arguments in his post judgment motions to the trial court, in his appeal of the trial courts judgment and in his petition for review filed with the State Supreme Court. Further, even if these issues had not already been raised and rejected as ill founded, there is not a single issue raised here that could not have been asserted at the time of trial or in Mr. Bereki's appeal. This case may stand as the poster case for why public policy demands that there be an end to litigation. Mr. Bereki has been heard on these issues and he has lost, not only at trial but at the appellate level. That should be the end of it.

//

IV.

**THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.**

In the event the Court determines that the instant motion warrants consideration, the facts of this case establish that the trial court had both personal jurisdiction over Mr. Bereki and subject matter jurisdiction over the case and that the judgment entered by the trial court and affirmed by the court of Appeal was proper and beyond attack at this level.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const, Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

***Superior courts have original jurisdiction in all other causes....***"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the action. As for personal jurisdiction over Mr. Bereki, Cal Code Civ

Proc § 410.50 states *"(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons on such party."*

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102. Mr. Bereki by substituting in as his own attorney in this matter in propria persona, filing his answer to the Humphrey's cross-complaint seeking a determination of the issues and appearing at and presenting his case in defense at the trial of this matter , has made a general appearance and thus has voluntarily submitted to the trial court exercising personal jurisdiction over him..

V.

**CONCLUSION**

Although Mr. Bereki couches his motion to vacate the judgment as being grounded in a claimed lack of jurisdiction by both the trial court to have rendered judgment and the court of appeal to have affirmed that judgment, in reality the motion is nothing more than an attempt to relitigate the same issues he has raised in his appeal of the trial court's judgment and in his petition to the State Supreme Court. While Mr. Bereki correctly points out that a motion to challenge a judgment on the basis it is void may be brought at any time, he clearly fails to understand that once that challenge has been brought and has been determined to be without merit, he is barred from reasserting that challenge except to a court of review at a higher level. Simply put, Mr. Bereki has shot his wad on this issue at all levels of review with the exception of the United States Supreme Court and for that reason this motion should be removed from the law and motion calendar as having been improperly filed or alternatively, denied.

For the reasons set forth above it is requested that the court refuse to hear the pending motion as having been improperly filed or alternatively deny the motion.

Respectfully Submitted

Date: February 28, 2019

William Bissell

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou, email=wbissell@wgb-law.com, c=US
Date: 2019.03.04 09:50:24 -08'00'

William G. Bissell,
Attorney for Defendants Cross-Complainants
Gary Humphreys and Karen Humphreys

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. On March 4, 2019, I served the within:

**Memorandum of Points and Authorities in Opposition to Motion to Vacate Judgment**

by placing the envelope for collection and mailing, following the above practices addressed to:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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

Executed on March 4, 2019, at Newport Beach, California.

William Bissell

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou, email=wbissell@wgb-law.com, c=US
Date: 2019.03.04 09:50:53 -08'00'

William Bissell

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys
Karen Humphreys

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/04/2019 at 10:29:00 AM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.

And Related Cross-Action

Case No.30-2015-00805807

**DECLARATION IN OPPOSITION TO MOTION TO VACATE JUDGEMENT**

Unlimited Civil- [Amount Exceeds $25,000.00]

Date: March 15, 2019
Time: 9:30 a.m.
Dept: C-16

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

I William Bissell declare as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration and could competently testify to the same.

2. On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff, The Spartan Associates, Inc. (Spartan) against the Gary and Karen Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

3. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017. Judgment in this matter and the entry thereof is reflected in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d).

4. On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three. The notice of appeal is contained in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d)

5. On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims as they relate to the trial courts jurisdiction over the action and Mr. Bereki's due process

arguments were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal. Attached as Exhibits "A" and "B" respectively are those portions of Mr. Bereki's Opening and Reply briefs filed with the Court of Appeal in which he raises the issues of jurisdiction and denial of due process. The opinion of the Court of Appeal is attached to the moving papers as exhibit A.

6. On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition. Attached as Exhibit "C" are those portions of Mr. Bereki's Petition for Review filed with the California Supreme Court in which he again raises the issues of jurisdiction and denial of due process.

7. On January 30, 2019 the California Supreme Court denied the petition for review. Attached as Exhibit "D" is notice of California Supreme Court's denial of Mr. Bereki's petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 25, 2019 at Newport Beach, California.



William Bissell
Attorney for Gary Humphreys
and Karen Humphreys

# EXHIBIT A

Appeal No. G055075

In the California Court of Appeal
Fourth Appellate District, Division Three

---

Adam Bereki
Defendant Below and Appellant

v

Karen and Gary Humphreys
Plaintiffs Below and Respondents

---

Appeal from the Superior Court County of Orange
Case No. 30-2015-00805807
Hon. David Chaffee

---

# APPELLANT/PETITIONER'S OPENING BRIEF

---

Adam Bereki
In Propria Persona
813 Spirit
Costa Mesa, California
949.241.6693
abereki@gmail.com

Received by Fourth District Court of Appeal, Division Three

## 7031 IS UNCONSTITUTIONAL AS APPLIED

Business & Professions Code §7031(b) is unconstitutional as applied by the court to Adam Bereki because it:

1) violates the Constitutional provisions of punitive damage awards;

2) does not meet the requirements of justiciability (See Section );

3) violates due process;

4) is void for vagueness as to the term compensation in "return all compensation paid".

5) Is purely punitive and requires Rights guaranteed to a criminal defendant

California authorizes four penalties for "engaging in the business of, or acting in the capacity of, a "contractor" without a license – a criminal penalty, a civil penalty, a shield penalty and a sword penalty:

1) The first offense criminal penalty can be a misdemeanor conviction with a fine up to $5,000, plus restitution for any actual economic loss. The fine is payable to the government, the economic loss to the customer.

2) The civil penalty is a citation by the Registrar of Contractors, an administrative hearing, and a penalty up to $5,000, except for certain named violations. The civil penalty is payable to the government.

3) The shield penalty bars the unlicensed contractor from using the courts to collect money owed for work performed. This penalty vindicates the judicial system by preventing use of the court to enforce unlicensed work performed in violation of law.

4) The sword penalty is disgorgement. It allows the customer to recover all compensation paid to the unlicensed contractor. Disgorgement, like compensatory damages, is payable to a private party, not the government.

Disgorgement is a form of damages assessed against the unlicensed contractor and paid to its customer for the violation of the license law.

Disgorgement is a monetary award to a private party, not the government.

Punitive damages are defined as being independent from, and not in any way compensation for, any actual damages suffered. Regardless of whether disgorgement is a legal or equitable remedy, and regardless of what it is labeled, disgorgement is clearly a penalty, unrelated to actual damages as it has been applied by the courts in the form of punitive damages paid to a private party.

California courts have repeatedly held disgorgement to be lawful – on its face – despite the potential harshness or draconian nature of the remedy. However, even though the Legislature allows juries to assess punitive damages under a statute that is clearly constitutional on its face (Civil Code § 3294), the courts routinely determine whether punitive damages assessed by a jury in a particular case exceed constitutional bounds. The same must be true for disgorgement.

7031 VIOLATES THE PROVISIONS OF PUNITIVE DAMAGE AWARDS

The U.S. Supreme Court has established a three part test for evaluating the validity of punitive damages in civil cases. See State Farm Mutual Auto Insurance Co. v Campbell, 538 US 408 (2003):

1) the reprehensibility of the conduct being punished;

2) the reasonableness of the relationship between the harm and the award; and

3) the difference between the award and the civil penalties authorized in comparable cases.

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

REASONABLENESS

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

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

California and federal courts have constrained awards of punitive damages to a reasonable relationship to the actual damages suffered.

In the instant case, disgorgement of anything would be an infinite multiple of the non-existent damages.

COMPARABLE CASE AWARDS

Second, the difference between the $848k disgorgement award and both the criminal and civil penalties authorized in comparable cases is astronomic. As previously noted, the maximum criminal penalty is $5,000 plus restitution of actual economic loss.

*Again, Respondents presented no witnesses or evidence at "trial" of any actual loss whatsoever.*

The maximum civil penalty that could be assessed by the CSLB is also $5,000. Thus, a "disgorgement" of $848k would be 169 TIMES the comparable criminal or civil penalty.

The judgment in this case is more than three times the financial penalty for treason, – the highest crime of our country– which is $250,000. Furthermore, it forces Adam into elements of financial ruin and bankruptcy.

Punitive damages in excess of $5000 therefore do not pass Constitutional muster.

REPREHENSIBLE

Third, the conduct is not reprehensible. Not only was there no evidence of any damages whatsoever, had there been, they would have been purely economic. No one was hurt or injured. There was no evidence of fraud, oppression, or malice.

No evidence was presented the compensation by Spartan or Adam had not been returned.

Respondents interacted exclusively with Adam Bereki who had the work experience and passed the competency exam to qualify for Spartan's contractors license. It is unknown how Respondents could therefore be deprived of the CSLL protections.

Prior to hiring Adam Bereki or Spartan, Respondent Gary Humphreys was intimately aware of Adam's competency by the previous projects he had done at Respondents business and for other family members (RT 93–10).

Furthermore, as mentioned, Mr. Humphreys is a nationally recognized expert in project management and government contractor who teaches project management around the world including to the construction industry. He is not a member of the public who needs protection from incompetence and dishonesty from those who provide building and construction services. In fact he has decades more training and experience than Adam Bereki who doesn't even possess a college degree.

While Mr. Humphreys claims he does not have specific experience in building construction itself, the project management principles he teaches most definitely are fundamental to every project. The preface of his near eight hundred page book on project management states: "Please do not conclude that a sample does not apply to those of you in the construction, software, or other industries." (CT 400-401, RT 97)

See Jet Source Charter, Inc. v Doherty, 148 Cal. App. 4th 1, (2007)

A de novo standard of review should be applied to the court's ruling.

## 7031 VIOLATES DUE PROCESS

See Pacific Mutual Life v Haslip, 499 US 1 and Honda Motor Co. Ltd v Oberg, 512 US 415

A de novo standard of review should be applied to the court's ruling.

## THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO RENDER ANY JUDGMENT DUE TO FRAUD, DUE PROCESS VIOLATIONS, AND RESPONDENTS FAILURE TO PROVE THE FACTUAL SUFFICIENCY OF THEIR CLAIM

A court of California does not have jurisdiction to render a judgment that violates the California Constitution or the Constitution of the United States.
County of Ventura v Tillett, 133 Cal. App. 3d 105

While a court has jurisdiction to hear and decide cases, it does not have jurisdiction adjudicate a case upon the commission of a crime such as fraud or violations of due process such as those evidenced above that occurred in this case.

A court only has subject matter jurisdiction to adjudicate a claim upon substantial proof of the factual sufficiency of each element of that claim by competent sworn testimony regarding authenticated evidence.

In the case of a violation of statute, jurisdiction *only* extends once the factual sufficiency of each element of the offense has been met.

In this way, subject matter jurisdiction is a two sided coin.

One side of the subject matter jurisdiction coin involves the common law, statutory authority, or contract upon which there was a duty to do or not do something and the court's empowerment to deal with that subject matter as authorized by Constitution or Statute.

> The first prong of the jurisdiction analysis is to determine which state courts have subject matter jurisdiction. The court in which the action is filed must be competent

under California law to render a judgment; i.e., the state constitution or statutes must empower it to adjudicate the type of lawsuit involved and to render a judgment for the amount in controversy. [See Marriage of Jensen (2003) 114 CA4th 587, 593, 7 CR3d 701, 705 (citing text)]

"The principle of 'subject matter jurisdiction' relates to the inherent authority of the court involved to deal with the case or matter before it." [Varian Med. Systems, Inc. v. Delfino (2005) 35 C4th 180, 196, 25 CR3d 298, 311]

The other side of the coin (or second prong) rests on the factual sufficiency of the claim. Without the factual sufficiency of the claim there would be no proven violation of law for the court to render judgment/verdict. The court would not have jurisdiction over the subject matter because a law has not been proven to have been violated – there is no proof of a claim for it to adjudicate. At that point the court has a non-discretionary duty to dismiss the case for want of subject matter jurisdiction. See FRCP 12(b)(6)

The factual sufficiency of the claim must establish there was a known duty the breach of which was the causation of damages as attested to by at least one competent fact witness testifying under oath and subject to cross examination regarding authenticated evidence.

See also Buis v State, 1990 OK CR 28.

Respondents:

1) failed to offer any competent sworn testimony Adam Bereki was a person to whom §7028 and §7031 applied

2) failed to offer any competent sworn testimony as to what work Adam Bereki did on their project that was required to be licensed and the amount he was compensated for

that work required to be licensed as differentiated from work done NOT required to be licensed or the work done by Spartan.

3) failed to controvert Spartans testimony and evidence of obtaining the permits, doing the work, and receiving $758,000 in compensation.

4) committed fraud on the court by making false or misleading statements to gain a civil advantage.

5) failed to prove they had paid personally $495,000 that was paid by Humphreys & Associates, Inc. and therefore had no standing to collect on its damages.

6) Failed to respond to multiple challenges to jursidiction violating due process

7) Failed to state a justiciable cause of action and subjected Adam to an unknown jurisdiction of law foreign to our Constitutions.

The trial court did not have cognizance of a case pursuant to §7028 or §7031 B&P against Adam Bereki because these causes of action do not meet the requirements for a justiciable controversy as evidenced.

The proper parties were NOT present because there were none who could be pursuant to the first requirement. See Reynolds v Stockton, 140 US 254, 268 (1891)

See also Saffer v Jp Morgan Chase, 225 CA4th 1239, 1246 (2104); Parrott v Mooring Townhomes Ass'n Inc., 112 CA 4th 876; Chromy v Lawrance, 233 CA3d 1521, 1527.

A de novo standard of review should be applied to the court's ruling.

# Exhibit 12

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

**MINUTE ORDER**

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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: 72990898

**EVENT TYPE:** Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

---

**APPEARANCES**
Law Offices of William G. Bissell, from Law Offices of William G. Bissell, present for Cross - Complainant,Defendant,Respondent on Appeal(s).
Adam Bereki, self represented Defendant, present.

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Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. 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.

Counsel for the Humphreys to give notice.

# Exhibit 13

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949)287-4503
wbissell@wgb-law.com

Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.
And Related Cross-Action

Case No.30-2015-00805807

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDGEMENT AND REQUEST FOR SANCTIONS - C.C.P. §128.5**

Date: June 26, 2025
Time: 2:00 p.m.
Dept: C-23

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

Defendants/Cross-Complainants/Judgment Creditors Gary Humphreys and Karen Humphreys in opposition to the motion of Cross-Defendant/Judgment Debtor Adam Bereki to vacate the judgement entered in this matter submits the following memorandum of points and authorities.

I.

## INTRODUCTION

This motion is in all substantive respects nothing more than a refiling and rehash of virtually the same motion to vacate judgment brought by Mr. Bereki in February of 2019 in this case and in which the court in denying the motion aptly noted *"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..."*

Despite the trial courts crystal clear admonition to Mr. Bereki advising him that upon the appellate court's affirming the judgment the trial court has no jurisdiction to entertain new arguments attacking the merits of the judgment, Mr. Bereki persists in ignoring both the courts rulings and procedural law and continues to harass the Humphreys, denigrate this Court and waste judicial resources by filing motions patently lacking in merit and seeking public support for the motion through inflammatory emails.

II.

## BRIEF HISTORY OF THE CASE

This case , judgment in which has long been final, arose out of a home remodel project which began in April of 2012 in Newport Beach, California. The parties

opposing this motion, Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and the moving party Adam Bereki (Mr. Bereki) was the contractor, albeit unlicensed, with whom the Humphreys contracted to perform the work.

A dispute arose between the Humphreys and Mr. Bereki over the quality of the work performed by Mr. Bereki and other disturbing aspects of Mr. Bereki's activities and performance on the project resulting in a civil complaint being filed in this matter by Mr. Bereki's corporation and a cross complaint being filed by the Humphreys. On motion of the Humphreys the first cause of action of their first amended cross-complaint for disgorgement under California Business & Professions Code Section 7031, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading.

The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 before Judge David Chaffee in Department C-20 of this Court and concluded on March 28, 2017. At the conclusion of the presentation of evidence, the Trial Court ruled in favor of the Humphreys on both the complaint and the first cause of action of the first amended cross-complaint and entered judgment accordingly.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. As with the instant motion, both Mr. Bereki's opening brief and his reply brief raised and addressed his claim that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution. Oral argument was heard on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of

jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal.

On or about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Court of Appeals decision, once again raising as grounds for review the claimed lack of jurisdiction of the trial court and claimed denial of due process. The petition for review was denied on January 30, 2019 and the case was remitted to this Court for entry of costs on Appeal.

On February 19, 2019 Mr. Bereki filed with this Court the motion to vacate the judgment in this matter mentioned above , which was denied on March 15, 2019.

In October of 2019 Mr. Bereki filed a petition for writ of certiorari with the United States Supreme Court seeking to have the judgment here overturned. That petition was denied.

In addition to the above there have been an assortment of misguided collateral attacks on the judgment brought by Mr. Bereki in both the federal court and again to the U.S. Supreme Court all of which have been summarily denied.

Mr. Bereki, who after repeatedly raising the issues of jurisdiction and due process and having been heard on those issues multiple times in multiple venues is apparently incapable of accepting the fact that in the vast majority of trials there is a loser and in this one that is he. There is no basis, either procedurally or substantively which would allow this court, at this juncture to so much as entertain Mr. Bereki's motion much less grant it.

## III.

## MOVING PARTY'S CLAIM IS BARRED UNDER THE DOCTRINE OF RES JUDICATA

The doctrines of res judicata and judicial estoppel rest on the ground that a party who has litigated a matter or has had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation Busick v. Workmen's **Comp. Appeals Bd. (1972) 7 Cal. 3d 967, 972; Rubenstein v. Rubenstein (2000) 81 Cal.** App. 4th 1131, 1144. The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues that **were or could have been** raised in the original suit Torrey Pines Bank v. Superior Court (1989) 216 Cal. App. 3d 813, 821. *"A final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in the action"* Federated Dept. Stores, Inc. v. Moitie 452 U.S. 394, 398 (1981).

The "issues" on which Mr. Bereki is basing his latest motion have either been raised numerous times before or are issues which could have been raised and litigated at the 2017 trial. Mr. Bereki has asserted the same tired and strained arguments in his post judgment motions to the trial court, in his appeal of the trial courts judgment, in his petition for review filed with the State Supreme Court and his petition for writ of certiorari filed with the U.S. Supreme Court .As to those issues which have not already been raised and rejected as ill founded, there is not one that could not have been asserted at the time of trial or in Mr. Bereki's appeal.

## IV.

## THE JUDGMENT IS NOT VOID

Mr. Bereki argues that the holding in Eisenberg Village v. Suffolk Constr. Co.53 CA 5th 1201 (2020) somehow voids the judgment in this case. It does nothing of the sort. The holding in the Eisenberg v. Suffolk case did not invalidate the disgorgement provisions of Business & Professions Code §7031 which remains unchanged and enforceable today as it was when the judgment in this case was entered. Eisenberg v. Suffolk merely identified the period in which an action under the disgorgement clause of that statute must be brought. Mr. Bereki argues that under the decision in the Eisenberg v, Suffolk supra case the Humphrey's disgorgement cause of action was untimely and the that consequently the judgment is void. In so arguing, Mr. Bereki ignores the fact that the burden of proving a statute of limitations defense lies with the party asserting the defense. Although it was within his power to assert the defense and put on evidence to try to establish it at trial Mr. Bereki failed to do either.

There has been no substantive change in the law under which the judgment in this case was entered and Mr. Bereki has certainly not pointed the court to any such change which would warrant a deviation here from the principals of res judicata.

## V.

## THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.

In the event the Court determines that the instant motion warrants consideration, the facts of this case establish that the trial court had both personal jurisdiction over Mr. Bereki

and subject matter jurisdiction over the case and that the judgment entered by the trial court and affirmed by the court of Appeal was proper and beyond attack at this level.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const, Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

***Superior courts have original jurisdiction in all other causes....***"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the action. As for personal jurisdiction over Mr. Bereki, Cal Code Civ Proc § 410.50 states "*(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). **A general appearance by a party is equivalent to personal service of summons on such party.***"

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102. Mr. Bereki by substituting in

as his own attorney in this matter in propria persona, filing his answer to the Humphrey's cross-complaint seeking a determination of the issues and appearing at and presenting his case in defense at the trial of this matter , has made a general appearance and thus has voluntarily submitted to the trial court exercising personal jurisdiction over him.

## VI.

## SANCTIONS UNDER CODE OF CIVIL PROCEDURE SECTION 128.5 ARE WARRANTED

A trial court may order a party to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. C.C.P §128.5 (a).

For purposes of C.C.P §128.5 (a) "actions or tactics" includes the making of a motion and "frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. C.C.P §128.5 (b) (1) & (2).

A request for sanctions under C.C.P §128.5 (a) may be made in a party's responding papers. C.C.P §128.5 (c) . Lesser v. Huntington Harbor Corp. 173 CA3rd 922 (1985).

An action is deemed frivolous or in bad faith if it is prosecuted for improper motive (including harassment or delay) or if it is totally and completely devoid of any merit. Finnie v. Town of Tiburon, 199 Cal. App. 3d 1, 12 (1988).

As set forth above, Mr. Bereki has been informed by this Court in terms which are crystal clear and not subject to interpretation, that the trial court has no jurisdiction to entertain attacks on the judgment entered in this case. In other words, Mr. Bereki has been

advised by this Court that any new attempt by him to attack the judgment in this venue is frivolous. Despite being on notice of the frivolousness of this motion Mr. Bereki persists in ignoring the court's admonishment and continues to harass the Humphreys. Worse still, Mr. Bereki in a display of shocking disrespect to the Court attempts to bait this Court by such emails as the following sent on June 4, 2025:

> *"Good day, Let us all patiently await the discovery of whether supervising Superior Court Judge, David Hesseltine, will tell the truth, exposing nearly 100 years of legislative, executive, and judicial tyranny in Commiefornia involving Cal. Business and Profession Code §7031 (unlicensed contracting) or will lie to shield his brethren and other officials involved in the corruption...*
> *Please join us, Thursday, June 26, at 2:00PM in his courtroom or by zoom (visit* ***occourts.org****, click on remote appearance, select civil unlimited, civil unlimited again, and Department C23 Judge Hesseltine) for the 'hearing', where, if my personal experience is any indication, no one will actually be heard. Perhaps the 26th will be a dawn of integrity for the Judge where he will honor his oath of office so that we can rightfully refer to him as "Honorable" (it would my honor to do so)....*
>
> *Kindly forward this email to your co-workers, friends, and family in support of me and many others across America who are exposing the fraud, deceit, and treason perpetrated by members public office (and especially bar ASSociations ie Donna Kirkner, William Bissell) upon us under color of law....*
>
> *Thank you for listening.*
> *Sincerely,*
> *Adam Bereki"*

These actions of Mr. Bereki warrant a finding of contempt of court and at a minimum, demand that Mr. Bereki be sanctioned under C.C.P. §128.5 in an amount which will compensate the Humphreys for the costs of defending this motion as set forth in the

accompanying declaration and hopefully dissuade Mr. Bereki from further frivolous and bad faith actions.

## VII.

## CONCLUSION

Although Mr. Bereki couches his motion to vacate the judgment as being grounded in a claimed lack of jurisdiction by both the trial court to have rendered judgment and the court of appeal to have affirmed that judgment, in reality the motion is nothing more than an attempt to relitigate the same issues he has raised in his appeal of the trial court's judgment and in his petition to the State Supreme Court and the United States Supreme court. While Mr. Bereki correctly points out that a motion to challenge a judgment on the basis it is void may be brought at any time, he clearly fails to understand that once that challenge has been brought and has been determined to be without merit, he is barred from reasserting that challenge except to a court of review at a higher level of which in this matter there is now none.

This case may stand as the poster child for why public policy demands that there be an end to litigation and an end to the losing party's harassment of the prevailing parties by continuing to bring spurious motions and proceedings. Mr. Bereki has been heard, reheard and heard again on the same issues and he has lost at every juncture at every possible level of review. Although it has been stressed before by the trial court, Mr. Bereki should be re-admonished in the strongest possible terms that he is pursuing course to which he has no rights and that must end now. Simply put, Mr. Bereki has been heard on this issue at all levels of review and for that reason this motion should be removed from the law and motion calendar as having been improperly filed or alternatively, denied and in either case sanctions

assessed against Mr. Bereki and in favor of the Humphreys as set forth in the accompanying declaration.

Respectfully Submitted:

Date: June 12 , 2025

*william bissell*

William G. Bissell,
Attorney for Defendants Cross-Complainants
Gary Humphreys and Karen Humphreys

# PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

*-The Spartan Assoc. Inc. vs .Gary Humpherys. et al*
30-2015-00805807

I am employed in the County of Orange, California. I am over the age of eighteen (18) years and not a party to the case. My business address is 23 Corporate Plaza Drive, Suite 150 Newport Beach CA 92660.

On April 14, 2025, I served electronically via email MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDFGMENT AND REQUEST FOR SANCTIONS – C.C.P 128.5 and SUPPORTING DECLARATION in this matter upon the following legal counsel and parties:

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
Abereki@gmail.com

Judgment Debtor in Pro Per

Executed on June 13, 2025, at Newport Beach, California

william bissell

William Bissell

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949)287-4503
wbissell@wgb-law.com

Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC.<br><br>Plaintiff,<br><br>vs.<br><br>GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive<br><br>Defendants.<br>And Related Cross-Action | Case No.30-2015-00805807<br><br>**DECLARATIONIN OPPOSITION TO MOTION TO VACATE JUDGEMENT AND REQUEST FOR SANCTIONS - C.C.P. §128.5**<br><br>Date: June 26, 2025<br>Time: 2:00 p.m.<br>Dept: C-23<br><br>Action Filed: August 21, 2015<br><br>Judgment Entered: April 20, 2017<br><br>Judgment Affirmed on Appeal: Oct. 21,2018<br><br>Cal. Supreme Court Review Denied: Jan. 30, 2019 |

I William Bissell declare as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration and could competently testify to the same.

2. I am presently and have been from the initial stages of this case the attorney of record for Karen and Gary Humphreys, the defendants/cross-complaints/judgment creditors in this matter and have acted as such in both the trial and post trial proceedings referred to in this declaration.

3. On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff, The Spartan Associates, Inc. (Spartan) against Gary and Karen Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

4. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017. Judgment in this matter and the entry thereof is reflected in the court's file of this matter and is attached to Mr. Bereki's request for judicial notice as Exhibit #1. Judicial Notice thereof the is requested under Evidence Code Section 452 (d).

5. On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three. The notice of appeal is

contained in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d)

6. On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims, as they relate to the trial courts jurisdiction over the action and Mr. Bereki's due process arguments, were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal. The opinion of the Court of Appeal and the Court's denial of Mr. Bereki's petition for rehearing is attached as Exhibit #2 to Mr. Bereki's Request for Judicial Notice filed in this motion.

7. On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition.

8. On January 30, 2019 the California Supreme Court denied the petition for review. Attached to Mr. Bereki's Request for Judicial Notice filed in this motion as Exhibit #4 is notice of California Supreme Court's En Banc denial of Mr. Bereki's petition for review.

9. On February 19, 2019 Mr. Bereki filed with this Court a motion to vacate the judgment in this matter, the hearing on which was held on March 15, 2019 in Department C16 before the Honorable James J. Di Cesare. In denying the motion the court noted "... *"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".* The Court's minute order on the March 15, 2019 motion to vacate is attached as Exhibit #3 to Mr. Bereki's Request for Judicial Notice filed in this motion..

10. In the fall of of 2019 Mr. Bereki filed a petition for writ of certiorari with the United States Supreme Court seeking to have the judgment in this case overturned. On October 7, 2019 the U.S. Supreme Court denied the petition for certiorari. Attached to Mr. Bereki's Request for Judicial Notice filed in this motion as Exhibit #5 is notice of The U.S. Supreme Court's denial of Mr. Bereki's petition for certiorari.

11. In addition to the above, there have been an assortment of collateral attacks on the judgment in this case brought by Mr. Bereki in both the federal court and again to the U.S. Supreme Court all of which have been summarily denied.

12. In reviewing the onslaught of moving papers notices to appear and subpoenas filed and/or served by Mr. Bereki, the records of the various court proceedings and in preparing the opposition to the pending motion, I have spent 8.5 hours. I anticipate spending an additional 1.5 hour in appearing at the hearing on this motion for a total of 10 hours. My billing rate is $360.00 per hour for a total cost to the Humphreys in defending against this spurious and frivolous motion of $3,600.00.

13. On June 4, 2025 I received the following email from Mr. Bereki:

*"Good day, Let us all patiently await the discovery of whether supervising Superior Court Judge, David Hesseltine, will tell the truth, exposing nearly 100 years of legislative, executive, and judicial tyranny in Commiefornia involving Cal. Business and Profession Code §7031*

*(unlicensed contracting) or will lie to shield his brethren and other officials involved in the corruption...*

*Please join us, Thursday, June 26, at 2:00PM in his courtroom or by zoom (visit occourts.org, click on remote appearance, select civil unlimited, civil unlimited again, and Department C23 Judge Hesseltine) for the 'hearing', where, if my personal experience is any indication, no one will actually be heard. Perhaps the 26th will be a dawn of integrity for the Judge where he will honor his oath of office so that we can rightfully refer to him as "Honorable" (it would my honor to do so)....*

*Kindly forward this email to your co-workers, friends, and family in support of me and many others across America who are exposing the fraud, deceit, and treason perpetrated by members public office (and especially bar ASSociations ie Donna Kirkner, William Bissell) upon us under color of law....*

*Thank you for listening.*
*Sincerely,*
*Adam Bereki"*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 12 , 2025 at Newport Beach, California.

william bissell

William Bissell
Attorney for Gary Humphreys
and Karen Humphreys

# PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

*-The Spartan Assoc. Inc. vs .Gary Humpherys. et al*
30-2015-00805807

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Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
Abereki@gmail.com

Judgment Debtor in Pro Per

Executed on June 13, 2025, at Newport Beach, California

william bissell

William Bissell

# Judicial Notice Exhibit 15.8B

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUL 11 2025
DAVID H. YAMASAKI, Clerk of the Court
BY: J. Phu DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

The Spartan Associates, Inc.,

Plaintiff,

v.

Gary Humphreys, an individual; Karen Humphreys, an individual; and DOES 1 through 25, inclusive,

Defendants.

And Related Cross-Action.

**CASE NO. 30-2015-00805807**

**ORDER STRIKING STATEMENT OF DISQUALIFICATION AND, IN THE ALTERNATIVE, VERIFIED ANSWER OF JUDGE DAVID HESSELTINE**

This action commenced on August 21, 2015, judgment was entered against cross-defendant Adam Bereki (Cross-Defendant) on April 20, 2017, and that judgment was affirmed on appeal on October 31, 2018. Since March 18, 2025, this Court has presided over the post-judgment proceedings in this case. On July 3, 2025, Cross-Defendant filed a document entitled "Verified Statement to Disqualify Judge David Hesseltine" (Statement of Disqualification).

The Statement of Disqualification asserts the Court is biased and prejudiced against Cross-Defendant for the following reasons: "(1) Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-

01259274 (Ex. 1), creating a pecuniary interest due to potential liability for structural jurisdictional errors depriving him of civil damages immunity; (2) his knowledge of this conflict prior to my Motion to Vacate Void Judgment filed May 28, 2005 (ROA 361, 356, 360, 386) and refusal to recuse himself; (3) his refusal to correct substantive errors in his tentative and final rulings denying my motion (Exs. 2-4); (4) his incorrect claims that my oral disqualification motion was untimely and improper; (5) his prior role as Senior Appellate Attorney at the Fourth District Court of Appeal, Division 3, suggesting professional and likely personal relationships with Justices Aronson, Goethals, and/or O'Leary, whom I allege committed structural jurisdictional errors that would also subject them to liability; (6) his potential relationships with retired Superior Court for the County of Orange Judges Di Cesare and/or Chaffee, also alleged to have committed jurisdictional errors subjecting them to liability; (7) his conduct constituting fraud on the court and perpetuating a conspiracy to procure an unlawful judgment through the unlawful enforcement of § 7031 actions; (8) his false Minute Order statement that my arguments were rejected by higher courts, despite no full, fair, or impartial judicial determination thereof; (9) his refusal to allow testimony from attorney William Bissell, critical to proving extrinsic fraud and conspiracy; (10) his enforcement of a discharged judgment, violating federal bankruptcy law; (11) his denial of my Ex Parte Application for Emergency Stay of Unlawful Detainer Action (ROA 306), filed March 14, 2025, on March 18, 2025, and Ex Parte Application for Reconsideration, filed May 21, 2025, despite notice of the bankruptcy discharge, perpetuating the harm of the void judgment and denying me restitution (Exs. 7-9); and, (12) his refusal to provide a court reporter or allow recording of proceedings, obstructing my due/judicial process right to preserve the record for appeal." (ROA 415.)

The Court finds the Statement of Disqualification on its face fails to disclose any legal grounds for disqualification, and it is untimely. Accordingly, the Statement of Disqualification is hereby stricken. (Code Civ. Proc., § 170.4, subd. (b) ["Notwithstanding paragraph (5) of subdivision (c) of Section 170.3, if a statement of disqualification is untimely filed or if on its

face it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken"]; *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 972 (*PBA, LLC*) ["the authority to strike a declaration exists 'notwithstanding' section 170.3 subdivision (c)(5) which precludes judges from ruling on their own disqualifications"].)

**The Statement of Disqualification Fails to State Grounds for Disqualification**

A statement of disqualification must set forth "the facts constituting the grounds" for disqualification. (Code Civ. Proc., § 170.3, subd. (c)(1).) "The law does not assume prejudice on the part of the trial judge." (*Gimble v. Laramie* (1960) 181 Cal.App.2d 77, 84.) The party seeking disqualification bears the heavy burden to show the judge is clearly biased or prejudiced. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391 (*Wechsler*).)

The applicable standard is an objective one: the judge should only be disqualified "if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial." (*Wechsler*, *supra*, 224 Cal.App.4th at p. 391.) "The 'reasonable person' is not someone who is 'hypersensitive or unduly suspicious,' but rather is a 'well-informed, thoughtful observer.' . . . '[T]he partisan litigant emotionally involved in the controversy underlying the lawsuit is not the disinterested objective observer whose doubts concerning the judge's impartiality provide the governing standard.'" (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389 (*Haworth*).)

Moreover, mere conclusions are insufficient. (*In re Morelli* (1970) 11 Cal.App.3d 819, 843.) An unsubstantiated suggestion of personal bias or prejudice also is insufficient. (*Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 286.) A statement of disqualification cannot be based on information and belief, hearsay, or other inadmissible evidence. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 106, fn. 6 (*United Farm Workers*).) "Rumor, speculation, beliefs,

conclusions, innuendo, suspicion, opinion, and similar nonfactual matters" are not ordinarily sufficient to require recusal. (*Nichols v. Alley* (10th Cir. 1993) 71 F.3d 347, 351.[1])

Here, the Statement of Disqualification relies on speculation and conclusions without providing any concrete evidentiary facts establishing a ground for disqualification. It also is based on criticism and erroneous legal conclusions about the Court's rulings and case management in this case and in a separate, unrelated case. Such speculation, conclusions, and criticism are the sort of subjective and partisan assertions that consistently have been held to fail to establish the requisite objectively reasonable appearance of bias. (See, e.g., *Haworth*, *supra*, 50 Cal.4th at p. 389.)

**The Court's Rulings and Courtroom Management Form No Basis for Disqualification**

The Statement of Disqualification is based, in large part, on the Court's rulings and exercise of its adjudicatory authority in this case, including its rulings on Cross-Defendant's ex parte applications and motion to vacate. It also is based on the Court's rulings in a separate, unrelated case in which none of the instant parties are involved. Such rulings are insufficient to support a claim of bias as a matter of law, as a party's disagreement with the Court's decisions is not grounds for disqualification. (See *Yolo County Dept. of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 51.) It is well established that "a trial court's numerous rulings against a party – even when erroneous – do not establish a charge of judicial bias . . . ." (*People v. Nieves* (2021) 11 Cal.5th 404, 485.) A party's remedy for an erroneous ruling is not a motion to disqualify, but rather to seek review by appeal or writ. (See *Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893; *People v. Farley* (2009) 46 Cal.4th 1053, 1110.) Thus, the Court's decisions and rulings in this case – including the denial of Cross-Defendant's ex parte applications and motion to vacate – as well as the Court's rulings in a separate, unrelated case, fail to support a claim of bias as a matter of law.

1. California courts may rely on federal cases interpreting a comparable provision of federal law. (See *United Farm Workers, supra,* 170 Cal.App.3d at p. 104; *Haworth, supra*, 50 Cal.4th at p. 389.)

The Statement of Disqualification also is based, in part, on Cross-Defendant's disagreement with the way the Court has managed this proceeding, when the Court would receive evidence and argument, and what the Court deemed relevant or important. This is insufficient to support a claim of bias as well. A court has the power and duty to ensure the orderly and expeditious conduct of court proceedings. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267; Code Civ. Proc., § 128, subd. (a)(3).) This includes decisions such as the scheduling of court proceedings, whether to hear oral argument, and whether and in what form evidence may be received. (See *Wilburn v. Oakland Hospital* (1989) 213 Cal.App.3d 1107, 1111; *Diaz-Barba v. Superior Court* (2015) 236 Cal.App.4th 1470, 1490-91.)

Accordingly, the Court's rulings and case management fail to support a claim of bias as a matter of law.

**Prior Employment as a Research Attorney Is Not Disqualifying**

The Statement of Disqualification appears to assert the Court is disqualified because the Court served as a research attorney before being appointed to the bench. Nothing in the Statement of Disqualification establishes any reason why the Court should be disqualified from this case based on the Court's prior employment. Code of Civil Procedure section 170.1, subdivision (a)(2), specifies the grounds on which a judge's prior service could be grounds for disqualification, but that subdivision only requires disqualification when the judge served or is deemed to have served as a lawyer in the proceeding or another proceeding involving the same issues and client. No evidence was presented to show section 170.1, subdivision (a)(2) applies here, and the Statement of Disqualification simply assumes disqualifying relationships arising from that prior employment.

**The Statement of Disqualification Is Untimely**

A party seeking to disqualify a judge must do so "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." (Code Civ. Proc., § 170.3, subd. (c)(1).) "This strict promptness requirement is not to be taken

lightly, as a failure to comply constitutes forfeiture or an implied waiver of the disqualification." (*Tri Counties Bank v. Superior Court* (2008) 167 Cal.App.4th 1332, 1337.)

Here, Cross-Defendant's challenge is based, in part, on the Court's ruling in a separate, unrelated case. In the Statement of Disqualification, Cross-Defendant admits he learned of those rulings approximately 10 days before the June 26, 2025 hearing on Cross-Defendant's motion to vacate. Nonetheless, Cross-Defendant asserted no claim of bias or disqualification until after he received the Court's tentative ruling prior to the hearing, he participated in the hearing and oral argument on his motion to vacate, and the Court made its final ruling denying that motion. Only at that time did Cross-Defendant seek to make an oral statement of disqualification. Neither this written Statement of Disqualification filed on July 3, 2025, nor the procedurally improper oral statement Cross-Defendant sought to make after the Court made its final ruling on June 26, 2025, can be said to have been made at the earliest practicable opportunity.

Moreover, Cross-Defendant's challenge also is based in part on the Court's earlier rulings in this case on Cross-Defendant's ex parte applications in March and May 2025. As to those such rulings, the Statement of Disqualification was not filed at the earliest practicable opportunity either.

Accordingly, the Statement of Disqualification is ordered stricken as untimely. (Code Civ. Proc., § 170.4, subd. (b).)

**A Judge Has a Duty to Rule When Not Disqualified**

A judge has both an ethical and statutory duty to decide cases where, as here, there are no legal grounds for disqualification. (Code Civ. Proc., § 170; Code Jud. Ethics, canon 3B(1).) The duty to decide cases if there are no legal grounds for disqualification is as strong as the duty to recuse if there are grounds. (*United Farm Workers, supra,* 170 Cal.App.3d at p. 100.)

**The Pleading Was Not Properly Served**

A statement of disqualification must be personally served on the judge or upon the judge's clerk provided the judge is present in the courthouse or in chambers. (Code Civ. Proc., § 170.3, subd. (c)(1).) Here, the Statement of Disqualification has not been personally served on the Court or the clerk. Cross-Defendant filed proof of service stating the Statement of Disqualification was e-served and served by mail. That fails to comply with the Code.

**Conclusion**

Because the Statement of Disqualification on its face discloses no legal grounds for disqualification and is untimely, it is stricken and denied. This determination is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought within 10 days of notice to the parties of the decision. (Code Civ. Proc., § 170.3, subd. (d).) In the event a timely writ is sought, and an appellate court determines an answer should have been timely filed, an alternative answer is filed herewith. (*See PBA, LLC*, *supra*, 112 Cal.App.4th at p. 972.)

GOOD CAUSE APPEARING THEREFORE, it is so ordered.

Date: July 11, 2025

Judge David Hesseltine

## VERIFIED ANSWER OF JUDGE DAVID HESSELTINE

I, David Hesseltine, declare as follows:

1. I am a judge of the Superior Court of California, County of Orange, and have been assigned to preside over the instant matter. Except to the extent otherwise indicated, I have personal knowledge of the facts stated in this declaration. If called upon as a witness, I could and would competently testify to the matters stated herein.

2. The judicially noticeable court file reflects the complaint in this action was filed on August 18, 2015, judgment was entered against cross-defendant Adam Bereki (Cross-Defendant) on April 20, 2017, and that judgment was affirmed on appeal on October 31, 2018. Since March 18, 2025, I have presided over the post-judgment proceedings in this case.

3. On July 3, 2025, Cross-Defendant filed a document entitled "Verified Statement to Disqualify Judge David Hesseltine" (Statement of Disqualification). To my understanding, Cross-Defendant contends I am biased and prejudiced against him.

4. I specifically deny that I am biased or prejudiced for or against any party or attorney in this action. I further deny that I am unable to act fairly and impartially in this proceeding. I am not prejudiced or biased against or in favor of any party or attorney, nor am I unable to act impartially in this case. I have no personal interest in this proceeding and know of no reason why I cannot be fair and impartial.

5. I specifically deny that I have acted improperly in this action. All statements made, all actions taken, and all my rulings in this proceeding have been based on my understanding of the facts and law, and they have been in furtherance of what I believe to be my judicial duties. I have considered all relevant evidence and argument before making my rulings.

6. My statements and rulings are set forth in the court records and court files, which are the best evidence of the proceedings. To the extent moving party's account of

those rulings and statements is inconsistent with the court records and court files, it is denied.

7. For example, Cross-Defendant's assertion I denied him a court reporter is not accurate or supported by the record. Cross-Defendant did not timely or properly request a court reporter in advance of either the March 18 or May 21, 2025 ex parte hearings. In the Statement of Disqualification, Cross-Defendant admits to recording these ex parte proceedings in violation of, *inter alia*, California Rules of Court, rule 1.150. Cross-Defendant, however, did properly request a court reporter for the June 26, 2025 hearing on the motion to vacate, and I made sure one was provided consistent with Cross-Defendant's fee waiver. Similarly, I deny I have made any rulings or orders enforcing the judgment in the case. Rather, I have merely denied Cross-Defendant's efforts to set aside the judgment that was affirmed on appeal.

8. I do not believe my recusal would serve the interests of justice.

9. I know of no facts or circumstances that would require my disqualification or recusal in this case.

10. Cross-Defendant did not personally serve either me or my clerk with the Statement of Disqualification as required by Code of Civil Procedure section 170.3, subdivision (c)(1). His proofs of service state he e-served and mail served the Statement of Disqualification.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2025 at Santa Ana, California.

Judge David Hesseltine

# Judicial Notice Exhibit 15.8C

Court of Appeal, Fourth Appellate District, Division Three
Brandon L. Henson, Clerk/Executive Officer
Electronically RECEIVED on 7/22/2025 at 10:04:57 AM

Court of Appeal, Fourth Appellate District, Division Three
Brandon L. Henson, Clerk/Executive Officer
Electronically FILED on 7/22/2025 by M. Castaneda, Deputy Clerk

In the Fourth District Court of Appeal of California
Division 3
Case No. G065772

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Adam Bereki
Petitioner

v.

Superior Court of California for the County of Orange
Respondent

Karen Humphreys and Gary Humphreys
Real Parties in Interest

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# AMENDED PETITION FOR WRIT OF MANDATE

Code of Civil Procedure § 170.3
Superior Court of California for the County of Orange
Case No. 30-2015-00805807

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Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
949.241.6693
abereki@gmail.com

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**
(Cal. Rules of Court, Rule 8.208)

Pursuant to California Rules of Court, Rule 8.208, Petitioner Adam Bereki certifies that the following entities or persons have an interest in the outcome of this proceeding:

1. Adam Bereki (Petitioner): Individual seeking a writ of mandate to vacate Judge David J. Hesseltine's order and disqualify him.
2. Superior Court of California, County of Orange (Respondent): The court whose order is challenged in this petition.
3. Karen Humphreys and Gary Humphreys (Real Parties in Interest): Defendants in the underlying action (Case No. 30-2015-00805807), with a financial interest in the judgment.
4. The Spartan Associates, Inc. (Spartan): Corporation for which Petitioner was the owner and qualifying individual, affected by the judgment and license suspension.
5. Citizens Bank N.A.: Financial institution that held Petitioner's home equity line and was involved in the foreclosure of Petitioner's property.
6. Steve Pantalemon: Defendant in *Moorefield Construction, Inc. v. Pantalemon* (Case No. 30-2022-01259274), with a potential interest due to similar legal issues under Cal. Bus. & Prof. Code § 7031.
7. American Building Innovation, LP (ABI): Defendant in *American Building Innovation, LP v. Balfour Beatty Construction, LLC* (Case No. 30-2019-01072989), with a potential interest due to similar legal issues under Cal. Bus. & Prof. Code § 7031.
8. Tin Vo: Intervenor and owner of American Building Innovation, LP, who filed a Verified Statement to disqualify Judge Hesseltine.
9. Judge David J. Hesseltine: Respondent judge whose impartiality is challenged, with a potential pecuniary interest due to rulings in related cases.

No other entities or persons are known to have a direct financial or other interest in the outcome of this proceeding at this time. Petitioner reserves the right to amend this certificate if additional interested parties are identified.

Date: July 22, 2025

Respectfully filed,



Adam Bereki

## INTRODUCTION

This petition seeks a writ of mandate pursuant to Code of Civil Procedure (CCP) § 170.3(d) to compel Respondent Superior Court to vacate Judge David J. Hesseltine's order dated July 11, 2025, (Ex. B), striking Petitioner's Verified Statement ("VS") to Disqualify Judge David Hesseltine (the "Statement") filed on July 3, 2025 (Ex. A), both incorporated as if fully set forth herein. Please note that the Reporters' Transcript for the June 26, 2025 hearing (Ex. D), is pending and will be filed upon receipt, approximately three weeks from July 21, 2025, as confirmed by the court-appointed stenographer. Additionally, some of the due process allegations herein will also be addressed on appeal in Case No. G065695. If the court prefers to consolidate these cases, Petitioner has no objection.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

This action stems from a 2015 construction dispute in Orange County Superior Court, Case No. 30-2015-00805807, where Real Parties in Interest (Karen Humphreys and Gary Humphreys, hereafter "the Humphreys") obtained a ~$930,000 judgment against Petitioner under Cal. Bus. & Prof. Code § 7031(a) and (b) for unlicensed contracting. Petitioner, the qualifying individual for a licensed contractor (Lic. #927244) under The Spartan Associates, Inc., ("Spartan") (§ 7096), contends the judgment is void due to extrinsic fraud, structural jurisdictional defects, and unconstitutionality as a penal statute enforced civilly without criminal safeguards, such as a jury trial and counsel. The judgment, affirmed by the Fourth District Court of Appeal (Case No. G055075) as an "equitable remedy" and denied review by the California and U.S. Supreme Courts, was dismissed in federal court under the *Rooker-Feldman* doctrine (Case No. 8:19-CV-02050; Request for Judicial Notice ("RJN") to be concurrently filed on or about July 22, 2025.) This denial of federal judicial review continues to violate Petitioner's right under Article III, § 2 of the U.S. Constitution to invoke federal judicial power as a check on unlawful state action (U.S. Const., Art. I, § 10; *The Federalist Papers*, No. 28 (general government checks state usurpations)), and contravenes the maxim that no one, including a state, should judge their own cause. Petitioner continues to be denied the right to invoke the judicial power of the United States in an Article III court to be heard on these issues

pertaining to the void judgment, constituting additional grounds the judgment is void per *Windsor v. McVeigh*, 93 U.S. 274 (1876).

In addition to the aforementioned challenges to jurisdiction, Petitioner also filed a Motion to Vacate the Void judgment in the Superior Court case on February 22, 2019, alleging fraud and jurisdictional defects. The Motion was summarily dismissed (ROA 304; Ex. C), affirming the court of appeal judgement without addressing the jurisdictional issues presented that deprived the court of subject matter jurisdiction to affirm a void the judgment (*Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828)), denying Petitioner, a full, fair, impartial and independent hearing per *Windsor*, supra, and perpetuating the harm as described below.

The void judgment led to the summary suspension of Petitioner's vested right to act as a qualifying individual for a contractor license under Cal. Bus. & Prof. Code § 7071.17 and included the summary suspension of Spartan's license, impairing Petitioner's private contracts, including a ~$62,523.24 home equity line with Citizens Bank N.A., and forcing bankruptcy (Case No. 8:22-BK-12076-SC, filed Dec. 8, 2022) after he was denied relief in all courts of California and the United States (RJN). The judgment was discharged on March 27, 2023 (VS Ex.5), and a restitution claim (minimally $5 million) was abandoned to Petitioner on December 31, 2024 (VS Ex. 6). The judgment's effects caused a wrongful foreclosure of Petitioner's home at 818 Spirit, Costa Mesa, CA, on November 18, 2024, for $371,688—approximately $1.2 million below market value—despite Citizens Bank's notice of the judgment's fraud, jurisdictional defects, and discharge. This foreclosure was void for lack of authority, as Citizens exploited state-imposed harm/constructive custody (summary license suspension and financial devastation of judgment more than 40 times Petitioner's qualifying net worth in violation of Cal. Const. Art. I, §§ 7, 9, 17; U.S. Const. Art I, § 10) to declare a default, violating Civil Code § 1708 and the covenant of good faith (*Orcilla v. Big Sur, Inc.*, 244 Cal. App. 4th 982, 996 (2016) (misuse of contract voids action); *Yvanova v. New Century Mortgage Corp.*, 62 Cal. 4th 919, 935 (2016) (void foreclosure lacks authority)).

On February 11, 2025, the Buyer at the foreclosure sale filed an unlawful detainer (UD) complaint (Superior Court of California for the County of Orange, Case No. 30-2025-01459684) served on Petitioner on March 1, 2025. On March 14, 2025, Petitioner attempted to file an answer in Case No. 30-2015-00805807, including UD defenses challenging jurisdiction and standing, an ex parte stay request of the UD proceeding, and a motion to vacate the void judgment (ROA 306). The clerk rejected the answer for combining filings, despite lacking authority to assess sufficiency. *Stevens v. Superior Court*, 180 Cal. App. 4th 110, 112-113 (2009). The Buyer and their Attorney were notified of the ex parte hearing and emailed the pleading.

On March 17, 2025, the Attorney filed a default request via USPS mail (UD ROA 17) without warning, despite knowing Petitioner's intent to defend, breaching ethical duties under CCP § 583.130 and Cal. Bus. & Prof. Code § 6068 (*Lasalle v. Vogel*, 36 Cal. App. 5th 127, 135-136 (2019) (attorney must warn of default)). At the Ex parte hearing on March 18, 2025, Judge Hesseltine denied the UD stay and motion with a one-word ruling, "denied," refusing to recognize the answer or address substantive issues including irreparable harm resulting the void judgment, negating jurisdiction. *Windsor v. McVeigh*, 93 U.S. 274, 277-278 (1876) (no jurisdiction without full, fair, and impartial hearing). Minutes after the hearing, the clerk unlawfully entered default in the UD despite possessing the answer, violating CCP § 1013(a) and due process. *Baske v. Burke*, 125 Cal. App. 3d 38, 45 (1981) (clerk cannot enter default with responsive pleading). On March 19, 2025, Petitioner's returned to the court to file a corrected answer but was rejected due to the default entry.

On March 22, 2025, a writ of possession issued (UD ROA 23), and on March 27, 2025, OC Deputy Sheriff Murillo served an eviction notice. Petitioner vacated his home under duress on or about April 2, 2025. Commissioner Snuggs-Spraggins's May 21 and 23, 2025, orders denying Petitioner's ex parte and reconsideration motions (UD ROA 51, 60) were void for lack of jurisdiction due to improper default entry and failure to hear substantive issues. *Windsor v. McVeigh*, 93 U.S. 274, 277-278 (1876) (no jurisdiction without hearing); *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (void judgments render executors trespassers). These actions further constituted bills of pains and

penalties, depriving property and substantive rights without a judicial hearing. Cal. Const., Art. I, §§ 7, 9; U.S. Const., Art. I, § 10. The UD case is currently on appeal in the appellate jurisdiction of the Superior Court, the record not yet transmitted.

*****

Judge Hesseltine has presided over post-judgment proceedings in the original Superior Court case since at least March 14, 2025. On May 18, 2025, Petitioner again moved to vacate the 2017 judgment as void (ROA 361; Ex. E, F), citing new law like *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020) (holding § 7031(b) imposes a penal forfeiture) and *Liu v. SEC*, 591 U.S. 71 (2020) (disgorgement limited to profits with offsets and reductions for expenses) and alleging new claims of extrinsic fraud and fraud on the court that were never made or adjudicated in the original proceedings. These cases evidence that there was no evidence in the Superior Court case to support an award of "damages" or "disgorgement", the judgment imposed a penalty (not damages or disgorgement) and that this court's judgment on appeal classifying relief under § 7031(b) as an "equitable remedy" and "disgorgement" while simultaneously denying offsets for value conferred is void because §7031(a) and (b) impose penal forfeitures minimally requiring executive authority/prosecution. The evidence further established that certain substantive issues raised on appeal (lack of evidence Petitioner performed work to meet the elements of a § 7031(b) claim) were also never addressed.

Approximately ten days before the June 26, 2025 ex parte hearing, Petitioner learned of Judge Hesseltine's rulings in another case, *Moorefield Construction, Inc. v. Pantalemon* (Case No. 30-2022-01259274, VS Ex. 1), where he allegedly fined Steve Pantalemon ~$230k for violating § 7031(b) without applying any excessive fines clause protections despite recognizing its punitive nature (ie labeling judgment as a "forfeiture"). This judgment created a pecuniary interest in Petitioner's case because, as evidenced by the penal nature of § 7031(b), Judge Hesseltine lacked personal and subject matter jurisdiction to award the judgment in *Moorefield*. Ruling in Petitioner's favor on his Motion

to Vacate which raised these jurisdictional issues would likely subject Hesseltine to civil damages liability in the *Moorefield* case.

Petitioner did not raise the pecuniary bias issue before the June 26th ex parte hearing, as he sought to interact with Judge Hesseltine and give him an opportunity to correct jurisdictional errors in the tentative ruling and act impartially. At the hearing, Petitioner first argued the substantive errors in the tentative ruling, including its failure to address new case law and evidence supporting the voidness of the judgment (VS Ex. 2-Tentative and Ex.D- Transcipt). Judge Hesseltine, without meaningfully or substantively addressing these arguments and all those in the Motion, suddenly declared the tentative ruling final, revealing his personal bias toward Petitioner and inability to be fair and impartial, violating due process denying a full, fair, and impartial hearing (*Windsor*, 93 U.S. at 277-278), continuing to deny Petitioner rights and property, resulting in a bill of pains of penalties. *In re Buchman's Est.*, 123 Cal. App. 2d 546, 559 (1954) (condemnation requires notice and hearing); *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (void judgments neither bind nor bar anyone and all persons concerned in executing are trespassers); *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239 (1998) (res judicata inapplicable to void judgments).

Petitioner then orally moved to disqualify Judge Hesseltine, citing the pecuniary interest from *Moorefield* and other biases, which Hesseltine denied as untimely and improper. VS Ex.'s 2 and 3– Minute Order; Ex. D. Petitioner contends whether he moved to disqualify or not, Hesseltine had a duty pursuant to CCP § 170.3(a)(1) to disqualify himself.

Judge Hesseltine's refusal to recuse sua sponte, despite knowing his *Moorefield* rulings conflicted with Petitioner's allegations in his Motion, constitutes an arbitrary exercise of jurisdiction without authority, further evidencing bias and rendering the July 11, 2025, striking order void ab initio. *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."); *Windsor v. McVeigh*, 93 U.S. 274, 282-283 (1876).

On July 3, 2025, Petitioner filed and served the Verified Statement (Ex. A), detailing 12 grounds for disqualification under CCP § 170.1(a)(6)(A)(iii) whereby "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial", supported by exhibits and requesting Judicial Council assignment of an impartial judge. Service was by U.S. mail to Judge Hesseltine (as Petitioner resides in Las Vegas, NV) and email to parties, with proofs of service filed.

On July 3, 2025, Petitioner discovered another case, *American Building Innovation, LP v. Balfour Beatty Construction, LLC* (Superior Court of California for the County of Orange, Case No. 30-2019-01072989), in which Judge Hesseltine issued rulings under Cal. Bus. & Prof. Code § 7031(a), applying it as civil and affirming a $1,918,797.98 judgment (including $96,924 in appellate fees on May 21, 2025) against American Building Innov., LP ("ABI"), despite its penal nature (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020)). This creates an additional pecuniary interest, as these rulings risk liability for jurisdictional violations similar to those in *Moorefield* and Petitioner's case, where § 7031(a) and (b) were applied without executive authority, criminal safeguards and Excessive Fines Clause analysis (*People v. Cowan*, 47 Cal. App. 5th 32 (2020)) resulting in structural jurisdictional defects (violation of separation of powers to confer executive authority vested exclusively in the governor on private parties; private parties exercising executive authority without capacity and standing; no criminal complaint filed to vest the court with subject matter jurisdiction, denial of all heightened protections required in criminal proceedings, including counsel and criminal jury trial, all affecting the structure of the trial mechanism). Hesseltine still hasn't recused in Petitioner's case or American Building, (court records checked as of today, July 21, 2025), and there may be other cases not yet known. A Verified Statement to Disqualify Judge Hesseltine for perceived and actual bias was filed in the ABI case today by intervenor and owner of ABI, Tin Vo.

On July 11, 2025, Judge Hesseltine issued an order striking the Statement as untimely, facially insufficient, and improperly served, without addressing specific allegations (Ex. B). The order includes a verified answer summarily denying bias but fails

to engage with facts like the *Moorefield* conflict or bankruptcy violations. This petition follows timely under CCP § 170.3(d).

## ARGUMENT

A writ of mandate lies to compel performance of a ministerial duty or correct violations of mandatory duties. CCP § 1085. Judge Hesseltine had inherent authority to address the Verified Statement as a preliminary threshold to confirm his power to act, but his summary striking without substantive review violates CCP § 170.3(c)(3) and due process, rendering the order void as an ultra vires act, as he was disqualified due to his pecuniary interest in *Moorefield Construction, Inc. v. Pantalemon* (VS Ex. 1). *Rankin v. Howard*, 633 F.2d 844, 849 (9th Cir. 1980) (disqualified judge's actions void); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). Separately, the Superior Court lacked subject matter jurisdiction to do anything but vacate the void 2017 judgment and order restitution due to its structural jurisdictional defects, and Hesseltine's reliance on res judicata to affirm it (VS Ex.'s 2, 3) constitutes an arbitrary exercise of unauthorized jurisdiction, evidencing actual bias and violating due process. Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art. I, § 10 (bill of pains and penalties); *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (void judgments neither bind nor bar anyone and render executors trespassers);

### 1. The Underlying Judgment is Void Ab Initio Due to Structural Jurisdictional Defects

The 2017 judgment is void due to extrinsic fraud by the Humphreys in misrepresenting Cal. Bus. & Prof. Code § 7031(a) and (b) as civil remedies rather than penal statutes, leading to the denial of criminal safeguards such as a jury trial, counsel, and Excessive Fines Clause analysis (*Albrecht v. United States*, 273 U.S. 1, 8 (1927); *People v. Cowan*, 47 Cal. App. 5th 32, 43 (2020)). New case law reinforces this: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020) (holding § 7031(b) imposes a penal forfeiture requiring executive prosecution), and *Liu v. SEC*, 140 S. Ct. 1936 (2020) (limiting disgorgement to net profits with offsets for expenses). The judgment lacked evidence for "damages" or "disgorgement," imposed a penalty without

offsets for value conferred, and was classified on appeal as an "equitable remedy" despite its highly penal nature, violating separation of powers by conferring executive authority on private parties without standing or a criminal complaint to vest subject matter jurisdiction. These defects deprived the court of personal and/or subject matter jurisdiction (depending on the violation), rendering the judgment void ab initio and limiting the Superior Court's authority to vacating it and ordering restitution. Cal. Penal Code § 1382; *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (void judgments "neither bind nor bar anyone"); *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 540-543 (2021) (lack of jurisdiction over invalid claims voids judgments). Any action beyond this exceeds jurisdiction and is void. *Windsor v. McVeigh*, 93 U.S. 274, 282-283 (1876) (deviations from procedural modes strip jurisdiction); *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (usurping jurisdiction is "treason to the constitution")).

**2. Fundamental Nature of Subject Matter Jurisdiction and Its Continuous Application**

Subject matter jurisdiction ("SMJ") is not a static entitlement based solely on the type of a case, but a continuous, issue-specific trust conferred upon judges by their fidelity to constitutional principles. It is the right to hear and determine, limited by procedural modes and the scope of judgments on every issue in the case. *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876). Jurisdiction extends beyond the initial class of case to every act, requiring adherence to "established modes" and constitutional mandates, such as due/judicial process (Cal. Const. Art. I, § 7) and prohibitions on bills of pains and penalties (Cal. Const. Art. I, §9; U.S. Const. Art. I, §10). *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 540–543 (2021). Violations, like denying hearings or imposing disproportionate penalties without safeguards, strip jurisdiction, rendering acts void as arbitrary edicts lacking legitimacy. *Windsor*, at 277–78. Courts lack authority to violate constitutional provisions (Cal. Const. Art. I, §26: provisions "mandatory and prohibitory", U.S. Const. Art. VI, § 2), making SMJ a test of whether each act carries the sanction of law. In this case, the 2017 judgment's structural defects—private enforcement of penal § 7031 without executive authority or criminal protections—deprived the court of SMJ from inception, limiting it to vacatur and restitution. Hesseltine's refusal

to address these defects perpetuated the voidness, violating his ministerial duty and rendering his orders ultra vires.

### 3. Objective Bias Arising from Pecuniary Interests in Related Cases (Moorefield and American Building)

Judge Hesseltine's rulings in *Moorefield Construction, Inc. v. Pantalemon* (Case No. 30-2022-01259274, VS Ex. 1) and *American Building Innovation, LP v. Balfour Beatty Construction, LLC* (Case No. 30-2019-01072989) create a direct pecuniary interest under CCP § 170.1(a)(3)(A), as they applied § 7031(a) and (b) as civil despite their penal nature, lacking executive authority, criminal safeguards, and jurisdiction—mirroring the defects in Petitioner's case. In *Moorefield*, Hesseltine fined ~$230k as a "forfeiture" without excessive fines protections; in American Building, he affirmed a ~$1.9 million judgment (including appellate fees) without similar safeguards. Ruling in Petitioner's favor on the Motion to Vacate would expose Hesseltine to civil damages liability for these jurisdictional errors, as judicial immunity does not protect acts without jurisdiction. This interest was evident upon Petitioner's discovery ~10 days before the June 26, 2025 hearing and triggered Hesseltine's mandatory sua sponte duty to recuse under CCP § 170.3(a)(1), regardless of when raised by Petitioner. *North American Title Co. v. Superior Court*, 17 Cal. 5th 155, 169 (2024) (non-waiver for self-disqualification). Failure to recuse voids the striking order ab initio as an ultra vires act by a disqualified judge. *Rankin v. Howard*, 633 F.2d 844, 849 (9th Cir. 1980); *Windsor v. McVeigh*, 93 U.S. 274, 283-284 (1876). The pattern in these cases reinforces an objective appearance of bias under CCP § 170.1(a)(6)(A)(iii), as a reasonable person would doubt impartiality where rulings protect prior decisions from scrutiny and expose damages liability. *Wechsler v. Superior Court*, 224 Cal. App. 4th 384, 391 (2014).

### 4. Proof that Application of § 7031 in Related Cases Lacks Jurisdiction and Creates Pecuniary Bias

Cal. Bus. & Prof. Code § 7031(a) and/or (b), as applied in *Moorefield, American Building*, and Petitioner's case operate as criminal penalties for the public offense of contracting without a license (§ 7028; Cal. Penal Code § 15), lacking personal and/or subject matter jurisdiction without executive prosecution and criminal safeguards,

exposing Hesseltine to liability. Substance, not form, determines a proceeding's nature: civil actions enforce private rights, while criminal actions punish public offenses. Code Civ. Proc. §§ 22, 24; *United States v. Shapleigh*, 54 F. 126, 129 (8th Cir. 1893). Section 7031 punishes unlicensed contracting (§ 7028, a misdemeanor), yet courts treat it as civil, denying protections.

Section 7028 criminalizes unlicensed contracting with fines up to $5,000 and/or jail. Section 7031(a) bars recovery for unlicensed work; § 7031(b) requires repayment of all compensation without offsets. When value is provided (e.g., $1 million work for $1 million paid), § 7031(b) imposes a penalty, not restitution, creating windfalls. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020) ("disgorgement provided in section 7031(b) is a penalty"). *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement limited to net profits).

*Hale v. Morgan*, 22 Cal. 3d 388, 398–401 (1978): Sanctions are penal if punitive, requiring no harm proof, and disproportionate. § 7031(b) deters unlicensed contracting (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 519 (2009)), needs no injury (*Eisenberg*, at 1212), and is excessive (e.g., ~$930,000 in Humphreys; ~$1.9 million in ABI). No discretion makes it punitive.

*Town of Gilbert v. Downie*, 218 Ariz. 466, 471 (2008): Restitution reflects actual loss, subtracting value; § 7031(b) denies offsets, confirming penalty.

*Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963) factors affirm: imposes restraint (financial ruin), historically punitive, strict liability, retributive/deterrent, applies to crime (§ 7028), non-remedial when value returned, excessive (186x § 7028 max $5k fine).

*Ex parte Clark*, 24 Cal.App. 389, 395 (1914): No quasi-criminal actions; penalties require state prosecution. § 7031(b): 1) usurps executive power (Cal. Const. Art. V, §1), violating separation of powers (Art. III, §3). *Robertson v. United States ex rel. Watson*, 560 U.S. 272, 282–83 (2010); 2) lacks substantive offense, acting as enhancement without jurisdiction (*People v. Vasilyan*, 174 Cal.App.4th 443, 449 (2009)); 3) Violates due

process Cal Const. Art. I, §§7,9; U.S. Const. Art. I, § 10); 4) excessive fines (Cal Const. Art I, §17); and 5) criminal jury trials (Cal. Const. Art. I, §16). See also *People v. Estes*, 218 Cal. App. 4th Supp. 14 (2013).

In Moorefield/American Building, applying § 7031 without safeguards created void judgments, risking Hesseltine's liability (*Rankin*, 633 F.2d at 849), substantiating pecuniary bias.

**5. Due Process Violations and Constitutional Infractions Stemming from Bias and Arbitrary Acts**

Hesseltine's actions, including summary denials without substantive engagement, violate due process by denying a full, fair, and impartial hearing, transforming proceedings into a "sham and deceptive" process. *Windsor v. McVeigh*, 93 U.S. 274, 277-278, 282 (1876); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). These include refusing to address jurisdictional defects in the tentative ruling, declaring it final without response, and issuing the striking order with misrepresentations (e.g., claiming allegations are "speculation" despite evidence like VS Exs. 1, 5-6). Such arbitrary exercises of unauthorized jurisdiction constitute bills of pains and penalties, depriving property without judicial hearing. Cal. Const., Art. I, §§ 7, 9; U.S. Const., Art. I, § 10; *In re Buchman's Est.*, 123 Cal. App. 2d 546, 559-560 (1954) ("Due process... excludes all arbitrary dealings... according to established principles of justice"). The striking order's bad faith (e.g., false claims of no legal grounds, ignoring *Moorefield's* relevance) violates CCP § 170.3(c)(3) (requiring a verified answer admitting/denying allegations with new facts), judicial ethics (Canons 2A, 3B(5), 3C(1)), and ministerial duties, rendering it void. *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239 (1998) (reliance on res judicata is invalid for void judgments; *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

**6. Procedural Objections to the Striking Order (Timeliness and Service)**

Even assuming arguendo untimeliness (disputed), procedural bars cannot override the sua sponte recusal duty where bias is evident, especially with limited jurisdiction to vacate the void judgment (CCP § 170.3(a)(1); Canon 3E(1); *North American*

*Title Co. v. Superior Court*, 17 Cal. 5th 155, 169 (2024); *Gibbons v. Ogden*, 22 U.S. 1, 197 (1824)(exemptions from a power mark its extent). Petitioner's ~10-day delay before raising *Moorefield* orally was good-faith, allowing Hesseltine to demonstrate impartiality; bias crystallized at the hearing when he summarily finalized the tentative without addressing arguments, making it the "earliest practicable opportunity." CCP § 170.3(c)(1). The July 3 Statement followed promptly, distinguishing from longer delays; new grounds like *American Building* allow supplemental challenges. *Bassett Unified School Dist. v. Superior Court*, 89 Cal. App. 5th 273, 286 (2023). As an aside, should also be noted that had Hesseltine addressed the March 14, 2025 ex parte substantively, the *Moorefield* ruling (March 25, 2025) might have been avoided as Petitioners Motion to Vacate (ROA 306) provided competent authority evidencing the unconstitutionality of §7031. Finally, CCP § 170.4(b) allows striking only for facial insufficiency, not where grounds are stated with evidence; summary striking violates duties and voids the order. Service by mail was adequate given distance and actual notice.

**7. The Order Erroneously Dismissed Valid Grounds for Disqualification Without Substantive Engagement**

The order ignores the 12 evidence-based grounds in the Statement (Ex. A, ROA 415), violating § 170.3(c)(3) and due process. Below are the key grounds, evidence, and why they create bias:

1. **Ground for Disqualification**: Pecuniary Interest from Moorefield and American Building Supporting Evidence/Citation: VS Ex. 1 (Moorefield rulings); Ex. M (American Building judgment); *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201; *Liu v. SEC*, 140 S. Ct. 1936. **Why It Creates Bias/Disqualification**: Risk of liability for jurisdictional errors in similar §7031 cases; pattern protects prior rulings (*Christie v. City of El Centro*, 135 Cal. App. 4th 767 (2006); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).
2. **Ground for Disqualification**: Prior Professional Relationships with Appellate Justices Supporting Evidence/Citation: 2010-2017 Senior Appellate Attorney role with Justices Aronson, Goethals, O'Leary (Orange County Bar Assoc. records); public records request denial; Potential relationships with retired Judges Di Cesare

and Chaffee, alleged to have committed jurisdictional errors in related proceedings **Why It Creates Bias/Disqualification**: Appearance of protecting colleagues from liability for affirming void judgment; reasonable doubt of impartiality (*Caperton*, 556 U.S. at 884; *Wechsler v. Superior Court*, 224 Cal. App. 4th at 391); Hesseltine's reliance on CCP § 170.1(a)(2) (Ex. B, p.5) is misplaced, as § 170.1(a)(6)(A)(iii) disqualifies for relationships creating reasonable doubt of impartiality

3. **Ground for Disqualification**: Enforcement of Discharged Judgment Violating Federal Law Supporting Evidence/Citation: Bankruptcy discharge (VS Ex. 5); claim abandonment (VS Ex. 6). **Why It Creates Bias/Disqualification**: Refusal to vacate effectively enforces discharged void judgment, denying restitution claims; shows bias to protect Moorefield rulings (11 U.S.C. § 524(a); *Taggart v. Lorenzen*, 587 U.S. 554 (2019); *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th at 540-541). Note: Argument is not direct violation but effective enforcement via refusal to address voidness. Hesseltine's claim of not enforcing the judgment (Ex. B, ¶7) ignores that his denials effectively preserved its harm (foreclosure, UD), violating 11 U.S.C. § 524(a)(2).
4. **Ground for Disqualification**: Fraud on the Court Supporting Evidence/Citation: False minute order claiming no higher court review (VS Ex. 3); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). **Why It Creates Bias/Disqualification**: Misrepresentations undermine integrity, evidencing actual bias (*Serri v. Santa Clara University*, 226 Cal. App. 4th 830, 848 (2014).
5. **Ground for Disqualification**: Misapplication of Res Judicata Supporting Evidence/Citation: Reliance on res judicata for void judgment (VS Ex. 2, 3); *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828); *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239 (1998). **Why It Creates Bias/Disqualification**: Invalid for void judgments; shows prejudice (*Miranda v. Arizona*, 384 U.S. at 491)
6. **Ground for Disqualification**: Denial of Witness Testimony Supporting Evidence/Citation: Denial of Bissell testimony. **Why It Creates**

**Bias/Disqualification**: Limits defense, indicating partiality (*Windsor v. McVeigh*, 93 U.S. at 279-280).

7. **Ground for Disqualification**: Denial of Court Reporter/Recording Supporting Evidence/Citation: *Jameson v. Desta*, 5 Cal. 5th 594 (2018). **Why It Creates Bias/Disqualification**: Prevents accurate record, facilitating bias; Despite Hesseltine's claim of untimely requests (Ex. B, ¶7), ROA 306 requested a reporter, and Rule 1.150(d) allows discretion, especially with a fee waiver, making denial a due process violation.
8. **Ground for Disqualification**: Other Procedural Rulings (e.g., Summary denials without hearing) Supporting Evidence/Citation: Various ex partes, one-word rulings (ROA 306, 361); *Windsor v. McVeigh*, 93 U.S. at 277. **Why It Creates Bias/Disqualification**: Arbitrary acts deny meaningful hearing, violating due process (*Hayward v. Superior Court*, 2 Cal. App. 5th 10, 26 (2016)).

This failure to rebut specifics (e.g., relationships, bankruptcy) evades statutory duty, undermining integrity (*Caperton v. A.T. Massey Coal Co.*, 556 U.S. at 886; *Hayward v. Superior Court*, 2 Cal. App. 5th at 26 (failure to respond deems true)). While Hesseltine had inherent authority to address disqualification as a preliminary threshold to confirm his power to act (even on vacating the void judgment), his biased summary striking without substantive engagement voids the order as an ultra vires act, given the court's limited jurisdiction over the underlying void judgment (*Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828)).

Date: July 22, 2025

Respectfully Filed,

Adam Bereki

**AUTHENTICATION OF EXHIBITS**

I, Adam Bereki, declare under penalty of perjury under the laws of California that all exhibits annexed hereto are true and correct copies of the documents they purport to

be, with exception of any bates numbering or other non-substantive markings I or someone else may have made and are incorporated as if fully set forth herein.

Date: July 21, 2025

By: 

Adam Bereki

## REQUEST FOR RELIEF

Petitioner requests this Court:

1. Issue an alternative writ directing Respondent to vacate the July 11, 2025 order, disqualify Judge Hesseltine, and assign the matter to an impartial judge per CCP § 170.3(c)(5); or show cause why not;
2. Issue a peremptory writ if cause not shown;
3. Award costs; and
4. Grant further relief as just.
5. Plaintiff reserves the right to file a request for damages.

## CERTIFICATE OF WORD COUNT

I hereby certify that the word count using Microsoft Word for Mac is 5,048.

In the Fourth District Court of Appeal for the State of California,
Division Three

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Adam Bereki
Petitioner

v.

Superior Court of California for the County of Orange
Respondent

Karen Humphreys and Gary Humphreys
Real Parties in Interest

---

PETITION FOR WRIT OF MANDATE
Code of Civil Procedure § 170.3(d)
Main Case: 30-2015-00805807

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**EXHIBITS**

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Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
949.241.6693
abereki@gmail.com

# Exhibit A

Electronically Filed by Superior Court of California, County of Orange, 07/03/2025 10:43:00 AM.
30-2015-00805807-CU-CO-CJC - ROA # 415 - DAVID H. YAMASAKI, Clerk of the Court By B. Romney, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**FOR THE COUNTY OF ORANGE– CENTRAL JUSTICE CENTER**

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.'s:
30-2025-01482941
30-2025-01487778

Open Bankruptcy Case No: 22-12076 (Central District of California)

**VERIFIED STATEMENT TO DISQUALIFY JUDGE DAVID HESSELTINE**

Dept: C23

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

**NOTICE IS HEREBY GIVEN** that Adam Bereki, Defendant, in pro per, moves to disqualify Judge David J. Hesseltine under Code of Civil Procedure (CCP) § 170.1(a)(6)(A)(iii) for an appearance of bias, actual bias, violations of due/judicial process under California Constitution, Article I, Section 7, and bills of pains and penalties under California Constitution, Article I, Section 9, and U.S. Constitution, Article I, Section 10, pursuant to CCP § 170.3(c)(1). This motion is based on: (1) Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-01259274 (Ex. 1), creating a pecuniary interest due to potential liability for structural

jurisdictional errors depriving him of civil damages immunity; (2) his knowledge of this conflict prior to my Motion to Vacate Void Judgment filed May 28, 2025 (ROA 361, 356, 360, 386) and refusal to recuse himself; (3) his refusal to correct substantive errors in his tentative and final rulings denying my motion (Exs. 2–4); (4) his incorrect claims that my oral disqualification motion was untimely and improper; (5) his prior role as Senior Appellate Attorney at the Fourth District Court of Appeal, Division 3, suggesting professional and likely personal relationships with Justices Aronson, Goethals, and/or O'Leary, whom I allege committed structural jurisdictional errors that would also subject them to liability; (6) his potential relationships with retired Superior Court for the County of Orange Judges Di Cesare and/or Chaffee, also alleged to have committed jurisdictional errors subjecting them to liability; (7) his conduct constituting fraud on the court and perpetuating a conspiracy to procure an unlawful judgment through the unlawful enforcement of § 7031 actions; (8) his false Minute Order statement that my arguments were rejected by higher courts, despite no full, fair, or impartial judicial determination thereof; (9) his refusal to allow testimony from attorney William Bissell, critical to proving extrinsic fraud and conspiracy; (10) his enforcement of a discharged judgment, violating federal bankruptcy law; (11) his denial of my Ex Parte Application for Emergency Stay of Unlawful Detainer Action (ROA 306), filed March 14, 2025, on March 18, 2025, and Ex Parte Application for Reconsideration, filed May 21, 2025, despite notice of the bankruptcy discharge, perpetuating the harm of the void judgment and denying me restitution (Exs. 7–9); and, (12) his refusal to provide a court reporter or allow recording of proceedings, obstructing my due/judicial process right to preserve the record for appeal.

Due to systemic unlawful § 7031(b) rulings in the Superior Court of California, County of Orange (and all rulings involving public welfare and/or public regulatory and/or quasi criminal, and/or strict liability offenses where punishment of any kind is imposed in all courts throughout California)[1], I request the Judicial Council assign an impartial judge without prior § 7031(b) or rulings involving public welfare and/or public regulatory and/or quasi-criminal and strict liability offenses where punishment of any kind is imposed to avoid pecuniary

[1] Section 24 of the California Code of Civil Procedure recognizes only two kinds of actions: civil and criminal. Public regulatory, public welfare, strict liability, and/or quasi-criminal actions like § 7031(a) and (b) that impose punishment without the heightened protections required in criminal proceedings are not recognized. *Ex parte Clark*, 24 Cal.App. 389 (1914).

conflicts and vacate the judgment due to bias. I have filed a notice of appeal in the event this motion is not granted.

This statement is supported by Exhibits 1–13, the record in Case No. 30-2015-00805807, all § 7031(a) and (b) cases incorporated as if fully set forth herein, and any further evidence at a hearing, if ordered. I request judicial notice of Exhibits 1–13 and all documents in Fourth District Court of Appeal Case No. G055075, and all document in UD Case No. (30-2025-01459684) under Cal. Evid. Code § 452(d). This statement has been served on Judge Hesseltine, Presiding Judge Maria D. Hernandez, the Judicial Council of California by U.S.P.S. first-class mail, and on opposing parties Karen and Gary Humphreys through their attorney, William Bissell, by email (see Proofs of Service).

**FACTUAL BASIS FOR DISQUALIFICATION**

I, Adam Bereki, have personal knowledge of the facts herein, except where stated on information and belief, and declare them true under penalty of perjury under the laws of the State of California:

1. On May 28, 2025, I filed a Motion to Vacate Void Judgment, Case No. 30-2015-00805807 (ROA 361) arguing the $930,000 judgment under Cal. Bus. & Prof. Code § 7031(a) and (b) is void due to extrinsic fraud (Humphreys' misrepresentation of § 7031(a) and (b) as civil, causing jury trial waiver), structural jurisdictional defects (no standing, usurpation of executive authority, denial of counsel, and all heightened protections required in criminal proceedings), and unconstitutionality (excessive fine, denial of criminal protections) accord: *Albrecht v. United States*, 273 U.S. 1, 8 (1927) (no standing for private parties to enforce penal statutes); *People v. Cowan*, 47 Cal.App.5th 32, 43 (2020) (penalties violate excessive fines clause if disproportionate and ability to pay not considered); *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (courts lack power to affirm void judgments). My intent was to invoke the court's equitable jurisdiction as an independent action in equity (ROA 361, First Am. Decl. ¶ 3 (ROA 369). *Bacon v. Bacon*, 150 Cal. 477, 482 (1907) (courts have equitable jurisdiction to vacate judgments for fraud). My restitution claim, including vacatur and damages minimally $5 million, was abandoned to me on December 31, 2024, in bankruptcy

Case No. 8:22-BK-12076-SC (Ex. 6, Abandonment Order and Motion to Compel Abandonment). New evidence and law support my claims: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020) (Bus. & Prof. Code § 7031(b) is a penalty); *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement limited to net profits, not penalties).

2. On June 26, 2025, I orally moved to disqualify Judge Hesseltine, citing his rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-01259274 (Ex. 1) applying § 7031(b) as civil and awarding $280,037.49, and his refusal to correct structural jurisdictional errors in the tentative ruling (Ex. 2). He denied the motion as improper and untimely, stating, "The court had already ruled in this matter, so in terms of disqualification for the ruling on this particular motion, that is not appropriate since it was not made until after the ruling was made" (Ex. 3- Minute Order, Ex. 4 Reporter's Transcript). This is incorrect, as it was a good-faith effort to prevent due/judicial process violations, followed by this statement. The *Moorefield* ruling conflicts with my motion's arguments that § 7031(b) is penal, creating a duty to recuse, CCP § 170.3(a)(1), in addition to the duty not to violation due/ judicial process, Cal. Const; Art. I, §§ 7, 9, 26, U.S. Const. Art. I, § 10.

3. Approximately ten days before the June 26, 2025, hearing, I discovered the *Moorefield* conflict but allowed Hesseltine the opportunity to abide his sworn duties and to rule honorably and lawfully. Upon receiving his tentative ruling prior to the hearing, I identified structural jurisdictional errors, raised them at the hearing, and moved to disqualify him when he refused to correct them because they deprived him of subject matter jurisdiction to affirm a void judgment pursuant to *Elliot v. Lessee of Piersol,* 26 U.S. 328, 341 (1828)[2] and/or to violate due process *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (judgments in violation of due process are void); Art. I, §§ 7, 9, 26, U.S. Const.

[2] "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers."

Art. I, § 10. He denied the motion to disqualify as untimely and improper (Ex. 3), despite my timely raising bias after his ruling showed partiality.

4. Judge Hesseltine was informed of my bankruptcy discharge, Case No. 8:22-BK-12076-SC (Ex. 5) issued March 27, 2023, via my Ex Parte Application for Emergency Stay, (ROA 306) filed March 14, 2025, and by opposing counsel William Bissell at the June 26, 2025, hearing (Ex. 4, Transcript pending). He denied my Motion to Vacate, refusing to vacate the discharged and void judgment and denied restitution (Ex. 3), resulting in a bill of pains and penalties (denial of judicial determination of rights (judge acting coram non judice and imposing punishment– denial of rights to liberty and property and ~$5 million dollars in restitution).
5. On March 14, 2025, I filed an Ex Parte Application for Emergency Stay of Unlawful Detainer Action (Case No. 30-2025-01459684) (ROA 306), in the instant case, arguing the UD, initiated by Canjian Hou, stemmed from a wrongful foreclosure sale (November 18, 2024) caused by enforcement of the void $930,000 judgment. The moving papers contained a combined Ex Parte Application, a Motion to Vacate the Void Judgment in the instant case, and an answer in the UD case. While I understand this combination is procedurally improper, the papers were filed under duress as the unlawful taking/theft of my home was imminent and I had been denied relief in all branches of state and federal government (ROA 306). The Deputy Clerk gave me the choice to file certain aspects of document (Ex Parte Application/ Motion to Vacate) in the instant case, or the answer to the UD complaint in the UD case, but not both, despite my demand, forcing me to file only in the instant case. On March 17, 2025 (the day of the Ex Parte hearing) Hou's counsel filed a default request without notice. The clerk then prematurely entered default on March 18, 2025 after the request in violation of CCP § 1013.I attempted to file an answer in the UD Case on March 19, 2025, however it was again rejected by the Deputy Clerk on the grounds that a default had already been issued.
6. In the moving papers, I notified Hesseltine of the bankruptcy discharge, judgment lien avoidance, and my restitution claim, and requested a court reporter or permission to record due to financial hardship (ROA 306). At the Ex Parte hearing on March 18, 2025, Judge Hesseltine denied my Application for a stay of the

unlawful detainer action with a one-word minute order ("denied"), stating my arguments, including the claim that the 2015 judgment was void, were rejected by higher courts and barred by the law of the case doctrine (Ex. 7, Transcript, p. 4, ll. 10–20). He minimally addressed the merits, dismissing my voidness argument as unsupported by the record (Ex. 7, Transcript, p. 4, ll. 15–25 – p. 5 ll. 1-4; p. 9, ll. 18–23), and did not engage with my citations of new case law evidencing the voidness, *Eisenberg* and *Liu v. SEC* (Ex. 7, Transcript, p. 8, ll. 15–21; p. 9, ll. 1–5). Despite my claims of exhausted remedies and requests for a forum for relief, he offered no specific guidance, citing his inability to provide legal advice (Ex. 7, Transcript, p. 5, ll. 15–25; p. 7, l. 18 to p. 8, l. 14; p. 10, ll. 12–18).

7. On May 21, 2025, I filed an Ex Parte Application for Reconsideration (ROA 341) to vacate the March 18, 2025, order, stay the UD action, and restore possession, arguing the March 18th order was void for due/judicial process violations (one-word denial, failure to address harm, lack of court reporter, misleading statements) and that the UD default was unlawful due to lack of notice premature entry and lack of standing. On June 22,2025, Judge Hesseltine denied the motion (Ex. 9), again refusing to address the merits of the stay, such as irreparable harm, and deferring judgment challenges to a later hearing, while mischaracterizing the March 18 ruling as substantive when it focused on procedural issues (Ex. 8[3],

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[3] Despite Judge Hesseltine's denials of a court reporter and/or to allow me to create an audio recording of the ex parte proceedings, I recorded them anyway to prevent spoliation of evidence for appeal and/or other relevant proceedings, such as this, and to ensure my rights to due/judicial process would be fully protected. See especially *Jameson v. Desta*, 5 Cal. 5th 594, 608–09, (2018) ("Under current California law, in most civil proceedings the presence of a court reporter is required in order to obtain a verbatim record of trial court proceedings and, ultimately, the preparation of an officially recognized reporter's transcript for use on appeal. The inclusion of court reporter fees in the original court rules setting forth the categories of costs and fees to which an economically needy litigant is entitled to a waiver, as well as the explicit legislative codification of such entitlement in section 68086(b) in 2013, reflect the realistic, crucial importance that the presence of a court reporter currently plays in the actual protection of a civil litigant's legal rights and in providing such a litigant equal access to appellate justice in California. As the Court of Appeal decision in the present case aptly demonstrates, the absence of a court reporter at trial court proceedings and the resulting lack of a verbatim record of such proceedings will frequently be fatal to a litigant's ability to have his or her claims of trial court error resolved on the merits by an appellate court. This is so because it is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error

Transcript, p. 3, ll. 15–25; p. 4, ll. 1–4; p. 5, ll. 4–8; p. 8, ll. 12–14). He provided no guidance on alternative forums for relief despite my claims of due process violations, including the March 18 default and rejected answer on March 19, 2025, directing UD issues to the UD department (Ex. 8, Transcript, p. 5, ll. 15–25; p. 6, ll. 1–20; p. 6, l. 21 to p. 7, l. 5) despite the fact that I continued to be denied a full, fair, and impartial hearing on these issues in the UD case. He reiterated that recording is not allowed in unlimited civil matters, citing statutory limits and resource constraints, despite my fee waiver and Cal. Rules of Court, Rule 1.150(d). Ex. 8, Transcript, p. 1, ll. 10–25; p. 2, ll. 1–19; p. 3, ll. 1–2.

8. At the Motion to Vacate hearing on June 26, 2025, Judge Hesseltine refused to correct errors in his tentative ruling, including misapplication of res judicata, ignoring fraud and conspiracy by the Humphreys and Bissell,and failing to address § 7031(a) and (b)'s penal nature and new case law: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020); *Liu v. SEC*, 591 U.S. 71, 79 (2020). He dismissed *Eisenberg* as a statute of limitations case (even though it held § 7031(b) imposed a penal forfeiture), stating, "I'm positive that I would never be able to convince you of anything." Shortly thereafter he closed the Zoom proceeding, refusing to engage in these substantive issues either at the hearing on in the tentative (Ex.'s 2, 3, 4).
9. Judge Hesseltine's refusal to recognize my Motion to Vacate as an independent action in equity, despite my intent (ROA 361, First Amen. Decl. ¶ 3), denied my right to invoke equitable jurisdiction. *Bacon v. Bacon*, 150 Cal. 477, 482 (1907);

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that justifies reversal of the judgment."). (Footnote and citations omitted.). Based on over 25 years of experience in civil and criminal investigations as former police officer and expert forensic investigator, my experience has shown that people who desire to tell the truth ordinarily have nothing to hide, exhibit a strong desire to be heard and to answer questions, and have no problem being recorded. On the other hand, those who seek to hide and/or conceal the truth and/or their unlawful behavior, do the opposite. I'm unable to conceive any reason why Judge Hesseltine would deny me the right to personally record the proceedings or to a court reporter other than to conceal his egregiously unconstitutional and criminal behavior.

*Olivera v. Grace*, 19 Cal.2d 570, 576 (1942); *Rose v. Fuqua*, 200 Cal.App.2d 719, 724 (1962); *Bloniarz v. Roloson*, 70 Cal.2d 143, 147 (1969).

10. Judge Hesseltine's stay, reconsideration, and Motion denials perpetuate the harm of the void judgment, enabling an unlawful default, eviction, ~$60,000 in property damage/loss, and continued involuntary servitude where I am forced to perform forensic investigation and reporting services without pay to expose the fraud and corruption that continues to be perpetrated on me to defend my rights and property.
11. To further evidence my allegations of extrinsic fraud, fraud on the court, and conspiracy between cross-complainants and their counsel, I subpoenaed their attorney, William Bissell, to appear at the Motion to Vacate/ Independent Action hearing and produce documents, but Hesseltine refused, denying critical evidence. *Rosenthal v. Great Western Fin. Sec. Corp.*, 14 Cal.4th 394, 414 (1996) (testimony required to resolve fraud).
12. Judge Hesseltine's prior role as Senior Appellate Attorney (2010–2017, per Orange County Bar Association online records) suggests relationships with Justices Aronson, Goethals, O'Leary, and retired Judges Di Cesare and Chaffee, whom I allege committed structural jurisdictional errors. I requested Judicial Council records to evidence his relationships with the Court of Appeal Justices, but they were deemed non-disclosable.
13. Judge Hesseltine's Minute Order (Ex. 3) falsely stated my arguments were rejected by the Court of Appeal, California Supreme Court, U.S. Supreme Court, U.S. District Court, and Ninth Circuit, when no full, fair, or impartial determination occurred. His conduct constitutes fraud on the court, perpetuating the Humphreys' and Bissell's conspiracy to misrepresent § 7031(a) and (b) as civil.
14. All § 7031(a) and (b) cases are incorporated as if fully set forth herein.
15. Exhibits 1–13 are true copies, except for non-substantive marks. Ex. 4 is pending from the court reporter.

Dated: July 3, 2025

By: _____

Adam Bereki

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

I, Adam Bereki, move to disqualify Judge David J. Hesseltine under CCP § 170.1(a)(6)(A)(iii) for an appearance of bias, actual bias, violations of due/judicial process under California Constitution, Article I, Section 7, and bills of pains and penalties under California Constitution, Article I, Section 9, and U.S. Constitution, Article I, Section 10. Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-01259274 (Ex. 1) applying Cal. Bus. & Prof. Code § 7031(b) as civil and awarding $280,037.49, conflict with my Motion to Vacate Void Judgment, filed May 28, 2025 (ROA 361) which argues § 7031(a) and (b) are penal and unconstitutional, creating a pecuniary interest due to potential liability. *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

Judge Hesseltine's refusal to correct errors in his tentative and final rulings (Exs. 2–4), false Minute Order statements, denial of Bissell's testimony, enforcement of a discharged judgment despite notice of my bankruptcy (Exs. 5–6), denial of my Ex Parte Application for Emergency Stay and Ex Parte Application for Reconsideration (ROA 306; Exs. 7–8), and refusal to provide a court reporter or allow recording demonstrate bias and violations of due/judicial process.

Judge Hesseltine's prior role as Senior Appellate Attorney (2010–2017) suggests personal and/or professional relationships with Justices Aronson, Goethals, O'Leary, and with retired Superior Court Judges Di Cesare and Chaffee who served in the same Superior Court, whom I allege are a part of the conspiracy to commit extrinsic fraud, fraud on the court, and perpetuate an unlawful judgment with structural jurisdictional errors, exacerbating the appearance of bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

Judge Hesseltine's conduct perpetuates a conspiracy to procure an unlawful judgment. Due to systemic unlawful § 7031(b) rulings in the Superior Court of California, County of Orange (and all rulings involving public welfare and/or public regulatory and/or quasi criminal, and/or strict liability offenses where punishment of any kind is imposed in all

courts throughout California), I request the Judicial Council assign an impartial judge without prior § 7031(b) or rulings involving public welfare and/or public regulatory and/or quasi-criminal and strict liability offenses where punishment of any kind is imposed to avoid pecuniary conflicts and vacate the judgment due to bias. I have filed a notice of appeal in the event this motion is not granted.

I have filed a notice of appeal in the event this motion is not granted.

A complaint is separately filed with the Commission on Judicial Performance, but this motion independently seeks disqualification.

## II. LEGAL STANDARD

CCP § 170.1(a)(6)(A)(iii) requires disqualification if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. *United Farm Workers of America v. Superior Court*, 170 Cal.App.3d 97, 103-104 (1985).

Actual bias or egregious conduct violating due/judicial process, Cal. Const. Art. I, § 7, or imposing bills of pains and penalties, Cal. Const. Art. I, § 9; U.S. Const. Art. I, § 10, mandates disqualification. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *People v. Freeman*, 47 Cal.4th 993, 1000 (2010).

A judge's unconstitutional application of a penal statute as civil is ultra vires. *Elliot v. Lessee of Piersol*, 26 U.S. 328, 340 (1828) (courts lack power to affirm void judgments). Fraud on the court or pecuniary interests from prior rulings creates an appearance of bias. *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

Res judicata does not apply to void judgments lacking subject matter jurisdiction, as this would elevate a judge above the Constitution. *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 317 (1795). *Ex parte Giambonini*, 177 Cal. 573, 576 (1897) (judges must act within conferred power).

CCP § 170.3(a)(1) mandates recusal upon determining disqualification, and § 170.3(c)(1) allows a written verified statement after refusal, filed at the earliest practicable

opportunity. Oral motions are permissible to raise disqualification sua sponte to prevent due/judicial process violations, followed by a written statement.

## III. ARGUMENT

### A. Pecuniary Interest from *Moorefield* Conflict

Judge Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield*, Ex. 1, applying § 7031(b) as civil and awarding $280,037.49, conflict with my Motion to Vacate, which argues § 7031(b) is penal and criminal, imposing a fine. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020); *Liu v. SEC*, 591 U.S. 71, 79 (2020); *People v. Estes*, 218 Cal.App.4th Supp. 14 (2013); *Ex parte Clark*, 24 Cal.App. 389, 393 (1914) (penal statutes require criminal safeguards). His knowledge of this conflict imposed a duty to recuse under CCP § 170.3(a)(1), Cal. Const. Art.'s 1 and 9 and U.S. Const. Art. I, § 10. His failure to do so, risking liability for jurisdictional errors in the Moorefield case (and potentially others not yet known), creates an appearance of bias. *Rankin v. Howard*, 633 F.2d 844, 849 (1980) (judicial liability for jurisdictional errors); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

Judge Hesseltine faced a dilemma: ruling in my favor risked exposing himself and other judicial officers to civil liability for acting without subject matter jurisdiction, while ruling against me exposed him to similar liability for jurisdictional errors. This conflict created a duty to recuse under CCP § 170.3(a)(1). His failure to do so raises concerns about bias and impartiality. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Rankin v. Howard*, 633 F.2d 844, 849 (1980).

Judge Hesseltine's enforcement of a discharged judgment, denial of the UD stay and reconsideration to determine the judgment's validity prior to forced eviction and irreparable harm, and refusal to allow recording further risk liability for violating federal bankruptcy law and due/judicial process, exacerbating this interest (see Section III.F).

### B. Bias from Relationships with Judicial Officers

Judge Hesseltine's service as Senior Appellate Attorney at the Fourth District Court of Appeal, Division 3 (2010–2017, per Orange County Bar Association records), suggests professional and personal relationships with Justices Aronson, Goethals, and O'Leary,

whom I allege committed structural jurisdictional errors in affirming the void judgment. I requested public records from the Judicial Council to evidence these relationships, but they were deemed non-disclosable. His likely relationships with retired Superior Court Judges Di Cesare and Chaffee, also alleged to have committed jurisdictional errors, and his role as a supervising judge create an appearance of bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006).

**C. Fraud on the Court**

Judge Hesseltine's conduct constitutes unequivocal fraud on the court, perpetuating the Humphreys' and Bissell's conspiracy to misrepresent § 7031(a) and (b) as civil, despite their penal nature, and upholding a judgment lacking personal and subject matter jurisdiction due to no criminal complaint being filed and structural jurisdictional errors. My Motion to Vacate and Ex Parte Application, argued that § 7031(b) imposes a punitive forfeiture, requiring executive authority and criminal safeguards. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020). *Liu v. SEC*, 591 U.S. 71, 79 (2020). *Ex parte Clark*, 24 Cal.App. 389, 393 (1914); *People v. Estes*, 218 Cal.App.4th Supp. 14 (2013). Hesseltine's refusal to engage with these authorities, dismissal of *Eisenberg* as a statute of limitations case, false Minute Order statements that my arguments were rejected by the Court of Appeal, California Supreme Court, U.S. Supreme Court, U.S. District Court, and Ninth Circuit (Ex. 3), denial of the UD stay and Ex Parte Application for Reconsideration despite notice of the void judgment's connection to the foreclosure (Exs. 7–9), and refusal to address UD due process violations (e.g., lack of notice for default request, premature entry, lack of standing) entrenched this fraud, undermining judicial integrity. His actions shielded the Humphreys' and Bissell's conspiracy to procure the judgment through a civil action for a criminal offense.

**D. Misapplication of Res Judicata**

Judge Hesseltine's tentative, final rulings, stay denial, and reconsideration denial misapplied res judicata and law of the case to shield a void judgment, ignoring new evidence and law demonstrating extrinsic fraud and fraud on the court by the Humphreys, their attorney William Bissell, Judges David Chaffee and James Di Cesare, and Appellate Justices Aronson, Goethals, and O'Leary, which arose during the court proceedings and

were not part of the original complaint or litigated in the prior action. *Allied Fire Protection v. Diede Constr., Inc.*, 127 Cal. App. 4th 150, 155 (2005) (res judicata does not bar claims arising after the initial complaint; such rights may be asserted in a subsequent action); *Yager v. Yager*, 7 Cal.2d 213, 217 (1936) (rights acquired pendente lite, not raised by supplemental pleading, are not foreclosed in later actions); *Kettelle v. Kettelle*, 110 Cal.App. 310, 312 (1930) (res judicata inapplicable to new rights acquired during action not required to be litigated). These fraud claims, involving misrepresentations of the penal nature of Cal. Bus. & Prof. Code § 7031(a) and (b), denying me criminal safeguards and a fair hearing, are supported by new evidence and law. *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020) (§ 7031(b) imposes a punitive forfeiture, not equitable relief); *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement limited to net profits, unlike § 7031(b)'s total forfeiture); *Trackman v. Kenney*, 187 Cal.App.4th 175, 184 (2010) (extrinsic evidence supports voidness claims); *Estate of Sanders*, 40 Cal.3d 607, 614 (1985) (extrinsic fraud denies a fair hearing); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (fraud on the court undermines judicial integrity).

Res judicata also does not apply to void judgments lacking subject matter jurisdiction, as this would elevate a judge above the Constitution. *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304 (1795); *Bennett v. Wilson*, 122 Cal. 509, 513-14 (1898); *Nelson*, 35 San Diego L. Rev. 555, 559 (1998). Hesseltine's reliance on *Torrey Pines Bank v. Superior Court*, 216 Cal.App.3d 813 (1989), is misplaced, as it involved a voluntary dismissal, not structural jurisdictional defects or fraud. His claim that voidness must appear "on the face of the record" under CCP § 473(d) (Ex. 7) is erroneous, as void judgments can be attacked at any time, including via the Thompson exception. *Thompson v. Cook*, 20 Cal.2d 564, 569 (1942) (voidness need not appear on the record if jurisdictional defects exist). His refusal to recognize my Motion to Vacate as an independent action in equity, despite my intent (ROA 361, First Amen. Decl. ¶ 3), denied my right to invoke equitable jurisdiction. *Bacon v. Bacon*, 150 Cal. 477, 482 (1907); *Olivera v. Grace*, 19 Cal.2d 570, 576 (1942); *Rose v. Fuqua*, 200 Cal.App.2d 719, 724 (1962); *Bloniarz v. Roloson*, 70 Cal.2d 143, 147 (1969). His refusal to address fraud, conspiracy, and structural errors demonstrates bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

**E. Denial of Witness Testimony**

Judge Hesseltine's refusal to allow testimony from Bissell, despite my subpoena and supplementary brief, prevented me from proving extrinsic fraud and conspiracy critical to my Motion to Vacate. *Rosenthal v. Great Western Fin. Sec. Corp.*, 14 Cal.4th 394, 414 (1996) (testimony required to resolve fraud). Bissell's testimony was necessary to reveal his intent in misrepresenting § 7031(b) as civil and conspiring with the Humphreys to procure an unlawful judgment, constituting extrinsic fraud and fraud on the court. This denial suggests prejudgment of my claims and denial of the due process right to present evidence of my claims, further evidencing bias. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). *People v. Freeman*, 47 Cal.4th 993, 1000 (2010).

**F. Violation of Bankruptcy Discharge Order**

Judge Hesseltine's denial of my Motion to Vacate/Independent Action on June 26, 2025, Ex Parte Application for Emergency Stay on March 18, 2025, and Ex Parte Application for Reconsideration effectively enforced a $930,000 judgment discharged in bankruptcy, violating 11 U.S.C. § 524(a) and demonstrating actual bias under CCP § 170.1(a)(6)(A)(iii). On March 27, 2023, the U.S. Bankruptcy Court for the Central District of California issued a discharge order in Case No. 8:22-BK-12076-SC, voiding the judgment as a personal liability under 11 U.S.C. § 524(a)(1) and enjoining enforcement under § 524(a)(2) (Ex. 5, Discharge Order). The judgment lien was avoided under 11 U.S.C. § 522(f) on June 15, 2023 (Ex. 6, Motion to Compel, ¶ 15). My restitution claim—vacatur and damages minimally $5 million—is a property interest among "unprosecuted lawsuit claims" abandoned to me on December 31, 2024, under 11 U.S.C. § 554(b). *In re DeVore*, 223 B.R. 193, 198 (1998) (B.A.P. 9th Cir.) (abandoned claims revert to debtor).

Hesseltine was informed of the discharge via my Ex Parte Application, ROA 306, and by Bissell at the June 26, 2025, hearing (Ex. 4, pending). Despite this, he denied my motion, stay, and reconsideration (Exs. 3, 7–9), refusing to vacate the judgment and denying restitution, effectively enforcing a void judgment in violation of 11 U.S.C. § 524(a)(2). *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (willful violation of discharge injunction incurs liability). *In re Kuehn*, 563 F.3d 289, 292 (2009) (7th Cir.) (actions based on discharged debts are void). The stay and reconsideration denials allowed the UD action, Case No. 30-2025-01459684, stemming from a wrongful foreclosure caused by the void judgment, to proceed, enabling an unlawful default, eviction, ~$1.18 million equity loss, $50,000 property damage,

and $10,000 lost property. This favored the Humphreys by preserving an improper advantage—the judgment's unvacated status, which avoids restitution and maintains a false appearance of validity—and Canjian Hou, whose UD relies on a defective title, over my property interest, suggesting bias, potentially to protect his *Moorefield* ruling (Ex. 1) and the liability of his friends and/or colleagues. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006). *Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018) (UD requires valid title). This violation risks liability for disregarding federal law. *Rankin v. Howard*, 633 F.2d 844, 849 (1980). It perpetuates the Humphreys' and Bissell's conspiracy. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

**G. Procedural Propriety of Oral Motion and Ex Parte Application and Due Process Violation by Denial of Stay**

Judge Hesseltine's rulings violated due/judicial process by incorrectly deeming my oral disqualification motion untimely and improper and by denying my Ex Parte Application for Emergency Stay of Unlawful Detainer Action (ROA 306, filed March 14, 2025) and Ex Parte Application for Reconsideration (filed May 21, 2025), prioritizing form over substance and causing irreparable harm, thus evidencing bias under CCP § 170.1(a)(6)(A)(iii).

While CCP § 170.3(c)(1) requires a written verified statement, my oral motion on June 26, 2025, was a good-faith effort to prevent due/judicial process violations, followed by this verified statement, and was timely raised after bias emerged at the hearing. *Christie v. City of El Centro,* 135 Cal.App.4th 767, 776 (2006).

Similarly, Hesseltine's denial of my Ex Parte Application and Reconsideration for filing in the 2015 case (Case No. 30-2015-00805807) and combining documents ignored their substantive connection to the void $930,000 judgment, which caused the wrongful foreclosure (November 18, 2024; see ROA 306) and UD action (Case No. 30-2025-01459684). These denials prevented me from defending against eviction based on fraud and structural jurisdictional defects, violating due/judicial process by undermining the fairness of the judicial process. *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146 (1980) (due process requires homeowners be permitted to raise fraud defenses in eviction actions tied to title disputes); *Mehr v. Superior Court*, 139 Cal.App.3d 1044, 1050 (1983) (denial of

stay in UD action pending appeal is abuse of discretion when substantial title issues exist and eviction causes irreparable harm). My applications sought to stay the UD action, which stemmed from a foreclosure enabled by the void judgment, to preserve my home and ~$1.2 million in equity. Hesseltine's one-word denial of the stay ("denied," Ex. 7) and cursory denial of reconsideration (Ex. 8, p. 3, ll. 15–25; p. 4, ll. 1–4), without addressing irreparable harm or the bankruptcy discharge (Exs. 5–6), allowed an unlawful default and forced sheriff eviction, despite my showing of substantial issues (e.g., fraud, lack of jurisdiction supported by new case law (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201 (2020); *Liu v. SEC*, 591 U.S. 71 (2020)) and minimal prejudice to the UD plaintiff, Canjian Hou, who holds defective title (*Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 483 (2018)). These denials, favoring the Humphreys and Hou by preserving the void judgment's effect, demonstrate bias, potentially to protect Hesseltine's ruling in *Moorefield Construction, Inc. v. Pantalemon* (Ex. 1) and his colleagues from liability. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Asuncion*, 108 Cal.App.3d at 146 (courts must evaluate harm in ex parte contexts to ensure due process).

**H. Judge Hesseltine's Failure to Declare the Judgment Void Despite Uncontroverted Evidence of Jurisdictional Defects and the Humphreys' Failure to Sustain Their Burden of Proof on Standing**

Judge Hesseltine had a mandatory, non-discretionary, ministerial duty to declare the April 20, 2017, judgment in Case No. 30-2015-00805807 void due to the Humphreys' failure to sustain their burden of proof of standing in response to my direct jurisdictional challenges, their failure to counter my evidence in the Motion to Vacate/Independent Action in Equity (ROA 361, 369) and prior proceedings, and the prior courts' lack of subject matter jurisdiction, rendering his refusal to do so evidence of bias under CCP § 170.1(a)(6)(A)(iii). In *Thompson v. Cook*, 20 Cal.2d 564, 569–73 (1942), the California Supreme Court held that when a party challenges a judgment as void with uncontroverted evidence of jurisdictional defects and the opposing party fails to offer proof to sustain jurisdiction, the court must declare the judgment void as a matter of law. My Motion to Vacate (ROA 361, 369), prior Writ of Error (April 18, 2017, ROA 244), and Bill of Particulars (ROA 256, 263) constituted direct attacks, presenting uncontroverted evidence that the Humphreys lacked standing to prosecute a penal action under Cal. Bus. & Prof. Code § 7031(b) without executive authority (Cal. Const. Art. V, § 1; *Albrecht v. United States*, 273 U.S. 1, 8 (1923)),

that no sworn information or criminal complaint was filed to vest jurisdiction (*Buis v. State*, 1990 OK CR 28, p.4; Cal. Gov't Code 100), and that no evidence showed I personally performed licensed work as required by CACI 4560(3) and § 7031(a) and (b). The Humphreys' opposition to my 2019 Motion to Vacate (Ex. 11 (exhibits B, C, D omitted- not relevant), ROA 300), their Respondent's Brief on appeal (Ex. 10), and their 2025 opposition (ROA 381, Ex. 13) failed to rebut these claims or provide evidence of their standing, executive authority, or my performance of licensed work, relying solely on res judicata, general jurisdictional assertions, and procedural bars. Specifically, they did not address the absence of a criminal complaint, their lack of prosecutorial authority, or my evidence that The Spartan Associates, Inc. (my company) performed all work instead citing my emails and testimony about contracting (Ex. 10) without evidence of performance. Their mischaracterization of *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201, 1212 (2020), as addressing only the statute of limitations (ROA 381, Ex 13) ignored its holding that § 7031(b) imposes a punitive forfeiture requiring criminal safeguards, and they failed to engage with *Liu v. SEC*, 591 U.S. 71, 79 (2020), which limits disgorgement to net profits, not the ~$930,000 penalty awarded. The trial and appellate courts' failure to establish subject matter jurisdiction, due to the unauthorized penal prosecution and lack of evidence, rendered the judgment void ab initio as a result of structural jurisdictional errors (e.g. violation of separation of powers, usurpation of executive authority, no criminal complaint filed, no counsel appointed, all heightened protections required in criminal proceedings denied). *Elliot v. Piersol*, 26 U.S. 328, 340 (1828); *Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898).

Judge Hesseltine's refusal to vacate the judgment, despite the Humphreys' failure to counter my evidence or prove standing, as reflected in their deficient briefs (Exs. 10, 11, 13) and the prior court's similar error (Ex. 12– Minute Order– prior Motion to Vacate), demonstrates bias by shielding a jurisdictionally defective judgment, potentially to protect his rulings in *Moorefield Construction, Inc. v. Pantalemon* (Ex. 1) or to align with the alleged judicial conspiracy involving Justices Aronson, Goethals, O'Leary, and Judges Chaffee and Di Cesare to protect them from civil liability for damages. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006). This failure to fulfill his mandatory duty under *Thompson v. Cook* constitutes a structural error,

violating due/judicial process and necessitating disqualification to ensure an impartial hearing. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

**I. Grounds for Commission on Judicial Performance Complaint**

Judge Hesseltine's conduct violates the California Code of Judicial Ethics, warranting a complaint to the Commission on Judicial Performance:

1. **Bias or Prejudice (Canon 3B(5))**: His refusal to engage with controlling authorities (e.g., *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal.App.5th 1201 (2020); *Liu v. SEC*, 591 U.S. 71 (2020)), denial of attorney William Bissell's testimony critical to proving extrinsic fraud (*Rosenthal v. Great Western Fin. Sec. Corp.*, 14 Cal.4th 394, 414 (1996)), enforcement of a judgment discharged in bankruptcy (Case No. 8:22-BK-12076-SC, Ex. 5), denial of my Ex Parte Application for Emergency Stay (ROA 306) and Reconsideration (Exs. 7–8), and refusal to provide a court reporter or allow recording despite my fee waiver and Cal. Rules of Court, Rule 1.150(d), suggest bias, potentially to protect his prior ruling in *Moorefield Construction, Inc. v. Pantalemon* (Ex. 1) and colleagues involved in this conspiracy. CJEO Formal Opinion 2021-016 (p. 8) notes that actions undermining impartiality violate Canon 3B(5). *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).
2. **Failure to Uphold the Law (Canon 3B(2))**: Hesseltine misapplied res judicata and law of the case to shield a void judgment, ignored *Eisenberg* and *Liu* establishing § 7031(a) and (b)'s penal nature, and failed to address the bankruptcy discharge (11 U.S.C. § 524(a)) and unlawful detainer (UD) due process violations (e.g., lack of notice, premature default, CCP § 1013). These actions violate constitutional and federal law. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires notice and opportunity to be heard).
3. **Fraud on the Court (Canon 3B(1))**: False Minute Order statements claiming my arguments were rejected by higher courts (Ex. 3), despite no full, fair, or impartial determination, perpetuation of a conspiracy to misrepresent § 7031(a) and (b) as civil, and dismissal of UD issues without addressing merits undermine judicial integrity. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) (fraud on the court undermines judicial integrity).

4. **Improper Denial of Disqualification (Canon 3C(1))**: Denying my oral disqualification motion as untimely (Exs. 3–4) violates his duty to recuse under CCP § 170.3(a)(1), given his pecuniary interest from *Moorefield* and potential relationships with Justices Aronson, Goethals, O'Leary, and Judges Di Cesare and Chaffee. CJEO Oral Advice Summary 2015-015 (p. 2) confirms judges must decide their own disqualification. *Caperton*, 556 U.S. 868.
5. **Abuse of Authority (Canon 2A)**: Affirming a void judgment, denying the UD stay and reconsideration despite notice of the bankruptcy discharge (Exs. 5–6), and obstructing record preservation erode public confidence in the judiciary. CJEO Formal Opinion 2021-016 (p. 8) notes that actions undermining impartiality violate Canon 2A. *Jameson v. Desta*, 5 Cal.5th 594, 608 (2018) (denial of court reporter for indigent litigant violates due process).
6. **Failure to Provide Forum Guidance**: Refusing to identify a forum for relief despite my exhaustion of remedies (Exs. 7–9) and pro se status exacerbates systemic bias, denying due process. *Mullane*, 339 U.S. 306, 314. Canon 3B(8) Commentary encourages reasonable steps to enable self-represented litigants to be heard.
7. **Obstruction of Record Preservation**: Denying a court reporter or recording permission, despite my fee waiver and Rule 1.150(d) discretion, limits my appeal rights, suggesting bias. *Jameson v. Desta*, 5 Cal.5th 594, 608 (2018); CJEO Formal Opinion 2013-002 (pp. 7–8) (judges must ensure accurate record documentation).

## IV. CONCLUSION

I request disqualification of Judge Hesseltine for appearance of bias, actual bias, violations of due/judicial process under California Constitution, Article I, Section 7, and bills of pains and penalties under California Constitution, Article I, Section 9, and U.S. Constitution, Article I, Section 10, that the Judicial Council assign an impartial judge under CCP § 170.3(c)(5) to rehear the Motion to Vacate, and that the judgment be vacated due to bias and structural jurisdictional defects. *Christie v. City of El Centro,* 135 Cal.App.4th 767, 776 (2006). Systemic unlawful rulings on § 7031(b) claims by Superior Court judges, including in the Orange County Superior Court, exacerbate this bias, as evidenced by pervasive misapplication of § 7031(b) as civil rather than penal. See e.g. *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal.4th 412, 426 (2005) (misapplied §

7031 as civil); all § 7031(a) and (b) cases are incorporated as if fully set forth herein. A particularly egregious example is *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal.App.4th 882, 895 (2015), where the Judicial Council pursued a $22.7 million forfeiture against a contractor for an unintentional licensing issue during corporate reorganization, despite satisfactory performance, and incurred over $3.3 million in legal costs debited from the public treasury, demonstrating systemic misuse of § 7031(b) to impose disproportionate penalties without regard for fairness or harm caused. This pattern of systemic bias necessitates Judicial Council intervention to assign a judge without prior § 7031(b) rulings to ensure impartiality.

**VERIFICATION**

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that the foregoing statements of fact are true and correct to the best of my knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true. Signed on July 3, 2025, at Las Vegas, Nevada.

By: _____

Adam Bereki

# Exhibit 1

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 08/06/2024 TIME: 03:31:00 PM DEPT: C23

JUDICIAL OFFICER PRESIDING: David J. Hesseltine
CLERK: R. Burns
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: D. Muldoon

CASE NO: **30-2022-01259274-CU-FR-CJC** CASE INIT.DATE: 05/12/2022
CASE TITLE: **Moorefield Construction, Inc. vs. Pantalemon**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

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EVENT ID/DOCUMENT ID: 74355541
**EVENT TYPE:** Under Submission Ruling

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**APPEARANCES**

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There are no appearances by any party.

The Court, having taken the Court Trial under submission on 7-18-24 makes its ruling following Court Trial as follows:

**Ruling Following Court Trial**
*. (Moorefield Construction, Inc. v. Steve Pantalemon, etc., et al., Case No. 2022-01259274)*

After completing various pretrial proceedings, including ruling on a motion in limine, the court conducted a two-day bench trial on July 2 and 3, 2024. At the conclusion of the proceedings on July 3, 2024, the court set a briefing schedule for the parties to submit their closing arguments in writing. The court received the parties' briefs on July 17, 2024, and took this matter under submission at that time. Having now considered all testimony and exhibits admitted at trial, any judicially noticed matters, the credibility of all witnesses and other evidence, the arguments of counsel, and the governing law, the court now rules as set forth below.

The complaint of plaintiff Moorefield Construction, Inc. (Plaintiff) alleges the following two causes of action against defendant Steve Pantalemon, individually and doing business as Custom Wine Cellar (Defendant): (1) intentional misrepresentation, and (2) violation of contractor's state licensing law. Both causes of action implicate the requirements of the Contractors' State License Law (Bus. & Prof. Code, § 7000, et seq.; CSLL), including whether the CSLL required Defendant to have a license and whether Defendant is entitled to retain any of the deposit Plaintiff paid to Defendant. Accordingly, a brief discussion of the CSLL is an appropriate starting point.

**Contractors' State License Law (Bus. & Prof. Code, § 7000, et seq.)**

"The CSLL provides 'a comprehensive scheme which governs contractors doing business in California.' [Citation.] 'The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [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.' [Citation.]" (*Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 894 (*Judicial Council*).)

For purposes of the CSLL, "a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, . . . add to, . . . improve, move, . . . any building, . . . or other structure, project, development or improvement, or to do any part thereof . . . and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. 'Contractor' includes subcontractor and specialty contractor." (Bus. & Prof. Code, § 7026.) "'Person' . . . includes an individual, a firm, partnership, corporation, limited liability company, association or other organization, or any combination thereof." (*Id.* at § 7025, subd. (b).)

"[Business and Professions Code s]ection 7026 plainly states that both the person who provides construction services himself and one who does so 'through others' qualifies as a 'contractor.' The California courts have also long held that those who enter into construction contracts must be licensed, even when they themselves do not do the actual work under the contract. [Citations.]" (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 941 (*Vallejo Development*).) Moreover, "[t]he mere execution of such a contract is an act 'in the capacity of a contractor,'" and makes an unlicensed person subject to the provisions of Business and Professions Code section 7031 discussed below. (*Vallejo Development, supra*, 24 Cal.App.4th at p. 940.)

"The two provisions of the CSLL of concern here are designed to enforce compliance with the CSLL's licensing requirements. [Business and Professions Code s]ection 7031, subdivision (a) provides that no person 'engaged in the business or acting in the capacity of a contractor' can bring an action for compensation for work requiring a contractor's license if the person was not properly licensed at all times during the performance of the work. [Business and Professions Code s]ection 7031, subdivision (b) goes further, permitting a person 'who utilizes the services of an unlicensed contractor' to bring an action for disgorgement of 'all compensation paid to the unlicensed contractor.' Although the language of the two provisions is somewhat different, they are interpreted 'in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant.' [Citation.]" (*Judicial Council, supra*, 239 Cal.App.4th at p. 895, fns. omitted.)

"The statutory intent behind [Business and Professions Code] section 7031, subdivisions (a) and (b) is 'to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay.' [Citation.]" (*Judicial Council, supra*, 239 Cal.App.4th at p. 895.) "Because it denies all compensation for a contractor's work, regardless of the quality of the work or the reasons for the failure of licensure, section 7031 can have harsh and seemingly unfair effects." (*Ibid.*)

"Courts have taken their cue from the Legislature in enforcing the letter of the law, consoled by the Legislature's ""determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties."" [Citation.] Accordingly, if a contractor is unlicensed for any period of time while delivering construction services, the contractor forfeits all compensation for the work, not merely compensation for the period when the contractor was unlicensed. [Citation.] Although construction contractors often make substantial payments to others for materials and labor, an unlicensed contractor forfeits all money paid, without offsets for such payments to third parties. [Citation.] Because [Business and Professions Code] section 7031 is held to apply '" [r]egardless of the equities"' [citation], unlicensed contractors are prohibited from asserting equitable defenses, such as estoppel, to forfeiture. [Citation.] On the contrary, ""[c]ourts may not resort to equitable considerations in defiance of [Business and Professions Code] section 7031."" [Citation.] As a result, an unlicensed contractor is subject to forfeiture even if the other contracting party was aware of the contractor's lack of a license, and the other party's bad faith or unjust enrichment cannot be asserted

by the contractor as a defense to forfeiture. [Citation.] For a contractor failing to qualify under the statutory safe harbor of subdivision (e), [Business and Professions Code] section 7031 is truly a strict liability statute." (*Judicial Council, supra*, 239 Cal.App.4th at pp. 896-897.)

"Nothing in [Business and Professions Code] section 7031 either limits its application to a particular class of homeowners or excludes protection of 'sophisticated' persons. Reading that limitation into the statute would be inconsistent with its purpose of '"deterring unlicensed persons from engaging in the contracting business."' [Citation.] Indeed, in *Hydrotech [Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988], the court rejected the argument that [Business and Professions Code] section 7031 should not be applied to a lawsuit by a subcontractor against a contractor because the subcontractor 'did not hold itself out to the public.' [Citation.] The court applied [Business and Professions Code] section 7031 even though the suit was against a general contractor for a large commercial construction project who allegedly was aware of the subcontractor's unlicensed status. [Citation.]" (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 849-850 (*Phoenix Mechanical*).)

**Second Cause of Action (Violation of CSLL)**

Plaintiff's second cause of action is brought under Business and Professions Code section 7031, subdivision (b), and seeks to recover all sums Plaintiff paid to Defendant on the ground Defendant at no time was a licensed contractor and both the CSLL and the parties' contract required Defendant to be licensed.

The elements of this claim are set forth in CACI jury instruction no. 4560 as follows: "1. That [name of plaintiff] [[engaged/hired]/ [or] contracted with] [name of defendant] to perform services for [name of plaintiff]; [¶] 2. That a valid contractor's license was required to perform these services; and [¶] 3. That [name of plaintiff] paid [name of defendant] for services that [name of defendant] performed." CACI no. 4561 further provides: "A person who pays money to an unlicensed contractor may recover all compensation paid to the unlicensed contractor. [¶] If you decide that [name of plaintiff] has proved that [he/she/nonbinary pronoun/it] paid money to [name of defendant] for services and that [name of defendant] has failed to prove that [he/she/nonbinary pronoun/it] was licensed at all times during performance, then [name of plaintiff] is entitled to the return of all amounts paid, not just the amounts paid while [name of defendant] was unlicensed. The fact that [name of plaintiff] may have received some or all of the benefits of [name of defendant]'s performance does not affect [his/her/nonbinary pronoun/its] right to the return of all amounts paid."

Here, there is no dispute the parties entered into the "Sub Contract" (Exhibit 7) in January 2022. The parties to the contract are "Moorefield Construction, Inc." and "Custom Wine Cellar." Hal Moorefield signed the contract on Plaintiff's behalf of January 28, 2022. Steve Pantalemon signed the contract on behalf of Custom Wine Cellar, as its CEO, on January 20, 2022.

The description of the work Defendant contracted to perform is described as follows in paragraph 2: "ALL FURNISH/INSTALL WINE DISPLAY PER PLANS, SPECIFICATIONS & HELL'S KITCHEN REQUIREMENTS, CLIMATE CONTROLLED CUSTOM BUILT UNITS WITH MULTIPLE DOORS, WINE RACKS, GLASS WALL, REFRIGERATION/HUMIDTY UNITS, CHEF'S TABLE CELLAR & SEISMIC REQUIREMENTS TO INCLUDE ENGINEERING & PERMITTED PLANS FOR THESE UNITS INCLUDING BUT NOT LIMITED TO ALL LABOR, MATERIALS, AND EQUIPMENT TO COMPLETE. This is to be done in strict accordance with the contract documents as listed in Exhibit 'B'." Exhibit "D" to the contract further elaborated upon the scope of work Defendant contracted to perform.

The court finds this is a contract subject to the CSLL, and Defendant was required to have a contractor's state license to enter into this contract and perform the work it required, because the work described in the contract falls within the scope of Business and Professions Code section 7026. Mr. Pantalemon

testified the contract does not accurately describe the work to be performed because Plaintiff did not understand how Defendant provides its product and services. That contention will be more fully addressed below in connection with Defendant's argument its work is exempt from Business and Professions Code section 7031 under section 7045. At this point, however, it is sufficient to note the contract Defendant undisputably signed controls and dictates whether a contractor's license was required. Moreover, the court credits the testimony of Hal Moorefield over Mr. Pantalemon as to what Plaintiff was contracting to obtain from Defendant.

The undisputed evidence also established Custom Wine Cellar at no time held a contractor's license (Exhibit 20), Steve Pantalemon at no time held a contractor's license (Exhibit 21), and Steven Pantalemon, dba Custom Wine Cellar, at no time held a contractor's license (Exhibit 22). Finally, the undisputed evidence established Plaintiff paid Defendant $230,400 on January 28, 2022, as a deposit on the work to be performed under the contract. (Exhibits 8, 9, 10.) Accordingly, the court finds the evidence establishes all the necessary elements for Plaintiff's claim for disgorgement under Business and Professions Code section 7031, subdivision (b), and Plaintiff is entitled to recover the full amount it paid to Defendant—i.e., $230,400.

Defendant makes several arguments as to why Business and Professions Code section 7031 does not apply in this case, but each of them lacks merit. First, Defendant contends Plaintiff made a mistake in preparing the contract and identifying with whom it was contracting, and therefore the contract should be reformed to state it is with the person or entity who holds the contractor's license identified in the contract, or at least the contract should be construed against Plaintiff. Specifically, Defendant contends the contract should have been with William Tassie dba Wine Cellar Designers Construction—i.e., the holder of license number 894458—rather than Custom Wine Cellar, and that Plaintiff cannot benefit from this error because it is the one who prepared the contract. Neither the evidence nor the law supports this argument.

Defendant's proposal for the project at issue was submitted to Plaintiff by Custom Wine Cellar. (Exhibit 3.) The proposal makes no mention of Wine Cellar Designers Construction or William Tassie. Based on Defendant's proposal, Plaintiff prepared the letter of intent with the name Custom Wine Cellar. Mr. Pantalemon signed the letter of intent as CEO without making any changes to the name of the entity with whom Plaintiff would contract. (Exhibit 4, p. 1.) Plaintiff then prepared the contract using the same name that was used on the proposal and letter of intent without any objection from Defendant, and indeed Mr. Pantalemon signed the contract on behalf of Custom Wine Cellar.

Defendant points to the certificates of insurance and W-9 forms Defendant submitted to Plaintiff after the letter of intent but before the contract (Exhibits 37, 39, 40) as evidence Plaintiff should have realized Custom Wine Cellar was not the proper entity. Specially, Defendant contends Plaintiff should have realized these documents did not identify Custom Wine Cellar, but rather, Wine Cellar Designers Group, LLC, and Wine Cellar Designers Construction, LLC, and therefore Plaintiff should have prepared the contract in the name of one of those entities. According to Defendant, Plaintiff's "compliance team" at least should have realized there was confusion about the party with whom Plaintiff was about to contract and they should have clarified things.

Defendant, however, fails to acknowledge that he never brought any of this to Plaintiff's attention. Defendant submitted the proposal under the name Custom Wine Cellar and that is the name Plaintiff used. Indeed, Plaintiff acknowledges it prepared the contract in the name of Custom Wine Cellar, but Defendant fails to acknowledge he signed the contract as the CEO of Custom Wine Cellar without raising any issue about the identity of the person or entity with whom Plaintiff was contracting. Mr. Pantalemon testified he has been in the business for over 20 years and has taken care over the course of his career to make sure he only submits bids and bills for products and services that do not require a contractor's license, and has a licensed contractor submit separate bids and bills for any installation work that requires a license. Moreover, Mr. Pantalemon certainly was aware of the significance of having a

contractor's license as demonstrated by the citation he acknowledged receiving from the California Contractors State License Board in 2021 (i.e., before the events of this case) for contracting without a license. (Exhibit 53.) It was Defendant who should have brought it to Plaintiff's attention if the contract named the wrong person or entity; the obligation did not fall on what Defendant characterizes as Plaintiff's compliance team on the facts presented.

The court finds there was no mistake in the contract's preparation and there is no basis for construing the contract as anything other than what it says—i.e., the contract is between Plaintiff and Custom Wine Cellar. Mr. Pantalemon knew the importance of the contract being in the name of a licensed contractor, but nonetheless signed the contract on behalf of Custom Wine Cellar, a non-licensed entity.

Along a similar line, Defendant argues the use of a fictitious business name that slightly varies from the name of the contractor's license does not preclude the licensee's recovery under the contract. To support this argument, Defendant cites *Ball v. Steadfast-BLK* (2011) 196 Cal.App.4th 694 (*Ball*). *Ball*, however, is distinguishable and does not apply to the facts of this case.

In *Ball*, the plaintiff David E. Ball was licensed as the sole owner who did business under the fictitious name Clark Heating and Air Conditioning, but he sought to recover for work under a contract he entered into under the name Clark Air Conditioning & Heating. The trial court sustained a demurrer to the plaintiff's complaint seeking to recover on the contract because the party that contracted was not licensed. The Court of Appeal reversed, explaining as follows: "The trial court has confused the individual owner to whom the contractor's license was issued with the name under which the individual conducted his contracting business. Ball was licensed as a 'Sole Owner,' and not as a partnership or corporate entity, pursuant to the classification system of [Business and Professions Code] section 7065. The 'doing business as' name 'Clark Heating and Air Conditioning' was not an entity that could be licensed; rather it was the business name under which the individual licensee did business. Not only is Clark Heating and Air Conditioning not a distinct legal entity, it is not among the categories of individuals or entities defined by the Contractors' State License Law (CSLL), section 7000 et seq., to whom a contractor's license may issue. [Citations.]" (*Ball, supra*, 196 Cal.App.4th at p. 697.)

The *Ball* court further elaborated as follows: "The CSLB licenses 'individual owners, copartnerships, and corporations.' [Citation.] Ball received a license under the 'License Type' as a 'Sole Owner,' i.e., an individual owner. A sole owner is a sole proprietorship and a sole proprietorship is not a legal entity separate from its individual owner. [Citation.] As a sole proprietorship, Clark Heating and Air Conditioning does not, and cannot, hold a contractor's license independent from Ball. Not only is Clark Heating and Air Conditioning not a distinct legal entity, it is not among the categories of 'persons' defined by the CSLL to whom a contractor's license may issue. [Citations.] Thus, although the name 'Clark Heating and Air Conditioning' appears on the license, it is David Edward Ball, an individual, who is the licensee as the owner of Clark Heating and Air Conditioning. That license entitles him, as the owner of Clark Heating and Air Conditioning, to perform contracting work under the name Clark Heating and Air Conditioning. [Citation.] [¶] . . . 'Use of a fictitious business name does not create a separate legal entity' distinct from the person operating the business. [Citation.] '"The business name is a fiction, and so too is any implication that the business is a legal entity separate from its owner."' [Citation.] Thus, like Clark Heating and Air Conditioning, Clark Air Conditioning & Heating is legally indistinguishable from Ball. [Citation.] While Ball entered into the contracts as 'David E. Ball, dba Clark Air Conditioning & Heating,' Ball was the contracting party, and it is Ball who is entitled to pursue an action to collect for the work done pursuant to the contract." (*Ball, supra*, 196 Cal.App.4th at p. 701.)

*Ball* potentially would apply in this case if Mr. Pantalemon was licensed as the sole owner who did business under the name Wine Cellar Designers Construction, and he contracted using his license but contracted as Mr. Pantalemon doing business and Custom Wine Cellar. Those, however, are not the facts of this case. The contract is in the name of Custom Wine Cellar, and it is executed by Mr. Pantalemon—no dba or fictitious parties are identified. The evidence shows neither Mr. Pantalemon nor

Custom Wine Cellar nor Mr. Pantalemon dba Custom Wine Cellar is a licensed contractor. (Exhibits 20, 21, 22.) The license number Mr. Pantalemon inserted on the contract—i.e., 894458—is in the name of William Tassie dba Wine Cellar Designers Construction and it is listed as a sole ownership type of license. (Exhibit 23.) There is no credible evidence Mr. Tassie, however, had any involvement in the matter. He clearly did not sign the contract, and only the licensee can sign. Moreover, although Mr. Pantalemon testified Mr. Tassie had some involvement in this matter, Mr. Moorefield testified he had no contact with Mr. Tassie and never even heard of him until this lawsuit. Mr. Tassie's name appears nowhere in any of the documents regarding this project. Mr. Pantalemon's testimony to the contrary is not credible and nonetheless is not relevant because Mr. Tassie did not contract with Plaintiff. As such, *Ball* does not apply here and provides Defendant no assistance.

Defendant next argues Mr. Pantalemon and Mr. Tassie formed an LLC named Wine Cellar Designers Construction, LLC of which they were both members, and so Mr. Pantalemon had the authority to contract on behalf of that LLC. This argument too does not help Defendant. The license is in the name of William Tassie dba Wine Cellar Designers Construction as a sole ownership license; it is not a license in the name of Wine Cellar Designers Construction, LLC. Mr. Pantalemon sought to testify the LLC applied to obtain a license, but he did not testify, and did not present any evidence showing, the LLC ever obtained a license or that he thought the LLC obtained a license. More importantly, the contract in this case is not in any form of the name Wine Cellar Designers Construction. Rather, as explained above, it is in the name of Custom Wine Cellar. To avoid Business and Professions Code section 7031, the contract must be in the name of the entity or person who holds the license. (*Opp v. St. Paul Fire & Marine Ins. Co.* (2007) 154 Cal.App.4th 71 (*Opp*).)

In *Opp*, the individual plaintiff, William Opp, held a California contractor's license. He also was president of Mountain Connection, Inc., a Montana corporation, that did not hold a California contractor's license. Mr. Opp, as president of Mountain Connection, Inc., entered into a building contract and inserted his individual contractor's license number on the contract. He later sued to enforce the contract, but the trial court granted summary judgment against him because the contract was entered into by Mountain Connection, Inc., and that corporation was not licensed. (*Opp*, *supra*, 154 Cal.App.4th at pp. 72-73.) The court of appeal affirmed that decision, explaining it did not matter Mr. Opp as an individual held a valid contractor's license because he did not contract as an individual. Rather, the contracting party was Mountain Connection, Inc.—an unlicensed corporation—and therefore Business and Professions Code section 7031 prevented the corporation from recovering on the contract, and Mr. Opp could not recover because he did not contract in his individual capacity. (*Id.* at pp. 74-76.)

Defendant also argues a license was not required because the contract at issue was exempt from the contractor license requirement under Business and Professions Code 7045, which states "This chapter does not apply to the sale or installation of any finished products, materials, or articles of merchandise that do not become a fixed part of the structure, nor shall it apply to a material supplier or manufacturer furnishing finished products, materials, or articles of merchandise who does not install or contract for the installation of those items." Defendant contends this case is analogous to *Walker v. Thornsberry* (1979) 97 Cal.App.3d 842 (*Walker*).)

In *Walker*, the plaintiff was a manufacturer of metal prefabricated restrooms that did not hold a contractor's license. The plaintiff contracted to furnish, assemble, and install one of its units upon a concrete foundation the defendant prepared. When the defendant did not pay, the plaintiff sued, and the defendant asserted plaintiff's claim was barred under Business and Professions Code section 7031. The trial court ruled a contractor's license was not required based on Business and Professions Code section 7045, and the appellate court agreed. (*Walker*, *supra*, 97 Cal.App.3d at pp. 843-844.)

The *Walker* court explained, implicit in the trial court's decision was a determination the prefabricated unit did not become a fixed part of the structure, and whether the goods installed become a fixed part of the structure is a question of fact. (*Walker*, *supra*, 97 Cal.App.3d at p. 847.) The *Walker* court determined

the record supported the application of Business and Professions Code section 7045's exemption because "[t]he contract between [plaintiff] and defendant did not require [plaintiff] to undertake the installation of concrete foundation, rough plumbing, or installation of plumbing fixtures, stalls, wood roofing, and painting upon which to place the prefabricated restroom. [Plaintiff's] employees merely assembled the pieces and bolted the structure to the foundation. Their contribution of labor to the finished restroom was at most minor and incidental." (*Id.* at p. 848.)

*Walker* was distinguished and found inapplicable by the court in *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 Cal.App.4th 1035, 1046 (*Banis*): "Here, in contrast, plaintiff's services involved more than incidental labor. The contract called for plaintiff to provide drawings for electrical, plumbing, and ceiling plans. Plaintiff was also to coordinate work with architects as well as structural, mechanical, and electrical engineers. The work plaintiff was hired to do cannot be compared with that in *Walker*."

Here, the court finds this case to be much more analogous to *Banis* than *Walker*, and Business and Professions Code section 7045 does not apply so as to exempt Defendant from the requirement of having a contractor's license. The contract in this case did not simply require Defendant to show up with a prefabricated unit, do some assembly, bolt it in place, and be done. Indeed, unlike in *Walker*, the evidence shows the parties' contract called for the wine coolers, especially the red wine cooler, to become a fixed part of the structure. As noted, that is a question of fact for this court to determine. (*Walker, supra*, 97 Cal.App.3d at p. 847.) Among other things, the evidence showed the contract required Defendant to specifically design the concept the project architect developed. Defendant had to do the design and engineering work to come up with functioning coolers. The contract called for Defendant to install glass walls, doors, climate controls, refrigeration and humidity units, and much more. Defendant had to comply with seismic requirement and many other things. Mr. Pantalemon's testimony that it would be a plug-and-play unit is not consistent with the contract. Indeed, he acknowledged as much by testifying the contract did not accurately describe his work, but the contract is what Defendant contracted to do. Moreover, the photos of the final product, which Mr. Pantalemon testified used a lot of his work, are not consistent with a plug-and-play unit that did not become a fixed part of the structure. Again, the court finds Business and Professions Code section 7045 does not exempt Defendant from the requirement of having a contractor's license.

Defendant also argues it substantially complied with the licensing requirements under Business and Professions Code section 7031, subdivision (e). Originally, in an effort to mitigate the harsh consequences of Business and Professions Code section 7031, subdivisions (a) and (b), the courts developed a substantial compliance doctrine to create exceptions to those provisions. The Legislature, however, amended section 7031 to override those decisions and strictly limit when a claim of substantial compliance may be asserted to avoid the forfeiture otherwise compelled by section 7031, subdivisions (a) and (b). Compliance with section 7031, subdivision (e), is now the exclusive means of avoiding forfeiture based on substantial compliance. (*Judicial Council, supra*, 239 Cal.App.4th at p. 896.)

Professions Code section 7031, subdivision (e), states as follows: "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."

Defendant does not meet these requirements. As stated above, the contracting party was Custom Wine Cellar, and it never has been licensed. Likewise, Mr. Pantalemon individually or doing business as Custom Wine Cellar never has been licensed. As such, the substantial compliance doctrine does not

apply. Defendant may not rely on Mr. Tassie's license for all the reasons set forth above.

Finally, Defendant asserts a host of arguments as to why he should be able to retain at least a portion of the amount paid, including, but not limited to, Plaintiff terminated the contract for convenience, not for cause; Plaintiff did not raise any licensing issue until well after it terminated the contract; and Defendant performed work under the contract worth at least $98,000. All these arguments, however, are irrelevant under the authorities discussed above. Business and Professions Code section 7031, subdivision (b), is a strict liability statute that prevents an unlicensed contractor, such as Defendant, from retaining any of the money it received regardless of any equities that otherwise may come into play. (See, e.g., *Judicial Council*, *supra*, 239 Cal.App.4th at pp. 895-897.)

Based on the foregoing, the court finds for Plaintiff and against Defendant on the second cause of action for violation of CSLL and awards Plaintiff $230,400, i.e., the full amount Plaintiff paid to Defendant.

**First Cause of Action (Intentional Misrepresentation)**

On this cause of action, Plaintiff contends Defendant committed fraud by misrepresenting Defendant was licensed under license no. 894458, and thereby inducing Plaintiff to enter into the contract and pay Defendant the $230,400 deposit that Defendant had no right to keep (regardless of what work was performed) because Defendant was not licensed.

The elements of a claim for fraud based on intentional misrepresentation are set forth in CACI no. 1900: "1. That [name of defendant] represented to [name of plaintiff] that a fact was true; [¶] 2. That [name of defendant]'s representation was false; [¶] 3. That [name of defendant] knew that the representation was false when [he/she/nonbinary pronoun] made it, or that [he/she/nonbinary pronoun] made the representation recklessly and without regard for its truth; [¶] 4. That [name of defendant] intended that [name of plaintiff] rely on the representation; [¶] 5. That [name of plaintiff] reasonably relied on [name of defendant]'s representation; [¶] 6. That [name of plaintiff] was harmed; and [¶] 7. That [name of plaintiff]'s reliance on [name of defendant]'s representation was a substantial factor in causing [his/her/nonbinary pronoun/its] harm."

As explained, Defendant contracted with Plaintiff under the name Custom Wine Cellar. When signing the contract as Custom Wine Cellar's CEO, Mr. Pantalemon inserted in the signature block the contractor's state license number 894458. By inserting that license number in the contract, Mr. Pantalemon represented Custom Wine Cellar (or at least Mr. Pantalemon) was/were the contractor licensed under that number and entitled to do contractor work under that number. Defendant argues Mr. Pantalemon never told Mr. Moorefield or anyone else that either he or Custom Wine Cellar were licensed. That argument assumes the only way Defendant could have represented it was licensed was if Mr. Pantalemon orally made that statement to someone. That is incorrect. Inserting the number into the contract he executed as Custom Wine Cellar's CEO is a representation Custom Wine Cellar and/or Mr. Pantalemon are licensed under that license. Defendant also argues the certificates of insurance and other documents Defendant submitted to Plaintiff bearing names other than Custom Wine Cellar show Defendant did not represent Custom Wine Cellar and/or Pantalemon were licensed. Again, the court disagrees. Those documents do not change the facts, as the court finds them, that Mr. Pantalemon signed the contract as Custom Wine Cellar's CEO without changing the name or otherwise raising any issue, and in doing so he inserted this license number.

Defendant's representation about licensure was false. As explained above, license number 894458 was in the name of William Tassie dba Wine Cellar Designers Construction. That license is a Sole Owner license authorizing Mr. Tassie, and Mr. Tassie alone, to contract using that license. There is nothing showing Custom Wine Cellar was a fictitious name used by Mr. Tassie, and more importantly, Mr. Tassie is not the one who signed the contract. Defendant's arguments about Mr. Pantalemon forming Wine Cellar Designers Construction, LLC with Mr. Tassie do not change that Defendant represented either

Custom Wine Cellar or Mr. Pantalemon were licensed under license no. 894458, and that representation was false.

The evidence also showed Defendant knew the representation was false when it was made. Indeed, Mr. Pantalemon testified about his practice for conducting business over the more than 20 years he has been in the industry. He explained he acted as the designer for the wine rooms and racks, he took care to design the products in a way that they could be installed by a separate contractor, he took care to submit bids and invoices for his services and products separate from the bids and services of any contractor, and he took care to ensure a contractor submitted the bids and bills for all work requiring a contractor's state license. Mr. Pantalemon testified he works with a large number of contractors who would sell and install his products. This testimony shows Mr. Pantalemon was aware of the requirement to have a contractor's license to bid, contract, bill, and collect for installing his wine rooms and racks, and that he did not have such a license. Why else would he allegedly structure his business this way?

Moreover, Mr. Pantalemon acknowledged he was cited and fined by the California State Contractor's Licensing Board in August 2021, for contracting without a license. (Exhibit 53.) He sought to explain the circumstances surrounding that incident and how it was an unusual circumstance for how he conducts his business. The significance of that citation, however, is not whether it arose from a unique set of circumstance. Rather, the significance of the citation is it shows he was well aware of the requirement and obligation to have a contractor's license when Defendant contracted with Plaintiff just a few months after the citation, and that Defendant did not have a license. Plaintiff seeks to emphasize this point by citing to a citation from the Nevada State Contractor's Board and the testimony by Mr. Lemore. Those events, however, postdate the contract between Plaintiff and Defendant, and the court has not found them to be significant.

Next, the evidence shows, or at least supports the inference, Defendant intended Plaintiff rely on the representation about licensure. The contract itself required Defendant to be licensed. (Exhibit 7, ¶22.) Moreover, as described above, the evidence shows Defendant was aware of the requirement to be licensed to contract for and perform the work described in the contract. The contract had blanks in the signature block for Defendant to insert the license number and its expiration date, and Mr. Pantalemon inserted that information. If he did not intend for Plaintiff to rely on the contractor's license number, why did Mr. Pantalemon insert it? He could have just left it blank.

The evidence also shows Plaintiff reasonably relied on Defendant's representation. Indeed, Mr. Moorefield testified he would never have signed the contract with Defendant if Defendant had not provided a contractor's license number and expiration date showing the contract was current. Plaintiff prepared the contract with the blanks for this information and included those blanks, not buried somewhere in the contract, but right at the signature block. In a perfect world, would Plaintiff have investigated to confirm the validity and the holder of that license? Yes. But no one presented any evidence or authority that required Plaintiff to do so, and the court finds it was reasonable for Plaintiff to rely on the representation of what it thought to be a fellow contractor. In reliance on the representation, not only did Plaintiff sign the contract with Defendant, Plaintiff also paid Defendant the $230,400 deposit.

Next, the evidence shows Plaintiff was harmed by its reliance on Defendant's false representation. As stated, Plaintiff paid Defendant the deposit. Under the governing law, Defendant had no right to collect, let alone retain the deposit. Nonetheless, over two and one-half years later, Defendant still retains the entire deposit Plaintiff paid. Defendant's argument it performed about $98,000 in services before Plaintiff terminated the contract, and that Plaintiff did not mention any licensure issue when terminating the contract, does not eliminate or reduce the harm. Defendant had no right to receive or retain any of the deposit. As explained above, Business and Professions Code section 7031 denies Defendant, as an unlicensed contractor, the right to receive or keep any payment.

Finally, the evidence shows Plaintiff's reliance on Defendant representation was a substantial factor in causing Plaintiff's harm. Again, Mr. Moorefield testified he never would have signed the contract and authorized the payment to Defendant if Mr. Pantalemon had not provided a contractor's license number on the contract or if he knew Defendant was unlicensed.

Based on the foregoing, the court finds the evidence presented establishes all the essential elements of Plaintiff's fraud claim, and Plaintiff is entitled to judgment against Defendant on the fraud claim. The evidence shows Plaintiff's damages are the full amount of the deposit—i.e., $230,000. No evidence was presented as to any other damages Plaintiff may have suffered based on Defendant's misrepresentations.

**Punitive Damages**

Plaintiff seeks punitive damages on both causes of action based on Plaintiff's claim Defendant engaged in the foregoing conduct with fraud. Plaintiff seeks $50,000 in punitive damages and presented Mr. Pantalemon's bankruptcy petition as evidence of his financial condition.

CACI no. 3940 explains the law on punitive damages to juries. In relevant part, it provides as follows:

"If you decide that [name of defendant]'s conduct caused [name of plaintiff] harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

"You may award punitive damages only if [name of plaintiff] proves by clear and convincing evidence that [name of defendant] engaged in that conduct with malice, oppression, or fraud.

[¶] . . . [¶]

"'Fraud' means that [name of defendant] intentionally misrepresented or concealed a material fact and did so intending to harm [name of plaintiff].

"There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. . . ."

Although the court finds Defendant committed fraud as described above, the court does not find Plaintiff has shown by clear and convincing evidence Defendant committed that fraud with the intent to harm Plaintiff.

Moreover, our Supreme Court has long held a plaintiff has no entitlement to punitive damages even after establishing they would be permissible. The decision whether to grant or withhold punitive damages is wholly within the control of the fact finder. Indeed, as the Supreme Court explained in *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, "a jury's 'imposition of punitive damages is an expression of its moral condemnation.' [Citation.] . . . [A] plaintiff is not '"entitled, as of right"' to an award of punitive damages [citation], even if the jury finds the defendant 'guilty of oppression, fraud, or malice' [citation]." (*Id.* at pp. 1048-1049; see *Brewer v. Second Baptist Church of Los Angeles* (1948) 32 Cal.2d 791, 801 ["a plaintiff is never entitled as a matter of right to exemplary damages. [Citations.] . . . 'A plaintiff, upon establishing his case, is always entitled of right to compensatory damages. But even after establishing a case where punitive damages are permissible, he is never entitled to them. The granting or withholding of the award of punitive damages is wholly within the control of the jury . . . . Upon the clearest proof of malice in fact, it is still the exclusive province of the jury to say whether or not punitive damages shall be awarded. A plaintiff is entitled to such damages only after the jury, in the exercise of its untrammeled discretion, has made the award.'"].)

Accordingly, the court declines to award Plaintiff any punitive damages.

**Conclusion**

Based on the foregoing, the court finds Plaintiff is entitled to judgment against Defendant on both the first cause of action for intentional misrepresentation and the second cause of action for violation of contractor's state licensing law. Plaintiff is entitled to judgment in the total principal amount of $230,400. Any request for prejudgment interest, costs, or attorney fees shall be made by separate motion or memorandum to the extent appropriate. Plaintiff is ordered to serve and submit a proposed judgment.

The clerk is directed to serve a copy of this ruling on all parties and counsel of record.

Judge David J. Hesseltine
Orange County Superior Court

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, address, and State Bar number)*:
After recording, return to:
Christopher M. Bunge, Esq. (SBN 258780)
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
4 Park Plaza, Suite 1000
Irvine, CA 92614

TEL NO.: 949-852-6700 FAX NO. (optional):
E-MAIL ADDRESS *(Optional)*: cbunge@watttieder.com
[X] ATTORNEY FOR MOOREFIELD CONSTRUCTION, INC. [ ] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 W. CIVIC CENTER DRIVE
MAILING ADDRESS: 700 W. CIVIC CENTER DRIVE
CITY AND ZIP CODE: SANTA ANA, CA 92702
BRANCH NAME: CENTRAL JUSTICE CENTER

*FOR RECORDER'S USE ONLY*

PLAINTIFF: MOOREFIELD, CONSTRUCTION, INC.,
DEFENDANT: STEVE PANTALEMON individually and doing business as CUSTOM WINE CELLAR

CASE NUMBER:
30-2022-01259274-CU-FR-CJC

# ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

[ ] Amended

*FOR COURT USE ONLY*

Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g).

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's
      Name and last known address
      STEVE PANTALEMON individually and doing business as Custom Wine Cellar
      35 Hallcrest Drive
      Ladera Ranch, CA 92694
   b. Driver's license no. [last 4 digits] and state: [X] Unknown
   c. Social security no. [last 4 digits]: [X] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to *(name and address)*:
      STEVE PANATALEMON, individually and doing business as CUSTOM WINE CELLAR
      35 HALLCREST DR., LADERA RANCH, CA 92694
2. [ ] Information on additional judgment debtors is shown on page 2.
3. Judgment creditor *(name and address)*:
   Moorefield Construction, Inc. c/o
   Watt Tieder Hoffar & Fitzgerald, L.L.P.
   4 Park Plaza, Suite 1000, Irvine CA 92614
   Date: May 28, 2025
   CHRISTOPHER M. BUNGE
   (TYPE OR PRINT NAME)
4. [ ] Information on additional judgment creditors is shown on page 2.
5. [ ] Original abstract recorded in this county:
   a. Date:
   b. Instrument No.:
   (SIGNATURE OF APPLICANT OR ATTORNEY)
6. Total amount of judgment as entered or last renewed: $280,037.49
7. All judgment creditors and debtors are listed on this abstract.
8. a. Judgment entered on *(date)*: 03/25/2025
   b. Renewal entered on *(date)*:
9. [ ] This judgment is an installment judgment.
10. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
    a. Amount: $
    b. In favor of *(name and address)*:
11. A stay of enforcement has
    a. [X] not been ordered by the court.
    b. [ ] been ordered by the court effective until *(date)*:
12. a. [X] I certify that this is a true and correct abstract of the judgment entered in this action.
    b. [X] A certified copy of the judgment is attached.

[SEAL]

This abstract issued on *(date)*: 6.9.2025

David H. Yamasaki, Clerk of the Court
Clerk, by A. Gill, Deputy

| PLAINTIFF: MOOREFIELD, CONSTRUCTION, INC., DEFENDANT: STEVE PANTALEMON individually and doing business as CUSTOM WINE CELLAR | COURT CASE NO.: 30-2022-01259274-CU-FR-CJC |
|---|---|

**NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:**

13. Judgment creditor *(name and address):*

14. Judgment creditor *(name and address):*

15. ☐ Continued on Attachment 15.

**INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:**

16. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

17. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

18. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

19. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

20. ☐ Continued on Attachment 20.

Christopher M. Bunge, Esq. (SBN 258780)
cbunge@watttieder.com
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
4 Park Plaza, Suite 1000
Irvine, CA 92614
(949) 852-6700

Attorneys for Plaintiff
MOOREFIELD CONSTRUCTION, INC.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
MAR 25 2025
DAVID H. YAMASAKI, Clerk of the Court
BY: J. Phu, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

MOOREFIELD CONSTRUCTION, INC.,

Plaintiff,

v.

STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR; and [redacted]

Defendants.

CASE NO.: 30-2022-01259274-CU-FR-CJC

ASSIGNED FOR ALL PURPOSES TO:
HONORABLE DAVID J. HESSELTINE
DEPARTMENT C23

**AMENDED JUDGMENT AFTER HEARING** [redacted]

Date: February 27, 2025
Time: 2:00 p.m.
Dept.: C23

This case came on regularly for trial on July 1, 2024 in Department C23 of the above-entitled court, the Honorable David J. Hesseltine Judge Presiding. Richard A. Soll of the law firm of Mahoney & Soll LLP appeared on behalf of Plaintiff MOOREFIELD CONSTRUCTION, INC. Joe O'Connor of the law firm of J.M. O'Connor Law Group, PLLC appeared on behalf of Defendant STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR.

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A jury trial having been duly waived, the Court having heard and considered the testimony, evidence and argument of counsel, the Court having taken the matter under submission on July 18, 2024, and the Court having issued its decision on August 6, 2024 finding in favor of Plaintiff and against Defendant on the first cause of action for intentional misrepresentation and the second cause of action for violation of Contractor's State Licensing law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff MOOREFIELD CONSTRUCTION, INC. shall recover from Defendant STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR the principal amount of $230,400.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any request for prejudgment interest, costs or attorney's fees shall be made by separate motion or memorandum to the extent appropriate.

Thereafter, on February 27, 2025, in Department 23 of the above-entitled court, before the Honorable David J. Hesseltine, the following matters were heard:

1. Plaintiff's Motion for Attorney's Fees; and

2. Defendant's Motion for Reconsideration.

Christopher M. Bunge of Watt, Tieder, Hoffar & Fitzgerald, L.L.P. ~~appeared~~ on behalf of Plaintiff, Moorefield Construction, Inc. and Joe O'Connor of the law firm of J.M. O'Connor Law Group, PLLC, ~~appeared~~ on behalf of Defendant Steve Pantalemon, individually and dba Custom Wine Cellar. Submitted on the court's tentative ruling. DH

The Court having considered the documents on file in this matter, evidence and argument of counsel, the Court issued its ruling as follows:

1. Plaintiff's Motion for Attorney's Fees is DENIED in part and GRANTED in part:

   A. Plaintiff's request for Attorney's Fees is DENIED.

   B. Plaintiff's request for costs of $8,187.27 is GRANTED.

   C. Plaintiff's request for prejudgment interest of $41,450.22 is GRANTED.

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Reconsideration

2. Defendant's Motion for ~~Consideration~~ is DENIED.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff MOOREFIELD CONSTRUCTION, INC. shall recover from Defendant STEVE PANTALEMON, individually and doing business as CUSTOM WINE CELLAR, the following sums:

| | | |
|---|---|---|
| 1. | The principal sum of: | $ 230,400.00 |
| 2. | Costs in the sum of: | $ 8,187.27 |
| 3. | Prejudgment interest in the sum of: | $ 41,450.22 |
| | TOTAL: | $ 280,037.49 |

IT IS SO ORDERED.

DATED: 03/25/25

Hon. David J. Hesseltine
JUDGE OF THE SUPERIOR COURT

20516361.1 104761.00007

**PROOF OF SERVICE**
**Moorefield Construction, Inc. v. Steve Pantalemon, et al.**
**OCSC Case No. 30-2022-01259274**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 4 Park Plaza, Suite 1000, Irvine, CA 92614.

On March 5, 2025, I served true copies of the following document(s) described as **AMENDED JUDGMENT AFTER HEARING [PROPOSED]** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

☐ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Watt, Tieder, Hoffar & Fitzgerald, L.L.P. for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address jbenton@watttieder.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY FEDEX:** I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 5, 2025, at Irvine, California.

*/s/ Julie Benton*
JULIE BENTON

**SERVICE LIST**
**Moorefield Construction, Inc. v. Steve Pantalemon, et al.**
**OCSC Case No. 30-2022-01259274**

Joseph O'Connor, Esq.
J.M. O'Connor Law Group, PLLC
120 Newport Center Drive
Newport Beach, CA 92660
Tel: (949) 459-3380
Email: joe@jmoclaw.com

***Attorneys for Defendant***
***STEVE PANTALEMON, individually and dba CUSTOM WINE CELLAR***

20397188.1 104761.00007

I hereby certify the foregoing instrument consisting of 5 page(s)
is a true and correct copy of the original on file in this court.

ATTEST: (DATE) MAY 28 2025
DAVID H. YAMASAKI, EXECUTIVE OFFICER AND CLERK OF THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

BY _____ DEPUTY
H. LICEA

# Exhibit 2

***Superior Court of the State of California***
***County of Orange***

***Tentative Rulings***
***Law and Motion Calendar***
***Department C23***
***Honorable David J. Hesseltine***

***Hearing Date and Time: June 26, 2025, at 2:00 p.m.***

**Court Reporters:** Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: **Civil Court Reporter Pooling**. For additional information regarding court reporter availability, please visit the court's website at **Court Reporter Interpreter Services**.

**Tentative Rulings:** The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.**

**Submitting on Tentative Rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

**Non-Appearances:** If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**Appearances:** Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

**https://www.occourts.org/media-relations/civil.html** before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at **https://www.occourts.org/media-relations/aci.html**. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at **https://www.occourts.org/media-relations/aci.html**. Those procedures and guidelines will be strictly enforced.

**Public Access:** The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

**NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150 AND ORANGE COUNTY SUPERIOR COURT RULE 180.**

| # | Case Name | Tentative |
|---|---|---|
| 1. | **Ren v. Luo**<br><br>*2025-01472867* | Before the court is the unopposed petition to confirm arbitration award filed by petitioners Xiao Ren and Hua An Group, Inc. (collectively, Petitioners) against respondents Hai Luo and Great Power Capital Holdings, LLC (collectively, Respondents). The Petition is **GRANTED** as set forth below.<br><br>This case arises from an arbitration at JAMS which was conducted pursuant to paragraph 38 of the Vacant Land Purchase Agreement and Joint Escrow Instructions. On February 19, 2025, Judge Luis Cardenas (Ret.), issued a Final Award of $131,795.55 in favor of Hua An Group, Inc. (seller) and against Great Power Capital Holdings, LLC (buyer).<br><br>Code of Civil Procedure section 1290.2 provides as follows: "A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the petition shall be given." Once a party to an arbitration files a petition to confirm, correct, or vacate an award, a response must be filed and served within 10 days after service of the petition, unless a judge extends, or both parties agree to extend, this deadline. (Code Civ. Proc., § 1290.6). If a response is not filed by the deadline, |

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|---|---|---|
| | | *Education Foundation v. UCLA Foundation* (2005) 130 Cal.App.4th 171, 180, fn. 2.)<br><br>Micron's counsel is ordered to give notice of the foregoing rulings. |
| 13. | **Newport Harbor Offices & Marina LLC v. Morris Cerullo World Evangelism**<br><br>*2016-00878807* | The motions to be relieved as counsel of record for defendants and cross-complainants Morris Cerullo World Evangelism and Plaza Del Sol Real Estate Trust filed by G10 Law, APLC and Daniel Watts are **ORDERED OFF CALENDAR AS MOOT** based on the substitution of attorney forms filed on June 24, 2025.<br><br>The clerk is directed to give notice. |
| 14. | **The Spartan Associates, Inc. v. Humphreys**<br><br>*2015-00805807* | 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**.<br><br>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.)<br><br>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.<br><br>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.<br><br>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 |

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| | | punitive nature of section 7031, the lack of evidence, the lack of jurisdiction and the other arguments relating to those assertions.<br><br>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.<br><br>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**.<br><br>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.<br><br>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.<br><br>Finally, the Humphreys' request for unspecified monetary sanctions is **DENIED**. That ruling, however, |

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| | | 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.<br><br>The Humphreys' counsel is ordered to give notice of this ruling. |
| 15. | | |
| 16. | | |

# Exhibit 3

**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

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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

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**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.

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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.

# Exhibit 4

# Exhibit 5

| Information to identify the case: | | |
|---|---|---|
| Debtor 1 | **Adam Alan Bereki**<br>First Name Middle Name Last Name | Social Security number or ITIN **xxx-xx-4758**<br>EIN __-_____ |
| Debtor 2<br>(Spouse, if filing) | First Name Middle Name Last Name | Social Security number or ITIN ____<br>EIN __-_____ |
| United States Bankruptcy Court **Central District of California** | | |
| Case number: **8:22-bk-12076-SC** | | |

## Order of Discharge – Chapter 7

12/15

**IT IS ORDERED:** A discharge under 11 U.S.C. § 727 is granted to:

Adam Alan Bereki

[include all names used by each debtor, including trade names, within the 8 years prior to the filing of the petition]

Debtor 1 Discharge Date: 3/27/23

**Dated:** 3/27/23

**By the court:** Scott C Clarkson
United States Bankruptcy Judge

### Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

**Creditors cannot collect discharged debts**
This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

**Most debts are discharged**
Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

32/AUTU

**For more information, see page 2 >**

**Some debts are not discharged**
Examples of debts that are not discharged are:

- ♦ debts that are domestic support obligations;
- ♦ debts for most student loans;
- ♦ debts for most taxes;
- ♦ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ♦ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ♦ some debts which the debtors did not properly list;
- ♦ debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- ♦ debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**

# Exhibit 6

Adam A. Bereki
In Propria Persona
818 Spirit
Costa Mesa, California 92626
949.24.6693
abereki@gmail.com

FILED & ENTERED

DEC 31 2024

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bolte DEPUTY CLERK

CHANGES MADE BY COURT

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

| | |
|---|---|
| In re: Adam Alan Bereki, | Case No. 8:22-BK-12076<br>Chapter 7<br>**ORDER RE: MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY OF THE ESTATE** |

The Court has considered the Motion to Compel Trustee to Abandon Property of the Estate filed by Debtor on October 18, 2024 [Dk. 105] ("Motion"), the docket as a whole, and noting that no objection was filed and that the Chapter 7 Trustee filed a "Report of No Distribution" on January 18, 2023, finds good cause to GRANT the Motion. The Estate's interest in following property is hereby deemed abandoned:

1. 818 Spirit, Costa Mesa, California; and,
2. Unprosecuted lawsuit claims, as described in the Motion.

**IT IS SO ORDERED.**

Date: December 31, 2024

Scott C. Clarkson
United States Bankruptcy Judge

Adam A. Bereki
*In Propria Persona*
818 Spirit
Costa Mesa, California 92626
949.241.6693
abereki@gmail.com

FILED
OCT 18 2024
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY: Deputy Clerk

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

In re: Adam Alan Bereki

Case No. 8:22-BK-12076-SC

Chapter 7

**MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY**

**INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT**

Date: December. ,2024
Hearing: 11:00 AM
Courtroom: 5C/ ZOOM

**To Scott C. Clarkson, United States Bankruptcy Judge, the Office of the United States Trustee, Bankruptcy Trustee Karen Sue Naylor, and all interested parties:**

1. Pursuant to 11 U.S.C. §554(b) and FRBP Rules 6007 and 9014, Adam Bereki, ("Petitioner"), in the above-captioned matter requests this Court compel the Bankruptcy Trustee to abandon: a) all interests pertaining to the real property located at 818 Spirit, Costa Mesa, California; and, 2) all interests in the prepetition lawsuit claims because they are of inconsequential value and inconsequential benefit to the estate.

**Incorporated Declaration of Adam Bereki**

2. I, Adam Bereki, declare under penalty of perjury of the laws of the United States of America, that the following statements of fact are true and correct, with exception of any conclusions of law or other statements made on information and belief.

**MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY**

Background

3. This Chapter 7 case was filed on December 8, 2022. (Dkt. 1). Karen Sue Naylor was appointed as the Bankruptcy Trustee. The Meeting of Creditors was conducted on January 18, 2023.

4. The Bankruptcy Trustee filed a "Report of No Distribution" on January 18, 2023, and declared that she "made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law." The Trustee also made a subsequent Certification of Services Rendered declaring the same quoted statements on or about May 19, 2023.

5. A discharge was ordered on March 27, 2023. (Dkt. 32).

Memorandum of Law

6. Property of the estate may be abandoned under §554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." *See* 11 U.S.C. § 554(a)–(b); FRBP Rule 6007(b).

7. Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled. The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999).

8. "In order to approve a motion to abandon property, the bankruptcy court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate." *In re Viet Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000) (citing 11 U.S.C. § 554(b) and *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.)*, 816 F.2d 238, 245 (6th Cir.1987)). Further, inconsequential value and inconsequential benefit are two separate elements that must both be satisfied. *In re K.C. Mach. & Tool Co.* 816 F.2d at 245. "Of inconsequential value and inconsequential benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

**1. Abandonment of Interest in Real Property**

9. Petitioner is a Party in Interest. On the date this case was filed, he claimed a legal interest in the real property located at the at 818 Spirit, Costa Mesa, California ("property" or "Spirit Property"). Dkt. 1, Dkt. 15. The value of the property was declared to be $1,142,000 while his equitable interest was declared to be $0. (Dkt. 1). Petitioner also claimed a $600,000 exemption pursuant to Cal. Code of Civil Proc. §704.730. Dkt.1.

10. Initially, Petitioner listed the following three claims against the Spirit property as secured, albeit with certain exceptions stated in his Declaration, (Dkt. 15): 1) 1st Mortgage, Citibank N.A, $457,693.71; 2) Line of Credit, Citizens Bank N.A., $36,396.75; and 3) Judgment Lien, $848,000. For reasons stated in his pleadings and Declarations, each of these claims was subsequently changed to unsecured and disputed. See e.g. Dkt's. 18 and 99 and Declaration of Adam Bereki. (Petitioner's categorization of these claims as "unsecured" was, and continues to be, based on the definition of unsecured being that either the claim does not exist, or if it does, is not secured by property. As a

result, there would also not be a secured claim the bankruptcy context of the term "secured" as defined by 11 U.S.C. §506).

11. As of the time of the filing of this Motion, the Trustee has taken no known action to determinate the nature, extent, or validity of any of these disputed claims, or any other claims Petitioner requests be abandoned herein.

12. Neither the Trustee nor any purported creditor or other party has made an objections to any of Petitioners Schedules, including the Third Amended Schedules filed on 11/3/23.

13. No purported creditor in the case has filed a Proof of Claim.

14. To the extent these claims are valid, their value is estimated to be: $1,309,390.46. This amount is $167,390.46 beyond the declared value of the property (excluding any allowable post-judgment interest for Claim 3 for at least seven years, estimated to be in excess of $800,000).

15. On or about 4/24/23, Petitioner filed a Motion to Avoid Lien under 11 U.S.C. 522(f)– to avoid the purported Judgement lien (Claim 3 above). Judge Clarkson granted Petitioner's Motion on 6/15/23 because the lien impaired his claimed $600,000 exemption. Dkt. 89.

16. Based on the foregoing, Petitioner asserts the property is "of inconsequential value and benefit to the estate" because there is no equity in the property. (Of inconsequential value and benefit to the estate includes assets that have no equity. *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000)). Additionally, Petitioner only holds legal title to the property and therefore no equity became property of the estate. See 11 U.S.C. §541(d) "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, [...] becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." To the extent any equity in the property is considered property of the estate, Petitioner disputes this summary and arbitrary finding.

17. To the extent Claim 1 is invalid and not secured by the property, the amount of Claim 1 could be property of the estate as equity in the Spirit property. However, absent substantial litigation and a judicial determination of the rights of the parties with respect to this disputed claim, there is no way to truthfully determine its validity and whether it became property of the estate or not. As previously alleged, the Bankruptcy Trustee has not taken any action to determine the validity or extent of this disputed claim. Petitioner attempted to do so by commencing an adversary proceeding and was told he lacked standing. His case was dismissed with prejudice. See case no. 8:23-AP-01075-SC.

18. Petitioner therefore requests Judge Clarkson issue an Order compelling the Bankruptcy Trustee to abandon all interest in the Spirit property because it is of inconsequential value and inconsequential benefit to the estate.

