

No. \_\_\_\_\_

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IN THE  
*Supreme Court of the United States*

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In re Adam Bereki,  
Petitioner.

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**APPENDIX**

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

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

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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 Bolsay

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.

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DATE: 03/27/2017

MINUTE ORDER

DEPT: C20

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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.



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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]

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

<input checked="" type="checkbox"/> Plaintiff (name each) (1) <b>The Spartan Associates, Inc.</b> (2) <input type="checkbox"/> Continued on Attachment 3b	<input checked="" type="checkbox"/> Plaintiff's attorney (name each): (1) <b>J. Scott Russo esq.</b> (2) <input type="checkbox"/> Defendant's attorney (name each): (1) <b>William Bissell esq.</b> (2) <b>William Bissell esq.</b>
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  - 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 <b>The Spartan Associates, Inc.</b>	CASE NUMBER <b>2015-00805807</b>
DEFENDANT <b>Gary Humphreys, Karen Humphreys et al</b>	

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) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (specify):	\$	
(6) TOTAL	\$	

c  Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	848,000.00
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input checked="" type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> 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 \$

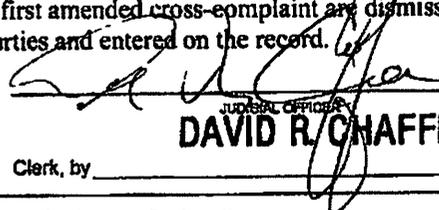
d  Cross-complainant to receive nothing from cross-defendant named in item 5d.

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 20 2017**



JUDICIAL OFFICER  
**DAVID R. CHAFFEE**

Date

Clerk, by \_\_\_\_\_, Deputy

**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

(SEAL)

# Appendix [C]

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1116(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1116(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1116.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

GARY HUMPHREYS et al.,

Cross-complainants and Respondents.

v.

ADAM BEREKI,

Cross-defendant and Appellant,

G055075

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

OPINION

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)<sup>1</sup>, 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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<sup>1</sup> 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.<sup>2</sup>

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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<sup>2</sup> 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.<sup>3</sup> 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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<sup>3</sup> 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.<sup>4</sup> 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 *Alatrisme v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 664-666 (*Alatrisme*) 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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<sup>4</sup> 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.]” (*Alatraste, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

Based on the statutory language and legislative history, both *Alatraste* 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.” (*Alatraste, 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, subs. (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. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514.) There is ample evidence in the record supporting the court's conclusion.<sup>5</sup>

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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<sup>5</sup> 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; Alatraste, 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; Alatraste, 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

---

**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.

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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

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INDEX

(NO WITNESSES)

(NO EXHIBITS)

1 SANTA ANA, CALIFORNIA - MARCH 15, 2019

2 MORNING SESSION

3 (PROCEEDINGS IN OPEN COURT:)

4 \* \* \*

5 THE COURT: Thank you. Is there an appearance  
6 on court call, please.

7 Someone on court call, please.

8 THE CLERK: Mr. Bereki?

9 MR. BEREKI: Your Honor, can you hear me?

10 THE COURT: We can now. Please state your  
11 name.

12 MR. BEREKI: Adam Bereki in propria persona.

13 THE COURT: Thank you. Welcome.

14 MR. BEREKI: Thank you.

15 THE COURT: And then counsel for the  
16 plaintiff.

17 MR. BISSELL: William Bissell, Your Honor, for  
18 the opposing parties, Karen and Gary Humphreys.

19 THE COURT: Thank you very much. Okay. So we  
20 do have a court reporter here. I do want to find out  
21 how much time that you wanted to take to argue the  
22 matter, then I'll put that into my consideration as to  
23 when I'll call the case.

24 So, Mr. Bissell, did you have a time estimate,  
25 if any?

26 MR. BISSELL: Your Honor, we would submit on

1 the tentative.

2 THE COURT: Okay. Mr. Bereki, do you have a  
3 time estimate at all?

4 MR. BEREKI: 10 -- 10 minutes, Your Honor. I  
5 just have some questions to ask of you for clarity  
6 because my next step is obviously to go to the US  
7 Supreme Court, so I just want some clarity on your  
8 tentative.

9 THE COURT: Okay. Do you have -- do you have  
10 the tentative? Have you been able to pull it off the  
11 internet?

12 MR. BEREKI: Yes. I'm looking at it,  
13 Your Honor.

14 THE COURT: All right.

15 Okay. Very good. So I'll come back to you  
16 then.

17 MR. BEREKI: Thank you.

18 THE COURT: Thank you for your patience.

19 (Recess.)

