IN THE
SUPREME COURT OF THE UNITED STATES

LARRY GILBERG,

Petitioner,

v.

POWER ARCHITECTS CORPORATION, et al.,

Respondents.

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI
INDEX TO THE APPENDIX

The appendix is assembled in the order Rule 14.1(i) requires — the decision under review first, then the companion and earlier decisions, the rehearing and review orders, the verbatim constitutional and statutory text, and last only those record excerpts essential to show the federal question was raised and decided. It is deliberately lean: the appendix proves jurisdiction, preservation, and what the panel decided — not the underlying facts, which are not reviewable here.

§§ 1257, 1334(e)(1); 21 U.S.C. § 853(a), (c), (p); 18 U.S.C. §§ 152, 1956, 3284. [Rule 14.1(i)(v).] ——————————

Appendix G — Essential record excerpts [Rule 14.1(i)(vi)] — limited to the following:

G-1 Excerpts of the AAA Award: pp. 1, 40—46, 75—76, 87, 94, 116 — the cover page and the panel's signature page, together with the § 541 estate-inclusion finding, the § 349(b)(3) revesting holding, the "declines to find a forfeiture under § 554(d)" ruling, the criminal-forfeiture ruling that "[o]n its face, the Final Order does not include any PA shares," and the repeated "legitimate shareholder" declarations — proving the panel made the federal determinations. ——————————

G-2 Kesel's Chapter 11 Schedule B, signed under penalty of perjury Jan. 16, 2010, In re Kesel, No. 10-41653 (Bankr. N.D. Cal.) — the omission of the 34.62% PA interest. ——————————

G-3 Order dismissing the Chapter 11 case, dated Dec. 19, 2011 — dismissal, not discharge. ——————————

G-4 Final Order of Forfeiture, United States v. All Discount Laboratory Supply and Mark Kesel, No. CR-00-40242 CW (N.D. Cal.) — the provision retaining jurisdiction "for the purpose of enforcing this Order." ——————————

G-5 Excerpts of Petitioner's Petition for Review (No. S295751), limited to the pages showing the federal questions were presented to the Supreme Court of California: (a) the cover/caption page [p. 1]; (b) Issues Presented for Review [pp. 8—14]; (c) Argument I (award void under Kalb v. Feuerstein), II (Supremacy Clause), III (Steel Co.), IV (28 U.S.C. § 1334(e)(1) exclusive jurisdiction cannot be conferred by an arbitration clause), and V (the panel's rewriting of the Wilken § 853(p) orders as a jurisdictional defect) [pp. 20—34]; and (d) the signature page [p. 57]. Offered to satisfy § 1257 preservation. ——————————

G-6 (Optional) Excerpt of the Court of Appeal oral-argument transcript, Jan. 6, 2026 — the exchange on whether Kesel may vote shares he illegally holds. ——————————

G-7 Plea Agreement of Mark Alexander Kesel, United States v. All Discount Laboratory Supply and Mark Kesel, No. CR-00-40242 CW (N.D. Cal.) (Hon. Claudia Wilken), signed Dec. 8, 2003 — admitting that "[b]etween 1998 and 2000 (inclusive)" ADLS's gross sales were forfeitable proceeds under 21 U.S.C. § 853 — establishing the criminal-period overlap with Kesel's PA investment. ——————————

G-8 Preliminary Order of Forfeiture as to Mark Alexander Kesel, United States v. Kesel, No. CR-00-40242 CW (N.D. Cal.) (Hon. Claudia Wilken) — the § 853(p) substitute-asset provision reaching property "transferred or sold to, or deposited with, a third party," and the Fed. R. Crim. P. 32.2(c)(2) provision under which the Preliminary Order became the Final Order. ———————————

G-9 Excerpts of Petitioner's Motion to Determine Jurisdiction (No. H052611): (a) the cover/caption page, the Notice of Constitutional Jurisdictional Challenge, and Section I, Summary of Argument [pp. 1—13]; (b) Reason #2, federal exclusive jurisdiction over bankruptcy-estate property under 11 U.S.C. §§ 541, 554(d) and 28 U.S.C. § 1334(e)(1) [pp. 34—47]; (c) the Supremacy Clause portion of Reason #3, Section A [p. 48]; and (d) the signature page [p. 105]. Offered to satisfy § 1257 preservation. ——————————
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APPENDIX A

Opinion of the California Court of Appeal, Sixth Appellate District Gilberg v. Power Architects Corp., No. H052611 (Feb. 17, 2026) (unpublished)

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Filed
April 27, 2026
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV368701
By: hkeniston

RE: LARRY GILBERG,
Plaintiff and Appellant,
v.
POWER ARCHITECTS CORPORATION,
Defendant and Respondent.

H052611
Santa Clara County Super. Ct. No. 20CV368701

*** * REMITTITUR * ***

I, Baltazar Vazquez, Clerk of the Court of Appeal of the State of California, for the Sixth Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on February 17, 2026, and that this decision has now become final.

____ Appellant ___X___ Respondent to recover costs
____ Each party to bear own costs
____ Costs are not awarded in this proceeding
____ See decision for costs determination

Witness my hand and the seal of the Court affixed at my office on April 21, 2026.

BALTAZAR VAZQUEZ
Clerk/Executive Officer

By: W. WILBOURN
Deputy Clerk

Filed 2/17/26

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

LARRY GILBERG, Plaintiff and Appellant, v. POWER ARCHITECTS CORPORATION, Defendant and Respondent.	H052611 (Santa Clara County Super. Ct. No. 20CV368701)

Larry Gilberg, Alexander Kolchinsky, Alexander Mednik, and Mark Kesel all hold shares in Power Architects Corporation. The five parties arbitrated a complex dispute concerning the company. The arbitration resulted in an award that required Gilberg and Kolchinsky to pay Power Architects, declared that they held fewer shares than they claimed, and rejected their affirmative claims. Gilberg and Kolchinsky separately moved to vacate or correct the award and now separately appeal the trial court's judgment confirming the award. Here, we will affirm the judgment against Gilberg.

I. BACKGROUND

A. *Commencement and Consolidation of Arbitration*

In 2020, Gilberg commenced two actions against Power Architects, Mednik, and Kesel. In the first, Gilberg alleged that he was unlawfully terminated from Power Architects. In the second, Gilberg and Kolchinsky alleged claims for a declaration of shareholder rights, removal of directors, and injunctive relief. Gilberg withdrew his claims from the second action and Kolchinsky amended the complaint to assert only a claim for declaratory relief concerning his shareholder status.

Power Architects, Mednik, and Kesel successfully moved to compel Gilberg to arbitrate his claims in the first action. Later, Mednik and Kesel successfully moved to compel Kolchinsky to arbitrate his claims in the second action.

Three separate arbitration demands were submitted, one by Mednik and Kesel against Gilberg and Kolchinsky, one by Power Architects against Gilberg and Kolchinsky, and one by Gilberg against Power Architects, Mednik, and Kesel. The three demands generated a consolidated arbitration. After being compelled to arbitrate, Kolchinsky appeared in the arbitration as a respondent and additional counterclaimant. The arbitration was conducted by a three-judge panel of the American Arbitration Association (AAA).

B. ***AAA's Findings and Award*** [1]

Power Architects sells configurable and custom power supplies. Power Architects was founded by Gilberg and Mednik. Kolchinsky, Gilberg's close friend, helped set up the business. Power Architects was first incorporated in Delaware in 1997 but reincorporated in California in 1998.

Commencing in 1998, Gilberg, Mednik, and Kesel were all members of the Power Architects board. Gilberg was also the company's Chief Executive Officer (CEO) and secretary from 1998 until February 2019, when Mednik and Kesel voted to remove Gilberg as a director and eliminated the CEO position. Mednik was the company's president from its founding until December 2019. Kolchinsky served as a director to represent Gilberg's interests from the date of Gilberg's removal until 2021. In 2020,

[1] We draw this background from the AAA award.

Power Architects reinstated the CEO position and appointed Vlad Pystin in that role. Pystin was not a shareholder. In 2021, Pystin replaced Kolchinsky on the board.

Three successive shareholders' agreements were entered in 1998, the " 'May Agreement,' " " 'July Agreement,' " and " 'August Agreement.' " The May Agreement, signed by Gilberg, Mednik, and Kolchinsky, allocated 45,000 shares each to Gilberg and Mednik and 10,000 shares to Kolchinsky. It appointed Gilberg as CEO, Mednik as president, and Kolchinsky as vice-president and secretary. The July Agreement, entered in conjunction with receipt of funding from three individuals comprising an investor group, identified five shareholders: Gilberg with 55,000 shares, Mednik with 45,000 shares, Kesel with 15,300 shares, Oleg Sagodeev with 15,300 shares, and Boris Kesil with 3,400 shares. The five identified shareholders signed the July Agreement. Kolchinsky was not mentioned in the July Agreement and did not sign it. The August Agreement was executed by the five signatories to the July Agreement.

The August Agreement was substantially the same as the July Agreement, except that Gilberg and Mednik each were allocated 50,000 shares. The August Agreement made Gilberg and Mednik officers—for "as long as [each] remain[ed] a shareholder and perform[ed] faithfully, efficiently, and competently for the Corporation." If they "cease[d] to be a shareholder in the Corporation" they were required to submit their "resignation as an officer when [they] transfer[ed] [their] shares." As for governance of Power Architects, the August Agreement specified that "[t]he Shareholders shall control the Corporation and all its affairs and shall have proportionate rights in the management and conduct of Corporation investments and activities." Although "[t]he CEO and the President shall be responsible for the day-to-day management and ministerial acts of the Corporation," the August Agreement provided that "major decisions should be decided by majority vote." But "if any action [is] taken at a meeting of the shareholders or directors of the Corporation by a vote of less than (76%) of the shareholders or directors, as the case may be, the dissenting shareholder may require the Corporation or directors within 90 days either to" rescind the action or purchase the shares owned by the dissenter.

Gilberg was responsible for Power Architects' financial matters. In this capacity, "he actively engaged in schemes to avoid taxes and generate funds for himself and family members." In that capacity, Gilberg unilaterally sold his shares back to Power Architects at self-determined prices but continued to distribute profits to himself as if he had retained all his shares. He did this without board knowledge or approval.

In a lengthy interim award addressing numerous claims and counterclaims, AAA ruled that: (1) Gilberg retained only 2,445 shares of Power Architects stock; (2) Power Architects sustained over $1.4 million in compensatory damages based on three schemes: (a) Gilberg took dividends as though he had sold no shares back to Power Architects; (b) he inflated his own dividends by adding an unauthorized bonus; and (c) he caused Power Architects to pay his family members for work they did not perform; and (3) Power Architects was entitled to treble damages under Penal Code section 496, subdivision (c), bringing the total to almost $4.3 million.

In the final award, AAA added awards for attorney fees, costs, arbitrator compensation, and AAA administrative fees. The total award is nearly $5.3 million.

AAA also ordered Kolchinsky to pay Power Architects $35,786 in costs.

C. ***Motions to Vacate and Appeal***

After arbitration, the two trial court cases were consolidated. Power Architects moved to confirm the AAA award. Gilberg and Kolchinsky separately moved to vacate and correct the awards. In a single order, the trial court granted Power Architects' motion and denied the motions filed by Gilberg and Kolchinsky. The trial court entered judgment declaring that Gilberg retained only 2,445 Power Architects shares and awarding Power Architects almost $5.3 million from Gilberg, including prejudgment interest. Gilberg timely appealed.

II. DISCUSSION

In the trial court, Gilberg challenged the arbitration award under Code of Civil Procedure section 1286.2, subdivisions (a)(4) and (5), arguing that AAA failed to follow the August Agreement and wrongfully excluded material evidence.[2] Specifically, Gilberg claimed that: (1) AAA did not give effect to a provision in the August Agreement that prohibited Gilberg from selling his shares, which in his view required AAA to treat Gilberg's sales as if they did not reduce his shareholdings; (2) AAA refused to hear testimony from David Lee on the legal effect of the same provision; (3) AAA invoked Penal Code section 496, subdivision (c) to award treble damages for payments to Gilberg's wife and mother when, Gilberg contends, Gilberg and Mednik were jointly responsible for managing corporate affairs under the August Agreement; and (4) AAA invoked Penal Code section 496, subdivision (c) to require Gilberg to pay attorney fees when, Gilberg contends, he should have had no predicate liability (or should have shared with Mednik responsibility for payments to Gilberg's wife and mother). On appeal, Gilberg now also challenges (1) Power Architects' authority to participate in the arbitration; (2) Kesel's status as a shareholder; and (3) AAA's rejection of certain of his arguments in defense of the claims against him. Even if we consider the arguments Gilberg failed to raise in the trial court, Gilberg has failed to establish a basis to vacate or correct the award.[3] So we will affirm the judgment.

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[2] Undesignated statutory references are to the Code of Civil Procedure.

[3] We do not reach Power Architects' contention that many of Gilberg's appellate arguments are forfeited on appeal because they were not presented to the trial court or Gilberg's various arguments against a finding of forfeiture here. To the extent Gilberg has raised new contentions in his appellate reply brief, however, we need not consider them because he has deprived Power Architects of an opportunity to respond. (See *United Grand Corp. v. Malibu Hillbillies, LLC* (2019) 36 Cal.App.5th 142, 158.)

A. *Legal Principles*

Courts generally "cannot review arbitration awards for errors of fact or law, even when those errors appear on the face of the award or cause substantial injustice to the parties." (*Sargon Enterprises, Inc. v. Browne George Ross LLP* (2017) 15 Cal.App.5th 749, 763.) Judicial review of private arbitration awards is limited to enumerated statutory grounds to vacate or correct the award. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28.) Gilberg invokes section 1286.2's provision for vacatur when "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (§ 1286.2, subd. (a)(4).)

" ' "[A]rbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact." ' " (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 917.) "Arbitrators may exceed their powers by issuing an award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy" (*id.* at p. 916) or where public policy renders the entire contract containing the arbitration agreement unenforceable (*Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59, 73, 80, 87).

While the scope of judicial review of an arbitration award is narrow, our review of the trial court's order confirming the arbitration award is de novo. (See *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9 (*Advanced Micro Devices*).)

B. *Gilberg's Jurisdictional Motion*

Beyond his appellate briefs, Gilberg has moved this court to determine "jurisdiction" before resolving other issues. Although reviewing courts must be satisfied of their own jurisdiction before proceeding to the merits (see *Steel Co. v. Citizens for a Better Environment* (1998) 523 U.S. 83, 94–95; *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339), Gilberg challenges neither the trial court's jurisdiction to review an arbitration award nor our jurisdiction to review the trial court's order. Indeed, it is our jurisdiction he is invoking, as the appellant, much as he sought the trial court's jurisdiction to review the arbitration award. Rather, Gilberg's motion is an unauthorized supplemental brief on the merits of his argument that the arbitration award was in excess of AAA's powers.[4] The motion is denied.

C. *Gilberg's Requests for Judicial Notice*

Gilberg filed in this court six requests for judicial notice, which we grant only in part.[5]

Under Evidence Code section 451, we take judicial notice of the existence and content of documents filed in the trial court in this case before judgment that are not otherwise in the appellate record.[6] (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; see also *Estate of Sanchez* (2023) 95 Cal.App.5th 331, 336, fn. 5 [explaining that courts have "discretion to augment the record with materials that were before the trial court when it issued the order on appeal"].) But our judicial notice is limited to the existence of each document in the court file and does not extend to the truth of hearsay statements within those documents. (*Lockley v. Law Office of Cantrell,*

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[4] Gilberg's request for permission to reply in support of his motion to determine jurisdiction is denied.

[5] Gilberg filed his first request for judicial notice with his opening merits brief. He filed five more requests before Power Architects filed its respondent's brief, the last on the day before the respondent's brief was filed. We deferred ruling on all six requests for consideration with the merits. One of his requests incorporated a request for judicial notice filed by Kolchinsky in Kolchinsky's separate appeal. Gilberg's unopposed motion to strike the untimely oppositions to the first four requests for judicial notice is granted.

[6] Our grant of judicial notice is limited to: (1) Excerpts from Gilberg's July 24, 2020 complaint; (2) the October 5, 2020 Pystin declaration; (3) a November 9, 2020 case management statement filed in this action; (4) a November 25, 2020 reply brief filed in support of the petition to compel arbitration; (5) excerpts from a request for judicial notice Kolchinsky filed on September 10, 2021 in connection with his opposition to the motion to compel arbitration in the consolidated case; (6) excerpts from the April 4, 2024 Gilberg declaration; and (7) excerpts from the May 21, 2024 Kolchinsky declaration.

Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 882.) Nor will we take judicial notice of evidence not presented to the trial court, because Gilberg has not shown any exceptional circumstance that would warrant our taking so extraordinary a measure. (See *In re K.M.* (2015) 242 Cal.App.4th 450, 456.) The requests are otherwise denied.[7]

D. *The Scope of Arbitration and the Effect of the Order Compelling Arbitration*

The trial court compelled Gilberg to arbitrate under the August Agreement.[8] Under that agreement, "[s]hould any dispute arise between any one or more of the parties to this agreement as to their rights under any provisions of this agreement, the parties . . . agree to refer such dispute to [AAA], whose decision on the questions shall be binding on the parties and shall be without appeal." The trial court ruled that Gilberg's claim for breach of the August Agreement fell within the scope of this arbitration provision. The trial court also compelled arbitration of Gilberg's employment claims because the rights he asserted "have 'their roots in' " the August Agreement's terms, by which Gilberg was appointed a corporate officer "as long as he remains a shareholder and 'performs faithfully, efficiently and competently for the Corporation.' " (See generally *Ahern v. Asset Management Consultants, Inc.* (2022) 74 Cal.App.5th 675, 687 [explaining that courts ruling on arbitration petitions assess "whether an agreement to arbitrate exists [citations] and, if so, whether the parties' dispute falls within the scope of that agreement"].)

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[7] Beyond documents never presented in the trial court, Gilberg's requests for judicial notice also extend to various authorities and facts derived from the appellate record, including of documents already in the appellate record. We thus deny these requests as at best superfluous and, alternatively, as unauthorized supplemental briefing on the merits.

[8] Gilberg states in passing that the order compelling him to arbitrate is reviewable in an appeal from the final judgment. But we discern in his brief no contention that the trial court erred in finding an agreement to arbitrate that encompassed Gilberg's claims or in ordering Gilberg to arbitrate his claims.