**2. Abandonment of Property in Complex Lawsuit Claims**

19. Petitioner is a party in interest. On Schedule A/B, he listed his interest in lawsuit claims that had yet to be commenced, amounting to more than $50 million dollars. Dkt's. 1 (Original Sched.) 18 (1st Amend. Sched.); 95 (2nd Amend. Sched.); 99 (3rd Amend. Sched.), 4th Amend. Sched. filed on or about 10/18/24. See especially the Declarations of Adam Bereki attached as a continuation of Sch.A/B to the 1st-4th Amend. Sched. itemizing the lawsuit claims.

20. The relevant portion of the most recent Declaration states "Paragraph 33 of Schedule A/B includes the expected compensation and/or all other forms of legal, equitable, or lawful relief from a lawsuit of all conceivable legal and equitable claims for deprivations of my rights to life, liberty, property, privacy, and security (and all other Constitutionally protected rights not listed) based upon the deprivation of these rights as described in U.S. Supreme Court case 22A426. In an effort to be more specific about the claims listed in ¶33, the following is a list of causes of action currently known but not limited to: deprivation of all protected rights secured by the California and U.S.

Constitutions including any claims which could be made pursuant to 42 U.S.C. §1983, §1985, §1986, §1994; malicious prosecution; false imprisonment; trespass, denial of a judicial determination of rights; intentional infliction of emotional distress; negligence; fraud; violation of public official duties; wrongful foreclosure; excessive, cruel, and unusual punishment; involuntary servitude; invasion of privacy, damage to reputation and business, deprivation of a representative form of State and National government; theft; robbery; extortion; obstruction of justice; treason; Civil RICO; violations of due process; any conceivably related claims under the Cal. Gov't Tort Claims Act and Federal Tort Claims Act; deprivation of a republican form of State and National government (ie with required checks and balances and separation of powers); denial of the inalienable rights to life, liberty, property, and privacy; conspiracy; conspiracy to violate rights; [...]. These claims include all conceivable forms of legal and equitable relief as allowed by law including compensatory damages, damages for personal injury and/or emotional distress, damages to business and reputation and punitive damages and also include interest, attorney's fees and expert fees and fees for my time and labor in the forensic investigation and prosecution of these claims."

21. To realize the value of this assets there would likely be extensive costly litigation. The estate does not possess any assets to pay any creditors, let alone to commence highly complex litigation.

22. In her Report of No Distribution, the Bankruptcy Trustee declared that she had "made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law." She has also taken no known action to commence prosecution of these claims.

23. Based on the foregoing, Petitioner asserts the lawsuit claims are "of inconsequential value and benefit to the estate" and requests Judge Clarkson issue an Order compelling the Bankruptcy Trustee to abandon all interests therein.

**NOTICE OF DEADLINE FOR FILING OBJECTIONS**

Pursuant to Local Bankruptcy Rule 6007-1, any objection and request for hearing must be filed and served not more than 14 days after service of this Notice.

Dated: October 17, 2024

Respectfully filed,

Adam Bereki

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and am not a party to this bankruptcy case or adversary proceeding. My address is:

Virginia Wells
P.O. Box 9033
Fountain Valley, CA 92728-9033

A true and correct copy of the foregoing document entitled: ~~**SUMMARY OF AMENDED SCHEDULES AND AMENDED SCHEDULES, SUPPLEMENTAL MASTER MAILING LIST, DECLARATION OF ADAM BEREK**~~**, MOTION TO COMPEL TRUSTEE TO ABANDON PROPERTY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 10/18/24, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

CHAPTER 7 TRUSTEE: Karen S. Naylor (TR) alane@ringstadlaw.com
US TRUSTEE: United States Trustee (SA) ustpregion16.sa.ecf@usddoj.gov
ALLEGED LIENHOLDER: Malcom & Cisneros, c/o Citizen's Bank N.A., christinao@mclaw.org
ALLEGED LIENHOLDER: Theron S Covey and Fanny Zhang Wan c/o Citibank N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2; tcovey@raslg.com, fwan@raslg.com (respectively)
ALLEGED LIENHOLDER: Law Offices of William Bissell c/o Karen Humphreys and Gary Humphreys, wbissell@wgb-law.com

☐Service information continued on additional page.

**2. SERVED BY UNITED STATES MAIL:**
On 10/18/24, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒Service information continued on additional page- Master and Supplemental Mailing List Attached.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 10/18/24, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

BANKRUPTCY COURT JUDGE: Scott S. Clarkson by placing a copy in the Judge's dropbox at the Bankruptcy Court.

☐Service information continued on additional page.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

| 10/18/24 | Virginia Wells | Virginia Wells |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

In re Adam Alan Bereki 22-12076

**Master Mailing List of Creditors**

Citibank N.A. Owner Trustee
55 Beattie Place, Ste. 100
Greenville, SC 29601-2743

Citizens Bank
P.O. Box 2800
Glen Allen, VA 23058

First National Bank of Omaha
P.O. Box 3331
Omaha, NB 68103

Citibank
P.O. Box 6500
Sioux Falls, SD 57117

Chase
P.O. Box 6294
Carol Stream, IL 60197

Goldman Sachs
Lockbox 6112
P.O. Box 7247
Philadelphia, PA 19170

Law Offices of William Bissell
c/o Karen and Gary Humphreys
23 Corporate Plaza Ste. 150
Newport Beach, CA 92660

Phoenix Mgmt. Solutions
10000 N. 31st St. Ave Ste. C-301
Phoenix, AZ 85057

In re Adam Alan Bereki 22-12076

Tamberly Homeowners Association
8220 University Ave. #100
La Mesa, CA 91942

Equinox Holdings, Inc.
895 Broadway 3rd Floor
New York, NY 10003

First Hzn. Mrtge. PT Trust 2005-5
Bank of NY Mellon Trustee
8950 Cypress Waters Blvd.
Coppell, TX 75019

New Residential Mtg. Ln.
Trust 2018-2
1345 Ave. of Americas
New York, Ny 10105

Nationstar Mortgage, LLC
DBA Mr. Cooper
PO Box 65073
Dallas, TX 75625

Mr. Cooper
Attn: Customer Service
PO Box 619098
Dallas, TX 75621-9741

Nationstar Mortgage LLC
8950 Cypress Waters Blvd.
Coppell, TX 75019

First Horizon Mtg. PT Cert. 2005-5
Bank of NY Mellon, Trustee
101 Barclay St. Floor 4W
New York, NY 10286

Shellpoint Mortgage Servicing
P.O. Box 51850
Levonia, MI 48151

First Horizon Home Loan Corp.
165 Madison Ave.
Memphis, TN 38103

In re Adam Alan Bereki 22-12076

Karen Humphreys
505 Augusta Dr.
Moraga, CA 94556

Gary Humphreys
505 Augusta Dr.
Moraga, CA 94556

In re Adam Alan Bereki 22-12076

**Suppplemental Master Mailing List of Creditors**

Superior Court of California
County of Orange
700 W. Civic Center Dr.
Santa Ana, CA 92701

CA Fourth District
Court of Appeal
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

CA Supreme Court
350 McAllister St.
San Francisco, CA 94102

U.S. District Court
Central District of CA
411 W. 4th St. Rm 1053
Santa Ana, CA 92701

Federal Reserve
1850 K St NW
Washington, DC 20006

Georgette Cressend
53 Ledgestone Dr.
Alexander, NC 28730

# Exhibit 7

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/18/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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: 74512542,124753793

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other For Emergency Stay of Unlawful Detainer Action, 03/14/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

Hearing held, all participants appearing remotely.

Ex-Parte application for Emergency Stay of Unlawful Detainer Action is requested by defendant Adam Bereki.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Ex Parte Application is denied by the Court.

The Court will not treat the Ex Parte Application as a new Complaint or an Answer to the Complaint for Case No. 30-2025-01459684. Defendant must file the Answer in the proper case (Case No. 30-2025-01459684) and not in this matter. Any new lawsuits must be filed as a new Complaint.

Phone call between Adam Bereki and Judge

Recording Name:
[EX PARTE APPLICATION FOR STAY DENIAL]

Transcript Prepared By:




(720) 287-3710
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

Judge: -- versus (ph) Humphries (ph) case number 2015. It's 00805807. Could we please have the appearances?

Bereki: Uh, Adam Bereki, Your Honor, on behalf of myself. Adam Bereki, Your Honor, on behalf of myself.

Judge: And one other appearance?

Bereki: If you're think- -- looking at the, uh, the Pringa (ph), Your Honor, that's -- that's someone with me. He's just here as a, uh, observer.

Judge: All right. Then, uh, if -- if we have no other, uh, appearances at this time, so -- now this application was, uh, filed by, uh, you, Mr. Bereki and it has an entirely new, uh, caption, uh, that our case that it, again, was filed in is the Spartan Associates, Inc. vs. Humphries case, which is the 2015. Uh, the caption states, "This application is, uh, related to the unlawful detainer action that was recently filed, which is case number 2025-01459684, and the title of, uh, unlawful detainer action is -- I believe it's Hou, H-O-U, vs., uh, Bereki. And, again, although it states that it's, uh, related there has been no determination of relatedness and no notice of related case had, uh, (inaudible - 0:01:41). Uh, now this application is, uh, 189 pages long and purports to combine a number of different, uh, documents, uh, into one, uh, document and, uh, some of them apply to, uh -

- or applies to multiple different, uh, cases. It was filed on a demand late last week and, uh, does indeed violate a number of the rules of court and the, uh, governing statutes for these documents by combining everything into one document. Uh, and it's, uh -- greatly exceeds the (inaudible - 0:02:20) the case for any sort of, uh, motion, uh, or application, uh, in addition to the 189-page, uh -- I guess, well, application. Uh, then we've got looking at probably three to four feet additional (inaudible - 0:02:36) and everything. Uh, so just letting you know that we did receive all these various materials. That's what we, uh, have received here in the department. Now in terms of what it purports to do, or asks for, I think we (inaudible - 0:02:51) has four pages. It's an ex parte application, uh, this department, stating unlawful detainer action that's, uh, pending in another department. Uh, it, uh, states that it includes an answer to the unlawful, uh, detainer action. Uh, it, uh, is a motion to vacate what it, uh -- (inaudible - 0:03:11) void judgment in the 2015 case, based on new, uh, evidence of extrinsic fraud. And then finally, it includes a complaint and cross complaint, uh, challenging the -- the, uh, underlying judgment in the 2015 case. Uh, the, uh, foreclosure,

uh, sale, uh, foreclosure process that recently, uh, completed, and then it also, uh, uh, attacks, uh, the constitutionality of, uh, multiple, uh, statutes. Uh, so the minutes from today will reflect that this document is not being treated as an answer in the UD (ph) action. It was not filed in a case. It's not being treated as a complaint to start a new case. So it will need to be filed as a separate, independent document, and in the proper case, not in this 2015 case. Any answer, any sort of response in pleading, any sort of re- -- response to the complaint in the UD (ph) action has to file in that action, not in this case, and any new claims, uh, any new lawsuit, uh, any collateral attack on the 2015 judgment, that needs to be filed as a, um, separate lawsuit, getting the summons paid and additional fees, or getting the fee waiver and going through all that process for initiating a, uh, new, uh, lawsuit. So, again, this will not be -- this application should not be construed and treated as either, uh, the, uh, answer to the UD action or the, uh, uh, new complaint. What this is being treated as and, uh, ruled upon as, is the ex parte application can stay, the unlawful detainer action, and the related -- I guess we'll call it motion to vacate the judgment in the 2015 case.

Uh, now treated as such, uh, the, uh, application will be denied. The underlying argument is that, uh, or -- and everything being sought is that the underlying judgment is void for a number of reasons, including that it was, uh, entered in, uh, based upon, or an action that was essentially criminal or penal in nature imposing punishment against you, Mr. Bereki, without providing the constitutional protections that, uh, are, uh, applicable in, uh, criminal proceedings. That, uh, same basic argument has been, uh, made multiple times, uh, and rejected in a number of different courts, including the court of appeal case in this, uh, the Ledruh (ph) called the objection (ph) in the 2015, uh, case. Uh, indeed the court of appeal rejected these, uh, challenges and I am, uh, bound by those determinations at law of the case. Now I understand the contention that a void judgment, uh, can be challenged at any time, but that doesn't allow me to ignore specific rulings that the court of appeal made in this case. Moreover, uh, the 473(d) voidness argument requires a, um, the voidness, uh, to appear on the face of record. I don't think that appears in this case. Uh, there are a number of other, uh, problems with the argument. And then there's also not a sufficient showing for the, uh, granting (ph) the ex

parte relief, setting aside any judgment at this, uh, point in time. Uh, regarding (ph) a -- a hearing earlier set (ph) in the UD action yet, uh, so there is not, uh, that, uh, justification for ex parte relief. So for those and, uh, uh, uh, other reasons, uh, the Court is going to deny the present ex parte application, uh, to the U -- (inaudible - 0:07:07) file the UD action, filing a new lawsuit, filing a notice motion, uh, with, uh, proper, uh, notice and service on it (inaudible - 0:07:15). Uh, so that is, uh, where the Court stands, uh, at this point in time, sir.

Bereki: Okay. Can I speak?

Judge: Yes, you may.

Bereki: Uh, my question for you is, having exhausted all of the -- the remedies that I have in the case that I've presented to the Court, where does the Court recommend that I go now to obtain, uh, uh -- if I can't basically challenge this judgment as, uh, you're saying, where do I go to overrule this, to overrule it? Because it's -- it's completely void.

Judge: Well, two things. First of all, I can't provide you with legal advice, I can't for any party, (inaudible - 0:07:54) with, uh, legal advice in that regard. But, uh, if you're -- there is truly some due basis you can

make your collateral attack, or file your motion, and that will be ruled on the merits. I can't guarantee the outcome of that. But at some point there is finality to matters as well. I understand you're, uh, vehement, and are in disagreement with the many different rulings that have been made. I under- -- uh, I -- I fully understand, uh, your position on that. But, uh, at some point in time thing do become final. But -- and then you have the -- the -- the unlawful detainer action to, uh -- you have every right to participate in that one and see wherever -- whether you can assert whatever claims defense (ph) in that case. Uh, they're -- the Court is, uh, not able to pre- -- you know, bar you from filing a, uh, properly noted (ph) motion or another, uh, lawsuit if that's the -- the pathway that you, uh, wish to follow. Um, but in terms of granting any of this on an ex parte relief I don't, uh, see that being a basis that I -- I have -- I -- I -- I'm not yet convinced, uh, of the merits, uh, even if it was on a notice -- but that doesn't (ph) prevent a notice motion. Uh -- uh, that's --

Bereki: Okay, so did I --

Judge: -- (inaudible - 0:09:07).

Bereki: I'm sorry -- did I understand you to say that

basically the Court's ruling is going to be the same if I, uh -- I know you said that they're being treated differently, but, uh, what will be the difference, so to speak, if I file that motion to vacate in the, so to speak, proper procedure that -- that you're saying, versus, uh, this -- the ex parte action?

Judge: Well, it may well be the same. I can't (inaudible - 0:09:32), you know, it depends. I have to see that, see if they comply with everything and what they're showing but I -- I have serious concerns and doubts that, uh, it, uh, would be successful, but I can't give an advisory (inaudible - 0:09:44), you know, I can't rule on something that isn't properly before me at this point in time. So, uh, it would -- I can't say it with 110 percent certainty, but I can say that there is very strong likelihood the outcome would be the same.

Bereki: Okay, thank you for that. So my earlier question was where do I go, because, uh, I've tried collateral attacks, I've tried direct attacks, I've tried habeas petitions and absolutely there is no remedy that I have, if -- if -- if what I am saying is taken to be true, wha- -- and -- and you said, uh, that you can't give me legal advice. Well, there has to be some forum, in California or the United States, to -- to,

uh, actually be heard. And if the court lacked jurisdiction and it was a void judgment in the first instance and on appeal, um, I -- like I said, I've exhausted every known remedy that I have. Wh- -- where is the fair forum to be actually heard?

Judge: Well, uh, I -- you've been provided with one. Y- -- you disagree with the forum but you've been provided with the forum on multiple -- at multiple levels. So I don't understand your -- like I said, I understand that you vehemently disagree with the rulings that have been made in the case. But that does not mean that you were not provided with a forum. It's just that, you know, you, uh, disagree with the outcomes in those forums.

Bereki: Well, and ap- -- apparently so does, um, our own courts of appeal here, with their recent ruling in the Eisenberg (ph) cases, saying it's a penalty. The U.S. Supreme Court in Lou v. SEC saying that disgorgement only applies to profits, and there were no profits in my case. I mean this isn't just me coming up with a -- with a hypothetical about why I think something's wrong. This is -- this is evidence from -- from other courts and, I mean our entire constitutional history shows that -- that everything I'm saying here is legit.

Judge: I -- again, I understand and, like I said, I -- you -- I cannot say 100 percent what any ruling would be on a future request, uh, and it will -- everything will be considered on its merits. But there -- again, I cannot tell you exactly what to file or how to file or where to file, but, uh --

Bereki: So in -- in essence, what I understand -- and you can correct me, of course, if I'm wrong, is that, um, I -- I filed several different things on the same, uh, document. I indicated that there was a related case, that it was, uh -- that this ex parte hearing was related to, and that essentially, because those procedural, uh, requirements weren't, uh, followed, um, that the -- the Court is putting, uh, form over substance in not recognizing any of those.

Judge: That's not -- listen, I said -- I just pointed out there are a number of problems with the forum, but I've also said that there is not a sufficient showing to justify ex parte relief, setting aside those s- -- uh, procedural, uh, circumstances. And on the current papers I have not been (inaudible - 0:12:36) on the merits of the argument. So it's not just simply form over substance, sir.

Bereki: Okay, I didn't hear you say that putting those things aside that that was the case. So your ruling --

you're saying that the law of case doctrine, essentially, is what it -- you're using to, um, basically deny relief here?

Judge: Well I -- I've explained everything as much as I can here today at this point, sir. So, uh, the -- the Court has (inaudible - 0:12:59) ruling. You can (inaudible - 0:13:00) whatever filings you deem appropriate in the UD action or an independent one. But I've (inaudible - 0:13:05) --

Bereki: Okay.

Judge: -- today.

Bereki: My -- my ultimate question is wh- -- where do I go for relief?

Judge: Well, again, I cannot provide you with any further, uh, uh, uh -- any legal advisement. I can't provide any further guidance than I already have (inaudible - 0:13:18). I'm sorry.

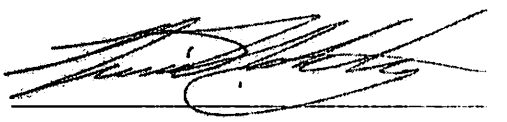
Bereki: Okay. All right.

Judge: Thank you. Best of luck to you.

TRANSCRIBER'S CERTIFICATE

I, Brian T. Henderberg, do hereby certify that the foregoing transcript is a full, true, and correct statement of the audio file provided to me titled "EX PARTE APPLICATION FOR STAY DENIAL".

DATED this 23rd day of June, 2025.



Brian T. Henderberg

Ditto Transcripts
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222
Tel: 720-287-3710
Fax: 720-952-9897

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

# Exhibit 8

Phone call between Adam Bereki and Judge

Recording Name:
[E45 EX PARTE MOTION FOR RECONSIDERATION OF

STAY OF UD]

Transcript Prepared By:




(720) 287-3710
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

Judge: All right, then, good morning. It looks like we're all connected up. We will, uh, the matter for ex parte calendar here this morning in the matter of The Spartan Associates, Inc. vs. Karen Humphries, et al. If we could have the appearances, please?

Bereki: Uh, uh, Judge it's Adam Bereki appearing on behalf of myself. And then there's a friend of mine, Pier Prenga, he's the other person that's here. And, um, before we get started I'd like to ask if the Court can, uh, re- -- record the proceedings, or allow me to, so that I can preserve this, uh, record on appeal.

Judge: Um, no, the Court cannot do a recording of the matter, and it is, uh, not permissible to record court proceedings, uh, online like this. So they're -- uh, in connection with this there is -- you may, uh, with a fee waiver you may request a court reporter but it, uh -- you need to request that in advance and there is a form that must be filed with the court to request, uh, a, uh, court reporter. So, um, that is something that you may have and obtain but, uh, it needs to be properly and timely requested, uh, for, uh, there to be. But uh, y- -- I, uh -- a party with a fee waiver may request a court reporter. There's a -- a -- a court form to fill out that needs to be filed in advance, uh, and it needs to be, uh -- the request

needs to be made in connection with each hearing. There can't be a blanket one that -- for all -- for in perpetuity, uh, have a court reporter. And just like p- -- re- -- parties with a fee waiver in a, uh, unlimited civil matter is on th- -- they're to have a certified court reporter, uh, to the extent that they would like a court exporter. That's, uh, you know, the unfortunate reality of the, uh, resources, uh, that, uh, the court is lacking, uh, at this time. So that's where we --

Bereki: I understand.

Judge: -- stand on that.

Bereki: Um, it's -- from what I understand, other departments, uh, just make a recording of the Zoom proceedings and that those can used on appeal. Is that incorrect?

Judge: Uh, in certain -- in, um, certain limited matters and certain case types, uh, it is statutorily authorized. It is not authorized and permitted in, uh, this type of proceeding.

Bereki: Okay. Thank you for clarifying that.

Judge: Uh, it's not a -- it's a -- yeah, it depends on the case type.

Bereki: Okay.

Judge: And the -- and it's unfortunately some of the statutes are out -- out of date with current reality, but the

statutes are the statutes, w- -- uh, (inaudible - 0:07:11).

Bereki: Okay. So the statute says it's not allowed in -- in ex parte proceeding for this?

Judge: In -- in civil, uh -- in -- in unlimited civil matters, yeah, the -- the audio recording is not permitted.

Bereki: Okay. Thank you.

Judge: Uh, so yes, we do have the ex parte to, uh, uh, vacate the, uh, Court's ruling on a ex parte from a couple months ago and to set aside the, uh, judgment, uh, in this case and make other orders relating to the unlawful detainer, uh, matter as well. Uh, this application, uh, will be denied. Uh, the, uh, challenges to the judgment will be, uh, heard on their merits in connection with the hearing that we sent yesterday, that it will be your opportunity to, uh, provide your briefing and have, uh, the ruling on those matters. Um, there's -- first of all, I think there's a number of inaccuracies in these, uh, papers. There was not simply a one-word, uh, ruling on your ex parte back in the -- March. There was a discussion about that, and indeed, you, uh, purport to paraphrase or quote various things that were made. The minutes are not a verbatim record of the proceedings, they are

a summary of the proceedings to document, uh, the actions and outcomes. They are not a verbatim, uh, record of that. So I don't think that that is an accurate thing. As I indicated, the process for obtaining a court reporter, there is a request that needs to be, uh, provided, uh, but there was, uh, a -- a number of, uh, explanations that were provided. Uh, I understand you may disagree with some of them and think our -- things are inaccurate and we'll get to the merits of those at the, uh, hearing that we scheduled, uh, yesterday. Uh, but I guess I'll also note for the record that statutorily many, uh, ex partes may be decided, uh, in chambers, uh, uh, that, for many things, that -- that a court hearing is not required on an ex parte matter. But the Court is, uh, endeavored to, uh, provide, uh, the explanation, uh, back in March with that. Uh, so this -- I don't see that there's a adequate showing to, uh, justify this, and we'll decide it in that hearing that we scheduled yesterday.

Bereki: Okay. May I respond?

Judge: You may.

Bereki: Okay. Um, I do understand your point about addressing the issues about whether the judgment is void, and I understand that we can address that at the hearing.

But, um, neither the ruling on the 18th, nor anything today, addresses the substantive issues pertaining to, um, staying the UD proceedings, uh, pending resolution of those issues because there I did demonstrate, uh, irreparable harm and imminent injury, and the Court has not, uh, addressed those substantive issues, either at the last hearing or this hearing. And, um, I also have additional, um, information. I don't know if you reviewed the, um, the ex parte that I filed in the UD case as well as the motion to vacate. Did you review that?

Judge: The ex parte that you filed the U- -- that's a separate case, assigned to a separate judge. So I have not seen an ex parte in a UD -- in the UD case.

Bereki: Okay, so are you aware of the issues, um, that I presented in this ex parte, pertaining to the, uh, the -- the, um, attorney in the UD case, he failed to notify me of the default judgment, the request for default. Uh, I believe the Court violated due process by, uh, uh -- awarding the default the next day, even though the attorney served it by mail and I did not get five days. Um, and I -- I was required to have five days' notice and I didn't get that. And then I appeared at the court the next day, after the ex parte, on March 19th to file an answer, based on the

corrections that you gave me in the hearing. And the clerk rejected it because it claimed, um, that the default had already been filed, that I was never given notice of. So essentially I've never, um, been allowed to answer. So I filed a, uh, UD, or a -- a ex parte application for a TRO stay and a motion to vacate in the, uh, UD case yesterday, and the judge, uh, de- -- uh, denied it basically, uh, again, refusing to address any of my substantive issues pertaining to, uh, the void -- the potential void judgment in this case. The, uh, uh, forthcoming imminent adversary proceeding of -- of the judgment violating the discharge order and being a fraudulent transfer. Um, and so, I -- I -- the due process just continues to be denied and -- and I'm trying to do my best to resolve this and to do so within court procedures by, you know, dotting every I and crossing every T to the best of my ability, and it just seems like at every turn, um, there's just another violation of due process that I'm not being heard.

Judge: All right, well I'm -- I'm sorry that you feel that way. In -- in terms of the UD, that -- it all needs to be addressed in the UD department. That is -- I can't order another judge at the trial court level to make a decision or, uh, take a -- a specific action.

That's -- the UD action that is pending in that case. What I can rule upon is the -- your challenges to the judgment. In this case we have set the hearing for that and it'll be addressed at that time.

Bereki: I -- I appreciate that. But what I'm -- I'm -- I'm reporting to you is that there's ongoing due process violations by the court itself, and those -- I'm not asking you to give me an appeal of that judge's orders. What I'm saying is that there's -- there's further irreparable harm, an injury continuing, and that -- that's what I'm --

Judge: Yes, (inaudible - 0:12:50) --

Bereki: -- hear right now for.

Judge: -- yes, well that's not the -- in the -- the analysis, sir. It's a much great- -- uh, the -- much greater, uh -- there's, uh, multi-fa- -- multiple factors that go into granting an ex parte relief. That, in and of itself, is not the sole, uh, factor. So, uh --

Bereki: Oh, okay.

Judge: -- again, the Court's made its ruling here today, uh - -

Bereki: Can -- can you give me the --

Judge: -- and so --

Bereki: -- substantive reasons of why?

Judge: Okay, sir, I -- I -- the Court has made its ruling

here today. S- -- so we will have that hearing for you on the date that we set yesterday on the merits of your challenge to the judgment.

Bereki: Okay, may I ask one more question?

Judge: Y- -- you may ask one more question, yes, sir.

Bereki: Okay. Um, I hear you, what you're saying, but again, I -- I had not heard any substantive, um, reasoning for you on addressing the issues of irreparable harm and imminent injury, and I need to have those issues addressed so that I can raise them on appeal.

Judge: Yeah, as I just indicated, there are multiple factors. Just, uh, showing what you believe to be irreparable harm does not justify ex parte relief. That is one of many considerations that go into ex parte relief. So thank you very much --

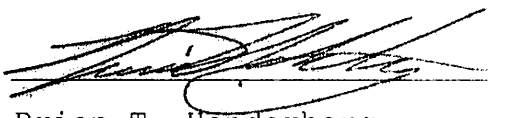
Bereki: Can --

Judge: -- sir, that wi- -- we will conclude the hearing here for today and we will speak again with the next filing. Thank you very much. Have a good day, sir.

TRANSCRIBER'S CERTIFICATE

I, Brian T. Henderberg, do hereby certify that the foregoing transcript is a full, true, and correct statement of the audio file provided to me titled "E45 EX PARTE MOTION FOR RECONSIDERATION OF STAY OF UD".

DATED this 23rd day of June, 2025.



Brian T. Henderberg

Ditto Transcripts
1355 S. Colorado Blvd.
Suite C515
Denver, CO 80222
Tel: 720-287-3710
Fax: 720-952-9897

DUNS Number: 037801851
CAGE Code: 6C7D5
Tax ID #: 27-2983097

# Exhibit 9

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 05/22/2025 TIME: 09:00:00 AM DEPT: C23

JUDICIAL OFFICER PRESIDING: Supervising Judge David J. Hesseltine
CLERK: J. Phu
REPORTER/ERM: None
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: 74569773

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 05/21/2025

---

**APPEARANCES**
Adam Bereki, self represented Cross - Defendant, present remotely.

P Prenga, present remotely on behalf of Defendant.

Hearing held, all participants appearing remotely.

Ex-Parte application for To Vacate Void Judgment; Stay Unlawful Detainer; Restore Possession of Real Property is requested by Defendant.

Upon Court inquiry, Defendant request to record today's hearing.

The Court provides information to Defendant on how to file a proper request for future hearings.

Defendant's Ex-Parte Application to Vacate Void Judgment; Stay Unlawful Detainer; Restore Possession of Real Property is **DENIED**.

Discussions held regarding Defendant's request of Ex-Parte relief.

The Court informs Defendants' irreparable harm presented via oral arguments does not qualify for Ex-Parte relief, however Defendant challenges will be heard on the merits during the 06/26/2025 hearing.

# Exhibit 10

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FOURTH APPELLATE DISTRICT
DIVISION THREE

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| The Spartan Associates, Inc. a California Corporation<br>Plaintiff | Court of Appeal No. G055075 |
| vs. | ( Superior Court No. 30-2015-00805807) |
| Gary Humphreys, an individual;<br>Karen Humphreys, an individual;<br>Defendants/Cross-Complainants and Respondents | |
| vs. | |
| Adam Bereki, an individual, et al<br>Cross-Defendant and Appellant, | |

**RESPONDENT'S BRIEF**

Appeal from a Judgment of the
Orange County Superior Court
Honorable David Chaffee, Judge

WILLIAM G. BISSELL
State Bar #93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Attorney for Defendants/Cross-Complainants
/Respondents
GARY HUMPHREYS and
KAREN HUMPHREYS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rule of Ct. 8.208)

Bereki v. Humphreys
App. Case No. G055075

Other than the parties to this appeal, the Respondents know of no entities or persons who have a financial interest in the outcome of these proceedings, or who Respondents reasonably believe the justices should consider in determining whether to disqualify themselves under Cannon 3E of the Code of Judicial Ethics.

Dated: Feb. 1,2018

William Bissell, Attorney for
Respondents, Gary Humphreys
& Karen Humphreys

## I.

## INTRODUCTION

This action arises out of a home remodel project which began in April of 2012 on two units of a three unit condominium located in the Lido Isle community of Newport Beach, California. The project consisted of combining what at the time, were two separate small adjoining units into a single unit. The respondents Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the two units and appellant Adam Bereki (Mr. Bereki) was the contractor with whom the Humphreys contracted to perform the work.

From the beginning, work on the project did not progress smoothly and was shut down on at least two separate occasions by the City of Newport Beach for lack of having the required building permits for the work that was being performed. In August of 2013, a year and a half into the project, with the work once again at a city ordered standstill and the project far from completed, the Humphreys terminated Mr. Bereki and hired another contractor to finish their project.

This action was initiated by The Spartan Associates, Inc. (Spartan), a corporation wholly owned by Mr. Bereki and the alleged general contractor on the project, to recover from the Humphreys amounts Spartan claimed it was owed on an open book account and for work, labor and/or materials provided to the project.

The Humphreys cross-complained against Mr. Bereki, for disgorgement under California Business & Professions Code §7031(b) of the compensation paid by them; against Mr. Bereki

and Spartan for damages for negligence and fraud and against the sureties on Spartan's contractor's license bonds for recovery on the bonds. The basis of the cross-complaint was the alleged unlicensed status of Mr. Bereki at the time the work was performed, negligence on the part of Mr. Bereki in the manner in which he performed the work and fraud in surreptitiously charging the Humphreys over $100,000 for personal expenses and other items which the Humphreys alleged were not chargeable to them under their agreement with Mr. Bereki.

On motion of the Humphreys, which was unopposed, and was heard by the Trial Court on March 24,2017, the first cause of action of the amended cross-complaint, for disgorgement of compensation paid, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading. The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 and concluded on March 28, 2017. At the conclusion of the presentation of evidence which consisted of both the testimony of witnesses and the introduction of documents, the Trial Court found that Mr. Bereki was the party who had contracted with the Humphreys, that the work performed by and under Mr. Bereki required that he possess a license issued by the California State Contractor's License Board and that at no time, either at the time the contract was entered into or when the work was performed, did Mr. Bereki possess such a license. The Trial Court ruled that the Humphreys were the prevailing party on the first cause of action of the amended cross-complaint and as such were entitled to recover from Mr. Bereki all compensation paid by the Humphreys during Mr. Bereki's involvement on the project.

Attempting to comprehend and distill the many, and varied arguments raised by Mr. Bereki in his opening brief, it appears that the gist of his position can be found in the brief's conclusion where he contends the Trial Court committed reversible error in applying section 7031 of the Business and Professions Code to him and ordering disgorgement of the compensation paid by the Humphreys.

Because the Trial Court's actions were necessary, proper and in accordance with the law, Respondents request that the Trial Court's judgement be affirmed.

## II.

## STATEMENT OF THE CASE

The chronology of this case relevant to the pending appeal of the Trial Court's judgment is as follows:

On August 21, 2015 The Spartan Associates Inc. filed its complaint in this matter against the Humphreys alleging the common counts of goods sold and services rendered and open book account, [Clerks Transcript -Vol. 1–Pg. 49-52]. The Clerks Transcript is hereafter referred to as "CT".

On October 13, 2015 the Humphreys filed their answer to the complaint generally denying the material allegations of that pleading and alleging twenty separate affirmative defenses [CT- Vol. 1 Pg. 64-72]. At the same time, the Humphreys filed their cross-complaint in the action against Adam Bereki, The Spartan Associates, Inc. and Suretec Insurance Company alleging causes of action for negligence, fraud, alter ego, penalty for violation of Business & Professions Code §7160 and recovery against contractor's license bond [CT- Vol. 1- Pg. 73-93].

On November 16, 2015 The Spartan Associates, Inc. and Mr. Bereki filed their joint answer to the Humphreys cross-complaint, generally denying all of the material allegations in that pleading and alleging twenty separate affirmative defenses [CT- Vol. 1 Pg. 99-105].

On December 14, 2016, a substitution of attorney was filed in the matter whereby attorney J. Scott Russo, who had been representing both The Spartan Associates, Inc. and Mr. Bereki, substituted out as Mr. Bereki's attorney and remained as attorney of record for The Spartan Associates, Inc. Mr. Bereki at that point undertook his own representation. [CT- Vol. 3- Pg 738]

On February 2, 2016, the Humphreys filed an amendment to their cross-complaint naming Old Republic Surety Company to reflect the true name of the cross-defendant sued under the fictitious name Roe 16 as a cross-defendant in the Humphreys cause of action for recovery against contractor's license bond. [CT- Vol. 1- Pg. 206-207].

By motion filed on December 5, 2016 [CT- Vol. 3 – Pg. 704-736] the Humphreys sought leave of the Trial Court to amend their cross-complaint to add an additional cause of action against Mr. Bereki for disgorgement of funds pursuant to Business & Professions Code §7130. The motion for leave to amend was unopposed and the Trial Court, at the hearing on the motion held on January 6, 2017, granted the Humphreys leave to file their amended cross-complaint [CT- Vol. 3- Pg742-743]. The amended cross-complaint was filed on January 6, 2017 [CT- Vol. 3- Pg. 744-764] and was responded to jointly by The Spartan Associates, Inc. and Mr. Bereki on February 10, 2017, again by way of a general denial and the reassertion of the same previously plead affirmative defenses [CT- Vol. 3- Pg. 822-829].

On motion of the Humphreys, which was unopposed, and heard by the Trial Court on March 24,2017, the first cause of action of the amended cross-complaint, for disgorgement of

compensation paid, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading [CT- Vol. 4- Pg. 904-905].

The trial on the amended cross-complaint's severed first cause of action for disgorgement commenced on March 27, 2017 in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, all parties being present and having waived a jury [CT-Vol. 4 -Pg. 929-931], and was concluded on March 28, 2017 [CT- Vol. 4 – Pg. 950-952]. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled as follows:

> "*Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license. The Court finds judgment for the Cross Complainants Gary and Karen Humphreys (First Cause of Action, for disgorgement of funds paid) and against cross-defendant Adam Bereki.*" [CT- Vol. 4-Pg 950-951].

The Trial Court, after an offer of proof by plaintiff's counsel on plaintiff's complaint, further found judgment for the Humphreys on the complaint of The Spartan Associates, Inc. [CT- Vol. 4- Pg. 950-951]

With the Trial Court having ruled in their favor on both the complaint and the first cause of action of the amended cross-complaint, and pursuant to an oral stipulation of the parties placed on the record, the Humphreys dismissed the remaining causes of action in their cross-action, without prejudice and subject to a stipulated waiver of the statute of limitations should it

become necessary to re-file an action on the dismissed causes of action [CT- Vol. 4 – Pg. 950-951].

Judgment on the complaint and on the amended cross-complaint was entered by the Trial Court on April 20, 2017 [CT- Vol. 4- Pg. 1005-1006], and notice of entry of judgment was served by the Humphreys on The Spartan Associates, Inc. and on all cross-defendants including Appellant on April 24, 2017 [CT-Vol. 4- Pg. 1017-1021].

On June 13, 2017 appellant Adam Bereki filed his notice of appeal from the judgment of the court [CT- Vol. 4- Pg. 1074] and notice thereof was given by the clerk of the Trial Court on the same date [CT- Vol. 4- Pg. 1075].

On June 30, 2017, Mr. Bereki filed his Appellant's Notice Designating Record on Appeal designating the Trial Court's file in this action in its entirety to comprise the Clerk's Transcript on appeal and electing to proceed without a reporter's transcript [CT- Vol. 4 – Pg. 1127-1135].

On December 13, 2017, Mr. Bereki filed a motion to augment the Record on Appeal by adding to the previously filed Clerk's Transcript, an additional 382 pages of post-trial filings in the Trial Court [CT- Vol. 4- Pg. 1151-1533] and the Reporter's Transcript of the trial of this matter on March 27 and March 28, 2017. The Reporter's Transcript is hereafter referred to as "RT".

On January 3, 2018 the Court of Appeal ruled on Appellant's motion to augment the record by granting the motion as it pertained to the inclusion of the Reporter's Transcript of the trial proceedings and denying the motion as it pertained to the attempt to include in the Clerk's Transcript the 385 pages of post-trial proceedings.

## III.

## STATEMENT OF APPEALABILITY

To the extent this appeal is from the judgment of the Orange County Superior Court entered in this matter, it is authorized by the Code of Civil Procedure Section 904.1 subdivision (a) (1). As to other matters, such as post trial proceedings, which Appellant has attempted to include in this appeal, no notice of appeal of such has been filed [CT Vol 4 -Pg. 1074] and therefore such matters are not an appropriate subject of this appeal.

## IV.

## ARGUMENT

### 1. NO FALSE OR MISLEADING STATEMENT WAS MADE TO THE TRIAL COURT

### A. New Issues Generally Will Not Be Considered

Appellate courts generally will not consider new issues or theories of law that a party raises for the first time on appeal. Bikkina v. Mahadevan (2015) 241 Cal. App. 4th 70, 92–93. To do so would unfairly deprive the trial court and the opposing parties of their opportunity to decide the issue, Bermudez v. Ciolek (2015) 237 Cal. App. 4th 1311, 1323. When a case is on appeal the parties are bound to the evidence produced in the trial court, and parties opposing or responding to the appeal cannot fairly be expected to disprove factual contentions that were not presented at trial, Strasberg v. Odessey Group, Inc. (1996) 51 Cal. App. 4th 906, 920. Both Mr. Bereki and the attorney for The Spartan Associates sat through the trial of this matter and both had the opportunity to cross-examine the Humphreys regarding any statement made by them in any prior pleadings or papers filed with the court. The Humphreys would have then had the opportunity to give their testimony on such examination and the Trial Court would have had the

opportunity to weigh any conflicting evidence or testimony. Neither Mr. Bereki nor counsel for the Spartan Associates however chose to bring up or question the Humphreys regarding their motion for summary judgment. To allow Mr. Bereki to raise these issues for the first time now would unfairly deprive the trial court and the Humphreys of the opportunity to address the issue and offer evidence to refute Mr. Bereki's claim.

**B. Standard of Review**

Determining whether statements made during trial were misleading is a factual determination to which the substantial evidence standard is applied. Under this standard great deference is given either to the trier of fact and will generally affirm a factual conclusion made by the trier of fact so long as it is supported by substantial evidence in the record, Nestle v. City of Santa Monica (1972) 6 Cal. 3d 920,925.

**C. The Record Proves Appellant's Argument to be False**

If the Court were nonetheless inclined to take Mr. Bereki's argument of false and misleading statements made at trial under consideration, the record puts a lie to that argument. Mr. Bereki argues that facts asserted by the Humphreys in their motion for summary judgment filed in this matter [CT -Vol. 1- Pg. 231-300] contradict facts to which they testified at trial and as a consequence a fraud was perpetrated on the court. Specifically, Mr. Bereki claims that the Humphreys asserted in their motion that they had contracted with The Spartan Associates, Inc. while testifying at trial that they had contracted with Mr. Bereki individually. In so arguing, Mr. Bereki misrepresents to this Court what in fact the Humphreys stated in their motion.

As opposed to Mr. Bereki's representation that the Humphreys, in their motion for summary judgment, acknowledged that they had contracted with The Spartan Associates and not Adam Bereki, the moving papers filed by the Humphreys actually state:

*"In April of 2012, my wife and I entered into an oral agreement with Adam Bereki for remodeling work to be performed by Mr. Bereki on our 436 Via Lido Nord Newport Beach condominium unit. Although I was initially under the impression that our agreement was with Mr. Bereki individually, we were later requested by Mr. Bereki to make our checks for progress payments payable to the The Spartan Associates, Inc."* Declaration of Gary Humphreys [CT - Vol.1 – Pg. 251 Line 15 -19]

*"In April of 2012, my husband and I entered into an oral agreement with Adam Bereki for remodeling work to be performed by Mr. Bereki on our 436 Via Lido Nord Newport Beach condominium unit. Although I was initially under the impression that our agreement was with Mr. Bereki individually, we were later requested by Mr. Bereki to make our checks for progress payments payable to the The Spartan Associates, Inc."* Declaration of Karen Humphreys [CT - Vol.1 – Pg. 273 Line 15 -19].

Clearly, the above declarations of fact of the Humphreys in support of their motion for summary judgment are consistent with the position adopted and the testimony given by the Humphreys at trial to the effect that they believed they were contracting with Mr. Bereki and his partner individually to perform the work on their condominium [RT-Vol-1-Pg 33, L-18 to Pg. 34, L- 2] [RT-Vol-1 – Pg. 84, L6-8].

## 2. THE TRIAL COURT'S APPLICATION OF BUSINESS & PROFESSIONS CODE §7031 TO THE FACTS OF THIS CASE WAS CORRECT.

### A. Appellant has Waived His Right to Attack the Judgment on Constitutional Grounds.

Mr. Bereki attacks the both the validity and the trial court's application of Business & Professions Code §7031 in this matter, on various misapplied legal grounds, relying primarily on

foreign and inapplicable authority. In doing so, Mr. Bereki is again raising issues for the first time on appeal that were neither brought up nor mentioned at the time of trial. Taking this issue under consideration at this stage would unfairly deprive the trial court and the Humphreys of the opportunity to address the issue and offer evidence to refute Mr. Bereki's claim and under the authority of Bikkina v. Mahadevan Supra at 241 Cal. App. 4th pg. 92–93 and Bermudez v. Ciolek Supra at 237 Cal. App. 4th 1323 this Court should decline to undertake the consideration of this issue.

Further, as a general rule, as with most other issues, a constitutional issue in a civil case must be raised at the earliest opportunity or it will be deemed waived. Needelman v. DeWolf Realty Co., Inc. (2015) 239 Cal. App. 4th 750, 763. As the court stated in, People v. Harrison (2013) 57 Cal. 4th 1211, 1229 "*No procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.*"

Beyond the policy of fairness expressed in Bikkina v. Mahadevan Supra and Bermudez v. Ciolek Supra, Mr. Bereki's failure to have raised, at the trial of this matter, the issues he now argues concerning the validity and application of Business & Professions Code §7031 amounts to a waiver of those issues.

**B. Standard of Review**

In the event the Court determines that the issue of the validity and application of Business & Professions Code §7031 by the trial court in this matter has not been waived by Mr. Bereki's failure to raise the issue at trial and is appropriate for its review in this matter, determining whether Business & Professions Code §7031 was a constitutionally valid law is a matter for de

novo review. Determining whether there was a sufficient showing made at trial for the trial court to base its judgment on that code section is a factual determination to which the substantial evidence standard is applied, requiring that deference be given to the trial court and the factual conclusions made by the trier of fact so long as they are supported by substantial evidence in the record, Nestle v. City of Santa Monica Supra at 6 Cal. 3d 925.

**C. Business & Professions Code §7031 (b) is an Appropriate and Valid Exercise of the State's Police Powers.**

The U.S. Constitution, Amend. X reads as follows: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" These are referred to as the states police powers. The police power is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people Keystone Bituminous Coal Ass'n v. DeBenedictis (1987) 480 U.S. 470, 503. In the civil context, the police power is the power of sovereignty or power to govern, i.e., the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare, Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal. 4th 866, 878 (superseded by statute on other grounds).

The validity of Business & Professions Code §7031 (b) as a proper exercise of the State's inherent police power to regulate the contracting industry for the benefit of the public, has been upheld by the California Supreme Court in Hydrotech Systems, Ltd. v. Oasis Waterpark, 52 Cal. 3d 988, 995 (1991) in which it was held;

"*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.* [Citations Omitted]."

The 2001 amendment to Business and Professions Code §7031 (b) adding the "sword" element to subsection (b) of the statute was addressed by this Court's District One in Alatriste v. Cesar's Exterior Designs, Inc. (2010, 4th Dist.) 183 Cal App 4th 656, 665-666 in which the Court stated;

". .*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(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(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...This measure is intended to clearly state that those using the services of unlicensed contractors are entitled to bring an action for recovery of compensation paid...*

*7031(b) was designed to treat persons who have utilized unlicensed contractors consistently, regardless of whether they have paid the contractor for the unlicensed work. In short, those who have not paid are protected from being sued for payment and those who have paid may recover all compensation delivered..."*

**D. The Elements of the Action**

The elements of an action for disgorgement of compensation paid, brought under Business & Professions Code §7031 are:

1. A person engaged in the business or acting in the capacity of a contractor performing a contract where a license is required - Business & Professions Code §7031 (a);

2. Failure by that person to be duly licensed at all times during the performance of that contract - Business & Professions Code §7031 (a); and

3. Compensation paid to the contractor by the person utilizing the contractor's services - Business & Professions Code §7031 (b).

**E. Evidence Supporting Judgment.**

Each of the elements of a claim for disgorgement under Business & Professions Code §7031 were established at trial.

**1. Appellant was Acting in the Capacity of a Contractor in Both Contracting to Perform and in Performing the Work on the Respondent's Condominium Unit.**

Business & Professions Code §7026 defines "Contractor" for the purpose of division 3, chapter 9 of the code as "... ***any person*** *who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building... other structure, project, development or improvement, or to do any part thereof...*"

Business & Professions Code §7025(b) defines "Person", as the term is used in division 3, chapter 9 of the code, as including "***an individual,*** *a firm, partnership, corporation, limited liability company, association or other organization, or any combination thereof.*"

Despite Mr Bereki's contorted and strained argument to the contrary, there is simply no rational or logical basis for the proposition that Business & Professions Code §7031 does not apply to individuals.

There was ample uncontroverted evidence, both testimony and documentary, at trial establishing that the work undertaken by Mr. Bereki for the Humphreys involved alteration, repair and improvement of their condominium unit. **Exhibit 303**, the April 5, 2012 emails between Mr. Bereki and the Humphreys describes the scope of the project at the time the agreement was entered into. [RT- Vol-1-Pg 33, L-18 to Pg. 34, L- 2]; [RT- Vol-1-Pg 82, L-6 to Pg. 83, L-19]. Mr. Bereki's own testimony establishes that the work involved in the Humphreys project fell within the scope of Business & Professions Code §7026 [RT- Vol-1-Pg 113, L-5-22] [RT-Vol-1-Pg 141, L-8-16], [RT-Vol-1-Pg 146. L-1-10].

Without citing to anything in the record to support it, Mr. Bereki argues that the trial court erred in finding that it was he and not Spartan Associates, Inc. who contracted with the Humphreys and therefore wrongfully applied the disgorgement provision of Business & Professions Code §7031 to him personally. In making this assertion Mr. Bereki ignores the nearly overwhelming evidence which came in at trial on that issue and which supported the trial court's finding that the contract in issue was entered into between the Humphreys and Mr. Bereki individually. [RT-Vol-2-Pg. 28, L-8-13].

Examples of the evidence in support of the trial court's finding are:

Both Mr. and Mrs Humphreys testified that they believed (based on **Exhibit 303**) that they were hiring Mr. Bereki and his partner to perform the work described in the exhibit- [RT-Vol-1-Pg. 33, L-18 to Pg 34, L- 2], [RT-Vol-1-Pg. 84, L-3- 8];

Before the April 5, 2012 agreement, **Exhibit 303**, was entered into, Mr. Bereki never mentioned The Spartan Associates, Inc. to the Humphreys and the Humphreys had never heard of The Spartan Associates, Inc. [RT-Vol-1—Pg. 39, L-13-23], [RT-Vol-1-Pg. 84, L-3- 8].

There is no mention of The Spartan Associates, Inc. in the April 5, 2012 agreement between the parties **Exhibit 303** [RT-Vol-1-Pg. 39, L-24-26];

Mr. Bereki initially requested that the Humphreys checks in payment for the work on the project be made payable to him personally **Exhibit 305** [RT Vol-1- Pg. 41, L-11 to Pg. 42, L- 2].

The Humphreys first heard of Spartan Associates only after several months into the project when Mr. Bereki asked that they start making payments to Spartan Associates [RT-Vol-1- Pg. 42, L-7-25]; [RT-Vol-I-Pg. 85, L-25 to PG 86. L-17].

The Humphreys were never presented with any proposal or contract from The Spartan Associates [RT-Vol-1-Pg 86, L- 18-21.]

Job correspondence from Mr. Bereki to the Humphreys, was without exception, sent on his personal email account even though The Spartan Associates had its own email account [RT-Vol-1- Pg. 110, L- 9-18].

Mr, Bereki paid job costs and expenses from his personal account [RT-Vol-1-Pg 122, L-12 to Pg. 123, L-6] **Exhibit 355.**

In contrast to the above, there is virtually nothing in the record other than Mr. Bereki's unsubstantiated testimony that it was the Spartan Associates and not he that entered into the April 5, 2012 agreement with the Humphreys.

**2. Appellant was Unlicensed Both at the Time He Contracted with the Respondents and at the Time He Performed Work Under that Contract.**

That Mr. Bereki was not licensed either at the time the April 5, 2012 agreement with the Humphreys was entered into or at the time he performed work on the project is evidenced by his own express admission of lack of holding a license. [RT-Pg. 123, L-7-14]. Although admitting that he had no license issued to him in his name, Mr. Bereki argues that because he was allegedly the qualifying individual for The Spartan Associates contractor's license (an alleged fact not established at trial) his failure to hold a license in his own name is a matter of no harm no foul. This argument finds no support however in Business & Professions Code §7028.5, which holds "*It is unlawful for a person who is or has been a partner, officer, director, manager, responsible managing employee, responsible managing member, responsible managing manager, or responsible managing officer of, or an individual who is listed in the personnel of record of, a licensed partnership, corporation, limited liability company, firm, association or other organization to individually engage in the business or individually act in the capacity of a contractor within this state without having a license in good standing to so engage or act.*"

**3. Compensation was Paid to Appellant by the Respondents.**

The Humphreys paid Mr. Bereki a total of $848,000.00 for the work he ostensibly performed on their project. **Exhibit 32-4to17**, [RT-Pg. 85, L-7-21], [RT-Pg. 89, L-20 to Pg. 90, L-26], [Appellants Opening Brief Pg. 22].

Mr. Bereki, while conceding that the compensation was paid, argues that a portion of that compensation were checks from Mr. Humphreys corporation and that therefore the Humphreys had no standing to pursue recovery of those payments. The trial court in its findings held: "*So the evidence shows here the payments that were made through Humphreys & Associates*

*Incorporated's bank account were essentially debited against Mr. Humphrey's compensation, effectively making the payments directly from Mr. Humphreys...*" [RT-Vol-2-Pg, 24 to Pg. 21, L-2]

The evidence to which the trial court was referring above is the testimony given by Mr. Humphreys to the effect that all payments made to Mr. Bereki on Humphreys & Associates, Inc. checks were debited against his compensation and was nothing more than an accommodation to him by his employer for times when Mr. Bereki stated that he needed a payment to keep the job moving and Mr. Humphreys was physically unavailable to make the payment personally. [ RT-Vol-1-Pg, 158, L-16 to Pg. 162, L- 15]. There was no evidence or testimony which controverted Mr. Humphreys testimony in this regard.

And lastly on this point, Mr. Bereki argues that he should be entitled to a credit for or offset against any disgorgement, the value of any materials or equipment he provided to the Humphreys. This argument however was put to rest in Alatriste v. Cesar's Exterior Designs, Inc. Supra 183 Cal App 4th at 672 in which the Court citing White v. Cridlebaugh (2009) 178 Cal.App.4th 506, 517 held "*...the authorization of recovery of 'all compensation paid to the unlicensed contractor for performance of any act or contract' [citation] means that unlicensed contractors are required to return all compensation received without reductions or offsets for the value of material or services provided.' (citation) The court reasoned that this 'interpretation ... is consistent with the usual meaning of the word 'all,' which signifies the whole number and does not admit of an exception or exclusion not specified. [Citation.] In short, 'all compensation paid' does not mean all compensation less reductions for offsets.*"

**3. APPELLANT HAS FAILED TO PERFECT RIGHTS TO APPEAL MATTER OCCURRING POST JUDGMENT.**

Included in Mr. Bereki's opening brief are arguments to overturn the results of a number of various and sundry post trial proceedings he had filed in the trial court. Specifically, Mr. Bereki seeks to compel different results to the trial court's ruling on his post-trial Writ of Error, Demand for Bill of Particulars, Motion to Compel Bill of Particulars and Request for Statement of Decision. [AOB- Pg. 59]. Mr. Bereki has however failed identify in his notice of appeal [CT - Vol-4 Pg. 1074] any of the above post judgment orders as being the subject of his appeal. California Rule of Court 8.100 (a) (2) provides that the notice of appeal "*...is sufficient if it identifies the particular judgment or order being appealed.*" The notice submitted by Mr. Bereki makes no such identification and therefore is insufficient as to the post judgment matters Mr. Bereki now seeks to have determined.

**4. THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.**

The one exception to the bar prohibiting Mr. Bereki from raising, in this appeal, post judgment orders not identified in his notice of appeal, is the question of the trial court's jurisdiction over the matter. While lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal DeTomaso v. Pan American World Airways, Inc. (1987) 43 Cal. 3d 517, 520 there is simply no basis in fact which in any supports Mr. Bereki's claim of lack of jurisdiction.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const., Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior*

*courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

*Superior courts have original jurisdiction in all other causes....*"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the case.

As for personal jurisdiction over Mr. Bereki, Cal Code Civ. Proc § 410.50 states "*(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons on such party.*"

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102, 104. Mr. Bereki by substituting in as his own attorney in this matter in propria persona [CT-Vol 3- Pg. 738], filing his answer to the Humphrey's cross-complaint seeking a determination of the issues [CT-Vol 3- Pg. 822-829]

and appearing at and presenting his case in defense at the trial of this matter [CT-Vol 4- Pg. 929], made a general appearance giving the trial court personal jurisdiction over him

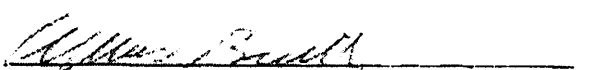
## V.

## CONCLUSION

For the reasons set forth above it is contended that Appellant's appeal is without merit and it is therefore respectfully requested that the judgement of the Trial Court be affirmed and that Respondents be awarded their costs on appeal, the amount of which to be determined by the Trial Court upon application made after remand of this case.

Dated: February 1, 2018

Respectfully Submitted



William G. Bissell
Attorney for Defendants/Cross-Complainants/Respondents Gary Humphreys and Karen Humphreys

## CERTIFICATION OF LENGTH

I, William Bissell, in compliance with Rule 8.204 (c) (1) of the California Rules of Court, do certify that according to the word count of the computer program used to prepare Respondent's Brief, Respondents Brief, exclusive of tables, is 5,536 words in length.

William G. Bissell
Attorney for Defendant/Cross-Complainants/Respondents
Gary Humphreys and Karen Humphreys

CERTIFICATION OF SERVICE & FILING

I, William Bissell, certify:

I am, and at all times mentioned herein was, an active member of the State Bar of California and not a party to the within action. My business address is 14 Corporate Plaza Drive, Suite 120, Newport Beach, CA 92660.

On February 1,2018 I served the **Respondent's Brief**, in this matter by depositing a copy of the Brief in the United States mail in Newport Beach, Orange County, California, in a sealed envelope, with postage fully prepaid, addressed to:

J. Scott Russo, Esq.
Russo & Duckworth LLP
9090 Irvine Center Drive, 2nd Floor
Irvine, CA 92618

Attorney for Plaintiff The Spartan Associates and Cross-Defendant Suretec Insurance Company

Carlos E. Sosa Esq.
Hausman & Sosa LLP
20750 Ventura Blvd
Ste 105
Woodland Hills, CA 91364-6646
Attorney for Cross-Defendant Old Republic Insurance Company.

On February 1,2018 I further served Respondent's Brief electronically on Appellant Adam Bereki by transmitting the brief to Appellant at:

abereki@gmail.com

On February 1, 2018 I further filed, through OneLegal, a court approved provider of electronic filing services, a copy of the brief with the clerk of the Orange County Superior Court, with instructions to deliver the brief to the Honorable David Chaffee,.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on February 1,2018, at Newport Beach, California.

William Bissell

# Exhibit 11

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys
Karen Humphreys

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/04/2019 at 10:29:00 AM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.

And Related Cross-Action

Case No.30-2015-00805807

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDGEMENT**

Unlimited Civil- [Amount Exceeds $25,000.00]

Date: March 15, 2019
Time: 9:30 a.m.
Dept: C-16

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

Defendants/Cross-Complainants/Judgment Creditors Gary Humphreys and Karen Humphreys in opposition to the motion of Cross-Defendant/Judgment Debtor Adam Bereki to vacate the judgement entered in this matter submits the following memorandum of points and authorities.

I.

## INTRODUCTION

This action arises out of a home remodel project which began in April of 2012 in Newport Beach, California. The parties opposing this motion, Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and the moving party Adam Bereki (Mr. Bereki) was the contractor with whom the Humphreys contracted to perform the work.

From the beginning, work on the project did not progress smoothly and was "red tagged" i.e. shut down on at least two separate occasions by the City of Newport Beach. In August of 2013, a year and a half into the project, with the work once again at a city ordered standstill and the project far from completed, the Humphreys terminated Mr. Bereki and hired another contractor to finish their project.

This action was initiated by The Spartan Associates, Inc. (Spartan), a corporation wholly owned by Mr. Bereki and the alleged general contractor on the project, to recover from the Humphreys amounts Spartan claimed it was owed by the Humphreys.

The Humphreys filed an amended cross-complaint, the first cause of action of which was against Mr. Bereki, under California Business & Professions Code §7031(b) for disgorgement of the compensation paid by them to Mr. Bereki. The basis of the first cause of action of the amended cross-complaint was the alleged unlicensed status of Mr. Bereki at the time the contract was entered into and at the time the work was performed.

On motion of the Humphreys, which was unopposed, the first cause of action of the amended cross-complaint, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading. The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 before Judge David Chaffee in Department C-20 of this Court and concluded on March 28, 2017. Mr. Bereki appeared, testified and examined witnesses at that trial. At the conclusion of the presentation of evidence which consisted of both the testimony of witnesses on direct and cross examination and the introduction of documents, the Trial Court found that Mr. Bereki was the party who had contracted with the Humphreys, that the work performed by and under Mr. Bereki required that he possess a license issued by the California State Contractor's License Board and that at no time, either at the time the contract was entered into or when the work was performed, did Mr. Bereki possess such a license. The Trial Court ruled that the Humphreys were the prevailing party on both the complaint and the first cause of action of the amended cross-complaint and as such were entitled to recover from Mr. Bereki all compensation paid by the Humphreys during Mr. Bereki's involvement on the project.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. Both Mr. Bereki's opening brief and his reply brief raised and addressed his claim that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution. Oral argument was heard on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their

costs on appeal.

On or about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Court of Appeals decision, once again raising as grounds for review the claimed lack of jurisdiction of the trial court and claimed denial of due process. The petition for review was denied on January 30, 2019 and the case was remitted to this Court for entry of costs on Appeal.

Mr. Bereki, who clearly lacks a sufficiently developed understanding of jurisdictional and constitutional law, has repeatedly raised the issues of jurisdiction and due process and has been heard on those issues multiple times and apparently is unable to accept the fact that his position has no basis in law. There is no basis, either procedurally or substantively which would allow this court, at this juncture of the litigation to so much as entertain Mr. Bereki's motion much less grant it.

II.

## CHRONOLOGY OF THE CASE AS IT PERTAINS TO THIS MOTION

The chronology of this case relevant to the pending motion is as follows:

On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff The Spartan Associates, Inc. (Spartan) against the Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017.

On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three.

On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims as they relate to the trial courts jurisdiction over the action and Mr. Bereki were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal.

On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition.

On January 30, 2019 the California Supreme Court denied the petition for review and on January 31, 2019 the Appellate Court issued its Remittitur of the case back to the trial court for entry of costs on appeal .

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III.

**MOVING PARTY'S CLAIM IS BARRED UNDER**

**THE DOCTRINE OF RES JUDICATA**

The doctrines of res judicata and judicial estoppel rest on the ground that a party who has litigated a matter or has had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation Busick v. Workmen's Comp. Appeals Bd. (1972) 7 Cal. 3d 967, 972; Rubenstein v. Rubenstein (2000) 81 Cal. App. 4th 1131, 1144. The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues that were or could have been raised in the original suit Torrey Pines Bank v. Superior Court (1989) 216 Cal. App. 3d 813, 821.

None of the "issues" on which Mr. Bereki is basing his motion are being raised here for the first time. Mr. Bereki has asserted the same tired and strained arguments in his post judgment motions to the trial court, in his appeal of the trial courts judgment and in his petition for review filed with the State Supreme Court. Further, even if these issues had not already been raised and rejected as ill founded, there is not a single issue raised here that could not have been asserted at the time of trial or in Mr. Bereki's appeal. This case may stand as the poster case for why public policy demands that there be an end to litigation. Mr. Bereki has been heard on these issues and he has lost, not only at trial but at the appellate level. That should be the end of it.

//

IV.

**THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.**

In the event the Court determines that the instant motion warrants consideration, the facts of this case establish that the trial court had both personal jurisdiction over Mr. Bereki and subject matter jurisdiction over the case and that the judgment entered by the trial court and affirmed by the court of Appeal was proper and beyond attack at this level.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const, Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

***Superior courts have original jurisdiction in all other causes....***"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the action. As for personal jurisdiction over Mr. Bereki, Cal Code Civ

Proc § 410.50 states *"(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons on such party."*

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102. Mr. Bereki by substituting in as his own attorney in this matter in propria persona, filing his answer to the Humphrey's cross-complaint seeking a determination of the issues and appearing at and presenting his case in defense at the trial of this matter , has made a general appearance and thus has voluntarily submitted to the trial court exercising personal jurisdiction over him..

V.

**CONCLUSION**

Although Mr. Bereki couches his motion to vacate the judgment as being grounded in a claimed lack of jurisdiction by both the trial court to have rendered judgment and the court of appeal to have affirmed that judgment, in reality the motion is nothing more than an attempt to relitigate the same issues he has raised in his appeal of the trial court's judgment and in his petition to the State Supreme Court. While Mr. Bereki correctly points out that a motion to challenge a judgment on the basis it is void may be brought at any time, he clearly fails to understand that once that challenge has been brought and has been determined to be without merit, he is barred from reasserting that challenge except to a court of review at a higher level. Simply put, Mr. Bereki has shot his wad on this issue at all levels of review with the exception of the United States Supreme Court and for that reason this motion should be removed from the law and motion calendar as having been improperly filed or alternatively, denied.

For the reasons set forth above it is requested that the court refuse to hear the pending motion as having been improperly filed or alternatively deny the motion.

Respectfully Submitted

Date: February 28, 2019

William Bissell

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou, email=wbissell@wgb-law.com, c=US
Date: 2019.03.04 09:50:24 -08'00'

William G. Bissell,
Attorney for Defendants Cross-Complainants
Gary Humphreys and Karen Humphreys

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. On March 4, 2019, I served the within:

**Memorandum of Points and Authorities in Opposition to Motion to Vacate Judgment**

by placing the envelope for collection and mailing, following the above practices addressed to:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on March 4, 2019, at Newport Beach, California.

William Bissell

Digitally signed by William Bissell
DN: cn=William Bissell, o, ou, email=wbissell@wgb-law.com, c=US
Date: 2019.03.04 09:50:53 -08'00'

William Bissell

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys
Karen Humphreys

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/04/2019 at 10:29:00 AM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.

And Related Cross-Action

Case No.30-2015-00805807

**DECLARATION IN OPPOSITION TO MOTION TO VACATE JUDGEMENT**

Unlimited Civil- [Amount Exceeds $25,000.00]

Date: March 15, 2019
Time: 9:30 a.m.
Dept: C-16

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

I William Bissell declare as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration and could competently testify to the same.

2. On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff, The Spartan Associates, Inc. (Spartan) against the Gary and Karen Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

3. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017. Judgment in this matter and the entry thereof is reflected in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d).

4. On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three. The notice of appeal is contained in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d)

5. On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims as they relate to the trial courts jurisdiction over the action and Mr. Bereki's due process

arguments were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal. Attached as Exhibits "A" and "B" respectively are those portions of Mr. Bereki's Opening and Reply briefs filed with the Court of Appeal in which he raises the issues of jurisdiction and denial of due process. The opinion of the Court of Appeal is attached to the moving papers as exhibit A.

6. On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition. Attached as Exhibit "C" are those portions of Mr. Bereki's Petition for Review filed with the California Supreme Court in which he again raises the issues of jurisdiction and denial of due process.

7. On January 30, 2019 the California Supreme Court denied the petition for review. Attached as Exhibit "D" is notice of California Supreme Court's denial of Mr. Bereki's petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 25, 2019 at Newport Beach, California.

William Bissell
Attorney for Gary Humphreys
and Karen Humphreys

# EXHIBIT A

Appeal No. G055075

In the California Court of Appeal
Fourth Appellate District, Division Three

---

Adam Bereki
Defendant Below and Appellant

v

Karen and Gary Humphreys
Plaintiffs Below and Respondents

---

Appeal from the Superior Court County of Orange
Case No. 30-2015-00805807
Hon. David Chaffee

---

# APPELLANT/PETITIONER'S OPENING BRIEF

---

Adam Bereki
In Propria Persona
813 Spirit
Costa Mesa, California
949.241.6693
abereki@gmail.com

Received by Fourth District Court of Appeal, Division Three

## 7031 IS UNCONSTITUTIONAL AS APPLIED

Business & Professions Code §7031(b) is unconstitutional as applied by the court to Adam Bereki because it:

1) violates the Constitutional provisions of punitive damage awards;

2) does not meet the requirements of justiciability (See Section );

3) violates due process;

4) is void for vagueness as to the term compensation in "return all compensation paid".

5) Is purely punitive and requires Rights guaranteed to a criminal defendant

California authorizes four penalties for "engaging in the business of, or acting in the capacity of, a "contractor" without a license – a criminal penalty, a civil penalty, a shield penalty and a sword penalty:

1) The first offense criminal penalty can be a misdemeanor conviction with a fine up to $5,000, plus restitution for any actual economic loss. The fine is payable to the government, the economic loss to the customer.

2) The civil penalty is a citation by the Registrar of Contractors, an administrative hearing, and a penalty up to $5,000, except for certain named violations. The civil penalty is payable to the government.

3) The shield penalty bars the unlicensed contractor from using the courts to collect money owed for work performed. This penalty vindicates the judicial system by preventing use of the court to enforce unlicensed work performed in violation of law.

4) The sword penalty is disgorgement. It allows the customer to recover all compensation paid to the unlicensed contractor. Disgorgement, like compensatory damages, is payable to a private party, not the government.

Disgorgement is a form of damages assessed against the unlicensed contractor and paid to its customer for the violation of the license law.

Disgorgement is a monetary award to a private party, not the government.

Punitive damages are defined as being independent from, and not in any way compensation for, any actual damages suffered. Regardless of whether disgorgement is a legal or equitable remedy, and regardless of what it is labeled, disgorgement is clearly a penalty, unrelated to actual damages as it has been applied by the courts in the form of punitive damages paid to a private party.

California courts have repeatedly held disgorgement to be lawful – on its face – despite the potential harshness or draconian nature of the remedy. However, even though the Legislature allows juries to assess punitive damages under a statute that is clearly constitutional on its face (Civil Code § 3294), the courts routinely determine whether punitive damages assessed by a jury in a particular case exceed constitutional bounds. The same must be true for disgorgement.

7031 VIOLATES THE PROVISIONS OF PUNITIVE DAMAGE AWARDS

The U.S. Supreme Court has established a three part test for evaluating the validity of punitive damages in civil cases. See State Farm Mutual Auto Insurance Co. v Campbell, 538 US 408 (2003):

1) the reprehensibility of the conduct being punished;

2) the reasonableness of the relationship between the harm and the award; and

3) the difference between the award and the civil penalties authorized in comparable cases.

Under this test, use of the disgorgement sword to *hypothetically* take anything more than nominal damages from Adam and give them to Respondents fails every element of the test for the following reasons:

REASONABLENESS

First, the relationship between the "harm" and disgorgement of $848,000 is grossly disproportionate. At "trial", Respondents presented no evidence of any damages proximately cause by Adam's *alleged* failure to be licensed.

Compensatory damages are intended to redress the concrete loss the 'victim' has suffered by reason of the 'perpetrators' wrongful conduct. By contrast, punitive damages serve a broader function; they are aimed at deterrence and retribution. Id 416

California and federal courts have constrained awards of punitive damages to a reasonable relationship to the actual damages suffered.

In the instant case, disgorgement of anything would be an infinite multiple of the non-existent damages.

COMPARABLE CASE AWARDS

Second, the difference between the $848k disgorgement award and both the criminal and civil penalties authorized in comparable cases is astronomic. As previously noted, the maximum criminal penalty is $5,000 plus restitution of actual economic loss.

*Again, Respondents presented no witnesses or evidence at "trial" of any actual loss whatsoever.*

The maximum civil penalty that could be assessed by the CSLB is also $5,000. Thus, a "disgorgement" of $848k would be 169 TIMES the comparable criminal or civil penalty.

The judgment in this case is more than three times the financial penalty for treason, – the highest crime of our country– which is $250,000. Furthermore, it forces Adam into elements of financial ruin and bankruptcy.

Punitive damages in excess of $5000 therefore do not pass Constitutional muster.

REPREHENSIBLE

Third, the conduct is not reprehensible. Not only was there no evidence of any damages whatsoever, had there been, they would have been purely economic. No one was hurt or injured. There was no evidence of fraud, oppression, or malice.

No evidence was presented the compensation by Spartan or Adam had not been returned.

Respondents interacted exclusively with Adam Bereki who had the work experience and passed the competency exam to qualify for Spartan's contractors license. It is unknown how Respondents could therefore be deprived of the CSLL protections.

Prior to hiring Adam Bereki or Spartan, Respondent Gary Humphreys was intimately aware of Adam's competency by the previous projects he had done at Respondents business and for other family members (RT 93–10).

Furthermore, as mentioned, Mr. Humphreys is a nationally recognized expert in project management and government contractor who teaches project management around the world including to the construction industry. He is not a member of the public who needs protection from incompetence and dishonesty from those who provide building and construction services. In fact he has decades more training and experience than Adam Bereki who doesn't even possess a college degree.

While Mr. Humphreys claims he does not have specific experience in building construction itself, the project management principles he teaches most definitely are fundamental to every project. The preface of his near eight hundred page book on project management states: "Please do not conclude that a sample does not apply to those of you in the construction, software, or other industries." (CT 400-401, RT 97)

See Jet Source Charter, Inc. v Doherty, 148 Cal. App. 4th 1, (2007)

A de novo standard of review should be applied to the court's ruling.

## 7031 VIOLATES DUE PROCESS

See Pacific Mutual Life v Haslip, 499 US 1 and Honda Motor Co. Ltd v Oberg, 512 US 415

A de novo standard of review should be applied to the court's ruling.

## THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO RENDER ANY JUDGMENT DUE TO FRAUD, DUE PROCESS VIOLATIONS, AND RESPONDENTS FAILURE TO PROVE THE FACTUAL SUFFICIENCY OF THEIR CLAIM

A court of California does not have jurisdiction to render a judgment that violates the California Constitution or the Constitution of the United States.
County of Ventura v Tillett, 133 Cal. App. 3d 105

While a court has jurisdiction to hear and decide cases, it does not have jurisdiction adjudicate a case upon the commission of a crime such as fraud or violations of due process such as those evidenced above that occurred in this case.

A court only has subject matter jurisdiction to adjudicate a claim upon substantial proof of the factual sufficiency of each element of that claim by competent sworn testimony regarding authenticated evidence.

In the case of a violation of statute, jurisdiction *only* extends once the factual sufficiency of each element of the offense has been met.

In this way, subject matter jurisdiction is a two sided coin.

One side of the subject matter jurisdiction coin involves the common law, statutory authority, or contract upon which there was a duty to do or not do something and the court's empowerment to deal with that subject matter as authorized by Constitution or Statute.

> The first prong of the jurisdiction analysis is to determine which state courts have subject matter jurisdiction. The court in which the action is filed must be competent

under California law to render a judgment; i.e., the state constitution or statutes must empower it to adjudicate the type of lawsuit involved and to render a judgment for the amount in controversy. [See Marriage of Jensen (2003) 114 CA4th 587, 593, 7 CR3d 701, 705 (citing text)]

"The principle of 'subject matter jurisdiction' relates to the inherent authority of the court involved to deal with the case or matter before it." [Varian Med. Systems, Inc. v. Delfino (2005) 35 C4th 180, 196, 25 CR3d 298, 311]

The other side of the coin (or second prong) rests on the factual sufficiency of the claim. Without the factual sufficiency of the claim there would be no proven violation of law for the court to render judgment/verdict. The court would not have jurisdiction over the subject matter because a law has not been proven to have been violated – there is no proof of a claim for it to adjudicate. At that point the court has a non-discretionary duty to dismiss the case for want of subject matter jurisdiction. See FRCP 12(b)(6)

The factual sufficiency of the claim must establish there was a known duty the breach of which was the causation of damages as attested to by at least one competent fact witness testifying under oath and subject to cross examination regarding authenticated evidence.

See also Buis v State, 1990 OK CR 28.

Respondents:

1) failed to offer any competent sworn testimony Adam Bereki was a person to whom §7028 and §7031 applied

2) failed to offer any competent sworn testimony as to what work Adam Bereki did on their project that was required to be licensed and the amount he was compensated for

that work required to be licensed as differentiated from work done NOT required to be licensed or the work done by Spartan.

3) failed to controvert Spartans testimony and evidence of obtaining the permits, doing the work, and receiving $758,000 in compensation.

4) committed fraud on the court by making false or misleading statements to gain a civil advantage.

5) failed to prove they had paid personally $495,000 that was paid by Humphreys & Associates, Inc. and therefore had no standing to collect on its damages.

6) Failed to respond to multiple challenges to jursidiction violating due process

7) Failed to state a justiciable cause of action and subjected Adam to an unknown jurisdiction of law foreign to our Constitutions.

The trial court did not have cognizance of a case pursuant to §7028 or §7031 B&P against Adam Bereki because these causes of action do not meet the requirements for a justiciable controversy as evidenced.

The proper parties were NOT present because there were none who could be pursuant to the first requirement. See Reynolds v Stockton, 140 US 254, 268 (1891)

See also Saffer v Jp Morgan Chase, 225 CA4th 1239, 1246 (2104); Parrott v Mooring Townhomes Ass'n Inc., 112 CA 4th 876; Chromy v Lawrance, 233 CA3d 1521, 1527.

A de novo standard of review should be applied to the court's ruling.

# Exhibit 12

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

**MINUTE ORDER**

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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

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EVENT ID/DOCUMENT ID: 72990898

**EVENT TYPE:** Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

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**APPEARANCES**
Law Offices of William G. Bissell, from Law Offices of William G. Bissell, present for Cross - Complainant,Defendant,Respondent on Appeal(s).
Adam Bereki, self represented Defendant, present.

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Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. 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.

Counsel for the Humphreys to give notice.

# Exhibit 13

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949)287-4503
wbissell@wgb-law.com

Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.

Plaintiff,

vs.

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive

Defendants.
And Related Cross-Action

Case No.30-2015-00805807

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDGEMENT AND REQUEST FOR SANCTIONS - C.C.P. §128.5**

Date: June 26, 2025
Time: 2:00 p.m.
Dept: C-23

Action Filed: August 21, 2015

Judgment Entered: April 20, 2017

Judgment Affirmed on Appeal: Oct. 21,2018

Cal. Supreme Court Review Denied: Jan. 30, 2019

Defendants/Cross-Complainants/Judgment Creditors Gary Humphreys and Karen Humphreys in opposition to the motion of Cross-Defendant/Judgment Debtor Adam Bereki to vacate the judgement entered in this matter submits the following memorandum of points and authorities.

I.

## INTRODUCTION

This motion is in all substantive respects nothing more than a refiling and rehash of virtually the same motion to vacate judgment brought by Mr. Bereki in February of 2019 in this case and in which the court in denying the motion aptly noted *"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..."*

Despite the trial courts crystal clear admonition to Mr. Bereki advising him that upon the appellate court's affirming the judgment the trial court has no jurisdiction to entertain new arguments attacking the merits of the judgment, Mr. Bereki persists in ignoring both the courts rulings and procedural law and continues to harass the Humphreys, denigrate this Court and waste judicial resources by filing motions patently lacking in merit and seeking public support for the motion through inflammatory emails.

II.

## BRIEF HISTORY OF THE CASE

This case , judgment in which has long been final, arose out of a home remodel project which began in April of 2012 in Newport Beach, California. The parties

opposing this motion, Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and the moving party Adam Bereki (Mr. Bereki) was the contractor, albeit unlicensed, with whom the Humphreys contracted to perform the work.

A dispute arose between the Humphreys and Mr. Bereki over the quality of the work performed by Mr. Bereki and other disturbing aspects of Mr. Bereki's activities and performance on the project resulting in a civil complaint being filed in this matter by Mr. Bereki's corporation and a cross complaint being filed by the Humphreys. On motion of the Humphreys the first cause of action of their first amended cross-complaint for disgorgement under California Business & Professions Code Section 7031, was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading.

The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 before Judge David Chaffee in Department C-20 of this Court and concluded on March 28, 2017. At the conclusion of the presentation of evidence, the Trial Court ruled in favor of the Humphreys on both the complaint and the first cause of action of the first amended cross-complaint and entered judgment accordingly.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. As with the instant motion, both Mr. Bereki's opening brief and his reply brief raised and addressed his claim that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution. Oral argument was heard on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of

jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal.

On or about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Court of Appeals decision, once again raising as grounds for review the claimed lack of jurisdiction of the trial court and claimed denial of due process. The petition for review was denied on January 30, 2019 and the case was remitted to this Court for entry of costs on Appeal.

On February 19, 2019 Mr. Bereki filed with this Court the motion to vacate the judgment in this matter mentioned above , which was denied on March 15, 2019.

In October of 2019 Mr. Bereki filed a petition for writ of certiorari with the United States Supreme Court seeking to have the judgment here overturned. That petition was denied.

In addition to the above there have been an assortment of misguided collateral attacks on the judgment brought by Mr. Bereki in both the federal court and again to the U.S. Supreme Court all of which have been summarily denied.

Mr. Bereki, who after repeatedly raising the issues of jurisdiction and due process and having been heard on those issues multiple times in multiple venues is apparently incapable of accepting the fact that in the vast majority of trials there is a loser and in this one that is he. There is no basis, either procedurally or substantively which would allow this court, at this juncture to so much as entertain Mr. Bereki's motion much less grant it.

## III.

## MOVING PARTY'S CLAIM IS BARRED UNDER THE DOCTRINE OF RES JUDICATA

The doctrines of res judicata and judicial estoppel rest on the ground that a party who has litigated a matter or has had an opportunity to do so should not be permitted to litigate it again to the harassment and vexation of his or her opponent. Public policy and the interests of litigants alike require that there be an end to litigation Busick v. Workmen's **Comp. Appeals Bd. (1972) 7 Cal. 3d 967, 972; Rubenstein v. Rubenstein (2000) 81 Cal.** App. 4th 1131, 1144. The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on one decision in their controversy; res judicata bars not only the reopening of the original controversy, but also subsequent litigation of all issues that **were or could have been** raised in the original suit Torrey Pines Bank v. Superior Court (1989) 216 Cal. App. 3d 813, 821. *"A final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in the action"* Federated Dept. Stores, Inc. v. Moitie 452 U.S. 394, 398 (1981).

The "issues" on which Mr. Bereki is basing his latest motion have either been raised numerous times before or are issues which could have been raised and litigated at the 2017 trial. Mr. Bereki has asserted the same tired and strained arguments in his post judgment motions to the trial court, in his appeal of the trial courts judgment, in his petition for review filed with the State Supreme Court and his petition for writ of certiorari filed with the U.S. Supreme Court .As to those issues which have not already been raised and rejected as ill founded, there is not one that could not have been asserted at the time of trial or in Mr. Bereki's appeal.

## IV.

## THE JUDGMENT IS NOT VOID

Mr. Bereki argues that the holding in Eisenberg Village v. Suffolk Constr. Co.53 CA 5th 1201 (2020) somehow voids the judgment in this case. It does nothing of the sort. The holding in the Eisenberg v. Suffolk case did not invalidate the disgorgement provisions of Business & Professions Code §7031 which remains unchanged and enforceable today as it was when the judgment in this case was entered. Eisenberg v. Suffolk merely identified the period in which an action under the disgorgement clause of that statute must be brought. Mr. Bereki argues that under the decision in the Eisenberg v, Suffolk supra case the Humphrey's disgorgement cause of action was untimely and the that consequently the judgment is void. In so arguing, Mr. Bereki ignores the fact that the burden of proving a statute of limitations defense lies with the party asserting the defense. Although it was within his power to assert the defense and put on evidence to try to establish it at trial Mr. Bereki failed to do either.

There has been no substantive change in the law under which the judgment in this case was entered and Mr. Bereki has certainly not pointed the court to any such change which would warrant a deviation here from the principals of res judicata.

## V.

## THE TRIAL COURT HAD BOTH THE REQUISITE SUBJECT MATTER AND PERSONAL JURISDICTION TO RENDER JUDGMENT IN THIS MATTER.

In the event the Court determines that the instant motion warrants consideration, the facts of this case establish that the trial court had both personal jurisdiction over Mr. Bereki

and subject matter jurisdiction over the case and that the judgment entered by the trial court and affirmed by the court of Appeal was proper and beyond attack at this level.

As to the question of the trial court's jurisdiction over the subject matter of this case, Cal Const, Art. VI § 10 states in pertinent part "*The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction.*

***Superior courts have original jurisdiction in all other causes....***"

"*The superior court is a court having jurisdiction in all civil actions and proceedings, with stated exceptions, and it is a court of general jurisdiction....*". Richardson v. Superior Court of Los Angeles County (Cal. App. 1934), 138 Cal. App. 389,391.

In that this case is not one involving matters reserved for the Supreme Court, courts of appeal or the appellate division of the superior court, the superior court was the appropriate court to adjudicate the issues raised in the matter and had jurisdiction over the subject matter of the action. As for personal jurisdiction over Mr. Bereki, Cal Code Civ Proc § 410.50 states "*(a) Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). **A general appearance by a party is equivalent to personal service of summons on such party.***"

An appearance for any purpose other than to question the jurisdiction of the court is general. Pfeiffer v. Ash (Cal. App. 1949), 92 Cal. App. 2d 102. Mr. Bereki by substituting in

as his own attorney in this matter in propria persona, filing his answer to the Humphrey's cross-complaint seeking a determination of the issues and appearing at and presenting his case in defense at the trial of this matter , has made a general appearance and thus has voluntarily submitted to the trial court exercising personal jurisdiction over him.

## VI.

## SANCTIONS UNDER CODE OF CIVIL PROCEDURE SECTION 128.5 ARE WARRANTED

A trial court may order a party to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. C.C.P §128.5 (a).

For purposes of C.C.P §128.5 (a) "actions or tactics" includes the making of a motion and "frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. C.C.P §128.5 (b) (1) & (2).

A request for sanctions under C.C.P §128.5 (a) may be made in a party's responding papers. C.C.P §128.5 (c) . Lesser v. Huntington Harbor Corp. 173 CA3rd 922 (1985).

An action is deemed frivolous or in bad faith if it is prosecuted for improper motive (including harassment or delay) or if it is totally and completely devoid of any merit. Finnie v. Town of Tiburon, 199 Cal. App. 3d 1, 12 (1988).

As set forth above, Mr. Bereki has been informed by this Court in terms which are crystal clear and not subject to interpretation, that the trial court has no jurisdiction to entertain attacks on the judgment entered in this case. In other words, Mr. Bereki has been

advised by this Court that any new attempt by him to attack the judgment in this venue is frivolous. Despite being on notice of the frivolousness of this motion Mr. Bereki persists in ignoring the court's admonishment and continues to harass the Humphreys. Worse still, Mr. Bereki in a display of shocking disrespect to the Court attempts to bait this Court by such emails as the following sent on June 4, 2025:

> *"Good day, Let us all patiently await the discovery of whether supervising Superior Court Judge, David Hesseltine, will tell the truth, exposing nearly 100 years of legislative, executive, and judicial tyranny in Commiefornia involving Cal. Business and Profession Code §7031 (unlicensed contracting) or will lie to shield his brethren and other officials involved in the corruption...*
> *Please join us, Thursday, June 26, at 2:00PM in his courtroom or by zoom (visit* ***occourts.org****, click on remote appearance, select civil unlimited, civil unlimited again, and Department C23 Judge Hesseltine) for the 'hearing', where, if my personal experience is any indication, no one will actually be heard. Perhaps the 26th will be a dawn of integrity for the Judge where he will honor his oath of office so that we can rightfully refer to him as "Honorable" (it would my honor to do so)....*
>
> *Kindly forward this email to your co-workers, friends, and family in support of me and many others across America who are exposing the fraud, deceit, and treason perpetrated by members public office (and especially bar ASSociations ie Donna Kirkner, William Bissell) upon us under color of law....*
>
> *Thank you for listening.*
> *Sincerely,*
> *Adam Bereki"*

These actions of Mr. Bereki warrant a finding of contempt of court and at a minimum, demand that Mr. Bereki be sanctioned under C.C.P. §128.5 in an amount which will compensate the Humphreys for the costs of defending this motion as set forth in the

accompanying declaration and hopefully dissuade Mr. Bereki from further frivolous and bad faith actions.

## VII.

## CONCLUSION

Although Mr. Bereki couches his motion to vacate the judgment as being grounded in a claimed lack of jurisdiction by both the trial court to have rendered judgment and the court of appeal to have affirmed that judgment, in reality the motion is nothing more than an attempt to relitigate the same issues he has raised in his appeal of the trial court's judgment and in his petition to the State Supreme Court and the United States Supreme court. While Mr. Bereki correctly points out that a motion to challenge a judgment on the basis it is void may be brought at any time, he clearly fails to understand that once that challenge has been brought and has been determined to be without merit, he is barred from reasserting that challenge except to a court of review at a higher level of which in this matter there is now none.

This case may stand as the poster child for why public policy demands that there be an end to litigation and an end to the losing party's harassment of the prevailing parties by continuing to bring spurious motions and proceedings. Mr. Bereki has been heard, reheard and heard again on the same issues and he has lost at every juncture at every possible level of review. Although it has been stressed before by the trial court, Mr. Bereki should be re-admonished in the strongest possible terms that he is pursuing course to which he has no rights and that must end now. Simply put, Mr. Bereki has been heard on this issue at all levels of review and for that reason this motion should be removed from the law and motion calendar as having been improperly filed or alternatively, denied and in either case sanctions

assessed against Mr. Bereki and in favor of the Humphreys as set forth in the accompanying declaration.

Respectfully Submitted:

Date: June 12 , 2025

*william bissell*

William G. Bissell,
Attorney for Defendants Cross-Complainants
Gary Humphreys and Karen Humphreys

# PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

*-The Spartan Assoc. Inc. vs .Gary Humpherys. et al*
30-2015-00805807

I am employed in the County of Orange, California. I am over the age of eighteen (18) years and not a party to the case. My business address is 23 Corporate Plaza Drive, Suite 150 Newport Beach CA 92660.

On April 14, 2025, I served electronically via email MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDFGMENT AND REQUEST FOR SANCTIONS – C.C.P 128.5 and SUPPORTING DECLARATION in this matter upon the following legal counsel and parties:

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
Abereki@gmail.com

Judgment Debtor in Pro Per

Executed on June 13, 2025, at Newport Beach, California

william bissell

William Bissell

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949)287-4503
wbissell@wgb-law.com

Attorney for Gary Humphreys
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC.<br><br>Plaintiff,<br><br>vs.<br><br>GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual and DOES 1 through 25 Inclusive<br><br>Defendants.<br>And Related Cross-Action | Case No.30-2015-00805807<br><br>**DECLARATION IN OPPOSITION TO MOTION TO VACATE JUDGEMENT AND REQUEST FOR SANCTIONS - C.C.P. §128.5**<br><br>Date: June 26, 2025<br>Time: 2:00 p.m.<br>Dept: C-23<br><br>Action Filed: August 21, 2015<br><br>Judgment Entered: April 20, 2017<br><br>Judgment Affirmed on Appeal: Oct. 21,2018<br><br>Cal. Supreme Court Review Denied: Jan. 30, 2019 |

I William Bissell declare as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration and could competently testify to the same.

2. I am presently and have been from the initial stages of this case the attorney of record for Karen and Gary Humphreys, the defendants/cross-complaints/judgment creditors in this matter and have acted as such in both the trial and post trial proceedings referred to in this declaration.

3. On March 27, 2017 trial in this matter commenced in Department C-20 of the Orange County Superior Court before the Honorable David Chaffee, the parties having waived jury. The trial was on the complaint of the plaintiff, The Spartan Associates, Inc. (Spartan) against Gary and Karen Humphreys and on the cross-complaint of the Humphreys against Mr. Bereki and Spartan. Mr. Bereki participated in the trial representing himself , examining and cross-examining witnesses, presenting documentary evidence and giving testimony on his own behalf.

4. At the conclusion of the presentation of evidence consisting of both the testimony of witnesses and the introduction of documentary evidence, and after argument of counsel, the Trial Court ruled in favor of the Humphreys on the first cause of action of their cross complaint for disgorgement and on the complaint of Spartan and judgement was entered accordingly on April 20, 2017. Judgment in this matter and the entry thereof is reflected in the court's file of this matter and is attached to Mr. Bereki's request for judicial notice as Exhibit #1. Judicial Notice thereof the is requested under Evidence Code Section 452 (d).

5. On June 13, 2017 Mr. Bereki filed his notice of appeal from the judgment of the court with the California Court of Appeal, Fourth District, Division Three. The notice of appeal is

contained in the court's file of this matter and Judicial Notice thereof the is requested under Evidence Code Section 452 (d)

6. On October 16, 2018, after the submission of briefs in which Mr. Bereki's claims, as they relate to the trial courts jurisdiction over the action and Mr. Bereki's due process arguments, were raised and addressed, oral argument was held before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court awarding Respondent's their costs on appeal. The opinion of the Court of Appeal and the Court's denial of Mr. Bereki's petition for rehearing is attached as Exhibit #2 to Mr. Bereki's Request for Judicial Notice filed in this motion.

7. On about December 10, 2018, Mr. Bereki filed with the California Supreme Court a petition for review of the Appellate Court's decision once again raising his claims of lack of jurisdiction as grounds for granting the petition.

8. On January 30, 2019 the California Supreme Court denied the petition for review. Attached to Mr. Bereki's Request for Judicial Notice filed in this motion as Exhibit #4 is notice of California Supreme Court's En Banc denial of Mr. Bereki's petition for review.

9. On February 19, 2019 Mr. Bereki filed with this Court a motion to vacate the judgment in this matter, the hearing on which was held on March 15, 2019 in Department C16 before the Honorable James J. Di Cesare. In denying the motion the court noted "... *"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".* The Court's minute order on the March 15, 2019 motion to vacate is attached as Exhibit #3 to Mr. Bereki's Request for Judicial Notice filed in this motion..

10. In the fall of of 2019 Mr. Bereki filed a petition for writ of certiorari with the United States Supreme Court seeking to have the judgment in this case overturned. On October 7, 2019 the U.S. Supreme Court denied the petition for certiorari. Attached to Mr. Bereki's Request for Judicial Notice filed in this motion as Exhibit #5 is notice of The U.S. Supreme Court's denial of Mr. Bereki's petition for certiorari.

11. In addition to the above, there have been an assortment of collateral attacks on the judgment in this case brought by Mr. Bereki in both the federal court and again to the U.S. Supreme Court all of which have been summarily denied.

12. In reviewing the onslaught of moving papers notices to appear and subpoenas filed and/or served by Mr. Bereki, the records of the various court proceedings and in preparing the opposition to the pending motion, I have spent 8.5 hours. I anticipate spending an additional 1.5 hour in appearing at the hearing on this motion for a total of 10 hours. My billing rate is $360.00 per hour for a total cost to the Humphreys in defending against this spurious and frivolous motion of $3,600.00.

13. On June 4, 2025 I received the following email from Mr. Bereki:

*"Good day, Let us all patiently await the discovery of whether supervising Superior Court Judge, David Hesseltine, will tell the truth, exposing nearly 100 years of legislative, executive, and judicial tyranny in Commiefornia involving Cal. Business and Profession Code §7031*

*(unlicensed contracting) or will lie to shield his brethren and other officials involved in the corruption...*

*Please join us, Thursday, June 26, at 2:00PM in his courtroom or by zoom (visit occourts.org, click on remote appearance, select civil unlimited, civil unlimited again, and Department C23 Judge Hesseltine) for the 'hearing', where, if my personal experience is any indication, no one will actually be heard. Perhaps the 26th will be a dawn of integrity for the Judge where he will honor his oath of office so that we can rightfully refer to him as "Honorable" (it would my honor to do so)....*

*Kindly forward this email to your co-workers, friends, and family in support of me and many others across America who are exposing the fraud, deceit, and treason perpetrated by members public office (and especially bar ASSociations ie Donna Kirkner, William Bissell) upon us under color of law....*

*Thank you for listening.*
*Sincerely,*
*Adam Bereki"*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 12 , 2025 at Newport Beach, California.

william bissell

William Bissell
Attorney for Gary Humphreys
and Karen Humphreys

# PROOF OF SERVICE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

*-The Spartan Assoc. Inc. vs .Gary Humpherys. et al*
30-2015-00805807

I am employed in the County of Orange, California. I am over the age of eighteen (18) years and not a party to the case. My business address is 23 Corporate Plaza Drive, Suite 150 Newport Beach CA 92660.

On April 14, 2025, I served electronically via email MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO VACATE JUDFGMENT AND REQUEST FOR SANCTIONS – C.C.P 128.5 and SUPPORTING DECLARATION in this matter upon the following legal counsel and parties:

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
Abereki@gmail.com

Judgment Debtor in Pro Per

Executed on June 13, 2025, at Newport Beach, California

william bissell

William Bissell

# Exhibit B

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUL 11 2025
DAVID H. YAMASAKI, Clerk of the Court
BY: J. Phu DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

The Spartan Associates, Inc.,

Plaintiff,

v.

Gary Humphreys, an individual; Karen Humphreys, an individual; and DOES 1 through 25, inclusive,

Defendants.

And Related Cross-Action.

**CASE NO. 30-2015-00805807**

**ORDER STRIKING STATEMENT OF DISQUALIFICATION AND, IN THE ALTERNATIVE, VERIFIED ANSWER OF JUDGE DAVID HESSELTINE**

This action commenced on August 21, 2015, judgment was entered against cross-defendant Adam Bereki (Cross-Defendant) on April 20, 2017, and that judgment was affirmed on appeal on October 31, 2018. Since March 18, 2025, this Court has presided over the post-judgment proceedings in this case. On July 3, 2025, Cross-Defendant filed a document entitled "Verified Statement to Disqualify Judge David Hesseltine" (Statement of Disqualification).

The Statement of Disqualification asserts the Court is biased and prejudiced against Cross-Defendant for the following reasons: "(1) Hesseltine's rulings on August 6, 2024, and March 25, 2025, in *Moorefield Construction, Inc. v. Pantalemon*, Case No. 30-2022-

01259274 (Ex. 1), creating a pecuniary interest due to potential liability for structural jurisdictional errors depriving him of civil damages immunity; (2) his knowledge of this conflict prior to my Motion to Vacate Void Judgment filed May 28, 2005 (ROA 361, 356, 360, 386) and refusal to recuse himself; (3) his refusal to correct substantive errors in his tentative and final rulings denying my motion (Exs. 2-4); (4) his incorrect claims that my oral disqualification motion was untimely and improper; (5) his prior role as Senior Appellate Attorney at the Fourth District Court of Appeal, Division 3, suggesting professional and likely personal relationships with Justices Aronson, Goethals, and/or O'Leary, whom I allege committed structural jurisdictional errors that would also subject them to liability; (6) his potential relationships with retired Superior Court for the County of Orange Judges Di Cesare and/or Chaffee, also alleged to have committed jurisdictional errors subjecting them to liability; (7) his conduct constituting fraud on the court and perpetuating a conspiracy to procure an unlawful judgment through the unlawful enforcement of § 7031 actions; (8) his false Minute Order statement that my arguments were rejected by higher courts, despite no full, fair, or impartial judicial determination thereof; (9) his refusal to allow testimony from attorney William Bissell, critical to proving extrinsic fraud and conspiracy; (10) his enforcement of a discharged judgment, violating federal bankruptcy law; (11) his denial of my Ex Parte Application for Emergency Stay of Unlawful Detainer Action (ROA 306), filed March 14, 2025, on March 18, 2025, and Ex Parte Application for Reconsideration, filed May 21, 2025, despite notice of the bankruptcy discharge, perpetuating the harm of the void judgment and denying me restitution (Exs. 7-9); and, (12) his refusal to provide a court reporter or allow recording of proceedings, obstructing my due/judicial process right to preserve the record for appeal." (ROA 415.)

The Court finds the Statement of Disqualification on its face fails to disclose any legal grounds for disqualification, and it is untimely. Accordingly, the Statement of Disqualification is hereby stricken. (Code Civ. Proc., § 170.4, subd. (b) ["Notwithstanding paragraph (5) of subdivision (c) of Section 170.3, if a statement of disqualification is untimely filed or if on its

face it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken"]; *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 972 (*PBA, LLC*) ["the authority to strike a declaration exists 'notwithstanding' section 170.3 subdivision (c)(5) which precludes judges from ruling on their own disqualifications"].)

**The Statement of Disqualification Fails to State Grounds for Disqualification**

A statement of disqualification must set forth "the facts constituting the grounds" for disqualification. (Code Civ. Proc., § 170.3, subd. (c)(1).) "The law does not assume prejudice on the part of the trial judge." (*Gimble v. Laramie* (1960) 181 Cal.App.2d 77, 84.) The party seeking disqualification bears the heavy burden to show the judge is clearly biased or prejudiced. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391 (*Wechsler*).)

The applicable standard is an objective one: the judge should only be disqualified "if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial." (*Wechsler, supra*, 224 Cal.App.4th at p. 391.) "The 'reasonable person' is not someone who is 'hypersensitive or unduly suspicious,' but rather is a 'well-informed, thoughtful observer.' . . . '[T]he partisan litigant emotionally involved in the controversy underlying the lawsuit is not the disinterested objective observer whose doubts concerning the judge's impartiality provide the governing standard.'" (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389 (*Haworth*).)

Moreover, mere conclusions are insufficient. (*In re Morelli* (1970) 11 Cal.App.3d 819, 843.) An unsubstantiated suggestion of personal bias or prejudice also is insufficient. (*Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal.App.5th 273, 286.) A statement of disqualification cannot be based on information and belief, hearsay, or other inadmissible evidence. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 106, fn. 6 (*United Farm Workers*).) "Rumor, speculation, beliefs,

conclusions, innuendo, suspicion, opinion, and similar nonfactual matters" are not ordinarily sufficient to require recusal. (*Nichols v. Alley* (10th Cir. 1993) 71 F.3d 347, 351.[1])

Here, the Statement of Disqualification relies on speculation and conclusions without providing any concrete evidentiary facts establishing a ground for disqualification. It also is based on criticism and erroneous legal conclusions about the Court's rulings and case management in this case and in a separate, unrelated case. Such speculation, conclusions, and criticism are the sort of subjective and partisan assertions that consistently have been held to fail to establish the requisite objectively reasonable appearance of bias. (See, e.g., *Haworth*, *supra*, 50 Cal.4th at p. 389.)

**The Court's Rulings and Courtroom Management Form No Basis for Disqualification**

The Statement of Disqualification is based, in large part, on the Court's rulings and exercise of its adjudicatory authority in this case, including its rulings on Cross-Defendant's ex parte applications and motion to vacate. It also is based on the Court's rulings in a separate, unrelated case in which none of the instant parties are involved. Such rulings are insufficient to support a claim of bias as a matter of law, as a party's disagreement with the Court's decisions is not grounds for disqualification. (See *Yolo County Dept. of Child Support Services v. Myers* (2016) 248 Cal.App.4th 42, 51.) It is well established that "a trial court's numerous rulings against a party – even when erroneous – do not establish a charge of judicial bias . . . ." (*People v. Nieves* (2021) 11 Cal.5th 404, 485.) A party's remedy for an erroneous ruling is not a motion to disqualify, but rather to seek review by appeal or writ. (See *Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893; *People v. Farley* (2009) 46 Cal.4th 1053, 1110.) Thus, the Court's decisions and rulings in this case – including the denial of Cross-Defendant's ex parte applications and motion to vacate – as well as the Court's rulings in a separate, unrelated case, fail to support a claim of bias as a matter of law.

---

1. California courts may rely on federal cases interpreting a comparable provision of federal law. (See *United Farm Workers, supra*, 170 Cal.App.3d at p. 104; *Haworth*, *supra*, 50 Cal.4th at p. 389.)

The Statement of Disqualification also is based, in part, on Cross-Defendant's disagreement with the way the Court has managed this proceeding, when the Court would receive evidence and argument, and what the Court deemed relevant or important. This is insufficient to support a claim of bias as well. A court has the power and duty to ensure the orderly and expeditious conduct of court proceedings. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267; Code Civ. Proc., § 128, subd. (a)(3).) This includes decisions such as the scheduling of court proceedings, whether to hear oral argument, and whether and in what form evidence may be received. (See *Wilbum v. Oakland Hospital* (1989) 213 Cal.App.3d 1107, 1111; *Diaz-Barba v. Superior Court* (2015) 236 Cal.App.4th 1470, 1490-91.)

Accordingly, the Court's rulings and case management fail to support a claim of bias as a matter of law.

**Prior Employment as a Research Attorney Is Not Disqualifying**

The Statement of Disqualification appears to assert the Court is disqualified because the Court served as a research attorney before being appointed to the bench. Nothing in the Statement of Disqualification establishes any reason why the Court should be disqualified from this case based on the Court's prior employment. Code of Civil Procedure section 170.1, subdivision (a)(2), specifies the grounds on which a judge's prior service could be grounds for disqualification, but that subdivision only requires disqualification when the judge served or is deemed to have served as a lawyer in the proceeding or another proceeding involving the same issues and client. No evidence was presented to show section 170.1, subdivision (a)(2) applies here, and the Statement of Disqualification simply assumes disqualifying relationships arising from that prior employment.

**The Statement of Disqualification Is Untimely**

A party seeking to disqualify a judge must do so "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." (Code Civ. Proc., § 170.3, subd. (c)(1).) "This strict promptness requirement is not to be taken

lightly, as a failure to comply constitutes forfeiture or an implied waiver of the disqualification." (*Tri Counties Bank v. Superior Court* (2008) 167 Cal.App.4th 1332, 1337.)

Here, Cross-Defendant's challenge is based, in part, on the Court's ruling in a separate, unrelated case. In the Statement of Disqualification, Cross-Defendant admits he learned of those rulings approximately 10 days before the June 26, 2025 hearing on Cross-Defendant's motion to vacate. Nonetheless, Cross-Defendant asserted no claim of bias or disqualification until after he received the Court's tentative ruling prior to the hearing, he participated in the hearing and oral argument on his motion to vacate, and the Court made its final ruling denying that motion. Only at that time did Cross-Defendant seek to make an oral statement of disqualification. Neither this written Statement of Disqualification filed on July 3, 2025, nor the procedurally improper oral statement Cross-Defendant sought to make after the Court made its final ruling on June 26, 2025, can be said to have been made at the earliest practicable opportunity.

Moreover, Cross-Defendant's challenge also is based in part on the Court's earlier rulings in this case on Cross-Defendant's ex parte applications in March and May 2025. As to those such rulings, the Statement of Disqualification was not filed at the earliest practicable opportunity either.

Accordingly, the Statement of Disqualification is ordered stricken as untimely. (Code Civ. Proc., § 170.4, subd. (b).)

**A Judge Has a Duty to Rule When Not Disqualified**

A judge has both an ethical and statutory duty to decide cases where, as here, there are no legal grounds for disqualification. (Code Civ. Proc., § 170; Code Jud. Ethics, canon 3B(1).) The duty to decide cases if there are no legal grounds for disqualification is as strong as the duty to recuse if there are grounds. (*United Farm Workers, supra,* 170 Cal.App.3d at p. 100.)

**The Pleading Was Not Properly Served**

A statement of disqualification must be personally served on the judge or upon the judge's clerk provided the judge is present in the courthouse or in chambers. (Code Civ. Proc., § 170.3, subd. (c)(1).) Here, the Statement of Disqualification has not been personally served on the Court or the clerk. Cross-Defendant filed proof of service stating the Statement of Disqualification was e-served and served by mail. That fails to comply with the Code.

**Conclusion**

Because the Statement of Disqualification on its face discloses no legal grounds for disqualification and is untimely, it is stricken and denied. This determination is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought within 10 days of notice to the parties of the decision. (Code Civ. Proc., § 170.3, subd. (d).) In the event a timely writ is sought, and an appellate court determines an answer should have been timely filed, an alternative answer is filed herewith. (*See PBA, LLC, supra*, 112 Cal.App.4th at p. 972.)

GOOD CAUSE APPEARING THEREFORE, it is so ordered.

Date: July 11, 2025

Judge David Hesseltine

**VERIFIED ANSWER OF JUDGE DAVID HESSELTINE**

I, David Hesseltine, declare as follows:

1. I am a judge of the Superior Court of California, County of Orange, and have been assigned to preside over the instant matter. Except to the extent otherwise indicated, I have personal knowledge of the facts stated in this declaration. If called upon as a witness, I could and would competently testify to the matters stated herein.

2. The judicially noticeable court file reflects the complaint in this action was filed on August 18, 2015, judgment was entered against cross-defendant Adam Bereki (Cross-Defendant) on April 20, 2017, and that judgment was affirmed on appeal on October 31, 2018. Since March 18, 2025, I have presided over the post-judgment proceedings in this case.

3. On July 3, 2025, Cross-Defendant filed a document entitled "Verified Statement to Disqualify Judge David Hesseltine" (Statement of Disqualification). To my understanding, Cross-Defendant contends I am biased and prejudiced against him.

4. I specifically deny that I am biased or prejudiced for or against any party or attorney in this action. I further deny that I am unable to act fairly and impartially in this proceeding. I am not prejudiced or biased against or in favor of any party or attorney, nor am I unable to act impartially in this case. I have no personal interest in this proceeding and know of no reason why I cannot be fair and impartial.

5. I specifically deny that I have acted improperly in this action. All statements made, all actions taken, and all my rulings in this proceeding have been based on my understanding of the facts and law, and they have been in furtherance of what I believe to be my judicial duties. I have considered all relevant evidence and argument before making my rulings.

6. My statements and rulings are set forth in the court records and court files, which are the best evidence of the proceedings. To the extent moving party's account of

those rulings and statements is inconsistent with the court records and court files, it is denied.

7. For example, Cross-Defendant's assertion I denied him a court reporter is not accurate or supported by the record. Cross-Defendant did not timely or properly request a court reporter in advance of either the March 18 or May 21, 2025 ex parte hearings. In the Statement of Disqualification, Cross-Defendant admits to recording these ex parte proceedings in violation of, *inter alia*, California Rules of Court, rule 1.150. Cross-Defendant, however, did properly request a court reporter for the June 26, 2025 hearing on the motion to vacate, and I made sure one was provided consistent with Cross-Defendant's fee waiver. Similarly, I deny I have made any rulings or orders enforcing the judgment in the case. Rather, I have merely denied Cross-Defendant's efforts to set aside the judgment that was affirmed on appeal.

8. I do not believe my recusal would serve the interests of justice.

9. I know of no facts or circumstances that would require my disqualification or recusal in this case.

10. Cross-Defendant did not personally serve either me or my clerk with the Statement of Disqualification as required by Code of Civil Procedure section 170.3, subdivision (c)(1). His proofs of service state he e-served and mail served the Statement of Disqualification.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2025 at Santa Ana, California.

Judge David Hesseltine

| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE<br>Central Justice Center<br>700 W. Civic Center Drive<br>Santa Ana, CA 92702 | |
|---|---|
| **SHORT TITLE:** THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS | |
| **CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE** | CASE NUMBER:<br>**30-2015-00805807-CU-CO-CJC** |

I certify that I am not a party to this cause. I certify that a true copy of the above Order - Other dated 07/11/25 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 7/11/25. Following standard court practice the mailing will occur at Sacramento, California on 7/14/25.

ADAM BEREKI
3649 METTER STREET
LAS VEGAS, NV 89129

LAW OFFICES OF HAUSMAN & SOSA
20750 VENTURA BOULEVARD 105
WOODLAND HILLS, CA 91364-6646

LAW OFFICES OF WILLIAM G. BISSELL
23 CORPORATE PLAZA DRIVE 1501
NEWPORT BEACH, CA 92660

Clerk of the Court, by: _____, Deputy

I certify that I am not a party to this cause. I certify that that the following document(s), Order - Other dated 07/11/25, was transmitted electronically by an Orange County Superior Court email server on July 11, 2025, at 10:34:46 AM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

ADAM BEREKI
ABEREKI@GMAIL.COM

RUSSO & DUCKWORTH LLP
BYOTS@RUSSOANDDUCKWORTH.COM

Clerk of the Court, by: _____, Deputy

# Exhibit C

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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

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EVENT ID/DOCUMENT ID: 72990898

**EVENT TYPE**: Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

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**APPEARANCES**
Law Offices of William G. Bissell, from Law Offices of William G. Bissell, present for Cross - Complainant,Defendant,Respondent on Appeal(s).
Adam Bereki, self represented Defendant, present.

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Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. 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.

Counsel for the Humphreys to give notice.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C16

THE SPARTAN ASSOCIATES, INC.,

Plaintiff,

vs.

No. 30-2015-00805807

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual, and DOES 1 THROUGH 25, inclusive,

Defendants

---

GARY HUMPHREYS, an individual and KAREN HUMPHREYS, an individual;

Cross-Complainants,

vs.

ADAM BEREKI, an individual, et al.,

Cross-Defendants.

---

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 15, 2019

APPEARANCES OF COUNSEL:

FOR THE DEFENDANTS, CROSS-COMPLAINANTS: WILLIAM G. BISSELL, ATTORNEY AT LAW

FOR THE CROSS-DEFENDANT: ADAM BEREKI, IN PROPRIA PERSONA

JAMIE JENNINGS, CSR NO. 13434
OFFICIAL COURT REPORTER

INDEX

(NO WITNESSES)

(NO EXHIBITS)

SANTA ANA, CALIFORNIA - MARCH 15, 2019

MORNING SESSION

(PROCEEDINGS IN OPEN COURT:)

* * *

THE COURT: Thank you. Is there an appearance on court call, please.

Someone on court call, please.

THE CLERK: Mr. Bereki?

MR. BEREKI: Your Honor, can you hear me?

THE COURT: We can now. Please state your name.

MR. BEREKI: Adam Bereki in propria persona.

THE COURT: Thank you. Welcome.

MR. BEREKI: Thank you.

THE COURT: And then counsel for the plaintiff.

MR. BISSELL: William Bissell, Your Honor, for the opposing parties, Karen and Gary Humphreys.

THE COURT: Thank you very much. Okay. So we do have a court reporter here. I do want to find out how much time that you wanted to take to argue the matter, then I'll put that into my consideration as to when I'll call the case.

So, Mr. Bissell, did you have a time estimate, if any?

MR. BISSELL: Your Honor, we would submit on

the tentative.

THE COURT: Okay. Mr. Bereki, do you have a time estimate at all?

MR. BEREKI: 10 -- 10 minutes, Your Honor. I just have some questions to ask of you for clarity because my next step is obviously to go to the US Supreme Court, so I just want some clarity on your tentative.

THE COURT: Okay. Do you have -- do you have the tentative? Have you been able to pull it off the internet?

MR. BEREKI: Yes. I'm looking at it, Your Honor.

THE COURT: All right.

Okay. Very good. So I'll come back to you then.

MR. BEREKI: Thank you.

THE COURT: Thank you for your patience.

(Recess.)

THE COURT: Okay. The matter is Spartan Associates versus Humphreys.

MR. BISSELL: Good morning, Your Honor. William Bissell for Respondents, the Humphreys.

THE COURT: Thank you.

Mr. Bereki, would you make your experience.

MR. BEREKI: Yes, Your Honor. Adam Bereki in

propria persona. Your Honor, this case hinges upon whether federal constitutional protections were denied and whether the trial in appellate court had jurisdiction to deny these protections. The matter goes to the jurisdiction of the Court, not the merit as was cited in the tentative.

While the rule that Your Honor cited may be applicable, it cannot be used to overrule the federal constitutional protections that I'm contending were denied here. This is held in Miranda v. Arizona at 384 US 436 at 491. The US Supreme Court stated there: Where rights secured by the Constitution are involved, there shall be no rule-making or legislation that would abrogate them.

The law of case doctrine that was cited in the tentative authority, which is People v. Dutra, does not apply here. It states: Because the rule is merely one of procedure and does not go to the jurisdiction of the Court, the doctrine will not be adhered to where its application will result in an unjust decision. For example, where there has been a manifest misapplication of existing principles resulting in substantial injustice.

That is exactly what I'm claiming here, Your Honor, that there's been a substantial injustice. And so, because this is a motion to vacate a void

judgment, I'm challenging the jurisdiction of the court to issue the Humphreys costs, and they have not substantiated the jurisdiction of the court to violate the Constitution and award the costs or even to have judgment awarded in their favor.

THE COURT: Thank you very much. Thank you.

Counsel, did you want to say something?

MR. BISSELL: I'm not sure how to respond to that, Your Honor. It's clear that the question of jurisdiction has been determined not once but twice: Once at the trial court level, once at the appellate court level, and presented to the California Supreme Court and rejected as a -- as grounds for review at that level. The -- you know, the Superior Court is a court of general jurisdiction; it has jurisdiction over all matters not exclusively reserved to the Courts of Appeal or the California Supreme Court. It had subject matter jurisdiction over this action.

Mr. Bereki appeared at the trial in this matter, he presented his case, he presented evidence, he questioned witnesses, he cross-examined witnesses. So, clearly, he had submitted to personal jurisdiction in this case. So the jurisdiction question is, to me, put to rest. If he wants to raise it, he has to raise it at another level.

Now, Mr. Bereki here is -- he's unhappy with

the Court's ruling, with the Court's decision. He thinks it's in error. Well, that's not a void judgment. That's a judgment you take up on appeal. He's done that. He's lost on appeal. If he's still unhappy, he has another level to go. That's where he has to go. He has no business being in this court today to present this motion.

THE COURT: Thank you.

Mr. Bereki?

MR. BEREKI: Yes, Your Honor. This is not just a matter of me being unhappy with the judgment. The Supreme Court in Kokesh v. SEC recently heard this matter regarding disgorgement. And what the Court -- what the matter was before that court was, I believe, Mr. Kokesh -- there was a judgment awarded, a disgorgement judgment awarded against him for about $40 million. And there was a statute in this case -- the determination was to whether that disgorgement penalty was -- was a penalty or not, because, if it was, then the statute of limitations would apply and he would not be liable for that disgorgement.

So the court heard the matter and determined that the disgorgement in that case was a penalty.

So, in this case, there's been a near-million-dollar disgorgement judgment awarded against me. And I'm claiming that that judgment, based

upon the Kokesh decision by the Supreme Court, is a penalty. And if you apply the same holdings that they did in Kokesh to this case, it clearly evidences that the holding in this case is punitive as well.

So here's where the constitutional protections apply and why I'm challenging the jurisdiction of the court: Because a court does not have jurisdiction to violate either the California Constitution or the Constitution of the United States.

So if the trial in Appellate Court found that this award was not punitive, in spite of the fact that the US Supreme Court held that it was, I'm contending that the 14th Amendment protections for excessive punitive damage awards have to apply here and that essentially due process was violated because the court did not recognize that the judgment was punitive in nature.

So, in my mind, if the constitution's been violated, that's not a judicial act and the court doesn't have jurisdiction to do that, which is why I keep challenging jurisdiction. And, on appeal and in the trial court, I have not yet seen one authority presented by the Humphreys or by the courts that overrule the Supreme Court's authority in Kokesh or the more than 100 years' authority case cited in that case that discuss exactly what a punitive judgment is. And

the judgment in this case, disgorgement, strictly to be nonpunitive under the laws of restitution -- nonpunitive restitutionary disgorgement can only apply to the profits that I made acting as the, quote/unquote, unlicensed contractor in this case. Can't order disgorgement of all the moneys were paid whatsoever, because, once you go beyond profits, as the Court held in Kokesh, it becomes punitive.

So the Humphreys have to be able to substantiate how they got a near-million-dollar award that wasn't punitive. And nowhere in this case and nowhere in any of the decisions of the Appellate Court or anywhere else do they do that. So it's very clear to me that this award that goes beyond any compensation that I received is punitive.

And if you look at the Exhibit B, which is the order for judgment in this case, it lists damages at $848,000. Well, my contention is these are punitive damages. Well, if they are, then the 14th Amendment's protections for excessive punitive damages apply. And if you apply those protections in this case, the maximum award that they could have got is $5,000; not a million.

So, I mean, this is hugely, hugely significant, and the jurisdictional issue is not just me being upset with the Court's judgment. I'm happy to take a lick and keep going on with life, but I want to

# Exhibit D

# Exhibit E

Electronically Filed by Superior Court of California, County of Orange, 05/28/2025 02:59:00 PM.
30-2015-00805807-CU-CO-CJC - ROA # 361 - DAVID H. YAMASAKI, Clerk of the Court By J. Gomez, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**FOR THE COUNTY OF ORANGE– CENTRAL JUSTICE CENTER**

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.: 30-2025-01482941

**NOTICE OF MOTION AND MOTION TO VACATE VOID JUDGMENT**
**Hearing Res.: 74569641**

**INCORPORATED DECLARATION OF ADAM BEREKI IN SUPPORT OF MOTION TO VACATE**

**FILED CONCURRENTLY WITH REQUEST FOR JUDICIAL NOTICE**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on July 17, 2025 ~~June 26, 2025~~, at 2:00 PM, in Department C23 of the Superior Court of California, County of Orange, located at 700 W. Civic Center Dr., Santa Ana, California, Defendant Adam Bereki ("Defendant") will move this Court for an order to:

1. Vacate the Void Judgment in Case No. 30-2015-00805807, entered on April 20, 2017, and appeal entered on October 31, 2018, Case No. G055075, as a bill of pains and penalties in violation of Cal. Const. Art. I, § 9 and U.S. Const. Art. I, § 10, and excessive fine in violation of Cal. Const. Art. I, § 17, along with other Constitutional violations (listed below) based on new evidence of extrinsic fraud and fraud on the court pursuant to the Court's inherent equitable jurisdiction, Cal. Const. Art. I, § 26,

U.S. Const. Art. VI, § 2. The new evidence includes a U.S. Supreme Court case, *Liu v. SEC*, 591 U.S. 71 (2020) defining the nature and scope of the equitable remedy "disgorgement" used to conceal the penal forfeiture in this case and *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020), recognizing the penal nature of Cal. Business & Prof. Code § 7031.

2. Declare the Law of the Case, Finality, Res Judicata and Collateral Estoppel Doctrines Inapplicable, as the judgment is void ab initio due to lack of personal and subject matter jurisdiction, extrinsic fraud, and constitutional violations, supported by the new evidence.
3. Order Restitution of all rights and property lost and damages incurred in accordance with law. In addition to the deprivation of rights and property evidenced herein and Defendant's Declaration in support, he will submit an accounting upon the Court's award of judgment in his favor for all expenses, rights, damages, and property lost as a result of the judgment. Some of these claims may require an additional opportunity for adversarial proceedings (i.e., emotional distress claims and the loss of his home in foreclosure sale).
4. Grant Declaratory Relief identifying each constitutional violation raised herein rendering the judgment void, including the unconstitutionality of Cal. Bus. & Prof. Code § 7031(a) and (b) as applied.
5. Provide other relief in accordance with law or equity as the Court deems reasonable and just.

This motion is based on the Court's inherent equitable authority, Cal. Const. Art. I, § 26, U.S. Const. Art. VI, § 2, and new evidence proving the judgment's punitive nature and voidness on the face of the record. It is supported by this Notice, the attached Memorandum of Points and Authorities, the Declaration of Adam Bereki, all pleadings in Case No. 30-2015-00805807, and appellate Case No. G055075, the concurrently filed Motion for Judicial Notice (including certified legislative history of Cal. Bus. & Prof. Code § 7031(b) as RJN Ex. 13), Exhibits 1–3 attached hereto, and any further evidence or argument at the hearing.

Dated: May 28, 2025

By: _____

Adam Bereki

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Defendant Adam Bereki moves to vacate the April 20, 2017, judgment in Case No. 30-2015-00805807 and the judgment in Court of Appeal Case No. G055075 issued October 31, 2018, a bill of pains and penalties imposing a ~$930,000 penalty ($848,000 under Cal. Bus. & Prof. Code § 7031(b) and ~$82,000 denied under § 7031(a)) for alleged unlicensed contracting, in violation of Cal. Const. Art. I, § 9, U.S. Const. Art. I, § 10, and other due/judicial process violations. 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 Defendant personally performed construction work, as required by CACI 4560(3), and misapplication of § 7031(a) and (b) when, assuming Defendant violated the licensing laws which he disputes, § 7028.5 would have been the correct statute. Section 7031(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: *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020) (§ 7031(b) imposes a punitive forfeiture, not equitable relief) and *Liu v. SEC*, 591 U.S. 71, 79 (2020) (disgorgement as an equitable remedy limited to net profits, unlike § 7031(b)'s total forfeiture penalty when value is returned but not offset). As applied, § 7031(b) is unconstitutional, violates due/judicial process, the Excessive Fines Clause, and the prohibition on bills of pains and penalties. The Court has a mandatory, non-discretionary ministerial duty to vacate this facially void judgment pursuant to Cal. Const. Art. I, § 26 and U.S. Const. Art. VI, § 2, as both the letter and spirit of the law require immediate vacatur of judgments lacking jurisdiction (*Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002) (unconstitutional acts are void under Cal. Const.); Courts cannot affirm void judgments, which are nullities subject to direct and collateral attack at any time (*Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898) ("[a] void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one"; *Elliot v. Piersol*, 26 U.S. 328, 340 (1828). The Court must grant restitution of all rights and property lost and damages caused by the effects of the void judgment and the automatic summary penal license suspension under § 7071.17.

## II. FACTUAL BACKGROUND

In 2012, Defendant's company, The Spartan Associates, Inc. (General Contractor License #927244), for which Defendant was the Qualifying Individual and Responsible Managing Officer, contracted with the Humphreys for a condominium remodel in Newport Beach (Ex. 1 [Reporter's Transcript 3/27/17] p.131, Lines 22-24 [Defendant is Qualifying Individual for Spartan's License]). All work on the project was by Spartan and its licensed subcontractors (Ex. 1: p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and sub-contractors performed all work]; p. 129, Lines 12-15 [Spartan obtained building permits]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]). The Humphreys paid Spartan and Defendant $848,000 but disputed ~$82,000 in money Spartan claimed it was owed. Spartan sued (ROA 2), and the Humphreys cross-complained under § 7031(b), alleging Defendant personally contracted without a license (ROA 144 [First Amended Cross-Complaint]). On March 28, 2017, Judge David Chaffee (Ret.) ruled Defendant was the unlicensed contractor, awarding $848,000 for "disgorgement" and denying ~$82,000 (ROA 193 [Minute Order 3/28/17]; RJN Ex. 1), despite no known evidence Defendant performed any work that required a license, as required by CACI 4560(3) (Decl. ¶ 15). The judgment was entered April 20, 2017 for "damages" (ROA 200; RJN Ex.1) despite no known evidence of "damages" presented at trial (Decl. ¶ 10). Defendant, self-represented, was misled about the action's penal nature, waiving jury trial (Decl. ¶'s 6, 7, 8). He was also denied counsel and all other heightened protections required in criminal proceedings (Id.). The ~$930,000 penalty, estimated 40 times his qualifying net worth (Decl. ¶ 12), triggered automatic summary license suspension under § 7071.17 (Decl. ¶'s 3, 12) causing an estimated $3 million in lost earnings. (Decl. ¶'s 2, 12). The Fourth District Court of Appeal (Case No. G055075) affirmed, and relief was denied by the California Supreme Court (Case No. S252954), U.S. Supreme Court (Case No. 18-1416), and U.S. District Court for the Central District of California (Case No. 8:19-CV-02050). (Decl. ¶ 19; RJN Ex.'s 1-12).

## III. LEGAL STANDARD

### A. Definition of a Facially Void Judgment

A judgment is void on its face when the defect rendering it invalid—specifically a lack of personal or subject matter jurisdiction or a fundamental due/judicial process violation—is apparent from the judgment roll or the court's record without requiring extrinsic evidence (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018)). The judgment roll, per CCP § 670, includes the complaint, cross-complaint, judgment, and any documents referred to in the judgment, such as the trial record. *Rochin v. Pat Johnson Mfg. Co.*, 67 Cal. App. 4th 1228, 1239 (1998) defines this standard: "A judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant, is subject to collateral attack at any time. An attack on a void judgment may also be direct, since a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored." (Citations omitted). Voidness arises from: • Lack of Subject Matter Jurisdiction: The court lacked authority, such as by applying an incorrect statute and/or Plaintiff's failure to state a claim under a statute (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 541 (2021) • Lack of Personal Jurisdiction: The court lacked authority over the defendant due to improper service of a criminal complaint (*Albrecht v. United States*, 273 U.S. 1, 8 (1923) (lack of proper service voids judgment)). • Due Process Violations: Fundamental procedural errors, such as imposing a judgment without evidentiary support or criminal safeguards, evident from the record (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018), *Thompson v. Louisville*, 362 U.S. 199 (1960)). The court has a mandatory, non-discretionary ministerial duty to vacate a facially void judgment under Cal. Const. Art. I, § 26 and U.S. Const. Art. VI, § 2, as unconstitutional acts are without authority and void ab initio (*Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002); Courts cannot affirm void judgments, which lack legal effect and are subject to collateral attack at any time (*Bennett, Piersol, supra)*; *Ware v. Stafford*, 206 Cal. App. 2d 232, 239 (1962) (uncontroverted evidence of invalidity mandates vacatur)).

**B. Equitable Jurisdiction to Vacate Void Judgments**

Independent of statutory limits (which are intentionally not cited or relied on as statutes such as CCP § 473 cannot shield void and/or fraudulent judgments), the court's inherent equitable jurisdiction mandates vacatur of void judgments at any time, especially

for extrinsic fraud or fraud on the court, without requiring facial voidness (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942) (equity requires vacatur for fraud)). It is well established that equity will not permit a statute [such as § 7031(a) and/or (b) and/or CCP § 473] to be used as a cloak for fraud as statutes cannot shield fraudulent judgments and equity will not suffer a wrong to be without a remedy. Extrinsic fraud, such as preventing a fair hearing, requires vacatur (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). This is a mandatory non-discretionary ministerial duty as void judgments are nullities (*Thompson v. Cook*, 20 Cal. 2d at 569–73).

**C. The Laws of Finality and of Case Do Not Apply to Void Judgments**

The law of the case doctrine does not apply to void judgments or when new law alters the legal landscape. *People v. Boyer*, 38 Cal. 4th 412, 442 (2006). Additionally, "the doctrine is one of procedure, not jurisdiction, and it will not be applied where its application will result in an unjust decision, e.g., where there has been a manifest misapplication of existing principles resulting in substantial injustice" (Id. at p.441; citations and internal quotations omitted). New authorities (*Liu v. SEC*, 591 U.S. 71 (2020); *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201 (2020)) and evidence of fraud and constitutional violations negate its application.

The rule of finality of judgments promotes judicial economy by treating a final judgment as conclusive, but this principle does not shield void judgments, which lack legal sanction due to jurisdictional or procedural defects. The U.S. Supreme Court in *Elliot v. Piersol*, 26 U.S. 328, 340 (1828), California Supreme Court in *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th 1228, 1239 (1998), hold that a judgment issued by a court without jurisdiction is void. It "neither binds nor bars any one" (*Rochin* at p.1240) "and form[s] no bar to a remedy sought in opposition [...], even prior to a reversal" (*Piersol* at p.329) and cannot, therefore, support execution or preclude direct or collateral attack.

**E. The Doctrines of Res Judicata and Collateral Estoppel Do Not Apply**

The doctrines of res judicata and collateral estoppel also do not apply, as the judgment was procured by extrinsic fraud through the Humphreys' and Bissell's conspiracy to usurp executive power under Cal. Bus. & Prof. Code § 7031(a) and (b), with judicial

acquiescence, rendering the court without subject matter and personal jurisdiction (*Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App. 4th at 1239 (res judicata inapplicable to void judgments). Defendant contends that because the Superior Court lacked personal and subject matter jurisdiction and the appellate Court to affirm, there was no "actual litigation" that occurred and no "issues" were lawfully "decided". As a result, no order, "final and on the merits", was ever made. Applying preclusion would undermine judicial integrity, contrary to *Lucido v. Superior Court*, 51 Cal. 3d 335, 342–43 (1990) (preclusion cannot shield fraud). *People v. Dutra*, 145 Cal. App. 4th 1359, 1365 (2006) limits post-remittitur jurisdiction to valid judgments, not void ones (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)). The judgment's facial voidness (*Pittman v. Beck Park Apartments Ltd.*, 20 Cal. App. 5th 1009, 1020 (2018)) and prior affirmances do not bar relief.

## IV. THIS COURT HAS A MANDATORY NON-DISCRETIONARY MINISTERIAL DUTY TO GRANT RELIEF

This Court has a mandatory, non-discretionary ministerial duty to grant Defendant's Motion to Vacate the void judgment in Case No. 30-2015-00805807 and appeal in Case No. G055075, as they were procured through extrinsic fraud, lack of subject matter and personal jurisdiction, and violations of fundamental constitutional protections, resulting in irreparable harm. The California Constitution, Article I, Section 26, declares its provisions "mandatory and prohibitory," rendering any action in violation thereof void (*Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 306–07 (2002)). *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 308 (1795), reinforces that judicial acts contravening constitutional mandates are "absolutely void," leaving courts no discretion to uphold them.

The judgment's defects constitute structural jurisdictional errors, as defined in *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938), where the U.S. Supreme Court held that denial of the Sixth Amendment right to counsel deprives a court of jurisdiction, rendering the proceeding void. Here, the Humphreys' unauthorized criminal prosecution under Business and Professions Code § 7031(a) and (b), lacking executive authority (Cal. Const. Art. V, § 1), and the fraudulent concealment of the action's penal nature denied Defendant criminal safeguards, including counsel, jury trial, and proof beyond a reasonable doubt, tainting the entire framework of the trial (*Weaver v. Massachusetts*, 582 U.S. 286, 295–96 (2017). These structural jurisdictional errors, compounded by extrinsic fraud, render the judgment void ab

initio, mandating automatic reversal without discretion (*Johnson v. Zerbst*, 304 U.S. at 467–68; *In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)).

The Humphreys' prosecution, misrepresenting a criminal action as civil, constituted extrinsic fraud, denying Defendant a fair hearing (*Olivera v. Grace*, 19 Cal. 2d 570, 575 (1942)). This fraud, compounded by judicial acquiescence, corrupted the judicial process, stripping jurisdiction (*County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982); *Albrecht v. United States*, 273 U.S. 1, 8 (1923)). The court's authority to vacate this void judgment is unaffected by prior appeals, as *MacMillan Petroleum Corp. v. Griffin* held: a court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree—a void order. 99 Cal. App. 2d 523, 533 (1950). A void judgment "neither binds nor bars any one" (*Rochin* at p.1240) "and form[s] no bar to a remedy sought in opposition [...], even prior to a reversal" (*Piersol* at p.329).

*People v. Dutra* clarifies that post-remittitur jurisdiction rests on the law of case doctrine, which is limited to valid judgments. As a void judgment, the judgments in the instant case and appeal are outside this limitation, allowing vacatur at any time (*Olivera v. Grace*, 19 Cal. 2d at 574).

The Court's inherent equitable powers obligate it to set aside this void judgment at any time (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)). The ongoing irreparable harm—foreclosure of Defendant's home, loss of ~$1.2 million in equity, and destruction of his livelihood—underscores the urgency of this duty. Equity demands that this Court grant the motion to vacate, declare the judgment void, and restore Defendant's rights, as any discretion to uphold a void judgment would contravene the Constitution's supremacy as previously evidenced.

## V. ARGUMENT

### A. Section 7031(b) Is a Penal Action, Not a Civil Remedy

**Legislative History Confirms Punitive Intent**: The Legislative History of § 7031(b) (RJN Ex. 13) and specifically bates number page 860 thereof, explicitly confirms its punitive

intent: "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, 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, those using unlicensed contractors 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". See also *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005) (confirming Legislative intent to "impose a stiff all-or-nothing penalty"); (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020); *Smith v. Doe*, 538 U.S. 84, 92 (2003) (punitive intent indicates penal action)). This legislative intent to punish, rather than compensate, underscores the penal nature of § 7031(a) and (b) as applied.

**Punitive Nature Voids Judgment**: The judgment under Cal. Bus. & Prof. Codes § 7031(a) and (b) is void because it imposes a penal sanction without criminal safeguards, as evidenced in *Hale v. Morgan*, 22 Cal. 3d 388, 398–401 (1978). *Hale* holds that a statute is penal if it serves a punitive rather than remedial purpose, requires no proof of harm, and imposes disproportionate sanctions. Section 7031(a) and (b) as applied meet this criteria: they enforce a "stiff all-or-nothing penalty" to deter unlicensed contracting (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005)), require no evidence of harm (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020); see also e.g. *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.,* 232 Cal. App. 4th 1332, 1357, (2015) ("[a]ny provision by which money or property is to be forfeited without regard to the actual damage suffered calls for a penalty and is therefore void")) are intended as deterrents (*White v. Cridlebraugh*, 178. Cal.App. 4th 506, 519 (2009) ("[t]he statute's harsh results are justified by the importance of deterring violations of the licensing requirements" [Citation]), are not remedial/ do not restore the status quo as the Humphreys were unjustly enriched by receiving both the benefit of $930,000 in custom remodel work and a ~$848,000 refund—approximately 40 times Defendant's qualifying net worth and 186 times the maximum $5,000 fine for the same offense under § 7028 (criminal statute)—without proportionality or ability to pay analysis. § 7031(a) and (b) as applied also bypass any judicial discretion evidencing that it functions as a Legislative penalty. By applying this penal statute without executive authority, criminal protections (e.g., jury trial, counsel), or

excessive fines safeguards, the court lacked jurisdiction, rendering the judgment facially void.

**Not Equitable Disgorgement**: Equitable disgorgement is limited to "net profits from wrongdoing" after deducting legitimate expenses (ie value conferred) (*Liu v. SEC*, 591 U.S. 71, 79 (2020)). Offsets were denied and no evidence showed profits or harm (ROA 193 [Minute Order for "disgorgement of funds paid" not profits]; Ex. 1 [Reporter's Transcript); ROA 144- First Cause of Action demanding "all sums paid" without reductions or offsets for expenses; Defendants claim for set off (ROA 166), was ignored making the ~$930,000 award a punitive forfeiture, not equitable disgorgement.

**Private Prosecution Lacks Executive Authority:** Sections 7031(a) and (b) target unlicensed contracting, a misdemeanor under § 7028 (maximum $5,000 fine), but allows private parties to impose penalties 186 times higher without executive authority for the same offense. Criminal prosecutions are exclusively reserved to the executive under Cal. Const. Art. V, § 1. The Humphreys' action was *ultra vires*, stripping jurisdiction.

**Lack of Criminal Safeguards**: By mislabeling § 7031(a) and (b) as civil, the court denied notice of penal consequences, jury trial, counsel, and proof beyond a reasonable doubt, which are required for punitive actions (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006); *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938) (right to counsel in punitive actions)).

**B. The Duplicative Penalty Under § 7031(b) Constitutes Extrinsic Fraud and a Criminal Penalty**

The judgment's imposition of a ~$930,000 penalty ($848,000 awarded under § 7031(b) and ~$82,000 denied under § 7031(a)) is facially void because it fraudulently requires Defendant to return compensation twice, covertly imposing a criminal fine within the definition of a public offense under Cal. Penal Code § 15, with the same elements as § 7028, through extrinsic fraud and without criminal safeguards. This duplicative penalty, misrepresented as a civil remedy (through 'civil' proceedings), denied Defendant a fair hearing and corrupted the judicial process (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)).

Defendant's company, The Spartan Associates, Inc. (License #927244), for which Defendant was the Qualifying Individual and Responsible Managing Officer, contracted with the Humphreys for a condominium remodel, performing all work through Spartan or its licensed subcontractors sub-contractors (Ex. 1 [Reporter's Transcript 3/27/17] p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and subcontractors performed all work]; p. 129, Lines 12-15 [Spartan obtained permit]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]). The Humphreys paid Spartan and Defendant $848,000, receiving equivalent value (Decl. ¶ 15), as no evidence in the judgment roll shows defective work or harm (ROA 144 [First Amended Cross-Complaint First Cause of Action for § 7031(b) alleging no evidence of harm or damages]; ROA 193 [Minute Order]-finding no evidence of harm or damages; (Decl. ¶ 10)). The Humphreys' First Amended Cross-Complaint under § 7031(b) (ROA 144) alleged Defendant personally contracted without a license, seeking "disgorgement" of all compensation paid. The court ordered Defendant to repay $848,000 (ROA 193 [Minute Order] awarding "Disgorgement of funds paid"), requiring him to return the same compensation twice—once through Spartan's licensed work and again through the judgment—without offsets for value provided. Defendants claim for set off (ROA 166), was ignored. This duplicative penalty is not equitable disgorgement, which requires deducting legitimate expenses to limit recovery to "net profits from wrongdoing" (*Liu v. SEC*, 591 U.S. 71, 79 (2020)), but a punitive forfeiture, as the Humphreys retained ~$930,000 in remodel value yet received an $848,000 windfall (*Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th 1201, 1212 (2020)). No evidence of Defendant's profits was admitted (Decl ¶11); Ex.1 Reporters Transcript]. Section 7031(b) mirrors § 7028, which criminalizes unlicensed contracting as a misdemeanor (max $5,000 fine), by targeting the same offense: performing or contracting for construction work without a license. Both statutes require identical elements—acting as a contractor without licensure—yet § 7031(b) imposes a penalty 186 times higher (~$930,000 vs. $5,000) without executive authority or criminal safeguards. Cal. Penal Code § 15 defines a crime or public offense as an act punishable by, inter alia, a fine, and *Ex parte Clark*, 24 Cal. App. 389, 394 (1914), holds that "punishment of any kind inflicted by law" is "essentially criminal." The ~$930,000 penalty, labeled "damages" (ROA 200; RJN Ex. 1 [Judgment Order]), is a fine for unlicensed contracting, rendering § 7031(a) and (b) covert criminal actions requiring criminal protections (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)). The Humphreys

and their counsel, William Bissell, committed extrinsic fraud by misrepresenting this penal action as civil, inducing Defendant to waive his jury trial and forgo protections like counsel and proof beyond a reasonable doubt (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). No sworn information or criminal complaint was filed, required to vest the court with subject matter jurisdiction (*Cal. Gov't Code § 100; Albrecht v. United States, 273 U.S. 1, 8 (1923)).* Judge Chaffee's acquiescence, despite knowing § 7031's "draconian" effect *(MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., 36 Cal. 4th 412, 426 (2005);* (Ex. 1 [Reporter's Transcript 3/28/17], p. 29, lines 13-15) entrenched this fraud, denying a fair hearing (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). The term "draconian" means excessively harsh or severe (*Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/draconian, accessed May 17, 2025). Section 7031(a) and (b)'s structure enables this fraud by transferring executive power to private parties, violating separation of powers *(Cal. Const.* Art. III, § 3; Art. V § 1; e.g. *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). The ~$930,000 penalty, approximately 40 times Defendant's qualifying net worth, is grossly disproportionate, imposed without proportionality analysis, and failed to account for his inability to pay it (Art. I, § 17; *People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020). This constitutes a bill of pains and penalties, punishing without judicial process (*Cal. Const.* Art. I, § 9; U.S. Const. Art. I, § 10). The judgment roll confirms these defects: the First Amended Cross-Complaint First Cause of Action (ROA 144) targets the same offense as § 7028, and the judgment (ROA 193 [Minute Order) imposes a fine (total forfeiture) without evidence of harm, Defendant's personal work, profits, or offsets for value conferred. The court lacked subject matter and personal jurisdiction due to this unauthorized prosecution, rendering the judgment facially void.

**C. The Judgment Is Facially Void Under *Pittman* and *Rochin***

The 2017 judgment is void on its face, as the judgment roll demonstrates lack of subject matter and personal jurisdiction and due process violations. The Court has a mandatory, non-discretionary ministerial duty to vacate this fascial void judgment pursuant to *Pittman* and *Rochman*, supported by Cal. Const. Art. I, § 26 and U.S. Const. Art. VI, § 2, as unconstitutional acts are void (*Katzberg, Dorrance, Bennett, Piersol*) for the following reasons:

**Due Process Violation (Penal Nature Without Criminal Safeguards):** The ~$930,000 penalty imposed under § 7031(a) and (b) by a court lacking personal and subject matter jurisdiction (imposed without criminal safeguards) is a bill of pains and penalties, violating due/judicial process. The judgment roll shows: 1) First-Amended Cross-Complaint First Cause of Action (ROA 144): seeks a total forfeiture under § 7031(b) of "all sums paid" (Id. p.4) without offsets for benefits conferred, profits, or allegations of damages, admitting intent to punish Defendant for violating § 7028 in a civil action. See also First Amended Trial Brief ROA 168 ("[Defendant] [...] was unlicensed as a contractor in violation of [...] § 7028. As a consequence, [Plaintiff's are entitled to recover all sums [...]"; 2) Judgment: ([Minute Order] ROA 193; RJN Ex. 1) imposes a $848,000 penalty (and denies ~$82,000 under § 7031(a), totaling ~$930,000) labeled as for "Disgorgement of Funds Paid" and "damages" ([Judgment Order] ROA 200, RJN Ex. 1) without jury trial or counsel. § 7031(b) does not mention or authorize "disgorgement" an equitable remedy (*Liu v. SEC*, 591 U.S. 71 (2020)) or "damages". It imposes a "stiff all-or-nothing penalty" (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 426 (2005); Legislative History, p.860. RJN Ex. 13 [intending punishment]). Pleadings show: 1) Defendant's self-represented status (ROA 141); 2) Imposition of a duplicative penalty requiring Defendant to repay $930,000 already returned or provided through Spartan's licensed work, covertly imposing a criminal fine under Cal. Penal Code § 15 for the same offense as § 7028, without criminal safeguards (ROA 193; *Eisenberg Village v. Suffolk Constr. Co.*, 53 Cal. App. 5th at 1212; *Hale v. Morgan*, 22 Cal. 3d 388, 398–401 (1978); *Ex parte Clark*, 24 Cal. App. 389, 394 (1914) (punitive fines are criminal)). This punitive penalty without safeguards is facially void under *Pittman and Rochin.*

**Due Process Violation (No Evidence Defendant Performed Work):** The judgment violates due process because no known evidence showed Defendant personally performed work, as required by CACI 4560(3) (*Thompson v City of Louisville*, 362 U.S 199, 204 (1960) (judgment without evidence violates due process)). CACI 4560(3) instructs that to establish a violation of § 7031(b) the claimant must prove the defendant "performed work requiring a contractor's license." The judgment roll shows: 1) First-Amended Cross-Complaint First Cause of Action (ROA 144): Focuses on Plaintiff's agreement(s) not Defendant's performance, relying on emails showing communication, not work performed; The Cross-Complaint alleges Defendant orally agreed to perform home improvement work and

"performed services" until August 31, 2013, but also claims he "substitute[d] his corporation [Spartan] as the contractor on the project." This vague "services" allegation lacks specificity about licensed work as required by CACI 4560(3), is unsupported by trial evidence, and contradicted by the proceeding allegation that "[Spartan] [w]as the contractor on the project". The Humphreys' trial strategy, adopted by the court, relied on emails suggesting Defendant contracted, potentially satisfying only CACI 4560(1)(contracting), not CACI 4560(3) (performing licensed work). Previously, the Humphreys also represented in their Motion for Summary Judgment (ROA 66, p. ii) that the "undisputed facts" were that Spartan, a "licensed building contractor," entered the agreement. Their later claim that Defendant acted independently lacks evidence, as the record is void of any work in the emails being performed by Defendant or anyone for that matter because it never was (the project in the emails was abandoned when the Humphreys bought a second unit); 2) Minute Order (ROA 193): Labels Defendant an "unlicensed contractor" without evidence of work performed. 3) Trial Record (Ex. 1 [Reporter's Transcript]): Shows only Spartan and its sub-contractors performed the work (Ex. 1 [Reporter's Transcript 3/27/17] p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and sub-contractors performed all work]; p. 129, Lines 12-15 [Spartan obtained permit]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]); Defendant admittedly received checks payable in his name and did issue some checks payable for work from his named bank account in which these checks were deposited. Banking deposits or withdrawals do not directly evidence work performance (Defendant was the sole owner of Spartan whose profits (and losses) as a subchapter S elected corporation flowed through to him); 4) The Humphreys' failure to present direct evidence that Defendant personally performed work required to be licensed, despite Spartan being listed on the Newport Beach building permits as the contractor (Id.); Spartan's sign posted on the property (Ex. 1 [Reporter's Transcript 3/27/17] p.148 Lines 19 – p.149, Line 15; p. 154, Lines 9-10 Exhibit 30-1 received; Ex.3 (annexed hereto)) and Spartan receiving $758,000 in payments from the Humphreys (Ex. 1 [Reporter's Transcript 3/27/17] p.141 Line 17 – p.143, Line 9) confirms the judgment's lack of evidentiary support (under both the preponderance and beyond reasonable doubt standards) rendering it void. *(Thompson,* supra). This absence of evidence is facially void under *Pittman and Rochin.* Furthermore, Defendant, as the Qualifying Individual (the being who possessed the experience and met the exam requirements; Ex. 1 [Reporter's Transcript 3/27/17] p.131,

Lines 13-24)) for The Spartan Associates, Inc. (License #927244), deemed a "licensee" under § 7096, was competent as a general contractor as determined by the Contractors State License Board and acted under his and Spartan's license. Spartan's license cannot survive without a qualifying individual.

**Lack of Subject Matter and Personal Jurisdiction (Misapplication of § 7031(a) and (b) and Unauthorized Prosecution):** The court lacked subject matter and personal jurisdiction by applying Cal. Bus. & Prof. Codes § 7031(a) and (b), penal statutes imposing a "stiff all-or-nothing penalty" to deter unlicensed contracting (*MW Erectors,* supra). The Humphreys lacked constitutional standing and the capacity to prosecute a penal action under § 7031(b), which requires executive authority (Cal. Const. Art. V, § 1). The judgment roll confirms these defects: 1) No sworn information, indictment, or criminal complaint was served, rendering the prosecution *ultra vires* (*Buis v State*, 1990 OK CR 28, p.4 (1990) ("jurisdiction of all justiciable matters can only be exercised [...] through the filing of pleadings which are sufficient to invoke the power of the court to act" (internal quotations omitted); *Albrecht v. United States*, 273 U.S. 1, 8 (1923) ("[a] person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court"; Cal. Penal Codes § 949, § 959 § 1382 (mandating dismissal). 2) Cross-Complaint (ROA 144) fails to allege specific licensed work by Defendant; 3) Judgment (ROA 193, 200) applies § 7031(b), awarding $848,000 and denying ~$82,000 under § 7031(a) (totaling ~$930,000), without addressing Defendant's licensee status (e.g Ex. 1 [Reporter's Transcript 3/27/17] p.131, Lines 13-24) (RJN, Ex. 1 [Minute Orders and Judgement Order]), orders relief without a criminal complaint filed on behalf of the People or under Executive authority per Cal Const. Art. V, § 1; 3) Trial Record (Ex. 1 [Reporter's Transcript 3/27/17] p. 125, Lines 2-8; p.140, Line 10 – p.143 Line 9 [Spartan and sub-contractors performed all work]; p. 129, Lines 12-15 [Spartan obtained permit]; p.131, Line 25 – p.133, Line 8 [building permits admitted into evidence]; Ex. 2 [Building Permits]) shows Spartan performed the work and was paid for the work. A Plaintiff must have standing for each type of relief sought (e.g. *Summers v. Earth Island Institute*, 555 U.S. 488 (2009)) and a lack of standing is a jurisdictional defect (*People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018)). Plaintiffs lack the capacity or standing to any relief awarded and never stated (and lawfully cannot) state a claim as § 7031(a) and (b) were applied in this

case. These jurisdictional errors, combined with the unauthorized prosecution, render the judgment facially void (*Pittman, Rochin).*

**Applicability of § 7028.5 (Exemption for Individuals Under Licensed Contractor's Supervision):** Assuming arguendo Defendant violated the licensing laws, which he contests, the court erred by applying § 7031(b) instead of § 7028.5, which exempts individuals acting under a licensed contractor's supervision from such penalties (§ 7028.5(a)). Defendant, as the Qualifying Individual for The Spartan Associates, Inc. (License #927244), deemed a "licensee" under § 7096, was competent as a general contractor as determined by the Contractors State License Board and acted under Spartan's and his license (the license cannot survive without his qualifying it). The trial record and unrebutted testimony confirm all work requiring a license was performed by Spartan or its licensed subcontractors, rendering § 7031(b) inapplicable. To the extent §7028.5 could have applied, the court violated due process by applying the wrong statute *(Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528, 541 (2021)). However, like § 7031(a) and (b) as applied, civil courts lack jurisdiction to adjudicate § 7028.5 claims, which are enforced by the Contractors State License Board (administrative fines) or criminal courts (misdemeanor prosecution).

**D. Constitutional Violations Rendering the Judgment Void**

Each violation below mandates vacatur under Cal. Const. Art. I, § 26: Due Process Violations (Cal. Const. Art. I, § 7): • Misrepresentation of the action as civil (ROA 144, seeking § 7028 punishment as "disgorgement" and judgment as "damages") (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires fair notice)). • Denial of jury trial due to reliance on misrepresentation (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006); • Denial of counsel (Art. I, § 15; *Johnson v. Zerbst*, 304 U.S. 458, 467–68 (1938) (right to counsel in punitive actions; • Lack of personal jurisdiction: No criminal complaint filed • Unaddressed statute of limitations and set off defenses (ROA 166). • No evidence Defendant performed work (*Thompson v. Louisville*, 362 U.S. 199 (1960) • No evidence Defendant was a "person" required to be licensed (*Thompson v. Louisville*, 362 U.S. 199 (1960)• No evidence of harm or profits, with "damages" award (*Thompson v. Louisville*, 362 U.S. 199 (1960); ROA 193, 200; RJN Ex. 1) (Decl. ¶ 10)) • Excessive Fines

(Cal. Const. Art. I, § 17;): The ~$930,000 penalty, ~40 times Defendant's qualifying net worth and 186 times § 7028's $5,000 cap, is grossly disproportionate, imposed without proportionality and Defendants ability to pay analysis (*People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020). This bill of pains and penalties, imposed by a court acting *coram non judice* due to lack of jurisdiction, violates constitutional limits. Bill of Pains and Penalties (Cal. Const. Art. I, § 9; U.S. Const. Art. I, § 10): The penalty punished without judicial process, as the court lacked jurisdiction. Separation of Powers (Cal. Const. Art. III, § 3): The Humphreys' penal prosecution violated executive authority (Art. V, § 1, e.g *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). Right to Contract and Liberty (Cal. Const. Art. I, § 1, U.S. Const. Art I, §10): The mandatory summary penal license suspension imposed pursuant to the judgment and §7071.17 when Defendant was unable to pay the judgment (Decl. ¶ 12)) impaired Spartan's contracts with other clients, violating Defendant's right to contract and liberty and vested right to licensure and resulted in another bill of pains and penalties. Inalienable Rights (Cal. Const. Art. I, § 1): The judgment and license suspension, individually and/or collectively violated Defendant's inalienable rights to liberty (right to lawful court access; to pursue employment in an ordinary vocation of life; to a judicial determination of rights in the first instance), property (to pursue employment and earn a living; vested property right in contractor's license), privacy (to not be harassed by lawless claims and *ultra vires* action/punishment sanctioned by state authorities but without authority), and the pursuit of happiness (to not be harassed by lawless claims and ultra vires state action/punishment). Petition for Redress (Cal. Const. Art. I, § 3): The imposition of appellate cost awards (Case No. G055075, RJN Ex. 2) retaliated against Defendant's attempts to seek redress, violating petition rights; additionally, these rights were further violated by refusal of the Cal. Supreme Court, U.S. Supreme Court, and U.S. District Court to exercise jurisdiction to vacate the void judgment (*Elliot v. Piersol*, 26 U.S. 328, 340 (1828) (enforcement of void judgment is trespass).

**E. Due Process Violations in Appeal as Final Judgment**

The appellate judgment in Case No. G055075, issued October 31, 2018, constitutes a further due process violation, rendering it void. Justices Aronson, Goethals, and O'Leary denied Defendant a full, fair, and impartial appeal by affirming a facially void judgment without addressing the Humphreys' lack of prosecutorial authority, the penal nature of §

7031(b), or the absence of evidence supporting the penalty. The trial court's lack of subject matter and personal jurisdiction due to the Humphreys' unauthorized prosecution deprived the appellate court of authority to affirm, mandating dismissal or remand (*Elliot, Barrett*). Their opinion relied on inapposite cases (*S.E.C. v. Huffman*, 996 F.2d 800 (5th Cir. 1993); *U.S. v. Philip Morris USA*, 310 F.Supp.2d 62 (D.D.C. 2004)) irrelevant to state contractor statutes and to support 7031(b) imposes an "equitable remedy" or "disgorgement". This failure to engage with Defendant's arguments (ROA 300 [Memorandum of Points and Authorities in Opposition to Motion to Vacate]- Ex. A- Appellant Adam Bereki's Opening Brief on Appeal) coupled with the imposition of appellate costs, constituted a structural error denying due process (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)). The appellate court lacked subject matter jurisdiction to affirm an unconstitutional judgment (*Piersol, Bennett, Rochin*), making the appeal a bill of pains and penalties. The court must vacate both the trial and appellate judgments as courts cannot affirm void judgments, which are nullities (*Piersol, Bennett, Rochin*, *Thompson, Hill, Ware)*

**F. Denial of Judicial Remedy & Lack of Forum for Relief**

Defendant's exhaustive efforts to vacate this void judgment in state and federal courts have been denied (RJN Ex.'s 1-12) leaving this Court as the sole forum.

## VI. EXTRINSIC FRAUD AND FRAUD ON THE COURT

The Humphreys, their attorney William Bissell, Judge David Chaffee (Ret.), and Appellate Justices Richard Aronson, Thomas Goethals, and Kathleen O'Leary committed extrinsic fraud and fraud on the court by misrepresenting a penal action as civil, preventing a fair hearing and undermining the judicial process. Additionally, Judge James Di Cesare's post-appeal conduct further entrenched this fraud. These actions are cited to demonstrate the judgment's voidness, not to seek personal liability against judicial officers in this Motion.

**A. Legal Standards for Extrinsic Fraud and Fraud on the Court**

Extrinsic Fraud Under California law encompasses "almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing" (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985) (Citations omitted)). It occurs when a party is prevented from presenting

their claim or defense, such as through concealment of material facts, failure to provide proper notice, or misrepresentation of the action's nature (*City and County of San Francisco v. Cartagena*, 35 Cal. App. 4th 1061, 1067 (1995) (concealment of facts constitutes fraud); (Decl ¶'s 5, 13)). Examples include inducing a party to forgo legal representation or misleading them about the proceedings' true character (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969) (misrepresentation of action's nature is fraud)). Relief from a judgment procured by extrinsic fraud is an equitable remedy, requiring vacatur to restore fairness (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)).

Fraud on the court involves conduct that undermines the integrity of the judicial process, such as presenting a false claim or deceiving the court about the proceedings' nature. It includes willful misrepresentations by parties, counsel, or judicial officers that mislead the court into acting without lawful authority (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944) When established, fraud on the court renders the judgment void and mandates vacatur to protect judicial integrity (Id.).

**B. Evidence of Extrinsic Fraud**

**Misrepresentations by the Humphreys and Bissell:** The Humphreys, through their attorney William Bissell, filed a cross-complaint under Cal. Bus. & Prof. Code § 7031(b) (ROA 144), presenting it as a civil action for "disgorgement." By misrepresenting the action as civil, they concealed its penal nature, denying Defendant criminal safeguards such as a jury trial, counsel, and proof beyond a reasonable doubt. This deception prevented Defendant from challenging the Humphreys' standing or invoking procedural protections, constituting extrinsic fraud (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). Defendant, self-represented and not trained in civil or criminal procedure (Decl. ¶7), relied on these misrepresentations (Decl. ¶'s 4, 9), appearing at the proceedings, participating, and waiving his jury trial, believing the action was a legitimate civil dispute. The Humphreys further concealed the penal nature by filing a proposed judgment order in favor of their first cause of action (for "disgorgement" ROA 197) and "damages" (ROA 199) and later serving it on Defendant. See signed order ROA 200; RJN Ex. 1) when they failed to present any known evidence of damages at trial, as required California Civil Code § 3281 and *Chaparkas v. Webb* (178 Cal. App. 2d 257, 259 (1960)) (requiring evidence of harm for damages) and

failed to present any evidence Plaintiff profited. This misrepresentation concealed § 7031(b)'s criminal nature, imposing a duplicative fine under Cal. Penal Code § 15 for the same offense as § 7028 (the criminal statute for unlicensed contracting), fraudulently requiring Defendant to repay $848,000 already returned through Spartan's work, denying him a fair and impartial hearing (*Estate of Sanders*, 40 Cal. 3d at 614). When Defendant challenged jurisdiction— through pleadings evidencing his lack of knowledge of procedure and practice—the Humphreys sought and were awarded sanctions with the obvious intent of silencing and/or further punishing him in his attempts to tell truth and expose the fraud: ([Writ of Error], electronically received 4/18/17 (Not Entered on Docket) yet recognized as Motion to Vacate and Denied (Notice of Rejection, 4/18/17), ignored by Humphreys; ROA 244 [Bill of Particulars] challenging jurisdiction, filed on the docket as "Notice-Other" by the Clerk, ignored by Humphreys; ROA 256 [Motion to Compel Production of Bill of Particulars]; ROA 260 [Opposition to Compel and Request for Sanctions] filed by the Humphreys; ROA 263 [Reply to Opposition; Motion to Disqualify Judge]; ROA 269 [Sanctions Award] for abuse of discovery.

**Judicial Complicity by Judge Chaffee:** Judge Chaffee's failure to address the Humphreys' lack of executive authority under Cal. Const. Art. V, § 1 or the statute of limitations under CCP § 340 (ROA 166), despite his knowledge of § 7031(b)'s penal nature (*MW Erectors,* supra), denied Defendant a fair and impartial hearing, constituting a structural error rendering the judgment void. Chaffee, who presided over *MW Erectors*, knew § 7031imposes a "stiff all-or-nothing penalty" and admitted imposing a forfeiture, referring to the statute as the "bellwether case" (Ex. 1 [Reporter's Transcript 3/28/17] p.28, Lines 20-24). He also signed a judgment order for "damages" of $848,000 (ROA 200; RJN Ex. 1) without the Humphreys stating a claim for damages (ROA 144, 160) and despite no evidence of harm, contradicting California Civil Code § 3281 and *Chaparkas v. Webb* (178 Cal. App. 2d 257, 259 (1960)) (requiring evidence of harm for damages). Judge Chaffee acknowledged § 7031(b)'s punitive nature, stating, "The Supreme Court... found that the contractor's license law is draconian in its effect" (Ex. 1 [Reporter's Transcript 3/28/17], p. 29, lines 13-15). He went on to also identify the judgement as a "forfeiture". *Id.* Line 17. The term "forfeit" has, since the beginning of America, been used to refer to a fine and punishment. *Austin v. United States*, 509 U.S. 602, 613-614 (1993). These admissions, yet failure to apply criminal safeguards including denying Defendant counsel, further

misrepresented the action as civil, constituting extrinsic fraud (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)).

**Appellate Justices' Affirmation of Fraud:** Justices Aronson, Goethals, and O'Leary's affirmance of a void judgment in Case No. G055075, despite Defendant's appellate briefs explicitly raising the Humphreys' lack of standing, the action's penal nature, and due process violations, (ROA 300 Ex. A [Opening Brief]; RJN Ex.2 [Appellate Opinion] p.8 "Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such claim must be afforded all criminal rights and protects. Not so. Disgorgement is a civil consequence") denied a fair and impartial appellate hearing, constituting a systemic error (*Estate of Sanders*, 40 Cal. 3d 607, 614 (1985)). Their opinion mischaracterized § 7031(b) as an "equitable remedy", relying on inapposite cases like *S.E.C. v. Huffman*, 996 F.2d 800 (5th Cir. 1993) (federal securities case irrelevant to state contractor law and § 7031(b)'s penal nature), and *U.S. v. Philip Morris USA*, 310 F.Supp.2d 62 (D.D.C. 2004) irrelevant to state contractor statutes and to support 7031(b) imposes an "equitable remedy" or "disgorgement", and also directly evaded Cal. Supreme Court precedent: courts may not resort to equitable considerations in defiance of section 7031 *Lewis & Queen v. N. M. Ball Sons,* 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957); *MW Erectors,* supra (confirming Legislative intent to "impose a stiff all-or-nothing penalty"). Equally troubling, neither § 7031 nor its legislative history mentions anything about "disgorgement" or an "equitable remedy". The Appellate Justices' refusal to engage with Defendant's arguments (ROA 300 Ex. A), including his citation of *Town of Gilbert Prosecutor's Office v. Downie*, 218 Ariz. 466 (2008) (addressing the penal nature of "disgorgement" and limitations of prosecutorial authority), and their dismissal of all his claims as "meritless" (RJN Ex.2 [Opinion], p.2) without meaningful and substantive analysis, denied a full, fair, impartial and independent appellate review and a fair hearing, corrupting the judicial process, perpetuating the extrinsic fraud and jurisdictional defects.

**Judge Di Cesare's Post-Appeal Misconduct:** Judge Di Cesare's refusal to vacate the void judgment, despite Defendant's February 19, 2019, motion citing fraud and lack of jurisdiction (ROA 294), denied a fair and impartial opportunity to challenge the jurisdictional defects, constituting a systemic error. Di Cesare misapplied *People v. Dutra*, 145 Cal. App. 4th 1359 (2006), which limits trial court jurisdiction post-remittitur to valid judgments, not void

ones (*Olivera v. Grace*, 19 Cal. 2d 570, 574 (1942)). By shielding the fraudulent judgment, Di Cesare perpetuated the extrinsic fraud (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). Di Cesare's misapplication of *Dutra*, irrelevant to void judgments, denied Defendant a fair and impartial hearing, as it shielded a jurisdictionally defective judgment and prevented meaningful and substantive review of Defendant's fraud and jurisdictional claims perpetuating the enforcement of a void judgment (*Elliot,* supra).

**C. Evidence of Fraud on the Court**

**False Claim and Judicial Acquiescence:** The Humphreys and Bissell deceived the court by presenting a penal prosecution as a civil action, leading Judge Chaffee to apply civil procedures and impose a ~$930,000 penalty without criminal safeguards. Chaffee's failure to question their authority or the action's nature corrupted the judicial process. The Appellate Justices' affirmance, despite clear evidence of fraud, further undermined judicial integrity by ratifying an unauthorized prosecution (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)). Di Cesare's refusal to vacate post-appeal entrenched this deception, allowing a void judgment to persist (Id.).

**Ongoing Harm and Judicial Failure:** The fraud's impact continues through the foreclosure of Defendant's home on November 18, 2024, loss of ~$1.2 million in equity, and eviction under threat of forceful removal by the County Sheriff rooted in the fraudulent judgment. This ongoing harm underscores the court's duty to vacate to protect its integrity (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)),restore Defendants rights and property, and compensate him for damages as a result of this egregious miscarriage of justice.

**D. Meritorious Defense**

Defendant has a meritorious defense: had the action been properly identified as criminal, he could have challenged the Humphreys' standing, invoked criminal protections, and sought dismissal based on the statute of limitations. The absence of evidence that Defendant performed work or was a person required to be licensed, and the misapplication of § 7031(b) instead of § 7028.5 further support his defense (executive branch enforces § 7028.5)).

**E. Conclusion**

As applied, § 7031(a) and (b) are unconstitutional, enabling private penal prosecutions without due process, violating Cal. Const. Art. I, § 7, and the Excessive Fines Clause Art. I, §17. This is facially void, requiring the court to vacate the judgment.

The extrinsic fraud and fraud on the court denied Defendant a fair hearing and corrupted the judicial process, harming Defendant and others in similar cases. Merely providing a building called a court and characters purporting to play official roles does not constitute a full, fair, impartial and/or independent hearing, trial, or appeal. The appearance of procedurally proper proceedings was a sham, as Defendant's issues and evidence have never been meaningfully addressed, denying him a trial, appeal, and access to judicial proceedings altogether (*In re Enrique G.*, 140 Cal. App. 4th 676, 685 (2006)).

The extrinsic fraud and constitutional violations reflect systemic issues with Cal. Bus. & Prof. Code § 7031(a) and (b)'s penal application. See e.g. *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015), an ~$22.7 million forfeiture was sought against a competent contractor for a licensing error, costing taxpayers $3.3 million according to a public records request received by Defendant. Similarly, *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012), imposed a ~$917,043 forfeiture, leading to bankruptcy (In re Bardos, Bankr. No. 10-41455-DS. Other cases include *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412 (2005) (~$1,322,247 forfeiture); *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005) (~$212,821 forfeiture); *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (1991) (~$110,000 forfeiture); *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009) (~$84,621 forfeiture); and *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*, 2010 U.S. Dist. LEXIS 116566 ($168,025 forfeiture). The preliminary analysis of these judgement orders may require further study for accuracy. These cases evidence systemic issues, as courts consistently impose penal forfeitures without criminal safeguards or jurisdictional scrutiny, necessitating vacatur to prevent further harm. Equity demands vacatur of the void judgment to restore Defendant's rights and prevent further harm to him and others. Defendant requests all relief requested in the Notice and Memorandum of this Motion.

Dated: May 5, 2025 By: Adam Pereki

## DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I have personal knowledge of the facts herein, except where stated on information and belief.
2. The 2017 judgment was a bill of pains and penalties, procured through extrinsic fraud and fraud on the court, falsely alleging I personally contracted and performed work, with no known evidence I preformed work as required by CACI 4560(3). The $848,000 penalty under § 7031(b) required me to repay compensation already returned through Spartan's licensed work, constituting a duplicative criminal fine under Cal. Penal Code § 15 for the same offense as § 7028, imposed through extrinsic fraud and fraud on the court. The Humphreys lacked standing and capacity to prosecute a penal action, as no sworn information or indictment was filed and no criminal complaint was served on me. Each constitutional violation listed occurred, causing the summary suspension of my vested right to act as the qualifying individual on a general contractor license under § 7071.17 when I could not afford to pay the judgment. This unlawful suspension, another bill of pains and penalties, resulted in an estimated $3 million in lost earnings. These lost earnings are based on estimated income losses from 2017–2025 and are attributable to earnings that would have flowed through to me as the qualifying individual of a general contractor license whether Spartan's or any other I qualified for. I have incurred additional losses of over $5 million dollars in investigation and defense time to vacate this void judgment, calculated as hours spent at the rate of $300 per hour. This time is partially evidenced by my filings on the dockets of each case included as RJN Ex's 1-12, and the Exhibits attached to the Ex parte Application for Emergency Stay filed on 3/14/25 in this case, (ROA's 306-322). Expenses of approximately $1 million include legal fees, medical bills (emotional, psychological, and physical distress), office and stationary supplies and equipment, gas, court parking, etc. Upon judgment in my favor, or before if time permits, I will file a supplemental declaration with a detailed accounting of all lost rights property, and damages (e.g., ~$1.20 million in home equity), supported by financial records and affidavits.

3. The summary suspension of my contractor's license under Cal. Bus. & Prof. Code § 7071.17, ninety days after the April 20, 2017, judgment (ROA 200), deprived me of my liberty to pursue my livelihood as a general contractor without a judicial hearing or appeal process, constituting a bill of pains and penalties (Cal. Const. Art. I, § 9. U.S. Const. Art I. §10); As the Qualifying Individual for The Spartan Associates, Inc. (License #927244), I held a vested right, which was suspended or revoked despite evidence that Spartan was the contractor, as shown by Newport Beach building permits and the Humphreys' payments of $758,000 to Spartan as provided in the citations of evidence in the Memorandum of Points and Authorities of this Motion. I am not aware of any evidence presented by the Humphreys that I personally performed licensed work rendering the judgment and suspension void.
4. I relied on Karen and Gary Humphreys, William Bissell, and Judge Chaffee's representation that the proceeding in the Superior Court of California for the County of Orange, Case No. 30-2015-00805807 were civil.
5. I was never told I was being subjected to highly penal/criminal proceedings and that my vested right to act as a qualifying individual would be summarily suspended or revoked as additional punishment, thereby denying my right to occupation in my profession as a general contractor.
6. I was never informed of my right to assistance of counsel prior to trial or appeal to prepare a meaningful and substantive defense and did not receive assistant counsel at trial, on appeal, or anytime after, despite my request (RJN, Ex. 6 [Denial of Request for Counsel, U.S. District Court].
7. At the time of the trial I was not able to meaningfully and substantively represent myself because I had not received any formal training or education in civil and criminal procedure before trial or on appeal. I had little if any involved in the criminal aspect of prosecution during my time as a police officer as my duties focused on investigation, apprehension, and reporting, not prosecution.
8. I waived trial by jury, based on my belief and the representations of Karen and Gary Humphreys, William Bissell, and Judge Chaffee, that I was facing civil proceedings and that the proceedings would have the sanction of law and recognize and honor my inalienable and constitutional rights and property.