20 THE COURT: Okay. The matter is Spartan  
21 Associates versus Humphreys.

22 MR. BISSELL: Good morning, Your Honor.  
23 William Bissell for Respondents, the Humphreys.

24 THE COURT: Thank you.

25 Mr. Bereki, would you make your experience.

26 MR. BEREKI: Yes, Your Honor. Adam Bereki in

1 propria persona. Your Honor, this case hinges upon  
2 whether federal constitutional protections were denied  
3 and whether the trial in appellate court had  
4 jurisdiction to deny these protections. The matter goes  
5 to the jurisdiction of the Court, not the merit as was  
6 cited in the tentative.

7           While the rule that Your Honor cited may be  
8 applicable, it cannot be used to overrule the federal  
9 constitutional protections that I'm contending were  
10 denied here. This is held in *Miranda v. Arizona* at 384  
11 US 436 at 491. The US Supreme Court stated there:  
12 Where rights secured by the Constitution are involved,  
13 there shall be no rule-making or legislation that would  
14 abrogate them.

15           The law of case doctrine that was cited in the  
16 tentative authority, which is *People v. Dutra*, does not  
17 apply here. It states: Because the rule is merely one  
18 of procedure and does not go to the jurisdiction of the  
19 Court, the doctrine will not be adhered to where its  
20 application will result in an unjust decision. For  
21 example, where there has been a manifest misapplication  
22 of existing principles resulting in substantial  
23 injustice.

24           That is exactly what I'm claiming here,  
25 Your Honor, that there's been a substantial injustice.  
26 And so, because this is a motion to vacate a void

1 judgment, I'm challenging the jurisdiction of the court  
2 to issue the Humphreys costs, and they have not  
3 substantiated the jurisdiction of the court to violate  
4 the Constitution and award the costs or even to have  
5 judgment awarded in their favor.

6 THE COURT: Thank you very much. Thank you.  
7 Counsel, did you want to say something?

8 MR. BISSELL: I'm not sure how to respond to  
9 that, Your Honor. It's clear that the question of  
10 jurisdiction has been determined not once but twice:  
11 Once at the trial court level, once at the appellate  
12 court level, and presented to the California Supreme  
13 Court and rejected as a -- as grounds for review at that  
14 level. The -- you know, the Superior Court is a court  
15 of general jurisdiction; it has jurisdiction over all  
16 matters not exclusively reserved to the Courts of Appeal  
17 or the California Supreme Court. It had subject matter  
18 jurisdiction over this action.

19 Mr. Bereki appeared at the trial in this  
20 matter, he presented his case, he presented evidence, he  
21 questioned witnesses, he cross-examined witnesses. So,  
22 clearly, he had submitted to personal jurisdiction in  
23 this case. So the jurisdiction question is, to me, put  
24 to rest. If he wants to raise it, he has to raise it at  
25 another level.

26 Now, Mr. Bereki here is -- he's unhappy with

1 the Court's ruling, with the Court's decision. He  
2 thinks it's in error. Well, that's not a void judgment.  
3 That's a judgment you take up on appeal. He's done  
4 that. He's lost on appeal. If he's still unhappy, he  
5 has another level to go. That's where he has to go. He  
6 has no business being in this court today to present  
7 this motion.

8 THE COURT: Thank you.

9 Mr. Bereki?

10 MR. BEREKI: Yes, Your Honor. This is not  
11 just a matter of me being unhappy with the judgment.  
12 The Supreme Court in Kokesh v. SEC recently heard this  
13 matter regarding disgorgement. And what the Court --  
14 what the matter was before that court was, I believe,  
15 Mr. Kokesh -- there was a judgment awarded, a  
16 disgorgement judgment awarded against him for about  
17 \$40 million. And there was a statute in this case --  
18 the determination was to whether that disgorgement  
19 penalty was -- was a penalty or not, because, if it was,  
20 then the statute of limitations would apply and he would  
21 not be liable for that disgorgement.

22 So the court heard the matter and determined  
23 that the disgorgement in that case was a penalty.

24 So, in this case, there's been a  
25 near-million-dollar disgorgement judgment awarded  
26 against me. And I'm claiming that that judgment, based

1 upon the Kokesh decision by the Supreme Court, is a  
2 penalty. And if you apply the same holdings that they  
3 did in Kokesh to this case, it clearly evidences that  
4 the holding in this case is punitive as well.