The trial court reserved for arbitral determination the merits of Gilberg's claims under the August Agreement. (See *Heimlich v. Shivji* (2019) 7 Cal.5th 350, 358 (*Heimlich*) [" 'Absent an express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator has the authority to find the facts, interpret the contract, and award any relief rationally related to his or her factual findings and contractual interpretation' "].) Gilberg misconstrues the order in broadly asserting that the trial court in compelling arbitration under the dispute resolution provision of the August Agreement rendered a binding determination of his substantive rights under the August Agreement's other terms.[9]

The court expressed no opinion on the viability of Gilberg's claims under the August Agreement. In ruling that Gilberg's statutory claims were arbitrable, the trial court did explain that Gilberg did not waive his substantive statutory rights under the California Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.) by agreeing to arbitrate them; he merely agreed to have those claims resolved in an arbitral forum. Gilberg interprets this as a "promise[]" that his unspecified statutory rights would be protected, which in his view justifies a more muscular judicial review of all his substantive claims. To be sure, for public policy reasons, " 'when unwaivable statutory rights are at stake, . . . review must be " 'sufficient to ensure that arbitrators comply with the requirements of the statute.' " ' " (*Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 679.) But none of Gilberg's appellate contentions turn on

[9] We also reject Gilberg's reliance on an October 2021 stipulation that he neither mentioned in his opening brief here nor put before the trial court when it issued its judgment. Gilberg contends that the stipulation entitles him to heightened judicial review of the arbitration award. (See *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1340 [California law permits parties to contract for heightened judicial review of arbitration awards].) Even if it were proper for us to take judicial notice of a document the trial court had no opportunity to consider, nothing in the stipulation—reserving any right he then retained to appeal the order compelling arbitration—suggests that the parties stipulated to heightened judicial review.

unwaivable statutory rights under FEHA. We cannot identify a public policy reason to deviate from the ordinary principles governing judicial review of arbitration awards in assessing Gilberg's contentions.

E. *Power Architects' Authority to Prosecute Arbitration*

Gilberg contends that AAA exceeded its authority by arbitrating a dispute in which Power Architects lacked authority either to prosecute its claims or to oppose Gilberg's. In Gilberg's view, the August Agreement prevented Pystin from serving as CEO because Pystin was not a shareholder; Pystin in turn lacked authority to retain Martinovsky to represent Power Architects in arbitration. Alternatively, if Pystin's appointment could have been approved by a supermajority of the shareholders, Gilberg asserts that Kesel lost his shares as a matter of law, foreclosing the 76 percent majority Gilberg maintains was required for appointment of a CEO and authorizing the arbitration itself. The record, however, lacks any indication that Gilberg challenged in the trial court the authority of Power Architects to proceed—either in opposing the petition to compel arbitration or in seeking to vacate or correct the award.

And even if Gilberg's contention were properly preserved for our review, AAA resolved the premises on which he bases them. AAA rejected Gilberg's interpretation of the August Agreement, ruling that the provision conditioning Gilberg's or Mednik's service as officers on their continued shareholding did "not prohibit the appointment of non-shareholders as officers" and that Power Architects thus validly appointed Pystin, who validly hired Martinovsky.[10] Gilberg's contentions regarding his and Kesel's respective shareholdings are likewise merely invitations to relitigate the merits of issues properly resolved in arbitration. AAA's rulings on these issues rest on factual and legal determinations, including contractual interpretation and remedial decisions, that are

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[10] Given Gilberg's forfeiture, we will not recapitulate here our assessment of the functionally identical claim in *Kolchinsky v. Power Architects* (Feb. 17, 2026, H052610) (nonpub. opn.), filed concurrently herewith.

within AAA's authority. (See *Heimlich*, *supra*, 7 Cal.5th at p. 358.) So Gilberg's contentions do not supply a basis for a court to vacate the arbitration award.

F. *Gilberg's Stock Buybacks*

AAA found that "Gilberg used his position in the company to take excessive compensation through unauthorized stock buybacks at inflated prices, keeping the money, and still exercising dominion and control over the stock, voting the shares as though they had not been sold, and paying himself dividends attributable to those sold shares as well as bonuses." Gilberg argues that any award of associated damages exceeded AAA's power because it conflicted with provisions of the August Agreement, which Gilberg maintains rendered any buybacks void rather than voidable. We disagree.

"The principle of arbitral finality, the practical demands of deciding on an appropriate remedy for breach, and the prior holdings of this court all dictate that arbitrators, unless expressly restricted by the agreement or the submission to arbitration, have substantial discretion to determine the scope of their contractual authority to fashion remedies, and that judicial review of their awards must be correspondingly narrow and deferential." (*Advanced Micro Devices*, *supra*, 9 Cal.4th at p. 376; see also *Heimlich*, *supra*, 7 Cal.5th at p. 358.)

Gilberg identifies nothing in the August Agreement that would narrow AAA's discretion to fashion an appropriate remedy for his breach of the provision prohibiting him from selling his shares back to Power Architects without supermajority approval. Nor does he identify any principle that would preclude Power Architects from effectively standing on the sales and suing for damages.

Gilberg would have us rely on the provision he violated to unwind not only AAA's remedy but the violation AAA found he committed: "No Shareholder shall be entitled to withdraw any part of his or its capital (prorated per share) or to receive any distribution from the Corporation except as specifically provided herein." He urges us in effect to spare him the remedy by unwinding the violation, reasoning that acts in excess of his authority should have no effect, including on him. But the provision Gilberg invokes limits only what Gilberg may permissibly do, not what remedies an arbitrator may impose should he exceed that limitation.

Gilberg protests that his treatment represents an unfair deviation from AAA's invalidation of a share transfer between Mednik and his wife—a transfer that *Gilberg* had instigated to prevent Mednik from voting those shares. AAA found that Mednik had never authorized Power Architects to transfer Mednik's shares to his wife. AAA's decision to thwart Gilberg's attempt to divest Mednik of shares does not limit AAA's discretion to remedy the harm caused by Gilberg's phantom sales of his own shares by upholding the sales and awarding damages.

Gilberg maintains that he could not have reduced his shareholdings by selling his shares back to Power Architects because there was no vote to permit him to do reduce his shareholdings—and he himself would have vetoed any attempt to reduce his shareholdings. We take as undisputed that Gilberg would have abstained from violating the August Agreement had he anticipated the consequences. This does nothing, however, to change AAA's factual finding that Gilberg did sell his shares back to the company without authorization. AAA had authority to fashion an appropriate remedy.

AAA's exclusion of what Gilberg now maintains was David Lee's expert opinion to the contrary does not alter this conclusion. AAA was not required to permit Lee to render a legal opinion.[11] (See *City of Rocklin v. Legacy Family Adventures-Rocklin, LLC* (2022) 86 Cal.App.5th 713, 728 ["an expert is not permitted to give an opinion on questions of law or legal conclusions"].)

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[11] Gilberg contends that the exclusion of Lee's opinion is reviewable under section 1286.2, subdivision (a)(5), which permits vacatur where a party's rights are substantially prejudiced by the arbitrators' refusal "to hear evidence material to the controversy." Even if the statute provides a vehicle to review this evidentiary ruling (cf. *Heimlich*, *supra*, 7 Cal.5th at p. 368), Gilberg has not shown that the exclusion was inappropriate.

Nor has Gilberg supplied any basis to disturb AAA's rejection of his contention that Mednik and Kesel ratified his decision to "sell" his shares to Power Architects without surrendering those shares.

G. *AAA's Determination of Other Issues*

Beyond his challenges to the arbitration proceeding itself, Gilberg contends that AAA exceeded its authority by (1) treating Power Architects as if it were subject to Corporations Code section 310; (2) awarding treble damages and attorney fees under Penal Code section 496; and (3) permitting intimidation to undermine the integrity of the proceedings. None of these contentions supplies a basis for reversal.

1. *Corporations Code Section 310*

AAA ruled that Gilberg's self-dealing stock transactions violated Corporations Code section 310, subdivision (a)(1) through (2) because the transactions were not disclosed to and approved by the shareholders, the board, or a committee. (This was in addition to AAA's ruling that the same transactions amounted to a breach of fiduciary duty and fraud.) Gilberg contends that Power Architects was governed exclusively by the August Agreement and not the Corporations Code. Gilberg's contention seems to rest on what he describes as "25 years of consistent shareholder governance" or a handful of provisions in the August Agreement he maintains implied an intention to manage Power Architects as a closed corporation exempt from Corporations Code section 310, subdivision (a)(1) through (2). Nothing in Gilberg's argument makes AAA's application of the statute an exercise in excess of its authority. Nor does AAA's award rely on its application of the statute, given its alternative findings of breach of fiduciary duty and fraud.

2. *Penal Code Section 496*

Gilberg contends that AAA exceeded its authority by awarding treble damages and attorney fees for a violation of the August Agreement that AAA also found to violate Penal Code section 496. We disagree.

Penal Code section 496, subdivision (a) prohibits a person from "buy[ing,] . . . receiv[ing]," or "conceal[ing], sell[ing], [or] withhold[ing] . . . from the owner" "any property that has been stolen or . . . obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained." Beyond potential criminal prosecution and sentencing, the statute creates a private right of action. "A principal in the actual theft of the property may be convicted pursuant to [that] section." (Pen. Code, § 496, subd. (a).) "Any person who has been injured by a violation of subdivision (a) . . . may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees." (*Id.*, subd. (c).)

Relying on *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, AAA applied Penal Code section 496, subdivision (c) because "Gilberg acted knowingly and intentionally and with intent to deceive, abused his offices as CEO and a director of Power Architects, and violated the trust of his fellow officers, directors and shareholders in inflating and diverting payments to himself and his family members."[12] (See *Siry*, at p. 339 [applying Pen. Code, § 496, subd. (c) to the "fraudulent diversion of a partnership's cash distributions"].) AAA also found that Gilberg's conduct violated the August Agreement. The parties' dispute about the proper remedy for violations of the agreement is within the scope of the arbitration. (See *Heimlich*, *supra*, 7 Cal.5th at p. 358.) There being no express and unambiguous agreement to limit the scope of remedies, AAA was entitled to award any relief rationally related to its factual findings and contractual interpretation. (*Ibid.*)

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[12] Gilberg maintains that because he and Mednik were responsible for the day-to-day management of the corporation, they both share equal responsibility for any improper distributions. Shared responsibility for management does not inexorably lead to shared responsibility for unilateral wrongdoing by a manager. We do not disturb AAA's factual finding that Gilberg alone was responsible for the wrongful distributions or that Gilberg alone should be held liable for his wrongdoing.

3. *Intimidation*

Gilberg contends that Mednik and Kesel undermined the integrity of the proceedings through intimidation—by variously (1) falsely claiming that Gilberg and Kolchinsky tried to oust them; (2) pushing to dissolve the company as a condition of settlement, in breach of assurances that the company would not be dissolved without consent;[13] and (3) attempting to discredit Kolchinsky as a purported target of Russian gangsters. Gilberg contends that AAA failed "to address these distortions," such that its award should be vacated under section 1286.2, subdivision (a)(5).

At the threshold, however, Gilberg misconstrues the statute as requiring express rulings on the significance of proffered evidence, rather than the bare hearing of material evidence. And the first two issues relate to factual disputes AAA resolved against Gilberg, finding that (1) Gilberg and Kolchinsky did try to oust Mednik and Kesel; and (2) Mednik never dissolved the company. We lack any basis to revisit these factual findings.

As for Russian gangsters, we reject Gilberg's contention that AAA was required to address this testimony. Much like a court, an arbitration panel is not required to comment on every aspect of the evidence or the legal theories that parties elect to present, and Gilberg has shown neither that he asked AAA to do so nor that AAA's considering it unworthy of comment would exceed AAA's powers.

H. *Sanctions*

Power Architects moves for sanctions, arguing that Gilberg prosecuted a frivolous appeal and filed frivolous appellate motions. We will deny the motion.

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[13] We cannot identify any inconsistency between promising not to dissolve a company without consent and requesting consent to dissolve the same company as a term of settlement. AAA refused to award Gilberg relief based on the "dissolution discussions," noting that Mednik and Kesel agreed in writing not to dissolve the company without Gilberg's consent but not commenting on the terms of any settlement offers.

"Whether to impose appellate sanctions is a matter within our discretion. [Citation.] Under section 907 and California Rules of Court, rule 8.276(a)(1), we may award sanctions when an appeal is frivolous and taken solely to cause delay. '[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit. [Citation.]' [Citation.] 'The two standards are often used together, with one providing evidence of the other.' " (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1194.) The distinction between meritless and frivolous appeals is " 'vague,' " and "punishment should be used most sparingly to deter only the most egregious conduct" to avoid "chilling . . . the assertion of litigants' rights on appeal." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650–651.)

Here, although Gilberg has not prevailed, his subjective belief in the merit of his contentions is apparent. And while we hold Gilberg to the same standard as a represented litigant, we are not indifferent to the difficulty he faces in navigating the appellate process without counsel. (See *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1285.) We decline to impose sanctions on Gilberg based on either the relative merit of his unsuccessful appellate arguments or motion practice. The motion is denied.

III. DISPOSITION

The judgment is affirmed.

LIE, J.

WE CONCUR:

GROVER, Acting P. J.

WILSON, J.

Gilberg v. Power Architects Corporation
H052611

APPENDIX B

Opinion of the California Court of Appeal, Sixth Appellate District Kolchinsky v. Power Architects Corp., No. H052610 (Feb. 17, 2026) (companion case; includes Section F)

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

Filed
April 27, 2026
Clerk of the Court
Superior Court of CA
County of Santa Clara
20CV368701
By: hkeniston

RE: ALEXANDER KOLCHINSKY,
Plaintiff and Appellant,
v.
POWER ARCHITECTS CORPORATION,
Defendant and Respondent.

H052610
Santa Clara County Super. Ct. No. 20CV368701

*** * REMITTITUR * ***

I, Baltazar Vazquez, Clerk of the Court of Appeal of the State of California, for the Sixth Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on February 17, 2026, and that this decision has now become final.

____ Appellant ____X____ Respondent to recover costs
____ Each party to bear own costs
____ Costs are not awarded in this proceeding
____ See decision for costs determination

Witness my hand and the seal of the Court affixed at my office on April 21, 2026.

BALTAZAR VAZQUEZ
Clerk/Executive Officer

By: W. WILBOURN
Deputy Clerk

Filed 2/17/26 Kolchinsky v. Power Architects Corp. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ALEXANDER KOLCHINSKY, Plaintiff and Appellant, v. POWER ARCHITECTS CORPORATION, Defendant and Respondent.	H052610 (Santa Clara County Super. Ct. No. 20CV368701)

Alexander Kolchinsky, Larry Gilberg, Alexander Mednik, and Mark Kesel all hold shares in Power Architects Corporation. The five parties arbitrated a complex dispute involving the company. That arbitration resulted in an award that required Kolchinsky and Gilberg to pay Power Architects, declared that they held fewer shares than they claimed, and rejected their affirmative claims. Kolchinsky and Gilberg separately moved to vacate or correct the award and now separately appeal the trial court's judgment confirming the award. Here, we will affirm the judgment against Kolchinsky.

I. BACKGROUND

A. *Commencement and Consolidation of Arbitration*

Kolchinsky sued Mednik and Kesel for declaratory relief as to Kolchinsky's claimed shares in Power Architects.[1] Mednik and Kesel successfully compelled Kolchinsky to arbitrate his claim.

Mednik, Kesel, and Power Architects also demanded arbitration of claims against Kolchinsky and Gilberg and of Gilberg's claims against Power Architects, Mednik, and Kesel. The consolidated arbitration was conducted by a three-judge panel of the American Arbitration Association (AAA).

B. *AAA Findings and Award*[2]

Power Architects sells configurable and custom power supplies. Power Architects was founded by Gilberg and Mednik. Kolchinsky, Gilberg's close friend, helped set up the business. Power Architects was first incorporated in Delaware in 1997 but reincorporated in California in 1998.

Commencing in 1998, Gilberg, Mednik, and Kesel were all members of the Power Architects board. Gilberg was also the company's Chief Executive Officer (CEO) and secretary from 1998 until February 2019, when Mednik and Kesel voted to remove Gilberg as a director and eliminated the CEO position. Mednik was the company's president from its founding until December 2019. Kolchinsky served as a director to represent Gilberg's interests from the date of Gilberg's removal until 2021. In 2020, Power Architects reinstated the CEO position and appointed Vlad Pystin in that role. Pystin was not a shareholder. In 2021, Pystin replaced Kolchinsky on the board.

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[1] The suit initially included Gilberg as plaintiff, Power Architects as a defendant, and additional claims; Gilberg withdrew his claims and Kolchinsky filed an amended complaint with a single declaratory relief claim against Mednik and Kesel. Gilberg also filed another suit, which he was separately compelled to arbitrate.

[2] We draw this background from the AAA award.

Three successive shareholders' agreements were entered in 1998, the " 'May Agreement,' " " 'July Agreement,' " and " 'August Agreement.' " The May Agreement, signed by Gilberg, Mednik, and Kolchinsky, allocated 45,000 shares each to Gilberg and Mednik and 10,000 shares to Kolchinsky. It appointed Gilberg as CEO, Mednik as president, and Kolchinsky as vice-president and secretary. The July Agreement, entered in conjunction with receipt of funding from three individuals comprising an investor group, identified five shareholders: Gilberg with 55,000 shares, Mednik with 45,000 shares, Kesel with 15,300 shares, Oleg Sagodeev with 15,300 shares, and Boris Kesil with 3,400 shares. The five identified shareholders signed the July Agreement. Kolchinsky was not mentioned in the July Agreement and did not sign it. The August Agreement was executed by the five signatories to the July Agreement. The August Agreement was substantially the same as the July Agreement, except that Gilberg and Mednik each were allocated 50,000 shares.

Of the three, AAA ruled that "the August Agreement governs the parties' rights and obligations and is the operative agreement for all practical purposes." AAA rejected Kolchinsky's contention that he was entitled to 10,000 shares under the May Agreement. But it ruled that Kolchinsky had since acquired 7,210 shares, about half the combined total he claimed. AAA denied various other claims Kolchinsky asserted in the arbitration. AAA ordered Kolchinsky to pay Power Architects $35,786 in incurred and unpaid AAA arbitrator compensation.

C. *Motion to Vacate and Appeal*

After arbitration, Kolchinsky's declaratory relief suit was consolidated with Gilberg's civil suit. Power Architects moved to confirm the AAA award. Kolchinsky and Gilberg separately moved to vacate and correct the awards. In a single order, the trial court granted Power Architects' motion and denied the motions filed by Kolchinsky and Gilberg. The trial court entered judgment declaring that Kolchinsky owns 7,210 shares of Power Architects stock and requiring Kolchinsky to pay Power Architects $35,786 plus interest. Kolchinsky timely appealed.[3]

II. DISCUSSION

Kolchinsky contends that the trial court should have vacated the arbitration award under Code of Civil Procedure section 1286.2, subdivision (a)(4) because AAA exceeded its powers.[4] Kolchinsky's specific arguments relate to the process for retaining and directing counsel to prosecute Power Architects' claims, Kesel's alleged forfeiture of his shares and associated rights, and the allocation of 10,000 shares to Kolchinsky under the May Agreement. Kolchinsky in our independent judgment supplies no statutory basis to vacate or correct the award.[5]

A. *Legal Principles*

Courts generally "cannot review arbitration awards for errors of fact or law, even when those errors appear on the face of the award or cause substantial injustice to the parties." (*Sargon Enterprises, Inc. v. Browne George Ross LLP* (2017) 15 Cal.App.5th 749, 763.) Judicial review of private arbitration awards is limited to enumerated statutory grounds to vacate or correct the award. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28 (*Moncharsh*).) Kolchinsky invokes section 1286.2's provision for vacatur when "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (§ 1286.2, subd. (a)(4).)[6]

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[3] The judgment also addressed the dispute between Power Architects and Gilberg. Gilberg appealed separately.