9. Had I known I was being subjected to highly penal/criminal proceedings include deprivation of my right to earn a living as a general contractor, I would have objected to any such unlawful proceedings prosecuted by the Humphreys and Bissell without lawful authority and in violation of my due/judicial process rights.
10. I am not aware of any evidence of damages that the Humphreys presented at trial that I or Spartan caused.
11. I am not aware of any evidence presented by the Humphreys at trial that I profited from their project and was thereby enriched, unjustly or otherwise.
12. The fine was excessive as my qualifying net worth (independent of disability pension and the ~$82k owed by the Humphreys to Spartan, some which would have passed through to me) at the time was approx. $23,000. The judgment was more than forty times this amount. This excessiveness resulted in the suspended/revoked my vested right to work as a general contractor under § 7071.17, resulting in an additional ~$3 million dollar penalty due to lost work as I was unable to pay the judgment, obtain a payment bond, or obtain vacatur in any court of California or the United States and ultimately was forced into bankruptcy. I repeatedly asked the Humphreys to come to an agreement so that I could notify the licensing board and have my qualifying individual status reinstated and resume work as a general contractor. They offered to settle for $300,000 which was still more than times my qualifying net worth.
13. The Humphreys terminated the project in August 2013. I cannot recall if Spartan received a "Notice of Cessation of Labor", but if not, believe it was produced by the Humphreys in discovery. The Notice, dated August 18, 2013, (Ex.5) addressed to Spartan (not me individually), orders Spartan to cease all construction activities at the Humphreys Project. I have never received a similar notice and believe this further evidences that the Humphreys knew their agreement was with and/or the work was performed by Spartan. See also the Humphreys Motion for Summary Judgment (ROA 66, p.ii) representing to the court that the "undisputed facts" were that "In April of 2012 The Spartan Associates entered into an agreement with the Humphreys for the performance of home improvement work on the Humphreys condominium unit" and that "The home improvement work to be performed by The Spartan Associates, Inc. on the Humphreys condominium unit had a value in excess of $500." I believe the Humphreys and Bissell also knew that they could not support a claim under §7031(b)

unless these "undisputed facts" were swept under the rug. When they lost their Motion for Summary Judgment based on these facts, they simply changed them, with a few days more than a month before trial (ROA 127 scheduled for 1/17/17) they filed for leave to amend their cross-complaint with the new first cause of action under §7031(b) (ROA 139, 12/9/16) to not only defraud me but also ambush me and Spartan.

14. Based on my direct experience at trial and my forensic investigation of this case, I believe the Humphreys conspired with their attorney, William Bissell to use these proceedings disguised as civil with intent to defraud and punish me without lawful authority and destroy me financially over a dispute involving their home remodel. They knew that §7031(b) did not mention or authorize an equitable remedy, disgorgement, or damages. Their repeated representation of civil proceedings including their filings in this case, service of judgments and orders upon me, and the trial, were a lawless sham and fraud to steal money and property from me under force of the legislative, executive, and judicial powers of California and color of law that lack lawful authority. In furtherance of their conspiracy to defraud me and commit fraud and fraud on the court, they filed a Proposed Judgment Order for "damages" knowing no damages had been evidenced at trial. Their Memorandum of Points and Authorities in their Motion for Severance (ROA 160) admitted that "since the amount paid by the Humphreys to Mr. Bereki exceeds the amount of damages they are claiming [est.$350,000 [First Amended Cross-Complaint] if they were to prevail on their first cause of action, the trial of the remaining cause of action for damages would be unnecessary." (Id. p.5). Assuming arguendo, their allegations damages were $350k, the judgment they sought and were awarded, was nearly three times this amount and could, under no reasonable interpretation be considered "damages" when they intentionally severed their claim for damages. (ROA 160). Simply put, the Humphreys wanted something for nothing and thought they could perpetrate fraud on me and the court to get it.

15. Spartan provided $930,000 of custom remodel work including labor and materials to Karen Humphreys and Gary Humphreys that they requested for their home at 436 Via Lido Nord, Newport Beach, California. The Humphreys have not paid the remaining approx. $82,000 for the materials and labor (ROA 2) due at the time of

invoice on or about August 1, 2013 and have not paid the interest due thereon through the date of this filing. If the Humphreys had an issue with Spartan or its sub-contractors work–fine–there is a judicial process to remedy those issues. This fraud and corruption of that process is not it!

16. As a result of the actions of the Humphreys, Bissell, Chaffee, Goethals, Aronson, O'Leary, and all other public officials (RJN Ex. 1-12, ROA's 306-322) who have refused to abide their sworn duty to take action to investigate and/or intervene to stop this lawless violences upon me and my family, I have and continue to suffer severe emotional distress and duress as a direct and proximate result. I began disclosing this emotional distress this in my Declaration filed as a First Amended Reply to Opposition of Motion to Compel Bill of Particulars, Motion to Vacate, and Disqualify Judge Chaffee for cause, dated October, 2, 2017 (ROA 267). The Declaration (p.3) stated:

> "I am experiencing emotional and psychological duress resulting from the domestic terrorism attacks by Plaintiffs, their counsel, and this court acting without lawful authority and in violation of numerous felony criminal codes as evidenced herein. I demand the court, Plaintiffs, and their counsel immediately cease and desist and am requesting an emergency protective order and civil harassment restraining order against William Bissell, and potentially Karen and Gary Humphreys and David Chaffee."
>
> Page 13 stated: "The Elements of Psychological and Emotional Distress I have experienced (and continue to to varying degrees) as a result of the continued unlawful actions of the court and William Bissell on behalf of Plaintiffs are: panic and anxiety attacks, severe depression including suicidal thoughts (no, I am not a danger to myself or others), severe headaches, neck and upper back tension, body tremors, loss of appetite, social inactivity, gut/digestion problems and pain, fear of physical and other harm, loss of liberty, and decreased ability to earn an income. My medical records are obviously confidential but will support thousands of dollars in Emergency Room visits to multiple hospitals, and observations, tests, and treatment by specialists including psychologists. I am currently under the care of a doctor whom I see

three days per week to mitigate the intensity of stress in my body in an attempt to cope."

17. I declared these facts of distress again in a Declaration attached to the Notice of Motion and Motion to Vacate post remittitur (ROA 294, Exhibit E). In paragraphs 1 and 2, I stated:

> 1. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -: fraud, gross negligence, abuse of process, intentional infliction of emotion distress, deprivations of my Rights and violations of due process by Plaintiffs Karen and Gary Humphreys and their Counsel, William Bissell, as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017.
>
> 2. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -; fraud, gross negligence, deprivations of my Rights and violations of due process by David R. Chaffee, Kathleen O'Leary, Richard. M. Aronson, and Thomas M. Goethals, acting coram non judice as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017."

18. Based on my training and experience in law enforcement, I believe I am the victim of the following crimes, (this is not an exhaust list of crimes of Defendants): robbery (Cal. Penal Code § 211- forcible taking of my rights, liberty and property without lawful authority); grand theft (Penal Code § 187); burglary (Cal. Penal Code § 459- entering the Superior courthouse with intent to commit grand theft); conspiracy to commit the foregoing crimes on me by the Humphreys and Bissell (Cal. Penal Code § 182(a)(1)); conspiracy by the Humphreys and Bissell to falsely move and maintain the lawless

proceedings against me under § 7031(b) (Cal. Penal Code § 182(a)(3)); and conspiracy by the Humphreys and Bissell to cheat and defraud me of my rights and property property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises (Cal. Penal Code § 182(a)(4)).

19. I continue to be afraid for my safety and that of my family due to these lawless acts of violence that continue to be perpetrated on us, including most recently the theft of our home and approx. $1.2 million dollars in home equity while all officials of State and government refuse to perform a full, fair, impartial and/or independent investigation and/or refuse to intervene to stop this lawless violence.

20. All exhibits are true copies of the documents they purport to be, with exception of nay bates numbering or other non-substantive marks I, or someone else may have made.

Signed on May 28, 2025, at Las Vegas, Nevada.

By: _____

Adam Bereki

# Exhibit 1

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DEPARTMENT C20

| | | |
|---|---|---|
| THE SPARTAN ASSOCIATES, INC. | ) | |
| | ) | |
| | ) | |
| PLAINTIFF, | ) | CASE NO.: 30-2015-00805807 CU-CO-CJC |
| | ) | |
| GARY HUMPHREYS, | ) | |
| KAREN HUMPHREYS, | ) | |
| | ) | |
| DEFENDANTS. | ) | |
| | ) | |

HONORABLE DAVID CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

3/27/17

APPEARANCES OF COUNSEL:

| | |
|---|---|
| FOR THE PLAINTIFF/ CROSS-DEFENDANT: | BY: J. SCOTT RUSSO<br>RUSSO & DUCKWORTH LLP |
| FOR THE DEFENDANTS/ CROSS-COMPLAINANTS: | BY: WILLIAM G. BISSELL<br>LAW OFFICES OF WILLIAM G. BISSELL |
| FOR THE CROSS-DEFENDANT: | BY: ADAM BEREKI<br>SELF-REPRESENTED |

REPORTED BY:
KELVIN K. DO, CSR #13803
OFFICIAL COURT REPORTER

WITNESS INDEX

WITNESSES FOR

| THE PLAINTIFF: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| (NONE) | | | | |

WITNESSES FOR

| THE DEFENSE: | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| KAREN HUMPHREYS | 27 | 43<br>64<br>70 | 71 | |
| GARY HUMPHREYS | 74 | 87<br>92 | 101<br>156 | 103<br>162<br>165 |
| ADAM BEREKI | 109 | 124 | 143 | |

INDEX OF EXHIBITS

| PLAINTIFF | IDENTIFIED | RECEIVED |
|---|---|---|
| (NONE) | | |

| DEFENSE | IDENTIFIED | RECEIVED |
|---|---|---|
| EXHIBIT 32 | 91 | 91 |
| EXHIBIT 302 | 106 | 106 |
| EXHIBIT 303 | 106 | 106 |
| EXHIBIT 304 | 106 | 106 |
| EXHIBIT 305 | 106 | 106 |
| EXHIBIT 306 | 106 | 106 |
| EXHIBIT 34 | 135 | 135 |
| EXHIBIT 35 | 135 | 135 |
| EXHIBIT 351 | 148 | 148 |
| EXHIBIT 355 | 148 | 148 |
| EXHIBIT 30-1 | 154 | 154 |
| EXHIBIT 348 | 154 | 154 |

SANTA ANA, CALIFORNIA; MARCH 27, 2017

MORNING SESSION

*****

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT.)

THE COURT: GOOD MORNING, EVERYBODY. THIS IS THE SPARTAN ASSOCIATES, INC. VERSUS HUMPHREYS.

AND FOR THE RECORD, YOU ARE?

MR. RUSSO: GOOD MORNING, YOUR HONOR. SCOTT RUSSO ON BEHALF OF SPARTAN ASSOCIATES, INC.

THE COURT: MR. RUSSO, WITH YOU IS?

MR. BEREKI: ADAM BEREKI, YOUR HONOR.

THE COURT: MR. BEREKI, SPELL YOUR LAST NAME FOR ME, PLEASE.

MR. BEREKI: B-E-R-E-K-I.

THE COURT: AND YOU PRONOUNCE IT BEREKI?

MR. BEREKI: BEREKI. THE SECOND E IS SILENT.

THE COURT: GIVE ME A COUPLE WEEKS, I WILL GET IT THEN.

MR. BEREKI: SOUNDS GREAT.

MR. BISSELL: GOOD MORNING, YOUR HONOR. WILLIAM BISSELL FOR THE DEFENDANT/CROSS-COMPLAINANTS GARY HUMPHREYS AND KAREN HUMPHREYS.

THE COURT: GOOD MORNING.

MR. BISSELL: YOUR HONOR, I HAVE BEEN REFERRING TO

MR. BEREKI AS "MR. BEREKI" FOR OVER TWO YEARS NOW. SO IF I SAY "MR. BEREKI," IT'S NOT INTENDED TO SLIGHT.

MR. BEREKI: I WON'T BE OFFENDED.

THE COURT: I AM PRETTY SURE I HAVE BEEN SAYING "BEREKI" AS WELL FOR THE LAST COUPLE OF YEARS.

OKAY. SO SINCE REVIEWING, MY UNDERSTANDING IS -- THIS IS A COURT TRIAL OF HOW MANY DAYS?

MR. BISSELL: I WOULD THINK FOUR.

MR. RUSSO: IT WOULD BE FAIR.

THE COURT: AND WHAT HAPPENED TO OLD REPUBLIC SURETY ACCOUNT?

MR. RUSSO: I GUESS I HAVEN'T EVEN THOUGHT ABOUT THAT, YOUR HONOR. I AM ALSO DEFENDING THE SURETIES IN THIS.

THE COURT: I SEE YOU DOWN FOR SURETEC INSURANCE COMPANY, BUT I SEE THE LAW OFFICES OF HAUSMAN & SOSA REPRESENTING OLD REPUBLIC.

MR. BEREKI: YOUR HONOR, WE HAVE HAD DISCUSSIONS WITH BOTH THE SURETIES. THEY FELT I WAS COMPETENT TO HANDLE THE DEFENSE AND THEY DIDN'T WANT TO SPEND THE COST TO SEND AN ATTORNEY HERE. I DON'T HAVE A GREAT ANSWER FOR THAT, BUT THAT'S JUST WHAT HAPPENED.

MR. BISSELL: YOUR HONOR, I WOULD LIKE TO SHED SOME LIGHT ON THAT. THERE WAS A STIPULATION, I BELIEVE, SIGNED BY THE COURT WHERE OLD REPUBLIC -- OLD REPUBLIC ONLY, NOT SURETEC, WE ALL STIPULATED THAT THEY WOULDN'T

HAVE TO APPEAR, THAT THEY WOULD ABIDE BY WHATEVER RULING THE COURT HAD AS FAR AS THE LIABILITY OF THE BOND, THAT THE BOND WAS GOOD. THEY STIPULATED THE BOND HAD BEEN ISSUED, THE BOND WAS GOOD. THERE'S NO ISSUE THERE. AND THEY JUST FELT THAT TO COME IN HERE AND SIT -- AND WE ALL AGREED -- THROUGH FOUR, FIVE DAYS OF TRIAL, WHEN THEIR ISSUE REALLY WASN'T AT ISSUE, OTHER THAN THE LIABILITY, EVERYBODY STIPULATED THAT THEY WOULD GO WITH WHICHEVER WAY THE COURT RULED ON THE LIABILITY ISSUE.

THE COURT: SOUNDS FAMILIAR. HOPE I CAN FIND IT WITHIN THE FILE.

MR. BISSELL: THAT'S TO THE BEST OF MY RECOLLECTION.

MR. RUSSO: YOUR HONOR, THAT'S SURETEC'S POSITION ALSO.

THE COURT: BUT, AGAIN, I SEE YOU AS OF RECORD.

MR. RUSSO: FRANKLY, YOUR HONOR, THAT WAS SO LONG AGO, I FORGOT THERE WERE TWO. BUT THE ANSWER IS YES, I AM COUNSEL FOR SURETEC.

THE COURT: AND IT LOOKS LIKE WE HAVE A RETURN FROM THE CITY OF NEWPORT BEACH COMMUNITY PLANNING DEPARTMENT ON THE SUBPOENA YOU ISSUED.

MR. BISSELL: THERE SHOULD ALSO BE ONE FROM THE LIDO ISLE COMMUNITY ASSOCIATION, YOUR HONOR.

THE COURT: SO THERE IS. HAVE YOU SEEN THE CONTENTS OF THESE?

MR. BISSELL: I HAVE NOT.

THE COURT: DO YOU WANT TO?

MR. BISSELL: I KNOW WHAT THEY ARE. THERE WERE COPIES OF DOCUMENTS OF WHICH WE HAD, SO, I ASSUME THAT'S ALL THEY'RE PRODUCING ALONG WITH THEIR DECLARATION AS TO BEING A BUSINESS RECORD.

THE COURT: LET'S LET MR. BISSELL AND MR. RUSSO HAVE A LOOK AT THE CONTENTS TO MAKE SURE EVERYTHING IS THERE. AND MR. BEREKI, OF COURSE.

MR. BISSELL: THAT'S WHAT WE ASKED FOR.

THE COURT: OKAY. WELL, WE WILL JUST LEAVE IT ON THE CLERK'S CALENDAR, AND WHEN YOU NEED IT, YOU WILL FILL US IN.

AND SO WITH REFERENCE TO THAT WHICH MR. BISSELL INDICATED, I HAVE IN MY HAND THE DOCUMENT ENTITLED "STIPULATION BETWEEN DEFENDANTS AND CROSS-COMPLAINANTS GARY HUMPHREYS, AN INDIVIDUAL, KAREN HUMPHREYS, AN INDIVIDUAL, PLAINTIFF AND CROSS-DEFENDANT SPARTAN ASSOCIATES, INC., A CALIFORNIA CORPORATION, AND CROSS-DEFENDANT OLD REPUBLIC SURETY COMPANY, A CORPORATION, RE: LIABILITY AND DAMAGES" -- AND THE ORDER THEREON. IT WAS FILED ON FEBRUARY 1, 2017. IT WAS -- SUBSTANTIALLY REFLECTS THAT WHICH MR. BISSELL INDICATED. I GUESS WE WON'T WORRY ABOUT OLD REPUBLIC -- SURE TO PAY IF THEY NEED TO.

ALL RIGHT. AND SO LET'S TALK FOR A SECOND

ABOUT EXHIBITS. MY UNDERSTANDING IS YOU ALL HAVE COME HERE TODAY WITH EXHIBITS, THE PLAINTIFFS' EXHIBITS NUMBERED 1 THROUGH 60 AND THE DEFENDANTS' EXHIBITS NUMBERED 1 THROUGH 60, OR SOMETHING ALONG THOSE LINES.

MR. RUSSO: IT'S ACTUALLY PLAINTIFFS' 1 THROUGH 137 AND DEFENDANTS' 1 THROUGH 62.

THE COURT: HOW DO WE FIX THIS PROBLEM?

MR. BISSELL: YOUR HONOR, WE HAD AN AGREEMENT BETWEEN COUNSEL -- AND THIS WAS BEFORE MR. BEREKI SUBSTITUTED OUT -- THAT WE WOULD TAKE NUMBERS 1 THROUGH 100 AND THEY WOULD TAKE NUMBERS 100 ON TO WHATEVER. WE HAVE OUR EXHIBITS KIND OF FINALIZED. WE KNEW THE EXTENT OF THE EXHIBITS. THEY WERE STILL WORKING PUTTING THEIRS TOGETHER. THEY DIDN'T KNOW HOW MANY THEY HAD SO THEY OPTED TO START WITH 100 ON INTO HOWEVER MANY THEY NEEDED.

THE COURT: TO INFINITY AND BEYOND.

MR. BISSELL: TO INFINITY AND BEYOND, YOUR HONOR.

MR. RUSSO: IT'S SIMPLY FIXED BY ADDING A TWO IN THE DEFENDANTS' EXHIBITS AND WE CAN GO FROM THERE. OR 200.

THE COURT: WELL, IF WE PUT A ONE IN FRONT OF YOUR NUMBER 1, I GUESS IT WOULD BE TEN RIGHT.

MR. RUSSO: WELL, WE HAVE 137.

THE COURT: PARDON?

MR. RUSSO: WE HAVE 137. I AM SUGGESTING IF WE

STARTED WITH 200 ON THEIRS, WE WOULD BE FINE.

THE CLERK: I THINK IT'S EASIER IF WE PUT A FIVE OR THREE ON THE DEFENDANTS'.

THE COURT: SO 301 AND SO ON?

THE CLERK: BECAUSE MR. RUSSO HAS MORE THAN 100 AND DEFENSE IS ONLY 75.

THE COURT: SEEMS LIKE A GREAT IDEA.

OKAY. SO THE TWO OF YOU GET TO COLLECTIVELY MARK THOSE EXHIBITS, THE DEFENSE EXHIBITS. SO IT'S GOING TO BE 301 AND FOLLOWING.

MR. BISSELL: SHOULD I DO THAT NOW?

THE COURT: WELL, YOU MIGHT AS WELL BECAUSE I THINK I HAVE NOT HAD A CHANCE TO READ THE TRIAL BRIEFS YOU SUBMITTED. WE WILL TAKE 30 MINUTES, COME BACK AT 10:00 AND RE-JOIN AFTER I READ THAT, AND WE WILL GET ROLLING.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: THANK YOU, YOUR HONOR. AS FAR AS THE READING OF THE BRIEFS, DO YOU RECALL THAT WE HAVE --

THE COURT: WE BIFURCATED.

MR. BISSELL: BIFURCATED. THE FIRST CAUSE OF ACTION WE TRIED FIRST. WE SUBMITTED A SEPARATE BRIEF ON THE FIRST CAUSE OF ACTION ALONE. I DON'T KNOW IF YOU WANT TO JUST FOCUS ON THAT AND WAIT --

MR. RUSSO: YOUR HONOR, MY UNDERSTANDING IS WE'RE NOT NECESSARILY TRYING THE FIRST CAUSE OF ACTION FIRST. WHAT WE'RE TRYING IS THE LICENSING ISSUES AND WHO THE

CONTRACT WAS WITH, AS BETWEEN THE CORPORATION AND MR. BEREKI. THAT WAS MY UNDERSTANDING OF THE BIFURCATION.

MR. BISSELL: THAT IS, IN ESSENCE, THE FIRST CAUSE OF ACTION.

MR. RUSSO: WELL, IF WE GO INTO THE WHOLE FIRST CAUSE OF ACTION, WE ARE TRYING -- THE WHOLE POINT TO NARROW THE CLAIM, AND THAT'S THE WHOLE CASE, WHICH IS SUBSTANTIALLY LONGER THAN THE BIFURCATION OF WHO THE CONTRACTORS WERE.

MR. BISSELL: NOT TRUE, YOUR HONOR. THE FIRST CAUSE OF ACTION ONLY GOES TO THE ISSUE OF WHO THE CONTRACTING PARTIES WERE AND THE LICENSING STATUS OF THOSE PARTIES. THERE'S NO ISSUES INVOLVING QUALITY OF WORKMANSHIP, NEGLIGENCE, FRAUD, NONE OF THE OTHER CAUSES OF ACTION APPEAR OR ARE A PART OF THE FIRST CAUSE OF ACTION. IT'S A DISTINCT SEPARATE CAUSE OF ACTION.

THE COURT: WELL, OKAY. LET ME GO REFRESH MY RECOLLECTION AS I READ THROUGH YOUR BRIEFS.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: SEE YOU IN ABOUT 30.

(RECESS.)

THE COURT: JUST TO CONFIRM, I DID NOT FIND PLAINTIFFS' TRIAL BRIEF IN MY STACK.

MR. RUSSO, DID I MISS IT?

MR. RUSSO: IT GOT FILED LAST NIGHT.
THE CLERK: LAST NIGHT?
MR. RUSSO: THAT'S WHEN I GAVE IT TO MY SECRETARY.
THE COURT: WHAT TIME? MIDNIGHT?
MR. RUSSO: PRETTY LATE, YOUR HONOR.
MR. BEREKI: I HAVE AN E-MAIL I COULD SEND OR I COULD READ IT.
THE COURT: MAYBE MR. RUSSO HAS A SPARE COPY OF HIS OWN.
MR. RUSSO: I DON'T, YOUR HONOR.
THE COURT: WE USUALLY LIKE TO GET COURTESY COPIES. IT'S PROBABLY OUT THERE IN THE BOWELS OF THE COMPUTER. DID YOU KNOW COMPUTERS HAVE BOWELS?
MR. RUSSO: I CAN ORALLY TELL YOU WHAT IT WOULD SAY, YOUR HONOR, IF YOU LIKE.
THE COURT: I WOULD RATHER READ IT. IN THE MEANTIME, JUST A QUICK DISCUSSION. I'M NOT SURE THERE'S A WHOLE LOT OF SUBSTANTIAL DIFFERENCE BETWEEN YOUR RESPECTIVE POSITIONS ON THIS BIFURCATION ISSUE. AT THE END OF THE DAY, MR. BISSELL'S POINT IS THE THRESHOLD ISSUE OF WHETHER OR NOT LICENSURE EXISTED. I HAVE NOT LOOKED AT ANY OF THE DOCUMENTS IN YOUR EXHIBITS YET. WITH RESPECT TO EITHER THE CONTRACT, I SEE REPRESENTATIONS IN MR. BISSELL'S PAPERS OF AN ORAL CONTRACT THAT CAUSES ME TO HAVE SOME CONCERN ALREADY. AND THEN I SEE SPARTAN ASSOCIATES AS A POSSIBLE PLAYER

LURKING ON THE HORIZON.

SO I DON'T THINK THAT WE'RE TRYING THE FIRST CAUSE OF ACTION IN THE SENSE OF DAMAGES SO MUCH AS WE'RE TRYING TO ASCERTAIN THE LICENSURE.

MR. RUSSO: I DON'T THINK THERE'S ANY DISPUTE THAT THE SPARTAN ASSOCIATES, INC. WAS LICENSED. THE QUESTION WAS WHETHER OR NOT THE HUMPHREYS AGREEMENT WAS WITH SPARTAN ASSOCIATES OR MR. BEREKI PERSONALLY.

THE COURT: IS THERE WRITTEN CONTRACT BETWEEN SPARTAN ASSOCIATES AND THE HUMPHREYS?

MR. RUSSO: NO. WE HAVE E-MAILS THAT FORM THE CONTRACT. IT'S FROM MR. BEREKI, AND HE WOULD CONTEND THAT WAS ON BEHALF OF SPARTAN ASSOCIATES.

IS THERE SOMETHING IN THE LETTERHEAD THAT SAYS SPARTAN ASSOCIATES AND HUMPHREYS ENTER INTO ANY AGREEMENT? NO, THERE IS NOT.

THE COURT: OKAY. WE'RE FOLLOWING UP ON THAT BRIEF OF YOURS.

MR. RUSSO: OH, GOOD.

THE CLERK: IT WILL TAKE A COUPLE OF MINUTES.

THE COURT: OKAY. SO ALL RIGHT. I TRIED TO FOCUS ON THE FIRST AMENDED CROSS-COMPLAINT FIRST CAUSE OF ACTION. THIS IS AGAINST CROSS-DEFENDANT MR. BEREKI -- MR. BEREKI.

MR. BEREKI: IT'S FINE.

MR. RUSSO: I HAD IT WRONG FOR TWO YEARS.

MR. BEREKI: IT'S FINE.

MR. BISSELL: LET'S JUST GO WITH "BEREKI."

THE COURT: THE CAUSE OF ACTION SEEKS DISGORGEMENT OF THE FUNDS PAID TO THE TUNE OF $848,000. THE INDICATION IN THE CROSS-COMPLAINT IN APRIL 2012 ORAL CONTRACT WITH LAST SERVICES, AUGUST 21, 2013, THERE IS INDICATED IN THAT CAUSE OF ACTION SOME EFFORTS TO SUBSTITUTE THE SPARTAN ASSOCIATES, INC. AS THE CONTRACTING PARTY, BUT IT'S UNCLEAR AS TO HOW OR WHAT THAT WAS OR HOW IT WOULD WORK. I'M SURE THAT'S WHAT THIS TRIAL WILL CLARIFY FOR ME.

I ALSO SAY, MR. BISSELL, YOUR FILED REQUEST FOR STATEMENT OF DECISION AND WE WILL HAVE TO SEE. IF THIS IS A ONE DAY OR LESS TRIAL, WHICH SEEMS UNLIKELY IN THESE CIRCUMSTANCES, THEN IT WOULD BE TIMELY. IF IT IS MORE THAN A DAY, THEN IT IS PREMATURE.

MR. BISSELL: UNDERSTOOD, YOUR HONOR. I JUST WANTED TO COVER THE BASES.

THE COURT: COVER THE BASES. GOOD MAN, GOOD LAWYER. SO RATHER THAN WAIT FOR THE COMPUTER TO SPEW OUT SOMETHING SOME DAY, THERE PROBABLY ISN'T ANY REASON WHY WE CAN'T GET STARTED SINCE THE PRESENTATION FALLS TO THE CROSS-COMPLAINANTS TO START.

MR. RUSSO: PERFECT. WE CAN START WITH THE CROSS-COMPLAINANTS THEN.

THE COURT: DO YOU ALL FEEL CONSTRAINED TO GIVE ME

AN OPENING STATEMENT, OR DO YOU WANT TO JUST PUT ON YOUR EVIDENCE?

MR. BISSELL: THE OPENING STATEMENT MAY FLUSH OUT SLIGHTLY A BIT MORE THAN WHAT WAS IN THE BRIEF, AS FAR AS BACKGROUND AND FACTS.

THE COURT: IN THAT CASE, RIGHT SIDE, BEGIN.

MR. BISSELL: VERY WELL, YOUR HONOR. THANK YOU.

ONCE AGAIN, YOUR HONOR, WILLIAM BISSELL, REPRESENTING THE HUMPHREYS WHO ARE THE DEFENDANTS, CROSS-COMPLAINANTS IN THIS ACTION.

THIS OPENING STATEMENT IS JUST ADDRESSING, AS THE COURT HAS INDICATED, THE FIRST CAUSE OF ACTION PLED IN THE FIRST AMENDED.

THE COURT: CORRECT. WE WILL HOLD OFF ON THE GENERAL RUN OPENING STATEMENT UNTIL LATER.

MR. BISSELL: THANK YOU, YOUR HONOR. THANK YOU.

FACTUALLY, THE WAY THIS CASE PLAYS OUT IN EARLY -- ACTUALLY, IN APRIL OF 2012, THE HUMPHREYS HAD PURCHASED A SMALL VACATION CONDOMINIUM UNIT IN NEWPORT BEACH. THEY LIVE UP IN CONTRA COSTA COUNTY, BAY AREA. THEY HAVE FAMILY AND FRIENDS DOWN HERE. BOTH HAVE CHILDREN DOWN HERE. THEY WANTED A PLACE WHERE THE FAMILIES COULD GET TOGETHER, KIDS COULD GO AND USE IT, FRIENDS COULD USE IT.

THE PROBLEM WAS THAT IT WAS A BUILDING THAT HAD BEEN BUILT IN 1955. IT WAS A RENTAL UNIT. IT WAS

PROBABLY -- THERE WASN'T A WHOLE LOT THAT HAD BEEN DONE TO IT SINCE 1955. IT WAS OLD.

THE COURT: POSITIVELY ANTIQUE. IT'S ALMOST AS OLD AS I AM.

MR. BISSELL: STILL YOUNGER THAN I AM, YOUR HONOR.

IT NEEDED AN OVERHAUL. GARY HUMPHREYS HAD KNOWN MR. BEREKI THROUGH HIS BROTHER AND SON. MR. BEREKI HAD DONE SOME CONSTRUCTION WORK FOR BOTH OF THEM. AND IN FACT, MR. HUMPHREYS HAD MET MR. BEREKI AT HIS HOUSE WHERE MR. BEREKI WAS INSTALLING AN ENTERTAINMENT SYSTEM IN THE HOME.

THE HUMPHREYS, BEING FROM THE BAY AREA, DIDN'T KNOW ANY OTHER CONTRACTORS IN THE AREA.

THE COURT: ARE WE TALKING ELECTRONICS OR ARE WE TALKING ABOUT STRUCTURE?

MR. RUSSO: ELECTRONICS. WIRING. MAYBE STRUCTURAL TO THE EXTENT THAT YOU'RE INSTALLING A SUPPORT FOR A TV SCREEN, SOMETHING LIKE THAT, AS FAR AS MR. HUMPHREYS UNDERSTOOD. IT WASN'T HIS PROJECT. HE WASN'T VIABLY INVOLVED OR PAYING ATTENTION, BUT THAT WAS HIS UNDERSTANDING.

AGAIN, THE HUMPHREYS DIDN'T KNOW ANY OTHER CONTRACTORS IN THIS AREA. HIS BROTHER SAID, "HEY, WHY DON'T YOU GIVE ADAM BEREKI A CALL. HE DOES GOOD WORK FOR ME."

THE HUMPHREYS CONTACTED MR. BEREKI. THEY

SAID, "HEY, WE BOUGHT THIS CONDOMINIUM UNIT. IT'S SHABBY, IT NEEDS AN OVERHAUL. WOULD YOU BE INTERESTED IN LOOKING AT IT WITH US AND MAYBE DOING THE WORK ON THE PROJECT?

THEY WALKED THE PROJECT. MR. BEREKI COULDN'T BE MORE ENTHUSIASTIC. "AS A LICENSED CONTRACTOR, I HAVE DONE SEVERAL OF THESE TYPES OF JOBS. THIS IS WHAT I DO. I HAVE DONE WORK IN THE CITY OF NEWPORT BEACH. I KNOW THE CITY'S REGULATIONS. THIS IS RIGHT IN MY WHEELHOUSE. THIS IS SOMETHING WE WOULD BE VERY INTERESTED IN DOING. AND I ASSURE YOU YOU WILL BE MORE THAN HAPPY WITH THE RESULTS."

MR. BEREKI, A FEW DAYS LATER, I THINK IT WAS WITHIN THREE OR FOUR DAYS AFTER THEY WALKED THE PREMISES, MR. BEREKI SENT THE HUMPHREYS A PROPOSAL VIA E-MAIL. THIS PROPOSAL WAS ON MR. BEREKI'S PERSONAL ACCOUNT. THE PROPOSAL BASICALLY OUTLINED WHAT MR. BEREKI UNDERSTOOD THAT THE HUMPHREYS WANTED WITH REGARD TO THEIR RENOVATION OF THEIR CONDOMINIUM UNIT.

AND THE HUMPHREYS WENT THROUGH THAT AND THEY RESPONDED BACK VIA E-MAIL TO MR. BEREKI, IN WHICH THEY AGREED TO MANY OF THE ITEMS. AND THERE WAS MANY ITEMS THAT MR. BEREKI PROPOSED, AND NO, WE DON'T WANT TO DO THAT, MAYBE DO THIS INSTEAD. IN OTHER WORDS, HERE'S WHAT I PROPOSE, THE HUMPHREYS LOOKED AT IT AND SAYS "YES, THAT'S FINE. HERE'S THE CHANGES WE WANTED TO

MAKE."

MR. BEREKI'S PROPOSAL, AS FAR AS FEES, WERE $500 A DAY FOR MYSELF AND $500 A DAY FOR MY PARTNER, MR. OVERLEY. MATERIALS WILL BE BILLED TO YOU AT THEIR COST, NO MARK UP, AND OTHER LABOR, AS NECESSARY, WILL BE BILLED AT COST. THE PROJECT WILL TAKE APPROXIMATELY TWO AND A HALF MONTHS AND SHOULD COST AROUND $143,000.

THIS WAS ALL MEMORIALIZED IN THE E-MAIL. WHEN I SAY THERE WAS AN ORAL AGREEMENT, THERE WAS AN ORAL AGREEMENT BUT IT WAS MEMORIALIZED IN THIS E-MAIL, THIS BACK AND FORTH BETWEEN THE HUMPHREYS AND MR. BEREKI. AND THAT IS DATED APRIL 5, 2012.

THE E-MAIL, AGAIN, WAS SENT ON MR. BEREKI'S PERSONAL E-MAIL ACCOUNT. IT WAS SIGNED OFF BY ADAM BEREKI. IT WAS -- IT MENTIONED MR. BEREKI ONLY AND HIS PARTNER, GLENN OVERLEY. THERE WAS ABSOLUTELY NO MENTION OF SPARTAN ASSOCIATES OR SPARTAN CONSTRUCTION IN THAT E-MAIL.

THE HUMPHREYS WILL TESTIFY THAT THERE IS NO MENTION OF SPARTAN ASSOCIATES OR SPARTAN CONSTRUCTION IN ANY OF THEIR CONVERSATIONS LEADING UP TO THE E-MAIL. THERE WAS NO MENTION OF SPARTAN ASSOCIATES WHEN THEY WALKED THE PROJECT. THERE WAS NO MENTION OF SPARTAN PERIOD.

NOW, THIS GOES A LITTLE BIT BEYOND OPENING, BUT UNDER THE LAW, CONTRACTS ARE INTERPRETED AT THE TIME

THEY ARE ENTERED INTO, AND THEY ARE INTERPRETED BY THEIR OBJECTIVE INTENT, NOT SOMEBODY'S UNEXPRESSED INTENT. SO IF THERE WAS AN INTENT TO, HEY, I AM REALLY SPARTAN, WHERE YOU'RE REALLY ENTERING INTO A CONTRACT WITH SPARTAN, THERE WAS INDICATION OF THAT. THE HUMPHREYS HAD ABSOLUTELY NO INDICATION. THEY HAD NEVER HEARD OF SPARTAN AT THIS POINT IN TIME.

NOW, ONCE THE PROJECT STARTED -- AND I SHOULD SAY THAT THE PROJECT INITIALLY WAS ONE SMALL -- I THINK IT WAS A 900 SQUARE FOOT CONDOMINIUM UNIT, AND THE ORIGINAL QUOTE OF $143,000, TWO AND A HALF MONTHS IS BASED ON REFURBISHING THAT ONE UNIT.

WELL, SHORTLY AFTER THAT, THE HUMPHREYS BOUGHT THE ADJACENT UNIT. SO IT'S AN UPSTAIRS UNIT, IF YOU CAN PICTURE IT.

THE COURT: WHEN DID THAT PURCHASE TAKE PLACE? WHAT WAS THE DATE OF THAT PURCHASE?

MR. BISSELL: MAY, I BELIEVE. MAY OF 2012.

THE COURT: THAT WAS THE DATE OF THE PURCHASE WHEN THE ESCROW CLOSED?

MR. BISSELL: OF THE SECOND UNIT, YES, YOUR HONOR.

THE COURT: WHEN DID ESCROW CLOSE ON THAT SECOND UNIT?

MR. BISSELL: MAY OF 2012.

THE COURT: THANK YOU.

MR. BISSELL: SO THE PROJECT BECAME LARGER THAN

ORIGINALLY ESTIMATED. IT WAS GOING TO BE ROUGHLY DOUBLE BECAUSE YOU HAD TWO UNITS OF THE SAME SIZE AND THEY WERE BOTH IN SIMILAR SHAPE, THEY BOTH NEEDED THE SAME STUFF DONE.

FOR THE FIRST THREE MONTHS ON THIS PROJECT, UNTIL JULY OF 2012 -- I SHOULD PREFACE THIS. SHORTLY AFTER THE APRIL 5 AGREEMENT, E-MAIL AGREEMENT, IF WE COULD CALL THAT THE AGREEMENT, MR. BEREKI'S ACKNOWLEDGED THAT WAS THE AGREEMENT, AND THERE WAS NO OTHER AGREEMENT. THAT WAS THE ONLY AGREEMENT.

WITHIN TWO OR THREE DAYS AFTER THAT, MR. BEREKI CONTACTED THE HUMPHREYS. IT COULD HAVE BEEN WITHIN A WEEK AFTER THAT. CONTACTED THE HUMPHREYS AND SAID I AM REALLY EXCITED ABOUT THIS, AND WE'RE GOING FORWARD. I NEED $15,000 AS A DOWN PAYMENT TO PAY -- I'VE GOT A LITTLE BIT OF LABOR ALREADY INVOLVED IN THIS THING AND THIS WILL SEE ME THROUGH FOR ANOTHER WEEK OR TWO. WOULD YOU SEND ME $15,000.

MS. HUMPHREYS E-MAILS BACK AND SAYS FINE. WHO DO YOU WANT IT MADE PAYABLE TO? SHE DIDN'T KNOW WHETHER OR NOT IT SHOULD BE PAYABLE TO MR. BEREKI, MR. BEREKI AND MR. OVERLEY, HIS PARTNER, A COMBINATION OF THE TWO? SHE DIDN'T KNOW. MR. BEREKI RESPONDS BACK, HEY, TO ADAM BEREKI.

SO FOR THE FIRST THREE MONTHS ON THIS PROJECT, UNTIL JULY OF 2012, THE HUMPHREYS PAID MR. BEREKI

PERSONALLY $100,000.

AFTER THE $100,000 IN JULY OF 2012, MR. BEREKI, I THINK THE LIGHTBULB WENT ON IN HIS HEAD THAT I THINK I SHOULD BE RUNNING THIS JOB THROUGH MY CORPORATION. HE HAD A CORPORATION APPARENTLY. IT WAS SPARTAN. HE SENT THE HUMPHREYS AN E-MAIL SAYING WOULD YOU PLEASE MAKE PAYMENTS TO SPARTAN.

NOW, AT THAT SAME TIME, UP UNTIL THAT TIME, MR. BEREKI WAS NOT ONLY REQUESTING AND ACCEPTING PAYMENTS TO HIM PERSONALLY, HE WAS PAYING ALL LABOR AND MATERIAL ON THE JOB IN HIS OWN ACCOUNT, AND ACTUALLY IT WAS SOMEONE'S MOTHER'S ACCOUNT. NOTHING ON THE SPARTAN CONSTRUCTION ACCOUNT. SPARTAN DIDN'T EXIST ON THIS JOB UNTIL JULY WHEN MR. BEREKI SAYS PLEASE START MAKING PAYMENTS TO SPARTAN.

THE HUMPHREYS DIDN'T KNOW WHO SPARTAN WAS OR WHAT SPARTAN WAS. THEY FIGURED IT WAS AN ACCOUNT MR. BEREKI WANTED TO RUN PAYMENTS THROUGH, A DBA, WHATEVER. IT REALLY DIDN'T REGISTER WITH THEM. IT WASN'T EXPLAINED TO THEM, CERTAINLY, WHAT SPARTAN WAS, JUST PLEASE COULD YOU MAKE PAYMENTS TO SPARTAN.

IT WAS IN JULY OF 2012, WHEN MR. BEREKI MADE THIS REQUEST, THAT HE APPLIED TO THE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA FOR SPARTAN TO BE AN EMPLOYER. IT WAS IN JULY OF 2012 WHEN MR. BEREKI APPLIED AS SPARTAN CONSTRUCTION FOR WORKERS'

COMPENSATION INSURANCE ON THIS JOB. SO SPARTAN DIDN'T EVEN EXIST ON THIS JOB UNTIL JULY OF 2012 AFTER THE HUMPHREYS HAD ALREADY ENTERED INTO THE AGREEMENT, AFTER THE HUMPHREYS HAD PAID MR. BEREKI $100,000 PERSONALLY.

AND THEN FROM THAT POINT FORWARD, PAYMENTS WERE MADE BOTH TO MR. BEREKI AND SPARTAN CONSTRUCTION. $188,000 WAS PAID PERSONALLY TO MR. BEREKI AND THE BALANCE OF $848,000 MINUS $184,000 WAS PAID TO SOME COMBINATION OF SPARTAN OR SPARTAN CONSTRUCTION AT MR. BEREKI'S REQUEST.

AGAIN, THE HUMPHREYS THINKING THIS WAS SOME ACCOUNT OR SOME BUSINESS DBA THAT ADAM WANTED TO USE, AND THAT WAS FINE WITH THEM.

BUT THE POINT IS, CONTRACTS ARE INTERPRETED AT THE TIME THEY ARE ENTERED INTO. AT THE TIME THIS CONTRACT WAS ENTERED INTO, AND FOR THE FIRST THREE MONTHS, SPARTAN DIDN'T EXIST ON THIS JOB.

MR. BEREKI, AFTER THE FACT, TRIED TO APPARENTLY -- IT APPEARS THAT HE TRIED TO INSERT SPARTAN INTO THE JOB. IT WAS TOO LATE AT THAT POINT. THERE WAS NO CONTRACT THAT WAS ENTERED INTO BETWEEN SPARTAN AND HUMPHREYS. IT JUST DIDN'T EXIST, THERE ISN'T ONE.

THE CONSEQUENCES, OF COURSE, WERE BRIEF, AND THAT'S THAT MR. BEREKI WASN'T LICENSED. HE HAD NO LICENSE TO ACT AS A CONTRACTOR. MR. BEREKI WAS AN RMO FOR HIS CORPORATION, SPARTAN. THE LAW SAYS WE COULD BE

AN RMO, YOU CAN BE A RESPONSIBLE MANAGEMENT OFFICER, YOU CAN BE A RESPONSIBLE MANAGING EMPLOYEE, YOU CAN BE THE MANAGER, YOU CAN BE WHATEVER OF A PARTNERSHIP, CORPORATION, JOINT VENTURE, WHATEVER, BUT THAT DOESN'T GIVE YOU THE RIGHT TO GO OUT AND CONTRACT AS AN INDIVIDUAL. YOU HAVE TO HAVE A LICENSE AS AN INDIVIDUAL.

THE OTHER KEY HERE IS THAT MR. BEREKI -- MR. OVERLEY. MR. BEREKI REFERRED TO MR. OVERLEY IN THE AGREEMENT AS MY PARTNER, MY PARTNER MR. OVERLEY. MR. OVERLEY WORKED ON THE JOB. HE WAS PAID ON THE JOB FOR AT LEAST THE FIRST THREE MONTHS. THEN WHAT HAPPENED TO MR. OVERLEY, WE DON'T KNOW. THE HUMPHREYS FRANKLY NEVER MET MR. OVERLEY, NEVER SEEN HIM BEFORE. BUT HE WAS REPRESENTED TO BE MR. BEREKI'S PARTNER.

SO, AS HIS PARTNER, THERE WOULD HAVE TO BE, BY LAW, A LICENSE ISSUED TO THE TWO OF THEM AS A JOINT VENTURE OR PARTNERSHIP. EVEN IF BOTH WERE INDIVIDUALLY LICENSED, WHICH THEY WERE NOT, THEY WOULD STILL HAVE TO HAVE A JOINT VENTURE LICENSE. EVEN IF YOU COULD ARGUE THAT SPARTAN ASSOCIATES WAS SOMEHOW INVOLVED IN THIS JOB, OR IF THE HUMPHREYS HAD CONTRACTED WITH SPARTAN -- AND THAT'S THE KEY, IS WHO THEY CONTRACTED WITH, NOT WHETHER OR NOT SPARTAN WAS INVOLVED. SPARTAN COULD BE INVOLVED AS MUCH AS IT WANTS. IT COULD BE A SUBCONTRACTOR OF MR. BEREKI, IT COULD BE A CO-VENTURE

WITH MR. BEREKI AND MR. OVERLEY. IT CAN BE WHATEVER IT WANTS, BUT IT DIDN'T CONTRACT WITH THE HUMPHREYS.

AND IF IT COULD BE ARGUED THAT SPARTAN ASSOCIATES WAS SOMEHOW -- HAD SOMEHOW CONTRACTED WITH THE HUMPHREYS, IT WOULD STILL NEED TO BE A JOINT VENTURE LICENSE BETWEEN SPARTAN AND MR. OVERLEY, MR. BEREKI'S PARTNER. SO BEREKI HAS TESTIFIED UNDER OATH THAT MR. OVERLEY WAS AN INDEPENDENT CONTRACTOR. THAT WAS HIS POSITION ON THIS JOB, INDEPENDENT CONTRACTOR. SO ANY COMBINATION, ANY COMBINATION OF SPARTAN AND MR. OVERLEY, ANY COMBINATION OF MR. BEREKI AND MR. OVERLEY, ANY COMBINATION -- ANY COMBINATION YOU CAN COME UP WITH HAD TO HAVE A LICENSE ISSUED TO IT AS A JOINT VENTURE.

AND THE EVIDENCE WILL SHOW WE HAVE ASKED FOR THE PRODUCTION. THE BURDEN WILL SHIFT -- ONCE THE LICENSURE ISSUE BECOMES IN ISSUE, THE BURDEN SHIFTS TO THE CONTRACTOR TO PROVE LICENSURE. WE HAVE ASKED FOR PRODUCTION TODAY IN THIS TRIAL OF LICENSES ISSUED TO MR. BEREKI, INDIVIDUALLY, MR. OVERLEY, INDIVIDUALLY, OR TO THE TWO OF THEM AS A JOINT VENTURE, OR BETWEEN ANY COMBINATION OF THEM AND SPARTAN AS A JOINT VENTURE. AND I -- I STRONGLY SUSPECT THAT WE'RE NOT GOING TO SEE THAT LICENSE.

THE CONSEQUENCE OF THAT, YOUR HONOR, IS THAT, UNDER THE LAW -- AND IT'S A HARSH REMEDY AND -- THE COURT SHOULD UNDERSTAND THAT THE HUMPHREYS ARE PREPARED,

IF NECESSARY, TO -- YOU KNOW, WE CAN PUT ON EVIDENCE OF 18 MONTHS OF MALFEASANCE BY MR. BEREKI ON THIS JOB. NOT ONLY NEGLIGENCE, BUT OUTRIGHT FRAUD.

SO WE FEEL THAT THE DISGORGEMENT STATUTE, ALTHOUGH HARSH IN SOME INSTANCES, AND IN THIS INSTANCE IT'S NOT THAT HARSH, UNDER THE LAW, THE LAW IS VERY CLEAR THAT HARSH OR NOT, THE HUMPHREYS ARE ENTITLED TO RECOVER FROM MR. BEREKI ALL AMOUNTS PAID BY THEM ON THIS JOB. AND THAT AMOUNT TOTALS $848,000.

THANK YOU.

THE COURT: TURN TO MR. RUSSO.

MR. RUSSO: IF ONLY IT WAS SO SIMPLE, YOUR HONOR.

THERE'S NOT A DISPUTE HERE THAT THE SPARTAN ASSOCIATES, INC. IS LICENSED TO BE A CONTRACTOR WITH THE CONTRACTOR STATE LICENSE BOARD. MR. BEREKI IS -- MR. BEREKI IS THE RMO OF THAT COMPANY. HE'S THE SOLE SHAREHOLDER OF THAT COMPANY.

SPARTAN ASSOCIATES, THIS WAS NOT THEIR FIRST -- IT'S -- IT WAS NOT ITS FIRST WORK WITH THE HUMPHREYS FAMILY. THE HUMPHREYS HAVE FAMILY MEMBERS THAT SPARTAN ASSOCIATES DID PRIOR PROJECTS ON. THERE WERE TWO HOMES THAT WENT THROUGH SOME REMODEL WORK. THERE WAS A COMMERCIAL OFFICE BUILDING THAT MR. HUMPHREYS' BUSINESS IS IN WHERE SPARTAN ASSOCIATES DID THE TENANT IMPROVEMENT WORK ON THAT PRIOR TO THIS PROJECT. SPARTAN ASSOCIATES WAS AN ENTITY KNOWN BY THE

HUMPHREYS PRIOR TO THE HUMPHREYS ENGAGING SPARTAN ASSOCIATES FOR THIS PROJECT.

WAS MR. BEREKI A LITTLE LAX ON THE FIRST COUPLE OF CHECKS GOING TO HIM PERSONALLY? YES. BUT AT ALL TIMES THIS WAS A SPARTAN ASSOCIATES PROJECT. YOU WILL SEE -- THE EVIDENCE WILL SHOW THAT OVER $500,000 OF THE PAYMENTS FOR THIS REMODEL PROJECT FOR THE TWO WATERFRONT HOMES WERE PAYABLE TO THE SPARTAN ASSOCIATES.

WHAT'S BEEN REFERRED TO HERE IN THIS CROSS-COMPLAINT IS THE DISGORGEMENT STATUTE FOR UNLICENSED CONTRACTING. THAT'S WHEN A PERSON WHO DOESN'T HAVE A LICENSE ACCEPTS MONEY FOR WORK WHERE A LICENSE WAS REQUIRED. SPARTAN ASSOCIATES, THE RECIPIENT OF MOST OF THAT MONEY, THE VAST MAJORITY, WAS A LICENSED CONTRACTOR SO THE STATUTE DOESN'T APPLY. IT IS NOT A QUESTION IN MY MIND OF WHO WE ARE CONTRACTED WITH, IT'S WAS THIS UNLICENSED WORK? CERTAINLY IT WAS NOT.

THE BUILDING PERMITS PULLED ON THIS PROJECT WERE PULLED BY SPARTAN ASSOCIATES. THE HUMPHREYS WERE WELL AWARE THAT THE BUILDING PERMITS WERE PULLED BY SPARTAN ASSOCIATES. EVERY SUBCONTRACT ENTERED INTO ON THIS PROJECT WAS ENTERED INTO BY THE SPARTAN ASSOCIATES, INC., NOT MR. BEREKI PERSONALLY. SO WE WILL HAVE THOSE IN EVIDENCE.

AT THE END OF THE DAY, THIS IS NOT TOO DISSIMILAR TO THE FACT THAT OFTEN CLIENTS WILL WRITE TO

AN ATTORNEY -- EVEN THOUGH THEY WANT THE CHECKS WRITTEN TO THE LAW FIRM, THEY WILL WRITE IT TO THE ATTORNEY AND THEY DEPOSIT IT INTO THE LAW FIRM'S ACCOUNT. AT THE END OF THE DAY, THE DISGORGEMENT STATUTE DOES NOT APPLY BECAUSE WE DO HAVE LICENSURE HERE, THE PROPER B LICENSE.

WE WILL GET INTO THE OTHER ISSUES, THE QUALITY OF THE WORK AND WHETHER OR NOT THERE WAS ANY OVERCHARGING AND ALL THAT, BUT THERE WAS A LICENSE. THERE WAS A B LICENSE. THE VAST MAJORITY OF THE MONEY WENT THERE. ALL THE PERMITS, ALL THE ENGAGEMENTS IN THIS WERE WITH THE SPARTAN ASSOCIATES, INC. THE HUMPHREYS WERE WELL AWARE OF THAT THE WHOLE TIME.

THE COURT: MR. BEREKI, TO YOU.

MR. BEREKI: JUST A FEW MINOR THINGS. I JUST WANTED TO TOUCH ON THE WORDS "ORAL AGREEMENT" THAT KEEP COMING UP. THAT BOX DOWN THERE WITH THE 4-INCH BINDERS ARE THE E-MAILS. THERE WAS OVER A THOUSAND OF THEM THAT HAPPENED BETWEEN MYSELF AND THE HUMPHREYS FAMILY, KAREN AND GARY, AND THE ARCHITECTS, ENGINEERS, PEOPLE INVOLVED WITH THE PROJECT. THERE'S HUNDREDS OF PAGES IN THOSE E-MAILS OF AGREEMENTS WHERE SOMETHING HAPPENED ON THE PROJECT AND I SAID, "HEY, WE GOT THIS PROBLEM, WHAT DO YOU WANT TO DO ABOUT IT?" THEY WOULD SAY, "YES, GO AHEAD AND SPEND THIS," OR "NO, DON'T DO THAT." TO ME, THAT WAS EITHER PERMISSION TO DO OR NOT TO DO SOMETHING, AND THAT, IN ITSELF, WAS AN AGREEMENT. SO THERE'S

COUNTLESS OTHER FORMS OF AGREEMENT THAT WENT ON IN ADDITION TO THAT INITIAL ORAL AGREEMENT THAT YOU HAD.

THE COURT: LET ME ASK YOU, DID YOU PREPARE A FINAL TRIAL BRIEF HERE, SIR?

MR. BEREKI: I DID NOT, SIR.

THE COURT: OKAY. HOPEFULLY SOMEBODY ON YOUR SIDE OF THE TABLE, AT SOME POINT, WILL BE ABLE TO GIVE ME SOME LAW WITH RESPECT TO THE ISSUE OF E-MAILS VIS-A-VIS WRITTEN CONTRACTS AND WHETHER AN E-MAIL IN AND OF ITSELF CONSTITUTES A WRITTEN CONTRACT.

MR. BEREKI: YES, YOUR HONOR.

THE COURT: MR. RUSSO IS MAKING NOTES.

MR. RUSSO: YES, I AM, YOUR HONOR.

MR. BEREKI: JUST A NOTE ABOUT THE RESPONSIBLE MANAGING OFFICER ON THE LICENSE. I WASN'T, TO MY KNOWLEDGE, THE RMO. I WAS THE QUALIFIED INDIVIDUAL. I AM THE ONE THAT HAD THE WORK EXPERIENCE AND THE ONE THAT TOOK THE TEST TO OBTAIN THE LICENSE.

AND AS FAR AS GLENN OVERLEY AND MY REFERENCE TO BEING A PARTNER, HE'S A PARTNER THAT I WORK WITH. HE'S A FELLOW RETIRED POLICE OFFICER, LIKE I AM. AND JUST LIKE IN POLICE WORK I REFER TO PEOPLE AS MY PARTNER, HE'S MY PARTNER. HE'S MY MAIN GUY. WE WORK TOGETHER.

IT DOESN'T MEAN THAT I HAVE A LICENSE ISSUE WITH HIM OR A BUSINESS WITH HIM. IN FACT, WE RENTED

SOME SHOP SPACE. HE HAS A DIFFERENT COMPANY, AND I HAVE A DIFFERENT COMPANY. BUT TOGETHER ON THIS PROJECT, WE CAME TOGETHER AND PARTNERED TO DO THE WORK.

THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: THANK YOU. SO LET'S START WITH MR. BISSELL. YOUR FIRST WITNESS, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR. THE CROSS-COMPLAINANTS CALL KAREN HUMPHREYS.

THE COURT: MS. HUMPHREYS, IF YOU WILL STOP RIGHT THERE, FACE THE CLERK, AND RAISE YOUR RIGHT HAND. SHE IS GOING TO SWEAR YOU IN.

THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL IT.

THE WITNESS: KAREN, K-A-R-E-N, MOE, M-O-E, HUMPHREYS, H-U-M-P-H-R-E-Y-S.

THE COURT: GOOD MORNING, MS. HUMPHREYS. HAVE A SEAT RIGHT HERE, PLEASE.

THE WITNESS: THANK YOU.

THE COURT: HOW ARE YOU?

THE WITNESS: I AM OKAY.

THE COURT: LET'S TALK ABOUT THE CLARITY OF THE

RECORD FOR A SECOND. THIS IS FOR EVERYBODY'S BENEFIT HERE. COUPLE THINGS. NUMBER ONE, SPEAK UP. EVERYBODY IN THE COURTROOM NEEDS TO HEAR WHAT YOU SAY. FEEL FREE TO PULL DOWN THE MICROPHONE. I DON'T GUARANTEE IT WORKS VERY WELL. USUALLY, IF YOU'RE CLOSER THAN ABOUT 4 INCHES, WE GET A LOT OF FEEDBACK AND TYPICALLY YOU BLOW EVERYBODY OUT OF THE ROOM. IF YOU'RE FURTHER THAN ABOUT 12 INCHES, IT DOESN'T PICK UP VERY WELL. SO THERE'S A SWEET SPOT IN THERE SOMEWHERE IF YOU NEED IT. I'M NOT SURE YOU REALLY DO. YOU HAVE A GOOD VOICE.

NEXT, IF YOU ARE ASKED A QUESTION THAT CALLS FOR A "YES" OR "NO" ANSWER, IF YOU WOULD USE THE WORD APPROPRIATE, YES OR NO. SOME PEOPLE LIKE TO SAY, "UH-HUH" OR "HUH-HUH." I'M NOT ACCUSING YOU, I DON'T KNOW YOU. I AM JUST LETTING YOU KNOW "UH-HUH" AND "HUH-HUH" LOOK BOTH -- BOTH LOOK THE SAME IN THE TRANSCRIPT FOR THIS TRIAL. THAT LEADS TO CONFUSION, WHICH IS SOMETHING WE CANNOT AFFORD.

THE WITNESS: ALL RIGHT. YES.

THE COURT: GOOD ANSWER. THE COURT REPORTER WHO IS SITTING RIGHT IN FRONT OF YOU, HIS JOB IS TO TAKE DOWN EVERY WORD SPOKEN IN THE COURTROOM. AND SO IT'S IMPORTANT TO KEEP IN MIND THAT EVEN A GOOD COURT REPORTER LIKE THE GENTLEMAN SITTING HERE, MR. DO, CANNOT TAKE DOWN TWO PEOPLE TALKING AT THE SAME TIME. WHAT THIS MEANS IS THAT, WELL, I KNOW YOU CAN ANTICIPATE THE

QUESTIONS, AND LIKE MOST OF US IN LIFE, YOU WOULD LIKE TO GET THIS OVER WITH, LET THE QUESTION BE FULLY POSED BEFORE YOU START RESPONDING TO IT. SIMILARLY, I WILL TRY TO NOT LET THE LAWYERS CUT YOU OFF MIDSTREAM. THAT WAY THE RECORD CAN BE CLEAR AND CLEAN, AND IF ANY REVIEWING COURT NEEDS TO LOOK AT IT, THEY WILL BE ABLE TO UNDERSTAND WHAT HAPPENED HERE.

READY TO GO?

THE WITNESS: I AM.

THE COURT: MR. BISSELL, TO YOU, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BISSELL:

Q GOOD MORNING, MS. HUMPHREYS.

A GOOD MORNING.

Q ARE YOU AND YOUR HUSBAND CURRENTLY THE OWNERS OF THE UPSTAIRS UNIT AT 436 VIA LIDO NORD?

A YES, WE ARE.

Q AND DID THAT PARTICULAR UNIT USED TO BE TWO SEPARATE UNITS?

A YES.

Q DID YOU AND YOUR HUSBAND BUY BOTH OF THOSE UNITS SEPARATELY?

A YES, WE DID.

Q AND WHEN DID YOU BUY EACH OF THOSE UNITS?

A WE BOUGHT THE FIRST UNIT IN NOVEMBER/DECEMBER OF 2011, AND WE BOUGHT THE SECOND ONE IN MAY OF 2012.

Q AND WHAT WAS YOUR PURPOSE FOR BUYING THOSE TWO UNITS?

A WE WANTED TO ESTABLISH A PLACE WHERE WE COULD HAVE SOME VACATION TIME AND SPEND MORE TIME IN OUR RETIREMENT WHERE WE WOULD BE CLOSE TO OUR FAMILY AND FRIENDS IN SOUTHERN CALIFORNIA. MY PERSONAL HOPE WAS THERE WOULD BE GRANDCHILDREN COMING SOON. WITH THE FIELD OF DREAMS IDEA OF BUILD IT AND THEY WILL COME.

THE COURT: HOW DID THAT WORK OUT?

THE WITNESS: NOT YET.

THE COURT: OKAY.

BY MR. BISSELL:

Q AND TO EXPAND ON THE FIELD OF DREAMS CONCEPT, WHERE IS THIS CONDOMINIUM SITUATED?

A IT'S ON LIDO ISLE, AN UPSTAIRS OF A TWO -- NOW A TWO-UNIT DUPLEX. IT HAS THE BEACH RIGHT IN FRONT OF IT.

Q AND AN UNOBSTRUCTED VIEW OF THE BAY?

A YES, IT IS ON THE BAY FRONT FACING BALBOA BAY BEACH CLUB, ACROSS THAT DIRECTION.

Q ARE YOU FAMILIAR WITH ADAM BEREKI?

A YES, I AM.

Q WHEN DID YOU FIRST MEET MR. BEREKI?

A I MET HIM ON APRIL 1ST, 2012.
Q AND WHAT WAS THE OCCASION OF YOUR FIRST MEETING WITH MR. BEREKI?
A GARY AND I MET WITH HIM AT THE SITE OF THE CONDO, INSIDE THE CONDO TO DO A WALK-THROUGH TO TALK ABOUT THE POSSIBILITIES OF UPGRADING IT WITH HIM.
Q AND YOU NEVER MET MR. BEREKI BEFORE THAT?
A I HAD NOT MET HIM BEFORE THAT DAY.
Q HAD YOU EVER SPOKEN TO MR. BEREKI BEFORE THAT DAY?
A I HAD NOT SPOKEN WITH HIM BEFORE THAT DAY.
Q AT THE TIME THAT YOU PURCHASED THE TWO CONDOMINIUM UNITS, HAD MR. BEREKI DONE ANY CONSTRUCTION WORK FOR YOU OR YOUR HUSBAND?
A NO, HE HAD NOT.
Q SO AFTER BUYING UNIT -- THE FIRST OF THE TWO UNITS, YOU HAD A WALK-THROUGH WITH MR. BEREKI ON THE PREMISES?
A YES.
Q AND DID YOU COMMUNICATE WITH MR. BEREKI AND WHAT YOU WERE THINKING OF HAVING HIM DO?
A YES. AS WE WALKED THROUGH, WE POINTED OUT THINGS WE THOUGHT NEEDED TO BE FIXED AND TALKED ABOUT IDEAS FOR UPGRADING IT.
Q CAN YOU DESCRIBE IN GENERAL WHAT YOUR THINKING WAS? WHAT DID YOU WANT TO HAVE DONE TO THE UNIT AT THAT

TIME?

A YES, I CAN. THE UNIT HAD A GREAT LOCATION, BUT IT HAD BEEN USED PRIMARILY FOR A LONG PERIOD OF TIME AS A RENTAL UNIT. SO IT WAS IN BAD REPAIR WITH DIRTY CARPET AND DINGS AND MARKS ON THE WALLS, THAT SORT OF THING, AND IT WASN'T IN SHAPE FOR US TO ENJOY AS A FAMILY HOME YET. SO WE WANTED TO CHANGE OUT THE WINDOWS, WE WANTED TO GET THE ELECTRICAL UP TO CODE. IT WAS STILL IN THE ORIGINAL 1950S CODE ON THAT. AND, BASICALLY, FRESHEN IT UP, MAKE IT FEEL MORE WELCOMING.

Q DID YOU COMMUNICATE THAT TO MR. BEREKI?

A YES.

Q AT THE TIME OF THE WALK-THROUGH?

A YES.

Q DID MR. BEREKI INDICATE TO YOU THAT HE WAS INTERESTED IN DOING THE PROJECT?

A YES, HE DID. HE WAS VERY EXCITED ABOUT THE OPPORTUNITY, AND HE HAD A LOT OF IDEAS OF WHAT HE COULD DO TO HELP US CREATE THAT KIND OF A SPACE.

Q MS. HUMPHREYS, YOU MIGHT HAVE A FEW EXHIBIT BOOKS IN FRONT OF YOU -- I'M NOT SURE -- OR BEHIND YOU. THERE'S ONE THAT INDICATES IT IS DEFENDANTS' TRIAL EXHIBITS.

A YEAH, THIS ONE?

Q YEAH. COULD YOU PUT THAT IN FRONT OF YOU.

A YES.

THE COURT: ALL EXHIBIT BOOKS ARE SIZED AND DESIGNED TO INDUCE HERNIAS, SO BE CAREFUL.

BY MR. BISSELL:

Q IF YOU WILL TURN TO -- IT'S TAB NO. 4 IN YOUR EXHIBIT BOOK, BUT ACTUALLY EXHIBIT 304.

A I CAN. BUT IT'S BLANK.

Q I'M SORRY. LET ME BACKTRACK. IF YOU -- WHAT HAPPENED TO IT?

THE COURT: POINT IT AT ME.

BY MR. BISSELL:

Q WHAT ARE YOU SAYING?

THE COURT: IT IS MISSING AN EXHIBIT.

MR. BISSELL: I HAVE EXTRAS.

THE WITNESS: YOUR HONOR, I FORGOT MY READING GLASSES.

THE COURT: STEP ON OVER AND GET THEM, OR PERHAPS MR. HUMPHREYS CAN HELP YOU OUT.

MR. HUMPHREYS: OH, IS THIS IT?

THE WITNESS: YEAH.

MR. BISSELL: IS ANYBODY ELSE'S EXHIBIT BOOK MISSING NUMBER 4?

MR. RUSSO: MINE IS. THANK YOU.

THE COURT: I HAVE IT.

MR. BISSELL: ALL RIGHT.

THE COURT: LOOKS TO BE A GMAIL OF APRIL 6, 2012.

MR. BISSELL: THAT'S CORRECT.

BY MR. BISSELL:

Q ALTHOUGH I'M GOING TO ASK YOU, INSTEAD OF FLIPPING FIRST TO NUMBER 4, IF YOU WOULD FLIP TO EXHIBIT NUMBER 303, TABBED 3 IN YOUR BOOK.

A YES.

Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

A YES.

Q CAN YOU TELL US WHAT THAT IS?

A THIS IS A COPY OF E-MAILS THAT WERE SENT ON APRIL 5, 2012 FROM ME TO ADAM BEREKI AT HIS PERSONAL GMAIL ACCOUNT, AND IT ALSO INCLUDES THE TEXT OF THE E-MAIL HE HAD SENT TO ME EARLIER IN THE DAY.

Q SO THIS WAS A RESPONSE TO MR. BEREKI'S E-MAIL EARLIER THE SAME DAY?

A YES.

Q AND THIS EXHIBIT NUMBER 303 CONTAINS BOTH MR. BEREKI'S ORIGINAL E-MAIL TO YOU AND YOUR RESPONSE TO HIM?

A YES.

Q AND CAN YOU TELL ME IN GENERAL THE GIST OF WHAT MR. BEREKI'S COMMUNICATION WAS TO YOU IN THIS E-MAIL?

A HE HAD MEMORIALIZED A LOT OF THE CONVERSATION THAT WE HAD AND HE ALSO -- IT WAS HIS PROPOSAL FOR THE SCOPE OF WORK, BASICALLY, AND TALKING ABOUT THINGS THAT HE THOUGHT WE TALKED ABOUT.

Q OKAY. AND DID YOU READ -- DID YOU GO OVER HIS E-MAIL EARLIER IN THE DAY WITH MR. HUMPHREYS?

A YES, I DID.

Q DID THE TWO OF YOU DISCUSS THAT?

A YES, WE DID.

Q AND DID YOU UNDERSTAND IT TO BE MR. BEREKI'S PROPOSAL FOR THE WORK HE WANTED TO DO?

A YES, WE DID.

Q AND DID YOU TALK ABOUT THAT PROPOSAL WITH MR. HUMPHREYS?

A YES, WE TALKED ABOUT IT TOGETHER.

Q DID YOU COME UP WITH A RESPONSE TO MR. BEREKI'S PROPOSAL?

A YES, WE CREATED THIS RESPONSE TOGETHER.

Q IS THAT RESPONSE ALSO INCLUDED IN THIS APRIL 5, 2012, E-MAIL, EXHIBIT 303?

A YES.

Q DOES THE EXHIBIT YOU'RE REFERRING TO NOW, THE EXHIBIT 303, DOES THAT ACCURATELY DESCRIBE WHAT YOUR UNDERSTANDING WAS AS TO WHAT THE PROJECT WOULD ENTAIL AS OF APRIL 5, 2012?

A YES, IT DID.

Q AND IN GENERAL TERMS, WHAT WAS THAT UNDERSTANDING?

A MY UNDERSTANDING IS THAT WE WERE HIRING ADAM AND HIS PARTNER GLENN OVERLEY TO FRESHEN UP THE UNIT BY

UPGRADING THE ELECTRICAL, DOING SOME CABINETRY WORK, REPLACING WINDOWS, PAINTING, THAT SORT OF THING.

Q AND DID MR. BEREKI INDICATE WHO IT WAS THAT HE WAS PROPOSING WOULD DO THIS WORK?

A YES.

Q AND WHO DID HE -- CAN YOU POINT OUT IN THIS EXHIBIT 303 WHERE MR. BEREKI IS INDICATING WHO HE'S PROPOSING TO HAVE -- TO DO THE WORK?

A YES, I CAN. ON PAGE 5, SECOND-TO-THE-LAST PARAGRAPH.

Q COULD YOU READ THAT PARAGRAPH, PLEASE?

A "AS I SHARED WITH YOU ON SUNDAY MY PARTNER GLENN AND I CHARGE $75" --

THE REPORTER: SLOW DOWN.

THE COURT: SLOW DOWN FOR THE COURT REPORTER. WHEN YOU ARE READING YOUR CADENCE PICKED UP BY A FACTOR OF ABOUT 50 PERCENT. HAVE YOU SEEN THAT COMMERCIAL YEARS AGO WITH THE GUY TALKING ABOUT 3,000 MILES AN HOUR ADVERTISING A PRODUCT THAT NOBODY TODAY REMEMBERS? WE WANT TO BE ABLE TO PAY ATTENTION, SO READ SLOWLY.

THE WITNESS: THANKS FOR THE REMINDER.

"AS I SHARED WITH YOU ON SUNDAY, MY PARTNER GLENN AND I CHARGE $75 PER HOUR FOR LABOR (EACH). DUE TO THE NIGHTMARE OF KEEPING TIMECARDS, ET CETERA, WE ALSO HAVE A REDUCED DAILY RATE OF $500 EACH. OUR WORKDAYS ARE USUALLY TEN TO 12 HOURS. WHERE POSSIBLE WE

USE LABORERS TO HANDLE DEMOLITION, CLEAN UP, AND OTHER NON-SKILLED WORK SO WE CAN FOCUS ON THE SKILLED PORTIONS. THE LABORERS MAKE 15 TO $25 PER HOUR AND WE DO NOT MARK UP THEIR PAY. MATERIALS ARE PAID FOR SEPARATELY AND ARE ALSO NOT MARKED UP."

BY MR. BISSELL:

Q BY THE WAY, DID YOU ASK MR. BEREKI AT THIS TIME WHETHER OR NOT THERE SHOULD BE A WRITTEN CONTRACT BETWEEN THE TWO OF YOU?

A YES, I DID.

Q IS THAT IN THIS E-MAIL ALSO?

A YES. IT'S THE LAST PARAGRAPH.

Q AND CAN YOU READ THAT, PLEASE?

A "WE ARE LOOKING FORWARD TO WORKING WITH YOU TOO. DO WE NEED TO SIGN A CONTRACT BEFORE YOU GO AHEAD AND GET STARTED? YOUR DAILY RATE SOUNDS FINE."

Q DID MR. BEREKI RESPOND TO YOUR INQUIRY AS TO WHETHER THERE SHOULD BE ANY FORM OF WRITTEN CONTRACT BETWEEN THE TWO OF YOU?

A YES, HE DID.

THE COURT: EXCUSE ME FOR A SECOND, COUNSEL, I AM A LITTLE CONFUSED. I MUST BE MISSING SOMETHING. THE WAY I AM LOOKING AT THIS E-MAIL STRING, THE FIRST AT THE TOP DATED APRIL 5, 2012, SENT AT 5:41 P.M., SUBJECT, 436 VIA LIDO NORD. AND THIS IS AN E-MAIL FROM MS. HUMPHREYS TO MR. BEREKI, AND IT APPEARS TO BASICALLY BE THREE

SENTENCES LONG.

FOLLOWING THAT, ON APRIL 5, 2012, AT 8:41 A.M., MR. BEREKI WROTE.

AND THEN ALL THE FOLLOWING PAGES GOING TO PAGE 6 APPEAR TO BE ALL PART OF THE E-MAIL MR. BEREKI SENT TO THE HUMPHREYS.

AND SO I WOULD UNDERSTAND THIS LAST PARAGRAPH TO BE MR. BEREKI INQUIRING AS TO WHETHER, QUOTE, WE NEED TO SIGN A CONTRACT BEFORE YOU GO AHEAD AND GET STARTED. THEN IT CLOSES WITH "BEST, ADAM BEREKI." PERHAPS THINGS HAVE BEEN MIXED TOGETHER IN SOME WAY. HELP ME OUT WITH THIS.

MR. BISSELL: IT'S VERY DIFFICULT, YOUR HONOR, AND I UNDERSTAND -- I UNDERSTAND HOW THE COURT SEES THIS BECAUSE A GOOD DEAL OF THE CORRESPONDENCE THAT WENT BACK AND FORTH BETWEEN MR. BEREKI AND THE HUMPHREYS ON THIS WAS ALL OF THIS NATURE. IT WAS MESSAGE SENT AND THEN INSERTED IN THAT MESSAGE WAS A RESPONSE. SOMETIMES IT WAS ALL IN CAPS, WHICH MAKES IT A LITTLE BIT EASIER. SOMETIMES IT WASN'T. BUT THAT WAS THE NATURE OF THE CORRESPONDENCE. I CAN PROBABLY CLEAR THIS UP BY SIMPLY ASKING MS. HUMPHREYS WHETHER OR NOT THAT LAST PARAGRAPH --

THE COURT: GO AHEAD, FIRE AWAY.

BY MR. BISSELL:

Q WHETHER THAT LAST PARAGRAPH -- DID YOU DRAFT

THAT LAST PARAGRAPH, THE PARAGRAPH YOU JUST READ --

A YES.

Q -- OF EXHIBIT 303?

A YES.

MR. BISSELL: DOES THAT HELP, YOUR HONOR?

THE COURT: UNTIL SOMEBODY COMES ALONG WITH FURTHER CLARIFICATION.

MR. BEREKI: I AM HAPPY TO SAY --

THE COURT: YOU'RE NOT TESTIFYING YET.

MR. BEREKI: OKAY.

THE COURT: JUST HOLD YOUR PEACE.

MR. BEREKI: OKAY.

BY MR. BISSELL:

Q YOU HAVE HEARD THE COURT'S CONCERN THAT IT'S DIFFICULT TO TELL WHO'S WRITING WHAT IN THIS E-MAIL, WHICH IS UNDERSTANDABLE.

IS THERE A WAY THAT -- IS THERE A WAY TO DIFFERENTIATE WHAT YOU WROTE VERSUS WHAT HE WROTE, WITHOUT GOING THROUGH EACH LINE AND IDENTIFYING THAT IS YOURS OR HIS?

A I BELIEVE SO.

Q OKAY.

A WHAT I DID WAS INSERT MY ANSWERS AFTER EACH SUGGESTION THAT HE MADE. SO IF WE JUST LOOK AT THE FIRST PAGE OF IT, THE "YES, FOR SURE" WAS MY RESPONSE TO HIS PROPOSAL TO REPLACE THE ELECTRICAL.

THE COURT: NOW IT COMES CLEAR. THANK YOU, MS. HUMPHREYS. NOW I UNDERSTAND.

BY MR. BISSELL:

Q ACTUALLY, I THINK THE FOLLOWING EXHIBIT MIGHT FURTHER CLARIFY AS TO WHO OR WHAT.

WOULD YOU FLIP TO EXHIBIT NO. 4 ON YOUR TAB, WHICH IS 304.

A THAT'S --

Q HAVE YOU SEEN THIS DOCUMENT BEFORE?

A THAT'S THE EXHIBIT MISSING FROM THIS BINDER.

Q NOBODY GOT THAT TO YOU?

MR. BISSELL: MAY I APPROACH --

THE COURT: FEEL FREE TO TAKE IT UP.

MR. BISSELL: I GAVE IT TO MR. HUMPHREYS. I THOUGHT FOR SURE --

THE COURT: IT'S NOW THAT PAPER GLIDER THAT MR. RUSSO IS FLYING ACROSS THE COURTROOM.

MR. BISSELL: THERE YOU GO.

THE WITNESS: YES, I HAVE SEEN THIS BEFORE.

BY MR. BISSELL:

Q CAN YOU TELL US WHAT THIS DOCUMENT IS?

A THIS IS A AN E-MAIL THAT ADAM BEREKI SENT FROM HIS PERSONAL ACCOUNT TO ME ON FRIDAY, APRIL 6, 2012.

Q NOW, IF YOU LOOK AT THE -- THE SECOND-TO-THE-LAST PARAGRAPH BEGINNING WITH, "AS FAR AS," DO YOU SEE THAT?

A YES.

Q IS THAT YOUR DRAFT, OR IS THAT MR. BEREKI'S DRAFT?

A MR. BEREKI'S.

Q COULD YOU READ THAT, PLEASE?

A "AS FAR AS THE CONTRACT GOES, NO, NOTHING NEEDS TO BE SIGNED UNLESS YOU PREFER TO. YOU ARE VERY DEAR FRIENDS AND YOUR WORDS/COMMITMENT IS ENOUGH."

Q NOW, WHEN MR. BEREKI SAYS "YOU ARE VERY DEAR FRIENDS," YOU MET HIM EXACTLY HOW MANY TIMES BEFORE THIS?

A ONCE ON THE WALK-THROUGH.

Q DURING ANY CONVERSATION WITH MR. BEREKI BEFORE HIS APRIL 5, 2012 E-MAIL TO YOU IN WHICH HE COMMUNICATED HIS PROPOSAL FOR THE PROJECT, DID HE EVER MENTION THE SPARTAN ASSOCIATES DEAL?

A NO, HE DIDN'T MENTION SPARTAN.

Q DID HE EVER MENTION SPARTAN AT ALL?

A NO.

Q HAVE YOU EVER HEARD OF SPARTAN ASSOCIATES IN CONNECTION WITH MR. BEREKI AT ANY TIME BEFORE APRIL 5, 2012?

A NO.

Q IN THE APRIL 5, 2012 E-MAIL FROM MR. BEREKI, EXHIBIT 303, IS THERE ANY MENTION IN THERE OF SPARTAN?

A NO.

Q IN APRIL 2012, DID YOU BELIEVE YOU WERE CONTRACTING WITH SPARTAN ASSOCIATES?

A NO.

Q WHO DID YOU BELIEVE YOU WERE CONTRACTING WITH?

A I BELIEVED I WAS CONTRACTING WITH ADAM BEREKI AND HIS PARTNER, GLENN OVERLEY.

Q WHAT WAS THAT UNDERSTANDING BASED ON?

A IT WAS BASED ON THE EXCHANGE OF E-MAILS ON APRIL 5.

Q IF YOU WILL FLIP TO EXHIBIT -- IT'S NUMBERED FIVE IN YOUR BOOKLET THERE, BUT IT'S 305.

HAVE YOU SEEN THIS DOCUMENT BEFORE?

A YES.

Q CAN YOU TELL US WHAT IT IS?

A THIS IS A COPY OF A STRING OF E-MAILS BETWEEN MYSELF AND ADAM BEREKI ON FRIDAY, APRIL 13, 2012.

Q THIS IS ROUGHLY ONE WEEK AFTER THE APRIL 5, 2012 E-MAIL AGREEMENT?

A YES.

Q AND CAN YOU TELL US WHO INITIATED THIS E-MAIL STRING?

A MR. BEREKI.

Q WHAT DID HE ASK IN HIS INITIAL E-MAIL TO YOU?

A HE ASKED FOR A CHECK FOR $15,000 TO COVER MATERIALS AND LABOR.

Q WHAT DID YOU RESPOND?

A I RESPONDED THAT I COULD SEND HIM A CHECK AND I WANTED TO KNOW IF I COULD MAIL IT OR DID HE WANT IT WIRED TO A BANK ACCOUNT AND TO WHOM TO MAKE IT OUT.

Q AND WHY DID YOU WANT TO KNOW TO WHOM TO MAKE IT OUT?

A I WANT TO KNOW IF I SHOULD MAKE IT OUT TO ADAM BEREKI OR ADAM BEREKI AND GLENN OVERLEY.

Q WHAT DID MR. BEREKI RESPOND?

A HE RESPONDED, "YES, TOMORROW IS FINE. MADE OUT TO ADAM BEREKI. MY HOME ADDRESS IS."

Q IF YOU LOOK AT EXHIBIT NO. 6 IN YOUR BOOKLET, BUT IT'S NUMBERED 306, HAVE YOU SEEN THAT DOCUMENT BEFORE?

A YES.

Q CAN YOU TELL US WHAT THIS IS?

A THIS IS AN IMAGE OF A CHECK AND A DEPOSIT WITH CHASE BANK.

Q AND WHEN YOU SAY "AN IMAGE," IS THAT AN IMAGE OF A CHECK?

A YES, THERE'S AN IMAGE OF A CHECK ON THE PAGE.

Q CAN YOU DESCRIBE WHAT THAT CHECK IS?

A THIS IS A CHECK THAT I WROTE TO ADAM BEREKI FOR $15,000 ON APRIL 13, 2012.

Q THAT WAS IN RESPONSE TO HIS REQUEST OF THE SAME DATE?

A YES, IT WAS.

Q WHO WAS THAT CHECK MADE PAYABLE TO?
A ADAM BEREKI.
Q BY THE WAY, ON THE EXHIBIT 5 YOU JUST LOOKED AT, THE STRING E-MAIL, WHOSE E-MAIL ACCOUNT DID MR. BEREKI'S E-MAIL COME TO YOU ON?
A HIS PERSONAL E-MAIL ACCOUNT AT GMAIL.
Q AT SOME POINT, DID YOU HEAR OF SPARTAN CONSTRUCTION?
A YES, I DID.
Q WHEN WAS THAT?
A IT WAS SEVERAL MONTHS INTO THE PROJECT IN JULY OF 2012.
Q HOW DID YOU HEAR OF SPARTAN CONSTRUCTION?
A ADAM ASKED US TO START MAKING THE CHECKS OUT TO SPARTAN INSTEAD OF ADAM BEREKI.
Q DID HE TELL YOU WHY?
A NO.
Q DID HE EXPLAIN WHO SPARTAN WAS?
A NO.
Q DID IT MATTER TO YOU?
A NO, IT DIDN'T.
Q DID YOU HAVE SOME UNDERSTANDING OF WHO SPARTAN CONSTRUCTION WAS?
A I THOUGHT SPARTAN WAS, I GUESS, ANOTHER ACCOUNT THAT HE WANTED TO USE.
Q DID YOU EVER ENTER INTO ANY AGREEMENT WITH

SPARTAN ASSOCIATES ON THIS PROJECT?

A NO.

Q WERE YOU EVER ASKED TO ENTER INTO ANY SORT OF AGREEMENT WITH SPARTAN ASSOCIATES?

A NO.

Q WERE YOU EVER PRESENTED WITH ANY TYPE OF AGREEMENT WITH SPARTAN ASSOCIATES ON THIS PROJECT?

A NO.

MR. BISSELL: THANK YOU. NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO, TO YOU.

CROSS-EXAMINATION

BY MR. RUSSO:

Q MS. HUMPHREYS, WHAT'S HUMPHREYS & ASSOCIATES?

A HUMPHREYS & ASSOCIATES IS A COMPANY THAT DOES EARNED VALUE MANAGEMENT SYSTEM CONSULTING.

Q IS THAT YOUR HUSBAND'S BUSINESS, YOUR BUSINESS, OR A COMBINATION?

A IT'S NOT MY BUSINESS.

Q OKAY.

A MY HUSBAND STARTED THE BUSINESS.

Q OKAY. SO IS IT A CORPORATION, TO YOUR KNOWLEDGE?

A IT'S AN S CORP.

Q OKAY. ISN'T IT TRUE THAT HUMPHREYS & ASSOCIATES MADE SOME OF THE PAYMENTS TOWARDS THE CONSTRUCTION ON THE LIDO PROPERTY?

A NO.

Q YOU'RE SAYING NONE OF THE CHECKS CAME FROM HUMPHREYS & ASSOCIATES?

A ARE YOU ASKING ME --

Q YES.

A -- IF THE CHECKS THAT WE PAID ADAM BEREKI CAME FROM HUMPHREYS & ASSOCIATES?

Q SOME OF THEM, NOT ALL OF THEM.

A I HAVE NO KNOWLEDGE OF THAT.

Q OKAY. HUMPHREYS & ASSOCIATES, WHERE IS THAT BUSINESS LOCATED?

A SOUTHERN CALIFORNIA.

Q RESEARCH AVENUE IN IRVINE; CORRECT?

A IT IS NOW.

Q 9910 RESEARCH AVENUE?

A I DON'T KNOW.

Q OKAY. YOU ARE AWARE THAT SPARTAN ASSOCIATES DID THE TENANT IMPROVEMENTS AT YOUR HUSBAND'S BUSINESS OFFICE PRIOR TO THIS WORK ON LIDO ISLE?

A I HEARD THAT SPARTAN ASSOCIATES, ADAM, DID WORK AT THE OFFICE BUILDING BEFORE HUMPHREYS & ASSOCIATES MOVED INTO IT.

Q OKAY. AND --

THE COURT: WHEN DID YOU HEAR THAT?

THE WITNESS: I HEARD THAT A FEW MONTHS AGO.

THE COURT: AFTER THIS LAWSUIT WAS FILED?

THE WITNESS: YES.

THE COURT: ALL RIGHT. GO ON.

BY MR. RUSSO:

Q ISN'T IT TRUE THAT ONE OF THE REASONS WHY YOU AND YOUR HUSBAND HIRED SPARTAN ASSOCIATES WAS BECAUSE OF ITS FINE WORK ON THE TENANT IMPROVEMENTS ON THE COMMERCIAL OFFICE BUILDING FOR YOUR HUSBAND'S BUSINESS?

MR. BISSELL: OBJECTION, YOUR HONOR. HE'S MISCHARACTERIZING THE WITNESS'S TESTIMONY SAYING ISN'T IT TRUE THAT YOU ENTERED INTO A CONTRACT WITH SPARTAN ASSOCIATES. SHE'S TESTIFIED IT'S HER UNDERSTANDING THAT SHE ENTERED INTO A CONTRACT --

MR. RUSSO: IS THAT AN OBJECTION OR IS THAT A SPEAKING OBJECTION?

MR. BISSELL: IT'S AN OBJECTION.

THE COURT: SEEMS THE LOCAL, LOCAL RULE; I.E., MY RULE, NO SPEAKING OBJECTIONS EVEN IN COURT TRIALS.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: ASIDE FROM THAT, MR. RUSSO, IF YOU WILL KINDLY REPHRASE.

BY MR. RUSSO:

Q ISN'T IT TRUE THE REASON YOU ENTERED INTO ANY RELATIONSHIP WAS BECAUSE OF HIS FINE WORK FOR YOUR

HUSBAND'S OFFICE BUILDING?

A I DIDN'T ENTER INTO AN AGREEMENT WITH SPARTAN ASSOCIATES.

Q DO YOU KNOW HOW MANY ADDRESSES MR. BEREKI USES?

A NO.

Q BECAUSE YOU KEEP REFERRING TO IT AS HIS PERSONAL E-MAIL. DO YOU KNOW IF THAT'S THE SAME AS HIS WORK E-MAIL?

A I ONLY AM FAMILIAR WITH THE ABEREKI@GMAIL.COM.

Q SO YOU DON'T KNOW IF THAT IS HIS PERSONAL BUSINESS OR ANYTHING; CORRECT?

A YES.

Q YOU DON'T KNOW -- YES, YOU DON'T KNOW; CORRECT?

A YES.

Q ISN'T IT TRUE THAT PRIOR TO THE LIDO PROJECT, YOU MET MR. BEREKI AT FAMILY OCCASIONS OF YOURS?

A I HAD NEVER MET MR. BEREKI BEFORE APRIL 1ST.

Q ISN'T IT TRUE THAT HE ATTENDED YOUR MOTHER-IN-LAW'S FUNERAL PRIOR TO THIS?

A I DON'T KNOW.

Q ISN'T IT TRUE THAT HE ATTENDED YOUR BROTHER-IN-LAW'S FUNERAL PRIOR TO THIS?

A I DON'T KNOW.

Q OKAY. HE ATTENDED AND ACTUALLY SAT AT THE

FAMILY TABLE AT YOUR SON'S WEDDING; CORRECT?

A I REMEMBER HIM BEING INVITED TO THAT WEDDING --

Q OKAY.

A -- WHICH WAS AFTER 2012.

Q YOU WOULD AGREE THAT HE WASN'T A FOREIGNER TO YOUR FAMILY; CORRECT?

A I HAD NEVER MET HIM. HE HAD NO FAMILIARITY TO MY FAMILY THAT I WAS AWARE OF PRIOR TO APRIL 1ST.

Q YOU WOULD AGREE, MA'AM, THAT YOU FELT THAT YOUR AGREEMENT WITH WHOEVER YOU WERE HIRING AS A CONTRACTOR WAS ADEQUATELY MEMORIALIZED IN YOUR E-MAILS WHICH ARE EXHIBIT NUMBER 303; CORRECT?

A I FELT THAT -- THAT ADAM PROPOSED A SCOPE OF WORK IN THE FIRST E-MAIL, AND OUR RESPONSE WAS AN ACCEPTANCE OF THAT PROPOSAL.

Q SO YOU HAD A MEETING OF THE MINDS AND IT WAS DOCUMENTED IN THE E-MAILS; CORRECT?

A YES.

Q SO IT'S NOT THAT THERE'S NO WRITING, IT'S JUST THE WRITING IS E-MAILS AS OPPOSED TO SOMETHING SIGNED; CORRECT?

A I HAD A CONCERN WHETHER WE NEEDED MORE THAN THAT, WHICH IS WHY I ASKED HIM ABOUT IT IN MY E-MAIL. BECAUSE I AM FAMILIAR WITH HAVING TO SIGN CONTRACTS WHEN YOU HIRE PEOPLE TO DO WORK FOR YOU.

Q YOU HAVE HIRED CONTRACTORS TO WORK ON OTHER VACATION HOMES; CORRECT?
A YES.
Q OKAY.
A OH, NO -- YES.
Q WELL, YOU HAVE TWO VACATION UNITS ON MAUI; CORRECT?
A YES.
Q OKAY. AND YOU HAVE BEEN THROUGH THE PROCESS OF REMODELING PROJECTS; CORRECT?
A YES.
Q OKAY. AND YOU WANTED A LICENSED CONTRACTOR FOR THE WORK ON YOUR LIDO PROPERTIES; CORRECT?
A YES.
Q OKAY. AND BECAUSE YOU KNEW YOU WERE GOING TO BE DOING PLUMBING AND ELECTRICAL AS WE CAN SEE IN EXHIBIT NO. 303; CORRECT?
A I WANTED LICENSED WORK DONE, YES.
Q OKAY.
A WITH PERMITS.
Q DID YOU, PRIOR TO STARTING THIS RELATIONSHIP, DOUBLE-CHECK TO MAKE SURE THAT THERE WAS A LICENSE FOR THIS SINCE PERMITS HAD TO BE PULLED?
A NO. I TOOK ADAM AT HIS WORD THAT HE HAD A LICENSE.
Q DID MR. BEREKI EVER TELL YOU -- WELL, HE TOLD

YOU HE WAS LICENSED; CORRECT?

A YES.

Q AND YOU'RE SAYING YOU DIDN'T REALIZE THAT THAT LICENSE WAS IN THE NAME OF SPARTAN ASSOCIATES; YOU THOUGHT IT WAS PERSONAL TO HIM?

A I HAD NEVER HEARD OF SPARTAN ASSOCIATES.

Q DID YOU EVER CHECK?

A DID I CHECK WHAT?

Q TO SEE WHETHER OR NOT MR. BEREKI'S LICENSE WAS PERSONAL OR IN HIS BUSINESS NAME.

A NO.

Q I HATE TO DO THIS TO YOU, BUT WE GOT MULTIPLE BINDERS. ONE OF THEM IS MARKED ONE TO 65. I'M GOING TO WORK OFF THAT ONE AS OPPOSED TO THE ONE YOU WERE JUST LOOKING AT.

THE COURT: WELL, SPEAKING OF HERNIA, YOU MAY HAVE SET A NEW RECORD. I THINK THIS IS THE BIGGEST BINDER I HAVE SEEN. THIS MAY INDIVIDUALLY BE THE BIGGEST BINDER I HAVE EVER SEEN IN THIS DEPARTMENT.

MR. RUSSO: I HAD A HARD TIME CARRYING THOSE UP TODAY.

THE COURT: EXHIBIT NUMBER?

MR. RUSSO: 38, THANK YOU.

MR. BISSELL: YOUR HONOR, I DON'T HAVE THE BENEFIT OF THOSE EXHIBITS. IF I COULD TAKE A LOOK.

MR. RUSSO: SURE.

THE COURT: I GUESS MR. RUSSO COULDN'T CARRY A FOURTH BECAUSE THESE WERE TOO HEAVY. THE STRAW THAT BROKE THE CAMEL'S BACK.

MR. RUSSO: WE SEND EACH OTHER DROPBOXES OF THE EXHIBITS.

BY MR. RUSSO:

Q MS. HUMPHREYS, DO YOU RECOGNIZE --

A I HAVEN'T --

Q I'M SORRY, MA'AM.

THE COURT: IT'S ALSO HARD TO WORK WITH.

THE WITNESS: AM I LOOKING FOR 38?

MR. RUSSO: YES, MA'AM.

THE COURT: YOU WEREN'T CONSERVING TREES, I CAN TELL YOU THAT.

BY MR. RUSSO:

Q MS. HUMPHREYS, DO YOU RECOGNIZE EXHIBIT NO. 38 AS THE TERMINATION NOTICE IN WHICH YOU AND YOUR HUSBAND TERMINATED THE SPARTAN ASSOCIATES FROM THIS PROJECT?

A THIS IS THE FIRST TIME I HAVE SEEN THIS.

Q YOU WERE AWARE THAT YOU -- DID YOUR HUSBAND SHARE WITH YOU THAT A TERMINATION NOTICE WAS SENT TO SPARTAN ASSOCIATES?

A NO.

Q YOU WEREN'T AWARE OF IT?

A NO.

Q OKAY. I WOULD LIKE YOU TO TURN TO --

THE COURT: BY THE WAY, JUST SO THE RECORD IS CLEAR, YOU CHARACTERIZED THIS AS A TERMINATION NOTICE. IT'S ACTUALLY STYLIZED AS NOTICE OF CESSATION OF LABOR AND IT INDICATES THE LAST SENTENCE, QUOTE, "THIS NOTICE OF CESSATION OF CONSTRUCTION AND RELATED ACTIVITIES SHALL REMAIN IN EFFECT AND SHALL BE BINDING UNTIL FURTHER NOTICE FROM THE UNDERSIGNED," END QUOTE. IT DOESN'T STRICTLY SOUND LIKE A TERMINATION NOTICE.

BY MR. RUSSO:

Q WAS IT ON OR ABOUT AUGUST 28, 2013, THAT YOU AND YOUR HUSBAND TERMINATED MR. BEREKI FROM THIS PROJECT?

A YES.

Q ARE YOU AWARE OF ANY NOTICE OTHER THAN THIS NOTICE HERE FOR THAT TERMINATION?

A NO.

Q MA'AM, CAN YOU PLEASE TURN TO EXHIBIT NUMBER 34.

A YES.

Q MA'AM, YOU ARE AWARE THAT A BUILDING PERMIT HAD TO BE BULLIED FOR THIS PROJECT?

A YES.

Q AND YOU KNEW THAT ONLY A LICENSED CONTRACTOR COULD PULL A BUILDING PERMIT?

A I DON'T KNOW THAT I KNEW THAT, BUT IT MAKES SENSE.

Q YOU CAN SEE THAT THE BUILDING PERMIT WAS PULLED BY THE SPARTAN ASSOCIATES, INC.?

A YES. IS THIS ON NOVEMBER 14, 2012? THIS ONE?

Q YES, MA'AM.

AS A MATTER OF FACT, MR. BEREKI E-MAILED YOU A COPY OF THE BUILDING PERMIT FOR THIS, DIDN'T HE?

A I DON'T RECALL.

Q MA'AM, CAN YOU TURN TO EXHIBIT NO. 31 IN THAT SAME BINDER.

A YES.

Q WERE YOU WORKING ON INTERIOR PLANS WITH MR. BEREKI FOR THE LIDO PROJECT?

A I'M SORRY, I WAS READING. CAN YOU RESTATE YOUR QUESTION, PLEASE?

Q SURE.

DID YOU WORK WITH MR. BEREKI REGARDING INTERIOR PLANS FOR THE PROJECT?

A YES.

Q OKAY. AND IS THIS AN EXAMPLE OF THE INTERIOR PLANS, WHAT WE SEE IN THIS EXHIBIT 31?

A THIS DATED AUGUST 23RD, 2013?

Q YES, MA'AM.

A I WASN'T WORKING WITH HIM ON PLANS IN AUGUST OF 2013.

Q OKAY. DO YOU KNOW IF YOUR HUSBAND WAS?

A HE WAS NOT.

Q MA'AM, DID IT MATTER TO YOU WHETHER OR NOT YOUR CONTRACTOR WAS ADAM BEREKI VERSUS SPARTAN ASSOCIATES?

A DID IT --

MR. BISSELL: OBJECTION. IRRELEVANT.

THE COURT: SUSTAINED.

BY MR. RUSSO:

Q MA'AM, CAN YOU TURN TO EXHIBIT NO. 32.

A YES.

Q LOOKING AT PAGE 1 OF EXHIBIT NO. 32, MA'AM, IS THAT YOUR E-MAIL TO MR. BEREKI ABOUT PAYMENT TO SPARTAN CONSTRUCTION?

A NO.

Q IS YOUR E-MAIL ADDRESS KMOEHUMPHREYS@YAHOO.COM?

A YES.

Q AND THE JULY 19, 2012, 1:59 P.M. E-MAIL AT THE TOP OF EXHIBIT 32-1, IS THAT FROM YOU?

A YES, TO ADAM BEREKI.

Q OKAY. AND IT SAYS THERE, "I JUST GOT BACK FROM WIRING $45,000 TO THE SPARTAN CONSTRUCTION ACCOUNT"?

A YES.

Q OKAY. SO YOU KNEW AT THIS POINT IN TIME THAT YOUR PAYMENTS WERE GOING TO SPARTAN; CORRECT?

A THIS WAS THE FIRST PAYMENT I MADE TO SPARTAN

CONSTRUCTION AFTER ADAM ASKED ME TO, INSTEAD OF WRITING CHECKS TO HIM, TO WIRE MONEY INTO THIS NEW BANK ACCOUNT.

Q OKAY. THROUGHOUT THIS PROJECT, ENGINEERS HAD TO BE HIRED; CORRECT?

A YES.

Q ARCHITECTS HAD TO BE HIRED?

A YES.

Q AND YOUR AGREEMENT WITH MR. BEREKI WAS THAT WHATEVER THOSE COSTS WERE FOR DESIGN PROFESSIONALS, THAT WAS GOING TO BE A COST PAID FOR BY YOU AND YOUR HUSBAND; CORRECT?

A NO.

MR. BISSELL: OBJECTION. RELEVANCY.

THE COURT: I WILL ALLOW THE QUESTION.

THE ANSWER WAS NO.

BY MR. RUSSO:

Q DO YOU KNOW WHAT THE TERMS WERE FOR YOUR AGREEMENT WITH MR. BEREKI?

A YES.

Q OKAY. AND AMONGST THOSE TERMS WAS THAT HE WAS TO BE REIMBURSED FOR PAYMENTS FOR DESIGN PROFESSIONALS; CORRECT?

A THE TERMS OF OUR CONTRACT AGREEMENT AS OF APRIL 2012 WERE THAT WE HIRE MR. BEREKI AND GLENN OVERLEY FOR $500 A DAY AND WE WOULD PAY FOR ACTUAL COSTS OF LABOR AND MATERIALS. THE LABOR WOULD BE 15 TO $25 AN

HOUR. THAT WAS THE TERMS OF OUR AGREEMENT.

Q SINCE THEN, MA'AM, YOU HAVE DISCUSSED WITH YOUR HUSBAND THE FACT THAT YOU HAD AGREED TO REIMBURSE MR. BEREKI FOR ANY DESIGN PROFESSIONALS EXPENSES; CORRECT?

A NO.

Q WERE YOU AWARE --

THE COURT: THIS IS A GOOD TIME FOR A 10-MINUTE RESTROOM BREAK. WHAT DO YOU THINK?

MR. RUSSO: SURE THING, YOUR HONOR.

THE COURT: MR. BEREKI, SO YOU KNOW, AFTER MR. RUSSO IS COMPLETE, THEN YOU HAVE AN OPPORTUNITY TO ASK SOME QUESTIONS AS WELL.

MR. BEREKI: THANK YOU FOR THAT, YOUR HONOR.

(RECESS.)

THE COURT: MS. HUMPHREYS, COME ON BACK.

THE WITNESS: COME ON DOWN.

THE COURT: MR. RUSSO, BACK TO YOU, PLEASE.

MR. RUSSO: SURE.

BY MR. RUSSO:

Q MS. HUMPHREYS, YOU SAID THAT YOU AND YOUR HUSBAND MADE ALL THE PAYMENTS TO BEREKI & ASSOCIATES; CORRECT?

A YES.

Q YOU OPENED UP THE BINDERS MR. BISSELL WAS ASKING ABOUT RIGHT THERE TO TAB NUMBER 15?

A YES.

THE COURT: THE DEFENSE BOOK?

MR. RUSSO: YOU KNOW, LET ME MAKE IT EASIER. LET ME MAKE A REPRESENTATION. TAB 15 IN THAT BOOK IS THE SAME AS THE FIRST DOCUMENT, TAB 32, WHAT WE HAVE IN FRONT OF YOU, SO WE DON'T HAVE TO OPEN TWO BOOKS.

THE COURT: ALL RIGHT. 32.

MR. RUSSO: YEAH, LET'S MAKE IT EASIER.

BY MR. RUSSO:

Q MS. HUMPHREYS --

MR. BISSELL: THAT'S YOUR 32?

MR. RUSSO: FIRST PAGE.

MR. BISSELL: OH, 32-SOMETHING?

MR. RUSSO: 32-2, I APOLOGIZE.

BY MR. RUSSO:

Q WE WERE TALKING ABOUT 32-1 A MOMENT AGO BEFORE THE BREAK, MS. HUMPHREYS, AND YOU WERE SAYING THAT $45,000 WAS THE FIRST TIME THAT YOU WERE AWARE OF MAKING A PAYMENT TO SPARTAN ASSOCIATES; CORRECT?

A ON JULY 19, 2012, I WIRED $45,000 TO SPARTAN CONSTRUCTION. THAT WAS MY FIRST PAYMENT TO THEM.

Q OKAY. LET'S GO TO 32-2, SAME AS EXHIBIT NUMBER 15 IN THE DEFENDANT'S BOOK -- OR 315 IN THE DEFENDANT'S BOOK.

IS THIS AN ACCURATE LIST OF ALL THE PAYMENTS MADE ON THIS PROJECT, MA'AM?

A I BELIEVE SO.

Q OKAY. LET'S GO THROUGH THE NEXT DOCUMENTS IN THE SAME EXHIBIT, 32.

SO 32-4, THAT'S THE FIRST CHECK FOR THE $15,000 FROM YOU AND YOUR HUSBAND'S JOINT ACCOUNT TO MR. BEREKI; CORRECT?

A NO. THIS CHECK IS DATED MAY 17.

Q OKAY.

THE COURT: WHAT HAPPENED TO 32-3?

MR. RUSSO: I DON'T KNOW.

MR. BISSELL: I THOUGHT THAT WAS A CHECK COMPILATION.

THE COURT: 32-2.

MR. RUSSO: I DON'T KNOW WHAT HAPPENED.

BY MR. RUSSO:

Q BUT 32-4, IS THAT A CHECK PAYABLE TO MR. BEREKI?

A 32-4 IS A CHECK THAT I WROTE TO MR. BEREKI ON MAY 17, 2012.

Q OKAY. IF WE GO BACK A PAGE TO 32-2, WE SEE THAT THERE'S A RUNNING COMPILATION OF HOW MUCH MONEY WAS PAID IN THE RIGHT-HAND COLUMN; CORRECT?

A YES.

Q OKAY. SO WOULD THIS BE THE SECOND CHECK IN THAT COMPILATION DATED MAY 17, 2012, SO THE SECOND $15,000?

A YES.
Q OKAY. NOW I ASK YOU TO TURN TO 32-5.
A I AM THERE.
Q OKAY. AND AT THIS POINT IN TIME, YOU WERE WRITING THIS $50,000 CHECK TO SPARTAN CONSTRUCTION; CORRECT?
A NOVEMBER 15, 2012, SPARTAN CONSTRUCTION, $50,000, SIGNED BY ME.
Q AGAIN, THAT WAS FROM THE JOINT ACCOUNT; CORRECT?
A YES.
Q THE NEXT CHECK, 32-6.
WHAT IS THIS CHECK, MA'AM?
A THIS CHECK IS DATED AUGUST 31, 2012, MADE OUT TO SPARTAN CONSTRUCTION FOR $30,000, AND SIGNED BY GARY HUMPHREYS.
Q AND THIS SEEMS TO BE FROM A DIFFERENT ACCOUNT. DID HE HAVE HIS OWN ACCOUNT?
A WE HAVE SEVERAL DIFFERENT FAMILY BANK ACCOUNTS.
Q OKAY.
A THIS WAS ONE OF OUR PERSONAL BANK ACCOUNTS. AND THAT'S MY WRITING MAKING OUT THE CHECK.
Q ARE YOU A SIGNATORY ON THAT ACCOUNT?
A THEY ARE ALL LINKED TOGETHER, SO I BELIEVE SO, YES.

Q OKAY. GO TO 32-7, MA'AM.
A YES.
Q SO YOU HAD ALREADY -- AT THIS POINT IN TIME YOU HAD ALREADY BEEN WRITING CHECKS TO SPARTAN CONSTRUCTION. AND THEN THIS ONE, 32-7, IS $30,000 PAYABLE TO MR. BEREKI.
DO YOU SEE THAT?
A YES.
Q AT THIS POINT IN TIME, HAD MR. BEREKI TOLD YOU THAT THE PAYMENTS WERE TO BE MADE TO SPARTAN ASSOCIATES?
A HE TOLD US THAT IN JULY OF 2012.
Q OKAY. BUT NEVERTHELESS, YOU WROTE A CHECK TO HIM PERSONALLY IN DECEMBER FOR THE $30,000; CORRECT?
A I DIDN'T WRITE THIS CHECK.
Q DID YOUR HUSBAND WRITE THIS CHECK?
A IT LOOKS LIKE HIS HANDWRITING AND HIS SIGNATURE.
Q OKAY. 32-8, LET'S GO TO THE NEXT CHECK.
THIS IS ANOTHER $30,000 CHECK TO MR. BEREKI; CORRECT?
A YES.
Q AND DID YOU WRITE THIS ONE, OR DID YOUR HUSBAND?
A MY HUSBAND.
Q OKAY. 32-9.
NOW THIS ONE IS A LITTLE BIT DIFFERENT. IS

THIS A CHECK THAT YOU WROTE?

A NO.

Q OKAY. WAS THAT YOUR HUSBAND'S HANDWRITING ON THAT CHECK?

A YES.

Q IT SAYS ADAM BEREKI, SPARTAN ASSOCIATES ON IT; CORRECT?

A MY COPY IS UNCLEAR. I CAN SEE IT SAYS ADAM BEREKI AND SCRIBBLE.

Q OKAY. YOU CAN'T SEE SPARTAN ASSOCIATES IN THE SECOND PART?

A I CAN BELIEVE THAT THAT'S WHAT IT SAYS, BUT I CAN'T READ IT AS THAT.

Q FAIR ENOUGH.

LET'S GO TO 32-10.

IS THIS A WIRE TRANSFER THAT YOU PREPARED OR THIS IS YOUR HUSBAND?

A I PREPARED THIS WITH THE BANKER.

Q OKAY. AND WAS THIS -- HOW MUCH WAS THIS PAYMENT FOR, MA'AM?

A I THINK IT SAYS $30,000.

Q OKAY. AND DO YOU KNOW TO WHICH ACCOUNT THIS WAS WIRED?

A THE RECIPIENT SAYS ADAM BEREKI AND THERE'S AN ACCOUNT NUMBER WRITTEN BELOW IT.

Q DO YOU KNOW IF THAT ACCOUNT WAS FOR SPARTAN

ASSOCIATES OR FOR MR. BEREKI?

A I DON'T.

Q GO TO 32-11.

IS THIS ANOTHER WIRE THAT YOU PREPARED?

A ALONG WITH THE BANKER, YES.

Q OKAY. AND WAS THIS TO THE SAME ACCOUNT AS THE LAST WIRE?

A I WOULD HAVE TO COMPARE THE NUMBERS.

Q OKAY. DO YOU KNOW WHETHER OR NOT THIS WAS TO MR. BEREKI'S PERSONAL ACCOUNT OR THE SPARTAN ASSOCIATES' ACCOUNT?

A THE RECIPIENT IS ADAM BEREKI.

Q OKAY. YOU MENTIONED HUMPHREYS & ASSOCIATES. THAT'S A CORPORATION; CORRECT?

A HUMPHREYS & ASSOCIATES IS AN S CORPORATION --

Q OKAY.

A -- TO MY UNDERSTANDING.

Q OKAY. WHO WERE THE SHAREHOLDERS OF HUMPHREYS & ASSOCIATES?

A NOW?

Q HOW ABOUT --

A WHEN IT WAS FOUNDED?

Q FOUR YEARS AGO.

DO YOU KNOW?

A I APOLOGIZE FOR TALKING IN THE MIDDLE OF THE QUESTION.

THE COURT: IT'S OKAY.

BY MR. RUSSO:

Q DO YOU KNOW, MA'AM, WHO THE SHAREHOLDERS WERE FOR HUMPHREYS & ASSOCIATES?

A AT WHAT PERIOD OF TIME?

Q DO YOU KNOW AT ANY TIME?

A YES.

Q HOW ABOUT IN 2012?

A YES.

Q WHO WAS THE SHAREHOLDERS?

A GARY HUMPHREYS.

Q OKAY. WERE THERE -- AT SOME POINT IN TIME WERE THERE OTHER SHAREHOLDERS OF HUMPHREYS & ASSOCIATES?

A YES.

Q WHEN WAS THAT, MA'AM?

A NOW.

Q OKAY. LET'S TURN TO EXHIBIT 32-12, MA'AM.

DO YOU RECOGNIZE 32-12?

A I HAVE NEVER SEEN IT BEFORE.

Q OKAY. SO IS THAT YOUR -- I SEE A SIGNATURE. IS THAT -- CHRIS HUMPHREYS, IS THAT YOUR SON?

A CHRIS HUMPHREYS IS MY STEPSON.

Q OKAY. AND DO YOU RECOGNIZE HIS SIGNATURE ON THIS CHECK?

A NO.

Q OKAY. DO YOU RECOGNIZE THIS AS A $90,000

CHECK FROM HUMPHREYS & ASSOCIATES, INC., THE CORPORATION, TO SPARTAN ASSOCIATES?

A YES.

Q SO IT WAS, IN FACT, THE CORPORATION THAT PAID SPARTAN ASSOCIATES THIS CHECK ON JULY 31ST, 2013; CORRECT?

MR. BISSELL: OBJECTION.

THE COURT: SUSTAINED.

MR. BISSELL: FOUNDATION.

BY MR. RUSSO:

Q DO YOU KNOW WHO PAID THE $90,000 TO MR. BEREKI AS EVIDENCED BY THIS $90,000 CHECK?

A ARE YOU ASKING ME IF THIS CHECK SAYS IT'S PAYABLE TO ADAM BEREKI?

Q WELL, IT'S FROM A CORPORATION --

A TO SPARTAN ASSOCIATES.

Q SO HUMPHREYS & ASSOCIATES, THE CORPORATION, TO SPARTAN ASSOCIATES; CORRECT?

A YES.

Q LET'S GO TO THE NEXT CHECK, 32-13.

DO YOU RECOGNIZE THIS CHECK?

THE COURT: WHY DON'T WE GO INDIVIDUALLY -- SINCE I NOTICED THAT ALL OF THE FOLLOWING CHECKS APPEAR TO BE DRAWN ON THE HUMPHREYS & ASSOCIATES, INC. ACCOUNT, PERHAPS YOU CAN COLLECTIVELY ASK ABOUT THEM AND SPEED IT UP A LITTLE BIT.

MR. RUSSO: OKAY.

BY MR. RUSSO:

Q OKAY. THE NEXT CHECKS, 90,000, 95,000, 75,000, 60,000, 80,000, ALL OF THE REMAINING CHECKS THAT WERE IN THE ACCOUNTING ARE ALL ACTUALLY PAID BY THE CORPORATION, HUMPHREYS & ASSOCIATES, INC., TO SPARTAN ASSOCIATES; CORRECT?

A YES.

Q AND THOSE ARE THE MONIES THAT YOU AND YOUR HUSBAND ARE TRYING TO SEEK BACK AS PAID BY YOU IN THIS CROSS-CLAIM; CORRECT?

A I DON'T KNOW THAT.

MR. RUSSO: I DON'T HAVE ANY FURTHER QUESTIONS AT THIS TIME.

THE COURT: MR. BEREKI.

CROSS-EXAMINATION

BY MR. BEREKI:

Q HI, KAREN.

YOU TESTIFIED THAT WE HAD A CONTRACT; CORRECT?

A YES.

Q OKAY. AND DID YOU BELIEVE THAT THE SIGNING OF YOUR NAME ON THE E-MAIL AGREEMENT OR ON THE AGREEMENT CONTRACT THAT WE HAD WAS YOUR AGREEMENT TO THE TERMS AND CONDITIONS OF THAT CONTRACT?

MR. BISSELL: OBJECTION. CALLS FOR A LEGAL CONCLUSION.

THE COURT: SUSTAINED.

MR. BISSELL: LACK OF FOUNDATION THAT SHE SIGNED IT.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q WOULD YOU AGREE THAT YOUR TYPING YOUR NAME ON AN E-MAIL CONSTITUTES YOUR SIGNATURE -- CONSTITUTES YOUR SIGNATURE?

MR. BISSELL: OBJECTION. LEGAL CONCLUSION.

THE COURT: SUSTAINED.

I AM AFRAID I MAY HAVE PUT YOU OFF A LITTLE BIT ON THIS PARTICULAR POINT. MY REQUEST IS THAT YOU STATE THE WORD "OBJECTION" AND THEN THE LEGAL BASIS FOR IT WITHOUT THE SPEAKING OBJECTION THAT WOULD FOLLOW THE LEGAL BASIS.

MR. BISSELL: UNDERSTOOD, YOUR HONOR. I WILL TRY TO FIND THAT MIDDLE GROUND.

THE COURT: PERFECT.

BY MR. BEREKI:

Q YOU TESTIFIED THAT, PURSUANT TO OUR CONTRACT, THAT YOU WOULD BE PAYING FOR THE ACTUAL COSTS OF ALL LABOR AND MATERIALS; IS THAT CORRECT?

A I BELIEVE MY TESTIMONY WAS THAT WE AGREED TO PAY YOU AND YOUR PARTNER GLENN $500 A DAY AND THE ACTUAL

COSTS OF LABOR AND MATERIAL, THE LABOR BEING 15 TO $25 AN HOUR. LABOR AND SUPPLIES -- SUPPLIES AND MATERIAL AND THE LABOR, YES.

Q SO WHAT I AM GETTING AT IS YOU WERE AGREEING TO PAY FOR THE ACTUAL COSTS FOR ALL THE LABOR THAT SPARTAN INCURRED, AS WELL AS ALL THE MATERIALS THAT SPARTAN PURCHASED FOR USE IN THE PROJECT?

A NO. MY AGREEMENT WAS WITH ADAM BEREKI AND GLENN OVERLEY. I HADN'T HEARD OF SPARTAN.

Q OKAY. WERE YOU AGREEING TO PAY FOR -- WAS IT YOUR UNDERSTANDING THAT YOU WERE AGREEING TO PAY FOR THE ACTUAL COSTS OF LABOR AND MATERIALS THAT WERE USED ON THE PROJECT?

MR. BISSELL: OBJECTION, YOUR HONOR. RELEVANCY AS TO THIS CAUSE OF ACTION. MIGHT BE RELEVANT --

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q COULD YOU PLEASE TURN TO EXHIBIT 31. IT'S WHAT WE --

THE COURT: IN THE VERY BIG BOOK?

MR. BEREKI: IN THE VERY BIG BOOK, YOUR HONOR.

BY MR. BEREKI:

Q AND WE NEED TO GET TO 31-49.

YOU TESTIFIED THAT YOU HAD NEVER -- OR WERE NOT WORKING ON INTERIOR OR EXTERIOR DESIGN PLANS IN AUGUST 23 OF 2013; IS THAT CORRECT?

A YES.

Q ISN'T IT TRUE IN AUGUST -- ON AUGUST -- IN AUGUST OF 2013 YOU ACTUALLY CAME TO THE JOB SITE TO MEET WITH BOTH MYSELF AND BRYAN LEFEVER PERTAINING TO INTERIOR AND ARCHITECTURAL DESIGN ELEMENTS?

A IN THE BEGINNING OF AUGUST WE MET WITH YOU, YES.

Q AT THAT TIME, HAD YOU RECEIVED THIS -- OR PRIOR TO THAT DATE, HAD YOU RECEIVED THIS COMPILATION OF INTERIOR AND EXTERIOR DESIGN ITEMS?

THE COURT: REFERENCING THE ENTIRETY OF EXHIBIT 31?

MR. BEREKI: YES, YOUR HONOR.

THE WITNESS: WELL, THIS ONE IS DATED AUGUST 23. I HAD RECEIVED SOMETHING SIMILAR TO THIS.

BY MR. BEREKI:

Q PRIOR TO OUR MEETING?

A MY RECOLLECTION IS AT THE MEETING THAT BRYAN SHOWED US SOMETHING THAT HE PUT TOGETHER. PRIOR TO THE MEETING, I RECEIVED SOME THINGS ABOUT FURNITURE AND DESIGN CONSIDERATIONS, YES.

Q OKAY. AND AT THE MEETING, DID WE GO OVER THIS SPECIFIC PRESENTATION STARTING WITH 31-49?

A I DON'T KNOW.

Q OKAY. I'M GOING TO REPRESENT TO YOU THAT WE DID.

AND THEN SUBSEQUENT TO OUR MEETING, DID YOU

RECEIVE A COPY OF THIS AUGUST 23 PRESENTATION?

A IT LOOKS FAMILIAR. I CAN'T BE CERTAIN.

Q OKAY. CAN YOU TELL ME HOW IT LOOKS FAMILIAR?

A IT CONTAINS THINGS THAT WE TALKED ABOUT BUYING, FOR EXAMPLE, THE FAN ON 3161 AND THE CHAIR ON 3166.

Q HOW ABOUT THE SPARTAN CONSTRUCTION LOGO? WAS THAT ON THE PRESENTATION THAT YOU REVIEWED?

A I DON'T KNOW.

Q CAN YOU PLEASE TURN TO EXHIBIT 31-46.

A YES.

Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE?

A NO.

Q DO YOU KNOW WHAT IT IS?

A IT SAYS IT'S A FLOOR ASSEMBLY.

Q DO YOU THINK THAT WOULD BE THE FLOOR ASSEMBLY BETWEEN THE UPSTAIRS UNIT AND THE DOWNSTAIRS UNIT?

A PROBABLY.

Q OKAY.

THE COURT: OUT OF CURIOSITY -- THIS IS TO MR. BEREKI -- DID THE HALF-INCH LAYER OF PLYWOOD REPRESENT THE SUBFLOOR, OR IS THAT AN EXTRA LAYER, IN YOUR UNDERSTANDING?

MR. BEREKI: THE ACTUAL SUBFLOOR, YOUR HONOR, WAS THE THREE-QUARTER TONGUE-AND-GROOVE STRUCTURAL 1 PLYWOOD, AND THEN THERE WAS ANOTHER LAYER OF HALF-INCH

PLYWOOD ABOVE THAT.

THE COURT: OVER THE GENIEMAT?

MR. BEREKI: YES. THE GENIEMAT WAS THE SOUND ISOLATOR.

BY MR. BEREKI:

Q WERE YOU AWARE THAT I SENT THIS DOCUMENT ON 3146, 3147, AND 3148 TO -- VIA E-MAIL TO GARY?

A NO.

Q GARY NEVER SHARED THESE DOCUMENTS WITH YOU?

THE COURT: TOO MANY FIRST NAMES TEND TO CAUSE CONFUSION. WHEN YOU SAY "GARY," I DON'T KNOW WHO YOU'RE TALKING ABOUT.

MR. BEREKI: I'M SORRY, YOUR HONOR.

THE COURT: SO GIVE A FULL NAME WHEN YOU ASK THAT QUESTION.

MR. BEREKI: YES, YOUR HONOR.

BY MR. BEREKI:

Q SO GARY HUMPHREYS, YOUR HUSBAND, NEVER SENT YOU THESE DOCUMENTS; CORRECT?

A HE DIDN'T SEND ME 3146 AND 47, CORRECT.

Q OKAY. ON EACH -- ON EACH OF THESE DOCUMENTS, IT SAYS SPARTAN CONSTRUCTION; CORRECT?

A YES.

Q DO YOU KNOW THE ADDRESS FOR THE SPARTAN ASSOCIATES, INC.?

A NO.

Q YOU NEVER SENT A CHECK TO THE SPARTAN ASSOCIATES, INC.?

A I DON'T KNOW THE ADDRESS OF SPARTAN ASSOCIATES, INC. I KNOW THE ADDRESS FOR ADAM BEREKI. 818 SPIRIT LANE, I BELIEVE.

Q DID YOU KNOW THAT THE ADDRESS FOR THE SPARTAN ASSOCIATES, INC. IS THE SAME ADDRESS FOR ADAM BEREKI?

A NO.

Q DID YOU EVER MAIL A CHECK TO THE SPARTAN ASSOCIATES, INC. AT 818 SPIRIT, COSTA MESA, CALIFORNIA?

A I DON'T RECALL.

MR. BEREKI: THAT WILL BE ALL. THANK YOU.

THE COURT: MR. BISSELL, BACK TO YOU THEN.

MR. BISSELL: JUST A COUPLE, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BISSELL:

Q YOU WERE GIVEN AN ADDRESS AT WHICH TO SEND CHECKS; CORRECT?

A YES.

Q THAT WAS ALL CHECKS?

A YES.

Q NOW, THAT ADDRESS WAS GIVEN TO YOU BY MR. BEREKI --

A YES.

Q -- BEREKI?
A YES.
Q A 818 SPIRIT LANE, COSTA MESA ADDRESS?
A YES.
Q WERE YOU EVER GIVEN ANOTHER ADDRESS SAYING THIS IS SPARTAN ASSOCIATES' ADDRESS BY MR. BEREKI?
A NO.
Q YOU WERE ASKED TO LOOK AT EXHIBIT 34. THAT WAS THE BUILDING PERMIT, I BELIEVE, FOR THE PROJECT?
A IT'S LABELED INSPECTION CARD.
Q INSPECTION CARD.
AND DOES IT INDICATE WHEN THAT CARD OR THE BUILDING PERMIT WAS ISSUED ON THIS JOB?
A IT'S DATED AT THE TOP, 11/14/2012.
Q NOVEMBER 14, 2012 --
A NOVEMBER 14, 2012.
Q OKAY. AND MR. BEREKI BEGAN ON THIS JOB ON APRIL 2012?
A YES.
MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.
THE COURT: MR. RUSSO.

RECROSS-EXAMINATION

BY MR. RUSSO:
Q MS. HUMPHREYS, CAN YOU TURN TO EXHIBIT 30.

A YES.
Q HOW OFTEN DO YOU VISIT THE JOB SITE, MA'AM?
A HOW MUCH DID I VISIT THE JOB SITE?
Q YES.
A I DON'T RECALL A NUMBER. I WOULD SAY RARELY.
Q OKAY. LOOKING AT EXHIBIT NUMBER 30, THIS IS THE JOB SITE; CORRECT?
THE COURT: TALKING ABOUT 30-1?
MR. RUSSO: YES, YOUR HONOR.
THE COURT: WOULD YOU LIKE TO MAKE A PRELIMINARY OFFER OF PROOF WITH RESPECT TO THE DATE AND PHOTOGRAPHER FOR THIS PHOTOGRAPH?
MR. RUSSO: I WILL MAKE AN OFFER OF PROOF BASED ON WHAT MR. BEREKI JUST TOLD ME THAT THIS WAS TAKEN IN APPROXIMATELY DECEMBER 2012.
THE COURT: BY MR. BEREKI?
MR. BEREKI: YES, YOUR HONOR.
THE COURT: OKAY.
BY MR. RUSSO:
Q MA'AM, ISN'T IT TRUE THAT WHEN THE CONSTRUCTION STARTED ON THIS PROJECT, MR. BEREKI HUNG A SPARTAN ASSOCIATES SIGN, THE SAME SIGN WE SEE HERE IN THE TOP-RIGHT CORNER OF EXHIBIT 30-1, ON THE PROJECT?
A I DON'T KNOW THAT.
Q OKAY. YOU SAID YOU VISITED THE PROJECT SPARINGLY. WHEN YOU WERE THERE, DIDN'T YOU SEE A

SPARTAN ASSOCIATES SIGN ON THE PROJECT?

A I DON'T RECALL.

Q WAS THERE CONSTRUCTION FENCING AROUND THE PROJECT?

A I DON'T RECALL.

Q OKAY.

MR. RUSSO: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI?

MR. BEREKI: NOTHING FURTHER, YOUR HONOR.

MR. BISSELL: NO QUESTIONS, YOUR HONOR.

THE COURT: OKAY. IN THAT CASE, THANK YOU. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

THE COURT: WHO IS YOUR NEXT WITNESS?

MR. BISSELL: NEXT WITNESS IS GARY HUMPHREYS, YOUR HONOR.

THE COURT: MR. HUMPHREYS. WELL, WE CAN GO FOR FIVE -- EIGHT MINUTES, AND THEN CONTINUE ON UNTIL LUNCH, THAT IS.

THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: GARY, G-A-R-Y, C., HUMPHREYS. H-U-M-P-H-R-E-Y-S.

THE CLERK: THANK YOU, SIR.

THE WITNESS: GRAB MY WATER, IS THAT ALL RIGHT?

THE COURT: THAT'S PERFECTLY FINE. BRING IT WITH YOU. AND GOOD MORNING, MR. HUMPHREYS. HOW ARE YOU?

THE WITNESS: HOW ARE YOU?

THE COURT: BETTER THAN EVER. THANKS.

MR. BISSELL, TO YOU, PLEASE.

DIRECT EXAMINATION

BY MR. BISSELL:

Q MR. HUMPHREYS, YOU HAVE HEARD YOUR WIFE TESTIFY AS TO THE TWO OF YOU BUYING THIS CONDOMINIUM UNIT ON LIDO ISLE AND THE REASONS YOU BOUGHT IT.

IS THAT CONSISTENT WITH YOUR UNDERSTANDING, OR IS ANYTHING DIFFERENT THAN YOU UNDERSTOOD IT?

A NO, THAT'S EXACTLY THE WAY I UNDERSTOOD IT.

Q ARE YOU FAMILIAR WITH ADAM BEREKI?

A YES, I AM.

Q WHEN DID YOU FIRST MEET MR. BEREKI?

A I THINK IT WAS IN THE FALL OF 2011.

Q AND WHAT WAS THE CIRCUMSTANCES?

A I WAS VISITING MY BROTHER IN VILLA PARK, AND HE WAS PUTTING IN A KIND OF A SOUND SYSTEM.

Q AND DID YOU SPEAK TO HIM AT THAT TIME?
A NOT MORE THAN HELLO, NICE TO MEET YOU, THAT KIND OF THING. I REALLY DIDN'T SPEAK WITH HIM.
Q BEFORE YOU PURCHASED THE CONDOMINIUM UNITS IN NEWPORT BEACH WITH YOUR WIFE, HAD MR. BEREKI DONE ANY CONSTRUCTION FOR YOU?
A NO, HE DID NOT. HOWEVER, HE CLEARLY DID SOME FOR MY BROTHER AND MY SON.
Q THAT WOULD BE BOTH -- WITH REGARD TO YOUR SON, YOUR SON OWNS THE BUILDING, YOU RENT SPACE -- YOUR BUSINESS RENTS SPACE FROM?
A YES.
Q THE CONSTRUCTION WORK THAT MR. BEREKI DID FOR YOUR SON WAS -- PART OF THAT WAS ON THAT BUILDING?
A YES, IT WAS.
Q THAT WAS PRESUMABLY UNDER SOME SORT OF AGREEMENT WITH MR. BEREKI AND/OR SPARTAN AND YOUR SON?
A YES.
Q DID YOU HAVE ANY INVOLVEMENT IN ANY OF THOSE DISCUSSIONS BETWEEN YOUR SON AND MR. BEREKI CONCERNING WORK TO THE PREMISES WHERE YOUR OFFICES ARE LOCATED?
A NO.
Q WERE YOU EVER PRESENT DURING CONVERSATIONS BETWEEN MR. BEREKI AND YOUR SON CONCERNING WORK DONE TO THE PREMISES WHERE YOUR OFFICES ARE LOCATED?
A NO.

THE COURT: PERHAPS WE COULD EXPLORE A LITTLE BIT. I AM SURE I HEARD MS. HUMPHREYS TESTIFY THAT THE OFFICE FOR HUMPHREYS & ASSOCIATES MOVED INTO THIS BUILDING SOMETIME AFTER THAT CONSTRUCTION WAS DONE. PERHAPS I AM MISTAKEN ON THAT, BUT I WOULD LIKE TO HAVE SOME IDEA ON THE PROXIMITY AND LOCATION AND SO ON TO THE MOVE, IF THERE WAS A MOVE.

MR. BISSELL: UNDERSTOOD, YOUR HONOR.

BY MR. BISSELL:

Q THERE WAS A POINT IN TIME WHERE HUMPHREYS & ASSOCIATES WAS NOT OCCUPYING THE PRESENT LOCATION ON RESEARCH -- IS IT RESEARCH DRIVE IN IRVINE?

A CORRECT.

Q AND WHEN DID IT MAKE THE MOVE -- FIRST OF ALL, WHERE WAS IT LOCATED PRIOR TO ITS MOVE TO RESEARCH DRIVE?

A ON TUSTIN AVENUE IN THE CITY OF ORANGE.

Q OKAY. AND WHEN DID IT MOVE FROM TUSTIN AVENUE, CITY OF ORANGE, TO RESEARCH DRIVE IN IRVINE?

A I WOULD BE GUESSING. I CAN'T SAY FOR SURE. I DIDN'T HANDLE -- I WASN'T INVOLVED IN IT OR I COULD PROBABLY TELL YOU, BUT I CAN'T REMEMBER EXACTLY WHEN.

Q WHEN IT MOVED INTO THE PREMISES ON RESEARCH DRIVE, HAD TENANT IMPROVEMENT WORK BEEN DONE, TO YOUR KNOWLEDGE, TO THE BUILDING PRIOR TO YOUR MOVING IN?

A IT WAS SET UP LIKE WE WANTED IT. I DON'T KNOW

IF THAT MEANT IT NEEDED MODIFICATION BEFORE WE MOVED.

Q DO YOU REMEMBER MR. BEREKI DOING TENANT IMPROVEMENT WORK AFTER YOU MOVED YOUR BUSINESS TO THE RESEARCH DRIVE LOCATION?

A NO, I DON'T.

Q OKAY.

THE COURT: GENERALLY, I DON'T WANT MR. HUMPHREYS TO GUESS. SO THERE MAY BE AN OPPORTUNITY LATER TO GET MORE INFORMATION.

BY MR. BISSELL:

Q YOU SAY YOU CAN'T RECALL EXACTLY WHEN YOU MOVED FROM TUSTIN AVENUE IN ORANGE TO RESEARCH DRIVE. IS THERE A REASON WHY YOU CAN'T RECALL? WERE YOU NOT INVOLVED IN THE MOVE?

A I WAS NOT INVOLVED IN THE MOVE AT ALL. MY PRIMARY ROLE WAS TO BE OUT ON THE ROAD CONSULTING. I DO VERY LITTLE AROUND THE OFFICE AND EVERYTHING ASSOCIATED WITH THE PHYSICAL PLANT.

Q SO --

A SO --

Q SO THERE'S A POINT IN TIME WHERE YOU SHOWED UP TO WORK IN TUSTIN -- ON TUSTIN AVENUE, AND THEN THERE WAS A PERIOD OF TIME WHERE YOU JUST STARTED SHOWING UP TO WORK IN IRVINE DRIVE; IS THAT CORRECT?

A YES. THEY TOLD ME WE HAD MOVED AND WHERE IT WAS LOCATED.

Q BUT YOU'RE NOT EXACTLY SURE WHEN THAT MOVE TOOK PLACE BECAUSE YOU WERE ON THE ROAD?

A EXACTLY.

Q DO YOU RECALL THE YEAR AT LEAST?

A 2010 TO '12. I AM JUST TOTALLY GUESSING.

Q OKAY. DO YOU RECALL WHEN YOU FIRST DISCUSSED WITH MR. BEREKI THE POSSIBILITY OF HIM DOING CONSTRUCTION WORK ON YOUR CONDOMINIUM UNIT?

A YES. THAT WAS IN SPRING OF 2012.

Q ALL RIGHT. AND CAN YOU DESCRIBE THE CIRCUMSTANCES OF THAT DISCUSSION?

A I BELIEVE HE CALLED ME A NUMBER OF TIMES. WE FINALLY SPOKE FOR A FEW MINUTES TO JUST SAY HELLO TO EACH OTHER. THE REAL MEETING OCCURRED ON THAT DAY WE MET ON APRIL OF 2012 AT THE JOB SITE. WE HAD A RENTER IN THERE PRIOR TO THAT. WE COULDN'T GO IN VERY EASILY, SO THAT'S WHY WE WAITED UNTIL THEN.

Q WAS THE RENTER NO LONGER THERE AS OF APRIL 1, 2012?

A I THINK THAT'S CORRECT.

Q OKAY. AND YOU HEARD -- YOU HEARD MS. HUMPHREYS TESTIFY AS TO WHAT WAS DISCUSSED AT THE MEETING ON THE SITE AND THAT MR. BEREKI EXPRESSED ENTHUSIASM FOR THE JOB.

DO YOU CONCUR WITH THAT TESTIMONY?

A ABSOLUTELY. HE WAS HIGHLY EXCITED; SAID THAT

WHAT I SAW AT MY BROTHER'S IS NOTHING COMPARED TO WHAT HE'S DONE BEFORE IN NEWPORT BEACH; THAT HE WAS REALLY EXCITED ABOUT TAKING THIS JOB ON. GIDDY. CLEARLY EAGER.

THE COURT: LET'S STOP THERE AND GO TO LUNCH ON THE SIDE NOTE OF HUSBAND AGREEING WITH WIFE.

THE WITNESS: GOOD.

THE COURT: ON THE CONTRARY, I THINK WE WILL PROBABLY SEE -- WE SEE IT A FAIR AMOUNT AT MY HOUSE. WHY NOT? ALL RIGHT, EVERYBODY. SEE YOU BACK AT 1:30. HAVE A GOOD LUNCH.

THE WITNESS: THANKS. YOU TOO.

(RECESS.)

//

SANTA ANA, CALIFORNIA; MARCH 27, 2017

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AFTERNOON SESSION

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT.)

THE COURT: SORRY FOR THE DELAY. I HAD TO TRACK DOWN THE BUSINESS AND PROFESSIONS CODE SECTION APPLICABLE TO OUR CASE.

SIR, COME ON DOWN.

THE WITNESS: THANKS.

THE COURT: MR. BISSELL, BACK TO YOU, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

BY MR. BISSELL:

Q MR. HUMPHREYS, BEFORE THE BREAK, YOU JUST TESTIFIED THAT THE TESTIMONY THAT YOUR WIFE HAD GIVEN THIS MORNING AS FAR AS WHAT YOU WANTED DONE TO THE UNIT, WHAT WAS DISCUSSED WITH MR. BEREKI, THAT WAS BASICALLY --

THE COURT: HE ABSOLUTELY AGREED WITH EVERYTHING SHE SAID. WE HAVE THAT DOWN.

THE WITNESS: EXACTLY RIGHT.

BY MR. BISSELL:

Q DID MR. BEREKI TELL YOU AT ANY TIME PRIOR TO APRIL 5, 2012, WHAT HIS QUALIFICATIONS WERE FOR DOING THIS PROJECT?

A YES, HE DID.

Q WHAT DID HE TELL YOU?

A HE TOLD ME HE HAD DONE A NUMBER OF PROJECTS IN NEWPORT BEACH, SPECIFICALLY, AND WEST COVINA, ORANGE COUNTY, SOUTHERN CALIFORNIA IN GENERAL THAT WERE EVEN MORE COMPREHENSIVE THAN THIS PROJECT. AND I FELT GOOD WHEN HE FINISHED TELLING ME THE STORY THAT HE WAS MORE THAN QUALIFIED TO HANDLE THIS JOB.

Q DID HE TELL YOU HE WAS A LICENSED CONTRACTOR?

A YES, HE DID.

Q HOW DID THAT COME UP?

A I THINK I ASKED HIM, ARE YOU A LICENSED CONTRACTOR, JUST TO MAKE SURE. AND HE AFFIRMED THAT HE WAS.

Q DID YOU BELIEVE HIM WHEN HE TOLD YOU HE WAS A LICENSED CONTRACTOR?

A YES, I DID.

Q WOULD YOU HAVE HAD MR. BEREKI DO THIS JOB FOR YOU IF YOU BELIEVED THAT HE WAS NOT A --

A ABSOLUTELY NOT. I HAVE HEARD SOME TERRIBLE HORROR STORIES ABOUT THOSE SITUATIONS.

Q IF YOU WILL TURN --

A I HAVE TWO BOOKS HERE.

Q IT'S THE ONE THAT'S DEFENDANTS' EXHIBITS.

A IS THAT THE BIG ONE?

THE COURT: IT MAY BE BEHIND YOU, SIR.

MR. BISSELL: I THINK IT'S THAT ONE.

MR. RUSSO: THAT ONE.

THE WITNESS: DEFENDANTS' TRIAL EXHIBITS.

MR. BISSELL: YES.

BY MR. BISSELL:

Q IF YOU WILL TURN TO WHAT'S TABBED IN YOUR BOOK --

A I COULDN'T HEAR, SORRY.

THE COURT: TURN TO TAB 3.

BY MR. BISSELL:

Q TAB 3.

A OKAY. I'M THERE.

Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

A YES, I HAVE.

Q AND YOU HEARD YOUR WIFE TESTIFY THIS MORNING THAT -- EXCUSE ME.

YOUR HONOR, IS IT ALL RIGHT TO QUESTION HIM ALONG THOSE LINES, OR DO YOU WANT ME TO GO THROUGH THE WHOLE SCENARIO OF ASKING HIM EVERY QUESTION THAT I ASKED MS. HUMPHREYS ABOUT THE UNDERSTANDING OF WHAT THIS WAS?

THE COURT: TAKE YOUR BEST SHOT.

MR. BISSELL: THANKS, YOUR HONOR.

THE COURT: WHICHEVER WAY YOU LIKE.

BY MR. BISSELL:

Q YOU HAVE SEEN THIS DOCUMENT BEFORE, HAVE YOU NOT?

A YES, I HAVE.
Q WHEN DID YOU FIRST SEE THIS?
A ON THAT DATE OF APRIL 5TH OF 2012.
Q AND THIS DOCUMENT HAS BEEN IDENTIFIED AS A -- KIND OF A TWO-STRING E-MAIL BETWEEN YOURSELF AND MR. BEREKI. IS THAT YOUR UNDERSTANDING?
A MR. BEREKI, MYSELF, AND MY WIFE.
Q COULD YOU TELL US WHAT YOUR UNDERSTANDING OF THIS DOCUMENT WAS?
A IT WAS KIND OF OUR ACCEPTANCE, AND IN SOME CASES A REJECTION OR ASKING FOR CLARITY OF THE SUGGESTIONS HE MADE IN WHAT I HAVE CHARACTERIZED AS A PROPOSAL IN THE PRIOR TAB.
Q DID -- THE E-MAIL FROM MR. BEREKI AND YOU AND YOUR WIFE'S RESPONSE TO MR. BEREKI, IT WAS ALL CONTAINED IN THIS ONE DOCUMENT. DID THAT SET FORTH WHAT YOUR UNDERSTANDING WAS AS FAR AS THE PROJECT WAS CONCERNED FROM APRIL 5, 2012?
A YES, IT DOES.
Q DURING ANY OF YOUR CONVERSATIONS WITH MR. BEREKI, LEADING UP TO THE APRIL 5, 2012, E-MAIL CORRESPONDENCE, DID MR. BEREKI EVER MENTION SPARTAN TO YOU?
A NO, HE DIDN'T.
Q YOU'VE READ THE EXHIBIT -- THE E-MAIL EXCHANGE BETWEEN YOU AND YOUR WIFE AND MR. BEREKI, EXHIBIT 303.

DOES THE NAME SPARTAN APPEAR ANYWHERE IN THAT E-MAIL?

A NO, IT DOESN'T.

Q AT ANY TIME BEFORE MR. BEREKI STARTED WORK ON THE PROJECT, HAD YOU EVER HEARD OF SPARTAN?

A NO, I HADN'T.

Q WHO DID YOU BELIEVE YOU WERE CONTRACTING WITH AS OF APRIL 5, 2012, FOR THIS PARTICULAR PROJECT?

A ADAM BEREKI AND HIS PARTNER, GLENN OVERLEY.

Q NOW, YOU HAD NEVER MET MR. OVERLEY BEFORE; IS THAT CORRECT?

A THAT'S CORRECT.

Q DID MR. BEREKI EXPLAIN ANYTHING ABOUT HIS PARTNER, WHAT HIS QUALIFICATIONS WERE?

A I DON'T RECALL THAT HE DID.

Q YOUR UNDERSTANDING THAT YOU WERE CONTRACTING WITH MR. HUMPHREYS (SIC) AND HIS PARTNER IS BASED ON WHAT, THEN?

A WITH MR. BEREKI AND HIS PARTNER IS BASED ON THIS E-MAIL AND EXHIBIT 3. YOU SAID HUMPHREYS. THAT'S WHY I SAID --

Q I'M SORRY.

A -- BEREKI AND HIS PARTNER, GLENN OVERLEY. IT WAS BASED ON THIS E-MAIL, YES.

Q I WILL DO THAT OFF AND ON. I APOLOGIZE.

MS. HUMPHREYS HAS ALREADY TESTIFIED AS TO EXHIBIT 306, WHICH WAS THE MAY 13, 2012 CHECK. IT'S OUR

EXHIBIT, NUMBER 6.

YOU'VE SEEN THAT CHECK BEFORE; CORRECT?

A YES, I HAVE.

Q AND YOU AND YOUR WIFE MADE FURTHER PAYMENTS TO MR. BEREKI ON THIS JOB; CORRECT?

A YES, WE DID.

Q IF YOU WILL FLIP TO TAB NUMBER 15 IN THE EXHIBIT BOOK YOU HAVE IN FRONT OF YOU.

A OKAY. I'M THERE.

Q CAN YOU IDENTIFY THAT DOCUMENT FOR US?

A YES. IT'S AN EXTRACT OF CHECKS AND WIRE TRANSFERS FROM KAREN AND ME, SOMETIMES HUMPHREYS & ASSOCIATES TO ADAM BEREKI OR SPARTAN.

Q IS THIS CHECK EXTRACT A COMPILATION PREPARED BY YOU UNDER YOUR DIRECTION?

A PREPARED UNDER MY DIRECTION.

Q BY WHO?

A MY ACCOUNTANT.

Q AND DOES THIS EXHIBIT REFLECT ALL PAYMENTS MADE BY YOU AND YOUR WIFE ON THIS JOB?

A I BELIEVE IT DOES.

Q WHAT WAS THE DATE OF THE FIRST PAYMENT TO SPARTAN CONSTRUCTION?

A JULY 19, 2012.

Q SO AT SOME POINT, HAD YOU HEARD OF SPARTAN CONSTRUCTION?

A YES. IN THE JULY TIME FRAME, A FEW MONTHS INTO THE PROJECT.

Q AND HOW DID YOU HEAR OF SPARTAN CONSTRUCTION?

A ADAM ASKED US TO START MAKING CHECKS TO SPARTAN.

Q DID HE EXPLAIN TO YOU WHY?

A NO.

Q DID YOU ASK HIM WHY?

A NO.

Q DID HE EXPLAIN TO YOU WHO SPARTAN CONSTRUCTION WAS?

A NO.

Q DID YOU HAVE ANY SORT OF UNDERSTANDING OF WHO YOU THOUGHT SPARTAN CONSTRUCTION WAS?

A I JUST FIGURED IT WAS A SEPARATE ACCOUNT OR DBA THAT HE WAS USING. I DIDN'T THINK ABOUT IT, QUITE FRANKLY.

Q AT ANY TIME DURING MR. BEREKI'S INVOLVEMENT ON THIS PROJECT, DID HE EVER APPROACH YOU WITH A PROPOSED CONTRACT FROM SPARTAN CONSTRUCTION?

A NO.

Q DID HE APPROACH YOU WITH ANY TYPE OF PROPOSAL FROM SPARTAN CONSTRUCTION?

A NO.

Q WAS THERE ANY POINT DURING MR. BEREKI'S INVOLVEMENT IN THIS PROJECT IN WHICH YOU THOUGHT THAT

YOU HAD CONTRACTED WITH SPARTAN CONSTRUCTION?

A NO.

MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO.

CROSS-EXAMINATION

BY MR. RUSSO:

Q WHEN YOU WENT TO THE PROJECT AND SAW THE SPARTAN CONSTRUCTION SIGN IN FRONT OF IT, DID YOU ASK QUESTIONS ABOUT THAT?

MR. BISSELL: OBJECTION, YOUR HONOR. ASSUMES FACTS NOT IN EVIDENCE.

THE COURT: SUSTAINED.

BY MR. RUSSO:

Q HOW MANY TIMES DID YOU GO TO THE PROJECT, SIR?

A THREE TO FIVE.

Q IN THE YEAR AND A HALF?

A THAT'S ABOUT RIGHT.

Q OKAY. AND YOU SAW THE SPARTAN ASSOCIATES SIGN ON THE PROJECT?

A NO.

Q DID YOU WALK AROUND THE WHOLE PROJECT WHEN YOU GOT THERE?

A NOT NECESSARILY.

Q DID YOU LOOK FROM THE STREET AND NOT GO SEE

WHAT WAS GOING ON WITH THE WORK?

A I WENT AND SAW WHAT WAS GOING ON WITH THE WORK.

Q OKAY. CAN YOU TURN TO EXHIBIT 30. IT'S THE OTHER BINDER, SIR.

A OH, OKAY. 30. I'M THERE.

Q I WILL ADDRESS YOUR ATTENTION TO PAGE 30-1, THE FIRST PAGE.

A OKAY.

Q DO YOU SEE IN THE TOP-RIGHT CORNER OF THE PICTURE, THE SPARTAN ASSOCIATES SIGN?

A I SEE THAT NOW.

Q YOU ARE SAYING YOU NEVER SAW THAT?

A NEVER SAW IT.

THE COURT: PERHAPS WE CAN GET SOME ORIENTATION.

BY MR. RUSSO:

Q SIR, CAN YOU TELL ME WHAT IS DEPICTED IN 30-1?

A IT LOOKS LIKE THE FRONT END OF THE CONDOMINIUM ON THE BEACH SIDE THAT HAD BEEN OPENED UP.

Q OKAY. SO IF WE ARE INSIDE LOOKING TOWARDS ME ON THIS PICTURE --

A YES.

Q -- AM I LOOKING AT WATER OR TOWARDS THE STREET?

A YOU'RE LOOKING AT WATER.

Q OKAY.

THE COURT: SO IS THERE A STREET BETWEEN THE WATER AND THE FRONT OF THIS HOUSE?

THE WITNESS: NO.

THE COURT: SIDEWALK?

THE WITNESS: YES.

BY MR. RUSSO:

Q WERE YOU AWARE, SIR, THAT THAT SIGN WAS ORIGINALLY POSTED ON THE FRONT OF THE HOUSE WHEN CONSTRUCTION BEGAN, BUT THE OWNER'S ASSOCIATION REQUIRED THAT IT BE REMOVED?

A NO.

Q YOU WEREN'T AWARE OF THAT?

A I WAS NOT AWARE OF THAT.

Q OKAY. SIR, DID YOU LOOK INTO THE LICENSURE OF MR. BEREKI?

A NO.

Q SO YOU DIDN'T CHECK TO SEE WHETHER OR NOT MR. BEREKI HAD A LICENSE HIMSELF; CORRECT?

A NO.

Q CAN YOU TURN, SIR, TO EXHIBIT NO. 32 IN THE BOOK BEFORE YOU.

A OKAY. I'M THERE.

Q SIR, CUTTING TO THE CHASE, ARE ALL THE CHECKS THAT ARE IN EXHIBIT NO. 32 THE CHECKS THAT MAKE UP THE CHECK REGISTER THAT WE HAVE DISCUSSED BEFORE, WHICH IS 32-2, WITH THE EXCEPTION OF THE FIRST $15,000 CHECK

MISSING?

A YES.

MR. RUSSO: OKAY. I WILL MOVE INTO ADMISSION EXHIBIT 32.

THE WITNESS: SORRY?

THE COURT: ANY OBJECTION?

MR. BISSELL: LET ME JUST MAKE SURE.

THE COURT: THIRTY-TWO CONSISTS OF PAGE 1 OF AN E-MAIL STRING DATED VARIOUSLY. AT THE TOP, JULY 19, 2012, THE NEXT ONE, JULY 19, 2012; THE NEXT ONE, JULY 20, 2012; THE LAST AT THE BOTTOM, FEBRUARY 1, 2017.

PAGE 2 IS THAT WHICH YOU PREVIOUSLY SHOWED, EXHIBIT 315, THE EXTRACTED CHECKS, PREPARED AT MR. HUMPHREYS' BY HIS ACCOUNTANT.

FOLLOWING THAT, 32, PAGE 4 -- THERE IS NO 32-3 BY THE WAY.

32-4 THROUGH 32-17, COPIES OF CHECKS PAYABLE EITHER TO MR. BEREKI AT VARIOUS TIMES OR TO SPARTAN ASSOCIATES, INCORPORATED. SOME CHECKS DRAWN ON THE HUMPHREYS' PERSONAL ACCOUNT. SOME REFLECTED AS WIRE TRANSFER. AND THEN TOWARDS THE END, A SERIES OF CHECKS DRAWN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES, INCORPORATED.

MR. RUSSO: COULDN'T HAVE DONE IT BETTER MYSELF, YOUR HONOR.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

YOUR HONOR, DO YOU PREFER TO HAVE EXHIBITS ENTERED ALL AT ONCE AT THE END OF THE CASE?

THE COURT: IN A COURT TRIAL, I REALLY DON'T CARE. AND FOR OUR PURPOSES ON THIS PARTICULAR BIFURCATED MATTER, PROBABLY BETTER IF WE JUST DO THEM AS THEY COME.

SO 32 RECEIVED.

(EXHIBIT NO. 32 WAS ADMITTED INTO EVIDENCE.)

BY MR. RUSSO:

Q SIR, WERE YOU AWARE THAT A BUILDING PERMIT HAD TO BE PULLED ON THIS PROJECT?

A THE BUILDING PERMIT HAD TO DO WHAT?

Q THAT A BUILDING PERMIT HAD TO BE PULLED ON THIS PROJECT.

A I'M ASSUMING --

THE COURT: MIGHT BE PULLED -- PULLED IS ALMOST A TERM OF ART FOR THE CONSTRUCTION BUSINESS. SO PROBABLY THE QUESTION REPHRASED AS, WERE YOU AWARE OF WHETHER OR NOT THE CITY REQUIRED A PERMIT TO BE ISSUED FOR THE PERFORMANCE OF THIS WORK.

BY MR. RUSSO:

Q WERE YOU AWARE THAT THE CITY REQUIRED A BUILDING PERMIT TO BE ISSUED FOR THE PERFORMANCE OF THIS WORK?

A I AM NOW.

THE COURT: GOOD QUESTION.

BY MR. RUSSO:

Q AND WERE YOU AWARE, SIR, THAT SPARTAN ASSOCIATES WAS THE APPLICANT FOR THAT BUILDING PERMIT?

A NO.

Q WERE YOU AWARE, SIR, THAT ARCHITECTS OR CIVIL ENGINEERS HAD TO BE HIRED FOR THIS PROJECT?

A I BELIEVE SO LATER.

Q AND WERE YOU AWARE, SIR, THAT IT WAS SPARTAN ASSOCIATES THAT HAD TO CONTRACT WITH THE CIVIL ENGINEERS?

A NO.

Q WERE YOU AWARE, SIR, THAT -- WHAT DESIGN PROFESSIONALS WERE YOU AWARE OF ON THIS PROJECT, SIR?

A I THINK THE ONLY NAME I REMEMBER IS WONG.

Q OKAY. AND DO YOU KNOW WHAT HIS PROFESSION WAS?

A I DO NOT.

Q WERE YOU AWARE, SIR, THAT EVERY SUBCONTRACT TO A PROJECT WAS WITH SPARTAN ASSOCIATES?

A I WAS NOT.

Q OKAY.

MR. RUSSO: NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI?

MR. BEREKI: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. BEREKI:

Q YOU MENTIONED A LITTLE BIT EARLIER ABOUT HEARING TERRIBLE WAR STORIES ABOUT CONSTRUCTION. CAN YOU GIVE US AN IDEA ABOUT WHAT YOU HEARD ABOUT --

THE COURT: LET'S NOT GO THERE.

MR. BISSELL: OBJECTION. RELEVANCY, YOUR HONOR.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q DID ALL YOUR FAMILY MEMBERS TELL YOU THAT SPARTAN HAD DONE A GOOD JOB ON THEIR PROJECTS?

A NO.

Q THEY DIDN'T?

A NO.

Q WHAT DID THEY SAY?

A ADAM BEREKI DID A GOOD JOB. I NEVER HEARD THE NAME SPARTAN ASSOCIATES.

Q OKAY. SO THEY TOLD YOU THAT ADAM BEREKI HAD DONE A GOOD JOB ON ALL THEIR PROJECTS?

A YES.

Q AND YOUR BUSINESS OFFICE, THE WORK THAT YOU SAW DONE THERE, DID YOU FEEL THAT A GOOD JOB HAD BEEN DONE?

A YES.

Q OKAY. WERE THERE ANY COMPLAINTS ABOUT THE WORK PRODUCT ITSELF?

MR. BISSELL: OBJECTION. VAGUE.

THE COURT: WELL, IT'S COMPOUND BECAUSE WE ARE NOW WELL AWARE THERE ARE MULTIPLE PROJECTS. SO I WILL SUSTAIN ON COMPOUND AT THIS POINT.

YOU CAN FOLLOW UP, MR. BEREKI.

MR. BEREKI: MR. --

THE COURT: LET ME CLARIFY SINCE I KNOW YOU'RE NOT A LAWYER. BASICALLY IF YOU WANT TO ASK A QUESTION LIKE THAT, YOU NEED TO ASK PROJECT BY PROJECT AND ANOTHER COLLECTIVELY.

MR. BEREKI: OKAY.

BY MR. BEREKI:

Q WERE THERE ANY COMPLAINTS ABOUT THE WORK THAT SPARTAN DID ON YOUR -- AT THE HUMPHREYS & ASSOCIATES OFFICE BUILDING ON RESEARCH?

A I NEVER HEARD SPARTAN ASSOCIATES. SO I HAVE TO SAY NO, THERE WERE NO COMPLAINTS.

Q OKAY. WERE THERE ANY COMPLAINTS ABOUT THE WORK THAT ADAM BEREKI DID AT YOUR -- AT THE HUMPHREYS & ASSOCIATES OFFICE ON RESEARCH?

A NO.

Q OKAY. DO YOU HIRE CONTRACTORS IN YOUR BUSINESS?

A NOT CONSTRUCTION CONTRACTORS. CONSULTANTS, MANAGEMENT CONSULTANTS, ACCOUNTANTS, PEOPLE, EXPERTS IN NUCLEAR PHYSICS, THAT KIND OF THING.

Q OKAY. BUT YOU REFER TO THEM AS CONTRACTORS; CORRECT?

A CONSULTANTS, ASSOCIATES, THOSE KIND OF TITLES.

Q OKAY. COULD YOU PLEASE TURN TO EXHIBIT 40.

A OKAY. I'M THERE.

Q OKAY. AND THEN I ASK YOU TO GO TO EXHIBIT A WHICH BEGINS ON 40-8.

A OKAY. I'M THERE.

Q CAN YOU READ THE TITLE OF THIS PAGE THAT'S IN BOLD FOR US, SIR?

A HUMPHREYS & ASSOCIATES, INC., INDEPENDENT CONTRACTOR AGREEMENT.

Q SO IN YOUR COMPANY, WHAT DOES THIS INDEPENDENT CONTRACTOR AGREEMENT APPLY TO?

MR. BISSELL: RELEVANCY, YOUR HONOR. OBJECTION.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q WAS YOUR TESTIMONY THAT YOU DON'T HIRE CONTRACTORS IN YOUR COMPANY?

A I AM SAYING THAT WE REFER TO THEM AS CONSULTANTS OR ASSOCIATES. I WASN'T SURE WHAT THE EXACT AGREEMENT NAME IS. IN FACT, I'M CONFIDENT IT'S CHANGED.

Q WOULD THOSE CONSULTANTS BE HIRED UNDER THIS INDEPENDENT CONTRACTOR AGREEMENT?

MR. BISSELL: SAME OBJECTION. RELEVANCE.

THE COURT: SUSTAINED. LET ME INDICATE TO YOU,

MR. BEREKI, I CONSIDER THERE TO BE SOME DIFFERENTIATION. I UNDERSTAND YOUR POINT IN TERMS OF TITLE, INDEPENDENT CONTRACTOR CONTAINED ON THIS ATTACHED EXHIBIT TO EXHIBIT 40, BUT IT WOULD BE RELEVANT AND GERMANE IF THIS WAS A CONTRACT TO PERFORM CONSTRUCTION-TYPE CONTRACTING WORK. HIRING SOMEBODY TO DO THE FUNCTION OF A MANAGEMENT CONSULTANT IN THE REALM OF MR. HUMPHREYS' BUSINESS, I THINK, IS AN ENTIRELY DIFFERENT THING, AND, THEREFORE, NOT RELEVANT.

MR. BEREKI: WHERE I'M COMING FROM IS THAT MR. HUMPHREYS, IN MY KNOWLEDGE, IS A MANAGEMENT CONSULTANT. HE WROTE THE BOOK ON PROJECT MANAGEMENT. AND IT -- HE MAY NOT BE INVOLVED IN CONSTRUCTION PROJECTS LIKE THIS AS MUCH, BUT HE DOES STATE THAT IN HIS WORK, THAT HIS MANAGEMENT PRINCIPLES, THAT HE BOTH TEACHES AND IS A SELF-PROCLAIMED EXPERT IN --

THE COURT: ASK HIM ABOUT THAT.

MR. BEREKI: OKAY.

THE COURT: I KNOW YOU'RE JUST ABOUT TO DO THAT.

MR. BEREKI: YES, I WAS, SIR.

BY MR. BEREKI:

Q OKAY. I'M GOING TO HOLD UP WHAT HAS NOT YET BEEN MARKED. WELL, IT IS ON THIS EXHIBIT -- ON THE LIST, BUT THIS BLUE BOOK. IT SAYS, "PROJECT MANAGEMENT USING EARNED VALUE," BY HUMPHREYS & ASSOCIATES.

DID YOU WRITE THIS BOOK, SIR?

MR. BISSELL: OBJECTION. RELEVANCY.
THE COURT: YOU CAN ANSWER YES OR NO.
THE WITNESS: YES.
BY MR. BEREKI:
Q AND IN THIS BOOK, ARE THERE PRINCIPLES RELATING TO THE HANDLING OF CONTRACTS?
A YES.
Q WOULD YOU AGREE THAT YOU HAVE EXTENSIVE EXPERIENCE IN VARIOUS TYPE OF CONTRACTS?
A FOR GOVERNMENT FUNDED CONTRACTS OVER $100 MILLION WHERE THERE'S A VERY SPECIFIC REQUIREMENT FOR A THING CALLED EARNED VALUE MANAGEMENT SYSTEMS.
Q OKAY. SO HOW ABOUT AN ACTUAL COST OR A COST-PLUS CONTRACT, DO YOU HAVE EXPERIENCE IN THAT?
A MANY OF MY CLIENTS HAVE COST PLUS CONTRACTS.
Q OKAY. AND WOULD YOU AGREE THAT YOU HAVE EXTENSIVE EXPERIENCE IN PROJECT MANAGEMENT?
A IN EARNED VALUE PROJECT MANAGEMENT SYSTEMS, YES.
Q OKAY. SO DURING THE PROJECT, DID I EVER ASK YOU TO MAKE A CHECK OUT TO LEGOLAND TO BUILD YOUR PROPERTY?
A I DON'T THINK SO.
Q OKAY. DID I ASK YOU TO MAKE A CHECK OUT TO JUDGE CHAFFEE?
THE COURT: WELL, LET'S NOT BE FACETIOUS.

BY MR. BEREKI:

Q HOW ABOUT PINKBERRY, THE ICE CREAM MANUFACTURER?

MR. BISSELL: OBJECTION. RELEVANCE.

THE COURT: SUSTAINED.

BY MR. BEREKI:

Q SO YOU HAVE STATED THAT YOU HAVE EXPERIENCE IN CONTRACTS AND PROJECT MANAGEMENT, YET YOU ARE ALLEGING THAT A SUBSTITUTION OCCURRED OF SPARTAN ASSOCIATES INTO THE PROJECT, AND DESPITE ALL OF THIS EXPERIENCE, WOULD YOU AGREE THAT THAT DID NOT SEND UP A RED FLAG TO YOU?

THE COURT: I WILL SUSTAIN MY OWN OBJECTION AS TOO MANY WORDS.

MR. BEREKI: OKAY.

THE COURT: SEE IF YOU CAN GO BACK AND REFRAME THE QUESTION. USUALLY, QUESTIONS, SINCE YOU'RE CROSS-EXAMINING -- LET ME EXPLAIN. SINCE YOU'RE CROSS-EXAMINING, YOU GET TO ASK LEADING QUESTIONS. I DON'T KNOW IF MR. RUSSO HAS GIVEN YOU THE LECTURE ON LEADING AND NON-LEADING QUESTIONS.

MR. RUSSO: WE HAD A FULL NIGHT OF IT LAST NIGHT.

THE COURT: OKAY.

MR. BEREKI: I AM JUST A ROOKIE, THOUGH.

THE COURT: A LEADING QUESTION IS ANY QUESTION THAT'S DESIGNED OR INTENDED TO PUT WORDS INTO THE MOUTH OF THE WITNESS THAT ADOPTS THE QUESTION BY SAYING YES.

MR. BEREKI: OKAY.

THE COURT: LEADING QUESTION. YOU WENT TO THE STORE LAST NIGHT, DIDN'T YOU? THE ANSWER WILL BE YES OR NO. PRESUMPTIVELY, THE ANSWER IS GOING TO BE YES. WHILE YOU WERE AT THE STORE, YOU BOUGHT A SIX PACK OF BEER, CORRECT? PRESUMPTIVELY, THE ANSWER WILL BE YES.

SO WHAT'S THE NON-LEADING FORM? NOT THAT YOU NEED TO KNOW THIS RIGHT NOW, BUT I WILL CLOSE THE BIG PICTURE. THE NON-LEADING FORM IS ANY QUESTION THAT EMPLOYS THE JOURNALIST'S TOOLS. WHAT ARE THE JOURNALIST TOOLS? WHO, WHAT, WHEN, WHERE, WHY, HOW. WHERE DID YOU GO LAST NIGHT? CAN'T BE ANSWERED JUST YES OR NO. I WENT TO THE STORE. WHAT, IF ANYTHING, DID YOU BUY WHILE YOU WERE AT THE STORE? NOTICE I STUCK AN EXTRA CLAUSE IN THERE, "IF ANYTHING." THERE IS A TECHNICAL REASON FOR THAT, BUT YOU DON'T NEED TO WORRY ABOUT THAT. ANSWER, CAN'T BE YES OR NO. ANSWER, I BOUGHT A SIX PACK OF BEER.

THE REASON I AM SAYING THIS TO YOU IS THAT, TYPICALLY, LEADING QUESTIONS ARE SHORT, TO THE POINT. PREFACING WITH LONG PARAGRAPHS OF INFORMATION IS BASICALLY TESTIMONIALS THAT DON'T REALLY WASH VERY WELL AROUND HERE. YOU WANT TO ASK SHORT QUESTIONS, ALLOW THE WITNESS TO SAY YES OR NO. THE LONGER THE QUESTION IS, THE MORE I START GOING, I'M NOT GOING TO REQUIRE A "YES" OR "NO" ANSWER. I'M GOING TO LET THE WITNESS TAKE OFF

AND GIVE SEVERAL PARAGRAPHS OF RESPONSE TO THAT.

BECAUSE, OFTENTIMES, WITH THE LONGER QUESTION, THERE ARE CERTAIN BUILT-IN ASSUMPTIONS THAT MAY OR MAY NOT BE ACCURATE. AND AS WE HAVE ALREADY SEEN, MR. HUMPHREYS AND MRS. HUMPHREYS HAVE DONE A GOOD JOB OF DIFFERENTIATING TO LEADING QUESTIONS. YOU HAD A CONTRACT WITH SPARTAN, DIDN'T YOU? THAT'S THE SHORT VERSION OF WHAT ACTUALLY WAS ASKED. THE ANSWER, I DIDN'T HAVE A CONTRACT WITH SPARTAN AT ALL. I HAD A CONTRACT WITH MR. BEREKI.

MR. BEREKI: THANK YOU.

THE COURT: IT COULDN'T BE ANSWERED YES OR NO. THAT IS THE PROBLEM.

MR. BEREKI: I UNDERSTAND.

THE COURT: NOW, TO GET THE CHAFFEE FULL COURSE, YOU'RE GOING TO HAVE TO READ THE COUNTY BAR JOURNAL NEXT MONTH, BUT IN THE MEANTIME -- OR LAST QUARTER. MR. RUSSO PROBABLY GAVE YOU A COPY OF THE ARTICLE I WROTE ON LEADING QUESTIONS. IN THE MEANTIME, IT'S JUST IMPORTANT TO KEEP IN MIND THAT IT'S BEST TO HAVE YOUR QUESTION WRITTEN OUT. AND I KNOW IT'S A LITTLE LATE IN THE GAME FOR THAT, BUT AS WE GO THROUGH THIS TRIAL, YOU WANT TO WRITE OUT YOUR QUESTIONS SO THAT YOU WILL HAVE A GOOD FLOW. THERE'S NOTHING WRONG WITH READING QUESTIONS OR AT LEAST REFERRING TO NOTES SO YOU KNOW WHERE YOU'RE GOING.

MR. BEREKI: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

MR. BEREKI: I WILL TAKE THAT TO HEART.

THE COURT: ALL RIGHT. BACK TO IT, SIR.

BY MR. BEREKI:

Q DID IT SEND UP A RED FLAG TO YOU WHEN YOU WERE ASKED TO WRITE A CHECK TO SPARTAN CONSTRUCTION?

A NOT REALLY.

Q WOULD IT SEND UP A RED FLAG TO YOU IF YOU THOUGHT YOU HAD A CONTRACT WITH ADAM BEREKI AND YET ADAM BEREKI IS ASKING YOU TO PAY SOMEONE ELSE?

A NO. I THINK THAT'S THE SAME QUESTION.

MR. BEREKI: I THINK I WILL BE DONE FOR NOW.

THE COURT: OKAY. MR. BISSELL, BACK TO YOU.

MR. BISSELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BISSELL:

Q MR. HUMPHREYS, MR. RUSSO, NOT SO MUCH BY YOUR TESTIMONY, BUT INDICATED TO YOU, REPRESENTED TO YOU THAT ALL SUBCONTRACTS ENTERED INTO ON THIS PROJECT WERE BY SPARTAN CONSTRUCTION. I ASK YOU TO FLIP TO TAB NUMBER 51 --

A OF THE BIGGER BOOK --

Q -- OF THE DEFENDANTS' BOOK, THE SMALLER OF THE

TWO.