5 So here's where the constitutional protections  
6 apply and why I'm challenging the jurisdiction of the  
7 court: Because a court does not have jurisdiction to  
8 violate either the California Constitution or the  
9 Constitution of the United States.

10 So if the trial in Appellate Court found that  
11 this award was not punitive, in spite of the fact that  
12 the US Supreme Court held that it was, I'm contending  
13 that the 14th Amendment protections for excessive  
14 punitive damage awards have to apply here and that  
15 essentially due process was violated because the court  
16 did not recognize that the judgment was punitive in  
17 nature.

18 So, in my mind, if the constitution's been  
19 violated, that's not a judicial act and the court  
20 doesn't have jurisdiction to do that, which is why I  
21 keep challenging jurisdiction. And, on appeal and in  
22 the trial court, I have not yet seen one authority  
23 presented by the Humphreys or by the courts that  
24 overrule the Supreme Court's authority in Kokesh or the  
25 more than 100 years' authority case cited in that case  
26 that discuss exactly what a punitive judgment is. And

1 the judgment in this case, disgorgement, strictly to be  
2 nonpunitive under the laws of restitution -- nonpunitive  
3 restitutionary disgorgement can only apply to the  
4 profits that I made acting as the, quote/unquote,  
5 unlicensed contractor in this case. Can't order  
6 disgorgement of all the moneys were paid whatsoever,  
7 because, once you go beyond profits, as the Court held  
8 in Kokesh, it becomes punitive.

9           So the Humphreys have to be able to  
10 substantiate how they got a near-million-dollar award  
11 that wasn't punitive. And nowhere in this case and  
12 nowhere in any of the decisions of the Appellate Court  
13 or anywhere else do they do that. So it's very clear to  
14 me that this award that goes beyond any compensation  
15 that I received is punitive.

16           And if you look at the Exhibit B, which is the  
17 order for judgment in this case, it lists damages at  
18 \$848,000. Well, my contention is these are punitive  
19 damages. Well, if they are, then the 14th Amendment's  
20 protections for excessive punitive damages apply. And  
21 if you apply those protections in this case, the maximum  
22 award that they could have got is \$5,000; not a million.

23           So, I mean, this is hugely, hugely  
24 significant, and the jurisdictional issue is not just me  
25 being upset with the Court's judgment. I'm happy to  
26 take a lick and keep going on with life, but I want to

1 see the authorities for the Court to do this, and they  
2 just aren't here.

3           The two cases that the Appellate Court cited  
4 are actually SEC versus Huffman. That one was overruled  
5 or superseded by Kokesh. And the other one was  
6 United States versus Phillip Morris, and that one is  
7 also, so to speak, in my favor because it says that it's  
8 not in the Court's equity powers to issue punishment.  
9 And it -- disgorgement only applies to the ill-gotten  
10 gains or profits, not to all of the compensation that  
11 was paid for a project.

12           THE COURT: Thank you very much.

13           Did you want to retort, for a moment only?

14           MR. BISSELL: Just for a moment only,  
15 Your Honor.

16           These arguments go to the merits of the case  
17 that has been determined as final and remitted to the  
18 Superior Court for one purpose only: For the entry of  
19 an award of costs. Even a case where the Court has made  
20 an error of law, even if the error of law is apparent on  
21 its face, which it's not here, that is not a void  
22 judgment and cannot be attacked at this level.

23           THE COURT: Mr. Bereki, you did read the  
24 tentative; right?

25           MR. BEREKI: I did, Your Honor. And what I'm  
26 saying is that appears to be a legislative rule that is

1 attempting to over -- to supersede the Constitution.  
2 Because the Miranda v. Arizona decision states, quote:  
3 Where rights secured by the Constitution are involved,  
4 there shall be no rule-making or legislation that would  
5 abrogate them. And under the supremacy clause of  
6 Article 6, Section 2, the Constitution has authority  
7 here.

8           So if these are punitive damages and the Court  
9 violated the Constitution, it does not have jurisdiction  
10 to issue a remittitur and award costs or to affirm the  
11 judgment of the Humphreys, period.

12           THE COURT: Well, what I --

13           MR. BEREKI: And the authorities that I've  
14 established here are -- Kokesh is one. I mean,  
15 literally 100 years of precedent of determining what a  
16 punitive damage award is, which is clearly punishment  
17 because --

18           THE COURT: No, I got it. No, I understand.  
19 Your papers make that clear and your argument makes that  
20 clear. The tentative, however, is the present state of  
21 the law, and so it will have to be the order of the  
22 Court.