[4] Undesignated statutory references are to the Code of Civil Procedure.

[5] We reach neither Power Architects' contention that certain of Kolchinsky's "specific legal theories" are forfeited on appeal because they were not raised in the trial court nor Kolchinsky's related contention that his reply brief in the trial court was enough to preserve issues for resolution in that forum.

[6] Kolchinsky also invokes section 1286.2, subdivision (a)(5), which provides for vacatur when "[t]he rights of the party were substantially prejudiced by . . . the refusal of

" ' "[A]rbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact." ' " (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 917.) "Arbitrators may exceed their powers by issuing an award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy" (*id.* at p. 916) or where public policy renders the entire contract containing the arbitration agreement unenforceable (*Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc.* (2018) 6 Cal.5th 59, 73, 80, 87).

While the scope of judicial review of an arbitration award is narrow, our review of the trial court's order confirming the arbitration award is de novo. (See *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9.)

B. *Kolchinsky's Motion*

Kolchinsky has moved this court "to determine, as a threshold jurisdictional matter, whether [r]espondents possess the authority to act on behalf of Power Architects." Although reviewing courts must be satisfied of their own jurisdiction before proceeding to the merits (see *Steel Co. v. Citizens for a Better Environment* (1998) 523 U.S. 83, 94–95; *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339), Kolchinsky challenges neither the trial court's jurisdiction to review the arbitration award nor our jurisdiction to review the trial court's judgment. Indeed, it is our jurisdiction that he is invoking, as the appellant, much as he sought the trial court's jurisdiction to review the arbitration award. Rather, Kolchinsky's motion is an unauthorized supplemental brief on the merits of his argument that the arbitration award was in excess of AAA's powers. The motion is denied.

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the arbitrators to hear evidence material to the controversy." But he does not identify evidence that AAA refused to hear. His argument appears to be that AAA's legal analysis was flawed because it deemed a factual dispute immaterial, not that it refused to hear the evidence on both sides of that dispute.

C. *Kolchinsky's Requests for Judicial Notice*

Kolchinsky filed in this court three requests for judicial notice,[7] each of which we grant only in part.

Under Evidence Code section 451, we take judicial notice of the existence and content of documents filed in the trial court in this case before judgment that are not otherwise in the appellate record.[8] (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; see also *Estate of Sanchez* (2023) 95 Cal.App.5th 331, 336, fn. 5 [explaining that courts have "discretion to augment the record with materials that were before the trial court when it issued the order on appeal"].) But our judicial notice is limited to the existence of each document in the court file and does not extend to the truth of hearsay statements within those documents. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) Nor will we take judicial notice of evidence not presented to the trial court, because Kolchinsky has not

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[7] Kolchinsky filed his first request for judicial notice with his opening merits brief. He filed the other two between the filing of his opening brief and Power Architects' response brief. In his second request for judicial notice, Kolchinsky requested judicial notice of all matters for which Gilberg requested judicial notice in Gilberg's separate appeal, through motions Gilberg filed on April 8, 2025, May 1, 2025, and May 8, 2025. We deferred ruling on all three requests for consideration with the merits. Kolchinsky's unopposed motion to strike the untimely oppositions to the first two requests for judicial notice is granted.

[8] Our grant of judicial notice is limited to: (1) Excerpts from the July 24, 2020 complaint Gilberg filed in what is now the lead case in the consolidated trial court proceeding; (2) the October 5, 2020 Pystin declaration filed in the same suit; (3) excerpts from the October 26, 2020 complaint Kolchinsky and Gilberg filed in this action; (4) an excerpt from a brief filed in the trial court regarding the petition to vacate; and (5) excerpts from the April 4, 2024 Gilberg declaration. The requests are otherwise denied.

shown any exceptional circumstance that would warrant our taking so extraordinary a measure.[9] (See *In re K.M.* (2015) 242 Cal.App.4th 450, 456.)

D. *The Scope of Arbitration*

Under the May Agreement, "[s]hould any dispute arise between any one or more of the parties to this agreement as to their rights under any provisions of this agreement, the parties . . . agree to refer such dispute to [AAA], whose decision on the questions shall be binding on the parties and shall be without appeal." The trial court ruled that this dispute resolution provision constituted an agreement to arbitration and that Kolchinsky's single claim for declaratory relief of his shareholder status fell within the agreement's scope. (See generally *Ahern v. Asset Management Consultants, Inc.* (2022) 74 Cal.App.5th 675, 687 [explaining that courts ruling on arbitration petitions assess "whether an agreement to arbitrate exists [citations] and, if so, whether the parties' dispute falls within the scope of that agreement"].)

The trial court reserved for arbitral determination whether other provisions of the May Agreement may have been "superseded or rescinded by operation of law or the parties' conduct." (See *Heimlich v. Shivji* (2019) 7 Cal.5th 350, 358 [acknowledging an arbitrator's general " 'authority to find the facts, interpret the contract, and award any relief rationally related to [these] factual findings and contractual interpretation' "].) Kolchinsky misconstrues the order compelling arbitration as establishing that *all* the provisions in the May Agreement were enforceable, even though the trial court expressly refused to reach the latter question.

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[9] Beyond documents never presented in the trial court, Kolchinsky's requests for judicial notice also extend to various authorities and facts derived from the appellate record, including of documents already in the appellate record. We thus deny these requests as at best superfluous and, alternatively, as unauthorized supplemental briefing on the merits.

As a corollary to his all-or-nothing view of the May Agreement, Kolchinsky contends that AAA undermined its own jurisdiction by ruling that the May Agreement was superseded by the August Agreement and rejecting his claim to shares under the May Agreement. Not so. AAA ruled that the August Agreement "governs the parties' rights and obligations and is the operative agreement *for all practical purposes*." (Italics added.) But it stopped short of ruling that the August Agreement superseded the May Agreement's dispute resolution provision. AAA's practical purposes did not extend to reviewing, let along contradicting, the trial court's ruling that the dispute resolution provision in the May Agreement remained effective to compel Kolchinsky to arbitrate his claimed rights under the August Agreement. Indeed, AAA's finding that Kolchinsky executed the May Agreement is consistent with the trial court's application of the arbitration provision in that agreement. Kolchinsky, whose substantive claim regarding his status as a shareholder relies on the continued effectiveness of the May Agreement, does not dispute the existence of the May Agreement or that its dispute resolution provision encompasses disputes concerning his rights under the agreement.

E. *Appointment of Pystin and Retention of Michael Martinovsky*

Recognizing that AAA rejected challenges to Pystin's appointment as CEO or Power Architects' retention of Martinovsky, Kolchinsky contends that AAA's rulings on these matters justify vacating the arbitration award as inconsistent with the shareholders' agreements and public policy ensuring that corporate counsel remains neutral in shareholder disputes. In support, Kolchinsky first posits that the May Agreement and August Agreement prevented Pystin from serving as CEO because Pystin was not a shareholder; from this Kolchinsky asserts that Pystin lacked authority to retain Martinovsky to represent Power Architects in arbitration. These arguments rest on Kolchinsky's fundamental disagreement with AAA's construction of the shareholders' agreements. But AAA did not exceed its power in adopting an interpretation at odds with Kolchinsky's.

The May Agreement contained a provision appointing Gilberg, Mednik, and Kolchinsky as officers of the corporation for so "long as [they] remain[] . . . shareholders and perform faithfully, efficiently, and competently for the Corporation." The same provision stated that if any of them ceased to be a shareholder, that person "shall submit . . . [their] resignation as an officer when [they] transfer[] [their] shares." We accept Kolchinsky's assertion that the August Agreement has an analogous provision.[10]

Kolchinsky's arguments rest on the premise that this agreement by Gilberg, Mednik, and Kolchinsky to condition their own appointment as officers on shareholder status also limited Power Architects' appointment of any successor officers like Pystin. AAA interpreted the provision differently, ruling that it did "not prohibit the appointment of non-shareholders as officers." Even if AAA's interpretation of the provision were subject to judicial review, we see in the provision's plain language no restriction on the potential pool from which *future* officers may be selected.[11]

Kolchinsky asserts that Power Architects is foreclosed from relying on AAA's interpretation of the provision, based on purported admissions by Pystin and Martinovsky that only shareholders could serve as officers. But like the May Agreement itself, the declarations Kolchinsky relies on merely recite that the officers appointed under that agreement—Gilberg, Mednik, and Kolchinsky—would be shareholders; they do not say that only shareholders could be appointed as officers in the future.

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[10] The August Agreement is not part of the record in Kolchinsky's appeal. But the trial court order compelling Gilberg to arbitrate his employment claims describes an analogous provision in the August Agreement as a basis for compelling Gilberg to arbitrate his claim for wrongful termination. AAA interpreted the relevant provision of the August Agreement in its ruling.

[11] We reject the premise of Kolchinsky's related argument that AAA was bound to enforce the provision as Kolchinsky understands it because the trial court adopted that construction when it compelled Gilberg to arbitration. The trial court did not adopt Kolchinsky's construction; it left the proper construction of the provision to AAA.

We understand Kolchinsky's challenge to Martinovsky's retention to be derivative of his challenge to Pystin's appointment, so as AAA determined, it fails for the same reason.

Kolchinsky argues that Martinovsky's representation of Power Architects in an arbitration against two shareholders is against a public policy requiring corporate counsel to remain neutral in shareholder disputes. This was more than a shareholder's disagreement with management of the corporation: The parties' dispute involved Gilberg's employment claims against the company, the company's fraud claims against Gilberg, and the company's request for a declaration regarding allocation of its shares. In arbitration, in the trial court, and on appeal, Martinovsky represented only the company. We cannot identify a public policy or conflict of interest that precludes his representation of Power Architects. (See *Coldren v. Hart, King & Coldren, Inc.* (2015) 239 Cal.App.4th 237, 249 [explaining that counsel representing an organization treats the organization itself as the client]; Rules Prof. Conduct, rule 1.13(a) ["A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement"].)

Kolchinsky also contends that (1) Martinovsky falsely asserted that Kolchinsky had not challenged Martinovsky's status as counsel,[12] and (2) in the trial court, Martinovsky misrepresented AAA's findings about Kesel's alleged bankruptcy fraud. Kolchinsky neither substantiates his claims with competent evidence nor persuasively explains how his claims, if substantiated, would be a basis for reversal.

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[12] In support, Kolchinsky cites handwritten notes of Martinovsky's statement to a Power Architects' expert witness at a hearing.

F. *Kesel's Shareholder Status*

In arbitration, Kolchinsky unsuccessfully claimed that Kesel in purchasing his shares laundered the proceeds of criminal activity and fraudulently concealed his shares from criminal forfeiture and a bankruptcy proceeding. Kolchinsky contends that AAA's award should be vacated because it validated unlawful conduct by Kesel, thereby contravening public policy. We disagree.

AAA's analysis of the impact of the federal proceedings on Kesel's status as a shareholder was within the scope of its power as the arbiter of his rights under the August Agreement. AAA did not decide in the first instance whether Kesel's shares should be forfeited to the federal government, whether Kesel's shares should be included in a bankruptcy estate, or whether Kesel could or should be prosecuted for the fraud that Kolchinsky alleges.

In some tension with the general course of his argument, Kolchinsky argues that AAA had to assess whether Kesel acted with a culpable mens rea when he disclosed assets for the purpose of the federal criminal proceeding and the bankruptcy. But AAA was assessing whether Kesel's shares had in fact been forfeited, not whether Kesel had committed uncharged federal offenses or whether federal prosecutors should have taken Kesel's shares from him.

Kolchinsky's remaining arguments boil down to his assertion that AAA reached the wrong result—it should have concluded that Kesel had forfeited his shares in the federal criminal proceedings or the bankruptcy. This is a quintessential determination of a mixed question of fact and law, which we may not review for error. (See *Moncharsh*, *supra*, 3 Cal.4th at p. 11.)

G. *AAA's Determination of the Merits*

Kolchinsky contests AAA's resolution of his shareholder status. As a shareholder under the May Agreement, he contends that AAA's determination that the May Agreement was superseded by the August Agreement is contrary to the May Agreement's express terms and thus beyond the scope of AAA's authority. AAA did not exceed its authority by addressing that issue: As we have explained, Kolchinsky's claim that he is entitled to shares by the May Agreement is within the scope of that agreement's arbitration provision.

Nor does AAA's determination of Kolchinsky's claim otherwise implicate any statutory ground for correction or vacatur. AAA interpreted the May Agreement to be modifiable by mutual consent "without a writing" and found Kolchinsky's claim to 10,000 shares under the May Agreement barred by the statute of limitations or laches. Whatever the merits of this analysis, we reject Kolchinsky's suggestion that it exceeded the scope of AAA's authority, and we do not review the sufficiency of the evidence supporting AAA's award. (See *Moncharsh*, *supra*, 3 Cal.4th at p. 11.)

H. *Sanctions*

We exercise our discretion to deny both sides' cross-motions for sanctions, filed after merits briefing was complete. Section 907 and California Rules of Court, rule 8.276(a)(1) permit us to award sanctions "when an appeal is frivolous and taken solely to cause delay." (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1194.) But " '[a]n appeal should be held to be frivolous only when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit.' " (*Ibid.*) The distinction between meritless and frivolous appeals is " 'vague,' " and "punishment should be used most sparingly to deter only the most egregious conduct" to avoid "chilling . . . the assertion of litigants' rights on appeal." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650–651.)

To be sure, Kolchinsky has not prevailed, but we cannot say he prosecuted his claims for an improper motive. And while we hold Kolchinsky to the same standard as a represented litigant, we are not indifferent to the difficulty of navigating the appellate process without counsel. (See *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1285.) So we decline to impose sanctions on Kolchinsky, either for his unsuccessful appellate arguments or for his motion practice.

Nor do we view Power Architects' motion for sanctions as sanctionable conduct: On the merits of Kolchinsky's appeal, Power Architects has decidedly prevailed. We accordingly deny Kolchinsky's motion for sanctions (and acknowledge the forbearance from any reciprocal sanctions-on-sanctions motion by Power Architects).

III. DISPOSITION

The judgment is affirmed.

LIE, J.

WE CONCUR:

GROVER, Acting P. J.

WILSON, J.

Kolchinsky v. Power Architects Corporation
H052610

APPENDIX C

Order Denying Rehearing California Court of Appeal, No. H052611 (Mar. 9, 2026)

Court of Appeal, Sixth Appellate District
Baltazar Vazquez, Clerk/Executive Officer
Electronically FILED on 3/9/2026 by S.Ramirez, Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

LARRY GILBERG,
Plaintiff and Appellant,
v.
POWER ARCHITECTS CORPORATION,
Defendant and Respondent.

H052611
Santa Clara County Super. Ct. No. 20CV368701

BY THE COURT*:

Appellant's petition for rehearing is denied.

Date: 03/09/2026 ______ A Grover ______ Acting P. J.

*Before Grover, Acting P.J., Lie, J., and Wilson, J.

APPENDIX D

Order Denying Review Supreme Court of California, No. S295751 (Apr. 1, 2026)

SUPREME COURT
FILED

APR - 1 2026

Jorge Navarrete Clerk

Deputy

Court of Appeal, Sixth Appellate District - No. H052611

S295751

IN THE SUPREME COURT OF CALIFORNIA

En Banc

LARRY GILBERG, Plaintiff and Appellant,

v.

POWER ARCHITECTS CORPORATION, Defendant and Respondent.

The request for judicial notice is granted.
The petition for review and application for stay are denied.

GUERRERO

Chief Justice

APPENDIX E

Order Confirming Arbitration Award Superior Court of Santa Clara County, No. 20CV368701 (Hon. Amber E. Rosen) (July 19, 2024)

FILED
JUL 22 2024
Clerk of the Court
Superior Court of CA County of Santa Clara
BY F. SAMOY DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

LARRY GILBERG, ET AL., Plaintiffs. vs. POWER ARCHITECTS, INC., ET AL., Defendants	Case No. 20CV368701 (Consolidated with 20CV372737) ORDER RE: PETITION TO VACATE/CORRECT ARBITRATION AWARD

Power Architects Corporation (PA) moves to affirm the final arbitration award issued by the American Arbitration Association on January 10, 2024 in AAA Case No. 01-20-0015-0897 (consolidated with Case No. 01-21-0002-1117). At the same time, Larry Gilberg moves to vacate and correct the August 31, 2023 Interim and January 10, 2024 Final Arbitration Awards. Alexander Kolchinsky separately moves to vacate and correct the Interim and Final Arbitration Awards. A hearing was held on July 19, 2024 in Department 16 before the Honorable Amber Rosen. Considering the briefs and arguments made by all parties, the Court rules as follows:

I. LEGAL STANDARD FOR CONTESTING THE ARBITRATION AWARD

A court may vacate an arbitral award only on certain grounds enumerated by statute. *Hightower v. Superior Court* (2001) 86 Cal.App.4th 1415, 1433. These grounds are set forth in the Code of Civil Procedure and do not reflect error in the merits of the decision, but rather"'circumstances involving serious problems with the award itself, or with the fairness of the arbitration process.' " *Id.* at 1432–1433. A basis for vacatur includes when: (1) an award fails to fully "determin[e] . . . all the questions submitted to the arbitrators[,] the decision of which is necessary in order to determine the controversy" (CCP § 1283.4; see *M. B. Zaninovich, Inc. v. Teamster Farmworker Local Union 946* (1978) 86 Cal.App.3d 410, 415; (2) "[t]he arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted" (CCP § 1286.2(a)(4)); and (3) "[t]he rights of the party were substantially prejudiced by the refusal of the arbitrators . . . to hear evidence material to the controversy." (CCP § 1286.2 (a)(5).) "Thus, both because it vindicates the intentions of the parties that the award be final, and because an arbitrator is not ordinarily constrained to decide according to the rule of law, it is the general rule that, 'The merits of the controversy between the parties are not subject to judicial review.' More specifically, courts will not review the validity of the arbitrator's reasoning. Further, a court may not review the sufficiency of the evidence supporting an arbitrator's award." *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10-11 (citations omitted).

II. GILBERG'S MOTION

Because Gilberg's motion to vacate and correct the awards includes the basis for Gilberg's opposition to PA's motion, the motions will be treated together. Basically, Gilberg claims the awards should be vacated and/or corrected because (1) the arbitrators exercised authority outside their jurisdiction in reaching their decision; (2) Gilberg was prejudiced by the arbitrators' refusal to admit testimony from David Lee; (3) the arbitrators improperly trebled the wage payments to Gilberg's wife and mother; and (4) the arbitrators wrongly ordered Gilberg to pay attorney's fees.

A. TIMELINESS

The parties dispute whether Gilberg's motion to contest the interim award is timely. The Court will not address timeliness, because even if Gilberg's motion is timely, it lacks merit.