A YOU SAID 51?

Q 51, YES.

THE COURT: "SMALL" IS SUCH A RELEVANT TERM.

MR. BISSELL: SMALLER OF THE TWO.

THE WITNESS: OKAY. I'M AT 51.

BY MR. BISSELL:

Q HAVE YOU SEEN THAT DOCUMENT BEFORE?

A I THINK I HAVE.

Q IS THIS A DOCUMENT THAT WAS PRODUCED BY MR. BEREKI IN CONJUNCTION WITH THIS LAWSUIT?

A YES.

Q THIS PURPORTS TO BE A WORK AUTHORIZATION TO WONG & ASSOCIATES?

A YES.

Q AND YOU MENTIONED THAT WONG WAS A NAME THAT YOU RECOGNIZE AS BEING ONE OF THE CONSULTANTS ON THIS PROJECT?

A I DO NOW, AND I SEE THE TITLE CONSULTING ENGINEER.

Q WHO IS THIS WORK AUTHORIZATION DIRECTED TO? WHO'S THE CLIENT? UP AT THE TOP, UPPER LEFT.

A OH, CLIENT, SORRY. ADAM BEREKI.

Q AND WHO AT THE BOTTOM RIGHT-HAND PORTION, WHO'S THIS WORK ORDER APPROVED BY?

A ADAM BEREKI.

MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO?

RECROSS-EXAMINATION

BY MR. RUSSO:

Q I DON'T WANT TO DO TIT FOR TAT, BUT CAN YOU TURN TO EXHIBIT 33, SIR.

A IN THE OTHER BOOK?

Q YES, SIR.

A 33?

Q YES, SIR.

A I'M AT 33.

Q LOOKING AT 33-1, SIR, DO YOU SEE THE CONTRACT OF RUSSELL'S CRANE SERVICE?

A I SEE RUSSELL CRANE SERVICE IN THE UPPER LEFT-HAND CORNER.

Q WHO IS THE CLIENT OUT HERE, BILLED TO?

A BILLED TO IS SPARTAN CONSTRUCTION AND THE DATE IS JANUARY OF 2013.

Q OKAY. MOVING TO PAGE 3-2, SIR, THE GEOLOGIST FOR THIS PROJECT?

A HARRINGTON GEOTECHNICAL ENGINEERING, INC.

Q WHO WAS THE CONTRACTOR FOR THIS?

A IT'S THE JULY 25 OF 2013, MR. ADAM BEREKI, SPARTAN CONSTRUCTION.

Q MOVING ON, SIR. EXHIBIT 33-3, THE NEXT PAGE --

A YES.

Q -- INVOICE FOR THE WINDOWS?

A CALIFORNIA GLASS AND WINDOW.

Q SOLD TO WHO, SIR?

A ON MARCH 26 OF 2013, SPARTAN CONSTRUCTION.

Q SIR, TURN TO 33-5. CONTRACTED WITH ANAHEIM HEATING AND AIR CONDITIONING. WHO'S THE CONTRACT WITH?

A DATED MAY 27, 2013, SPARTAN CONSTRUCTION. AND IT SAYS "EQUALS ADAM."

Q NEXT PAGE, 33-6, SIR.

PROCOAT, INC. WHAT DID THEY DO ON THIS PROJECT?

A PROCOAT, INC., IT'S DATED, AGAIN, MARCH 22 OF 2013. IS THERE A SCOPE OF WORK ON HERE SOMEPLACE I SHOULD BE FINDING?

Q DO YOU KNOW WHAT THIS WAS FOR, SIR?

A I DO NOT.

Q DID YOU HAVE TO HAVE A WATERPROOFING SUBCONTRACTOR?

A I DON'T KNOW.

Q NEXT PAGE, 33-7,SIR. SHORELINE FABRICATORS, WHAT DID THEY DO FOR YOU?

A IT SAYS TO FABRICATE AND INSTALL ONE 10-FOOT LONG GUTTER. GUTTER TO BE MADE FROM 24-GAUGE STAINLESS

Electronically Filed by Superior Court of California, County of Orange, 10/16/2025 01:43:00 PM.
30-2025-01482941-CL-UD-CJC - ROA # 51 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

In the Appellate Division of the Superior Court of California
for the County of Orange

Consolidated Case Nos.:
30-2025-1482941 (Lead Case) and 30-2025-01487778

---

Adam Bereki,
Appellant.

v.

Canjian Hou,
Respondent.

---

**REQUEST FOR JUDICIAL NOTICE**
**PART 4 OF 4**

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Adam Bereki
3649 Metter St.
Las Vegas, Nevada 89129
949.241.6693 | abereki@gmail.com

STEEL AND TWO, THREE-INCH LONG NO-HUB THUNDERBIRD DRAINS AT EACH END.

Q AGAIN, THIS WAS FOR SPARTAN CONSTRUCTION; CORRECT?

A IN APRIL OF 2013, SPARTAN CONSTRUCTION.

Q OKAY. LAST ONE, 33-8. HELIX ENVIRONMENTAL PLANNING, WHAT DID THEY DO FOR YOU, SIR?

A PROVIDE ENVIRONMENTAL CONSULTING SERVICES FOR THE RESIDENTIAL REMODEL OF NEWPORT BEACH. AGAIN, DATED JANUARY 16 OF 2013. I ASSUME THE SUBJECT COVERS.

Q AGAIN, THIS WAS WITH SPARTAN; CORRECT?

A SORRY. YES --

Q THANK YOU --

A -- IT'S WITH SPARTAN.

Q -- SIR.

MR. RUSSO: NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI.

MR. BEREKI: NOTHING FURTHER, YOUR HONOR.

MR. BISSELL: YOUR HONOR, I WOULD REQUEST TO -- I WOULD MOVE INTO EVIDENCE EXHIBITS 302, 303 --

THE COURT: HOLD ON A SECOND. START OVER AGAIN.

MR. BISSELL: 302, 303, 304, 305, 306, AND 315.

THE COURT: ANY OBJECTION TO 302?

MR. RUSSO: NO, YOUR HONOR.

THE COURT: MR. BEREKI?

MR. BEREKI: NO.

THE COURT: YOU'RE A PART OF THIS TOO.
MR. BEREKI: NO.
THE COURT: ALL RIGHT. 302 RECEIVED.
(EXHIBIT NO. 302 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 303.
MR. RUSSO: NO OBJECTION.
MR. BEREKI: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 303 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 304.
MR. RUSSO: NO OBJECTION.
MR. BEREKI: NO OBJECTION.
THE COURT: ALSO RECEIVED.
(EXHIBIT NO. 304 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 305.
MR. RUSSO: NO OBJECTION.
MR. BEREKI: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 305 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 306 IS THE COPY OF THE CHASE CHECK, $50,000. ANY OBJECTION?
MR. BEREKI: NO OBJECTION.
MR. RUSSO: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 306 WAS ADMITTED INTO EVIDENCE.)
THE COURT: LASTLY, 315, THIS IS THE SUMMARY OF

CHECKS PAID OVER THE COURSE OF THE RUN OF THIS EVENT. ANY OBJECTION?

MR. RUSSO: IT'S -- I OBJECT THAT IT'S DUPLICATIVE OF THREE -- I'M SORRY -- OF 32. AND I BELIEVE THERE'S AN ABSENCE OF FOUNDATION FOR IT.

THE COURT: SO DID YOU MOVE 32?

MR. RUSSO: I DID.

THE COURT: THERE IT IS. I JUST DIDN'T NOTE IT IN MY BOOK. WELL, CONSIDERING THE FACT THAT 32 IS IN EVIDENCE, DO WE NEED TWO OF THEM?

MR. BISSELL: AGAIN, YOUR HONOR, I DON'T HAVE THEIR EXHIBIT BOOK. I'M GOING TO HAVE TO TAKE A --

THE COURT: TAKE A LOOK.

MR. BISSELL: AS LONG AS IT'S TRULY DUPLICATIVE --

MR. RUSSO: IT IS.

MR. BISSELL: -- WE DON'T.

THE COURT: WELL, ONE DIFFERENCE I CAN TELL YOU RIGHT NOW. 32-2, WHICH IS THE PAGE IN QUESTION, ON MY BOOK, THERE ARE A SERIES OF RED CHECKMARKS. THEN THERE ARE SOME BLUE INITIALS NEXT TO, IT LOOKS LIKE, THE BEREKI ENTRIES AND THEN SOMEONE IN BLUE HAS CIRCLED THE BALANCE OF 848,000.

MR. BISSELL: TO ME, THOSE ARE INSIGNIFICANT. SO I HAVE NO OBJECTION TO 32 COMING IN.

THE COURT: OKAY. WE WON'T DOUBLE DOWN ON THAT ONE.

MR. BISSELL: ALL RIGHT.

THE COURT: THANK YOU, SIR, YOU CAN STEP DOWN.

THE WITNESS: THANK YOU, SIR.

MR. BISSELL: YOUR HONOR, AT THIS TIME, CROSS COMPLAINANTS CALL ADAM BEREKI TO THE STAND.

THE COURT: MR. BEREKI.

MR. BEREKI: YOUR HONOR, MAY I RUN TO THE BATHROOM REALLY QUICK?

MR. BISSELL: ABSOLUTELY.

MR. BEREKI: THANK YOU. I WILL BE RIGHT BACK.

THE COURT: WE WILL GO OFF THE RECORD FOR A SECOND.

(OFF THE RECORD.)

THE CLERK: DO YOU SOLEMNLY STATE THAT THE EVIDENCE YOU'RE ABOUT TO GIVE IN THE CASE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: CAN YOU PLEASE STATE YOUR FULL NAME AND SPELL IT FOR THE RECORD.

THE WITNESS: ADAM, A-D-A-M, ALAN, A-L-A-N, BEREKI, B-E-R-E-K-I.

THE CLERK: THANK YOU.

THE COURT: COME ON DOWN, MR. BEREKI. HAVE A SEAT. NOW, I NEED TO EXPLAIN SOMETHING TO YOU SINCE I HAVE JUST GIVEN YOU A LITTLE BIT OF CHAFFEE ON EVIDENCE ALREADY. BECAUSE YOUR POSITION IS ADVERSE TO

MR. BISSELL'S CLIENTS, EVEN THOUGH MR. BISSELL IS CALLING YOU, HE GETS TO ASK LEADING QUESTIONS OF YOU. ON, QUOTE, CROSS-EXAMINATION, MR. RUSSO IS GOING TO HAVE TO ASK YOU NON-LEADING QUESTIONS. AND TO THE EXTENT YOU WANT TO ASK YOURSELF QUESTIONS, I JUST WILL UNDERSTAND THAT YOU'RE GOING TO BASICALLY ASK YOURSELF NON-LEADING QUESTIONS. AGAIN, THOSE ARE THE WHO, WHAT, WHEN, WHY, AND HOW QUESTIONS.

THE WITNESS: IS IT MY UNDERSTANDING THAT YOU'RE GOING TO GIVE ME A PERIOD OF TIME AFTER THIS TO ASK MY OWN QUESTIONS --

THE COURT: OH, SURE.

MR. BEREKI: -- TO HAVE A SMALL DIATRIBE OF MY OWN.

THE COURT: YOU'RE GOING TO BE UNDER OATH ASKING YOURSELF QUESTIONS TO WHICH YOU HAVE TO GIVE TRUTHFUL ANSWERS.

MR. BEREKI: YES, SIR. THAT WILL BE --

THE COURT: THERE IS A CERTAIN IRONY THERE. I DON'T KNOW WHY.

ALL RIGHT. MR. BISSELL, TO YOU, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MR. BISSELL:

Q MR. BEREKI, IF YOU WILL TURN TO TAB NUMBER 2

IN DEFENDANTS' EXHIBIT BOOK, EXHIBIT 302.

A I'M THERE, SIR.

Q YOU RECOGNIZE THAT DOCUMENT?

A YOU SAID 302; CORRECT?

Q 202.

THE COURT: NO, 302. TAB --

MR. BISSELL: I'M SORRY. SORRY.

BY MR. BISSELL:

Q 302, TAB NUMBER 2.

A I DO RECOGNIZE THIS DOCUMENT.

Q AND DID YOU DRAFT THAT?

A YES.

Q AND ON WHOSE E-MAIL ACCOUNT WAS THAT DOCUMENT SENT TO THE HUMPHREYS?

A THE ADAM BEREKI E-MAIL ACCOUNT.

Q DID SPARTAN HAVE AN E-MAIL ACCOUNT AT THIS TIME?

A I BELIEVE IT DID.

Q OKAY.

A HOWEVER, ADAM BEREKI WAS THE E-MAIL ACCOUNT THAT I USED FOR SPARTAN.

Q IF YOU WILL FLIP TO EXHIBIT -- YOUR EXHIBIT NOW, IN YOUR EXHIBIT BOOK, 39 -- 35-13.

A I'M SORRY. SAY AGAIN.

Q EXHIBIT 35-13.

A OKAY.

OKAY.

Q DO YOU RECOGNIZE THAT DOCUMENT, SIR?

A I DO.

Q WHAT IS THAT?

A THIS IS A CONTRACT WITH -- BETWEEN THE SPARTAN ASSOCIATES AND ADP AND GUARD. ADP PROVIDED PAYROLL SERVICES AND GUARD PROVIDED WORKERS' COMP SERVICES.

Q AND WERE THOSE SERVICES TO BE PROVIDED IN CONNECTION WITH THE PROJECT YOU WERE DOING FOR THE HUMPHREYS?

A YES, SIR.

Q WHEN I SAY "THE HUMPHREYS," I'M TALKING ABOUT THE HUMPHREYS PROJECT ON LIDO NORD. DO YOU UNDERSTAND THAT, SIR?

A YES.

THE COURT: LET'S BE CLEAR. THE CONTRACT ITSELF ENCOMPASSES PAGE 35-11 THROUGH -13; IS THAT RIGHT?

THE WITNESS: YOUR HONOR, I BELIEVE IT ENCOMPASSES 35-1 THROUGH -- MAYBE THE ENTIRE 35 EXHIBIT. IT IS.

BY MR. BISSELL:

Q SO IF YOU LOOK AT THE BOTTOM OF PAGE 35-13, THERE'S AN E-MAIL ACCOUNT THERE, IS THERE NOT?

A YES.

Q AND THAT E-MAIL ACCOUNT IS ADAM@THESPARTANASSOCIATES.COM?

A YES.

Q AND YOU WERE USING THAT E-MAIL IN CONJUNCTION WITH THE HUMPHREYS PROJECT?

A YES, SOMETIMES, I DID.

Q WELL, DID YOU JUST NOT TESTIFY THAT YOU ALWAYS USE THE ADAM BEREKI E-MAIL IN CONJUNCTION WITH SPARTAN ASSOCIATES FOR THIS PROJECT?

A I DID NOT USE THE WORD "ALWAYS."

Q BACK TO EXHIBIT 302. TURN TO PAGE 5 OF THAT EXHIBIT.

ARE YOU THERE?

A I'M THERE, SIR.

Q OKAY. NOW, AT THE LAST COMPLETE PARAGRAPH, YOU MENTIONED WHAT YOU AND YOUR PARTNER PROPOSED TO CHARGE THE HUMPHREYS ON THIS PROJECT; CORRECT?

A IN RELATING TO THIS DOCUMENT, IT'S NOT ON THIS DOCUMENT, NO.

Q ARE YOU -- I'M SORRY. PAGE 4, 302, PAGE 4.

A NO. IT WOULD BE 304; RIGHT?

Q NO.

A OKAY. 302, PAGE 4, YES. I'M HERE NOW.

Q SECOND TO THE -- THE LAST COMPLETE PARAGRAPH ON THE PAGE, THAT'S A PROPOSAL BY YOU AND YOUR PARTNER AS TO WHAT YOU TWO INTEND TO CHARGE THE HUMPHREYS ON THIS PROJECT?

A NO. IT'S A PROPOSAL FROM SPARTAN ABOUT WHAT THE LABOR RATE OF ADAM BEREKI AND GLEN CHARGE ON THE

PROJECT.

Q OKAY. CAN YOU POINT TO ANYWHERE IN THAT DOCUMENT WHERE THE NAME SPARTAN IS MENTIONED?

A IT'S NOT.

Q NOW, THE COST OF THE WORK THAT YOU ESTIMATED AT THAT TIME, UNDERSTANDING THAT THE SCOPE CHANGED, IT WAS $143,000?

A ACTUALLY, THERE WERE TWO PROJECTS, WHAT WE DESCRIBED IN THIS E-MAIL AS PHASE ONE AND PHASE TWO. PHASE ONE WAS TO BE SOMEWHAT OF A COSMETIC REMODEL OF THE UNIT ITSELF, AND THAT WAS TO BE ABOUT $68,000, IS WHAT I ESTIMATED.

AND THEN THERE WAS ANOTHER PHASE OF THE PROJECT THAT WE SPOKE ABOUT, WHICH WAS PUTTING A DECK ON TOP OF THE UNIT BECAUSE THE HUMPHREYS INDICATED THEY WANTED TO HAVE LARGER DECK ENTERTAINMENT SPACE, AND THAT WOULD BE SOMETHING THAT WOULD BE RESEARCHED AND DISCUSSED OR AGREED UPON LATER. AND THAT AMOUNT WAS 75,000.

SO I THINK IF YOU ADD THE 68 AND 75, IT'S 143. BUT THE 75, TO MY RECOLLECTION, WASN'T YET AGREED UPON. IT WAS SOMETHING WE WERE GOING TO RESEARCH ON.

Q IT WAS YOUR ESTIMATE?

A YES.

Q IN THE LAST PAGE OF THIS E-MAIL, HOW DO YOU SIGN OFF?

A BEST, ADAM BEREKI.

Q NOW, YOUR PARTNER, MR. -- YOU TESTIFIED THAT -- YOU MENTIONED IN YOUR OPENING STATEMENT THAT MR. OAKLEY -- MR. OVERLEY WAS YOUR PARTNER ON THIS PROJECT?

A YES.

Q HE WAS AN INDEPENDENT CONTRACTOR?

A NO. WELL, AN INDEPENDENT LICENSED CONTRACTOR, OR JUST AN INDEPENDENT CONTRACTOR IN THE TERMS OF HOW YOU WOULD FILE A TAX RETURN FOR HIM?

Q HOW YOU WOULD FILE A TAX RETURN?

A YES, HE WAS TREATED AS AN INDEPENDENT CONTRACTOR.

Q HE HAD NO INVOLVEMENT WITH SPARTAN OTHER THAN PARTNERING WITH YOU; CORRECT?

A ARE YOU REFERRING TO ME AS SPARTAN OR ME AS ADAM BEREKI?

Q EITHER/OR.

A OKAY. I THINK TO MAKE IT CLEAR, I'M UP HERE AS A REPRESENTATIVE OF THE SPARTAN ASSOCIATES. AND TO NOT DIFFERENTIATE THOSE ISSUES, I WOULD APPRECIATE IF YOU WOULD CLARIFY IN YOUR QUESTIONS WHICH ONE YOU'RE REFERRING TO OR JUST ASSUME THAT I'M ALWAYS TALKING FROM THE PLACE OF SPARTAN.

THE COURT: THE WITNESS'S COMPOUND OBJECTION IS SUSTAINED.

REPHRASE.

BY MR. BISSELL:

Q READING FROM THE DEPOSITION THAT YOU GAVE IN THIS MATTER AT PAGE -- BEGINNING OF PAGE -- I'M SORRY -- 98, BEGINNING LINE 10 --

THE COURT: ALL RIGHT. HOLD ON A SECOND. 98, LINE 10. GOING TO WHERE?

MR. BISSELL: TO LINE -- I'M SORRY -- LINE 10 -- I'M SORRY -- TO LINE 13.

THE COURT: ANY OBJECTION?

MR. RUSSO: NO.

THE COURT: GO AHEAD AND READ.

MR. BISSELL: LET'S SEE.

BY MR. BISSELL:

Q "QUESTION: MR. OVERLEY, WAS HE -- DID HE HAVE ANY INVOLVEMENT WITH SPARTAN?

"ANSWER: HE WAS AN INDEPENDENT CONTRACTOR, YOU MIGHT SAY."

IF YOU WILL FLIP TO EXHIBIT 303, THE -- I'M SORRY. 305, IF YOU WOULD, SIR.

A OKAY. I'M HERE.

Q DO YOU RECOGNIZE THAT DOCUMENT?

A YES.

Q AND IN THIS DOCUMENT, YOU'RE COMMUNICATING WITH THE HUMPHREYS AND YOU'RE ASKING THEM TO CUT YOU A CHECK FOR $15,000; CORRECT?

A YES.

Q AND MS. HUMPHREYS, IN RESPONSE TO YOUR REQUEST, ASKS YOU WHO SHE SHOULD MAKE THE CHECK OUT TO.

DO YOU SEE THAT?

A I DO.

Q WHO IS IT THAT YOU'RE ASKING TO MAKE THE CHECK OUT TO?

A ADAM BEREKI.

Q IS THERE ANYTHING IN THE EXHIBIT 3 -- EXHIBIT 303 AGREEMENT THAT WOULD -- YOU CONTEND WOULD PUT THE HUMPHREYS ON NOTICE THAT THEY WERE CONTRACTING WITH ANYONE OTHER THAN YOU AND YOUR PARTNER, MR. OVERLEY? CAN YOU POINT TO THAT?

A IN THESE DOCUMENTS, NO.

Q IS THERE ANYTHING IN THE E-MAIL YOU SENT TO THE HUMPHREYS ON APRIL 13, THAT'S EXHIBIT 305, WHERE YOU'RE ASKING FOR PAYMENT AND ASKING THE PAYMENT BE MADE PAYABLE TO ADAM BEREKI, THAT WOULD PUT THE HUMPHREYS ON NOTICE THEY HAVE CONTRACTED WITH ANYONE OTHER THAN YOU?

A NO.

YOU'RE SPEAKING DOCUMENT SPECIFIC ONLY?

Q WELL, DID YOU HAVE CONVERSATIONS WITH THE HUMPHREYS PRIOR TO APRIL 5, 2012 WHERE YOU INDICATED TO THEM THAT YOU WERE GOING TO BE DOING THIS JOB WITH SPARTAN CONSTRUCTION AND NOT ADAM BEREKI?

A I BELIEVE THEY UNDERSTOOD IT WAS WITH SPARTAN

CONSTRUCTION.

Q ANY CONVERSATIONS TO THAT EFFECT?

A YEAH, I TOLD THEM THAT THAT'S WHAT MY COMPANY IS, SPARTAN CONSTRUCTION.

Q WHEN DID YOU TELL THEM THAT?

A DURING THE DAY WE MET THERE ON LIDO. I BELIEVE, AS MR. HUMPHREYS SAID, HE DID ASK FOR -- IF I WAS LICENSED AND I DID SAY THAT I WAS AS SPARTAN AND REFERRED HIM TO THE CALIFORNIA STATE LICENSE BOARD TO CHECK THE LICENSE NUMBER.

Q READING AGAIN FROM YOUR DEPOSITION OF PAGE 61, LINES 5 THROUGH 9.

"QUESTION" --

THE COURT: HOLD ON.

MR. BISSELL: I'M SORRY.

THE COURT: ANY OBJECTION?

MR. RUSSO: NO OBJECTION.

THE COURT: GO AHEAD.

BY MR. BISSELL:

Q "QUESTION: ASIDE FROM TELLING YOU WHAT THEY WANTED, DID THE HUMPHREYS EVER MANAGE THE PROJECT?

"ANSWER: OH, YES.

"QUESTION: DID THEY HIRE CONTRACTORS?

"ANSWER: ME.

NOW, YOU REQUESTED AND RECEIVED PAYMENTS FOR A NUMBER OF MONTHS AND ACCEPTED PAYMENTS MADE OUT TO ADAM

BEREKI ON THIS JOB; CORRECT?

A CAN YOU STATE THAT AGAIN, PLEASE.

Q FOR A NUMBER OF MONTHS INTO THIS PROJECT, YOU ACCEPTED PAYMENTS FROM THE HUMPHREYS MADE OUT TO ADAM BEREKI; IS THAT CORRECT?

A YES.

Q FOR A NUMBER OF MONTHS ON THIS PROJECT, YOU PAID YOUR LABOR AND MATERIALS WITH CHECKS DRAWN ON THE PERSONAL ACCOUNT OF ADAM BEREKI AND/OR YOUR MOTHER; IS THAT CORRECT?

A CAN YOU ASK THOSE QUESTIONS ONE AT A TIME, PLEASE.

Q UNTIL JULY OF 2012, YOU PAID YOUR OWN LABOR AND MATERIALS ON THIS PROJECT ON CHECKS DRAWN ON EITHER YOUR PERSONAL ACCOUNT OR THEY WERE PAID ON CHECKS DRAWN ON YOUR MOTHER'S ACCOUNT; IS THAT CORRECT?

A NO.

Q NOW, YOU HAVE A -- YOU BROUGHT VOLUMES OF DOCUMENTS. CAN YOU POINT TO EVIDENCE OF A SINGLE PAYMENT MADE IN CONNECTION WITH THIS JOB TO ANYBODY, LABOR, MATERIALS, CONTRACTOR, THAT WAS PAID ON AN ACCOUNT BY SPARTAN CONSTRUCTION?

A I BELIEVE THE PAYMENTS FOR THE SHOP SPACE RENT WERE FROM SPARTAN CONSTRUCTION.

Q SHOP SPACE RENT?

A YES.

Q YOU BELIEVE THAT YOU PAID THE SHOP SPACE RENT ON CHECKS DRAWN FROM SPARTAN CONSTRUCTION?

A AT THIS MOMENT I BELIEVE I DO. I HAVE TO CHECK TO VERIFY THAT.

Q YOU HAVE BEEN ASKED TO PRODUCE THOSE DOCUMENTS. DO YOU HAVE THOSE DOCUMENTS?

A I HAVE THE CHECKS THAT SPARTAN WROTE, YES.

MR. BISSELL: CAN WE HAVE THE WITNESS PRODUCE THOSE DOCUMENTS? WE HAVE ASKED HIM TO PRODUCE THOSE. THEY WERE NOT PROVIDED IN DISCOVERY. WE DON'T BELIEVE THEY EXIST.

THE COURT: I WILL VACATE. YOU GUYS CAN SPEND ABOUT TEN MINUTES, THE THREE OF YOU, GO OVER THE PRODUCTION. LET MS. BOLCE KNOW WHEN YOU ARE READY TO RESUME.

MR. BISSELL: THANK YOU, YOUR HONOR.

(RECESS.)

THE COURT: MR. BISSELL.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: HOW ARE WE DOING?

MR. BISSELL: I THINK WE'RE READY.

THE COURT: PROCEED.

BY MR. BISSELL:

Q MR. BEREKI, YOU HAVE HAD A CHANCE TO SIT DOWN WITH MR. RUSSO, CORPORATION'S COUNSEL, TO LOOK OVER THE CHECKS YOU HAVE. YOU HAVE BEEN ASKED TO PRODUCE ANY

CHECKS PAYABLE ON THE -- A SPARTAN CONSTRUCTION ACCOUNT TO ANYBODY INVOLVED ON THIS PROJECT BEFORE, SAY, JULY 15, 2012.

YOU'VE MADE A SEARCH OF YOUR RECORDS?

A THE ONES THAT I HAVE AVAILABLE, YES. IT WASN'T UNTIL YOU ASKED THE QUESTION THAT I REALIZED THAT THAT CHECKBOOK I USED ON THIS PROJECT ACTUALLY BEGAN WITH CHECK 001 IN JULY. SO THERE MUST BE ANOTHER CHECKBOOK THAT IS OUTSTANDING THAT I DON'T HAVE BECAUSE THE BANK ACCOUNT HAS BEEN CLOSED DOWN FOR AT LEAST THREE YEARS NOW.

Q BOTTOM LINE IS YOU CAN'T PRODUCE A SINGLE RECORD OF PAYMENT TO ANYBODY ON THIS JOB ON A SPARTAN CONSTRUCTION ACCOUNT PRIOR TO JULY OF 2012; IS THAT CORRECT?

A I'M NOT SAYING I CAN'T PRODUCE IT. I'M SAYING I DON'T HAVE THAT INFORMATION AVAILABLE TO ME RIGHT NOW.

Q YOU WERE ASKED TO PRODUCE IT AND YOU HAVEN'T PRODUCED IT.

A I WASN'T AWARE THAT IT EXISTED.

Q ISN'T IT TRUE THAT SPARTAN -- AS FAR AS THIS PROJECT WAS CONCERNED, SPARTAN DIDN'T EVEN EXIST UNTIL JULY OF 2012?

A THAT'S NOT TRUE.

Q YOU DIDN'T APPLY TO THE BOARD OF EQUALIZATION FOR -- TO REGISTER SPARTAN AS AN EMPLOYER UNTIL JULY OF

2012; IS THAT CORRECT?

A THAT IS CORRECT.

Q AND YOU DIDN'T APPLY FOR WORKERS' COMPENSATION ON THIS JOB WITH SPARTAN CONSTRUCTION UNTIL JULY OF 2012; IS THAT CORRECT?

A THAT IS CORRECT, BECAUSE --

Q BOTH --

A -- SPARTAN DID NOT OPERATE WITH EMPLOYEES PRIOR TO THAT -- PRIOR TO THE NECESSITY TO DO SO ON THIS PROJECT. THIS PROJECT DEEMED EMPLOYEES WITH WORKERS' COMPENSATION NECESSARY.

Q AND IF YOU FLIP TO TAB NUMBER 51 IN THE BOOK, DEFENDANTS' BOOK IN FRONT OF YOU, DO YOU SEE THAT DOCUMENT?

A I BELIEVE I DO. 51?

Q TAB 51 IS DEFENDANTS' EXHIBIT 351. THAT IS YOUR TAB 51.

A YES.

Q DO YOU RECOGNIZE THAT DOCUMENT?

A I DO.

Q AND WHAT IS THAT?

A IT IS A WORK ORDER AUTHORIZATION TO BEGIN -- FOR WONG & ASSOCIATES TO BE A CONSULTING ENGINEER ON THE PROJECT.

Q WHAT'S THE DATE OF THAT?

A 8/14/2012.

Q AND WHO'S THE CLIENT ON THAT?
A ADAM BEREKI.
Q AND WHO APPROVED THAT?
A ADAM BEREKI.
Q IF YOU WILL TURN TO EXHIBIT --
A AND I WOULD ALSO LIKE YOU TO LOOK AT THE ADDRESS THAT SAYS 436 VIA LIDO NORD, AND THAT'S WHERE SPARTAN'S BUSINESS LICENSE WAS REGISTERED AS WELL, IS AT 436 VIA LIDO NORD.
Q THANK YOU.
A SURE.
Q IF YOU WILL TURN TO TAB 55, CROSS-COMPLAINANTS' EXHIBIT 355.
A OKAY.
Q THIS IS A COLLECTION OF 36 DIFFERENT CHECKS.
A OKAY.
Q YOU CAN THUMB THROUGH THOSE. DO YOU RECOGNIZE THOSE CHECKS? LET ME KNOW WHEN YOU'RE READY.
A YES, I APPEAR TO RECOGNIZE THEM.
Q OKAY. THESE ARE ALL CHECKS THAT WERE IN PAYMENT OF SOME COST INCURRED IN CONNECTION WITH THE HUMPHREYS PROJECT?
A YES. THEY APPEAR TO BE.
Q AND ON WHOSE ACCOUNT WERE EACH OF THESE CHECKS DRAWN?
A CAN YOU JUST LET ME KNOW IF THERE ARE ANY THAT

SAYS ROSE AND BEREKI AT THE TOP. OTHERWISE, I WILL JUST SAY THEY ARE ALL FROM ADAM'S ACCOUNT.

Q IN THIS PARTICULAR EXHIBIT, I WILL REPRESENT TO YOU THAT NONE OF --

A OKAY. THESE ALL CAME FROM THE ACCOUNT OF ADAM BEREKI.

Q MR. BEREKI, AT THE TIME THAT YOU CONTRACTED WITH THE HUMPHREYS, DID YOU POSSESS A CONTRACTOR'S LICENSE ISSUED IN YOUR NAME?

A ISSUED IN MY NAME, NO.

Q AT THE TIME THAT YOU PERFORMED WORK ON THIS PROJECT, DID YOU POSSESS A CONTRACTOR'S LICENSE ISSUED IN YOUR NAME?

A NO.

Q AT THE TIME THAT YOU CONTRACTED WITH THE HUMPHREYS, DID YOU AND MR. OVERLEY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED TO THE TWO OF YOU AS A JOINT VENTURE?

A NO.

Q AT THE TIME -- AT ANY TIME WHEN YOU WORKED ON THIS PROJECT, DID YOU AND YOUR PARTNER, MR. OVERLEY, POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED TO THE TWO OF YOU?

A NO.

Q AT THE TIME THAT YOU CONTRACTED -- ENTERED INTO THE CONTRACT WITH THE HUMPHREYS ON THIS PROJECT,

DID SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A JOINT VENTURE LICENSE ISSUED TO THE TWO OF THEM?

A CAN YOU SAY THAT AGAIN, PLEASE.

Q AT THE TIME THAT YOU -- THAT YOU CONTRACTED WITH THE HUMPHREYS, DID THE SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED BY THE CALIFORNIA CONTRACTOR'S LICENSE BOARD?

A WELL, YOUR QUESTION ASSUMES THAT I CONTRACTED WITH THE HUMPHREYS AND I AM SAYING THAT SPARTAN ASSOCIATES CONTRACTED WITH THE HUMPHREYS. SO.

Q ALL RIGHT. LET'S USE THE DATE. AS OF APRIL 5 -- AS OF APRIL 5, 2012, DID SPARTAN ASSOCIATES AND MR. OVERLEY JOINTLY POSSESS A JOINT VENTURE CONTRACTOR'S LICENSE ISSUED BY THE CALIFORNIA CONTRACTOR'S LICENSE BOARD?

A NO.

Q AT ANY TIME DURING -- AT ANY TIME BETWEEN APRIL 5, 2012 AND SEPTEMBER 31, 2013, DID THE SPARTAN ASSOCIATES AND MR. OVERLEY POSSESS A CONTRACTOR'S LICENSE ISSUED TO THEM AS JOINT VENTURES?

A NO.

MR. BISSELL: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: MR. RUSSO.

CROSS-EXAMINATION

BY MR. RUSSO:

Q MR. BEREKI, WHO PERFORMED THE WORK AT THE VIA LIDO NORD PROJECT?

A THE SPARTAN ASSOCIATES.

Q WERE YOU EVER DOING ANY OF THE WORK IN YOUR PERSONAL CAPACITY AS OPPOSED TO ON BEHALF OF SPARTAN ASSOCIATES?

A NO.

Q LET'S GO TO EXHIBIT 32, SIR.

A IN OUR BOOK?

Q YES.

A OKAY. OKAY.

Q DIRECTING YOUR ATTENTION TO 32-2, WHICH IS THAT REGISTER.

A OKAY.

Q THE FIRST $100,000 IN CHECKS WERE PAYABLE TO ADAM BEREKI; CORRECT?

A CORRECT.

Q AND THEN AFTER THAT, WAS ALL THE MONEY PUT INTO SPARTAN ASSOCIATES' ACCOUNTS AFTER THAT FIRST $100,000?

A YES.

Q OKAY. SO EVEN IF THE CHECK WAS PAYABLE TO ADAM BEREKI LATER ON, IT STILL WENT TO SPARTAN; CORRECT?

A CORRECT.

Q OKAY.

A AND EVEN THOUGH I ASKED THEM TO MAKE THE CHECK TO SPARTAN, THEY STILL MADE IT TO ADAM BEREKI, BUT IT STILL WENT IN THE SPARTAN ACCOUNT.

Q DURING THIS FIRST PERIOD, IT LOOKS LIKE THAT LAST CHECK BEFORE THINGS SWITCHED OVER WAS JUNE 22, 2012. WHAT WAS THE WORK THAT WAS GOING ON ON THIS PROJECT?

A PRIMARILY -- WELL, THE FIRST THING WE DID WAS TO GET THEM PACKED UP AND MOVED. SO I HAD TO BUY ALL THE MOVING SUPPLIES AND PAY FOR THE LABOR TO HAVE EVERYONE PACK UP ALL OF THE BELONGINGS THAT BELONGED TO THE HUMPHREYS -- THEIR PERSONAL BELONGINGS WERE THERE -- AND ALL OF THE FURNITURE. AND THEN WE TOOK THAT VIA TRAILER TO THE SHOP THAT HAD BEEN RENTED FOR USE ON THIS PROJECT AND PUT UP STEEL VERTICAL SHELVING, WRAPPED THE FURNISHINGS AND OTHER THINGS IN PLASTIC TO THEN BE PALLETIZED AND PUT IN STORAGE WHILE WE WERE WORKING ON THE PROJECT.

Q SO YOU HAD TO RENT STORAGE FOR ALL THEIR STUFF?

A I HAD THE STORAGE, AND, YES, I USED THAT TO STORE THEIR STUFF.

Q OF THIS $100,000, BEFORE EVERYTHING WAS TRULY SPARTAN ASSOCIATES, A PORTION OF IT WAS FOR RENTING A PLACE FOR THEIR STUFF AND MOVING IT THERE; CORRECT?

A THAT'S ONE ASPECT, YES.

Q OKAY. TO YOUR KNOWLEDGE, DOES THAT REQUIRE A CONTRACTOR'S LICENSE?

A NO.

Q OKAY. WHAT ELSE DID YOU DO?

A THERE WAS SIGNIFICANT COMMUNICATION BETWEEN THE HUMPHREYS AND I AND MY TEAM ABOUT DESIGN ISSUES. I WAS GOING TO BUILD THEM A CUSTOM MARQUIS, AND THERE WAS OTHER DESIGN FACETS THAT WERE DISCUSSED GOING BACK AND FORTH. SO A SIGNIFICANT AMOUNT OF TIME WAS SPENT ON THAT.

Q WAS THAT ANYTHING THAT REQUIRED A CONTRACTOR'S LICENSE?

A NO.

Q WHAT ELSE DID YOU DO?

A WE STARTED DEMOLITION.

Q OKAY. NOW, TELL ME ABOUT THE DEMOLITION OR TELL THE COURT ABOUT THE DEMOLITION. WAS THERE ANYTHING AS FAR AS A REMOVAL OF THE FOUNDATION DURING THIS PERIOD?

A NO.

Q WAS THERE ANY REMOVAL OF STRUCTURAL WALLS DURING THIS PERIOD, PART OF ANYTHING GOING ON WITH SPARTAN ASSOCIATES?

A IF YOU MEAN A LOAD-BEARING WALL BY STRUCTURAL WALL, NO. WE TORE DRY WALL OR PLASTER OFF THE WALL AND THAT IS A STRUCTURAL ELEMENT. BUT AS FAR AS PULLING OUT

THE WALL AND MOVING THE STRUCTURE OR ANYTHING LIKE THAT, NONE OF THAT OCCURRED.

Q WAS THERE ANYTHING YOU DID DURING THIS FIRST PERIOD THAT REQUIRED A CONTRACTOR'S LICENSE?

MR. BISSELL: OBJECTION. LACK OF FOUNDATION.

THE COURT: SUSTAINED.

BY MR. RUSSO:

Q DO YOU KNOW, SIR, WHETHER OR NOT ANY OF THE WORK YOU PERFORMED REQUIRED A CONTRACTOR'S LICENSE?

MR. BISSELL: SAME OBJECTION.

THE COURT: TO THIS QUESTION, YOU CAN ANSWER YES OR NO.

THE WITNESS: AT THIS MOMENT, I RECALL THAT MOST EVERYTHING WE WERE DOING WAS DEMOLITION, THAT THERE WAS NOT ACTUAL CONSTRUCTION GOING ON. I HAVE TO REALLY LOOK BACK AT THE PICTURES AND REALLY GET A FEEL. BUT IF THERE WAS ANY WORK GOING ON, IT WAS VERY, VERY MINUTE.

BY MR. RUSSO:

Q YOU ARE FAMILIAR WITH A C21 CONTRACTOR'S LICENSE FOR DEMOLITION?

A IT'S -- YES.

Q OKAY. THAT'S WHEN STRUCTURAL ELEMENTS ARE REMOVED; CORRECT?

A CORRECT.

Q OKAY.

A OR BUILDINGS ARE MOVED OR SIGNIFICANT SHORING

IS INVOLVED.

Q TO THE BEST OF YOUR RECOLLECTION, DID ANY OF THE DEMOLITION WORK THAT YOU PERFORMED FALL WITHIN THE REQUIREMENTS OF THE C21 LICENSE?

A NO.

Q LATER ON IN THE PROJECT, WERE THERE MORE STRUCTURAL ELEMENTS INVOLVED?

A YES.

Q AND BY THEN, YOU HAD STRUCTURAL ENGINEERS AND DESIGN PROFESSIONALS?

A YES.

Q AND A PERMIT WAS PULLED; CORRECT?

A YES.

Q WHO PULLED THE PERMIT?

A SPARTAN ASSOCIATES.

Q NOW, YOU SAID THAT DURING YOUR MEETING WITH THE HUMPHREYS, THE ISSUE OF LICENSURE CAME UP; CORRECT?

A YES.

Q AND WHAT DID YOU TELL THEM?

A THAT I HAD A LICENSE. THAT I, SPARTAN, HAD A LICENSE.

Q DID YOU ASK THEM TO LOOK IT UP?

A I THINK HOW IT HAPPENED WAS THERE WAS A MENTION OF IT BY GARY HUMPHREYS, AS HE HAD SAID, AND THAT THERE WAS -- WHEN HE SAID THAT, IT TRIGGERED MY MEMORY THAT I HAD SAID TO HIM THAT HE COULD LOOK IT UP

ON THE STATE'S LICENSE BOARD TO VERIFY THAT, IN FACT, SPARTAN DID HAVE A LICENSE.

Q THE PRIOR PROJECTS, INCLUDING THE OFFICE BUILDING WHERE MR. HUMPHREYS' BUSINESS IS, WHO PERFORMED THAT WORK?

A THE SPARTAN ASSOCIATES.

Q WHO WAS PAID FOR THAT WORK?

A THE SPARTAN ASSOCIATES.

Q WHO CONTRACTED FOR THAT WORK?

A THE SPARTAN ASSOCIATES.

Q IN JULY OF 2012, YOU APPLIED FOR THE WORKERS' COMP FOR THIS PROJECT; CORRECT?

A CORRECT.

Q AND WHO APPLIED FOR THAT?

A THE SPARTAN ASSOCIATES.

Q AND WHY DID YOU NEED TO APPLY FOR IT THEN AS OPPOSED TO NOT HAVING IT BEFORE?

A THE WAY THAT THIS PROJECT ENDED UP, I WAS GOING TO BE USING A LOT OF UNSKILLED LABOR. USUALLY, GENERALLY SPEAKING, SKILLED LABOR YOU CAN 1099 AND TREAT AS AN INDEPENDENT SUBCONTRACTOR. HOWEVER, IN THIS CASE, BECAUSE I WAS HIRING PEOPLE THAT WERE UNSKILLED, I NEEDED TO TREAT THEM LEGALLY AS AN EMPLOYEE, AND SO THAT'S WHY THE EMPLOYEE ACCOUNT WAS SET UP.

Q WHEN MR. HUMPHREYS PAID YOU OR WHEN YOU WERE BEING PAID BY HUMPHREYS & ASSOCIATES, DID THAT RAISE ANY

RED FLAGS WITH YOU?

A NO.

Q WITH THE EXCEPTION OF -- THERE WAS ONE ENGINEER, I BELIEVE, THAT THE CONTRACT WAS WITH YOU PERSONALLY; CORRECT?

A NO. IT HAS MY NAME ON IT, BUT THERE WERE SOME ISSUES WHERE PEOPLE PUT MY NAME ON CONTRACTS EVEN THOUGH IT WAS SPARTAN CONSTRUCTION. JUST LIKE THE HUMPHREYS WROTE CHECKS TO ADAM BEREKI, AND I ASKED THEM TO PUT SPARTAN ON THERE. IT'S JUST A REAL -- YOU KNOW, IT WASN'T -- I WASN'T -- THE WORD USUALLY COMES TO MIND AS ABLE ABOUT IT. I JUST WENT WITH THE FLOW.

Q WHAT KIND OF LICENSE DOES SPARTAN HAVE?

A A B.

Q WHAT'S ITS LICENSE NUMBER?

A 927244.

Q WAS IT ACTIVE DURING THE ENTIRE TIME OF THIS PROJECT?

A YES.

Q WHO'S THE RESPONSIBLE MANAGING OFFICER OF SPARTAN ASSOCIATES?

A I DON'T THINK I'M CLASSIFIED AS THE RMO, BUT ADAM BEREKI IS THE QUALIFYING INDIVIDUAL, THE ONE WHO HAD THE WORK EXPERIENCE AND TOOK THE EXAM.

Q THE BUILDING PERMIT FOR THE PROJECT, IS THAT FOR UNIT 34?

A THIS IS ONE OF THEM, YES.
Q OKAY. DID YOU SHARE -- WELL, 34 IS ONE OF THE BUILDING PERMITS?
A YES.
Q HOW MANY WERE THERE, SIR?
A THREE THAT SPARTAN HAD ISSUED.
Q DID ADAM BEREKI INDIVIDUALLY EVER APPLY FOR A BUILDING PERMIT FOR THIS PROJECT?
A NO.
Q OKAY.
MR. RUSSO: MOVE INTO ADMISSION EXHIBIT 34.
MR. BISSELL: NO OBJECTION.
THE COURT: RECEIVED.
(EXHIBIT NO. 34 WAS ADMITTED INTO EVIDENCE.)
THE COURT: THIRTY-FOUR IS ONE OF SEVERAL. WHICH ONE IS THIS IN ORDER? IS IT THE FIRST? THE LAST?
BY MR. RUSSO:
Q LOOKING AT EXHIBIT 34, SIR, IS THERE MORE THAN ONE BUILDING PERMIT HERE, SIR?
A YES. THERE ARE TWO AND A THIRD IS IN ANOTHER LOCATION.
Q WHAT IS THE OTHER LOCATION, IF YOU KNOW?
A I BELIEVE IT'S UP IN THE BEGINNING.
NO. I DON'T HAVE AN EXHIBIT LIST HERE IN THIS BINDER.
Q IT'S ALL RIGHT.

A IT'S UNDER SCE, WHICH IS A DOWNSTAIRS --

Q OKAY. SO THREE BUILDING PERMITS WERE PULLED AND IT WAS ALL BY SPARTAN ASSOCIATES; CORRECT?

A YES.

MR. RUSSO: WELL, AGAIN, MOVE INTO ADMISSION EXHIBIT 34, THE COMPLETE EXHIBIT.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

THE COURT: WELL, 34 IS RECEIVED. BUT LET'S BE CLEAR. 34-1 APPEARS TO HAVE BEEN ISSUED ON NOVEMBER 14, 2012. AM I CORRECT?

MR. BISSELL: YES.

THE COURT: MR. RUSSO?

MR. RUSSO: THAT'S WHAT IT SAYS. IT'S ACTUALLY THE INSPECTION.

THE COURT: 34-2, IT LOOKS LIKE A MECHANICAL, ELECTRICAL, PLUMBING COMBINATION PERMIT, AND IT APPEARS TO HAVE BEEN ISSUED ON NOVEMBER 14, 2012. LEFT-HAND COLUMN, TOWARDS THE MIDDLE OF THE PAGE.

MR. RUSSO: YES.

THE COURT: AND THEN 34-3 LOOKS TO BE A PLUMBING SEWER LINE PERMIT. AND I'M HAVING TROUBLE FINDING A DATE OF ISSUANCE.

MR. RUSSO: 4/11/2013. IT'S MIDWAY ON THE LEFT.

THE COURT: OKAY. ARE THERE ANY OTHER PERMITS ISSUED FOR THIS PROPERTY OTHER THAN THESE THREE FOR THIS PROJECT?

THE WITNESS: THERE ARE ONLY TWO. AND THE SECOND PAGE, YOUR HONOR, THAT SAYS "CANCELED/EXPIRED," THIS IS -- ULTIMATELY WHAT HAPPENED WAS WHEN THE NEXT CONTRACTOR TOOK OVER, THEY CANCELED THIS PERMIT. SO THAT PAGE ISN'T AN ACTUAL PERMIT.

SO JUST TO BE A LITTLE BIT MORE CLEAR, THE YELLOW PAGE THAT YOU SEE, 34-1, THAT'S ONE PERMIT. THE SECOND ONE IS THE CANCELLATION OF THAT. AND 34-3 IS THE SECOND PERMIT ITSELF FOR PLUMBING AND SEWER LINE. AND THE THIRD PERMIT WAS FOR THE SOUTHERN CALIFORNIA EDISON TO PUT A BIG PIPE UNDERGROUND AND RUN IT TO A NEW POWER UNIT AT THE BUILDING.

THE COURT: GOING FROM WHAT, 100 AMP TO 200 AMP SERVICE?

THE WITNESS: ABOUT THAT, YES.

THE COURT: GO AHEAD.

BY MR. RUSSO:

Q MR. BEREKI, EXHIBIT 35, ARE THESE ALL THE DOCUMENTS PERTAINING TO THE PAYROLL AND WORKERS' COMP FOR THE PROJECT?

A YES.

MR. RUSSO: I MOVE INTO ADMISSION EXHIBIT 35.

THE COURT: ANY OBJECTION ON PAYROLL?

MR. BISSELL: I'M NOT SURE I HAVE SEEN IT. LET ME TAKE A QUICK LOOK.

THE COURT: TAKE A LOOK, OF COURSE.

MR. RUSSO: SURE.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

THE COURT: RECEIVED.

(EXHIBIT NO. 35 WAS ADMITTED INTO EVIDENCE.)

BY MR. RUSSO:

Q MR. BEREKI, CAN YOU TURN TO EXHIBIT 33, PLEASE.

A I'M HERE.

Q CAN YOU TELL ME IN SUMMARY, ALTHOUGH WE HAVE ALREADY BEEN OVER THESE DOCUMENTS, WHAT IS EXHIBIT 33?

A I WENT THROUGH SOME OF THE WORK ORDERS. I PICKED OUT A HANDFUL OF THEM. THESE ARE BASICALLY WORK ORDERS OR CONTRACTS BETWEEN SPARTAN AND OTHER COMPANIES THAT WERE HIRED TO DO WORK SPECIFICALLY ON THE LIDO PROJECT.

MR. RUSSO: MOVE INTO ADMISSION EXHIBIT 33.

MR. BISSELL: NO OBJECTION.

THE COURT: RECEIVED.

(EXHIBIT NO. 33 WAS ADMITTED INTO EVIDENCE.)

THE WITNESS: ACTUALLY, THERE'S ANOTHER EXHIBIT IN THERE, A TIMECARD.

THE COURT: WHICH PAGE WILL THAT BE?

THE WITNESS: 33-4, YOUR HONOR.

BY MR. RUSSO:

Q MR. BEREKI, DID YOU PROVIDE ACCOUNTINGS TO THE HUMPHREYS FOR THIS PROJECT?

A I DID.

Q OKAY. AND THE ACCOUNTINGS, WERE THEY -- DID THEY DESIGNATE SPARTAN ASSOCIATES AS THE ONE BILLING THEM?

A YES.

Q OKAY.

A ALL WITH THE EXCEPTION OF THE FIRST ONE, I THINK IT WAS -- THE FIRST THREE MONTHS THERE WAS SOME SORT OF -- THIS IS AN EXCEL SPREADSHEET. JUST HOW I HAD ALWAYS DONE IT IN THE PAST, BUT SINCE IT BECAME -- THIS JOB BECAME EXTREMELY COMPLEX, I SWITCHED OVER TO QUICKBOOKS AND QUICKBOOKS STARTED GENERATING THIS OUTPUT, AND THE OUTPUT SAYS THE SPARTAN ASSOCIATES ON IT.

THE COURT: NOW, MR. RUSSO, WHAT I'M HEARING IS THERE WERE AT LEAST TWO ACCOUNTINGS.

MR. RUSSO: I THINK THERE WERE A LOT OF THEM.

THE COURT: MAYBE WE NEED TO GO OVER IT.

MR. RUSSO: SURE.

BY MR. RUSSO:

Q MR. BEREKI, CAN YOU TURN TO EXHIBIT NUMBER 39.

A SURE.

OKAY.

Q CAN YOU TELL ME WHAT EXHIBIT 39 IS, SIR?

A THIRTY-NINE IS A PARTIAL INVOICE BY THE SPARTAN ASSOCIATES TO HUMPHREYS & ASSOCIATES, INC.

THE COURT: WHAT'S THE DATE?

THE WITNESS: THERE IS NO DATE ON HERE, YOUR HONOR. BUT I CAN GIVE YOU -- IT WAS PRIOR IN FEBRUARY OF 2012. TWO MONTHS PRIOR TO THE LIDO PROJECT.

THE COURT: THIS IS AN ACCOUNTING WITH RESPECT TO THE WORK DONE ON RESEARCH DRIVE?

THE WITNESS: YES, SIR.

THE COURT: OKAY.

THE WITNESS: THIS WAS A PROJECT HUMPHREYS & ASSOCIATES BUSINESS HIRED SPARTAN TO DO AT THEIR BUSINESS OFFICE.

THE COURT: OKAY. GO AHEAD.

BY MR. RUSSO:

Q SO DID YOU UNDERSTAND MR. HUMPHREYS TO BE THE PRESIDENT OF HUMPHREYS & ASSOCIATES?

A YES.

Q OKAY. SO SPARTAN ASSOCIATES HAD ALREADY DONE THIS PROJECT AND INVOICED HIS BUSINESS FOR IT; CORRECT?

A YES.

MR. RUSSO: MOVE INTO ADMISSION NUMBER 39.

MR. BISSELL: OBJECTION. RELEVANCE, YOUR HONOR.

THE COURT: OBJECTION SUSTAINED.

BY MR. RUSSO:

Q MR. BEREKI, DID YOU INTERACT AT ALL WITH MR. HUMPHREYS REGARDING THE PROJECT AT 9910 RESEARCH DRIVE?

A THAT WOULD DEPEND UPON WHAT YOU MEAN BY INTERACT. I BELIEVE HE SHOWED UP THERE ONE DAY WITH CHRIS WHILE I WAS WORKING ON THE PROJECT. I SAID HI TO HIM AND THIS AND THAT. I THINK THAT WAS OUR ONLY INTERACTION ABOUT THIS --

Q OKAY.

A -- ABOUT THAT PROJECT.

Q CAN YOU TURN TO EXHIBIT NO. 18, SIR.

A SURE.

Q FINALLY FOUND THE ACCOUNTING. WHAT IS EXHIBIT 18?

A EXHIBIT 18 APPEARS TO BE ALL OF THE ACCOUNTINGS AND ASSOCIATED E-MAILS FOR THE PROJECT.

Q WAS THIS SOMETHING THAT YOU SUBMITTED TO MR. AND MRS. HUMPHREYS?

A YES.

Q OKAY.

A VIA E-MAIL.

Q WHEN YOU STARTED --

THE COURT: WHAT DATE?

THE WITNESS: EACH ONE OF THEM IS A DIFFERENT DATE, YOUR HONOR. THEY WERE SPACED OUT ABOUT A MONTH EACH.

BY MR. BEREKI:

Q SO WHAT WAS YOUR PROCEDURE AS FAR AS PROVIDING ACCOUNTINGS TO THE HUMPHREYS?

A I WOULD, GENERALLY SPEAKING, INCUR WORK IN THE

FORM OF -- OR DO WORK IN THE FORM OF LABOR AND PURCHASE MATERIALS FOR THE PROJECT, AND THEN I WOULD PUT THEM INTO EITHER WHAT BEGAN AS THE SPREADSHEET. AND LATER I HIRED MY MOM, WHO'S AN ACCOUNTANT OR BOOKKEEPER, I SHOULD SAY, VERY EXPERIENCED IN THIS TO THEN DO THE PAYROLL AND PUT THE APPROPRIATE CHARGES TO BILL THEM, TO BILL THE HUMPHREYS.

Q HOW WOULD THESE ACCOUNTINGS BE SENT TO THE HUMPHREYS?

A VIA E-MAIL.

Q OKAY. SO LET'S LOOK AT THE SIXTH PAGE OF EXHIBIT 18.

A OKAY.

Q I SEE NEAR THE HOLE PUNCH, THE MIDDLE, IT SAYS "THE SPARTAN ASSOCIATES."

A CORRECT.

Q OKAY. FROM THIS POINT FORWARD, DID ALL THE ACCOUNTINGS THAT YOU PROVIDED TO THE HUMPHREYS HAVE THE SPARTAN ASSOCIATES ON IT?

A I BELIEVE -- I BELIEVE SO, YES.

Q DID THE HUMPHREYS EVER ASK YOU ABOUT THAT OR QUESTION IT?

A NO. I THOUGHT IT WAS CLEAR AS DAY, THEY UNDERSTOOD.

Q TOWARDS THE END OF EXHIBIT 18, STARTING ROUGHLY AT PAGE 49, WE NOW HAVE E-MAILS AS PART OF THIS

EXHIBIT.

A CORRECT.

Q WERE THESE -- AND THEN YOU GOT A NUMBER OF PAGES, PERHAPS MAYBE ANOTHER 60 PAGES.

A CORRECT.

Q WERE THESE E-MAILS ASSOCIATED WITH THE TRANSMITTAL OF THE ACCOUNTING WITH THE SPARTAN ON IT TO THE HUMPHREYS?

A YES.

Q DID YOU HIRE DESIGNERS FOR THE HUMPHREYS PROJECT? OR HOW DID THAT GO AS FAR AS THE INTERIOR DESIGNING?

A I PRIMARILY DID IT, BUT I ALSO HIRED PEOPLE TO HELP ME OUT ON CERTAIN ASPECTS ON THAT.

Q AND THE DESIGNERS WHO WERE HIRED, WERE THEIR INVOICES PASSED ON THROUGH YOUR ACCOUNTING TO THE HUMPHREYS?

A YES.

Q HOW ABOUT THE ENGINEERING SERVICES, WERE THOSE PASSED ON?

A YES.

Q WERE THERE ANY OTHER DESIGN PROFESSIONALS ENGAGED WITH THIS?

A YES.

Q WHO ELSE WAS THERE?

A BRYAN LEFEVER.

Q WHAT WAS HIS PROFESSION?
A HE'S AN INTERIOR DESIGNER.
Q OKAY. AND DID BRYAN CONTRACT WITH THE SPARTAN ASSOCIATES OR THE HUMPHREYS DIRECTLY?
A THE SPARTAN ASSOCIATES.
Q OKAY. AND THEN HE PASSED THAT ALONG?
A YES.
Q WHO ELSE DID YOU HAVE TO HIRE FOR THIS?
A I HIRED A PLUMBER, AN ELECTRICIAN, NUMEROUS UNSKILLED WORKERS. I HIRED A FOREMAN, AN ENGINEER, AN ARCHITECT, CRANE OPERATORS, METAL FABRICATORS, PEOPLE TO RE-ALIGN THE SEWER DRAIN UNDERNEATH THE HOUSE BECAUSE IT WAS ROTTEN. OTHER PEOPLE, OTHER CARPENTERS. A CONCRETE EXPERT. A CONCRETE SUBCONTRACTOR. A FIRE SPRINKLER SUBCONTRACTOR AND PAVING SUBCONTRACTOR. THAT'S WHAT'S COMING TO MIND.
Q OKAY. SIR, OF THE MONIES THAT WERE PAID, HOW MUCH OF IT WAS PAID THROUGH THE SPARTAN ASSOCIATES ACCOUNT?
A I BELIEVE THAT NUMBER IS $758,000.
Q AND --
A GO AHEAD.
Q FINISH. I'M SORRY.
A OH, THAT'S FINE. THAT'S IT. $758,000.
Q OKAY. SO SOME OF IT YOU HAVE -- SOME OF THE FIRST $100,000 WENT INTO YOUR PERSONAL ACCOUNT. DID

SOME OF IT GO INTO THE SPARTAN ACCOUNT?

A 10,000 DID, YES.

Q SO 90 WENT IN YOUR PERSONAL ACCOUNT, 10 WENT INTO THE SPARTAN ACCOUNT; CORRECT?

A CORRECT.

Q AND THEN ALL THAT MONEY WAS SPENT BY SPARTAN ASSOCIATES, THE LICENSE CONTRACTOR ON THIS PROJECT; CORRECT?

A YES.

Q OF THE MONIES THAT THE HUMPHREYS SPENT ON THIS PROJECT, HOW MUCH OF IT WENT TO ADAM BEREKI, ALTHOUGH -- EVEN THOUGH YOU PAID IT OUT FOR WORKERS ON THIS?

A I'M SORRY. CAN YOU SAY THAT AGAIN?

Q SURE.

YOU HAD $100,000 IN CHECKS IN THE BEGINNING OR WIRES THAT WENT INTO -- THAT WAS MADE PAYABLE TO ADAM BEREKI; CORRECT?

A CORRECT.

Q OKAY. AND ALL THE REST OF THIS WAS ULTIMATELY MADE PAYABLE TO SPARTAN ASSOCIATES, OR THE CHECKS WERE, EVEN THOUGH YOU REQUESTED THAT SPARTAN ASSOCIATES WOULD DEPOSIT IT IN THE SPARTAN ASSOCIATES BANK ACCOUNT; CORRECT?

A YES.

Q AND SPARTAN ASSOCIATES PERFORMED ALL THE WORK ON THIS PROJECT; CORRECT?

A YES. WELL, WITH THE EXCEPTION OF THESE SUBCONTRACTORS THAT WERE HIRED, YES.

Q OKAY. THROUGH ITS SUBCONTRACTORS?

A I'M SORRY?

Q THROUGH ITS SUBCONTRACTORS --

A YES, YES. YES.

MR. RUSSO: I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: MR. BISSELL?

MR. BISSELL: THANK YOU, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. BISSELL:

Q JUST A POINT OF CLARIFICATION, MR. BEREKI. YOU TESTIFIED THAT THE SPARTAN ASSOCIATES IS A LICENSED CONTRACTOR.

A YES.

Q ISN'T IT TRUE THAT THE --

A EXCUSE ME.

Q -- THE LICENSE FOR THE SPARTAN ASSOCIATES HAS BEEN REVOKED BY THE CONTRACTOR'S LICENSE BOARD?

A WHAT I TESTIFIED TO WAS AT THE TIME OF THE PROJECT THE LICENSE WAS IN GOOD STANDING OR VALID, YES.

Q AND SINCE THEN IT'S BEEN REVOKED; CORRECT?

A WELL, IT WAS EXPIRED BECAUSE THE COMPANY DISSOLVED. AND WHEN THERE'S A DISSOLUTION OF A COMPANY,

THE LICENSE GOES WITH IT.

Q SIR, YOU'RE AWARE THAT THE LICENSE HAS BEEN REVOKED, AREN'T YOU?

A IT SHOWS A REVOKED STATUS, YES.

Q YOU KNOW WHY IT WAS REVOKED; CORRECT?

A I --

Q AND IT'S NOT BECAUSE THE CORPORATION IS DISSOLVED; CORRECT?

A CORRECT.

Q SO YOU HAD CONVERSATIONS WITH AN ATTORNEY IN SAN DIEGO ABOUT THE PROBLEM INVOLVING THE LICENSE. IT HAD NOTHING TO DO WITH A CORPORATION BEING DISSOLVED; IS THAT TRUE?

A I'M SORRY. SAY THAT AGAIN.

Q AS FAR AS THE REASON FOR THE LICENSE BEING REVOKED, IT HAD NOTHING TO DO WITH THE CORPORATION BEING DISSOLVED --

A NO. THE LICENSE IS NOT REVOKED BECAUSE THE CORPORATION IS DISSOLVED. I SAID THE LICENSE WAS EXPIRED BECAUSE THE CORPORATION DISSOLVED. AS OF RIGHT NOW, THE LICENSE SHOWS REVOKED, HOWEVER.

Q CORRECT.

AND THAT WAS BECAUSE OF SOME ILLEGAL ACTION TAKEN AGAINST THE LICENSE; CORRECT?

A I WOULD SAY IT WAS ILLEGAL ACTION TAKEN AGAINST THE LICENSE. AN ARBITRATION PROCEEDING WAS

CONDUCTED WITHOUT MY PRESENCE, AND AN AWARD WAS ISSUED WITHOUT SPARTAN BEING ALLOWED TO ATTEND IT TO DEFEND ITSELF. THAT'S AN ILLEGAL PROCEEDING IN MY BOOK.

Q AND AS LONG AS WE ARE ON THE AREA OF THE LAW, YOU TESTIFIED TO WHAT'S REQUIRED AND WHAT ISN'T REQUIRED AS FAR AS A CONTRACTOR'S LICENSE, WHAT TYPE OF WORK REQUIRES A LICENSE, WHAT TYPE OF WORK DOESN'T. YOU HAVE TESTIFIED TO THAT.

CAN YOU TELL US BRIEFLY -- CAN YOU EXPLAIN TO US WHAT YOUR UNDERSTANDING IS OF WHAT WORK IS A LICENSE REQUIRED FOR.

A IT DEPENDS ON WHICH LICENSE YOU'RE TALKING ABOUT.

Q SAY A GENERAL BUILDING LICENSE, B LICENSE.

A A GENERAL BUILDING LICENSE, I BELIEVE YOU HAVE TO DO TWO OR MORE TRADES TO BE ABLE TO USE YOUR LICENSE ON A PROJECT. IF YOU'RE DOING THAT SINGLE TRADE, IT HAS TO BE DONE BY THAT LICENSEE.

Q DO YOU HAVE ANY KNOWLEDGE AS YOU SIT HERE TODAY AS TO WHAT TYPE OF WORK IS A LICENSE REQUIRED FOR?

A WHAT TYPE OF WORK A LICENSE IS REQUIRED FOR. I'M NOT SURE I'M UNDERSTANDING YOUR QUESTION, SIR.

Q OKAY. WELL, YOU HAVE TESTIFIED TO AS CERTAIN AREAS OF THE WORK THAT YOU SAY SPARTAN ASSOCIATES DID THAT DIDN'T REQUIRE A LICENSE.

A OKAY.

Q WELL, IF YOU KNOW WHAT A -- IF YOU KNOW THAT A LICENSE WAS NOT REQUIRED, OR YOU BELIEVE THAT YOU KNOW THAT A LICENSE WAS NOT REQUIRED FOR CERTAIN WORK, THEN THE QUESTION IS: DO YOU HAVE AN UNDERSTANDING OF WHAT KIND OF WORK A LICENSE IS REQUIRED FOR?

A YES.

Q CAN YOU TELL US?

A FRAMING, PLUMBING, ELECTRICAL, DRYWALL, ROOFING, STUCCO, CONCRETE. THOSE ARE THE ONES THAT ARE COMING TO MIND RELATIVE TO THIS PROJECT.

Q AND AS FAR AS -- HOLD ON ONE SECOND, PLEASE.

HAVE YOU EVER READ THE CONTRACTOR'S LICENSE LAW OR ANY SECTIONS OF THE CONTRACTOR'S LICENSE LAW THAT EXPLAINS WHEN A LICENSE IS REQUIRED?

A I'M SURE I HAVE, SIR.

Q OKAY. AND DO YOU KNOW -- ARE YOU FAMILIAR WITH THE TERM OF "THE WORK OF IMPROVEMENT" IN CONNECTION WITH CONTRACTING WORK?

A IMPROVEMENT?

Q HAVE YOU EVER HEARD THAT TERM BEFORE?

A HOME IMPROVEMENT I HAVE HEARD.

Q OKAY. ARE YOU FAMILIAR WITH ANY KIND OF MONETARY THRESHOLD THAT CAN'T BE CROSSED WITHOUT HAVING A CONTRACTOR'S LICENSE FOR ONE DOING HOME IMPROVEMENT WORK?

A THAT DEPENDS WHAT -- IT DEPENDS WHAT HOME

IMPROVEMENT WORK IS DEFINED AS. AND YOU CAN'T -- GO AHEAD.

Q CAN YOU TELL ME WHAT YOUR DEFINITION OF "HOME IMPROVEMENT WORK" IS?

A I REALLY HAVEN'T THOUGHT ABOUT IT BEFORE.

Q YOU HAVE MENTIONED THAT THE -- YOU SENT ACCOUNTINGS TO THE HUMPHREYS UNDER A SPARTAN ASSOCIATES HEADING. BUT THIS ALL OCCURRED SOMETIME IN JULY OF 2012?

A ALL THE INVOICES WERE NOT SENT IN JULY, NO.

Q BUT I'M TALKING ABOUT INVOICES WHERE -- THAT SHOW ANY INDICATION OF SPARTAN ASSOCIATES ON IT.

A I BELIEVE BEFORE THEN, THERE WEREN'T. IT WAS JUST AN EXCEL SPREADSHEET. AND I NOTIFIED THEM THAT I WAS DOING A ACCOUNTING CUTOVER TO THE QUICKBOOKS.

Q AND THIS ACCOUNTING CUTOVER TO THE QUICKBOOKS, THAT COINCIDED WITH THE SPARTAN ASSOCIATES APPLYING TO THE BOARD OF EQUALIZATION TO REGISTER WITH THE BOARD OF EQUALIZATION AND IT COINCIDED WITH THE SPARTAN ASSOCIATES APPLYING FOR WORKERS' COMP INSURANCE ON THIS JOB?

A YES.

MR. BISSELL: YOUR HONOR, I HAVE NO FURTHER QUESTIONS, BUT I MOVE INTO -- REQUEST TO BE MOVED INTO EVIDENCE EXHIBITS 341, 351, 355 -- I'M SORRY. I RETRACT EXHIBIT 341. WE DID NOT REFER TO THAT.

MR. RUSSO: SO 351, 355?
MR. BISSELL: YES.
MR. RUSSO: OKAY. I HAVE NO OBJECTION.
THE COURT: ALL RIGHT. 351 RECEIVED.
(EXHIBIT NO. 351 WAS ADMITTED INTO EVIDENCE.)
THE COURT: 355 ALSO RECEIVED.
(EXHIBIT NO 355 WAS ADMITTED INTO EVIDENCE.)
THE COURT: I WOULD GO AHEAD AND TAKE TEN MINUTES, RESTROOM BREAK, AND THEN COME BACK. AND MR. BEREKI MAY HAVE SOME QUESTIONS OF HIMSELF.
(RECESS.)
THE COURT: OKAY. PRESSING ON.
MR. BEREKI?
MR. BEREKI: I WOULD JUST LIKE TO GO OVER EXHIBIT 30 IN THE PLAINTIFFS' BOOK.
THE COURT: THE PHOTOGRAPHS?
MR. BEREKI: THE PHOTOGRAPH, JUST THE 30-1, SIR.
THE COURT: OKAY. I'M AT 30-1.
MR. BEREKI: I HAD TWO SIGNS, TWO SPARTAN SIGNS. ONE WAS PUT UP ON THE WATER SIDE OF THE BUILDING, THE OTHER WAS ON THE STREET SIDE. THE ASSOCIATION ASKED ME TO TAKE DOWN OR TURN DOWN THE SIGN ON THE STREET SIDE.
THE COURT: APPROXIMATELY WHAT DATE WAS THAT THAT IT WENT DOWN?
MR. BEREKI: WITHIN A COUPLE OF DAYS AFTER SPARTAN BEING ON THE PROJECT.

THE COURT: OKAY.

MR. BEREKI: THE WOMAN PATROLS THE PLACE LIKE IT'S NOBODY'S BUSINESS.

SO THEN THIS SIGN WASN'T ALWAYS ON THE OUTSIDE OF THE BUILDING HERE. IT WAS AS LONG AS I REMEMBERED IT OR OFTEN COULD TO PUT IT UP, BUT THE OTHER SIGN THAT HAD GONE ON THE FRONT OF THE BUILDING WAS INSIDE THE GARAGE.

THE COURT: WHEN YOU SAY "INSIDE THE GARAGE," YOU MEAN IT WAS HUNG ON THE WALL INSIDE THE GARAGE, OR IT WAS JUST LEFT STANDING --

MR. BEREKI: IT WAS HUNG ON THE WALL INSIDE THE GARAGE. AND ON-SITE THERE WAS ALSO --

THE COURT: WAS THE GARAGE OPEN OR CLOSED ALL THE TIME?

MR. BEREKI: DURING BUSINESS TIME, OPEN.

THE COURT: OKAY.

MR. BEREKI: WE HAD TURNED IT INTO A BARN DOOR TYPE OF THING AFTER REMOVING THE GARAGE DOORS.

ALSO ON THE SITE WAS IN-CASE-OF-AN-EMERGENCY WRITING, AND IT HAD MY PERSONAL CELL PHONE NUMBER ON IT, BUT IT SAID THE SPARTAN ASSOCIATES.

THE COURT: OKAY.

MR. BEREKI: OR SPARTAN CONSTRUCTION, I'M SORRY.

I WOULD LIKE TO ALSO REFER TO EXHIBITS -- I BELIEVE IT'S -- THERE WAS A LEASE FOR A SHOP SPACE THAT WAS USED IN CONJUNCTION WITH THIS PROJECT. THAT LEASE

BEGAN IN MARCH OF 2012. AND THE PAYMENTS FOR THAT SHOP -- WELL, THE HUMPHREYS' FURNISHINGS WERE STORED IN THAT BUILDING BEGINNING THE DAY THAT WE BEGAN WORK ON THE PROJECT.

THE COURT: SO WAS I TO UNDERSTAND THERE WAS A SHOP AND A STORAGE SPACE?

MR. BEREKI: CORRECT.

THE COURT: GO ON.

MR. BEREKI: AND THAT SHOP SPACE WAS RENTED IN SPARTAN'S NAME.

AND FINALLY, TO SHOW SPARTAN'S HISTORY, CAN WE TURN TO EXHIBIT 39. MR. HUMPHREYS -- OR MR. RUSSO HAD ALREADY GONE OVER 39-1.

THE REMAINING EXHIBITS HERE ARE EACH OF THE SPARTAN INVOICES THAT I HAVE IN RECORD FOR ALL OF THE WORK THAT SPARTAN HAD DONE FOR THE HUMPHREYS' FAMILY MEMBERS, INCLUDING THEIR EXTENDED FAMILY MEMBERS. AND ON ALL OF THESE INVOICES, YOU WILL SEE THE SPARTAN ASSOCIATES LOGO. ON MANY OF THEM, YOU WILL SEE GENERAL BUILDING CONTRACTOR WITH THE LICENSE NUMBER DOWN BELOW. THESE WERE PRIMARILY FOR MR. HUMPHREYS' SON, HUMPHREYS & ASSOCIATES' OFFICE BUILDING, CHRIS HUMPHREYS' MOTHER, CHRIS HUMPHREYS' MOTHER- AND FATHER-IN-LAW. AND ON EVERY PROJECT THIS IS HOW THEY WERE INVOICED.

THE COURT: OKAY. I SEE IT. NEXT.

MR. BEREKI: THAT'S ALL, YOUR HONOR.
THE COURT: MR. RUSSO, ANY FOLLOW-UP?
MR. RUSSO: NO, YOUR HONOR.
THE COURT: MR. BISSELL, HOW ABOUT YOU?
MR. BISSELL: I THINK JUST ONE OR TWO QUESTIONS, YOUR HONOR.
BY MR. BISSELL:
Q MR. BEREKI, YOU REFERENCE THE EXHIBIT, I THINK IT WAS 30.1, SHOWING A SIGN ON THE CONSTRUCTION SITE.
AND YOU'VE BEEN ON CONSTRUCTION SITES BEFORE; CORRECT?
A HAVE I BEEN ON CONSTRUCTION SITES?
Q YES. YOU'RE FAMILIAR WITH CONSTRUCTION SITES, ARE YOU NOT?
A YES.
Q IT'S PRETTY COMMON FOR ALL SORTS OF CONTRACTORS TO -- WHOEVER IS INVOLVED WITH THE JOB USUALLY CAN OR DOES HANG THEIR SIGN ON THE PROTECTIVE -- EITHER THE PROTECTIVE FENCING AT THE CONSTRUCTION SITE OR THE SITE ITSELF, ALL THE VARIOUS SUBCONTRACTORS, PAINTERS --
A THAT'S NOT BEEN MY EXPERIENCE, ACTUALLY. MOST PROJECTS THAT I HAVE SEEN, THE GENERAL IS THE ONLY ONE THAT PUTS THEIR SIGN UP BECAUSE THEY WANT THE BUSINESS TO SUBCONTRACT ALL THE OTHER SUBS.
Q SO FROM YOUR EXPERIENCE, IT'S NOT -- IT'S NOT

USUAL OR IT'S UNUSUAL FOR A SUBCONTRACTOR TO HAVE HIS SIGN ON THE PROJECT?

A I CANNOT RECALL A PROJECT WHERE I HAVE SEEN A SUBCONTRACTOR'S SIGN ON THE PROJECT. THE ONES THAT ARE COMING TO MIND RIGHT NOW ARE -- ESPECIALLY ONE AT MY GYM, SNYDER LANGSTON, THERE ARE PROBABLY 20 SUBCONTRACTORS WORKING THERE AND NOT ONE HAS A SIGN UP EXCEPT FOR SNYDER LANGSTON BECAUSE THEY'RE THE GENERAL.

Q IF YOU WILL FLIP TO EXHIBIT 48 IN THE DEFENDANTS' -- TAB 48, EXHIBIT 348 IN THE DEFENDANTS' BOOKLET.

A 48 YOU SAID, SIR?

Q YES. TAB 48. ACTUALLY EXHIBIT 348.

A OKAY.

I'M HERE.

Q FLIPPING TO PAGE 048-002.

A OKAY.

Q DO YOU RECOGNIZE THIS DOCUMENT?

A I BELIEVE SO.

Q YOU TESTIFIED THAT YOU ENTERED IN A SHOP LEASE AS THE SPARTAN ASSOCIATES, OR DID I MISUNDERSTAND YOU?

A NO, I DID. I BELIEVE I DID.

Q IF YOU WILL FLIP TO PAGE 048-006 --

A RIGHT.

Q -- PARAGRAPH 1.1. CAN YOU TELL US WHO IT SAYS THE LESSEES ARE.

A GLENN OVERLEY AND ADAM BEREKI, JOINTLY AND SEPARATELY, GO DOORS AND SPARTAN ASSOCIATES.

Q DOING BUSINESS AS; CORRECT? YOU FORGOT THE DBA.

A DBA GO DOORS/SPARTAN ASSOCIATES. GO DOORS IS GLEN'S COMPANY AND SPARTAN ASSOCIATES IS -- I'M THE SHAREHOLDER. IT'S MY COMPANY, SPARTAN ASSOCIATES.

Q AND IF YOU FLIP TO PAGE 48-039.

A 039?

Q 039, THE SAME EXHIBIT.

A OKAY.

Q THE BOTTOM OF THE PAGE FOR LESSEES, WHO IS SIGNING THIS LEASE?

A ADAM BEREKI ON BEHALF OF SPARTAN.

Q ARE YOU -- DO YOU HAVE A DIFFERENT PAGE THAN I HAVE? I DON'T SEE "ON BEHALF OF SPARTAN." DO YOU SEE "ON BEHALF OF SPARTAN" THERE?

A WELL, AS THE SPARTAN ASSOCIATES REPRESENTATIVE, YES. I SIGN MY NAME ON THE BACK OF THE SPARTAN CHECKS TOO. SAME THING. IT SAYS ABOVE, "THE SPARTAN ASSOCIATES."

THE COURT: I'M SORRY. WHERE ARE YOU POINTING WHEN YOU SAY IT SHOWS ABOVE THE SPARTAN ASSOCIATES?

THE WITNESS: AT THE VERY TOP OF THE DOCUMENT, IT SAYS "LEASE MODIFICATION AGREEMENT, GLENN OVERLEY AND ADAM BEREKI, JOINT AND SEPARATELY, GO DOORS, DBA SPARTAN

ASSOCIATES."

THE COURT: THANK YOU.

MR. BISSELL: THANK YOU. NO FURTHER QUESTIONS, YOUR HONOR.

MR. RUSSO: JUST MOVE INTO ADMISSION EXHIBIT 30-1.

THE COURT: ANY OBJECTION FOR 30-1?

MR. RUSSO: THE PICTURE WITH THE SIGN.

MR. BISSELL: NO OBJECTION, YOUR HONOR.

THE COURT: 30-1 IS RECEIVED.

(EXHIBIT NO 30-1 WAS ADMITTED INTO EVIDENCE.)

MR. BISSELL: YOUR HONOR, WE REQUEST MOVING INTO EVIDENCE EXHIBIT --

THE COURT: WAIT A SECOND. LET ME GET TO -- AND MR. BISSELL?

MR. BISSELL: EXHIBIT 348.

THE COURT: IN ITS ENTIRETY.

MR. BISSELL: YES.

THE COURT: ANY OBJECTION?

MR. RUSSO: NO OBJECTION.

MR. BEREKI: NO OBJECTION.

THE COURT: 348 RECEIVED.

(EXHIBIT NO. 348 WAS ADMITTED INTO EVIDENCE.)

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

THE WITNESS: THANK YOU.

MR. BISSELL: YOUR HONOR, CROSS-COMPLAINANTS REST ON THE FIRST CAUSE OF ACTION --

THE COURT: WELL, HOLD ON A SECOND. I'M LOOKING FOR A LITTLE CLARIFICATION BEFORE YOU CAN SAY REST --

MR. BISSELL: THANK YOU.

THE COURT: -- BECAUSE WHAT I SEE CONTAINED -- GIVE ME A SECOND TO FIND IT.

EXHIBIT 32-2, THIS IS THE PLAINTIFFS' VARIATION OR THE PLAINTIFFS' ITERATION OF THE EXHIBIT YOU OFFERED, BUT WE DIDN'T WANT TO DOUBLE DOWN.

MR. BISSELL: THE COMPILATION OF CHECKS?

THE COURT: COMPILATION OF CHECKS WHICH WE WENT OVER IN SOME DETAIL. AND SO WHAT I SEE ARE BASICALLY A SERIES OF CHECKS WRITTEN DIRECTLY ON THE ACCOUNT OF YOUR CLIENTS. AND THEN I SEE A SERIES OF CHECKS WRITTEN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES, INC. WHICH IS NOT A PARTY IN THIS ACTION. WHILE THERE'S TESTIMONY AT THIS TIME MR. HUMPHREYS IS THE SOLE SHAREHOLDER OF THE CORPORATION, ADMITTEDLY AN S CORPORATION, ALTHOUGH AN S CORPORATION ONLY HAS CERTAIN TAX RAMIFICATIONS, IT DOESN'T REALLY CHANGE THE NATURE OF THE CORPORATE ENTITY, PER SE, IN TERMS OF ITS PERSONHOOD.

SO THE QUESTION IS: HOW DO YOUR CLIENTS FIT INTO THE PICTURE IN TERMS OF RECOVERY? SHOULD THEY RECOVER FOR CHECKS THAT A SEPARATE LEGAL ENTITY WROTE?

MR. BISSELL: I CAN HAVE MR. HUMPHREYS ADDRESS THAT ISSUE. WOULD YOU LIKE HIM TO RE-TAKE THE STAND AND I CAN ASK HIM ABOUT THAT?

THE COURT: WELL, IT'S YOUR CASE. I AM NOT TRYING TO TRY YOUR CASE.

MR. BISSELL: IF THE COURT HAS A QUESTION, I WOULD LIKE TO ADDRESS --

THE COURT: I THINK MR. RUSSO HAS RAISED THE ISSUE. THAT IS CERTAINLY WHAT I WAS HEARING FROM THE TEN OR SO QUESTIONS MR. RUSSO WAS ASKING. IT'S A FAIR QUESTION THAT NEEDS TO BE ADDRESSED EITHER IN TERMS OF TESTIMONY OF MR. HUMPHREYS AND/OR, I DON'T KNOW, MAYBE YOU WANT TO CONSIDER AMENDING THE COMPLAINT. THAT'S NOT WITHIN MY PURVIEW OF THIS. AND I'M SURE MR. RUSSO WOULD HAVE AN OBJECTION TO THAT, OR MR. BEREKI.

MR. BISSELL: I AM REQUESTING THAT I RECALL MR. HUMPHREYS TO THE STAND SO THAT WE CAN CLARIFY THAT ISSUE FOR THE COURT.

THE COURT: LET'S DO THAT.

MR. BISSELL: OKAY. GO AHEAD.

THE COURT: COME ON DOWN, MR. HUMPHREYS. YOU'RE STILL UNDER OATH. IT DIDN'T WEAR OFF.

FURTHER DIRECT EXAMINATION

BY MR. BISSELL:

Q MR. HUMPHREYS, IF YOU WILL TURN TO, IN THE DEFENDANTS' EXHIBIT BOOK --

A OURS?

Q THAT'S OURS.

-- EXHIBIT 315.

A 15?

THE COURT: TAB 15.

THE WITNESS: TAB 15, I'M THERE.

BY MR. BISSELL:

Q ARE YOU THERE?

A YES.

Q AND YOU HAVE TESTIFIED THAT THIS WAS A COMPILATION OF CHECKS THAT YOU PREPARED UNDER YOUR DIRECTION ON YOUR ACCOUNT; CORRECT?

A YES.

Q NOW, YOU WILL SEE BEGINNING WITH CHECK DESIGNATED AS NUMBER 11 --

THE COURT: YOU KNOW WHAT, LET'S TAKE THE EXHIBIT THAT WAS RECEIVED, WHICH IS EXHIBIT 32.

THE WITNESS: OUT OF THE OTHER BOOK?

THE COURT: OUT OF THE BIG BOOK.

MR. BISSELL: OKAY.

THE COURT: MR. RUSSO WILL BE HAPPY TO SHARE THAT BOOK WITH YOU. IN PARTICULAR, 32 HAS THE BACKUP IN TERMS OF COPIES OF THE CHECKS THAT WERE WRITTEN. SO IT'S A LITTLE EASIER TO DELINEATE WHICH ONES WERE WRITTEN ON THE HUMPHREYS' PERSONAL ACCOUNT AND WHICH ONES WERE WRITTEN -- WERE DONE VIA A WIRE TRANSFER, WHICH ONES WERE DONE VIA CHECKS ON THE

HUMPHREYS & ASSOCIATES, INCORPORATED ACCOUNT.

BY MR. BISSELL:

Q ARE YOU WITH ME ON --

A I'M AT 32 --

Q DASH TWO?

A DASH TWO.

Q OKAY. NOW, DOES THAT APPEAR TO BE -- ASIDE FROM RED CHECKMARKS AND SOME BLUE INK NOTATIONS, DOES THAT APPEAR TO BE THE SAME CHECK COMPILATION THAT YOU HAD PREPARED UNDER YOUR DIRECTION?

A YES.

Q IF YOU WILL NOTICE, BEGINNING WITH CHECK 11 THROUGH -- SORRY.

THE COURT: 17?

BY MR. BISSELL:

Q IF YOU FLIP TO EXHIBIT 32-12, SAME EXHIBIT, JUST THE BACKUP --

A OKAY. I'M THERE.

Q ALL RIGHT. YOU WILL SEE THAT THAT'S A CHECK DATED JULY 31ST, 2013, AND THAT'S DRAWN ON HUMPHREYS & ASSOCIATES' BANK ACCOUNT?

A YES.

Q ALL RIGHT. IS THERE A REASON WHY THIS CHECK WAS DRAWN ON THE ACCOUNT OF HUMPHREYS & ASSOCIATES?

A YES.

Q CAN YOU TELL US WHY THAT WAS?

A QUITE A FEW OF THE TIMES. THIS WAS WHEN I HAD A LARGE PROJECT GOING IN TEXAS. I WASN'T IN TOWN. AND ADAM WOULD CALL AND SAY, "I NEED MONEY RIGHT AWAY." AND I WOULD SAY, "SEND IT, OFFICE," AND EITHER BOB OR CHRIS, THE TWO THAT HAVE SIGNATURE AUTHORITY, WOULD SEND IT. AND THEN THEY WOULD FACTOR IT UP AND THROW IT ON MY W-2. SO IT'S JUST AN EXPEDIENCY MEANS.

Q LET'S NOT GO QUITE SO FAST THROUGH THAT BECAUSE I DIDN'T QUITE FOLLOW THAT.

THE COURT: I AM GLAD I WASN'T THE ONLY ONE.

THE WITNESS: OKAY.

BY MR. BISSELL:

Q YOU ARE SAYING THERE WAS TIMES WHEN YOU WERE OUT OF TOWN AND MR. BEREKI WOULD CALL AND SAY I NEED PAYMENT?

A YES.

Q AND YOU WEREN'T AVAILABLE TO ISSUE A CHECK ON YOUR OWN ACCOUNT?

A THAT'S RIGHT.

Q SO YOU CALL SOMEBODY FROM HUMPHREYS & ASSOCIATES AND SAY I NEED YOU TO CUT A CHECK TO MR. BEREKI OR SPARTAN ASSOCIATES?

A EXACTLY.

Q AND THEY WOULD DO THAT?

A YES.

Q AND WAS THERE A RECONCILIATION AS FAR AS THE

PAYMENT MADE BY THE COMPANY AND YOU REIMBURSING THE COMPANY FOR ANY PAYMENTS MADE BY THEM AT MR. BEREKI'S REQUEST?

A YES. EVERY QUARTER THEY HAVE TO FACTOR IT UP FOR TAXES AND PAY THE IRS AND THE STATE.

Q SO --

A SO IT WAS JUST AN EXPEDIENCY MEANS.

Q I UNDERSTAND IT'S EXPEDIENCY.

BUT IS IT TRUE THAT, FOR INSTANCE, CHECK NUMBER 32-12 MADE PAYABLE TO THE SPARTAN ASSOCIATES FOR $90,000, YOU, MR. HUMPHREYS, AND YOUR WIFE, MRS. HUMPHREYS, PERSONALLY ENDED UP PAYING THAT AMOUNT?

A THAT'S CORRECT.

Q WOULD THE SAME BE TRUE FOR CHECK NUMBER 32-13?

A YES.

Q ANY CHANGE IN THAT? ANY DIFFERENCE IN THE PROCESS?

A SAME PROCESS EVERY TIME.

Q DID YOU, IN FACT, PAY HUMPHREYS & ASSOCIATES $95,000 AS REIMBURSEMENT FOR THEIR CHECK NUMBER 16819 PAYABLE TO SPARTAN ASSOCIATES?

THE COURT: PERHAPS A BETTER QUESTION WOULD BE, DEFINE OR DESCRIBE WHAT FACTORING IT UP WOULD ENTAIL, PLEASE.

MR. BISSELL: THANK YOU, YOUR HONOR.

BY MR. BISSELL:

Q OKAY. FACTORING IT UP --

A SO TO YIELD --

Q NO. JUST TELL US WHAT FACTORING IT UP IS, PLEASE.

A FOR ME TO HAVE A $95,000 CHECK, I PROBABLY HAD -- I'M THROWING OUT A NUMBER -- 140,000 OF TAXABLE INCOME, AND THE DIFFERENCE WENT TO THE IRS OR STATE AT THE END OF EACH QUARTER. AM I MAKING SENSE NOW? IN OTHER WORDS, KAREN AND I PAID FOR EVERY BIT OF THESE THAT SAY HUMPHREYS & ASSOCIATES AT THE END OF EACH QUARTER.

Q HOW WAS THAT DONE?

A ON MY QUARTERLY INCOME TAX ESTIMATED PAYMENTS.

Q WELL, THAT'S YOUR QUARTERLY INCOME TAX ESTIMATED PAYMENTS. HOW IS HUMPHREYS & ASSOCIATES REIMBURSED FOR THE $95,000 REPRESENTED ON THEIR CHECK TO SPARTAN ASSOCIATES THAT'S EXHIBIT 32-13? HOW WERE THEY REIMBURSED?

A BY KAREN AND I EARNING THE INCOME, 140,000 OR WHATEVER. AND THEN 45 WENT TO THE STATE OR FEDS AND THE REST WENT TO HUMPHREYS & ASSOCIATES.

Q SO WHEN YOU SAY "FACTOR UP," ARE YOU SAYING THAT PAYMENT TO YOU THAT YOU EARNED, INCOME TO YOU FROM HUMPHREYS & ASSOCIATES, WAS DEDUCTED FROM YOUR PAY BASED ON CHECKS THEY HAD WRITTEN TO SPARTAN ASSOCIATES AND

MR. HUMPHREYS (SIC)?

A YES.

Q IS THAT WHAT "FACTORING IT UP" MEANS?

A THAT'S A TERM THAT I HAVE USED. SORRY. YES.

Q AND WAS THAT THE SAME ACROSS THE BOARD WITH ALL CHECKS WRITTEN ON HUMPHREYS & ASSOCIATES, INC. CHECKS TO MR. HUMPHREYS -- TO MR. BEREKI OR SPARTAN ASSOCIATES?

A YES, IT IS.

Q AND ON EACH OF THOSE CHECKS, WAS THERE WHAT YOU CALL FACTORING UP; I.E., THEY DEDUCTED FROM YOU INCOME THAT YOU HAD EARNED WORKING FOR THE COMPANY AND APPLIED THE INCOME TO THEMSELVES AS REIMBURSEMENT?

A YES, THAT'S EXACTLY RIGHT. AM I EXPLAINING IT VERY WELL? ARE WE OKAY?

MR. BISSELL: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: WE WILL FIND OUT AFTER MR. RUSSO AND MR. BEREKI HAVE THEIR CHANCE TO ASK YOU QUESTIONS.

FURTHER CROSS-EXAMINATION

BY MR. RUSSO:

Q WHY DO YOU HAVE A CORPORATION, SIR?

A WHY DO I HAVE A CORPORATION?

MR. BISSELL: OBJECTION. RELEVANCY.

THE COURT: YOU CAN ANSWER.

THE WITNESS: TO PROVIDE CONSULTING SERVICES TO MY CLIENTS.

BY MR. RUSSO:

Q AND AS THE SHAREHOLDER, THAT SHIELDS YOU FROM PERSONAL LIABILITY; CORRECT?

A IN A SMALL FASHION, YES.

Q OKAY. AND THE HUMPHREYS & ASSOCIATES FILES ITS OWN TAX RETURNS EVERY YEAR?

A AS AN S CORP, I BELIEVE THEY FLOW IT THROUGH TO ME.

Q SO THE COMPANY FILES A TAX RETURN AND YOU GET A K-1; CORRECT?

A I DON'T REMEMBER THE NUMBER, BUT I KNOW I GET A FORM.

Q OKAY.

A OKAY.

Q YOUR PROFITS; CORRECT?

A SAY AGAIN?

Q YOUR PROFITS FROM THE COMPANY; CORRECT?

A PROFITS OR LOSSES.

Q AND YOU ALSO GET A W-2 FROM THE COMPANY AS AN EMPLOYEE FOR YOUR SALARY; CORRECT?

A CORRECT.

Q OKAY. AND AT NO POINT IN TIME DID YOU EVER WRITE A CHECK BACK TO HUMPHREYS & ASSOCIATES FOR ANY OF

THESE CHECKS THAT WERE WRITTEN TO SPARTAN ASSOCIATES; CORRECT?

A WELL, BECAUSE THEY HANDLED IT IN THE ACCOUNTING.

Q OKAY. ULTIMATELY ALL YOU'RE SAYING IS YOU HAD TO ACCOUNT FOR IT AS REVENUE; CORRECT?

A SAY AGAIN?

Q ULTIMATELY, ALL YOU'RE SAYING IS YOU HAD TO ACCOUNT FOR IT AS REVENUE; CORRECT?

A REVENUE?

Q YES.

A I DON'T UNDERSTAND. TRY ME AGAIN.

Q YOU'RE SAYING THAT YOU -- THIS MONEY THAT HUMPHREYS & ASSOCIATES PAID ULTIMATELY WAS ATTRIBUTED TO YOU AS REVENUE ON YOUR W-2; CORRECT?

A WHEN YOU SAY "REVENUE," PART OF MY PAYROLL? IS THAT WHAT YOU'RE SAYING?

Q YES.

A OKAY.

Q BUT AT NO POINT IN TIME DID YOU WRITE A CHECK BACK TO HUMPHREYS & ASSOCIATES FOR THESE PAYMENTS IT MADE TO SPARTAN ASSOCIATES; CORRECT?

A I HAVE AN INDEPENDENT CONTRACTOR. THEY LOOK AT EVERY LITTLE NUMBER EVERY QUARTER AND SIGN OFF. THERE'S NO GAIN -- I WORK IN THE UNITED STATES GOVERNMENT BUSINESS. THERE ARE NO GAMES TO BE PLAYED

EVEN IF ONE WAS SO INCLINED TO DO SO.

Q THE ANSWER TO THE QUESTION IS NO, YOU DID NOT WRITE CHECKS BACK TO HUMPHREYS & ASSOCIATES FOR THE MONIES PAID TO SPARTAN ASSOCIATES; CORRECT?

A OKAY.

MR. RUSSO: THANK YOU. NO FURTHER QUESTIONS.

THE COURT: MR. BEREKI, HOW ABOUT YOU?

MR. BEREKI: I DO, JUST A COUPLE, YOUR HONOR.

FURTHER CROSS-EXAMINATION

BY MR. BEREKI:

Q DO YOU CARRY YOUR PERSONAL CHECKBOOK WITH YOU WHEN YOU TRAVEL?

A NO.

Q DO YOU CARRY A BUSINESS CHECKBOOK WITH YOU WHEN YOU TRAVEL?

A NO.

Q HOW DO YOU PAY FOR CORPORATE EXPENSES WHEN YOU TRAVEL?

A WITH A CREDIT CARD OR CASH.

Q OKAY. DURING THE PROJECT, DID WE EVER HAVE DISCUSSIONS ABOUT SETTING UP A REGULAR PAY SCHEDULE SO THAT THERE WOULDN'T BE ISSUES AROUND EXPEDIENCY, AS YOU CALL THEM?

A I DON'T REMEMBER IF WE DID.

Q THERE WAS NUMEROUS TIMES. I WILL REPRESENT TO YOU THAT WE SPOKE ABOUT --

THE COURT: YOU'RE NOT TESTIFYING YET.

MR. BEREKI: OKAY. NO FURTHER QUESTIONS.

THE COURT: MR. BISSELL?

MR. BISSELL: PARDON ME?

THE COURT: ANY MORE ON YOUR SIDE?

MR. BISSELL: NO, YOUR HONOR.

THE COURT: THANK YOU, MR. HUMPHREYS. YOU CAN STEP DOWN.

THE WITNESS: THANKS.

THE COURT: AND WITH THAT, I TAKE IT --

MR. BISSELL: WE REST, YOUR HONOR.

THE COURT: REST AS TO THIS PHASE?

MR. BISSELL: AS TO THE FIRST PHASE.

THE COURT: MR. RUSSO?

MR. RUSSO: SPARTAN ASSOCIATES RESTS AS TO THIS PHASE.

THE COURT: MR. BEREKI?

MR. BEREKI: I REST, YOUR HONOR.

THE COURT: I WISH I COULD REST. LET'S DO THIS. I NEED TO THINK ABOUT THIS A LITTLE BIT AND LOOK AT YOUR EXHIBITS. LET'S RE-JOIN TOMORROW MORNING, 9:30.

MR. RUSSO: YOUR HONOR --

THE COURT: LET'S SEE WHERE WE GO AFTER THAT.

MR. RUSSO: OKAY.

MR. BEREKI: THANK YOU, YOUR HONOR.

THE COURT: GOOD NIGHT, EVERYBODY.

(OFF THE RECORD.)

//

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )

) SS

COUNTY OF ORANGE )

I, KELVIN K. DO, CSR #13803, COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 11, 2017.

Certified Copy; Adam Bereki

Kelvin Khuong Do

Digitally signed by Kelvin Khuong Do
DN: cn=Kelvin Khuong Do, o, ou=Court Reporter, email=kelvinkdo@gmail.com, c=US
Date: 2017.12.12 17:48:17 -08'00'

KELVIN K. DO, CSR #13803

OFFICIAL COURT REPORTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

DEPARTMENT C20

| | | |
|---|---|---|
| THE SPARTAN ASSOCIATES, INC. | ) | |
| | ) | |
| | ) | |
| PLAINTIFF, | ) | CASE NO.: 30-2015-00805807 CU-CO-CJC |
| | ) | |
| GARY HUMPHREYS, | ) | |
| KAREN HUMPHREYS, | ) | |
| | ) | |
| DEFENDANTS. | ) | |
| _____ | ) | |

HONORABLE DAVID CHAFFEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

3/28/17

APPEARANCES OF COUNSEL:

| | |
|---|---|
| FOR THE PLAINTIFF/ CROSS-DEFENDANT: | BY: J. SCOTT RUSSO<br>RUSSO & DUCKWORTH LLP |
| FOR THE DEFENDANTS/ CROSS-COMPLAINANTS: | BY: WILLIAM G. BISSELL<br>LAW OFFICES OF WILLIAM G. BISSELL |
| FOR THE CROSS-DEFENDANT: | BY: ADAM BEREKI<br>SELF-REPRESENTED |

REPORTED BY:
KELVIN K. DO, CSR #13803, CSR
OFFICIAL COURT REPORTER

SANTA ANA, CALIFORNIA; MARCH 28, 2017

MORNING SESSION

*****

(THE FOLLOWING PROCEEDINGS

WERE HELD IN OPEN COURT.)

THE COURT: GOOD MORNING, EVERYBODY.

MR. RUSSO: GOOD MORNING, YOUR HONOR.

MR. BISSELL: GOOD MORNING, YOUR HONOR.

THE COURT: PRETTY BAD ON THE FREEWAY, MR. RUSSO?

MR. RUSSO: NORTH OF JEFFREY, IT WAS A PARKING LOT. THERE WAS AN ACCIDENT. I AND EVERYONE ELSE TRIED TO DRIVE AROUND IT, ALL THE SIDE STREETS. IT WAS JUST ONE OF THOSE DAYS.

THE COURT: DID YOU USE THE WAZE PROGRAM ON YOUR PHONE?

MR. RUSSO: NO, I DIDN'T. ONCE I GOT ON AND I REALIZED IT WAS STOPPED, I JUST PUT THE GOOGLE MAPS ON AND SAW IT WAS RED FROM WHERE I WAS ALL THE WAY, MID-WAY BETWEEN JEFFREY AND CULVER. SO I DROVE AROUND AND GOT BACK ON AT CULVER AND IT WAS FINE, BUT IT TOOK A WHILE.

THE COURT: ON THE 5?

MR. RUSSO: I GOT OFF THE 5 BECAUSE I REALIZED AFTER TEN MINUTES WE WEREN'T GOING ANYWHERE.

THE COURT: ALL RIGHT. SO WHAT I AM ABOUT TO DO AT THIS TIME IS TO INVITE ARGUMENT WITH RESPECT TO THE

FIRST CAUSE OF ACTION ISSUE, AND WE WILL SEE WHERE WE GO AFTER THAT.

SO MR. BISSELL, WE WILL START WITH YOU.

MR. BISSELL: THANK YOU, YOUR HONOR.

YOUR HONOR, CIVIL CODE SECTION 1636 PROVIDES THAT A CONTRACT MUST BE INTERPRETED AS TO GIVE EFFECT TO THE MUTUAL INTENTION OF THE PARTIES AS IT EXISTED AT THE TIME OF THE CONTRACTING. THE CASE OF SHAW VERSUS REGENTS OF UNIVERSITY OF CALIFORNIA 58 CAL.APP.4TH 44 STATES, "ALTHOUGH UNDER CIVIL CODE SECTION 1636 AND 1638 THE INTENT OF THE PARTIES DETERMINES THE MEAN OF THE CONTRACT, THE RELEVANT INTENT IS OBJECTIVE. THAT IS, THE OBJECTIVE INTENT IS EVIDENCED BY THE WORDS OF THE INSTRUMENT, NOT A PARTY'S OBJECTIVE INTENT. THE TRUE INTENT OF THE CONTRACTING PARTY IS IRRELEVANT IF IT REMAINS UNEXPRESSED."

IN THE CASE OF TRAVELERS -- I'M SORRY -- AUGBURN VERSUS TRAVELERS INSURANCE COMPANY, 207 CAL.APP. 50 STATED, "AS TO HARDSHIPS, ADVANTAGES, OR DISADVANTAGES, WHICH MAY RESULT FROM SUCH CONSTRUCTION, COURTS HAVE NOTHING TO DO."

SO WHAT WAS THE OBJECTIVE EXPRESSED INTENT OF THE PARTIES AT THE TIME THAT THEY ENTERED INTO THIS CONTRACT? FIRST OF ALL, WE ALL HAVE TO DEFINE WHAT THE CONTRACT IS. THE ONLY CONTRACT WE HAVE BETWEEN THE HUMPHREYS AND MR. BEREKI IS OUR EXHIBIT 303, WHICH WAS

THE APRIL 5, 2012 E-MAIL STRING IN WHICH MR. BEREKI COMMUNICATED HIS PROPOSAL FOR THE WORK ITEMIZING EACH ITEM OF WORK. MS. HUMPHREYS RESPONDED TO THAT PROPOSAL AND AGREED TO THE TERMS OF THE AGREEMENT AND HIRING MR. BEREKI AND MR. OVERLEY TO DO THE JOB.

THERE SIMPLY WAS NO OTHER CONTRACT. THERE WAS NO CONTRACT AT ANY TIME PROPOSED, OFFERED, SUGGESTED BY SPARTAN ASSOCIATES AND THE HUMPHREYS OR PROPOSED TO THE HUMPHREYS.

NOW, IT IS APPARENT THAT MR. BEREKI, AT SOME POINT, DEVELOPED AN UNEXPRESSED INTENT THAT THE CONTRACTING PARTY BE SPARTAN ASSOCIATES INSTEAD OF HIMSELF. HOWEVER, THE EVIDENCE IS CLEAR THAT THAT UNEXPRESSED INTENT DIDN'T EVEN DAWN ON MR. BEREKI UNTIL SEVERAL MONTHS INTO THE JOB.

THE EVIDENCE THAT SUPPORTS THAT IS MR. BEREKI AFTER THE -- SHORTLY AFTER THE EXHIBIT 303 CONTRACT WAS PROPOSED AND AGREED TO, HE REQUESTED THAT THE PAYMENTS BE MADE PAYABLE TO HIM PERSONALLY. MR. BEREKI PAID ALL OF THE JOB COSTS ON THIS PROJECT UP UNTIL JULY OF 2012 ON HIS PERSONAL ACCOUNT OR ON HIS MOTHER'S PERSONAL ACCOUNT, NOT ON THE SPARTAN ACCOUNT.

MR. BEREKI NEVER SENT AN INVOICE TO THE HUMPHREYS BEFORE JULY OF 2012 ON ANY DOCUMENT THAT WOULD EVEN HAVE THE NAME SPARTAN ON IT, MUCH LESS A LOGO OR ANYTHING THAT WOULD ALERT THE HUMPHREYS THAT SPARTAN WAS

PART OF THIS JOB.

MR. BEREKI DIDN'T SET UP SPARTAN AS A -- AN EMPLOYER UNTIL JULY OF 2012. THAT'S WHEN HE REGISTERED WITH THE BOARD OF EQUALIZATION AND THAT'S WHEN HE APPLIED FOR WORKERS' COMPENSATION INSURANCE FOR THIS JOB AS SPARTAN.

THE HUMPHREYS PAID MR. BEREKI $100,000 BEFORE MR. BEREKI EVEN BROUGHT UP THE NAME SPARTAN. PURE AND SIMPLY, SPARTAN WANTED PRESENCE IN THIS JOB IN ANY WAY, SHAPE, OR FORM BEFORE JULY OF 2012. AND, AGAIN, A CONTRACT'S INTERPRETED BY THE OBJECTIVE EXPRESSED INTENT AT THE TIME THE PARTIES ENTER INTO IT.

MR. BEREKI OFFERED AS EVIDENCE EXHIBIT 30-1 SHOWING A SPARTAN SIGN ON THE PROJECT AT SOME UNDISCLOSED DATE. BUT MR. BEREKI HAS TESTIFIED THAT FOR THE FIRST SEVERAL MONTHS, EVEN THOUGH HE HAD BEEN PAID $100,000, THE HUMPHREYS PAID HIM $100,000 ON THIS JOB, HE BASICALLY JUST HAD BEEN PUTTERING AROUND. EXHIBIT 30-1 SHOWS THE CONDOMINIUM IN A VIRTUALLY DEMOLISHED STATE. SO CLEARLY THAT PICTURE WASN'T TAKEN AT ANY EARLY STAGE OF MR. BEREKI'S INVOLVEMENT IN THE PROJECT.

WHAT WAS THE EVIDENCE OFFERED AS TO THE OBJECTIVE INTENT OF THE PARTIES AT THE TIME THAT THE CONTRACT WAS ENTERED INTO THAT SPARTAN WAS ONE OF THE CONTRACTING PARTIES? YOUR HONOR, THERE WAS ABSOLUTELY NONE. THERE IS NOTHING THERE THAT SUGGESTS SPARTAN

OBJECTIVELY WAS A CONTRACTING PARTY. IN FACT, IT WAS CLEAR FROM THE TESTIMONY OF MR. BEREKI WHEN HE WAS TALKING ABOUT -- FIRST HE TESTIFIED THAT HE HAD ENTERED INTO THIS SHOP RENTAL LEASE AS SPARTAN CONSTRUCTION. WELL, WHEN WE LOOKED AT THE LEASE, IT WAS CLEAR THAT HE DID NOT ENTER THE LEASE AS SPARTAN CONSTRUCTION. HE ENTERED IT AS ADAM BEREKI, DBA SPARTAN. IT'S CLEAR ADAM BEREKI NEVER UNDERSTOOD THE DIFFERENCE BETWEEN A CORPORATION AND HIMSELF. HE JUST DIDN'T UNDERSTAND. HE THOUGHT -- HE FELT THE CORPORATION WAS HIM, HE WAS THE CORPORATION. AND THAT'S NOT THE WAY IT WORKS UNDER THE LAW.

WHAT'S THE SIGNIFICANCE OF THE CONTRACTING? THE SIGNIFICANCE IS THE CONTRACTOR HAS TO BE LICENSED. MR. BEREKI SEEMED TO BE UNDER THE IMPRESSION THAT UNLESS HE WAS DOING SOMETHING STRUCTURAL, HE DIDN'T NEED A LICENSE. IN LIGHT OF WHAT TRANSPIRED ON THIS JOB, IT IS NOT SURPRISING THAT MR. BEREKI THINKS THAT, BUT HE'S CLEARLY WRONG.

A FUNDAMENTAL SECTION OF THE CONTRACTOR'S LICENSE LAW, BUSINESS AND PROFESSIONS CODE SECTION 7026 DEFINES A CONTRACTOR VERY BROADLY AS INCLUDING ANY PERSON WHO UNDERTAKES TO CONSTRUCT, ALTER, REPAIR OR IMPROVE ANY BUILDING OR STRUCTURE.

EXHIBIT 303, THE AGREEMENT THAT THE PARTIES ENTERED INTO, IS EVIDENCE OF SUCH UNDERTAKING. IT IS

CLEAR A LICENSE IS REQUIRED. NO QUESTION ABOUT THAT.

MR. BEREKI WAS NOT LICENSED. HE'S TESTIFIED THAT HE HAD NO LICENSE ISSUED TO HIM AT ANY TIME, EITHER AT THE TIME THE CONTRACT WAS ENTERED INTO OR AT ANY TIME THE WORK WAS BEING PERFORMED BY MR. BEREKI. HE TESTIFIED THAT THE PARTNERSHIP OF HE AND MR. OVERLEY WERE NOT LICENSED AT THE TIME THE CONTRACTING WAS ENTERED INTO OR AT ANY TIME DURING THE WORK. IN FACT, THEY COULD NOT HAVE BEEN LICENSED BECAUSE MR. BEREKI DIDN'T HAVE A LICENSE. A JOINT VENTURE LICENSE REQUIRES THAT BOTH PARTIES TO THE JOINT VENTURE, OR IF IT'S MORE THAN TWO, HOWEVER MANY PARTIES TO THE JOINT VENTURE, EACH BE INDIVIDUALLY LICENSED. MR. BEREKI TESTIFIED THAT HE WAS NOT LICENSED.

EVEN IF ONE WERE TO SUBSCRIBE TO THE THEORY THAT SPARTAN ASSOCIATES HAD CONTRACTED WITH THE HUMPHREYS, SPARTAN ASSOCIATES AND MR. OVERLEY, AND MR. BEREKI HAS TESTIFIED IT WAS AN INDEPENDENT CONTRACTOR HE PARTNERED WITH ON THIS JOB, THAT PARTNERSHIP WAS NOT LICENSED. THERE WAS NO COMBINATION OR PERMUTATION OF INDIVIDUALS OR ENTITIES THAT PARTICIPATED ON THIS JOB THAT HAD THE REQUISITE LICENSE.

THE COURT RAISED THE QUESTION YESTERDAY AS TO THE QUESTION OF WHAT IS THE IMPACT, WHAT IS THE EFFECT OF THE FACT THAT NOT ALL PAYMENTS ON THIS JOB CAME TO MR. BEREKI DIRECTLY FROM THE HUMPHREYS. WHAT IS THE

EFFECT OF THAT? CAN THE HUMPHREYS STILL RECOVER ON DISGORGEMENT?

THE KEY STATUTE WHICH HAS BEEN BRIEFED, AND I AM SURE THE JUDGE HAS READ, IS BUSINESS AND PROFESSIONS CODE SECTION 7031, SUBSECTION E, "A PERSON WHO UTILIZES THE SERVICES OF AN UNLICENSED CONTRACTOR MAY BRING AN ACTION IN ANY COURT OR COMPETENT JURISDICTION IN THIS STATE TO RECOVER ALL COMPENSATION PAID TO THE UNLICENSED CONTRACTOR FOR PERFORMING -- PERFORMANCE OF ANY ACT OR CONTRACT."

NOW, THE COURT SUGGESTED YESTERDAY THAT MAYBE HUMPHREYS & ASSOCIATES SHOULD BE A CO-PARTY TO THE ACTION TO RECOVER THE FUNDS THAT THEY -- BASICALLY THEY WERE A CONDUIT, BUT -- THE FUNDS THAT WERE CONDUITED THROUGH THEM TO MR. BEREKI. THEY COULDN'T BE A PARTY TO THIS ACTION. THIS STATUTE IS LIMITED TO A PERSON WHO UTILIZES THE SERVICES OF AN UNLICENSED CONTRACTOR.

THE ONLY PEOPLE WHO UTILIZED THE SERVICES OF THE UNLICENSED CONTRACTOR OF MR. BEREKI AND MR. OVERLEY WERE THE HUMPHREYS. THEY WERE THE ONLY PERSONS THAT CAN BRING THIS ACTION. THERE IS NO LANGUAGE IN THAT CODE SECTION THAT LIMITS OR RESTRICTS WHERE THE SOURCE OF THE FUNDS COME FROM. IT'S JUST ALL COMPENSATION.

NOW THAT MAKES SENSE. IT MAKES SENSE THAT THERE'S NO LIMITATION BECAUSE I ASSUME THAT THE LEGISLATURE WAS -- TOOK SOME SORT OF CUE FROM THE

CONSTRUCTION INDUSTRY THAT, HEY, WAIT A MINUTE, WE HAVE CONSTRUCTION LENDERS OUT HERE WHO ARE DISBURSING FUNDS ON PROJECTS ALL THE TIME. WE HAVE THIRD-PARTY CONSTRUCTION CONTROL AGENTS WHO ARE DISBURSING CONSTRUCTION FUNDS ON PROJECTS ALL THE TIME. WE HAVE CONSTRUCTION FUND ESCROW ACCOUNTS WHERE FUNDS ARE DISBURSED ALL THE TIME.

SO THERE ARE A MYRIAD OF EXAMPLES OR SITUATIONS WHERE PAYMENT DOESN'T HAVE TO COME OR DOESN'T COME DIRECTLY FROM THE PARTY WHO CONTRACTED WITH THE UNLICENSED CONTRACTOR. THERE ARE OTHER CONDUITS FOR THAT PAYMENT AND THE STATUTE MAKES NO DIFFERENTIATION OR NO RESTRICTIONS ON WHERE THAT MONEY COMES FROM. IT'S PURE AND SIMPLY ALL COMPENSATION PAID.

IF YOU LOOK AT THE INTENT, THAT SECTION OF 7031 WAS NOT AN ORIGINAL SECTION. THAT WAS APPLIED AFTER -- SEVERAL YEARS AFTER SECTION 7031 WAS ENACTED. SECTION 7031 WAS INITIALLY SIMPLY A SECTION THAT SAID AN UNLICENSED CONTRACTOR CANNOT BRING AN ACTION IN ANY COURT OF LAW TO RECOVER ON ANY JOB THAT HE'S PERFORMED WORK ON THAT REQUIRED A LICENSE.

WELL, THE LEGISLATURE UNDERSTOOD -- AT SOME POINT THEY UNDERSTOOD THAT, WAIT A SECOND, WE NEED TO TREAT PEOPLE EQUALLY HERE. THERE'S PEOPLE THAT HAVE PAID AN UNLICENSED CONTRACTOR AND THERE'S PEOPLE THAT HAVEN'T PAID AN UNLICENSED CONTRACTOR.

NOW, IF THE HUMPHREYS HADN'T PAID MR. BEREKI A DIME AND MR. BEREKI CLAIMED -- THE HUMPHREYS PAID HIM 848,000. SAY MR. BEREKI CLAIMS, HUMPHREYS, YOU DIDN'T PAY ME A DIME. I DID ALL THIS WORK. YOU OWE ME $848,000. WELL, HE WOULD BE OUT OF LUCK. HE'S NOT ENTITLED TO DIME ONE UNDER THE ORIGINAL SECTION OF 7031. NOW, UNDER THE ORIGINAL SECTION OF 7301, THOSE WHO HAD PAID THE UNLICENSED CONTRACTOR, THE PEOPLE IN THE HUMPHREYS POSITION, THEY COULDN'T RECOVER. SO THERE WAS AN UNEQUAL TREATMENT OF PARTIES DEALING WITH UNLICENSED CONTRACTORS UNDER SECTION 7031. WELL, THE LEGISLATURE RECOGNIZED THAT AND HE EQUALIZED THE IMPACT THAT SOMEBODY WHO DOESN'T PAY OR SOMEBODY WHO DOES PAY IS GOING TO BE TREATED THE SAME AS SOMEBODY WHO DOESN'T PAY; I.E., IF YOU OWE THE GUY 100 PERCENT OF WHAT WOULD OTHERWISE BE DUE ON THIS JOB, HE'S NOT ENTITLED TO IT. IF YOU PAID HIM 100 PERCENT OF WHATEVER HE IS ENTITLED TO ON THE JOB, YOU'RE ENTITLED TO RECOVER 100 PERCENT.

IN THE CASE ALATRISTE VERSUS CESAR'S EXTERIOR DESIGNS, INC. 183 CAL.APP.4TH 656, THE COURT STATED 7031(B) WAS DESIGNED TO TREAT PERSONS WHO HAVE UTILIZED UNLICENSED CONTRACTORS CONSISTENTLY REGARDLESS OF WHETHER THEY HAVE PAID THE CONTRACTOR FOR THE UNLICENSED WORK. THE ONLY WAY THAT 7031(B) CAN BE APPLIED IN THIS CASE WOULD BE CONSISTENT WITH NOT ONLY THE LANGUAGE OF THE STATUTE ITSELF -- THROUGH LANGUAGE OF THE STATUTE,

WHICH IS NOT VAGUE AND NOT AMBIGUOUS. AND THE INTERPRETATION OF THAT STATUTE IS FOUND IN THE ALATRISTE CASE, IS THAT THE HUMPHREYS ARE ENTITLED TO RECOVER ALL COMPENSATION PAID. THAT DOESN'T MATTER IF IT CAME FROM THEIR PERSONAL ACCOUNT OR IF IT CAME FROM A CONDUIT THROUGH WHICH THEY MADE PAYMENT OR WHETHER IT CAME FROM A RICH UNCLE. IT JUST MAKES NO DIFFERENCE. THE STATUTE IS CLEAR. ALL COMPENSATION.

THE EVIDENCE IS UNCONTROVERTED THAT THE HUMPHREYS PAID AS COMPENSATION TO MR. BEREKI ON THIS PROJECT $848,000. MR. BEREKI WAS REQUIRED TO HAVE A LICENSE. HE HAD NO LICENSE. UNDER THE LAW, THE HUMPHREYS ARE ENTITLED TO $848,000.

THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. MR. RUSSO.

MR. RUSSO: YES, YOUR HONOR.

IF ONLY IT WERE SO SIMPLE. YOUR HONOR, THE BACKGROUND ON ALL THIS IS MR. BEREKI WAS WORKING IN THE POLICE FORCE WITH MR. HUMPHREYS' BROTHER.

THE COURT: WHICH POLICE FORCE WAS THAT?

MR. RUSSO: HUNTINGTON BEACH.

THE COURT: HB?

MR. RUSSO: YES. HE WENT OUT ON DISABILITY FROM THE POLICE FORCE. SO THAT WAS HOW THE RELATIONSHIP STARTED WITH THE BROTHER. HE JUST WENT INTO CONTRACT. THAT BUSINESS HAS NOW BEEN DISSOLVED. SO IT'S GONE.

DOESN'T HAVE ANY MONEY. HE'S OUT WITH HIS DISABILITY TRYING TO EARN A LIVING. THE COMPANY HAS NO MONEY. THE COMPANY HAS NO MONEY TO PAY THEIR ATTORNEY IN THIS CASE, BUT HERE WE ARE CLOSE TO TRIAL SO HERE I AM.

THE COURT: GOD, WE LOVE THE VOLUNTEERS.

MR. RUSSO: IT IS THAT. SO THE BOTTOM LINE IS WE'RE AT A POINT WHERE THROUGH SOME CREATIVE LAWYERING THIS NEW ISSUE CAME UP AT THE LAST MINUTE. THEY SAID THIS DISPUTE HAS BEEN GOING ON SINCE AUGUST OF 2013. THIS LAWSUIT HAS BEEN PENDING SINCE AUGUST OF 2015. AND THEN IN JANUARY OF THIS YEAR, THE CROSS-COMPLAINT WAS AMENDED TO ADD THIS CLAIM FOR DISGORGEMENT. SO IT'S NOT SOMETHING THAT WAS ON THEIR MINDS, IT'S NOT SOMETHING THAT THEY CARED ABOUT, IT'S NOT SOMETHING THEY CARED ABOUT WHEN I TOOK THEIR DEPOSITIONS. THIS WAS A LAST MINUTE, HEY, LET'S GIVE THIS ONE A SHOT.

SO SHOULD THERE BE SYMPATHY FOR THE HUMPHREYS IN LOSING THIS CLAIM WHEN WE HAVE BIGGER ISSUES IN THIS CASE? ABSOLUTELY NOT. THIS IS SOME GOOD, CREATIVE LAWYERING BY A GOOD LAWYER TO COME UP WITH THIS TECHNICAL ISSUE. AND IT'S A BIG FORFEITURE ISSUE. WE KNOW THE LAWS OF FORFEITURE. I HAVE BEEN ON THE OTHER SIDE OF THIS STATUTE AND ARGUED IT, AND IT'S DRACONIAN. IT IS. BUT THIS CASE DOES NOT FIT THE PIECES OF PUZZLE FOR FORFEITURE. THIS IS NOT AN UNLICENSED CONTRACTOR CASE.

WHAT DO WE HAVE HERE? WE HAVE PAYMENTS OVER $800,000. AND OF THAT, OVER 700,000 OF IT WAS PAID TO A LICENSED CONTRACTOR. THE LICENSED CONTRACTOR WHO PERFORMED THE WORK. THE STATUTE AT ISSUE 7031(B) TALKS ABOUT REPAYMENT FOR COMPENSATION PAID TO THE UNLICENSED CONTRACTOR FOR PERFORMANCE OF ANY ACT OR CONTRACT, WORK THAT HAD TO HAVE A LICENSE. OKAY. SO COMPENSATION TO THE UNLICENSED CONTRACTOR.

YOU HAVE SEEN THE CHECKS, EXHIBIT 32. AFTER THE FIRST $100,000, THE CHECKS WERE MADE TO THE CONTRACTOR WHO PERFORMED THE WORK WHO WAS LICENSED. INTERSPERSED LATER ON THERE WERE SOME PAYMENTS, THEY WERE DIRECTED TO MR. BEREKI, DESPITE THE TESTIMONY THAT HE ASKED THAT THEY BE PAID TO SPARTAN ASSOCIATES. THEY GOT DEPOSITED INTO THE SPARTAN ASSOCIATES' ACCOUNT AND SPARTAN ASSOCIATES DID THE WORK.

SO IT'S NOT EVEN AN ISSUE UNDER THE SUBSTANTIAL COMPLIANCE RULES THAT WENT ON. AND I UNDERSTAND, WITH THE CHANGES TO 7031, MOST OF THAT WAS -- SUBSTANTIAL COMPLIANCE WAS, FOR THE MOST PART, THE PAST. WE DON'T HAVE THAT REALLY, NOR DOES THIS FIT NEATLY WITHIN THE CONFINES OF SUBSTANTIAL COMPLIANCE. THIS IS JUST PURE INAPPLICABILITY IN THIS CASE OF 7031 BECAUSE IT'S NOT ABOUT THAT ORAL AGREEMENT, THE E-MAIL, THE STATUTE IS ABOUT UNLICENSED WORK. WE DON'T HAVE THAT HERE. THAT FIRST CONVERSATION, WHETHER OR NOT THEY

THOUGHT IT WAS SPARTAN ASSOCIATES OR MR. BEREKI, THAT'S NOT WHAT THE STATUTE SPEAKS TO. IT'S PAYMENTS TO AN UNLICENSED CONTRACTOR FOR WORK THAT NEEDED TO BE LICENSED. AND THE PAYMENTS, THEY KNEW WHO THEY WERE WRITING THE CHECKS TO WHEN THEY WERE WRITING TO SPARTAN ASSOCIATES, LICENSED CONTRACTOR, THIS DID NOT APPLY.

NOW WE DO HAVE THE FIRST $100,000 OF PAYMENTS WHICH WERE PAYABLE TO MR. BEREKI. WHAT I WOULD SUBMIT ON THAT, YOUR HONOR, IS IT'S -- IT DOESN'T REALLY MATTER WHO THOSE PAYMENTS WENT TO. THE POINT IS THERE'S BEEN A FAILURE OF PROOF BY THE HUMPHREYS ON THIS AS TO THAT WORK FOR WHICH THAT $100,000 WAS PAID WAS REQUIRED TO BE LICENSED. THERE'S BEEN NO EVIDENCE. TO THE CONTRARY, THE ONLY EVIDENCE YOU HAVE IS THAT BASED ON WHAT WAS GOING ON AT THAT TIME, DURING THE FIRST $100,000, THE TESTIMONY OF MR. BEREKI WAS THAT WE WERE LOADING UP THINGS, WE WERE GETTING STORAGE UNITS, WE WERE DOING THOSE THINGS, DOING SOME DEMOLITION. BUT IF YOU WERE TO LOOK AT THE C11 LICENSURE FOR DEMOLITION WORK, STRUCTURAL WORK, AT THAT POINT IN TIME, THERE'S NO EVIDENCE AT THAT POINT IN TIME THAT THIS WORK REQUIRED A LICENSE FROM HIM PERSONALLY. SO THAT'S A FAILURE OF PROOF ON THEIR PART.

THEN WE TURN TO THE ISSUE OF THE REAL PARTY IN INTEREST. THE FACT OF THE MATTER IS THAT A CORPORATION PAID $495,000 OF THE PAYMENTS TO SPARTAN ASSOCIATES.

THE CASES ON THAT ISSUE, ON REAL PARTY IN INTEREST, ARE THE DION VERSUS PELAYO CASE, 2006 145.CAL.APP.4TH 347 AND THE GANTMAN VERSUS UNITED PACIFIC INSURANCE CASE, 1999 232 CAL.APP.3RD 1560. THIS IS JUST FUNDAMENTAL STUFF. THE CLAIM HAS TO BE PROSECUTED BY THE REAL PARTY IN INTEREST, NOT SOMEBODY WHO'S INTERESTED, BUT THE ACTUAL REAL PARTY. THEY FAILED, AT LEAST AS TO $495,000 OF THE CHECKS, BECAUSE THEY WERE WRITTEN BY A CORPORATION WHO SHOULD HAVE BEEN JOINED IN THIS ACTION, SHOULD HAVE DONE AN ASSIGNMENT, SHOULD HAVE DONE SOMETHING LONG BEFORE NOW. IT'S LATE AND THERE COULD BE STATUTE OF LIMITATIONS ISSUES ASSOCIATED WITH THAT PARTY COMING IN. IT'S NOW A SIMPLE AMENDMENT AT THIS POINT IN TIME.

SO THE FACT OF THE MATTER IS IT'S NOT A LITTLE ISSUE. THIS IS NOT THE SAME AS A CONSTRUCTION LENDER DISBURSING FUNDS. IN THE CASE OF CONSTRUCTION LENDER DISBURSING FUNDS, THAT MONEY IS THE BORROWER'S MONEY. YOU HAVE GOT THIS CONDUIT, BUT THAT'S THE BORROWER'S MONEY. THIS WAS THE CORPORATION'S MONEY. PERHAPS MR. HUMPHREYS GOT TAXED ON IT IN THE FUTURE, BUT AT THE TIME THE PAYMENTS WERE MADE, THE CORPORATION'S MONEY. SO THIS IS ANOTHER GLITCH IN THEIR CASE. SO FOR ALL THOSE REASONS, 7031 NOT APPLYING. REAL PARTY IN INTEREST. AND -- WELL, FOR THOSE TWO REASONS. THEY FAILED TO ULTIMATELY PROVE, AS THEY HAD TO WITH THEIR

BURDEN, THAT FIRST CAUSE OF ACTION IN THAT CROSS-COMPLAINT.

WE'VE GOT BIGGER ISSUES IN THIS CASE. WE GOT THE COMPLAINT. WE GOT THEIR CROSS-COMPLAINT FOR THE WORK BEING DEFICIENT. WE GOT OTHER ISSUES, BUT THIS IS NOT THE VEHICLE FOR THE HUMPHREYS TO GET WHAT THEY WANT. WE GOT THE REST OF THE CASE TO TRY.

THANK YOU.

THE COURT: THANK YOU, MR. RUSSO.

MR. BEREKI?

MR. BEREKI: NOTHING, YOUR HONOR.

THE COURT: YOU WILL RELY ON MR. RUSSO'S ARGUMENT?

THE COURT: HE WAS BRILLIANT, YES, SIR. THANK YOU.

THE COURT: I WILL TAKE 15 MINUTES, GO COLLECT MY THOUGHTS, REVIEW MY NOTES. SORRY FOR THE DELAY, BUT IT SEEMS LIKE GOOD IDEA. SO FEEL FREE TO TAKE A WALK ABOUT, RUN UP AND DOWN THE HALLWAYS, SWIM A COUPLE OF LAPS. WE WILL BE BACK.

MR. BISSELL: THANK YOU.

(RECESS.)

THE COURT: THANK YOU, OFFICER GINO.

MR. RUSSO.

MR. RUSSO: YES, YOUR HONOR.

THE COURT: ARE YOU BY ANY CHANCE A STUDENT OF ANCIENT GREEK HISTORY?

MR. RUSSO: WELL, IT SO HAPPENS THAT MY FAVORITE

PROFESSOR AT UC DAVIS WAS A GUY NAMED SPYRIDAKIS. HE TAUGHT ANCIENT --

THE COURT: HE DOESN'T SOUND TOO ANCIENT.

MR. RUSSO: HE TAUGHT ANCIENT HISTORY AND I TOOK ALL THREE OF HIS COURSES. GREEK HISTORY IS THE FIRST ONE, AND THEN A COUPLE -- WE DID ANCIENT ROME, MESOPOTAMIA. SO THE ANSWER IS, IT WAS MY FAVORITE COURSE.

THE COURT: EXCELLENT. THEN YOU'RE PROBABLY FAMILIAR WITH THE STORY FROM THE CITY-STATE OF SPARTA IN ANCIENT GREECE IN THE NAME OF THE COMPANY OPERATED BY MR. BEREKI. AS YOU KNOW, SPARTA WAS A VERY WARLIKE CIVILIZATION. THEIR YOUNG MEN WERE TRAINED AT A VERY EARLY AGE TO BASICALLY PREPARE AND FIGHT A NUMBER OF BATTLES BECAUSE IT WAS A WARLIKE CIVILIZATION THAT WENT ON. SO THE LINE FROM THE MOTHERS AND TWO SONS GOING OFF TO BATTLE ON BEHALF OF THE CITY-STATE OF SPARTAN. COME BACK VICTORIOUS OR COME BACK DEAD OVER YOUR SHIELD. LET'S HOPE THAT DOESN'T APPLY TO SOMEBODY HERE TODAY.

MR. RUSSO: ONE ANECDOTE. ONE OF MY FAVORITE THINGS ABOUT THAT -- AND I ALSO TOOK MILITARY HISTORY FOR A YEAR -- WAS THE INVENTION THAT MADE THE GREEKS SUCCESSFUL -- NOT THE SPARTANS BUT THE GREEKS -- WAS LENGTHENING THE PHALANX SO WHEN THEY ALL RAN INTO EACH OTHER, THEIRS WAS A FEW FEET LONGER. I THOUGHT THAT WAS A KIND OF AN INTERESTING DEVELOPMENT.

THE COURT: I THOUGHT YOU WERE GOING TO TELL ME IT WAS THE WHEEL.

MR. RUSSO: NO.

THE COURT: OR THE CATAPULT.

MR. RUSSO: NO, LENGTHENING THE PHALANX.

THE COURT: A LONGER SPEAR. I THINK THE ENGLISH CAME UP WITH ANOTHER LINE CALLED "HOISTED BY THEIR OWN PETARD." WHAT IS A PETARD?

MR. RUSSO: I DON'T RECALL WHAT A PETARD IS.

THE COURT: IT'S ANOTHER VERSION OF A SPEAR. ALL RIGHT. WELL, YOU ALL CAUSED ME TO HAVE A FEW MOMENTS OF CONSIDERATION HERE. MY INITIAL COMMENT, YOU KNOW, FINE LAWYERS AND GOOD LAWYERING, AS WE HAVE SEEN HERE, MAKES THIS DECISIONAL PROCESS ALL THE HARDER. I WANT TO THANK THE LAWYERS, BOTH OF YOU, FOR GOOD WORK, GOOD PRESENTATIONS. STILL, YOU KNOW, I HAVE TO SAY, AT THE BOTTOM, THE FACT IS THE FACTS WIN OR LOSE CASES. PEOPLE THAT THINK, HEY, YOU KNOW, I WANT CLARENCE DARO (PHONETIC) -- A NAME FROM THE PAST -- I WANT THE TOUGHEST LAWYER IN TOWN, SO ON AND SO FORTH. MY EXPERIENCE IS THAT BAD LAWYERING CAN LOSE CASES BECAUSE THE FACTS DON'T GET IN. ULTIMATELY, GOOD LAWYERING, WHICH IS WHAT I HAVE SEEN HERE, ACCOUNTS FOR THE FACT, AGAIN, THAT IT MAKES THE DECISION HARDER. AGAIN, IT'S THE FACTS THAT CONTROL, NOT THE LAWYERS THAT CONTROL. AN INTERESTING EXERCISE FOR ME, FROM THE STANDPOINT OF

JUST REVIEWING AND CONSIDERING WHAT'S REQUIRED UNDER THE CONTRACTOR LICENSE LAW, AND IN SOME WAYS, IT'S A LITTLE BIT OF A TRIP INTO ALICE IN WONDERLAND.

I TURN FIRST TO BUSINESS PROFESSIONS CODE SECTION 7159, WHICH IS ENTITLED "HOME IMPROVEMENT; HOME IMPROVEMENT GOODS OR SERVICES DEFINITIONS." WELL, THIS DEFINES THE -- UNDER -- SUBSECTION B DEFINES THE HOME IMPROVEMENT CONTRACT AS MEANING ANY AGREEMENT, WHETHER ORAL OR WRITTEN, BETWEEN THE CONTRACTOR AND THE OWNER FOR THE PERFORMANCES OF A HOME IMPROVEMENT, AS DEFINED BY SECTION 7151.

SECTION 7551 DEFINES A HOME IMPROVEMENT AS BEING THE REPAIRING, REMODELING, ALTERING, CONVERTING OR MODERNIZING UP OR ADDING TO RESIDENTIAL PROPERTY AND SHALL INCLUDE, BUT NOT BE LIMITED TO, THE CONSTRUCTION, ERECTION, REPLACEMENT, OR IMPROVEMENT OF DRIVEWAYS, SWIMMING POOLS, INCLUDING SPAS, HOT TUBS, TERRACES, PATIOS, AWNINGS, STORM WINDOWS, LANDSCAPING, FENCES, PORCHES, GARAGES, FALLOUT SHELTERS, BASEMENTS, AND OTHER IMPROVEMENTS OF THE STRUCTURE OR LAND WHICH IS ADJACENT TO A DWELLING. HOME IMPROVEMENT SHALL ALSO MEAN THE INSTALLATION OF HOME IMPROVEMENT GOODS OR THE FURNISHING OF HOME IMPROVEMENT SERVICES.

I THINK THAT THAT INCLUDES THE REMODELING PROJECT THAT WAS DONE ON THIS PROPERTY. ALTHOUGH I SUSPECT, AS AN ARGUMENT, THAT IT COULD BE LIMITED TO

THINGS OUTSIDE OF THE STRUCTURE ITSELF. IF THAT WERE THE CASE, THEN I SUSPECT THAT SECTION 7164 WOULD APPLY WITH RESPECT TO THIS.

WHY AM I TALKING ABOUT THIS? BECAUSE IF YOU LOOK AT SECTION 7159(C), IT REQUIRES THAT THE LICENSEE SHALL COMPLY WITH ALL OF THE FOLLOWING. IT SPELLS OUT, IN GREAT DETAIL, THE REQUIRED CONTENTS OF THE CONTRACT BETWEEN THE CONTRACTOR AND THE CONTRACTING PARTIES. AS WE HAVE SEEN NONE OF WHICH ARE PRESENT HERE, BUT JUST SO THAT WE'RE ON THE SAME PAGE, IT REQUIRES, AMONG OTHER THINGS -- AND THIS IS WHERE IT'S CONFUSING BECAUSE IT SAYS, FOR PURPOSES OF THIS SECTION, SUBSECTION B OF 7159, FOR PURPOSES OF THIS SECTION, HOME IMPROVEMENT CONTRACT MEANS AN AGREEMENT, WHETHER ORAL OR WRITTEN, OR CONTAINED IN ONE OR MORE DOCUMENTS, ET CETERA.

SO THERE SEEMS TO BE SOME ACKNOWLEDGMENT THAT IT CAN BE ORAL OR WRITTEN, BUT THEN IT GOES ON IN SUBSECTION C TO SAY, "IN ADDITION TO THE SPECIFIC REQUIREMENTS LISTED UNDER THIS SECTION, EVERY HOME IMPROVEMENT CONTRACT AND ANY PERSON SUBJECT TO LICENSURE UNDER THIS CHAPTER SHALL COMPLY WITH ALL OF THE FOLLOWING:

"ONE, THE WRITING SHALL BE LEGIBLE." THAT DENIES AN ORAL CONTRACT.

"TWO, ANY PRINTED FORM SHALL BE READABLE;

"THREE, BEFORE ANY WORK STARTED, THE

CONTRACTOR SHALL GIVE THE BUYER A COPY OF THE CONTRACT SIGNED AND DATED BY BOTH THE CONTRACTOR AND THE BUYER," WHICH SEEMS TO BELIE THE CONCEPT OF THE EXCHANGE OF E-MAILS AS BEING SOME FORM OF WRITTEN SIGNED AGREEMENTS, AS HAS BEEN ARGUED IN THIS CASE. SO I WON'T GO ON WITH ANY MORE OF THE DETAILS FOR THIS CODE SECTION.

SO NUMBER ONE, I HAVE CONCERNS ABOUT THE NATURE OF THE CONTRACT BETWEEN THE PARTIES;

NUMBER TWO, JUST DEALING WITH AN ISSUE THAT APPEARS TO BE INCIDENTAL TO THIS LITIGATION; THAT IS, WHETHER OR NOT HUMPHREYS & ASSOCIATES, INCORPORATED SHOULD HAVE BEEN, COULD HAVE BEEN, OUGHT TO HAVE BEEN A PARTY TO THIS LAWSUIT, THE EVIDENCE HERE IS HUMPHREYS & ASSOCIATES IS A SUBCHAPTER S CORPORATION. THAT HAS NOT ONLY TAX SIGNIFICANCE, BUT IT HAS OTHER SIGNIFICANCE WITH RESPECT TO COMPENSATION OF EMPLOYEES TO THE CORPORATION, OF WHICH MR. HUMPHREYS IS BOTH AN OFFICER AND AN EMPLOYEE OF THE CORPORATION, AS I UNDERSTAND FROM THE EVIDENCE. WITH AN S CORPORATION, IT SERVES SIMPLY AS A CONDUIT AND PASSTHROUGH SO THE CORPORATION ITSELF PAYS NO TAXES. INSTEAD, ITS INCOME IS PASSED TO ITS EMPLOYEES AND OFFICERS TO THE EXTENT THAT THEY'RE COMPENSATED AND THEY PAY THE TAXES.

SO THE EVIDENCE SHOWS HERE THE PAYMENTS THAT WERE MADE THROUGH HUMPHREYS & ASSOCIATES, INCORPORATED'S BANK ACCOUNT WERE ESSENTIALLY DEBITED AGAINST

MR. HUMPHREYS' COMPENSATION; EFFECTIVELY MAKING THE PAYMENT DIRECTLY FROM MR. HUMPHREYS TO WHETHER IT'S MR. BEREKI OR SPARTAN AT THIS POINT IS OF NO PARTICULAR MOMENT. IN THE COURT'S OPINION, THE COURT FINDS THAT THE HUMPHREYS & ASSOCIATES, INCORPORATED ENTITY IS NOT A NECESSARY PARTY TO THIS LITIGATION OR EVEN AN APPROPRIATE PARTY GIVEN THESE FACTS.

TURNING TO THE CROSS-DEFENDANTS' ARGUMENT OF -- WITH RESPECT TO WHAT THE HUMPHREYS KNEW OR UNDERSTOOD WHEN THE CHECKS STARTED GOING TO THE SPARTAN ASSOCIATES, I THINK THAT THE ARGUMENT PRESUPPOSES A CERTAIN LEVEL OF SOPHISTICATION AND EXPERIENCE THAT I CANNOT AND DO NOT ASCRIBE TO MR. HUMPHREYS. SURE, THEY REMODEL OTHER PROPERTIES. THEY OWN OTHER PROPERTIES. BUT NOTHING IN THE EVIDENCE SUGGESTS THAT THEY ARE KNOWLEDGEABLE ABOUT CONTRACTORS, KNOWLEDGEABLE ABOUT CONTRACTING, KNOWLEDGEABLE ABOUT CONTRACTING IN A SENSE OF BUILDING STRUCTURES. MR. HUMPHREYS' EXPERIENCE DEALING AS A CONSULTANT ON LARGE GOVERNMENT CONTRACTS DID NOT STRIKE ME AS FALLING WITHIN BUILDING CONTRACTS, BUT SOMETHING ELSE. AND, AGAIN, I THINK THAT THEY ARE ENTIRELY DIFFERENT DISCIPLINES, WHICH REQUIRE DIFFERENT LEVELS OF UNDERSTANDING AND EXPERIENCE.

THE PROBLEM FOR THE UNINITIATED IN DEALING WITH BILLING CONTRACTORS IS THE USE OF SUBCONTRACTORS, THE USE OF CORPORATE ENTITIES, SOMETIMES, TO REFLECT

PAYMENTS. I DON'T BLAME -- I DON'T FIND THAT MR. HUMPHREYS AND MRS. HUMPHREYS WERE IN SOME FASHION REQUIRED TO EXPLORE IN ANY PARTICULAR DETAIL WHAT SPARTAN ASSOCIATES, INCORPORATED WAS THAT THEY WERE MAKING PAYMENTS TO UNDER THESE CIRCUMSTANCES.

TURNING TO MY OWN RESEARCH, I FOUND TWO CASES THAT I THINK ARE ANALOGOUS TO OUR CASE AND REQUIRE SOME CONSIDERATION. FIRST CASE IS BALL VERSUS STEADFAST-BLK. THIS IS A 2011 CASE RECORDED AT 196 CAL.APP.4TH 694.

HERE, JUST TO GIVE YOU THE SUMMARY, THE TRIAL COURT IN THIS INSTANCE SUSTAINED WITHOUT LEAVE TO AMEND THE PROPERTY OWNER'S DEMURRER TO A CAUSE OF ACTION FOR CLOSURE -- FOR FORECLOSURE OF A MECHANIC'S LIEN IN AN INDIVIDUAL LICENSED CONTRACTOR'S COMPLAINT. THE COURT FOUND THAT THE CONTRACTOR WAS NEVER LICENSED AS A CONTRACTOR TO DO BUSINESS UNDER THE FICTITIOUS BUSINESS NAME HE USED AND THUS WAS PRECLUDED, AS A MATTER OF LAW, UNDER BUSINESS PROFESSIONS CODE SECTION 7031, SUBDIVISION A FROM PURSUING THIS CAUSE OF ACTION.

AND JUST TO BE CLEAR, WHAT WE HAVE IS AN INDIVIDUAL CONTRACTOR, MR. BALL, WHO WAS DOING BUSINESS UNDER A DBA OF CLARK HEATING AND AIR CONDITIONING. AND AS IT HAPPENED, THIS DBA WAS NOT A CORPORATION; IT WAS JUST A DBA. AND SO WHEN BALL SUED, THE HOMEOWNER SAID, WELL, WAIT, WE HAVE THIS CONTRACT WITH CLARK HEATING AND AIR CONDITIONING AND THIS GUY IS NOT CLARK, WE DON'T

THINK, AND THE TRIAL COURT AGREED.

THE COURT OF APPEAL REVERSED. THE COURT FOUND THAT THE TRIAL COURT HAD CONFUSED THE INDIVIDUAL OWNER TO WHOM THE CONTRACTOR'S LICENSE WAS ISSUED WITH THE NAME UNDER WHICH THE INDIVIDUAL CONDUCTED HIS CONTRACTING BUSINESS; I.E., THE FICTITIOUS BUSINESS NAME. THE CONTRACTOR WAS LICENSED AS A, QUOTE, SOLE OWNER, END QUOTE, AND NOT AS A PARTNERSHIP OR CORPORATE ENTITY PURSUANT TO THE CLASSIFICATION SYSTEM OF B&P CODE SECTION 7065. THE FICTITIOUS BUSINESS NAME HE USED WAS NOT AN ENTITY THAT COULD BE LICENSED; RATHER, IT WAS THE BUSINESS NAME UNDER WHICH THE INDIVIDUAL LICENSEE DID BUSINESS. NOT ONLY WAS THE FICTITIOUS BUSINESS NAME NOT A DISTINCT LEGAL ENTITY, IT WAS NOT AMONG THE CATEGORIES OF INDIVIDUALS OR ENTITIES DEFINED BY THE CONTRACTOR'S STATE LICENSE LAW, B&P CODE SECTION 7000, TO WHOM A CONTRACTOR'S LICENSE MAY ISSUE.

ACCORDINGLY, BECAUSE THE CONTRACTOR WAS A LICENSED CONTRACTOR, HE WAS ENTITLED TO PERFORM CONTRACTING WORK UNDER THE FICTITIOUS BUSINESS NAME. HIS FAILURE TO CONTRACT IN THE EXACT SAME NAME SET FORTH IN HIS LICENSE WAS, AT MOST, GROUNDS FOR DISCIPLINARY ACTION, BUT IT DID NOT BAR HIM FROM RECOVERING FOR WORK PERFORMED UNDER THE CONTRACTS.

SO NOW WE CONTRAST THE BALL OPINION WITH THE FACTS OF THIS CASE. AND I THINK OUR CASE HERE IS

DISTINGUISHABLE. FIRST OF ALL, AND FOREMOST, WE HAVE NO LICENSE IN THE NAME OF MR. BEREKI INDIVIDUALLY; INSTEAD, IT APPEARS HE WAS THE QUALIFYING CORPORATE OFFICER FOR THE LEGAL ENTITY, SPARTAN ASSOCIATES, INCORPORATED. THAT WAS THE ENTITY TO WHICH THE CONTRACTOR'S LICENSE WAS ISSUED, AS OPPOSED TO OUR OTHER CASE. YOU KNOW, HERE, AS A MATTER OF LAW, THE CORPORATE ENTITY WAS ENTITLED TO BE LICENSED, WHICH IT WAS. THIS WILL TAKE US TO MORE CONSIDERATION LATER ON.

SO SECONDLY, I TURN TO THE OTHER CASE, 29 PALMS ENTERPRISES CORPORATION VERSUS BARDOS. THIS IS A 2012 CASE RECORDED AT 210 CAL.APP.4TH STARTING AT PAGE 14, 13. THIS CASE ACTUALLY APPEARS TO BE DIRECTLY ON POINT.

AND JUST TO GIVE YOU THE OVERVIEW, HERE WHAT WE HAVE IS A TRIBAL CORPORATION THAT SUED THE CONTRACTOR TO RECOVER MONEY PAID FOR WORK ON TRIBAL LAND ALLEGING B&P CODE SECTION 7031 17200 AND THAT THE CONTRACTOR WAS UNLICENSED AND THAT ITS PERFORMANCE OF WORK WITHOUT A LICENSE WAS UNFAIR COMPETITION.

HERE THE TRIAL COURT GRANTED THE SUMMARY JUDGMENT FOR THE TRIBAL CORPORATION. IN AFFIRMING THAT SUMMARY JUDGMENT, THE COURT OF APPEAL REJECTED THE CONTRACTOR'S ARGUMENT THAT B&P CODE SECTION 7031 WAS NOT ENFORCEABLE IN A CONTRACT MADE WITH THE TRIBAL ENTITY FOR WORK DONE ON TRIBAL LAND.

ALL RIGHT. WE DON'T HAVE A TRIBAL LAND ISSUE. WE ALL UNDERSTAND THAT, SO I WILL SKIP OVER THE CONSIDERATIONS THE DCA MADE WITH RESPECT TO THE TRIBAL LAND ISSUE AND THE TRIBAL CONTRACT AND INSTEAD TURN TO THE ISSUES THAT ARE GERMANE TO US.

THE COURT HELD THAT THE CONTRACT DID NOT CREATE A FACT ISSUE AS TO WHETHER IT SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF 7031 BECAUSE THERE WAS NOTHING INDICATING THAT THE CONTRACTOR ACTED REASONABLY AND IN GOOD FAITH TO MAINTAIN PROPER LICENSURE. AND THE EVIDENCE REFLECTED THAT THE CONTRACTOR KNEW IT WAS UNLICENSED AND DID NOT ACT PROMPTLY TO OBTAIN ITS LICENSE. ALTHOUGH THE OWNER OF THE UNLICENSED SOLE PROPRIETORSHIP WAS ALSO THE RESPONSIBLE MANAGING OFFICER FOR A CORPORATION THAT HAD BEEN LICENSED, THE OWNER DID NOT HOLD THE CORPORATION'S LICENSES AS AN INDIVIDUAL AND, THEREFORE, COULD NOT PERFORM WORK UNDER THAT LICENSE USING THE NAME OF THE SOLE PROPRIETORSHIP. THE CONTRACTOR COULD NOT RELY ON EQUITABLE ESTOPPEL TO CIRCUMVENT SECTION 7031.

AGAIN, I THINK THAT THE ARGUMENT ADVOCATED HERE IS THAT EITHER SPARTAN WAS THE CONTRACTING PARTY OR, ALTERNATIVELY, THAT MR. BEREKI WAS OPERATING UNDER SPARTAN'S LICENSE. THE SECOND PART OF THAT ARGUMENT IS UNDONE BY THE 29 PALMS CASE, WHICH BASICALLY HOLDS THAT AN INDIVIDUAL, SUCH AS MR. BEREKI, CANNOT RELY -- IF

HE'S CONTRACTING ON HIS OWN, CANNOT RELY ON HIS CORPORATION'S LICENSE TO CONTRACT.

SO WE HAVE TO NOW TURN TO THE ULTIMATE FACTUAL ISSUE THAT THE COURT MUST DECIDE. AND SO THAT REALLY TURNS ON JUST WHO WERE THE CONTRACTING PARTIES TO WHATEVER THIS AGREEMENT WAS, HARKENING BACK TO MY INITIAL DISCUSSION ABOUT THE NECESSARY ELEMENTS FOR A CONTRACT.

CLEARLY, THE HUMPHREYS INTENDED TO ENGAGE SOMEONE TO DO THE WORK ON THEIR SINGLE UNIT IN OR ABOUT APRIL OF 2012. I HAVE BEEN TOLD AND THE EVIDENCE IS A LITTLE UNCLEAR HERE, BUT WHAT I UNDERSTAND IS THAT WHAT HAPPENED IS THAT A SECOND UNIT WAS PURCHASED BY MR. AND MRS. HUMPHREYS APPROXIMATELY TWO TO FOUR MONTHS AFTER THIS APRIL 2012 E-MAIL EXCHANGE OCCURRED. AND THAT WHATEVER WORK IN ROLLING THAT SECOND UNIT INTO THE INITIAL UNIT WERE, THAT WAS ALSO SUBJECT TO WHATEVER THE AGREEMENT WAS BETWEEN THE PARTIES.

AND I HAVE TO SAY, IT WAS AT A CERTAIN LEVEL OF CONCERN THAT -- WHEN I SAY "WHATEVER THE AGREEMENT WAS," IT'S BECAUSE ULTIMATELY IT'S STILL, EVEN TO THIS DAY AFTER ALL THE EVIDENCE, STILL NOT CLEAR WHAT THE AGREEMENT WAS. JUST A LESSON IN OR COMMENT ON THE FACT THAT THESE TYPES OF CONTRACTS, PARTICULARLY WE'RE DEALING WITH TENS OF THOUSANDS, ULTIMATELY HUNDREDS OF THOUSANDS OF DOLLARS, NEED TO BE NAILED DOWN IN DETAIL,

IN WRITING. THAT WRITING SUBSCRIBED TO WITH THE SIGNATURES OF THE PARTIES THAT ARE CONTRACTING.

WITH RESPECT TO THE SECOND PROPERTY, I FIND NO WRITING THAT ACTUALLY DETAILS WHAT WAS TO BE DONE ON THE SECOND PROPERTY OR HOW IT WAS TO BE INCLUDED IN THE INITIAL CONTRACT. I SUPPOSE IT COULD BE CONSIDERED AS SOME FORM OF A CHANGE ORDER THAT THE CODE EVEN REQUIRES CHANGE ORDERS BE IN WRITING AND BE ATTACHED TO THE ORIGINAL CONTRACT.

WHAT I DO FIND HERE IS THAT NOTHING IN THE APRIL 2012 E-MAILS OR THE MEETINGS AND DISCUSSIONS REVEALS SPARTAN AS THE CONTRACTING PARTY WITH THE HUMPHREYS. ALL OF THE LANGUAGE RELATES TO MR. BEREKI INDIVIDUALLY.

MY CONCERN HERE -- AND I AM SORRY IF THIS SOUNDS POLITICAL, BUT I WILL BORROW FROM SOMETHING THAT THEN-SPEAKER OF THE HOUSE NANCY PELOSI SAID WITH RESPECT TO THE ACA, THE AFFORDABLE CARE ACT. WE NEED TO PASS IT SO YOU CAN FIND OUT WHAT'S INSIDE OF IT. HERE WE HAVE A SITUATION WHERE, IN HINDSIGHT, IT -- THE CONTRACT, IN SOME FORM OR FASHION, NEEDED TO BE SIGNED BEFORE WE COULD FIND OUT WHO THE CONTRACTING PARTIES WERE. THAT'S SILLY.

THE ULTIMATE FINDING HERE IS THAT, AS WE SEE, ALL THE PAYMENTS INITIALLY OVER SEVERAL MONTHS WERE MADE TO MR. BEREKI INDIVIDUALLY. MR. BEREKI'S ACCOUNTS

PERSONALLY PAID FOR THE WORK ONCE HE WAS COMPENSATED BY THE HUMPHREYS. THE PAYMENTS TO SPARTAN SHOW UP SOME MONTHS LATER AND THEY DO NOT REFLECT ANY SORT OF RETROSPECTIVE MODIFICATION OF THE INITIAL AGREEMENT OR A SUBSTITUTION OF SPARTAN AS THE CONTRACTOR HERE. AGAIN, THIS IS THE PROBLEM WITH TRYING TO DO THINGS ON AN AD HOC BASIS.

THE COURT NOW FINDS THAT THIS CONTRACT WAS BETWEEN MR. HUMPHREYS AND MR. BEREKI INDIVIDUALLY. THERE WAS NO CONTRACT WITH SPARTAN, NOR WAS THERE ANY MECHANISM OR FORM WITHIN WHICH THE HUMPHREYS COULD UNDERSTAND THAT SPARTAN WAS THE ACTUAL CONTRACTING PARTY AS IS ASSERTED BY MR. BEREKI. GIVEN THOSE CIRCUMSTANCES, SINCE WE KNOW MR. BEREKI DID NOT AND DOES NOT POSSESS A CONTRACTOR'S LICENSE -- AND, ULTIMATELY, I WOULD JUST TELL YOU LAWYERS TO TAKE A LOOK AT A CASE ENTITLED MW ERECTORS VERSUS NIEDERHAUSER. IT'S A CASE OF 2005. I DON'T HAVE THE CITE IN FRONT OF ME AT THE MOMENT. I THINK IT'S REPORTED AT 34 CAL. 4.

THE REASON I CITE TO THE CASE, NUMBER ONE, IT'S A CALIFORNIA SUPREME COURT CASE. NUMBER TWO, IT IS CONSIDERED BY MANY TO BE THE BELLWETHER CASE ON THE ISSUE OF CONTRACTOR RESPONSIBILITY OR UNLICENSED CONTRACTOR RESPONSIBILITY. MW ERECTORS DID NOT HAVE A LICENSE AT THE TIME THAT IT WAS TO DO THE HEAVY STEEL CONSTRUCTION FOR A HOTEL OVER BY DISNEYLAND. SPENT

$2 MILLION PUTTING UP HEAVY STEEL. THERE WAS A DISPUTE BETWEEN THE GENERAL CONTRACTOR OR THE CONTRACTING PARTY, NIEDERHAUSER, AND MW ERECTORS, SO NIEDERHAUSER ELECTED NOT TO PAY THE $2 MILLION TO MW ERECTORS. IT TURNED OUT THAT MW ERECTORS LEARNED IN HINDSIGHT THAT THEY DIDN'T HAVE THEIR LICENSE AT THE TIME AND HAD LOST ITS LICENSE OR DROPPED THEIR LICENSE BY EXPIRATION OF TIME, SO THEY WENT AND GOT THE LICENSE. I DON'T THINK THE WORK HAD BEEN ENTIRELY COMPLETED AT THE TIME THAT IT DID RE-OBTAIN THE LICENSE.

THE SUPREME COURT IN REVERSING THE COURT OF APPEAL ON THIS ISSUE FOUND THAT THE CONTRACTOR'S LICENSE LAW IS DRACONIAN IN ITS EFFECT, BUT THAT'S THE INTENT OF THE LEGISLATURE. THE LEGISLATURE EXPECTS CONTRACTORS TO BE LICENSED AT ALL TIMES DURING THE PERFORMANCE OF WORK ON A PROJECT, AND IN FAILING TO BE SO LICENSED AT ANY POINT IN TIME, SUBJECT TO THE FORFEITURE.

AND SO IN MY OPINION, THE FORFEITURE IS REQUIRED HERE, AND THAT IS DISGORGEMENT. AND I KNOW MR. BISSELL CITED A CASE. I WOULD CITE TO YOU ALATRISTE VERSUS CESAR'S EXTERIOR DESIGNS, INC. THIS IS A CASE AT 183 CAL.APP.4 656, WHICH STANDS FOR THE PROPOSITION UNDER THE STATUTE AUTHORIZING RECOVERY OF ALL COMPENSATION PAID TO AN UNLICENSED CONTRACTOR. THE UNLICENSED CONTRACTOR WAS REQUIRED TO RETURN ALL COMPENSATION RECEIVED WITHOUT REDUCTIONS OR OFFSETS FOR

THE VALUE OF MATERIALS USED IN THE PROJECT.

THERE ARE PLENTY OF OTHER CASES IN THIS PARTICULAR AREA ALL SAYING ROUGHLY THE SAME THING, WHETHER IT COMES TO PAYMENTS FOR MATERIALS OR PAYMENTS TO SUBCONTRACTORS. AS INDICATED BY EXHIBIT 32, THE DISGORGEMENT AMOUNT IS THE $848,000.

THAT, I THINK, TAKES CARE OF THE CROSS-COMPLAINT, THE FIRST CAUSE OF ACTION. NOW, I INVITE COUNSEL TO MEET TOGETHER AND SEE WHERE WE GO FROM HERE.

MR. RUSSO: THANK YOU, YOUR HONOR.

THE COURT: COME BACK AND LET ME KNOW IF YOU CAN DO THAT IN THE NEXT 20 MINUTES. I WOULD APPRECIATE THAT.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: OKAY. THANK YOU, YOUR HONOR.

THE COURT: OKAY.

MR. RUSSO: BY THE WAY, I USED THAT MW ERECTORS CASE RIGHT AFTER IT WAS DECIDED IN ANOTHER CASE WITH JUDGE JOHNSTON FOR DISGORGEMENT, AND I REMEMBER IT BEING THAT CASE AT THE TIME.

THE COURT: IT'S STILL CITED IN AT LEAST ONE OF THE TWO CASES THAT I JUST READ FROM.

MR. RUSSO: YEAH.

THE COURT: I WAS RELATING THE STORY TO ONE OF OUR OUT-OF-COUNTY ASSIGNED JUDGES YESTERDAY IN THE LUNCH ROOM TO WHICH SHE SAID THANK YOU. SHE HAD ALSO USED

THAT CASE ON A NUMBER OF OCCASIONS.

MR. RUSSO: MINE WAS AFFIRMED ALSO IN THIS COURTROOM.

THE COURT: PARDON ME?

MR. RUSSO: THAT ONE WENT UP ON APPEAL AND IT WAS AFFIRMED ON DISGORGEMENT, BUT I REPRESENTED THE PERSON WANTING THE DISGORGEMENT AT THE TIME.

THE COURT: I UNDERSTAND.

(RECESS.)

THE COURT: ALL RIGHT. WHAT'S THE PLAN?

MR. RUSSO: WELL, WE'RE IN MUTUAL AGREEMENT THAT THE REMAINING CLAIMS SHOULD BE STAYED AS THIS ONE PRETTY MUCH CUTS THE LEGS OUT FROM UNDERNEATH EVERYTHING. THE QUESTION WE HAVE, AND I DON'T KNOW THE ANSWER, BUT WE'RE HOPING THAT MAYBE YOU DO, IS, IS THERE A WAY TO HAVE AN ORDER STAY IN THE REMAINING CLAIMS AND HAVE SOME SORT OF JUDGMENT BE ENTERED ON WHAT WE HAVE SO FAR SO THAT COULD POSSIBLY BE TAKEN UP ON APPEAL AT THIS POINT?

THE COURT: I THINK YOU'RE GOING TO END UP HAVING TO DO IT ALL OR NOTHING.

MR. BISSELL: IT WOULD BE SIMILAR TO I THINK IT'S CCP 637, WHICH ALLOWS FOR STAYING OF THE TRIAL OF THE DEFENSE PENDING THE ENTRY OF FINAL JUDGMENT ON OTHER CAUSES OF ACTION. THERE IS CAUSES OF ACTION, BUT THE THINKING IS IT'S JUST SORT OF THE OTHER SIDE OF THE COIN. TO THINK -- OUR THINKING IS THAT WE COULD SPEND

THE NEXT THREE DAYS PUTTING ON EVIDENCE OF DAMAGES THAT AREN'T GOING TO AMOUNT TO THE AMOUNT OF DISGORGEMENT. SO THERE'S REALLY NO POINT OF THAT, BUT THOSE ARE GOOD CAUSES OF ACTION.

NOW, IF THE COURT'S JUDGMENT ON THE FIRST CAUSE OF ACTION IS TAKEN UP ON APPEAL, AND SOMEHOW I DON'T BELIEVE IT WOULD BE, BUT IF IT HAPPENED TO BE OVERTURNED, WE DON'T WANT TO HAVE TO COME BACK AND BE LIMITED TO ONLY TRYING THAT ONE CAUSE OF ACTION, HAVING DISMISSED WHAT ARE ALSO, WE BELIEVE, GOOD MERITORIOUS CAUSES OF ACTION. BUT AS WE SIT HERE TODAY, IT JUST MAKES NO SENSE TO GO FORWARD AT THIS TIME ON ANY OF THOSE CAUSES OF ACTION.

MR. RUSSO: FUNDAMENTALLY, YOUR FINDINGS WOULD ALSO BE THE DEFENSE TO THE PLAINTIFFS' CLAIM IN ITS COMPLAINT. BECAUSE YOU FOUND THAT BEREKI WAS THE CONTRACTOR, HE'S UNLICENSED, AND, THEREFORE, THE GOODS AND MATERIALS SUPPLIED BY SPARTAN, WHICH IS THE CLAIM, WE LOSE BASED ON THAT FINDING. BUT WE HAVEN'T TRIED THAT CAUSE OF ACTION. THAT'S ESSENTIALLY WHAT WE GET. WE'RE IN TOTAL AGREEMENT THAT IT DOES NOT MAKE SENSE TO PROCEED.

MR. BISSELL: AND IT DOESN'T MAKE SENSE TO DISMISS PREMATURELY WHILE THERE IS STILL ANY UNCERTAINTY AS TO THE FINALITY OF THE COURT'S RULING IN THE FIRST CAUSE OF ACTION.

THE COURT: WELL, I'M NOT SURE THAT YOUR APPELLATE PRACTICE IS GOING TO BE SUSCEPTIBLE IN THAT KIND OF PROCEDURE. MY CONCERN IS WHAT THE COURT OF APPEAL EXPECTS IS BASICALLY A JUDGMENT ON ALL OF THE ISSUES. IF THERE'S SOME MECHANISM; I.E., A STAY, I'D LIKE TO KNOW WHAT THE AUTHORITY IS FOR THAT. I AM GOING TO HAVE TO LEAVE THAT TO YOU, BUT IN MY OWN APPELLATE EXPERIENCE, I HAVE, IN ONE CASE, HAD A TRIAL WHERE THE LEAD PLAINTIFF WAS BIFURCATED OUT, CASE TRIED, I LOST. FILED A NOTICE OF APPEAL. MEANWHILE, WE HAD TO COME BACK FOR A SECOND BITE OF THE APPLE WITH RESPECT TO THE BALANCE OF THE CLASS. AND WHAT I DID IS I STIPULATED A JUDGMENT IN FAVOR OF THE CLASS AND AGAINST MY CLIENT, SUBJECT TO REVIEW ON APPEAL OF BOTH HALVES OF THIS CASE. AND THE COURT OF APPEAL, IN THAT PARTICULAR CASE, SUBSCRIBED TO THE APPROACH AND SAID, NO, THIS WAS AN ACCEPTABLE PROCESS. BUT WE HAVE RESOLVED THROUGH THAT PROCESS BOTH THE LEAD PLAINTIFFS' CLAIMS AND THE CLASS CLAIMS. SO EVERYTHING WAS THERE READY FOR THE COURT OF APPEAL TO DECIDE. ULTIMATELY, THAT CASE WENT TO THE STATE SUPREME COURT.

YOU GUYS WANT TO CHECK -- DO MORE RESEARCH THIS AFTERNOON AND COME BACK AND TELL ME IN THE MORNING?

MR. RUSSO: I AM ASSUMING WE COULD CRAFT SOME SORT OF STIPULATION THAT ULTIMATELY --

THE COURT: WHAT YOU SAY MAKES PERFECT SENSE.

MR. RUSSO: MAKE FINDINGS SUCH THAT IT IS THAT YOU FOUND FOR THE AFFIRMATIVE DEFENSE ON THE COMPLAINT ALSO.

MR. BISSELL: WELL, IF I UNDERSTAND YOUR HONOR CORRECTLY, I THINK THE CONCERN IS THAT THE COURT OF APPEALS IS NOT GOING TO BE INTERESTED IN ANYTHING SHORT OF A FINAL JUDGMENT ON THIS, AND THE FINAL JUDGMENT HAS TO INCLUDE ALL CAUSES OF ACTION. IS THAT CORRECT?

THE COURT: PRECISELY. AND, AGAIN, YOU KNOW, I AM ALL FOR SAVING YOUR CLIENTS ON BOTH SIDES AS MUCH MONEY AS POSSIBLE.

MR. BISSELL: I'M NOT SURE A STIPULATION ON OUR PART, EVEN IF -- IT'S GOING TO DO IT. BECAUSE WE WOULD CERTAINLY STIPULATE --

THE COURT: I GUESS THE QUESTION IS WHAT'S THE WORST THAT COULD HAPPEN. IT GOES TO THE DCA, THEY GO WE'RE NOT GOING TO ACCEPT THE IDEA OF THE BALANCE OF A CASE BEING STAYED, SEND IT BACK TO COMPLETE THE CASE AND THEN WE WILL REVIEW IT ON APPEAL.

MR. BISSELL: YEAH.

THE COURT: FINE. IT COMES BACK IN PROBABLY NINE MONTHS TO A YEAR, AND WE GO ON AND TRY THE BALANCE OF THE CASE. I SUPPOSE THAT'S ONE POSSIBILITY. ON THE OTHER HAND, OF COURSE, THAT SUBJECTS ALL OF US TO SOME CRITICISM FROM OUR FRIENDS ACROSS THE STREET AT THE DCA.

MR. BISSELL: I DON'T WANT TO DO THAT.

THE COURT: WELL, I WOULD LIKE TO THINK THAT THEY

WOULD APPRECIATE THE CONCEPT OF NOT CONSUMING A LOT OF EXTRA COURTROOM TIME THAT COULD BE PUT TO OTHER PURPOSES; NOT CONSUMING ANY MORE OF YOUR CLIENT'S MONEY I GUESS IS THE ULTIMATE ISSUE THAT RESOLVES THE CASE. I DON'T HAVE A GOOD SENSE AS TO WHAT A PANEL OF THE DCA WOULD DO OVER THIS.

MR. BISSELL: FRANKLY, YOUR HONOR, I'M NOT OVERLY CONCERNED ABOUT THE PROSPECT OF APPEAL. I BELIEVE THAT THE COURT'S STATEMENT, THE DECISION IS SOUND. AND I HAVE SPOKEN TO MY CLIENTS ABOUT THAT AND WE TALKED ABOUT THE RISK, YOU KNOW, IF YOU DO DISMISS, WHAT ARE THE RISKS? WE HAVE AGREED THAT THE RISK IS MINIMAL. IF NECESSARY, WE WILL DISMISS. WE WOULD JUST PREFER NOT TO.

THE COURT: ALL RIGHT. LET'S ALL BE PRAGMATIC LAWYERS AROUND HERE. AND PRAGMATISM CALLS FOR TRYING TO KEEP THIS AS INEXPENSIVE AS POSSIBLE. TO DO ANOTHER SEVERAL DAYS OF TRIAL, FOR PARTICULARLY NO GOOD REASON, SEEMS TO ME TO BE THROWING IN GOOD MONEY AFTER BAD AT THIS POINT. IT MAY BE THAT THE DCA WILL TURN IT RIGHT AROUND, AS I SAID. IT MAY BE THAT THEY WILL AFFIRM AND THAT WILL BE EFFECTIVELY THE END OF IT.