23           I want to thank you very much for your very  
24 articulate presentation and --

25           MR. BEREKI: No problem, Your Honor. Can I  
26 ask you a couple of questions?

1 THE COURT: Well, the Court doesn't really  
2 answer questions. The Court reviews the papers and then  
3 gives tentatives. So I can really offer no direction.  
4 The issues that you're dealing with and have argued  
5 involve substantive law, and that is something that  
6 really has to be addressed, in this circumstance, with  
7 the Court of Appeal. Already been to the Court of  
8 Appeal. Petition to the Supreme Court. And you may  
9 have other remedies, but I really cannot comment on any  
10 of those or offer you any assistance.

11 MR. BEREKI: I'm not interested in you  
12 practicing law or doing that. I just had some questions  
13 about how -- the decision that you made to issue the  
14 tentative in this case.

15 THE COURT: Yeah. It is in the tentative. It  
16 is in the tentative. So I have other people in the  
17 courtroom, and I'm going to have to get to their case,  
18 but I really want to appreciate -- tell you that I  
19 appreciate your fine argument and that of counsel.

20 So have a good day. The tentative --

21 MR. BEREKI: Okay. Your Honor, can I wait  
22 until the other people are done so that we can go  
23 through this?

24 THE COURT: Well, I really do not want to get  
25 involved in doing any more than I've already done. I  
26 cannot give any legal advice or give any direction, and

1 the --

2 MR. BEREKI: I'm clearly not asking for that,  
3 Your Honor.

4 THE COURT: Excuse me.

5 MR. BEREKI: I have questions -- just to give  
6 an example, the judgment order says there's damages in  
7 \$848,000. So I have questions as to what specific type  
8 of damages these are.

9 THE COURT: Yeah, no, I'm not prepared --

10 MR. BEREKI: I need to know that to be able to  
11 prepare a meaningful and substantive petition to the  
12 Supreme Court. If no one's going to answer these  
13 questions, well, I feel that that's denying me a  
14 hearing, and I have a right to know what the actual  
15 judgment order is and how the --

16 THE COURT: The Appellate Court -- excuse me.

17 As a matter of fact, the Appellate Court, in  
18 its opinion, did address those issues. So I do have to  
19 move on. The tentative is the order of the Court.

20 You have a very nice day. Thank you.

21 MR. BEREKI: Thank you.

22 THE COURT: Bye-bye.

23 MR. BISSELL: Thank you, Your Honor.

24 (Proceedings concluded.)

25

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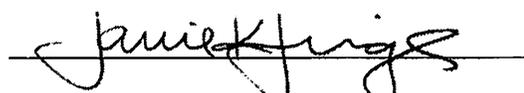
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REPORTER'S CERTIFICATE

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

S252954

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

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  
Deputy Clerk

NOT REPORTED  
Court Reporter

Attorneys Present for Plaintiff:  
NONE PRESENT

Attorneys Present for Defendants:  
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]

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**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”).)<sup>1</sup>

**I. BACKGROUND**

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

<sup>1</sup> 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”).)

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

14 Plaintiff then commenced this action on October 28, 2019. On November  
 15 8, 2019, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right  
 16 naming only The Humphreys as defendants. (Dkt. No. 11.) The FAC alleges this  
 17 action is "an Independent Action in Equity to relieve a party from a judgment,  
 18 order or proceeding pursuant to FRCP Rule 60(d)" (FAC at p.13), and that this  
 19 action "is a direct attack on the jurisdiction of the California trial and appellate  
 20 Courts in case numbers – 30-2015-00805897, and G055075" (*id.* at p.17).

## 21 II. STATEMENT OF THE LAW

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

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

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

27 <sup>3</sup> California Business & Professions Code § 7031 provides: "[A] person who  
 28 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."

1 the party asserting jurisdiction bears the burden of proving jurisdiction exists.  
2 *Sopak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995).  
3 A motion under Rule 12(b)(1) may challenge the court’s jurisdiction facially,  
4 based on the legal sufficiency of the claim, or factually, based on the legal  
5 sufficiency of the jurisdictional facts. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
6 2000). Where the Rule 12(b)(1) motion attacks the complaint on its face, the court  
7 considers the complaint’s allegations to be true, and draws all reasonable  
8 inferences in the plaintiff’s favor. *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir.  
9 2009) (citation omitted). Where the Rule 12(b)(1) motion challenges the  
10 substance of jurisdictional allegations, the court does not presume the factual  
11 allegations to be true, and may consider evidence such as affidavits and testimony  
12 to resolve factual disputes regarding jurisdiction. *McCarthy v. United States*, 850  
13 F.2d 558, 560 (9th Cir. 1988).