B. WHETHER THE ARBITRATORS EXCEEDED THEIR AUTHORITY

Gilbert contends that the Panel exceeded its jurisdiction when it allegedly ignored Provision 7 and Provision 4 of the parties' Shareholder Agreement which prohibits the redemption of any shares unless all shares are redeemed. Ex. 3 to Gilberg Decl.; Motion pp9-10 and Reply Motion p13. Gilberg claims he could not have redeemed some of his shares, as found by the Panel, as that was not permitted under the Agreement. One issue for the arbitrators was whether Gilberg breached the Agreement by making the redemptions. Gilberg's counsel, Richard Avila, argued at the July 19th hearing that during the arbitration proceedings Gilberg claimed he had not breached the Agreement, and made no argument about Provision 7. The Panel found that Gilberg breached the Agreement, in part by redeeming shares. See Ex H to Martinovsky Decl, p51 ("Gilberg put his own self-interest ahead of the interest of PA and other shareholders in the [sic] engaging in the undisclosed and unauthorized stock buybacks and continuing to distribute profits as though he had not sold any shares."); p52 (committing constructive fraud by "conduct[ing] stock sale transactions to further his private interests."); and pp56-60. Avila further stated at the July 19th hearing that Gilberg now concedes that he did breach the agreement, but that the Panel should not have found he redeemed partial shares as that was not allowed under Provision 7 of the Agreement. In treating Gilberg's sales as he himself treated them at the time, the Panel did not exceed its authority. Rather, it properly found that Gilberg breached the agreement by taking actions that were neither allowed nor disclosed and held him accountable for it. The Panel did not need to rewrite his actions and act as though Gilberg had abided by the very Agreement he breached. Nor was it required to adopt arguments never presented to it. Gilberg's disagreement with the Panel's decision does not warrant a correction or vacatur of the Awards. The Panel acted within its jurisdiction in determining that by redeeming some of his shares, Gilberg breached the agreement. As such, its decision is binding.

C. EXCLUSION OF DAVID LEE TESTIMONY

Gilberg contends that the Panel's refusal to admit the proffered opinion of attorney David Lee substantially prejudiced him, as Lee's opinion constituted evidence material to his claim about the redemption of his shares. As Gilberg acknowledges, the Panel wrote a three-page order regarding why it was not admitting the testimony of Lee. See Ex. 9 to Gilberg Decl. The Panel found Lee's proffered opinion about Provision 7 irrelevant. Lee would have testified "to agreements that the parties are . . . to rescind all past redemptions." *Id.* at 2. But because none of the four principals testified to any such agreement, the Panel found such testimony irrelevant to the questions before it. *Id.* The email from Lee (ex. 8 to Gilberg Decl.), which Gilberg now claims was improperly excluded, is similarly irrelevant. It offers Lee's opinion as to how to restore Gilberg's shares, if one were so inclined. It offers nothing about how the redemptions should be viewed, given that they were not rescinded. Gilberg is not prejudiced by the exclusion of irrelevant evidence.

D. WHETHER TREBLED DAMAGES ARE GILBERG'S ALONE

Gilberg next argues that the Arbitrators improperly trebled the damages for the wage payments made to his wife and mother. In so arguing, Gilberg claims that the Arbitrators ignored Key Provisions of the Parties' August 1998 PA Shareholder Agreement because under Provision 13(a) he shared responsibility for the payments with Mednik, and as such he should not alone be liable for treble damages. This argument is without any merit. The Panel specifically found these payments to be theft from PA and that Gilberg "actively concealed payments to his family from the other shareholders and directors." Given that Gilberg actively concealed his payments, he alone is responsible for his theft.

E. WHETHER ATTORNEY FEES WERE PROPERLY AWARDED

Finally, Gilberg argues that he should not have to pay attorney fees because they arise solely from the 14th claim for relief which was added after the parties were sent to arbitration. Gilberg provides no law or facts to suggest that adding the claim was improper or even objected to at the time. As such he has failed to meet his burden to demonstrate that the award should be corrected or vacated on this basis.

Gilbert's motion is DENIED and PA's motion is GRANTED.

III. KOLCHINSKY'S MOTION

Alexander Kolchinsky, a shareholder of PA, also moves to correct or vacate the arbitration award. Kolchinsky claims that the arbitrators exceeded their powers under Section

1286(a)(4) by ignoring Provision 1 of the May Agreement. He also claims that the arbitrators exceeded their authority by failing to enforce Provision 4(b) of the agreement which required any buying or selling of shares to be in writing. He argues that the arbitrators denied him his rights to a fair hearing and the award is against public policy. Finally, he argues that the award should be corrected or vacated because his rights "were substantially prejudiced by the refusal of the arbitrators . . . to hear evidence material to the controversy," (CCP § 1286.2 (a)(5)), namely, the testimony of David Lee.

A. TIMELINESS

PA argues that Kolchinsky's objection to the arbitration award is not timely. The Court does not address this question, as even if the motion were timely, it lacks merit. As such the Court will instead address the merits.

B. WHETHER THE ARBITRATORS EXCEEDED AUTHORITY BY IGNORING PROVISION 1 OF THE MAY AGREEMENT

Kolchinsky argues that he was awarded 14,210 shares, but that the arbitrator's awarded him only 7,210, ignoring the 10,000 shares he was awarded under the clear language of Provision 1 of the May Agreement. The Panel agreed with Kolchinsky that he had 4,210 shares, resulting from his 1999 investment. Ex. H to Martinovsky Decl., p70. The Panel also agreed that Kolchinsky had an additional 3,000 shares given to him by Mednik and Gilberg beginning in 2004. Ex. H, pp70-71. Kolchinsky argues that the 3,000 shares for which he received distributions were from the initial grant of 10,000 shares from the May Agreement, not from a later grant as found by the Panel. As a result, Kolchinsky argues that the Panel should have awarded him another 7,000 shares from the May Agreement. He argues that because the Arbitrators omitted the shares that were unambiguously granted him under Provision 1 of the May agreement, they exceeded their jurisdiction.

The parties all agreed that there were three agreements: the May Agreement, the July Agreement, and the August Agreement. There is no dispute that the May Agreement awarded Kolchinsky 10,000 shares. Ex. H. p10. The parties disputed which agreement was the operable agreement. The Panel found that, except where otherwise and specifically noted, "the August

Agreement governs the parties' rights and obligations and is the operative agreement for all practical purposes." Ex. H, p.10. This finding is not beyond the authority of the Panel to make, and Kolchinsky does not argue that it is.

The Panel found that Kolchinsky did not, at the time of the arbitration, maintain the 10,000 shares granted under the May Agreement for two reasons. First, the July and August Agreements, to which Kolchinsky was not a party, did not award him any shares and superseded the May Agreement such that he did not have any shares as of the July Agreement. Ex. H, pp10 and 40. Secondly, the Panel found that even if the later agreements did not lawfully change Kolchinsky's share ownership, he was foreclosed by the statute of limitations and laches from making any claim to shares under the May Agreement. Specifically, the Panel found that Kolchinsky was aware since 1998 or 1999 that the July and August Agreements omitted him as a shareholder, yet he took no action for more than 20 years to assert any rights he thought he had under the May agreement. As such, he was time barred from making any claim to those 10,000 shares. Ex. H, pp39-40; 68-72.

The Panel did not ignore the May Agreement or fail to consider its clear provisions. Rather, it found based on the evidence that Provision 1 of the May Agreement was no longer operable and that Kolchinsky had no shares under the May Agreement. This finding is not beyond the jurisdiction of the Panel. Kolchinsky's disagreement with their reasoning and findings from the evidence is not a basis to correct or vacate the award and this claim is DENIED.

C. WHETHER THE PANEL EXCEEDED ITS AUTHORITY BY IGNORING PROVISION 4(b)

Kolchinsky argues that the Panel exceeded its authority by failing to apply Provision 4(b), which required the buying or sellling of shares to be documented in writing. The Panel found that under the plain language of the Agreement in OP 9, no writing was required to change the terms of the May Agreement. As a result, Kolchinsky had no shares under the May Agreement once the later Agreements were signed. There was, therefore, no need to apply OP

4(b) of the August Agreement, as by that time, Kolchinsky no longer possessed the 10,000 shares initially granted in the May Agreement.

D. WHETHER THE DECISION WAS MADE IN CONTRAVENTION OF PUBLIC POLICY

Kolchinsky next argues that the arbitration award is against his rights and public policy because (1) Kesel committed bankruptcy fraud and the arbitrators failed to apply judicial estoppel, thereby contravening public policy; (2) Kesel and Mednik were dishonest in their testimony, which is against public policy; and 3) PA's hiring of Mr. Martinovsky as counsel deprived him of a fair arbitration.

The Panel considered the issue of Kesel's bankruptcy fraud. It found Kesel's omission of his PA shares in the bankruptcy case did not change the result, that Kesel was not judicially estopped from taking the positions he did, and that Gilberg failed to carry his burden to establish forfeiture by Kesel of his PA shares either pursuant to the bankruptcy or in connection with his criminal case. Ex. H, pp42-46. Because the issue of Kesel's alleged bankruptcy fraud was fully considered by the Panel, but denied, Kochinsky was not denied a fair hearing on this basis and the decision does not contravene public policy.

Kolchinsky's claim that the dishonesty of Kesel and Mednik contravene public policy must also be denied. Credibility determinations are the province of the arbitrators and disagreement with their credibility findings is not a basis to vacate or correct an award.

The Panel fully considered the claims that PA did not have the authority to hire Mr. Martinovsky or that his hiring constituted a conflict of interest, and it denied those claims. Ex. H, pp 82-83. Kolchinsky provides no legal authority to suggest that the Panel committed legal error in making these findings (which would not be sufficient to correct the award in any event) or that he was deprived of a fair arbitration because of Mr. Martinovsky's hiring.

E. EXCLUSION OF DAVID LEE'S TESTIMONY

Kolchinsky argues that Mr. Lee should have been allowed to testify because he would have testified that Kolchinsky helped prevent the signing of an illegal agreement. Kolchinsky claims that Mednik and Kesel told Gilberg and Kolchinsky to sign an agreement dissolving PA, threatening to start arbitration proceedings if they did not do so. Kolchinsky states that Lee would have testified that dissolving PA, instead of reorganizing it, would have been illegal. But none of that is relevant. The fact is that PA was not dissolved. Lee's testimony of the legality of dissolving PA was not relevant to any of the issues before the arbitrators. Accordingly, Kolchinsky was not prejudiced by the Panel's exclusion of Lee's testimony.

F. ADDITIONAL CLAIMS MADE IN REPLY

In reply, Kolchinsky makes additional claims for vacating or correcting the arbitration award. New arguments made in rebuttal will not be considered, as it deprives the other side from being able to respond, particularly in a case such as this, where Kolchinsky offers no reason why new arguments could not have been raised in the opening brief. See *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 (issues raised for first time in reply brief are generally not considered, "because such consideration would deprive the respondent of an opportunity to counter the argument").

IV. CONCLUSION

Based on the above, the motions to vacate or correct the arbitration award are DENIED and PA's motion to confirm the award is GRANTED.

July 19, 2024

Amber Rosen

Hon. Amber Rosen
Judge of the Superior Court

APPENDIX F

Constitutional and Statutory Provisions Involved

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2 (Supremacy Clause)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. amend. XIV, § 1

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

11 U.S.C. § 349(b)(3)

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 541(a)(1)

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 542(a)

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 554(c)–(d)

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

28 U.S.C. § 1257(a)

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1334(e)(1)

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate[.]

21 U.S.C. § 853(a), (c)

(a) Property subject to criminal forfeiture.—Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation . . . .

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II, that the person forfeit to the United States all property described in this subsection.

(c) Third party transfers.—All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

18 U.S.C. § 152(1)

A person who—

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor; . . .

shall be fined under this title, imprisoned not more than 5 years, or both.

18 U.S.C. § 1956(h)

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 3284

The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

APPENDIX G-1

Excerpts of the AAA Arbitration Award (pp. 41, 43–46, 87, 94)

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

ALEXANDER MEDNIK, MARK KESEL,

Claimants,

v.

LARRY GILBERG, ALEXANDER KOLCHINSKY,

Respondents.

POWER ARCHITECTS CORPORATION, et al.

Claimants,

v.

LARRY GILBERG, ALEXANDER KOLCHINSKY,

Respondents.

AND RELATED COUNTERCLAIMS.

Case No.: 01-20-0015-0897 (lead)
(consolidated with Case No. 01-21-0002-1117)

INTERIM AWARD

Arbitrators: Francis J. Burke, Jr.
Hon. Chris Cottle (Ret.)
Gilda R. Turitz (Chair)

This claim lacks merit. First, by its terms, the May Agreement did not require modification to be in writing. Moreover, as previously shown, Kolchinsky was aware in 1998 or 1999 that Kesel had invested in PA, that the July Agreement had been signed and allocated Kesel shares, and that Kolchinsky had been omitted as a shareholder. Yet Kolchinsky took no action to assert any rights he believed he had under the May Agreement until more than 20 years had passed. For declaratory relief, the statute of limitation is based on the applicable statute for the underlying alleged wrong, here a breach of contract, which is four years. CCP § 337. To be timely, Kolchinsky needed to bring this claim by 2003, so it is time-barred by statute as well as being barred by laches for his unreasonable delay. *Highland Springs, supra*, 244 Cal. App. 4th at 282.

Accordingly, Kolchinsky has failed to sustain his burden on Respondents' Eighteenth Cause of Action, and his request for a declaration is denied.

2. Gilberg's Claim Against Kesel for Declaratory Relief Counterclaim, Seventeenth Cause of Action

Gilberg alleges in the Seventeenth Cause of Action that Kesel is not a shareholder on two grounds:

> "(a) Kesel lost a percentage of Power Architects shares, specifically shares he transferred to himself from ADLS, at the moment all ADLS assets were forfeited to the federal government; and (b) Kesel forfeited his remaining shares and ceased being a Power Architects shareholder under the terms of the July Agreement when he failed to disclose his Power Architects shares in his Chapter 11 bankruptcy and he obtained relief in bankruptcy court against the $1.4 million judgement secured against him by Applied Materials, automatically triggering provision 16, subsection 1." SAC ¶ 246.

In their briefing, Counterclaimants also assert that Kesel forfeited his PA shares through estoppel, equitably or judicially, by failing to disclose them in the bankruptcy and criminal cases.

a. The ADLS / Criminal Case Forfeiture Argument

As pleaded above, Gilberg must prove that Kesel transferred PA shares to himself from ADLS, which transferred shares he lost "at the moment all ADLS assets were forfeited to the federal government." This claim is first predicated on the assumption that ADLS owned shares of PA. Gilberg's arguments are based on his belief that ADLS is a shareholder of PA because OSM (the investment group of which Kesel was a part) owns ADLS. Vol. VI, 1239:1-4 (Gilberg). This assumption has not been proven for the following reasons.

It is undisputed that ADLS made two loans of $25,000 to PA, one of which was fully repaid. The other loan was converted to shares of PA in or around January 2001. According to a chart faxed on January 29, 2001 to Gilberg by Oleg Sagodeev, the distribution of PA shares from the ADLS $25,000 loan conversion was to Sagodeev, Kesel, Kesil, Rima Kantarov, and Vlad Kotlyarenko (all affiliated with OSM)), with the number of shares to each individual shown. RE-276; Vol. V, 1044:5-20 (Kesel). Gilberg did not respond concerning the share distribution or protest that the shares had to belong to ADLS and not individuals.

There is no documentary evidence that PA ever issued any shares to ADLS or considered ADLS a shareholder. Indeed, the documentary evidence is to the contrary, showing shareholdings by individuals and not ADLS, as per the below:

A PA balance sheet dated October 31, 2000 does not list any paid in capital by ADLS, as admitted by Gilberg. C-0040; Vol. VI, 1236:2-12 (Gilberg).

Gilberg prepared a dividend schedule dated as of March 31, 2005, that included 1,289 shares for Sagodeev of the 4,167 total shares issued to OSM members from the ADLS loan conversion as shown on RE-276. C-0084; Vol .VI, 1352:8-1353:9 (Gilberg). ADLS is not shown on this schedule as a recipient of dividends, and the dividend schedule prepared by Gilberg and relied on by Stern did not show any payments to ADLS. RC-1945.

A letter from Sagodeev's attorney dated October 19, 2005 to Gilberg also confirms that Sagodeev received 1,298 shares due to the ADLS loan conversion. RC-0032.

By letter dated March 10, 2008, Gilberg wrote to Sagodeev, confirming the number of shares Sagodeev had purchased before he sold some shares to Kesel and back to PA, which included 1,289 shares (consistent with the March 31, 2005 dividend schedule). C-0144. Gilberg testified that when he wrote that letter he thought "the whole thing belong to OSM" but he also believed that "[w]ithin their group they can shift the shares however they want." Vol. VI, 1350:16-24 (Gilberg). This comment also indicates that he understood individual ownership of the shares, not ownership by an entity such as ADLS.

Gilberg wrote an undated note to Boris Kesil apparently after September 2008 or in 2009, in which he confirmed the number of shares Kesil had before selling his PA stock to Kesel, that included Kesil's 603 shares from 1999 pursuant to the ADLS promissory note conversion. C-0886; Vol. VI, 1355:6-1356:2 (Gilberg).

On January 28, 2009, Gilberg wrote to Kotlyarenko's wife, Zhanna Shpits, referring to her purchase of 417 shares on February 28, 2000 which were the shares issued to Kotlyarenko from the ADLS conversion. C-0157; Vol. VI, 1356:9-25 (Gilberg).

The Panel finds by the weight of the evidence that ADLS never was a shareholder in Power Architects. Kesel and other members of OSM received shares pursuant to the ADLS loan conversion as individuals. Gilberg's own correspondence confirmed the individuals' ownership pursuant to the loan conversion to PA stock. Gilberg did not assert at the time that because the loan funds came from the entity ADLS (a limited liability company) rather than the individuals, in the conversion shares had to be issued to ADLS rather than the individuals as they apparently directed. Gilberg is estopped from taking an opposing position more than twenty years after the transaction occurred. *See, e.g.*, *Brown v. Brown*, 274 Cal. App. 2d 178, 188 (1969).

Gilberg further argues that the Final Order of Forfeiture ("Final Order") entered on August 5, 2004 in the federal government's criminal case (CR-00-40242 CW) against ADLS and Kesel required forfeiture of Kesel's PA shares owned at that time. On its face, the Final Order does not include any PA shares to be forfeited either by ADLS or by Kesel. C-0071. The Final Order requires Kesel to forfeit $1,150,000 and his interest in certain glassware and lab apparatus identified in an Attachment A but does not state anything about shares of Power Architects or any company. *Id.*

Gilberg's position is that Kesel was required but failed to disclose his PA shares to the government and they were therefore to be forfeited. Preceding the Final Order, on December 8, 2003, ADLS had entered into a plea agreement with the U.S. District Attorney's Office, signed by Kesel as its managing partner. Under the plea agreement, ADLS agreed to forfeit "all assets in any form, including ... all stocks, . . . ownership interests owned by, held for the benefit of, or representing any beneficial interest of ADLS." RC-0627, ¶ 8.

Gilberg's argument lacks merit because he failed to prove that ADLS ever owned or had any beneficial interest any of Kesel's PA stock. Therefore, the PA stock was not an asset encompassed by the plea agreement or the Final Order, which is controlling. As noted above, the Final Order did not address assets that had not been disclosed or might be discovered after the fact[25].