I LIKE THE IDEA. MAYBE YOU FOLKS, INSTEAD OF COMING BACK TOMORROW, COULD WORK ON SOMETHING OVER THE NOON HOUR AND SEE WHAT YOU PUT TOGETHER.

MR. RUSSO: I AM THINKING ALONG THE LINES OF AN

OFFER OF PROOF ON THE PLAINTIFFS' CLAIMS AND THEN YOU FIND FOR THE DEFENSE ON THAT SO WE WOULD HAVE EFFECTIVELY LAID THAT OUT.

THE COURT: WELL, ON THE PLAINTIFFS' CLAIMS, YEAH, IT'S GOING TO BE A LACK OF STANDING --

MR. RUSSO: SURE.

THE COURT: -- AND THE 7031 ISSUE, THE FACTUAL FINDING THAT SPARTAN WAS NOT THE CONTRACTING PARTY AND HAS NO STANDING IN AND OF ITSELF.

MR. RUSSO: YES, THAT'S WHERE I WAS GOING.

THE COURT: ON THE DEFENSE CROSS-COMPLAINANTS' SIDE, THERE ARE OTHER REMAINING ISSUES WITH RESPECT TO THE TERMINATIONS THAT THE CROSS-COMPLAINANT MAY WISH OR MAY NOT WISH TO HAVE ADJUDICATED AT THIS POINT.

MR. BISSELL: IT'S CLEARLY EXPEDIENCY AT THIS POINT. WE HAVE NOTHING TO GAIN BY GOING FORWARD WITH THE CROSS-COMPLAINT. IT'S JUST A MATTER OF BEING CAUTIOUS AND NOT LETTING GOOD CAUSES OF ACTION GO BY THE BOARD IF -- UNTIL THEY BECOME NECESSARY.

THE COURT: EXCUSE ME FOR A SECOND. I HAVE TO GO. IF YOU WOULDN'T MIND COMING BACK AT 1:45 TO FILL ME IN ON WHERE YOU'RE GOING. MAYBE WE WILL GO ON THE RECORD AT THAT POINT IN TIME. MY APOLOGIES.

MR. RUSSO: THANK YOU, YOUR HONOR.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: THE TRAIN IS LEAVING THE STATION AT THE

MOMENT.

(RECESS.)

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SANTA ANA, CALIFORNIA; MARCH 28, 2017

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AFTERNOON SESSION

(THE FOLLOWING PROCEEDINGS
WERE HELD IN OPEN COURT.)

THE COURT: ALL RIGHT. DO WE HAVE AN ANSWER TO THE GORDIAN KNOT PROBLEM?

MR. BISSELL: WE MIGHT, YOUR HONOR. WE HAVE COME UP WITH SOMETHING THAT'S ACCEPTABLE TO BOTH OF US.

THE COURT: THAT'S HALF THE BATTLE.

MR. BISSELL: IT'S ACCEPTABLE TO THE TWO OF US, BUT THAT DOESN'T NECESSARILY MEAN IT'S GOING TO FLY. WE WILL RUN IT BY YOU.

MR. RUSSO: WE GOT HOUSEKEEPING ON THE COMPLAINT ITSELF, AND WHAT I WOULD LIKE TO DO IS THEN MAKE AN OFFER OF PROOF OF WHAT THE EVIDENCE WOULD BE. THEY ACCEPT THE OFFER OF PROOF, BUT YOU RULE BASED ON THE DEFENSES OF THE LICENSURE AND STANDING AGAINST THE PLAINTIFF ON THAT.

THE COURT: OKAY.

MR. RUSSO: THAT WAY WE HAVE A JUDGMENT ON A COMPLAINT FOR THE SAME REASONS.

THE COURT: OKAY.

MR. RUSSO: AND THEN WE HAVE THE OTHER HOUSEKEEPING.

MR. BISSELL: AS TO THE REMAINING CAUSES OF ACTION ON THE FIRST AMENDED CROSS-COMPLAINT, EVERYBODY IS IN AGREEMENT THAT WE HANDLE IT THIS WAY:

THOSE CAUSES OF ACTION WOULD BE DISMISSED WITHOUT PREJUDICE.

IF JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMES FINAL, THE DISMISSAL WITHOUT PREJUDICE WILL CONVERT TO DISMISSAL WITH PREJUDICE.

PENDING JUDGMENT BECOMING FINAL ON THE FIRST CAUSE OF ACTION, THE STATUTE OF LIMITATIONS ON THE RE-FILING OF THE DISMISSED CAUSES OF ACTION IS WAIVED.

IF THE NEW -- IF A NEW ACTION IS FILED ON THE DISMISSED CAUSES OF ACTION, DISCOVERY IS DEEMED COMPLETED AND WILL NOT BE RE-OPENED.

THE NEWLY FILED CASE WILL BE CONSOLIDATED WITH THE REMANDED CASE FOR TRIAL.

THE COURT: I THINK IT MAKES SENSE. DO YOU?

MR. BISSELL: I THINK IT COVERS IT.

THE COURT: I THINK THAT KEEPS THE DOOR FROM BEING SLAMMED IN YOUR FACE SHOULD IT FOR SOME REASON COME BACK, ON ONE HAND. ON THE OTHER HAND, IT SHOULD COME BACK PER STATUS QUO.

MR. BISSELL: THAT WAS THE INTENT.

THE COURT: AS TO -- TO BE SURE OF WHERE I AM GOING, I HAVE PULLED OUT THE PLAINTIFF'S COMPLAINT, THE COMMON COUNT, AND SERVICES RENDERED, AND COMMON ACCOUNT

OPEN BOOK ACCOUNT. AND I HAVE ALSO IN HAND THE FIRST AMENDED CROSS-COMPLAINT FOR DAMAGES FOR NEGLIGENCE, FRAUD, ALTER EGO, PENALTY, ATTORNEY'S FEES, DISCOURAGEMENT AND RECOVERY AGAINST CONTRACTOR'S LICENSE BOND. I PRESUME YOU TWO WANT PART OF THAT RECOVERY FROM CONTRACTOR'S LICENSE BOND.

MR. BISSELL: WE WANT TO SAY THAT, YOUR HONOR.

THE COURT: OKAY. IS THAT NOT SOMETHING WE SHOULD DEAL WITH NOW AS OPPOSED TO LATER, OR IS THAT AN ISSUE THAT MIGHT BE SUBSUMED BY THIS DETERMINATION OF THE LICENSE?

MR. BISSELL: HERE IS MY THINKING, YOUR HONOR. THE CONTRACTOR'S LICENSE BONDS WERE ISSUED TO SPARTAN CONSTRUCTION.

THE COURT: WHICH I DETERMINED WAS NOT THE CONTRACTING PARTY.

MR. BISSELL: WAS NOT THE CONTRACTOR. NOW SPARTAN DID PERFORM WORK ON THE JOB. AND IF NECESSARY, WE'RE PREPARED TO PUT ON EVIDENCE THAT SPARTAN CONSTRUCTION, ALONG WITH MR. BEREKI, VIOLATED PROVISIONS OF THE CONTRACTOR'S LICENSE LOG, WHICH WOULD MAKE THOSE BONDS LIABLE. AT THIS POINT, WE'RE PREPARED TO DEFER THAT ALONG WITH THE OTHER CAUSES OF ACTION.

THE COURT: ALL RIGHT.

MR. RUSSO: IT'S KIND OF LIKE I FORGOT THEY EXISTED IN THE BEGINNING. IT'S ANOTHER ISSUE.

THE COURT: WELL, WELCOME TO THE BAR EXAM.

MR. RUSSO: YOUR HONOR, SO I THINK THE FIRST STEP WOULD BE THE OFFER OF PROOF.

THE COURT: PHASE ONE.

MR. RUSSO: YES, YOUR HONOR.

THE COURT: THE RUSSO PRESENTATION OFFER OF PROOF. SIR, IF YOU PLEASE.

MR. RUSSO: EXCUSE ME, YOUR HONOR.

THE COURT: IF YOU PLEASE.

MR. RUSSO: IF IT PLEASE THE COURT.

YOUR HONOR, THE PLAINTIFF, SPARTAN ASSOCIATES, WOULD MAKE AN OFFER OF PROOF THAT, IF CALLED, ADAM BEREKI WOULD BE THE WITNESS, AND THE TESTIMONY WOULD BE THAT SPARTAN ASSOCIATES HAD RENDERED GOODS AND SERVICES TO THE HUMPHREYS, THE DEFENDANTS, AT THE FAIR MARKET VALUE FOR THE SERVICES AND GOODS OF $82,821.53 TO BE BACKED UP BY INVOICES AND TESTIMONY ABOUT THE REASONABLE VALUE OF THOSE SERVICES. THAT WOULD BE ON THE FIRST CAUSE OF ACTION, QUANTUM MERUIT.

AND THEN FOR THE SECOND CAUSE OF ACTION, GO HAND IN HAND THAT IT WAS AN OPEN BOOK ACCOUNT. ACCOUNTING WAS RENDERED TO THE HUMPHREYS AS DEFENDANTS THAT -- THEY WERE GIVEN THE ACCOUNTINGS AND THE SUM WAS $82,821.53 THAT WAS STILL DUE. IT WOULD BE CLAIMED ON THE SECOND CAUSE OF ACTION.

THE COURT: AND THOSE CLAIMS, I UNDERSTAND, ARE

BASED UPON THE VIEW OF PLAINTIFF SPARTAN THAT IT WAS THE GENERAL CONTRACTOR ON THE PROJECT?

MR. RUSSO: THAT'S CORRECT, THAT SPARTAN ASSOCIATES WAS THE GENERAL CONTRACTOR, AND THAT IT WAS DULY LICENSED AT ALL TIMES TO PERFORM IN THAT WAY.

THE COURT: OKAY. AND SO BASED ON THAT OFFER OF PROOF, AS WE HAVE JUST RECENTLY DISCUSSED, I WOULD FIND THAT SPARTAN DOES NOT HAVE STANDING, AS I DETERMINED EARLIER TODAY THAT MR. BEREKI WAS THE PURPORTED GENERAL CONTRACTOR ON THE CONTRACT. SPARTAN MAY HAVE BEEN APPARENTLY SUBSTITUTED, BUT IT IS CERTAINLY NOT WITH THE PERMISSION OR AGREEMENT OF MR. AND MRS. HUMPHREYS.

SO BASED ON THAT, I WOULD INDICATE JUDGMENT FOR DEFENDANT ON THE COMPLAINT. DEFENDANTS, PLURAL ON THE COMPLAINT.

THEN MR. BISSELL, I GUESS WE NEED YOUR RECORD WITH RESPECT TO WHAT YOU WANT TO DO OFFICIALLY WITH RESPECT TO THE BALANCE OF THE CAUSES OF ACTION.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE PARTIES HAVE DISCUSSED AND HAVE AGREED AND ARE WILLING TO STIPULATE TO HANDLING THE REMAINING CAUSES OF ACTION ON THE FIRST AMENDED CROSS-COMPLAINT AS FOLLOWS:

THE MANY CAUSES OF ACTION IN THE ENTIRETY WILL BE DISMISSED -- ARE BEING DISMISSED WITHOUT PREJUDICE. IF JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMES FINAL,

THE DISMISSAL WITHOUT PREJUDICE WILL BE CONVERTED TO DISMISSAL WITH PREJUDICE. PENDING JUDGMENT ON THE FIRST CAUSE OF ACTION BECOMING FINAL, THE STATUTE OF LIMITATIONS ON THE RE-FILING OF AN ACTION ON THE DISMISSED CAUSES OF ACTION IS WAIVED.

THE COURT: OR TOLLED?

MR. BISSELL: WELL, ACTUALLY, WE DISCUSSED THAT. I THINK -- I DON'T KNOW THAT TOLLING HELPS BECAUSE, AT THIS POINT IN TIME, ALL OF THE STATUTES WOULD HAVE RUN. WE COULDN'T -- I THINK TOLLING STOPS IT AS OF NOW, AND NOW WOULD BE TOO LATE TO RE-FILE.

THE COURT: UNDERSTOOD. OKAY.

MR. BISSELL: IF A NEW ACTION IS FILED ON THE DISMISSED CAUSES OF ACTION, DISCOVERY IS DEEMED COMPLETED AND WILL NOT BE RE-OPENED. THE NEWLY FILED CASE WILL BE CONSOLIDATED WITH THE REMANDED CASE FOR TRIAL. AND THAT'S -- THAT IS THE STIPULATION.

THE COURT: DOES THAT COMPORT WITH YOUR UNDERSTANDING, MR. RUSSO?

MR. RUSSO: YES, YOUR HONOR. ON BEHALF OF SPARTAN ASSOCIATES, SO STIPULATED.

THE COURT: MR. BEREKI, HOW ABOUT YOU?

MR. BEREKI: SO STIPULATED.

THE COURT: THE COURT ACCEPTS THE STIPULATION. PURSUANT THEN TO MR. BISSELL'S MOTION, THE COURT WILL ORDER THE REMAINING CAUSES OF ACTION, NEGLIGENCE, FRAUD,

ALTER EGO, PENALTY, ATTORNEY'S FEES, AND RECOVERY AGAINST THE CONTRACTOR'S LICENSE BOND TO BE DISMISSED WITHOUT PREJUDICE. THE JUDGMENT WILL BE ON THE SOLE REMAINING CAUSE OF ACTION FOR DISCOURAGEMENT; CORRECT?

MR. BISSELL: CORRECT.

THE COURT: AND THE COURT UNDERSTANDS AND ADOPTS THE CONDITIONAL WAIVER OF THE STATUTE OF LIMITATIONS, THAT CONDITION BEING WHETHER OR NOT THE -- TRULY THE DCA RETURNS THIS CASE FOR RE-TRIAL ON A REVERSAL OF THE COURT'S DETERMINATION.

MR. BISSELL: THANK YOU, YOUR HONOR.

THE COURT: GOOD WORK.

MR. RUSSO: THANK YOU VERY MUCH, YOUR HONOR.

THE COURT: SO MR. BISSELL, YOU'RE GOING TO PREPARE THE PROPOSED JUDGMENT. CIRCULATED, OF COURSE, TO MR. RUSSO AND MR. BEREKI.

MR. BISSELL: WILL DO.

THE COURT: SEND IT OVER HERE. I THINK THERE'S AN APPROPRIATE PERIOD OF TIME WE CAN HOLD IT JUST TO MAKE SURE IF THERE'S SOME OBJECTION, THAT THAT OBJECTION CAN BE MADE AND FILED.

AND WE WILL TAKE IT FROM THERE.

MR. BISSELL: I WILL DO SO. THANK YOU. THANK YOU FOR YOUR ATTENTION TO THIS CASE.

THE COURT: I JUST COMMENT -- I DON'T OFTEN SAY THIS. ONE OF THE INTERESTING THINGS USUALLY IN A TRIAL

OF THIS NATURE, THERE'S A, QUOTE, BAD GUY AND A GOOD GUY. I WOULD SAY ALL THREE OF YOU ARE VERY NICE PEOPLE. I'M SORRY IT CAME TO THIS FOR A LOT OF REASONS. AND SO THE JUDGMENT, YOU KNOW, IS WHAT IT IS. IT'S NOT A REFLECTION ON YOUR HUMANITY OR PERSONHOOD. I WISH YOU WELL.

MR. BISSELL: UNDERSTOOD, YOUR HONOR.

THE COURT: ALL OF YOU.

MR. BISSELL: THANK YOU, YOUR HONOR.

MR. HUMPHREYS: THANK YOU.

THE COURT: TAKE CARE. OH, CAN WE STIPULATE TO THE EXHIBITS BEING RETURNED TO YOU ALL FOR SAFEKEEPING?

MR. RUSSO: I THOUGHT THE COURT WANTED TO KEEP THE EXHIBITS.

THE COURT: GUESS AGAIN.

MR. RUSSO: YES, YOUR HONOR.

MR. BISSELL: YES, YOUR HONOR. OFF THE RECORD.

(OFF THE RECORD.)

//

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )

) SS

COUNTY OF ORANGE )

I, KELVIN K. DO, CSR #13803, COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED: DECEMBER 11, 2017.

Certified Copy; Adam Bereki

Kelvin Khuong Do

Digitally signed by Kelvin Khuong Do
DN: cn=Kelvin Khuong Do, o, ou=Court Reporter, email=kelvinkdo@gmail.com, c=US
Date: 2017.12.12 17:49:20 -08'00'

KELVIN K. DO, CSR #13803

OFFICIAL COURT REPORTER

# Exhibit 2

# City of Newport Beach - Building Division
## Inspection Card

3300 Newport Blvd
Inspection RequestsTelephone (949) 644-3255

Date : 11-14-2012

Permit # : X2012-2116
Job Address: 436 VIA LIDO NORD NB
Owner : HUMPHREYS GARY
Contractor : SPARTAN ASSOCIATES INC THE
Description : 800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE

Plan Check # : 1552-2012
MFP / ELEC
MECH / PLUM

| TYPE | ITEM# | DESCRIPTION | DATE | SIGNATURE |
|---|---|---|---|---|
| COMB | 2200 | Pre-Grade Meeting | | |
| COMB | 2210 | Soil Pipe | | |
| COMB | 2220 | Sewer | | |
| COMB | 2230 | Water Pipe Underground | | |
| COMB | 2240 | Gas Pipe Underground | | |
| COMB | 2250 | Underslab/Floor Mechanical | | |
| COMB | 2260 | Ufer Ground | | |
| COMB | 2270 | Underground Electrical | | |
| COMB | 2280 | Rough Grade Approval | | |
| COMB | 2290 | WQ-Best Management Practices | | |
| COMB | 2300 | Erection Pads | | |
| COMB | 2310 | Foundation/ Setbacks/Footings | | |
| COMB | 2330 | Slab on Grade | | |
| COMB | 2340 | Area Drains | | |
| | | DO NOT COVER/POUR CONCRETE UNTIL ABOVE IS SIGNED OFF | | |
| | | ROUGH | | |
| COMB | 2360 | Masonry Pre-Grout/Wall Steel | | |
| COMB | 2370 | Slab or Deck | | |
| COMB | 2380 | Rough Plumbing | | |
| COMB | 2390 | Gas Pipe | | |
| COMB | 2400 | Rough HVAC | | |
| COMB | 2410 | Hood | | |
| COMB | 2420 | Fireplace Throat | | |
| COMB | 2430 | Under Floor Plumbing | | |
| COMB | 2440 | Under Floor Electrical | | |
| COMB | 2450 | Rough Electric Residential | | |
| COMB | 2455 | Rough Conduit Walls - Commercial | | |
| COMB | 2475 | Rough Wiring Ceilings - Commercial | | |
| COMB | 2480 | Rough Electrical Service | | |
| COMB | 2490 | Floor Framing & Sheathing | | |
| COMB | 2500 | Rough Wall Framing - Commercial | | |
| COMB | 2510 | Roof Framing, Sheathing & Building Ht | | |
| COMB | 3005 | Exterior Shear & Hold Downs | | |
| COMB | 2520 | COMPLETE FRAMING | | |
| | | DO NOT COVER WORK UNTIL ABOVE SIGNED OFF | | |
| | | INTERIOR & EXTERIOR | | |
| COMB | 2540 | Insulation/Densglass | | |
| COMB | 2550 | Drywall | | |
| COMB | 2560 | Suspended Ceiling | | |
| COMB | 2570 | Shower Lath | | |
| COMB | 2580 | Exterior Lath | | |
| COMB | 2590 | Plaster-Scratch | | |
| COMB | 2530 | Other Electrical | | |
| COMB | 2350 | Other Plumbing | | |
| COMB | 2425 | Other Mechanical | | |
| COMB | 2600 | Other Building | | |
| COMB | 2610 | Gas Pressure Test | | |
| COMB | 2617 | Grading / Drainage Final | | |
| COMB | 3000 | Electrical Final | | |
| COMB | 3001 | Mechanical Final | | |
| COMB | 3002 | Plumbing Final | | |
| COMB | 3004 | Fire Dept Final 949/644-3105 | | |
| COMB | 2620 | FINAL BUILDING | | |
| | | DO NOT OCCUPY UNTIL FINAL INSPECTIONS ARE SIGNED OFF | | |

call the inspection request line at 949/644-3255 or visit the City website at http://www.newportbeachca.gov and select Online Services Inspections (only for permits in approved status) must be requested before 8:00 A.M. the day of the inspection

Please use the following list of permit code when calling for an inspection
PRESS:
'0' for **combination / X permit**
'1' for building / B permit
'3' for electrical / E permit
'4' for mechanical / H permit
'5' for grading / G permit
'6' for harbor / M permit
'7' for pool and spa / S permit
'8' for fire / F permit

7/12/13 PARTIAL FOOTINGS SEE PLANS BJ.

Inspector Notes are located on the reverse side.

34-1

# City of Newport Beach — Building Division

PO Box 1768 Newport Beach, California 92658-8915 , Permit Counter Telephone (949)644-3288 Inspection Requests/Telephone (949)644-3255

**COMB Permit No: X2012-2116**

PROJECT NUMBER: 1552-2012

Combination Type - MFP/ ELEC/ MECH/ PLUM/

**Job Address:** 436 VIA LIDO NORD NB
**Description:** 800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE 2ND FLOOR UNITS (B & C) TO CREATE 1, REROOF THE ENTIRE HOUSE "WORK IN PROGRESS"

**Inspector Area:** 1
TOGETHER

Legal Desc.: P M 105-43 PAR 1 UNIT 3 OF PROJECT LOCATED ON AP 423-191-08

INSPECTOR

| | | | | | |
|---|---|---|---|---|---|
| Owner: | HUMPHREYS GARY | Contractor: | SPARTAN ASSOCIATES INC THE | Architect: | OVERLEY RICK |
| Address: | 505 AUGUSTA DR<br>MORAGA CA 94556 | Address: | 436 VIA LIDO NORD #B<br>NEWPORT BEACH CA 92663 | Address: | 13221 SAFFORD ST<br>GARDEN GROVE CA 92843 |
| Phone: | | Phone: | 949-241-6693 | Phone: | 714-537-2132 State Lic:9858 |
| Applicant: | BEREKI ADAM | Con State Lic: | 927244 | Engineer: | WONG ARIV NATHANIEL |
| Address: | 436 VIA LIDO NORD #B<br>NEWPORT BEACH CA 92663 | Lic Expire: | 01/31/2013 | Address: | 180 S PROSPECT AVE #110<br>TUSTIN CA 92780 |
| Phone: | 949-241-6693 | Bus Lic: | BT30039938 | Phone: | 714-368-9898 State Lic:C-055045 |
| | | Lic Exp Date: | 06/30/2013 | | |
| | | Workers Compensation Insurance | | Designer: | |
| | | Carrier: | NORGUARD INS | Address: | |
| | | Policy No: | SCWC059550 | | |
| | | Expire: | 07/05/2013 | Phone: | |
| | | Building Setbacks: | Rear: / | Special Conditions: | C2012-014 |
| | | | Front: / | | |
| | | | Left: / | | |
| | | | Right: / | | |
| | | Use Zone: | | | |
| | | Parking Spaces: | 0 | Fire Hazard Zone: | N |

Code Edit : 2010
Type of Construction: V - B
Occupancy Group: B
Added /New sq.ft. Bldg: -188
Added /New sq. ft. Garage: 0
No of Stories: 2
No Units : 2
Bldg Height: .0
Bldg Sprinklers: N
Flood Zone:
Issued Date: **11/14/2012**

2-15

CANCEL
EXPIRED
Date: 10-4
Unreadable:
80% or 100% refund
to whom:
Scan plan
Discard plan
(work started)
(no work started)
Refer to Inspection
2851
Insp. initials:

INSTALL OR VERIFY SMOKE AND CARBON MONOXIDE DETECTORS ARE EXISTING PER CRCR 314.1 & 315

| | | | | | |
|---|---|---|---|---|---|
| Construction Valuation: | $400,000.00 | | | | |
| Building Permit Fee: | $2,806.00 | Solar System PC: | $0.00 | Planning Department | Fire Department |
| Plan Check Fee: | $2,020.32 | Excise Tax: | $0.00 | Plan check Fee : | $31.20 Fire Inspection: $0.00 |
| Overtime Plan Ck: | $0.00 | | | Fair Share : | $0.00 Fire Plan Rev: $0.00 |
| Investigation Fee: | $2,806.00 | | | SJH Trans : | $0.00 Demolition Fee: $0.00 |
| Record Management : | $240.00 | Grading Permit Fee: | $0.00 | In-lieu Housing Fee : | $0.00 Building Dept Adm $0.00 |
| Energy Compliance: | $240.00 | Grading PC Fee: | $0.00 | Public Works Department - | General Service $0.00 |
| CA Seismic Safety : | $0.00 | WQ Insp. Fee : | $0.00 | Park Dedication : | $0.00 Refund Deposit $0.00 |
| Disabled Access : | $0.00 | | | P/W Plan Check : | $0.00 |
| Fee Increase: Fee: | $0.00 | Electrical %: | $392.84 | San Dist : | $0.00 |
| Additional Fee : | $0.00 | Mechanical %: | $280.60 | NMUSD Fee: | $0.00 $0.00 |
| Hazardous Mat : | $0.00 | Plumbing %: | $561.20 | | $0.00 |
| Building Green Fee : | $16.00 | | | | |
| TOTAL FEE : | $9,394.21 | Plan Check Fee : | $2,020.32 | Fee Due at Permit Issuance : | $7,373.89 |

PROCESSED BY: LD

ZONING APPROVAL: BMZ

GRADING APPROVAL:

PUBLIC WORKS APPROVAL:

PLAN CHECK BY: AN

APPROVAL TO ISSUE: AN

*PERMITS EXPIRE 180 DAYS AFTER ISSUANCE OR LAST VALID INSPECTION.*

R 34145

2074

City of Newport Beach — Buildi.. ivision — PLUMBING Permit No: P2013-0

PO Box 1768 Newport Beach, California 92658-8915 Permit Counter Telephone (949)644-3288 Inspection Requests/Telephone (949)644-3255

UTC ON SPREADSHEET 4/11/13

INSPECTOR

) Address: 436 VIA LIDO NORD Bldg: 1 Floor: Suite:
scription of Work: PLUM - SEWER LINE RPR
X2012-2116
pector Area: 1 Code Edit 2010
gal Description: P M 105-43 PAR 1 UNIT 3 OF PROJECT LOCATED ON AP 423-191-08
GETHER

'ner: HUMPHREYS GARY
dress: 505 AUGUSTA DR
MORAGA CA 94556
one:
ued Date: 04/11/2013
cessed By:

Contractor: SPARTAN ASSOCIATES INC THE
Address: 818 SPIRIT
COSTA MESA CA 92626
Phone: 949-241-6693
Con State Lic: 927244
Lic Expire: 01/31/2015
Bus Lic: BT30039638
Lic Exp Date: 06/30/2013

Worker's Compensation Insurance -
Carrier : NORGUARD INS
Policy No: SPWC359950
Expire : 07/05/2013

FEES

| athroom Fixtures | | | Kitchen Fixtures | | | Misc. | | | Misc. | | | Other | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| oilet: | 0 | $0.00 | Kitchen Sink: | 0 | $0.00 | Water Piping: | 0 | $0.00 | Roof Drain: | 0 | $0.00 | | $0.00 |
| idet | 0 | $0.00 | Garbage Disp: | 0 | $0.00 | Water Softener: | 0 | $0.00 | Grease Trap: | 0 | $0.00 | | $0.00 |
| rinal | 0 | $0.00 | Bar Sink: | 0 | $0.00 | Water Heater: | 0 | $0.00 | Grease Interceptor: | 0 | $0.00 | | |
| ath Tub: | 0 | $0.00 | Vegetable Sink: | 0 | $0.00 | Gas up to 4 outlets: | 0 | $0.00 | P-Trap: | 0 | $0.00 | Record Mgmt Fee: | $1.00 |
| hower Stall: | 0 | $0.00 | Ice Maker: | 0 | $0.00 | Gas over 4 outlets: | 0 | $0.00 | Sewer | | | Investigation: | $0.00 |
| Vash Basin: | 0 | $0.00 | Dishwasher: | 0 | $0.00 | Backflow up to 2": | 0 | $0.00 | Sewer: | 0 | $0.00 | Plan Check: | $0.00 |
| ydro-Mass Tub: | 0 | $0.00 | Lndry/Trap: | 0 | $0.00 | Backflow over 2": | 0 | $0.00 | Sewer Alter/Repair: | 1 | $32.00 | Issuance: | $0.00 |
| loor Sink: | 0 | $0.00 | Regulator: | 0 | $0.00 | Hose Bibb: | 0 | $0.00 | Sewer Abandon: | 0 | $0.00 | Supplemental Fee: | $9.00 |
| loor Drain: | 0 | $0.00 | Lawn Sprinkler: | 0 | $0.00 | Drinking Fountain: | 0 | $0.00 | | | | | |

TOTAL: $42.00 Plan Check Fee : $0.00 Fee Due at Permit Issuance : $42.00

*PERMITS EXPIRE 180 DAYS AFTER ISSUANCE OR LAST VALID INSPECTION*

3A-3

2075

# Exhibit 3

SPARTAN
CONSTRUCTION
949 241 6693

# Exhibit 4

1/11/13

# Work Order

**Russell's Crane Service, Inc.**

1645 W. Orangewood Avenue
Orange, CA 92868

Phone: 714-771-8522
Fax: 714-771-7083

| Date | Work Order # |
|---|---|
| 1/11/2013 | 39758 |

| Bill To: | Job Location: |
|---|---|
| Spartan Construction<br>818 Spirit<br>Costa Mesa, CA 92626 | Friday, 10:30 AM<br>Humphries Residence Pg. 888 J-7<br>436 Via Lido Nord<br>(xst: Via Jucar)<br>Newport Beach, CA 92663 |

| P.O. # | Originating Office | Terms | Time Required | Ordered By |
|---|---|---|---|---|
| | Orange | C.O.D. | 2-3 hrs. | Adam |

| Equipment | Description of Work | Amount |
|---|---|---|
| T-30 | Lift 5 each beams up, 1,000#, 22' up, 60' back | |

RELEASE OF LEGAL LIABILITY - READ CAREFULLY. The undersigned hereby releases and further agrees to indemnify and hold harmless Russell's Crane Service Inc., its owners, agents & employees from all liability or claims resulting from damages or injury to persons or personal property resulting from any action or failure to act by R.C.S. Inc., its equipment and/or personnel on or near the site of the requested work, including but not limited to all underground utilities, installations or obstructions. This release applies to all possible claims or litigation except those arising through the sole negligence or willful misconduct of R.C.S. Inc., except those waived, and R.C.S. Inc. is not responsible for damages occurring from rigging, loading or damages to sidewalks, lawns, driveways or other real/ personal property adjacent thereto.

Returned checks for any reason are subject to a $25 service charge.

Date:

Signature at Start of Job:

Signature at Job Completion:

110 - $130 per hr., 2 hr. minimum. All time charged port to port.

**Total** $0.00

33-1

Harrington Geotechnical Engineering, Inc.

July 25, 2013

Mr. Adam Bereki
**SPARTAN CONSTRUCTION**
818 Spirit
Costa Mesa, CA 92626

**Subject:** **Preliminary Geotechnical Investigation for Remodel and Addition to Existing Two-Story Residential Structure at 436 Via Lido Nord, Newport Beach, CA**

**HGEI Project No. 13-01-3181**

Dear Mr. Bereki:

This report presents the results of a geotechnical investigation of the subject site. The investigation was conducted in accordance with generally accepted geotechnical engineering practice in this area.

Preliminary plans and information furnished to this office were used in outlining the scope of the investigation.

Based on analysis and evaluation of the data obtained it has been concluded that construction of the subject improvements are feasible from a geotechnical engineering standpoint provided the recommendations presented herein are incorporated into the design and construction.

Thank you for this opportunity to be of service. If you have any questions concerning this report or if we can be of further assistance, please call at your convenience.

Very truly yours,

**HARRINGTON GEOTECHNICAL ENGINEERING, INC.**

Joseph L. Welch, P.E., G.E.
Senior Geotechnical Engineer

REGISTERED PROFESSIONAL ENGINEER
JOSEPH L. WELCH
No. GE2239
EXP. 7/31/14
GEOTECHNICAL
STATE OF CALIFORNIA

Distribution: (1) file *3181 Prelim Rpt.docx*
(5) US Mail

1590 N. Brian Street, Orange, CA 92867-3406 FAX (714) 637-3096 PHONE (714) 637-3093
Please visit our website at www.harringtongeotechnical.com

33-2

# INVOICE

California GLASS & WINDOW CORPORATION

2915 Red Hill Avenue, Bldg. D-100
Costa Mesa, California 92626
Phone: (714) 434-3800
Contractor's Lic #508502

| | |
|---|---|
| Date: | March 26, 2013 |
| CGW Control #: | 20130098 |
| P.O. #: | Sparten-Humphreys Downstairs |
| Salesperson: | Jeff Conkle |
| Mfg/Shipper #: | "Milgard" #1391541 |
| Mfg/Shipper #: | |
| Mfg/Shipper #: | |

**SOLD TO:**

Spartan Construction ATT: Adam Bereski
818 Spirit
Costa Mesa, CA 92626

(949)241-6693

**JOB ADDRESS IF DIFFERENT:**

Manufacturers projected delivery date to the job-site is 4/24/13.

**436 Via Lido Nord**
**Newport Beach, CA 92663**

## Contract Description

*Contract* for 8 windows and 1 door by *"Milgard"* all being dual pane, espresso color vinyl exterior and white color vinyl interior with options as listed. These units have SunCoat glass with accessory package and glass breakage warranty.

**Style Line Series** nail-on double vent above 3 picture windows
1- 89 1/8 X 71 XOX/O-O-O with bottom being tempered
**Style Line Series** nail-on single hung window
1- 23 ½ X 38 3/4 with matelux obscure glass, bottom being tempered
**Style Line Series** nail-on double vent sliding windows
1- 100 ½ X 26 XOX
1-100 ½ X 39 XOX
**Style Line Series** nail-on horizontal sliding windows
1- 34 ½ X 25 XO with tempered matelux obscure glass
1- 71 ½ X 26 OX
1- 44 1/4 X 23 3/4 XO
**Style Line Series** nail-on awning window
1- 28 3/4 X 26 with tempered matelux obscure glass
**Tuscany Series** nail-on sliding patio door
1- RO 72 X 80 OX with a keyed lock

*X - sliding panel as viewed from the exterior of the home*

| | | |
|---|---|---|
| $6,067.44 | **Total Amount of Contract** | |
| $6,067.44 | **Payment With Order** | Pd Ck #1129 |
| | **Payment Due At:** | |
| | **Payment Due At:** | |
| $0.00 | **Paid In Full:** | |

**I acknowledge the satisfactory completion of the above described work :**

33-3

THE SPARTAN ASSOCIATES, INC.

Employee Name: MEI [redacted]

| Week: 3-8-12 | Log In | Log Out | Log In | Log Out | Hrs Worked | |
|---|---|---|---|---|---|---|
| Monday 12-3 | 8:00 | 12:30 | 12:30 | 4:30 | 8 | |
| Tuesday 12-4 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Wednesday 12-5 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Thursday 12-6 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Friday 12-7 | 8:00 | 12:00 | 12:30 | 2:00 | ~~5.5~~ 6.0 | 38.0 |
| Saturday — | | | | | | |
| Sunday — | | | | | | |
| Week: 12-10 -- 12-14 | | | | | | |
| Monday 12-10 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Tuesday 12-11 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Wednesday 12-12 | 8:00 | 12:30 | 1:00 | 4:30 | 8 | |
| Thursday 12-13 | 8:00 | 12:00 | 12:30 | 4:30 | 8 | |
| Friday 12-14 | 8:00 | 12:15 | 12:45 | 4:30 | 8 | 40.0 |
| Saturday | | | | | | |
| Friday | | | | | | |
| | | | | Total: | 78.0 ✓ | |

33-4

2082

325

Anaheim Heating & Air Conditioning
With an Eye on Excellence
est. 1962

1418 South Central Park Avenue
Anaheim, California 92802
(714) 772-9699 Ph
(714) 772-0668 Fx
www.AnaheimHtgClg.com
License: #784141

# PROPOSAL NUMBER 5566

| | | | |
|---|---|---|---|
| **Submitted To:** | SPARTAN CONSTRUCTION = ADAM | **Date:** | 3/27/2013 |
| **Street:** | 818 SPIRIT | **Job Name:** | KAREN & GARY HUMPHREYS |
| **City, ST Zip:** | COSTA MESA CA 92626 | **Job Location:** | 436 VIA LIDO NORD #B NEWPORT BCH. |
| **Phone:** | 949-241-6693 **FAX:** N / A | **Job Phone:** | |

**We hereby submit specifications and estimates for:**

INSTALLATION OF CENTRAL GAS FORCED AIR HEATING. INSTALLED EQUIPMENT & SCOPE OF WRK. AS FOLLOWS;

_ TRANE XB90, TUC1B060A9361A ( 60K BTU / 92% AFUE / SINGLE STG. HTG. ) CONDENSING GAS FURNACE
_ WHITE RODGERS 1F80-261 ELECTRONIC / PROGRAMABLE THERMOSTAT.

_ CITY BUILDING PERMITS, FURNACE CLOSET CONSTRUCTION AND ASBESTOS DUCT WRK. ABATEMENT BY OTHERS. WILL REMOVE AND DISPOSE OF OLD EQUIPMENT & ALL WRK. REL;ATED TRASH. WILL FABRICATE & INSTALL STATIONARY SUPPLY PLENUM & TRANSITION SLEEVE. INSTALL NEW FURNACE ON AFTER MARKET FILTER BASE W/ THROW AWAY FILTER. REPLACE GAS SHUT-OFF VALVE, GAS CONNECTOR AND LINE CORD. INSTALL CONDENSATE PUMP WITH COPPER DRAIN LINE TO APPROVED DRAIN SITE. INSTALL FURNACE VENT PIPE AND WALL TERMINATION KIT ( PRE-DETERMINED LOCATION ). ENLARGE ( 3 ) REGISTER BOX OUTLETS. RE-DUCT SYSTEM FOR PROPER AIR-FLO USING JPL , R-4.2 RATED TYPE FLEXIBLE DUCT, RELATED METAL FITTINGS & CONNECTORS. INSTALL AJUSTABLE BAR STYLE REGISTERS THRU-OUT HM. / BAR STYLE RETURN AIR GRILLES. INSTALL THERMOSTAT ( FAU CLOSET WALL ) SYSTEM COMPLETELY INSTALLED AND READY TO OPERATE WITH 1 YR. PARTS AND LABOR WARRANTY. TRANE WARRANTYS OF 5 YRS. FUNCTIONAL SMALL PARTS, LIMITED LIFE-TIME HEAT EXCHANGER.

**We propose to furnish material and labor, complete in accordance as specificied above for the sum of: $4, 638.00**
**Payment to be made as follows: 100% On Completion**

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications in involving extra costs will be executed only upon written orders, and will become and extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyound our control. The owner to cary fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. This proposal may be withdrawn by us if not accepted in 30 days.

**Authorized Signature:** Scott Siegel

**NOTICE TO OWNER:** Contractors are required by law to be licensed and regulated by the contractor's state license board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:
Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95827.

Acceptance of Proposal:The above prices are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Any changes or alterations to the above will be an "Extra" to theis contract, and no further work will be performed until a "Change Order" has been signed. You the buyer, may cancel this transaction at any time prior to the third business day after the date of this transaction.
**Authorized Signature:** _____ **Date of Acceptance:** _____

**NOTICE TO OWNER:** (Section 7019 Contractors License Law) Under the Mechanics' Lien Law, any contractor, subcontractor, laborer, materialman or other person who helps to improve your property and is not paid for his labor, services, or material, has a right to enforce his claim against your property. Under the law, you may protect yourself against such claims by filing, before commencing such work of improvement, and original contract for the work of improvement of a modification hereof, in the office of the county recorder of this county where the property is situated and requiring that a contractor's payment bond be recorded in such office. Such bond shall be in an amount not less than fifty percent (50%) of the contract price and shall, in addition to any conditions for the performance of the contract, be conditioned for the payment in full of the claims of all persons furnishing labor, services, equipment or materials for the work described in said contract.
**CALIFORNIA PRELIMINARY NOTICE:** Section 1193(c) California Code of Civil Procedure requires us to notify you "that if bills are not paid in full for Labor, Services, Equipment or Materials furnished, or to be furnished, the improved property (which is described hereon) may be subject to mechanics' liens."



335

License # 826141
Proposal By: Jay C. Bagnall

# Pro Coat, Inc.

## Contract Proposal

**INSURED** **BONDED**

1131 North Citrus Street, Orange, Ca 92867 888.3.PRO.COAT 714.639.7403 ph. 714.639.7405 fax

Waterproof Deck Coatings Below Grade Waterproofing Concrete Repair and Resurfacing Concrete Coatings, Sealing, Staining, and Polishing

**Bid #:** _____

**Date:** 03/22/13

**Submitted to:** Spartan Construction

**Address:** 818 Spirit

**City:** Costa Mesa **State:** CA **Zip:** 92626

**Contact:** Adam Bereki **Office Phone:** _____ **Fax:** _____

**Email Address:** adam@thespartanassociates.com **Mobile Phone:** (949) 241-6693

**Job Name:** Humphreys Residence

**Job Address:** 436 Via Lido Nord

**City:** Newport Beach **State:** CA **Zip:** _____

**Superintendent:** Lyman Emmer **Mobile Phone:** (714) 749-5400 **Job Phone:** _____

For California Preliminary 20-Day Notice (See Civil Code Section 3097 & 3098)

**Owner Name:** _____

**Owner's Address:** _____

**City:** _____ **State:** CA **Zip:** _____

**Mobile Phone:** _____ **Office Phone:** _____ **Fax:** _____

**Standard Notations:**

When proposals are made from plans, field measurement of application shall prevail and contract pricing will be adjusted accordingly.

Any alteration or deviation from the signed contract will become an extra charge over and above the contract price. Any item such as sloping, drains, crickets, or other items not directly contained in the specific specification is additional unless outlined in this contract.

Specifications are available for any contract proposal. It is the General Contractor's and homeowner responsibility to request, read and understand these specifications (especially note items regarding sloping, flashing details, railing impediments and plywood gapping).

Pro Coat will not be responsible for any damage or cracking that may occur due to structural inadequacies, abuse, deterioration, or leakage due to contiguous material failure.

Because of seismic activity, unknown soil conditions, and methods used in installing original surfaces, Pro Coat cannot warrant crack repairs and cannot be held responsible should cracks reappear, although every effort is made by Pro Coat to make said repairs permanent.

Pro Coat requires periodic inspection and, if necessary, repairs and/or reseal to maintain specified warranty.

Proposal is subject to an approved credit check that is hereby authorized. Prices, specifications & conditions of this proposal set forth in the attached "Description of Work To Be Performed" are satisfactory & hereby accepted. Pro Coat is authorized to do the work specified. Payment terms are satisfactory. Prices are subject to change SIXTY (60) DAYS after bid date. Proposal prices are subject to revision 1-year after the contract is awarded; or upon notification of a material price increase of 10% or more from a Pro Coat vendor or manufacturer; or as a result of a 5% or more increase in Pro Coat's insurance or labor costs.

**Customer Initials** _____

*Shoreline Fabricators, Inc.*

5267 Warner Ave., Suite #137
Huntington Beach, Ca. 92649
Ph. 562 424-4744, Fax 562 424-4997
Contractors License # 641234

# Invoice

| DATE | INVOICE # |
|---|---|
| 4/19/2013 | 9395 |

| BILL TO | PROJECT |
|---|---|
| Spartan Construction<br>818 Spirit<br>Costa Mesa, Ca. 92626<br>Attn: Lyman Emmer | 436 Via Lido Nord<br>Newport Beach, Ca. |

| P.O. NO. | PROJECT |
|---|---|
| | |

| ITEM | AMOUNT |
|---|---|
| To fabricate and install one 10' long deck gutter. Gutter to be made from 24 Ga. stainless steel with two 3" long no-hub thunderbird drains at each end. | 1,025.00 |

Please remit to above address.

**Total** $1,025.00

Please Pay By Invoice.
1.5% per month interest will be charged on all past due accounts. Buyer agrees that in the event collection becomes necessary, Buyer shall pay all collection costs including court cost and reasonable attorney fees.

HELIX Environmental Planning, Inc.
7578 El Cajon Boulevard
Suite 200
La Mesa, CA 91942
619.462.1515 tel
619.462.0552 fax
www.helixepi.com

HELIX Environmental Planning

January 16, 2013

Adam Bereki
Spartan Construction
818 Spirit
Costa Mesa, CA 92626

**Subject:** **Letter Proposal/Agreement to Provide Environmental Consulting Services for the Residential Remodel in Newport Beach**

Dear Mr. Bereki:

HELIX Environmental Planning, Inc. (HELIX) is pleased to submit this letter proposal/ agreement (Agreement) to Adam Bereki (Client) to provide acoustical consulting services for the remodel of a multi-family residence (Project).

## PROJECT UNDERSTANDING

HELIX understands that the Project involves the remodel of a single building with stacked separate family residences sharing a common floor/ceiling. The Project site is located at 436 Via Lido Nord in Newport Beach, California.

## SCOPE OF SERVICES

**Task 1**:

- Conduct a telephone consultation on floor/ceiling design methods (completed)
- Conduct a field inspection of the residential unit to look at the floor/ceiling assembly, which has the upper floor deck removed.
- Discuss methods for controlling noise impacts from the upper unit to the lower unit with the final installation of a hard surface flooring assembly in the upper unit. Included in the discussion will be maintaining the assembly effectiveness with the installation of "canned lighting" and air conditioning duct drops in the downstairs ceiling.

33-8

# Exhibit 5

NOTICE OF CESSATION OF LABOR

To: The Spartan Associates, Inc.
Attn: Adam Bereki President
818 Spirit
Costa Mesa, CA 92626

Re: 436 Via Lido Nord, Newport Beach CA 92663

Dear Mr. Bereki:

In light of the current and pending "red tagged" status of the above referenced project as initiated by the City of Newport Beach, and the pending project reconciliation/audit currently being undertaken by Bryan Nickel with your anticipated cooperation:

NOTICE IS GIVEN, that effective immediately, all construction related work and design work provided by you either directly or indirectly to the project, including the furnishing of labor and/or materials and/or professional services shall cease. This notice of cessation of construction and related activities shall remain in effect and shall be binding until further notice from the undersigned.

Dated: August 28, 2013

_____
Owner

000134

38-1

0176.5

# Exhibit F

Electronically Filed by Superior Court of California, County of Orange, 06/04/2025 04:02:00 PM.
30-2015-00805807-CU-CO-CJC - ROA # 369 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

Adam Bereki
c/o 3649 Metter St.
Las Vegas, NV 89129
949.241.6693
Abereki@gmail.com
www.thespiritoflaw.com

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**FOR THE COUNTY OF ORANGE– CENTRAL JUSTICE CENTER**

The Spartan Associates, Inc.

Plaintiff and Defendant,

vs.

Karen Humphreys and Gary Humphreys,

Defendants / Cross-Complainants,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2015-00805807
Related Case No.: 30-2025-01459684 (Unlawful Detainer)
Related Appeal Case No.: 30-2025-01482941

**FIRST AMENDED DECLARATION OF ADAM BEREKI WITH SUPPORTING EXHIBITS 6-13 (FILED IN SUPPORT OF MOTION TO VACATE ROA 361)**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

The following Declaration and the Exhibits annexed hereto present additional evidence of the extrinsic fraud and fraud on the court alleged in this case. They Declaration and Exhibits are intended to be incorporated in the Motion to Vacate Void Judgment I filed on May 28, 2025. These Declaratory statements shall overrule those of my previous Declaration incorporated in the Motion.

Date: June 4, 2025

By: _____
Adam Bereki

## FIRST-AMENDED DECLARATION OF ADAM BEREKI

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that:

1. I have personal knowledge of the facts herein, except where stated on information and belief.
2. This declaration is fully incorporated in the Motion to Vacate (ROA 361).
3. While the Motion is titled "Motion to Vacate" my intent is that it is an Independent Action in Equity and invokes the inherent equity jurisdiction of the Superior Court of California as stated therein.
4. The 2017 judgment was a bill of pains and penalties, procured through extrinsic fraud and fraud on the court, falsely alleging I personally contracted and performed work, with no known evidence I preformed work as required by CACI 4560(3). The $930,000 penalty under § 7031(a) and (b) required me to repay compensation already returned through Spartan's licensed work, constituting a duplicative criminal fine under Cal. Penal Code § 15 for the same offense as § 7028, imposed through extrinsic fraud and fraud on the court. The Humphreys lacked standing and capacity to prosecute a penal action, as no sworn information or indictment was filed and no criminal complaint was served on me. Each constitutional violation listed occurred, causing the summary suspension of my vested right to act as the qualifying individual on a general contractor license under § 7071.17 when I could not afford to pay the judgment. This unlawful suspension, another bill of pains and penalties, resulted in an estimated $3 million in lost earnings. These lost earnings are based on estimated income losses from 2017–2025 and are attributable to earnings that would have flowed through to me as the qualifying individual of a general contractor license whether Spartan's or any other I qualified for. I have incurred additional losses of over $5 million dollars in investigation and defense time to vacate this void judgment, calculated as hours spent at the rate of $300 per hour. This time is partially evidenced by my filings on the dockets of each case included as RJN Ex's 1-12, and the Exhibits attached to the Ex parte Application for Emergency Stay filed on 3/14/25 in this case, (ROA's 306-322). Expenses of approximately $1 million include legal fees, medical bills (emotional, psychological, and physical distress), office and stationary supplies

and equipment, gas, court parking, etc. Upon judgment in my favor, or before if time permits, I will file a supplemental declaration with a detailed accounting of all lost rights property, and damages (e.g., ~$1.20 million in home equity), supported by financial records and affidavits.

5. The summary suspension of my contractor's license under Cal. Bus. & Prof. Code § 7071.17, ninety days after the April 20, 2017, judgment (ROA 200), deprived me of my liberty to pursue my livelihood as a general contractor without a judicial hearing or appeal process, constituting a bill of pains and penalties (Cal. Const. Art. I, § 9. U.S. Const. Art I. §10); As the Qualifying Individual for The Spartan Associates, Inc. (License #927244), I held a vested right, which was suspended or revoked despite evidence that Spartan was the contractor, as shown by Newport Beach building permits and the Humphreys' payments of $758,000 to Spartan as provided in the citations of evidence in the Memorandum of Points and Authorities of this Motion. I am not aware of any evidence presented by the Humphreys that I personally performed licensed work rendering the judgment and suspension void.
6. I relied on Karen and Gary Humphreys, William Bissell, and Judge Chaffee's representation that the proceedings in the Superior Court of California for the County of Orange, Case No. 30-2015-00805807 were civil as opposed to criminal.
7. I was never told I was being subjected to highly penal/criminal proceedings and that my vested right to act as a qualifying individual would be summarily suspended or revoked as additional punishment, thereby denying my right to occupation in my profession as a general contractor.
8. I was never informed of my right to assistance of counsel prior to trial or appeal to prepare a meaningful and substantive defense and did not receive assistant counsel at trial, on appeal, or anytime after, despite my request (RJN, Ex. 6 [Denial of Request for Counsel, U.S. District Court].
9. At the time of the trial, I was not able to meaningfully and substantively represent myself because I had not received any formal training or education in civil and criminal procedure before trial or on appeal. I had little if any involvement in the criminal aspect of prosecution during my time as a police officer as my duties focused on investigation, apprehension, and reporting, not prosecution/criminal procedure.

10. I waived trial by jury, based on my belief and the representations of Karen and Gary Humphreys, William Bissell, and Judge Chaffee, that I was facing civil proceedings and that the proceedings would have the sanction of law and recognize and honor my inalienable and constitutionally recognized rights to liberty, property, privacy etc.
11. Had I known I was being subjected to highly penal/criminal proceedings including the deprivation of my right to earn a living as a general contractor, I would have objected to any such unlawful proceedings prosecuted by the Humphreys and Bissell without lawful authority and in violation of my due/judicial process rights.
12. I am not aware of any evidence of damages that the Humphreys presented at trial that I or Spartan caused.
13. I am not aware of any evidence presented by the Humphreys at trial that I profited from their project and was thereby enriched, unjustly or otherwise.
14. The fine was excessive as my qualifying net worth (independent of disability pension and the ~$82k owed by the Humphreys to Spartan, some which would have passed through to me) at the time was approx. $23,000. The judgment was more than forty times this amount. This excessiveness resulted in the suspension/revocation my vested right to work as a general contractor under § 7071.17, resulting in an additional ~$3 million dollar penalty due to lost work as I was unable to pay the judgment, obtain a payment bond, or obtain vacatur in any court of California or the United States and ultimately was forced into bankruptcy. I repeatedly asked the Humphreys to come to an agreement so that I could notify the licensing board and have my qualifying individual status reinstated and resume work as a general contractor. They offered to settle for $300,000 which was still more than times my qualifying net worth.
15. The Humphreys terminated Spartan from the project in August 2013. I cannot recall if Spartan received a "Notice of Cessation of Labor". But if not, I believe it was produced by the Humphreys in discovery (Ex. 5). The Notice, dated August 18, 2013, addressed to Spartan (not me individually), orders Spartan to cease all construction activities at the Humphreys Project. I have never received a similar notice and believe this further evidences the Humphreys knew their agreement was with and/or the work was performed by Spartan. See also the Humphreys Motion for Summary Judgment (ROA 66, p.ii) representing to the court that the "undisputed facts" were that "In April of 2012 The Spartan Associates entered into an agreement with the Humphreys for

the performance of home improvement work on the Humphreys condominium unit" and that "The home improvement work to be performed by The Spartan Associates, Inc. on the Humphreys condominium unit had a value in excess of $500." I believe the Humphreys and Bissell also knew that they could not support a claim under §7031(b) unless these "undisputed facts" were swept under the rug/altered. When they lost their Motion for Summary Judgment based on these facts, they simply changed them. With a few days more than a month before trial (ROA 127 scheduled for 1/17/17) and after discovery had already been completed, they filed for leave to amend their cross-complaint with a new first cause of action under §7031(b) (ROA 139, 12/9/16) to not only defraud me and the court but also ambush me and Spartan with these surprise accusations.

16. Based on my direct experience at trial and my forensic investigation of this case, I believe the Humphreys conspired with their attorney, William Bissell to use these proceedings disguised as civil with intent to defraud and punish me (and deny Spartan compensation) without lawful authority and destroy me financially over a dispute involving their home remodel. They knew that §7031(b) did not mention or authorize an equitable remedy, "disgorgement", or "damages". Their repeated representation of civil proceedings including their filings in this case, service of judgments and orders upon me, and the trial, were a lawless sham and fraud to steal money and property from me under force of the legislative, executive, and judicial powers of California and color of law without lawful authority. In furtherance of their conspiracy to defraud me and the court, they filed a Proposed Judgment Order for "damages" knowing no damages had been evidenced at trial. Their Memorandum of Points and Authorities in their Motion for Severance (ROA 160) admitted that "since the amount paid by the Humphreys to Mr. Bereki exceeds the amount of damages they are claiming [est.$350,000 [First Amended Cross-Complaint] if they were to prevail on their first cause of action, the trial of the remaining cause of action for damages would be unnecessary." (Id. p.5). Assuming arguendo, their damages were $350k, the judgment they sought and were awarded, was nearly three times this amount and could, under no reasonable interpretation, be considered "damages", when they intentionally severed their claim for damages. (ROA 160). Simply put, the

Humphreys wanted something for nothing and thought they could perpetrate fraud on me and the court to get it.

17. Spartan provided $930,000 of custom remodel work including labor and materials to Karen Humphreys and Gary Humphreys that they requested for their home at 436 Via Lido Nord, Newport Beach, California. The Humphreys have not paid the remaining approx. $82,000 for the materials and labor (ROA 2) due at the time of invoice on or about August 1, 2013 and have not paid the interest due thereon through the date of this filing. If the Humphreys had an issue with Spartan or its sub-contractors work, fine, there is a judicial process to remedy those issues. This fraud and corruption of that process is not it!

18. As a result of the actions of the Humphreys, Bissell, Chaffee, Goethals, Aronson, O'Leary, and all other public officials (RJN Ex. 1-12, ROA's 306-322) who have refused to abide their sworn duty to take action to investigate and/or intervene to stop this lawless violence upon me and my family, I have and continue to suffer severe emotional and economic distress as a direct and proximate result. I began disclosing this emotional distress this in my Declaration filed as a First Amended Reply to Opposition of Motion to Compel Bill of Particulars, Motion to Vacate, and Disqualify Judge Chaffee for cause, dated October, 2, 2017 (ROA 267). The Declaration (p.3) stated: "I am experiencing emotional and psychological duress resulting from the domestic terrorism attacks by Plaintiffs, their counsel, and this court acting without lawful authority and in violation of numerous felony criminal codes as evidenced herein. I demand the court, Plaintiffs, and their counsel immediately cease and desist and am requesting an emergency protective order and civil harassment restraining order against William Bissell, and potentially Karen and Gary Humphreys and David Chaffee." Page 13 stated: "The Elements of Psychological and Emotional Distress I have experienced (and continue to to varying degrees) as a result of the continued unlawful actions of the court and William Bissell on behalf of Plaintiffs are: panic and anxiety attacks, severe depression including suicidal thoughts (no, I am not a danger to myself or others), severe headaches, neck and upper back tension, body tremors, loss of appetite, social inactivity, gut/digestion problems and pain, fear of physical and other harm, loss of liberty, and decreased ability to earn an income. My medical records are obviously confidential but will support thousands of dollars in Emergency

Room visits to multiple hospitals, and observations, tests, and treatment by specialists including psychologists. I am currently under the care of a doctor whom I see three days per week to mitigate the intensity of stress in my body in an attempt to cope."

19. I declared these facts of distress again in a Declaration attached to the Notice of Motion and Motion to Vacate post remittitur (ROA 294, Exhibit E). In paragraphs 1 and 2, I stated: I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -: fraud, gross negligence, abuse of process, intentional infliction of emotion distress, deprivations of my Rights and violations of due process by Plaintiffs Karen and Gary Humphreys and their Counsel, William Bissell, as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be - including but not limited to -; fraud, gross negligence, deprivations of my Rights and violations of due process by David R. Chaffee, Kathleen O'Leary, Richard. M. Aronson, and Thomas M. Goethals, acting coram non judice as evidenced in the Motion to Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017.

20. Based on my training and experience in law enforcement, I believe I am the victim of the following crimes, (this is not an exhaust list of crimes or Defendants): robbery (Cal. Penal Code § 211- forcible taking of my rights, liberty and property without lawful authority); grand theft (Penal Code § 187); burglary (Cal. Penal Code § 459- entering the Superior courthouse with intent to commit grand theft); conspiracy to commit the foregoing crimes on me by the Humphreys and Bissell (Cal. Penal Code § 182(a)(1)); conspiracy by the Humphreys and Bissell to falsely move and maintain the lawless proceedings against me under §7031(b) (Cal. Penal Code § 182(a)(3)); and conspiracy by the Humphreys and Bissell to cheat and defraud me of my rights and property, by any means which are in themselves criminal, or to obtain money or

property by false pretenses or by false promises with fraudulent intent not to perform those promises (Cal. Penal Code § 182(a)(4)).

21. I continue to be afraid for my safety and that of my family due to these lawless acts of violence that continue to be perpetrated on us, including most recently the theft of our home and approx. $1.2 million dollars in home equity while all officials of State and government refuse to perform a full, fair, impartial and/or independent investigation and/or refuse to intervene to stop this lawless violence.

22. All exhibits are true copies of the documents they purport to be, with exception of any bates numbering or other non-substantive marks I, or someone else may have made.

23. I submit Exhibit 6 (Report by Bryan Nickel, dated December 15, 2013 (contemporaneous with Spartan's termination in August 2013) to further demonstrate that The Spartan Associates, Inc., ("Spartan"), performed the construction work at 436 Via Lido Nord, Newport Beach, and was paid $758,000 by the Humphreys. The report confirms that Spartan was engaged to perform all construction work, including design, demolition, framing, plumbing, and electrical work, with approximately $505,000 in labor and materials and $758,000 in payments.

24. This "Report on Spartan Construction Work in Place and Costs" was prepared by Bryan Nickel and/or his construction company that was hired by the Humphreys to finish the project after Spartan's termination. Prior thereto, Nickel and/or his company was/were directed by the Humphreys and/or Bissell to investigate Spartan's work and prepare this report. In the report, Nickel states "Spartan was engaged to do the work" and "Spartan proceeded to design the new space and start work in April of 2012." "Spartan did purchase finish fixtures and appliances during this period, additionally Spartan engaged an acquaintance who worked at a commercial architecture firm to moonlight and draw up plans to secure a building permit. Building Permit number x2012-2116 was issued on November 14, 2012." (Ex .2 Building Permit). "For the period November 2012 to May 2013 Spartan proceeded to demolish and reframe the entire second floor, except for the street facing wall, and substantial amounts of the first-floor unit as he discovered, attempted to fix and rebuild old, deteriorated and water damaged portions of the structure." "We do know from the Owners banking records that Spartan has been paid $758,000."

25. The Humphreys and Bissell concealed this report in their First Amended Cross-Complaint (ROA 144) and at trial and never called Nickel as an expert witness to testify at trial, which would have defeated their claim. This constitutes extrinsic fraud and fraud on the court (*Estate of Sanders*, 40 Cal. 3d 607 (1985)).

26. Exhibit 8 (Declaration of William G. Bissell, dated June 1, 2016) and Exhibit 9 (Deposition of Robert Brockway, September 13, 2016) further support the claims of extrinsic fraud and fraud on the court. In Ex. 8, Bissell declared that expert witness Robert Brockway was prepared to testify at trial about "the services which were to be performed and which were performed by Adam Bereki and/or The Spartan Associates" on the Humphreys' project (Ex. 8, ¶ 5). In Brockway's deposition, attended by Bissell and Gary Humphreys (Ex. 9, p. 2, Lines 17–23), Brockway confirmed that The Spartan Associates, Inc. performed the work, stating, "I went over payroll records provided by Spartan, and I went over the W-2s to analyze the number of men, how long they were there, and what tasks they were doing" (Ex. 9, p. 7, Lines 2–10). He further noted, "Spartan was terminated on or about 8-28 of 2013" (Ex. 9, p. 39, Lines 9–10), indicating Spartan was the contractor (see also Ex.2 Notice of Cessation of Labor for Spartan). Brockway created an "invoice matrix" from "documents [receipts] that Spartan provided" (Ex. 9, p. 21, Lines 1–2) to assess expenses, reinforcing Spartan's role. Significantly, Brockway did not state that I personally performed any construction work, focusing instead on Spartan's operations and my work as Spartan's manager. Bissell's decision not to call Brockway, despite designating him as an expert and knowing his testimony would undermine the §7031(b) claim, was a deliberate concealment of evidence. I intend to question Bissell at the June 26, 2025, hearing about his failure to call Brockway, as his testimony is critical to establishing intent to conceal evidence central to the Humphreys' burden under Evidence Code § 500.

27. **Non-Hearsay Purpose: Evidence of Defendants' Knowledge and Concealment** The deposition testimony of expert witnesses Robert Brockway and Bryan Nickel are offered to demonstrate that the Humphreys and Bissell, were aware of material evidence confirming Spartan performed the work, but intentionally concealed this evidence at trial to defraud the court and me and secure a void judgment under § 7031(a) and (b). The testimony is not offered for the truth of the experts' statements

but to show the Humphreys and Bissell's knowledge and fraudulent concealment, making it non-hearsay under California Evidence Code § 1200. Nickel's report confirms Spartan was paid $758,000 for work, and Brockway's deposition verifies Spartan's performance through payroll records and invoices (Ex. 9, p. 7, Lines 2–10). The Humphreys failure to call these experts, despite commissioning their reports, evidences extrinsic fraud and fraud on the court.

28. **Supporting Authority**: *People v. Montes* (2014) 58 Cal.4th 809, 863 (out-of-court statements admissible to show knowledge or effect on listener, not for truth); *Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 591 (statements admissible to show concealment or state of mind); *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471 (concealment of material evidence constitutes extrinsic fraud).

29. **Adoptive Admissions: Defendants' Prior Reliance on Expert Findings** The deposition testimony Brockway and statement of Nickel in his report are admissible as adoptive admissions under California Evidence Code § 1221 because the Humphreys previously relied on these experts' findings in their Motion for Summary Judgment (ROA 66, p. ii), stating the "undisputed facts" were that Spartan contracted and performed the work. By adopting these facts, which align with the experts' testimony that Spartan was the licensed contractor, the Humphreys admitted their truth. Their subsequent concealment of this evidence at trial, by not calling Nickel or Brockway and amending their cross-complaint to falsely claim Adam Bereki individually performed unlicensed work (ROA 139, 144), does not negate their prior adoption and supports the claim of extrinsic fraud. These adoptive admissions are not hearsay and are admissible to show the defendants' fraudulent intent.

30. **Supporting Authority**: *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 316 (statements adopted by a party in prior filings are admissible as non-hearsay); Evid. Code § 1221; *Estate of Sanders* (1985) 40 Cal.3d 607, 618 (concealment of evidence known to party supports fraud on the court).

31. **Impeachment: Prior Inconsistent Statements Contradicting Trial Claims** The deposition testimony Brockway and report statements by Nickel are admissible under California Evidence Code § 1235 to impeach the defendants' trial position that Adam Bereki individually performed unlicensed work, as it contradicts their prior representations and trial omissions. In their Motion for Summary Judgment, the

defendants admitted Spartan contracted and performed the work (ROA 66, p. ii), consistent with Nickel's report (Ex. 7) and Brockway's deposition (Ex. 9, p. 39, Lines 9–10). At trial, they concealed this evidence and failed to call the experts, allowing their attorney, William Bissell, to misrepresent that Bereki was the unlicensed contractor. The experts' testimony, showing Spartan's performance, is offered to demonstrate this inconsistency, not for its truth, and thus is not hearsay. This impeachment evidence further establishes the defendants' intent to defraud me and the court.

32. **Supporting Authority**: *People v. Johnson* (2018) 6 Cal.5th 541, 582-3 (prior inconsistent statements admissible for impeachment); Evid. Code § 1235; *Hazel-Atlas Glass Co. v. Hartford-Empire Co.* (1944) 322 U.S. 238, 246 (concealment of evidence to mislead court constitutes fraud).

33. Bissell misrepresented that I was an unlicensed contractor under BPC § 7031, stating at trial: "SECTION 7026 DEFINES a CONTRACTOR... as INCLUDING ANY PERSON who UNDERTAKES to CONSTRUCT... EXHIBIT 303... is EVIDENCE of such UNDERTAKING" (Ex. 1, p. 5, Lines 20–26). This is legally flawed, as § 7026 defines a "contractor" without imposing liability, whereas § 7031(b) requires proof that I performed unlicensed work: "a person who utilizes the services of an unlicensed contractor may bring an action... to recover all compensation paid to the unlicensed contractor for **performance** of any act or contract" (BPC § 7031(b). CACI 4560(3) mandates evidence that I performed licensed work, yet no evidence shows I performed tasks like framing or plumbing (Ex. 5, 6, 8, 9). Instead, Spartan performed all work, as confirmed by the Notice of Cessation to Spartan (Ex. 5), Nickel's report (Ex. 6), Brockway's deposition (Ex. 9), and the Humphreys' own Motion for Summary Judgment admitting Spartan contracted (ROA 66, p. ii). As Spartan's Responsible Managing Officer (RMO) and Qualifying Individual (Ex. 7), I supervised under Spartan's license, not as an individual (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 517 (2009); *WSS Industrial Construction, Inc. v. Great West Contractors*, Inc., 162 Cal. App. 4th 581, 591 (2008)). The Humphreys and Bissell may argue I "hired" Spartan, but this is irrelevant, as § 7031(b) liability hinges on unlicensed performance, not contracting, and Spartan's licensed work negates their claim (*WSS Industrial*, 162 Cal. App. 4th at 591). To the extent the emails could be considered an agreement,

the work stated thereon was never evidenced to have been performed. Reason being, the email project was abandoned. The court and Court of Appeal's reliance on my initial emails, which omitted Spartan, ignored that these were preliminary negotiations for Spartan, not a personal contract (Civ. Code § 1550; *Lewis v. Fletcher*, 101 Cal. App. 3d 459, 465 (1980); *Donovan v. RRL Corp.*, 26 Cal. 4th 261, 280–81 (2001)). My intent, as Spartan's RMO since securing its license years before the Humphreys project, was always for Spartan to perform, as shown by the building permit in Spartan's name (Ex. 2) and payments to Spartan (Ex. 6). The Humphreys, family of my friend (Gary's brother), exploited my trust in the informal emails, knowing Spartan was the contractor (ROA 66, p. ii). Bissell's concealment of Spartan's performance (Ex. 6, 8, 9) and misrepresentation that my emails triggered § 7031(b) liability, despite no evidence of my performance, misled the court and exploited my pro se status, constituting extrinsic fraud and denying a fair hearing.

34. The Humphreys and Bissell's fraud was deliberate. The Humphreys' Motion for Summary Judgment admitted Spartan contracted (ROA 66, p. ii), but after losing, they amended their cross-complaint to target me (ROA 144), ambushing me before trial. This aligns with their Notice of Cessation addressed to Spartan (Ex. 5) and Bissell's designation of Brockway, confirming they knew Spartan performed the work.

35. Exhibit 11 (CHP Incident Report, dated September 21, 2024) and Exhibit 12 (Bill of Particulars, filed June 28, 2017) confirm the extrinsic fraud, fraud on the court, and jurisdictional defects in the 2017 judgment through Judge Chaffee's admissions on April 16, 2024. During an interview with the California Highway Patrol, Chaffee acknowledged the case was civil but "turned" with the Humphreys' cross-complaint under Business and Professions Code §7031(b) (Ex. 11, p. 7, Lines 19-21), reinforcing my reliance on his representations that the proceedings were civil, while concealing their punitive nature. Contradictorily, he stated §7031(b) is "not criminal and has 'no penalty attached,' but it is punitive" and "draconian" (Ex. 11, p. 7, Lines 23–24), failing to specify civil remedies and admitting the penal character of the ~$930k penalty, imposed without counsel or jury trial, violating due process. Chaffee ruled I contracted individually, stating, "we have no license in the name of Mr. Bereki individually; instead, it appears he was the qualifying corporate officer for the legal entity, Spartan Associates, incorporated" (Ex. 11, p. 4, Lines 1-3), based on initial

emails from my personal account (Ex. 11, p. 2, Lines 17-19). This ignored evidence that The Spartan Associates, Inc. was the contractor, including payments to Spartan after July 2012 (Ex. 11, p. 2, Lines 33-25), the Notice of Cessation to Spartan (Ex. 5), building permits (Ex. 2). Even if I were the contracting party, Spartan, a licensed contractor, performed all work through its employees and subcontractors satisfying CACI 4560(3). Chaffee's reliance on *Ball v. Steadfast* (2011) (Ex. 11, p. 3, Lines 12–36) was erroneous, as *Ball* involved a sole proprietor with a personal license, unlike Spartan's corporate license and my RMO and Qualifying Individual Role under BPC §7096. Chaffee denied suspending my license, stating, "Judge Chaffee assumes that any suspension would come from the State Contractor's Board" (Ex. 11, p. 8, Lines 22–23), but the judgment's financial burden directly triggered the mandatory summary suspension under BPC §7071.17, a bill of pains and penalties. Chaffee falsely claimed I did not raise constitutional issues (Ex. 11, p. 8, Lines 1-2), despite my Bill of Particulars challenging jurisdiction and the Humphreys' standing (Ex. 12, Questions 4, 8, 14, 51; ROA's 244, 256, 260, 263), suppressed through fines for abuse of discovery, reflecting my pro se status and Bissell's concealment. Chaffee admitted, "the damages are not offset by the work that was completed" (Ex. 11, p. 8, Lines 32-33), refusing to consider Spartan's $930,000 in value, despite no evidence of damages, enabled by Bissell's fraud.

36. Exhibit 11 is admissible under California Evidence Code § 1280 as a public record, as it was prepared by a CHP officer in the course of official duties, records contemporaneous observations from an April 16, 2024, interview, and is trustworthy. Chaffee's statements are further admissible under Evidence Code § 1200 as non-hearsay, offered not for their truth but to show his representations that the proceedings were civil, which misled me into waiving protections like a jury trial, and his knowledge of the case's punitive nature. Additionally, these statements are admissible under § 1250 to reflect Chaffee's state of mind and judicial reasoning. Chaffee's acknowledgment that the case "turned" with the Humphreys' § 7031(b) cross-complaint and his contradictory claim that the ~$930,000 penalty was "punitive" yet "not criminal" demonstrate he concealed the proceedings' punitive character, enabling the Humphreys and Bissell's extrinsic fraud to secure a void judgment without due process safeguards. His false statement that I did not raise constitutional

issues, despite my Bill of Particulars (Ex. 12), further evidences suppression of my jurisdictional challenges, corrupting the judicial process.

37. As Spartan's Responsible Managing Officer (RMO) and Qualifying Individual, I was required to supervise its construction operations under Business and Professions Code § 7068.1(a), as defined in Exhibit 7 (Application for Original Contractor License, CSLB). The qualifying individual "meets the experience and examination requirements for the license and is responsible for exercising supervision and control... to secure compliance with CSLB's laws" (BPC § 7068.1(a)). The CSLB determined I was Spartan's qualifying individual, making me a licensee under BPC § 7096 and inseparable from Spartan's license (*White v. Cridlebaugh*, 178 Cal. App. 4th 506, 517 (2009)). I performed the functions as RMO of Spartan's license on the Humphreys project.

38. Judge David Chaffee had a duty to ensure all CACI 4560 elements were met for a §7031(b) claim (*Thompson v. Louisville*, 362 U.S. 199 (1960)): (1) the Humphreys contracted with me, (2) a license was required, and (3) they paid me for work I performed. No known evidence was presented for Element 3. Chaffee's finding that I was unlicensed (ROA 193) without addressing Spartan's performance violated due process, enabling the Humphreys' fraud *(Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)).

39. The Humphreys' fraud corrupted the judicial process. Bissell's concealment and § 7026 misuse, exploiting my pro se status, convinced Chaffee to order the ~930,000 penalty without evidence I performed work, actualizing their intent to corrupt the process (*Kulchar*, 1 Cal. 3d at 471; *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

40. The judgment is void for lack of jurisdiction. The Humphreys had no standing. Their failure to prove CACI 4560(3) and my licensee status (BPC § 7096) negate their claim (ROA 144). My inalienable right to gainful employment cannot be presumed incompetent without a judicial determination (*Estate of Buchman*, 123 Cal. App. 2d 546 (1954)), and BPC § 7026 does not define a "person" as a "natural person," exempting me from licensing requirements. Chaffee's false claim that I did not raise standing issues (Ex. 11, p. 8, Lines 1-2) ignores my Bill of Particulars challenging the Humphreys' standing and court jurisdiction (Ex. 12, Questions 4, 8, 14, 51), suppressed through fines, enabled by my pro se status and Bissell's concealment.

41. On September 20, 2017, I had the following email conversation with William Bissell:

1. **Email from Adam Bereki to William G. Bissell**
   **Date:** September 20, 2017, 3:14 PM
   **Subject:** Phone Call
   **From:** Adam Bereki abereki@gmail.com
   **To:** wbissell@wgb-law.com

   Hi Bill,

   I hope this finds you well. I called your office today to speak with you about what I believe to be a huge miscarriage of justice happening in this case surrounding the challenge to jurisdiction I filed on 4/18/17 before judgement was ordered in this case. If you have any interest in discussing this matter with me, I'd welcome that.

   If so, please let me know when would be a good time to call you and I'll do so.

   Sincerely,
   Adam Bereki

2. **Email from William G. Bissell to Adam Bereki**
   **Date:** September 20, 2017, 3:50 PM
   **From:** wbissell@wgb-law.com
   **To:** Adam Bereki abereki@gmail.com

   Mr. Bereki: I reviewed your "Writ of Error" at the time it was filed with the court. I saw nothing in it that would cause me to question the validity of the judgment entered by the court. You have appealed the judgment and presumably you will be giving it your best shot with the Court of Appeal. Because appellate procedure is very deadline sensitive I suggest that your time might be better spent focusing on your argument to be made to the court than discussing your theories with me.

   Sincerely,
   Law Office of William G. Bissell

3. **Email from Adam Bereki to William G. Bissell**
   **Date:** September 20, 2017, 4:09 PM
   **From:** Adam Bereki abereki@gmail.com
   **To:** wbissell@wgb-law.com

   Thank you Bill, I appreciate your reply. It's just that since the "writ of error" was a direct jurisdictional challenge before the entry of judgement. The judgement is void because you didn't prove the factual sufficiency of subject matter jurisdiction as you were required to do upon direct attack. At that point and until subject matter jurisdiction was proved, the court was want of jurisdiction to issue an order. You'll see the jurisdictional challenge was served two days

before the judgement. I don't believe it's in judicial process for the court or other parties to just ignore and/or reject my documents however foreign or out of statutory procedure they may be. While I understand your position that you might think what I'm sharing is a legal "theory" I obviously believe otherwise and we can disagree. If I'm right though, you and the judge could be in a lot of trouble which is why I reached out to you first to see if you wished to speak with me humbly.

Sincerely,
Adam Bereki

4. **Email from William G. Bissell to Adam Bereki**
**Date:** September 20, 2017, 4:24 PM
**From:** wbissell@wgb-law.com
**To:** Adam Bereki abereki@gmail.com

Mr. Bereki: Thank you for your clarification and the opportunity to avoid the trouble that may befall me as a result of the trial conducted in this matter. As I remain unpersuaded by your position, I suppose I (and I guess Judge Chaffee as well) will just have to take my chances that the court will have the same view of your argument as I do.

42. Exhibit 13, consisting of email correspondence between myself and William G. Bissell dated September 20, 2017, further substantiates the extrinsic fraud and fraud on the court perpetrated by the Humphreys and Bissell. These emails demonstrate that Bissell was aware of my jurisdictional challenge filed on April 18, 2017, two days prior to the entry of judgment on April 20, 2017 (ROA 200). In my initial email, I invited Bissell to discuss the challenge, which asserted the court lacked subject matter jurisdiction. Bissell's dismissive reply, acknowledging he reviewed my "Writ of Error" but refusing to engage and urging me to focus on my appeal, reflects his deliberate avoidance of addressing the unproven jurisdictional foundation of the case (Decl. ¶ 38). His failure to contest the challenge's claims at the time, despite knowing its significance, evidences his intent to conceal jurisdictional defects, thereby corrupting the judicial process to secure a void judgment. These emails are admissible as non-hearsay under California Evidence Code § 1221, as adoptive admissions, and § 1200, as they are offered to show Bissell's knowledge and concealment, not for the truth of the statements contained therein.

43. Exhibits 1, 2, 3, 4, 5, 6, 8, 9, and 13 demonstrate the Humphreys and Bissell's efforts to secure a claim against me despite lacking standing, corrupting the judicial process. Their fabrication of a claim that I personally contracted and performed unlicensed

work (ROA 144), when they knew Spartan performed the work (Ex. 5; ROA 66, p. ii; Ex. 9), constitutes extrinsic fraud. By fabricating this claim to fraudulently invoke the court's jurisdiction, knowing they had no capacity or standing, they prevented a fair hearing (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969)). This lack of capacity and standing is a jurisdictional defect, rendering the judgment void (*Albrecht v. United States*, 273 U.S. 1, 8 (1923); *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018)).

44. The Court of Appeal opinion (RJN Ex. 2, Case No. G055075, filed October 31, 2018) supports my claim that no evidence showed I personally performed licensed construction work, as required by CACI 4560(3) (Decl. ¶ 5), by failing to identify substantial evidence for this element. The court found substantial evidence only that (1) I, not Spartan Associates, contracted with the Humphreys, based on their testimony about my initial representations and emails (RJN Ex. 2, pp. 10–11), and (2) payments from Gary Humphreys' corporation were attributable to the Humphreys personally, based on his testimony about income deductions (RJN Ex. 2, p. 12). These findings address the contractual relationship and payment source, not whether I performed licensed work such as framing or plumbing. The opinion's assumption that I "performed all the remodel work" (RJN Ex. 2, p. 4) lacks supporting evidence, as it cites no testimony or documents showing my performance, contrary to my evidence that Spartan performed the work. This gap, enabled by the Humphreys and Bissell's extrinsic fraud in concealing evidence that Spartan was the contractor (Ex. 5, 6, 9; Decl. ¶¶ 15–16, 25–27) and misrepresenting me as an unlicensed contractor (Ex. 1; Decl. ¶ 32), renders the judgment void for lack of jurisdiction, as the Humphreys failed to prove all elements of their § 7031(b) claim (Decl. ¶¶ 33, 37–41).

45. I respectfully request the Court vacate the void judgment (ROA 200) and grant relief as prayed in my motion, filed May 28, 2025.

Signed on June 4, 2025 at Las Vegas, Nevada.

By: _____

Adam Berek

# Exhibit 6

December 15, 2013

# 436 Via Lido Nord
# Report on Spartan Construction Work in Place and Costs

## Overview

The initial scope of the project was to combine two condominium units at 436 Via Lido Nord in Newport Beach, CA on the second floor into one unit on a design build basis. Spartan was engaged to do the work on a verbal agreement to be paid "actual cost of the work plus $500 per day fee for supervision, contractor overhead and profit". Spartan proceeded to design the new space and start work in April of 2012. Spartan did not get a building permit for the work. On or about the first of June 2012 The City of Newport Beach cited (C2012-0143) the project for "Construction without B,E,M,P permits" Actual work on the project slowed for the next four and one half months with only two to three workers on site possibly demolishing some of the existing structure. Spartan did purchase finish fixtures and appliances during this period, additionally Spartan engaged an acquaintance who worked at a commercial architecture firm to moonlight and draw up plans to secure a building permit. Building Permit number x2012-2116 was issued on November 14, 2012. The scope of the permitted work allowed was limited to combining the units and reroofing the building. This scope involved limited access to the lower unit to pour pads for structural columns and reroute some plumbing.

For the period November 2012 to May 2013 Spartan proceeded to demolish and reframe the entire second floor, except for the street facing wall, and substantial amounts of the first floor unit as he discovered, attempted to fix and rebuild old, deteriorated and water damaged portions of the structure. Significant work was done, again, without design drawings and building permits. The plumbing and electrical systems were substantially modified and rebuilt, some of this mechanical work was permitted (P2013-0125, N2013-0061). Spartan was also the subject of three written City of Newport Beach code enforcement violations in February, March and April of 2013.

During this period Spartan never completed, as evidenced by City inspection sign off, any portion of he permitted work, most notably the foundation work.

Spartan seemed unaware of the various City of Newport Beach and Building Code thresholds of remodeling that trigger updating the existing structure to current building codes. In the first week of June 2013 the City of Newport Beach issued and posted a "Stop Work" Notice on the project (Red Tagged) for exceeding the scope of work allowed in the existing building permit. Spartan, however, notwithstanding the City's position, continued to work on the project. Concurrently, Spartan engaged a drafting company in Riverside to prepare plans reflecting the work put in place and the new worked now required to bring the structure current with the building code. This design and engineering work continued until Spartan was excused from the project in September 2013.

Spartan billed the Owner, Gary Humphreys $826,094 in total for work on the project and was paid $758,000 as of the date of this report. Spartan has provided a detail spreadsheet summary of the billed amounts and copies of various invoices and receipts related to the project but not a comprehensive cost and payment backup.

- Spartan Associates Inc. is a licensed California general contractor License # 927244 issued in 2009
- Adam Alan Bereki is listed as the Responsible Managing Officer
- Workman's Compensation coverage through Norguard Insurance Co.
- Limited construction experience, prior to 2009 employed as a policeman

## Scope of Review of the Project and Costs.

The project will be reviewed in two parts, Performance/Value delivered and Cost of the Work.

**Performance**

On so many levels Spartan violated the trust and duty to the Owner to perform work on the property in a professional, knowledgeable and industry standard quality of work manner that this analysis should be used as a starting point to document further legal actions for recovery of damages based on the quality of the work and services performed by Spartan. Unfortunately, the author believes that Spartan, a corporation, and Adam Bereki, the Responsible Managing Officer, are largely uncollectable should a judgment be entered over the amount of the contractors bond ($12,000). A partial listing of the areas that could be further explored are as follows;

- Lost opportunity to improve the structure design
- Defective design and construction work both latent and patent
- Poor Management, Inefficient scheduling and use of the Owners funds
- Breech of fiduciary duty as a licensed contractor to secure permits prior to performing Work
- Damage to First Floor Unit (unpermitted work, loss of occupancy)
- No written Contract for the project
- No Evidence of Liability Insurance protecting the Owner from consequences of Spartan's actions.
- Exposing the building to code upgrade requirements

**Cost of the Work Plus Fee**

This portion of the project analysis is based on a review of Spartan supplied cost summary Excel spreadsheet and a collection of copies of receipts and invoices. It should be cautioned that the invoice copies are not supported by any banking / check copy information nor any reporting from a cost accounting software system. The information supplied is not sufficient to provide an opinion of an exact cost of the work but is adequate to provide a reasonable estimate of monies spent on items stored or incorporated into the building. Our estimate is that Spartan expended approximately $505,000 on labor and material that the industry would consider "Cost of the Work." The value received as discussed above under Performance is significantly less.

Spartan's billing for other costs include parking tickets, gas for Mr Bereki and his site supervisor, software, a vehicle lease and repairs, rentals on a "shop" and other owned tools, accounting and other contractor overhead, labor for site supervision, and a fee for Mr. Bereki. We estimate that these charges add up to approximately $321,000.

**Days worked**

Apparently, Spartan is unable to produce copies of a daily log of attendance and activities on the site. Our "days worked" estimate is based on a five day work week less federal holidays for the period April 2012 thru June 6th 2013 (Ordered by City of Newport to stop work.) We estimate 239 working days on the project.

**Contractor's Overhead and Fee**

At the discussed, but unwritten, $500 per day compensation beyond the cost of the work Spartan would be entitled to bill $119,500 in addition to the Cost of the Work for a total contract value estimated at $624,500 before credits for damages from poor performance. This would represent a fee mark up of approximately 23%. This is at the higher end, but within the industry range, for this type of work.

We do know from the Owners banking records that Spartan has been paid $758,000.

Based on our estimates of the Cost of the Work plus a $500 per day overhead and fee, Spartan has been OVERPAID approximately $133,500.

# Exhibit 7

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, CA 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com



# IMPORTANT NOTICE

Dear Applicant:

Enclosed is the application from the Contractors State License Board (CSLB).

**Please be aware that nearly half of all applications submitted to CSLB are inaccurate or incomplete and must be returned for correction.**

## Please complete your application in its entirety to ensure that your application is accepted for processing by CSLB.

After an application has been accepted by CSLB as complete (also known as "posted"), the applicant will be sent instructions on the process for obtaining and submitting fingerprints, as required by law. (*Business and Professions Code sections 144 and 7069*)

An incomplete application can needlessly delay your license. Delays can last several weeks or even months and possibly result in the application being deemed abandoned and becoming void and the application fee being forfeited. (*Business and Professions Code sections 7074 and 7138 and Title 16, California Code of Regulations section 813*)

## Spending a few extra minutes now may save you weeks or months later!

Before you submit your application, follow these simple directions.

- **Sign the form.**
- **Fill out all applicable information.**
- **Make sure you submit Certification of Work Experience forms that have been filled out completely, ensuring that you have provided four (4) years of applicable experience in the classification for which you are applying.**

**Carefully read the General Information and Instructions** that immediately precede the application package and follow the specific instructions that are contained throughout the application to help ensure that your application is complete and accurate.

**Please be aware that there are no schools or application preparation organizations that are affiliated with or agents of CSLB, although some may have company names that are confusingly similar to CSLB.** If you discover that an organization has misrepresented itself as being associated with CSLB, you should submit a complaint to CSLB or the California Department of Consumer Affairs. However, official CSLB examination study guides are available free of charge on CSLB's website.

# IMPORTANT NOTICE REGARDING CONVICTIONS PLEASE READ CAREFULLY

As part of the Contractors State License Board (CSLB) application process and as required by law, the applicant must be fingerprinted if they have not been fingerprinted by CSLB before or if the applicant's previous fingerprint record was purged by CSLB due to a voided application; disassociated, revoked, or cancelled license or registration; or for some other reason. After an application is accepted by CSLB as complete (also known as "posted"), the applicant will be sent instructions on the process for obtaining and submitting fingerprints, usually via live scan electronic transmission.

The applicant's fingerprints will be compared to the records of the California Department of Justice and the Federal Bureau of Investigation. **If an applicant has ever been convicted of a crime, their criminal record information will be reported to CSLB.** This includes DUIs and other Vehicle Code violations resulting in a conviction. Even if you pled "no contest," had the conviction set aside, or judgment deferred pursuant to Penal Code sections 1000 or 1203.4 (commonly understood as "expunged"), the past conviction will still be reported to CSLB.

Under certain circumstances, CSLB may request that an applicant provide mitigating information regarding their criminal history by completing and submitting the Disclosure Statement Regarding Criminal Plea/Conviction form that is available on CSLB's website on the Forms and Applications page. CSLB's Criminal Background Unit will contact the applicant if it is requesting this additional information. If so, the applicant can complete the disclosure and send an email scan of it to CBU@cslb.ca.gov or fax to 916-255-4135. Please note, completing the form or any other disclosure of mitigating evidence is voluntary, and the applicant may choose not to disclose any information. An applicant's choice not to disclose information shall not be a factor in a board's decision to grant or deny an application for licensure. (See Bus. & Prof. Code, § 480(f)(2).

Applicants with criminal convictions are not automatically denied licensure – each applicant is reviewed individually based on the applicable sections of law. When reviewing criminal convictions, CSLB considers factors such as the nature and severity of the crimes, the amount of time that has passed since the convictions, and any evidence of rehabilitation submitted by the applicant. CSLB has several regulations to review criminal convictions, including Title 16 of the California Code of Regulations sections 868, 868.1, and 869. Section 868 guides how to evaluate whether a crime is substantially related to the qualifications, duties, or functions of a licensee or registrant. Section 868.1 guides whether a felony financial crime is directly and adversely related to the fiduciary qualifications, duties, or functions of a licensee or registrant; and Section 869 guides whether an applicant has made a showing of rehabilitation.

For rehabilitation evaluation, in addition to other evidence of rehabilitation, CSLB is generally looking at how much time has passed since the conviction without further violations of law.

# APPLICATION FOR ORIGINAL CONTRACTOR LICENSE
## General Information and Instructions

### GENERAL INFORMATION

Listed below is general information to assist you as you complete the attached application. Detailed instructions are also provided that address the content of the application section by section. Please refer to the Applicants page on the Contractors State License Board's (CSLB) website (www.cslb.ca.gov) for more detailed information about the licensing process.

**Do not submit this General Information and Instructions portion with your completed application** – the actual application begins immediately following this section on Application – Page 1 of 4 and includes the Certification of Work Experience and the Owner-Builder B-General Building Construction Project Experience form, if needed. Before you submit your application, please review and be sure you have complied with the following items.

- **Enclose the nonrefundable $450 application fee with your completed application for licensure in a single classification.** CSLB cannot process your application without the appropriate fee made payable to the Registrar of Contractors. The initial license fee ($200 for sole owner and $350 for non-sole owner) should be submitted separately after you pass the examination. If approved for the military expedite and initial license fee reduction provision (see instructions under Military), these initial license fees will be reduced by 50%. (*Business and Professions Code [BPC] sections 7137 and 7138*) Examination fees are paid directly to CSLB's approved testing vendor when the examinations are scheduled.
- **Your application may be returned to you if it is insufficient or incomplete.** You must provide any missing information, make corrections, and resubmit your completed application to CSLB within **90 days** after the date that it was returned to you, or your application will be deemed abandoned and become void. You cannot reinstate an abandoned application – you must submit a new application and $450 application fee if you wish to pursue licensure. (*BPC 7074 and Title 16, California Code of Regulations [T16 CCR] section 813*)

**Complete the application and all accompanying forms legibly in black or dark blue ink or on CSLB's website using the Easy-Fill feature.** Please make sure that you and other authorized individuals sign and date the forms, where applicable.

- **Leave no space blank.** If a particular question or request for information does not apply to you, write "N/A" in the blank space to indicate that you have read the question and determined that it is not applicable.
- The "**#**" symbol is used interchangeably with the word "number" where space is limited on the application.
- If you need additional copies of forms (e.g., Certification of Work Experience, Section 4 – Personnel Full Legal Names and Addresses), please make copies of the blank forms before you begin or print additional copies from the CSLB website, under the Forms and Applications page.

### SECTION 1 – BUSINESS NAME AND ADDRESS

**Business Name Styles** (Box 1)

In accordance with BPC section 7059.1, the business name for a contractor license **must not be misleading in relation to the classification(s) issued to the license and must be compatible with the type of business entity licensed** (*see Section 2 on next page*). For example, it would not be acceptable for ABC123 Tile to apply for a C-10 Electrical contractor license, but it would be acceptable for ABC123 Construction to apply for a B-General Building contractor license or for ABC123 Tile to apply for a C-54 Ceramic and Mosaic Tile contractor license. In addition, it would not be acceptable for a sole ownership or proprietorship to use the words "partners" or "incorporated" in its business name.

**Business Addresses, Phone and Email** (Boxes 3a – 3c)

- You **must** provide an address of record (mailing address) for your business that will be made available to the public if you become licensed. This address will be published on CSLB's website and will also be used for all official correspondence, notices, and orders from CSLB, such as renewal notices. P.O. boxes and private mailboxes (PMB) are acceptable for the address of record.
- You **must also** provide a business street address that will be used only for CSLB's internal administrative purposes – it will not be published on CSLB's website. P.O. boxes and PMBs are **not** acceptable for the business street address.

# APPLICATION FOR ORIGINAL CONTRACTOR LICENSE
## General Information and Instructions *(continued)*

- You are also asked to provide business phone and business fax numbers and a business email address. The business phone number is published on CSLB's website. If you have an email address at which you are currently receiving emails, you must provide it (BPC 7083.2). The email provided will not be part of your public license record. CSLB emails important license updates and changes to the law that may affect your license. All emails CSLB sends to the email address you provided are presumed to be received.

**Classification Requested** (Box 2)

Listed below are the contractor license classifications. **Only one classification may be requested on an original application when an examination is required.** For a complete description of the classifications, refer to the License Classifications link on the Applicants page of CSLB's website.

A General Engineering Contractor
B General Building Contractor
B-2 Residential Remodeling Contractor C-2 Insulation and Acoustical Contractor
C-4 Boiler, Hot Water Heating and Steam Fitting Contractor
C-5 Framing and Rough Carpentry Contractor
C-6 Cabinet, Millwork and Finish Carpentry Contractor
C-7 Low Voltage Systems Contractor
C-8 Concrete Contractor
C-9 Drywall Contractor
C-10 Electrical Contractor
C-11 Elevator Contractor
C-12 Earthwork and Paving Contractors
C-13 Fencing Contractor
C-15 Flooring and Floor Covering Contractors
C-16 Fire Protection Contractor
C-17 Glazing Contractor
C-20 Warm-Air Heating, Ventilating and Air-Conditioning Contractor
C-21 Building Moving/Demolition Contractor
C-22 Asbestos Abatement Contractor
C-23 Ornamental Metal Contractor
C-27 Landscaping Contractor
C-28 Lock and Security Equipment Contractor
C-29 Masonry Contractor
C-31 Construction Zone Traffic Control Contractor
C-32 Parking and Highway Improvement Contractor
C-33 Painting and Decorating Contractor
C-34 Pipeline Contractor
C-35 Lathing and Plastering Contractor
C-36 Plumbing Contractor
C-38 Refrigeration Contractor
C-39 Roofing Contractor
C-42 Sanitation System Contractor
C-43 Sheet Metal Contractor
C-45 Sign Contractor
C-46 Solar Contractor
C-47 General Manufactured Housing Contractor
C-49 Tree and Palm Contractor
C-50 Reinforcing Steel Contractor
C-51 Structural Steel Contractor C-53 Swimming Pool Contractor
C-54 Ceramic and Mosaic Tile Contractor
C-55 Water Conditioning Contractor
C-57 Well Drilling Contractor
C-60 Welding Contractor
C-61 Limited Specialty Classification (see below)

The C-61 Limited Specialty classification is for contractors who specialize in work not listed above (for example, C-61/D-50 Suspended Ceilings) or who perform work that is a specialized part of an existing classification (for example, C-61/D-29 Paper Hanging). The License Classifications link on the CSLB website contains a full listing of the subcategories of the C-61 classification.

**SECTION 2 – BUSINESS ENTITY** (Box 4)

Applicants must designate their business entity. Below is information on the five business entity types that are covered by this application. Contractor licenses are also issued to joint ventures – such applicants must submit the separate Application for Joint Venture License, available at CSLB's website on the Forms and Applications page.

Corporations and LLCs must be registered and in good standing (not suspended or otherwise restricted) with California Secretary of State (SOS) in order to be licensed and remain licensed with CSLB. California SOS can be reached by calling (916) 653-6814 or by visiting their website at www.sos.ca.gov. Applicants who wish to change their business entity after the application is posted should withdraw their application and submit a new one.

**Sole Owner**

Check the "Sole Owner" box if the business is owned by only one individual person and is not a corporation or an LLC.

**Partnership**
Check the "Partnership" box if the business is a partnership. Partnerships must provide their federal employer identification number (FEIN), which is available from the U.S. Internal Revenue Service (IRS). The IRS can be reached by calling (800) 829-1040. Personal Social Security numbers are **not** acceptable for the FEIN. Limited Partnerships must be registered with the California SOS and in good standing prior to being issued a contractor license.

**Corporation**
Check the "California Corporation" box if the business is a corporation. Corporations must be registered with the California SOS and in good standing prior to being issued a contractor license. Corporations must provide a current and active California SOS registration number where indicated in Section 2 of the application.

**Limited Liability Company**
Check the "Limited Liability Company" box if the company is a limited liability company. LLCs must be registered with the California SOS, must be in good standing, and have filed their statement of information prior to being issued a contractor license. LLCs must provide a current and active registration number where indicated in Section 2 of the application.

If your business entity is an LLC, before you submit your application, please be aware that the following additional requirements apply to LLC licenses (*please refer to CSLB's website for more information*):

- **$100,000 Surety Bond.** LLC licenses are required to file a $100,000 surety bond (in addition to the $25,000 contractor's bond) for the issuance, reissuance, reinstatement, reactivation, and renewal of an LLC license for the benefit of any employee or worker damaged by the LLC's failure to pay wages, interest on wages, or fringe benefits, as well as other contributions. (*BPC sections 7071.6 and 7071.6.5*)
- **$1 Million Liability Insurance Minimum.** LLC licenses are required to carry liability insurance with the aggregate limit of $1 million for licensees with five or fewer persons and/or companies listed as personnel of record, plus an additional $100,000 required for each additional personnel, not to exceed $5 million total. (*BPC section 7071.19*)
- **Personnel of Record.** Every person and/or company that is an officer, responsible manager, member, or director of an LLC must be listed as personnel of record on LLC applications. All individuals who are members of the personnel of record are subject to fingerprinting. LLC officers and members must be listed on the LLC's record with California SOS. LLCs may also have additional officers who may not be included on the official California SOS record, but who must be listed on this application and who will become part of the contractor license (*BPC section 7065*).

**Tribal Business**
Check the "Tribal Business" box if the business is a federally recognized tribe under BPC 7025.1

A tribal business can be verified by submitting any one of the following three documents along with the application.
- A resolution that ratifies the charter for this tribal business under federal law ("IRA Section 17 corporation").
- A resolution authorizing this tribal corporation under tribal laws ("tribally chartered corporation").
- Articles of incorporation or by-laws for this tribal corporation.

**SECTION 3 – QUALIFYING INDIVIDUAL FULL LEGAL NAME AND ADDRESS**
The terms **"qualifying individual"** and **"qualifier"** are used interchangeably. The qualifying individual is the person who meets the experience and examination requirements for the license and who is responsible for exercising **supervision and control** of their employer's or principal's construction operations to secure compliance with CSLB's laws, rules, and regulations. (*BPC section 7068.1 (a)*) "Supervision and control" means "direct supervision or control" or monitoring and being available to assist others to whom "direct supervision and control" has been delegated. "Direct supervision or control" means supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, and/or supervision on construction sites.

A qualifying individual is required for every classification on every license issued by CSLB. The qualifying individual may or may not be the owner of the business.

You must complete the personnel information requested in Sections 3 and 4 of the application for each individual and company that will be listed on the license.

- Line 5a – **Full legal names are required.** You must provide the full legal name of all personnel. If an individual does not have a middle name, write "None" or "No Middle Name" in the space provided. If an individual has only an initial for their first or middle name, write "(Initial Only)" after the initial.
- Provide qualifier's date of birth where requested.

# APPLICATION FOR ORIGINAL CONTRACTOR LICENSE

## General Information and Instructions *(continued)*

- **All applicants are required to provide their U.S. Social Security number (SSN) or individual taxpayer identification number (ITIN) if an individual does not have an SSN.**
- Box 5b – You must **also** provide a residence street address for the qualifier that will be used only for CSLB's internal administrative purposes – it will not be published on CSLB's website unless it is also the business address. P.O. boxes and PMBs are **not** acceptable for the qualifier's residence street address.
- Line 6 – Please enter any previous or current license numbers held by the qualifier in the provided box. Also enter the percentage of the new business owned/held by the qualifier (ranging between zero and 100%), the qualifier's driver's license number, and the qualifier's home phone number.
- Box 7 – Check the appropriate box that identifies the title/position of the qualifying individual. The **title/position must be compatible with the business entity type**, as entered in Section 2 above. Please be sure your selected title/position complies with the following:
  - **Sole owner entity** = either Owner or Responsible Managing Employee (RME) – see below
  - **Partnership entity** = either Qualifying Partner or RME
  - **Corporation entity** = either Responsible Managing Officer (RMO) or RME
  - **LLC entity** = any one of RMO, Responsible Managing Manager, Responsible Managing Member, or RME
  - **Tribal Business entity** = either RMO or RME
- An **RME is a bona fide employee** who is permanently employed by the applicant and is actively engaged in the operation of the applicant's contracting business for at least 32 hours or 80% of the total hours per week such business is in operation, whichever is less.
- Box 8 – You **must** print and sign your name and indicate the date below the certification statement at the bottom of Page 1 of the application. Failure to sign your application will result in the application being returned to you for correction.

**SECTION 4 – PERSONNEL FULL LEGAL NAMES AND ADDRESSES** (Other than Qualifying Individual)

**You must complete the personnel information requested in Section 4 of the application for each individual and company that will be listed as personnel on the license**, other than the qualifier listed in Section 3. Be sure to include the applicant's business name at the top of the page where requested.

- See Section 3 above for instructions on how to complete the specific fields of this section. If more than four (4) personnel must be reported, please make a copy of the blank form. All personnel **must** print and sign their names below the certification statement and include the date that the form was signed.
- Every person who is an officer, member, responsible manager, or director of a corporation, tribal business, or limited liability company seeking licensure under this chapter shall be listed on the application as a member of the personnel of record. (BPC 7065 (b) (1)
- LLCs can have managers or members that are corporations or other LLCs, as opposed to individual people. When an LLC has corporate or LLC managers or members, complete Section 4 for those companies, omitting the fields that do not apply (e.g., date of birth, SSN/ITIN, and driver license number). Since corporations and LLCs are incapable of signing documents (e.g., applications, renewals, etc.), you must also report at least one individual person who will be an authorized signer for that company. To do this, you must complete a portion of Section 4 using this individual person's personal information. Identify that person as the "Authorized Signer for _____" (inserting the name of the corporation or LLC on behalf of which the individual person will sign). This individual person will not be part of the official license personnel of record (unless they are also an actual responsible manager, member, or officer of the applicant LLC), but their information will be maintained by CSLB for signing purposes only.

## SECTION 5 – REQUIRED APPLICATION QUESTIONS

Be sure to include the applicant's business name at the top of the page where requested. **All** questions must be answered, unless otherwise indicated, and all requested explanations and documentation must be provided, or the application will be returned for correction. Failure to thoroughly and accurately complete this section of the application can delay the licensure process or result in denial of the application.

### Fingerprint Requirement

**Please be sure to read the Important Notice Regarding Convictions on the front of this application packet.** All applicants for licensure are required to submit a full set of fingerprints for the purpose of conducting a criminal background check. Fingerprints will be compared to the records of the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) to determine whether a criminal history exists. Your license will not be issued until CSLB receives fingerprint results from both DOJ and FBI. Even though you may have been fingerprinted previously for an employer or another regulatory body, you will need to undergo the fingerprinting and criminal history check process again specifically for CSLB. California Penal Code section 11142 prohibits criminal history information from being released to any entity other than the requesting agency that you have authorized to receive it.

After an application has been accepted by CSLB as complete (also known as "posted"), each individual listed on the application who needs to fingerprint will be sent instructions on the process for obtaining and submitting fingerprints. Individuals in California are required to fingerprint by electronic live scan; individuals outside of California can fingerprint either by electronic live scan in California or by submitting hard card fingerprints that are completed in the applicant's location, as explained in the instructions that are sent after the application has been posted. Please note that submitting hard card fingerprints can significantly delay the licensure process due to the extra processing needed at DOJ and FBI. For more information, please visit CSLB's website and view information on the Applicants page.

### Translator for Examination (Question 15)

Check the "Yes" box if you have difficulty understanding or reading the English language and you would like to use a translator to read the examination to you. Complete question #15 by listing in what language your translator will read the examination. The translator you choose must be approved in advance by CSLB. If you check the "Yes" box, information will be sent to you regarding the translator process. Some of CSLB's examinations have been translated into Spanish. If the applicant selects "Spanish" as their preferred language and there is an examination available in that language, they will be scheduled for that examination.

## SECTION 6 – QUALIFIER EDUCATION, APPRENTICESHIP, LICENSURE, AND MILITARY SERVICE

### Education and Apprenticeship (Question 16)

CSLB may grant up to three years of credit toward the four-year experience requirement for completed training in an accredited school and/or apprenticeship program in the construction trade for which the applicant is applying. (*T16 CCR section 825*). For formal education, request a certified official transcript from the applicant's educational institution. Include the sealed official transcript with the application when submitting. Degrees obtained outside of the United States must be translated, if in a language other than English, and evaluated by an accredited evaluation service in the U.S. before being submitted to CSLB.

For apprenticeship programs, the applicant must submit a copy of their apprenticeship certificate and indicate the dates of the program where requested on the application.

### Reciprocity (Question 17)

Applicants who are seeking licensure in California and who are licensed in the same classification in another state may be eligible for the waiver of the trade examination if the qualifier meets the requirements for reciprocity (*BPC section 7065.4*). Please see CSLB's website (www.cslb.ca.gov) for more information. If you are licensed in a state and classification recognized by the Board, please have the licensing agency from your state complete a "License Verification Request" form and submit it with this application. The California Law and Business Examination will still be required if the applicant has not passed California Law and Business Examination within the last five (5) years. (*See CSLB's website for more information on reciprocity on the Applicants page.*)

**Military Service** (Questions 18 and 19)

**Expedited Processing and 50% reduction of Initial License fee for Military Personnel**
CSLB will expedite the licensure process and reduce the initial licensing fee by 50% for an applicant who is a current active-duty member of the Armed Forces or who was not dishonorably discharged after having served as an active-duty member of the United States Armed Forces or the National Guard or Reserves. Please provide the following documentation: Evidence of your current military duty (copy of your military orders) or your previous military service (copy of your latest DD 214 long form – Certificate of Release or Discharge from Active Duty showing discharge status or a copy of a current and valid driver's license or identification card issued by this state or another state with the word "Veteran" printed on its face) or for National Guard discharge status (copy of your NGB 22 form), or for Reserves discharge status (copy of your DD256 form).

**Expedited Licensure Application Processing for Service Members Enrolled in Skillbridge**
CSLB will expedite the licensure process for service members who are enrolled in a Skillbridge program. Please provide documentation of enrollment in a Skillbridge program, such as an official letter from a commanding officer, in order to qualify for expedited processing.

**Expedited Processing and Fee Waiver for Military Personnel Spouses or Domestic Partners**
CSLB will expedite the licensure process and waive the application fee and initial license fee for an applicant who:

- Is married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active-duty military orders.
  **AND**
- Holds a current license in another state, district, or territory of the United States in the profession or vocation for which the applicant seeks a license from the board.

If you answer "Yes" to question 19 and you would like to be considered for this expedited processing and waiver of licensure fees, please provide a copy of your current license from the other state, district, or territory of the United States documenting a contractor license, registration, permit, or certificate in the same classification for which you are seeking licensure **AND** documentation of your marriage or legal union **AND** your spouse's or partner's active military duty. For example, in addition to the licensure documentation, attach a copy of the marriage certificate or certified declaration/registration of domestic partnership filed with the Secretary of State **AND** military orders establishing a duty station in California. For other forms of "legal union" not recognized by California, you may submit other documentary evidence of legal union issued by the state that recognizes your legal union for consideration by CSLB in meeting this requirement.

**If all of the above-mentioned requirements are met and all the required documentation is submitted with the application, the application fee and the initial license fee will be waived. All other fees will still be required.**

**Credit for Military Experience and Training**
CSLB may grant credit toward licensure requirements for applicable work experience and training received while the applicant was an active-duty member of the Armed Forces of the United States performing duties in the classification for which they are applying. This work experience and training must be reported on a Certification of Work Experience form and must be supported by acceptable documentation. Include a copy of your Joint Service Transcripts (military transcripts) for evaluation. You may also provide evidence of current military duty (copy of applicant's military orders) or previous military service (copy of applicant's DD 214 – Certificate of Release or Discharge from Active Duty). If you are claiming military experience, please be sure to check the "Yes" box for Question 18 on the application, as discussed above.

**Immigration Status Expedites** (Question 20)

CSLB will expedite the licensure process for an applicant who immigrated to the United States of America in certain circumstances. Please check the "yes" box to question 20 on this application if:

- You were admitted to the United States as a refugee pursuant to section 1157 of title 8 of the United States Code;
- You were granted asylum by the Secretary of Homeland Security or the United States Attorney General pursuant to section 1158 of title 8 of the United States Code; or,
- You have a special immigrant visa and were granted a status pursuant to section 1244 of Public Law 110-181, Public Law 109-163, or section 602(b) of title VI of division F of Public Law 111-8, relating to Iraqi and Afghan translators/interpreters or those who worked for or on behalf of the United States government.

If you selected YES, you must attach evidence of your status as a refugee, asylee, or special immigrant visa holder. Failure to do so may result in application review delays. Acceptable evidence includes:

- Form I-94, Arrival/Departure Record, with an admission class code such as "RE" (Refugee) or "AY" (Asylee) or other information designating the person a refugee or asylee.
- Special immigrant visa that includes "SI" or "SQ."
- Permanent Resident Card (Form I-551), commonly known as a "Green Card," with a category designation indicating that the person was admitted as a refugee or asylee.
- An order from a court of competent jurisdiction or other documentary evidence that provides reasonable assurance that the applicant qualifies for expedited licensure.

## MISCELLANEOUS INFORMATION

### Experience and Examination Information

Applicants for licensure must meet specific experience and examination requirements, as explained below. Waivers of the trade examination may be granted under certain circumstances, as indicated on the next page. **If you qualify for examination waiver or exemption, do not use this application** – please instead use the Application for Original Contractor License – Waiver (7065) (form 13A-1A).

**Experience Requirements**

To be eligible for licensure, the qualifying individual must have had, within the last 10 years, at least four (4) years of experience in the classification for which they are applying. The experience must be at no less than a journeyman level, or as a foreman, supervising employee, contractor, or owner-builder. Owner-builder experience can only be used to qualify for a B-General Building classification, and certain requirements must be met. Please see the general information page of the Certification of Work Experience form for more information. A "journeyman" is defined as an experienced worker who is fully qualified (as opposed to a trainee) and is able to perform the trade without supervision, or one who has completed an apprenticeship program. **Experience is documented on the Certification of Work Experience form**. (*T16 CCR section 825*)

**Examination Eligibility Requirements**

The qualifying individual for a contractor license is required to pass the written Law and Business Examination and a specific trade examination if required (BPC section 7065) unless they meet the requirements for a waiver (see next page for information regarding examination waivers). These examinations are administered by an approved testing vendor and fees for the examinations are paid directly to the vendor by the applicant. Information about scheduling examinations will be mailed to you once the application is posted. Official CSLB examination study guides are available free of charge on CSLB's website under the Applicants tab. These study guides are available in English and Spanish.

**Re-Examination**

If you are required to take an examination, subject to some limitations, you have 18 months after the approval of your application to achieve a passing score on the examinations(s). During that time, you may take the examinations(s) as many times as needed within retesting guidelines. These re-examinations are administered by an approved testing vendor and the fee for the re-examinations are paid directly to the vendor by the applicant each time you reschedule an examination. Scheduling re-examinations will be done through the PSI Exams account. If a candidate fails one or both of their examinations, they must go to their PSI account to select the date, time, and location for their next examination. Candidates must wait 21 days after taking an examination before they may try it again. *(See BPC section 7074 for more detailed information on re-examinations).*

*Please detach this General Information and Instructions portion before submitting the completed application package to CSLB.*

**Reasonable Accommodation – The Americans with Disabilities Act**

In compliance with the Americans with Disabilities Act (ADA), CSLB provides reasonable accommodation for applicants with disabilities that may affect their ability to take the required examinations. Applicants wishing to request reasonable accommodation pursuant to the ADA must complete the Special Accommodation Request for Examination form (available on the Forms and Applications page on CSLB's website) and submit it to CSLB with the appropriate supporting documentation. In order to make the necessary arrangements to accommodate candidate needs, the form and supporting documentation should be submitted as soon as possible. As soon as the reasonable accommodation is approved, candidates may contact PSI Exams to schedule and pay for their examination(s).

**Examination Waivers and Exemptions**

The examination may be waived if the qualifying individual is currently or has been in the last five (5) years, actively engaged in the construction business and meets specific waiver requirements as mandated by law or has been actively licensed in good standing or has passed the required examinations in the classification for which they are applying. *(See BPC sections 7065 – 7065.4 for a complete list.)* If you are applying for licensure based on waiver of or exemption from the trade and Law and Business examinations, you should complete the Application for Original Contractor License – Examination Waiver (7065) instead of this application.

In addition, the trade examination may be waived if the qualifier meets the requirements for reciprocity. Please see CSLB's website (www.cslb.ca.gov) for more information. If you are licensed in a state and classification recognized by the Board, have the licensing agency from your state complete a "License Verification Request" form and submit it with this application. The Law and Business Examination will still be required if the applicant has not passed that examination within the last five (5) years. (See CSLB's website for more information on reciprocity on the Applicants page.)

**Random Application and Experience Review**

By law, CSLB must randomly review three percent (3%) of applications, including the experience claimed on Certifications of Work Experience forms that must be verifiable through payroll records or similar documents. In the event that your application is selected for review, please see CSLB's website for a Summary of Acceptable Documentation (*located at CSLB's website on the Applicants page*) that may be submitted to CSLB to support claimed experience. In addition, CSLB staff may contact the certifier of experience or other parties to verify experience. *(BPC section 7068 and T16 CCR 824)*

**C-22 Asbestos Abatement Contractor License**

The C-22 – Asbestos Abatement contractor performs abatement, including containment, encapsulation, or removal, and disposal of asbestos containing construction materials, as defined in Section 6501.8 of the Labor Code, in and on buildings and structures. All work performed and all documentation prepared by an asbestos abatement contractor shall be done in accordance with DOSH regulations and requirements.

The Board shall not issue an asbestos abatement contractor license unless the applicant or contractor is duly registered with DOSH pursuant to Section 6501.5 of the Labor Code or has an active application for registration in process with DOSH. All holders of the C-22 – Asbestos Abatement classification shall have completed DOSH registration training requirements, as contained in Section 1529 of Title 8 of the California Code of Regulations.

You may wish to contact DOSH prior to applying for the asbestos certification or the C-22 – Asbestos Abatement classification to be sure that you understand their requirements for registration since DOSH registration is required in order to perform asbestos-related work. DOSH's Asbestos Contractors' Registration Unit (ACRU) can be reached at (916) 574-2993 or ACRU@dir.ca.gov, or you can visit their website at http://www.dir.ca.gov/dosh/ACRU/ACRUhome.htm.

**C-47 General Manufactured Housing Contractor License**

Prior to obtaining a C-47 – General Manufactured Housing contractor classification, you must complete a federally approved initial installer training. Along with your application, please submit a "Certificate of Completion of Training" from a qualified trainer approved by the U.S. Department of Housing and Urban Development (HUD). The license applicant is responsible for ensuring the training program is approved by HUD. Existing C-47 license holders are exempt from the requirement.

## Bond, Insurance, and Other Licensure Requirements

**All contractors** must meet specified bond, insurance, and other requirements for licensure with CSLB, as indicated below. Failure to maintain a required bond or insurance may result in the suspension of the license. For information on bonds, see *A Guide to Contractor License Bonds*, available on CSLB website under the Resources tab and then choose CSLB Publications. Bonds may be submitted to CSLB electronically by the issuing surety company.

### Contractor's Bond

**All contractors** must have a $25,000 contractor's bond on file with CSLB. (*BPC section 7071.6*)

### Bond of Qualifying Individual

An **additional** $25,000 qualifying individual's bond must be filed for **all** contractors that are qualified by an RME, or under certain other circumstances for corporate and LLC contractors when the qualifying individual (RMO, responsible managing manager, or responsible managing member) holds less than 10 percent of the voting stock of the corporation or membership interest in the LLC. (*BPC section 7071.9*). Tribal businesses are exempt from this specific requirement.

### LLC Employee/Worker Bond

**All** LLC licenses are required to have an **additional** $100,000 employee/worker bond on file with CSLB for the benefit of workers employed by or contracted to work for an LLC. (*BPC section 7071.6.5*)

### Disciplinary Bond

A license that has been disciplined may be required to have an **additional** disciplinary bond on file with CSLB in an amount fixed by the Registrar at not less than $25,000 or more than $250,000. (*BPC section 7071.8*)

### Workers' Compensation Insurance

Workers' compensation is required when a contractor has employees, including an RME and/or home improvement salespersons. It is also required for all contractors applying for the C-8 Concrete, C-20 Warm-Air Heating, Ventilating, and Air Conditioning, C-22 Asbestos Abatement, C-39 Roofing, and C-61/D-49 Tree Service classifications, whether or not they have any employees. The Certificate of Insurance must be issued in the business name shown on this application. Contractors that have no employees and are not otherwise required to have workers' compensation insurance must complete the Exemption from Workers' Compensation form, available on CSLB website's Forms and Applications page. (*BPC section 7125*)

### LLC Liability Insurance

**All** LLC licenses are required to have liability insurance in an amount that is not less than one million dollars ($1,000,000) or more than five million dollars ($5,000,000). The amount is determined based on the number of personnel of record on the license. For five (5) or fewer personnel, the amount is $1 million. For each additional member of personnel, the amount increases by $100,000, up to a maximum of $5 million. For example, an LLC that has eight (8) personnel would be required to carry a $1,300,000 liability insurance policy. (*BPC section 7071.19*)

### Asbestos Open Book Examination

**All** qualifiers must complete the Asbestos Open Book Examination as part of the licensure process. Information about this examination and the link to take it can be found on CSLB's website at www.cslb.ca.gov. (*BPC section 7058.5*) Completion of this required open book examination does not authorize the licensee to engage in asbestos-related work.

## Reissuance or Reassignment of License Number

If the qualifier has previously been licensed, it may be possible to have the previous license number reissued or reassigned under certain circumstances. Sole owner numbers may be reissued to corporations or LLCs, and corporate license numbers may be reissued to LLCs. To request the reissuance of a license number, the applicant must complete and submit with their application the Request for License Number Reissuance form (13A-1h), available on the Forms and Applications page on CSLB's website. (*BPC section 7075.1*)

**Construction Management Education Account**

A grant program was established in 1991 to provide funds for qualified public post-secondary schools that teach construction management. You may voluntarily contribute to the account when paying the application fee or the license renewal fee. If you would like to make a voluntary contribution, please mark the box on the top portion of Page 1 of the application, write in the dollar amount in the space provided, and include that dollar amount in the total amount paid with your application, or submit a separate check or money order made payable to CSLB/Construction Management Education Account. *(See BPC sections 7139.2 and 7139.4.)*

**Collection of Social Security Numbers, Individual Taxpayer Identification Numbers, and Federal Employer Identification Numbers**

With the exception of the driver's license number, all information requested on the application is mandatory, including disclosure of U.S. Social Security numbers (SSN), individual taxpayer identification numbers (ITIN), and federal employer identification numbers (FEIN). Collection of the SSN, ITIN, and FEIN is authorized by BPC sections 30, 31, and 7145.5. SSNs, ITINs, and FEINs are used exclusively for the purpose of tax enforcement, compliance with any judgment or order for family support in accordance with Family Code section 17520, measurement of employment outcomes of students who participate in career technical education programs offered by the California Community Colleges as required by BPC section 30, and investigation of tax evasion and violations of cash-pay reporting laws as set forth in Section 329 of the Unemployment Insurance Code. If you fail to disclose your SSN, ITIN, or FEIN, your application will not be processed, and you will be reported to the Franchise Tax Board; they may assess a $100 penalty against you.

**Collection of Personal Information**

CSLB collects the personal information requested on the following form as authorized by BPC sections 30, 31, 114.5, 115.5, 141, 480, 7066, 7069, 7072, 7073, and 7145.5 and T16 CCR section 816. CSLB uses this information to identify and evaluate applicants for licensure, issue and renew licenses, and enforce licensing standards set by law and regulation. Submission of the requested information is mandatory. CSLB cannot consider your application for licensure unless you provide all of the requested information. You may review the records maintained by CSLB that contain your personal information, unless the records are identified as confidential information and exempted from disclosure by the Information Practices Act, including Civil Code section 1798.40. CSLB makes every effort to protect the personal information you provide us; however, it may be disclosed in response to a Public Records Act request as allowed by the Information Practices Act; to another government agency as required by state or federal law or as provided in Civil Code section 1798.24; or in response to a court or administrative order, a subpoena, or a search warrant. The Custodian of Records is responsible for maintaining the information on this form and may be contacted at the address and telephone number listed in the letterhead at the top of this General Information and Instructions portion for questions about this notice or access to records.

**Resources on the Licensing Process**

CSLB has a variety of publications available to help you become a licensed contractor and to maintain your license. You can order free publications from or view documents on CSLB's website (www.cslb.ca.gov), by writing to CSLB at the address listed below, or by calling the 24-hour automated phone system at (800) 321-CSLB (2752). Please visit CSLB's website or call the toll-free phone number to find out how to order the current edition of the *California Contractors License Law & Reference Book* or other publications.

**Application Processing – Follow Your Application Status Online**

When CSLB receives your application, an acknowledgement letter will be sent to you that explains how to check the status of your application online at www.cslb.ca.gov or by calling (800) 321-CSLB (2752) using the Application Fee Number and Personal Identification Number (PIN) provided in the acknowledgement letter.

Please include your Application Fee Number in any correspondence. All correspondence should be sent to:

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827-1703
Mailing Address: P.O. Box 26000, Sacramento, CA 95826-0026

## CERTIFICATION OF WORK EXPERIENCE FORM

Following the application in this packet, you will find the Certification of Work Experience form that must be completed by the qualifying individual on the application and certified by a **qualified and responsible person** who has **direct knowledge of the experience and time period listed**. The experience must be verifiable through payroll records or similar documents. **Corrections on the certification forms must be initialed by the certifier.** Forms containing strikeouts or modifications that may compromise the validity of the work experience certification may not be accepted.

To assist the certifier in completing Part 2 of the Certification of Work Experience form, a listing of the License Classifications is available through a link on the Applicants page of CSLB's website (www.CSLB.ca.gov). This document may be used as a reference when listing the specific trade duties that the qualifier has performed or supervised in the classification for which they are applying.

The Certification of Work Experience form may not be required if the qualifier has ever served as the qualifier on a license in the same classification for which they are currently applying.

## OWNER-BUILDER B-GENERAL BUILDING CONSTRUCTION PROJECT EXPERIENCE FORM

Pursuant to BPC section 7044, owners who build or improve structures on their own property are exempt from the licensure laws for contractors under certain circumstances. The Owner-Builder B-General Building Construction Project Experience form **must** be completed by the qualifier on the application if they are claiming experience as an owner-builder working on projects on their own property. The experience must be verifiable through building permits, final inspections, or similar documents. Please see CSLB's website for the listing of Acceptable Supporting Experience Documentation (*located at CSLB's website on the Applicants page*) that may be submitted to CSLB to support claimed experience. *(BPC section 7068 and T16 CCR section 824)* A separate form is required for each project on the owner-builder's property. A Certification of Work Experience form must also be completed by the qualifying individual on the application and certified by a qualified and responsible person who has direct knowledge of the experience performed on the project.

**CONTRACTORS STATE LICENSE BOARD** STATE OF CALIFORNIA
9821 Business Park Drive, Sacramento, CA 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800-321-CSLB (2752) | *www.cslb.ca.gov* | *CheckTheLicenseFirst.com*

# Application for Original Contractor License

Application Fees
- **Single classification application** ..... **$450**
- Initial license fee (sole owner) * ..... $200
- Initial license fee (non-sole owner) * ..... $350
- **Total fees required (sole owner)** ..... **$650**
- **Total fees required (non-sole owner)** ..... **$800**
- Initial license fee to be paid after examinations
- * **Military Veterans see question #18**

The application fee for a single classification ($450) is not refundable once the application has been filed.
Attach a money order or a personal, business, certified, or cashier's check made payable to the Registrar of Contractors. Do not send cash.
There is a $25 service charge for each dishonored check.
☐ **Voluntary contribution to Construction Management Education Account $____**

**Please type or print neatly and legibly in black or dark blue ink.**

## SECTION 1 –BUSINESS NAME AND ADDRESS

**Business Name:** The legal business name will appear on the license and is the actual name under which the contracting business will operate. The full business name must be provided. The business name must not be misleading in relation to the classification(s) issued for that license and must be compatible with the type of business entity licensed. Please refer to the General Information and Instructions for information on business name styles.

| 1. FULL NEW BUSINESS NAME | 2. CLASSIFICATION REQUESTED *(Only one classification may be requested on the original application if an exam is required.)* |
|---|---|
| | |

| 3a. BUSINESS MAILING ADDRESS Number/Street or P.O. Boxes | City | State | ZIPCode |
|---|---|---|---|
| | | | |

| 3B. BUSINESS STREET ADDRESS Number/Street Only – NO P.O. Boxes or PMBs | City | State | ZIPCode |
|---|---|---|---|
| | | | |

| 3c. BUSINESS PHONE NUMBER | BUSINESS FAX NUMBER | BUSINESS EMAIL ADDRESS |
|---|---|---|
| ( ) | ( ) | |

## SECTION 2 – BUSINESS ENTITY

**Corporations** must provide a current and active California Secretary of State corporate registration number below. Please be sure to write the corporate titles (president, secretary, and treasurer) in the space provided for the appropriate personnel in Sections 3 and 4. **Partnerships** must list their federal employer identification number (FEIN) below (personal Social Security numbers and individual taxpayer identification numbers [ITIN] are not acceptable). **Limited liability companies** (LLC) must provide a current and active California Secretary of State registration number below. If this LLC has officers, please be sure to write the titles (president, secretary, and treasurer) in the space provided for the appropriate personnel in Sections 3 and 4. **Tribal businesses** must list the tribe under which they are incorporated as a business and list the qualifying individual and officers for their company. (*See the General Information and Instructions for more information.*)

4. NEW BUSINESS WILL OPERATE AS A (check only one)
- ☐ Sole Ownership (not a corporation or LLC)
- ☐ California Corporation # _____
- ☐ Federally recognized tribe _____
- ☐ Partnership – Federal Employer ID # _____
- ☐ Limited Liability Company # _____

## SECTION 3 – QUALIFYING INDIVIDUAL FULL LEGAL NAME AND ADDRESS

**Qualifying Individual (Qualifier):** A qualifying individual is required for every classification on every license issued by CSLB. You must provide **full legal names** of all individuals. (*See the General Information and Instructions for more information on completing this section.*)

| 5a. QUALIFIER'S FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| 5b. RESIDENCE ADDRESS Number/Street Only – NO P.O. Boxes or PMBs | City | State | ZIP Code |
|---|---|---|---|
| | | | |

| 6. QUALIFIER'S EXISTING / PREVIOUS CSLB LICENSE NUMBER(S) (If none, enter "N/A") | PERCENTAGE OF NEW BUSINESS OWNED BY THE QUALIFIER | DRIVER LICENSE NUMBER | RESIDENCE PHONE NUMBER |
|---|---|---|---|
| | _____% | | ( ) |

7. TITLE OR POSITION (check only one) For LLC and corporations qualified by a Responsible Managing Officer, the corporate title you provide in this section must exactly match the corporate title listed on SOS records.
- ☐ Owner (sole ownership only)
- ☐ Qualifying Partner
- ☐ Responsible Managing Employee (RME)*
- ☐ Responsible Managing Member
- ☐ Responsible Managing Manager
- ☐ Responsible Managing Officer (RMO) – Title(s): _____

* *RMEs are prohibited from having an active sole owner license. Please visit CSLB's website for an Application to Inactivate Contractor's License, if needed.*

8. I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I certify that I agree to the Examination Security Acknowledgement (see the General Information and Instructions for more information). I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to Business and Professions Code (BPC) section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

APP - EXAM

FOR CSLB USE ONLY

Applicant's Business Name (as listed in Section 1 of this application): _____

*(If additional space is needed, please make a copy of this blank page.)*

## SECTION 4 – PERSONNEL FULL LEGAL NAMES AND ADDRESSES (Other than Qualifying Individual)

The following must be **completed by all individuals and companies that will be listed on the license.** You must provide **full legal names** of all individuals. Each individual must sign the certification statement under penalty of perjury. *(See the General Information and Instructions regarding company personnel.)*

| 9a. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ Owner ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

| 9b. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

| 9c. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

| 9d. PERSONNEL FULL LEGAL NAME Last | First | Middle | DATE OF BIRTH | SOCIAL SECURITY NUMBER or ITIN |
|---|---|---|---|---|
| | | | | |

| RESIDENCE ADDRESS Number/Street Only – **NO** P.O. Boxes or PMBs | City | State | ZIP Code | DRIVER LICENSE # |
|---|---|---|---|---|
| | | | | |

TITLE OR POSITION (check only one) ☐ General Partner ☐ Limited Partner ☐ Director ☐ Member ☐ Manager ☐ Officer - Title(s) _____

RESIDENCE PHONE NUMBER ( )

I certify under penalty of perjury under the laws of the State of California that all statements, answers, and representations made in this application, including all supplementary statements attached hereto, are true and correct, and that I have reviewed the entire contents of this application. In signing and submitting this application, I also authorize the Franchise Tax Board to provide CSLB with required tax information pursuant to BPC section 7145.5.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

FOR CSLB USE ONLY

Applicant's Business Name (as listed in Section 1 of this application): _____

## SECTION 5 – REQUIRED APPLICATION QUESTIONS

**All questions in this section must be answered.** Questions 10 - 12 pertain to **all** individuals listed on this application (qualifying individual and **all** personnel listed in Section 4), and Questions 13 – 15 pertain to the qualifying individual only.

**10. To the best of your knowledge, is anyone listed on this application (or any company the person is or was a part of) named in or responsible for any unsatisfied final judgments, liens, and/or claims against any bond or cash deposit pertaining to a construction project?**

If you checked "Yes" for this question, you are required to attach a statement identifying all judgments (pending or on record), liens, past due unpaid bills, claims, or suits and a detailed explanation of the situation. Include the names and addresses of the parties involved. If the obligation was or is being discharged in bankruptcy, attach a copy of the bankruptcy filing and a copy of the creditors list.

❑ Yes ❑ No

**11. To the best of your knowledge, has anyone on this application (or any company the person is or was a part of, or any immediate family member of the applicant) ever received a citation from CSLB or had a contractor license or other professional or vocational license or registration denied, suspended, revoked, or otherwise disciplined by this state or elsewhere (i.e., other U.S. state, U.S. territory, agency of the federal government, or other country)?**

For the purposes of responding to this question, "disciplined" is an administrative action that resulted in a restriction or penalty being placed on any license you have or have possessed, such as a revocation, suspension, probation, or reprimand.

(Check "No" if the license or registration was suspended due to lack of a bond, workers' compensation or other required insurance, a qualifier, or family support.)

If you checked "Yes" for this question, you are required to attach a statement detailing the events leading to this action.

❑ Yes ❑ No

**12. To the best of your knowledge, has anyone on this application failed to resolve any outstanding final liabilities, which include taxes, additions to tax, penalties, interest, and any fees that may be assessed by CSLB, the Department of Industrial Relations, the Employment Development Department, the Franchise Tax Board, or the State Board of Equalization (BOE)?**

If you checked "Yes" for this question, you are required to attach a statement regarding the outstanding liabilities. In relation to BOE liabilities, you must indicate if you have entered into an installment payment agreement for that liability with the BOE and provide verification that you are in compliance with the terms of that agreement, if applicable.

❑ Yes ❑ No

**13.** ***(This question must be answered by the qualifying individual.)*** Direct supervision and control over construction operations includes any one or a combination of the following activities: supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, or direct supervision on construction job sites. **Will you, as the qualifying individual, perform one or more of these duties?**

❑ Yes ❑ No

**14.** ***(This question must be answered only if the qualifying individual is a responsible managing employee [RME].)*** Business and Professions Code Section 7068 (c) states in part that a RME is a bona fide employee that is permanently employed by the applicant and is actively engaged in the operation of the business, meaning working at least 32 hours per week or 80% of the total hours per week that the applicant's business is in operation. **Will you, as the responsible managing employee, meet the requirements of Business and Professions Code Section 7068 (c)?**

❑ Yes ❑ No

**15. The examinations are administered in English.** Will you require the use of a CSLB-approved translator?

**If yes**, in what language will your translator read the examination? _____

❑ Yes ❑ No

Applicant's Business Name (as listed in Section 1 of this application): _____

*(If additional space is needed, please make a copy of this blank page.)*

## *SECTION 6 – QUALIFIER EDUCATION, APPRENTICESHIP, LICENSURE, AND MILITARY*

*Applicants must answer the following questions and may be granted credit toward licensure requirements or receive expedited processing as noted below. Please refer to the General Information and Instructions for more information. If you checked "Yes" in response to any question, please provide the requested documentation.*

**16. Have you completed an educational or apprenticeship program?**

If you checked "Yes" for this question, you may be granted credit for **completed training in an accredited school** if you:

- Submit transcripts for a four-year degree, two-year degree (or less), technical training (must include course hours and descriptions), and all other degrees in a business or construction-related field.

**Transcripts must be certified official and received directly from the educational institution in a sealed envelope.** (If you received your degree outside the United States, your transcripts must be translated, if in a language other than English, and evaluated by an accredited evaluation service that does business within the United States.)

❑ Yes ❑ No

You may be granted credit for a **completed apprenticeship program** if you:

- Submit a copy of your apprenticeship certificate; **AND**
- Enter the beginning and ending dates of your completed apprenticeship program:

From_____ to _____
Month/Day/Year Month/Day/Year

(The apprenticeship period cannot overlap the journeyman-level experience period being certified on the Certification of Work Experience.)

**17. Are you licensed in another state in the same classification for which you are seeking licensure?** If you checked "Yes" for this question, you must provide a License Verification Request form that is completed by the licensing agency from the other state, please see CSLB's website to see if your state and classification qualifies.

❑ Yes ❑ No

**18. Are you serving in, or have you previously served in, the United States Armed Forces?**

If you checked "Yes" for this question, please provide the following documentation for review to potentially receive expedited processing and a 50% reduction in the initial license fee:

❑ Yes ❑ No

- Evidence of your current military duty (copy of your military orders) or your previous military service (copy of your latest DD 214 long form – Certificate of Release or Discharge from Active Duty showing discharge status or Copy of Driver's License with "Veteran" endorsement) or National Guard discharge (form NGB 22), Reserves discharge (form DD 256), or proof of enrollment in Skillbridge. See instructions section under **Military**.

**19. The CSLB will expedite the licensure process and waive the license application fee and the initial license fee charged by the board for an applicant who is the spouse of an active-duty member of the Armed Forces stationed in California and meets both of the following requirements:**

Are you married to, or in a domestic partnership or other legal union with, an active-duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active-duty military orders?

❑ Yes ❑ No

**AND**

Do you hold a current license in another state, district, or territory of the United States in the profession or vocation for which you seek a license from the board?

If you checked "Yes" for this question, please provide documentation of current licensure AND marriage, partnership or legal union AND active-duty military orders as described in the instructions under **Military**.

If all required documentation is submitted with the application the application fee and initial license fee will be waived. All other fees will still be required.

**20. Were you admitted to the United States of America under one of the circumstances described below?**

❑ Yes ❑ No

1. Admitted as a refugee pursuant to section 1157 of title 8 of the United States Code; 2. Granted asylum by the Secretary of Homeland Security or the United States Attorney General pursuant to section 1158 of title 8 of the United States Code; 3. You have a special immigrant visa and were granted a status pursuant to section 1244 of Public Law 110-181, Public Law 109-163, or section 602(b) of title VI of division F of Public Law 111-8, relating to Iraqi and Afghan translators/interpreters or those who worked for or on behalf of the United States government.

If you checked "Yes" for this question, please provide documentation as described in the instructions.

***STATE TAX AND OTHER OBLIGATIONS NOTICE***

*The State Board of Equalization and Franchise Tax Board may share taxpayer information with CSLB. You are obligated to pay your state tax obligation. CSLB may suspend or refuse to issue, reactivate, reinstate, or renew a license if your state tax obligation, child support obligation, or any outstanding final liability to CSLB, the Department of Industrial Relations, or the Employment Development Department is not paid. (BPC sections 30, 31, and 7145.5)*

**CONTRACTORS STATE LICENSE BOARD**
9821 Business Park Drive, Sacramento, CA 95827
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800.321.CSLB (2752) | *www.cslb.ca.gov* | *CheckTheLicenseFirst.com*



# CERTIFICATION OF WORK EXPERIENCE
## General Information

- **This form must be filled in completely in order to document the applicant's work experience, or the application will be returned for correction or completion. The qualifying individual on the application (as listed on Page 1 of the application) and certifier (a qualified and responsible person who verifies the experience in the classification for which the applicant is seeking licensure) must type or print neatly and legibly in black or dark blue ink – pencil is not acceptable.**
- FORMS CONTAINING STRIKEOUTS OR MODIFICATIONS MAY NOT BE ACCEPTED.
- Corrections on the Certification of Work Experience forms must be initialed by the certifier.
- Original signatures are required – faxed, photocopied, or stamped signatures are not acceptable.
- All qualifying individuals and certifiers must be at least 18 years old.
- All Certification of Work Experience forms must be submitted with the application.
- The Certification of Work Experience form, when filed with an application, becomes the property of CSLB and is kept as a matter of record. **Keep a copy of the completed and signed form for your records** – you may be asked to provide further documentation or testimony to verify your experience. A random three percent (3%) of applications are subject to review, and experience must be verifiable through payroll records and similar documents. CSLB staff may contact the certifier or other parties to verify experience.
- If you have ever served as a qualifier on a license in the classification for which you are now applying, you may not need to complete this form. However, if you are applying for a waiver of the examination pursuant to Business and Professions Code (BPC) sections 7065.1(b) or 7065.1(c), you do need to complete this form. *(Please refer to CSLB's website for more information on examination waivers.)* **NOTE: If you had a previous application that was denied on the basis of a lack of qualifying work experience, you must complete this form, regardless of whether or not you passed the examination.**
- Anyone who knowingly procures or offers false or forged documents to be filed, registered, or recorded in any public office in California is guilty of a felony. *(Penal Code section 115)*

### PART 1 – QUALIFYING INDIVIDUAL (APPLICANT) INFORMATION

- The qualifying individual (qualifier) must complete Part 1 in its entirety before the certifier completes Part 2.
- Lines 2 and 3 request the business name of company, license number of company, and company's business street address of the place where your experience was gained, which may or may not have been your employer.

### PART 2 – WORK EXPERIENCE AND CERTIFICATION STATEMENT

- The certifier must complete Part 2 in its entirety after the qualifying individual has completed Part 1.
- **The qualifying individual must document at least four (4) years of journey-level or higher experience in the classification for which they are applying. The experience must have been obtained within the last 10 years.**
- **The qualifying individual's work experience must have been completed at the level of journeyman, foreman, supervising employee, or contractor**, as defined below *(Title 16, California Code of Regulations [T16 CCR] section 825)*. Also defined below are "owner-builder" and "self-employed individual."
  - A **"journeyman"** is an experienced worker who is fully qualified (as opposed to a trainee) and is able to perform the trade without supervision, or a person who has completed an apprenticeship program. *(T16 CCR section 825)*
  - A **"foreman"** or **"supervising employee"** is a person who has the knowledge and skills of a journeyman and directly supervises construction projects.
  - A **"contractor"** is an individual who is currently a licensed California contractor, a former licensed California contractor, or an out-of-state licensed contractor. A contractor has the skills necessary to manage the daily activities of a construction business, including field supervision.
  - An **"owner-builder"** (a person who performs B-General Building classification work solely on their own property, pursuant to BPC section 7044) or a **"self-employed individual"** must have the knowledge and skills of a journeyman as listed above and the skills necessary to manage the daily activities of a construction business, including field observation. Owner-builders must complete and submit an Owner-Builder B-General Building Construction Project Experience form for each owner-builder project on their own property, in addition to the Certification of Work Experience form.
- The Description of Classifications document may be used as a reference only and is available through a link on the Applicants page of CSLB's website.
- **The certifier (a qualified, responsible person who is able to verify the work experience of the qualifier) must complete, date, and sign under the certification statement on line 9 at the bottom of the form.** The certifier can be an employer, fellow employee, journeyman, union representative, contractor, or business associate. This form will help CSLB determine whether the qualifier has the experience necessary to become a qualified contractor.
- **The certifier must have direct knowledge of the qualifier's experience during the time period listed.** "Direct knowledge" means personal knowledge of the experience that does not depend on outside information or hearsay. The certifier must be able to certify that the qualifier demonstrated a level of knowledge and skills expected of a journeyman or higher in the classification for which they are applying.
- Any licensee whose signature appears on a falsified Certification of Work Experience form, or who otherwise certifies false or misleading experience claims submitted by an applicant to obtain a contractor license, will be subject to disciplinary action. *(BPC section 7114.1)*

*Please detach this General Information and Instructions portion before submitting the completed application package to CSLB.*

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, CA 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com



# Certification of Work Experience

Please read the General Information on the previous page before beginning this form.

The qualifying individual from Page 1 of the application must complete the information in Part 1 below; then, the certifier (person certifying the experience) must complete Part 2. The experience must be verifiable through payroll records or similar documents. If additional space is needed to list the trade duties, please attach a separate sheet that must also be signed under the same certification statement contained below in line 9.

Use a separate form for each employer or work setting. If you need additional forms, please make a copy of this blank form or visit CSLB's website to print the form.

**Please type or print neatly and legibly in black or dark blue ink – pencil is not acceptable.**

FORMS CONTAINING STRIKEOUTS OR MODIFICATIONS MAY NOT BE ACCEPTED. Corrections must be initialed by the certifier.

## PART 1 – QUALIFYING INDIVIDUAL (APPLICANT) INFORMATION

**The qualifying individual must complete Part 1 in its entirety before the certifier completes Part 2.**

1. QUALIFIER'S FULL LEGAL NAME Last First Middle

2. BUSINESS NAME OF COMPANY WHERE EXPERIENCE WAS GAINED – OR, IF YOU WERE SELF-EMPLOYED, LEAVE THIS SPACE BLANK AND CHECK THIS BOX ☐ *(If you checked the box, skip line 3 and go to line 4.)* | LICENSE NUMBER OF COMPANY WHERE EXPERIENCE WAS GAINED

3. COMPANY'S BUSINESS STREET ADDRESS Number/Street Only – **NO** P.O. Boxes City State ZIP Code

4. WAS THE EXPERIENCE OBTAINED WORKING ON YOUR OWN PROPERTY AS AN **OWNER-BUILDER** *(see previous page for definition)*? ☐ Yes ☐ No
*If you checked "Yes" above, use the Owner-Builder B-General Building Construction Project Experience form to provide information on completed projects.*

## PART 2 – WORK EXPERIENCE AND CERTIFICATION STATEMENT

**The certifier must complete Part 2 in its entirety after the qualifying individual (applicant) has completed Part 1.**

5. APPLICANT'S **JOURNEYMAN-LEVEL OR HIGHER** TIME-BASE WORKED IN SPECIFIC TRADE DUTIES (check one):
☐ FULL-TIME
☐ PART-TIME
} FROM _____ TO _____ = FOR A TOTAL OF _____ YEAR(S) and _____ MONTH(S)
Month/Day/Year Month/Day/Year
(List **ONLY** journeyman-level or higher experience that was obtained in the applicable classification.)
*(Do not claim credit for full-time work if applicant worked only part-time or if trade duties in requested classification were only one component of entire job. For example, if applicant worked half-time in specific trade duties for six (6) years, write "3 years" in the space above.)*

6. IN THE SPACE BELOW, LIST ALL SPECIFIC TRADE DUTIES APPLICANT PERFORMED OR SUPERVISED IN THE CLASSIFICATION FOR WHICH THEY ARE APPLYING. ***PLEASE REFER TO THE DESCRIPTION OF CLASSIFICATIONS DOCUMENT FOR ASSISTANCE.*** *(Do not list office work or individual project names.)*

7. My business relationship to _____ is or was *(check all that apply)*:
Name of Qualifying Individual *(Applicant)*
☐ Employer ☐ Contractor (License Number _____) ☐ Foreman or Supervisor
☐ Journeyman ☐ Fellow Employee ☐ Union Representative ☐ Business Associate

8. CERTIFIER'S STREET ADDRESS Number/Street Only – NO P.O. Boxes City State ZIP Code

PHONE NUMBER ( ) | FAX NUMBER ( ) | EMAIL ADDRESS

9. **I certify that I have direct knowledge of the work covering the time period outlined above.** I certify under penalty of perjury, under the laws of the State of California, that the information stated above is true and correct.

| Date | Signature | Printed Name |
|---|---|---|
| | | |

Note: For information on the collection of personal information, please refer to the General Information and Instructions at the beginning of this application package, under the heading "Collection of Personal Information."

FOR CSLB USE ONLY

ADDL - CERT

**CONTRACTORS STATE LICENSE BOARD**
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800.321.CSLB (2752) | *www.cslb.ca.gov* | *CheckTheLicenseFirst.com*

STATE OF CALIFORNIA
Governor Gavin Newsom

# Owner-Builder B-General Building Construction Project Experience

**This form must be completed ONLY if the qualifying individual indicates on the Certification of Work Experience form that they obtained B-General Building classification experience working on their own property as an owner-builder.**

Use a separate form for each project. If you need additional forms, please make a copy of this blank form or visit CSLB's website to print the form.
**Please type or print neatly and legibly in black or dark blue ink. Incomplete forms are not accepted.**

| 1. QUALIFIER'S (OWNER-BUILDER) FULL LEGAL NAME Last | First | Middle | PHONE NUMBER ( ) |
|---|---|---|---|
| | | | |

| 2. PROJECT STREET ADDRESS Number/Street Only – **NO** P.O. Boxes | City | State | ZIP Code |
|---|---|---|---|
| | | | |

3. DO/DID YOU PERSONALLY OWN THE PROPERTY LISTED IN NUMBER 2 ABOVE? ☐ Yes ☐ No If you did not own the property, the work is not owner-builder. Business and Professions Code section 7044 describes an owner-builder as "an owner who builds or improves a structure on his or her property."

| 4. START DATE Month/Day/Year | COMPLETION DATE Month/Day/Year | How much time did you actually work on this project? |
|---|---|---|
| | | _____ YEARS and _____ MONTHS |

5. STRUCTURE/PROJECT SQUARE FOOTAGE: (You must provide the square footage of the project improvement, or the entire structure built, whichever applies.)

Square Footage: _____

6. BUILDING PERMIT NUMBER (Attach a copy of your building permit and final inspection record to this project document.)

Permit #: _____

7. DESCRIBE THE FULL SCOPE OF THIS PROJECT: (For example: remodel, new construction, room addition, and list in detail the full scope of all trade work performed)

8. LIST ALL THE TRADE DUTIES *YOU PERSONALLY* PERFORMED: (For example: I installed sheetrock, I installed 4-ton HVAC unit, I installed 2500 sf concrete tile roof)

9. EXPLAIN HOW YOUR PAST EXPERIENCE, TRAINING, AND/OR EDUCATION PREPARED YOU TO PERFORM WORK ON THIS PROJECT:

10. PROVIDE THE NUMBER OF LABORERS USED AND THE TRADES THEY PERFORMED:

11. PROVIDE THE NUMBER OF GENERAL CONTRACTORS OR SUBCONTRACTORS USED AND THE TRADES THEY PERFORMED:

FOR CSLB USE ONLY

OB-PROJ-LIST

# Exhibit 8

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys
and Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC.<br><br>Plaintiff<br><br>vs<br><br>GARY HUMPHREYS an individual; KAREN HUMPHREYS, an individual; and DOES 1 through 25 inclusive,<br><br>Defendants<br><br>and Related Cross-Action | Case No.: 30-2015-00805807<br><br>**DECLARATION - RE EXPERT WITNESS - ROBERT BROCKWAY**<br><br>Assigned to Judge David Chaffee Dept. C-20<br><br>Complaint Filed: Aug. 21, 2015<br><br>Trial Date: Sept. 26,2016 |

1. I, the undersigned, am the attorney of record in this action for Gary Humphreys and Karen Humphreys.

2. Accompanying this declaration is a list of the persons whose expert or opinion testimony the parties I represent intend to offer at the trial of this action, either orally or by deposition testimony. The list includes Robert Brockway to whom this declaration refers.

3.Mr. Brockway has agreed to testify at trial.

4. Attached to this declaration is the curricula vitae of Mr.Brockway containing a summary of the qualifications of Mr Brockway to render an opinion on the matters set forth in this declaration.

5. The following is a brief narrative statement of the general substance of the opinion testimony that Mr. Brockway is expected to give at trial:

Mr.Brockway will testify as to the standards and practices of the construction industry as they relate both to the services which were to be performed and which were performed by Adam Bereki and/or The Spartan Associates on the subject construction project; the adequacy of the services furnished by Adam Bereki and/or The Spartan Associates on and for the subject project; the standards and practices of the construction industry as they relate to contracts for home improvement work; the standards and practices of the construction industry as they relate to reimbursable construction costs and the extent to

which Adam Bereki and/or The Spartan Associates met or failed to meet those standards; The cause and extent of cost overruns on the subject project; The cause, extent, and impact of delays experienced by the project; The extent, and impact of the management of Adam Bereki on the project.

6. Mr. Brockway will be sufficiently familiar with the pending action to submit a meaningful oral deposition concerning the testimony described above, including his expert opinion and the basis therefor. Mr. Brockway's hourly fee for testimony is $420,00 per hour.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 1,2016

LAW OFFICES OF WILLIAM G. BISSELL

William G. Bissell
Attorney for Defendants, Cross-Complainants Gary Humphreys & Karen Humphreys

# Robert Brockway

**Expert Consultant Construction Litigation**
Estimating, Project Management
Scheduling, Delay Claims
OSHA Compliance

robertbrockway@berthowe.com
800.482.1822
Civil Engineering Technologies at Temple University, Philadelphia, Pennsylvania



*Senior Construction Project Manager*
*Senior Construction Estimator*
*Senior Construction Scheduler*
*Adjunct Instructor, Colleges, Technical Schools*
*OSHA Construction Safety and Health Training*

Southern California
Corporate Offices
5415 E. La Palma Ave.
Anaheim Hills, CA 92807
714.701.9180

Sacramento
2520 Venture Oaks Way
Suite 435
95833
916.569.8400

San Antonio
17806 IH 10
Suite 300
78257
210.540.9017

San Diego
402 W. Broadway
Suite 400
92101
619.890.7782

Las Vegas
3960 Howard Hughes Parkway
Suite 500
89169
800.928.1822

Phoenix
2375 East Camelback Road
Suite 600
85016
800.305.6440

Salt Lake City
2150 South 1300 East
Suite 500
84106
800.482.1822

Denver
4600 South Syracuse
9th Floor
80237-2719
800.248.4096

Houston
800 Town and
Country Boulevard
Suite 300
77024
713.264.8221

Miami
1111 Lincoln Road
Suite 400
33139
800.783.1822

## EXPERIENCE

Mr. Brockway is an expert consultant with over 34 years of experience in construction planning, scheduling, estimating, and project management. He has amassed vast experience in every aspect of a multitude of project delivery systems. From carpenter to contract manager and director of preconstruction, Robert Brockway has personally constructed, planned, scheduled, estimated, coordinated, supervised, and managed over $1.7 billion of in-place construction.

Robert Brockway's professional career in commercial and industrial construction commenced in 1982 with Mr. Brockway filling the role of utility man in the fabrication and installation of industrial iron work, and then progressed through training to carpentry which ultimately led to employment as a journeyman carpenter. By 1987 Mr. Brockway achieved the position of Project Estimator with Delran Builders Company, Inc. in Wyndmoor, Pennsylvania. He advanced to Chief Estimator in 1992, and through 2016 held a senior management position with multiple construction firms nationally. During his time with these firms, he scheduled, managed, and created estimates for various public, private, and negotiated projects, including new and renovated residential, commercial, hospitality, industrial, educational, and institutional facilities.

Mr. Brockway has developed a mastery of the construction, materials, processes, and protocols necessary to plan, bid, and build, various types of structures for a multitude of end-users including high rise, multi-unit residential, mixed-use, retail, malls, site development, infrastructure, rail, airports, laboratory, hospitals, parking structures, sports complexes, mass transit, Federal Aviation, Department of Energy, Department of Defense, Army Corps of Engineers, and historic restorations.

While at Delran Builders Mr. Brockway scheduled and estimated various urban renewal projects in the Mid-Atlantic region which included interface with local, state, and federal contracting entities as well has local historical societies. Projects ranged in price exceeding $12MM.

Robert Brockway continued his career trajectory by accepting positions as Vice President of Estimating and Chief Estimator for J.J. Deluca and Daniel J. Keating Company of Narberth, Pennsylvania. This period included work on educational, institutional, commercial, condominiums, high-rise, mass transit, airports, hospitals, stadiums, and urban construction ranging in value to $45MM.

In 1999 Mr. Brockway expanded his knowledge base by providing specialized consulting services which included providing pre-construction and project management services on a per project basis for several contractors lacking the experience to enter commercial construction projects. Additional endeavors included providing on-site training to construction personnel in the areas of estimating, project management, construction-scheduling, and field supervision.

During this same time period, Mr. Brockway custom tailored, prepared, implemented, administered, and presented comprehensive marketing and business plans to bonding companies and potential investors. Further consultations included providing services to a major bonding company reviewing potential client's business structure and analyzing the potential risks. This led to the opportunity to be engaged to compile and estimate damages caused by a hurricane to an entire school district for use in insurance settlements.

From 2004 through 2011 Mr. Brockway was able to leverage his considerable body of experience into participation in the construction of dozens of significant projects in the Mid-Atlantic region with the area's top firms. While working for Jeffery M. Brown Associates of Huntingdon Valley, Pennsylvania he maintained and nurtured the Class "A" commercial portfolio of a Fortune 500 development company and prepared estimates for, and managed, several Class "A" retail, commercial, and condominium projects. As a construction management department head for IMC Construction, Inc., in Malvern, Pennsylvania, Mr. Brockway was responsible for the total management of all project activities from project inception to closeout including: Pre-Construction, Bid Compilation, Estimating, Scheduling and Planning, and Project Management. He was personally responsible for management and assignment of project managers, estimators, and field personnel, establishment and implementation of project management and estimating procedures, fiscal responsibility for all assigned projects and departmental expenditures, administration of subcontracts (including preparing of same), budget management of projects, schedule preparation and execution, and negotiation of contracts with owners and subcontractors. While at IMC Construction Mr. Brockway was able to successfully lead new market penetration efforts in a stagnant economy, and craft a multi-pronged approach to minimizing risk and increasing profits on zero margin projects. He also established and implemented company-wide project management software protocols and procedures. During his tenure in Pennsylvania, Mr. Brockway worked on projects across the nation that ranged in value to $454 MM.

Mr. Brockway was not only an estimator and manager; beginning in 1988, he took on the role of educator, instructor, and guest lecturer at various colleges and technical schools, including the American Builders and Contractors Association, The United Brotherhood of Carpenters and Joiners of America, Metropolitan Regional Council, Villanova University, Community College of Philadelphia, and Penn State University. Mr. Brockway's parallel 21 year career teaching in trade schools and colleges included teaching accredited carpenter apprenticeship training for the first year module, journeyman upgrade courses that included scheduling, and core required college level courses including estimating, construction management, and job site management.

In 2011, Mr. Brockway relocated to California and McCormick Construction Company, Inc., in Burbank, and continued to estimate and provide construction management expertise for several commercial projects in excess of $100MM. Work included providing expert level conceptual estimating reports for various end users for use in commercial development proforma and design build proposals including Municipal lease-back developments. He has also worked with a world renowned engineer to prove concept of emerging technologies in high rise residential construction. He continued through 2013 with Tri-Technic, Inc. of Sonora, California estimating and competitively bidding various life critical public utility and industrial projects in excess of $50MM. Projects included power plants, transmission lines, substations and switch yards, solar and wind power generation, HVDC converter stations and, water treatment facilities.

Mr. Brockway became a consultant with Bert L. Howe & Associates, Inc., in Anaheim Hills, California in 2013. He has demonstrated exceptional communication, organizational, and technical writing skills, and can effectively interact with design professionals, owners, attorneys, municipal officials, and tradesmen with full comprehension on any construction-related issue.

Due to his diverse and comprehensive operational background in multiple construction disciplines, Mr. Brockway has been designated for expert testimony over twenty times, and has been deposed multiple times in five States. He has participated in arbitration, mediation, trial preparations, and made presentations for cases that were won or settled successfully.

# PROFESSIONAL TEACHING EXPERIENCE

2008 – 2009

Adjunct Instructor
Penn State University
Pennsylvania College of Technology

All classes are core course requirements to qualify for a B.S. degree in Construction Management. Classes taught: Scheduling, Construction Management, and Job Site Management

2007 – 2009

Adjunct Instructor
Community College Of Philadelphia
Department of Architecture, Design and Construction

All classes are core course requirements to qualify for the A.A.S. (Associate in Applied Science) degree in Construction Management. Classes taught: Construction Cost Estimating I and Construction Cost Estimating II

2006 – 2007

Guest Lecturer
American Society of Professional Estimators Chapter 61
Subject presented: Pre-Construction Management

1994 – 2003

Instructor
The United Brotherhood of Carpenters and Joiners of America
Metropolitan Regional Council
Philadelphia Carpenters Joint Apprenticeship Committee

All classes are for journeyman carpenters who are training to be superintendents, supervisors, and project managers. Classes taught: Scheduling

1996 – 1997

Guest Lecturer
Villanova University
Center for Engineering Education and Research
Subject presented: Application of Engineering Principles in Construction Management

1988 – 1992

Instructor
American Builders and Contractors Association (ABC)
National Center for Construction Education and Research (NCCER)
Central Montgomery County Area Vocational Technical School

All classes are core course requirements to qualify to be a Journeyman Carpenter. Classes taught: Carpenter's Apprenticeship Training – Year 1

# AREAS OF SPECIALIZATION

Mr. Brockway is considered a veteran in hard-bid compilation and construction management for projects located throughout the United States. He provides a professional level of expertise with regard to the principals of, estimating, construction management, planning, OSHA protocols, and knowledge of in-place construction systems. His background and experience are well suited to assignments wherein he provides expert opinion relative to matters of budget, construction, standard of care, standard of practice, and OSHA Regulations.

Mr. Brockway also provides forensic schedule analysis. His experience encompasses all universal scheduling concepts, including all forms of observational and modeling methodologies. His extensive experience in the field of schedule creation, management, and analysis as practitioner, teacher, and delay claim analyst allows the client to benefit from his unique combination of skills in development and execution of appropriate claim strategies relative to desired results.

Mr. Brockway possesses the business acumen and technical expertise necessary to navigate the assorted challenges that influence the complicated environment of men, materials and equipment of an active job site. He also is familiar with state and local building code criteria, union agreements, contract documentation, including specifications and details of construction.

Mr. Brockway is proficient in many software applications, including Sage, Timberline, Primavera, Microsoft, Prolog, and Oracle. He has knowledge of office systems, databases, word processing, and spreadsheet programs, including on-screen take-off software and web-based applications. He has pioneered, designed, and implemented a proprietary computer-based construction costing software program, as well as a program created specifically for contract control systems.

Specialized Expert Support in:

- Mediation and Trial Support
- Allocation of Subcontractor Liability
- Forensic Schedule Analysis
- AIA Contract Analysis
- Subcontract Agreement Analysis
- Scope of Work Determination
- Change Order Analysis
- Construction Means and Methods
- RFI Analysis
- Billing Procedure Standards
- Personal Injury Claims
- Contractor and Carrier Liability
- Site Investigation Reports
- OSHA Standards
- Jobsite Safety Analysis
- General Contractor Responsibilities
- Subcontractor Responsibilities and Standards of Care
- Project Management Standards of Care
- Schedule Compliance
- Delay Claims
- Federal Project Contract Administration
- Performance Assessment
- New Construction Estimating
- Repair Estimating
- Fire Reconstruction Estimates
- Industry Breach of Standards Care
- LEED Compliance Analysis
- ADA Compliance

# CONSTRUCTION MANAGEMENT AND FORENSIC EXPERIENCE

- Federal, State, DoE, and DoD Project Experience
- Institutional Projects
- Forward Planning and Entitlement
- Site Development
- Commercial Projects
- Sports Complexes
- Educator - Estimating, Scheduling, Construction Management
- Estimate Preparation
- Scope of Work Documents
- Contracts and Proposal Preparation
- Construction Management
- Scheduling
- Risk Management
- Infrastructure Development
- Educational and Institutional Projects
- Medical Facility Construction
- Airports and FAA Projects
- Rail Expansion Projects
- Multi-Unit Residential Projects
- Laboratory Facilities
- Parking Structures
- Retail Development and Tenant Improvement Projects
- Public Utility Projects
- Educational Renovation Projects
- Institutional Renovation Projects
- Report Preparation
- Software Development and Implementation
- Professional Consultant Coordination
- Staff Management
- Project Monitoring and Protocol Development

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

September 8, 2016, I served the within:

**Declaration re Expert Witness - Robert Brockway**

in said action by placing a true copy thereof, enclosed in a sealed envelope with postage, certified, return receipt requested thereon fully prepaid, in the United States mail at Newport Beach, California addressed as follows:

J. Scott Russo, Esq.
Russo & Duckworth LLP
9090 Irvine Center Drive, 2nd Floor
Irvine, CA 92618

Carlos E. Sosa Esq.
Law Office of Hausman & Sosa
18757 Burbank Blvd. Ste 305
Tarzana, CA 91356-6329

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 8, 2016, at Newport Beach, California.

William Bissell

# Exhibit 9

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

| | |
|---|---|
| THE SPARTAN ASSOCIATES, INC., | |
| Plaintiff, | |
| vs. | Case No.: 30-2015-00805807 |
| GARY HUMPHREYS an individual; KAREN HUMPHREYS, an individual; and DOES 1 through 25 inclusive, | |
| Defendants. | |
| And Related Cross-Action | |

DEPOSITION OF ROBERT BROCKWAY
Taken on Tuesday, September 13, 2016, 12:58 p.m.

REPORTED BY:
Grace A. DiBernardo
CSR No. 10322

Deposition of Robert Brockway, taken before Grace A. DiBernardo, Certified Shorthand Reporter No. 10322, for the State of California, with the principal office in the County of Orange, commencing at 12:58 p.m., Tuesday, September 13, 2016, in the Law Offices of Russo & Duckworth, LLP, at 9090 Irvine Center Drive, Second Floor, Irvine, California.

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:
RUSSO & DUCKWORTH, LLP
9090 Irvine Center Drive
Second Floor
Irvine, California 92618
(949) 752-7106
BY: J. Scott Russo, Esq.
jsrusso@russoandduckworth.com

FOR THE DEFENDANT:
LAW OFFICES OF WILLIAM G. BISSELL
14 Corporate Plaza Drive
Suite 120
Newport Beach, California 92660
(949) 719-1159
BY: William G. Bissell, Esq.

ALSO PRESENT: Adam Bereki
Gary Humphreys

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Mr. Russo ---------- 4

E X H I B I T S

Plaintiff's Page
1 Cost Worksheet - Memo on Damages 34
(2 pages)
2 Master Timeline (11 pages) 42

QUESTIONS NOT ANSWERED

(None)

DOCUMENTS REQUESTED

(None)

INFORMATION REQUESTED

(None)

Robert Brockway,
having been first duly sworn by the
Certified Shorthand Reporter, was called as a witness,
examined, and testified as follows:

EXAMINATION

BY MR. RUSSO:

Q Mr. Tolman, you've had your deposition taken before, haven't you?

A Mr. Brockway.

Q My mistake. Okay. Mr. Brockway, you and Mr. Tolman, you guys work together?

A Yes.

Q Okay. For this assignment, originally Mr. Tolman was designated. When did you learn that you were going to be a witness in this case?

A Around the exact same time, and it had to do with John's schedule at the time. So, I took it over almost from inception.

Q When did that begin?

A I'm going to estimate that it was in 2014.

Q So, you've been on this project for a couple of years?

A Since its inception, yes.

Q You've given depositions before, haven't you?
A Yes.
Q Many times?
A Enough times.
Q Any reason for me to go over the rules?
A No, I understand them.
Q Any reason why your deposition can't go forward today?
A No.
Q Who were you hired by in this case?
A William Bissell, attorneys.
Q Had you done any work for him before?
A I have not personally, no.
Q Had your firm done work for his firm before?
A I don't know. I don't have knowledge of that.
Q What did he tell you about what your assignment was going to be in this case?
A I was -- we were hired or I was instructed to examine and analyze the performance on the work onsite, how it was performed, means and methods, et cetera about the management and management practices that were appropriate for a job like that, to give an approximation or estimate of the cost of what something like that would have cost, and to opine on what was spent versus what was needed.

Q Okay. So, was any part of your assignment determining whether or not the construction was done appropriately?

A Well, if you consider means and methods, I do. I guess the answer would be yes.

Q How about whether or not the work was substandard or defective?

A Not defective as an architectural opinion, no. It's more or less means and methods, which is how you go about doing something, the standards that you follow, the management, and then the cost. So, as far as code, architectural defects, things like that, no, I will not be opining on that.

Q So, were the items you were looking at is how long it took and the cost?

A And how the means and methods, again how they went about performing the work and management techniques applied to carry out the work.

Q Where did you get your understanding as to what means and methods were actually used and what to help form your opinion?

A In the documents that I turned over to you, there's a series of e-mails that describe things. There is a lot of photographs and some letters that went along the way. In that there was no daily job logs. It's

common in a job. I didn't have any day-to-day records. What I had to do was take -- I went over payroll records provided by Spartan, and I went over the W-2s to analyze the number of men, how long they were there, and what tasks they were doing. I would match up the timing of the payroll records with the photographs that Spartan provided, and there was a lot of photographs. So, I got an idea of how long things went. There was some descriptions in e-mails that gave me clues to what means and methods were or were not applied to the job.

Q And by means and methods, what do you mean?

A An example would be, there's several primary areas that jump out to me. No. 1, at the beginning of the project, standard means and methodology for carrying out what I consider a residential renovation of this type at this location. Standard procedures are, you get building permits and you get working drawings. What I was able to determine through -- I'm sorry. I also examined Mr. Bereki's deposition testimony for additional information as far as means and methods go.

An example to me would be, at the beginning of demolition to the property without building permits, the need to demolish, beginning demolition without a set of working drawings, that's abnormal. That's not in the standards of how you do those kinds of things. The other

example of means and methods, I saw a multitude from photographs of occurrences of unsafe practices. According to OSHA, things such as lack of shoring when demolishing structural elements, lack of PPE, which is personal protective equipment, inappropriate like that. Those are two examples of that. I was able to discern that largely from the photographs and descriptions in the deposition testimony and e-mail communications.

Q Why did you believe that looking at safety issues and OSHA-type stuff was important to what you were doing?

A Well, it is common in the industry, any builder, anybody who has gotten a license in California or spends any time performing construction work, OSHA goes over it all. You look at a job site and get an idea of how they go about doing work.

I'm going to give you a specific example that concerned me. There's a photograph of somebody sawing a structural element, which is a post, a vertical post, at the very bottom of it, trying to saw it. That's inherently dangerous without protective shoring, meaning if they saw that and it falls down, that person is going to be injured. That gives me an example as far as training goes of somebody on the job site.

I also looked at the progression of the work. In the beginning of the job, for the first several months

because there was a stop-work order for lack of permit, there was a whole bunch of demolition that continued to go on. There's a lot of payroll records of a whole bunch of folks there. In my opinion, in examining the project itself, voluminous photographs, and video, that there's way too many men do to too limited amount of work. These gave me clues as to how they were proceeding. Meaning, when you approach a job, when you start a job, means and methods, you get a permit, you get a set of drawings, and you start to work.

The original -- according to the original agreement, which was an e-mail, which is what I'm basing it on, dated April 5th of 2012, the original work was what I'm going to call a cosmetic renovation, which is go in there, update some outlets, do some painting, do some finish-type work with the second part of that being for a future rooftop patio. That's a relatively contained, finite scope of work, pretty easy to get a set of drawings for that.

Standard procedure to get drawings on a renovation project, you go out to the existing building. First of all, you can go to City Hall and try to pull up permit drawings from the past if it is an existing building of what is already built.

Q Do you know whether or not there were any

existing plans for this property?

A I do not, and what I was about to say is, there is not. I do that as a builder and somebody who does this all of the time because it help you with field measurements. It gives you a basis to go check the building. If that does not exist, and that's not uncommon, they can't find it or if the building is really old, you go to the building and field measure it. You field measure the building. It's common practice, and you come up with an architectural drawing, something that you can get a permit off of. You can have a licensed professional prepare the drawing, seal the drawing, and get a permit and then you begin. You don't need to perform demolition to prepare the drawings. It's not standard.

Q Does the City issue demolition permits?

A They issue demolition permits for building teardowns.

Q On remodeling, isn't it true that the City of Newport Beach does not issue demolition building permits?

A The selective demolition required for this project falls under the building permit. That is also not uncommon.

Q So, in this case, as I understand it, there were a lot of unknowns about what was going on. How is a

contractor supposed to find out what the current state of things are without doing some demolition to figure it out?

A First of all, I don't know what you mean by "unknowns."

Q Structural integrity.