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

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

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

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

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

15 (A) in that person’s absence, the court cannot accord complete relief  
16 among existing parties; or

17 (B) that person claims an interest relating to the subject of the action  
18 and is so situated that disposing of the action in the person’s absence  
may:

19 (i) as a practical matter impair or impede the person's ability to  
protect the interest; or

20 (ii) leave an existing party subject to a substantial risk of  
21 incurring double, multiple, or otherwise inconsistent  
obligations because of the interest.

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

26 **III. DISCUSSION**

27 **A. Request for Judicial Notice**

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

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

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

11 **B. Rooker-Feldman Doctrine**

12 Defendants move to dismiss the FAC for lack of subject matter jurisdiction  
13 pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars  
14 losing parties "from seeking what in substance would be appellate review of the  
15 state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S.  
16 997, 1006-07 (1994). "The purpose of the doctrine is to protect state judgments  
17 from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252  
18 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker-Feldman* "to apply, a plaintiff  
19 must seek not only to set aside a state court judgment; he or she must also allege a  
20 legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*,  
21 359 F.3d 1136, 1140 (9th Cir. 2004).

22 Here, Plaintiff seeks relief from the superior court judgment pursuant to  
23 Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the  
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28 <sup>4</sup> Plaintiff did not oppose Defendants' request for judicial notice.

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

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

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

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

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

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

6 **(2) Constitutional Challenge**

7 Plaintiff also argues the Rooker-Feldman doctrine does not bar this action  
8 because the FAC raises a constitutional challenge to California Business &  
9 Professions Code §§ 7071.17 and 7031. While the FAC raises a “facial” and “as  
10 applied” challenge to the constitutionality of Sections §§ 7071.17 and 7031, the  
11 relief sought by Plaintiff is an order vacating or voiding the state court judgment.  
12 Moreover, the basis for Plaintiff’s constitutional challenge is that the Superior  
13 Court and California Court of Appeals lacked subject matter jurisdiction to enter  
14 and affirm the judgment against Plaintiff because (1) there is no evidence  
15 supporting the judgment; and (2) disgorgement pursuant to Cal. Bus. & Prof. Code  
16 § 7031 is a penalty and an excessive fine, and therefore unconstitutional. The  
17 California Court of Appeals, however, found there was evidence supporting the  
18 Superior Court’s judgment and held disgorgement pursuant to Cal. Bus. & Prof.  
19 Code § 7031 is an equitable remedy, not a penalty or fine. (RJN, Ex. C.) Thus,  
20 despite purporting to raise a “constitutional” challenge in his FAC, Plaintiff seeks  
21 relief from the state court judgment in this action and asserts legal errors by the  
22 Superior Court and California Court of Appeals. Therefore, the Rooker-Feldman  
23 doctrine applies to bar Plaintiff’s instant action.

24 \* \* \*

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

1 **C. Res Judicata / Collateral Estoppel**

2 Defendants also move to dismiss the FAC as barred by the res judicata /  
3 collateral estoppel doctrines.<sup>5</sup>

4 Issue preclusion, or collateral estoppel, bars relitigation of issues that have  
5 been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824.

6 Pursuant to the doctrine of collateral estoppel, “a federal court must give to a  
7 state-court judgment the same preclusive effect as would be given that judgment  
8 under the law of the State in which the judgment was rendered.” *Migra v. Warren*  
9 *City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738.

10 Under California law, collateral estoppel/issue preclusion applies: “(1) after final  
11 adjudication (2) of an identical issue (3) actually litigated and necessarily decided  
12 in the first suit and (4) asserted against one who was a party in the first suit or one  
13 in privity with that party.” *DKN Holdings LLC*, 61 Cal. 4th at 825.

14 Here, the FAC alleges the superior court lacked jurisdiction and violated  
15 Plaintiff’s due process rights because there was no evidence supporting the  
16 judgment. The FAC, however, alleges Plaintiff challenged the jurisdiction of the  
17 superior court in a motion to vacate the judgment, which was denied. (FAC at 97-  
18 98.)

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

26 \_\_\_\_\_  
27 <sup>5</sup> “Res judicata” refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474  
28 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.

1 “equitable remedy”).)