For the foregoing reasons, Gilberg has failed to carry his burden to establish forfeiture by Kesel of his PA shares to the U.S. Government and he is not entitled to the declaratory relief he seeks. This claim is denied.

b. The Bankruptcy Forfeiture Argument

Respondents contend that Kesel ceased being a voting PA shareholder due to the operation of OP 16, "Shareholder's Bankruptcy or Insolvency," in the shareholder agreements, which provides in pertinent part as follows:

> "A Shareholder shall cease to be a Shareholder and shall have no interest or liability in common with the remaining Shareholders of Corporation property when the Shareholder does any of the following:
>
> (1) Obtains or becomes subject to an order of relief under the Bankruptcy Code; . . .
>
> From the date of any of the above events, the Shareholder shall be considered in equity as a vendor to the Corporation of his share of the Corporation's assets. The Corporation shall have the right within 45 days to purchase the Corporation interest of the Shareholder for the purchase price and on the terms as hereinafter set forth. If the Shareholders elect that the Corporation shall not purchase said Corporation interest, those Shareholders wishing to purchase said Corporation interest shall have the right to do so within forty five (45) days thereafter. If neither the Corporation nor any Shareholders wish to purchase said Corporation interest, the Shareholders may elect to offer the interest to qualified third-party purchasers under the terms pursuant to Section 15 above. ..." C-0018.

[25] In July 2021, Gilberg sent a letter on this topic to prosecutor Karen Beausey at the U.S. Attorney's office and asked her to look into the government's interest in PA shares. She did not substantively respond or have any investigator reach out to Respondents about the issue. Vol. VI, 1242:20-1244:23 (Gilberg). Nor did Beausey contact Kesel after receiving Gilberg's letter. Vol. IV, 790:20-791:3 (Kesel).

On February 16, 2010, Kesel filed a Chapter 11 petition in the U.S. Bankruptcy Court, Northern District of California, Case No. 10-41653, signing the petition under penalty of perjury. SFI ## 9, 10. At the time that he filed his petition, Kesel owned PA shares but did not list them on the petition's Schedule B. SFI ## 12-14.

Kesel's bankruptcy filing was triggered by a federal court judgment for $1,427,000 for attorney fees entered against his company Multimetrixs, Kesel, and two other owners over a patent/reverse engineering dispute with Applied Materials. Kesel testified that the bankruptcy was intended to last while they pursued an appeal of the adverse finding on the reverse engineering issue. Vol. III, 675:21-676:12 (Kesel). After the appeal was unsuccessful, the parties settled globally by Applied Materials forgiving the judgment amount in exchange for Multimetrixs agreeing to allow Applied Materials to use its patents, to cease its reverse engineering, and agreeing not to sue. Vol. III, 652:8-20, 655:11-25, 677:13-18 (Kesel).[26]

On or about December 19, 2011, the Bankruptcy Court approved the settlement agreement with Applied Materials and Kesel promptly dismissed his Chapter 11 case. Vol. III, 677:22-24 (Kesel).

The parties dispute whether OP 16 is unenforceable as an *ipso facto* clause under 11 U.S.C. § 365(e) which does not permit the forfeiture of valuable property rights belonging to a bankrupt debtor. Claimants further contend that under California law, its application would be an unenforceable forfeiture, citing Cal. Civ. Code § 3275.

Bankruptcy Code Section 365(e) provides in relevant part that:

> (1) Notwithstanding a provision in an executory contract ..., or in applicable law, an executory contract ... of the debtor may not be terminated or modified, and any right or obligation under such contract ... may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract ... that is conditioned on --...
>
> (B) the commencement of a case under this title; ...

The parties' shareholder agreement is an "executory contract," and OP 16 classically fits within Section 365(e) as a contractual right that purports to terminate the debtor's shareholder status due to filing for bankruptcy (implicitly terminating his shareholder voting rights and purportedly changing his status to be considered "in equity" as a "vendor" to Power Architects of a forced sale of his shares). OP 16 therefore on its face directly conflicts with the protections for

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[26] Respondents contend that Kesel intentionally omitted the PA shares to mislead Applied Materials about his ability to pay the judgment, which it reduced to zero in the settlement. Kesel testified that it was not an intentional omission; that he disclosed $2.6 million in assets at the time of his bankruptcy; and that he was jointly and severally liable with Kesil and another owner for the judgment (so that there were substantial assets to pay Applied Materials' judgment). Vol. III, 676:22-677:3 (Kesel). He also testified that Applied Materials' primary objective was to resolve the patent dispute, and not recover its fee judgment, which is evident from the settlement agreement approved by the Bankruptcy Court. Vol. III, 677:4-21 (Kesel); Claimants' Pre-Hearing Brief at 2:7-14. The Panel deems it unnecessary to resolve the issue of Kesel's intent in omitting his shares in order to determine the operational effect of OP 16 on his ownership.

the debtor in § 365 and is unenforceable to deprive Kesel of his property interest and contractual rights in his PA shares.

Kesel's omission of his PA shares from his Chapter 11 Schedule B does not change the result. Bankruptcy Code Section 541 defines "property of the estate" as "all of a debtor's legal or equitable interests in property, wherever located, as of the commencement of the case." 11 U.S.C. § 541(a). As explained in *Samson v. W. Capital Partners, LLC (In re Blixseth)*, 684 F.3d 865 (9th Cir. 2012), "[n]othing in § 541 limits property of the estate to property scheduled by a debtor. ... Property of the estate, therefore, includes property not identified or listed on the bankruptcy schedules." *Id.* at 871. Therefore, although Kesel did not list his PA shares in his Chapter 11 case, those shares were part of the bankruptcy estate and reverted back in ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3) of the Bankruptcy Code, which provides in pertinent part as follows:

> Unless the court, for cause, orders otherwise, a dismissal of a case
> ...
> (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

The dismissal order in the Kesel bankruptcy did not "order otherwise" with respect to the revesting of the property to Kesel of his bankruptcy estate. Therefore, by operation of law, all of Kesel's property that was the subject of the bankruptcy estate, whether or not listed on his schedules, revested in Kesel personally – including his unlisted PA shares -- as he was the "entity in which such property was vested immediately before" he filed his Chapter 11 petition. 11 U.S.C. § 349(b)(3).[27] Section 349 "makes no distinction between those that were listed in the debtor's schedule of assets and those that were not" and "[t]he legislative history makes clear that Congress intended that a dismissal would undo the bankruptcy case." *Crawford v. Franklin Credit Mgt.*, 758 F.3d 473, 483-84 (2d Cir. 2014); *see also In re N. (In re Westwood Plaza North*, 2016 WL 11697859 at *4 (C.D. Cal. 2016) (following *Crawford*).

Further, the bankruptcy did not automatically deprive Kesel of his voting rights pursuant to OP 16, as Respondents assert. *See* 11 U.S.C. § 365(e)(1)(B). Even if Kesel had been deprived of voting rights during the period of his bankruptcy (February 2010 through December 2011), upon the automatic revestment of Kesel's PA shares after dismissal, his shares and their attendant obligations and rights, including voting rights, had been restored. *See* 11 U.S.C. § 349(b)(3). Moreover, the only voting issue with respect to Kesel of which Respondents complain occurred in February 2019, more than seven years after his bankruptcy case dismissal fully restoring to him his pre-petition property, including his PA shares, with their attendant voting rights.[28]

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[27] Moreover, even if OP 16 was enforceable (which the Panel finds is not the case), by its terms OP 16 required PA or its shareholders to follow steps to purchase Kesel's shares at the price designated in that provision or offer them to third parties if the shareholders agreed. No evidence was presented that PA followed any such procedures regardless of when PA first learned of the bankruptcy, which is factually disputed as explained above.

[28] The Panel declines to follow *Milford Power Co., LLC vs. PDC Milford Power, LLC*, 866 A.2d 738, 761-762 (Del. Chancery Court 2004) to strip Kesel of his voting rights. The case is factually inapposite and largely based on interpretation of Delaware statutes that have no applicability here. *Milford Power* found that Section 365(e) prevents forfeiture of the economic value of an LLC's membership interest held by a bankrupt LLC member but not the forfeiture of such member's LLC voting rights. The Chancellor conceded in the opinion that "Of course, I recognize that a reasonable mind could conclude that the outcome I reach is neither incontestably required by the applicable law nor economically optimal." *Id.* at 761.

Alternatively, Gilberg argues that Kesel "independently ceased to be a voting PA Shareholder under 11 U.S.C. § 554(d), as a consequence of his knowing and intentional failure to disclose his valuable PA Shares to the Bankruptcy Court, the Bankruptcy Judge, AMC, and/or any of Kesel's Creditors throughout his Bankruptcy Case while using that nondisclosure to persuade AMC to forgive for $0 its $1,427,000 Pre-Bankruptcy Judgment against him."[29] He contends that notwithstanding § 349(b), § 554(d) is strictly enforced to operate as a forfeiture provision when the debtor is a sophisticated businessperson who concealed a valuable property right in a prior bankruptcy case and substantially profited from the nondisclosure. They rely on *Kunica v. St. Jean Financial, Inc.*, 233 B.R. 46, 53-56 (S.D.N.Y. 1999), which *Crawford* cited but did not follow. They also rely on *Kilpatrick v. Kilpatrick,* 205 S.W. 3d 690, 701-703 (Tex. App. 2006) which they note was overruled. The Panel declines to find a forfeiture under § 554(d) based on the authorities relied on by Respondents.

c. The Estoppel Arguments

Further, Gilberg contends that because Kesel did not list his shares in the bankruptcy or through the plea agreement, constituting forfeitures, he made judicial admissions that he did not own the shares. Accordingly, Gilberg argues that Kesel is judicially estopped from taking a position inconsistent with those in earlier proceedings by voting to eliminate the CEO position held by Gilberg, voting him off the board, and bringing claims on behalf of himself and PA. Insofar as Kesel could have amended his bankruptcy petition at any time before the case was closed and he voluntarily dismissed it, the omission is not deemed a judicial admission. *Ellis v. Phillips & Cohen Assocs.*, 2015 U.S. Dist. LEXIS 93494 *11-12 (N.D. Cal. 2015) (finding that, in light of a subsequent dismissal of bankruptcy proceedings, plaintiff's failure to disclose certain claims in her bankruptcy petition was not a judicial admission), *citing Singer State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997) ("A trial judge has discretion whether to accept a judicial admission.").

The Panel declines to apply estoppel against Kesel under all of the circumstances described above, as a basis to strip him of his PA shares.

d. Gilberg's Claim Against Kesel Is Untimely

Finally, until the current dispute arose in 2019, Respondents never contended that Kesel was not a shareholder or lacked voting rights. Again, Gilberg has been untimely in asserting this claim. Gilberg testified that he did not learn of the bankruptcy until 2018 but never did anything. Vol. VI, 1373:21-1374:18 (Gilberg). This uncorroborated assertion is rebutted by Gilberg's own writing alluding to his concern about Kesel's bankruptcy and criminal case when they were trying to secure the Hydra project with Lam (which happened around 2015). C-0429, p. 1. Kesel, Mednik and Sandor Ruzsa also testified to Gilberg's knowledge years earlier. Kesel testified that he told Gilberg of the bankruptcy around the time that it occurred. Vol. III, 678:6-679:3 (Kesel). Mednik testified that Gilberg told him about Kesel's bankruptcy in 2010, in "real time." Vol. I, 68:15-24 (Mednik). Ruzsa testified that "in or about late 2017 or early 2018, when Mr. Gilberg was still the chief executive officer of PA, he informed me that Mr. Kesel had previously filed for bankruptcy and had a criminal conviction." C-1046 ¶ 7.

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[29] Respondents' Pre-Hearing Brief at 32:8-12.

During all those years Gilberg took no action and never raised an issue concerning Kesel's share ownership. Indeed, he distributed profits to Kesel throughout the entire time period, whenever profit distributions were made. Even crediting Gilberg's testimony as correct, Gilberg did not assert that the shares had been forfeited until the February 2019 meeting when he attempted to block Kesel from voting as a shareholder. Vol. III, 680:20-681:5 (Kesel).

Under these circumstances, Gilberg's claim is clearly time-barred and subject to laches for undue delay, as with the other bases for his declaratory relief cause of action.

For the foregoing reasons, Gilberg has failed to carry his burden to establish forfeiture by Kesel of his PA shares either pursuant to the bankruptcy or in connection with his criminal case, and he is not entitled to the declaratory relief he seeks. This untimely claim lacks merit on all points and is denied.

C. DERIVATIVE VERSUS DIRECT CLAIMS OF CLAIMANTS

The Panel has determined above that both Mednik and Kesel are legitimate shareholders of Power Architects. Both PA and the Individual Claimants have asserted multiple claims against Gilberg (and in one instance, Kolchinsky) that are substantively similar, if not identical, seeking the same relief. Those claims are breach of contract, breach of covenant of good faith and fair dealing, breach of fiduciary duty, fraud, Cal. Penal Code § 496(c), unjust enrichment, declaratory relief concerning Gilberg's equity interest, declaratory relief concerning Kolchinsky's equity interest, and constructive trust.[30] As a threshold issue, it must be determined whether the ICs or PA is the appropriate claimant for these duplicative claims.

PA asserts that these claims belong to the Company and not to individual shareholders. In *Schrage v. Schrage*, 69 Cal. App. 5th 126 (2021), the court explained that where a cause of action seeks to recover for harms to the corporation, the shareholders have no direct cause of action because a corporation exists as a separate legal entity and is the ultimate beneficiary of such a derivative suit:

> "An action is deemed derivative 'if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' [Citation.] When a derivative action is successful, the corporation is the only party that benefits from any recovery; the shareholders derive no benefit '"except the indirect benefit resulting from a realization upon the corporation's assets." [Citations and internal quotations omitted.]

Id., 69 Cal. App. 5th at 150.

The shareholders may bring a derivative suit to enforce the corporation's rights and redress its injuries when the board of directors fails or refuses to do so. Here, PA has brought suit to enforce its rights and redress its claimed injuries. Accordingly, to the extent that the Individual Claimants would be seeking to assert PA's rights, their claim is superfluous. But they are seeking

[30] Power Architects asserts additional claims that the ICs do not, and Mednik asserts one direct claim against Gilberg.

VII. ANALYSIS OF RESPONDENTS' CORPORATE COUNTERCLAIMS[44]

A. FRAUD AGAINST KESEL – FIRST CAUSE OF ACTION

In their First Cause of Action of their SAC, Respondents assert that Kesel committed fraud by not revealing, before executing the Shareholder Agreement in July 1998, that he was involved in illegal business transactions through his business, ADLS, specifically the sale of freon for production of methamphetamine, for which he was later convicted. They allege that "Kesel knew that the source of ADLS funds to be used for the capital contributions in exchange for shares of Power Architects was from illegal activities," knowingly concealed information from PA's founders with the intent to defraud them, and "the concealment concerned material facts, which the shareholders reasonably relied upon in selling shares to Kesel and issuing securities to their detriment." ¶¶ 128-132. They further allege that Gilberg and the founders were unaware of the illegal source of funds used to purchase PA shares and the concealment was essential to the founders' decision to sell PA shares to Kesel. ¶ 135.

Respondents further allege that the illegal funds invested by Kesel through ADLS "subjects the founders and Power Architects to criminal liability" and as a "proximate cause of Kesel's concealment, Gilberg, as well as the shareholders of Power Architects, have been injured in an amount to be proven at trial." ¶¶ 136, 138. They also claim that Kesel's concealment caused a decrease in the value of Power Architects shares to any potential investors and the founders. ¶ 134. However, there was no evidence of any decrease in value of shares due to any act or omission of Kesel.

In briefing, Respondents contend that PA and its founders were harmed by Kesel's concealment because of alleged exposure to criminal liability under the Money Laundering Control Act of 1986.

The Panel finds that this claim must be denied. First, this claim would belong to Power Architects insofar as the company, not Respondents, accepted Kesel's money in exchange for issuing stock. This claim has not, however, been brought as a derivative claim on PA's behalf and fails for that reason.

Further, insofar as this claim may be construed as being asserted by the individual Respondents, Kolchinsky lacks standing. He was not a signatory to the July Agreement through which Kesel became a shareholder. As discussed in previously, Kolchinsky was not even aware of the July Agreement at the time of its execution so could not possibly have been defrauded by the alleged concealment. Insofar as Gilberg is asserting a claim on his own behalf, he failed to prove that the funds invested by Kesel came from ADLS; there was no proof tracing the funds accepted from Kesel back to ADLS. Vol. III, 609:20-22 (Kesel); Vol. IV, 828:18-829:18 (Kesel).

The necessary elements of a concealment/suppression claim consist of (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (*i.e.*, to induce reliance); (4) justifiable reliance; and (5) resulting damage. *Hoffman v. 162 North Wolfe LLC*, 228 Cal. App. 4th 1178, 1185-86 (2014) (internal citations omitted). Respondents have failed to produce evidence that Kesel knew in July

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[44] Respondents' Sixteenth, Seventeenth, and Eighteenth Causes of Action in the SAC for declaratory relief concerning Mednik's and Kesel's shareholder status have already been discussed in Sections IV.A and B, *supra.*

1998 that he was engaging in the illegal sale of controlled substances when he invested in PA or knew that he was under investigation for illegal activities. Vol. III, 651:2-11; 654:13-22 (Kesel). The element of known concealment therefore was not proven.

Further, assuming that PA and its founders were exposed to potential criminal liability,[45] Respondents failed to prove any injury or damages as a result. For a fraud claim, damages are an essential element. *Hoffman, supra.*

Finally, this claim is time-barred. The statute of limitation for a fraud claim is three years from the date of discovery, by the aggrieved party, of the facts constituting the fraud. CCP § 338(d). Gilberg knew about Kesel's arrest by the latest on March 21, 2018, when he sent an email to Mednik and Pystin with a link to an article describing the raid on ADLS and suggested that Kesel invested his initial $50,000 into PA from ill-gotten gains from ADLS. C-0342; RE-32; RE-32A; Vol. VI, 1379:3-1381:6 (Gilberg). Therefore, Gilberg was on notice no later than March 21, 2018 of the facts giving rise to this concealment claim concerning Kesel's source of funds for his capital investment, but did not assert this claim until April 30, 2021, more than three years later. The claim is simply untimely.

For the above reasons, this claim is denied.

B. NEGLIGENT CONCEALMENT AGAINST KESEL – SECOND CAUSE OF ACTION

Respondents' Second Cause of Action for negligent concealment against Kesel is essentially the same as their fraud by concealment claim, except that Respondents allege that "[t]he concealment caused a decrease in the value of Power Architects shares rendering Kesel liable of [*sic*] negligent misrepresentation." ¶ 142. Respondents' Post-Hearing Brief (at 22:2-10) asserts that if the Panel does not find that Kesel had the requisite intent to conceal the illegal nature of his finances when investing in PA, then "he was negligent in not revealing this material fact to Power Architects at the time he negotiated his investment."

This claim fails for all the reasons stated with respect to the First Cause of Action, including Respondents' failure to prove any decrease in PA's share as a result of any conduct of Kesel. The claim is denied.

C. SHAREHOLDER LIABILITY FOR CORPORATE DISTRIBUTION AGAINST KESEL – THIRD CAUSE OF ACTION

Respondents assert that they bring this claim against Kesel on behalf of Power Architects pursuant to Corporations Code § 506(b) on the ground that he received distributions knowing that his shares were divested pursuant to the bankruptcy and his plea agreement with the federal government. The core of this claim is that Kesel did not own the shares and therefore is liable for the distributions he received. ¶¶ 146-150.