A Well, that could be the case with anything that has ever been built, whether it has an unknown. It's standard practice. You don't demolish a building to find out if it is structurally stable. That is not the right thing to do. It is unsafe. It is not standard practice. You prepare a drawing of what is known, that's existing conditions. You don't do a whole exploratory. I have done innumerable projects, similar renovation-type projects with such unknowns. If you can't visually see it with the eye, you don't see it. You get the permits so you can proceed.

Once you begin to proceed with the set of drawings with no information, No. 1, I'm going to go back to the original scope was not a destructive demolition in phase one. It was a cosmetic job. It was not structural. If during the course of your renovations, you discover something based on your experience or knowledge of residential construction, if something comes to you that you feel is unsafe or just doesn't look right, the common thing, the standard thing to do is, because you get an

architect or engineer to examine it, and they will say, "This is good. That's not good." They may come up with a sketch, maybe they won't. They'll address the problem. If there's significant changes that have to be made based on an inspection, you stop the work. The architect prepares a document or writes a letter or describes what you need to do. You inform the City, and you continue working. So, that's kind of a standard process of how that works.

Q So, he should have gotten the general building permit on the project, and then during the progress, done exploratory work and see if things needed to be changed?

A I do know there was originally a plan for a patio on the roof. Ultimately, that work did not happen. During the course -- well, first of all, anybody with a little bit of framing experience, this is basic framing. There is basically three types of framing in California in general. There's post and beam, there's balloon framing, and western platform framing.

Houses built in that era are generally built with one of those standards, one of those type of wood framing. It's relatively simple. You would have an inherent knowledge of what is likely in those walls just by examining it. You can look at the building and probably poke one hole in a piece of drywall if you had a question.

If you had a post and beam, you can see where it is or you can measure off and be able to determine where that is, and if it was balloon framing, which means you frame one stud that passes all floors. Western platform framing, you have a stud wall with a platform floor and another stud wall and a roof. It's going to fall into one of those three categories. You would know that by knowing the era it was done, by looking at the building, you can tell that.

Q What was the state of the construction when you first went there?

A If it would have been -- I did not go there. I sent somebody with videos and photographs which I turned over to you.

Q When you said you reviewed photographs, were those Mr. Bereki's photographs that he turned over in discovery or ones that your own client had?

A I reviewed both. I got Spartan's photographs at a much, much later date. So, the initial -- when Bert L. Howe initiated the project, there was an inspection scheduled. John Tolman was there on that day. I was unavailable. So, he took extensive videos of walking the site, and he took extensive photographs, a lot, and I produced those to you. I had the additional photographs that Spartan provided at a later date.

Q Is that at the end of 2013, beginning of 2014?
A It was what then?
Q When the first photographs were taken.
A I would guess the photographs were dated. Like I said, my recollection is '14.
MR. BISSELL: Are you talking about the Tolman photographs?
MR. RUSSO: Yeah.
THE WITNESS: I would be guessing because I don't remember. It could have been in '14. Could have been in '13. I don't know. I could guess, but the documents will -- the photographs are dated.
BY MR. RUSSO:
Q And you said you reviewed correspondence. Was that between Mr. Humphreys and Mr. Bereki?
A I reviewed limited. There's a couple kinds of correspondence. There's letters from an architect and from the City or whatever. The correspondence I am referring to now is e-mail communication, very few that I had. One was the original agreement, the April 5th, 2012 date. Another was an exchange with Mr. Bereki explaining his point of view on what happened when I guess this matter started to come to a head, and maybe a couple of more. I certainly didn't see anything in the file that was provided to me that there was voluminous e-mails. I

was not provided with those.

Q So, one of your thoughts was, there was a lack of communication?

A I didn't say that.

MR. BISSELL: Objection; mischaracterizes his testimony.

BY MR. RUSSO:

Q Well, do you know how they communicated?

A Well, I wasn't there. I can tell you what Mr. Bereki testified to because I read his deposition. I can tell you how he explained it.

Q Did you feel that Mr. Humphreys' involvement was too limited in this situation?

A That's a difficult question to answer, what too limited means. He could be not involved at all, and the project would still be okay.

Q I believe in his deposition, he testified he only went to the project three or four times.

A That's not unusual.

Q So, you went or you or Mr. Tolman went to get a current state of events when you took on the project; correct?

A I'm sorry?

Q You went or Mr. Tolman went to determine what the current state of the situation was at the beginning?

A Mr. Tolman went to the site and took extensive video and photographs of the site, yes.

Q Was your understanding of what the agreement was as to the scope of work limited to those e-mails or did you do anything else to determine what the scope was?

A First of all, the original agreement I'm going to use that in quotes, "the April 5th e-mail communication," defines what I will call considered very loosely, what the scope of work is, certainly what the intent of Spartan was when they started the project.

Through the scant e-mails that I was able to review, it become apparent that issues came up through somebody's opinion that there's structural work that needed to be done. It also came up that there was a stop-work order because of no permit. It's not unusual and is not surprising. There was a set of architectural drawings that were prepared. Wong is the name of the architect. It is the original drawings, and that showed what the scope of work was, the original scope of work was. When I say original, I'm going to refer to the April 5th e-mail, which is renovation and possible roof patio.

Q Was that when it was just a single unit though?

A Correct, and then drawings were prepared after, and then the project was expanded to include another unit and drawings were prepared, and it has footings on it. It

has some supplemental wood framing, et cetera, on it.

So, the scope changed from what the original intent was.

Q And did you believe there was adequate documentation regarding the change in the scope?

A I believe that the architectural documents speak for themselves. When you say "adequate," as any builder or licensed contractor or anybody who does this professionally, we rely on the licensed professionals to tell us what needs to be done. I have a lot of experience, but I always rely on that for liability reasons, No. 1. The licensed architect or engineer is going to tell me what is needed. I'm going to follow that exactly, and I will be safe. That's a standard practice we do.

If you proceed with work that's not shown on the architect's drawings, and let's say there's a structural failure, you're now at fault. That's negligence. You don't do that. I've never done that. It's not standard practice to do that.

Q As a big picture, you haven't found any fault in Mr. Bereki's work or Spartan's work; correct?

A What do you mean by "fault"?

Q Anything wrong with it. It sounds to me you're addressing the costs, the timing, but not whether or not

the work was appropriate; is that correct?

A "Appropriate" is a loose term, and when you say I'm just addressing the costs and things like that, what I'm -- by looking at the photographs, an e-mail, and the payroll records and the material purchased, invoices provided by Spartan, you can develop a timeline of what was bought, when, and how long it took to do that.

In my opinion, for example, at the beginning of the project, which started on or about the second week of April, the first week April, on the 9th, I believe -- I'm basing on that the photograph -- until the time they actually got the permit was a very long time, and all of the photographs don't show the work proceeding very quickly. Removing drywall to expose a building, it's quick. It's a relatively small building. Overall, it's about 3200 square feet approximately. That work should take no more than two weeks, especially with the number of men they had on the project.

So, what I'm talking about with Bereki's work or Spartan's work, it took way longer. I can't justify in my mind how it took months and months to peel drywall off and do various pieces of cabinetry. That's what I'm talking about that it took too long.

Q Did you believe that it was appropriate or inappropriate for Spartan to do the exploratory work

downstairs?

A It was inappropriate without a permit.

Q Okay. So, you're not saying it didn't need to be done. It's that it should have been permitted first?

A I don't know why they did exploratory renovation. It was cosmetic. I see no documents that tell me why that was done, other than they needed to demolish the building to prepare the drawings, which I already opined on.

Q Do you know what remodel work happened on the first floor shortly before the Humphreys' project started?

A There's not enough detailed information for me to say what happened. I just have brief descriptions of things. I don't know. You talking about the downstairs, Laugharns?

Q It doesn't sound like it's spelled.

MR. BISSELL: Laugharn.

THE WITNESS: If you're talking about that property, there's not enough information in the project file that I saw to make me with certainty know what that was, other than some brief description I got from either Mr. Bereki's testimony or his e-mail communications.

BY MR. RUSSO:

Q Did you speak with the Laugharns at all?

A No.

Q So, have you reviewed anything for this project

of yours in this case outside of the documents exchanged from the parties? Have you gone to any outside sources?

A Yes. What I do in the standard practice, I go and use electronically public information. For example, the California State Licensing Board. I go there. They have public records. So, I can see what the licenses are, when they were obtained, things like that. I went to the Newport Beach City Hall records electronically and pulled out permitting information and everything I could that they had. I also examined their standards of practice. I'm sorry. Each municipality has a little bit differing permitting procedures, which is not unusual. So, I reviewed all of their standards and procedures for doing work in Newport Beach on Lido Island. Also the California State Board, all of the rules and regulations, I do that once in awhile to refresh specifics on a specific project. I also contacted places such as Home Depot for lumber prices to get an idea what the market rate for certain materials are. As far as outside documents, in my recollection right now, that's probably it.

Q Was there anything you felt was overcharged on this project? And I also understand you say it took too long. Was there, whether it be a subcontractor cost or a material cost, anything like that which you felt was far too much?

A Yes, and what I did was, the documents that Spartan provided, I took and made a matrix of all of the receipts. There was a lot. It was very painstaking of everything, made a description of what it was, and I put it in categories, power tools, hand tools, subcontractor, lumber, office supplies, et cetera.

Before I did that, I did an estimate of the Wong drawings. So, I did a take-off. I did a quantity survey, we call it, to count of the materials that's required, and then I developed pricing for that as far as materials. I developed labor pricing for that. I came up with a baseline for me of around what the project like this should cost.

When I finished my analysis, at a later date, because I didn't have the Spartan documents originally, I put all of these together and categorized everything, and I had trouble making the ends meet. By that, there's only so much material that can go into the building. For example, wood. The building is only so big. I got a price which is reasonable. Home Depot was a good enough barometer or any lumber yard. I took the price of materials spent and it was vastly different. So --

Q Because he came in so low?

A No.

Q Okay.

A It was vastly different.

MR. BISSELL: It was a good attempt.

THE WITNESS: Probably 300 percent, 400 percent higher that I couldn't justify where it went or why that was necessary. There's only so much that went into the building. By looking at the photographs, after a point, after Spartan had been terminated from the project, I looked at what was in place, and I can compare that to the drawings to my take-off, my quantity survey and receipts, and I don't want to say it makes no sense to me, but it literally was a 400 percent difference that I don't know where it went.

BY MR. RUSSO:

Q Well, the receipts are what they are. You're saying too much material was ordered or too high of a price was paid? What is your opinion on that?

A My opinion is when you look at the project and estimate the standard, there's what I refer to as bricks and sticks, lumber, drywall, flooring, cabinets, appliances, electrical outlets. Those are finite items that you can count and put a value on, a market rate value on. I obtain those through getting material prices, using experience and reference guides to put labor to, and you come up with a price, and the price of what was ultimately spent to the date when Spartan was terminated was 400

percent higher than that.

So, when you say were the prices too high, there was what I considered inappropriate charges, unusual, improper charges for a project of this nature on the project.

Q Inappropriate because too much was charged for it?

A Unnecessary. I saw thing like truck leases and shop rentals and power tool purchases and hand tool purchases and furniture and furnishing such as pillows and blankets and things like that.

Q So, there were charges that you felt were not necessary or appropriate; correct?

A Improper.

Q Well, we're talking about materials, and you said the materials came in 400 percent more. Are you throwing in these other costs into materials?

A Let me clarify. When I say the 400 percent, I'm talking about the overall cost, which includes the basic four categories of construction, labor, materials, subcontractor, and equipment. Overhead which are soft costs. Four basic categories. What I'm telling you is what I believe those four categories should have cost and what I examined for the information available to me was approximately 400 percent high.

Q Altogether; correct?
A Yes, all of those.
Q Labor, material, equipment, and what?
A Subcontract.
Q Did you determine that any of the subcontracting was at an unreasonable cost?
A Without having specific details of scope, meaning no written contract with details, it's common to provide a contract, for example, to an air-conditioning HVAC contractor, who will say, "I will put in one unit and all the duct work and thermostats for X," and he gives you a price. I didn't see that. I did it without knowing all of the details. For me to tell you whether that was inappropriate, I don't have enough information to determine that.

I do believe that the amount labor that was used on the project is -- I'm going to use the term wildly inappropriate for the number of man-hours spent on a project of this type, including the revisions that took place, the structural things, extra pieces of wood, things like that that had to take place.
Q As far as equipment, were there equipment charges you felt were unreasonable?
A Yes. Well, I thought they were inappropriate or improper, I should say, for a project of this nature. If

this was, I don't believe it was a true time and material cost, in the definition, the licensing board definition, it was kind of not legal how they did this. I'm not an attorney, but my experience tells me it's not legal to proceed like this.

On a labor and material or time and material-type project, when you hire somebody to do this work, it's inherent that they have a car, that they own the power tools. It's much like when I go to Pep Boys. I'm not buying the mechanic's tools. I'm paying for that service. He has all the equipment he needs to do that project.

So, for what appears to me, the quantity of hand tools, power tools, things like that purchased for the project is improper. It's not normal. It's not a standard of practice, standard of care. It is often -- in my experience how this is addressed, if this was a proper time and material cost plus-type contract, which it is not, what is common is, is that because a project when you have unknowns, it's not uncommon for that. You have a baseline to start with.

For example, in the e-mail agreement, Mr. Bereki provided some timeframes and provided dollar values. I have no idea how they were derived at. It's common to estimate what is known and then apply the cost to perform the work, and you start with the baseline. You say, "I

believe it's going to be between X and Y, the value of the project." You proceed. What is common is that you keep records. It's very important that you keep records for time and materials.

For example, when you were paying somebody for X-number of hours to do something, it's common at the end of the day, people in construction, you keep daily logs. You have to because OSHA requires that you do it to protect yourself. At the end of the day, you summarize that you worked here for three hours, the agreed upon rate is X, and we used so much material. Here are the receipts for the material. You have a labor and material, whatever agreed upon management fee or other fee. That's the appropriate way to do that.

If you need a specialized piece of equipment, not everybody has a concrete saw. Not everybody has a dump truck. If you feel like you need a specialized tool or equipment for the project, you would rent it for the time period, and you would turn the receipt over to the owner or whoever you're contracted to. It's a common procedure. You wouldn't buy everything that you need for an indefinite period of time.

I saw many instances where there was equipment, in my opinion, on a job site that was not necessary to stay there for months on end. Yes, you need a concrete

saw. You rent a concrete saw for a finite amount of time, pass along the rental charges. You need to dump things, you make arrangements with the dumpster to rent or pay for that service. You do it for a finite period of time. If you need something delivered, you don't buy a truck. If you feel you need to have your own truck, you go to U-Haul and rent one for $50 a day or $30 a day and turn it back. That's common. You don't load up everything you may or may not need for the entire duration of the project and charge the owner for something you used for a couple of finite pieces of work.

Q Would you agree that if you can buy a piece of equipment for less than the expected rental rate of that equipment for when that equipment would be on the job, that it's okay to buy the equipment?

A That's depends significantly.

Q On what?

A An example, I saw an example of when -- one that comes to mind is a paint sprayer, over a thousand dollars, somewhere north of a thousand dollars for that. I know that you can rent a paint sprayer for less than $80 a day. I looked at this project, there is certainly no more possible work to be done than a week, the painting would be done in a week. Painting is very quick. It's just labor. Especially if you're spraying, the whole building

can be sprayed in two days, detail work done in three or four days.

There's an example I saw where my opinion is to buy even more than one sprayer was inappropriate. If there is a case or the builder wants to make a case that it's cheaper to buy it, you need some sort of analysis. There's nothing on this project that took so long that you needed to buy a piece of equipment. This is residential construction. It's relatively not complex. It's a residential building. There's wood, concrete, drywall, and finishes. It's pretty simple. I saw no need for purchasing specialized equipment.

Q I understand that dumpsters were not allowed due to the confinement on Lido. When you have to haul away stuff on a daily basis, what is the appropriate way to do it and who pays for it?

A Well, there's more than one way to do that. In the photographs, I saw dumpsters. You can -- if they're not allowed, if you can't get a special permit for it, sometimes you can and you have to pay a fee for that, you get a dumpster and haul it off. If that's not appropriate, a way you could do it, let's say you need a dump truck or larger truck to carry debris. How I've done it in the past, how it's common to do it, you do the demolition. You get the rubbish, you get it together.

You rent a truck or you hire a truck, hire a guy that hauls junk or debris to load it and get it out and do that repeatedly if you need to, but that's not unusual to do that. You don't need to buy a truck. Me, I would hire somebody who hauls junk. If I needed a dump truck or a larger truck, I would rent a U-Haul for a day or two or three days.

Q Did you feel it was appropriate or inappropriate for Mr. Bereki to charge for the use of his truck if, in fact, it would have cost more to lease one than what he was charging?

A That's a confusing question. You're trying to say if he bought in lieu of leasing and it's cheaper?

Q He charged Mr. Humphreys part his payment on his truck because it was being used at the project as opposed to him going to rent a truck and charging the whole thing.

A It's wholly improper to put any cost of that truck, to pass it onto Mr. Humphreys.

Q It would have been appropriate for him to rent a truck instead; is that correct?

A No, that's not what I said. It's improper and wholly improper to charge a personal vehicle to Mr. Humphreys. If Spartan had used that truck 24 hours a day for the length of the project at whatever the cost came out to, you don't pass that along on a labor,

material, and cost plus job.

Q Is there some definitive place that you could look to determine what the scope of costs are for purposes of a cost plus a fee contract?

A I'm not sure what you're asking.

Q Sure. Is there a definitive place to look to determine what is an appropriate cost of a job for purposes of an agreement such as this?

A You said cost of a job?

Q Yes.

A That's where expertise and experience comes in and building standards. You're talking about an estimate?

Q No, what costs can be passed along to the customer if not otherwise delineated in a written agreement that we all wish we had here?

A The standards in the industry, and I will say, California State Licensing Board and their building codes are very closely in line to AIA documents. What you will find in the AIA documents, it's common. They list, they give you categories of what cost plus items are. It's a pretty specific listing what that is and also a range of markups, what an appropriate markup is. That's one document where I would start with.

Q In this case, Mr. Bereki didn't mark anything up whereas in contracts such as the successor, who did work

on this, marked up a percentage on the cost. Why is it acceptable to mark up a percentage on a cost versus making sure every possible cost is included?

A That's a compound, difficult question. I have no idea that Mr. Bereki or Spartan did not mark up their cost. I don't know that. There's not enough evidence to say they did or did not. All I know is what was stated in the April 5th e-mail as far as fees or to cover their costs of labor, management or expertise that you're paying for. There is an enormous difference in what I found in project records dollarwise to what was appropriate to pay for that work.

An example would be the project, taking X-number of days, you multiply that by $500 a day, as I recall in this e-mail for the number of days he's on the project compared with what the record indicates is 200,000 plus dollars that Mr. Bereki received for that work or Spartan received for that work. So, I don't know that he didn't mark it up.

I looked at the payroll records in the agreement. When you look at the payroll records that we have for number of hours worked, you do a simple function of division. You will see that some folks are making $30 an hour when maybe they were going to make a range of 15 to 25. So, I can't say that's not a markup. There's an

irregularity that I can't justify.

Q You had prepared a report. Is the one I have right here the right one?

A Yes, it has a print date of 9-12-16.

Q Is this as far as your damage analysis for taking too long or for charges that you thought were excessive or inappropriate, does this accurately summarize your conclusions on this?

A To date, it summarizes my conclusions, yes.

Q Was there something you haven't done that you wish you had done that would change that report?

A No.

Q Okay. You said "to date."

A When I say "to date," because there's always a possibility that new information can become available.

Q Did you look at what the subsequent contractor Mr. Nickel did after he started on the job?

A I would say I looked at the documentation. I did not analyze it. I was not hired to analyze those, but yes, I looked at it.

Q In your conclusions, is there some reliance on what Mr. Nickel did after he started on the job?

A What do you mean by "reliance"? I didn't look at Mr. Nickel's enough to tell you right, wrong, left, right, what it stood for. I didn't rely it on it whatsoever for

a couple of reasons. I was not paid or engaged to analyze Nickel's project. The information became available to me. We looked at it real quick.

Q I understand, for instance, he testified earlier today that he had a new set of architectural plans. Did you see the new set of architectural plans?

A I did see those.

Q Did that at all influence your opinion?

A That work is -- my opinion is going from the time of April 5th, 2012 to approximately on or about August 28, 2014, I think was the termination date.

Q Okay.

MR. RUSSO: Was it 2013?

MR. BEREKI: Yeah.

BY MR. RUSSO:

Q It sounds like we have a disparity in dates. I think the termination date was actually in 2013.

A I believe you're correct.

Q You're looking at things in the snapshot as of the time of termination; is that correct?

A I'm looking at the timeframe from April 5th of '12 to August 28 of '13. I will say, I did notice in Spartan's records that there was payroll after that date. So, it went into September a little bit.

Q So, anything that happened after August of 2013

didn't weight into the opinions that you're here to testify about; correct?

A No.

Q Okay. We've got your report. We will mark it as Exhibit 1 to your deposition.

(Whereupon Plaintiff's Exhibit 1 was marked for identification.)

BY MR. RUSSO:

Q Are there any other reports that summarize your opinions?

A No. This a worksheet that collects all of that. I'm sorry. Maybe I spoke too soon. I did some estimating spreadsheets and additional schedules, if you want to consider that a report.

Q Okay. I see next to your left hand, there seems to be some scheduling.

A Yes. These are just -- what this is, is simply a timeline this plots events and plots payrolls and things of that nature. This is for reference.

Q Okay. You gave me a flash drive with a bunch of documents. Are all of these reports on there?

A It's all on there. These are not reports. They're to help the deposition if we needed it. They've been provided.

Q Let's go through Exhibit 1. The run date is

November 12th --

A September 12th.

Q Sorry. September 12th, 2016.

MR. BISSELL: Do you happen to have another copy of it?

MR. RUSSO: I'll get you a copy.

MR. BISSELL: Thanks.

(Recess held.)

BY MR. RUSSO:

Q Apparently, the engineering was Wong, and the architect was Overly.

A That's correct. I used the Wong drawings because he's the licensed professional.

Q Okay. Do you know how long into the project it was that the Wong drawings were prepared?

A Yes.

Q When is that?

A Seventy days after the agreement of April 5th.

Q And you're basing what things should have cost in your opinion and how long it took based on the Wong drawings; correct?

A No. I'm basing it on everything. There's four aspects I considered. The two aspects are the original agreement, which was a renovation with the potential roof patio, there was the Wong drawings, and then there was

Spartan/Bereki mentioned work at the Laugharns, however you pronounce that, and the soil pipe, and so I take all of those things into consideration. I recognized the project changed from what was conceived until what the Wong drawings illustrated.

Q Did you feel that in those first 70 days before the plans were prepared that things were not moving quick enough?

A Things should not have been moving at all.

Q You're saying because there was no permit?

A For two reasons, yes. A, there's no permit, and so he shouldn't be there, and Wong produced the drawings 70 days later. What are you doing if you don't know what the architectural drawings are going to say? When you found out that you needed a permit or you needed drawings, what were you doing in the meantime? Payroll records indicate work was going on. Photographs tell me a little bit of demolition is all that was done.

So, the proper thing to do, you're not supposed to proceed without a permit. They did. Spartan did. You go there, and you have the stop work order. You should stop until you obtain the permit. He obtained the permit sometime well after the drawings were prepared. No work should have been taking place there.

Q Do you know why it took so long to get the

permit?

A I know there were several review cycles, which is not common with any municipality.

Q Do you know whether or not -- do you have an opinion as to whether or not the architectural plans were prepared promptly from when Mr. Overly was engaged?

A Not having specific, rock hard evidence of when specifically Mr. Overly was engaged, just some hearsay on e-mails, to say it's an appropriate amount of time, I can't opine on that without additional information. I only can opine on that 70 days after you started the project, which is slightly over two months, that's a long time to produce drawings.

Q Okay. Let's go through your report. Do you break up what you contend the damages are into components here?

A Yes.

Q Okay. The first one, scheduled delay --

A Yes.

Q -- what are you intending to convey here?

A What I did -- and that's why I brought this visual aid here. I can give you a copy of this. What we did is, the multiple phases of the project, Phase 1, interior renovation, in the April 5th e-mail, Mr. Bereki estimates that's going to take 30 days. Phase 2 in that

April 5th e-mail, Mr. Bereki says it's going to take approximately 45 days. That's approximately a month and a half. For what I call the structural remodeling and all that work with the Wong drawings, there was no schedule provided by Mr. Bereki or Spartan. So, I did one to estimate how long that should take, and I came up with a duration of 154 days or 153 days.

Q So, that's to do the -- if nothing else, just the interior renovations that were originally planned back on April 5th, 2012 and then expanded when the new unit came in?

MR. BISSELL: Objection; mischaracterizes his testimony.

THE WITNESS: No.

MR. BISSELL: It's the Wong drawings.

THE WITNESS: It's the Wong drawings and everything else that occurred, meaning modifications to the Laugharns and mentioning of an underground drain, but that didn't delay the project. That 153 days encompasses all work necessary.

BY MR. RUSSO:

Q Okay. When the original, somewhat vague scope started to the additional unit to Wong getting involved and deciding what needed to be down below that you included, you believe that the whole project should have

taken 153 days?

A Yes.

Q Are those workdays or calendar days?

A Calendar days.

Q So, that includes Saturdays and Sundays?

A Correct.

Q And based on this, you believe it took 157 days too long to get to where he was?

A No, 357 days too long. Spartan was terminated on or about 8-28 of 2013. If you subtract the difference of when he should have been done at 9-5 of '12, that's 357 days. That's a mathematical function.

Q And the chart you have to your left, can I see that?

A (Witness complies.)

Q (Counsel peruses document.)

Is this a source that you go to to decide how long these things should have taken or is it just your experience?

A Well, it's a method. As a side, I have decades of experience. I have a lot of experience with this practicality application and instruction. You go through a process, which is a standard to come up with a bar chart that accompanies those 84 days that I went through the process. I also used -- did a takeoff for quantity survey

of all of the materials and labor required for the project, and we come up with a number of days. That's another analysis for coming up with workdays. So, I believe I went through a thorough process for developing days.

Q Okay.

A Creating a schedule.

Q Were you aware that the property has never been rented since the completion of construction?

A I don't know whether it's been rented or not.

Q So, why have the rental value if the intent of the owner was never to rent the property?

A I have no idea. The potential to rent the property was lost. I don't know what is in the owner's mind or what events could have occurred or how long they were going to be here or if they could have rented it. If they could have rented it, they lost that opportunity, in my analysis, of 357 days worth of opportunity to rent the property.

Q Do you know how often the Humphreys actually go to the property?

A No.

Q Okay. Did you ever ask Mr. Humphreys if his intent was to actually rent the property out?

A I don't believe I asked him that specifically,

no.

Q Let's look at the next category, Supervision Compensation.

A Yes.

Q Can you tell me how you came up with that?

A Essentially, it's the same mathematics as in the Schedule Delay. What I'm saying here is, it should have taken 153 days to do all of this work. The supervision rate or day rate assuming he worked every single day including weekends, and I'm not saying that's true. I erred on the conservative side, giving the benefit of the doubt that Spartan was there every single day, seven days a week. At $500 a day, an acceptable fee for that would have been 76,500, as I have listed. From the records, I was able to glean right around $201,000. So, my opinion is the delta between that is $124,500 of unnecessary costs.

Q Okay. The next item is Tools.

A Yes. What I did, I will show you visually, this is an Excel worksheet that is part of this, and I took from Spartan's deposit, all of their records, which is all of the invoices, and on this piece of paper, along this column, I listed, these are the vendors, here is the description, and it's dated, and I put in categories. For example, Labor, Material, Subcontract, Equipment, Power

Tools, Hand Tools, Administration, Gas, Furniture, Automotive Expenses, Appliances, Architecture, Engineering, City Fees, et cetera. I came up with this matrix, what I'm showing you here, and under the category of Hand Tools is hammers, wrenches, tape measures, common carpentry tools. I came up with a purchase that I have listed here of 20,042 -- I'm sorry -- 2,042.

Q That's each actual item listed on the spreadsheet?

A Yes.

Q Are the items on the spreadsheet based on what Spartan charged or how did you get that number?

A By the receipts provided, receipts or invoices.

Q If I wanted to know what tools you thought he should have owned and not charged Mr. Humphreys for, it's on that spreadsheet?

A It's on here. I color coded it so it's easy to find.

MR. BISSELL: Do you want to mark that as Exhibit 2 since he's talking about this?

MR. RUSSO: Sure. I will mark it as Exhibit 2. Let me take that.

(Whereupon Plaintiff's Exhibit 2 was marked for identification.)

///

BY MR. RUSSO:

Q What would you call the document we just marked as 2, sir?

A Invoice matrix. We will call it that.

Q It specifically has to do with hand tools or is it more general?

A All invoices.

Q Okay. The next item is Power Tools.

A Yes.

Q How did you decide what power tools -- are those power tools purchased and charged for?

A Yes.

Q And is there a standard in the industry when you do have to buy a power tool about who keeps it at the end?

A It's highly unusual who keeps it. What I'm paying for when I hire a tradesman, they come with a hammer, tape measure. They come with hand tools and the basic power tools. In the case of carpentry, they would need a saw, maybe some drills, and possibly some screwdrivers. They come with that. That's what you're buying.

Q Okay. The subsequent contractor, Mr. Nickel, came with nothing. He was more of an administrative general contractor and didn't do any of the labor. Why is it that if he charges for these items for his

subcontractors, it's okay, but yet Mr. Bereki who's on the job charging for these things is not okay?

MR. BISSELL: Objection; incomplete and inaccurate hypothetical.

THE WITNESS: And what I was going to say is, it's two completely different scenarios. No. 1, I did not have access to whatever agreement Mr. Nickel came to. I do have access to what the understanding of Mr. Bereki or Spartan was, and I don't know if I should speculate what Mr. Nickel did, but what is not uncommon is if I hire a subcontractor like Mr. Bereki did for $3,000 to do electrical work, this electrician isn't charging back for his wire cutters, his -- whatever he might need, an amp meter or any specialized piece of equipment.

BY MR. RUSSO:

Q Is there within the AIA guidelines or any guidelines, is there anything that sets forth the industry standard on what power tools can be charged for and what cannot?

A Going off of my memory, they list -- they describe. Power tools are different than equipment. I want to make that distinction. A power tool is a power screwdriver, a drill, a reciprocating saw, something like that. Equipment is something specialized. Equipment is like scaffolding. Equipment is a crane. Equipment is a

forklift. I want to make that distinction, first of all.

So, small tools, hand tools, it's all considered by AIA, including power tools like I described, saw, screwdriver, et cetera, that's all considered under tools, and that is a part of the labor rate. Equipment above and beyond that is charged separately.

Q Okay. So, were there particular power tools charged for that you took issue with?

A All of them. Without looking at them, power tools -- when I'm paying for a carpenter, I pay for that. Same thing when I take my car to Pep Boys, I'm not paying for the wrenches. I bought that when I am paying his hourly rate.

Q Where would I look at on what I marked as Exhibit 2 to see where the power tool list is or is it incorporated within everything else?

A When you look across the top of the first page, PT is power tools. It's $118.74, and that's a Ryobi screwdriver, and if you go down there, the next entry is $156, a Dewalt screw gun. Then screwdriver kits, et cetera, et cetera. That's how you'll track it.

Q I got it. Would it have been appropriate for Mr. Bereki to hire a tradesman that had the tools and charged more than Mr. Bereki purchasing these power tools and includes it within his daily rate?

A According to the agreement, Mr. Bereki or Spartan forgive me, if I'm mispronouncing it or Spartan sold the owner that he is the tradesman. So, he should have had the tools. When you say it would have been cheaper or appropriate to hire a tradesman, it's so hypothetical, I don't know how to address it.

Q Next, Equipment.

A Again, on the sheet that I provided you where it says E, that's equipment. So, the first expense is a stylus for an iPad and propane tanks and different types of supplies that you can follow if you go down the column.

Q If these items needed to be rented, would that have been appropriate?

A If they were necessary.

Q Was there any equipment that you determined was not necessary?

A My determination was that the equipment that's listed here, any reasonable contractor would possess those. They would possess a broom and dust pan and things like that.

Q So, would it be fair to summarize your position on the equipment is that Mr. Bereki should have owned this already?

A Any contractor would own those things, a broom, ladder, trash cans, at least some. If there was a whole

bunch necessary, a multitude of trash cans or ladders or different things likes that, there would have to be a reason for that.

Q Is it your opinion that the charges themselves were unreasonable outside of the fact you're saying there shouldn't have been a charge at all?

A The receipts speak for themselves. If there's a receipt that came from whatever store, that's what the market rate is.

Q The next item is Vehicle Cost.

A Yes.

Q You're saying categorically, there shouldn't have been any vehicle costs?

A Categorically is a strong term. As I said earlier in my testimony that if there was an absolute necessity for a specialized vehicle to be used on this project and Spartan deemed it appropriate to use it on the project, then you can rent something. You wouldn't outright purchase one. If I needed to dump things or to deliver some stone, if I couldn't hire a driver with a truck, which is common, then I would rent one from U-Haul or Ryder or some other reputable rental outfit for the period of time necessary.

Q Was there a period of time when a truck was necessary for this job for hauling purposes?

A I will say that it's not uncommon at some point that something will have to be hauled. I would add, for material deliveries, the materials are delivered by the suppliers in all cases. There may come a time when something came up and you were short a couple of two-by-fours. You can call them to redeliver that. Everything is else is delivered, you can get delivered to you.

Q It's okay to charge the client to have it delivered, but it's not okay to pick it up and charge him for that?

A That's an interesting question because it's compound.

Q Okay.

A Okay. What the owner is being charged for is Mr. Bereki's time and the time it takes to perform the work. So, if it takes him two hours to go pick that up, that's included in what the negotiated or stated day rate of $500 is. You wouldn't charge above and beyond that.

Q If he needs to use his work truck for that to go get materials, you believe any charge for that use of the truck is inappropriate?

A No. 1, I would have it delivered. All of the supply is delivered. If you made a mistake and you are short and they're going to charge you an extra delivery

charge of 50 bucks or something, you can pass that along to the owner.

MR. BISSELL: Even if it's your own mistake?

THE WITNESS: If it's a mistake, no. I'm trying to use the example, let's say it was not a mistake and it's newly discovered that you needed material and you have to have it delivered, it's a short load. That's when it's less than a full load and they charge you for that, that is an example of an equipment charge. It goes with the materials. When you get lumber from the lumber yard, the cost of delivery is sometimes built into the cost. Sometimes they charge extra. It's an expected cost. That type of cost is appropriate to charge.

BY MR. RUSSO:

Q For purposes of your analysis, you categorically found that the charges for the use of the automobile and everything associated with it was unreasonable; correct?

A Categorically do I say it's unreasonable? Yes.

Q So, the $22,910.38, that was all of the charges for the automobile; correct?

A I don't know if that was all of the charges. That was all I was able to glean from the documents.

Q You excluded from reasonable every charge associated with the auto you were aware of?

A Repeat that.

Q Sure. You determined that every charge associated with the automobile was unreasonable at least as to the charges you saw; correct?

A Of all the charges I saw, yes.

Q Next is Labor Overpayment.

A Yes.

Q Can you tell me what you're trying to convey here?

A Okay. What I was able to examine is, I had the payroll records and I had W-2 statements, which is a federal form you turn into taxes for the people that worked on this project. I will take the first category. I take Wolf Construction consulting fees. As is described, Wolf Construction is either an associate of Spartan or was somehow was going to be the foreman on the project. Somewhere along the line, it was determined to be around $300 a day to pay him. Assuming he was on the job every single day, 7 days a week, which I do not believe he was, you take that rate and multiply it by the 153 days. You come up with $45,900. That's what was agreed to pay him for what was agreed to. The amount I have there is $63,744.

Q Let me stop you one second. 153 days. If work was not done on the weekends, is it still 153?

A We use calendar days. So, there's -- I don't

know what days they work. We have to use calendar days. What I'm saying is, I'm giving everything in this case, Spartan, Wolf Construction, the benefit of the doubt that we're paying you for seven days a week.

Q You're basing the number of days that Spartan or Wolf Construction worked on their charges?

A No, should have done this project in 153 days.

Q What I'm saying is, in determining how long it did take -- I'm trying to figure out -- if they only worked Monday through Friday, then would the project have taken more than 153 calendar days?

A No.

Q Why not?

A Well, I would ask you why.

Q Well, if they worked every Saturday and Sunday, is it still 153 calendar days?

A The answer is yes. I'm going to tell you why. In standard practice for scheduling, we use calendar days for a reason. There's seven days in a week. It's an actuality we can measure. During the calendar days, we are assuming there's nonworking days, holidays, probably a weather day, maybe it rains or something. That's taken into account, which is why when those things happen, and maybe you can do it on Saturday. Saturday is a workday. The 153 days is assuming you have five days a week at the

bear minimum to get it done. That's how we're basing the 153 days on. I hope that answered your question.

Q Do you know or conclude whether or not there were any weather days?

A I didn't study that, meaning, how I would study that, I would go the National Weather Service. There's plenty of websites that's acceptable in legal proceedings that I used in the past. They give me that information. The case in this project was an enclosed building. There could have been occasional weather days. It doesn't snow in Newport Beach, at least I've never seen it. They get occasional moisture in the air. That would not have stopped construction.

Q Okay. Wolf Construction, you determined that Wolf Construction should have been paid for 153 labor days. Is that what you're saying?

A Yes.

Q Times 300, that's where you get the 43,900; correct?

A Correct, and the consulting fees, 63,744, I got from the records that were provided by Spartan. I totaled those up. The number could be a little different, but that's the records I could find where he was compensated. It appears he was compensated both for materials and labor. The materials he was compensated for is not

included in this figure. This is just labor. These are some things he was reimbursed for like getting lumber. That is not in this number. It is in the material numbers. I want to make that clear.

Q Is it somewhere else in your damage analysis?

A This would be listed in the matrix I provided.

Q Did you find that all of the materials Wolf Construction charged for that were passed along to Mr. Humphreys, was any of that unreasonable?

A I'm glad you asked that because I know in some cases, by that I mean, I'm going pick a number at random, $300, with a description of what it is, not necessarily an invoice backing it up. When I'm doing my analysis, I'm giving Spartan and Wolf the benefit of the doubt that what they said it cost was true. I'm giving them the benefit of the doubt. Meaning, I could not necessarily coordinate an invoice for what Mr. Wolf was compensated for.

Q This payroll, is that based on the invoices from Mr. Bereki? Where does that number come from?

A The 236,842 comes from the payroll records provided by Spartan.

Q Okay.

A If you want, I have another matrix I used for that. I titled this sheet "Cost Worksheet - Payroll" and before I hand it to you, this is the payroll records, this

is the W-2 records (indicating).

Q (Counsel peruses document.)

So, were the W-2 records actually from Wolf Construction?

A I'm talking all labor. Wolf Construction is outside of the labor in this payroll. Wolf was paid in addition to this figure.

Q In addition to the -- so, what makes up the 236?

A The payroll you have in your hand, which is the payroll that Spartan provided. I painstakingly went through every single one, listed the person's name, what the compensation was, how it was described, the number of hours, when it was described, the rate of pay, did some math to figure out what the rate of pay was, if it wasn't listed, what it was based on the hours and gross pay and I made that sheet to determine it.

Q Are you questioning whether or not these sums were actually paid to these people?

A When you say questioning, I can only go off evidence. The evidence I have is the W-2 is to me the concrete evidence. It is a federal document. That is the hardest evidence of what was paid to those workmen listed there. In my analysis, I only found 165,386 that went to those guys, not the 236 plus thousand listed on the payroll records. I don't have any evidence to cover that

gap.

Q From Spartan's records, you showed 236,000 in payroll not including Wolf Construction fees; correct?

A Correct.

Q And of the 236, you then looked for those individual employees and you found W-2s from Spartan to them only for 165,386; is that correct?

A Correct.

Q So, you believe there was possibly overcharging of roughly $70,000; is that correct?

A That's not what I believe. That's what the evidence shows that I have examined. So, there's a difference that I can't account for.

Q Okay. We have two issues here on the labor overpayment. One, you thought Wolf Construction worked an excessive number of days; correct?

A No. Stay with the delay. 153 days was appropriate. I said an excessive number of days. I'm saying, the project should have taken 153 days, and his compensation should have been 45,900. I'm saying, at the time of Spartan's termination, I could determine he was paid at least $63,000, and that's an overcharge of whatever the delta is of that number, 17,000 or so.

Q That's because he was on the job more days than what you felt was appropriate?

A To complete the work, yes.
Q Aside from that, you have the payroll charge not matching up with W-2s?
A Yes.
Q And the last item is Accounting. Why did you put Accounting down?
A Because it's not for a time and material type of arrangement. You wouldn't -- it's not appropriate or proper. Assuming again, if we have a contract that was legal and proper, you wouldn't charge that to a job of this nature.
Q Why not?
A I would ask back why? It's unusual. I would ask why. Why do you need an accountant?
Q If you're being paid for all costs, why wouldn't the accountant be part of the costs?
A That is an indirect cost.
MR. BISSELL: It's an inappropriate and inaccurate hypothetical.
BY MR. RUSSO:
Q Did the agreement between Spartan and Humphreys differentiate between direct and indirect costs?
MR. BISSELL: It doesn't mention costs.
THE WITNESS: The e-mail which you call an agreement, which I don't, but that's all we have, doesn't get to that

specificity. It implies that we're paying, the Humphreys are paying for Bereki's or Spartan's expertise and supervision and management and skill in his daily rate. Some tasks to me are implied, which includes accounting. Accounting on a job like this is pretty much simple. You count how many hours you worked and what the invoices are for the materials you spent. This, agree or not, disagree, it's unusual, it's improper. You don't add an accountant's cost to a time and material project.

BY MR. RUSSO:

Q Okay. Next item is Material Overpayment. Is this where you did a takeoff on what you thought the material should be and what the charges were?

A Yes. What I did as best I could from the matrix that I previously handed to you --

Q That's in the first matrix?

A Yes.

Q Exhibit No. 2?

A Yes. That's what it appears was spent on total materials. I did a quantity survey, and that's the estimate as I described to you before, how much lumber was required, what the market rate is, and came up with a price, and it's $56,753. You will see the next line, Construction Material Contingency, it's 10 percent of the original 56,000. I am giving the benefit of the doubt for

the 10 percent of the materials. So, my opinion in my analysis, the cost of materials is approximately $62,000 based on everything I looked at.

So, I looked at that $62,000. I looked at the $141,000, approximately a hundred percent difference, and I don't know how that is justified.

Q Were the actual materials specified such that you knew what they were supposed to be?

A There's two things I need to add to this. The materials I came up with was for everything on the job. It was to complete the job according to the Wong drawings, Overly may have assisted in preparing them. My material takeoff includes of all of that 100 percent. It's very important to note, on August 28, the work -- I can estimate it was approximately 25 to a third percent complete on those drawings.

So, the reality, that number should be a third of $62,000. Do you follow what I'm trying to say? The project wasn't complete at the time of termination. My estimate of materials is for all the materials required. I'm giving the benefit of the doubt as far as my numbers. If I got down into it, I would probably cut my material price in half.

Q So, the approximately $62,000 was to complete the work under the -- what you called the Wong drawings?

A Correct.
Q Okay. And is that all materials of every kind or more lumber, concrete type stuff?
A All materials.
Q Including all finish materials?
A Yes. All materials, yes.
Q And does that include things like fixtures and everything?
A Correct. Let me clarify that. The subcontract invoices that I saw in here, I let those go, meaning, I didn't reduce those costs any. If he paid an electrician or plumber to do the work because I didn't have the scope of work, if there's any fixtures or materials in those prices, I didn't discount that, if you will.
Q Okay. In coming up with the 141,000 you're saying?
A Right.
Q Okay. So, there might have been other materials built into the contractor's fees?
A There could have been. I don't have enough information to know for sure.
Q Okay. And again, is that in the spreadsheet?
A Yes.
Q Exhibit No. 2?
A The materials, yes.

Q Is that under NT?

A No, under M, the second column from the left. You see 141? You see the matching number there.

Q So, that's ultimately adding up what the actual costs were?

A The materials from what I could determine from the invoices, yes.

Q Is there somewhere within your files where you did the takeoff on what the material costs should have been?

A Yes. This one here is two sheets entitled "Estimate Takeoff," and it's self-explanatory.

Q (Counsel peruses document.)

Did you go out and do some research on the cost of the materials or are they built within a program that you have?

A No, there's no program. What we generally do or I do, I will say, and what I do for a living, literally do, I don't know if hundreds, but it's certainly dozens of cost estimates a year, and we have a historical database. What I always do and what I did in this case, we go look for pricing. Lumber is a -- you go to Home Depot, Lowes or some lumberyard. I would have done that. I didn't pull it out of a program. This is just an Excel spreadsheet. It's not a specialized, proprietary program.

Q Next, Business Equipment.

A What I have here is furniture, shelves, computer, printers, software, things like that. Again, if this was a legally executed contract, you wouldn't have that anyway, but to pass on the price of the computer software, stuff like that to the owner is highly unusual and improper. If I needed -- No. 1, I go back to, we're paying for specialty services from Spartan to do this work. To buy a computer, to buy a bunch of software for design work is inappropriate for this scenario. If I wanted to demonstrate different designs in 3D, things like that, anywhere you buy the stuff, they have the software, and you can tell them what you want and they will print out the sketches for free. You don't need to buy a computer and all of the software. It's highly unusual. It's unnecessary.

Q Again, you're not questioning the actual charge. You're saying it wasn't necessary to begin with?

A Again, my opinion on a charge, if it says it on the invoice, if there's an invoice from a vendor, then I accept it as market rate. If it's just a number listed in a ledger somewhere with no backup, I gave them the benefit of the doubt, but looking at the equipment under that line item, it looks appropriate, and if the invoice backed it up, I put it on there.

Q Overhead. What about Business License and Insurance?

A That's the cost of doing business that Spartan takes care of. That's their business. They don't pass that onto the owner, and the overhead with the excessive stationery and how-to books and things like that, you don't pass it onto the owner. Bottom line is, when it comes to reference books, whatever you come across, we don't go out and buy the book and pass it on. The wonderful thing with the world today is that we have the internet. The information is free on the website. If you need a page, you can print it. If you want to know how to do something, we don't need to buy all of these things to keep around in case something comes up. Plus, I'm assuming that the professional has inherent knowledge on how do those things.

Q Business License.

A That's a cost of why I'm doing business. It's inappropriate to charge the owner for that.

Q Okay. I believe the last item is Shop.

A I have two other categories. Shop/Office Rental and Equipment Rentals. I pulled -- that's for the forklift specifically, and I have probably $300, like 15 months, whatever the amount of months was. The forklift wasn't necessary. It surely wasn't required for 15 months

or however long it was kept at the site nor was it required to outfit a shop office to do the project.

Q Why not have the place to, for instance, make the cabinets?

A Why or why not do it in the house?

Q So, your opinion is that it wasn't necessary to have a shop because it should have been done on the premises?

A No, that's not what I said. I would go back to, why did you have to have a shop to do the cabinet, and were the cabinets requested to be custom made or would it have been better to buy them off the shelf? You can get any number of cabinets relatively economic to hand-building them from the store, I mean from a cabinet maker, a cabinet supplier. You don't need a shop to make the cabinets or anything for that matter.

Q If it was cheaper to make the cabinet including the shop rental than buying them, would this be an inappropriate charge?

A That's a loaded question. I will put it like this: I see no evidence in the reports that an analysis was done that we shopped for cabinets, this is what I came up with. I propose to build them for less. That's a hypothetical question we can't answer. There was no -- as far as I can tell, the Humphreys weren't given a choice.

Q Is it unusual for there to be a rental as a staging area to store materials and equipment for a project like this?

A When you go to normal procedure, I'm going to go back to that this is a relatively simple piece of residential construction. Yes, it's on Lido Island, space is at a premium. That is not unusual, like working in any urban center or anywhere else there's no room. What's common practice is, if I need stuff on the project, I have it delivered when I can use it. For example, if I have a whole bunch of lumber, I will have the amount delivered that I can get put up in a reasonable amount of time. In this case, you had a garage that existed at the property or you can store it in the work area. If I had all of these kitchen cabinets and I wanted them, I would bring them to the site when I needed them. I wouldn't get them six months ahead of time and have them sit and pay for rent. That's kind of silly. What we do, we set delivery dates to make sure we are ready to receive them so they're not sitting.

I put forth in my experience, I've done projects with zero staging area, zero delivery area. It comes down to managing your deliveries. If there's an extraordinary circumstance, I would bring it up with the owner. In this case with this type of construction for this building,

nothing I've seen in the records would not have fit somewhere on this project if it had to stay for a day or two.

Q What was wrong with the forklift rental?

A I don't know what the forklift was used for. If a forklift was required, he didn't need it for the duration of the project.

MR. RUSSO: Okay. I'm going to ask my client if I have any more questions, and I'll be right back.

(Recess held.)

BY MR. RUSSO:

Q Can you tell me what the date of Wong drawings is that you're referring to?

A 6-14-12.

Q Can you tell me on what we marked as Exhibit No. 2, your spreadsheet, can you tell me what the different categories are, for example, S, what is that?

A Subcontract.

Q E, that's equipment?

A Equipment.

Q PT again?

A Power tools.

Q HT?

A Hand tools.

Q Administration?

A That's --

Q Just as it sounds. Gas, that was associated with the car?

A Fuel.

Q Furniture, what's wrong with that?

A I had to have a category for it. Furniture is furnishing. It's not part of the construction. It's part of the category.

Q A&E?

A Architectural and engineering fees.

Q Did you feel any of those fees were inappropriate?

A I saw the receipts of what they cost. That appears to be market rate. That's what he paid for it.

Q Does the customer or contractor pay for building permits?

A Depends on the agreement, but it's not uncommon for the owner to pay for the building permits.

MR. RUSSO: Thank you. I have no further questions. Any questions?

MR. BISSELL: No questions here.

MR. RUSSO: I propose that relieve the reporter of her duties under the Code of Civil Procedure; the original of the transcript can be sent to Defense counsel; a certified copy can be used for all purposes; he will let me know by

the time of trial of any changes by the witness who will sign it under penalty of perjury; and if for any reason the original is not available, a certified copy can be used for all purposes.

MR. BISSELL: So stipulated.

(Whereupon the deposition adjourned at 2:35 p.m.)

*****

DECLARATION UNDER PENALTY OF PERJURY

I do solemnly swear under penalty of perjury under the laws of the State of California that the foregoing is my deposition under oath; are the questions asked of me and my answers thereto; that I have read same and have made the necessary corrections, additions, or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this _____ day of _____, 20_____.

_____

Robert Brockway

CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

* * * *

The undersigned Certified Shorthand Reporter of the State of California does hereby certify:

That the foregoing Deposition was taken before me at the time and place therein set forth, at which time the Witness was duly sworn by me.

That the testimony of the Witness and all objections made at the time of the Deposition were recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy of the proceedings thereof.

That the dismantling of the original transcript will void the reporter's certificate.

In witness whereof, I have subscribed my name, this date:

_____

Grace A. DiBernardo, CSR No. 10322

# Exhibit 10

# Exhibit 11

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

## SYNOPSIS:

In March 2022, I was assigned to investigate Adam Bereki's complaint against Orange County Superior Court Judge D. Chaffee. Judge Chaffee oversaw a civil case between Adam Bereki and Karen and Gary Humphreys. Adam Bereki alleged grand theft against Judge Chaffee for his judgment and decision on the case.

**Subject 1:**
Judge David Chaffe [redacted]

**Subject 2:**
Adam Bereki (CA / B6970543)
818 Spirit
Costa Mesa, CA 92626
(949) 241-6693

## INVESTIGATION:

In April 2012, Adam Bereki entered a contract with the Humphreys, Karen and Gary, to complete a remodel of their newly purchased condominium unit in Newport Beach, California. Adam Bereki previously completed work for Gary Humphreys' brother and son. The Humphreys took the recommendations and hired Adam Bereki to complete the remodel. Adam Bereki sent a proposal to the Humphreys through email, and they agreed to the terms of the project. The daily fees for Adam Bereki and his partner, Glenn Overley, along with the prices for parts and labor were also discussed and agreed upon through the emails.

In May 2012, the Humphreys purchased the condominium unit directly above the unit Adam Bereki was hired to remodel. The Humphreys retained Adam Bereki's services for the second unit and ultimately decided to convert it into one unit. Work on the Humphreys' condominium units seized, and the last services were dated August 21, 2013.

Adam Bereki filed a civil suit against the Humphreys on August 21, 2015. He filed the suit after the contract was terminated, and he was not paid the remaining balance of $82,000. On October 13, 2015, the Humphreys filed a cross-complaint against Adam Bereki.

The Humphreys were able to bring a cross-complaint because Business and Professions Code 7031(e) allows for a party who utilizes the services of an unlicensed contractor to may bring an action in ANY court of competent jurisdiction to recover all compensation paid to the unlicensed contractor. The Humphreys were the only people to utilize Adam Bereki's services, so they were able to bring forth an action against him. Adam Bereki claimed he is the sole owner and operator of The Spartans and Associates, Incorporated, a construction company, with a valid contractor license.

The two-day case took place between March 27-28, 2017, and was overseen by Orange County Superior Court Judge David Chaffee. Representing the Humphreys was William G. Bissell, Law Offices of William G. Bissell. Adam Bereki represented himself along with J. Scott Russo, Russo & Duckworth LLP. J. Scott Russo was also defending the Suretec Insurance Company, a contractor license bond.

The cross-complaint sought the disgorgement of the funds paid by the Humphreys to Adam Bereki, The Spartan Associates or Spartan Construction, which was $848,000. The cross-complaint alleged that Adam Bereki worked on the Humphreys condominiums without a valid contractor's license.

The first cause of action in the trial was about who the Humphreys contracted with. Based on emails and lack of written contracts, the court decided the contract was between the Humphreys and Adam Bereki, and not Adam Bereki's company, The Spartan Associates.

J. Scott Russo made the argument that Adam Bereki was a "little lax" for accepting the first few payments under his name and not his company but ultimately the majority of the money accepted was done by The Spartan Associates. Additionally, the building permits were obtained by The Spartan Associates. J. Scott Russo argued the work done was done under a B license and was correctly done.

J. Scott Russo argued that although there was not a written contract, the emails exchanged between the Humphreys and Adam Bereki constituted a contract. J. Scott Russo contended that the emails were from Adam Bereki, on behalf of The Spartan Associates, since Adam Bereki was the sole "shareholder" and employee. The emails that began talking of fees and costs began on April 5, 2012. The emails were sent from Adam Bereki's personal email account. The initial emails mentioned Adam Bereki's partner, Glenn Overley, but he didn't mention The Spartan Associates.

After July 2012, Adam Bereki requested the Humphreys make payments to The Spartan Associates and not to Adam Bereki. From April 2012 to July 2012, payments were made to Adam Bereki. From July 2012 forward, the payments were made to either Spartan or Spartan Construction.

The Humphreys and William G. Bissell argued that Adam Bereki was unlicensed at the time of entering the contract. William G. Bissell argued that although Adam Bereki was The Spartan Associates Responsible Management Officer, he was required to have a contractor's license as an individual. Even the partnership between Glenn Overley and Adam Bereki would have needed a joint venture license. Since Glenn Overley was an independent contractor, he was required to have his own contractor's license.

Judge Chaffee ruled that the contract was made between Adam Bereki and the Humphreys, therefore rendering Adam Bereki as an unlicensed contractor. Judge Chaffee ruled that Adam Bereki would return $848,000 to the Humphreys. Judge Chaffee acknowledged that the emails exchanged between Adam Bereki and the Humphreys met the definition of a contract.

Judge Chaffee referenced three cases to make his decision:

- Ball v. Steadfast (2011), 196 Cal.App.4th p. 694.
- 29 Palms Enterprises Corporation v. Bardos (2012), 210 Cal.App.4th p. 14, 13.
- MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc. (2005), 36 Cal.4th p. 412.

**Ball v. Steadfast (2011), 196 Cal.App.4th p. 694**

In Ball v. Steadfast, a licensed contractor was not licensed as a contractor to do business in the name of "Clark Air Conditioning Heating." Ball sued in his own name to a foreclosure on a mechanic's lien. The foreclosure came from a nonpayment under the contracts entered.

The court held that Ball was not licensed as a contractor to do business under the name Clark Heating and Air Conditioning. Ball appeared on the contractor license as the owner of Clark Heating and Air Conditioning. The license was issued to Clark Heating and Air Conditioning.

The court determined that "Ball entered the contracts on behalf of his sole proprietorship, not on behalf of a separate legal entity that could, and should, have obtained its own license." (Ball, supra, 196 Cal.App.4th at p. 703)

Judge Chaffee interpreted that in Ball v. Steadfast, "the contractor was licensed as a "sole owner" and not as a partnership or corporate entity pursuant to the classification system of B&P code section 7065." Furthermore, Judge Chaffee interpreted that because Ball failed to contract work under the wrong business name, and not the name on his license, it was grounds for disciplinary action, but it did not bar him from attempting to recover payment for the work he performed.

Judge Chaffee stated, "First of all, and foremost, we have no license in the name of Mr. Bereki individually; instead, it appears he was the qualifying corporate officer for the legal entity, Spartan Associates, incorporated."

**29 Palms Enterprises Corporation v. Bardos (2012), 210 Cal.App.4th p. 14, 13**

In 29 Palms Enterprises Corporation v. Bardos, 29 Palms Enterprises Corporation filed a complaint against Cadmus Construction Company. The complaint was because Cadmus Construction Company, and indirectly Bardos were not licensed as contractors in California. The court ordered Cadmus Construction Company to disgorge all of the fees 29 Palms Enterprises Corporation had paid.

It was determined Bardos was the Responsible Managing Officer, and he did not have a license in his personal name. Additionally, the court ruled that Bardos' corporation, Bardos Construction, Inc., was a different entity from his dba (doing business as) Cadmus Construction Company. Cadmus Construction Company was licensed, and Bardos Construction Inc. did hold a license. The court ordered the return of all costs to 29 Palms Enterprises Corporation. Bardos believed the judgment was not an equitable result. The court responded by saying, "It has long been settled that the courts may not resort to equitable considerations in defiance of Section 7031."

Judge Chaffee interpreted that Bardos was the Responsible Managing Officer for a licensed corporation, but he did not hold the corporation's licenses as an individual. Bardos could not perform work under that license using the name of the "sole proprietorship."

Judge Chaffee used the case to establish that either Spartan and Associates was the contracting party or, alternatively, Adam Bereki operated under The Spartan and Associates' license. Because of the ruling in 29 Palms Enterprises Corporation, Adam Bereki "cannot rely on his corporation's license to contract."

**MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc. (2005), 36 Cal.4th p. 412**

In MW Erectors v. Niederhauser Ornamental & Metal Works Company, Inc., MW Erectors, a steel contractor was not licensed at the time the contract was made but obtained a license shortly after. Ultimately, the Supreme Court concluded that licensing is required at all times during the performance of the labor. Niederhauser Ornamental & Metal Works Company, Inc. elected not to pay MW Erectors.

Judge Chaffee stated that the California Supreme Court's ruling on the issue of unlicensed contracting is "draconian in its effect" but that was the intent of the legislature. The legislature expects contractors to be

licensed at all times during the times they are contracted and failing to do so, opens a person or company to forfeiture.

**Adam Bereki's Allegations**

1. Business and Professions Code section 7031 action is a criminal prosecution in disguise of a civil action to criminally prosecute and punish an unlicensed contractor for committing the public offense of contracting without a license – a misdemeanor offense as defined by Business and Professions Code section 7028.

   Business and Professions Code section 7028 is defined as:

   (a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

   (1) The person is not licensed in accordance with this chapter.

   (2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

   (b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

2. That as a result of Allegation #1, private parties cannot commence Business and Professions Code section 7031 actions because the Executive Power of California is vested exclusively in the Governor pursuant to California Constitution Article V, Section 1.

3. That as a result of Allegation 1 and Allegation 2, the Humphreys lacked Constitutional Authority to prosecute Adam Bereki. That should have prevented Judge Chaffee of the ability to hear the case and give a judgment.
4. As a result of Allegation 1, Allegation 2, and Allegation 3, Justices O'Leary, Goethals, and Aronson of the Fourth District Court of Appeal lacked Constitutional Authority to affirm Judge Chaffee's judgment.

5. Based the aforementioned allegations, the State of California lacked the Constitutional authority to summarily suspend The Spartan and Associates/Adam Bereki's general contractor license pursuant to Business and Professions Code section 7071.17.

Judge Chaffee returned all the compensation paid to the Humphreys. Adam Bereki believes he already returned the amount that was paid to him through the work that was completed on the Humphrey's property. The work that was completed added value to the Humphrey's home. Adam Bereki believes the punishment was not authorized by Business and Professions Code section 7031(b) because Adam Bereki and The Spartan and Associates returned the money in the form of value.

Adam Bereki cited, Lewis & Queen v. N. M. Ball Sons (1957), 48 Cal 2d. 141, 152. Adam Bereki interpreted the case to state that "Courts may not resort to equitable considerations in defiance of Business and Professions Code section 7031."

Adam Bereki explained that the case demonstrated that the courts are not allowed to consider the value of materials and labor. Adam Bereki believes his interpretation appears to be exactly what the court intended. He stated that if an unlicensed contractor received money but didn't complete the work, then Business and Professions Code section 7031(b) would apply appropriately. However, if the unlicensed contractor returned the money or compensation as value to the homeowner, then a judge would be relieved of his authority to issue any relief through Business and Professions Code section 7031(b) because it would be an "arbitrary" penalty.

In support of this claim, Adam Bereki cited case, Town of Gilbert Prosecutors Office v. Downie (2008), 218 Arizona 466. In this case the Supreme Court of Arizona found that the full amount of payments returned would constitute economic loss for restitution purposes.

In conclusion, Adam Bereki believes he was unfairly punished by having to pay the Humphreys a total of $930,000. Adam Bereki explained that nowhere in the trial where "damages" mentioned. There was no evidence of improper work or damages to the Humphrey's property due to Adam Bereki's work. Due to Judge Chaffee not recognizing any of the work Adam Bereki performed at the property, he was not authorized to order Adam Bereki to return the compensation under Business and Professions Code section 7031(b).

Adam Bereki believes that the punishment, if there was to be one, should be Business and Professions Code section 7028(b), which authorizes a fine not exceeding $5,000 or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Adam Bereki does not agree that he was fined a significant amount more than the $5,000 because it is an excessive fine and in violation of the

Excessive Fines Clause (Eighth Amendment). The fine should have been proportionate to the offense and he should have the ability to pay it. Because Judge Chaffee did not take those things into consideration, he lacked the authority to fine or punish Adam Bereki.

Adam Bereki believes that the Humphreys and their attorney, William Bissel do not have the executive or constitutional authority to commence Business and Professions Code section 7031(b). Additionally, Adam Bereki believes Judge Chaffee should have dismissed the case against him due to California Penal Code section 1382(a), Dismissal of the Action for Want of Prosecution Otherwise.

Adam Bereki believes that because the action against him was intended to be criminal in nature, he was entitled to protections given in a criminal proceeding, such as; assistance of counsel, confrontation of his accusers, and trial by jury. Adam Bereki was not afforded any of these protections.

**Judge Chaffee's Statement**

April 16, 2024, at 1000 hours, I spoke with Judge D. Chaffee on the phone. Judge Chaffee remembered presiding over the case, although he had forgotten some of the names and small details.

I informed Judge Chaffee of Adam Bereki's allegations, and he told me he was aware. Judge Chaffee acknowledged the case was a civil case but "turned" when the Humphreys brought forth the cross-complaint.

Judge Chaffee confirmed that Business and Professions Code section 7031 is not criminal and has "no penalty attached," but it is punitive. Judge Chaffee described section 7031(b) as "draconian" but said the legislature intended the law to work in favor of the consumer.

In response to Adam Bereki's claim that he should have been charged with Business and Professions Code section 7028 because it was his first offense, Judge Chaffee stated, "He was not charged with that."

Adam Bereki filed a civil action against the Humphreys for unpaid contractor fees. The Humphreys filed a cross-complaint against Adam Bereki because they realized he was contracting without a license.

The case that Judge Chaffee oversaw was a civil case, not a criminal case. Judge Chaffee does not believe Adam Bereki was charged by the Orange County District Attorney's office. Adam Bereki brought forth the civil case for civil damages, and in turn, the Humphreys filed for civil damages. Judge Chaffee "was not inviting a criminal prosecution of him. We were limited to civil remedies for a civil action that he brought."

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

Adam Bereki made a claim that his trial was a civil case disguised as a criminal trial. Judge Chaffee confirmed that Adam Bereki did not "raise that issue" at trial, and even if he raised it at his appeal, it would have been barred because it was not raised at trial. Judge Chaffee's judgment was affirmed by the California Court of Appeals, and the review was denied by the California Supreme Court. Ultimately, Adam Bereki's appeal was rejected by the United States Supreme Court.

Judge Chaffee acknowledged he lost any jurisdiction on the case when Adam Bereki filed his Notice of Appeal. Judge Chaffee is retired and has no legal authority to handle the case.

Adam Bereki claimed that Judge Chaffee lacked the Constitutional standing to bring any civil or criminal penalties against him. Since Adam Bereki did not raise the issue at trial, it was waived for the purposes of appeal. Even if Adam Bereki had brought forth the issue at trial, he was "wrong."

Adam Bereki claimed that the Humphreys lacked Constitutional standing to prosecute him, thereby depriving the Orange County Superior Court and Judge Chaffee of Constitutional authority to punish him. Judge Chaffee acknowledged that Adam Bereki's claim is not correct because he was the person who commenced the civil complaint. The Humphreys simply filed a cross-complaint. Since Adam Bereki did not raise the issue at trial, it was not available to him at the appeal.

Adam Bereki claims that the State of California lacked the Constitutional authority to suspend The Spartan and Associates/Adam Bereki's general contractor license. Judge Chaffee confirmed he did not suspend Adam Bereki's license. Judge Chaffee assumes that any suspension would have come from the State Contractor's Board. Judge Chaffee confirmed that the license can only be placed under one name. Adam Bereki chose to place the license with the Spartan and Associates. Adam Bereki chose to contract the job he did for the Humphreys under his name and not the company and, therefore, was found to be contracting without a license.

Judge Chaffee believes that Adam Bereki's mistakes causing this result. Judge Chaffee believes that Adam Bereki's work was not what he promised the Humphreys. Judge Chaffee looked at pictures from the work completed by Adam Bereki and did not complete the work properly.

Adam Bereki stated he should not be forced to pay the fine because he returned the money in the form of work and materials. Judge Chaffee confirmed that the damages are not offset by the work that was completed, and the Humphreys are entitled to receive their money in return for Adam Bereki contracting without a license.

| DATE OF INCIDENT | TIME | NCIC NUMBER | OFFICER I.D. | NUMBER |
|---|---|---|---|---|
| 03/10/2022 | 1200 | 9675 | 20697 | 202200887 |

**CONCLUSION:**

Adam Bereki brought forth a civil case against the Humphreys for an outstanding balance owed from a contracting job. In turn the Humphreys filed a cross-complaint against Adam Bereki for contracting without a valid contractor license. The judgement by Judge Chaffee from civil case was in favor of the Humphreys. The judgement was based on prior cases with similar contractual situations. Adam Bereki appealed the case with the Fourth District Court of Appeal and the judgement was affirmed. Adam Bereki then filed appeals to the California Supreme Court and the United States Supreme Court, but the appeals were denied.

Adam Bereki's appeals were denied because appellate courts do not consider new evidence. An appeal is not considered a new trial. The allegations Adam Bereki brought forth cannot have been disputed in an appellate court because he did not raise those issues at the original trial. Therefore, he could not present his allegations because it would have been considered new evidence in the eyes of the appellate courts. In order Adam Bereki to present his new allegations, Adam Bereki would be required to file a new lawsuit against the Humphreys.

Contracting without a license is a misdemeanor offense, violation of section 7028 of the Business and Professions Code. During the civil case, no criminal charges were filed on Adam Bereki for contracting without a license by the Orange County District Attorney's office.

Based on this investigation, Adam Bereki's claim of grand theft committed against him by Judge Chaffee was not substantiated. Any additional pertinent information presented at a later date, will be added to a supplemental report. At this time, no further follow up will be conducted and I recommend this investigation be closed.

| PREPARED BY | I.D. NUMBER | DATE | REVIEWER'S NAME | DATE |
|---|---|---|---|---|
| E. Mejia / Officer | 20697 | 9/21/2024 | D. Navarro / Sergeant | 09/21/2024 |

# Exhibit 12

**FW-003** **Order on Court Fee Waiver (Superior Court)**

Clerk stamps date here when form is filed

**FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUN 21 2017
DAVID H. YAMASAKI, Clerk of the Court
BY: _____, DEPUTY

(1) **Person who asked the court to waive court fees:**
Name: Adam Bereki
Street or mailing address: 818 Spirit
City: Costa Mesa State: CA Zip: 92626

(2) **Lawyer, if person in (1) has one** *(name, address, phone number, e-mail, and State Bar number):*

(3) A request to waive court fees was filed on *(date):* 6-20-17

☐ The court made a previous fee waiver order in this case on *(date):*

*Fill in court name and street address:*
**Superior Court of California, County of**
Orange
700 Civic Center Dr. W.
Santa Ana, CA 92701

*Fill in case number and case name:*
Case Number: 30-2015-00805807
Case Name: The Spartan Gas. US Humphries

***Read this form carefully. All checked boxes ☑ are court orders.***

**Notice:** The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for $10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

(4) After reviewing your *(check one):* ☑ *Request to Waive Court Fees* ☐ *Request to Waive Additional Court Fees* **the court makes the following orders:**

a. ☑ **The court grants your request, as follows:**

(1) ☑ **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. *(Cal. Rules of Court, rule 3.55.)* You do not have to pay the court fees for the following:
- Filing papers in Superior Court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Giving notice and certificates
- Sending papers to another court department
- Court-appointed interpreter in small claims court
- Reporter's daily fee *(for up to 60 days following the fee waiver order at the court-approved daily rate)*
- Preparing and certifying the clerk's transcript on appeal
- Court fees for phone hearings

(2) ☐ **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. *(Cal. Rules of Court, rule 3.56.)* You do not have to pay for the checked items.
☐ Jury fees and expenses
☐ Fees for a peace officer to testify in court
☐ Fees for court-appointed experts
☐ Court-appointed interpreter fees for a witness
☐ Reporter's daily fees *(beyond the 60-day period following the fee waiver order)*
☐ Other *(specify):*

(3) ☐ **Fee Waiver for Appeal.** The court grants your request and waives the fees and costs checked below, for your appeal. *(Cal. Rules of Court, rules 3.55, 3 56, 8.26, and 8.818.)* You do not have to pay for the checked items.
☐ Preparing and certifying clerk's transcript for appeal
☐ Other *(specify):*

Your name: Adam Bereki

Case Number: 30-2015-00805807

b. ☐ The court denies your request, as follows:

**Warning!** If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) ☐ The court denies your request because it is incomplete. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- File a new revised request that includes the items listed below *(specify incomplete items):*

(2) ☐ The court denies your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested *(specify reasons):*

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about *(specify questions regarding eligibility):*

☐ Bring the following proof to support your request if reasonably available:

**Hearing Date** → Date: Time: Name and address of court if different from page 1:
Dept.: Rm.:

**Warning!** If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: 6-21-17

*Signature of (check one):* ☑ *Judicial Officer* ☐ *Clerk, Deputy*

TIMOTHY J. STAFFORD

**Request for Accommodations.** Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation,* Form MC-410. (Civil Code, § 54.8.)

**Clerk's Certificate of Service**

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

☑ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from *(city):* Santa Ana, California on the date below.

Date: 6/22/17 Clerk, by Rochelle McAdams, Deputy

Revised July 1, 2009

This is a Court Order. R. McADAMS FW-003, Page 2 of 2

**Order on Court Fee Waiver (Superior Court)**

Adam Bereki
c/o postal service address
818 Spirit
Costa Mesa, California CF 92626 CF
The united States of America

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
06/28/2017 at 12:37:00 PM
Clerk of the Superior Court
By e Clerk,Deputy Clerk

Served on this date: 6/28/17

To: Orange County Superior Court Administrator Clerk
Central Justice Center
700 Civic Center Drive West
Santa Ana, California 92702

Ref: Alleged Superior Court Case; 30-2015-00805807
SPARTAN v HUMPHREYS

Re: Preacipe to take notice of and file responsive notice(s).

Greetings,

This writ shall constitute formal response to alleged notice of judgement filed in your office in the above Case. You will please take notice of and enter into said Case the hereto annexed true copy of the two Demands for Bill of Particulars served on this date to William G. Bissell, Esq. and the Hon. David Chaffee.

You will please take further notice of and place a minute entry into said Case file that jurisdiction, as to proper venue, subject matter in personam and in rem, is being challenged; and that presentment of said Demand for Bill of Particulars to Mr. Bissell and Mr. Chaffee, constitute, inter alia, demand upon him for actual production and entry of conclusive evidence of same; and

That presentment hereof for filing does not constitute express or implied submission to jurisdiction; and

That Adam Bereki is in the process of investigating potential Federal RICO, treason, and other crimes and said investigation is still in progress as of this date.

Duly executed this twenty eighth day of the sixth month, anno domini two thousand and seventeen.

Adam Bereki

Adam Bereki
c/o postal service address:
818 Spirit
Costa Mesa, California CF 92626 CF
The united States of America

Date: 6/28/17

To: Hon. David Chaffee
Central Justice Center
700 Civic Center Drive West
Santa Ana, California 92702

Re: 30-2015-00805807/ SPARTAN v HUMPHREYS

Demand for Bill of Particulars
Nature and Cause of Accusation
(U.S. Constitution 6th Amendment & California Civil Code 454)

THIS IS NOT A DISCOVERY MOTION!

The reason for this Demand for Bill of Particulars is so that Adam Bereki might be able to prepare for a meaningful and substantive appeal and defense in order that he not be deprived of life, liberty, or property without judicial process in the above matter, hereafter "Case", or "Action".

To this end, the following questions are specifically posed, to wit, and do not represent an exhaustive list:

**SECTION 1**

1. The above referenced Case was brought against Adam Bereki as a: (check one)
( ) Criminal Action
( ) Civil Action
( ) Administrative Action
( ) Other Action: (specify)_____

2. The nature of the process by which judgment was rendered against Adam Bereki is: (check all that apply)
( ) Criminal
( ) Civil
( ) Other: (specify)_____

3. That with which judgement was rendered against Adam Bereki in this action is:
( ) A crime, described as:_____
( ) Not a crime, described as:_____

4. The *constitutionally authorized* **jurisdiction** under which judgement was rendered against Adam Bereki is:
( ) Law ("in pursuance of" the Constitution)
( ) Equity
( ) Administrative ("statutory")
( ) Admiralty
( ) Quasi or Colorable Admiralty
( ) Military/ Martial Law Rule
( ) Other: (specify)_____

5. The *constitutionally cognizable* **body of law** applied to this Action against Adam Bereki (under the aforesaid jurisdiction) is:
( ) Constitutional Law
( ) Contract Law
( ) Administrative Law
( ) Commercial Law (domestic)
( ) Martial Law
( ) Law Merchant (international)
( ) "Statutory" Law, generally classified as:
( ) Remedial Code ( ) Civil Code ( ) Business and Professions Code
( ) Political Code ( ) Penal Code
( ) Other Law: (specify)_____

6. The organic Constitution for The State of California (1879) authorizes the particular application of legislative power in Case against Adam Bereki:
( ) Yes, under Article_____, Section_____, Clause_____
( ) No

7. The *published* **Rules** governing the type of action indicated above (under "constitutionally authorized jurisdiction" [4] are entitled: (specify)_____
_____
and are available for inspection at:_____

8. This action was brought against Adam Bereki by: (check all that apply)
( ) "The State of California" in its servitor (to the People) capacity
( ) The "STATE OF CALIFORNIA" in its corporate/commercial capacity
( ) The "state of Washington" as an agent for an unregistered foreign principal
( ) Karen and Gary Humphreys as "individuals", therefore "persons" as described in Business and Professions Code Section 7025.
( ) Karen and Gary Humphreys as State California de jure Citizens
( ) Other: (specify)_____

9. The corpus delicti of this Action against Adam Bereki is:
( ) Actual injury or damage to the protected Rights of another, under Law
( ) Fictional "injury", under color of law
( ) Other: (specify)_____

10. The nature of the actual damage or injury alleged by the witnesses in support of this action against Adam Bereki is:
( ) Bodily injury:(specify)_____
( ) Property Damage: (specify)_____
( ) Libel: (specify)_____
( ) Violation of Private Rights: (specify)_____
( ) Breach of a valid, binding and subsisting contract
( ) Breach of a voluntary consent agreement
( ) Other: (specify)_____

11. The name of the witness(es) claiming and possessing evidence of the actual damage or injury in support of the action is/are:_____
_____

12. Said witness(es) in [11] allege a valuation of $_____ in actual damages or injury against Adam Bereki in this Action.

13. If different than the said witness(es) above, the real parties of or in interest to this action against Adam Bereki are: (specify)_____
which is evidenced by: (specify)_____

14. The elements which, in the face of challenge, the Fundamental Law obligates your office to ensure are met in this action against Adam Bereki are: (check all that apply)
( ) Jurisdiction over the subject matter.
( ) Jurisdiction in personam over Adam Bereki
( ) Proper venue (territorial jurisdiction)
( ) The constitutional authority of the "law" alleged to have been violated by the accused.
( ) The actual harm, damage, or injury being alleged as a violation of Law by the above named witness(es).
( ) Positive identification of the witness(es), victim(s), injured party(ies) in Fact, real party(ies) in interest, or holder(s) in due course who gave you or anyone else authority to bring this action against Adam Bereki.
( ) Other: (specify)_____
( ) None of the above.

15. Judgement was in Fact rendered in this Action against Adam Bereki in order to: (check all that apply)
( ) Redress actual injury to constitutionally secured private Rights.
( ) Enforce political/administrative codes to collect revenue.
( ) Circumvent one or more constitutional obligations and/or restraints.
( ) Arbitrarily compel specific performance of purely political codes regardless of individual status and standing in Fact.
( ) Silence political dissidence.
( ) Protect the purely commercial interests of the corporate "STATE OF CALIFORNIA".
( ) Enforce political/administrative codes to obfuscate or prevent public exposure of alter ego activities in connection with or in the name of The State of California.
( ) Diminish or abrogate the true character, status, standing and/or reputation of Adam Bereki.
( ) Covertly wage mixed war upon Adam Bereki.
( ) Other:_____

16. Judgement in this action was rendered against Adam Bereki in a tribunal that acted:
( ) Judicially
( ) Ministerially (administratively)
( ) Other: (specify)_____

17. The tribunal in which this Action was brought and judgement rendered possesses the Lawful capacity to grant pecuniary award/relief in full compliance with the mandates of Article VI and Article I, Section 10 of the Supreme Law of the Land [1787-1791]. (check one)
( ) Yes
( ) No

18. The action brought against Adam Bereki is:
( ) Bonded by the accuser in Fact.
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
Policy No.: (specify)_____
Underwritten by: (specify)_____
whose principal place of business is:(specify)_____
( ) Not Bonded.
( ) Other: (specify)_____

19. A "person" as described in Business & Professions Code 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

19.1. A "person" as described in Business & Professions Code 7025 means the same thing as a "Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

20. An "individual" as described in Business & Professions Code Section 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

21. A Citizen as recognized in the Constitution for the united States [1787-1791] is a fiction at law.
( ) Yes
( ) No

22. In what way does the "person" of Adam Bereki attach to the statute(s) enforced against him?

_____
_____
_____
_____

23. Was there a right to effective assistance of counsel in Case?
( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No
24. Was there a right to trial by jury at common law in case?

( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No

25. From what pool(s) are members of the Grand or petit juries summoned?

_____

_____

26. Do the juries mentioned in [25] function at common law?
( ) Yes
( ) No. Specify to what law they do function:_____

_____

27. What constitutes the consent of the governed [See e.g. Declaration of Independence 1776] of any members of the de jure body politic to be regulated other than by the common law of England? _____

_____

_____

28. What form of payment is accepted to pay the judgment, or more accurately, to discharge the obligation in Case? _____

_____

29. What jurisdiction does the payment method described in [28] circulate?_____

_____

_____

**SECTION 2**

30. The Orange County Superior Court is:
( ) a court of general jurisdiction.
( ) a court of limited jurisdiction.
( ) a court of special or pro temper jurisdiction.
( ) Other: (specify)_____

31. The Orange County Superior Court is:
( ) A judicial court of record.
( ) Not a judicial court of record.
( ) Not a judicial court.
( ) Other: (specify)_____

31.1. The officers and staff of the Orange County Superior Court receive compensation for their labor/services from:
( ) The City of Santa Ana
( ) The County of Orange
( ) The State of California
( ) An office of agency of the United States
( ) Other: (specify)_____

31.2. The officers and staff of the Orange County Superior Court are:
( ) Liability bonded individually (privately).
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
( ) Bonded by an office of agency of the United States.
( ) Otherwise bonded by: (specify)_____
under Policy No.:_____ in the amount of $: _____.

31.3. You and your appointed deputies are compensated for your labor/services by:
( ) The city of Santa Ana.
( ) The County of Orange.
( ) The State of California.
( ) An office of agency of the United States.
( ) Other:_____

31.4. You and your appointed deputies are:
( ) Liability bonded individually (privately).
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
( ) Bonded by an office of agency of the United States.
( ) Otherwise bonded by: (specify)_____
under Policy No.:_____ in the amount of $: _____.

31.5. You and your appointed deputies are officers of the Orange County Superior Court:
( )Yes
( ) No

31.6 You and your appointed deputies are officers of the Superior Court of California in and for the County of Orange:
( ) Yes
( ) No

**SECTION 3**

32. Willliam Bissell, Esq. is an officer of:
( ) The Orange County Superior Court
( ) The State of California
( ) Other: (specify):_____

33. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to exercise judicial power(s) in the performance of executive duties:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

34. The organic Constitution for the State of California (1879) authorizes the State legislature to blend or mix the legislative, executive, and judicial powers by statute or code:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

35. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to signature authorize and issue instruments of judicial process in the name of and on behalf of the Orange County Superior Court:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

**SECTION 4**

36. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "U.S. citizen" or "person" within the meaning of the so-called "14th Amendment":
( ) Yes: (specify):_____
( ) No

37. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "person" within the meaning of Business and Profession Code Section 7025:
( ) Yes: (specify):_____
( ) No

38. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "citizen" or "resident" of the "state of California" (aka: "STATE OF CALIFORNIA"):
( ) Yes: (specify):_____
( ) No

39. Your office has in actual possession conclusive evidence that Adam Alan Bereki is contractually obligated to perform or is otherwise subject to the political codes of the "state of California", including but not limited to the Business & Professions Code:
( ) Yes: (specify):_____
( ) No

40. Your office has in actual possession any application form, contract or other similar document or Instrument bearing the unrestricted signature/autograph of Adam Alan Bereki:
( ) Yes: (specify):_____
( ) No

41. Your office has in actual possession any registration document or similar item, bearing the unrestricted signature/autograph of Adam Alan Bereki, which evidences his voluntary, knowing, and intelligent Consent to or authorization of majority (mob) rule or "public policy":
( ) Yes: (specify):_____
( ) No

42. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a natural-born, flesh and blood man, long since past the age of Consent:
( ) Yes: (specify):_____
( ) No

43. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a man of sound mind and body, in full possession of his faculties:
( ) Yes: (specify):_____
( ) No

44. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has, at any time, affirmatively and voluntarily surrendered, waived or in any way and to any degree impaired the exercise of any of his secured Rights, Privileges, Immunities, and Remedies:
( ) Yes: (specify):_____
( ) No

45. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is in Fact a "trustee" or "subrogee" or "surety" or any other similar characterization in connection with any state created legal fiction entity:
( ) Yes: (specify):_____
( ) No

46. Your office has in actual possession any document, bearing the unrestricted signature/autograph of Adam Alan Bereki, whereby he has directly or indirectly authorized the creation of any legal fiction entity which is identified by his own Lawful name or any orthographic variation thereof:
( ) Yes: (specify):_____
( ) No

47. Your office has in actual possession any document bearing the unrestricted signature/autograph of Adam Alan Bereki, which in any way authorizes a departure from the long established Rules of English grammar governing spelling, capitalization and structuring of proper noun names generally of his own Lawful name specifically:
( ) Yes: (specify):_____
( ) No

48. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact expressly granted power of attorney or procuratorial authority to "United States", "UNITED STATES", "U.S.", "state of California", "STATE OF CALIFORNIA", "COUNTY OF ORANGE", "CITY OF SANTA ANA" or any officer(s) thereof:
( ) Yes: (specify):_____
( ) No

49. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact surrendered, waived or otherwise impaired or forfeited his authority to make direct presentment in and to any public office of court of The State of California or The united States of America for any Lawful purpose whatsoever:
( ) Yes: (specify):_____
( ) No

50. It is a long and firmly established precept of Fundamental American Law that an accused (wo)man is presumed innocent until proven guilty of any wrong doing. Your office has in actual possession conclusive evidence that Adam Alan Bereki has in Fact surrendered, waived, or otherwise forfeited or impaired his Right to enjoy the benefit of this presumption of Law:
( ) Yes: (specify):_____
( ) No

51. It is a long and firmly established precept of Fundamental American Law that jurisdiction, in any of its elements, may be challenged at any time and, once challenged, it must be proven by he who bears the burden of proof, as "mere assertion is not enough". Your office has in actual possession conclusive evidence that Adam Alan Bereki has in fact surrendered, waived or otherwise forfeited or impaired his Right to enjoy the benefit of this precept of American Law:
( ) Yes: (specify):_____
( ) No

52. Your office, as the moving party, carries the burden of proof in this action, including the proof of jurisdiction. Your office has in actual possession conclusive evidence that Adam Alan Bereki has waived or has otherwise relieved your office of that burden:
( ) Yes: (specify):_____
( ) No

53. Other heretofore undisclosed assumptions, presumptions, hypothecations and similar tacitly noticed fictions of law affecting or material to the status, standing and/or capacity of Adam Alan Bereki in Case are fully disclosed as follows:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The disclosures/particulars provided herein above are hereby Certified, under the pains and penalties of Perjury of organic American Law, to be true, correct and complete. Witness my hand:

_____ _____

Date Hon. David Chaffee

CAVEAT

It is common knowledge that only criminals and perverts require a cloak of secrecy with which to hide their activities. This Bill of Particulars for immediate and full disclosure is mandatory and has been formatted as a multiple choice questionnaire as a time saving convenience to your office.

Failure to complete the foregoing Bill of Particulars Questionnaire and return the same to Adam Bereki within ten (10) days of date of delivery/service may result in measures being taken to compel you to do so. Further obstruction may result in one or more criminal charges being brought against you in a Court of Justice. By your Oath, you will be held accountable for all acts of commission or omission, as the case may be. In the alternative, you may file a formal notice of vacated judgment into Case. These things you will faithfully do or come forth in writing and show good and Lawful cause why you could not do that which is commanded herein.

All responses sent by U.S. Post to Adam Bereki are to be sent/mailed exactly as shown at the head of this document, without alteration, deletion, addition or substitution, which has been specially arranged for that purpose. All secured Rights, Privileges, Immunities, and Remedies explicitly reserved to Adam Bereki by restricted signature given below:

..... 6/28/17 .....

Adam Bereki
c/o postal service address:
818 Spirit
Costa Mesa, California CF 92626 CF
The united States of America

Date: 6/28/17

To: William G. Bissell, Esq.
14 Corporate Plaza Drive, Suite 120
Irvine, California 92660

Re: 30-2015-00805807/ SPARTAN v HUMPHREYS

Demand for Bill of Particulars
Nature and Cause of Accusation
(U.S. Constitution 6th Amendment)

THIS IS NOT A DISCOVERY MOTION!

The reason for this Demand for Bill of Particulars is so that Adam Bereki might be able to prepare for a meaningful and substantive appeal and defense in order that he not be deprived of life, liberty, or property without judicial process in the above matter, hereafter "Case", or "Action".

Your office brought this Action against Adam Bereki where jurisdiction was alleged to exist and consequently judgement was allegedly found against him. To this end, the following questions are specifically posed, to wit, and do not represent an exhaustive list:

**SECTION 1**

1. The above referenced Case was brought against Adam Bereki as a: (check one)
( ) Criminal Action
( ) Civil Action
( ) Administrative Action
( ) Other Action: (specify)_____

2. The nature of the process by which this action was brought against Adam Bereki is: (check all that apply)
( ) Criminal
( ) Civil
( ) Other: (specify)_____

3. That with which judgement was rendered against Adam Bereki in this action is:
( ) A crime, described as:_____
( ) Not a crime, described as:_____

4. The *constitutionally authorized* **jurisdiction** under which Case was brought against Adam Bereki is:
( ) Law ("in pursuance of" the Constitution)
( ) Equity
( ) Administrative ("statutory")
( ) Admiralty
( ) Quasi or Colorable Admiralty
( ) Military/ Martial Law Rule
( ) Other: (specify)_____

5. The *constitutionally cognizable* **body of law** being applied to this action against Adam Bereki (under the aforesaid jurisdiction) is:
( ) Constitutional Law
( ) Contract Law
( ) Administrative Law
( ) Commercial Law (domestic)
( ) Martial Law
( ) Law Merchant (International)
( ) "Statutory" Law, generally classified as:
( ) Remedial Code ( ) Civil Code ( ) Business and Professions Code
( ) Political Code ( ) Penal Code
( ) Other Law: (specify)_____

6. The organic Constitution for The State of California (1879) authorizes the particular application of legislative power of Case against Adam Bereki:
( ) Yes, under Article_____, Section_____, Clause_____
( ) No

7. The *published* **Rules** governing the type of action indicated above (under "constitutionally authorized jurisdiction" [4] are entitled: (specify)_____
_____
and are available for inspection at:_____

8. This action was brought against Adam Bereki by: (check all that apply)
( ) "The State of California" in its servitor (to the People) capacity
( ) The "STATE OF CALIFORNIA" in its corporate/commercial capacity
( ) The "state of Washington" as an agent for an unregistered foreign principal
( ) Karen and Gary Humphreys as "individuals", therefore "persons" as described in Business and Professions Code Section 7025.
( ) Karen and Gary Humphreys as State California de jure Citizens
( ) Other: (specify)_____

9. The corpus delicti of this action against Adam Bereki is:
( ) Actual injury or damage to the protected Rights of another, under Law
( ) Fictional "injury", under color of law
( ) Other: (specify)_____

10. The nature of the actual damage or injury alleged by the witnesses in support of this action against Adam Bereki is:
( ) Bodily injury:(specify)_____
( ) Property Damage: (specify)_____
( ) Libel: (specify)_____
( ) Violation of Private Rights: (specify)_____
( ) Breach of a valid, binding and subsisting contract
( ) Breach of a voluntary consent agreement
( ) Other: (specify)_____

11. The name of the witness(es) claiming and possessing evidence of the actual damage or injury in support of the action is/are:_____
_____

12. Said witness(es) in [11] allege a valuation of $_____ in actual damages or injury against Adam Bereki in this action.

13. If different than the said witness(es) above, the real parties of or in interest to this action against Adam Bereki are: (specify)_____
which is evidenced by: (specify)_____

14. The elements which, in the face of challenge, the Fundamental Law obligates your office to **prove** in this action against Adam Bereki are: (check all that apply)
( ) Jurisdiction over the subject matter.
( ) Jurisdiction in personam over Adam Bereki
( ) Proper venue (territorial jurisdiction)
( ) The constitutional authority of the "law" alleged to have been violated by the accused.
( ) The actual harm, damage, or injury being alleged as a violation of Law by the above named witness(es).
( ) Positive identification of the witness(es), victim(s), injured party(ies) in Fact, real party(ies) in interest, or holder(s) in due course who gave you or anyone else authority to bring this action against Adam Bereki.
( ) Other: (specify)_____
( ) None of the above.

15. This action was in Fact being brought against Adam Bereki in order to: (check all that apply)
( ) Redress actual injury to constitutionally secured private Rights.
( ) Enforce political/administrative codes to collect revenue.
( ) Circumvent one or more constitutional obligations and/or restraints.
( ) Arbitrarily compel specific performance of purely political codes regardless of individual status and standing in Fact.
( ) Silence political dissidence.
( ) Protect the purely commercial interests of the corporate "STATE OF CALIFORNIA".
( ) Enforce political/administrative codes to obfuscate or prevent public exposure of alter ego activities in connection with or in the name of The State of California.
( ) Diminish or abrogate the true character, status, standing and/or reputation of Adam Bereki.
( ) Covertly wage mixed war upon Adam Bereki.
( ) Other:_____

16. This action was brought against Adam Bereki in a tribunal that acted:
( ) Judicially
( ) Ministerially (administratively)
( ) Other: (specify)_____

17. The tribunal in which this action was brought possesses the Lawful capacity to grant pecuniary award/relief in full compliance with the mandates of Article VI and Article I, Section 10 of the Supreme Law of the Land [1787-1791]. (check one)
( ) Yes
( ) No

18. The action brought against Adam Bereki is:
( ) Bonded by the accuser in Fact.
( ) Bonded by the City of Santa Ana.
( ) Bonded by the County of Orange.
( ) Bonded by the State of California.
Policy No.: (specify)_____
Underwritten by: (specify)_____
whose principal place of business is:(specify)_____
( ) Not Bonded.
( ) Other: (specify)_____

19. A "person" as described in Business & Professions Code 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

20. An "individual" as described in Business & Professions Code Section 7025 means the same thing as a "State Citizen" as recognized in the Constitution for the united States [1787-1791]
( ) Yes
( ) No

21. A State Citizen as recognized in the Constitution for the united States [1787-1791] is a fiction at law.
( ) Yes
( ) No

22. In what way does the "person" of Adam Bereki attach to the statute(s) enforced against him?

_____
_____
_____
_____

23. Is there a right to effective assistance of counsel in Case?
( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No

24. Was there a right to trial by jury at common law in case?
( ) Yes. Specify which provision(s) of the Federal and/or state Constitution(s) secure such a right:_____
( ) No

25. From what pool(s) are members of the Grand or petit juries summoned?

_____

_____

26. Do the juries mentioned in [25] function at common law?
( ) Yes
( ) No. Specify to what law they do function:_____

_____

27. What constitutes the consent of the governed [See e.g. Declaration of Independence 1776] of any members of the de jure body politic to be regulated other than by the common law of England? _____

_____

_____

28. What form of payment is accepted to pay the judgment, or more accurately, to discharge the obligation in Case? _____

_____

29. What jurisdiction does the payment method described in [28] circulate?_____

_____

_____

**SECTION 2**

30. The Orange County Superior Court is:
( ) a court of general jurisdiction.
( ) a court of limited jurisdiction.
( ) a court of special or pro temper jurisdiction.
( ) Other: (specify)_____

31. The Orange County Superior Court is:
( ) A judicial court of record.
( ) Not a judicial court of record.
( ) Not a judicial court.
( ) Other: (specify)_____

**SECTION 3**

32. Willliam Bissell, Esq. is an officer of:
( ) The Orange County Superior Court
( ) The State of California
( ) Other: (specify):_____

33. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to exercise judicial power(s) in the performance of executive duties:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

34. The organic Constitution for the State of California (1879) authorizes the State legislature to blend or mix the legislative, executive, and judicial powers by statute or code:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

35. The organic Constitution for the State of California (1879) authorizes William Bissell, Esq. to signature authorize and issue instruments of judicial process in the name of and on behalf of the Orange County Superior Court:
( ) Yes, under Article_____, Section_____, Clause_____.
( ) No

**SECTION 4**

36. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "U.S. citizen" or "person" within the meaning of the so-called "14th Amendment":
( ) Yes: (specify):_____
( ) No

37. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "person" within the meaning of Business and Profession Code Section 7025:
( ) Yes: (specify):_____
( ) No

38. Your office has in actual possession conclusive evidence that Adam Alan Bereki is in Fact a "citizen" or "resident" of the "state of California" (aka: "STATE OF CALIFORNIA"):
( ) Yes: (specify):_____
( ) No

39. Your office has in actual possession conclusive evidence that Adam Alan Bereki is contractually obligated to perform or is otherwise subject to the political codes of the "state of California", including but not limited to the Business & Professions Code:
( ) Yes: (specify):_____
( ) No

40. Your office has in actual possession any application form, contract or other similar document or Instrument bearing the unrestricted signature/autograph of Adam Alan Bereki:
( ) Yes: (specify):_____

( ) No

41. Your office has in actual possession any registration document or similar item, bearing the unrestricted signature/autograph of Adam Alan Bereki, which evidences his voluntary, knowing, and intelligent Consent to or authorization of majority (mob) rule or "public policy":
( ) Yes: (specify):_____
( ) No

42. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a natural-born, flesh and blood man, long since past the age of Consent:
( ) Yes: (specify):_____
( ) No

43. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is other than a man of sound mind and body, in full possession of his faculties:
( ) Yes: (specify):_____
( ) No

44. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has, at any time, affirmatively and voluntarily surrendered, waived or in any way and to any degree impaired the exercise of any of his secured Rights, Privileges, Immunities, and Remedies:
( ) Yes: (specify):_____
( ) No

45. Your office has in actual possession conclusive evidence that one Adam Alan Bereki is in Fact a "trustee" or "subrogee" or "surety" or any other similar characterization in connection with any state created legal fiction entity:
( ) Yes: (specify):_____
( ) No

46. Your office has in actual possession any document, bearing the unrestricted signature/autograph of Adam Alan Bereki, whereby he has directly or indirectly authorized the creation of any legal fiction entity which is identified by his own Lawful name or any orthographic variation thereof:
( ) Yes: (specify):_____
( ) No

47. Your office has in actual possession any document bearing the unrestricted signature/autograph of Adam Alan Bereki, which in any way authorizes a departure from the long established Rules of English grammar governing spelling, capitalization and structuring of proper noun names generally of his own Lawful name specifically:
( ) Yes: (specify):_____
( ) No

48. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact expressly granted power of attorney or procuratorial authority to "United States", "UNITED STATES", "U.S.", "state of California", "STATE OF CALIFORNIA", "COUNTY OF ORANGE", "CITY OF SANTA ANA" or any officer(s) thereof:
( ) Yes: (specify):_____
( ) No

49. Your office has in actual possession conclusive evidence that one Adam Alan Bereki has in Fact surrendered, waived or otherwise impaired or forfeited his authority to make direct presentment in and to any public office of court of The State of California or The united States of America for any Lawful purpose whatsoever:
( ) Yes: (specify):_____
( ) No

50. It is a long and firmly established precept of Fundamental American Law that an accused (wo)man is presumed innocent until proven guilty of any wrong doing. Your office has in actual possession conclusive evidence that Adam Alan Bereki has in Fact surrendered, waived, or otherwise forfeited or impaired his Right to enjoy the benefit of this presumption of Law:
( ) Yes: (specify):_____
( ) No

51. It is a long and firmly established precept of Fundamental American Law that jurisdiction, in any of its elements, may be challenged at any time and, once challenged, it must be proven by he who bears the burden of proof, as "mere assertion is not enough". Your office has in actual possession conclusive evidence that Adam Alan Bereki has in fact surrendered, waived or otherwise forfeited or impaired his Right to enjoy the benefit of this precept of American Law:
( ) Yes: (specify):_____
( ) No

52. Your office, as the moving party, carries the burden of proof in this action, including the proof of jurisdiction. Your office has in actual possession conclusive evidence that Adam Alan Bereki has waived or has otherwise relieved your office of that burden:
( ) Yes: (specify):_____
( ) No

53. Other heretofore undisclosed assumptions, presumptions, hypothecations and similar tacitly noticed fictions of law affecting or material to the status, standing and/or capacity of Adam Alan Bereki in Case are fully disclosed as follows:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

The disclosures/particulars provided herein above are hereby Certified, under the pains and penalties of Perjury of organic American Law, to be true, correct and complete. Witness my hand:

_____ _____

Date William G. Bissell

CAVEAT

It is common knowledge that only criminals and perverts require a cloak of secrecy with which to hide their activities. This Bill of Particulars for immediate and full disclosure is mandatory and has been formatted as a multiple choice questionnaire as a time saving convenience to your office.

Failure to complete the foregoing Bill of Particulars Questionnaire and return the same to Adam Bereki within ten (10) days of date of delivery/service may result in measures being taken to compel you to do so. Further obstruction may result in one or more criminal charges being brought against you in a Court of Justice. By your Oath, you will be held accountable for all acts of commission or omission, as the case may be. In the alternative, you may file a formal notice of retraxit of suit and vacated judgment into Case. These things you will faithfully do or come forth in writing and show good and Lawful cause why you could not do that which is commanded herein.

All responses sent by U.S. Post to Adam Bereki are to be sent/mailed exactly as shown at the head of this document, without alteration, deletion, addition or substitution, which has been specially arranged for that purpose. All secured Rights, Privileges, Immunities, and Remedies explicitly reserved to Adam Bereki by restricted signature given below:

4/24/17

# Exhibit 13

Gmail [redacted]

# Phone Call

[redacted]

**Adam** <abereki@gmail.com> Wed, Sep 20, 2017 at 3:14 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill,

I hope this finds you well. I called your office today to speak with you about what I believe to be a huge miscarriage of justice happening in this case surrounding the challenge to jurisdiction I filed on 4/18/17 before judgement was ordered in this case. If you have any interest in discussing this matter with me, I'd welcome that.

If so, please let me know when would be a good time to call you and I'll do so.

Sincerely,

Adam Bereki

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Wed, Sep 20, 2017 at 3:50 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

Mr. Bereki: I reviewed your "Writ of Error" at the time it was filed with the court. I saw nothing in it that would cause me to question the validity of the judgment entered by the court. You have appealed the judgment and presumably you will be giving it your best shot with the Court of Appeal. Because appellate procedure is very deadline sensitive I suggest that your time might be better spent focusing on your argument to be made to the court than discussing your theories with me.

Sincerely.

**Law Office of William G. Bissell**

14 Corporate Plaza Drive, Suite 120

Newport Beach, CA 92660

(949) **719-1159**

wbissell@wgb-law.com

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain information that is confidential or legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender by telephone at 949.719.1159 or return e-mail and delete the original transmission and its attachments without reading or saving in any manner. Thank you.

---

**Adam** <abereki@gmail.com> Wed, Sep 20, 2017 at 4:09 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you Bill, I appreciate your reply. It's just that since the "writ of error" was a direct jurisdictional challenge before the entry of judgement. The judgement is void because you didn't prove the factual sufficiency of subject matter jurisdiction as you were required to do upon direct attack. At that point and until subject matter jurisdiction was proved, the court was want of jurisdiction to issue an order. You'll see the jurisdictional challenge was served two days before the judgement. I don't believe it's in judicial process for the court or other parties to just ignore and/or reject my documents however foreign or out of statutory procedure they may be. While I understand your position that you might think what I'm sharing is a legal "theory" I obviously believe otherwise and we can disagree. If I'm right though, you and the judge could be in a lot of trouble which is why I reached out to you first to see if you wished to speak with me humbly.

Sincerely,

Adam Bereki

---

**wbissell wgb-law.com** <wbissell@wgb-law.com> Wed, Sep 20, 2017 at 4:24 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

Mr. Bereki: Thank you for your clarification and the opportunity to avoid the trouble that may befall me as a result of the trial conducted in this matter. As I remain unpersuaded by your position, I suppose I (and I guess Judge Chaffee as well) will just have to take my chances that the court will have the same view of your argument as I do.

# Judicial Notice Exhibit 15.8D

Court of Appeal, Fourth Appellate District, Division Three
Brandon L. Henson, Clerk/Executive Officer
Electronically FILED on 8/7/2025 by Sandra Mendez, Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| ADAM BEREKI<br><br>Petitioners,<br><br>v.<br><br>THE SUPERIOR COURT OF ORANGE COUNTY,<br><br>Respondent;<br><br>KAREN HUMPHREYS et al.,<br><br>Real Parties in Interest. | G065772<br><br>(Super. Ct. No. 30-2015-00805807)<br><br>O R D E R |

THE COURT:*

The petition for writ of mandate and request for judicial notice are DENIED.

MOTOIKE, ACTING P. J.

* Before Motoike, Acting P. J., Delaney, J., and Scott, J.

# Judicial Notice Exhibit 16

Recording Requested By:
The Jasper Companies, Inc.

When Recorded Mail To:
William Bissell
14 Corporate Plaza Drive
Suite 120
Newport Beach, CA 92660

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder




2017000170718 2:20 pm 04/27/17
62 417 A03 F13 4
0.00 0.00 0.00 0.00 9.00 0.00 0.00 0.00

Space above this line reserved for Recorder's use only

# ABSTRACT OF JUDGMENT

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
According, return to:
William G. Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660

TEL NO.: (949) 719-1159 FAX NO. (optional): (949) 719-1158
E-MAIL ADDRESS (Optional): wbissell@wgb-la
[X] ATTORNEY FOR [X] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

FOR RECORDER'S USE ONLY

PLAINTIFF: The Spartan Associates, Inc.
DEFENDANT: Gary Humphreys etc. et al

CASE NUMBER:
30-2015-00805807

# ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

[ ] Amended

FOR COURT USE ONLY

Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g).

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's
      Name and last known address
      Adam Bereki
      818 Spirit
      Costa Mesa, CA 92626
   b. Driver's license no. [last 4 digits] and state: 0543 CA [ ] Unknown
   c. Social security no. [last 4 digits]: 4758 [ ] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to *(name and address)*:
      Adam Bereki 818 Spirit Costa Mesa, CA 92626

2. [ ] Information on additional judgment debtors is shown on page 2.
3. Judgment creditor *(name and address)*:
   Gary Humphreys
   505 Augusta Drive
   Moraga, CA 94556
   Date: April 25, 2017
   William G. Bissell
   (TYPE OR PRINT NAME)
4. [X] Information on additional judgment creditors is shown on page 2.
5. [ ] Original abstract recorded in this county:
   a. Date:
   b. Instrument No.:
   ▶ William Bissell
   (SIGNATURE OF APPLICANT OR ATTORNEY)
6. Total amount of judgment as entered or last renewed: $848,000.00
7. All judgment creditors and debtors are listed on this abstract.
8. a. Judgment entered on *(date)*: April 20, 2017
   b. Renewal entered on *(date)*: n/a
9. [ ] This judgment is an installment judgment.
10. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
    a. Amount: $
    b. In favor of *(name and address)*:
11. A stay of enforcement has
    a. [X] not been ordered by the court.
    b. [ ] been ordered by the court effective until *(date)*:
12. a. [X] I certify that this is a true and correct abstract of the judgment entered in this action.
    b. [ ] A certified copy of the judgment is attached.

[SEAL]

This abstract issued on *(date)*: 4/26/17
David H. Yamasaki, Clerk of the Court
Clerk, by A. DANG, Deputy

| PLAINTIFF: The Spartan Associates, Inc.<br>DEFENDANT: Gary Humphreys etc. et al | COURT CASE NO.:<br>30-2015-00805807 |
|---|---|

**NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:**

13. Judgment creditor *(name and address):*
Karen Humphreys
505 Augusta Drive
Moraga, CA 94556

14. Judgment creditor *(name and address):*

15. ☐ Continued on Attachment 15.

**INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:**

16. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

17. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

18. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

19. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

20. ☐ Continued on Attachment 20.

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

April 26, 2017, I served the within:

**Abstract of Judgment**

in said action by placing a true copy thereof, enclosed in a sealed envelope with postage, certified, return receipt requested thereon fully prepaid, in the United States mail at Newport Beach, California addressed as follows:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on April 26, 2017, at Newport Beach, California.

William Bissell

Certified Copy of document number 20170000170718

7/3/2018
5.00

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE:_____

CERTIFICATION FEE:_____

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

# Judicial Notice Exhibit 17

Electronically Filed by Superior Court of California, County of Orange, 05/21/2025 10:43:00 AM.
30-2025-01459684-CL-UD-CJC - ROA # 47 - DAVID H. YAMASAKI, Clerk of the Court By E. efilinguser, Deputy Clerk.

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129
949.241.6693
abereki@gmail.com
www.thespiritoflaw.com

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**FOR THE COUNTY OF ORANGE– CENTRAL JUSTICE CENTER**

Canjian Hou

Plaintiff,

vs.

Adam Bereki,

Defendant.

Main Case No.: 30-2025-01459684

**UPDATED PROOF OF SERVICE RE EX PARTE HEARING**

**DECLARATION OF ADAM BEREKI**

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY(S) OF RECORD:**

**DECLARATION OF ADAM BEREKI REGARDING NAME USAGE**

I, Adam Bereki, declare under penalty of perjury of the laws of California the following is true and correct:

1. I received confirmation at 10:29AM of the court's accepting of my e-filing of the emergency ex parte action filed in this case.
2. I immediately called Plaintiff's counsel, Henry Paloci, and left a voice message updating him with notice him of the ex parte proceeding (in chambers) to take place tomorrow, May 22, 2025, at 1:45 in Dept. C61. I also emailed him this updated notice, along with Plaintiff at the email addresses provided in the Application.

Signed on May 21, 2025

By:



Adam Bereki

| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE<br>STREET ADDRESS: 700 W. Civic Center Drive<br>MAILING ADDRESS: 700 W. Civic Center Drive<br>CITY AND ZIP CODE: Santa Ana CA 92701<br>BRANCH NAME: Central Justice Center | *FOR COURT USE ONLY* |
|---|---|
| SHORT TITLE: Hou vs. Bereki | |
| **NOTICE OF CONFIRMATION OF ELECTRONIC FILING** | CASE NUMBER:<br>30-2025-01459684-CL-UD-CJC |

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange. In order to process the filing, the fee shown was assessed.

**Electronic Filing Summary Data**

| | |
|---|---|
| Electronically Submitted By: | Adam Bereki |
| On Behalf of: | Adam Bereki; CCMS ID: 81642438 |
| Transaction Number: | 21653952 |
| Court Received Date: | 05/21/2025 |
| Court Received Time: | 10:43:52 AM |
| Filed Date: | 05/21/2025 |
| Filed Time: | 10:43 AM |
| Fee Amount Assessed: | $0.00 |
| Case Number: | 30-2025-01459684-CL-UD-CJC |
| Case Title: | Hou vs. Bereki |
| Location: | Central Justice Center |
| Case Type: | Unlawful Detainer - Residential |
| Case Category: | Civil - Limited |
| Jurisdictional Amount: | 1-10000 |

| Documents Electronically Filed/Received | Status |
| --- | --- |
| Proof of Service | Accepted |

**Comments**
**Submitter's Comments:**

**Clerk's Comments:**

**Electronic Filing Service Provider Information**

Service Provider OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: 8009388815

# Judicial Notice Exhibit 18

Valerie Hammer 05/06/25 12:22 PM

Good Afternoon.

The time showing entered for ROA 18 and 19 is 9:44(am)

Thank you.

Automatic response 05/06/25 12:22 PM

Your request status has changed to Waiting for customer.

Automatic response 05/06/25 12:22 PM

Your request status has changed to Resolved with resolution Done.

Add a comment

**Status**

RESOLVED

Notifications on

**Request type**

Public

**Shared with**

abereki@gmail.com

Creator

# Judicial Notice Exhibit 19

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

Christina J. Khil, #266845
Malcolm ♦ Cisneros, A Law Corporation
2112 Business Center Drive, 2nd Floor
Irvine, California 92612
(Telephone) (949)252-9400
(Facsimile) (949)252-1032
Email: christinao@mclaw.org

FOR COURT USE ONLY

☐ *Movant appearing without an attorney*
☒ *Attorney for Movant*

**UNITED STATES BANKRUPTCY COURT**
**CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

In re:
**Adam Alan Bereki,**

Debtor(s).

CASE NO.: **8:22-bk-12076-SC**

CHAPTER: **7**

# NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (REAL PROPERTY)

DATE: March 1, 2023

TIME: 10:00 a.m.

COURTROOM: 5C

**Movant: Citizens Bank, N.A., and its successors and/or assignees**

1. **Hearing Location:**
   - ☐ 255 East Temple Street, Los Angeles, CA 90012
   - ☐ 21041 Burbank Boulevard, Woodland Hills, CA 91367
   - ☐ 3420 Twelfth Street, Riverside, CA 92501
   - ☒ 411 West Fourth Street, Santa Ana, CA 92701
   - ☐ 1415 State Street, Santa Barbara, CA 93101

2. Notice is given to the Debtor and trustee (if any)(Responding Parties), their attorneys (if any), and other interested parties that on the date and time and in the courtroom stated above, Movant will request that this court enter an order granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached Motion.

3. To file a response to the motion, you may obtain an approved court form at www.cacb.uscourts.gov/forms for use in preparing your response (optional LBR form F 4001-1.RFS.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.

4. When serving a response to the motion, serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above.

5. If you fail to timely file and serve a written response to the motion, or fail to appear at the hearing, the court may deem such failure as consent to granting of the motion.

6. [X] This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d). If you wish to oppose this motion, you must file and serve a written response to this motion no later than 14 days before the hearing and appear at the hearing.

7. [ ] This motion is being heard on SHORTENED NOTICE pursuant to LBR 9075-1(b). If you wish to oppose this motion, you must file and serve a response no later than (date) _____ and (time) _____; and, you may appear at the hearing.

   a. [ ] An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge).

   b. [ ] An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge).

   c. [ ] An application for order setting hearing on shortened notice was filed and remains pending. After the court rules on that application, you will be served with another notice or an order that specifies the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion.

Date: February 3, 2023

Respectfully submitted,

**MALCOLM & CISNEROS, ALC**

Printed name of law firm (if applicable)

**Christina J. Khil**

Printed name of individual Movant or attorney for Movant

**/s/ Christina J. Khil**

Signature of individual Movant or attorney for Movant

## MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO REAL PROPERTY

1. **Movant is the:**

☐ Holder: Movant has physical possession of a promissory note that either (1) names Movant as the payee under the promissory note or (2) is indorsed to Movant, or indorsed in blank, or payable to bearer.

☒ Beneficiary: Movant is either (1) named as beneficiary in the security instrument on the subject property (e.g., mortgage or deed of trust) or (2) is the assignee of the beneficiary.

☐ Servicing agent authorized to act on behalf of the Holder or Beneficiary.

☐ Other (specify):

2. **The Property at Issue (Property):**

a. Address:

*Street address:* **818 Spirit**
*Unit/suite number.:*
*City, state, zip code:* **Costa Mesa, CA 92626**

b. Legal description, or document recording number (including county of recording), as set forth in Movant's deed of trust (attached as **Exhibit "1"**):

3. **Bankruptcy Case History:**

a. A ☒ voluntary ☐ involuntary bankruptcy petition under chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on (date) **12/08/2022**.

b. ☐ An order to convert this case to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 Was entered on (date) _____.

c. ☐ A plan, if any, was confirmed on (date) _____.

4. **Grounds for Relief from Stay:**

a. ☐ Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant relief from stay as follows:

(1) ☐ Movant's interest in the Property is not adequately protected.

(A) ☐ Movant's interest in the Property is not protected by an adequate equity cushion.

(B) ☐ The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.

(C) ☐ Proof of insurance regarding the Property has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor.

(2) ☐ The bankruptcy case was filed in bad faith.

(A) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents.

(B) ☐ The Property was transferred to the Debtor either just before the bankruptcy filing or after the filing.

(C) ☐ A non-individual entity was created just prior to the bankruptcy petition date for the sole purpose of filing this bankruptcy case.

(D) ☐ Other bankruptcy cases have been filed in which an interest in the Property was asserted.

(E) ☐ The Debtor filed only a few case commencement documents with the bankruptcy petition. Schedules and the statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed.

(F) ☐ Other (see attached continuation page).

(3) ☐ (Chapter 12 or 13 cases only)

(A) ☐ All payments on account of the Property are being made through the plan.

☐ Preconfirmation ☐ Postconfirmation plan payments have not been made to the chapter 12 trustee or chapter 13 trustee.

(B) ☐ Postpetition mortgage payments due on the note secured by a deed of trust on the Property have not been made to Movant.

(4) ☐ The Debtor filed a Statement of Intentions that indicates the Debtor intends to surrender the Property.

(5) ☐ The Movant regained possession of the Property on (date) _____.
which is ☐ prepetition ☐ postpetition.

(6) ☐ For other cause for relief from stay, see attached continuation page.

b. ☒ Pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property; and, pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.

c. ☐ Pursuant to 11 U.S.C. § 362(d)(3), the Debtor has failed, within the later of 90 days after the order for relief or 30 days after the court determined that the Property qualifies as "single asset real estate" as defined in 11 U.S.C. § 101(51B) to file a reasonable plan of reorganization or to commence monthly payments.

d. ☐ Pursuant to 11 U.S.C. § 362(d)(4), the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved:

(1) ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval; or

(2) ☐ Multiple bankruptcy cases affecting the Property.

5. ☐ **Grounds for Annulment of the Stay.** Movant took postpetition actions against the Property or the Debtor.

a. ☐ These actions were taken before Movant knew the bankruptcy case had been filed, and Movant would have been entitled to relief from the stay to proceed with these actions.

b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit _____.

c. ☐ Other (specify):

6. **Evidence in Support of Motion: (Declaration(s) *MUST be signed under penalty of perjury and attached to this motion)***

a. The REAL PROPERTY DECLARATION on page 6 of this motion.

b. ☐ Supplemental declaration(s).

c. ☒ The statements made by Debtor under penalty of perjury concerning Movant's claims and the Property as set forth in Debtor's case commencement documents. Authenticated copies of the relevant portions of the case commencement documents are attached as **Exhibit "3"**.

d. ☒ Other: Certificate regarding name change as **Exhibit "4."**

7. **An optional Memorandum of Points and Authorities is attached to this motion.**

**Movant requests the following relief:**

1. Relief from the stay is granted under: [X] 11 U.S.C. § 362(d)(1) [X] 11 U.S.C. § 362(d)(2) [ ] 11 U.S.C. § 362(d)(3).
2. [X] Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
3. [X] Movant, or its agents, may, at its option, offer, provide and enter into a potential forebearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement.
4. [ ] Confirmation that there is no stay in effect.
5. [ ] The stay is annulled retroactive to the bankruptcy petition date. Any postpetition actions taken by Movant to enforce its remedies regarding the Property shall not constitute a violation of the stay.
6. [ ] The co-debtor stay of 11 U.S.C. §1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor.
7. [X] The 14-day stay prescribed by FRBP 4001(a)(3) is waived.
8. [ ] A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing on this Motion:
   [ ] without further notice, or [ ] upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
9. [ ] Relief from the stay is granted under 11 U.S.C. § 362(d)(4): If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing.
10. [ ] The order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion:
    [ ] without further notice, or [ ] upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
11. [ ] The order is binding and effective in any future bankruptcy case, no matter who the debtor may be:
    [ ] without further notice, or [ ] upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.
12. [ ] Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).
13. [ ] If relief from stay is not granted, adequate protection shall be ordered.
14. [ ] See attached continuation page for other relief requested.

Date: February 3, 2023

Respectfully submitted,

**MALCOLM & CISNEROS, ALC**

Printed name of law firm (if applicable)

**Christina J. Khil**

Printed name of individual Movant or attorney for Movant

**/s/ Christina J. Khil**

Signature of individual Movant or attorney for Movant

## REAL PROPERTY DECLARATION

I, (print name of Declarant) Dimitris Peale, declare:

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the real property that is the subject of this Motion (Property) because (specify):

   a. ☐ I am the Movant.

   b. ☐ I am employed by Movant as (state title and capacity):

   c. ☒ Other (specify): I am employed as a Bankruptcy Specialist by Citizens Bank, N.A.

2. a. ☒ I am one of the custodians of the books, records and files of Movant that pertain to loans and extensions of credit given to Debtor concerning the Property. I have personally worked on the books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant. These books, records and files were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the actions, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the court if required.

   b. ☐ Other (see attached):

3. The Movant is:

   a. ☐ Holder: Movant has physical possession of a promissory note that (1) names Movant as the payee under the promissory note or (2) is indorsed to Movant, or indorsed in blank, or payable to bearer. A true and correct copy of the note, with affixed allonges/indorsements, is attached as Exhibit _____.

   b. ☒ Beneficiary: Movant is either (1) named as beneficiary in the security instrument on the subject property (e.g.,mortgage or deed of trust) or (2) is the assignee of the beneficiary. True and correct copies of the recorded security instrument and assignments are attached as **Exhibit "1"** and **Exhibit "4."**

   c. ☐ Servicing agent authorized to act on behalf of the:
      ☐ Holder.
      ☐ Beneficiary.

   d. ☐ Other (specify):

4. a. The address of the Property is:
   *Street address:* **818 Spirit**
   *Unit/suite number.:*
   *City, state, zip code:* **Costa Mesa, CA 92626**

   b. The legal description of the Property or document recording number (including county of recording) set forth in the Movant's deed of trust is:
   **County of Orange; Document Recording Number: 2006000838019**

EFP/B71087

5. Type of property (check all applicable boxes):

a. [X] Debtor's principal residence
b. [ ] Other residence
c. [ ] Multi-unit residential
d. [ ] Commercial
e. [ ] Industrial
f. [ ] Vacant land
g. [ ] Other (specify):

6. Nature of the Debtor's interest in the Property:

a. [X] Sole owner
b. [ ] Co-owner(s) (specify):
c. [ ] Lienholder (specify):
d. [ ] Other (specify):
e. [X] The Debtor [X] did [ ] did not list the Property in the Debtor's schedules
f. [ ] The Debtor acquired the interest in the Property by [ ] grant deed [ ] quitclaim deed [ ] trust deed. The deed was recorded on (date) _____.

7. Movant holds a [X] deed of trust [ ] judgment lien [ ] other (specify) _____ that encumbers the Property.

a. [X] A true and correct copy of the document as recorded is attached as Exhibit "1".
b. [X] A true and correct copy of the promissory note or other document that evidences the Movant's claim is attached as **Exhibit "2"**.
c. [X] A true and correct copy of the assignment(s) transferring the beneficial interest under the note and deed of trust to Movant is attached as **Exhibit "4"**.

8. Amount of Movant's claim with respect to the Property: (as of **12/12/2022**)

| | PREPETITION | POSTPETITION | TOTAL |
|---|---|---|---|
| a. Principal: | $ | $ | **$34,631.22** |
| b. Accrued interest | $ | $ | **$1,614.02** |
| c. Late charges | $ | $ | **$0.00** |
| d. Costs (attorney's fees, foreclosure fees, other costs): | $ | $ | **$2,607.94** |
| e. Advances (property taxes, insurance): | $ | $ | **$9,681.85** |
| f. Less suspense or partial balance paid: | $[ ] | $[ ] | **$[0.00]** |
| g. TOTAL CLAIM as of *(date)*: **12/12/2022** | $ | $ | **$48,535.03** |

h. [ ] Loan is all due and payable because it matured on (date) _____

9. Status of Movant's foreclosure actions relating to the Property (fill the date or check the box confirming no such action has occurred):

a. Notice of default recorded on (date) _____ or [X] none recorded.
b. Notice of sale recorded on (date) _____ or [X] none recorded.
c. Foreclosure sale originally scheduled for (date) _____ or [X] none scheduled.
d. Foreclosure sale currently scheduled for (date) _____ or [X] none scheduled.
e. Foreclosure sale already held on (date) _____ or [X] none held.
f. Trustee's deed upon sale already recorded on (date) _____ or [X] none recorded.

10. Attached (optional) as Exhibit ____ is a true and correct copy of a POSTPETITION statement of account that accurately reflects the dates and amounts of all charges assessed to and payments made by the Debtor since the bankruptcy petition date.

11. [X] (chapter 7 and 11 cases only) Status of Movant's loan:

a. Amount of current monthly payment as of the date of this declaration: $350.41 for the month of 12/23/2023.

b. Number of payments that have come due and were not made: 15. Total amount $7,979.10

c. Future payments due by time of anticipated hearing date (if applicable):
An additional payment of $350.41 will come due on (date) January 23, 2023, and on the 23rd day of each month thereafter. If the payment is not received within 1000 days of said due date, a late charge of $N/A will be charged to the loan.

d. The fair market value of the Property is $1,142,000.00 established by:

(1) [ ] An appraiser's declaration with appraisal is attached as Exhibit _____.
(2) [ ] A real estate broker or other expert's declaration regarding value is attached as Exhibit _____.
(3) [X] A true and correct copy of relevant portion(s) of the Debtor's schedules is attached as **Exhibit "3."**
(4) [ ] Other (specify): _____

e. **Calculation of equity in Property:**

Based upon [ ] a preliminary title report [X] the Debtor's admissions in the schedules filed in this case, the Property is subject to the following deed(s) of trust or lien(s) in the amounts specified securing the debt against the Property:

| | Name of Holder | Amount as Scheduled by Debtor (if any) | Amount known to Declarant and Source |
|---|---|---|---|
| 1st deed of trust: | **CitiBank** | $457,693.71 | **$457,693.71** |
| 2nd deed of trust: | **Citizens Bank** | $36,396.75 | **$48,535.03** |
| 3rd deed of trust: | **Karen and Gary Humphries** | $848,000.00 | **$848,000.00** |
| Judgment liens: | | $ | $ |
| Taxes: | | $ | $ |
| Other: | Costs of Sale | $ | **$91,360.00** |
| **TOTAL DEBT:** | **$1,445,558.74** | | |

f. Evidence establishing the existence of these deed(s) of trust and lien(s) is attached as Exhibit "3" and consists of:

(1) [ ] Preliminary title report.
(2) [X] Relevant portions of the Debtor's schedules.
(3) [ ] Other (specify):

g. [X] **11 U.S.C. § 362(d)(1) - Equity Cushion:**
I calculate that the value of the "equity cushion" in the Property exceeding Movant's debt and any lien(s) senior to Movant's debt is **$635,771.26** and is **55%** of the fair market value of the Property.

h. [X] **11 U.S.C. § 362(d)(2)(A) - Equity:**
By subtracting the total amount of all liens on the Property from the value of the Property as set forth in Paragraph 11(e) above, I calculate that the Debtor's equity in the Property is **$-303,588.74.**

i. [X] Estimated costs of sale: $91,360.00 (estimate based upon 8% of estimated gross sales price)

j. [ ] The fair market value of the Property is declining because:

12. [ ] (Chapter 12 and 13 cases only) Status of Movant's loan and other bankruptcy case information:

a. A 341(a) meeting of creditors is currently scheduled for (or concluded on) the following date: _____
A plan confirmation hearing currently scheduled for (or concluded on) the following date: _____
A plan was confirmed on the following date (if applicable): _____

b. Postpetition preconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

| Number of Payments | Number of Late Charges | Amount of Each Payment or Late Charge | Total |
|---|---|---|---|
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |

(See attachment for additional breakdown of information attached as Exhibit _____.)

c. Postpetition postconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

| Number of Payments | Number of Late Charges | Amount of each Payment or Late Charge | Total |
|---|---|---|---|
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |

d. Postpetition advances or other charges due but unpaid: $
(For details of type and amount, see Exhibit _____)

e. Attorneys' fees and costs: $
(For details of type and amount, see Exhibit _____)

f. Less suspense account or partial paid balance: $ [ ]

TOTAL POSTPETITION DELINQUENCY: $

g. Future payments due by time of anticipated hearing date (if applicable): _____.
An additional payment of $_____ will come due on _____, and on the _____ day of each month thereafter. If the payment is not received by the day of the month, a late charge of $ __ __ __ __ __ will be charged to the loan.

h. Amount and date of the last 3 postpetition payments received from the Debtor in good funds, regardless of how applied (if applicable):

$ received on *(date)*
$ received on *(date)*
$ received on *(date)*

i. [ ] The entire claim is provided for in the chapter 12 or 13 plan and postpetition plan payments are delinquent. A plan payment history is attached as Exhibit ___. See attached declaration(s) of chapter 12 trustee or 13 trustee regarding receipt of payments under the plan (attach LBR form F 4001-1.DEC.AGENT.TRUSTEE).

13. ☐ Proof of insurance regarding the Property has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor.

14. ☐ The court determined on (date) _____ that the Property qualifies as "single asset real estate" as defined in 11 U.S.C. § 101(51B). More than 90 days have passed since the filing of the bankruptcy petition; more than 30 days have passed since the court determined that the Property qualifies as single asset real estate; the Debtor has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or the Debtor has not commenced monthly payments to Movant as required by 11 U.S.C. § 362(d)(3).

15. ☐ The Debtor's intent is to surrender the Property. A true and correct copy of the Debtor's statement of intentions is attached as Exhibit .

16. ☐ Movant regained possession of the Property on (date) _____, which is ☐ prepetition ☐ postpetition.

17. ☐ The bankruptcy case was filed in bad faith:

a. ☐ Movant is the only creditor or one of few creditors listed in the Debtor's case commencement documents.

b. ☐ Other bankruptcy cases have been filed in which an interest in the Property was asserted.

c. ☐ The Debtor filed only a few case commencement documents. Schedules and a statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed.

d. ☐ Other (specify):

18. ☐ The filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved:

a. ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. See attached continuation page for facts establishing the scheme.

b. ☐ Multiple bankruptcy cases affecting the Property include.

1. Case name:
Chapter: Case number:
Date filed: Date discharged: Date dismissed:
Relief from stay regarding the Property ☐ was ☐ was not granted.

2 Case name:
Chapter: Case number:
Date filed: Date discharged: Date dismissed:
Relief from stay regarding the Property ☐ was ☐ was not granted.

3 Case name:
Chapter: Case number:
Date filed: Date discharged: Date dismissed:
Relief from stay regarding the Property ☐ was ☐ was not granted.

☐ See attached continuation page for information about other bankruptcy cases affecting the Property.

☐ See attached continuation page for facts establishing that the multiple bankruptcy cases were part of a scheme to delay, hinder, or defraud creditors.

19. ☐ Enforcement actions taken after the bankruptcy petition was filed are specified in the attached supplemental declaration(s).
    a. ☐ These actions were taken before Movant knew the bankruptcy petition had been filed, and Movant would have been entitled to relief from stay to proceed with these actions.
    b. ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting the Property as set forth in Exhibit ____.
    c. ☐ For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: 1/30/23 Printed name Dimitris Poole Signature

# Judicial Notice Exhibit 20

Adam A. Bereki
*In Propria Persona*
818 Spirit
Costa Mesa, California 92626
949.241.6693
abereki@gmail.com

FILED
FEB 15 2023
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY: Deputy Clerk

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

In re: Adam Alan Bereki

Case No. 8:22-BK-12076-SC

Chapter 7

**DEBTOR'S RESPONSES AND OBJECTIONS TO CITIZEN BANK N.A.'S MOTION FOR RELIEF FROM STAY WITH SUPPORTING DECLARATION (REAL PROPERTY)**

Date: March 1, 2023
Hearing: 10:00 AM
Courtroom: 5C

Adam Bereki ("Debtor"), in the above-captioned matter responds and objects to Citizen Bank N.A.'s, ("Citizen's"), Motion seeking an Order lifting the automatic stay.

**There are extraordinary circumstances in this case requiring this Court's mandatory non-discretionary duty to intervene and deny Citizen's Motion *sua sponte*. Debtor's right to fundamental due process continues to be actively denied resulting in irreparable harm and damages.**

**Background**

1. On 12/8/22 Debtor was *involuntarily* forced to file bankruptcy as a direct result of fraud and other State and Federal crimes being perpetrated upon him by purported "Creditors" Karen and Gary Humphreys, ("the Humphreys"), and their attorney, William Bissell, in conspiracy with State and Federal Officials to steal his money, property, and liberty under color of law but without lawful authority.

2. On or about 1/10/23, Debtor timely filed Schedules A/B declaring that he had a legal interest in the real property located at 818 Spirit, Costa Mesa, California, ("property"). He declared that the property was valued at approximately $1,142,000.00 and that three Creditors had claims secured thereby. The secured claims listed were:

1. Citibank N.A., 1st Mortgage, for $457,693.71, ("Claim 1")
2. Citizen's, Line of Credit, for $36,396.75, ("Claim 2")
3. Karen and Gary Humphreys, Judicial Lien, for $848,000, ("Claim 3")

3. Included with Debtors' Schedule filings was a Declaration and supporting authenticated evidence rebutting the presumptive validity of the "Judgment" upon which the "Judicial Lien" of "Claim 3" is based. See Dkt.15. The Declaration and supporting verified documents are incorporated as if fully set forth herein.

4. The "Judgment" is fraudulent and void because it was rendered in direct violation of the California and United States Constitutions by a State Court acting without subject matter jurisdiction. The "Judgment" is at the heart of the conspiracy of why Debtor has been forced into bankruptcy to begin with and cannot be used as a means to allow any purported Creditors, including Citizen, to take Debtor's property without lawful authority.

**Objections to Citizen's Motion**

5. In its Motion for Relief from Automatic Stay, ("Motion"), Citizen asserts two grounds for relief. Those grounds are that pursuant to 11 U.S.C. §362(d)(2)(A), the Debtor has no equity in the property; and, pursuant to 11 U.S.C. §362(d)(2)(B), the property is not necessary to an

effective reorganization. *Id.* p.4. Debtor objects to the Court granting relief to Citizen on both issues for the following reasons:

1. Citizen's equity calculation is incorrect. There is substantial equity in the property and Citizen's claim remains secured because Claim 3 ($848,000) is not a valid lien.

2. The statements made by Citizen's witness to substantiate the value of its claim are inadmissible hearsay and should be stricken from the record because they do not meet the business record exception as no certified business records were included. The statements should also be stricken because they are untrustworthy based on conflicting evidence debtor was sent by Citizen.

3. Without the foregoing evidence of a claim, Citizen has not stated an injury in fact and therefore lacks standing to any relief.

4. The terms of the purported "Deed of Trust" and "Credit Line Agreement" require that payment is due in full in about eight years. Consequently, there has been no apparent default to allow Citizen to foreclose as it requests.

**There is Substantial Equity in the Property and Citizen's Lien is Secure**

6. Citizen's claim that there is no equity in the property is false because it is based upon the false premise that the "lien" represented by "Claim 3" actually exists. "California Courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation." *In re Thomas*, 102 B.R. 199, 201 (E.D. Cal. 1989) (Citations omitted). There is no underlying obligation to the "Judicial lien" of "Claim 3" and there is substantial equity in the property to safely continue to secure Citizen's lien (assuming its validity).

7. In 2017, Debtor was maliciously criminally prosecuted in a purported "civil case" by the Humphreys and Bissell for allegedly performing construction work without a contractor license even though he was the qualifying individual (the person who met the licensing requirements) for his company's general contractor license. During the trial Debtor was denied the right to know the true nature and cause of the accusation against him, denied the assistance of counsel, denied trial by jury, and denied all the remaining heightened protections required in criminal proceedings.

8. Following the two-day bench trial, Debtor was excessively, cruelly, and unusually punished by being fined nearly $930,000, an amount more than an estimated 42 times his qualifying

net worth and 186 times the *maximum* criminal penalty for the same offense. As a result of being punished without judicial proceedings, he was subjected to a bill of pains and penalties in violation of Article I, §10 of the U.S. Constitution.

9. Under the California Constitution, the entirety of the Executive power is vested in the Governor to see that the law is faithfully executed. Consequently, private parties such as the Humphreys lack both the capacity and standing to prosecute other private parties for the commission of public offenses like contracting without a license. Because no complaint, information, or indictment was ever filed by any official of the Executive branch of California on behalf of the People against Debtor, the Court lacked the capacity and subject matter jurisdiction to prosecute Debtor resulting in a fraudulent and void "Judgment".

10. Ninety days after the "Judgment" was issued, Debtor was further egregiously punished by another bill of pains and penalties when his vested right to remain a qualifying individual for a general contractor license was summarily suspended or revoked by operation of statute without a judicial hearing. Debtor has been forcibly restrained from earning a living in his profession as a general contractor ever since.

11. As a direct consequence of these egregious and unconscionable circumstances, Debtor's private contracts and obligations became impaired (another violation of Art. I, §10) that has resulted in his inability to discharge Claims 1 and 2 and nearly all the unsecured claims in his Schedules.

12. In good faith, Debtor has pursued a remedy in every known State and Federal Court in the Nation with subject matter jurisdiction to vacate the void judgments. All have refused to exercise jurisdiction when they had a mandatory non-discretionary ministerial duty to do so. Debtor also filed Petitions for Redress of Grievance with officials of State and Federal law enforcement and the California Assembly. All have refused to fully, fairly, and impartially investigate and/or intervene to stop the criminal behavior and protect his liberty, money, and property. Debtor must be afforded judicial process before anymore of his property is taken, including granting Citizen relief from the stay to ultimately allow it to foreclose on his home.

13. Citizen cannot rely upon this egregiously unlawful conduct to commence foreclosure proceedings of Debtor's home after having received due notice without becoming part of the conspiracy to commit and/or aid and abet these crimes. While Citizen *may* have a valid claim, it is not facing the irreparable harms of total financial destruction and the denial of all rights, privileges, and immunities secured by the California and U.S. Constitutions like Debtor continues to be. Debtor must be afforded due process which imposes upon this Court (and the United States Trustee) the mandatory duty to investigate these claims and to intervene to stop the irreparable harm, damages, and fraud that continue to be perpetrated upon him and his estate before taking any adverse action in this case.

14. The automatic stay is in place for the very purpose it was intended: to "[stop] all collection efforts, all harassment, and all foreclosure actions, [and to be] relieved of the financial pressures that drove him into bankruptcy. H.R.Rep. No. 595, 95th Cong., 1st Sess., at 340 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97." *Dean v. TWA*, 72 F.3d 754, 755 (9th Cir.1995).

15. The stay is necessary to protect Debtor's rights, liberty, and property as well as his Creditors while he commences Adversary Proceedings to, amongst other reorganization issues, determine the validity of the lien surrounding "Claim 3", which continues to cause him and his estate irreparable harm and damages as 'they' continue to be denied the right to judicial relief. The right to liberty includes "the right to be free from, and to obtain judicial relief for, unjustified intrusions of personal security." *Ingram v. Wright*, 430 U.S. 651, 673 (1977). Citations omitted. Lifting the stay and allowing Citizen to commence foreclosure proceedings would only perpetrate the irreparable harm against Debtor and his estate and further deprive 'them' of due process.

16. Additionally, Debtors estate has genuine claims for damages, punitive damages, and restitution for deprivation of constitutionally protected rights, intentional infliction of emotional distress, wrongful foreclosure, fraud, malicious prosecution, and false imprisonment (constructive), amongst other claims pertaining to "Claim 3". The claim for false imprisonment alone involves damages amounting to over three million dollars. Upon lawful adjudication, this claim could be used to pay all the *valid* Creditors of Debtors estate.

17. Returning to the central claim of Citizen's Motion: To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that "cause" exists for relief under 11 U.S.C. §362(d)(1). *In re Gould*, 401 B.R. 415, 426 (9th Cir. BAP 2009). The *only* causes Citizen claimed to be entitled to relief under are: (1) Debtor has no equity in the property (11 U.S.C. §362(d)(2)(A)); and, (2) that the property is not necessary to an effective reorganization (11 U.S.C. §362(d)(2)(B)).

18. Under 11 U.S.C. 362(g), a creditor has the burden of proving that a debtor does not have equity in the property. In its equity calculation, Citizen claims "Debtor's equity in the property is "$-303,588.74". (Motion p.8, sec. h). By removing "Claim 3" there would be an estimated $684,306.29 in equity after paying off "Claim 1". By then subtracting Citizen's alleged cost of sale at 8% ($91,360) (assuming the property were sold, which remains to be determined) the equity would be $592,946.29, approximately twelve times Citizen's claim.

19. But even assuming "Claim 3" were valid, under well-established law "[t]he fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under section 362(d)(1)." *In re Mellor*, 734 F.2d 1396 1400 (9th Cir. 1984). The reason is because a junior lien, such as that of "Claim 3", "cannot affect the outcome of the holder of a perfected senior interest" and therefore "cannot be considered in determining whether the interest of a senior lienholder is adequately protected". (*Id.* p.1401). "Claim 1" is the only lien senior to Citizen's and after deducting "Claim 1" and the cost of sale from the value of the property, there remains $592,946.29 to satisfy Citizen's alleged $48,535.03 claim.

20. Citizen's equity cushion calculation is also incorrect. Citizen calculates the equity cushion to be $635,771.26 and 55% of the fair market value of the property. (Motion p.8, Sec. g). In doing so, it has erroneously included the value of its "lien" in the calculation. "The existence of an equity cushion is determined by starting with the value of the property [and] deducting senior liens or encumbrances [...]" *In re Hollister*, 628 B.R. 154, 159 (C.D. Cal. 2021). Taking the value of the property at $1,142,000 and deducting the only purported senior lien of "Claim 1" ($435,693.71) reveals that the equity cushion is $684,306.29 and 59% of the fair market value of the property. Under well-established law, "[a] 20% cushion has been held to be an adequate protection for a

secured creditor." *Mellor* at p.1401 citing *In re McGowan*, 6 Bankr. 241, 243 (B.Ct. E.D. Pa. 1980) (holding a 10% cushion is sufficient to be adequate protection).

21. By its own sworn Declaration, Citizen admitted that there was no merit to its claim by finding an equity cushion of 55%, more than twice what has been repeatedly held to be adequate protection. "[I]t has been held that the existence of an equity cushion, standing alone, can provide adequate protection." *Mellor* at p.1400.

22. Based on all the foregoing, the property is also necessary to an effective reorganization and/or the settlement of claims effecting Debtor's estate, including Citizen's. Citizen has not provided any evidence to the contrary in support of this claim.

**Citizen Lacks Standing to Foreclose Because There Has Been No Breach of the "Deed of Trust" or "Credit Line Agreement"**

23. Citizen requests relief so that it "may proceed under applicable nonbankruptcy law to enforce remedies to foreclose upon and obtain possession of the property." (Motion p.5, line 2). The problem here is that there has been no alleged or apparent default under the purported "Deed of Trust" ("DOT") dated 10/30/2006, (Motion Exhibit 1), that would authorize Citizen to foreclose.

24. Item 4 the "DOT" states that "The Credit Line Agreement ["Agreement"][1] in the amount of $110,798.00 executed by the Mortgagor/Grantor and dated the same day as this Security Instrument, which, if not paid earlier, is **due and payable in full 300 months** from the due date of the first payment." Bolded emphasis added. No date is listed for the due date of the first payment. Hypothetically assuming it was on or around 11/1/2006, 300 months from that date would be 25 years later, or 11/1/2031. At the time of this writing, the date is February 13, 2023. <u>According to the "DOT", the "Agreement" is not due and payable in full for another eight years.</u>

25. Under Motion Exhibit 2, "TERM" of the "Agreement", <u>The "Maturity Date" would be 25 years (300 months later) or 10/30/2031, another eight years away.</u>

[1] While Debtor has provided Responses and objections to Citizen's purported claims, he does not admit to the authenticity or validity of the purported "Deed of Trust" and "Credit Line Agreement" attached as Exhibits to Citizen's Motion and has changed his Schedules to reflect this claim as "disputed".

26. Under both the alleged "DOT" and "Agreement", payment in full is not due for another eight years and Citizen has not alleged any other grounds of default necessary to be relieved from the stay to commence foreclosure.

27. Under "8. DEFAULT" of the "DOT" "Trustor will be in default if any of the following occur[:] **Fraud.** [...] **Payments.** Any Consumer Borrower on any Secured Debt that is an open end home equity plans fails to make a payment when due." Debtor has not failed to make a payment when due and has therefore not defaulted. **Property.** Any action or inaction by the Borrower or Trustor occurs that adversely affects the Property or Lender's rights in the Property[.] This includes, but is not limited to the following a) Trustor fails to maintain the required insurance on the Property, b) Trustor transfers the property, c) Trustor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects the Lender's security, d) Trustor fails to pay property taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument [...], h) a judgment lien is filed on the against Trustor and subjects Trustor and the property to action that adversely affects Lender's interest, or i) a prior lienholder forecloses on the property and as a result, Lender's interest is adversely affected."

28. Debtor/Trustor has not committed fraud and has complied with all apparent Payment and Property requirements. To the extent that any claims could be alleged that Debtor has not complied with any of the requirements under "Payments" or "Property", Debtor objects that said violations were not caused by his "action or inaction" but by the lawless actions of the Humphreys, Bissell, and State and Federal officials.

29. Under "9. REMEDIES ON DEFAULT. [...] Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Trustor is in default."

30. As Debtor/Trustor is not knowingly in default and Citizen has not submitted claim to the contrary, it has no apparent remedy to foreclose.

**Citizen Has Not Provided Evidence of a Claim to Make The Required Equity Calculations Because its Witness's Statements Are Inadmissable Hearsay and Not Trustworthy**

31. Debtor objects to Citizen's witness, Dimitas Poole, testimony pertaining "to the amount of Movant's claim with respect to the Property (as of 12/12/2022)" (Motion p.7, Item 8) for the reason that there is no apparent default and that nothing in Poole's testimony as a "Bankruptcy Specialist" or "custodian of the books, records, and files" evidences that she possesses the qualifications and expertise to testify to the validity and accuracy of the charges. No foundation was laid pertaining to her training, experience, and qualifications in law or accounting to interpret the terms and conditions of the "DOT" and the "Agreement" necessary to formulate the alleged charges due on Debtor's account. To the extent that Poole was just attempting to certify business records, no records were included. It is the records themselves, not the foundational declaration, that serves as proof of the matters asserted.

32. Debtor requests that Poole's testimony on Citizen's "Claim" in Items 8 and 11 of its Motion be stricken as hearsay pursuant to Federal Rules of Evidence, Rule §802. Poole has not produced any authenticated financial records that she could have certified to be true and correct as the "custodian of the books, records, and files". There can be no business record hearsay exemption if no records are produced.

33. Debtor also requests the statements made in Items 8 and 11 be stricken as untrustworthy because they are in direct conflict with a "Payoff Quote" Citizen sent Debtor for the same date (12/12/22) in Citizen's Motion. (Page 7, line 8g). In comparing the charges in the Motion under Item 8, with those of the Payoff Quote (Exhibit 1), the following is observed:

| PAYOFF QUOTE (12-12-22) | | CITIZENS MOTION (12-12-22) | |
|---|---|---|---|
| Principal Balance | $34,631.22 | $34,631.22 | Principal |
| Interest | $1,549.12 | $1,614.12 | Accrued Interest |
| Escrow/Impound Overdraft | $9,681.85 | $9,681.85 | Advances (prop. taxes, insur.) |
| Unpaid late charges | $302.94 | $0 | Late Charges |
| Recoverable Advances | $575.00 | | |
| Recording Fee | $173.00 | | |
| | | $2,607.94 | Costs (Attorney's fees, foreclosure fees |
| TOTAL | $46,913.13 | $48,535.03 | |

34. While in the grand scheme of an equity or equity cushion calculation the difference between the "totals" may be negligible, the point is that Poole testified to their accuracy and there's a $1621.19 conflict in Citizen's own records. Moreover, the interest, advances, recordings fees, and costs, also don't align.

35. Citizen's Motion also states that cost Advances include insurance. Debtor has been paying the insurance as evidenced by his checking account payment activity printout from 11/1/21 to 2/3/23. Exhibit 2. USAA insurance is both his home and automobile insurance carrier and the payments listed include both premiums.

36. Citizen has not produced any authenticated financial records or trustworthy testimony evidencing that Debtor owes it $48,535.03 to substantiate its "Claim". Debtor requests this Court strike Item's 8 and 11 of Citizen's Motion and all calculations associated therewith in support of its Motion pursuant to Federal Rules of Evidence, Rule §901.

37. Debtor also objects to Exhibits 1 and 2 annexed to Citizen's Motion on the grounds that they are *not* "true and correct copies of the recorded security instrument and assignments" – as declared under penalty of perjury by Poole – and are not copies certified by the Clerk-Recorder for the County of Orange. When compared to the documents on file with the Clerk-Recorder's online records, the Clerk's recording stamp is different, text (albeit non-substantive) appears to have been added, handwritten information is missing, and certain portions of the document have been redacted. (Debtor has included the first page of the "DOT" on file with the Clerk and the Clerk's authentication so these differences can be seen). Debtor requests Exhibits 1 and 2 be stricken pursuant to Rule §901 and that Citizen bring the original unaltered versions of these documents to the hearing so they can be inspected by Debtor and the Court.

**Conclusion**

38. Citizen has abysmally failed to meet its burden of proof on all issues it has raised and as a result of failing to state a claim that it has been injured in fact, lacks standing to any relief. Consequently, this Court has a duty to dismiss Citizen's Motion. "A federal court may exercise jurisdiction over a litigant only when that litigant meets constitutional and prudential standing

requirements." *Veal v. Am. Home Mortg. Servicing, Inc.*, (In re Veal), 450 B.R. 897, 906 (9th Cir. BAP 2011) citing *Elkgrove Unified School Dist. V. Newdow*, 542 U.S. 1, 11 (2004). "Standing is a threshold question in every federal case, determining the power of the court to entertain the suit." *Ibid.* citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (Other citations omitted).

39. Debtor has met his burden of proof that there is substantial equity in the real property securing Citizen's purported interest when the totality of the issues pertaining to Debtor's estate are accounted for. Citizen's interest remains protected by the property that continues to appreciate. Debtor has also filed bankruptcy in good faith and continues to follow the rules of bankruptcy procedure.

**Request for Relief**

For all the foregoing reasons, Debtor requests this Court deny Citizen's Motion for Relief in its entirety and strike the aforementioned testimony and Exhibits from the record.

Debtor also requests this Court, on its own Motion, award sanctions against Citizen and its attorney, Christina Khil, to compensate Debtor for his time spent conducting legal research and responding to this frivolous Motion that has clearly been presented to harass Debtor and cause unnecessary delay. Unnecessary delay has been caused by the fact that Debtor was taken away from performing critical research and investigation necessary to present timely Adversary Proceedings pertaining to claims involving his estate by having to Respond and Object to the Motion. In addition to the fact that none of Citizen's legal contentions are supported by well-established existing law, its factual allegations have no evidentiary support to substantiate its alleged "Claim".

Upon service of the Motion, Debtor sent Khil an email on 2/9/23 requesting to meet and confer to settle the issues raised therein to avoid requiring Debtor to use his precious life resources without compensation to respond. Khil did not reply. Debtor also asked Khil to properly serve him by email with an actual-sized copy of the Motion so he would not have to pay to download one from PACER. (The copy he was served with contained four pages of the Motion imposed on the front and back of an 8 ½ x11 paper and was barely discernible without a magnifying glass). Exhibit 4. Khil did not reply.

As Debtor does not have a law degree or any experience in bankruptcy procedure, it takes him a substantial amount of time to properly research and draft legitimate meritorious responses that are grounded in fact and law. He spent over 50 hours conducting research, drafting his responses and objections, and ensuring proper service. The work he did was precisely what Khil was hired for, and was minimally required to do to properly evaluate this claim prior to filing it. It is not Debtor's job to perform this work without compensation under coercion or threat that if he didn't respond or appear at the hearing, as stated in the Motion (p.2), that "the court may deem such failure as consenting to the motion." At the rate of $300 per hour, Debtor is owed $15,000 for his services.

**Notice to All Parties**

Pursuant to LBR 9013-1(f)(2) any reply to this response must be filed with the Court and served on the responding party no later than 7 days prior to the hearing on the Motion.

**Declaration**

I, Adam Bereki, declare under penalty of the laws of the United States of America that the foregoing statements of fact are true to my best recollection and belief and that the Exhibits annexed hereto are true and correct copies of the documents they purport to be.

| 2/14/23 | Adam Bereki | |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and am not a party to this bankruptcy case or adversary proceeding. My address is:

Virginia Wells
P.O. Box 9033
Fountain Valley, CA 92728-9033

A true and correct copy of the foregoing document entitled: **RESPONSE TO MOTION REGARDING THE AUTOMATIC STAY AND DECLARATION(S) IN SUPPORT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 2/15/23, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

CHAPTER 7 TRUSTEE: Karen S. Naylor (TR) alane@ringstadlaw.com
US TRUSTEE: United States Trustee (SA) ustpregion16.sa.ecf@usddoj.gov
ALLEGED LIENHOLDER: Malcom & Cisneros, c/o Citizen's Bank N.A., christinao@mclaw.org

☐Service information continued on additional page.

2. **SERVED BY UNITED STATES MAIL**:
On 2/15/23, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

ALLEGED LIENHOLDER: Citibank N.A., 65 Beattle Place, Ste. 100, Greenville, SC 29601

☐Service information continued on additional page.

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 2/15/23, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

HONORABLE BANKRUPTCY COURT JUDGE: Scott S. Clarkson, 411 West Fourth St, Santa Ana, CA 92701
ALLEGED LIENHOLDER: Law Office of William Bissell, c/o Karen and Gary Humphreys, wbissell@wgb-law.com

☐Service information continued on additional page.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

| 2/15/23 | Virginia Wells | Virginia Wells |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

# Exhibit 1

CITIZENS MORTGAGE LOAN
PAYOFF QUOTE

Adam Bereki
818 Spirit
Costa Mesa, CA 92626 3089

November 22, 2022

Phone No: (000)000-0000

Re: Property Address: 818 Spirit
Costa Mesa CA 92626

Loan Number: 8000123235
Loan Type: CONV W/O PMI Investor No: 067

Thanks for contacting Citizens for a payoff quote on the Home Equity Line of Credit (HELOC) referenced above.

THE AMOUNT TO PAY THE LOAN IN FULL AS OF 12-12-22, IS

$ 46,913.13

Here's a breakdown of your loan payoff amount:

| | | |
|---|---|---|
| Principal Balance | | 34,631.22 |
| Interest at 2.70000% from September 23, 2021 | | 1,549.12 |
| Total Interest Due | | 1,549.12 |
| Escrow/Impound Overdraft | | 9,681.85 |
| Unpaid Late Charges | | 302.94 |
| Recoverable Advances | | 575.00 |
| Recording Fee | | 173.00 |
| TOTAL PAYOFF AMOUNT | $ | 46,913.13 |

Please check one of the following selections and sign where indicated below:

_____ By signing below, I/We request that this account be permanently closed to further advances and a discharge of mortgage be issued.

_____ By signing below, I/We acknowledge that this account is to remain open and available for future advances and that the payoff amount is requested only for the purpose of paying down the account balance.

_____
Adam Bereki

ADDITIONAL PAYOFF DETAILS

* This pay off is good through December 12, 2022.

* Interest accrues daily, so an additional $ 5.41 per Month is required if your payoff funds are received after December 12, 2022

Note: Payoff funds received after 2 p.m. ET. will be effective as of the next business day and any additional interest required should be included.

XP181/BC6/09-21

# Exhibit 2

CHASE

Printed from Chase Personal Online

| Send on | Deliver by | Status | Payee | Amount |
|---|---|---|---|---|
| Feb 3, 2023 | Feb 6, 2023 | Processed | USAA INSURANCE > (...5819) | $283.23 |
| Jan 6, 2023 | Jan 9, 2023 | Processed | USAA INSURANCE > (...5819) | $283.20 |
| Dec 5, 2022 | Dec 6, 2022 | Processed | USAA INSURANCE > (...5819) | $283.20 |
| Nov 3, 2022 | Nov 3, 2022 | Processed | USAA INSURANCE > (...5819) | $283.20 |
| Oct 7, 2022 | Oct 11, 2022 | Processed | USAA INSURANCE > (...5819) | $302.41 |
| Sep 2, 2022 | Sep 6, 2022 | Processed | USAA INSURANCE > (...5819) | $302.42 |
| Aug 1, 2022 | Aug 2, 2022 | Processed | USAA INSURANCE > (...5819) | $302.42 |
| Jul 1, 2022 | Jul 5, 2022 | Processed | USAA INSURANCE > (...5819) | $302.42 |
| Jun 6, 2022 | Jun 7, 2022 | Processed | USAA INSURANCE > (...5819) | $302.42 |
| May 2, 2022 | May 3, 2022 | Processed | USAA INSURANCE > (...5819) | $302.42 |
| Mar 29, 2022 | Mar 30, 2022 | Processed | USAA INSURANCE > (...5819) | $305.46 |

| | | | | |
|---|---|---|---|---|
| Mar 1, 2022 | Mar 2, 2022 | Processed | USAA INSURANCE > (...5819) | $305.48 |
| Jan 24, 2022 | Jan 25, 2022 | Processed | USAA INSURANCE > (...5819) | $305.48 |
| Jan 3, 2022 | Jan 4, 2022 | Processed | USAA INSURANCE > (...5819) | $305.48 |
| Dec 1, 2021 | Dec 2, 2021 | Processed | USAA INSURANCE > (...5819) | $305.48 |
| Nov 8, 2021 | Nov 9, 2021 | Processed | USAA INSURANCE > (...5819) | $0.90 |
| Nov 1, 2021 | Nov 2, 2021 | Processed | USAA INSURANCE > (...5819) | $304.58 |

The Bill Payment and Transfers Agreement applies.

Don't see your payment? Send us an Inquiry >

Morgan Chase Bank, N.A. Member FDIC ©2023 JPMorgan Chase & Co. Equal Housing Opportunity

# Exhibit 3

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder
24.00
2006000838019 11:06am 12/14/06
117 59 D11 7
0.00 0.00 0.00 0.00 18.00 0.00 0.00 0.00

This document was prepared by
Casey Schrum/Charter One Bank, N.A.
When recorded mail to:
*FIRST AMERICAN TITLE INSURANCE*
*LENDERS ADVANTAGE*
*1100 SUPERIOR AVENUE, SUITE 200*
*CLEVELAND, OHIO 44114*
*ATTN: FT1120*

State of California — Space Above This Line For Recording Data

10521310

# DEED OF TRUST
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is 10/30/2006 and the parties, their addresses and tax identification numbers, if required, are as follows:
TRUSTOR:
Adam Bereki, Single Man
818 Spirit, Costa Mesa, CA 92626

☐ If checked, refer to the attached Addendum incorporated herein, for additional Trustors, their signatures and acknowledgments.

TRUSTEE:
First American Title Insurance Company
1 First American Way
Santa Ana, CA 92707

LENDER:
Charter One Bank, N.A.
1215 Superior Avenue
Cleveland, OH 44114

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Trustor's performance under this Security Instrument, Trustor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:
See exhibit "A" attached hereto and by this reference made a part hereof.

The property is located in Orange (County): at
818 Spirit (Address), Costa Mesa (City), California 92626 (ZIP Code)
Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed $ 110,798.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(Include items such as borrowers' names, note or contract amounts, interest rates (whether variable), maturity dates, etc.)*
The Credit Line Agreement in the amount of $110,798.00, executed by the Mortgagor/Grantor and dated the same day as this Security Instrument, which, if not paid earlier, is due and payable in full 300 months from the due date of the first payment.

Certified Copy of document number 20060000838019

7/3/2018
8.00

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE:_____

CERTIFICATION FEE:_____

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

# Exhibit 4

i. ☒ Estimated costs of sale: $31,500.00 (estimate based upon 6% of estimated gross sales price)

j. ☐ The fair market value of the Property is declining because:

12. ☐ (Chapter 12 and 13 cases only) Status of Movant's loan and other bankruptcy case information:

a. A 341(a) meeting of creditors is currently scheduled for (or concluded on) the following date: _____
A plan confirmation hearing currently scheduled for (or conducted on) the following date: _____
A plan was confirmed on the following date (if applicable): _____

b. Postpetition preconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

| Number of Payments | Number of Late Charges | Amount of Each Payment or Late Charge | Total |
|---|---|---|---|
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |

(See attachment for additional breakdown of information attached as Exhibit _____.)

c. Postpetition postconfirmation payments due BUT REMAINING UNPAID since the filing of the case:

| Number of Payments | Number of Late Charges | Amount of each Payment or Late Charge | Total |
|---|---|---|---|
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |
| | | $ | $ |

d. Postpetition advances or other charges due but unpaid: $
(For details of type and amount, see Exhibit _____)

e. Attorneys' fees and costs: $
(For details of type and amount, see Exhibit _____)

f. Less suspense account or partial paid balance $ (

TOTAL POSTPETITION DELINQUENCY: $

g. Future payments due by time of anticipated hearing date (if applicable): _____.
An additional payment of $_____ will come due on _____, and on the _____ day of each month thereafter. If the payment is not received by the day of the month, a late charge of $_____ will be charged to the loan.

h. Amount and date of the last 3 postpetition payments received from the Debtor in good funds, regardless of how applied (if applicable):
$ received on (date)
$ received on (date)
$ received on (date)

i. ☐ The entire claim is provided for in the chapter 12 or 13 plan and postpetition plan payments are delinquent. A plan payment history is attached as Exhibit ___. See attached declaration(s) of chapter 12 trustee or 13 trustee regarding receipt of payments under the plan (attach LBR form F 4001-1.DEC.AGENT.TRUSTEE).



13. ☐ Proof of insurance regarding the Property has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with the Debtor.

14. ☐ The court determined on (date) _____ that the Property qualifies as "single asset real estate" as defined in 11 U.S.C. § 101(51B). More than 90 days have passed since the filing of the bankruptcy petition; more than 30 days have passed since the court determined that the Property qualifies as single asset real estate; the Debtor has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or the Debtor has not commenced monthly payments to Movant as required by 11 U.S.C. § 362(d)(3).

15. ☐ The Debtor's intent is to surrender the Property. A true and correct copy of the Debtor's statement of intentions is attached as Exhibit .

16. ☐ Movant regained possession of the Property on (date) _____, which is ☐ prepetition ☐ postpetition.

17. ☐ The bankruptcy case was filed in bad faith:

a. ☐ Movant is the only creditor or one of few creditors listed on the Debtor's case commencement documents.

b. ☐ Other bankruptcy cases have been filed in which an interest in the Property was asserted.

c. ☐ The Debtor filed only a few case commencement documents. Schedules and a statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed.

d. ☐ Other (specify):

18. ☐ The filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved:

a. ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. See attached continuation page for facts establishing the scheme.

b. ☐ Multiple bankruptcy cases affecting the Property include:

1. Case name:
Chapter: Case number:
Date filed: Date discharged: Date dismissed:
Relief from stay regarding the Property ☐ was ☐ was not granted.

2. Case name:
Chapter: Case number:
Date filed: Date discharged: Date dismissed:
Relief from stay regarding the Property ☐ was ☐ was not granted.

3. Case name:
Chapter: Case number:
Date filed: Date discharged: Date dismissed:
Relief from stay regarding the Property ☐ was ☐ was not granted.

☐ See attached continuation page for information about other bankruptcy cases affecting the Property.

☐ See attached continuation page for facts establishing that the multiple bankruptcy cases were part of a scheme to delay, hinder, or defraud creditors.

Adam A. Bereki
*In Propria Persona*
818 Spirit
Costa Mesa, California 92626
949.241.6693
abereki@gmail.com

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

| | |
|---|---|
| In re Adam Alan Bereki<br><br>Alleged Debtor | Case No. 8:22-BK-12076<br><br>Chapter 7<br><br>**DECLARED STATEMENT OF INTENT OF ADAM BEREKI TO COMMENCE ADVERSARY PROCEEDINGS AND REQUEST FOR EXTENSION OF TIME** |

To the Honorable Scott C. Clarkson, United States Bankruptcy Judge, the Office of the United States Trustee, and all interested parties:

Adam Bereki, ("Declarant"), hereby provides the following Statement of Intent to file two adversary proceedings challenging the validity of two purported "liens" listed on the First-Amended Schedules in the case of *In re Adam Alan Bereki*, case number 8:22-BK-12076. Declarant is providing this Statement of Intent because of certain parties' intent to obtain relief from the emergency stay and the Court's tentative ruling, made on or about April 10, 2023, stating its inclination to grant that relief, which he believes constitutes prejudicial error.

Declarant believes he and the estate will be prejudiced and continue to be irreparably harmed and damaged if the Court ultimately grants the relief allowing the party to commence foreclosure proceedings for reasons already alleged on the record and the fact that the stay relief is based upon the validity and extent of certain purported "liens" that he reasonably believes to be void or unsecured. (Declarant has previously provided substantial evidence to demonstrate that this claim pertaining to the "Judicial lien" being void is not smoke and mirrors, intended harm creditors or unnecessarily delay the administration of the estate. See Dkt. 15).

Declarant believes any relief granted on the stay would be premature and highly prejudicial because he has not had the opportunity to challenge the validity of the "liens" upon which the equity calculations for stay relief and the Court's tentative ruling are based. According to the Tentative for the scheduled hearing on April 12, 2023, the "Court is inclined to GRANT relief from stay under 11 U.S.C. Section 362(d)(2) for Debtor's lack of equity in the property."

If the "liens" at issue are either void or unsecured as Declarant reasonably believes, then they cannot be used as evidence upon which to base the equity calculations of the stay relief. Because the First-Amended Schedules indicate the "liens" in question are disputed and the fact that Declarant intends to commence adversary proceedings to determine their validity and extent, the Court must first determine their validity and extent before they can be used as material, reliable, and trustworthy evidence in the equity calculations. See e.g. *In re Ahn*, 804 Fed. Appx. 541,543 (9th Cir. 2020) (finding bankruptcy court was first required to determine the validity of a lien before avoiding it). "It makes sense that a court must first ensure that a valid lien exists, because, if no valid judicial lien attached to the debtor's property, then there is no lien to avoid and the lien avoidance cause of action would be moot. In other words, if there is a question as to a lien's validity, the bankruptcy court would err by assuming the validity of the lien and proceeding to the merits of the lien avoidance action, because there may be no injury in fact that the §522(f) action could remedy. Therefore, if the validity of a lien is disputed or becomes disputed, the court must determine, as a necessary predicate to resolving the lien avoidance action under §522(f), whether there is a valid judicial lien to avoid." *Anh*, at fn3. See also *Wiget v. Nielsen (In re Nielsen)*, 197 B.R. 665, 667-8 (9th Cir. B.A.P 1996) (superseded on other grounds).

In this case, basing stay relief upon the validity and security of "liens" that either don't exist or are unsecured would also be error. Because the "liens" at issue are clearly indicated as "disputed" in the First-Amended Schedule, the Court must first determine their validity and extent before relying upon them as evidence for relief. Presumptions are not evidence (Cal. Evidence Code §600) and cannot be used as a means of avoiding the Constitutional requirement of due process. *Bailey v. Alabama*, 219 U.S. 219, 239 (1911).

Presently, the two "liens" Declarant intends to commence adversary proceedings upon are listed in the First-Amended Schedules as (1) "Citibank N.A. Owner Trustee", ("Citibank N.A."), in the updated amount of approx. $502,000; and, (2) "Karen and Gary Humphreys", ("Judicial lien") in the amount of $848,000. If the "Judicial Lien" alone is found to be void, there would be approximately $592,946.29 in equity. Hypothetically assuming the validity and security of the "Citibank N.A." "lien", this would result in at least a 55% equity cushion, according to calculations listed in "Debtor's Responses and Objections to Citizens Bank N.A.'s Motion for Relief From Stay".

Declarant initially listed the aforementioned "liens" on the Schedules as "secured" based on reasonable belief of their *presumptive* validity. With reference to the Judicial lien, however, he also provided a sworn declaration and authenticated evidence to rebut that presumption because the underlying Judicial Judgment violates the California and United States Constitutions and is therefore void. See Dkt. 15. Based upon these facts, Declarant subsequently felt it would be more accurate to amend the initial Schedule and list this "claim" in the First-Amended Schedule as unsecured and disputed. His intent was not deceitful or malevolent.

Upon further investigation of the purported claim titled "Citibank N.A.", Declarant, who is a retired police officer and expert forensic investigator with a specialty in fraud cases, discovered a series of issues pertaining to the validity and enforceability of the alleged obligation that, based on his training and experience, indicate serious fraud. Similar elements of fraud are well known in this Circuit. See e.g. *Deutsche Bank Nat'l Trust Co. v. Tarantola (In re Tarantola)*, 2010 Bankr. LEXIS 2435, exhibiting a near carbon copy of the issues discovered by Declarant. Consequently, Declarant also changed the "Citibank N.A." "lien" from secured to unsecured and disputed.

Declarant intends to file adversary proceedings to challenge the validity and extent of each of the aforementioned "liens" and has been diligently working to that end since filing bankruptcy. In the process of writing the complaints and conducting an ongoing investigation to further discover the nature and extent of the fraud pertaining to the "Citibank N.A." "lien", two purported "creditors", including "NewRez", allegedly acting on behalf of "Citibank N.A.", filed Motions for relief from the stay. Declarant has thus far spent about twenty days and over 160 hours responding to those Motions, which required a significant diversion of his time and attention from the investigation and writing the adversary complaints.

The Court should also be aware of another apparent error overlooked by Declarant and the Court pertaining to Declarant's actual interest in the subject property. Declarant stated in the Schedules that he has only a legal and no beneficial interest therein. See also Declaration, Dkt. 15. The "Judicial Lien" therefore, can *only* attach to the extent of his beneficial interest, accord: *Riverdale Mining Co v. Wicks, 14 Cal. App 526, 536 (1910)*, holding "[t]he law is well settled that the lien of a judgment does not attach to a naked title, but only to the judgement debtor's interest in the real estate; and if he has no interest, though possessing the naked title, then no lien attaches." For this reason alone, the validity and extent of the purported "Judicial Lien" cannot be relied upon in the equity calculations because Declarant has only "naked title". This issue can also be addressed in the adversary proceedings.

Declarant requests this Court take the aforementioned facts and his intent into consideration and allow him twenty-five days to continue his investigation and to complete and file the complaints so (1) the true validity and extent of the liens can be determined first before granting relief from the stay; (2) the estate will be effectively administered; (3) Declarant will be given a true fresh start; and, (4) all void and/or unsecured liens wrongfully recorded and/or attached to property he holds legal title to, will be removed.

I, Adam Bereki, declare under penalty of perjury of the laws of the United States of America that the foregoing statements of fact are true and correct to the best of my knowledge and belief. [28 U.S.C. §1746(1) and (2)].

Dated: April 11, 2023

By: _____
Adam Bereki

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and am not a party to this bankruptcy case or adversary proceeding. My address is:

Virginia Wells
P.O. Box 9033
Fountain Valley, CA 92728-9033

A true and correct copy of the foregoing document entitled: **DECLARED STATEMENT OF INTENT OF ADAM BEREKI TO COMMENCE ADVERSARY PROCEEDINGS AND REQUEST FOR EXTENSION OF TIME** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 4/11/23, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

CHAPTER 7 TRUSTEE: Karen S. Naylor (TR) alane@ringstadlaw.com
US TRUSTEE: United States Trustee (SA) ustpregion16.sa.ecf@usddoj.gov
ALLEGED LIENHOLDER: Malcom & Cisneros, c/o Citizen's Bank N.A., christinao@mclaw.org
ALLEGED LIENHOLDER: Theron S Covey and Fanny Zhang Wan c/o Citibank N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2; tcovey@raslg.com, fwan@raslg.com (respectively)

☐Service information continued on additional page.

**2. SERVED BY UNITED STATES MAIL:**
On_____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐Service information continued on additional page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 4/11/23, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

HONORABLE BANKRUPTCY COURT JUDGE: Scott S. Clarkson, 411 West Fourth St, Santa Ana, CA 92701
ALLEGED LIENHOLDER: Law Office of William Bissell, c/o Karen and Gary Humphreys, wbissell@wgb-law.com

☐Service information continued on additional page.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

| 4/11/23 | Virginia Wells | Virginia Wells |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

# Judicial Notice Exhibit 21

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address

Christina J. Khil, #266845
MALCOLM ♦ CISNEROS, A Law Corporation
2112 Business Center Drive, Second Floor
Irvine, California 929612
christinao@mclaw.org
(949) 252-9400 (Telephone)
(949) 252-1032 (Fax)

☒ *Attorney for Movant*
☐ *Movant appearing without an attorney*

FOR COURT USE ONLY

FILED & ENTERED

MAY 01 2023

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bolte DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT**
**CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

In re:

**Adam Alan Bereki,**

Debtor(s).