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

10 Therefore, the issues raised by Plaintiff in this federal action regarding the  
11 Superior Court and California Court of Appeal’s lack of jurisdiction and violation  
12 of Plaintiff’s due process rights, the unconstitutionality of Cal. Bus. & Prof. Code  
13 §§ 7031 and 7071.17, Plaintiff’s contention that disgorgement pursuant to Cal.  
14 Bus. & Prof. Code § 7031 is a penalty/fine rather than an equitable remedy, and  
15 the lack of evidence supporting the Superior Court’s judgment and California  
16 Court of Appeals decision affirming the judgment, were actually litigated by  
17 Plaintiff in the state court action and necessarily decided in a final judgment. *See*  
18 *DKN Holdings LLC*, 61 Cal. 4th at 825; *Rodriguez v. City of San Jose*, 930 F.3d  
19 1123, 1132 (9th Cir. 2019).

20 Thus, even if the instant action was not barred pursuant to the Rooker-  
21 Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing  
22 this action. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th  
23 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.<sup>6</sup> The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.<sup>7</sup>

**IT IS SO ORDERED.**

DATED: February 6, 2020.



**CONSUELO B. MARSHALL**  
**UNITED STATES DISTRICT JUDGE**

<sup>6</sup> 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).

<sup>7</sup> 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]

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**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.”

1 (Dkt. No. 34.)

2 The Court finds Plaintiff's in forma pauperis status should not continue for  
3 the appeal because Plaintiff's appeal of the Order is frivolous. Therefore, the  
4 Court revokes Plaintiff's in forma pauperis status. See 28 U.S.C. § 1915(a)(3)  
5 ("An appeal may not be taken in forma pauperis if the trial court certifies in  
6 writing that it is not taken in good faith."); *Hooker v. Am. Airlines*, 302 F.3d 1091,  
7 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where  
8 the district court finds the appeal to be frivolous).

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

11  
12 **IT IS SO ORDERED.**

13  
14 DATED: February 27, 2020.



15 CONSUELO B. MARSHALL  
16 UNITED STATES DISTRICT JUDGE

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CC: 9<sup>TH</sup> 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**  
155 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.

Adam Bereki  
July 9, 2020  
Page 2

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

# 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](http://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](mailto:vsarmiento@santa-ana.org)

David Penaloza  
Mayor Pro Tem, Ward 2  
[doenalozasanta-ana.org](mailto:doenalozasanta-ana.org)

Thai Viet Phan  
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Jessie Lopez  
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Phil Bacerra  
Ward 4  
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Johanathan Ryan Hernandez  
Ward 5  
[jryanhernandez@santa-ana.org](mailto:jryanhernandez@santa-ana.org)

Nelida Mendoza  
Ward 6  
[nmendoza@santa-ana.org](mailto:nmendoza@santa-ana.org)

# Appendix [L]

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

INFORMATION REPORT

**ORIGINAL**

Reporting Area: North Uninc

(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

INFORMATION REPORT

**ORIGINAL**

Reporting Area: North Uninc

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	<input type="checkbox"/>	9/6/2020
Assisting Officer	Foster, D. 03340	<input type="checkbox"/>	9/6/2020
Approving Officer	Castro, M. 05307	<input type="checkbox"/>	9/6/2020



# ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

## REQUEST AUTHORIZATION FORM RELEASE OF CASE INFORMATION

NAME ADAM BEREKI DATE 11/25/2020  
 ADDRESS \_\_\_\_\_ CASE # 20-029161  
 CITY \_\_\_\_\_ STATE CA ZIP \_\_\_\_\_

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  
 FEES 0.00 CHECK # \_\_\_\_\_ RECEIPT # \_\_\_\_\_  
 REQUEST  Approved  Approved / Redacted  Denied

Document(s) released:

- |  |   |
|--|---|
| <input type="checkbox"/> Initial Crime Report                                    | <input type="checkbox"/> Fees returned <u>0.00</u>  |
| <input type="checkbox"/> Initial Crime Rpt Supplemental                          | <input type="checkbox"/> Released pursuant to Family Code Section 6228  |
| <input type="checkbox"/> Deputy Follow Up  | <input type="checkbox"/> Released pursuant to Welfare and Institutions Code section 827 and Juvenile Court Administrative Order No. 12/003-903 "Exchange of Information". |
| <input type="checkbox"/> Initial Follow Up                                       | <input type="checkbox"/> Released pursuant to Vehicle Code section 20012  |
| <input type="checkbox"/> Traffic Accident  | <input type="checkbox"/> Released pursuant to Court Authorization and Penal Code Section 1203.097(a)(7)(B)  |
| <input type="checkbox"/> CHP180  |   |
| <input type="checkbox"/> TC Property Damage                                      |   |
| <input type="checkbox"/> Property Report   |   |
| <input type="checkbox"/> Casualty Report   |   |
| <input type="checkbox"/> Supplemental DV Report                                  |   |
| <input type="checkbox"/> CAD Report <input type="checkbox"/> ID Theft            |   |
| <input checked="" type="checkbox"/> Other <u>Information Report; Two (2) Sup</u> |   |