[45] Respondents unsuccessfully attempted to solicit an investigation by the United States Attorney's Office into Kesel's investment in PA. They did not demonstrate that Kesel's investment exposed PA to any criminal liability.

new allegations against Mednik and Kesel: they appointed non-shareholders to officer positions, stopped R&D, and failed to give Gilberg and Kolchinsky their proportional rights of management.

Gilberg asserts these claims under the July Agreement (¶ 159). The Panel has found that the operative agreement is the August Agreement, but the terms are essentially the same.

These claims are denied in their entirety as explained below.

Claims Against Mednik Only

1. **Isolator Loss.**

Gilberg fails to prove that Mednik breached his contractual duties under either the July or August Agreement by not bringing the Isolator project to a successful completion. This appears to be a claim of a failure to use "best efforts" to develop PA's "best interests" although Gilberg fails to prove or even allege whether this was Mednik's duty as a shareholder, officer, or director. In an event, the claim is not actionable because Gilberg failed to produce any evidence of damages to him related to the Isolator project. *See also* discussion in the Fourth Cause of Action.

2. **Distributions to Kesel**

Gilberg fails to prove that Mednik breached his contractual duties under any version of the Shareholders Agreement by allegedly approving distributions to Kesel in 2019-2022. Gilberg fails to prove or even allege whether this was Mednik's duty as a shareholder, officer, or director. Further, the Panel has found that Kesel is a legitimate shareholder.

3. **Microchip IP**

Gilberg alleges that Mednik breached the covenant not to compete in the July Agreement due to his work relating to power supplies (¶ 161(d)). Gilberg fails to prove that Mednik breached his contractual duties under any version of the Shareholders Agreement by having full time employment at Microchip and developing technology that is used in its integrated circuits. Vol. III, 550:14-16 (Mednik). At PA, Mednik deals with system-level designs, whereas at Microchip, Mednik deals with component-level designs. Vol. III, 551:7-9 (Mednik). Because PA is not a semiconductor manufacturer, the architecture that Mednik developed at Microchip could not be implemented at PA, unless PA completely pivoted its business model. Vol. III, 551:13-17 (Mednik).

Respondents have not put forth any credible evidence that the intellectual property that Mednik has created for Microchip competes with or negatively impacts PA. Moreover, as Niesar opined, OP 31, the covenant not to compete in each of the July and August Agreements is void pursuant to Bus. & Prof. Code § 16600. C-1048, 8:1. Therefore, Mednik cannot be found to have breached any contractual duty. This claim is baseless.

Claims Against Mednik and Kesel

1. **Appointing Non-Shareholders as Officers**

Claimants' expert Niesar testified that OP 2 of the Shareholders Agreement (either July or August version) is unenforceable under Cal. Corp. Code ¶ 300(a) because it usurps the rights and duties of the board to appoint officers. C-1048, 6:12-17. Nevertheless, by this provision, in 1998, Gilberg was appointed and remained for 20 years the CEO and Secretary of PA. SFI # 12.

J. CONVERSION – TENTH CAUSE OF ACTION

Gilberg testified that while a director and CEO of the Company, he kept items of personal property in the office, including personal documents and hard drives. Vol. VII, 1608:15-16 (Gilberg). He has brought a claim against Mednik and Kesel for allegedly wrongfully converting his personal property.

Even after February 7, 2019, Gilberg had unrestricted access to his office at PA. *See, e.g.*, C-1047, ¶ 20. Gilberg testified that after that date he removed various items from his office. Vol. VII, 1606:6-11, 1607:12 (Gilberg). He also testified that he does not know where his small hard drive is that he kept at the office. Vol. VII, 1608:6-7 (Gilberg).

To prevail on a claim for conversion, Gilberg has to show (i) an ownership right to his hard drive; (ii) Mednik and Kesel's wrongful taking of the hard drive; and (iii) damages as a result of the wrongful taking. *See, e.g., Lee v. Hanley*, 61 Cal. 4th at 1240. Gilberg has shown through his testimony that he had a hard drive that he sometimes kept at his office and that he does not know what happened to it. That is the extent of his evidentiary support for the conversion claim. It therefore fails insofar as he fails to prove a wrongful taking by Mednik and Kesel and has failed to prove any damages. *Caterpillar Fin. Servs. Corp. v. Stahl (In re Stahl)*, 2012 Bankr. LEXIS 3886 (C.D. Bankr. August 21, 2012) (finding that there was no evidence to establish either the second or third elements of a claim for conversion).

For these reasons, Gilberg's Tenth Cause of Action is denied in its entirety.

K. UNJUST ENRICHMENT – ELEVENTH CAUSE OF ACTION

Respondents' Eleventh Cause of Action in their SAC against Mednik and Kesel alleges that they received a benefit in the form of improper payments from Power Architects as distributions and other compensation because they are not valid shareholders; they received payments without rendering any services to the company; they charged usury rates on loans; and they unjustly retained that benefit at the expense of Respondents. (¶¶ 203-205). In their Post-Hearing Brief Respondents rely on their Sixteenth through Eighteenth Causes of Action by which they seek declaratory relief that Mednik and Kesel are not PA shareholders to complain about the act of misappropriating payments in the form of improper distributions. Brief at 59:12-15.

This claim is denied because the Panel has found that Mednik and Kesel are legitimate PA shareholders, which finding defeats the premise on which this claim has been brought.

L. CIVIL CONSPIRACY – TWELFTH CAUSE OF ACTION

Gilberg asserts in Respondents' Twelfth Cause of Action a claim for "civil conspiracy" against Mednik and Kesel. The core allegations are that Mednik and Kesel "united against Gilberg and conspired to oust him of Power Architects the moment Gilberg refused to go along with their conduct aimed at destroying the company," making reference to Kesel's refusal to support Gilberg's efforts against Mednik's sexual activity and refusal to sign the "rules and regulations," and Mednik's refusal to support Gilberg concerning his Kesel's purported use of ADLS funds for his investment in PA and Kesel's forfeiture, according to Gilberg, of his PA shares in his bankruptcy. Other allegations generally refer to efforts to strip Gilberg of his shareholder rights and to prevent him from exercising his proportionate management rights and mischaracterization

This Interim Award shall remain in full force and effect unless and until it is modified due to matters to be determined during the retained continuing jurisdiction and until such time as a Final Award is rendered.

DATED: August 31, 2023

Gilda R. Turitz
Arbitrator and Chair of the Panel

Francis J. Burke, Jr.
Arbitrator

Hon. Christopher Cottle (Ret.)
Arbitrator

This Interim Award shall remain in full force and effect unless and until it is modified due to matters to be determined during the retained continuing jurisdiction and until such time as a Final Award is rendered.

DATED: August 31, 2023

Gilda R. Turitz
Arbitrator and Chair of the Panel

Francis J. Burke, Jr.
Arbitrator

Hon. Christopher Cottle (Ret.)
Arbitrator

APPENDIX G-2

Kesel's Chapter 11 Schedule B In re Kesel, No. 10-41653 (Bankr. N.D. Cal.)

In re *Kesel, Mark* Case No. ____________
Debtor (if known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY AN INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of *16* sheets, and that they are true and correct to the best of my knowledge, information and belief.

Date: *1/16/2010* Signature */s/ Kesel, Mark*
Kesel, Mark

[If joint case, both spouses must sign.]

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

In re *Kesel, Mark*, Debtor(s)   Case No.__________ (if known)

SCHEDULE A-REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption	Amount of Secured Claim
59 Stratford Road, Kensington, CA 94707 - personal residence	*Fee Simple*		*$ 859,500.00*	*$ 859,500.00*
1306 Martin Luther King Jr. Way, Berkeley, CA 94709 - rental apartment building	*Fee Simple*		*$ 1,500,000.00*	*$ 1,500,000.00*
		TOTAL $	*2,359,500.00*	

No continuation sheets attached

TOTAL $ (Report also on Summary of Schedules.)

In re *Kesel, Mark*, Case No. ______ (if known)
Debtor(s)

SCHEDULE B-PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
1. Cash on hand.		*Cash on hand* *Location: In debtor's possession*		*$ 100.00*
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		*Checking account - Wells Fargo* *Location: In debtor's possession*		*$ 921.00*
		Checking account - Bank of America, Albany Branch *Location: In debtor's possession*		*$ 1,635.00*
		Checking account - Citibank *Location: In debtor's possession*		*$ 102.00*
		Money Market Account - Dreyfus *Location: In debtor's possession*		*$ 1,118.00*
		Savings account - The Partnership Federal Credit Union *Location: In debtor's possession*		*$ 102.00*
3. Security deposits with public utilities, telephone companies, landlords, and others.	*X*			
4. Household goods and furnishings, including audio, video, and computer equipment.		*Home computer and printer* *Location: In debtor's possession*		*$ 250.00*

In re *Kesel, Mark*, Debtor(s)　　　Case No. ______ (if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		Household goods and furnishings *Location: In debtor's possession*		*$ 4,000.00*
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	*X*			
6. Wearing apparel.		*Clothing* *Location: In debtor's possession*		*$ 1,000.00*
7. Furs and jewelry.		*Jewelry* *Location: In debtor's possession*		*$ 400.00*
8. Firearms and sports, photographic, and other hobby equipment.	*X*			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	*X*			
10. Annuities. Itemize and name each issuer.	*X*			
11. Interest in an education IRA as defined in 26 U.S.C. 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. 521(c).)		*FBO Daniella Kesel ESA* *Location: In debtor's possession*		*$ 3,998.00*
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		*Daniella Kesek - UTMA CA* *Location: In debtor's possession*		*$ 3,041.00*
		Rollover IRA - Ameritrade *Location: In debtor's possession*		*$ 145,722.00*
		SEP IRA - Ameritrade *Location: In debtor's possession*		*$ 113,243.00*
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		*Stock account - Ameritrade* *Location: In debtor's possession*		*$ 5,235.00*
14. Interests in partnerships or joint ventures. Itemize.	*X*			

In re *Kesel, Mark*, Debtor(s)

Case No. ____________ (if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts Receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
20. Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as described in 11 U.S.C. 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers and other vehicles and accessories.		1999 Lexus 400GS Location: In debtor's possession		$ 4,000.00
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.		Office computer and printer Location: In debtor's possession		$ 500.00
		Office fax and copy machine Location: In debtor's possession		$ 75.00

In re *Kesel, Mark*, Debtor(s) Case No. ______ (If known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		Office furniture and supplies *Location: In debtor's possession*		*$ 400.00*
29. Machinery, fixtures, equipment and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Total → *$ 285,842.00*

(Report total also on Summary of Schedules.)
Include amounts from any continuation sheets attached.

B6C (Official Form 6C) (12/07)

In re *Kesel, Mark*, Case No. ______ (if known)
Debtor(s)

SCHEDULE C-PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

☐ 11 U.S.C. § 522(b) (2)
☒ 11 U.S.C. § 522(b) (3)

☐ Check if debtor claims a homestead exemption that exceeds $136,875.

Description of Property	Specify Law Providing each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemptions
59 Stratford Road, Kensington, CA 94707	Calif. C.C.P. §704.730(a)(2)	$ 0.00	$ 859,500.00
Home computer and printer	Calif. C.C.P. §704.020(a)	$ 250.00	$ 250.00
Household goods and furnishings	Calif. C.C.P. §704.020(a)	$ 4,000.00	$ 4,000.00
Clothing	Calif. C.C.P. §704.020(a)	$ 1,000.00	$ 1,000.00
Jewelry	Calif. C.C.P. §704.040	$ 400.00	$ 400.00
FBO Daniella Kesel ESA	20 U.S.C. § 1095a(d)	$ 3,998.00	$ 3,998.00
Daniella Kesek - UTMA CA	Calif. C.C.P. §704.115	$ 3,041.00	$ 3,041.00
Rollover IRA	Calif. C.C.P. §704.115	$ 145,722.00	$ 145,722.00
SEP IRA	Calif. C.C.P. §704.115	$ 113,243.00	$ 113,243.00
1999 Lexus 400GS	Calif. C.C.P. §704.010	$ 2,550.00	$ 4,000.00
Office computer and printer	Calif. C.C.P. §704.060	$ 500.00	$ 500.00
Office fax and copy machine	Calif. C.C.P. §704.060	$ 75.00	$ 75.00
Office furniture and supplies	Calif. C.C.P. §704.060	$ 400.00	$ 400.00

B6D (Official Form 6D) (12/07)

In re Kesel, Mark, Debtor(s)   Case No. ______ (if known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

Creditor's Name and Mailing Address Including ZIP Code and Account Number (See Instructions Above.)	Co-Debtor	H--Husband W--Wife J--Joint C--Community	Date Claim was Incurred, Nature of Lien, and Description and Market Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
Account No: 4921 Creditor # : 1 Bac Home Loans Servici 450 American St PO Box 5170 Simi Valley CA 93065		H	2004-04-22 Deed of Trust 59 Stratford Road, Kensington, CA 94707 Value: $ 859,500.00				$ 431,837.00	$ 0.00
Account No: Creditor # : 2 Genkin, Mikhail 58 Lucille Way Orinda CA 94563	X		9/08 Deed of Trust - Apt building 5 year balloon - $347,045.00 for debt of MultiMetrix, LLC Value: $ 1,500,000.00				$ 236,100.00	$ 0.00
Account No: Creditor # : 3 Kantorov, Rima 2619 San Jose Avenue Alameda CA 94501			5/1/2006 Deed of Trust - Apt building 1306 Martin Luther King Jr. Way, Berkeley, CA 94709 - 3 year balloon Value: $ 1,500,000.00				$ 225,000.00	$ 0.00
1 continuation sheets attached			Subtotal $ (Total of this page)				$ 892,937.00	$ 0.00
			Total $ (Use only on last page)					
							(Report also on Summary of Schedules.)	(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data)

B6D (Official Form 6D) (12/07) - Cont.

In re Kesel, Mark , Case No. ________
Debtor(s) (if known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

Creditor's Name and Mailing Address Including ZIP Code and Account Number (See Instructions Above.)	Co-Debtor	H--Husband W--Wife J--Joint C--Community	Date Claim was Incurred, Nature of Lien, and Description and Market Value of Property Subject to Lien	Contingent	Unliquidated	Disputed	Amount of Claim Without Deducting Value of Collateral	Unsecured Portion, If Any
Account No: Creditor # : 4 Kantorov, Rima 2619 San Jose Avenue Alameda CA 94501			2008 Deed of Trust 59 Stratford Road, Kensington, CA 94707 -- 5 year balloon Value: $ 859,500.00				$ 60,000.00	$ 30,373.00
Account No: Creditor # : 5 Kantorov, Rima 2619 San Jose Avenue Alameda CA 94501			2008 Deed of Trust 59 Stratford Road, Kensington, CA 94707 - 3 year balloon Value: $ 859,500.00				$ 200,000.00	$ 0.00
Account No: Creditor # : 6 Midland Loan Services, Inc. PO Box 25965 Overland Park KS 66225-5965			2004 Deed of Trust - Apt building 1306 Martin Luther King Jr. Way, Berkeley, CA 94709 Value: $ 1,500,000.00				$ 735,000.00	$ 0.00
Account No: Creditor # : 7 Oxbridge Capital, Inc. 2001 Van Ness Avenue Suite 411 San Francisco CA 94103	X		9/08 Deed of Trust - Apt building 5 year balloon $380,250 for debt of MultiMetrix, LLC Value: $ 1,500,000.00				$ 262,240.00	$ 56,810.00
Account No: Creditor # : 8 Tachkov, Oleg 1027 Ready Court Walnut Creek CA 94598	X		9/08 Deed of Trust - Apt building 5 year balloon $137,830.00 for debt of MultiMetrix, LLC Value: $ 1,500,000.00				$ 98,470.00	$ 0.00
Account No: 1998 Creditor # : 9 Wells Fargo Bank N A Po Box 31557 Billings MT 59107		H	2005-11-25 Deed of Trust 59 Stratford Road, Kensington, CA 94707 Value: $ 859,500.00				$ 198,036.00	$ 0.00
Sheet no. 1 of 1 continuation sheets attached to Schedule of Creditors Holding Secured Claims						Subtotal $ (Total of this page)	$ 1,553,746.00	$ 87,183.00
						Total $ (Use only on last page)	$ 2,446,683.00	$ 87,183.00
							(Report also on Summary of Schedules.)	(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data)

In re Kesel, Mark, Debtor(s) Case No. ________________ (if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts NOT entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**
Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**
Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**
Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**
Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**
Claims of certain farmers and fishermen, up to $5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**
Claims of individuals up to $2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**
Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**
Claims based on commitments to FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**
Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

*Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

No continuation sheets attached

B6F (Official Form 6F) (12/07)

In re *Kesel, Mark*, Debtor(s)

Case No. ______ (if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedules. Report this total also on

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

Creditor's Name, Mailing Address including Zip Code, And Account Number (See instructions above.)	Co-Debtor	H--Husband W--Wife J--Joint C--Community	Date Claim was Incurred, and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
Account No: *Creditor # : 1* *Applied Materials* *c/o Munger, Tolles & Olson* *560 Mission Street, 27th Fl* *San Francisco CA 94105-2907*	X		*1/6/10* *Judgment for attorney fees, costs*			X	*$ 1,427,928.94*
Account No: *Creditor # : 2* *Brucker, Michael* *5855 Doyle Street, #110* *Emeryville CA 94608*	X		*Legal fees*				*$ 3,000.00*
Account No: *2259* *Creditor # : 3* *Hsbc/bsbuy* *Po Box 15519* *Wilmington DE 19850*		H	*2008-08-30*				*$ 1,294.00*
Account No: *Creditor # : 4* *Kesel, Julia* *912 Clark Place* *El Cerrito CA 94530*			*2003* *Marital Property Settlement*				*$ 200,000.00*

1 continuation sheets attached

Subtotal $	*$ 1,632,222.94*
Total $ (Use only on last page of the completed Schedule F. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related	

B6F (Official Form 6F) (12/07) - Cont.