CASE NO.: **8:22-bk-12076-SC**

CHAPTER: 7

# ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (REAL PROPERTY)

DATE: April 12, 2023
TIME: 10:00 AM
COURTROOM:5C
PLACE: 411 West Fourth Street, Santa Ana CA 92701

**Movant:** Citizens Bank, N.A., and its successors and/or assignees

1. The Motion was: ☒ Opposed ☐ Unopposed ☐ Settled by stipulation

2. The Motion affects the following real property (Property):

*Street address*: 818 Spirit
*Unit/suite number*:
*City, state, zip code*: Costa Mesa CA 92626

Legal description or document recording number (including county of recording):

2006000838019; COUNTY OF ORANGE

☒ See attached page.

3. The Motion is granted under:

   a. ☐ 11 U.S.C. § 362(d)(1)

   b. ☒ 11 U.S.C. § 362(d)(2)

   c. ☐ 11 U.S.C. § 362(d)(3)

   d. ☐ 11 U.S.C. § 362(d)(4). The filing of the bankruptcy petition was part of a scheme to hinder, delay, or defraud creditors that involved:

      (1) ☐ The transfer of all or part ownership of, or other interest in, the Property without the consent of the secured creditor or court approval; and/or

      (2) ☐ Multiple bankruptcy cases affecting the Property.

      (3) ☐ The court ☐ makes ☐ does not make ☐ cannot make a finding that the Debtor was involved in this scheme.

      (4) If recorded in compliance with applicable state laws governing notices of interests or liens in real property, this order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of this order by the court, except that a debtor in a subsequent case under this title may move for relief from this order based upon changed circumstances or for good cause shown, after notice and a hearing. Any federal, state or local government unit that accepts notices of interests or liens in real property shall accept any certified copy of this order for indexing and recording.

4. ☒ As to Movant, its successors, transferees and assigns, the stay of 11 U.S.C. § 362(a) is:

   a. ☒ Terminated as to the Debtor and the Debtor's bankruptcy estate.

   b. ☐ Modified or conditioned as set forth in Exhibit _____ to this order.

   c. ☐ Annulled retroactively to the bankruptcy petition date. Any postpetition acts taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay.

5. ☒ Movant may enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable nonbankruptcy law, but may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

6. ☐ Movant must not conduct a foreclosure sale of the Property before (*date*) _____.

7. ☐ The stay shall remain in effect subject to the terms and conditions set forth in the Adequate Protection Agreement contained within this order.

8. ☐ In chapter 13 cases, the trustee must not make any further payments on account of Movant's secured claim after entry of this order. The secured portion of Movant's claim is deemed withdrawn upon entry of this order without prejudice to Movant's right to file an amended unsecured claim for any deficiency. Absent a stipulation or order to the contrary, Movant must return to the trustee any payments received from the trustee on account of Movant's secured claim after entry of this order.

9. ☐ The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, as to the same terms and conditions as to the Debtor.

10. ☐ The 14-day stay as provided in FRBP 4001(a)(3) is waived.

11. This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

12. Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement.

13. Upon entry of this order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

14. ☐ A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy case concerning the Property for a period of 180 days from the hearing of this Motion

(a) ☐ without further notice.

(b) ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

15. ☐ This order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.

16. ☐ This order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion:

(a) ☐ without further notice.

(b) ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

17. ☐ This order is binding and effective in any future bankruptcy case, no matter who the debtor may be

(a) ☐ without further notice.

(b) ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

18. ☐ Other (*specify*):

###

Date: May 1, 2023

Scott C. Clarkson
United States Bankruptcy Judge

## LEGAL DESCRIPTION

LOT 55 OF TRACT NO 15211, AS SHOWN ON A MAP RECORDED IN BOOK 733, PAGES 33 TO 37 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.EXCEPTING THEREFROM ONE-HALF OF ALL OIL AND MINERALS, BUT WITHOUT THE RIGHT OF ENTRY, AS RESERVED BY ETTA C. DAVIES, A WIDOW, IN DEED RECORDED JUNE 1, 1959 IN BOOK 4737, PAGE 511 OF OFFICIAL RECORDS.

# Judicial Notice Exhibit 22

FILED & ENTERED

JUN 22 2023

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bolte DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

| | |
|---|---|
| In re:<br><br>Adam Alan Bereki,<br><br>Debtor(s). | Case No.: 8:22-bk-12076-SC<br><br>CHAPTER 7<br><br>**ORDER: (1) GRANTING IN PART AND DENYING IN PART MOTION TO AVOID LIEN AND (2) OVERRULING OPPOSITION TO ENTRY OF AN ORDER**<br><br>Date: June 13, 2023<br>Time: 11:00 a.m.<br>Courtroom: 5C - Virtual |

On June 13, 2023, the Court held a hearing on Debtor's Amended Motion to Avoid Lien Under 11 U.S.C. § 522(f) [Dk. 61] ("Motion"). Appearances are as noted in the record. Having considered the Motion, the docket as a whole, the discussion with the parties on the record, and for the reason stated on the record, the Court granted the Motion, in part, and instructed Debtor to lodge an order. Rather than lodge an order, or seek reconsideration, Debtor filed an objection to entry of an order on the Motion.

As set forth on the record, and for the reasons stated below, the Court hereby

GRANTS the Motion to avoid the lien that impaired Debtor's exemption, but DENIES the remaining relief requested which sought a determination that the underlying judgment was void.

Debtor's Opposition to entry of an order on the Motion, filed June 15, 2023 [Dk. 88] ("Opposition"), is OVERRULED.

**1. June 13 Hearing and Debtor's Opposition**

During the June 13 hearing, the Court advised Debtor that to the extent Debtor sought a determination as to the validity of the underlying debt, the Court would not do so within the context of a motion to avoid lien and that an adversary proceeding was required. The Court further cautioned Debtor that any frivolous filings could be subject to sanctions.[1] The Court further instructed Debtor to lodge an order on his Motion. Rather than lodge an order, Debtor (the moving party) filed the Opposition, which is overruled. It is premised upon inaccurate conclusions of law and spurious allegations that generally allege that the Court refused to do its duty and follow the mandate of the law.

**2. The 522(f) Motion**

The Motion seeks to avoid the judicial lien of Karen and Gary Humphreys recorded April 27, 2017, as Recorder's Instrument Number 201700017070718, as impairing Debtor's $600,000 homestead asserted under California Code of Civil Procedure § 704.730 on property located at 818 Spirit, Costa Mesa, Orange County. California (the "Property"). See, Dk. 61. Debtor listed the Property as his residence on his petition. See Dk, 1.

[1] Debtor's discharge was entered on March 27, 2023 [Dk. 32]. No adversaries were filed against him. Thus, the Court is unclear as to the basis of Debtor's concern or the necessity for the additional relief. The granting of this motion, combined with the failure of the Humphrey's to seek dischargeability of the debt owed to them, serves to strip the security and permanently enjoin any collection activities, eliminating Debtor's liability for any such judgment.

Given that the pleadings of pro se debtors are to be construed liberally, the Court construed the 522(f) motion in this manner, as it is required to do.[2] While Debtor asserts that he only possesses bare legal title in the Property, and has a 0% interest, he also asserted a $600,000 homestead exemption. See, Amended Schedules filed 2/15/23 [Dk. 18]. Debtor also used the mandatory form motion to avoid a lien under 11 U.S.C. §522(f). Since the form of the title to the property is not determinative of whether Debtor may assert a homestead, and Debtor did assert a homestead (to which no objection was taken), it follows that Debtor's homestead may be impaired by a judicial lien. Accordingly, given the foregoing, the Court found that the Humpheys' lien impaired Debtor's homestead.

**3. Adversary Proceeding**

The Court was not required to, and could not by motion, determine the nature of Debtor's interest in the Property or the validity of the underlying debt. These issues may only be determined pursuant to an adversary proceeding, pursuant to Federal Rule of Bankruptcy Procedure Rule 7001 which provides as follows:

> An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:
>
> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under §554(b) or §725 of the Code, Rule 2017, or Rule 6002;
> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but a proceeding under Rule 3012 or Rule 4003(d);
> (3) a proceeding to obtain approval under §363(h) for the sale of both the interest of the estate and of a co-owner in property;
> (4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§727(a)(8), (a)(9), or 1328(f);
> (5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;
> (6) a proceeding to determine the dischargeability of a debt;
> (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

[2] See, *Mohsen v. Wu (In re Mohsen),* 2010 Bankr. LEXIS 5074, *13-14 (9th Cir BAP 2010) (While the pleadings of pro se litigants are to be liberally construed, a court is not required to search the record and make their arguments for them. *Aguasin v. Mukasey*, 297 Fed. Appx. 706 (9th Cir. 2008). Additionally, arguments must be briefed in order to be preserved. *Id.*)

> (8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;
> (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or
> (10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452.

FRBP 7001.

It is not the Court's responsibility to act as legal counsel for Debtor.[3] It is clear from the Court's reading of the Opposition that Debtor, who is pro se, lacks a fundamental understanding of the bankruptcy process and substantive law and encourages Debtor to seek counsel. At a minimum, the Court encourages Debtor to visit the pro se clinic for useful information and guidance.

**4. Conclusion**

For the reasons stated on the record at the June 13 hearing, the Court hereby GRANTS the Motion and avoids the lien under 11 U.S.C. § 522(f). All other relief sought is denied.

Debtor may file a further motion for reconsideration; in any such motion for reconsideration, Debtor must address (1) the Court's comments in footnote 1 of this order and the necessity for seeking the additional relief sought; and (2) why the additional relief sought can be obtained via motion instead of by adversary, as

---

[3] As noted by the Court in *Cent. Union High Sch. v. United States*, 2022 U.S. Dist. LEXIS 231156, *7-8 (CA So. Dist. Ct. 2022):

> It is not the court's role to do Plaintiff's legal research or to make legal arguments on Plaintiff's behalf. *See Birdsong v. Apple, Inc.*, 590 F.3d 955, 959 (9th Cir. 2009) (Courts will not "manufacture arguments for a[] [party], and a bare assertion does not preserve a claim."); *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929-30 (9th Cir. 2003) ("However much we may importune lawyers to be brief and to get to the point, we have never suggested that they skip the substance of their argument in order to do so . . . . We require contentions to be accompanied by reasons."); *Mahaffey v. Ramos*, 588 F.3d 1142, 1146 (7th Cir. 2009) ("Perfunctory, undeveloped arguments without discussion or citation to pertinent legal authority are waived"); *Bretford Mfg., Inc. v. Smith Sys. Mfg.* Corp., 419 F.3d 576, 581 (7th Cir. 2005) ("It is not our job to do the legal research that [the plaintiff] has omitted."); *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs'); *Blankenship v. Cox*, No. 3:05-CV-00357-RAM, 2007 U.S. Dist. LEXIS 19425, 2007 WL 844891 at 12 (D. Nev. Mar. 19, 2007) ("It is not the court's duty to do [Plaintiff's] legal research.").

requested by Federal Rule of Bankruptcy Procedure 7001. While Debtor is pro se, Debtor must follow applicable substantive law.

**IT IS SO ORDERED.**

Date: June 22, 2023

Scott C. Clarkson
United States Bankruptcy Judge

# Judicial Notice Exhibit 23

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

CASE #: 8:22-BK-12076

---

**DECLARATION OF ADAM BEREKI**

**AND SUPPORTING EXHIBITS**

---

# DECLARATION OF ADAM BEREKI

January 10, 2023

I, Adam Bereki, declare under penalty of perjury of the laws of California and the United States of America that the following statements of fact are true and correct:

## NOTICE OF BANKRUPTCY FRAUD BY CERTAIN PURPORTED "CREDITORS", FILING OF BANKRUPTCY UNDER EXTREME DURESS AND COERCION, AND EXPLANATION OF OWNERSHIP OF REAL PROPERTY LOCATED AT 818 SPIRIT COSTA MESA, CALIFORNIA

1. In 2017, I was maliciously criminally prosecuted in the Superior Court of California- County of Orange by private parties, Karen and Gary Humphreys, and their attorney, William Bissell, for allegedly performing construction work without a contractor license even though I was the licensee of a general contractor license in the name of my former solely owned and operated company, The Spartan Associates, Inc. See license #927244 and case 30-2015-00805807, and U.S. Supreme Court Case 22A246.

2. During the "trial" I was denied assistant counsel, trial by jury, and all of the heightened protections of criminal proceedings and then excessively, cruelly, and unusually fined about $930,000. See Exhibit [A]- Minute Order and "Judgment". I was denied ALL Constitutional protections and all Constitutional protections continue to be denied to me.

3. Based on the illegal and void "Judgement", the Humphreys and/or their Attorney then filed a a false and fraudulent "Abstract of Judgment" in the office of the Clerk-Recorder for the County of Orange. The Abstract attached to the real property located at 818 Spirit, Costa Mesa, California, held in The Living Trust of Adam Bereki ("Living Trust"). See attached Exhibit [B] for a certified copy of the Abstract.

4. While the Living Trust is the legal title holder of the property, the beneficiary and true owner is my mother, Roseanne Bereki, who purchased the home from me in 2010 (about five years prior to the suit with the Humphreys). Please see her attached Declaration as well as the Declarations of attorneys David Robin and Jim Bohm, Exhibit [C]. The Humphreys and Bissell were notified of this ownership interest and have also refused to remove the Abstract based on these circumstances.

5. About 90 days after the "Judgment", Spartan's license, as well as my ability to act as a qualifying individual on any general contractor license was suspended (or revoked) pursuant to Cal. Business and Professions Code §7071.17. While there is no official documentation that I am aware of for this suspension (or revocation) it is commanded by §7071.17. Prior to the license suspension (or revocation) I was NOT afforded any hearing at all and have consequently been forcibly restrained from earning a living in my profession as a general contractor ever since with no apparent means of judicial or other relief.

6. In 2021, Roseanne (who had been making all of the mortgage and property tax payments for the Spirit Property) was forced to retire due to a severe medical illness. Upon retirement, she became unable to continue to afford to make the mortgage, property tax, and other payments.

7. As a result of the force of the unlawful "Judgement", and the denial of any remedy in any office of the governments of California or the United States (See U.S. Supreme Court case 22A426 incorporated and fully set forth herein, Exhibit [C]) Roseanne and I have been forcibly restrained from selling the Spirit property to avoid foreclosure sale.

8. As a result of the fraud and other illegal actions of the Humphreys and Bissell in obtaining a false and fraudulent "Judgment" against me, I believe any claims they may make in these Bankruptcy proceedings pertaining to this "Judgment" are also fraudulent and criminal abuse of abuse proceedings. I have reported this matter in writing to Michael Hauser of office of the United States Bankruptcy Trustee on January 9, 2023.

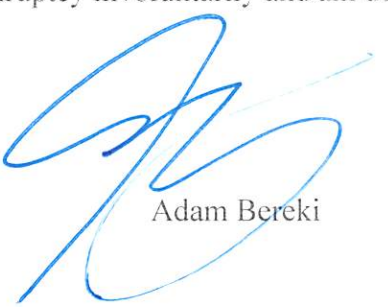
9. As Roseanne is the sole and true beneficial owner of the Spirit property, I have no beneficial interest therein as reflected on Official Form 106A/B. However, since the Living Trust is the legal title holder, I claimed the real property exemption pursuant to Cal. Code of Civ. Proc. §704.730.

EXPLANATION OF EXEMPTIONS PERTAINING TO DISABILITY PENSION AND PERSONAL PROPERTY

10. On or about July 2010, I was medically retired as a police officer employed by the City of Huntington Beach, California. As a result of this retirement, I receive a tax-exempt disability retirement pension. Pursuant to Cal. Code of Civ. Proc. §704.110(b) and Cal. Gov't Code §21255, I believe this pension is entirely exempt from Bankruptcy and have indicated so on Official Form 106C. In addition to exempting this pension in its entirety, I have also claimed exemptions for all of the personal property that I have purchased with these exempt funds. I exempted the firearm as it was included as part of the compensation for my disability retirement.

Based on all of the foregoing, I am being forced to file this bankruptcy involuntarily and am doing so under extreme duress and coercion.

Executed on January 10, 2023, in Costa Mesa, California.



Adam Bereki

# EXHIBIT [A]

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/28/2017 TIME: 09:30:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Michelle Gallegos

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: 72559889
**EVENT TYPE**: Jury Trial

**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
KAREN HUMPHREYS, Defendant is present.
GARY HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

**2nd day of trial**

At 9:55 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 9:57 a.m. Mr. William G. Bissell presents closing argument on behalf of Cross-Complainants/Defendants, Karen & Gary Humphreys.

At 10:12 a.m. Mr. J. Scott Russo presents closing argument on behalf of Cross-Defendant, The Spartan Associates, Inc..

Mr. Adam Bereki waived closing argument.

At 10:19 a.m. Court declares a recess.

At 10:52 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license.

The Court finds judgment for the Cross Complainants, Gary & Karen Humphreys (First Cause of Action,

for Disgorgement of Funds Paid) and against cross-defendant, Adam Bereki.

The Court invites counsels to meet and discuss the plan for the remaining cause of actions and the complaint.

At 11:19 a.m. Court declares a recess.

At 11:37 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Legal discussions held with regards to remaining cross-complaint cause of actions and the complaint as set forth on the record.

Counsels are to resume discussions during lunch hour and report to the Court at 1:45 p.m.

At 11:47 p.m. Court declares a recess.

At 1:48 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Counsels reached an agreement as set forth on the record.

Mr. J. Scott Russo presents an offer of proof on plaintiff's complaint that if called Mr. Adam Bereki would be the witness and the testimony would be that Plaintiff, Spartan Associates had rendered goods and services to the defendants. The fair market value for the services and goods of $82,821.53 to be backed up by invoices and testimony about the reasonable value of those services that would be the first cause of action Quantum Merit. For the 2nd cause of action, go and in hand that it was an open book accounting was rendered to the defendants that they were given the accountings and the sum was $82,821.53 that was still due.

Based on Mr. Russo's offer of proof, the Court understand that those claims are based upon the view of plaintiff Spartan Associates, Inc. was the general contractor on the project. The Court finds that Spartan Associates does not have standing as determined earlier today that Mr.Bereki was the purported general contractor on the contract. Spartan Associates, Inc. may have been apparently substituted but it is certainly not with the permission or agreement of the defendants. Based on that, the **Court finds judgment for the defendants on the complaint.**

The parties have discussed, agreed and stipulates on the record as follows: The entirety of remaining causes of action on the First Amended Cross-Complaint will be dismissed without prejudice. If judgment on the first cause of action becomes final, the dismissal without prejudice will be converted to dismissal with prejudice. Pending judgment on the first cause of action becoming final, the statute of limitations on the re-filing of an action of the dismissed causes of action is waived. If a new action is filed on the dismissed causes of action , discovery deemed completed and will not be re-opened and the newly filed case will be consolidated with the remanded case for trial.

Pursuant to Mr. Bissell's Motion, **the Court orders the remaining causes of action, negligence, fraud, alter ego, penalty, attorney's fees and recovery against the Contractor's license bond be dismissed without prejudice. The judgment on the First Amended Cross Complaint is on the 1st cause of action for discouragement only.**

CASE TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS

CASE NO: **30-2015-00805807-CU-CO-CJC**

The Court directs Mr. William G. Bissell to prepare the judgment.

At 2:03 p.m. **Pursuant to oral stipulation set forth on the record, exhibits are released and returned to the submitting parties/counsels for maintenance, custody and safekeeping pending any post-verdict or appeal proceedings. All identification tags and other identifying markings are to remain in place pending this period.**

At 2:05 p.m. The Court is adjourned in this matter.

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/04/2017 at 12:01:00 PM
Clerk of the Superior Court
By Enrique Vaca,Deputy Clerk

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)
William Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
TELEPHONE NO: (949) 719-1159 FAX NO (Optional)
E-MAIL ADDRESS (Optional): wbissell@wgb-law.com
ATTORNEY FOR (Name): Gary Humphreys & Karen Humphreys

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
APR 20 2017
DAVID H. YAMASAKI, Clerk of the Court
BY: DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

PLAINTIFF: The Spartan Associates, Inc.

DEFENDANT: Gary Humphreys, Karen Humphreys et al

CASE NUMBER
2015-00805807

Judge David Chaffee

**JUDGMENT**

☐ By Clerk ☐ By Default ☑ After Court Trial
☑ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial

**JUDGMENT**

1 ☐ **BY DEFAULT**
a. Defendant was properly served with a copy of the summons and complaint.
b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
c. Defendant's default was entered by the clerk upon plaintiff's application
d. ☐ Clerk's Judgment (Code Civ Proc., § 585(a)) Defendant was sued only on a contract or judgment of a court of this state for the recovery of money
e. ☐ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
(1) ☐ plaintiff's testimony and other evidence
(2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**
a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case The court approved the stipulated judgment and
b ☐ the signed written stipulation was filed in the case
c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☑ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
a. The case was tried on *(date and time)*: March 27, 2017 at 9.00 a.m.
before *(name of judicial officer)*: The Honorable David Chaffee
b. Appearances by:
☑ Plaintiff *(name each)*
(1) The Spartan Associates, Inc.
(2)
☐ Continued on Attachment 3b
☑ Plaintiff's attorney *(name each)*:
(1) J. Scott Russo esq.
(2)
☑ Defendant *(name each)*:
(1) Gary Humphreys
(2) Karen Humphreys
☑ Continued on Attachment 3b.
☐ Defendant 's attorney *(name each)*:
(1) William Bissell esq.
(2) William Bissell esq.
c. ☐ Defendant did not appear at trial Defendant was properly served with notice of trial.
d. ☑ A statement of decision (Code Civ Proc., § 632) ☑ was not ☐ was requested.

PLAINTIFF The Spartan Associates, Inc.

DEFENDANT Gary Humphreys, Karen Humphreys et al

CASE NUMBER 2015-00805807

JUDGMENT IS ENTERED AS FOLLOWS BY: ☑ THE COURT ☐ THE CLERK

4 ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties

5. **Parties.** Judgment is

a ☐ for plaintiff *(name each)*

and against defendant *(names)*:

☐ Continued on Attachment 5a.

b. ☑ for defendant *(name each)*.
Gary Humphreys & Karen Humphreys

c ☑ for cross-complainant *(name each)*.
Gary Humphreys & Karen Humphreys
and against cross-defendant *(name each)*:
Adam Bereki

☐ Continued on Attachment 5c.

d ☐ for cross-defendant *(name each)*:

6 **Amount.**

a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

| | | |
|---|---|---|
| (1) ☐ | Damages | $ |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☐ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

b. ☑ Plaintiff to receive nothing from defendant named in item 5b.
☑ Defendant named in item 5b to recover costs $
☐ and attorney fees $

c ☑ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

| | | |
|---|---|---|
| (1) ☑ | Damages | $ 848,000.00 |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☑ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

7 ☑ Other *(specify)*:
Causes of action two through eight of the first amended cross-complaint are dismissed without prejudice subject to a stipulation by the parties and entered on the record.

Date: APR 2 0 2017

☐ _____
JUDICIAL OFFICER
DAVID R. CHAFFEE

Date

☐ Clerk, by _____, Deputy

(SEAL)

**CLERK'S CERTIFICATE** *(Optional)*

I certify that this is a true copy of the original judgment on file in the court

Date:

Clerk, by _____, Deputy

Page 2 of 2

JUD-100 [New January 1 2002] **JUDGMENT**

1028

**0008**

**2330**

# EXHIBIT [B]

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
After recording, return to:
William G. Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660

TEL NO.: (949) 719-1159 FAX NO. (optional): (949) 719-1158
E-MAIL ADDRESS (Optional): wbissell@wgb-la
[X] ATTORNEY FOR [X] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

FOR RECORDER'S USE ONLY

PLAINTIFF: The Spartan Associates, Inc.
DEFENDANT: Gary Humphreys etc. et al

CASE NUMBER: 30-2015-00805807

# ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

[ ] Amended

FOR COURT USE ONLY

Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g).

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's Name and last known address
      Adam Bereki
      818 Spirit
      Costa Mesa, CA 92626
   b. Driver's license no. [last 4 digits] and state: 0543 CA [ ] Unknown
   c. Social security no. [last 4 digits]: 4758 [ ] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to *(name and address)*:
      Adam Bereki 818 Spirit Costa Mesa, CA 92626
2. [ ] Information on additional judgment debtors is shown on page 2.
3. Judgment creditor *(name and address)*:
   Gary Humphreys
   505 Augusta Drive
   Moraga, CA 94556
4. [X] Information on additional judgment creditors is shown on page 2.
5. [ ] Original abstract recorded in this county:
   a. Date:
   b. Instrument No.:

Date: April 25, 2017
William G. Bissell
(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed: $848,000.00
7. All judgment creditors and debtors are listed on this abstract.
8. a. Judgment entered on *(date)*: April 20, 2017
   b. Renewal entered on *(date)*: n/a
9. [ ] This judgment is an installment judgment.
10. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
    a. Amount: $
    b. In favor of *(name and address)*:
11. A stay of enforcement has
    a. [X] not been ordered by the court.
    b. [ ] been ordered by the court effective until *(date)*:
12. a. [X] I certify that this is a true and correct abstract of the judgment entered in this action.
    b. [ ] A certified copy of the judgment is attached.

[SEAL]

This abstract issued on *(date)*: 4/26/17
David H. Yamasaki, Clerk of the Court

Clerk, by A. DANG, Deputy

| PLAINTIFF: The Spartan Associates, Inc.<br>DEFENDANT: Gary Humphreys etc. et al | COURT CASE NO.:<br>30-2015-00805807 |
|---|---|

**NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:**

13. Judgment creditor *(name and address):*
Karen Humphreys
505 Augusta Drive
Moraga, CA 94556

14. Judgment creditor *(name and address):*

15. ☐ Continued on Attachment 15.

**INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:**

16. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

17. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

18. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

19. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown
Social security no. [last 4 digits]: ☐ Unknown
Summons was personally served at or mailed to *(address):*

20. ☐ Continued on Attachment 20.

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

April 26, 2017, I served the within:

**Abstract of Judgment**

in said action by placing a true copy thereof, enclosed in a sealed envelope with postage, certified, return receipt requested thereon fully prepaid, in the United States mail at Newport Beach, California addressed as follows:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on April 26, 2017, at Newport Beach, California.

William Bissell

Certified Copy of document number 20170000170718

7/3/2018
5.00

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE:_____

CERTIFICATION FEE:_____

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

NOTICE OF TRESPASS TO BISSELL

SANTA ANA WINDOW SVCS
3101 W SUNFLOWER AVE
SANTA ANA
CA
92799-0100
0569360115
05/15/2017 (800)275-8777 11:29 AM

| Product Description | Sale Qty | Final Price |
|---|---|---|
| First-Class Mail Letter (Domestic) (NEWPORT BEACH, CA 92660) (Weight:0 Lb 1.10 Oz) (Expected Delivery Day) (Wednesday 05/17/2017) | 1 | $0.70 |
| Certified (@@USPS Certified Mail #) (70150640000386681629) | 1 | $3.35 |
| Total | | $4.05 |
| Cash | | $5.00 |
| Change | | ($0.95) |

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit USPS.com USPS Tracking or call 1-800-222-1811.

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

**********
BRIGHTEN SOMEONE'S MAILBOX. Greeting cards available for purchase at select Post Offices.
**********

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®
NEWPORT BEACH, CA 92660

OFFICIAL USE

| | |
|---|---|
| Certified Mail Fee | $3.35 |
| Extra Services & Fees (check box, add fee as appropriate) | |
| ☐ Return Receipt (hardcopy) | $0.00 |
| ☐ Return Receipt (electronic) | $0.00 |
| ☐ Certified Mail Restricted Delivery | $0.00 |
| ☐ Adult Signature Required | $0.00 |
| ☐ Adult Signature Restricted Delivery | $ |
| Postage | $0.70 |
| Total Postage and Fees | $4.05 |

0115 15
SANTA ANA P&DC
Postmark MAY 15 2017
USPS CA 92799

7015 0640 0003 8668 1629

Sent To: William Bissell - Notice of Trespass
Street and Apt. No., or PO Box No.: 14 Corporate Plaza
City, State, ZIP+4®: Newport Beach, CA 92660

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

# NOTICE OF TRESPASS

# NOTICE TO CEASE AND DESIST

Attention:

William G. Bissell
Attorney for Karen and Gary Humphreys
14 Corporate Plaza Dr. Suite 130
Newport Beach, CA 92660

Notice is hereby given you are trespassing upon my property, the title to: [818 Spirit Costa Mesa, California, "Spirit"] by filing a lien upon it for judgment against Adam Bereki payable to Karen and Gary Humphreys.

1. I, Roseanne Bereki, declare and state as follows:

1. I am not a guarantor for any debts, public or private of Adam Bereki.

2. I have had no contractual relationship with Karen or Gary Humphreys.

3. There have been no legal proceedings between myself and Karen of Gary Humphreys upon which judgement has been entered in their favor against me.

4. There are a plethora of other legal documents not on file with the Clerk that nullify the title to the Spirit property on file at the Orange County Clerk-Recorders office.

5. In November of 2010, my son, Adam Bereki, was no longer able to make the payments for the Spirit property he owned. In fact, he had missed two mortgage payments.

6. Adam had attempted to sell the property numerous times but was unsuccessful due to the depressed market conditions.

7. Adam offered to sell the property to me if I would immediately pay the past due payments on the first mortgage and second (equity line of credit), and assume these as well as all tax and other related payments going forward. I agreed.

8. Adam left the property at that time and I moved in. I paid the missed mortgage payments, brought all other payments up to date and began paying all of the mortgage, property tax, and insurance payments and have done so ever since.

9. This agreement between Adam and I is also memorialized in written documents releasing all of the interests in the Spirit property to me.

10. Concurrent with Adam and I's written agreements, we informed several people of our agreement. Refer to the attached declarations of fact by Jim Bohm, esq. and David Robin, esq.

11. Pursuant to my full ownership interest in Spirit, I have been claiming the mortgage interest deduction on my annual income tax. If necessary, I can provide another declaration by Ken Lorin, CPA.

12. Upon taking ownership of Spirit, I made numerous legal and mortgage expert consultations regarding how I could put the recorded title into my name. I was told that any transfer of title would likely result in the mortgage company calling due the loan(s).

13. I have attempted to refinance the property two times since taking ownership in an effort to, amongst other things, change title. Due to other financial obligations on my credit record, I was not able to get approved under terms which were favorable to and affordable to me. If necessary, another affidavit from Mortgage Banker Tim Fahl can be provided.

14. Every single financial document in my possession, including all cancelled checks and checking account records confirms the facts which I have stated above.

15. The Spirit property belongs to me, not Adam Bereki. He has no legal interest in it whatsoever pursuant to our legally binding agreements.

16. I am nearing retirement and am suffering from a severe medical condition which could cause my retirement to be imminent. In pursuance thereof and my basic human rights, I need access to the funds in the equity of my home and full control over it which has been restricted by your lien.

17. I understand you did not have legal notice of the terms and agreements between Adam Bereki and I regarding the Spirit property, which is why I am giving you notice now and allowing you ample time to remedy your actions before penalties below are imposed.

18. I demand you remove the lien you have filed and attached to my property within ten business days from the date of service of this Notice. Postage delivery time is incorporated in the ten days (not an extension thereto) and you have also been emailed a copy.

19. Failure to remove the lien will, on the 11th day after notice will result in the following:

a. You will be deemed guilty of trespass upon my property and subject to the following fines and penalties:

1. For each calendar day (beginning at 12:01 AM on the 11th day) the lien remains on my property, you will be charged a fee of $2500. Any portion of a day after 12:01AM constitutes the whole day.

2. You will be charged for any and all legal expenses I deem necessary to complete the process of removing the lien. This includes but is not limited to court

filing fees, travel time, mileage expenses at $.90 per mile, parking fees, postage, copying, scanning, printing, attorneys fees, and clerical or other assistant fees I deem necessary.

3. You will be charged a fee of $500 for each hour (or portion thereof) I spend in preparing documentation, testifying, researching, attending any court proceedings in this matter or anything whatsoever relating to it.

4. This document is governed by the common law of the State of California. Any legal proceedings arising out of failure to perform to this notice of trespass shall be dealt with proceedings under common law exclusively.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. Executed this 12th day of May, 2017, at Costa Mesa, California.

Roseanne Berelo 05/15/2017

Roseanne Berelo

Without Prejudice

DECLARATION OF DAVID ROBIN

I, David Robin, declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts in the State of California and am owner of The 4600 Group, Inc.

2. Unless otherwise indicated, the matters attested to herein are based on my direct and personal knowledge and if called upon as a witness to testify, I could and would, competently testify hereto:

3. I have known Roseanne and Adam Bereki personally and professionally for approximately 31 years.

4. In or about November 2010, Roseanne informed me Adam was unable to pay several financial obligations including the mortgage and property taxes of his home at 818 Spirit Costa Mesa, California. She said he had already missed two mortgage payments.

5. At that time, Roseanne told me Adam decided to sell his house to his mother, Roseanne Bereki for the consideration of her bringing all past payments, taxes and other expenses current and assuming all financial obligations going forward.

6. Roseanne advised me Adam had also attempted to sell the house several times but was unable to due to the depressed market conditions and the decline in real estate values.

7. Pursuant to the agreement between Roseanne and Adam, Adam moved out of the house and Roseanne moved in.

8. I learned from both Roseanne and Adam that pursuant to their agreement, Adam was moving out of the country for an indefinite period of time. I learned that he went to the Philippines.

9. At present, Adam has moved back into the house and is living in a guest room. Roseanne has told me Adam is paying her rent for the room. Roseanne occupies the master bedroom.

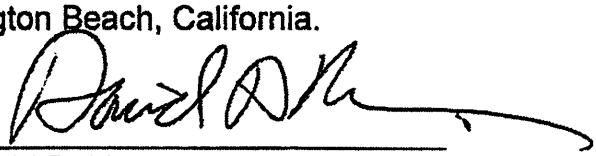
10. Since November of 2010, Roseanne has always referred to the house (818 Spirit Costa Mesa, California) as her house in our conversations. As part of the

change of ownership from Adam to Roseanne, I am aware during contemporaneous conversations from 2010 to the present time that Roseanne pays all of the property taxes on the house and claims the deduction on her personal income tax filings. In my conversations with Adam he refers to the house as "Mom's house."

11. Roseanne has worked for me for the past 24 years as the Manager of Finance and Human Resources for my company. She manages all of the business financial accounts and the HR for the firm. There has never been an integrity violation on her part.

12. It is my belief, based on the statements and actions of both Roseanne and Adam Bereki, the house at 818 Spirit Costa Mesa, California, belongs, by agreement between them, to Roseanne Bereki.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 12th day of May 2017, at Huntington Beach, California.



David Robin

DECLARATION OF JAMES G. BOHM

I, James G Bohm, declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts in the State of California and am a partner in the law firm of Bohm Wildish LLP.

2. Unless otherwise indicated, the matters attested to herein are based on my direct and personal knowledge and if called upon as a witness to testify, I could and would, competently testify thereto.

3. I have known Adam Bereki personally and professionally for approximately 15 years.

4. In or about November 2010, Adam informed me he was unable to pay several financial obligations including the mortgage and property taxes of his home at 818 Spirit Costa Mesa, California. He said he had already missed two mortgage payments.

5. At that time, Adam told me he decided to sell his house to his mother, Roseanne Bereki for the consideration of her bringing all past payments, taxes and other expenses current and assuming all financial obligations going forward. Adam advised me that due to the decline in real estate at that time and the amounts of the first and second loans on the house, the house had little to no equity when the cost of sale was considered. Pursuant to this agreement, Adam then moved out of the house and Roseanne moved in.

6. Adam advised me at that time that he was moving out of the country for an indefinite period of time. I learned that he went to the Philippines.

7. At present, Adam has moved back into the house, living in a guest room, and he has told me he is paying rent to Roseanne. Roseanne occupies the master bedroom.

8. Since November of 2010, Adam has always referred to Roseanne's house (818 Spirit Costa Mesa, California) as "my mom's house" in our conversations.

9. It is my belief, based on the statements and actions of both Adam and Roseanne Bereki, the house at 818 Spirit Costa Mesa, California, belongs, by agreement between them, to Roseanne Bereki.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of May 2017, at Costa Mesa, California.

James G. Bohm

WILLIAM G. BISSELL
ATTORNEY AT LAW
14 CORPORATE PLAZA DRIVE, SUITE 120
NEWPORT BEACH, CALIFORNIA 92660

SANTA ANA
CA 926
19 MAY '17
PM 10 L




Roseanne Bereki
818 Spirit
Costa Mesa, California 92626

92626-308918

WILLIAM G. BISSELL
ATTORNEY AT LAW
14 CORPORATE PLAZA DRIVE, SUITE 120
NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE: (949) 719-1159
TELEFAX: (949) 719-1158

May 18, 2017

Roseanne Bereki
818 Spirit
Costa Mesa, California 92626

**Re: The Spartan Assoc. v. Humphreys OCSC # 30-2015-00805807**

Dear Ms Bereki:

In response to your "Notice of Trespass - Notice to Cease and Desist" dated May 15, 2017, according to the official records of the Orange County Recorder, your son Adam Bereki is the holder of legal title to the 818 Spirit Costa Mesa property. As such, the Humphreys have every right to file a judgment lien against any and all right title and interests held by Adam in that property as well as any other property in which he has legal title or holds some interest. To the extent you and your son may be involved in some scheme which constitutes a breach of the terms of Adam's agreement with his lender and/or commit lender fraud, the Humphreys cannot concern themselves with or be a party to those activities and the actvities you describe certainly do not constitute grounds for the Humphreys to release their lien.

The Humphreys actions consist of filing an abstract of the judgment which indicates only that judgment has been entered against Adam Bereki, the amount of that judgment and Adam's last known address, all of which is 100% accurate and fully sanctioned under the law. You are not mentioned anywhere in that recorded abstract. Accordingly please be advised that any action taken by you as described in your May 15th notice will be aggressively defended and all rights, causes of action and damages which arise from the filing of a frivolous or meritless action, and/or an abuse of the legal process will be aggressively pursued.

Sincerely,

LAW OFFICES OF WILLIAM G. BISSELL

William G. Bissell

cc Client

# EXHIBIT [C]

Adam Bereki
818 Spirit
Costa Mesa, California 92626
949.241.6693 | abereki@gmail.com

Attn: Michael Hauser
Fraud Section
Office of the United States Trustee
411 W. 4th St. #7160
Santa Ana, CA 92701
Via email to: Michael.hauser@usdoj.gov

RE: REPORT OF FRAUD ON UNITED STATES BANKRUPTCY COURT
CASE #8:22-12076 In re Adam Alan Bereki

DATE: January 9, 2023

---

This complaint letter is to establish my claim that I have been unlawfully forced into bankruptcy as a direct and proximate result of fraud, treason, and other crimes being perpetrated against me and my estate by public officials and private parties in conspiracy therewith to steal my money, property, and liberty under color of law but without lawful authority. I have attached a copy of a *verified* complaint I recently made to the United States Supreme Court with supporting authenticated evidence establishing my allegations. I will expect your prompt investigation into these complaints to protect me and my estate and this Honorable Bankruptcy Court from being used as a weapon of oppression and domestic violence.

Sincerely,

Adam Bereki

No. 22A426

IN THE

# Supreme Court of the United States

In re Adam Bereki,

Petitioner.

## *VERIFIED* APPLICATION FOR EMERGENCY STAY *PENDING THE FILING AND LAWFUL ADJUDICATION OF A* PETITION FOR ORIGINAL WRITS OF *QUO WARRANTO*, *MANDAMUS*, & *HABEAS CORPUS*

To Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Ninth Circuit

Adam A. Bereki
*In Propria Persona*
818 Spirit
Costa Mesa, California
916.585.3016
abereki@gmail.com

**To Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:**

Pursuant to "Rules" 22 and 23 of the "Rules" of the Supreme Court, Petitioner Adam Bereki applies for an emergency stay of: (1) the non-judicial foreclosure proceedings initiated by Respondent Prestige Default Services, LLC in the Office of the Clerk-Recorder for the County of Orange, California; and, (2) the judgment in the Superior Court of California case# 30-2022-01271693 initiated by Respondent First National Bank of Omaha for "damages" pertaining to Petitioner's alleged breach of contractual obligation.

This Application is made pending the filing and Lawful adjudications of an Emergency Petition for Original Writs of *Quo Warranto*, *Mandamus*, and *Habeas Corpus* to be sent within 40 calendar days of the date this Stay is granted.

## I. WHY THE RELIEF PETITIONER REQUESTS IS NOT AVAILABLE FROM ANY OTHER COURT OR JUDGE

Petitioner has been unlawfully restrained of his liberty and irreparably harmed and damaged by the repeated and deliberate denial of all rights, privileges, and immunities guaranteed to him by the California and U.S. Constitutions.

### A. BACKGROUND

Petitioner is a former police officer in southern California with more than twenty years of experience in forensic civil and criminal investigations and a specialty in cases involving highly sophisticated fraud and government corruption. In March of 2017, he became aware of a criminal Enterprise orchestrated individually and/or collectively by officials of all three branches of the governments of California and the

United States designed to egregiously deprive him and the American People of the rights, privileges, and immunities secured by the California and United States Constitutions.

Petitioner became aware of the Enterprise when it was used to maliciously prosecute and falsely constructively imprison him for allegedly performing construction work without a license even though he was the licensee of a general contractor license.

During the faux "trial" held in the Superior "Court" of California-County of Orange, he was maliciously prosecuted by *private parties* for violating the contractor "licensing laws" under the fraudulent pretense of a remedial civil action in equity for "disgorgement". He was never told the true nature and cause of the accusation(s) against him, never informed of his right to or afforded the assistance of counsel, never allowed to confront his accuser(s), denied all of the heightened protections in criminal proceedings, and then excessively fined about $930,000 resulting in a bill of pains and penalties.

When Petitioner challenged the jurisdiction of the "Court" to excessively, cruelly, and unusually punish him–including by depriving him of the right to a judicial proceeding–he was further punished by monetary sanctions obviously intended to silence his dissent.

When Petitioner was unable to pay the excessive fine (an amount more than 42 times his qualifying net worth) his general contractor license (the one he allegedly didn't have) was summarily suspended without *any* hearing or means of appeal by operation of the contractor "licensing laws". Consequently, he has been unlawfully

restrained from earning a living in his profession as a general contractor for more than five years causing an estimated three million dollars in lost earnings, irreparable harm, and other damages that include the impairment of his private contracts and obligations. As recognized by a former Justice of this Court, "by taking away his opportunity to earn a living, you can drain the blood from his veins without even scratching his skin."[1]

Among the impairment of Petitioner's private obligations is the fraudulent and wrongful non-judicial foreclosure proceedings on the "Deed of Trust" secured by the real property held in his Living Trust because he and his estate are unable to discharge the alleged monthly mortgage obligation as a direct result of the restraint of his liberty. Prestige is also fraudulently attempting to foreclose on this "Deed of Trust" to steal Petitioner's home when it knows neither the "Deed of Trust" nor the real property are security for an entirely separate security instrument traded on the U.S. Stock Exchange as a purported "mortgage backed security".

At almost the same time as the "trial", and in mirror-like despotic fashion, Petitioner was also subjected to another bill of pains and penalties in the form of a "mandatory arbitration" proceeding executed by the Contractors State License Board and a private arbitration company. Not only was there no statutory authority for the Board and arbitration company to create or conduct a "mandatory arbitration" proceeding, or to assign the proceeding to unelected unappointed private arbitrators who don't hold public office, he was never given notice of the proceedings. After

[1] *Flemming v. Nestor*, 363 U.S. 603, 629 (1960). Justice Douglas Dissenting. Citation omitted.

discovering what had transpired and repeatedly objecting, his license was summarily suspended/revoked without *any* hearing or known means of appeal.

Having honorably served in law enforcement and seen first-hand how the justice system can operate for the good of our society and with integrity, Petitioner was initially shocked and in disbelief at what had transpired. He initially thought it was just a series of sloppy government mistakes that could be corrected on appeal or through other checks and balances. What he didn't understand was that it was not a mistake at all and was just the beginning of the fraud, treason, and other crimes that would be perpetrated upon him as he sought remedial justice that continues to be denied.

Over the past five years, Petitioner put the purported system of "checks and balances" in every branch of State and Federal government to a real test as he sought relief. In addition to meticulously following the State and Federal "Court" appellate processes and being denied relief at every step, he made complaints to five municipal Police departments, the Orange County Sheriff-Coroner department, California Highway Patrol, Orange County District Attorney, U.S. Dept. of Justice and FBI, California Assembly and Senate, California Governor and Attorney General, and the California Commission on Judicial Performance. In every instance, the officials involved either acted with careless disregard or deliberate indifference to the irreparable harm and damages being suffered by him as result of the obvious and ongoing deprivation of his rights. In every instance, the officials refused to fully, fairly, and impartially investigate his criminal complaints and deprivation of rights claims and/or to intervene to stop the ongoing irreparable harm and damages.

All of the authenticated Exhibits pertaining to Petitioner's investigation, including many digital audio recordings, are available for viewing and/or download in the spirit of full disclosure and transparency at http://www.thespiritoflaw.com.

This Application and Petitioner's forthcoming Petition for Extraordinary Original Writs will evidence his forensic investigation throughout the entire process from treasonous "conviction" to every attempt at seeking relief. It will expose the egregiously anti-Constitutional policies and procedures that have been established under color of law but without lawful authority by "official" actors of the Enterprise to obliterate the system of checks and balances and overthrow the Constitutional Republican forms of government of California and the United States.

In the words of the Founders, "[a]n elective despotism was not the government we fought for; but one which should not only be founded on free principles, […] in which the powers of government should be so divided and balanced […], as that no one could transcend their legal limits, without being effectually checked and restrained by the others."[2]

Article III of the Constitution *mandates* that "[t]he judicial Power of the United States **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution" and therefore, that "[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"[3]. Despite this, this "Court"

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[2] *Cmty. Fin. Servs. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, 2022, U.S. App. LEXIS 29060, 2 (5th Cir. 2022) citing The Federalist No. 48 (J. Madison) (quoting Thomas Jefferson's *Notes on the State of Virginia* (1781)).

[3] "The constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of

has refused its mandatory duty to hear Petitioner's case twice– an act it has repeatedly admitted is "treason to the Constitution".[4]

This Court has a mandatory, non-discretionary ministerial duty to exercise jurisdiction over this case to: (1) conduct a full, fair, and impartial investigation; (2) intervene to stop the crimes and irreparable harm and damages being perpetrated upon Petitioner and the American People; and, (3) to take all Lawful action necessary and within the bounds of its authority to restore the Republican governments of California and the United States.

## B. EXTRAORDINARY CIRCUMSTANCES REQUIRING THIS COURT TO EXERCISE JURISDICTION AND GRANT THE REQUESTED RELIEF

The right to liberty includes "the right to be free from, and to obtain judicial relief for, unjustified intrusions of personal security."[5] Based on the extraordinary circumstances presented herein, unless the jurisdiction of this Court is exercised, there is a complete absence of any judicial or other trustworthy and effective corrective process available in the "governments" of California and the United States leaving Petitioner and the American People without a Constitutional form of government. Even if there appears to be another corrective process available, the evidence presented herein will reveal that it is a façade intended to create the illusion of justice and that rogue "officials" will continue to abuse their authority as a means

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justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."*Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

[4] "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[5] *Ingram v. Wright*, 430 U.S. 651, 673 (1977). Citations omitted.

to commit additional crimes and treason to aid and abet the Enterprise to ensure its survival while simultaneously denying Petitioner and the American People Lawful remedy.

1. **Petitioner has exhausted all apparent remedies in the "Courts" of California and the United States and has been denied a judicial determination of his rights in every instance;**

2. **There is a complete and total absence of any State or Federal corrective processes** as the officials of all three branches of the governments of California and the United States involved in this case are allegedly engaged in fraud, deceit, and/or treason and other crimes to deliberately deprive Petitioner of his rights, liberty, and property and have either exercised jurisdiction over his person and/or property without Lawful authority and/or have refused to exercise jurisdiction to perform their sworn duties to investigate and intervene as mandated by Law;

3. **There is no judicial Constitutional Court in the State of California with subject matter jurisdiction upon which Petitioner can present these claims**
    i. California "Courts" claim that they lack subject matter jurisdiction to hear and determine cases involving Federal questions. Exhibit [D] p.5438, pp.5441-5447. Amongst other structural jurisdiction issues, this has resulted in the apparent summary suspension of the writ of *Habeas Corpus* secured by Art. I, §9, cl. 2 in all Cal. "Courts";
    ii. The Cal. "Constitution of 1879" does not vest any Court of California with subject matter jurisdiction at Law or Equity as mandated by the U.S. Constitution. Article VI, §5 of the Cal. "Constitution of 1879" that once granted the Superior Courts subject matter jurisdiction at Law and Equity was repealed in 1966. The "Courts" of California appear to have been proceeding without any Lawful authority ever since.
    iii. The Cal. "Constitution of 1879" does not grant the Legislature any power to create lower Courts or to vest them with any statutory jurisdiction, including jurisdiction over the "statutes" involved in this case;
    iv. All "Courts" of California involved in this case have either committed fraud and treason to the Constitutions of California and the United States by exercising personal and/or subject matter jurisdiction without Lawful authority and/or *repeatedly* refusing to exercise jurisdiction to stop the crimes and the irreparable harm and damages resulting therefrom. Most recently, this includes summary denials of Petitioner's

Application for Emergency Stay and Petition Writ of *Habeas Corpus*;

4. **The Contractor's State Licensing Board and its "mandatory arbitration" program are treason to the Constitutions of California and the United States and there are no checks and balances in the government of California to stop it;**

5. **Congress has not vested any inferior Court of the United States with subject matter jurisdiction at Law or Equity as defined by the U.S. Constitution to hear and determine Petitioners claims;**

6. **There is no lawful representative quorum in the "Legislature" of California or the "Congress" of the United States;**

7. **The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief*.**

## ADDITIONAL ISSUES RAISED IN THE FORM OF QUESTIONS

Petitioner has included a *preliminary* copy of the questions to be presented in his forthcoming Petition for Original Writs in Appendix [S], beginning on page 90. There are *many* additional issues raised therein, all of which are fully incorporated in this Application.

## CORPORATE DISCLOSURE STATEMENT

First National Bank of Omaha is a subsidiary of the public traded corporation, First National of Nebraska. Citibank N.A. may be a subsidiary of publicly traded Citigroup.

## NOTICE

By direction of the office of the Clerk of Court, Petitioner has not included the voluminous Exhibits referenced herein but intends them to be fully incorporated. They will be delivered to the Court on the Court's request and can be viewed and/or downloaded in the meantime at: https://www.thespiritoflaw.com/exhibits.

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**DECLARATION OF ADAM BEREKI**

## PARTIES TO THE PROCEEDINGS

### Petitioner

Adam Bereki is one of the People domiciled in California. He is not a "citizen of the United States", or "person subject to the jurisdiction thereof" according to the so-called "14th Amendment" or a statutory resident of the District of Columbia, a municipal corporation[6] chartered[7] by Congress masquerading as a "State"[8] or as the "United States."[9] According to the Supreme Court of California, the People of California do not owe their Citizenship to the "14th Amendment".[10]

Petitioner also cannot possibly be "subject to the jurisdiction [of the United States]" by virtue of the so-called "14th Amendment" because it was never Lawfully ratified commensurate with Article V,[11] having been forced upon the People without a Lawful representative quorum in "Congress" and by means of federal regional

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[6] MUNICIPAL CORPORATION "A public corporation, created by government for political purposes, and having subordinate and local powers of legislation." [e.g., cities, towns etc.] Black's Law Dictionary by Henry Campbell Black, Revised Fourth Edition, St. Paul, Minn.: West Publishing Co., 1968, pp.1168-9.

[7] "An Act to provide a Government for the District of Columbia," ch. 62, 16 Stat. 419, February 21, 1871; later legislated in "An Act Providing a Permanent Form of Government for the District of Columbia," ch. 180, sec. 1, 20 Stat. 102, June 11, 1878, to remain and continue as a municipal corporation (brought forward from the Act of 1871, as provided in the Act of March 2, 1877, amended and approved March 9, 1878, *Revised Statutes of the United States Relating to the District of Columbia . . . 1873–'74* (in force as of December 1, 1873), sec. 2, p. 2); as amended by the Act of June 28, 1935, 49 Stat. 430, ch. 332, sec. 1 (Title 1, Section 102, District of Columbia Code (1940)).

[8] See for e.g. The Act of June 30, 1864 (13 Stat. 223, 306), at section 182 SEC. 182. "And be it further enacted, [t]hat wherever the word state is used in this act it shall be construed to include the territories and the District of Columbia, where such construction is necessary to carry out the provisions of this act."

[9] Cal. Code of Civil Procedure §17 (13) "State" includes the District of Columbia and the territories when applied to the different parts of the United States, and the words "United States" may include the district and territories.

[10] *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

[11] *Dyett v. Turner*, 20 Utah 2d 403 (UT Supreme Ct. 1968); Congressional Globe April 5, 1866 pp. 1775-1776; Congressional Record Volume 113 Part 12 June 1967 pp.15641-15646; Tulane Law Review Volume 28, 14th Amendment. (Unknown source; accuracy unverified).

martial law rule imposed by the Reconstruction Acts.[12] Martial law appears nowhere in the Constitutional amending processes found in Article V. Moreover, Petitioner has not made any knowing, voluntary, or intelligent waiver of rights to be subject to the jurisdiction of the "14th Amendment" which is, on account of having never been ratified and in violation of all six Articles of the Constitution, "foreign to our Constitution and unacknowledged by its law." Any claims for privileges or "rights" pursuant to the "14th Amendment" and all statutes, regulations, rules, and codes in pursuance thereof or in pursuance any other unlawful authority made herein are under extreme duress and coercion.

See also Appendix [S]– Questions Presented: 29-31.

**Respondents**
(Emergency Stay Application Only)

Superior Court of California- County of Orange; Hugh Nguyen, Clerk Recorder-County of Orange;

The status and standing of the following Respondent entities and People are unknown:

Karen Humphreys, a human being;

Gary Humphreys, a human being;

William Bissell, a human being;

David Chaffee, a human being in his private capacity;

Kathleen O'Leary, a human being, in her private capacity;

Thomas Goethals, a human being, in his private capacity;

[12] See especially President Andrew Johnson's Veto thereof.

Richard Aronson, a human being. in his private capacity;

Law Offices of William Bissell;

Prestige Default Services, LLC;

Citibank, N.A. As Owner Trustee for NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2;

First National Bank of Omaha;

The Dunning Law Firm, APC;

Donald Dunning, a human being;

James MacLeod, a human being;

Patricia Sanchez, a human being;

Does 1 through 100.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS

### California "Statutes"

For Cal. Business and Professions Codes §7028, §7031, §7071.17 and §7085, refer to Appendix [Q] pp.82-88.

### Northwest Ordinance of 1787

**Section 14, Article 2 of the Northwest Ordinance of 1787 as reenacted by the First Congress** declares that "The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

### Constitution for the United States of America

**Article I, §2** declares that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at Least one Representative; and until such enumeration shall be

made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

**Article I, §9** declares in pertinent part that "[n]o Bill of Attainder […] shall be passed."

**Article I, §10** declares that "No State shall […] make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.

**Article III** declares in pertinent parts that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

**Article IV, §3** declares in pertinent part that "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; […] without the Consent of the Legislatures of the States concerned as well as of the Congress."

**Article IV, §4** declares that "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

**Article VI, §2** declares in pertinent parts that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States

and of the several States, shall be bound by Oath or Affirmation, to support this Constitution[.]"

**The First Amendment** declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

**The Fifth Amendment** declares that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

**The Sixth Amendment** declares that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

**The Seventh Amendment** declares that "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

**The Eighth Amendment** declares that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

**The Ninth Amendment declares that "**The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

**The Tenth Amendment** declares that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

**The Thirteenth Amendment** declares that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

**The Fourteenth Amendment** declares, in pertinent parts that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

## STATEMENT OF JURISDICTION

Under our Constitutional government of *defined and limited* powers, the Constitution is the "supreme Law of the Land",[13] not the arbitrary acts of public officials. As public officials are agents of the People, challenges to their authority cannot be summarily denied and avoided at the whim or discretion of the official. "[W]henever an act of […a] government [official] is challenged[,] [the] grant of power must be shown, or the act is void."[14]

Petitioner's accompanying Petition for Original Writs of *Quo Warranto*, *Mandamus*, and non-statutory *Habeas Corpus* challenging the authority of officials of the State of California and the United States to excessively, cruelly, and unusually punish and/or to conspire to punish him and deprive him of his rights, liberty, and property without a judicial determination thereof are writs of *right* and are not to be confused with any "discretionary" writs. Cf. Rule 20 of the Rules of the Supreme Court declaring that petitions for extraordinary writs are "not a matter of right, but of discretion."

On petition for non-statutory Original Writ of *Habeas Corpus*, this Court has jurisdiction over the subject matter pursuant to Article I, §9, Cl. 2 and Article III, §2, which declares, that "[t]he judicial Power **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution […]." (Emphasis added). See also *Ex parte Siebold*,[15] holding that "[t]he only ground on which this Court, or any court, without

[13] Article VI, §2.

[14] *United States v. Rhodes*, 27 F. Cas. 785, 790 (1866).

[15] *Ex parte Siebold*, 100 U.S. 371, 375 (1879).

some special statute authorizing it, will give relief on habeas corpus […] is the want of jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings void."

Petitioner asserts that the officials in the challenged actions herein lacked jurisdiction over his person and/or of the cause and that he has been falsely constructively imprisoned and subjected to involuntary servitude as a result of an *ultra vires* prosecution and other "official" actions taken under color of law but without Lawful authority. Accordingly, this Court also has power to grant this Writ pursuant to Article III, §2, Article I, §9 Cl. 2, Article I, §9 and §10, the First and Fifth Amendments, §14 of the Judiciary Act of 1789, and/or 28 U.S.C. §2241(c)(1) and (2) because Petitioner has been unlawfully restrained "under or by color of the authority of the United States[,] [an] act done or omitted in pursuance of an Act of Congress, [and] order[s], [and] judgment[s] of judge[s] of the United States."

On Petition for Original Writs of *Quo Warranto* and *Mandamus*, this Court has subject matter jurisdiction pursuant to Article III, §2, Article I, §9 and §10, the First and Fifth Amendments, §14 of the Judiciary Act of 1789, and/or §28 U.S.C. §1651(a).

Pursuant to Article I, §9, Article VI, §2, and Article III, §2, this Court has personal jurisdiction over all of the parties who are either officers of the Court, officials of California or the United States or People or entities that have submitted to the jurisdiction of this Court by filing pleadings subject to its review. All parties have been properly served pursuant to the "Rules" of this Court.

## II. VERIFIED STATEMENT OF THE CASE

### A. BACKGROUND

The case against Petitioner arose as a simple and straightforward civil contract dispute over non-payment for materials and labor services rendered by his company, The Spartan Associates, Inc.[16] ("Spartan"), pursuant to its alleged agreement with Karen and Gary Humphreys, ("the Humphreys"), to perform custom remodel construction work on their condominium units in Newport Beach, California. When the Humphreys refused to pay Spartan, Spartan initiated a suit in the Superior Court of California-County of Orange with claims for quantum meruit and open book account.

In response to Spartan's suit, the Humphreys filed cross-complaints against Spartan, Petitioner, and two surety companies. Among the allegations were claims for damages, negligence, and misrepresentation.

The Humphreys initial defense strategy was to a file a Motion for Summary Judgment on the grounds that because Spartan had allegedly not complied with certain aspects of the contractor "licensing laws" that it lacked standing to the relief it sought. The part of their Motion most relevant here claimed that: (1) the "undisputed facts" establish that Spartan was a **licensed building contractor** and that Spartan (not Petitioner) entered into an agreement with them for home improvement work. Exhibit [A3] pp.231-233. Bolded emphasis added.

[16] A corporation chartered under the laws of the State of California that was solely owned and operated by Petitioner and had repeatedly elected itself as a subchapter S corporation. Spartan remains in the process of dissolution as a result of the issues in this case.

When the Humphreys failed to prove as a matter of law that they were entitled the relief they sought, they concocted a new claim that they *never* contracted with Spartan, but instead with Petitioner, and that since Petitioner was allegedly unlicensed, they were entitled a full refund *without* offsets for the benefits they received pursuant to Cal. Business and Professions Code. §7031(b). (This would amount to a $930,000 total forfeiture to Petitioner while the Humphreys would also receive a windfall of the $930,000 in custom work Spartan performed on their home).

Immediately prior to "trial", the Humphreys amended their complaint with the new first cause of action under §7031(b) they called "disgorgement", while simultaneously severing *all* of their other remaining cross-claims in a Motion for Severance that was granted by the "Court". "Trial" proceeded on their first cause of action for "disgorgement" *only*.

As will be evidenced, Business and Professions Code §7031(b) does not mention let alone authorize a claim for "disgorgement"– an equitable remedy designed to strip a wrongdoer of their illegal profits. Rather, §7031(b) authorizes a total penal forfeiture as punishment for committing the offense of contracting without a license– a public offense that can only be prosecuted under the Executive power of California by the District Attorney's office, not private parties like the Humphreys.

## B. PROCEDURAL HISTORY

### 1. "Trial": Superior "Court" of California-County of Orange

On March 27-28th, 2017, Petitioner was criminally prosecuted in the Superior Court of California-County of Orange, under the fraudulent pretense of a remedial

civil action in Equity for allegedly performing construction work without a license pursuant to Cal. Business and Professions Code §7031(b). At "trial" he was denied all the heightened protections of criminal proceedings including the assistance of counsel and trial by jury. Upon "conviction" he was excessively fined (ordered to forfeit) about $930,000 without any of the protections of the excessive fines clause pursuant to §7031(a) and (b).

Despite the facts that: (1) Spartan was listed on the City of Newport Beach Building Permits as the contractor (vf)[17](Exhibit [A5] pp.499-501); (2) Petitioner was the qualifying individual for Spartan's general contractor license (vf); (3) the Humphreys and Gary Humphreys company, directly paid Spartan $758,000 (Exhibits [A4] p.128 line 19–p.129 line 3, p144 line 17–p.146 line 9 and [A5] pp.475-488); (5) the Humphreys never presented any known evidence Petitioner was a "person" required to be licensed[18] (vf); (6) the Humphreys never presented any known evidence that Petitioner, independent of Spartan, performed any specific work on their project *and* that this work was required to be licensed (vf); and, (7) the Contractors State Licensing Board had determined Petitioner was "qualified" as a general building contractor (vf), "Judge" David Chaffee, found that Petitioner (not Spartan) was the contractor, that he was unlicensed, and "subject to the [total] forfeiture". Exhibit [A4]– Reporter's Transcript p.201.

Chaffee awarded the Humphreys "disgorgement of funds paid" in the amount of $848,000 pursuant to Cal. Business and Professions Code §7031(b). Appendix [A]–

[17] All statements followed by "(vf)" indicated a verified fact. The same applies to all statements made citing Exhibits verifying the statement.

[18] See *Bass v. United States*, 784 Fed. 2d. 1282, 1284 (1986).

Minute Order pp.4-5 and [B]– Judgment p.7 even though §7031(b) fails to grant the "Court" subject matter jurisdiction to award the forfeiture of payments made to *licensed* contractors. Chaffee also held that Petitioner was barred from recovering the approximate $82k allegedly due Spartan on its quantum meruit claim because he was the contractor (not Spartan) pursuant to §7031(a). Appendix [B]– Minute Order, p.5. See also Proc. Hist. Exhibits [A1-A5] found on http://www.thespiritoflaw.com.

Ninety days after the "Judgment Order" was issued on April 20, 2017, Petitioner's vested right to act as a qualifying individual for a general contractor license (which included Spartan's license) was summarily suspended/revoked indefinitely by operation of Cal. Business and Professions Code §7071.17 without a hearing or any known appeal process. No known official record exists for this suspension, even though it is commanded by §7071.17.

**2. "Appeal"–Fourth District "Court" of Appeal**

On appeal to the California Fourth District "Court" of Appeal, "Justices" Aronson, Goethals, and O'Leary (CJ) affirmed Chaffee's "Judgment" in its entirety, holding that all of Petitioner's claims on appeal were "meritless" and that he was not being punished because the $930,000 fine was not penal, but instead an "equitable remedy" known as "disgorgement".[19] Appendix [C]– Opinion pp.9-22 dated October 31, 2018, and Proc. Hist. Exhibits [A5-A18].

**3. Challenge to Jurisdiction: Superior "Court" of California- County of Orange**

[19] *Humphreys v. Bereki*, 2018 Cal. App. Unpub. LEXIS 7469 p.14 (2018).

When the Appellate "Justices" awarded costs against Petitioner (to further take his money and property without Lawful authority) and remitted the case to the Superior "Court", he again challenged jurisdiction. "Judge" Di Cesare refused to vacate the void "Judgment" finding that the appellate "Court's" arbitrary edict was "final". Appendix [D]– Minute Order p.23 dated March 15, 2019, Reporter's Transcript pp.24-37, Proc. Hist. Exhibits [A19-A23], and [E1].

**4. Petition for Review– California Supreme "Court"**

On Petition for Review to the Supreme "Court" of California, "Justices" Tani Cantil-Sakouye (CJ), Carol A. Corrigan, Goodwin H. Liu, Mariano-Florentino Cuellar, Leondra R. Kruger, Joshua P. Groban, and Ming W. Chin, sitting en banc, denied Petitioner's Petition for Review. Ordinarily review by the Supreme Court is discretionary. In this case however, it was *mandatory* because Petitioner never received a full, fair, or impartial trial or appeal and there was no other Court of California to obtain a remedy. Appendix [E] p.38, and Proc. Hist. Exhibits [A24-A27]. The "Court" has no record of which "Justices" voted to arbitrarily deny the Petition. Exhibit [C] pp.2595-2608.

**5. Petition for Writ of Certiorari– U.S. Supreme "Court"**

On Petition for Writ of *Certiorari* to this "Court", unknown "Justices" arbitrarily denied Petitioner's challenge to jurisdiction on October 7, 2019, despite the fact that Article III, §2 of Constitution mandated the Court to hear and determine his case. The "Court" also had a duty to hear his case especially because he had never

been afforded a full, fair, impartial or independent trial or appeal and there was no Court in California to obtain a judicial remedy. See case# 18-1416.

**8. Independent Action in Equity– U.S. District "Court" Central District of California**

In an Independent Action in Equity in the United States District "Court" for the Central District of California, Petitioner challenged the jurisdiction of the State "Court" "Judgments" and the Constitutionality of §7031 and §7071.17. District "Judge" Marshall refused to perform a full, fair, impartial, and independent investigation of his claims and held that the "Court" lacked subject matter jurisdiction to grant him relief because of the doctrines of collateral estoppel and Rooker-Feldman. Appendix [G]– Opinion pp.41-50 dated February 6, 2020, and Procedural History Exhibits [A29-A36]. Upon notice of appeal, Marshall declared Petitioner's appeal "frivolous" and denied his *in forma pauperis* status. Appendix [H] pp. 51-52. She also denied his request for counsel. Appendix [F] p.39.

**7. "Appeal"– Ninth Circuit "Court" of Appeals**

On appeal to the Ninth Circuit "Court" of Appeals, "Judges" Thomas (CJ), Tashima, and W. Fletcher, dismissed Petitioner's appeal as "frivolous" on November 12, 2020. Appendix [I] p.53, and Proc. Hist. Exhibits [A38-A42].

**8. Emergency Petition for Writ of *Habeas Corpus*– U.S. Supreme "Court"**

On September 16, 2021, Petitioner sent an Emergency Petition for Writs or Error and/or non-Statutory *Habeas Corpus* to this "Court". It was received on

September 22, 2021. Exhibit [A43]. The Clerk refused to file the Petition and returned it because it was allegedly not in the proper form as required by the "Rules of "Court" (Appendix [N] p.72).

According to this Court, "the Constitution does not require that the case or controversy should be presented by traditional forms of procedure[.]"[20] Equally important, the "Rules of Court", which have the force and effect of law and can result in the summary denial of Constitutional rights (as they did here), have never been approved by "Congress" or the President and therefore are without authority. The Clerk's office has also repeatedly acted in the capacity of a "gatekeeper" to screen cases before they are given to the Justices. The Clerk of Court has never been appointed as an Article III United States Judge by any President or confirmed by the Senate, and therefore has no power whatsoever to act in the capacity of a Constitutionally unauthorized "gatekeeper" to exercise the judicial power of the United States and summarily reject cases. Cf. Rule 5 of the FRCP whereby "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

See also Appendix [S]– Questions Presented: 21-22.

**9. Criminal Complaints/ Petitions for Redress of Grievance**

While pursuing a judicial remedy, Petitioner filed Petitions for Redress of Grievance and/or criminal complaints with the Governor of California (Gavin Newsom), Attorney General of California, California Commission on Judicial

[20] *Nashville, C. & St; Louis Ry. Co. v. Wallace*, 288 U.S. 249, 264 (1933)

Performance, Assembly of California through the office of Assemblywoman Cottie Petrie-Norris, the Senate of California through the office of Senator John MW Moorlach, Santa Ana Police Department, Orange County Sheriff-Coroner Department, Newport Beach Police Department, Costa Mesa Police Department, Irvine Police Department, California Highway Patrol, Orange County District Attorney, U.S. Department of Justice, and the Federal Bureau of Investigation. All of the officials who received the complaints have either refused to perform a full, fair, impartial, and independent investigation into his claims and/or refused to intervene to stop the irreparable harm and damages being perpetrated upon him. Exhibits [C], [D], [E], [F] and section II(D)(3) *infra.*

**10. Application for Emergency Stay/ Petition for Writ of *Habeas Corpus* Superior "Court" of California- County of Orange**

As a direct and proximate cause of the fraud, deceit, treason and other crimes perpetrated upon Petitioner–especially the restraint of his liberty with no apparent means of relief–his private contracts and obligations became impaired resulting in two actions (thus far) taken by "creditors". In the first action, Prestige Default Services, LLC, the (Trustee) for the "Deed of Trust" securing the "Promissory Note" for a "loan" pertaining to real property held in Petitioner's living trust, initiated non-judicial foreclosure proceedings on July 7, 2022 for non-"payment" of $37,958.42. Exhibit [D] pp.5225-5230. In the second action, First National Bank of Omaha sued Petitioner for "damages" for breach of credit card contract in the Superior "Court" of California, County of Orange, for failure to "pay" $13,052.87. See case #30-2022-01271693.

Petitioner responded to both actions by filing a Petition for Writ of *Habeas Corpus* in the Superior "Court" on September 7, 2022, challenging the personal and subject matter jurisdiction of the State of California and the United States to unlawfully prosecute and punish him and/or sanction this behavior, including denying him a remedy, republican form of government, and impairing the obligations of his private contracts. The requested relief included a request for expedited processing[21] and for an emergency stay of both of the above actions. Proc. Hist. Exhibit [A46]. The Deputy Clerk set a hearing date for the Petition for October 13, 2022.

Pursuant to Cal. Civil Code §2924(a)(2), the foreclosure redemption period is not less than three months, or about October 7, 2022, 90 days after July 7, 2022 when the Notice of Default was filed and six days *after* the hearing date for the *Habeas* Petition was set. Because Petitioner had been denied relief in every branch of government and could not cure the defaults by "payment", his only apparent recourse other than an emergency stay would be to file for bankruptcy involuntarily. To stop the irreparable harm and damages, including to avoid being forced into bankruptcy, he filed an *Ex parte* Application for Emergency Hearing on the Petition and set the hearing date for September 15, 2022. Proc. Hist. Exhibit [A47].

While the *appearance* of a hearing was conducted by Superior Court "Judge" Sandra Leal, Petitioner was denied a full, fair, and impartial hearing and judicial determination of his rights resulting in the summary denial of his Application and all claims for relief. On the record, Leal held that she "[didn't] find that there [were]

[21] Cal. Rules of Court, Rule 4.551(h).

exigent circumstances […and] that a Petition for Writ of *Habeas Corpus* [was not] applicable in this situation." Appendix [R] p.89.

Pursuant to Cal. Penal Code §1473(a) "[a] person unlawfully […] restrained of their liberty, **under any pretense**, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint." (Bolded emphasis added). Leal made no apparent meaningful inquiry. See also *In re Winchester*,[22] holding that *habeas corpus* is the proper remedy to collaterally attack a judgment [restraining liberty] in violation of fundamental constitutional rights, *In re McDonald*[23]*, and Deshaney v. Winnebago County Dep't of Social Services,*[24] holding that:

> "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The affirmative duty to protect arises […] from the limitation which [the State] has imposed on his freedom to act on his own behalf."

The Minute Order issued by Leal contains no Lawful authority or other substantive reasoning for her summary denial of not only Petitioner's right to *Habeas* relief, but to all his rights secured by the California and U.S. Constitutions that continue to be violated.

On October 13, 2022, the hearing initially scheduled for the Petition was commenced before Superior "Court" "Judge" Corey Cramin. Cramin summarily denied the Petition and requests for an emergency stay. Cramin's "Minute Order",

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[22] *In re Winchester*, 53 Cal 2d 528, 531 (1960).

[23] *In re McDonald*, 16 F. Cas. 17 (1861).

[24] *Deshaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 199-200 (1989).

like Leal's, contains no Lawful authority or other substantive reasoning for his summary denials. Appendix [R] p.90.

## C. OVERVIEW OF THE CRIMINAL ENTERPRISE

The criminal Enterprise operates as a shadow government, what some have called "The Deep State", in interstate commerce and/or under Federal regional martial law rule, whereby it uses the appearance and facade of the Lawful California and U.S. Constitutional governments to carry out its agenda while committing crimes, treason, and acts of racketeering upon the People of California and America to systematically their Lawful governments. Many of these subversive acts also appear to be taking place under the guise of the "progressive" movement, apparently intent on overthrowing Republican forms of government with communist or totalitarian forms of government.

The principal ways the Enterprise functions and continues to expand its parasitic sphere of influence is either through the arbitrary exercise of power without Lawful authority and/or the refusal to exercise the Constitutionally mandated powers vested in the official offices occupied by members of the Enterprise.

## D. ANTI-CONSTITUTIONAL POLICIES AND PROCEDURES OF THE ENTERPRISE/ EXTRAORDINARY REASONS RESULTING IN THIS COURT'S MANDATORY DUTY TO EXERCISE JURISDICTION AND GRANT THE REQUESTED RELIEF

### 1. Malicious Prosecution and False Imprisonment

#### *a. Destruction of Inalienable Rights and Unlawful Creation of Fourth Branch of Government*

To understand how Petitioner became subjected to the malicious prosecution for unlicensed contracting in the first place, it's imperative to examine how the contractor "licensing laws" under the California Business and Professions Code came into existence.

One of the primary reasons behind establishing our Constitutional forms of government of carefully defined and limited powers was to recognize and protect the inherent rights of People to life, liberty, and property, and to declare, without any ambiguity, that these rights were innate in the individual, antecedent to the formation of government, and could not be taken away by whichever way the political winds blew.[25] Put differently, these "creator-endowed inalienable rights" were not mere privileges subject to the arbitrary whim of government officials, democracies/mob majorities, commercial regulations, or "police powers".

As one of the checks and balances to ensure these private inalienable rights remained protected beyond their mere parchment declaration, the Judicial branch of government was established to adjudicate disputes involving them, but only through procedures that had been established over centuries that were firmly rooted in the common Law upon which every State (except Louisiana) had been admitted to the union. Many of these protections also became enumerated in the Bills of Rights of Constitutions.

[25] "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943).

In the early 1900's, however, the "Legislature" of California, acting without any Lawful representative quorum or Lawful authority, began converting private inalienable[26] (not lienable, non-commercial) rights into revocable public privileges in interstate commerce.[27] While done under the guise of "protecting the public", the real agenda was to create and empower a centralized totalitarian[28] Police State ("total State" or "the Enterprise") by implementing a new authoritarian system of government under Roman civil law in direct violation of the California and U.S. Constitutions. The intent of this new "government"–as directly evidenced by the untold millions of rules, regulations, statutes, and codes it has since created–was to dominate and control nearly every aspect of the lives of the People of California while masquerading as a Lawful Republican, "free" form of government despite having no consent of the governed or Lawful authority.

The implementation of the total State/ Enterprise required three primary means: (1) for government "officials" to commit fraud, treason, and other crimes by either exercising powers without Lawful authority to create and enforce the new policies and procedures of the total State/Enterprise; (2) for government "officials" to

[26] Secured by: Article I, §1 of the Cal. Constitution; Article I, §10 and the Ninth Amendment to the U.S. Constitution. See also *Hale v. Henkel*, 201 U.S. 43, 74 (1906) recognizing that "[t]he individual […] is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State […]."

[27] Inalienable rights secured on Land by the California and U.S. Constitutions are either not recognized or secured in interstate commerce governed by international law, Roman civil law, and/or Admiralty/Maritime jurisdictions where there is no Constitution/ Bill of Rights securing them. Commerce (com- with, mer- sea) is a jurisdiction dealing with commodities and things that doesn't recognize the inalienable rights of sentient beings.

[28] A form of government and a political system that prohibits all opposition parties, outlaws individual and group opposition to the State and its claims, and exercises an extremely high degree of control and regulation over public and private life. It is regarded as the most extreme and complete form of authoritarianism. In totalitarian States, political power is often held by autocrats, such as dictators and absolute monarchs, who employ all-encompassing campaigns in which propaganda is broadcast by state-controlled mass media in order to control the citizenry.

refuse to perform the sworn mandatory non-discretionary duties of their office, including, most specifically, those duties known as "checks and balances"; and, (3) for the People to refuse to perform their duties as principals of their government to keep their agents within the chains of the Constitution thereby stopping the usurpers of the total State/ Enterprise from implementing the takeover.

One of the most explicit acts of the Enterprise was to literally create a Fourth branch of government, without any authority whatsoever, that would combine the powers of all three of the existing Legislative, Executive, and Judicial branches Constitutionally made separate. These branches were intentionally made separate because the People and Framers, having just escaped the throes of tyranny, knew that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."[29] And they "regarded [the separation of powers as a system of] checks and balances [and] self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."

To this end, The California Constitution of 1849 established a tripartite Republican form of government that almost mirrors that of the United States government. Each branch was vested with certain "core" or "essential" functions that were not be usurped by another branch.[30] Article IV, Section 1 declares that "[t]he

[29] *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57 (1982) (Per curiam)(Internal quotations and citations omitted) citing The Federalist No. 47, p. 300 (H. Lodge ed. 1888) (J. Madison).

[30] *Northern Pipeline v. Marathon Pipeline*, 458 U.S. 50, 57-8 (1982) citing *Buckley v. Valeo*, 424 U.S. 1, 122 (1976). (Per curiam).

legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly [...]" Article V, Section 1 declares that "[t]he supreme executive power of this State is vested in the Governor [and that] "[t]he Governor shall see that the law is faithfully executed". Article VI, Section 1 declares that "the judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record." Just to ensure this separation of powers was abundantly clear, Article III, Section 3 separately declares that "[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."[31]

Despite the foregoing, one Fourth branch agency, known today as the Contractors State Licensing Board, sprung into existence to take total control of the construction industry in California and to create a means for the non-judicial determination of property rights in construction-related disputes by forcing parties into highly unconstitutional "mandatory arbitration" proceedings in direct violation of the separation of powers. The "mandatory arbitration program" was created by the Licensing Board and/or employees thereof treasonously exercising the Legislative and Executive powers of California that have never been conferred upon it/them.

To initially create and empower the Board, the "Legislature" had to effectively

[31] See especially Justice Thomas' dissent in *Seila Law, LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2216 (2020). "The Constitution does not permit the creation of officers exercising "quasi-legislative" and "quasi-judicial powers" in "quasi-legislative" and "quasi-judicial agencies." No such powers or agencies exist. Congress lacks the authority to delegate its legislative power, and it cannot authorize the use of judicial power by officers acting outside of the bounds of Article III[.] Nor can Congress create agencies that straddle multiple branches of Government. The Constitution sets out three branches of Government and provides each with a different form of power[…]. Free-floating agencies simply do not comport with this constitutional structure.

rob[32] the People of California of their inalienable right to their time and labor (Cal. Const. Article I, §1) by denying them a hearing and judicial determination of their rights while simultaneously converting their inalienable rights into revocable privileges entirely subject to the "licensing laws" and "policies" of the Board. This policy was most clearly expressed by the Attorney General of California in Opinion 47-175:

> "Since a license to conduct any of the regulated activities [in California] is a mere statutory privilege [not an inalienable right]–a creature of statute–it is at all times subject to legislative control, including destruction or termination by the legislative process."

The destruction of inalienable rights at the hands of political majorities was exactly what the doctrine of separation of powers and checks and balances was intended to protect against. But the system of check and balances could only work if the Courts, Executive officials, and the People were steadfast in their duties. They weren't, and "The New Despotism"[33] in the form of the total State/ Enterprise was born. [34]

### *b. The "Legislature" of California Was Without Authority to Transfer the Executive Power of California to Private Parties Depriving the Superior Court of Subject Matter Jurisdiction*

At first blush, Business and Professions Code §7031(b) appears to be civil remedial statute giving private parties the privilege of recovering compensation they

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[32] Robbery is the taking of property (such as rights) without Lawful authority by means of force or fear. See e.g. Cal. Penal Code §211. If a government official uses force and/or fear to take something (rights, liberty, property) without Lawful authority (Constitutionally prescribed due process), then they are committing the felonious crime of robbery.

[33] The New Despotism, Lord Hewart (London Ernest Benn Limited 1929), p.17.

[34] Petitioner has been unable to locate any official documents that these changes to California's form of government, in addition to having never been approved by the People, have ever been approved by Congress pursuant to Article IV, §3.

paid to an unlicensed contractor by commencing a civil suit. But §7031(b) is a wolf in sheep's clothing. It's really an action intended for private parties to commence an unlawful criminal prosecution disguised as a remedial civil action. To discover the wolf lurking behind the sheep's clothing, it's necessary to forensically examine the "Legislative" intent, the history of interpreting and enforcing §7031(b) claims by California "Courts", and most importantly, what the real effect of the statute has on an unlicensed contractor.

### 1. Business and Professions Code §7031 Imposes a Total Penal Forfeiture Not Equitable Disgorgement

California Business and Professions Code §7031(b) is a public regulatory penal statute that governs contractor licensing under California's contractor "licensing laws". It declares that:

> "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."

According to the Supreme "Court" of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing **penalty** for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[35]

[35] *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (Cal. Supreme Ct. 2005). Italicized emphases original. Internal quotations omitted. Bolded emphasis added.

More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[36] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided.[37] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

One august authority addressing these precise issues is the *Town of Gilbert Prosecutors Office v. Downie*,[38] which Petitioner cited on appeal to the Fourth District. Exhibit [A6] pp.29-30. The *Gilbert* case involved "disgorgement" and the criminal prosecution of an unlicensed contractor where the Supreme Court of Arizona found that "a rule of total disgorgement [forfeiture] regardless of any benefit conferred on the victim […] may lead to absurd or troubling results." Discussing the issue, the high Court found that "when determining the proper amount of restitution to be paid to a victim, consideration should be made for [the] value conferred on the victim;" *Id.* p.18. and, that restitution "should not compensate victims for more than their actual loss." *Id.* p.13. Citing both the Seventh[39] and Ninth[40] Circuit Courts of Appeal, the Gilbert Court declared that they "[found] no significant difference between returning cash,

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[36] *Asdourian v. Araj*, 38 Cal. 3d 276, 282 (Cal. Supreme Ct. 1985) "In view of the severity of this sanction and of the forfeitures which it necessarily entails […]." Quotations and citation omitted; *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882, 895 (2015). "Because the remedies of subdivisions (a) and (b) of section 7031 are essentially two sides of the same coin in denying compensation to an unlicensed contractor, we will refer to the remedies jointly as forfeiture." Internal quotations omitted. See also *Austin v. United States*, 509 U.S. 602, 614 (1993) stating forfeit is the word the First Congress used for a fine.

[37] *Humphreys v. Bereki*, 2018 Cal. App. Unpub. Lexis 7469 (2018) p.14, *Lewis & Queen v. N. M. Ball Sons,* 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957) "[T]he courts may not resort to equitable considerations in defiance of section 7031." *Ebbert v. Mercantile Trust Co.,* 213 Cal. 496, 499-500 (Cal. Supreme Ct. 1931).

[38] *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (2008).

[39] *United States v. Shephard*, 269 F. 3d 884 (7th Cir. 2001).

[40] *United States v. Matsumaru*, 244 F.3d 1092, 1109 (9th Cir. 2001). See also *People v. Fortune*, 129 Cal. App. 4th 790 (2005).

one form of value, and returning other forms of value, such as permits, chattels, services, or other property [and that the concept of] loss is […] rooted in value, not solely in the exchange of money." *Id.* p.25.

In his concurring opinion, Justice Hurwitz added that under the pretense of a total forfeiture of "disgorgement" without offsets for the value conferred, "a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but would nonetheless also retain the work performed." He concluded "[i]t is impossible for me to view such a victim as having suffered any loss, economic or otherwise..." *Id.* p.30.

Notably, the Fourth District "Justices" refused to even acknowledge this case and found all of Petitioner's claims making these Lawful and rational arguments "meritless".

After Petitioner was purportedly found to be the unlicensed contractor (as opposed to Spartan), he was denied all offsets for the alleged $930,000 work that was performed by Spartan on the Humphreys project and ordered to pay the Humphreys an additional $848,000. He was also denied the right to compensation for the approximate $82,000 that the Humphreys refused to pay pursuant to §7031(a).

The legislative history of §7031(b) confirms this draconian punishment was indeed intended by the California "Legislature" and "Governor" upon its enactment. See Exhibit [B] p.860:

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, 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, those using unlicensed contractors 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."

As this Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment […]."[41]

Other obvious indications of §7031's purely penal nature are: (1) that §7031(b) falls squarely within the definition of a crime or public offense as defined by Cal. Penal Code §15[42]; and, (2) that the same conduct is made criminal by Cal. Business and Professions Codes §7028 and §16240.

It should be carefully noted that the *maximum* fine for a first offense of unlicensed contracting under §7028 is $5,000, not $930,000.

Pursuant to a Public Records Request to the Orange County District Attorney, the ten most recent first-offense convictions for violating §7028 averaged a fine of $750 and a year of informal probation. Exhibit [C] pp.2550-2557.

Chaffee's "Judgment" was no accident or "harmless error". He had direct knowledge of §7031's penal nature by the fact that he was the trial "Judge" in the *MW Erectors* case that went to the Cal. Supreme "Court" where it found that §7031 imposed "a stiff all-or-nothing penalty". Chaffee also cited *MW Erectors* in his discussion of his "Judgment" at "trial", identified it as the "bellwether case on the issue of […] unlicensed contractor responsibility" (Exhibit [A4]– Reporter's Transcript p.200) and admitted that he was imposing a forfeiture. *Id.* p.201.

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[41] *Smith v. Doe*, 538 U.S. 84, 92 (2003).

[42] "A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction […][a] [f]ine."

**2. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Award a Total Forfeiture Disguised as Equitable Disgorgement Because the Humphreys Never Stated a Claim for Disgorgement**

Business and Professions Code §7031 mentions nothing about "disgorgement". Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is also *not* used *anywhere* in the legislative of history of §7031. Exhibit [B]. And, as previously evidenced, the "Legislature" and "Governor" (Gray Davis) were perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

According to this Court's recent decision in the case of *Liu v. SEC*,[43] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, *not* the total penal forfeiture of an entire transaction *without* offsets for benefits conferred.

Even assuming §7031(b) called for a true claim of equitable disgorgement, Petitioner is: (1) unaware of any evidence on the trial "Court's" record that he profited even one dollar let alone the $930,000 awarded by Chaffee to the Humphreys (vf); or, (2) that he was unjustly enriched by allegedly performing the custom remodel work requested by the Humphreys (vf). See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

> "Allegations that the defendant is a wrongdoer, and that the defendant's business is profitable, do not state a claim in unjust enrichment. By contrast, a claimant who is prepared to show a causal connection between defendant's wrongdoing and a measurable increase in the defendant's net assets will satisfy the burden of proof as ordinarily understood."

[43] *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020).

The Humphreys evidenced that they (and Gary Humphreys company, Humphreys & Associates, Inc.) paid a total of $848,000 to Petitioner and Spartan, which was undisputed (vf). In an action for unjust enrichment, however, "[t]he emphasis is on the wrongdoer's enrichment, not the victim's [payments]".[44] Therefore, if §7031(b) actually provided a claim for disgorgement, Petitioner was entitled to offsets for the compensation that had *already* been returned to the Humphreys. Under the Maxims and Principles of Equity Adjudication, "[n]o one is presumed to give something for nothing. And no one can in reason and conscience expect to receive something for nothing."[45]

Not only does §7031(b) not authorize a claim for "disgorgement", the punishment provided by §7031(b) is neither equitable nor remedial. The Supreme "Court" of California and lower "Courts" have also repeatedly held that "courts may not resort to equitable considerations in defiance of section 7031"[46], evidencing it is not an equitable action. Consequently, the Humphreys never stated a claim for equitable disgorgement or unjust enrichment and Chaffee clearly imposed a total penal forfeiture.

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent–is to invoke a default rule, […] not of flexibility but of omnipotence".[47]

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[44] *Meister v. Mensinger*, 230 Cal. App. 4th 381, 390 (2014) citing *County of San Bernardino v. Walsh*, 158 Cal. App. 4th 533 542-543 (2007). See also Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *h.*

[45] A Treatise on Suits in Chancery, Setting Forth the Principles, Pleadings, Practice, Proofs and Process of The Jurisprudence of Equity, Henry R. Gibson, Second Edition 1907, §43, p.37.

[46] *Lewis & Queen v. N. M. Ball Sons,* 48 Cal 2d. 141, 152 (Cal. Supreme Ct. 1957).

[47] *Grupo Mexicano De Desarollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). Internal quotations omitted.

"Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[48]

**4. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Award a Total Penal Forfeiture Disguised as "Damages" Because the Humphreys Never Stated a Claim for Damages**

Even though Chaffee's "Minute Order" stated that he awarded the Humphreys "disgorgement", the "Judgment Order" he later signed, Appendix [B] pp.7-8, is for "[d]amages". Petitioner is also unaware of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with any State or Federal Court definition thereof (vf).

In *Birdsall v. Coolidge,*[49] this Court defined damages as "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and that "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

Under Cal. Civil Code §3281, which purportedly codified the common Law definition of damages in California, "[e]very person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages." "[A] [p]laintiff has [the] burden of proving, with reasonable certainty, damages actually sustained by him as result of defendant's wrongful act, and [the] extent of such damages must be proved

[48] *Id.* p.333. Internal quotations omitted. See also *Liu v. SEC*, 140 S. Ct. 1936, 1941 (2020) holding "equity never lends it's aid to enforce a forfeiture or penalty." Internal quotations and citation omitted.

[49] *Birdsall v. Coolidge,* 93 U.S. 64 (1876).

as fact. [The] burden of proving damages placed on plaintiff is not lessened by his presentation of [a] prima facie case of negligence against [the] defendant"[50] "[and] [d]amages cannot be recovered if the evidence leaves them uncertain, speculative, or remote."[51]

According to the California Second District "Court" of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.,*[52] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the "licensing laws" are founded is purely hypothetical.

Under California law, "any provision by which money or property is to be forfeited without regard to the actual damage suffered calls for a penalty and is therefore void."[53] See also Cal. Civil Code §3275 and *Ebbert v. Mercantile Trust Co.*[54] requiring equitable relief from a penalty or forfeiture by compensation for damages

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[50] *Chaparkas v. Webb*, 178 Cal. App. 2d 257, 259 (1960).

[51] *Page v. Bakersfield Uniform & Towel Supply Co.,* 239 Cal App. 2d 762, 774 (1966). See also *Frustuck v. Fairfax*, 212 Cal. App. 2d 345, 368 (1963) "[a] wrong without damage does not constitute a cause of action for damages" and "nominal damages to vindicate a technical right cannot be recovered in a negligence action where no actual loss has occurred."

[52] *Eisenberg Village etc. v. Suffolk Construction Co., Inc.,* 53 Cal. App. 5th 1201, 1213 (2020). Internal parenthesis omitted.

[53] *Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.,* 232 Cal. App. 4th 1332, 1357 (2015). Citation omitted.

[54] *Ebbert v. Mercantile Trust Co.,* 213 Cal. 496, 499-500 (1931).

*actually suffered*. No such relief was afforded to Petitioner.

The case against Petitioner was clearly not to remediate damages for an *actual* injury suffered by the Humphreys. The Humphreys severed their alleged claim for damages and proceeded to "trial" *only* on their first-amended claim for "disgorgement." At "trial" they introduced no evidence of damages, including any damages that arguably could have been caused by Petitioner's purported lack of a license. In other words, there was no evidence presented of a traceable connection or nexus between the Humphreys claim and the remedy they sought. Their non-existent "injury" was purely hypothetical and speculative and not based in reality. Accordingly, they failed to state a claim for "damages" and thereby deprived Chaffee of subject matter jurisdiction to award any.

See also Appendix [S]– Questions Presented: 1-10, 28, 41.

**5. State and Federal "Court" History of Treason Involving §7031 Actions**

The case against Petitioner is not an anomaly. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.,*[55] where the so-called "Judicial" Council of California sought a $22.7 million "dollar" forfeiture under the same false and fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired to maintain the California "Court" buildings that had admittedly done a good job. In response to a public records request, the "Judicial" Council admittedly spent over $3 million "dollars" of the People's tax "money" in its attempts to prosecute, punish, and likely financially destroy *Jacobs*

[55] *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015).

due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. $3,307,408.78 to be exact. Exhibit [C] p. 1815. One has to wonder just what degree of sociopathy[56] it must take to spend more than 3 million "dollars" to try to ruin a company that provided quality service and caused no harm. This is precisely the lack of humanity and direct evidence of the severe mental illness that is rampant in the behavior of the "officials" of this case (and many others) to use one's position of honor, profit, and trust without empathy or fairness and as a weapon of domestic violence, treason, and oppression.

It is unknown exactly how many other similar cases like Petitioner's have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes like §7031, which has been in existence since 1929. The following are just a handful of other cases Petitioner was able to locate because an appeal was filed. (Please note that the facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.): (1) *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr, No. 10-41455-DS. ; (2) *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and "Court" costs awarded against *MW Erectors, Inc.* pursuant to §7031(a)

[56] "Sociopathy refers to a pattern of antisocial behaviors and attitudes, including manipulation, deceit, aggression, and a lack of empathy for others."
Source: https://www.psychologytoday.com/us/basics/sociopathy.

upheld by the Cal. Supreme "Court", awarded by "Judge" Chaffee; (3) *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a); (4) *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against *Hydrotech* pursuant to §7031(a); and, (5) *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District "Courts" enforce these same Enterprise "policies". See e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp*.,[57] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a); and the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

In every case Petitioner examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed–and consequently <u>any</u> protections guaranteed by State and Federal Constitutions (especially the excessive fines clause protections)–they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution […] of another."[58]

> *"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would*

[57] *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp*,. 2010 U.S. Dist. LEXIS 116566.

[58] *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973).

*be treason to the Constitution."*[59]

**5. The Trial "Court" "Judge" Lacked Subject Matter Jurisdiction to Punish Petitioner Because Private Parties Lack State and National Constitutional Standing to Prosecute Other Private Parties**

***1. The History of Criminal Forfeiture Laws***

In the case of *United States v. Seifuddin,*[60] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

> "the classical distinction between civil and criminal forfeiture was founded upon whether the penalty assessed was against the person or against the thing. Forfeiture against the person operated *in personam* and required a conviction before the property could be wrested from the defendant. Such forfeitures were regarded as criminal in nature because they were penal; they primarily sought to punish. Forfeiture against the thing was *in rem* and the forfeiture was based upon the unlawful use of the *res*, irrespective of its owner's culpability. These forfeitures were regarded as civil; their purpose was remedial."

Applying this criteria to the instant case, it is plainly obvious that the action against Petitioner was an *in personam* forfeiture intended to punish him for allegedly committing the public offense of unlicensed contracting (even though he was licensed). A total forfeiture like this would be appropriate if he committed a robbery or defrauded the Humphreys by taking their money without conferring any value upon them. But that's clearly *not* what happened.

In *United States v. Shapleigh*, the Circuit Court of Appeals for the Eighth Circuit found that "[t]o protect the substantial rights of the parties [and] to wisely administer the law, courts must frequently look beyond the outward form to the real substance and nature of things."[61] "It is not the form, but the nature of the proceeding

[59] *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[60] *United States v. Seifuddin*, 820 F.2d 1074, 1076-7 (1987). Citations omitted.

[61] *United States v. Shapleigh*, 54 F. 126, 130 (1893).

that must determine the rule to be applied to it." *Id.*

### *2. The Humphreys Admitted Their Intent to Prosecute and Punish Petitioner*

In their First Amended Trial Brief, the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish Petitioner for violating the "licensing law"s by seeking a $930,000 fine/total forfeiture upon him. They claimed that "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

### 3. *The Humphreys Lacked Standing Under the California Constitution to Criminally Prosecute Petitioner*

While the California Constitution does not *overtly* have a case or controversy standing requirement like the U.S. Constitution, this standing requirement is implicit its separation of powers provisions.

The Humphreys lacked standing under the Cal. Constitution to prosecute Petitioner for the commission of a public offense because Article V, §1 vests the *entirety* of Executive power *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting

on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a […] political society, and incorporates into a commonwealth."[62] Therefore, only officials of the Executive branch of California could prosecute Petitioner, not the Humphreys.[63] The "Legislature", therefore, was entirely without any authority to transfer the Executive power of the Governor to private parties.

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, […] have required a further showing of injury for violations of "public rights"–rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include […] general compliance with regulatory law."[64] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[65]

The Humphreys neither alleged nor proved that they were caused any extraordinary damage and no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the

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[62] *Robertson v. Watson*, 560 U.S. 272, 282-3 (2010) citing Locke, Second Treatise §128, at 64. Internal quotations and brackets omitted.

[63] *Robertson v. Watson*, 560 U.S. 272, 273 (2010). See also Cal. Gov't Code §100(b) requiring that all prosecutions be conducted in the name of "The People of the State of California" and by their authority; and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

[64] *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations omitted. Citing Blackstone and Woolhandler & Nelson, 102 Mich. L. Rev. at 693.

[65] *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016). Internal quotations and brackets omitted. Citing Blackstone.

Superior "Court" with personal and subject matter jurisdiction[66] to prosecute and punish Petitioner.

"A lack of standing is a jurisdictional defect."[67] As a result, Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[68] Instead, he arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no Lawful authority whatsoever to do so, thereby committing fraud upon Petitioner and his estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of his fraudulent *ultra vires* "Judgment Order".

### *4. The Humphreys Lacked Standing Under the U.S. Constitution to Criminally Prosecute Petitioner*

Because the U.S. Constitution is the "supreme Law of the Land" (Art. VI, §2), the judicial power of the United States must be capable of acting upon *all* State action which comes into conflict with its superior authority. For how could a State and the Judges which are bound thereby transcend its authority by creating claims that the Article III power could not reach? This would especially be true when a defendant in State Court invokes the concurrent jurisdiction of the United States by claiming rights secured by the U.S. Constitution requiring the State Court Judge to sit in that

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[66] "[J]urisdiction of all justiciable matters can only be exercised […] through the filing of pleadings which are sufficient to invoke the power of the court to act." *Buis v State*, 1990 OK CR 28, p.4 (1990). Internal quotations omitted. "A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court." *Albrecht v. United States,* 273 U.S. 1, 8 (1923). See also Cal. Penal Codes §949, §959.

[67] *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). Citation, brackets and internal quotation omitted.

[68] Cal. Penal Code §1382.

concurrent jurisdictional capacity. All State judicial action therefore, must meet the standing requirements of Article III. The same guarantee is made by Article I, §10 requiring a *judicial* proceeding.

The Humphreys claim under §7031(b) fails to meet even one of the Article III standing requirements as declared in *Steel Co. v. Citizens for a Better Env't* [69]. They presented no evidence of an injury in fact that was concrete and actual; no evidence of a fairly-traceable connection between their non-existent injury and Petitioner's conduct; and no evidence that their non-existent injury would be redressed by fining him $930,000.

The fact that the Humphreys claims fails to meet any of the Article III standing requirements is directly linked to all of the other standing issues raised by Petitioner. Had these Article III requirements been carefully considered by the Cal. "Legislature" and "Courts", §7031's unconstitutionality would have been blatantly obvious from the outset.

The deliberate refusal to abide Constitutional standing requirements–namely by creating claims for relief with hypothetical or fictitious injuries–appears to be one of the core issues at the heart of the implementation of the total State and its "public policies". Historically, claims at common Law (on Land)[70] were for actual injuries because they could be readily determined by witnesses and evidence. In stark contrast, claims involving presumptive injuries and *liquidated* damages were found in Admiralty or Maritime jurisdictions because they arose on the open sea (liquid) where there was likely to be no evidence of the incident or any witnesses to determine

[69] *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 102-3 (1998).

[70] The Constitution is the "supreme Law of the Land". Article VI, §2.

who to attribute fault to.

To specifically prevent against the abuses of Admiralty jurisdiction coming onto Land and being used to overthrow the Constitutional standing and due process requirements of claims at common Law, cases in Admiralty were specifically excluded from arising *under* the U.S. Constitution. State Courts were also forbidden from exercising Admiralty jurisdiction.[71] This is specifically why States cannot create claims such as those in Admiralty that transcend the case or controversy standing requirements of Article III that arise *under* the Constitution. Admiralty claims don't arise *under* the Constitution, they arise extra–Constitutionally under international law. See especially section II(4)(b)(i), *infra.*

This Court has repeatedly declared that the judicial power of the United States is "limit[ed] […] to the resolution of cases and controversies[,]" "otherwise the power is not judicial."[72] As the power exercised against Petitioner is not judicial, it is clearly arbitrary and lawless.

### c. Post "Trial" Acts of Fraud and Treason to Steal Petitioners Property and Further Punish Him by Restraining Him from Earning a Living in His Profession as a General Contractor

#### *1. The Humphreys Filed a False and Fraudulent Abstract of Judgment and Commercial Lien*

Following "trial", the Humphreys continued the conspiracy with their Attorney, William Bissell, and Chaffee, to steal Petitioner's money, property, and liberty by filing a false and fraudulent "Abstract of Judgment" with the Clerk-

[71] Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).
[72] *Valley Forge Christian College v. American United for Separation of Church & State*, 454 US. 464, 472 (1982). Internal quotations and citations omitted.

Recorder for the County of Orange on April 27, 2017 (Exhibit [D] pp.5249-5253) and a "commercial lien" with the Cal. Sec. of State on April 28, 2017 (file 177582830223). Exhibit [D] p.5439. The "Abstract" and "commercial lien" were false and fraudulent because they were based upon Chaffee's "Judgment Order" they collectively knew, or reasonably should of known, was without any Lawful authority whatsoever.

The "Abstract" became attached to the real property at 818 Spirit Costa Mesa, California held in Petitioner's living trust and thereby operated to unlawfully restrain him and his mother (the true and beneficial owner of the property) from their rights to the free and unrestricted use of the property and the equitable assets therein. This included their inability to sell or refinance the property to avoid the foreclosure sale or to meet other needs.

### *2. Petitioner's Vested Licensing Right Was Summarily Suspended/Revoked Without Any Hearing or Means of Appeal*

As previously stated, Petitioner contends that he had an inalienable right to his time and labor in construction as recognized by Article 1, §1 of the Cal. Constitution. As a result, he could not be required to obtain a license and pay a recurring fee for the privilege of earning a living in an ordinary avocation of life.[73] The Cal. "Legislature" was therefore without authority to arbitrarily convert his inalienable (not lienable, non-commercial) right into a revocable commercial public privilege in interstate commerce. Even if this were not the case, the fact that he became a qualifying individual of a general contractor license was a vested right that

[73] See e.g. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

also could not be taken without judicial process[74] pursuant to Article I, §10.

The "State" had also previously determined Petitioner "competent" as a general contractor. It therefore remains unknown how he could be magically transformed "incompetent" by Chaffee at "trial" simply because he allegedly didn't have a license in his own name and/or didn't pay the licensing tax.[75] As the qualifying individual of a general contractor license, Petitioner was a licensee.[76]

Ninety days after the fraudulent "Judgment Order" was issued on April 20, 2017, Petitioner's vested right was summarily suspended/revoked by operation of Cal. Business and Professions Code §7071.17 without a hearing or any known appeal process because he was unable to pay the unlawful "Judgment" or meet any of the other requirements of §7071.17 to obtain or maintain a license. He was consequently deprived of all of the heightened protections of judicial criminal proceedings and the right to trial by jury on this issue, resulting in a bill of pains and penalties.

See also Appendix [S]– Questions Presented: 7, 11, 12.

### 2. Petitioner Has Exhausted All Apparent Remedies in the "Courts" of California and the United States and Has Been Denied a Judicial Determination of His Rights in Every Instance.

#### *a. Denial of Judicial Remedy in All "Courts" of California*

See Procedural History, *ante* pp.4-12.

#### *b. Denial of Judicial Remedy in All "Courts" of the United States*

[74] *Ex Parte Garland,* 71 U.S. 333, 378 (1866). See also *Schomig v. Keiser*, 189 Cal. 596, 598 (Cal. Supreme Ct. 1922) holding that "[t]he portion of the act which authorizes the [Registrar of Contractors] to forfeit the license of a [contractor] and take it away from him is highly penal in its nature."

[75] See e.g. *Vlandis v. Kline*, 412 U.S. 441, 446-8, 452 (1973).

[76] Cal. Business and Professions Code §7096.

**i. The "Justices" of this "Court" Breached Their Mandatory Duty to Exercise Jurisdiction by Refusing to Granting Petitioner's Petition for Writ of *Certiorari* and to Affordi Him Relief Mandated by Law**

After a §7031 defendant discovers that there is no judicial remedy available in *any* "Court" of California, they might believe they had a right under the U.S. Constitution to an appeal in the U.S. Supreme Court. But this would be delusional.

Even though Article III of the Constitution *mandates* that the judicial power of the United States "**shall** extend to **all** Cases in Law and Equity" the "Justices" have created and enforced a "policy" whereby they believe they can arbitrarily vote on whether or not to hear a case and thereby determine who will or won't receive the protections guaranteed by the Constitution. [77] [78] Nowhere in Article III is there an arbitrary voting provision and "Congress" and this "Court" is without authority to amend the Constitution in violation of Article V to create one.

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[77] Emphasis added. See Commentaries on the Constitution (1833), Joseph Story §1584 "The judicial power, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose under the sanctions of the Constitution, they might defeat the Constitution itself. A construction which would lead to this result cannot be sound;" §1585-1589; *Martin v. Hunters, Lessee*, 14 U.S. 304, 331 (1816); Article 1, 9 (Bill of Attainder clause mandating the right to a judicial determination of rights); the First and Fifth Amendments (rights to Petition for Redress of Grievance and due process); and A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction by Akhil Reed Amar; Boston University Law Review Volume 65, Number 2, March 1985; p230.

[78] See e.g. https://www.supremecourt.gov/orders/courtorders/100719zor_m648.pdf. See also Office of the Clerk, Guide for Prospective Indigent Petitioners for Writs of Certiorari, July 2019 stating "It is important to note that review in this Court by means of a writ of certiorari is **not a matter of right**, but of judicial discretion. The primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved." Bolded emphasis added. While this policy may be lawful if the applicant had a full, fair, and impartial judicial determination of rights in the first instance in State or Federal Court, it absolutely is not if this did not happen and the applicant has been deprived of Constitutionally protected rights. In such a case, review by the Supreme Court becomes mandatory and *not* discretionary pursuant to at least Article I, §9 or §10 and fundamental due process. Petitioner has never had a judicial determination of rights by any Court of California or the United States acting with Lawful subject matter jurisdiction/ within Constitutional bounds.

As declared by this Court more than two hundred years ago, "[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. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."[79]

On October 7, 2019, Petitioner's Petition for Writ of *Certiorari* was summarily denied without any Lawful authority.

### ii. The U.S. District "Court" "Judge" Breached Her Mandatory Duty to Exercise Jurisdiction to Grant Petitioner Relief

In concert with this "Court's" "policy" to arbitrarily refuse to hear cases, the "Judges" of the U.S. District "Court" for the Central District of California and the U.S. "Court" of Appeals for the Ninth Circuit have arbitrarily created and enforced another "policy" whereby they also summarily deny all rights and protections guaranteed by the U.S. Constitution on the ground that they have no authority to provide relief in at least cases challenging State "Court" "judgments" that violate the U.S. Constitution.

The "policies" of this "Court" and the Ninth Circuit "Courts" not only result in giving the full faith and credit of the United States to the Lawless acts of State "officials", but also deny the People their right to a judicial determination of their rights under the U.S. Constitution. In this Court's own words, these "policies" amount

[79] *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821). Bolded emphasis added.

to "treason"[80] to the Constitution.[81] Without access to any judicial Court, every single "law" or "statute" whether lawfully enacted or not is a bill of attainder or pains and penalties and totally unenforceable pursuant to Article I sections 9 or 10.

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After this "Court" refused to grant his Petition for Writ of *Certiorari*, Petitioner filed a verified complaint in the form of an Independent Action in Equity in the United States District "Court" for the Central District of California. His First Amended Complaint rebutted the presumptive validity of the State "Court" "Judgements" and included a request for the assistance of counsel, declaratory relief, injunctive relief, and restitution. The case was assigned to District "Court" "Judge" Consuelo B. Marshall.

In response to his Complaint, the Humphreys filed a Motion to dismiss pursuant to FRCP Rules 12(b)(1), 12(b)(6), and 12(b)(7). Notably, they failed to address any of the issues relating to Petitioner's challenges to the lack of subject matter jurisdiction of the "Judgments" that rebutted their presumptive validity.

Assuming Marshall retained subject matter jurisdiction based upon her denial of Petitioner's request for assistant counsel (Appendix [F] pp.39), she had a mandatory, non-discretionary, ministerial duty to investigate Petitioner's claims that he was not given a full, fair, and impartial trial or appeal. Under this Court's precedents "the requirement of determining whether the party against whom an

[80] "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[81] See also *Heck v. Humphrey*, 512 U.S. 477 (1994) whereby if anyone has been harmed as a result of an unconstitutional conviction or imprisonment, they are denied a claim for damages unless the sentence has first been declared invalid.

estoppel is asserted [has] had a full and fair opportunity to litigate is a most significant safeguard,"[82] and "collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate that issue in the earlier case."[83] "If a defendant were convicted and punished for an act that the law does not make criminal, there can be no room for doubt that such a circumstance inherently results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief."[84]

Marshall refused to abide her sworn duty to perform the mandatory investigation and arbitrarily granted the Humphreys Motion to Dismiss *with prejudice* based on the collateral estoppel and Rooker-Feldman doctrines. Appendix [G] pp.41-50. Marshall's "ruling" declared that "[t]he purpose of the [Rooker-Feldman] doctrine is to protect state judgements from collateral federal attack," (Appendix [F] p.45, lines 19-20) and "[that Petitioner's] action is barred pursuant to the Rooker-Feldman doctrine because [he] seeks relief from the state court judgment and alleges legal error by the state trial and appellate court." Appendix [F] p.47, lines 25-28.

Marshall's "ruling" would be Lawful if the word "valid" were included, such that "the purpose of the Rooker-Feldman doctrine was to protect *valid* state judgements from collateral attack"– not just any State judgment, and certainly not one that is void for lack of personal and/or subject matter jurisdiction and in violation of the U.S. Constitition. "Unless a court has jurisdiction, it can never make a record

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[82] *Blonder-Tongue Labs v. University of Illinois Found*, 402 U.S. 313, 329 (1971).

[83] *Allen v. McCurry*, 449 U.S. 90, 95 (1980). Internal quotations and citations omitted.

[84] *United States v. Stoneman*, 870 F.2d 102, 104 (3d. Cir. 1989). Internal brackets, quotations, and citation omitted.

which imports uncontrollable verity to the party over whom it has usurped jurisdiction, and he ought not, therefore, to be estopped from proving any fact which goes to establish the truth of a plea alleging the want of jurisdiction."[85] "The constitutional provision that full faith and credit shall be given in each state to the judicial proceedings of other states, does not preclude inquiry into the jurisdiction of the court in which a judgment is rendered over the subject matter or the parties affected by it, nor into the facts necessary to give such jurisdiction."[86] The Federalist Papers also make mandatory Federal relief abundantly clear by declaring that "[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress."[87]

Marshall acknowledged Petitioner's claims: (1) that the State trial and appellate "Courts" violated due process; (2) lacked subject matter jurisdiction; and, (3) that §7031 was unconstitutional because it is penal in nature. Despite this, she declared that each of these issues "were actually litigated by [him] in the state court action[s] and necessarily decided in a final judgment," (Appendix [F] p.49, lines 16-17) concluding as a result that he was "collaterally estopped from bringing [the Federal Court] action." *Id.* p.49, lines 20-23. Despite these conclusions, her opinion fails to include any independent analysis, investigation, or resolution of these issues demonstrating that they were fully, fairly, and impartially adjudicated by the State trial and appellate "Courts" acting with personal and subject matter jurisdiction to

[85] *Harris v. Hardeman*, 55 U.S. 334, 341 (1853).

[86] *Simmons v. Saul*, 138 U.S. 439 (1891). citing *Thompson v. Whiteman*, 85 U.S. 457, 467 (1873) and *Cole v. Cunningham*, 133 U.S. 107 (1890).

[87] Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

render and affirm these "Judgments" and thereby make them "final". It is also unknown how the personal and/or subject matter jurisdiction of these "Courts" (if ever lawfully acquired) was also not lost through subsequent egregious due process violations and/or fraud committed during the proceedings in the procurement of subject matter jurisdiction.

Marshall's "ruling" also fails to cite any authority whereby an arbitrary void judgment in violation of the California and U.S. Constitutions can be collaterally estopped or is subject to the Rooker-Feldman doctrine. Because judgments rendered without personal or subject matter jurisdiction are void and not entitled to full faith and credit elsewhere, the doctrines of collateral estoppel and Rooker-Feldman do not apply and cannot be used to overrule or supersede the Constitution.[88] A fake "trial" put on by a "Judge" acting *coram non judice* cannot in any manner be considered a *judicial* proceeding whose fraudulent "Judgment Order" results in finality or full faith and credit. "[T]he principle of finality rests on the premise that the proceeding had the sanction of law […]."[89] Furthermore, the supremacy clause *mandates,* and this Court has declared, that "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them–[including the doctrines of collateral estoppel and Rooker-Feldman]."[90]

As "[a] court is a place where justice is legally administered, [where a court lacks subject matter jurisdiction] the defendant has had no trial under the laws of

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[88] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff,* 95 U.S. 714, 732-3 (1877). "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere."

[89] *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) citing Restatement (second) of Judgments §12, Comment a.

[90] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

the land."[91] This Court has also held that it is a "universal principle" that judgments can be collaterally attacked when questions of *power in the officer* or fraud in the party are raised.[92] A State can't transcend the U.S. Constitution and then claim its judgment is *res judicata* and/or collaterally estopped. But this is exactly what the freewheeling Ninth Circuit Enterprise "policy" and arbitrary Constitutional "Amendment" Marshall's edict intends.

This Court has repeatedly made it clear that District Courts can entertain independent actions that attack State Court judgments as void. See *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post *Rooker*); and *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre *Rooker*). See also *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 608–9 (1990) and *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

District Courts can also entertain independent actions to vacate void judgments when such claims are also authorized by State law. In *Parsons Steel Inc. v. First Alabama Bank,*[93] this Court held that pursuant to 28 U.S.C. §1738 (the Full Faith and Credit Act), a "federal court *must* give the judgment *the same effect* that it would have in the courts of the State in which it was rendered."[94] Under California law a void judgment is subject to attack at any time, either directly or by way of an independent action in equity.[95] See also Cal. Code of Civil Procedure §1916 whereby

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[91] *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

[92] *Vorhees v. Jackson*, 35 U.S. 449, 478 (1836) citing *U.S. v. Arredondo*, 31 U.S. 691 (1832).

[93] *Parsons Steel Inc. v. First Alabama Bank,* 474 U.S. 518 (1986).

[94] *Id.* at 523. Italicized emphasis added.

[95] *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998). Italicized emphasis original. Citations omitted.

"[a]ny judicial record may be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."

On this issue, Marshall's "ruling" relies on the holding of the Supreme Court of California in the case of *DKN Holdings LLC v. Faerber,*[96] where the Court declared the circumstances in which collateral estoppel and issue preclusion apply: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." Not one of these constitutes a holding that collateral estoppel/issue preclusion applies to an arbitrary judgment by a "Court" acting without personal and/or subject matter jurisdiction. And none of these overrule Art. 6, §2 of the Constitution– "[w]here rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."[97]

Marshall also arbitrarily denied Petitioner's challenges to the Constitutionality of Business and Professions Codes §7031(a), §7031(b), and §7071.17 on the grounds that the relief he sought was an "order vacating or voiding the state court judgment."[98] While Petitioner's prayer for relief admittedly requested vacating and declaring the State "Judgment" void, Marshall *omitted* the fact that his request also included "any other relief [that] the Court determine[d] reasonable and just." "[U]nder [a] general prayer, other relief may be granted than that which is

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[96] *DKN Holdings LLC v. Faerber,* 61 Cal. 4th 813, 825 (2015).

[97] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (1990) (Citations omitted). *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

[98] *Id.* p.47, lines 10-11.

particularly prayed for."[99]

Contrary to Marshall's arbitrary edict, *Feldman actually* held that the facial challenge to the constitutionality of a State statute could not be precluded because it "[does] not require review of a judicial decision in a particular case" and "is a challenge to the validity of the rule rather than a challenge to an application of the rule."[100] Petitioner therefore had a right to challenge the Constitutionality of these statutes and to a judicial remedy. "Whenever the legislature passes an act which transcends the limits of the police power, it is the duty of the judiciary to pronounce it invalid."[101] Furthermore, "an unconstitutional law is void and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void and cannot be a legal cause of imprisonment. […] If laws are unconstitutional and void, the […] Court acquired no jurisdiction of the causes […]."[102]

Therefore, if §7031(a) or §7031(b) were found to be unconstitutional, declaring the judgments void would be the precise relief Marshall had a *mandatory* non-discretionary, ministerial duty to grant. "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy."[103]

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[99] *English v. Foxall*, 27 U.S. 595, 612 (1829).

[100] *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

[101] *Noel v. Hall*, 341 F.3d 1148,1157 (9th Cir. 2003) citing *District of Columbia Court of Appeals v. Feldman*, 406 U.S. 462, 486-7 (1983).

[102] *Ex parte Siebold*, 100 U.S. 371, 376-7 (1879).

[103] *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 89 (1998).

Finally, while Petitioner's complaint was not captioned as a Petition for *non-statutory* writ of *habeas corpus* (Art. I, §9, Cl. 2), the *substance* was in fact a challenge to the jurisdiction of the State Courts to bind him indefinitely in constructive custody without remedy and financially destroy him amounting to civil capital punishment with prejudice. "The writ of *habeas corpus* is the fundamental instrument for safe-guarding individual liberty against arbitrary and lawless state action."[104] *Habeas* relief is also not barred by any of the estoppel doctrines asserted by the Marshall or the Humphreys.[105]

But Marshall's lawless assault on Petitioner's rights, liberty, and property did not stop there. On February 26, 2020, he filed a timely notice of appeal of her *ultra vires* "Order" granting the Humphreys Motion to Dismiss. In response, she filed another arbitrary and *ultra vires* "Order" on February 27, 2020, revoking his previously granted *in forma pauperis* status and declaring his appeal "frivolous". Appendix [H] pp.51-52. According to this Court, an appeal is frivolous if it lacks any arguable issue in law or fact.[106] As Petitioner's appeal contained arguable issues of law, it was clearly not frivolous.

### iii. The Judges of the Ninth Circuit Court of Appeals Breached Their Mandatory Duty to Exercise Jurisdiction to Hear Petitioner's Appeal and Grant Him Relief Mandated by Law

On March 20, 2020, Petitioner filed a Motion for the Appointment of Assistant Counsel and to proceed *in Forma Pauperis* on appeal in the United States Court of

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[104] *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969); *Ex parte Siebold*, supra.

[105] *Noel v. Hall*, 341 F.3d 1148, 1151 (9th Cir. 2003).

[106] *Nietzke v. Williams*, 490 U.S. 319, 325 (1989).

Appeals for the Ninth Circuit. Exhibit [A38]. He also filed a "Statement of Why This Appeal Should Go Forward." Exhibit [A39]. His request for counsel was ignored.

While Petitioner's appeal was pending, this Court issued its decision in *Liu v. SEC*, supra, a case in which it vacated the Ninth Circuit's affirmation of the District "Court's" judgment imposing yet another *ultra vires* penal forfeiture disguised as "equitable disgorgement".[107] Pursuant to *Liu*, Petitioner immediately filed a Notice/Request for Consideration of Additional Authorities. Exhibit [A41].

Despite the resounding clarity evidencing the purported nature of "disgorgement" declared in *Liu,* and that Petitioner had in fact been subject to a penal forfeiture without Lawful authority, "Chief Judge" Sidney Thomas and "Associate Judges" Atsushi Tashima and William Fletcher arbitrarily dismissed his appeal as "frivolous" with no further explanation. Appendix [I] p.53.

See also Appendix [S]– Questions Presented: 18, 19.

**3. There is a Complete and Total Absence of Any State or Federal Corrective Processes**

In addition to there being no apparent judicial Constitutional "Courts" in California or the United States, and consequently no judicial remedies, Petitioner filed Petitions for Redress of Grievance with the following State and Federal agencies and officials, who, without authority either: (1) refused to perform a full, fair, impartial, and independent investigation of his criminal and/or deprivation of rights complaints; and/or, (b) refused to intervene to protect his rights, liberty, money, and property; and/or, (c) created and/or enforced an unwritten Enterprise "policy": (1) to

[107] See *SEC v. Liu*, 262 F. Supp. 3d 957 (2017) and *SEC v. Liu*, 754 Fed. Appx. 505 (9th Cir. 2018).

not fully, fairly, impartially, independently investigate Citizen complaints for deprivation of Constitutionally protected rights; and/or (2) to not intervene when public officials are depriving People of rights, privileges, and immunities secured by the California and U.S. Constitutions; and/or, (3) to not investigate State and Federal "Court" "Judges" and members of the Cal. "Legislature" for criminal behavior and deprivation of Constitutionally protected rights.

***a. City of Santa Ana Police Department***
*and Chief David Valentin, "Commander" Roberto Rodriguez, "Sergeant" Abel Alcanter, "Sergeant" Gil Hernandez, "Sergeant" Michelle Macchiaroli*

See Appendix [K] p.56, Exhibits [E4. E5, E6, E7, E21]. Exhibit [C] pp.:1818-1836, 1856-1894, 1894-2106, 2120-2153, 2660-2673. Exhibit [D] pp.4205-4263, 4507-4509. With the exception of the Chief of Police, none of the officials acting in a supervisory capacity have subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 yet are acting in official capacities and accepting compensation from the public treasury.

***b. City of Newport Beach, Newport Beach Police Department,***
*and Chief Jon Lewis, Deputy Chief Joseph Cartwright, Lieutenant Keith Krallman, City Attorney Aaron Harp, "Sergeant" Darrin Joe*

See Appendix [M] pp.68-71, Exhibits: [E24-E27], [D], including pp. 4571-4904, 4796-4821, 5060-5068.

***c. City of Irvine Police Department***
*and "Sergeant" Sean Paul Crawford*

See Exhibits [D], including pp.5159-5202; [E31]. Crawford has not subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 for the position of any office within the IPD (Exhibit [D] p.5200) and the IPD has an unwritten policy to "move away from signing Oaths of Office". Exhibit [D] pp.5159-5161.

***d. City of Costa Mesa Police Department***
*and Chief Ronald Lawrence, "Lieutenant" Brian Wadkins, "Sergeant" Michael Manson, City Attorney Gregory Palmer*

See Exhibits [E29, E30], Exhibit [D], including pp.5110-5158. Wadkins and Manson have not subscribed an oath of office pursuant to Cal. Const. Art. XX, §3 for the position of Sergeant (no records exist).

***e. Orange County Sheriff–Coroner Department***
*and Sheriff Don Barnes, "Assistant Sheriff" Ross Caouette, "Under Sheriff" Jeff Hallock, "Lieutenant" Gary Knutson, Investigator Mike Leeb, "Sergeant" Alejandro Salceda, Deputy Sherry Demaio,*

See Appendix [L] pp.57-67, Exhibits [E9, E11, E12, E13, E17, E18] [D], including pp.4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 4540 [C], including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691. With of the Sheriff, none of the officials acting in a supervisory capacity have subscribed an Oath of Office pursuant to Cal. Const. Art. XX, §3 yet are acting in official capacities and accepting compensation from the public treasury.

***f. Orange County District Attorney***
*and Deputy District Attorneys, Christopher Duff, Bill Feccia, Clyde Von Der Ahe*

See Appendix [L] pp.57-6, [M] pp.68-71; Exhibits: [E9, E11, E12, E13, E17, E18, E24-E27]; [C], including pp.1899-1972, 2246-2351, 2559-2568, 2569-2594, 2676-2683, 2684-2691; [D], including pp. 4348-4352, 4356-4363,4469-4506, 4531-4533, 4537, 45404571-4904, 5060-5068, 5204-5208.

***g. California Highway Patrol***
*and Sergeant Ed Moran, Officer Ernesto Mejia*

See Exhibit [D], including pp.4905-5010, 5069-5095; [E28].

***h. California Commission on Judicial Performance***
*and Attorney Anjuli Fiedler*

See Appendix [J] pp.54-55, Exhibit [D] including pp.4168-4201.

***i. California Governor***
*and Gavin Newsom*

See Exhibits: [E24-E27]; [D], including pp. 4089–4101; 4309-4334; 4348-4350;4356-4363; 4469-4506, 4510-4522; 4531-2; 4537; 4540; 4547-4551; 4556-4563; [C], including pp. 2559-2594.

***j. California Department of Justice***
*and Attorney General Rob Bonta, Investigator Bill Wagner*

See Appendix [P] p.80, Exhibit [C], [D] including pp. 4403-4411, 5378-5399 and all Exhibits under Orange County Sheriff-Coroner Dept.

***k. Federal Bureau of Investigation***
*and Christopher Wray, unknown employees and agents thereof*

See Exhibit [C], [D], [E3, E14, E19].

***l. United States Department of Justice***
*and unknown agents thereof*

See Exhibits [C], [D], including pp.4106-4166.

***m. Contractors State License Board***
*and Registrar David Fogt, Arbitrator Don Fobian, Arbitration Mediation Conciliation Center, Inc, Karen Smith*

See Exhibit [F]; Appendix [O] pp.73-79.

***n. California Assembly and Senate***
*and Assemblywoman Cottie Petrie-Norris, fmr. Senator John M.W. Moorlach*

See Exhibits [E2, E10, E15]; [C], including pp.2369-2381; [D], including pp.4164-S4166, 4335-4347, 4412-4467, 4552.

***o. Superior Court of California- County of Orange***

On August 16, 2022, Petitioner filed a judicial complaint with the Superior Court-County of Orange that was delivered to Presiding "Judge" Erick Larsh. Exhibit [D] pp.5511-5524.

The complaint alleged criminal activity, egregious deprivations of rights, and damages and irreparable harm directly caused by the unlawful behavior of Chaffee and the "Justices" of the Fourth District. The complaint was directed by Larsh to Layne Melzer, the Supervising "Judge" for the "Court's" civil panel. *Id.* p.5503.

Melzer responded in a letter dated October 31, 2022. *Id.* p.5503-5505.

Melzer told Petitioner that "each judicial officer of the court exercises independent judicial authority, and no judge – even judges who exercise some degree of supervisory authority – has the authority to review, overrule, intervene in, or otherwise affect the outcome of any matter proceeding before another judicial officer" (*Id.* p.5504), that "the Court is powerless to afford […] the relief [he] requested", and "[t]he judgment is therefore final". *Id.* p.5505.

Melzer breached his mandatory, non-discretionary duty to conduct a full, fair, and impartial investigation into Petitioner's claims and to intervene to stop the irreparable harm and damages being perpetrated upon him. Notably, his response fails to acknowledge let alone address the substantive violations of Constitutional law evidenced by Petitioner.

Melzer's response and refusal to abide his sworn duties further evidences that even in the face of clear and unequivocal violations of Constitutional rights, it is not the will of the People and the Constitution that is the "supreme Law of Land", but the arbitrary and lawless acts of "officials" of the Enterprise, fraudulently purporting to be "Judges".

The Enterprise "policy" Melzer admits to is that either there is no Constitution of California or the United States, or that if there is, Enterprise "Judges" are not bound by it and therefore above it. The truth is "[t]he judiciary is but the creature of the Constitution […]. It can not [sic] rise above the source of its own existence. If it could do this, it could annul the Constitution, instead of simply declaring what it means."[108] "[A Judge] must act judicially in all things, and cannot transcend the power conferred by law."[109] "[W]here the language of the Constitution is express and the intent plain, there is *no power* in the judicial department to set it aside […]."[110] If a court transcends the limits of its authority, the resulting judgment would not be merely erroneous, but absolutely void.[111] Moreover, violating due process is a crime[112] and a crime cannot be committed to procure or maintain personal or subject matter jurisdiction.

The fraud, deceit, and treason being advocated by Melzer is not the Law under

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[108] *Ex parte Newman*, 9 Cal. 503, 511-512 (Cal. Sup. Ct. 1858).

[109] *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876), *Ex Parte Giambonini*, 117 Cal. 573, 576 (Cal. Supreme Ct. 1897).

[110] *Nougues v. Douglas, 7* Cal. 65, 66 (Cal. Sup. Ct. 1857). Italicized emphasis added.

[111] *Baar v. Smith*, 201 Cal. 87, 100 (Cal. Supreme Ct. 1927).

[112] 18 U.S.C. §242, Cal. Penal Code §211.

a Constitutional government of defined and limited powers–where exceptions from a power mark its extent […]"[113]–but one under a different form of government entirely–a despotic and totalitarian form of government.

The root of this issue appears to stem from this "Court's" entire history of jurisprudence concerning the nature of subject matter jurisdiction and immunity doctrines in attempt to guarantee omnipotence to "Judges" and other Enterprise "officials" by transcending the sovereignty of the American People to grant immunity to "officials" who commit crimes and treason upon them.

The California and U.S. Constitutions were carefully crafted to provide absolute immunity too all officials who follow the Law. To create the Enterprise immunity "policies" that transcend Law, this "Court" has repeatedly violated the doctrine of separation of powers by exercising powers that are exclusively conferred upon Congress. The "Justices" even openly admit that their "qualified immunity precedents […] represent precisely the sort of freewheeling policy choices that [they] have previously disclaimed the power to make."[114] Without the power to make a Law, there can consequently be no power to enforce it. Either would be a clear act of treason.

To obtain the omnipotence inherent in the fraudulent doctrine of "judicial immunity", this "Court" took the doctrines of subject matter jurisdiction and judicial immunity from a different Country ruled by a monarchy and no written Constitution,

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[113] *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824).

[114] *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1871 (2017), Thomas, J. concurring. Internal brackets, quotations, and citation omitted.

and, without any authority, "legislated" them into our nation's jurisprudence. In other words, this "Court" took the edicts of an arbitrary, despotic form of a government[115] and forced them into the "Laws" of our Republican form of government of defined and limited powers.

The purpose of the doctrine of judicial immunity when it was created in Britain was to end the collateral attacks on judgments and to remodel the Court system to match that of the hierarchical ecclesiastic Courts.[116] "The attractiveness of the ecclesiastical model lay in its hierarchical structure. […The] hierarchical system enable[d] the [King's Courts] to authoritatively ascertain and declare legal precepts […in] relation to the local courts[.] [To accomplish this,] they needed to monopolize the existing means of correcting errors"[117] by removing the complaint of false judgment against a Judge that could be brought by the People. A statute was thereby enacted which made the claim of false judgment a royal plea, which could only be heard in the King's Courts.[118]

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[115] "The British Constitution differs from our American Constitutions in one great leading feature. It only classifies and distributes, but does not limit the powers of government; while our Constitutions do both." *Ex parte Newman*, 9 Cal. 502, 512 (Cal. Supreme Ct. 1858). Burnett, J. concurring.

[116] "In the twelfth century, under the influence of the canon law, English- men became familiar with appeals *(appelationes)* of a quite other kind [than criminal appeals of felony]; they appealed from the archdeacon to the bishop, from the bishop to the archbishop, from the archbishop to the pope. The graduated hierarchy of ecclesiastical courts became an attractive model. The king's court profited by this new idea; the king's court ought to stand to the local courts in somewhat the same relation as that in which the Roman curia stands to the courts of the bishops." Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882 citing 2 F. Pollock and F. Maitland, The History of English Law 665, (2d ed 1898) p.664. Footnotes omitted.

[117] Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882. Citation omitted.

[118] Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5, p.882-3 citing Statute of Marlborough, 1267, 52 Hen. 3, c. 19 "None from henceforth, except our Lord the King, shall hold in his Court any Plea of false Judgement, given in the Court of his Tenants; for such Plea specially belongeth to the Crown and Dignity of our Lord the King."

Ending collateral attacks on false judgments and limiting the correction of errors to the hierarchical system were only the first two steps in the culmination of the judicial immunity doctrine. The third step involved extending the doctrine of sanctity of records to all the King's Courts. The doctrine of sanctity of records originated as a royal edict of the King known as a "prerogative" whereby whatever the King said happened in his presence in Court was "indisputable".[119] "When this [arbitrary] privilege was extended from the King to his judges, the court of record was born and the foundation for limited judicial immunity was set. Since the record of a court of record was incontrovertible, no party could allege that an act noted therein was wrong, and thus the source of the record–the judge–could not be subject to civil or criminal liability for an abuse of power."[120] "The record was a potent weapon to use in the political struggle because of the unimpeachable authority of its origins, the King himself. Impugning the integrity of the record verged on impugning the integrity of the monarch."[121]

The doctrine of the sanctity of records was clearly based on the delusional regal maxim that "the king can do wrong" and the divine right of Kings whereby Kings are only answerable to God. These delusions clearly were not intended to survive the

[119]Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.206. See also Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5 p.883.

[120] Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.206. See also Stump v. Sparkman and the History of Judicial Immunity, J. Randolph Block, Duke Law Journal Volume 1980 Number 5 p.883.

[121] Feinman, Jay and Cohen, Roy S. (1980) "Suing Judges: History and Theory," South Carolina Law Review: Vol. 31 : Iss. 2, Article 4. P.207, citing 77 Eng. Rep. 1305, 1306 (Star Chamber 1607) "And the records are of so high a nature, that for their sublimity they import verity in themselves, and none shall be received to aver anything against the record itself."

American revolution. As poignantly recognized by this Court in the case of *Chisholm v. Georgia*[122], contemporaneously with this Country's founding:

> It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the Sovereign, and the people as his Subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial controul [sic] and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the Courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are Sovereigns without Subjects (unless the African slaves among us may be so called) and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.
>
> From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Soverignty [sic] is the right to govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the Government; here, never in a single instance; our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns. Their Princes have personal powers, dignities, and pre-eminences, our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens.

"Judge" Melzer has it backwards. David Chaffee is not King and is answerable to Petitioner and the American People. In America "if [a Judge] act[s] without authority, [her] judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a

[122] *Chisholm v. Georgia*, 2 U.S. 419, 471-72 (1793).

reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."[123]

This "Court" and the "Courts" of the Ninth Circuit's attempt to transplant the British doctrine of sanctity of records and the divine right of kings to this Country to amend the Constitution by ending the collateral attack of State judgments is without authority and void. The provisions of the California and U.S. Constitutions are mandatory and prohibitory (Cal. Const. Art. I, §26; Art. VI, 2). As emphatically declared by Alexander Hamilton in Federalist No. 28 "[t]he general government will at all times stand ready to check the usurpations of the state governments. If [the People's] rights are invaded by either, they can make use of the other as the instrument of redress."[124] Article III, §2 also mandates that "[t]he judicial Power of the United States "**shall** extend to **all** Cases, in Law and Equity, arising under this Constitution". (Bolded emphasis added).

See also Appendix [S]– Questions Presented: 14, 36-37.

**4. There is No Judicial Constitutional Court in the State of California Vested with Subject Matter Jurisdiction Upon Which Petitioner Can Present These Claims**

***a. California "Courts" Repeatedly Admit That They Lack Subject Matter Jurisdiction to Hear and Determine Cases Involving Federal Questions.***

See Exhibit [D] p.5438, pp.5441-5447, a Declaration and Exhibits provided to Petitioner by William Henshall. Henshall's Petition for Writ of *Habeas Corpus* to the

[123] *Elliott v. Lessee Peirsol*, 26 U.S. 328, 340 (1828).

[124] Federalist No. 28. Alexander Hamilton; https://avalon.law.yale.edu/18th_century/fed28.asp.

Supreme "Court" of California was returned *unfiled* and thereby summarily denied by the Clerk of "Court" on the ground that "[t]he question raised by the petition are beyond the jurisdiction of California Courts [parenthetically all of them] as they appear to raise Federal issues. *Id.* p.5448.[125]

1. State Courts have had concurrent Federal Court jurisdiction since the inception of this Country. See e.g. *Claflin v. Houseman*,[126] declaring "State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it[.]"
2. Pursuant to the Cal. Constitution of 1849, which, according to the Cal. Secretary of State has never been repealed, Exhibit [K] p.98, the District Courts have original general jurisdiction in cases at common Law and Equity (Art. I, §6). Petitioner, however, has been unable to locate any "District Courts" or any other Courts of California vested with common Law general jurisdiction as these Courts appear to have been abolished. See section b below. It is also unknown how a litigant can possibly exhaust State *habeas* relief and raise Federal issues as purportedly required by 28 U.S.C. §2254, when there is no jurisdiction to do so.
3. There is nothing in the California Constitution that vests any of the judicial power of California in the Clerk of the Supreme "Court" to deny Petitions for Writs of *Habeas Corpus*. Nor has the Clerk been appointed to serve as a

[125] See also his Petition submitted to the Superior Court of California- County of San Mateo dismissing the Writ on the same grounds. *Id.* p 5443. See also p.5446 another dismissal on the same ground by the Superior Court of California- County of San Francisco.

[126] *Claflin v. Houseman*, 93 U.S. 130, 136 (1876).

Justice of the Court.

When Henshall was unable to obtain *habeas* relief, he filed a Petition for Redress of Grievance with California Assemblyman Kevin Mullin and asked that he submit the Petition to the floor of the Assembly. Mullin refused, citing the Clerk of the Supreme "Court's" "determination" (p.5448) while adding that the issues presented were also "beyond the jurisdiction [of the] California Assembly." *Id.* p.5447.

### *b. The Cal. "Constitution of 1879" does not vest any Court with subject matter jurisdiction at Law or Equity as mandated by the U.S. Constitution*

While the States admitted to the union of States known as the United States of America were purportedly comprised of separate sovereign bodies politic, as a unified entity, the States surrendered certain immunities to Federal supervision like those in Article I, §10 as another check and balance protection to guard against State official abuses of power. There is also a lesser-known limitation on the judicial power of the States found in Article III. Under Article III, there are *only* two jurisdictions that arise *under* the Constitution, Laws of the United States, and Treaties made *under* their authority. Those jurisdictions are Law and Equity.

At the time of America's founding, it was proceedings "according to the course of the common Law" [127] where the rights to jury trial by jury, due process of law, and many other rights, privileges, and immunities were recognized and later became enshrined in the Constitution. It was also why every State in the Union (with the

[127] Section 14, Article II Northwest Ordinance 1787 declaring "[t]he inhabitants of the said territory shall always be entitled to […] judicial proceedings according to the course of the common law[.]"; 7th Amendment.

exception of Louisiana) was admitted under the common Law and not Roman civil law. California specifically repealed all Roman civil law in effect prior to its admission as a State.[128]

Another jurisdiction known as Admiralty (based on Roman civil law) was specifically excluded as a direct result of the abuses by King George III that became one of the principle causes of the American Revolution.[129] Consequently, the States were deprived of all judicial power to exercise Admiralty jurisdiction as it was vested exclusively in the Courts of the United States.[130] As States also had no authority to transcend the Constitution and subject the People thereof to a jurisdiction foreign to their Constitution, they are *only* empowered to vest their Courts with jurisdiction in cases at Law and Equity. Additionally, State Courts must have concurrent jurisdiction with the Courts of the United States to be so empowered to answer Federal questions arising in State cases. If State Courts are not vested with these jurisdictions, they cannot entertain Federal questions, as recognized by this Court in the case of *Claflin v. Houseman*, 93 U.S. 130, 136 (1876).

Up until recently, the California Constitution of 1849 and the purported Cal. "Constitution of 1879" vested the Courts of California with the separate and distinct jurisdictions of Law and Equity. However, as part of the Enterprise scheme to (1) abolish proceedings according to the course of the common Law (section II(D)(6),

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[128] *Fowler v. Smith,* 2 Cal. 568 (Cal. Supreme Ct. 1862).

[129] "He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation". Declaration of Independence. The British parliament "claiming a power, of right, to bind the people of America by statutes in all cases […] and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county". Declaration of Resolves of the First Congress, October 14, 1774.

[130] Section 9 of the Judiciary Act of 1789, 1 Stat. 73, *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 546 (1828).

*infra*); (2) amalgamate Law, Equity, and Admiralty into one "civil action" (section II(D)(6), *infra*); and, (3) to impose Roman civil law upon the People of California and the United States, common Law jurisdiction was removed from the "Constitution of 1879" by the repeal of Article VI, §5. (Please confirm that there is no Article VI, §5 in the current version of the "Constitution of 1879"). This "repeal" is akin to removing Article III, §2, Cl. 1 from the U.S. Constitution.

Today, the "Constitution of 1879" vests the Superior "Courts" of California with jurisdiction in "all other causes". "All other causes" is not a jurisdiction known to the Constitution, history and laws of California or the United States and does not reveal the form or nature of the proceedings by which the Superior "Courts" exercise subject matter jurisdiction. "All other causes" is also not defined anywhere in the "Constitution of 1879" or by Lawfully enacted statute.

Consequently, there is no Court in California with subject matter jurisdiction in any case at Law or Equity arising *under* the U.S. Constitution in order grant Petitioner any relief thereby, including by Writ of *Habeas Corpus*. See *Cleveland Trust Co. v. Nelson,* [131] holding that "[a] mere assumption of jurisdiction by a court, however long continued, cannot confer a jurisdiction otherwise nonexistent under the constitutional grant of judicial power" and *State ex rel Wernmark v. Hopkins*, 213 Ore. 669 (Supreme. Ct. 1958).

See also Appendix [S]– Questions Presented: 15, 24, 26.

**i. Superior Courts of California Lack Subject Matter Jurisdiction in Cases of Admiralty Jurisdiction**

[131] *Cleveland Trust Co. v. Nelson*, 51 F.2d 276, 277 (1931).

As all competent jurists know, money and Law operate as opposite sides of the same coin. In other words, there are different forms of money and each of these circulates under different modes of proceedings or subject matter jurisdictions of law. Therefore, one's choice of money determines what rights, privileges, and immunities as well as the means and methods of adjudicating disputes that arise thereunder. For this reason, the Founding Fathers specifically chose gold and silver coin (also known as "specie") as the *only* "tender for payment of debts" under the Constitution and laws of the United States.[132] Another form of tender such as checks, money orders, promissory notes, and other negotiable instruments also known as "commercial paper" were specifically excluded.

Unlike gold and silver coin that circulate according to the course of the common Law, commercial paper circulates in commerce/Admiralty[133] and international law and *not* under the Constitution and Laws of the United States. See Art. III, §2 carefully noting that (1) cases in Admiralty jurisdiction do not arise *under* the Constitution and laws of the United States;[134] and, (2) that the judicial power for all cases arising under the Constitution and Laws of the United States extends *only* to cases in Law and Equity.

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[132] See especially Exhibit [G]– Memorandum of Law: The Money Issue by Larry Becraft, the 7th Amendment whereby "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved", and *Calder v. Bull*, 3 U.S. 386, 390 (1798) declaring that "[t]he prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted [in the Constitution] to secure private rights […]." Underlined and italicized emphasis added.

[133] "The exclusive jurisdiction in admiralty cases was conferred on the national government, as closely connected with the grant of the commercial power." *New Jersey Steam Navigation Co. v. Merchants' Bank*, 47 U.S. 344, 392 (1848). "The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, 2 Burr. R. 883, 887, to be in a great measure, not the law of a single country only, but of the commercial world." *Swift v. Tyson*, 41 U.S. 1, 19 (1842).

[134] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

Because commerce involves the relationship between debtors and creditors, commercial paper (ie Federal Reserve Notes) *cannot* be made tender for the *payment* of a debt *under* the Constitution because commercial paper can only *discharge* an obligation.[135] But most importantly, in cases arising at Law or Equity *under* the Constitution the judicial power of all State and United States Courts is incapable of acting upon any case involving commercial paper because it does not circulate at Law or Equity.[136]

Article I, §8, Cl.5 gives Congress the power to "coin money" which means to "stamp pieces of metal for use as a medium of exchange […] according to fixed standards of value."[137] It does *not* give "Congress" or this "Court" the power: (1) to unilaterally Amend the Constitution in violation of Article V by making commercial paper (such as Federal Reserve Notes) legal tender; (2) to delegate this non-existent power to the President or to a private banking institution such as the Federal Reserve Bank; or, (3) to subject the American People to a jurisdiction foreign to their Constitution and unacknowledged by its laws. Furthermore, the People's contracts cannot be impaired by forcing them to accept debt instruments or to be bound to a currency in which they cannot Lawfully pay their debts, and by virtue thereof, become indentured servants or slaves to an ever expanding "national debt" upon which they have not consented to and purportedly cannot question (e.g. section 4 of the "14th

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*135* "Let it be that the act of discharging the debt is a mere nullity and that it is still due". *Cohens v. Virginia*, 19 U.S. 264, 403 (1821). See also *Bank of Columbia v. Okely*, 17 U.S. 235 (1819).

136 "The case of a State which pays off its own debts with paper money, no more resembles this than do those to which we have already adverted. The Courts have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation." *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

137 The General Principles of Constitutional Law in the United States of America by Thomas M. Cooley, Little Brown and Company 1880, p.79.

Amendment"). Not only was there no Lawful representative "Congress" to authorize the "Federal Reserve Act of 1913" or the "14th Amendment", there is no Lawful representative "Congress" to authorize *any* expenditures on behalf of the American People to bind them in any way whatsoever.

Federal Reserve Notes (that can *only* discharge an obligation) are not Lawful money and cannot be made legal tender like gold and silver coin that actually pay a debt.[138] Federal Reserve Notes are also *undefined* in American law and are not "dollars" as defined by the Coinage Act of 1792.

Federal Reserve Notes have no intrinsic value as true "credit" and are only evidence of the so-called "national debt". According to Marriner S. Eccles, former chairman of the Federal Reserve Board "if there were no debt in our money system […] [t]here wouldn't be any money."[139] See also Congressional Record– House, August 19, 1940, pp.10548-10555 stating that "the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone's debt […]") *Id.* p.10550. In other words, if the national debt were "repaid," there wouldn't be any "money".

With the exception of Louisiana, all of the American States were admitted to the Union under English/American common Law, not Interstate Commerce/ Admiralty/ Roman civil law. Absent an unequivocal knowing, voluntary, and intelligent waiver of rights and Constitutional Amendment, neither Petitioner nor

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[138] See H.J.R. 192 and the Coinage Act of 1792 (1 Stat. 246) defining dollar "to contain three hundred and seventy-one grains and four sixteenth parts of a grain of pure, or four hundred and sixteen grains of standard silver."

[139] Hearings Before the Committee on Banking and Currency, House of Representatives, Seventy-Seventh Congress, First Session on H.R. 5479, Revised, Part 2.p.1338.

any of the American People can have their Republican form of government based on the rule of common Law altered to be subjected to Roman civil law/Interstate Commerce/Admiralty. Petitioner has not made any such waiver of rights, including to be subjected to the modern codified version of the law merchant/Interstate Commerce in the form of the Uniform Commercial Code.

Based on the facts that: (1) all of the transactions involved in this case involved negotiable instruments circulating in Interstate Commerce/Admiralty; (2) claims for setoff that are recognized in cases at common Law and Equity were denied; (3) Admiralty cannot entertain pleas of setoff;[140] (4) the proceedings were not according to the course of the common Law or Equity (and thereby *not* a case arising *under* the Constitutions of California or the United States); and, (5) Petitioner was subjected to strict liability akin to claim for *liquidated* damages, the case against him clearly arose and proceeded according to the course of Roman civil law in Admiralty jurisdiction for which the State of California lacks subject matter jurisdiction. "The case of a State which pays off its own debts with paper money […has] no jurisdiction over the contract. They cannot enforce it, nor judge of its violation."[141]

See also Appendix [S]– Questions Presented: 38, 39.

### *c. The Cal. "Constitution of 1879" Does Not Grant the Legislature Any Power to Create Lower Courts or to Vest Them with Any Statutory Jurisdiction Including Jurisdiction Over the Statutes Involved in This Case*

Another structural jurisdictional issue is that the "Constitution of 1879" does not vest the "Legislature" with any authority to create lower or inferior statutory

[140] *Bains v. James and Catherine*, 2 F. Cas 410, 412 (1832).

[141] *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

Courts or to vest them with any special statutory jurisdiction.[142] Article VI, §1 of the *original "*Constitution of 1879" which purportedly conferred judicial power on inferior Courts established by the Legislature, and Article VI, §13, which vested power in the Legislature to define the subject matter jurisdiction of these Courts,[143] have both been repealed.

Unless the power or authority of a Court to perform a contemplated act can be found in the Constitution or laws enacted thereunder, the "legislature cannot either limit or extend that jurisdiction."[144] Consequently, the Superior "Courts" of California lack subject matter jurisdiction in all cases arising under Business and Professions Code §7031 (and apparently all other statutory cases whatsoever).

Furthermore, the aforementioned "Amendments" to the "Constitution of 1879", and many others substantively altering California's form of government, have not, in Petitioner's research, been approved by "Congress" pursuant to Article IV, §3. Nor is there any apparent Lawful "Congress" to approve such changes.

See also Appendix [S]– Questions Presented: 16, 17

**5. The Contractor's State Licensing Board's "Mandatory Arbitration" Program is Treason to the Constitutions of California and the United States**

On November 21, 2014, Petitioner was subjected to a "mandatory arbitration" proceeding by another conspiracy of the Enterprise to deprive him of his rights to

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[142] "Article VI, §10 is silent to any jurisdiction-setting power of the Legislature" *Communities for a Better Environment v. Energy Resources Conservation & Development Com.*, 57 Cal. App. 5th, 786, 798 (2020).

[143] See also *In re Application Guerrero,* 69 Cal. 88, 99 (Cal. Supreme Ct. 1886).

[144] *Pacific Tel. & Tel. Co. v. Eshleman*, 166 Cal. 640, 647 (Cal. Supreme Ct. 1913). Citations omitted.

judicial proceedings, trial by jury, and his money, property, and liberty without Lawful authority. Appendix [O] pp.73-79, Exhibit [F]. According to the arbitrary "Award", Appendix [O] p.73, the proceeding occurred under the authority of Cal. Business and Professions Code §7085. Appendix [Q] pp.86-87.

§7085 does *not* authorize the Contractors State License Board and the Arbitration Mediation Conciliation Center, Inc. ("AMCC"), to create and/or enforce a "mandatory arbitration" proceeding. Rather, it purports to authorize a *voluntary* arbitration process requiring "the concurrence of both the licensee and the complainant".[145] Petitioner did not and has never made any knowing, voluntary, or intelligent waiver of any rights to be subjected to this or any other "mandatory arbitration" proceeding as recognized by the CSLB in a document it apparently created stating "THE CONTRACTOR DID NOT RETURN A "SUBMISSION TO MANDATORY ARBITRATION". Appendix [O] p.74.

When Petitioner failed to comply with the "Award", his vested right to remain the qualifying individual of a general contractor license was arbitrarily suspended without a judicial hearing or known process of appeal by operation of Cal. Business and Professions Code §7085.6. Appendices [O] pp.75-78 and [Q] pp. 87-88. He has thereby been restrained from earning a living in his profession as a general contractor ever since with no apparent remedy and no access to a judicial Court.

In comparison, when members of the State Bar of California[146] are faced with

[145] The CSLB admits to referring 8,275 mandatory arbitration cases to the AMCC since January 1, 2006. Appendix [O] p.79.

[146] Another vehicle of the Enterprise by and through which it creates and executes its "policies" is membership by "Legislators", "Executives", and "Judges", whether active or not, in the malevolent monopolies of Bar Associations like the State Bar of California. For example, §7031(b) was: proposed to the Cal "Legislature" by an attorney serving as a "Judge" (Quentin Kopp); ratified by attorneys in

discipline or a licensing suspension or revocation, there is a full-time State Bar "Court" comprised of trial judges and a three-judge appellate "Court" that makes recommendations to the Supreme "Court" of California who is the final arbiter of attorney discipline.[147] No such substantive and equal protections exist for contractors–or any other known regulated profession–in Commiefornia. Nor is review by the Supreme "Court" of California mandatory prior to licensee discipline like it is for attorneys.

See also Questions Presented: 13 Appendix [S].

### a. The Contractors State License Board is Unconstitutional

The separation of powers of the California Constitution flatly forbids the Cal. "Legislature" from combining the Legislative, Executive, and Judicial powers of California in any way to create a fourth branch of government in the form of the agency known as the Contractors State License Board. This fundamental change to California's Republican form of government has not, in Petitioner's research, ever been authorized by a Lawful quorum in either the "Legislature" of California or "Congress" in violation of Article IV, §3 Article IV, §4 and Article I, §10.

The "Legislature" was also without any authority to transfer the judicial power

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the "Legislature"; signed into law by an attorney occupying the office of Governor (Gray Davis); prosecuted by attorneys, (such as William Bissell) and adjudicated by "Judges" (such as David Chaffee). The State Bar of California and its members, along with the Orange County Bar Association, have also played an active role in the creation of the Civil Jury Instructions. Exhibit [C] pp.1621-1642, 2625-2651. §7031(b) "Judgments" are enforced by the office of the Governor (such as fmr. Governor Edmund G. Brown, Jr.). Members of the Bar also sit on the Contractors State License Board (Kevin Albanese) and prosecute "mandatory arbitration" proceedings (Jamie Handrick). They also occupy seats in "Congress" (Adam Schiff). As officers of the "Court", Bar members are flatly forbidden by the doctrine of separation of powers from serving in multiple branches of government intentionally designed to be separated as a check and balance, whether their status in the Bar is active or not.

[147] Cal. Business & Professions Codes §6078, §6097.1 and §6086.65.

of California to the AMCC to conduct arbitration hearings, especially by unelected and unappointed "arbitrators" who don't hold public office.

**6. Congress Has Not Vested Any Inferior Court of the United States with Subject Matter Jurisdiction at Law or Equity as Defined by the U.S. Constitution to Hear and Determine Petitioner's Claims**

28 U.S.C. §1331 also known as "Federal question jurisdiction" declares that: "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." According to the United States House of Representatives Committee on Revision of the Laws,[148] the "[w]ords 'all civil actions' were substituted for 'all suits of a civil nature, at common law or in equity' to conform with Rule 2 of the Federal Rules of Civil Procedure, ["FRCP"]". FRCP Rule 2 states "There is one form of action—the civil action."

In further explanation of the meaning of "the civil action", the 1966 Amendment to the FRCP in the Notes of the Advisory Committee on Rules, declares that "[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."[149]

The obvious problem here is that the Constitution does not confer the judicial power of the United States in any jurisdiction known as "the civil action". The principles and distinctions between Law, Equity, and Admiralty upon which the judicial power of the United States is vested and *separately* and *exclusively*

[148] Revision of Title 28, United States Code, Report from the Committee on Revision of the Laws, House of Representatives, 79th Congress, 2d Session, House Report No. 2646. p. A111.

[149] https://www.law.cornell.edu/rules/frcp/rule_1; US Code.

distributed by Article III cannot be "abolished", "unified", or blended together in one suit known as "the civil action". This is not only because "[a] case in Admiralty does not […] arise under the Constitution or laws of the United States,"[150] but also because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures have *not* been followed. Moreover, "Congress" is without any authority to delegate its law-making power to the Judicial branch to create and enact these "rules" that have the force and effect of law.[151]

"The Constitution of the United States […] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity […] according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."[152] See also *Mc Faul v. Ramsey*,[153] holding that "[i]n those States where the courts of the United States administer the common law,[154] they cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either." "While in many of the states statutes exist which permit the joinder

[150] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

[151] On June 19, 1934, "Congress" (the one allegedly without a lawful representative quorum to do any business) purportedly enacted the Rules Enabling Act, (48 Stat. 1064, Pub. Law 73-416) to give the U.S. Supreme Court the power to promulgate the Federal Rules of Practice and Procedure to "govern the conduct of trails, appeals, and cases under Title 11 of the United States Code." The creation and revision of these rules, "which have the force and effect of law[,]" is usually carried out by the Judicial Conference's Committee on Rules of Practice and Procedure and it's five advisory committees. https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works.

[152] *Thompson v. R.R. Cos.*, 73 U.S. 134, 137 (1867); See also *Scott v. Neely*, 140 U.S. 106, 111 (1891). Superseded on other grounds; *Robinson v. Campbell*, 16 U.S. 212 (1818); *Fenn v. Holme*, 62 U.S. 481 (1858).

[153] *McFaul v. Ramsey*, 61 U.S. 523, 526 (1857).

[154] California was admitted as a free State under English common Law having repealed the Roman civil law then in effect, as held by the Supreme Court of California case of *Fowler v. Smith,* 2 Cal. 568, 568-9 (1852).

of causes of action at law and in equity in the same suit, this course is not permissible in the federal courts. In truth, the difference between causes of action at law and in equity is matter of substance and not of form, and no legislative enactment can really remove it. In the national courts this meradicable [sic eradicable] difference is as sedulously preserved in the forms and practice available for their maintenance as it is in the natures of the causes themselves and in the principles upon which they rest."[155]

"Courts created by the general Government [of the United States other than the U.S. Supreme Court] possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power ceded to the general Government will authorize them to confer."[156] Without being vested with a jurisdiction as precisely declared by the Constitution (either Law or Equity), "the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."[157] See also *Mayor v. Cooper*,[158] holding that "two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and a [Constitutional] act of [Congress] must have supplied it. Their concurrence is necessary to vest it. […] It can be brought into activity in no other way."

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[155] *Schurmeier v. Connecticut Mut. Life Insurance Co.*, 171 F. 1 16-17 (8th Cir. 1909). Numerous citations omitted.

[156] *United States v. Hudson& Goodwin*, 11 U.S. 32, 33 (1812). See also *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) holding that federal courts, being courts of "limited jurisdiction," "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Citations omitted.

[157] *Ex Parte McCardle*, 74 U.S. 506, 512 (1869).

[158] *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

The means of properly conferring subject matter jurisdiction vested by the Constitution upon an inferior Court can be found in section 11 of the Judiciary Act of 1789 (1 Stat. 73), whereby the Circuit Courts of the United States were vested with subject matter jurisdiction of all suits of a civil nature "[…] at common law or in equity[…]" with omitted exceptions.[159]

Finally, the Federal Rules of Civil Procedure which "have the force and effect of law"[160] were not given "any affirmative consideration, action, or approval of the rules by Congress or by the President"[161] as required by Article I, §7, Cl.2.

Consequently, Congress has not vested any inferior Court of the United States with the judicial Power of the United States in any case at Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case. See also section II(b)(ii-iii), *infra,* whereby even if the District "Court" were, despite the foregoing, vested with jurisdiction at Law or Equity, the "Court" claimed it lacked subject matter jurisdiction to vacate a void judgment of a State in violation of the U.S Constitution, which are fundamental powers of both Courts of Law and Equity.

See also Appendix [S]– Questions Presented: 23, 27.

**7. There is No Lawful Representative Quorum in the "Legislature" of California or the "Congress" of the United States**

[159] By no coincidence Circuit Courts have been abolished as part of this scheme.

[160] https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works. Accessed 8/16/22.

[161] 374 U.S. 865-66.

Since at least 1929, "Congress" has refused to apportion the number of representatives in the House to the population of the People of the States leaving them without any representative government based on the rule of Law or consent of the governed.

One of the chief complaints of the American colonists at the time of the Revolution was that they believed they were not represented in British Parliament that consistently took adverse actions to their interests and without their consent. The famous political slogan "no taxation without representation" originated at this time. Consequently, the Declaration of Independence declared that the newly established governments of the thirteen united States of America were to "deriv[e] their just powers from the consent of the governed[.]"

As one of the checks and balances subsequently framed into the Constitution to ensure this consent and the representation of the People, Article I, §2, Cl. 3 clearly and unambiguously set forth a minimum and maximum ratio of representation in the House of Representatives of Congress. In 1929 however, "Congress", acting without any lawful representative quorum, arbitrarily decided to "amend" the Constitution in violation of the procedures set forth in Article V by fixing the number of "representatives" at 435. Consequently, there has been no Lawful representative quorum in "Congress" for nearly 100 years. Today, with a population nearing 330,000,000 People, a proper ratio of representation in the House of Representatives would be close to 11,000 members, not 435. Cf. Section 14, Article II of The Northwest Ordinance of 1787 guaranteeing that even the inhabitants territories "shall always be entitled to […] a proportionate representation of the people in the legislature[.]

A similar situation has occurred in the "Legislature" of California with its 80 "representatives" for nearly 40 million people. No apportionment according to population has been made since at least 1879 despite being mandated by Article I, §14 of the Constitution of 1849 declaring that "representation shall be apportioned according to population."

See also Appendix [S]– Questions Presented: 29-34

**8. The "Judges" of the Superior "Court" of California-County of Orange Breached Their Mandatory Duty to Grant Petitioner's Application for Emergency Stay and To Provide *Habeas Corpus Relief***

Upon the filing of Petitioner's verified *Ex parte* Application for Emergency Stay and Petition for Writ of *Habeas Corpus*, Superior "Court" "Judges" Leal, and subsequently, Cramin, had a mandatory, non-discretionary, ministerial duty to (1) fully, fairly, and impartially investigate his claims; and, (2) upon determination of their validity, to grant him all requested relief as mandated by Law. The refusal/ "denial" to abide these sworn mandatory duties is not a Lawful action because all Judge's lack discretion and subject matter jurisdiction to violate the Constitution.

**a. First National Bank of Omaha ("FNBO")**

On April 12, 2022, FNBO was given notice of the issues pertaining to Petitioner and his estate's inability to discharge the alleged mortgage obligation due to the crimes being perpetrated upon him and his estate by public "officials" and private parties in conspiracy therewith, in a recorded phone call he made to FNBO. During the call, Petitioner provided the address to his website, http://www.thespiritoflaw.com, where FNBO could find and verify his claims.

Despite providing this evidence to FNBO, FNBO directed its attorneys, The Dunning Law Firm, APC ("Dunning Firm") and the Dunning Firm's apparent employees, Donald Dunning and James MacLeod, to sue Petitioner in the Superior "Court" of California-County of Orange on or about July 25, 2022. In other words, FNBO and its attorneys intended to obtain relief from the same entity accused of committing crimes against Petitioner that were the direct and proximate cause of his inability to meet his private obligation with FNBO.

Upon being served with FNBO's complaint, Petitioner filed a timely Challenge to Jurisdiction/ Petition for Writ of *Habeas Corpus* and *Ex Parte* Application for Emergency Stay. Exhibits [A46 and A47].

Amongst numerous claims, the Petition and Application challenged FNBO's standing on the grounds that: (1) because the State of California had deprived Petitioner of due process and was actively engaged in depriving him of his liberty, the judicial power of California could not be used to further take his money or property until he was afforded due process on the previous claims that were the proximate cause of damages in the alleged claim by FNBO; (2) that because all of the purported transactions occurred in interstate commerce, the State of California was entirely without subject matter jurisdiction over the case; and, (3) that even if Petitioner had failed to discharge the alleged obligation that it could not result in the claim of "damages" made by FNBO (Exhibit [D] p.5483) because, as this Court has declared, "the act of discharging the debt is a mere nullity and that it is still due."[162]

[162] *Cohens v. Virginia*, 19 U.S. 264, 403 (1821).

FNBO's opposition and MacLeod/ Dunning Firm's declaration in support thereof (Exhibit [D] pp.5461-5467) failed to meaningfully and substantively address these issues and thereby failed to sustain FNBO's burden of proof to standing on direct jurisdictional attack.

Based upon the *verified* claims and evidence filed by Petitioner, FNBO had two apparent options so as not to violate its ordinary duty of care[163] owed to Petitioner, or to become complicit in the conspiracy against him. FNBO could either (a) present authenticated evidence that Petitioner's claims were false and the Court thereby lacked a mandatory duty to fully, fairly, and impartially investigate his claims and grant him the mandatory relief he requested; or, (b) to (1)unequivocally declare that it had no intention of using the Court's jurisdiction as a means of causing Petitioner harm; (2) by affirming that the Court had a mandatory duty to investigate Petitioner's claims; and, (3) by refusing to exercise the Court's jurisdiction until the requisite fair and impartial due process was afforded to Petitioner. The position to effectively support Petitioner in achieving a Lawful resolution that could also lead to the Lawful resolution of FNBO's claims would in no way hinder the Dunning Firm or MacLeod or Dunning's duty to represent FNBO. On the contrary, it would have protected them and FNBO from aiding and abetting the conspiracy.

The Superior "Court's" jurisdiction cannot be used as a sword on the one hand to commit crimes and deprivations of Petitioner's rights, while on the other, as a shield to refuse to grant him the relief mandated by Law. Put differently the "Court"

[163] See e.g. Cal. Civil Code §1714(a). In this same light, private parties can be liable under 42 U.S.C. §1983 when they conspire with State officials in the deprivation of rights secured by the U.S. Constitution. *Lugar v. Edmundson Oil Co., Inc.*, 457 U.S. 922 (1982).

cannot use its authority to unlawfully restrain Petitioner while consequently finding him guilty of the "damages" resulting from that restraint that he didn't cause.

As officers of the Court, Dunning and MacLeod also had a sworn mandatory duty to support the Constitutions of California and the United States (Cal. Bus. & Prof. Code §6067) and not to war against them by either directly or indirectly advocating the fraud, treason, and other crimes being perpetrated upon Petitioner or by being involved in additional substantive due process violations to violate his rights and take his money or property without Lawful authority.

FNBO, The Dunning Firm, Dunning, and MacLeod (collectively hereafter "FNBO") decided war to against Petitioner and the California and U.S. Constitutions by: (1) advocating that Petitioner had no right to the relief he sought (Exhibit [D] pp.5461-5467); (2) by violating due process in failing to meaningfully and substantively respond to the direct jurisdictional attack and substantiate each of the issues raised by Petitioner to evidence their standing and the Court's subject matter jurisdiction[164] to award the relief they sought and were eventually awarded. (At the very least this included providing competent authority that none of the alleged transactions occurred in interstate commerce and by substantiating exactly what jurisdiction they occurred in, if not interstate commerce); (3) by MacLeod lying to the "Court" under oath, on the Dunning Firm and FNBO's behalf, that Petitioner had not presented authenticated evidence of his claims (Exhibit [D] p.5467, line 8) even

[164] See e.g. *McNutt v. Gen. Motors Accep. Corp.*, 298 U.S. 178 (1936). Additionally, having not been vested with common Law general jurisdiction, the Superior "Court" could not be sitting in that capacity and thereby its jurisdiction had to be affirmatively stated, proved, and on the record. See *Ex Parte Knowles,* 5 Cal. 300, 306 (Cal. Supreme Ct. 1855), *Parsons v. Tuolumne Co. Water Co.*, 5 Cal. 43 (Cal. Supreme Ct. 1855), *In re Estate of Strong*, 119 Cal. 663, 666-7 (1898), *Estate of Scarlata*, 193 Cal. App. 2d 35, 41 (1961), *Cohen v. Barrett*, 5 Cal. 195, 210 (Cal. Supreme. Ct. 1855), *Cent. Ill. Pub. Serv. Co. v. Indus. Comm'n*, 293 Ill. 62, 65-6 (Ill. Supreme Ct. 1920).

though Petitioner had (Proc. Hist. Exhibit [A46] pp.8-9); (4) by MacLeod/The Dunning Firm violating due process by failing to provide Petitioner with a Declaration and Exhibits filed in the "Court" to support FNBO's "damages" claim when Petitioner directly notified MacLeod that he never received service of the documents (Exhibit [D] pp.5499-5502) and still has not; (5) by MacLeod/ The Dunning Firm requesting the "Court" to award judgment in FNBO's favor even though they knew, that Petitioner never received a full, fair and impartial judicial determination of his rights, not to mention on his *Ex Parte* Application and *Habeas* petition hearings (Exhibit [D] pp.5452-5459) and in the action commenced by FNBO;[165] (6) by MacLeod/ The Dunning Firm falsely and fraudulently telling Petitioner that final "Judgment" had been entered by the Court when he/they knew that due process had not been followed for all of the above reasons, including the fact that Petitioner was not given any opportunity to meet the evidence of FNBO's "damages" claim because the Deputy Clerk issued "Judgement" *on the same day* (October 21, 2022) that FNBO filed its Declaration and supporting evidence. Exhibit [D] pp.5450-51. This was this same evidence that MacLeod/ The Dunning Firm refused to provide Petitioner a copy of after he informed them that he had never received service. MacLeod/ Dunning Firm refused to provide Petitioner copies of the Declaration and supporting evidence on the grounds that "default ha[d] [already] been entered[,] [he (Petitioner)] was not before the Court", and his "fee waiver was denied." *Id.* None of these responses preclude

[165] "[I]f [a Court] act[s] without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers." *Elliott v. Lessee Persol*, 26 U.S. 328, 329 (1828).

Petitioner's fundamental due process right to be served process and to have an opportunity to meet and oppose all claims against him.

By conspiring with State "officials" to violate due process to receive a "Judgment" in its favor FNBO has become directly involved in the conspiracy to take Petitioner's money and property without Lawful authority.

By denying Petitioner mandatory relief yet exercising jurisdiction to award FNBO relief "Judges" Leal and Cramin also aided and abetted the conspiracy by amongst other crimes, committing treason by refusing to exercise the "Court's" jurisdiction to fully, fairly, impartially, investigate his claims and to grant him the relief mandated by Law.

In a final apparent act to silence Petitioner and prevent him from continuing to defend himself because he was unable to afford to pay the "Court" filing fees, "Judicial Officer" June Jee An denied his Fee Waiver request on the ground that his "savings account amounts may cover [the Court] fees." Exhibit [D] p. 5480. Petitioner does not have a savings account and did not indicate anywhere on the Fee Waiver form that he had any money in a savings account. Exhibit [D] pp.5471-5478. His monthly income was listed at $4,721.60 while his monthly expenses totaled more than $9,000. There is no known process to appeal a Fee Waiver denial. It should also be noted that all of Petitioner's previous Fee Waiver applications had been approved in every State action.