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 emphasized 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	<input type="checkbox"/>	9/15/2020
Approving Officer	Weidenkeller, E. 04050	<input type="checkbox"/>	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	<input type="checkbox"/>	11/25/2020
Approving Officer	Weidenkeller, E. 04050	<input type="checkbox"/>	11/26/2020



Adam Bereki &lt;abereki@gmail.com&gt;

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**20-029161**

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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



Bereki Dr 20-029161

---

**Bereki Dr 20-029161**

Adam &lt;abereki@gmail.com&gt;

Thu, Dec 17, 2020 at 12:59 PM

To: eweidenkeller@ocsd.org, mleebe@ocsd.org, "Knutson, Gary L" &lt;gknutson@ocsd.org&gt;, 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 it 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 arbitrarily 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

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 LD\_02\_V-6.4.pdf  
441K



Adam Bereki

**Bereki Dr 20-029161**

**Knutson, Gary L** <gknutson@ocsd.org>  
To: Adam <abereki@gmail.com>

Fri, Dec 18, 2020 at 9:00 AM

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.

[Redacted]

**Attention:** This email originated from an **external source**. Use caution when opening attachments or clicking on links.

# Appendix [M]



# 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	
D R U G S						

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 <i>SUSPICIOUS CIRCUMSTANCES</i>	Date / Time Reported <i>Tue 12/07/2021 10:35</i>

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.



Aaron Harp &gt; [mailto:aharp@newportbeachca.gov]

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**PDF Version of Brief in Support of Law**

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Harp, Aaron &lt;aharp@newportbeachca.gov&gt;

Fri, Dec 10, 2021 at 12:07 PM

To: Adam &lt;abereki@gmail.com&gt;

Cc: "Carpentieri, Peter" &lt;pcarpentieri@nbpd.org&gt;, "Joe, Darrin" &lt;DJoe@nbpd.org&gt;

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.

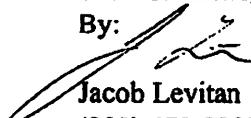
The Rules of the Court make no provision for the filing of documents via digital media.

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
<b>TOTAL:</b>	<b>\$ 7,943.46</b>

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 -*

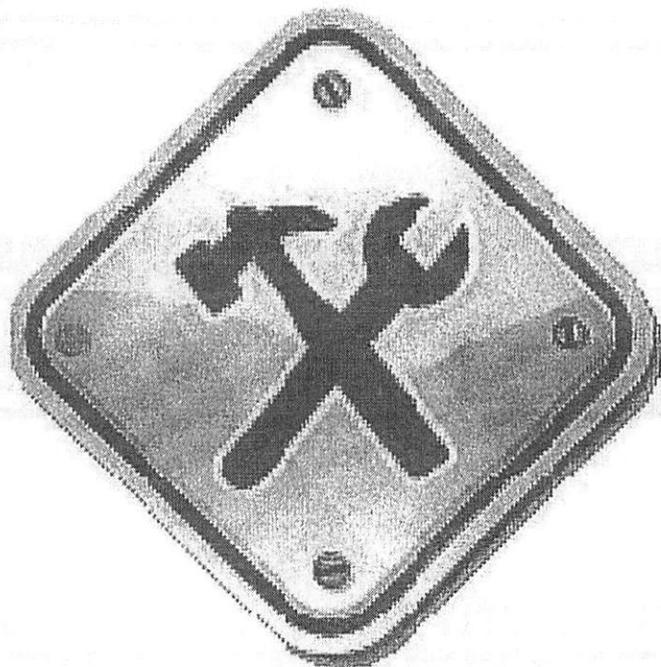
**SIGNED:** *Don Fobian*  
**ARBITRATOR Fobian, Don**

**DATE: 11/21/2014**

[WWW.AMCCENTER.COM](http://WWW.AMCCENTER.COM)  
(800) 845-4874

3055 Wilshire Blvd., Suite 610  
Los Angeles, CA 90010  
(213) 487-8560 Fax: (415) 946-3486

**THE CONTRACTOR  
DID NOT  
RETURN A  
“SUBMISSION TO  
MANDATORY  
ARBITRATION”**





SACRAMENTO CASE MANAGEMENT  
8821 BUSINESS PARK DRIVE  
P O BOX 26888  
SACRAMENTO, CA 95828  
(916)255-4632

**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.

**REVOCAION 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  
9921 BUSINESS PARK DRIVE  
P O BOX 26888  
SACRAMENTO, CA 95828  
(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 A S 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](http://www.cslb.ca.gov) | [CheckTheLicenseFirst.com](http://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)