In re Kesel, Mark , Case No. ______ (If known)

Debtor(s)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

Creditor's Name, Mailing Address including Zip Code, And Account Number (See instructions above.)	Co-Debtor	H--Husband W--Wife J--Joint C--Community	Date Claim was Incurred, and Consideration for Claim. If Claim is Subject to Setoff, so State.	Contingent	Unliquidated	Disputed	Amount of Claim
Account No: 8166 Creditor # : 5 Thd/cbsd Po Box 6497 Sioux Falls SD 57117		H	2009-12-01				$ 514.00
Account No:							
Account No:							
Account No:							
Account No:							
Account No:							

Sheet No. 1 of 1 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal $ $ 514.00

Total $ $ 1,632,736.94

(Use only on last page of the completed Schedule F. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related

In re *Kesel, Mark* / Debtor Case No. ______ (if known)

SCHEDULE G-EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State the nature of debtor's interests in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if the debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract.	Description of Contract or Lease and Nature of Debtor's Interest. State whether Lease is for Nonresidential Real Property. State Contract Number of any Government Contract.
Neovision, LLC *1027 Ready Court* *Walnut Creek CA 94598*	Contract Type: *Property Management Contract* Terms: Beginning date: *1/1/2010* Debtor's Interest: Description: *Agreement between Debtor and Neovision, LLC wherein Neovision collects the rents and pays the expenses of Debtor's 12 unit apartment building located at 1306 Martin Luther King Jr. Way, Berkeley, CA and pays Debtor to manage the property* Buyout Option:

APPENDIX G-3

Order Dismissing Chapter 11 Case (Dec. 19, 2011)

DIEMER, WHITMAN & CARDOSI, LLP
JUDITH L. WHITMAN, #103385
75 East Santa Clara Street, Suite 290
San Jose, California 95113
Telephone: (408) 971-6270
Facsimile: (408) 971-6271

ATTORNEYS FOR
MARK KESEL

The following constitutes
the order of the court. Signed December 19, 2011

William J. Lafferty, III

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re: MARK KESEL Debtor.	Case No. 10-41653 WJL CHAPTER 11 Date: December 14, 2011 Time: 9:30 A.M. Place: 1300 Clay Street Courtroom 220 Oakland, CA 94612 Judge: William J. Lafferty

ORDER GRANTING MOTION BY DEBTOR TO DISMISS CHAPTER 11 CASE

The motion of Debtor, Mark Kesel ("Debtor"), for an order dismissing his Chapter 11 case came on for hearing before the Honorable William J. Lafferty, United States Bankruptcy Judge on December 14, 2011 at 9:30 A.M. Appearances were noted on the record.

Upon review of the papers filed, noting no opposition to Debtor's motion, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The motion to dismiss is APPROVED in its entirety.

2. The Chapter 11 case shall be, and hereby is, DISMISSED.

3. The dismissal of the Chapter 11 case is made subject to retention of and continued validity of the Order Approving the Motion to Approve Compromise of Controversy with Applied Materials, Inc., which order shall remain binding and effective notwithstanding dismissal of the case.

***** END OF ORDER *****

APPENDIX G-4

Final Order of Forfeiture United States v. All Discount Laboratory Supply & Kesel, No. CR-00-40242 CW (N.D. Cal.)

FILED

AUG - 5 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ALL DISCOUNT LABORATORY SUPPLY and MARK KESEL, et al., Defendants.	)	CR 00-40042 CW ~~[AMENDED PROPOSED]~~ FINAL ORDER OF FORFEITURE

On April 13, 2004, the Court entered a Preliminary Order of Forfeiture ordering defendant All Discount Laboratory Supply to forfeit $11,748,771and the glassware and lab apparatus listed in Attachment A affixed hereto. On the same day, the Court entered a Preliminary Order of Forfeiture ordering defendant Mark Kesel to forfeit $1,150,000 and the glassware and lab apparatus identified in Attachment A.

The United States has complied with the publication and notice requirements of the Preliminary Orders and no petitions have been filed.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Mark Kesel forfeit $1,150,000 and his interest in the glassware and lab apparatus identified in Attachment A, pursuant to Title 21, United States Code, 853.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant All Discount Laboratory Supply forfeiture $11,748,771 and its interest in the glassware and lab apparatus identified in Attachment A, pursuant to Title 21, United States Code, Section 853.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all right, title and interest in said property is vested in the United States of America.

IT IS FURTHER ORDERED that the United States District Court shall retain jurisdiction in the case for the purpose of enforcing this Order.

IT IS SO ORDERED.

Dated: AUG - 5 2004

CLAUDIA WILKEN
United States District Judge

ATTACHMENT A

ALL DISCOUNT LAB SUPPLY

ITEMS TO BE SEIZED:

	ITEM ID	ITEM DESCRIPTION	QUANTITY
1.	FNBP10000-10	FUNNEL, BUCHNER	1
2.	FNBP10000-4	FUNNEL, BUCHNER	1
3.	FNBP10000-5	FUNNEL, BUCHNER	2
4.	FNBP10000-6	FUNNEL, BUCHNER	2
5.	FNBP10135-10	FUNNEL, BUCHNER	2
6.	FNBP10170-10	FUNNEL, BUCHNER	2
7.	FNBP11000-10	FUNNEL, BUCHNER	1
8.	FNBP11000-2	FUNNEL, BUCHNER	9
9.	FNBP11000-3	FUNNEL, BUCHNER	1
10.	FNBP11135-10	FUNNEL, BUCHNER	2
11.	FNBP11170-10	FUNNEL, BUCHNER	3
12.	FNPL10000-10	FUNNEL, BUCHNER	7
13.	FNPP10000-7	FUNNEL, BUCHNER	3
14.	FNPR10000-10	FUNNEL, BUCHNER	7
15.	FNPR10000-100	FUNNEL, BUCHNER	15
16.	FNPR10000-55	FUNNEL, BUCHNER	22
17.	FNPR10000-67	FUNNEL, BUCHNER	50
18.	FNPR10000-75	FUNNEL, BUCHNER	31
19.	FNPW10000-100	FUNNEL, BUCHNER	15
20.	FNPW10000-150	FUNNEL, BUCHNER	8
21.	FNPW10000-80	FUNNEL, BUCHNER	3
22.	GVNT1000-11	GLOVE, NITRILE SZ 11	4
23.	GVNT1000-7	GLOVE, NITRILE SZ 7	10
24.	MPMP10000-312	MORTAR, PORCELAIN	1
25.	MPMP10000-412	MORTAR, PORCELAIN	1
26.	MPPP10000-312	MORTAR, PESTLE	1
27.	MPPP10000-412	MORTAR, PESTLE	1
28.	PHLP10000-2	PH LITMUS STRIPS BLUE/ACID	4
29.	PHLP10000-3	PH LITMUS STRIPS NEUTRAL	6
30.	PLLR10000-P	PAIL LID-OFF TOOL, PLASTIC	4
31.	RGCK10000-7	RING, CORK 7"	5
32.	RGCK10000-9	RING, CORK 5"	15
33.	STBR00100-516	STIR BAR, OCTAGON	7
34.	STBR00138-38	STIR BAR, OCTAGON	16
35.	STBR00158-516	STIR BAR, OCTAGON	8
36.	STBR00200-38	STIR BAR, OCTAGON	4
37.	STBR00212-38	STIR BAR, OCTAGON	14
38.	STBR00212-516	STIR BAR, OCTAGON	12
39.	TBLXA03858-12	TUBING, LATEX	3
40.	TBLXB03812-12	TUBING, LATEX	7
41.	WRDP90000	WRENCH, DRUM PLUG	3
42.	HMCT10000-120	HEATING MANTLE POWRTWIN	2
43.	HMCT20000-112	HEATING MANTLE CORDTROL	7
44.	HMTT00000-12	HEATING MANTLE 12L W/O CT	4
45.	FKB1N4500-12L	FLASK, BOIL 1N 45/50 12L	5
46.	FKB3N2445-12L	FLASK, BOIL 3N 45/50 12L	2
47.	~~[illegible]~~ Lathe machines		3
48.	Forklift		1

APPENDIX G-5

Excerpts — Petitioner's Petition for Review
Supreme Court of California, No. S295751

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 3/19/2026 12:32:56 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 3/20/2026 by Tayuan Ma, Deputy Clerk

S295751

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LARRY GILBERG, *Plaintiff and Appellant,*	Supreme Court No. S________
v.	Court of Appeal No. H052611
POWER ARCHITECTS CORPORATION, *Defendant and Respondent.*	(Related Case No. H052610) Superior Court Case No. 20CV368701

Appeal from the Superior Court of Santa Clara County

Case No. 20CV368701

Honorable Amber E. Rosen, Judge Presiding

Opinion of the Sixth Appellate District, filed February 17, 2026 (unpublished). Rehearing denied March 9, 2026

PETITION FOR REVIEW

LARRY GILBERG

221 Meridian Ave. #408

Miami Beach, FL 33139

Telephone: (408) 472-6859

Email: larrygilberg@comcast.net

Appellant, Self-Represented "In Pro Per"

ISSUES PRESENTED FOR REVIEW

California Rules of Court, rule 8.500(b)(1) authorizes review when necessary to secure uniformity of decision or to settle an important question of law. This petition presents such questions, each independently warranting review.

Every question in this petition flows from one question Gilberg posed at oral argument on January 6, 2026 [1] : "Can Kesel legally vote shares he illegally holds?" — shares he concealed from his Chapter 11 bankruptcy court and from the open federal forfeiture order in CR-00-40242 CW, then used — after seizing control of Power Architects' (PA's) Citibank account, in spite of Gilberg's veto, at PA's expense — to authorize AAA arbitration on PA's behalf against Gilberg, hire PA's attorney, retain PA's experts, and bring an $8.53 million claim against Gilberg who discovered and reported the concealment. Justice Lie's answer was: "I'm not convinced that that's a question for this court." She then affirmed the Award that answered it. This petition asks this

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1 Transcript of Oral Argument, January 6, 2026, Case Nos. H052610 and H052611, Tuesday, January 6, 2026, at 9:30 A.M. Video Timestamp: 1:10:00 to 1:50:00. Available at: https://jcc.granicus.com/player/clip/6827?view_id=36&redirect=true. The transcript is Exhibit 1 to Petition for Rehearing, filed Feb. 27, 2026 (H052611 docket).

Court to answer whether California's confirmation of an Award built on Kesel's vote violates the Supremacy Clause.

The answer is yes — and the record makes it undeniable. At oral argument, Justice Lie acknowledged that §3284's limitations period requires discharge, not dismissal. Gilberg responded: "Exactly. So it was dismissed. So that means it's ongoing." Lie never contradicted it.

> **18 U.S.C. §3284** states: "The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge."

If §3284 is unrebutted, Kesel's concealment remains an active federal felony. Kesel's Chapter 11 Case No. 10-41653, was dismissed — never discharged. AAA panel found: " Kesel's omission of his PA shares from his Chapter 11 Schedule B does not change the result .... once his Chapter 11 case was dismissed pursuant "(CT p. 77). The clock has never started.

11 U.S.C. §554(d) states: "Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate."

If the concealment is active, the shares remain federal property under §554(d) — never scheduled, never abandoned, never administered. Kesel never amended Schedule B from 2010 forward. A court never told about the shares cannot have ordered otherwise. Congress made the consequence automatic — the shares remain estate property by operation of law, permanently, without limitation. "The Panel declines to find a forfeiture under § 554(d) based on the authorities relied on by Respondents" (CT p. 78)

Kesel was warned. The Form B6 he signed carries a warning printed by Act of Congress directly below his signature: "Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§152 and 3571." (Exhibit 6) He signed it and concealed PA shares worth $5.16 million anyway.

If the shares are federal property, Kesel had no authority to vote them. California affirmed an Award built on that vote. Each link is supported by the record and unrebutted by Respondent.

Under Article VI, Clause 2 of the United States Constitution, any state law, state court judgment, or state-confirmed arbitration award that conflicts with federal law — including exclusive federal jurisdiction granted by Congress under 28 U.S.C. §1334(e)(1) — is without force. A California judgment that validates Kesel's vote on shares Congress placed in the federal estate, and that no federal court ever authorized him to hold, is precisely that conflict. The Supremacy Clause does not yield to arbitration agreements, state confirmation orders, or appellate affirmances.

This case asks whether a private AAA panel may adjudicate competing federal bankruptcy statutes — 11 U.S.C. §§554(d) and 349(b)(3) — resolve open federal forfeiture orders, and relitigate binding federal guilty plea admissions, all without disclosure, without federal jurisdiction, and with no statute of limitations — and whether California courts, by confirming and affirming that Award as an enforceable state judgment, thereby commit a Supremacy Clause violation under Article VI, Clause 2, lending — in the words of Shelley v. Kraemer, 334 U.S. 1, 19 (1948) — "the full coercive power of government" to enforce a determination that Congress reserved exclusively to the federal courts.

Appellant does not seek criminal penalties. He is the victim — a minority shareholder bearing an $8.53 million judgment obtained through votes cast with shares federal law placed in the bankruptcy estate, that no federal court ever authorized Kesel to hold, and that the panel declared legitimate only by resolving seven federal statutes and two open federal court orders it had no authority to resolve. Gilberg invokes federal statutes not to obtain criminal enforcement but to show that California courts lack authority to validate what Congress reserved exclusively to the federal courts.

Bond v. United States (2011) 564 U.S. 211, 222 (individuals have standing to challenge structural violations of federal power allocation; "the structural principles secured by the separation of powers protect the individual as well"); INS v. Chadha (1983) 462 U.S. 919, 935-936 (structural constitutional allocations of power cannot be circumvented by agreement of the parties); Free Enterprise Fund v. PCAOB (2010) 561 U.S. 477, 487-491 (structural limits on governmental power protect individual liberty; individuals harmed by structural violations have standing to invoke them).

DISCLAIMER : Any determination of criminal culpability is exclusively for the United States Attorney and the federal courts — not this Court, and not this Appellant. The civil determinations under §§554(d), 349(b)(3), and §1334(e)(1) are reserved to the Northern District — Appellant presents the analysis; that court decides.

A three-arbitrator panel — including a former federal AUSA and a former California Justice— declared Mark Kesel, a convicted of narcotics money-laundering who concealed his PA shares from his federal criminal court (CR-00-40242 CW, Judge Wilken, N.D. Cal.) and from his Chapter 11 bankruptcy court (Case No. 10-41653), a "legitimate shareholder" of Power Architects Corporation. (CT p. 79; Award p. 46.)

After Gilberg brought the ADLS money-laundering connection to the attention of the board and the two remaining shareholders, Kesel used those same concealed shares — joined by Mednik's vote — to terminate Gilberg as CEO and director and remove him as a Citibank signatory, then to hire PA's counsel, authorize the AAA arbitration, and bring an $8.53 million claim against Gilberg who had reported the concealment to Mednik first.

Under Provision 4(a), any major corporate action — including invoking arbitration on PA's behalf — required a 76% supermajority. (Appendix A, p. 3; Exhibit 3; Exhibit 4.) Kesel himself testified the 76% provision was the "most important" minority protection. (Vol. III, pp. 613-614; Exhibit 3.) Lead Arbitrator Burke conducted the exchange confirming the 25% blocking position and 76% requirement. (Vol. IV, pp. 968-969; Exhibit 4.) Both exchanges were documented in Appellant's Motion to Determine Jurisdiction filed August 13, 2025 — which Justice Lie dismissed as "an unauthorized supplemental brief" without addressing the 76% math. (Appendix A, p. 6)

Even assuming Kesel is a legitimate shareholder, Mednik and Kesel combined held only 69.62% — short of the required 76% by 6.38 points, confirmed by PA's own IRS Form 1120, or Mednik have actually been divested of their shares." (CT p. 329.) and then " The Petition to Compel Arbitration and Stay Action is GRANTED." (CT p. 332). The arbitrators derived their authority from the Agreement and Folan's order. Neither could confer federal jurisdiction that neither possessed, See Kalb, 308 U.S. 433, 438 (1940).

ARGUMENT

I. IF JUDGE ROSEN IS RIGHT — THE PANEL FULLY DECIDED THE FEDERAL QUESTIONS: EXCEEDED POWERS, VOID UNDER KALB.

Before confirming the Award, Judge Rosen did not act in the dark. Co-Plaintiff Kolchinsky's Petition to Vacate placed directly before her the Supremacy Clause warning: that the arbitrators acknowledged Kesel "owned PA shares but did not list them on the petition's Schedule B"; that Kesel "directly transferred funds from illegal drug proceeds to the PA Citibank account"; that the concealment "is not limited by the statute of limitations, as Kesel continues to receive profit sharing on shares he did not disclose in his Chapter 11 Bankruptcy today"; and that "under the Supremacy Clause of the United States Constitution, state courts are bound to uphold" controlling federal law. (CT pp. 274-278.)

Judge Rosen received that warning. She read it. She confirmed the Award anyway — and in doing so made a Judicial Admission that sealed the §1286.2(a)(4) violation. Her confirmation order states:

> "Gilberg failed to carry his burden to establish forfeiture by Kesel of his PA shares either pursuant to the bankruptcy or in connection with his criminal case. Ex. H, pp42-46. Because the issue of Kesel's alleged bankruptcy fraud was fully considered by the Panel, but denied." (CT p. 530), "Ex. H, pp. 42-46" is the Award analysis Rosen relied on.

That sentence is not deference — it is an independent judicial finding that the panel decided every federal question at issue — bankruptcy estate status, criminal forfeiture, and the fraud underlying both — without jurisdiction to decide any of them. Having found those questions "fully considered," CCP §1286.2(a)(4) required one result: vacatur. Rosen reached the correct factual predicate and applied the wrong legal consequence. She confirmed instead of vacated — reducing that confirmation to an enforceable judgment now executing through Florida garnishment against a spouse who was never a party. Under *Kalb v. Feuerstein*, 308 U.S. 433 (1940), that judgment is void. Assets stripped before this Court acts cannot be restored.

Under *Shelley*, Rosen's confirmation is state action — California lending "the full coercive power of government" to enforce a determination that rewrites an open federal forfeiture order, nullifies a binding plea agreement, and displaces seven federal statutes without authority. Rosen treated the Award as a complete federal determination.

The Award's own language resolves any remaining ambiguity. "Kesel's omission of his PA shares from his Chapter 11 Schedule B does not change the result. Bankruptcy Code Section 541 defines 'property of the estate' as 'all of a debtor's legal or equitable interests in property, wherever located, as of the commencement of the case.' 11 U.S.C. §541(a).... and reverted back in ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3) of the Bankruptcy Code." (CT p. 77.) That sentence applied §349(b)(3) to concealed assets

— exactly the wrong statute for exactly the wrong category of property. The panel then stated: "The Panel declines to find a forfeiture under §554(d) based on the authorities relied on by Respondents." (CT p. 78.) The word "declines" is decisive. One does not decline a statute one never considered. The panel evaluated §554(d), consciously rejected it, and chose §349(b)(3) instead.

The seven-step pattern in the Award confirms the civil statutory choice was central, not peripheral. Step 1: Award confirms § 541 transferred shares to federal estate upon 2010 filing. Step 2: Award confirms Kesel never scheduled his PA shares. Step 3: Award confirms shares "were part of the bankruptcy estate." Step 4: Award states panel "declines to find a forfeiture under § 554(d)." Step 5: Award applies § 349(b)(3) to declare shares "reverted back in ownership." Step 6: Award declares Kesel a "legitimate shareholder." Step 7: Award uses that declaration as foundation for the $8.53 million judgment. Remove the jurisdictionally unauthorized Step 4 and the chain collapses. That is the exceeded power CCP § 1286.2(a)(4) was enacted to reach.

Step 7 rests entirely on Step 4. Remove the jurisdictionally unauthorized Step 4 — the deliberate election between §349(b)(3) and §554(d) that §1334(e)(1) reserved exclusively to the Northern District — and the $8.53 million judgment has no foundation. That is not an error of law. It is a federal jurisdictional determination made by a former federal AUSA and a former Justice of 6th District Court — arbitrators who cannot have been unaware of the boundary they crossed. Under *Kalb v. Feuerstein*, 308 U.S. 433, 438-440 (1940), it is a void act. Rosen confirmed it was made. That is enough. *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 shields merits determinations from review — it does not and cannot shield a panel that lacked authority to act in the first instance; jurisdiction is a threshold question.