**b. Citibank N.A. Not in its Individual Capacity But Solely as Owner Trustee For New Residential Mortgage Loan Trust 2018-2[166] ("Citibank N.A.")**

On March 7, 2022, shellpoint–a company purporting to be the servicer (Exhibit [D] pp.5040-1) of the mortgage pertaining to the "Deed of Trust" (*Id.* pp.5288-5303) and "Promissory Note" (*Id.* pp.5330-5331) allegedly executed by Petitioner–was given notice of the issues pertaining to Petitioner and his estate's inability to discharge the alleged mortgage obligation due to the crimes being perpetrated upon them by public "officials" and private parties in conspiracy therewith, in a recorded phone call. During the call, Petitioner provided the address to his website, http://www.thespiritoflaw.com, where shellpoint could find and verify his claims.

Despite the foregoing notice, Prestige Default Services, LLC, ("Prestige") the purported "Trustee" of the Deed of Trust (*Id.* p.5222) initiated non-judicial foreclosure proceedings by filing a "Notice of Default" in the Office of the Clerk-Recorder for the County of Orange pursuant to Cal. Civil Code §2924 on July 7, 2022. Exhibit [D] p.5225-5230.

In response, Petitioner filed a Petition for Writ of *Habeas Corpus* and Application for Emergency *Ex parte* hearing. Proc. Hist. Exhibits [A46 and A47]. Amongst numerous claims, the Petition and Application challenged Prestige's standing on the grounds that: (1) because the State of California had deprived Petitioner of due process and was actively engaged in depriving him of his liberty, the judicial power of California could not be used to further take his money or property

[166] Exhibit [D] pp.5218-19.

until he was afforded due process on the previous claims that were the proximate cause of "damages" in the alleged claim by Prestige[167]; (2) because all of the purported transactions occurred in interstate commerce, the State of California was entirely without subject matter jurisdiction over the case; and, (3) Petitioner could not be subjected to non-judicial foreclosure proceedings in violation of Article 1, §10 because he never made a knowing, voluntary, or intelligent waiver of rights.

Prestige failed to oppose Petitioners direct jurisdictional challenges entirely.

Shellpoint, Citibank N.A., and Prestige have also all refused to substantively respond to Petitioner's repeated requests under the Fair Debt Collection Practices Act and the Freedom of Information Act for information and documentation pertaining to the alleged "loan" and mortgage at issue in the foreclosure proceedings. Exhibit [D] pp.5334-5339, 5503.

Petitioner is not in possession of any authenticated evidence: (1) that Citibank N.A. or any other bank "loaned" him anything; or (2) that Citibank N.A. has standing to foreclose on the "Deed of Trust" given the facts that (a) the alleged security Prestige relies upon is not the "Deed of Trust" executed by Petitioner, but an entirely different security instrument listed on the U.S. Stock Exchange[168], that not only does not secure the "Promissory Note" but is also not secured by the real property located at 818 Spirit Costa Mesa, California; (b) the "Promissory Note" has become separated from the "Deed of Trust", by repeated transfers that were all made without the "Note"

[167] Pursuant to the obligations of the "Promissory Note", Petitioner and/or his estate have a duty "to keep of the promises made in [the] Note, including the promise to pay the full amount owed." Exhibit [D] p.5331.

[168] https://sec.report/Document/0000891092-18-003130/

(Exhibit [D] p.5218-19, 5287) that by Law cannot be rejoined. See e.g. *Carpenter v. Longan*,[169] declaring that "[a]n assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity" and Restatement (Third) of Property (Mortgages) §5.4 (1997) March 2019 Update:

> "[I]t is nearly always sensible to keep the mortgage and the right of enforcement of the obligation it secures in the hands of the same person. This is so because separating the obligation from the mortgage results in a practical loss of efficacy of the mortgage […]. When the right of enforcement of the note and the mortgage are split, the note becomes, as a practical matter, unsecured."

The "Deed of Trust" that purports to be secured by the real property located at 818 Spirit Costa Mesa, California is not listed on the U.S. Stock Exchange.Whomever the beneficiaries of the New Residential Mortgage Loan Trust 2018-2 are, they do not have a known beneficial interest in the "Deed of Trust" secured by the real property located at 818 Spirit Costa Mesa, California. What they apparently have is a limited partnership interest in a completely separate security instrument on the U.S. Stock Exchange. The "Deed of Trust" is also not a security for the security listed on the U.S. Stock Exchange.

In the same way that a stockholder *only* possesses a property interest in the shares held, the owner(s) of the security held by New Residential Mortgage Loan Trust 2018-2 *only* possess an interest in the instrument it holds, which is not the "Deed of Trust" Prestige has sought to foreclose on.

There is also no known authority under California or Federal statute by which a mortgage created under California statute can be converted into and governed by

[169] *Carpenter v. Longan*, 83 U.S. 271, 274 (1872).

Federal statute and traded on the U.S. Stock Exchange. Any conversion of the "Deed of Trust" into different security instrument or foreign venue renders the original a nullity.

Despite the foregoing, Patricia Sanchez, "Trustee Sale Officer" for Prestige filed a "Notice of Trustee Sale" in the Office of the Clerk-Recorder for the County of Orange on October 31, 2022. Exhibit [D] pp.5508-5510. The sale date is scheduled for December 12, 2022.

Petitioner has no apparent remedy in any other Court of California or the United States. Even filing bankruptcy will not afford him any protection as the United States Bankruptcy Court for the Ninth Circuit has repeatedly been involved in the fraud surrounding §7031 actions and is not empowered to adjudicate his Article III claims. And the District "Court" has already dismissed his claims with prejudice on the grounds it lacked subject matter jurisdiction to adjudicate them.

See also Appendix [S]– Questions Presented: 40.

**9. The Constitutions of California and the United States Mandate a Judicial Determination of Rights and Redress of Grievance in the *First Instance*, Not a Multi-year Expedition to Find An Official Willing to Abide Their Sworn Duties. Petitioner Cannot be Subjected to Involuntary Servitude to Continue to Seek Relief From "Government" Agencies and "Officials" Who Have *Repeatedly* Demonstrated Their Engagement in Crimes and Acts of Treason**

**10. The Entity Purporting To Be The Lawful De Jure State: California Is Not California and Has Never Been Admitted To The Union of States Known As The United States of America In Violation of Article IV, §3 and §4**

Based on all of the issues presented, Petitioner contends: (1) there is no judicial Constitutional Court of California and no apparent judicial officer willing to abide

their sworn duties pertaining to at least the issues presented in this case; (2) no Lawful representative quorum in the "Legislature"; (3) no apparent Executive official willing to abide their sworn duties pertaining to at least the issues presented in this case (from the "Governor", Gavin Newsom, to any other "official" in State or local law enforcement); (4) that the Republican form of government of California admitted as a State under English/American common Law has been overthrown or replaced by a municipal form of government under Roman civil law[170] without the consent of the People, a Lawful representative quorum in the Cal. "Legislature" and "Congress" and is currently operating without the required system of checks and balances outside of the California and U.S. Constitutions; (5) that the Republican form of government of California in the "City of Costa Mesa" where Petitioner is domiciled has been overthrown or replaced by a municipal "council-manager form of government"[171] based on Roman civil law that operates outside of the California and U.S. Constitutions; (6) that none of the sovereign People of California appear to occupy any office of California "government" or Congress, having been denied access (Appendix [S] Questions:29-31); (7) that only another foreign body politic known as a "citizen of the United States" or "United States citizen" that has no recognized

[170] CIVIL LAW. The "Roman Law" and the "Civil law" are convertible phrases, meaning the same system of jurisprudence; it is not frequently denominated the "Roman Civil Law."

. . . 1. The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors . . . as distinguished from the common law of England and the canon law.

2. That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself ; more properly called "municipal" law, to distinguish it from the "law of nature" and from international law. Henry Campbell Black, A Dictionary of Law (St. Paul, Minn.: West Publishing Co., 1891), 207.

[171] Charter of the City of Costa Mesa:
https://www.costamesaca.gov/home/showpublisheddocument/6014/636490563866670000

sovereign inalienable rights appears to occupy all offices of "California" and United States "government" (Appendix [S] Questions:29-31 and e.g. U.SA. The Republic Is The House That No One Lives In); (7) that the entity pretending to be the Lawful de jure State: California, has, without any Lawful authority, either been overthrown or unadmitted from the union of States known as the United States of America; (8) that these issues result in a violation of all six Articles of the U.S. Constitution; and, (9) that Petitioner has been denied all applicable protections of the California and United States Constitutions.

## III. CONCLUSION

Ernst Huber, a leading Nazi theorist, in a definitive presentation of the Nazi political-legal position wrote:

> "The authority of the Fuhrer is complete and all-embracing; it unites in itself all the means of political direction; it extends into all fields of national life; it embraces the entire people, which is bound to the Fuhrer in loyalty and obedience. The authority of the Fuhrer is not limited by checks and controls, by special autonomous bodies or individual rights, but is free and independent, all-inclusive and unlimited."[172]

On what happens to personal liberty in the "total state", Huber stated:

> "Not until the nationalistic political philosophy had become dominant could the liberalistic idea of basic rights be really overcome. The concepts of personal liberties of the individual as opposed to the authority of the state had to disappear; it is not to be reconciled with the principle of the nationalistic Reich. There are no personal liberties of the individual which fall outside the realm of the state and which must be respected by the state ... There can no longer be any question of a private sphere, free of state influence, which is sacred or untouchable before the political unity. The constitution of the nationalistic Reich is therefore

[172] National Socialism: Basic Principles, Their Application by the Nazi Party's Foreign Organization, and the Use of Germans Abroad for Nazi Aims" U.S. Department of State, U.S. Govt. Printing Office (1943) as cited in the Objectivist Newsletter February 1969, p.37, 50

> not based upon a system of inborn and inalienable rights of the individual… *Id.* p.50.

In such regimes "there is no longer any distinction between private matters and public matters"; there are no private matters. "The only person who is still a private individual in Germany," declared Robert Ley, a member of the Nazi hierarchy, ... "is somebody who is asleep."[173]

## IV. RELIEF

Pursuant to Article III of the Constitution this Court has a mandatory, non-discretionary ministerial duty to exercise jurisdiction over this case. "We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution."[174]

You will please grant this Application for the Emergency Stay of: (1) the "foreclosure proceedings" of the "Deed of Trust" secured by the real property located at 818 Spirit Costa Mesa, California; and (2) enforcement of the "Judgement" in Superior "Court" of California-County of Orange case #30-2022-01271693; pending this Court's Lawful adjudication of all of the issues presented in Petitioner's Petition for Original Writs of *Quo Warranto, Mandamus, and Habeas Corpus* to be sent to the Court within forty days of the date of the Stay Order. Petitioner should also be allowed to present his Petition in 8.5 x11 format without any page restrictions with all applicable fees waived.

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[173] The Fascist New Frontier, The Ayn Rand Column, 98.

[174] *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

This Court will please also exercise its inherent Equity powers or those of supplemental jurisdiction to grant Petitioner emergency restitution so that he will be able to fully meet his needs and obligations; be fairly compensated for a preliminary portion of his time and all expenses having been forced into involuntary servitude to perform this multiyear forensic investigation.

Petitioner has spent an average of eight hours per day, five days per week, for 291 weeks (the week of April 3, 2017 through November 4, 2022) conducting this investigation. The rate he should reasonably be paid is the same rate for legal services provided by a lawyer, such as Mr. Bissell (the Humphreys counsel), whose customary rate is $300 per hour (Exhibit [A3] p.123). At this rate, the compensation due Petitioner is about $3,540,000.

Petitioner has also incurred a *preliminary* estimate of $350,000 in expenses that include "Court" and attorney's fees; office expenses (paper, toner, postage, envelopes, printers, scanner, filing cabinets, 3-ringed binders, computer, software, paper cutter, website and domain hosting, cloud storage, part time assistant, etc…); research (law and history books, repeated consultations with expert legal historians); and medical (regular psychotherapy, acupuncture, and other specialist visits and professional consultations to help cope and treat extreme levels of stress resulting from the intentional infliction of emotional distress by "officials").

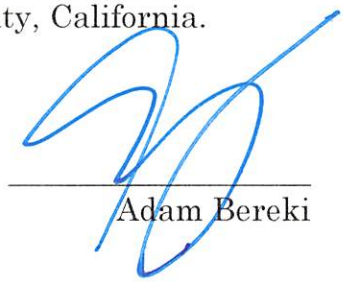
Pending further adjudication, which will incur additional time and expenses, Petitioner feels it is fair and reasonable that he be immediately compensated ten percent of the balance for his time (approx. $354,000) and all expenses (to be accounted for in a Motion sent within five calendar days upon granting the Stay). The

Court will equitably apportion the amount due between Respondents Karen and Gary Humphreys, William Bissell, the Law Offices of William Bissell, David Chaffee, Kathleen O'Leary, Richard Aronson, and Thomas Goethals. All payments are to be made in Lawful money and are not in any way to way be considered as settlement or waiver of any of Petitioner's claims at Law or in Equity against these People or any others. The amounts paid will however be deducted from any additional claims upon which they are found to be liable.

## DECLARATION

I, Adam Bereki, declare under penalty of perjury of the laws of California and the United States of America that: (1) the foregoing statements of fact are true and correct to the best of my knowledge and belief; and, (2) that all Exhibits and Appendix documents referenced herein and/or found on http://www.thespiritoflaw.com are true and correct copies with the exception of any non-substantive notes, numbering, redactions, or other marks I may have made thereon.

Signed on the 5th day of November, 2022 in Orange County, California.



Adam Bereki

No. _____

IN THE

# Supreme Court of the United States

In re Adam Bereki,

Petitioner.

**APPENDIX**

*VERIFIED* APPLICATION FOR EMERGENCY STAY
*PENDING THE FILING & LAWFUL ADJUDICATION OF A*
PETITION FOR ORIGINAL WRITS OF *QUO WARRANTO*, *MANDAMUS*,
& *HABEAS CORPUS*

To Elena Kagan, Associate Justice of the Supreme Court of the United States,
and Circuit Justice for the Ninth Circuit

Adam A. Bereki
*In Propria Persona*
818 Spirit
Costa Mesa, California
916.585.3016
abereki@gmail.com

# Appendix [A]

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/27/2017 TIME: 09:00:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Shanon Taylor

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: 72514442
**EVENT TYPE:** Jury Trial

**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
GARY HUMPHREYS, Defendant is present.
KAREN HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

All counsel answer ready for trial.

**1st day of trial**

At 9:21 a.m. This being the date set for Court Trial in the above-entitled cause, having been assigned to this department, all parties and counsel appear as noted above and trial commences.

All parties waived jury trial.

The Court and counsels discuss exhibits and pleadings as set forth on the record.

At 9:33 a.m. The Court declared a recess to read the trial briefs.

At 10:19 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Pursuant to Court's ruling on 3/24/2017, the Court to commence a severed Cross Complaint 1st cause of action as against Cross-Defendant, Adam Bereki.

At 10:14 a.m. Mr. William G. Bissell presents an opening statement on behalf of Cross Complainants Karen & Gary Humphreys for the severed Cross complaint 1st cause of action against Mr. Adam Bereki.

CASE TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS CASE NO: **30-2015-00805807-CU-CO-CJC**

At 10:29 a.m. Mr. J. Scott Russo presents an opening statement on behalf of Plaintiffs/Cross-Defendants The Spartan Associates, Inc..

At 10:32 a.m Mr. Adam Bereki presents an opening statement on behalf of himself as the Cross-Defendant.

121 document(s) are ordered pre-marked for identification as Plaintiffs/Cross-Defendants exhibits 1 through 137, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

62 document(s) are ordered pre-marked for identification as Cross-Complainants/Cross-Defendants exhibits 301 through 362, a description of each document is contained in the Exhibit List, a copy of which is attached hereto and incorporated herein by reference.

**MS. KAREN HUMPHREYS** is sworn and testifies.

At 11:14 p.m. Court declares a recess.

At 11:25 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 11:26 a.m. Ms. Karen Humphreys, previously sworn, resumes the stand for further testimony .

Ms. Karen Humphreys steps down.

**MR. GARY HUMPHREYS** is sworn and testifies.

At 11:58 a.m. Court declares a recess.

At 1:40 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 1:42 p.m. Mr. Gary Humphreys, previously sworn, resumes the stand for further testimony .

Exhibit(s) **32, 302, 303, 304, 305, 306,** having been previously marked for identification are admitted into evidence.

At 2:20 p.m. Mr. Gary Humphreys steps down.

**MR. ADAM BEREKI** is sworn and testifies.

Portions of Mr. Adam Bereki's deposition transcripts of 8/2/2016 read on the record (page 98 lines 10 to 13; page 61 lines 5 to 9)

At 2:34 p.m. Court declares a recess.

2:42 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 2:45 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

Exhibit(s) **34, 35, 33, 351 and 355,** having been previously marked for identification are admitted into

evidence.

At 3:22 p.m. Court declares a recess.

At 3:41 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 3:42 p.m. Mr. Adam Bereki, previously sworn, resumes the stand for further testimony .

**Exhibit(s) 30-1; 348,** having been previously marked for identification are admitted into evidence.

Mr. Adam Bereki steps down.

At 3:55 p.m. Mr. Gary Humphreys, previously sworn, recalls to the stand for further testimony by his counsel.

Mr. Gary Humphreys steps down.

At 4:10 p.m. Court declares a recess.

Court is adjourned until 03/28/2017 at 09:30AM in C-20.

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/28/2017 TIME: 09:30:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: Khoung Kelvin Do
BAILIFF/COURT ATTENDANT: Michelle Gallegos

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: 72559889
**EVENT TYPE**: Jury Trial

**APPEARANCES**
J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant,Plaintiff(s).
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Cross - Complainant(s).
KAREN HUMPHREYS, Defendant is present.
GARY HUMPHREYS, Defendant is present.
Adam Bereki, self represented Cross - Defendant, present.

**2nd day of trial**

At 9:55 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

At 9:57 a.m. Mr. William G. Bissell presents closing argument on behalf of Cross-Complainants/Defendants, Karen & Gary Humphreys.

At 10:12 a.m. Mr. J. Scott Russo presents closing argument on behalf of Cross-Defendant, The Spartan Associates, Inc..

Mr. Adam Bereki waived closing argument.

At 10:19 a.m. Court declares a recess.

At 10:52 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, the Court finds and determines that Mr. Adam Bereki is the contractor and he does not possess contractor's license.

The Court finds judgment for the Cross Complainants, Gary & Karen Humphreys (First Cause of Action,

CASE TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS CASE NO: **30-2015-00805807-CU-CO-CJC**

for Disgorgement of Funds Paid) and against cross-defendant, Adam Bereki.

The Court invites counsels to meet and discuss the plan for the remaining cause of actions and the complaint.

At 11:19 a.m. Court declares a recess.

At 11:37 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Legal discussions held with regards to remaining cross-complaint cause of actions and the complaint as set forth on the record.

Counsels are to resume discussions during lunch hour and report to the Court at 1:45 p.m.

At 11:47 p.m. Court declares a recess.

At 1:48 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

Counsels reached an agreement as set forth on the record.

Mr. J. Scott Russo presents an offer of proof on plaintiff's complaint that if called Mr. Adam Bereki would be the witness and the testimony would be that Plaintiff, Spartan Associates had rendered goods and services to the defendants. The fair market value for the services and goods of $82,821.53 to be backed up by invoices and testimony about the reasonable value of those services that would be the first cause of action Quantum Merit. For the 2nd cause of action, go and in hand that it was an open book accounting was rendered to the defendants that they were given the accountings and the sum was $82,821.53 that was still due.

Based on Mr. Russo's offer of proof, the Court understand that those claims are based upon the view of plaintiff Spartan Associates, Inc. was the general contractor on the project. The Court finds that Spartan Associates does not have standing as determined earlier today that Mr.Bereki was the purported general contractor on the contract. Spartan Associates, Inc. may have been apparently substituted but it is certainly not with the permission or agreement of the defendants. Based on that, the **Court finds judgment for the defendants on the complaint.**

The parties have discussed, agreed and stipulates on the record as follows: The entirety of remaining causes of action on the First Amended Cross-Complaint will be dismissed without prejudice. If judgment on the first cause of action becomes final, the dismissal without prejudice will be converted to dismissal with prejudice. Pending judgment on the first cause of action becoming final, the statute of limitations on the re-filing of an action of the dismissed causes of action is waived. If a new action is filed on the dismissed causes of action , discovery deemed completed and will not be re-opened and the newly filed case will be consolidated with the remanded case for trial.

Pursuant to Mr. Bissell's Motion, **the Court orders the remaining causes of action, negligence, fraud, alter ego, penalty, attorney's fees and recovery against the Contractor's license bond be dismissed without prejudice. The judgment on the First Amended Cross Complaint is on the 1st cause of action for discouragement only.**

CASE TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS

CASE NO: **30-2015-00805807-CU-CO-CJC**

The Court directs Mr. William G. Bissell to prepare the judgment.

At 2:03 p.m. **Pursuant to oral stipulation set forth on the record, exhibits are released and returned to the submitting parties/counsels for maintenance, custody and safekeeping pending any post-verdict or appeal proceedings. All identification tags and other identifying markings are to remain in place pending this period.**

At 2:05 p.m. The Court is adjourned in this matter.

# Appendix [B]

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/04/2017 at 12:01:05 PM
Clerk of the Superior Court
By Enrique Velez,Deputy Clerk

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)
William Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
TELEPHONE NO: (949) 719-1159 FAX NO (Optional)
E-MAIL ADDRESS (Optional): wbissell@wgb-law.com
ATTORNEY FOR (Name): Gary Humphreys & Karen Humphreys

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
APR 20 2017
DAVID H. YAMASAKI, Clerk of the Court
BY: DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

PLAINTIFF: The Spartan Associates, Inc.

DEFENDANT: Gary Humphreys, Karen Humphreys et al

CASE NUMBER
2015-00805807

Judge David Chaffee

**JUDGMENT**

☐ By Clerk ☐ By Default ☑ After Court Trial
☑ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial

**JUDGMENT**

1 ☐ **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application
- d. ☐ **Clerk's Judgment** (Code Civ Proc., § 585(a)) Defendant was sued only on a contract or judgment of a court of this state for the recovery of money
- e. ☐ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
  - (1) ☐ plaintiff's testimony and other evidence
  - (2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**
- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case The court approved the stipulated judgment and
- b ☐ the signed written stipulation was filed in the case
- c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☑ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on *(date and time)*: March 27, 2017 at 9.00 a.m.
  before *(name of judicial officer)*: The Honorable David Chaffee
- b. Appearances by:

☑ Plaintiff *(name each)*
(1) The Spartan Associates, Inc.
(2)
☐ Continued on Attachment 3b

☑ Plaintiff's attorney *(name each)*:
(1) J. Scott Russo esq.
(2)

☑ Defendant *(name each)*:
(1) Gary Humphreys
(2) Karen Humphreys
☑ Continued on Attachment 3b.

☐ Defendant 's attorney *(name each)*:
(1) William Bissell esq.
(2) William Bissell esq.

- c. ☐ Defendant did not appear at trial Defendant was properly served with notice of trial.
- d. ☑ A statement of decision (Code Civ Proc., § 632) ☑ was not ☐ was requested.



Form Approved for Optional Use
Judicial Council of California
JUD-100 [New January 1, 2002]

PLAINTIFF The Spartan Associates, Inc.

DEFENDANT Gary Humphreys, Karen Humphreys et al

CASE NUMBER 2015-00805807

**JUDGMENT IS ENTERED AS FOLLOWS BY:** ☑ THE COURT ☐ THE CLERK

4 ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties

5. **Parties.** Judgment is

a ☐ for plaintiff *(name each)*

and against defendant *(names)*:

☐ Continued on Attachment 5a.

b. ☑ for defendant *(name each)*.
Gary Humphreys & Karen Humphreys

c ☑ for cross-complainant *(name each)*.
Gary Humphreys & Karen Humphreys
and against cross-defendant *(name each)*:
Adam Bereki

☐ Continued on Attachment 5c.

d ☐ for cross-defendant *(name each)*:

6 **Amount.**

a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

| | | |
|---|---|---|
| (1) ☐ | Damages | $ |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☐ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

b. ☑ Plaintiff to receive nothing from defendant named in item 5b.
☑ Defendant named in item 5b to recover costs $
☐ and attorney fees $

c ☑ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

| | | |
|---|---|---|
| (1) ☑ | Damages | $ 848,000.00 |
| (2) ☐ | Prejudgment interest at the annual rate of % | $ |
| (3) ☐ | Attorney fees | $ |
| (4) ☑ | Costs | $ |
| (5) ☐ | Other *(specify)*: | $ |
| (6) | TOTAL | $ |

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

7 ☑ Other *(specify)*:
Causes of action two through eight of the first amended cross-complaint are dismissed without prejudice subject to a stipulation by the parties and entered on the record.

Date: APR 2 0 2017

☐ JUDICIAL OFFICER
DAVID R. CHAFFEE

Date ☐ Clerk, by _____, Deputy

(SEAL)

**CLERK'S CERTIFICATE** *(Optional)*

I certify that this is a true copy of the original judgment on file in the court

Date:

Clerk, by _____, Deputy



JUD-100 [New January 1 2002] **JUDGMENT**

# Appendix [C]

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**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

---

[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

---

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.]"

---

[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.

---

[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**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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: 72990898

**EVENT TYPE**: Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

---

**APPEARANCES**
Law Offices of William G. Bissell, from Law Offices of William G. Bissell, present for Cross - Complainant,Defendant,Respondent on Appeal(s).
Adam Bereki, self represented Defendant, present.

---

Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. 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.

Counsel for the Humphreys to give notice.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

DEPARTMENT C16

THE SPARTAN ASSOCIATES, INC.,

Plaintiff,

vs.

No. 30-2015-00805807

GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual, and DOES 1 THROUGH 25, inclusive,

Defendants

---

GARY HUMPHREYS, an individual and KAREN HUMPHREYS, an individual;

Cross-Complainants,

vs.

ADAM BEREKI, an individual, et al.,

Cross-Defendants.

---

HONORABLE JAMES J. DI CESARE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MARCH 15, 2019

APPEARANCES OF COUNSEL:

FOR THE DEFENDANTS, CROSS-COMPLAINANTS: WILLIAM G. BISSELL
ATTORNEY AT LAW

FOR THE CROSS-DEFENDANT: ADAM BEREKI
IN PROPRIA PERSONA

JAMIE JENNINGS, CSR NO. 13434
OFFICIAL COURT REPORTER

INDEX

(NO WITNESSES)

(NO EXHIBITS)

SANTA ANA, CALIFORNIA - MARCH 15, 2019

MORNING SESSION

(PROCEEDINGS IN OPEN COURT:)

* * *

THE COURT: Thank you. Is there an appearance on court call, please.

Someone on court call, please.

THE CLERK: Mr. Bereki?

MR. BEREKI: Your Honor, can you hear me?

THE COURT: We can now. Please state your name.

MR. BEREKI: Adam Bereki in propria persona.

THE COURT: Thank you. Welcome.

MR. BEREKI: Thank you.

THE COURT: And then counsel for the plaintiff.

MR. BISSELL: William Bissell, Your Honor, for the opposing parties, Karen and Gary Humphreys.

THE COURT: Thank you very much. Okay. So we do have a court reporter here. I do want to find out how much time that you wanted to take to argue the matter, then I'll put that into my consideration as to when I'll call the case.

So, Mr. Bissell, did you have a time estimate, if any?

MR. BISSELL: Your Honor, we would submit on

the tentative.

THE COURT: Okay. Mr. Bereki, do you have a time estimate at all?

MR. BEREKI: 10 -- 10 minutes, Your Honor. I just have some questions to ask of you for clarity because my next step is obviously to go to the US Supreme Court, so I just want some clarity on your tentative.

THE COURT: Okay. Do you have -- do you have the tentative? Have you been able to pull it off the internet?

MR. BEREKI: Yes. I'm looking at it, Your Honor.

THE COURT: All right.

Okay. Very good. So I'll come back to you then.

MR. BEREKI: Thank you.

THE COURT: Thank you for your patience.

(Recess.)

THE COURT: Okay. The matter is Spartan Associates versus Humphreys.

MR. BISSELL: Good morning, Your Honor. William Bissell for Respondents, the Humphreys.

THE COURT: Thank you.

Mr. Bereki, would you make your experience.

MR. BEREKI: Yes, Your Honor. Adam Bereki in

propria persona. Your Honor, this case hinges upon whether federal constitutional protections were denied and whether the trial in appellate court had jurisdiction to deny these protections. The matter goes to the jurisdiction of the Court, not the merit as was cited in the tentative.

While the rule that Your Honor cited may be applicable, it cannot be used to overrule the federal constitutional protections that I'm contending were denied here. This is held in Miranda v. Arizona at 384 US 436 at 491. The US Supreme Court stated there: Where rights secured by the Constitution are involved, there shall be no rule-making or legislation that would abrogate them.

The law of case doctrine that was cited in the tentative authority, which is People v. Dutra, does not apply here. It states: Because the rule is merely one of procedure and does not go to the jurisdiction of the Court, the doctrine will not be adhered to where its application will result in an unjust decision. For example, where there has been a manifest misapplication of existing principles resulting in substantial injustice.

That is exactly what I'm claiming here, Your Honor, that there's been a substantial injustice. And so, because this is a motion to vacate a void

judgment, I'm challenging the jurisdiction of the court to issue the Humphreys costs, and they have not substantiated the jurisdiction of the court to violate the Constitution and award the costs or even to have judgment awarded in their favor.

THE COURT: Thank you very much. Thank you.

Counsel, did you want to say something?

MR. BISSELL: I'm not sure how to respond to that, Your Honor. It's clear that the question of jurisdiction has been determined not once but twice: Once at the trial court level, once at the appellate court level, and presented to the California Supreme Court and rejected as a -- as grounds for review at that level. The -- you know, the Superior Court is a court of general jurisdiction; it has jurisdiction over all matters not exclusively reserved to the Courts of Appeal or the California Supreme Court. It had subject matter jurisdiction over this action.

Mr. Bereki appeared at the trial in this matter, he presented his case, he presented evidence, he questioned witnesses, he cross-examined witnesses. So, clearly, he had submitted to personal jurisdiction in this case. So the jurisdiction question is, to me, put to rest. If he wants to raise it, he has to raise it at another level.

Now, Mr. Bereki here is -- he's unhappy with

the Court's ruling, with the Court's decision. He thinks it's in error. Well, that's not a void judgment. That's a judgment you take up on appeal. He's done that. He's lost on appeal. If he's still unhappy, he has another level to go. That's where he has to go. He has no business being in this court today to present this motion.

THE COURT: Thank you.

Mr. Bereki?

MR. BEREKI: Yes, Your Honor. This is not just a matter of me being unhappy with the judgment. The Supreme Court in Kokesh v. SEC recently heard this matter regarding disgorgement. And what the Court -- what the matter was before that court was, I believe, Mr. Kokesh -- there was a judgment awarded, a disgorgement judgment awarded against him for about $40 million. And there was a statute in this case -- the determination was to whether that disgorgement penalty was -- was a penalty or not, because, if it was, then the statute of limitations would apply and he would not be liable for that disgorgement.

So the court heard the matter and determined that the disgorgement in that case was a penalty.

So, in this case, there's been a near-million-dollar disgorgement judgment awarded against me. And I'm claiming that that judgment, based

upon the Kokesh decision by the Supreme Court, is a penalty. And if you apply the same holdings that they did in Kokesh to this case, it clearly evidences that the holding in this case is punitive as well.

So here's where the constitutional protections apply and why I'm challenging the jurisdiction of the court: Because a court does not have jurisdiction to violate either the California Constitution or the Constitution of the United States.

So if the trial in Appellate Court found that this award was not punitive, in spite of the fact that the US Supreme Court held that it was, I'm contending that the 14th Amendment protections for excessive punitive damage awards have to apply here and that essentially due process was violated because the court did not recognize that the judgment was punitive in nature.

So, in my mind, if the constitution's been violated, that's not a judicial act and the court doesn't have jurisdiction to do that, which is why I keep challenging jurisdiction. And, on appeal and in the trial court, I have not yet seen one authority presented by the Humphreys or by the courts that overrule the Supreme Court's authority in Kokesh or the more than 100 years' authority case cited in that case that discuss exactly what a punitive judgment is. And

the judgment in this case, disgorgement, strictly to be nonpunitive under the laws of restitution -- nonpunitive restitutionary disgorgement can only apply to the profits that I made acting as the, quote/unquote, unlicensed contractor in this case. Can't order disgorgement of all the moneys were paid whatsoever, because, once you go beyond profits, as the Court held in Kokesh, it becomes punitive.

So the Humphreys have to be able to substantiate how they got a near-million-dollar award that wasn't punitive. And nowhere in this case and nowhere in any of the decisions of the Appellate Court or anywhere else do they do that. So it's very clear to me that this award that goes beyond any compensation that I received is punitive.

And if you look at the Exhibit B, which is the order for judgment in this case, it lists damages at $848,000. Well, my contention is these are punitive damages. Well, if they are, then the 14th Amendment's protections for excessive punitive damages apply. And if you apply those protections in this case, the maximum award that they could have got is $5,000; not a million.

So, I mean, this is hugely, hugely significant, and the jurisdictional issue is not just me being upset with the Court's judgment. I'm happy to take a lick and keep going on with life, but I want to

see the authorities for the Court to do this, and they just aren't here.

The two cases that the Appellate Court cited are actually SEC versus Huffman. That one was overruled or superseded by Kokesh. And the other one was United States versus Phillip Morris, and that one is also, so to speak, in my favor because it says that it's not in the Court's equity powers to issue punishment. And it -- disgorgement only applies to the ill-gotten gains or profits, not to all of the compensation that was paid for a project.

THE COURT: Thank you very much.

Did you want to retort, for a moment only?

MR. BISSELL: Just for a moment only, Your Honor.

These arguments go to the merits of the case that has been determined as final and remitted to the Superior Court for one purpose only: For the entry of an award of costs. Even a case where the Court has made an error of law, even if the error of law is apparent on its face, which it's not here, that is not a void judgment and cannot be attacked at this level.

THE COURT: Mr. Bereki, you did read the tentative; right?

MR. BEREKI: I did, Your Honor. And what I'm saying is that appears to be a legislative rule that is

attempting to over -- to supersede the Constitution. Because the Miranda v. Arizona decision states, quote: Where rights secured by the Constitution are involved, there shall be no rule-making or legislation that would abrogate them. And under the supremacy clause of Article 6, Section 2, the Constitution has authority here.

So if these are punitive damages and the Court violated the Constitution, it does not have jurisdiction to issue a remittitur and award costs or to affirm the judgment of the Humphreys, period.

THE COURT: Well, what I --

MR. BEREKI: And the authorities that I've established here are -- Kokesh is one. I mean, literally 100 years of precedent of determining what a punitive damage award is, which is clearly punishment because --

THE COURT: No, I got it. No, I understand. Your papers make that clear and your argument makes that clear. The tentative, however, is the present state of the law, and so it will have to be the order of the Court.

I want to thank you very much for your very articulate presentation and --

MR. BEREKI: No problem, Your Honor. Can I ask you a couple of questions?

THE COURT: Well, the Court doesn't really answer questions. The Court reviews the papers and then gives tentatives. So I can really offer no direction. The issues that you're dealing with and have argued involve substantive law, and that is something that really has to be addressed, in this circumstance, with the Court of Appeal. Already been to the Court of Appeal. Petition to the Supreme Court. And you may have other remedies, but I really cannot comment on any of those or offer you any assistance.

MR. BEREKI: I'm not interested in you practicing law or doing that. I just had some questions about how -- the decision that you made to issue the tentative in this case.

THE COURT: Yeah. It is in the tentative. It is in the tentative. So I have other people in the courtroom, and I'm going to have to get to their case, but I really want to appreciate -- tell you that I appreciate your fine argument and that of counsel.

So have a good day. The tentative --

MR. BEREKI: Okay. Your Honor, can I wait until the other people are done so that we can go through this?

THE COURT: Well, I really do not want to get involved in doing any more than I've already done. I cannot give any legal advice or give any direction, and

the --

MR. BEREKI: I'm clearly not asking for that, Your Honor.

THE COURT: Excuse me.

MR. BEREKI: I have questions -- just to give an example, the judgment order says there's damages in $848,000. So I have questions as to what specific type of damages these are.

THE COURT: Yeah, no, I'm not prepared --

MR. BEREKI: I need to know that to be able to prepare a meaningful and substantive petition to the Supreme Court. If no one's going to answer these questions, well, I feel that that's denying me a hearing, and I have a right to know what the actual judgment order is and how the --

THE COURT: The Appellate Court -- excuse me.

As a matter of fact, the Appellate Court, in its opinion, did address those issues. So I do have to move on. The tentative is the order of the Court.

You have a very nice day. Thank you.

MR. BEREKI: Thank you.

THE COURT: Bye-bye.

MR. BISSELL: Thank you, Your Honor.

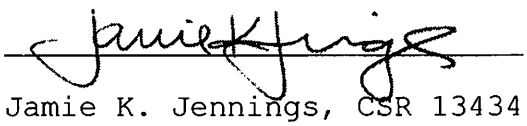
(Proceedings concluded.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA )
)SS.
COUNTY OF ORANGE )

I, Jamie K. Jennings, CSR 13434, Official Court Reporter in and for the Superior Court of the State of California, County of Orange, do hereby certify that the foregoing transcript, consisting of Pages 1 through 11, inclusive, is a true and correct transcript of my shorthand notes and is a full, true and correct statement of the proceedings had in said cause.

Dated this 20th day of March, 2019.



Jamie K. Jennings, CSR 13434

# Appendix [E]

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division Three - No. G055075

JAN 30 2019

Jorge Navarrete Clerk

Deputy

S252954

# IN THE SUPREME COURT OF CALIFORNIA

**En Banc**

---

GARY HUMPHREYS et al., Cross-complainants and Respondents,

v.

ADAM BEREKI, Cross-defendant and Appellant.

---

The petition for review is denied.

CANTIL-SAKAUYE

*Chief Justice*

# Appendix [F]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

| | | | |
|---|---|---|---|
| Case No. | CV 19-2050-CBM-(ADSx) | Date | November 12, 2019 |
| Title | *Bereki v. Humphreys et al.* | | |

| | |
|---|---|
| Present: The Honorable | CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE |

| | |
|---|---|
| YOLANDA SKIPPER | NOT REPORTED |
| Deputy Clerk | Court Reporter |
| Attorneys Present for Plaintiff: | Attorneys Present for Defendants: |
| NONE PRESENT | NONE PRESENT |

**Proceedings:** **IN CHAMBERS- ORDER RE: REQUEST FOR ASSISTANCE OF COUNSEL**

The matter before the Court is Plaintiff's Request for Assistance of Counsel (the "Request").

The Request is **DENIED** because the Court does not appoint counsel in civil cases.

The Court, however, advises Plaintiff that the Central District of California offers Pro Se Clinics in Los Angeles, Riverside, and Santa Ana to provide information and guidance to *pro se* litigants, such as Plaintiff, who are not represented by counsel. Below is information regarding the Pro Se Clinics:

Los Angeles Federal Pro Se Clinic
The Edward Roybal R. Federal Building and U.S. Courthouse
255 East Temple Street, Suite 170 (Terrace Level)
Los Angeles, CA 90012
Hours (by appointment only): Mondays, Wednesdays, and Fridays, 9:30 am - 12:00 pm and 2:00 pm - 4:00 pm
To make an appointment, contact Public Counsel at 213-385-2977, Ext. 270.

Riverside Joint Federal Pro Se Clinic
George E. Brown Federal Building
3420 Twelfth Street, Room 125
Riverside, CA 92501
Hours: Tuesdays and Thursdays, 10:00 am – 2:00 pm

Santa Ana Federal Pro Se Clinic
Ronald Reagan Federal Building and United States Courthouse
411 W. 4th Street, Room 1055 (first floor)
Santa Ana, CA 92701
Hours: Tuesdays, 1:00 pm – 4:00 pm; Thursdays, 10:00 am – 12:00 pm and 1:30 pm – 3:30 pm

Plaintiff can find more information about the Pro Se Clinics, including contact information, at http://prose.cacd.uscourts.gov/federal-pro-se-clinics.

**IT IS SO ORDERED.**

# Appendix [G]

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

Adam Bereki,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(B)(1), (6) & (7) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND REQUEST FOR JUDICIAL NOTICE [JS-6]**

The matter before the Court is Defendants Gary Humphreys and Karen Humphreys' (collectively, "Defendants'" or "The Humphreys'") "Motion to Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the Federal Rules of Civil Procedure and Request for Judicial Notice." (Dkt. No. 9 (the "Motion").)[1]

## I. BACKGROUND

This action arises from a state court judgment in favor of Defendants and

[1] Following the hearing on the Motion, Plaintiff filed a document entitled "Additional Authorities and Corrected Testimony To Be Considered By the Court re: Defendants Motion to Dismiss Filed 11/19/19," which has been reviewed by the Court. (Dkt. No. 30 (hereinafter, "Additional Authorities").)

against Plaintiff in connection with remodeling work performed by Plaintiff. On April 20, 2017, following a bench trial, the Superior Court, County of Orange, entered judgment in favor of The Humphreys and against Plaintiff in the amount of $848,000 (plus costs).[2] (FAC Exs. D, G.) The Superior Court found Plaintiff (as opposed to his company Spartan Associates) was the contractor who performed the remodel work for The Humphreys, and found Plaintiff was not a licensed contractor. Accordingly, the superior court awarded The Humphreys disgorgement of all compensation paid by The Humphreys to Plaintiff for the remodel work pursuant to Cal. Bus. & Prof. Code § 7031.[3] Plaintiff appealed the state court judgment. The California Court of Appeals affirmed the judgment in favor of The Humphreys. Plaintiff's request for review by the California Supreme Court was denied, and Plaintiff's writ for certiorari with the United States Supreme Court was also denied.

Plaintiff then commenced this action on October 28, 2019. On November 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this action is "an Independent Action in Equity to relieve a party from a judgment, order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this action "is a direct attack on the jurisdiction of the California trial and appellate Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

## II. STATEMENT OF THE LAW

### A. Fed. R. Civ. Proc. 12(b)(1)

On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction,

---

[2] While the superior court judgment reflects judgment entered against Plaintiff in the amount of $848,000, the FAC alleges Plaintiff was "fined $930,000 for allegedly doing remodel construction work without a contractor's license." (FAC at p.16.)

[3] California Business & Professions Code § 7031 provides: "[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."

the party asserting jurisdiction bears the burden of proving jurisdiction exists. *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995). A motion under Rule 12(b)(1) may challenge the court's jurisdiction facially, based on the legal sufficiency of the claim, or factually, based on the legal sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court considers the complaint's allegations to be true, and draws all reasonable inferences in the plaintiff's favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the substance of jurisdictional allegations, the court does not presume the factual allegations to be true, and may consider evidence such as affidavits and testimony to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

**B. Fed. R. Civ. Proc. 12(b)(6)**

Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a complaint for "failure to state a claim upon which relief can be granted." Dismissal of a complaint can be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a motion to dismiss, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663, (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A formulaic recitation of the elements of a cause of action will not suffice. *Twombly*, 550 U.S. at 555. To conform to Federal Rule of Civil Procedure 8, the plaintiff must make more than "an unadorned, the-defendant-harmed me" accusation. *Iqbal*, 556 U.S. at 678. Labels and conclusions are insufficient to meet the Plaintiff's obligation to provide the grounds of his or her entitlement to relief. *Twombly*, 550 U.S. at 555. "Factual allegations must be

enough to raise a right to relief above the speculative level." *Id.* If a complaint cannot be cured by additional factual allegations, dismissal without leave to amend is proper. *Id.* On a motion to dismiss for failure to state a claim, courts accept as true all well-pleaded allegations of material fact and construes them in a light most favorable to the non-moving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031–32 (9th Cir. 2008). A court may only consider the allegations contained in the pleadings, exhibits attached to or referenced in the complaint, and matters properly subject to judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

**C. Fed. R. Civ. Proc. 12(b)(7)**

Rule 12(b)(7) permits a party to move to dismiss the case for "failure to join a party under Rule 19." Fed. R. Civ. Proc. 12(b)(7). Rule 19 requires "[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction" to be joined as a party if:

> **(A)** in that person's absence, the court cannot accord complete relief among existing parties; or
>
> **(B)** that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > **(i)** as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > **(ii)** leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19. If "a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. Proc. 19(b).

## III. DISCUSSION

**A. Request for Judicial Notice**

Defendants request that the Court take judicial notice of the following:

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);
2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);
3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);
4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);
5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);
6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and
7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).[4]

(Hereinafter, "RJN".) The Court grants Defendants' request for judicial notice because the accuracy of Exhibits A-G can be "readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201.

**B. Rooker-Feldman Doctrine**

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker–Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

[4] Plaintiff did not oppose Defendants' request for judicial notice.

judgment entered against Plaintiff in the superior court action and (2) ordering the superior court to remove the property lien based on the judgment entered against Plaintiff in the superior court action (*id.*, Prayer for Relief). The FAC also alleges the instant federal action "is a direct attack on the jurisdiction of the California trial and appellate Courts in case numbers – 30-2015-00805897, and G055075." (*Id.* at p.17.) Therefore, Plaintiff seeks relief from the state court judgment affirmed by the California Court of Appeals.

The FAC also alleges a legal error by the superior court and California Court of Appeals on the ground that the superior court and appellate court entered and affirmed the judgment against Plaintiff without supporting evidence, and erred in holding disgorgement pursuant to Cal. Bus. & Proc. § 7031 is an equitable remedy rather than a penalty, thereby "resulting in a void judgment." (FAC at p.82, 90.)

**(1) Extrinsic Fraud on the Court**

Where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, Rooker-Feldman does not bar jurisdiction. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003). Therefore, the Rooker-Feldman doctrine does not apply where the plaintiff alleges extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud. *Kougasian*, 359 F.3d at 1141.

Plaintiff contends this action is not barred because this Court has the power to set aside or enjoin state-court judgments procured by fraud. The FAC alleges Defendants committed "fraud in the procurement of jurisdiction" in the superior court action because Defendants took one position during summary judgment (i.e., that they had contracted with Spartan (Plaintiff's company) to perform the work) and then took a contrary position during trial (i.e., that they believed they contracted with Plaintiff to perform the work). (FAC at 94-97.) Such alleged conduct does not constitute "extrinsic" fraud on the court since such evidence was

presented by Defendants before the superior court, nor constitute a legal injury caused by Defendants. Rather, the FAC alleges the superior court erred in entering judgment despite Defendants taking contrary positions throughout the state court litigation. Therefore, the extrinsic fraud exception to the Rooker-Feldman doctrine does not apply. *Kougasian*, 359 F.3d at 1141.

**(2) Constitutional Challenge**

Plaintiff also argues the Rooker-Feldman doctrine does not bar this action because the FAC raises a constitutional challenge to California Business & Professions Code §§ 7071.17 and 7031. While the FAC raises a "facial" and "as applied" challenge to the constitutionality of Sections §§ 7071.17 and 7031, the relief sought by Plaintiff is an order vacating or voiding the state court judgment. Moreover, the basis for Plaintiff's constitutional challenge is that the Superior Court and California Court of Appeals lacked subject matter jurisdiction to enter and affirm the judgment against Plaintiff because (1) there is no evidence supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The California Court of Appeals, however, found there was evidence supporting the Superior Court's judgment and held disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus, despite purporting to raise a "constitutional" challenge in his FAC, Plaintiff seeks relief from the state court judgment in this action and asserts legal errors by the Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman doctrine applies to bar Plaintiff's instant action.

* * *

Accordingly, the Court finds Plaintiff's action is barred pursuant to the Rooker-Feldman doctrine because Plaintiff seeks relief from the state court judgment and alleges legal errors by the state trial and appellate court. *See Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

**C. Res Judicata / Collateral Estoppel**

Defendants also move to dismiss the FAC as barred by the res judicata / collateral estoppel doctrines.[5]

Issue preclusion, or collateral estoppel, bars relitigation of issues that have been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824. Pursuant to the doctrine of collateral estoppel, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738. Under California law, collateral estoppel/issue preclusion applies: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." *DKN Holdings LLC*, 61 Cal. 4th at 825.

Here, the FAC alleges the superior court lacked jurisdiction and violated Plaintiff's due process rights because there was no evidence supporting the judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the superior court in a motion to vacate the judgment, which was denied. (FAC at 97-98.)

Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued the Superior Court committed due process violations and lacked subject matter jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals affirmed the Superior Court's judgment, and found Plaintiff's arguments on appeal had "no merit." (*Id.* Ex. C; *see also* FAC at p.19 (alleging California Court of Appeal held the superior court judgment against Plaintiff was a "non-punitive"

[5] "Res judicata" refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007) Since the claims asserted by Plaintiff in this action were not asserted in the state court action, res judicata would not apply to bar Plaintiff's claims here.

"equitable remedy").)

Plaintiff filed a petition for review with the California Supreme Court wherein Plaintiff argued the superior court and California Court of Appeals lacked jurisdiction and violated Plaintiff's due process rights, and argued Cal. Bus. & Prof. Code §§ 7031 and 7071.17 were unconstitutional and authorize imposition of penalties. (RJN, Ex. D.) The California Supreme Court denied Plaintiff's petition for review. (*Id.* Ex. E.) On April 23, 2019, Plaintiff filed a petition for writ of certiorari with the United States Supreme Court, which was denied. (*Id.* Exs. F, G.)

Therefore, the issues raised by Plaintiff in this federal action regarding the Superior Court and California Court of Appeal's lack of jurisdiction and violation of Plaintiff's due process rights, the unconstitutionality of Cal. Bus. & Prof. Code §§ 7031 and 7071.17, Plaintiff's contention that disgorgement pursuant to Cal. Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and the lack of evidence supporting the Superior Court's judgment and California Court of Appeals decision affirming the judgment, were actually litigated by Plaintiff in the state court action and necessarily decided in a final judgment. *See DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1132 (9th Cir. 2019).

Thus, even if the instant action was not barred pursuant to the Rooker-Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing this action. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th Cir. 2006).

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## IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action.[6] The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.[7]

**IT IS SO ORDERED.**

DATED: February 6, 2020.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

[6] Because Plaintiff's claims are barred on collateral estoppel grounds, leave to amend would be futile. *See Tait v. Asset Acceptance, LLC*, 2013 WL 3811767 (C.D. Cal. July 22, 2013).

[7] Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the superior court and California Court of Appeals which are "indispensable parties." Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine, and finds collateral estoppel would bar Plaintiff from bringing this action, it does not reach the issue of whether the superior court and California Court of Appeals are indispensable parties.

# Appendix [H]

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

Adam Bereki,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

**ORDER RE: NINTH CIRCUIT'S REFERRAL AND REVOCATION OF PLAINTIFF'S IN FORMA PAUPERIS STATUS [34]**

Plaintiff filed the Complaint in this action on October 28, 2019. (Dkt. No. 1.) On October 31, 2019, the Court granted Plaintiff's Request to Proceed in Forma Pauperis. (Dkt. No. 5.) On February 6, 2020, this Court issued an order granting Defendants' Motion to Dismiss, and dismissed the action with prejudice because Plaintiff is collaterally estopped from bringing this action and the action is barred pursuant to the Rooker-Feldman doctrine. (Dkt. No. 31 (the "Order").)

Plaintiff filed a notice of appeal of the Order on February 10, 2020. (Dkt. No. 32.) On February 24, 2020, the Ninth Circuit referred the matter to this Court "for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith."

(Dkt. No. 34.)

The Court finds Plaintiff's in forma pauperis status should not continue for the appeal because Plaintiff's appeal of the Order is frivolous. Therefore, the Court revokes Plaintiff's in forma pauperis status. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."); *Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where the district court finds the appeal to be frivolous).

The clerk of this Court shall provide notice to the Ninth Circuit and the parties of this Order.

**IT IS SO ORDERED.**

DATED: February 27, 2020.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

CC: 9TH COA

# Appendix [I]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADAM BEREKI,

Plaintiff-Appellant,

v.

GARY HUMPHREYS; KAREN HUMPHREYS,

Defendants-Appellees.

No. 20-55181

D.C. No. 8:19-cv-02050-CBM-ADS
Central District of California, Santa Ana

ORDER

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On March 24, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the responses to the court's March 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

**DISMISSED.**

# Appendix [J]

f: 7/13/20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

July 9, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

At its July 2020 meeting, the Commission on Judicial Performance voted to close your complaint dated June 8, 2020.

Your complaint concerns legal rulings made by the judges. This commission is not a court and does not have the authority to reverse judicial decisions. Even if a judge's decision is later determined to be legally incorrect by an appellate court, that by itself is not a violation of the Code of Judicial Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. The information you have provided is not sufficient to establish any of those factors.

If you wish to provide additional information regarding your complaint, it will be considered. You should provide specific information that fully describes what the judges said or did that you believe was misconduct. You may wish to consult the "Filing a Complaint" and "FAQ's" tabs on the commission's website (http://cjp.ca.gov) for further information about what a complaint should contain.

With respect to the legal proceedings that gave rise to your complaint, you may wish to consult an attorney or legal services provider to see if they can help you. This office cannot provide individuals with legal assistance.

We appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

Anjuli Fiedler
Staff Counsel

AF:aap/L070920Bereki

Confidential under California Constitution,
Article VI, Section 18, and Commission Rule 102

# Appendix [K]

MAYOR
Vicente Sarmiento
MAYOR PRO TEM
David Penaloza
COUNCILMEMBERS
Phil Bacerra
Johnathan Ryan Hernandez
Jessie Lopez
Nelida Mendoza
Thai Viet Phan

CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

# CITY OF SANTA ANA

## SANTA ANA POLICE DEPARTMENT

20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

Police Department

December 22, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92646

**Subject: Citizen's Complaint – PSU2020-0035**

Mr. Bereki,

Your complaint regarding the actions of our police employee(s) has been investigated. Your allegations that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct.

The Santa Ana Police Department is committed to providing quality service. You can be assured that your complaint was treated seriously and a thorough investigation was conducted. Should you have any questions about this investigation, you may contact Commander J. Rodriguez at (714) 245-8705.

Sincerely,

David Valentin
Chief of Police

Robert Rodriguez, Commander
Internal Affairs

SANTA ANA CITY COUNCIL

Vicente Sarmiento, Mayor, vsarmiento@santa-ana.org
David Penaloza, Mayor Pro Tem, Ward 2, dpenaloza@santa-ana.org
Thai Viet Phan, Ward 1, tphan@santa-ana.org
Jessie Lopez, Ward 3, jessielopez@santa-ana.org
Phil Bacerra, Ward 4, pbacerra@santa-ana.org
Johanthan Ryan Hernandez, Ward 5, jryanhernandez@santa-ana.org
Nelida Mendoza, Ward 6, nmendoza@santa-ana.org

# Appendix [L]

ORANGE COUNTY SHERIFF'S DEPARTMENT CALIFORNIA

DR # 20-029161

INFORMATION REPORT

ORIGINAL

Reporting Area: North Uninc

## EVENT SUMMARY

Date Occurred: Wednesday, 9/2/2020 08:17

Date Reported: Wednesday, 9/2/2020 08:17

Incident Location: 550 N Flower St, Santa Ana CA 000000000

Naloxone Deployed? ☐ Use of Force ☐

Brief Description of Incident: INFORMATION REPORT

## OTHER

**Name:** CHAFFEE, DAVID **Age:**

**Position/Title:** JUDGE

| Sex | Race |
|---|---|
| M | |

## REPORTEE

**Name:** BEREKI, ADAM ALAN **DOB:** 6/18/1979 **Age:** 41

**Address:** 818 Spirit , Costa Mesa CA 92626

Email: ABEREKI@GMAIL.COM **Cell Phone:** (949)241-6693 **Home Phone:** **Other Phone:**

| Sex | Race |
|---|---|
| M | White |

## OTHER

Name: HUMPHREYS, GARY **Age:**

| Sex | Race |
|---|---|
| M | |

## OTHER

**Name:** HUMPHREYS, KAREN **Age:**

| Sex | Race |
|---|---|
| F | |

## PROPERTY/EVIDENCE

**Related Offense:** INFO REPORT

**Property Description:** PAPERWORK

## NARRATIVE

On Wednesday, September 2, 2020, Deputy D. Foster #3340 and I were dispatched to Orange County Sheriff's Department Headquarters, located at 550 N. Flower Street in the City of Santa Ana, reference a report.

Upon arrival, we spoke to Adam Alan Bereki (06/18/1979). Adam told us the following: Adam is a former police officer with the Huntington Beach Police Department and was medically retired about 10 years ago. After retiring, Adam started a construction company, Spartan Associates. Adam obtained a contractor's license under Spartan Associates and not under his own name.

From April 2012 to August 2013, Spartan Associates was contracted by Gary and Karen Humphreys

(NFD) to remodel a condominium in Newport Beach. In August of 2013, Gary and Karen terminated Spartan Associates. At that time, Gary and Karen had paid Spartan Associates $848,000.00 and still had a pending balance of $82,000.00 that they refused to pay Spartan Associates. Spartan Associates attempted to negotiate the price owed with Gary and Karen but they rejected all negotiations. In August of 2015, Spartan Associates filed a lawsuit [Case#2015-00805807] against Gary and Karen, for the time and materials owed, which amounted to $82,000.00.

On February 16, 2016, Gary and Karen filed a motion for summary judgement. Gary and Karen initially asserted they entered an agreement with Spartan Associates for construction on their condominium. In early 2017, Gary and Karen filed a 1st amended cross complaint with new info. Gary and Karen amended that they contracted with Adam and not Spartan Associates.

On April 20, 2017, the court found that Adam did not have a contracting license in his name, therefore he violated B&P 7031(b). Judge David R. Chaffee ruled that Adam was to pay Gary and Karen $848,000 in Disgorgement. Adam disagreed with the judgement based on the fact that Adam felt they had contracted with his company. Neither Adam nor Spartan Associates ever had a formal contract with Gary and Karen and all agreed to items were in an email chain which Adam did not provide. Adam provided me a statement with a list of checks written by Gary and Karen for all work completed. In this list there are 7 checks written to Adam and 10 checks written to Spartan Associates.

Due to the $848,000.00 owed by Adam, a lien was placed on 818 Sprint, Costa Mesa, CA. 92626. Adam stated in November 2010, his mother Roseanne Bereki (09/25/1953) took over as legal owner of the residence and Adam's name is on the legal title. Adam also lost his business' contractors license.

On March 18, 2017, Adam filed a Writ of Error with the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after, Adam received an email stating they denied the request to vacate judgement.

On June 6, 2017, Adam again went to the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after the court responded and fined Adam approximately $1,500.00, for abuse of discovery. Adam's motion was again denied.

On January 10, 2018, Adam filed an appeal with the Fourth Appellate District Court of Appeal. On October 31, 2018, Adam received the Appeal Court judgement, stating all arguments had no merit.

On October 28, 2019, Adam filed a complaint with the US Supreme Court. On February 27, 2020, the court denied Adam's case, due to the appeal being frivolous.

Adam believes that B&P 7031(b) is unconstitutional and the $848,000.00 disgorgement was given to him as a fine and a fine can only be levied if he is charged with a crime. Adam cited MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 36 Cal. 4th 412 and Rambeau v. Barker, 2010 Cal. App. Unpub. Lexis S610 to prove that the violation of B&P 7031(b) and subsequent penalties were imposed illegally and unjustly. Adam stated the fine levied under B&P 7031(b) is actually criminal forfeiture. Adam provided a definition of criminal forfeiture under US v. Seifuddin, 820 F.2d 1074, "If the statute under which the forfeiture alleged is penal, it will be treated as criminal

forfeiture." Under People V. Cowan, 47 Cal. App. 5th 32, Adam believes his forfeiture was an excessive fine and his ability to pay was not taken into consideration. The courts rejected these claims stating his amount owed is Disgorgement and not a fine.

Adam also believes the amount was excessive because it did not take into consideration the amount of materials and work completed on the construction project. Adam asserted that his company completed $848,000.00 worth of work therefore he should only have to pay back any profit he made on the project. Adam cited, US Supreme Court Case Liu V. SEC, 2020 Lexis 3374. This case states: "the profit-based measure of unjust enrichment reflects a foundational principle: It would be inequitable that a wrongdoer should make a profit out of his own wrong. At the same time courts recognize that the wrongdoer should not profit by his own wrong, they also recognized the countervailing equitable principle that the wrongdoer should not be punished by paying more than a fair compensation to the person wronged."

Adam stated his rights have been violated under Title 18, U.S.C., Section 242 –Deprivation of Rights under the Color of Law. Adam believes he has been given an excessive fine by the courts that is cruel and unusual punishment. Adam believes his 5th, 6th, 7th, 8th and 14th Amendment Rights have been violated. Adam believes that Judge Chaffee is in violation of CPC 211- Robbery and CPC 484g Theft by False Pretense, by imposing the $848,000.00 fine. At the conclusion of the initial judgment, Adam has subsequently represented himself in every court with self-taught legal knowledge. Adam has met with attorneys regarding his case but does not have the funds necessary to retain them as council. Adam has exhausted all legal avenues in the courts to rectify his perceived constitutional violations.

Adam came to the Sheriff's Department as a last resort in an attempt to prove his Constitutional rights have been violated. As the Sheriff's Department is an agent of the Executive Branch of the State Government, Adam would like to use our agency as Checks and Balances with the Legislative and Judicial Branches of the State Government. Adam stated he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims.

| INVOLVEMENT TYPE | OFFICER NAME | BODY WORN CAMERA | DATE |
|---|---|---|---|
| Reporting Officer | Milbery, B. 09838 | ☐ | 9/6/2020 |
| Assisting Officer | Foster, D. 03340 | ☐ | 9/6/2020 |
| Approving Officer | Castro, M. 05307 | ☐ | 9/6/2020 |

# ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

## REQUEST AUTHORIZATION FORM
## RELEASE OF CASE INFORMATION

NAME ADAM BEREKI

ADDRESS

CITY STATE CA ZIP

DATE 11/25/2020

CASE # 20-029161

CONTACT PHONE

YOUR INVOLVEMENT supplemental

(ex: victim, witness, suspect, attorney for , insurance for)

REQUESTOR'S SIGNATURE See attachment

---

**BELOW SECTION TO BE COMPLETED BY ORANGE COUNTY SHERIFF PERSONNEL**

RECORDS SIGNATURE reynarg

FEE $ 0.00 CHECK # RECEIPT #

REQUEST ☑ Approved ☐ Approved / Redacted ☐ Denied

*Document(s) released:*

- ☐ Initial Crime Report
- ☐ Initial Crime Rpt Supplemental
- ☐ Deputy Follow Up
- ☐ Initial Follow Up
- ☐ Traffic Accident
- ☐ CHP180
- ☐ TC Property Damage
- ☐ Property Report
- ☐ Casualty Report
- ☐ Supplemental DV Report
- ☐ CAD Report ☐ ID Theft
- ☑ Other Information Report; Two (2) Sup

- ☐ Fees returned 0.00
- ☐ Released pursuant to Family Code Section 6228
- ☐ Released pursuant to Welfare and Institutions Code section 827 and Juvenile Court Administrative Order No. 12/003-903 "Exchange of Information".
- ☐ Released pursuant to Vehicle Code section 20012
- ☐ Released pursuant to Court Authorization and Penal Code Section 1203.097(a)(7)(B)

---

Authorized Signature Jeffrey Deutsch

Mailed ☐ Pick Up ☐ Date 12/01/2020 By jd

Emailed ☑

320 N. FLOWER STREET, SANTA ANA, CA 92703

ORANGE COUNTY SHERIFF'S DEPARTMENT CALIFORNIA

DR #: 20-029161

SUPPLEMENT

ORIGINAL

**Reporting Area:** North Investigations

## NARRATIVE

**Phone Call from Adam Bereki, 09/15/2020:**

On Tuesday. 09/15/2020, at approximately 1105 hours, I received a telephone call from a male subject verbally identifying himself as Adam Bereki wanting to check on the status of his report and to provide additional details. I recorded the conversation on my department issued digital audio recorder and later placed a copy of the audio recording onto a compact disc which I booked into Sheriff's Evidence in Santa Ana, Sheriff's Evidence Item# OS20-029161.3. I referred to the digital audio recording when preparing the following summary of my phone conversation with Mr. Bereki:

Bereki was advised I had been assigned this case and wanted to know if I was familiar with it. I summarized for Bereki that he was alleging several of his Constitutional Rights had been violated by a judicial officer and that there were additional criminal allegations against the same Judiciary based on judgements occurring in Civil Court. Bereki emphasised that in addition to the specific judicial officer he feels violated his constitutional rights, the "Whole State" of California's "Judicial Branch" has perpetuated a "Policy" in violation of persons constitutional rights. Bereki further stated that this policy, enacted into law by the California Legislature and "Upheld" by the Judicial Branch is supporting an unconstitutional "Policy" or law and one of the only remedies is for the Executive Branch of the government to perform its "Duty to enforce the law". Bereki has reached out to the following:

- California Commission on Judicial Performance
  - Bereki "Filed a complaint" which was returned to him stating he was "Complaining about legal errors by the judge". Bereki told me that in addition to the legal errors, he was also filing the complaint to address his "Deprivation of Rights".
- Federal Bureau of Investigation
  - Bereki has contacted the FBI three times within the last two to three months; however, the first time he called the "Crime Tip Line" and was told "We don't investigate that" and the second time he was told a "Complaint" was taken but no case number was provided to Bereki and the person taking the "Complaint" did not provide their name to Bereki. Bereki called the FBI again approximately two to three weeks after the second call to inquire about the status of his complaint, obtain the case number, and obtain the Agents name and he said, "They refused to give me all of those". Bereki believes he contacted the FBI office in Orange the second time.
    - Bereki served a Public Records Act Request on the FBI to try to obtain a copy of his phone call and was told they did not have a copy of the call.
- California State Assemblywoman Cottie Petrie-Norris
- California State Senator John Moorlach
- California Attorney General's Office
  - Approximately one week ago, Bereki emailed the California Attorney General's Office Public Information Unit. Bereki'sl requested information about how to file a complaint regarding a deprivation of rights complaint regarding a public official and has not yet received a response.

Bereki also wanted to clarify the following information from the initial report taken by deputies on 09/02/2020:

- Where the Initial Information Report reads, "Adam filed a complaint with the US Supreme Court". Bereki clarified that he went to the Federal District Court for The Central District Court of California to attempt to have the Federal District Court "Vacate" the "Void Judgement" from the California Court.
  - Bereki stated the Federal District Court Judge "Dismissed" his case, advising Bereki that the

Federal Court did not have the authority to "Hear and determine the case".
- When Bereki attempted to file an Appeal, the same Federal District Court Judge advised the Federal Appeals Court that Bereki's Appeal was "Of bad faith and frivolous".
  - In Response to this, In March of 2020, Bereki filed a "Statement" regarding why the Appeal should move forward and he has not yet heard a response.

- Bereki also wanted to note that in the Initial Report's closing sentence where it states "...he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims", that in addition to the Sheriff's Department's "Duty to investigate" it is also the Sheriff's Department's duty to "Protect" him and "Intervene" when his "Rights and property are being violated and unlawfully taken".

I advised Bereki that his initial report was being reviewed and I would be working on attempting to identify the appropriate Executive Branch agency to investigate the matter or defer the matter back for further review through the Judicial Branch in the appeal process.

| INVOLVEMENT TYPE | OFFICER NAME | BODY WORN CAMERA | DATE |
|---|---|---|---|
| Supplementing Officer | Anderson, M. 07279 | ☐ | 9/15/2020 |
| Approving Officer | Weidenkeller, E. 04050 | ☐ | 9/23/2020 |

ORANGE COUNTY SHERIFF'S DEPARTMENT CALIFORNIA

DR #: 20-029161

SUPPLEMENT

ORIGINAL

**Reporting Area:** North Investigations

## NARRATIVE

On Wednesday, November 25, 2020, at approximately 1240 hours, I received a phone call from Sgt. S. Millhollon that he had inadvertently been forwarded a call reference this case from Bereki. Sgt. Millhollon gave me the number Bereki called him from (949-241-6693) and asked that I call him back.

At approximately 1300 hours, I contacted Bereki and asked him how I could help. He told me he was looking for a status update on his case. I advised him that the case had been reviewed by the California Department of Justice and that both they and the Orange County District Attorney's Office would not prosecute the case, or investigate it any further. I provided him with my full name and pin number and we ended the call.

At approximately 1305 hours, Bereki called my office line back, and asked if the Orange County Sheriff's Department was refusing to protect him from, "Lawless actions by government officials acting without authority." I advised him that our investigation into his allegations had ended. Bereki thanked me for my time and the conversation ended.

Both phone calls were recorded. The recordings were placed onto a compact disc and booked into Sheriff's Evidence under this case number.

| INVOLVEMENT TYPE | OFFICER NAME | BODY WORN CAMERA | DATE |
|---|---|---|---|
| Supplementing Officer | Leeb, M. 08787 | ☐ | 11/25/2020 |
| Approving Officer | Weidenkeller, E. 04050 | ☐ | 11/26/2020 |

Gmail Adam Bereki <abereki@gmail.com>

# 20-029161

**Adam** <abereki@gmail.com>
To: mleeb@ocsd.org

Mon, Dec 14, 2020 at 4:06 PM

Hi Mike,

I called and left a message for you last week to speak about your findings pertaining to the complaint I filed that you closed and have not received a return call. I am interested in knowing the factual findings and legal basis associated with your determination to close my case. These findings don't appear to be documented in your report and reasonably should be given each of the issues I raised.

My phone number is 949 241 6693.

Thank you for your help.

Sincerely,

Adam Bereki

Gmail

# Bereki Dr 20-029161

**Adam** <abereki@gmail.com> Thu, Dec 17, 2020 at 12:59 PM
To: eweidenkeller@ocsd.org, mleeb@ocsd.org, "Knutson, Gary L" <gknutson@ocsd.org>, jhallock@ocsd.org

Lt. Knutson,

Pursuant to a recent public records act request on your agency, I received a copy of the information report I filed as well as the supplemental investigation reports by Sgt. Andersen and Inv. Leeb pertaining to my allegations of fraud and deprivation of constitutional rights by judges and other public officials that I recently spoke with you and Commander Hallock about.

After receiving the supplemental reports made by Inv. Leeb, I called and left a message to speak with him on 12/2/20 . He has not returned my call. On 12/14/20, I also sent him an email and have not received a reply.

The essence of Inv. Leeb's findings in his supplemental report dated 11/4/20 states: "given that there is no criminal activity able to be discovered from what has been reported, this case will be closed pending any additional information." The report was approved by whom I suspect is Leeb's supervisor, E.Weidenkeller.

My phone message and email specifically asked Inv. Leeb to share the factual findings and legal basis of his conclusions that "there [was] no criminal activity able to be discovered." This information should very reasonably be part of his investigation report but is nowhere to be found. Inv. Leeb needs to explain exactly how he resolved each issue presented in my complaint. This includes but is not limited to how he determined there was constitutional authority for the judge/State of California to fine me $930,000 without any of the heightened protections of the excessive fine clause and in direct violation of the separation of powers declared in Article V of the California Constitution. A person, whether a civilian or public official who takes property without Constitutionally prescribed due process commits theft and/or fraud and potentially robbery if done under the full force of the State as in this case.

The fact that Inv. Leeb contacted the OCDA and CA DOJ who allegedly were not interested in prosecuting the case does not absolve him or the OCSD of their duty to fully and impartially investigate my valid claims and take remedial action including action to protect my liberty and property from unlawful taking.

If the OCSD or Inv. Leeb do not understand the law surrounding the claims I have made, I remain totally willing and available to help. I provided a significant amount of case law to the reporting officer who told me it would be booked into evidence so ti could be reviewed by the investigator. Despite this, there no indication in Inv. Leeb's reports that he read any of the cases or how he determined them to be incorrect or not relevant in relation to my claims. This is also information that should reasonably be included in his investigation report.

While I cannot be sure, it feels to me like Leeb spoke with County Counsel and perhaps the other aforementioned agencies and concluded, with little to no research of the actual law pertaining to the issues in my complaint, that what the judge/Court did was lawful based on the Opinion of the appellate Court that was also involved and then subsequently closed the case. This is not acceptable. How under any rational basis could a $930,000 fine for a simple licensing law violation could be lawful without any of the Constitutional protections of the excessive fines clause that specifically prohibit this behavior?

In another public records act request to your agency, I received copies of police academy training manuals from POST known as Learning Domains ("LD"). LD2 specifically reviews Constitutionally protected rights and Law Enforcement's duties to enforce the law and protect the public against the arbitrary deprivation thereof by government. I have enclosed it for reference. On page 1-5 it says "To be effective leaders, peace officers must be aware of the constitutional rights of all individuals [...] and the role the criminal justice system has in protecting those rights."

Investigator Leeb has clearly not performed an adequate and full investigation before abritrarily closing my case and told me the OCSD is not going to protect me or my property in this situation. Please inform me if this is in fact the official position of the OCSD or order Inv. Leeb to fully perform his sworn duties.

Please feel free to contact me with any questions.

Sincerely,

Adam Bereki
949.241.6693

---

**LD_02_V-6.4.pdf**
441K

Gmail

# Bereki Dr 20-029161

**Knutson, Gary L** <gknutson@ocsd.org> Fri, Dec 18, 2020 at 9:00 AM
To: Adam <abereki@gmail.com>

Adam,

Thank you for contacting me with this matter. I will look into it and get back to you.

Lieutenant Gary Knutson

Orange County Sheriff's Department

North Patrol Bureau Commander

Chief of Villa Park Police Services

Ofc. (714) 647-4094

**From:** Adam <abereki@gmail.com>
**Sent:** Friday, December 18, 2020 8:55 AM
**To:** Weidenkeller, Ehren J <eweidenkeller@ocsd.org>; Leeb, Michael C <MLEEB@ocsd.org>; Knutson, Gary L <gknutson@ocsd.org>; Hallock, Jeffrey A <JHallock@ocsd.org>; Rcauoette@ocsd.org
**Subject:** [EXTERNAL] Fwd: Bereki Dr 20-029161

Correction, after reviewing my records, I spoke with Commander Caouette not Assist. Sheriff* Hallock before speaking with you, Lt. Knutson. I have therefore included him in this communication.

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links.

# Appendix [M]

# INCIDENT/INVESTIGATION REPORT

**INCIDENT DATA**

| Agency Name | ORI | Case# | Date / Time Reported | Last Known Secure | At Found |
|---|---|---|---|---|---|
| Newport Beach Police Department | CA0301400 | 21008880 | 12/07/2021 10:35 Tue | 04/20/2017 09:00 Thu | 10/28/2021 14:04 Thu |

| Location of Incident | Gang Relat | Premise Type | Beat/Tract |
|---|---|---|---|
| 870 SANTA BARBARA DR, Newport Beach CA | NO | Other Location | A3 |

| | Crime Incident(s) | Weapon / Tools | Entry | Exit | Security | Activity |
|---|---|---|---|---|---|---|
| #1 | Suspicious Circumstances 925 (Att ) | NONE | | | | |
| #2 | Crime Incident ( ) | | | | | |
| #3 | Crime Incident ( ) | | | | | |

MO

**VICTIM**

# of Victims 0 | Type: | Injury: | Domestic: N

| | Victim/Business Name (Last, First, Middle) | Victim of Crime # | DOB / Age | Race | Sex | Relationship To Offender | Resident Status | Military Branch/Status |
|---|---|---|---|---|---|---|---|---|
| V1 | | | | | | | | |

Home Address | Home Phone

Employer Name/Address | Business Phone | Mobile Phone

| VYR | Make | Model | Style | Color | Lic/Lis | VIN |
|---|---|---|---|---|---|---|
| | | | | | | |

**OTHERS INVOLVED**

CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: INDIVIDUAL/ NOT LAW ENFORCEMENT | Injury:

| Code | Name (Last, First, Middle) | Victim of Crime # | DOB / Age | Race | Sex | Relationship To Offender | Resident Status | Military Branch/Status |
|---|---|---|---|---|---|---|---|---|
| IO | BEREKI, ADAM ALAN | | 06/18/1979 Age 37 | W | M | | Non-Resident | |

Home Address: 818 SPIRIT COSTA MESA, CA 92626 | Home Phone: 949-241-6693

Employer Name/Address: SELF | Business Phone: 714-960-8825 | Mobile Phone:

Type: | Injury:

| Code | Name (Last, First, Middle) | Victim of Crime # | DOB / Age | Race | Sex | Relationship To Offender | Resident Status | Military Branch/Status |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

Home Address | Home Phone

Employer Name/Address | Business Phone | Mobile Phone

**PROPERTY**

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)

| VI # | Code | Status Frm/To | Value | OJ | QTY | Property Description | Make/Model | Serial Number |
|---|---|---|---|---|---|---|---|---|
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Officer/ID# JOE, D. (1219)

Invest ID# JOE, D. (1219) | Supervisor RODRIGUEZ, B. (1208)

Status | Complainant Signature | Case Status: Cleared Non-crime 12/10/2021 | Case Disposition:



R_CS1IBR Printed By: MFEAR, REC-SR Sys#: 272146 01/05/2022 15:36

## INCIDENT/INVESTIGATION REPORT

*Newport Beach Police Department*

Case # *21008880*

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

| | IBR | Status | Quantity | Type Measure | Suspected Type | |
|---|---|---|---|---|---|---|
| DRUGS | | | | | | |
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Assisting Officers

Suspect Hate / Bias Motivated:

## INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 21008880 *Newport Beach Police Department*

NARRATIVE

The listed Involved Other party contacted NBPD Detectives to report suspicious circumstances.

REPORTING OFFICER NARRATIVE

| Newport Beach Police Department | | OCA 21008880 |
|---|---|---|
| Victim | Offense SUSPICIOUS CIRCUMSTANCES | Date / Time Reported Tue 12/07/2021 10:35 |

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Alcohol Related: No Involved Location: N/A
Reportable Use of Force: No
Hate Crime Related: No Weapon Involved: N/A
Victims' Bill of Rights Provided to Victim(s): No
Victim Advised of Confidentiality Provisions Per 293 PC: No
Victim Desires Confidentiality: N/A

On 10-28-2021, I was working as a detective sergeant, assigned to the Property Crimes Unit-West of the Newport Beach Police Department. I received a voice message from a subject who identified himself as Adam Bereki. In the message, Bereki stated he was dealing with "some very peculiar circumstances," and that he needed some help with "crimes being perpetrated by judges."

I contacted Bereki, a Costa Mesa resident, by telephone. Over the course of the following four weeks, I had several separate telephone conversations with Bereki, some lasting over an hour in length, where he described his situation. In summary, Bereki had a civil judgment against him in 2017 for $848,000.00 after a court (Orange County Superior Court in Santa Ana) determined he operated as a contractor without a license during a residential remodel project in Newport Beach. In 2018, Bereki appealed the decision to the California Court of Appeals, Fourth Appellate District, Division 3 in Santa Ana. The appellate court affirmed the lower court's decision.

Bereki insisted I investigate this case as a criminal matter, stating as a police officer, I was bound by the Constitution of the United States and the Constitution of the State of California to investigate the violation of his constitutional rights; in this case a violation of the 8th Amendment prohibiting excessive fines. Bereki also stated the crimes of fraud, theft, forgery, and robbery were committed by the judges involved in this decision, based on his interpretation of the judicial process and subsequent case law, as well as his belief the involved judges have been misinterpreting the law for years leading up to his case.

On 12-7-2021, I contacted Orange County Deputy District Attorneys Bill Feccia and Clyde Von Der Ahe to discuss this case. Both DAs were in agreement that criminal courts have no jurisdiction to intervene in sustained civil judgments. They also stated that the Constitution protects people against the deprivation of life, liberty, or property in circumstances when they were not afforded the benefit of due process of law. DDA Feccia advised me to recommend Bereki either file a motion for re-hearing of his case through the appellate court, or petition the Supreme Court of the United States to hear his case.

I relayed this information to Bereki, who adamantly disagreed. Bereki asked if he was permitted to contribute a written statement to this case. I told him he was free to do so. Bereki reminded me that he has contacted numerous different law enforcement agencies and spoken to numerous different police officers about this case, all of whom have refused to assist him. Bereki said a potential next step for him would be to sue all the departments and officers who did not investigate this case further, including me and the Newport Beach Police Department.

This case shall be categorized as a Suspicious Circumstance due to the lack of probable cause to indicate a violation of the California Penal Code has occurred. A printout of the decision from Bereki's appellate case was scanned into this file, along with the emails and attachments sent to me by Bereki.

Gmail

# PDF Version of Brief in Support of Law

**Harp, Aaron** <aharp@newportbeachca.gov> Fri, Dec 10, 2021 at 12:07 PM
To: Adam <abereki@gmail.com>
Cc: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Joe, Darrin" <DJoe@nbpd.org>

Good afternoon Mr. Bereki,

Our office has reviewed this matter and it is our opinion that the Police Department has acted appropriately regarding your complaint. In our view, this is civil dispute that is properly handled by the judiciary and not by the Police Department. Hence, the City of Newport Beach will be taking no action related to this matter.

We appreciate your reaching out to the City of Newport Beach and we sincerely hope that you can resolve this dispute.

**Aaron C. Harp**

City Attorney

City of Newport Beach

100 Civic Center Drive

Newport Beach, CA, 92660

Phone: (949) 644-3131

Fax: (949) 644-3139

Email: aharp@newportbeachca.gov

CONFIDENTIALITY NOTICE: The information in this e-mail message is intended

# Appendix [N]

**SUPREME COURT OF THE UNITED STATES**
**OFFICE OF THE CLERK**
**WASHINGTON, DC 20543-0001**

September 22, 2021

Adam A. Bereki
695 Town Center Dr., Ste. 700
Costa Mesa, CA 92626

RE: In Re Bereki

Dear Mr. Bereki:

The above-entitled petition for an extraordinary writ of habeas corpus was received on September 22, 2021. The papers are returned for the following reason(s):

The petition does not follow the form prescribed by Rule 14 as required by Rule 20.2.

The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

No motion for leave to file a petition for an extraordinary writ of habeas corpus is required. However, a petition for an extraordinary writ of habeas corpus may not be combined with any other filing, and the Rules of the Court make no provision for the filing of a petition for a writ of error.

The Rules of the Court make no provision for the filing of documents via digital media.

Please be advised that the Court does not appoint counsel for the purpose of preparing a petition.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:
Jacob Levitan
(202) 479-3392

Enclosures

# Appendix [O]

# Arbitration Award
## Contractors State License Board Arbitration Program

**CSLB Case Number: AS2014-087**

Jamie Handrick, Esq.
Tamberly Homeowners Association
8220 University Ave., Suite 100
La Mesa, CA 91942

Adam Alan Bereki
Blackrock General, Inc.,
dba Handyman Connection San Diego
7343 Ronson Rd., Suite H
San Diego, CA 92111
License #: 944018

TO THE ABOVE PARTIES AT INTEREST, IN THE MATTER OF CSLB CASE NO: AS2014-087
The undersigned Arbitrator, in accordance with California Business and Professions Code §7085, has investigated and considered all the material facts and available information pertaining to this case and has decided upon a final and binding Arbitration Award as described below.

| DECISION | REMEDY |
|---|---|
| Respondent shall reimburse Complainant the costs paid to correct balcony/deck repair. The repair performed by Respondent did not meet the minimum workmanship standards of the industry resulting in safety issues. Remedy includes cost of permit never obtained by Respondent. | $ 7,943.46 |
| Complainant's claim for refund of the amount paid to Respondent is denied. | $ 0.00 |
| **TOTAL:** | **$ 7,943.46** |

☒ Respondent shall pay the Complainant the Sum of **$7,943.46.**

THIS ARBITRATION AWARD SHALL BE VALID AND BINDING UPON ALL PARTIES CONCERNED.
PARTIES SHALL HAVE THIRTY (30) DAYS FROM DATE OF THIS AWARD TO SATISFY REMEDIES.

927244 - Associated entity -

**SIGNED:** Don Fobian
**ARBITRATOR Fobian, Don**

**DATE:** 11/21/2014

# THE CONTRACTOR DID NOT RETURN A "SUBMISSION TO MANDATORY ARBITRATION"



**CONTRACTORS STATE LICENSE BOARD** www.cslb.ca.gov

STATE OF CALIFORNIA
Governor Edmund G. Brown Jr.

SACRAMENTO CASE MANAGEMENT
9821 BUSINESS PARK DRIVE
P O BOX 26888
SACRAMENTO, CA 95826
(916)255-4832

**DATE:** December 29, 2014

**CSLB ARB CASE NO:**
A S 2014 87

**LICENSE NO:** 944018

HANDYMAN CONNECTION OF SAN DIEGO * BLACKROCK GENERAL INC
7343 RONSON RD STE H
SAN DIEGO, CA 92111

## NOTICE OF AUTOMATIC SUSPENSION OF LICENSING BY OPERATION OF LAW

(Business and Professions Code Section 7085.6)

The noted arbitration matter has become a final order of the Registrar and you have failed to comply with the provisions of the award as ordered.

Effective **01/28/2015**, the license listed above will be suspended. By the provisions of Business and Professions Code 7097, any additional license issued to you or for which you have provided qualifying experience or appearance under the provisions of Business and Professions Code 7068 will be suspended.

The license(s) will remain under suspension for ninety (90) days. During that time you may end the suspension by complying with the award and have your license reinstated provided you meet all other licensing requirements.

If you do not comply with the arbitration award during the ninety (90) day period of suspension, your license will be automatically revoked. Any other Sole Owner, Partnership, Corporate or Joint Venture license(s) of which you are a member will also be revoked.

**YOU WILL NOT RECEIVE FURTHER NOTICE !**

If you wish to appeal the automatic suspension, you may submit a written statement to the office listed above within 15 days of the date of this notice. Your appeal must contain the specific reasons you did not comply with the arbitration award. You will be notified of the determination by mail.

**REVOCATION IS AUTOMATIC !**

After the license is revoked you must wait from one to five years to reapply for licensure. In addition, before being issued any new license, you will be required to fully comply with the arbitration award. Also, you will be required to post a disciplinary bond for two to five years. You may write to the Legal Action Deputy for the Contractors State License Board for the specific requirements when you wish to re-apply.

Case Management Unit

**ARBITRATION FILE COPY**

(SUS) Revised 01/2011

**CONTRACTORS STATE LICENSE BOARD**

www.cslb.ca.gov

STATE OF CALIFORNIA
Governor Edmund G. Brown Jr.

SACRAMENTO CASE MANAGEMENT
9821 BUSINESS PARK DRIVE
P O BOX 26888
SACRAMENTO, CA 95826
(916)255-4832

**DATE:** December 29, 2014

SPARTAN ASSOCIATES INC THE
818 SPIRIT
COSTA MESA, CA 92626

**CSLB ARB CASE NO:**
A S 2014 87

**LICENSE NO:** 944018

ASSOCIATED LICENSE # 927244

**LICENSEE:**
HANDYMAN CONNECTION OF SAN DIEGO * BLACKROCK GENERAL INC

**NOTICE OF AUTOMATIC SUSPENSION**
**OF QUALIFIER'S LICENSE**
(Business and Professions Code Section 7097 and 7085.6)

Our records indicate that the above referenced arbitration case has become a final order of the Registrar. The licensee that was named in the arbitration case has failed to comply with the arbitration award. Therefore, effective **01/28/2015** the license number listed above will be automatically suspended by operation of law.

This is also to inform you that, as the qualifier for the above referenced license, your license **927244** will also be suspended effective **01/28/2015.**

The licenses will remain under suspension for ninety (90) days. During that time the suspensions may be lifted by complying with the provisions of the arbitration award. The licenses will then be reinstated, provided that all other licensing requirements are met. If the arbitration award is not complied with during the period of suspension, the licenses will be automatically revoked by operation of law. Other licenses will also be affected.

Case Management Unit

**ARBITRATION FILE COPY**

(SUQ) Revised 01/2011

ARBIT. NO AS 2014 87
LIC 927244

To Whom It May Concern:

I just received the attached letter of license revocation dated 1/14/16.

I have sent multiple letters regarding this matter and seem to receive no response that addresses the situation or fosters resolution.

In short, allegations were made against a license I am the RMO of and an arbitration hearing was conducted. I was NEVER notified as the RMO of these arbitration proceedings and therefore did not attend.

A judgment was made during the arbitration proceedings.

I have NEVER been provided any documentation whatsoever about the claims against this license. What I mean by documentation is any evidence showing the alleged damages and associated costs were actually incurred by the complainant. In fact, the complainant had a year to notify my company of any problems per our contractual agreement and to my best knowledge did not comply.

I have contacted the attorney who is handling the case for the complainant. I have requested they send me documentation of the claim repeatedly however no documentation has been received. I have also negotiated a settlement with the complainant pending their providing of documentation (assuming I was responsible) but have still NOT received any documentation. The CSLB has also not provided any evidence of these claims.

As all of this has been unfolding, the CSLB seems to keep taking actions against my license based upon this arbitration proceeding I was NOT privy to. I was not able to defend myself to something I had no idea was happening. As a result a judgment was filed and my license revoked.

I have telephoned the CSLB numerous times about this matter as well as written several letters to no avail. Can someone please help me? I tried again this morning, to the Sacramento Case Management Division that apparently sent this letter and every mailbox I tried was full. No one answered the phone.

I am truly interested in the integrity of my license and doing the right thing.

If there is some type of rebuttal process I can go through to challenge the arbitration decision please provide that information along with any forms to me.

I think a phone call could resolve things much more expediently. Please feel free to call.

Sincerely,

Adam Bereki
949 241 6693

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, California 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com

STATE OF CALIFORNIA
Governor Edmund G. Brown Jr.

October 15, 2015

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Application Fee # 2014 01 08850

Dear Mr. Bereki:

This responds to your letter dated August 7, 2015, to the Contractors State License Board (CSLB) regarding the status of your license, # 944018.

I hope it will be helpful to provide some background on this matter. CSLB records confirm that you are the qualifier on two licenses, Spartan Associates, license # 927244; and Handyman Connection of San Diego, license # 944018. Handyman Connection is the license that was revoked on April 30, 2015. After a complaint was received against this license on July 25, 2013, the case was sent to mandatory arbitration on September 30, 2014. You are responsible as the qualifier to be aware of and comply with the terms of the arbitration (Business and Professions Code [BPC] section 7068.1). The license of Handyman Connection was revoked on April 30, 2015 per BPC section 7085.6 – failure to comply with an arbitration award.

Regarding the matter at issue, you made application for a license on January 8, 2015, prior to the revocation. You had a case that had been sent to arbitration with an outstanding award during the application process; therefore, your application was returned to provide verification that you had complied with the arbitration award. When you did not provide that verification, your application went void. A letter to that effect was sent to you (copy enclosed) on March 24, 2015.

As is explained in the application documents, the $300 application fee is an earned fee and cannot be refunded because of the expense incurred in handling the application (BPC 7138). For this reason, the following notice is provided at the top of the application form: "The application fee for a single classification ($300) is not refundable once the application has been filed." CSLB staff has initiated a refund of your $180 two-year license fee. I have asked that the processing time be expedited for you. You should receive your refund in a few weeks.

You may reapply on April 30, 2017. However, you will need to show rehabilitation, post a $15,000 disciplinary bond, and resolve any outstanding arbitration award before the license will be issued.

Sincerely,

David Fogt, Chief
Enforcement Division

Enclosure (1)

Gmail

# PRA REQUESTS- BEREKI

**Maier, Ellen@CSLB** <Ellen.Maier@cslb.ca.gov> Mon, Mar 22, 2021 at 3:17 PM
To: Adam <abereki@gmail.com>

Good afternoon Adam,

Please see attached. There was 8275 mandatory arbitration cases referred to AMCC since January 1, 2006.

**2 attachments**

**CSLB Copier_20210322_141609.pdf**
5670K

**CSLB Copier_20210322_141641.pdf**
6128K

# Appendix [P]

*ROB BONTA*
*Attorney General*

*State of California*
*DEPARTMENT OF JUSTICE*

**PUBLIC INQUIRY UNIT**
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

February 25, 2022

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your correspondence to the Office of the Attorney General.

While we appreciate the time and effort it has taken to contact our office, we are unable to assist you. The role of the Attorney General is to represent the People of California, collectively, in civil and criminal matters before trial courts, appellate courts, and the supreme courts of California and the United States. However, the Attorney General is prohibited by law from representing private individuals or providing legal advice, legal research or legal analysis to private individuals under any circumstances. As a result, the Attorney General cannot represent you in your private litigation or intercede on your behalf.

Therefore, we suggest that you consult with a private attorney to determine any civil remedies that may be available to you. An attorney would directly represent your interests and is the one whose advice would be most helpful to you.

Your complaint about the judge(s) involved in this case should be directed to the Commission on Judicial Performance. The Commission has exclusive jurisdiction over complaints against judges. You may contact the Commission as follows:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
Telephone: (415) 557-1200
Fax: (415) 557-1266
Internet: http://cjp.ca.gov

Your complaint about the attorney(s) involved in this case should be directed to the State Bar. The Bar has exclusive jurisdiction over complaints against attorneys. You may contact the Bar as follows:

State Bar of California
Intake Unit
845 S. Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 765-1000 (outside of CA) or (800) 843-9053 (toll free)
Internet: http://www.calbar.ca.gov

We regret that we are unable to assist you. However, we hope the information we have provided clarifies our restrictions in regard to your request. Thank you again for writing.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For ROB BONTA
Attorney General

# Appendix [Q]

# STATUTES INVOLVED

## Cal. Business and Profession Code §7028

(a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

(1) The person is not licensed in accordance with this chapter.

(2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, or five thousand dollars ($5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars ($5,000) nor more than the greater amount of ten thousand dollars ($10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(f) If the unlicensed person engaging in the business of or acting in the capacity of a contractor has agreed to furnish materials and labor on an hourly basis, "the contract

price" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(g) Notwithstanding any other law, an indictment for any violation of this section by an unlicensed person shall be found, or information or a complaint shall be filed, within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

(h) For any conviction under this section, a person who utilized the services of the unlicensed person is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether he or she had knowledge that the person was unlicensed.

(i) The changes made to this section by the act adding this subdivision are declaratory of existing law.

## Cal. Business and Professions Code §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 1993–94 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.

## Cal. Business and Professions Code § 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.

**Cal. Business and Professions Code §7085**

(a) After investigating any verified complaint alleging a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement and finding a possible violation, the registrar may, with the concurrence of both the licensee and the complainant, refer the alleged violation, and

any dispute between the licensee and the complainant arising thereunder, to arbitration pursuant to this article, provided the registrar finds that:

(1) There is evidence that the complainant has suffered or is likely to suffer material damages as a result of a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120, and any complaint arising from a contract involving works of improvement.

(2) There are reasonable grounds for the registrar to believe that the public interest would be better served by arbitration than by disciplinary action.

(3) The licensee does not have a history of repeated or similar violations.

(4) The licensee was in good standing at the time of the alleged violation.

(5) The licensee does not have any outstanding disciplinary actions filed against him or her.

(6) The parties have not previously agreed to private arbitration of the dispute pursuant to contract or otherwise.

(7) The parties have been advised of the provisions of Section 2855 of the Civil Code.

For the purposes of paragraph (1), "material damages" means damages greater than the amount of the bond required under subdivision (a) of Section 7071.6, but less than fifty thousand dollars ($50,000).

(b) In all cases in which a possible violation of the sections set forth in paragraph (1) of subdivision (a) exists and the contract price, or the demand for damages is equal to or less than the amount of the bond required under Section 7071.6, but, regardless of the contract price, the complaint shall be referred to arbitration, utilizing the criteria set forth in paragraphs (2) to (6), inclusive, of subdivision (a).

**Cal. Business and Professions Code §7085.6**

(a) (1) The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law.

(2) The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice.

(3) The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar.

(4) Reinstatement may be made at any time following the suspension by complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within 90 days of the date of the automatic suspension, the license and any other contractor's license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102.

(5) The registrar may delay, for good cause, the revocation of a contractor's license for failure to comply with the arbitration award. The delay in the revocation of the license shall not exceed one year. When seeking a delay of the revocation of his or her license, a licensee shall apply to the registrar in writing prior to the date of the revocation of the licensee's license by operation of law and state the reasons that establish good cause for the delay. The registrar's power to grant a delay of the revocation shall expire upon the effective date of the revocation of the licensee's license by operation of law.

(b) The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, manager, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of that person by another licensee shall constitute grounds for disciplinary action. A qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

# Appendix [R]

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 09/15/2022 TIME: 01:30:00 PM DEPT: C66

JUDICIAL OFFICER PRESIDING: Sandy Leal
CLERK: V. Do
REPORTER/ERM: Olivia Caucas
BAILIFF/COURT ATTENDANT: M. Wright

CASE NO: **30-2022-01271693-CL-CL-CJC** CASE INIT.DATE: 07/25/2022
CASE TITLE: **First National Bank of Omaha vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Rule 3.740 Collections

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EVENT ID/DOCUMENT ID: 73846965

**EVENT TYPE:** Ex Parte
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 09/14/2022

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**APPEARANCES**
James McCleoud, Plaintiff, present remotely.
Adam Bereki, self represented Defendant, present remotely.
Attorney, Katelyn Burnett for Prestige Default Services appears remotely.

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Hearing held, all participants appearing remotely.

Case called at 1:46 PM.

Ex-Parte application for Emergency Hearing on Petition for Writ of Habeas Corpus is requested by Defendant, Adam A. Bereki.

The Court hears oral argument.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Ex- Parte Application for Emergency Hearing on Petition for Writ of Habeas Corpus is **DENIED.**

**The Court notes the Petition for Writ set for October 13, 2022 in Judge Corey S. Cramin's Department in C3.**

**SUPERIOR COURT OF CALIFORNIA,**
**COUNTY OF ORANGE**
**CENTRAL JUSTICE CENTER**

**MINUTE ORDER**

DATE: 10/13/2022 TIME: 09:30:00 AM DEPT: C03

JUDICIAL OFFICER PRESIDING: Corey S. Cramin
CLERK: M. Dambert
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: K. Thach

CASE NO: **30-2022-01271693-CL-CL-CJC** CASE INIT.DATE: 07/25/2022
CASE TITLE: **First National Bank of Omaha vs. Bereki**
CASE CATEGORY: Civil - Limited CASE TYPE: Rule 3.740 Collections

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EVENT ID/DOCUMENT ID: 73841220,116895273

**EVENT TYPE:** Petition for Writ
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Petition - Other For Writ of Habeas Corpus, 09/07/2022

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**APPEARANCES**
James MacLeod, from The Dunning Law Firm APC, present for Plaintiff(s) remotely.
Adam Bereki, self represented Defendant, present remotely.

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Hearing held, all participants appearing remotely.

The Court, having fully considered the documents submitted, now rules as follows:

Defendant's Petition for Writ of Habeas Corpus is denied.

No further notice was ordered.

# Appendix [S]

# QUESTIONS PRESENTED

It is the duty of all Americans to question the authority of officials of the government they "ordained and established for themselves and their posterity" who purport to exercise authority to take their life, liberty, or property. Conversely, it is the duty of these officials to answer by stating the authority upon which they act. If they cannot affirmatively provide an authority, or, if they refuse to answer, their acts are without authority and void.

With regard to the following questions, this Court should keep firmly in mind that "[t]he judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. [It cannot] cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, [this Court] must decide it, if it be brought before [you]. [You] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which [you] would gladly avoid; but [you] cannot avoid them. All [you] can do is, to exercise [y]our best judgment, and conscientiously to perform [y]our duty."[1]

This Court should also note that in the event the Justices intend to use the so-called "Ashwander Doctrine"[2] to "dispose" of this case by only addressing the issue(s) they abritrarily feel like rather than *all* of the issues presented, that Petitioner challenges the Court's subject matter jurisdiction on the grounds that it lacks the authority to Legislate "doctrines" such as the "Ashwander Doctrine" to deliberately avoid performing its Constitutionally mandated duties.

1. What are the mandatory non-discretionary duties required of each public official included as a Party as they pertain to the power(s) conferred on their office by the Constitutions of California *and* the United States regarding *every* issue involved in this case.

2. What mandatory non-discretionary duties were violated by each public official included as a Party as they pertain to the power(s) conferred on their office by the Constitutions of California *and* the United States regarding *every* issue involved in this case.

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[1] *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

[2] "The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of." *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936).

3. Cal. Business and Professions Code §7031(b) requires that an unlicensed contractor "return all compensation paid" to a consumer *without* equitable offsets for the value of work performed *without* any evidence of profit.
    a. Is the "remedy" under §7031(b) a penal forfeiture (fine) or equitable disgorgement? If neither, what is the "remedy"?
    b. Is a violation of §7031(b) a "crime" or "public offense" as defined by Cal. Penal Code §15?
        i. Do the words "crime" and "public offense" as used in Penal Code §15 mean the same thing? If not, what is the difference?
    c. Is the violation of §7031(b) considered criminal or quasi-criminal?
    d. What is the difference between a criminal and quasi-criminal crime or public offense?
        i. State all provisions of the California and U.S. Constitutions that authorize quasi-criminal actions.
        ii. State all protections that apply to quasi-criminal actions under the California and US Constitutions.
    e. If a violation of §7031(b) is a crime or public offense, by what authority(ies) can the "Legislature" of California transfer the Executive power (*exclusively* vested in the Governor) to private parties to commence criminal and/or quasi-criminal prosecutions?
        i. In Petitioner's case, should the People of California have been the Plaintiff?
            1. If yes, what effect does the fact that the People of California were not the Plaintiff have on the personal jurisdiction over Petitioner and the subject matter jurisdiction of the case for the Superior Court to render judgment and the Fourth District Court of Appeal to affirm that judgment?
        ii. What is the standard for burden of proof in a §7031 action?
            1. What is the standard for burden of proof in a quasi-criminal action?
    f. Did Petitioner have a right to a trial by jury and to all of the heightened protections of criminal proceedings, including the assistance of counsel? If not, why not?
        i. By what authority(ies) did the trial Court Judge, David Chaffee, deny Petitioner each of these protections?
    g. By what authority(ies) did the Superior Court of California have subject matter jurisdiction to conduct a criminal prosecution commenced by private parties?

4. The Supreme Court of California has repeatedly held that the purpose of the "licensing laws" (Cal. Bus. & Prof. Code §§7000 et seq.) are to "protect the

public from incompetence and dishonesty in those who provide building and construction services"[3]:

a. Does this declared purpose create an irrebuttable presumption whereby unless one obtains a license they are presumed "incompetent and dishonest" in the performance of the skills of a contractor as defined in §7026?
    i. Is whether or not one is competent and honest an issue of fact to be determined by a jury or Judge at trial?
    ii. By what authority(ies) did the Cal. "Legislature" determine that Petitioner was incompetent and dishonest?
        1. Was Petitioner entitled to a judicial determination and trial by jury on both of these issues?
        2. What is the standard for burden of proof on these issues?
    iii. No known evidence was presented at "trial" pertaining to Petitioner's level of competence and integrity in construction, or on the project in question. By what authority(ies) did Chaffee make these determinations and/or rely upon those of the "Legislature"?
        1. What effect did this determination made without evidence have on the validity and finality of the "Judgment"?
    iv. See general contractor license #927244. How could Chaffee presume Petitioner to be incompetent and/or dishonest at "trial" when the Licensing Board had previously determined that he was competent and issued a general contractor license listing him as a licensee and qualifying individual?
    v. Does the Legislative presumption of incompetence and dishonesty only extend to construction related activities as defined by §7026?
        1. What effect does the presumption of incompetence and dishonesty have on election day?

5. According to the "Judgment" Appendix [B] pp.07-08 and California Civil Jury Instruction §4561, the hiring of an unlicensed contractor results in "damages".
    a. What is the definition of "damages" as used in the "Judgment" and §4561?
    b. Are these "damages" an irrebuttable presumption?
    c. Are these "damages" purely hypothetical?
        i. What competent authenticated evidence was relied upon at "trial" to establish a finding of "damages" in the amount of $848,000 against Petitioner?
            1. What effect does the fact that there was no competent authenticated evidence presented at "trial" on whether or

[3] *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 436 (Cal. Supreme Ct. 2005).

not Petitioner caused actual (not hypothetical or fictitious) damages have on the validity and finality of the "Judgment"?

2. What effect does the fact that there was no competent authenticated evidence presented at "trial" on whether or not Petitioner caused actual (not hypothetical or fictitious) damages have on the Humphreys standing to receive an award of "damages" and on the subject matter jurisdiction of Court to make such an award?
3. In what subject matter jurisdictions (and by what authority(ies)) arising under the California and U.S. Constitutions can Petitioner be subjected to a claim for hypothetical and/or fictitious damages?

d. Is whether or not "damages" occurred an issue of fact to be determined by a jury or Judge at trial?
   i. By what authority(ies) can "damages" be summarily determined by the "Legislature" or a "Judge" without any competent evidence?
   ii. How could Petitioner make any meaningful and substantive defense against a claim involving hypothetical and/or fictitious injury(ies) that (1) don't' exist in reality; (2) upon which no evidence was presented at "trial"; and, (3) are based upon an irrebuttable presumption?
   iii. Who specifically is/are the accuser(s) making the claim of "damages" against Petitioner?
      1. How could Petitioner meaningfully and substantively confront this(ese) accuser(s) when their identity was unknown/ not disclosed?
         a. What effect did the fact that Petitioner was not able to confront his accuser(s) have on the validity and finality of the "Judgment"?
         b. What effect did the fact that Petitioner was not able to confront his accuser(s) have on the Humphreys standing to receive an award in their favor and on the subject matter jurisdiction of the Court to make such an award?

6. Keeping in mind: (1) that *only* the subject matter jurisdictions of Law and Equity arise *under* the Constitution for the United States[4]: (2) that offsets and other equitable remedies were denied/not allowed at "trial" or on "appeal"; (3) that the injury/damages Petitioner purportedly caused were purely fictitious and/or hypothetical and akin to *liquidated* "damages"; (4) that Petitioner was denied all of the heightened protections of criminal proceedings, including trial

[4] Unless otherwise noted, all references to the "United States" are to the United States of America.

by jury; (5) that Admiralty jurisdiction, the law of the sea (liquid), does *not* recognize equitable offset[5] or trials by jury; (6) that each of the transactions for the project occurred by commercial negotiable instruments circulating in Interstate Commerce, a jurisdiction "closely connected" with Admiralty[6]:

a. What subject matter jurisdiction did the "trial" proceed and was the "Judgement" issued?
b. What was the venue of the "trial"?
c. In what jurisdiction(s) and venue(s) do contracts made and/or performed under the "licensing laws" operate?

7. Prior to the purported enactment of the "licensing laws", the People of California's inalienable right to their time and labor in performing carpentry and construction work was recognized. See Article I, §1 of the Cal. Constitutions of 1849 and 1879. However, according to the Attorney General of California in Opinion 47-174, §7028/§7031, "a license to conduct any of the regulated activities [in California] is a mere statutory privilege [not an inalienable right] – a creature of statute – [and] is at all times subject to legislative control, including destruction or termination by the legislative process":
    a. Define "inalienable".
    b. What is the definition of an "inalienable right" as used in the Declaration of Independence and Article I, §1 of the Cal. Constitutions of 1849 and 1879?
        i. What is the nature and extent of each of the inalienable rights secured by these organic documents?
        ii. What inalienable rights are recognized in Interstate Commerce?
        iii. What inalienable rights are recognized under the "14th Amendment"?
        iv. What inalienable rights are recognized in "citizens of the United States" as declared by the "14th Amendment"?
    c. By what authority(ies) can the Cal. "Legislature" convert the private inalienable rights to contract[7] and to property (in the form of one's time

[5] *Bains v. James and Catherine*, 2 F. Cas 410, 412 (1832).

[6] "The exclusive jurisdiction in admiralty cases was conferred on the national government, as closely connected with the grant of the commercial power." *New Jersey Steam Navigation Co. v. Merchants' Bank*, 47 U.S. 344, 392 (1848). "The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke v. Lyde*, 2 Burr. R. 883, 887, to be in a great measure, not the law of a single country only, but of the commercial world." *Swift v. Tyson*, 41 U.S. 1, 19 (1842).

[7] Article I, §10 U.S. Const., and Section 14, Article II of the Northwest Ordinance of 1787 as reenacted by the First Congress, whereby "no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements[.]"

and labor, Cal. Const. Article I, §1) into a revocable privilege/public right?

d. Exhaustively define the difference between public and private rights under the Laws of California and the United States.
    i. Are private rights subject to the political process/ political majorities? If yes, by what authority(ies) and to what extent?

e. By what authorities can this conversion/taking of private rights occur without notice and a judicial hearing? See for e.g. Article I, §10 forbidding the taking of rights, liberty and property *without* judicial process and Section 14 of Article II of the Northwest Ordinance of 1787 as reenacted by the First Congress guaranteeing "judicial proceedings according to the course of the common law" even to inhabitants of territories.
    i. See Cal. Civil Code §3521 "[h]e who takes the benefit must bear the burden" and Exhibit [J]– Invisible Contracts by George Mercier:
        1. Is an Application for Original Contractor License an application for benefits as the term "benefit" is used in §3521?
        2. Does an Application for Original Contractor License constitute a contract?
        3. Is there a waiver of any rights, privileges, or immunities as secured by the Constitutions of California and the United States implicit in an Application for Original Contractor License?
            a. If yes, which specific rights are waived and how does this waiver occur *knowingly*, voluntarily, and intelligently?
        4. Provide the authenticated evidence that Petitioner made a knowing, voluntary, and intelligent waiver of the rights in

f. See for e.g. *Bass v. United States*, 784 Fed. 2d. 1282, 1284 (1986). Is whether or not one is a "person" and therefore subject to the Business and Professions Code (or any statutory enactment) an element of claim and/or offense?
    i. No known evidence was presented at "trial" that Petitioner was a "person" subject to the "licensing laws". Was this a violation of due process? A bill of pains and penalties?
            a. Define Bill of Attainder and Pains and Penalties.
                i. What is the definition of a "judicial act"?
        2. What effect does the lack of evidence on this issue have on the validity and finality of the "Judgment"?
        3. What effect does the lack of evidence on this issue have on the Humphreys standing to receive a judgment in their

favor and the subject matter jurisdiction of the Court to award such relief?

ii. Noting that "Person", as used in §7025, defines who the "licensing laws" apply to also includes corporations and other fictitious entities:
    1. How could Petitioner have the same status and standing (in other words rights, privileges and immunities) as a corporation or other fiction of law?

iii. Even though there was no known evidence presented at "trial" as to whether Petitioner was a "person" to whom the "licensing laws" applied, on appeal, the "Justices" determined that Petitioner was such a person (as an "individual") and therefore, that the "licensing laws" applied to him:
    1. Define "individual".
    2. What status and standing (rights, privileges, and immunities) does an "individual" have under the Constitution and Laws of California and the United States?
        a. Is an individual a State Citizen? A "citizen of the United States"? "United States citizen?"
    3. Did the determination that Petitioner was an "individual" by the "Justices" violate due process in that he was not afforded: the right to confront his accuser(s), to a trial by jury on this issue, and to oppose this claim with evidence of his own?
        a. What effect does the fact that the "Justices" summarily determined Petitioner was an "individual" have on the subject matter jurisdiction of the Court of Appeal to render judgment on this issue?
    4. What evidence did the "Justices" rely upon to make the determination that Petitioner was an "individual"?
        a. Present the authenticated evidence relied upon to the record of this case.
    5. It has become apparent throughout Petitioner's investigation that in many statutory enactments, words that have a clearly understood meaning in common usage are given an *opposite* or other meaning. For example, the word "person", which most ordinary People consider to *only* mean a biological, sentient being, is used to also mean a corporation or other fiction of law, the complete opposite of biological, sentient being. The word "individual" is also often used in the same way. In Petitioner's experience, a principle reason for this behavior is to *intentionally* deceive

and/or create confusion so that someone either takes (or doesn't take) certain action based upon their reliance of the deception. For example, someone may believe that they have to obtain a professional license because they are a "person" when a license is actually *only* required for a corporation. Another example might be for a State Citizen to believe they are required to pay Federal income taxes when said taxes may only apply to residents of the District of Columbia.

a. Is it a violation of due process to redefine words in statutory and other enactments to have an opposite meaning than in common usage?

8. Is performance of work by an unlicensed contractor an element of the offense under §7031(b)?
    a. No known evidence was presented that Petitioner performed any specific work on the project.
        i. What effect does this have on the validity and finality of the "Judgement"?
        ii. What effect does this have on the Humphreys standing to receive judgement in their favor and the subject matter jurisdiction of the Court to award such relief?

9. Are all of the elements of a claim, whether in a civil *or* criminal case (including quasi-criminal cases), required to be proved by competent authenticated evidence?
    a. What effect does the lack of competent authenticated evidence of any element of a claim or offense have on the validity and finality of a judgment?
    b. What effect does the lack of competent authenticated evidence of any element of a claim or offense have on the subject matter jurisdiction of a Judge to deprive a litigant of life, liberty, and/or property?
    c. By what authority(ies) is a Judge empowered to legislate new claims or offenses into existence by only requiring that certain elements of an existing offense or claim are met? In other words, if a claim or offense has five elements and only three are proved, by what authority(ies) can a Judge deprive a litigant of their life, liberty, and/or property?
    d. In the example in c where only three out of the five elements were met, would this result in the create of a new law, an ex post facto law?
    e. Specifically, what are the elements of the offense of §7031 and which of these elements were met at "trial"?
        i. Was Petitioner subject to an ex post facto law?

1. If Petitioner was subject to an ex post facto law, what effect did this have on the subject matter jurisdiction of the Court to deprive Petitioner of his rights, liberty, and/ property?

ii. Does the prohibition against ex post facto laws also apply in civil and quasi-criminal cases?

10. As part of fundamental due process (and a judicial determination of rights as secured by Article I, §9 and §10), are findings of facts and conclusions of law for each element of a claim or offense *and* every issue in a case requisite to a valid final judgment?
    a. If not, how can Petitioner/the People be required to guess these determinations in order to present a meaningful and substantive Motion for New Trial, appeal, or other challenge to jurisdiction?
    b. Without this knowledge, how is it possible to exercise the right to instruct our "representatives" and/or be able to nominate and elect those who will adhere to their Oath of Office?
    c. Was it a violation of due process for Chaffee to refuse to render a findings of facts and conclusions of law addressing his specific findings and conclusions for each element of the offense and every issue in the case against Petitioner?
    d. Does Cal. Code of Civil Procedure §632 violate due process and/or (Article I, §10) by not requiring a Superior Court Judge to render a finding of facts and conclusion of law upon questions of fact?
    e. What effect did the fact that Chaffee refused to create and file a findings of facts and conclusion of law have on the validity and finality of the "Judgment"?
        i. Does the refusal of a Judge to issue a findings of facts and conclusions of law result in a bill of attainder or pains and penalties?
    f. What effect did the fact that Chaffee refused to create and file a findings of facts and conclusion of law have on Petitioner's ability to make a meaningful and substantive appeal?

11. Under Cal. Business and Professions Code §7071.17, if a contractor is unable, or refuses to comply with an unlawful "Judgment" pursuant to §7031(b), their license (and or ability to obtain one) is summarily suspended by operation of statute and without any known right to appeal.
    a. As held by this Court, "[e]xclusions from any of the professions or any of the ordinary avocations of life […] can be regarded in no other light than as punishment for such conduct."[8] Was the suspension/ revocation of

[8] *Ex Parte Garland,* 71 U.S. 333, 378 (1866). See also *Schomig v. Keiser*, 189 Cal. 596, 598 (Cal. Supreme Ct. 1922) holding that "[t]he portion of the act which authorizes the [Registrar of Contractors] to forfeit the license of a [contractor] and take it away from him is highly penal in its nature."

Petitioner's status as the qualifying individual of a general contractor license penal/punitive?

i. Did Petitioner have the right to a judicial determination of rights on this issue? A right to trial by jury? To the heightened protections of criminal proceedings, including the assistance of counsel? By what authority(ies) were these protections denied? What is the standard for burden of proof on this issue?

ii. Did the "Legislature" of California unlawfully exercise the Judicial power of California to summarily suspend and/or revoke Petitioner's license status and punish him?

1. Did this act of the "Legislature" constitute a bill of pains and penalties?

b. Did the suspension/ revocation of Petitioner's status as a qualifying individual result in false imprisonment?

c. Is Petitioner entitled to just compensation for the entire period of deprivation of this right?

i. If yes, what does "just compensation" mean/ how is it determined in this instance?

ii. Does "just compensation" include interest?

12. Given that Contractors State Licensing Board had determined Petitioner was qualified to act as a general contractor and had issued a general construction license naming him as a licensee (license #92744), did Petitioner have a vested right to a license?

a. Was the suspension and/or revocation of Petitioner's status as a qualifying individual for a general contractor license (Appendix [O] pp.75-77, Exhibit [F]) punitive?

b. Did Petitioner have a right to a judicial determination of his rights on this issue? To the heightened protections of criminal proceedings, including the assistance of counsel? A trial by jury? By what authority(ies) were these protections denied?

c. Was the suspension/ revocation of Petitioner's status as a qualifying individual a bill of pains and penalties? An unlawful taking and/or seizure?

d. Did the suspension/ revocation of Petitioner's status as a qualifying individual result in false imprisonment?

e. Is Petitioner entitled to just compensation for the entire period of deprivation of this right?

i. If yes, what does "just compensation" mean/ how is it determined in this instance?

ii. Does "just compensation" include interest?

13. See Appendix [O] pp.73-79 and Exhibit [F]. Under Cal. Business and Professions Code §7085, the Contractors State License Board has created and enforced a "mandatory arbitration program":
    a. Does §7085 authorize mandatory arbitration?
    b. By what authority(ies) did officials and employees of the State of California and the Contractors State License Board create and/or enforce the mandatory arbitration program?
    c. Keeping in mind that *only* the subject matter jurisdictions of Law and Equity arise under the Constitution for the United States, in what subject matter jurisdiction do proceedings under the "mandatory arbitration program" occur?
    d. Did Petitioner make a knowing, voluntary, and intelligent waiver of rights to be subjected to "mandatory arbitration"? If yes, provide the authenticated evidence of this waiver of rights.
    e. Did Petitioner have a right to a judicial determination of his rights and a trial by jury upon the issues in the complaint?
    f. Petitioner as Spartan's Responsible Managing Officer and the Qualifying Individual of Blackrock and Spartan's licenses was not given notice of the mandatory arbitration proceeding. Did this failure to notify him of the proceedings constitute a violation of due process?
    g. Petitioner was not provided with any evidence of the claim to prepare for a meaningful and substantive defense at the mandatory arbitration hearing. Did this failure to provide him evidence of the claim constitute a violation of due process?
    h. Was the mandatory arbitration award a bill of pains and penalties?
    i. By what authority(ies) can the Executive and Judicial powers of California be transferred to and/or exercised by a private arbitration company known as the Arbitration Mediation Conciliation Center, Inc. ("AMCC")?
        i. By what authority(ies) can employees of the AMCC exercise the Executive and/or Judicial power(s) of California?
        ii. By what authority(ies) can employees of AMCC who have not (1) been elected or appointed; and/or (2) taken an Oath of Office, exercise the Executive and/or Judicial power(s) of California?

14. See complaints to public officials made by Petitioner in Exhibits [C-F] and "Parties". Do officials of the Executive and Legislative branches of California and the United States have a mandatory, non-discretionary ministerial duty to investigate and/or intervene when they receive a complaint that an official of the Judicial and/or Legislative branch(es) has acted without authority to deprive one of the People of their rights, liberty, and/or property secured by the California and/or United States Constitution(s)?
    a. By what authority(ies) can the officials of the Legislative, Executive, and Judicial branches of the governments of California and the United

States refuse to enforce the provisions of the Constitutions of California and/or the United States within the capacity of their office?

b. See Exhibits [E31] and [D] pp.5166-5178 whereby Sean Paul Crawford refused to investigate and intervene in Petitioner's complaints on the grounds that he lacked jurisdiction because the incidents did not occur within the City of Irvine. By what authority(ies) does municipal law overrule and/or supersede the Constitutions of California and the United States? Do the Constitutions of California and the United States not apply within certain Cities and/or Counties in California? If yes, which, and by what authority(ies)?
c. See e.g. Exhibit [D] pp.4805-4809 whereby the City Attorney of Newport Beach, Aaron Harp, refused to provide Petitioner with a findings of fact(s) and conclusions of law pertaining to his complaints against Newport Beach Police officials for dereliction of duty(ies). When Petitioner specifically asked for these findings and conclusions, Harp refused to provide them and told Petitioner they constituted "legal advice":
    i. When a Citizen makes a complaint for deprivation of Constitutionally protected rights, is the government agency required to produce a findings of fact(s) and conclusion(s) of law pertaining to every issue presented by the complaint?
    ii. Did Harp's refusal to provide a findings of facts and conclusions of law constitute a violation of due process?
d. Explain the precise contours of all facets of the duties for officials of each branch of State and Federal government upon receipt of a complaint for deprivation of Constitutionally protected rights/ petition for redress of grievance.

15. Keeping in mind that *only* "Cases in Law and Equity" arise *under* the Constitution, Laws of the United States and Treaties made under their authority, that the Constitution is the "supreme Law of the Land" and that "the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding":
    a. By what authority(ies) did Chaffee and the Fourth District appellate "Justices" exercise a subject matter jurisdiction called "all other causes" (Art. VI, §10, Cal. Const. 1879)?
    b. Define "all other causes", including the precise means and methods of proceeding in all causes and the limitations/extent of this jurisdiction.
    c. Is "all other causes" foreign to the U.S. Constitution and unacknowledged by its law?
    d. Is "all other causes" considered to be "in pursuance of" the Constitution and Laws of the United States? If so, define what "in pursuance thereof" means and specifically how "all other causes" is in pursuance thereof.
    e. Is the Business and Profession Code considered administrative "law"?

f. Keeping in mind that *only* "Cases in Law and Equity" arise *under* the Constitution, in what subject matter jurisdiction does a case of administrative law proceed?
    i. In what subject matter jurisdiction does a case under the Business and Professions Code proceed?
g. See *Parsons v. Tuolumne Co. Water Co.*.[9] Is a case pursuant to §7031 considered a "special case"?
    i. In what capacity (administrative, judicial, etc.) is a Court proceeding to a "special case" exercising subject matter jurisdiction?

16. Does the Cal. "Constitution of 1879" vest any power in the "Legislature" to create Courts? If yes, by what authority(ies)?

17. Does the Cal. "Constitution of 1879" vest any power in the Cal. "Legislature" to vest any Courts of California with subject matter jurisdiction of any special and/or statutory cases? If yes, by what authority(ies)? Which Courts?
    a. By what authority(ies) did the "Legislature" vest the Superior Court of California with subject matter jurisdiction under Cal. Business & Professions Code §7031(b) in the case against Petitioner?
    b. Did the Superior Court of California have subject matter jurisdiction in the case against Petitioner? By what authority(ies)? What subject matter jurisdiction was the Superior Court exercising?

18. Did Petitioner have Article III standing for each issue raised in his complaints in the District Court and on Appeal in the Ninth Circuit? If not, which issues did he lack standing and why?

19. By what authority(ies) have the Judges of the United States District Court for the Central District of California and the Ninth Circuit Court of Appeals created and/or enforced each of the policies stated in their "Judgments"?
    a. State each issue in which the District Court had subject matter jurisdiction over Petitioner's claims and by what authority(ies)?
    b. State each issue in which the District Court did not have subject matter jurisdiction over Petitioner's claims and by what authority(ies)?
    c. Did Petitioner rebut the presumptive validity of the State Court "Judgments"?
        i. If yes, did the burden of proof shift to the Humphreys on direct (or collateral) attack to sustain their standing to the relief they were awarded as well as the State Court's personal and subject matter jurisdiction to award that relief?

[9] *Parsons v. Tuolumne Co. Water Co.*, 5 Cal. 43 (Cal. Supreme Ct. 1855). (Citations omitted).

1. Did the Humphreys sustain their burden of proof on these issues? If yes, how did they sustain this burden and by what authority(ies)?
2. Did the Humphreys failure to sustain their burden of proof on these issues result in a violation of due process?
    a. If yes, what effect did this have on the validity and finality of Marshall's judgment?

d. Given that Petitioner was "prosecuted" for the commission of a public offense and never informed of nor afforded the right to assistant counsel at "trial", did he have a right to the assistance of counsel in the proceedings in the District Court?
    i. If yes, by what authority(ies)?
    ii. If not, by what authority(ies) was he not entitled this assistance?
    iii. What effect did Marshall's denial of assistant counsel have on the validity and finality of her "Judgment"?
    iv. What effect did Marshall's denial of assistant counsel have on the personal and subject matter jurisdiction of the Court?
e. Did Petitioner have a right to appeal Marshall's "Judgment"?
    i. If yes, by what authority(ies)?
f. Did Petitioner have a right to assistant counsel on appeal?
    i. If yes, by what authority(ies)?
    ii. If not, by what authority(ies) was he not entitled this assistance?
    iii. What effect did the Ninth Circuit "Judges" denial of assistant counsel have on the validity and finality of their "Judgment"?
    iv. What effect did the Ninth Circuit "Judges" denial of assistant counsel have on the personal and subject matter jurisdiction of the Court?
g. Did the "Judges" of the Ninth Circuit violate Petitioner's right to appeal?
    i. What effect did this have on the validity and finality of their "Judgment"?
    ii. What effect did this have on the personal and subject matter jurisdiction of the Court?
h. State each issue Petitioner raised on appeal and by what authority(ies) each issue was "frivolous".
i. The United States government has refused to provide Petitioner with all of the official documents pertaining to the appointment to the office of District Court Judge for Consuelo Bland Marshall and the office of Judge of the United States Court of Appeals for the Ninth Circuit for Judges Fletcher, Tashima, and Thomas. Pursuant to his request made under the Freedom of Information Act, Exhibit [D] p.5357-5377, you will please submit the requested documents to the record of this case.

20. Define "assistance of counsel" as used in the Sixth Amendment and the Cal. Constitution. More specifically, define "assistance" and "counsel".

a. In what specific cases and actions is the "assistance of counsel" limited only to attorney's licensed by a Bar Association?
    i. Does this limitation reflect a presumption that Petitioner (and the American People) is/are incompetent in the practice of law and/or the assistance in the practice of law of cases concerning other People?
        1. If yes, on what authenticated evidence and by what authority(ies) is this presumption based?
        2. By what authority(ies) is Petitioner not competent to determine who can provide meaningful and effective assistance in any lawful action?
b. Given that the State Bar of California (founded in 1927) did not exist at the time of the enactment of the Cal. Constitutions of 1849 and 1879, and the American Bar Association (founded in 1878) did not exist at the time of the enactment of the U.S. Constitution, by what authority(ies) and authenticated historical facts can the term "assistance of counsel" mean only a Bar licensed attorneys?
c. By what authority(ies) can the Sixth Amendment be amended such that "assistance of counsel" means *only* a Bar licensed attorney?
d. Petitioner has contacted an estimated fifteen lawyers/ law firms and all have refused to "represent" or "assist" him in this matter. Does the fact that he has not been able to find meaningful and substantive assistance from a Bar licensed attorney result in the effective denial of assistance of counsel?
e. Given that Petitioner cannot afford an attorney based on the restraints of his liberty, does this result in the effective denial of assistant counsel?
f. Does Petitioner have a right to the assistance of counsel in this matter before the Court?
g. Given the evidence presented herein that the State Bar of California and its members (active and/or inactive) are allegedly involved this conspiracy against Petitioner (and all like-situated litigants), by what authority(ies) could Petitioner be compelled to only receive "assistance" from one of its members?
h. Given the appearance of gross incompetence and severe psychological issues of all of the active and inactive members of the State Bar of California involved in this case, would it not be an effective denial of assistant counsel to require Petitioner to be assisted and/or represented by a member of the Bar?
i. Does the State Bar of California constitute a monopoly under the Sherman Antitrust Act (26 Stat. 209 Ch. 647)?
    i. If so, how can Petitioner be compelled to only receive assistance from an organization in violation of Federal Statutes?

21. Petitioner submitted a meaningful and substantive complaint for deprivation of rights arising under the U.S. Constitution to this Court on or about September 16, 2021. Exhibit [A43]. By purportd authority vested in the Clerk of Court under the Rules of the U.S. Supreme Court, Petitioner's complaint was never given to the Justices and was returned unfiled. Exhibit [A44], Appendix [N] p.72.

    Keeping in mind that Article III of the Constitution declares that "[t]he judicial Power **shall** extend to **all** Cases, in Law and Equity, arising under this Constitution […]." (Emphasis added); Rule 5 of the FRCP declares that "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice"; and that this Court has held: (1) "the Constitution does not require that the case or controversy should be presented by traditional forms of procedure";[10] (2) that "[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation that would abrogate them";[11] (3) that "[t]he exaltation of form over substance is to be avoided";[12] and, (4) that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury":

    a. Did the Clerk's refusal to file Petitioner's complaint constitute:
        i. A denial of the right to a judicial determination of his rights *and* all of the rights prayed for in his complaint?
        ii. A violation of due process?
        iii. A denial of the right to Petition a Federal Court for Redress of Grievance pursuant to Article III, §2 and/or the First Amendment?
        iv. A bill of pains and penalties?
    b. By what authority(ies) can the Clerk be vested with and/or exercise the judicial power of the United States under Rule 1 of the Rules of the U.S. Supreme Court to refuse to file and thereby adjudicate Petitioner's complaint by summary denial of all of the issues he presented?
    c. By what authority(ies) did the Justices of this Court create, enact, and or/enforce the Rules of U.S. Supreme Court, such as Rule 1, that have the force and effect of law, without the approval of Congress or the President?
    d. By what authority(ies) did the Justices of this Court create, enact, and or/enforce the Rules of U.S. Supreme Court, such as Rule 1, that result in a summary denial of rights secured by the Constitution?

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[10] *Nashville, C. & St; Louis Ry. Co. v. Wallace*, 288 U.S. 249, 264 (1933)

[11] *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

[12] *United States v. DiFrancesco*, 449 U.S. 117, 142 (1980).

22. See Exhibit [D] p.5435. By what authority(ies) can a Clerk and/or Deputy Clerk of the Supreme Court of California refuse to file a Petition for Writ of *Habeas Corpus?*
    a. See for e.g. Senate Report 93-549, Essays on Emergency Powers. Has the Writ of *Habeas Corpus* (Art. I, §9, Cl.2) been suspended in whole or in part as a result of any of these States of Emergency? If so, which parts and by what authority(ies)?
    b. By what authority(ies) do the Courts of California not have concurrent jurisdiction of a Federal Court?

23. Keeping in mind that *only* "Cases in Law and Equity" arise *under* the Constitution, Laws of the United States and Treaties made under their authority, and that the Constitution makes these jurisdictions of Law and Equity separate:
    a. By what authority(ies) can these jurisdictions be combined along with admiralty (a jurisdiction that does *not* arise *under* the Constitution, Laws of the United and Treaties made under their authority) to create "one form of action" as declared in Rule 2 of the Federal Rules of Civil Procedure?
    b. By what authority(ies) can these changes be made without the approval of Congress and the President?

24. See Exhibit [K] p.98. According to the California Secretary of State, the California Constitution of 1849 has never been repealed.
    a. Is the Cal. Constitution of 1849 still in full force and effect? (i) If yes or no, by what authority(ies)?
    b. The Cal. "Constitution of 1879" does not define who the People and Citizens of California are. Who are the People and/or Citizens of California? Is there a difference between a People and a Citizen?
    c. Provide a complete list (and therefore full disclosure) of all amendments to the Cal. "Constitution of 1879".
        i. Which of these Amendments have been required to be approved by Congress?
        ii. Which of these amendments have been approved by Congress?

25. Keeping in mind the facts presented by Lysander Spooner in No Treason, No VI, The Constitution of No Authority (1870) (Exhibit [I]), what specifically constitutes "consent of the governed" to be subject to the Cal. Constitutions of 1849 and 1879, Chapter 9. Contractors of the Cal. Business and Professions Code, the law merchant/Cal. Commercial Code, Interstate Commerce as defined by Article I, §8, Cl.3, and the Constitution for the United States of America?

26. Do the Constitutions of California and the United States of America each establish a trust?
    a. Are the public officials of California and the United States of America trustees of either or both of these trusts?
    b. Provide a comprehensive list of which provisions of the Constitutions of California and the United States are mandatory and which are discretionary.
    c. Provide a comprehensive list of which provisions of the Constitutions of California and the United States are ministerial.
    d. Does the Oath of Office of a public official have the same force and effect as a contract?
    e. Does violation of an Oath of Office constitute intent to "advocate the overthrow of our constitutional form of government" as declared in 5 U.S.C §7311?
    f. Which officials involved in this case have violated their Oath of Office?
    g. Pursuant to Article XX, §3 of the Cal. "Constitution of 1879" are officials required to take *and* subscribe an Oath of Office for each position they hold? For e.g. is a Police Officer required to take and subscribe an Oath of Office when promoted to the position of Police Sergeant– a position with different duties, responsibilities, and pay than that of a Police Officer?
        i. Based upon the answers to all of the foregoing questions, which officials listed in "Parties" are not lawfully in office?
            1. If any officials in "Parties" are not lawfully in office: (1) what effect does this have on their ability to accept compensation from the public treasury; and, (2) on their ability to make lawful determination(s) of Petitioners claims (claims for deprivation of Constitutionally protected rights, privileges, and/or immunities)?
    h. See Exhibit [D] pp.5159-5161. By what authority(ies) can Executive officials overrule, supersede, or amend the Cal. "Constitution of 1879" by creating and/or implementing policies to not subscribe an Oath of Office?
    i. See Exhibit [D] p.5200. By what authority(ies) can "officials" make up their own Oath of Office?
    j. See for e.g. Parties: Brian Wadkins, Mike Manson et al. who have not subscribed an Oath of Office.
        i. What effect does the failure to *subscribe* an oath of office have on an official's ability to receive compensation from the public treasury? On the official's authority to make any *lawful* orders or commands or to *lawfully* perform the function of their office?

27. Article III of the Constitution *mandates* that the judicial power of the United States "shall extend to all Cases in Law and Equity"[13]. In furtherance of this declaration, this Court has held that "[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. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided."[14] Consequently, the judicial power of the United States must be *fully* vested in Federal Courts in both original *and* appellate forms. Despite the foregoing, Congress has apparently not vested any judicial power of the United States at Law or Equity in any known District Court of the United States. See II(D)(6) of the Application for Emergency Stay. Furthermore, pursuant to at least 28 U.S.C. §1257, this Court has enforced a policy created by "Congress" whereby appellate review of State Court judgments "is not a matter of right, but of judicial discretion."[15] The result being, as directly evidenced by this case, that Petitioner (and all like situated litigants) have no apparent access to a Constitutional Court exercising the judicial power of the United States as conferred by Article III.
    a. By what authority(ies) has "Congress" refused to vest the judicial power of the United States in any original case at Law or Equity in any District Court of the United States?
    b. By what authority(ies) has "Congress" refused to vest the judicial power of the United States in any appellate case at Law or Equity in any District Court of the United States?
    c. See U.S. Supreme Court case# 18-1416. By what authority(ies) has "Congress" refused to vest the judicial power of the United States in the Supreme Court of the United States in *all* appellate cases at Law or Equity involving review of State Judgments in violation of the Constitution?
        i. By what authority(ies) has this Court created and/or enforced Rule 10 of the Rules of the Supreme Court whereby this Court

[13] Emphasis added. See Commentaries on the Constitution (1833), Joseph Story §1584 "The judicial power, therefore, be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose under the sanctions of the Constitution, they might defeat the Constitution itself. A construction which would lead to this result cannot be sound;" §1585-1589; *Martin v. Hunters, Lessee*, 14 U.S. 304, 331 (1816); Article 1, 9 (Bill of Attainder clause mandating the right to a judicial determination of rights); the First and Fifth Amendments (rights to Petition for Redress of Grievance and due process); and A Neo-Federalist View of Article III: Separating the Two Tiers of Federal Jurisdiction by Akhil Reed Amar; Boston University Law Review Volume 65, Number 2, March 1985; p230.

[14] *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

[15] Rules of the Supreme Court, Rule 10.

refuses to exercise appellate review of State Judgments where claims in violation of the Constitution are made?

d. Based on the fact that Congress has apparently refused to vest the full judicial power of the United States in any original case at Law or Equity, does this Court consequently have original jurisdiction in all cases at Law or Equity? If not, in what Court would Petitioner file such a case?

28. Pursuant to Article I, §10, was Petitioner entitled to a judicial determination of his rights in the first instance in all cases in which his rights, liberty, and/or property were to be taken under the authority of the State of California?
    a. Define the terms "Bill of Attainder" and "Bill of Pains and Penalties".
    b. Carefully noting that the Constitution imposes the restrictions of these Bills on a "State" specifically and not any specific branch of government or official, does the restriction against these Bills apply whenever State action imposes punishment by taking the rights, liberty, and/or property of one of the People by force of the Legislative, Executive or Judicial power of the State?
    c. Did the supposed ratification of the "14th Amendment" effectively amend Article I, §9 and §10? Did it amend any other provisions of the Constitution?
        i. If yes, precisely state and define all such Amendments.
        ii. Clearly define the extent the supposed ratification of the "14th Amendment" had on the State-Federal relationship originally established by the Constitution.
        iii. Were all of these Amendments to the Constitution effected by the supposed ratification of the "14th Amendment" disclosed to the People at the time of its "ratification"?
            1. If yes, provide the authenticated evidence of these disclosures for every "Amendment".
            2. If not, would non-disclosure of any of these issues nullify the validity of the Amendment?

29. According to the *Slaughterhouse Cases*[16], "there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual." See also *Van Valkenburg v. Brown,*[17] holding that the People of California do not owe their Citizenship to the "14th Amendment", and the definition of "Citizen" in Bouvier's Law Dictionary of 1859.[18] Based on the

[16] *Slaughterhouse Cases*, 83 U.S. 36, 74 (1872). See also *Scott v. Sanford*, 60 U.S. 393, 399 (1857).

[17] *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

[18] The then Congressionally approved definitions of the words and phrases of the Constitution, as "[o]ne who, under the Constitution and laws of the United States, has the right to vote for representatives in Congress, and other public officers, and who is qualified to fill all offices in the gift

foregoing, there appear to be two separate bodies politic in at least the State of California, if not every other State admitted into "this Union". Those bodies politic are the Citizens of California and citizens of the United States and/or United States citizens (Cal. Political Code §201).

a. Given that this Court has declared that corporations are "citizens of the United States"[19], who and/or what is a "citizen of the United States" (as used in the "14th Amendment") and a "United States citizen" (as used in the Cal. Elections Code §201?
b. State precisely all characteristics or circumstances in the individual or entity that determine whether one is a Citizen of a State, "citizen of the United States" or "United States citizen".
c. State precisely *all* rights, privileges and immunities for Citizens of California, "citizens of the United States" and "United States citizens".
d. Who and/or what specifically is subject to the "jurisdiction thereof" as declared in the "14th Amendment"?
    i. What specifically is the "jurisdiction thereof" and what is its extent?
e. By what authority(ies) can Congress dictate to the States who are to be its Citizens?
f. In Petitioners research, it appears that the acceptance of Federal benefits such as Social Security, results in the fact that one also is considered a resident of the District of Columbia even though they may actually physically reside in a State. Does the fact that one is a "citizen of the United States", "United States citizen", or that one accepts any Federal benefits also mean, in any instance (other than if one actually physically resides in the District of Columbia) that one is a resident of the District of Columbia? If yes, state all instances in which this is the case and by what authority(ies)?
g. What is Petitioner's status and standing? In other words, is he a Citizen of California? citizen of United States? Both? Neither? Where is he considered to reside? Where is he considered to be domiciled?
    i. What effect does this have on whether Petitioner has any inalienable rights (as cognized in the Declaration of Independence and Cal. Constitution)?
h. See for e.g. *Dyett v. Turner*, 20 Utah 2d 403 (UT Supreme Ct. 1968); Congressional Globe April 5, 1866 pp. 1775-1776; Congressional Record Volume 113 Part 12 June 1967 pp.15641-15646; Tulane Law Review Volume 28, 14th Amendment. (Unknown source; accuracy unverified). Was the "14th Amendment" lawfully ratified?
    i. If yes, by what authority(ies)? If not, why not?

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of the people. In a more extended sense, under the word citizen, are included all white male persons born in the United States …"

[19] See e.g. *Connecticut Insurance v. Johnson*, 303 U.S. 77 (1938).

ii. Provide the authenticated evidence that there was a lawful quorum in the House and Senate to ratify the "14th Amendment".
iii. Under Article V, was the "14th Amendment" required to be ratified by conventions of People in the States? If not, why not?

30. In the case of *Santa Clara County v. Southern Pacific Railroad*, 118 U.S. 394 (1886) this Court first decided that the word "person" in the "14th Amendment" included corporations. See also *Connecticut insurance v. Johnson*, 303 U.S. 77 (1938) noting the dissent of Justice Black.
    a. At the time of the purported ratification of the "14th Amendment" was it disclosed to the People that the word "person" as used therein also meant corporations?
        i. If yes, provide the authenticated evidence of this disclosure.
        ii. If not, by what authority(ies) did this Court amend the Constitution to change the intended meaning of "person" to include corporations?
        iii. What effect(s) did this Court's inclusion of corporations as persons have on the make-up of the body politic of the United States and every State?
        iv. What Article(s) of the Constitution (other than the "14th Amendment") gives corporations the status and standing to state a claim in a judicial Constitutional Court of the United States"

31. Under our Constitutional governments of *defined and limited* powers, the Constitution is the "supreme Law of the Land". Therefore, "whenever an act of […] government is challenged a grant of power must be shown, or the act is void."[20] Pursuant to the First and Fifth Amendments, Petitioner also has a right to petition every branch of State and National government for Redress of Grievance. Commensurate with this right is the *requirement* that the office petitioned be lawfully occupied in order that a lawful investigation and/or intervention to redress the grievance(s) be made.

    Pursuant to Petitioner's investigation, a number of the Parties that purport to be duly elected, appointed, or employed as public officials, do not appear to lawfully be in office and thereby have no apparent authority to accept compensation from the public treasury or to provide any lawful redress of his complaints. This has resulted in further depriving Petitioner of his rights, liberty and property because his complaints have not been and cannot be lawfully addressed.

    Various provisions of the Constitution make Citizenship and/or residence in a State a central issue in whether or not an official can lawfully hold office. The

[20] *United States v. Rhodes*, 27 F. Cas. 785, 790 (1866); See also Article 6, §2.

apparent intent of these requirements includes: (1) that aliens and/or enemies not be allowed to hold office; and, (2) that the States and the People thereof receive effective representation in the government of the Nation by maintaining the independence and sovereignty of the bodies politic of each State.

In Petitioner's research (which remains inconclusive on the extent of these issues) there appears to be repeated action by the Federal government to centralize its power and authority by compounding the American People into one common mass as "citizen[s] of the United States" to make them (and/or the States) subject to its authority for taxation and other regulatory purposes, in direct contravention of the original intent of the Constitution. See especially Exhibit [J]– Invisible Contracts by George Mercier. The intent of this action appears to be the destruction of: (1) the separate and independent bodies politic of the States and consequently the States themselves (as the States cannot exist without a sovereign political body); and, (2) destruction of the inalienable rights secured by State Constitutions to State Citizens as the "14th Amendment" does not recognize any creator endowed inalienable rights and citizens of the United States apparently have none.

Under the apparent original intent of the Framers, the Federal government was not given any power to create Citizens. Each of the States reserved the power to define Citizenship by their respective Constitutions. The value of this Citizenship is that in many State Constitutions, inalienable rights inherent in the individual and antecedent to the formation of government were recognized. In other words, the rights of the People were not mere government privileges that could be revoked by political majorities or arbitrary edicts.

Consequently, there was no separate political body comprising "citizens of the United States" because the United States was never intended to be a separate political body. It is only a union of States with defined and limited powers derived from those States. "Citizens of the United States" as defined by the "14th Amendment" are consequently *not* represented in any State government or in Congress. A person *only* was considered a Citizen of the United States by virtue of the fact that they were a State Citizen. See especially the statements of Senator Reverdy Johnson (D) Maryland in the Congressional Globe of the 39th Congress pp. 1776 et seq.

One of the apparent methods of compounding the People into one common mass and thereby subjecting them to the jurisdiction of the United States as defined in the "14th Amendment", was to create confusion around the issue of State and Federal citizenship and to subsequently require the People to declare that they are a "citizen of the United States" (as opposed to a State Citizen) in order to obtain Federal benefits. These benefits, by no mistake, are in many

cases required to function in society. The declaration of U.S. citizenship also appears to be required to: (1) obtain and hold any government office in California (and potentially that of every other "State"); (2) open a bank account; (3) vote in any election in California (and potentially that of every other "State"); and, (4) obtain a U.S. passport. See Exhibit [K] pp. 2, 8, 14.

The apparent result in at least California is that there are no State Citizens who hold office in any branch of California or U.S. government. Having no apparent State Citizens and not being represented in any branch of U.S government, the "States" are no longer separate sovereign political bodies, but are political subdivisions of the United States and "subject to the jurisdiction thereof".

According to section 201 of the Cal. Elections Code, "no person is eligible to be elected or appointed to an elective office unless that person is a registered voter." Under section 2101, "[a] person entitled to register to vote shall be a United States citizen."

a. If the People of California must be a "United States citizen" to vote, who specifically is the sovereign body politic of California (see e.g. Cal. Gov. Code §100)?
b. Is the sovereign body politic of California "United States citizens"?
c. In what State(s) admitted into "this Union" do "United States citizen[s]" reside or inhabit? Or, are they residents in the District of Columbia? See e.g. 26 U.S.C. 7408(d).
d. Keeping in mind that Article I, §2, requires that members of the House of Representatives be inhabitants of States, by what authority(ies) can a "United States citizen" become a representative in Congress?
e. By what authority(ies) can the Citizens of California be excluded from all offices of the governments of California and the United States?
f. See Cal. Elections Code §7100. By what authority(ies) can a "United States citizen" designate a presidential elector for the State of California?
g. Provide an authenticated list of the names of all Citizens of California who voted in the 2020 Presidential Election.
h. Provide an authenticated list of the names of all Electors of California (as chosen by the Citizens of California) who voted in the 2020 Presidential Election.
i. Are the Electors certified by Gavin Newsom in the 2020 Election Citizens of California or citizens of the United States?

32. In his attempt to stop the irreparable harm and damages being perpetrated upon him, Petitioner made numerous complaints to the FBI, the principal law enforcement agency of the Executive branch of the United States. To his knowledge and belief, the FBI has refused to investigate and/or intervene and

appears to have an unwritten policy and practice to refuse to investigate and/or intervene in complaints for deprivation of Constitutionally protected rights.

The Chief Executive of the United States is the President. The right to Petition the office of the President for Redress of Grievance is guaranteed at any time pursuant to the First Amendment, especially when his subordinates refuse to execute their sworn duties. Pursuant to the First Amendment and Article IV, §4,[21] there must be a Lawfully enacted President in office to receive a complaint and make Lawful redress of grievance.

The People are the principals of the government they established. As there is no known complete certified public official record available for Petitioner (or any of the American People) to meaningfully and substantively verify the results any Presidential election, there is no known way to verify that Presidents, Vice Presidents, and all officials appointed by or under their authority are lawfully in office, and consequently, that they have any authority to address any of Petitioner's complaints (or take any Executive action whatsoever).

Elections aren't determined simply because certain public officials (who also may not Lawfully be in office) just say so by declaring a certain candidate "won the race". The documents of all elections must be *completely* transparent and verifiable by all of the People at all times.

a. Does Petitioner and each of the People have a duty to ensure their agents are Lawfully elected and/or appointed and Lawfully hold office at all times?
b. Does Petitioner and each of the People have a right to all the information necessary to determine the accuracy of all elections?
c. Does the fact that there is no complete certified record publicly available for Petitioner to meaningfully and substantively verify the results of the most recent President Election result in a violation of due process and to a Republican Form of Government based on the rule of Law and the consent of the governed?

33. As one of the checks and balances framed into the Constitution to ensure the meaningful representation of the People, Article I, §2, Cl. 3 clearly and unambiguously sets forth a minimum and maximum ratio of representation in the House of Representatives of Congress. Thereunder, the People of each

[21] According to Article IV, §4, "The United States shall guarantee to every state in this union a republican form of government, […] and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence. If, as Petitioner has alleged, the Legislature cannot be convened because there is no lawful representative quorum in the House, then, in addition to the rights secured by the First and Fifth Amendments, there must be a lawfully occupied office of the Executive.

State admitted into the Union have a right to a minimum of one representative and a maximum of one representative for every 30,000 inhabitants. It is also required that the number of the representatives "shall be apportioned […] within every subsequent term of ten years". See especially Federalist Papers No. 55, 56, Congressional Globe of February 9th, 1866, pages 763, and 764, Commentaries on the Constitution by Joseph Story, §642–§645, and Section 14 of Article II of the Northwest Ordinance of 1787 guaranteeing, *even to inhabitants of territories*, the right of proportional representation.

Today, with a population nearing 330,000,000 People, a proper ratio of representation in Congress of the United States would be close to 11,000 members, not 435.

a. By what authority(ies) did "Congress" pass the Act of June 18, 1929, otherwise known as the Permanent Apportionment Act, (46 Stat. 21, Pub. Law 71-13), fixing the number of Representatives in the House at 435?
b. Would an Act of this type and magnitude not have required a Constitutional Amendment by conventions of the People in the States as referred to in Article V? If not, why not?
c. Was there a lawful quorum in the House to pass the Act of June 18, 1929?
d. If the Act of June 18, 1929 is not Constitutional, please determine the Constitutionality of all acts of "Congress" dating back to when it began operating without a lawful quorum.
e. Additional safeguards pertaining to the separation of powers enumerated in the Constitution are (1) Article IV, §4 (whereby the United States shall guarantee a Republican Form of Government and protect the States (of whom the People are the sovereign bodies politic) from invasion and domestic violence upon Application of the Legislature); and (2) the First Amendment right to petition any branch of government for redress of grievance. If the Act of June 18, 1929 is not Constitutional and there is effectively no Congress to guarantee these protections and remedies, has Petitioners rights secured by Article IV, §4 and the First Amendment been violated?
f. Do the Judges of State and Federal Courts have a duty *prior* to the enforcement of any Act of a State Legislature or Congress to ensure that it was lawfully ratified?

34. According to the Cal. Secretary of State, the Cal. Constitution of 1849 has never been repealed. Article I, §14 of the Cal. Constitution of 1849 provides that "Representation shall be apportioned according to population." Mysteriously, this right was entirely removed from the purported Cal. "Constitution of 1879" and there has been no apportionment in the Cal. "Legislature" since at least its "ratification". Today, with a population nearing 40,000,000 People, a proper ratio of representation would be close to 1300 members, not 80.

a. By what authority(ies) has the California "Legislature" refused to apportion representation according to population?
b. Is there a lawful representative quorum in the Cal. "Legislature"?
    i. If no, has Petitioner thereby been denied the right and/or opportunity to Petition the "Legislature" for redress of grievance?
    ii. If no, please determine the Constitutionality of all acts of the Cal. "Legislature" dating back to when it began operating without a lawful quorum.
c. Is proportionate representation a critical aspect of a Republican Form of Government based on the rule of law and the consent of the governed secured by Article IV, 4?
    i. If yes, by what authority(ies) did "Congress" approve the Cal. "Constitution of 1879"?
        1. Would the failure to make this approval not be in direct dereliction of Congress' duty prescribed by Article IV, §4?
        2. Has Petitioner been deprived of a Republican form of government?

35. If California was a State admitted under English/ American common Law (see *Fowler v. Smith* 2 Cal. 568, 568-9 (1852) and not Roman civil law, how can the "Legislature" of California change and/or alter this fundamental process of governance (and the means and methods of adjudicating disputes) without the explicit consent of the People and Congress?
    a. Carefully distinguish between the systems of jurisprudence known as the common Law and Roman civil law. See especially Excellence of Common Law: Compared and Contrasted with Civil Law: In Light of History, Nature, and Scripture by Brent Allen Winters.

36. By what authority(ies) has this Court created and enforced the doctrines of Legislative, Judicial, and Executive immunity?
    a. Evidence specifically how each of these policies, crafted under a completely different and incompatible form of government, apply under the Constitutional Republican form of government for the United States of America of carefully defined and limited powers.

37. The Constitution vests the judicial power in Judges while also clearly defining and limiting the extent of this power (subject matter jurisdiction) by specific Articles and Amendments that articulate the ways and means by which a Court must proceed before depriving anyone of life, liberty, or property. Consequently, a Court must have subject matter jurisdiction over each issue in a case before the judicial power can be exercised to deprive anyone of any rights, privileges, or immunities. Under this Court's precedents however,

subject matter jurisdiction appears to only apply to the issue of whether or not a Court has authority to hear and determine a case in the first instance.

a. Define subject matter jurisdiction.
b. By what authority(ies) does subject matter jurisdiction *only* apply to the type of the case and not to every issue in a case?
c. This Court has declared that "[i]t is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent […]."[22] If the Constitution forbids a Judge from doing some act such as imposing an excessive fine, how can a Judge impose an excessive fine while maintaining subject matter jurisdiction?
    i. Define "exceed jurisdiction".
        1. How can a Judge exceed authority that was never granted to begin with? In other words, if the Constitution explicitly forbids a Judge from imposing an excessive fine, how can it be an excess of authority for a Judge to impose an excessive fine?
d. What effect does fraud and violations of due process have on personal and subject matter jurisdiction?

38. Keeping in mind that Article I, §8, Cl. 5 only gives Congress the power "[t]o coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures":
    a. by what authority(ies) did Congress pass the Federal Reserve Act of 1913 (Pub. Law. 63-43)?
        i. Was there a lawful representative quorum in "Congress" at the time of the purported passage of Pub. Law. 63-43?
        ii. By what authority(ies) can Congress perform the acts in Pub. Law. 63-43?
        iii. Even if there were a lawful representative quorum and Congress possessed the power to perform the acts in Pub. Law. 63-43, by what authority(ies) did/can Congress delegate these powers to the President?
    b. Define "coin money" as used in Article I, §8, Cl. 5.
    c. Define "elastic currency" as used in Pub. Law. 63-43 and state the Constitutional authority which gives Congress the power to create an "elastic currency".
    d. In what subject matter jurisdiction does gold and silver coin and bullion circulate?
    e. In what subject matter jurisdiction do Federal Reserve Notes circulate?
    f. Keeping in mind the Coinage Act of 1792 and the Seventh Amendment, what is the definition of a "dollar" as stated on a Federal Reserve Note?

[22] *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824).

g. See Exhibit [D] pp.5239-40. By what authority(ies) has Petitioner's Certificate of Live Birth been monetized and assigned a Bank Note Number?
    i. In what jurisdiction does this Certificate circulate?
    ii. Provide all obligations that are in any way associated with Petitioner's Certificate of Live Birth and the means by which Petitioner (or anyone else including his parents) made a knowing, voluntary and intelligent waiver of rights and thereby consented to said monetization and/or pledge.
h. See *Bank of Columbia v. Okely*, 17 U.S. 235 (1819).
    i. Does section 4 of the "14th Amendment" make all "citizens of the United States" hypothecators of goods and/or stipulators in the admiralty?
    ii. By what authority(ies) can "citizens of the United States" be restrained from questioning the fiscal policies of their government?
    iii. Are State Citizens also restrained from questioning the fiscal policies of their government? If so, by what authority(ies)?
i. Explain the entire process by which "money" is created under the Federal Reserve System.
j. According to Marriner S. Eccles, former chairman of the Federal Reserve Board, "if there were no debt in our money system […] [t]here wouldn't be any money."[23] See also Congressional Record– House, August 19, 1940, pp.10548-10555 stating that "the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone's debt […]") *Id.* p.10550. See also *Cohens v. Virginia*, 19 U.S. 264, 403 (1821) stating that "the act discharging [a] debt is a mere nullity and that it is still due."
    i. How can the American People possibly own real and/or personal property if they can only discharge the obligation and the means of purchasing said property is mere evidence of debt?
    ii. How can the National Debt ever be repaid?
k. Can specie as defined by the Coinage Act of 1792 be subjected to any State (of California) and Federal taxes? If so, which specific taxes and by what authority(ies)?
l. What specifically is/are the difference(s) between discharging an obligation and paying an obligation?
m. By what specific authority(ies) does Petitioner become a "taxpayer" and (i) subject to the Internal Revenue Code; and, (ii) subject to the Revenue and Taxation Code of California? (iii) What role does obtaining a social security number and any Federal benefits have in the determination of

[23] Hearings Before the Committee on Banking and Currency, House of Representatives, Seventy-Seventh Congress, First Session on H.R. 5479, Revised, Part 2.p.1338.

whether Petitioner is a taxpayer and subject to either of the aforementioned tax codes?

n. Keeping in mind that "[t]he prohibitions not to make any thing but gold and silver coin a tender in payment of debts, and not to pass any law impairing the obligation of contracts, were inserted to secure private rights […]", *Calder v. Bull*, 3 U.S. 386, 390 (1798), what effect(s) does the use of Federal Reserve Notes have on private rights and the obligations of private contracts?
    i. What is the definition of a "private right"?
        1. List and exhaustively define the extent of all "private rights" that are recognized under the California and U.S. Constitutions.
o. By what authority(ies) was the so-called "National Debt" created?
p. Who and/or what specifically is security and/or collateral for the "National Debt"?
q. By what authority(ies) can Petitioner be security in any way for the so-called "National Debt"?
r. Is Petitioner considered a voluntary or involuntary servant to the so-called "National Debt"?
s. Provide authenticated evidence that the so-called "National Debt" was created by Petitioner's consent.
t. By what specific lawful, legal, and/or administrative process(es) can Petitioner sever the contract and/or bond as a security and/or collateral for the "National Debt"?
    i. Is there a summary remedy for this severance process?
u. Where specifically is all of the gold coin, bullion, and gold certificates held in trust for the American People?
    i. Provide a complete statement of account, including anything that was received (confiscated by force of the Executive Power of the United States) pursuant to Executive Order 6102.
v. Who is/are the real party(ies) in interest and/or the beneficial owner(s) of the United States? The United States of America?
w. Does Petitioner have absolute right, title, and interest in his body and the products of his faculties?
    i. If not, by what authority(ies) and who/what entity(ies) has any rights, title, and/or interest?

39. Keeping in mind that individual rights have historically been tied to Land and that the Constitution for the United States of America "and Laws of the United States, which shall be made in Pursuance thereof" are declared to be the "supreme Law of the Land" (Article VI, 2), are the inalienable rights or any other rights, privileges, or immunities whether guaranteed by the Cal. Constitution and U.S. Constitutions tied to or in any way associated or dependent upon whether one claims ownership (stake's a claim) in Land?

a. If yes, please explain the full nature and scope of this Land-rights connection and precisely how one stake's a claim.
b. To stake a claim in Land, must one use gold or silver coin or bullion to pay in full for the Land?
    i. What effect does the use of Federal Reserve Notes have, if any, upon one's ability to lawfully pay for and stake a claim in Land?

40. See Exhibit [D] pp.5217-5230 and Cal. Civil Code §2924. By what authority(ies) can Petitioner be denied a judicial determination of his rights in foreclosure proceedings such as the proceeding for the foreclosure of the real property at 818 Spirit Costa Mesa, California?
    a. Keeping in mind that only the jurisdictions of Law and Equity arise under the Constitution, in what jurisdiction do these foreclosure proceedings occur?
    b. Provide the authenticated evidence that Petitioner made a knowing, voluntary, and intelligent waiver of rights to be subjected to these summary foreclosure proceedings.
    c. Is the mortgage contract for a loan or exchange of equal value for equal value?
    d. Explain the entire process with specificity for so-called mortgage and/or credit lending, including how all assets and liabilities with regard to a "loan" are created and extinguished on bank records using the mortgage for the real property located at 818 Spirit, Costa Mesa, California as an example. Be sure to carefully define all terms, including those in the Promissory Note, Deed of Trust and any other official documents. See Exhibits [D] pp.5288-5303, 5330-5333.
    e. How is the property itself foreclosed upon when it is *only* the Deed of Trust that is the security for the note?
    f. Define the differences between a land patent, allodial title, and fee simple title and how they affect ownership rights in real property.
        i. In which subject matter jurisdiction(s) do cases arising under these different means of acquiring and holding title proceed?
        ii. Which of the foregoing is the title to the real property located at 818 Spirit Costa Mesa, California held?
    g. By what authority(ies) was the Promissory Note secured by the Deed of Trust converted into a security and/or Trust Certificate?
        i. In what jurisdiction(s) does this security and/or Trust Certificate circulate?
        ii. By what authority(ies) can such a conversion take place without Petitioner's consent/ knowing, voluntary, and intelligent waiver of rights?
    h. Who is/are the real party(ies) in interest in THE NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2?
    i. See Exhibit [D] p.5218-9.

i. Can a Deed of Trust be separated from the Promissory Note?
ii. What effect does the transfer of a Deed of Trust without the Note have?

j. Does Petitioner and/or his estate have a vested right/interest in the property and/or the equity in the title to the property located at 818 Spirit, Costa Mesa, California?
   i. By what authority(ies) can he/ his estate be summarily divested of this right/interest in the administrative foreclosure proceedings pursuant to Cal. Civil Code §2924?
   ii. Produce the authenticated evidence whereby Petitioner has consented to/ made a knowing, voluntary, and intelligent waiver of right(s) to this(ese) right(s)/interest(s).

41. By what authority(ies) were each of the Judgments, Orders, Awards, and all official rulings and determinations made by every official pertaining to each issue involved in this case?

42. The United States government has refused to provide Petitioner with all of the official documents pertaining to the appointments to the offices of Chief and/or Associate Justice of the U.S. Supreme Court for every Justice of this Court (with the exception of Ketanji Brown Jackson). Pursuant to his request made under the Freedom of Information Act, Exhibit [D] pp.5357-5377, you will please submit these documents to the record of this case.

43. What specifically is a "republican form of government" as stated in Article 4, §4?
   a. Exhaustively compare and contrast a "republican form of government" with that of a "democracy".
   b. Does a "republican form of government" as intended by the Founders and People who ratified the Constitution include an administrative form of government?
      i. If so, to what extent and by what authority(ies)?
   c. Keeping mind that Article IV, §4 mandates that "[t]he United States shall guarantee to ever State in this Union a Republican Form of Government" how can Petitioner/ the People of California be subjected to a municipal form of government or council-manager form of government such as that of the City of Costa Mesa?
   d. What constitutes "domestic violence" as stated in Article IV, §4?

44. What behavior(s) Constitute(s) treason to the Constitution by officials of the Legislative, Executive, Judicial, and "Administrative" branches of the governments of California and the United States?

45. State all principals of "natural law" as found in the First and Second Treatises of Government by John Locke that are embodied within the Constitutions of California and the United States of America.

46. Define "State" when used in reference to a State admitted into the union of States known as the United States and/or the United States of America.

47. Define "United States" and "United States of America".

48. See Article III, §2, carefully noting that cases at Law and Equity are separate, that neither jurisdiction has paramount authority over the other, and that a case in Equity does not require that there is no "plain, adequate and complete remedy at law".[24] By what authority(ies) are equitable suits limited to cases in which there is no "plain, adequate and complete remedy at law"?

49. Based upon the evidence presented herein and the answers to the foregoing questions, what is the status and standing of the entity admitted into the union known as California?
    a. Is there a legal or any other difference between the entities "California", "State of California", and "STATE OF CALIFORNIA"?
        i. If so, state all differences.
        ii. By what authority(ies) can a State be unadmitted from the Union?

50. Was California, State of California, and STATE OF CALIFORNIA admitted to the United States of America as entities in Interstate Commerce?

51. Keeping in mind *De Lovio v. Boit*, 7 F. Cas. 418 (1815), by what authority(ies) can Petitioner/ the American People be forcibly subjected to cases arising in the Admiralty/Maritime jurisdiction (see for e.g. Cal. Vehicle Code §16028(a) requiring motor-vehicle insurance, Cal. Labor Code §3700 requiring workers compensation insurance)?

52. Keeping in mind all the claims made herein, including the monetization of Petitioner's Certificate of Live Birth and this Court's decision in *Reno v. Condon*, 521 U.S. 141 (2000), is Petitioner considered an entity in Interstate Commerce?

53. Did the "trial" in the Superior Court occur in Interstate Commerce?

[24] *Guaranty Trust v. York*, 326 U.S. 99, 105 (1945). See also *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, fn. 3 (2020).

54. What is the definition of Interstate and Intrastate Commerce?

55. What rights secured by the Constitutions of California and the United States of America are recognized in cases involving Interstate Commerce?

56. Do any of the avocations of ordinary life on Land arise in Interstate Commerce/ Admiralty? If so, which? By what authority(ies)?

57. Provide an accounting of all "Debts contracted and Engagements entered into, before the Adoption of this Constitution" as declared in Article VI, §2, including the current status of these engagements and obligations.

58. Define "in this state" as used in Cal. Business and Professions Code §7031(b).
    a. See Cal. Business and Professions Code §21, and Cal. Code Civil Procedure §17(13). Does "in this state" as used in §7031(b) in any way mean the District of Columbia, the Territories, or the United States? If yes, by what authority(ies)? If not, why not?

59. See Senate Report 93-549.
    a. Define "emergency" and "state of emergency".
    b. What "emergencies" and/or "states of emergency" are currently purportedly in effect?
    c. By what authority(ies) have each of these "emergencies" and/or "states of emergency" been declared and do they remain in effect?
    d. By what authority(ies) does a President have to issue an Executive Order?
    e. If there is a power to issue an Executive Order, precisely define its nature and extent.
    f. By what authority(ies) can Congress transfer or delegate any of its powers to the President?
    g. By what authority(ies) can an Executive Order in any way amend the Constitution in violation of Article V?
    h. By what authority(ies) can an Executive Order grant power(s) to any branch of government that it does not already possess by the Constitution?
    i. What effect, if any, do any of the States of Emergency currently purportedly in effect have on this case?
        i. State each effect and by what authority(ies) it operates.

60. In a Constitutional republican form of government of defined and limited powers, based on the rule of law and the consent of the governed, are the People considered principals and government officials their agents?

a. As principals and therefore part of the system of checks and balances, do the People have a duty to supervise their agents and ensure that they follow established law?
b. What are the specific duties of the People?

61. Keeping in mind the facts presented in An Essay on Trial by Jury by Lysander Spooner, (incorporated and fully set forth herein), did Petitioner have a right to a trial by jury according to the course of the common law where the jury was empowered to rule on the facts *and* the law?
    a. If yes, under what authority(ies) and rational bases? If no, why not and by what authority(ies) and rational bases?
    b. Is a trial by jury where the jury is empowered to rule on the facts *and* the law an *essential* component of the system of checks and balances *and* consent of the governed to ensure that Legislative and/or Judicial officials do not transcend the limits of their authority?
    c. Does a Republican form of government as secured by Article IV, §4 include the power of the People to judge on the facts and the Law as a fundamental check and balance among the separation of powers?
    d. Is the right to a trial by jury where the jury is empowered to rule on the facts and the law an essential component of due process? Of a judicial determination of rights (Art. I, §9 or §10)?

62. In Petitioners observation, facts are required to be proven in order to establish a claim and therefore a violation of law. In this way, the facts and the law are opposite sides of the *same* coin such that a valid claim cannot exist without either the facts or the law. In other words, there is no apparent line separating facts from law.
    a. By what authority(ies) and rational bases are facts separated from law during a trial by jury such that a jury can only rule on the facts?
    b. Why can one person as a Judge rule on the law of a case, but not twelve members of the sovereign body politic who ordained, established, and/or maintain government that is purportedly based upon their consent?

63. When the Northwest Ordinance of 1787 speaks of a proceedings according to the course of the common law, what *specifically* is meant by "proceedings according to the course of the common law?"

64. What is specifically meant by "good behaviour" as stated in Article III of the U.S. Constitution?
    a. What behavior constitutes bad behaviour that would result in a violation of the good behaviour clause?

65. Is it a violation of fundamental due process (fairness) to require Petitioner/ the American People to know how to meaningfully and substantively represent

themselves in any official proceeding even though they may not have received any meaningful and substantive education in the Constitution, history, and laws of their State and the United States?

66. Does Petitioner/ the American People have a right to record any public official by audio or video (with respect to the personal space and dignity of the official) at any time while they are being compensated by the public treasury for their official duties?

67. By what authority(ies) has this Court created, enforced, and/or in any way sanctioned each of the policies involved in this case?

68. By what authority(ies) are the People of California required to register their real and personal property with California, State of California and/or STATE OF CALIFORNIA?

69. What are all of the requirements of a judicial determination of rights as required by Article I, §9 and §10?

70. By what authority(ies) were the Legislative, Executive, and/or Judicial powers of California amalgamated to create the Contractors State License Board?

71. Based upon the answers to all of the foregoing:
    a. Was Petitioner subjected to a malicious prosecution?
    b. Is Petitioner falsely imprisoned?
    c. Is Petitioner in constructive custody?
        i. What are the requirements/elements to substantiate a claim of constructive custody?

72. Can all of the rights, known as the "Bill of Rights" (the first Ten Amendments to the U.S. Constitution) be considered fundamental to the guaranty of a republican form of government as declared in Article IV, §4?

73. In Petitioner's research thus far, this Court has never held that the Fifth Amendment's due process clause, the Sixth Amendment's right to know the nature and cause of the accusation (which includes jurisdiction and venue), and/ or the right to a republican form of government requires either a State Legislature and/or Congress to make clear, concise, and unambiguous declarations in their statutory enactments that inform the People of the true nature, cause, jurisdiction, and venue of each statute that deprives them of life, liberty, or property. Yet by simple, reasonable and Constitutional principles this information is mandatory.

Which of the following criteria is not required by fundamental due process or otherwise to be included with *every* statutory enactment?

a. What Constitutional provision grants a State Legislature or Congress the authority to enact the statute, and why;
b. Whether the statute is civil or criminal and why;
c. What the statute of limitations is;
d. What each of the elements of the offense are;
e. What the definitions of each word or phrase mean and the source of that definition;
f. Whether the statute is penal or remedial, and why;
g. Whether there is a right to trial by jury or not;
h. What Constitutional protections apply, and why;
i. What the standard of proof is and an explanation of how this burden is established and can be challenged upon an opposing parties failure to meet it;
j. Whether the statute is Lawful or equitable and where the rules of procedure for this jurisdiction can be found;
k. What the venue is;
l. What the possible defenses are with explanations of each;
m. Disclosure of all related actions to the initial proceeding (e.g. suspension of a privilege after a trial or hearing);
n. A source link to a full and complete copy of the legislative history without having to separately request it;
o. A list of all applicable jury instructions;
p. A source link to all case law decisions and an explanation showing how those decisions have affected the enactment;
q. A source link to a presentation containing complete instructions on to conduct basic and advanced legal research;
r. A source link to a presentation containing complete instruction on the nature of personal and subject matter jurisdiction and how they are acquired and lost by a Court and Judge.
s. A free source link to civil and criminal procedures before and at trial along with relevant case law decisions that are relied upon by all State and Federal Courts such as that of Rutter Group and American Law Institute;
t. A source link to a presentation containing complete instruction on all aspects of civil and criminal actions include prosecution and defense and all rights, privileges, and immunities afforded at each step;