Adam, Ellen@CSLB - Sent as webmail

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## PRA REQUESTS- BEREKI

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Maier, Ellen@CSLB <Ellen.Maier@cslb.ca.gov>  
To: Adam <abereki@gmail.com>

Mon, Mar 22, 2021 at 3:17 PM

Good afternoon Adam,

Please see attached. There was 8275 mandatory arbitration cases referred to AMCC since January 1, 2006.

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### 2 attachments

 CSLB Copier\_20210322\_141609.pdf  
5670K

 CSLB Copier\_20210322\_141641.pdf  
6128K

# Appendix [P]



**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: 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.”<sup>1</sup>

This Court should also note that in the event the Justices intend to use the so-called “Ashwander Doctrine”<sup>2</sup> to “dispose” of this case by only addressing the issue(s) they arbitrarily 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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<sup>1</sup> *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).

<sup>2</sup> “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”<sup>3</sup>:

- 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

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<sup>3</sup> *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4<sup>th</sup> 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<sup>4</sup>; (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

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<sup>4</sup> 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<sup>5</sup> 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<sup>6</sup>:

- 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 “14<sup>th</sup> Amendment”?
    - iv. What inalienable rights are recognized in “citizens of the United States” as declared by the “14<sup>th</sup> Amendment”?
  - c. By what authority(ies) can the Cal. “Legislature” convert the private inalienable rights to contract<sup>7</sup> and to property (in the form of one’s time

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<sup>5</sup> *Bains v. James and Catherine*, 2 F. Cas 410, 412 (1832).

<sup>6</sup> “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).

<sup>7</sup> 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.”<sup>8</sup> Was the suspension/ revocation of

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<sup>8</sup> *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.*<sup>9</sup> 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?

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<sup>9</sup> *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 purported 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”;<sup>10</sup> (2) that “[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation that would abrogate them”;<sup>11</sup> (3) that “[t]he exaltation of form over substance is to be avoided”;<sup>12</sup> 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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<sup>10</sup> *Nashville, C. & St. Louis Ry. Co. v. Wallace*, 288 U.S. 249, 264 (1933)

<sup>11</sup> *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

<sup>12</sup> *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”<sup>13</sup>. 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.”<sup>14</sup> 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.”<sup>15</sup> 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

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<sup>13</sup> 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.

<sup>14</sup> *Cohens v. Virginia*, 19 U.S. 264, 383-4 (1821).

<sup>15</sup> 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 “14<sup>th</sup> 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 “14<sup>th</sup> 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 “14<sup>th</sup> 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*<sup>16</sup>, “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*,<sup>17</sup> holding that the People of California do not owe their Citizenship to the “14<sup>th</sup> Amendment”, and the definition of “Citizen” in Bouvier’s Law Dictionary of 1859.<sup>18</sup> Based on the

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<sup>16</sup> *Slaughterhouse Cases*, 83 U.S. 36, 74 (1872). See also *Scott v. Sanford*, 60 U.S. 393, 399 (1857).

<sup>17</sup> *Van Valkenburg v. Brown*, 43 Cal. 43, 47 (Cal. Supreme Ct. 1872).

<sup>18</sup> 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”<sup>19</sup>, who and/or what is a “citizen of the United States” (as used in the “14<sup>th</sup> 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 “14<sup>th</sup> 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 “14<sup>th</sup> 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 ...”

<sup>19</sup> 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 “14<sup>th</sup> Amendment”.
- iii. Under Article V, was the “14<sup>th</sup> 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 “14<sup>th</sup> 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 “14<sup>th</sup> 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 “14<sup>th</sup> 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.”<sup>20</sup> 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

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<sup>20</sup> *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 "14<sup>th</sup> 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 "14<sup>th</sup> 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 39<sup>th</sup> 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 "14<sup>th</sup> 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,<sup>21</sup> 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

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<sup>21</sup> 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 9<sup>th</sup>, 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 [...]”<sup>22</sup> 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?

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<sup>22</sup> *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 "14<sup>th</sup> 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."<sup>23</sup> 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

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<sup>23</sup> 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”.<sup>24</sup> 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?

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<sup>24</sup> *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;