II. JUDGE ROSEN'S JUDICIAL ADMISSION PROVES THE AWARD IS VOID UNDER CCP §1286.2(a)(4) AND CONSTITUTES A DIRECT SUPREMACY CLAUSE VIOLATION.

Rosen did not act in the dark. Kolchinsky's Petition to Vacate placed before her the precise Supremacy Clause warning — the Schedule B omission, the drug proceeds transfer to PA's Citibank account, the ongoing concealment, and the federal preemption argument. (CT pp. 274-278.) She confirmed on July 12, 2024 — while Kesel's concealment remained an active federal felony under 18 U.S.C. §3284. Kesel's Chapter 11 was dismissed, never discharged. The clock has never started.

Her order — quoted in Section I — found the federal questions "fully considered by the Panel." (CT p. 530.) That finding creates vacatur on two independent grounds:

(i) Contract scope. The four questions Rosen found "fully considered" — bankruptcy fraud, judicial estoppel, bankruptcy forfeiture, and criminal case forfeiture— are not provisions of the August Agreement (CT pp. 150-162). Provision 21 limits the panel to "provisions of this agreement." A panel that decided questions outside that scope exceeded its powers — by Rosen's own finding. The statute required vacatur. She confirmed instead.

(ii) State action. The panel adjudicated the Wilken Final Order — determining it did not cover undisclosed assets — the opposite of §853(p), which explicitly covers concealed and transferred property. (Exhibit 6; Exhibit 7.) That determination belongs

exclusively to the Northern District, which issued the order and retained jurisdiction. (H052610, CT pp. 46-47; Exhibit 7.) The panel had no authority to make it. By making it, the panel declared Kesel a "legitimate shareholder" — a federal determination that required resolving an open federal forfeiture order without jurisdiction. Under *Shelley*, Rosen's confirmation of that determination is state action. Under *Kalb*, the judgment is void.

III. IF JUSTICE LIE IS RIGHT — LIE DECIDED THE FEDERAL QUESTIONS ON AFFIRMANCE: VOID UNDER STEEL CO.

Gilberg did not let the appeal proceed without response. On August 13, 2025, he filed in the Sixth Appellate District, Case No. H052611, a 107-page Motion to Determine Jurisdiction documenting — under *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998) and *Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330 — eleven independent grounds on which the panel exercised exclusive federal jurisdiction it did not possess, including the threshold question of who had legal authority to invoke arbitration on PA's behalf — a classic jurisdictional question of standing and corporate authorization that precedes any merits determination — supported by 18 exhibits. Justice Lie dismissed it in a single sentence: "Gilberg's motion is an unauthorized supplemental brief on the merits of his argument." (Opinion, Appendix A, Section B.) She did not address a single one of the eleven grounds.

Justice Lie then contradicted — what Judge Rosen had found, stating that "**AAA did not decide** in the first instance whether Kesel's shares should be forfeited to the federal government, whether Kesel's shares should be included in a bankruptcy estate, or whether Kesel could or should be prosecuted for the fraud that Kolchinsky alleges." (Exhibit 1, Opinion for H052610, Section F.)

First, as to "AAA did not decide ..... whether Kesel's shares should be included in a bankruptcy estate" — the AAA panel's own Award opens with precisely that determination:

> "Kesel's omission of his PA shares from his Chapter 11 Schedule B does not change the result. Bankruptcy Code Section 541 defines 'property of the estate' as 'all of a debtor's legal or equitable interests in property, wherever located, as of the

commencement of the case.' 11 U.S.C. §541(a).... Therefore, although Kesel did not list his PA shares in his Chapter 11 case, those shares were part of the bankruptcy estate and reverted back in ownership to Kesel once his Chapter 11 case was dismissed pursuant to Section 349(b)(3) of the Bankruptcy Code." (CT p. 77)

The AAA panel then went further — addressing and rejecting the alternative federal statute:

"Gilberg argues that Kesel 'independently ceased to be a voting PA Shareholder under 11 U.S.C. §554(d), as a consequence of his knowing and intentional failure to disclose his valuable PA Shares to the Bankruptcy Court, the Bankruptcy Judge.... The Panel declines to find a forfeiture under §554(d) based on the authorities relied on by Respondents." (CT p. 78)

That is not peripheral analysis. These are the first two substantive federal determinations in the Award — made before the panel reached any contract question, before any damages analysis, and before any finding on Kesel's shareholder status. The panel decided the estate inclusion question under §541. It then evaluated §554(d) and consciously rejected it in favor of §349(b)(3). The word "declines" is not a passive finding — it is a deliberate election between two competing federal statutes, both of which Congress placed under exclusive federal jurisdiction. Both determinations are at CT pp. 77-78. The Court of Appeal's statement that AAA "did not decide" what CT pp. 77-78 show AAA decided first — and decided twice — is the internal contradiction this petition is built on.

Provision 21 limits the panel to "provisions of this agreement." Neither §349(b)(3) nor §554(d) is a provision of the August Agreement. The panel went outside the document it was empowered to interpret. It is the exercise of exclusive federal jurisdiction the panel did not possess.

Under §3284, Kesel's concealment is an ongoing federal offense — the clock never started. Yet AAA, Rosen, and Lie declare him the legitimate owner of those same shares. These two conclusions cannot coexist, and no court has ever reconciled them.

Jurisdictional defects are never waived. Under Kabran, they may be raised for the first time on appeal. Under Kalb, 308 U.S. 433, 438-40, 444, whether the exclusive federal bankruptcy jurisdiction question was contested is immaterial — Congress manifested that it need not be raised at all. The States cannot vest their courts with power to violate the supreme law of the land. Kalb, 308 U.S. at 439. A fortiori, they cannot accomplish the same result by confirming a private arbitration panel's unauthorized exercise of exclusive federal jurisdiction. Gilberg raised the defect at every stage: AAA objection, Petition to Vacate, Opening Brief, Reply Brief, Motion to Determine Jurisdiction, and oral argument. Compelled participation does not cure the void. Judge Folan's order to arbitrate did not confer the exclusive federal jurisdiction the panel subsequently exercised.

If Lie is right that AAA never decided the estate question, the shares remain federal property today — never scheduled, never abandoned, never administered, still held by the estate under §554(d), still under exclusive federal jurisdiction under §1334(e)(1). Kesel had no legal authority to hold them, let alone vote them. Lie never asked that question.

By affirming an Award that declared him a "legitimate shareholder" entitled to vote those shares, Lie herself — on affirmance — transferred concealed federal estate property to Kesel without §1334(e)(1) authority, making her affirmance the Supremacy Clause violation. Under Shelley, that is state action: California lending "the full coercive power of government" to enforce what Congress reserved to the federal courts. Either path leads to vacatur.

IV. NEITHER PATH SURVIVES: § 1334(e)(1) EXCLUSIVE JURISDICTION CANNOT BE CONFERRED BY ARBITRATION CLAUSE.

Section 541 transferred Kesel's PA shares to the federal bankruptcy estate automatically upon his February 16, 2010 filing (CT p. 77). Section 554(d) kept them there: property never scheduled, never abandoned, never administered remains property of the estate by operation of law. The Ninth Circuit has uniformly held that unscheduled property remains estate property. Cusano v. Klein (9th Cir. 2001) 264 F.3d 936, 945. Section 349(b)(3) cannot revest what was never brought into the estate through proper disclosure.

Section 1334(e)(1) grants federal district courts exclusive jurisdiction over "all property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." No arbitration clause, no state court order, and no agreement of the parties can confer exclusive federal jurisdiction on a private tribunal. Under Kalb, acts taken in violation of exclusive federal bankruptcy jurisdiction are void ab initio — not merely erroneous, not voidable, but void.

V. THE PANEL REWROTE THE WILKEN ORDERS — A FORMER FEDERAL PROSECUTOR'S §853(p) VIOLATION IS JURISDICTIONAL.

The panel ruled: "the Final Order did not address assets that had not been disclosed or might be discovered after the fact." (CT p. 75) (i) That ruling is for a Federal Judge to make. (ii) The ruling is wrong, because the Preliminary Order is the Final Order. Per Fed. R. Crim. P. 32.2(c)(2) (H052610, CT pp. 41–42; Exhibit 8), no third party filed a claim; the Final Order confirms "no petitions have been filed." (H052610, CT p. 46) The Preliminary Order explicitly states:

This Court should grant review, vacate the Award, and stay enforcement of all related judgments on an emergency basis. Florida garnishment proceedings in Miami-Dade County Case No. 24-020109-CA-01 have frozen marital accounts held in tenancy by entirety with Anna Gilberg — a spouse who was never a party to the arbitration — containing proceeds from the sale of Appellant's California homestead. Those proceeds are protected under California homestead law and are not reachable under Florida's tenancy by entirety doctrine against a judgment to which Anna Gilberg was never a party. Assets stripped before this Court acts cannot be restored after a favorable federal ruling. Emergency relief is the only mechanism that preserves the status quo.

This Court should further stay enforcement pending the Northern District of California's resolution of the 28 U.S.C. §2201 action in Kesel's open bankruptcy (No. 10-41653) and criminal case (No. CR-00-40242 CW).

Respectfully submitted,

Dated: March 19, 2026

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APPENDIX G-6

Excerpt — Court of Appeal Oral Argument Transcript (Jan. 6, 2026)

EXHIBIT ___

TRANSCRIPT OF ORAL ARGUMENT

COURT OF APPEAL, SIXTH APPELLATE DISTRICT

STATE OF CALIFORNIA

Tuesday, January 6, 2026, at 9:30 A.M.

Video Timestamp: 1:10:00 to 1:50:00

https://jcc.granicus.com/player/clip/6827?view_id=36&redirect=true

Case No. H052610

ALEXANDER KOLCHINSKY, Plaintiff and Appellant

v.

POWER ARCHITECTS CORPORATION, Defendant and Respondent

Case No. H052611

LARRY GILBERG, Plaintiff and Appellant

v.

POWER ARCHITECTS CORPORATION, Defendant and Respondent

Panel: Grover, Acting P.J., Lie, J., Wilson, J.

Appearances:

Alexander Kolchinsky, Plaintiff and Appellant In Pro Per (H052610)
Larry Gilberg, Plaintiff and Appellant In Pro Per (H052611)
Michael Martinovsky, Attorney for Respondent Power Architects Corporation

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CASE NO. H052610 — KOLCHINSKY v. POWER ARCHITECTS

OPENING ARGUMENT — ALEXANDER KOLCHINSKY

PRESIDING JUSTICE GROVER: So that you can begin afterward. Michael Martinovsky appearing for Respondent Power Architects.

MR. KOLCHINSKY: My time estimate is probably two to three minutes depending on the questions from the court.

PRESIDING JUSTICE GROVER: Okay, very good. And our appellant?

MR. KOLCHINSKY: My time estimate was ten minutes for the jurisdictional mandate and then five minutes for the rebuttal.

PRESIDING JUSTICE GROVER: Very good. All right, you may go ahead and start, and if you need to adjust the height of the podium, you may do that as well. There's a button underneath.

MR. KOLCHINSKY: May it please the court? Steel Co. versus Citizens for Better Environment mandates that jurisdiction be examined first before any other issue. The Supreme Court stated, for a court to pronounce upon law's meaning when it has no jurisdiction to do so is by very definition an ultra vires act. Steel Co. also prohibits bootstrapping — using the results of unauthorized proceedings to justify jurisdiction for those same proceedings.

I raised these defects in my July 20, 2025 motion. I did not waive them. Judge Takaichi compelled me to arbitration by court order. Under Rosenthal, compelled participation does not waive jurisdictional defects. Neither Judge Folan nor Judge Takaichi addressed P.A.'s counterclaims against me. I raised Kesel's federal violations to Judge Takaichi. He called them not relevant to whether an arbitration agreement existed.

They have never been decided. This court should decide them now. Kesel had no standing to sue me, individually or on P.A.'s behalf. Mednik alone holds only 35 percent — insufficient even for majority action.

Under 11 U.S.C. § 541, when Kesel filed Chapter 11 bankruptcy on February 16, 2010, his P.A. shares transferred automatically to the bankruptcy estate. The panel acknowledged this at Award page 77. They said, although Kesel did not list his P.A. shares in his Chapter 11 case, those shares were part of the bankruptcy estate. Under Butner versus United States —

JUSTICE LIE: Excuse me, just for the interruption, but the bankruptcy was dismissed ultimately.

MR. KOLCHINSKY: It was dismissed, but it was not discharged.

JUSTICE LIE: Okay, and you don't think that the dismissal of the bankruptcy filing resolves that issue?

MR. KOLCHINSKY: No, because it's an ongoing crime.

JUSTICE LIE: Because the bankruptcy estate continues to exist, notwithstanding the dismissal of the bankruptcy?

MR. KOLCHINSKY: Because Kesel concealed Power Architects. Therefore, the crime continues. Every time he receives his dividends, it's a continuation of the crime. They had no idea that he concealed it. Federal court didn't, and then the panel admitted this. Federal court had no idea.

JUSTICE LIE: What gives you standing to prosecute this, what you posit as an ongoing crime, in the course of an arbitration that does not include any public participant?

MR. KOLCHINSKY: Nothing, but neither does the other side, because it's a jurisdictional question that can only be decided by the federal court system. What gives the arbitration court the right to decide on a matter that should be handled by the federal court?

JUSTICE LIE: So, respectfully, one argument is that what gives the arbitration panel jurisdiction is the parties' agreement to arbitrate, the scope of that agreement, and the matters that fall within the issues in dispute between the parties.

MR. KOLCHINSKY: Yes, but the jurisdiction was never addressed by the court. The jurisdiction of whether Kesel is a shareholder can only be determined by the federal court. And there's also a question of the counsel, the validity of the counsel.

JUSTICE LIE: Do you mean the bankruptcy court? I understand that you have a separate argument as far as criminal forfeiture, but as far as your bankruptcy argument —

MR. KOLCHINSKY: Both. There were two cases. One was the criminal forfeiture.

JUSTICE LIE: Right, but as far as the bankruptcy issue, your position is that that's a federal bankruptcy court issue.

MR. KOLCHINSKY: Yes, because the issue about the criminal forfeiture would be a federal district court issue. In criminal forfeiture proceedings. Yes, and in both cases the shares were concealed. They were not on the form, and the panel admitted that. Without Kesel's vote, this litigation could never be authorized. And the question of whether Kesel is a legitimate shareholder, like I said, is a question for the federal court.

The unauthorized counsel — Provision 2 of our agreement requires officers to be shareholders. Piston was appointed CEO, but he's not a shareholder. He violated that agreement.

JUSTICE LIE: So, Mr. Kolchinsky, I absolutely understand and respect your interpretation of the relevant agreements here. To the extent that the arbitration panel had jurisdiction to construe the agreement, to determine what it considered the parties to have intended at the time of the agreement, as opposed to at the time of litigation — my concern is that we don't have the power statutorily to second-guess that, or the trial court didn't have the power to second-guess that, and so we don't, and that implicates our ability to review that. Would you like to speak to that limitation on judicial review of the arbitration panel's interpretation of the agreement?

MR. KOLCHINSKY: This is exactly why we're asking you to dismiss the case, because we don't believe that the state courts have the jurisdiction to — as I understand it, the moment when I was compelled to arbitration, the state court became the agent of the state, the state actor, which means that they must comply with the federal laws, and they should acknowledge that if this is not a question to be decided by the state, it should be passed on to higher authority.

JUSTICE LIE: So I understand that you've made your jurisdictional motion. The difficulty that I have with the jurisdictional motion is that you are invoking the jurisdiction of the trial court by your petition to correct or vacate. You're invoking our jurisdiction to review that determination. So it seems like you're trying to have it both ways — that on the one hand, there is jurisdiction in the courts to correct the arbitration award or to vacate it, and on the other hand, the court doesn't have jurisdiction. And to the extent that you're making those arguments simultaneously, I think the issue is — it's hard for me to see how the trial court lacked jurisdiction to adjudicate the competing petitions it had before it, and yet didn't have jurisdiction. And if we don't have jurisdiction, then how do we have jurisdiction over your appeal?

MR. KOLCHINSKY: Well, I believe that there has to be an acknowledgment that there was a defect, because if there's any risk involved, if there's any chance that the state acted irrationally and did not have the authority over the federal court, it's a much higher matter, it's much more grave.

PRESIDING JUSTICE GROVER: Assuming that we agree with you that the issue of Kesel's shareholder status was purely a federal matter and was properly raised by you in the course of the arbitration proceeding?

MR. KOLCHINSKY: Yes, because he concealed it from the bankruptcy twice. He was indicted criminal, and he was supposed to — the minute when he was indicted, he was supposed to — and in the bankruptcy court, his assets were automatically turned over to the estate.That we agree.

JUSTICE LIE: So without necessarily agreeing with you, Mr. Kolchinsky, I guess I appreciate the points that you've raised and the many concerns that you have about the conduct of other parties in this case, and about wrongs that you believe have been committed by those other parties in any number of respects. I think the question is, assuming the validity of all of those claims of wrongdoing, notwithstanding what the arbitration panel decided and all of that, but even taking all of that as true — not every wrong committed by a party has a remedy in a particular dispute. So the fact that somebody has committed criminal conduct in other respects, even respects that potentially bear on the subject matter in dispute, doesn't necessarily mean that that criminal conduct affects the outcome of our very limited review of a trial court's very limited review of what happened in arbitration.

MR. KOLCHINSKY: Right. Yet you will not find a single case where a state court could override the laws of the federal court.

JUSTICE LIE: And I'm willing to spot you that. I'm just not necessarily seeing that — I'm not necessarily accepting your jurisdictional argument or what sounds like a Supremacy Clause argument on these facts.

MR. KOLCHINSKY: Well, I just want to point out that there was a lot of motive here from all the parties.

JUSTICE LIE: Understood. But again, there's a limit to what the trial court can do with that when the parties have agreed to arbitration as their dispute resolution mechanism.

MR. KOLCHINSKY: Well, I never agreed.

JUSTICE LIE: And I understand you're disputing that at this point. And where the arbitration panel has heard those claims, has heard the evidence and reached a decision.

MR. KOLCHINSKY: Well, Kesel was a convicted criminal, and during the court he spoke about —

PRESIDING JUSTICE GROVER: Typically to your right would be where you would sit. Thank you. And Mr. Martinovsky, go ahead.

* * *

ARGUMENT — MICHAEL MARTINOVSKY (RESPONDENT)

MR. MARTINOVSKY: May it please the court? Respondent will essentially submit on his pleadings. I believe we have briefed our position adequately, and nothing that I have heard — before I can take up any more of the court's time, I will just reiterate our request in the pleadings for sanctions. The standards for imposing sanctions have been met in this case, both the objective standard and the subjective standard.

PRESIDING JUSTICE GROVER: I'm sorry, Mr. Martinovsky, I'm just going to have to push back on that a little bit. I appreciate your position on the merits, and I understand why your clients would absolutely prefer not to have had to litigate this beyond the arbitration and so extensively in the trial courts on the petition to confirm. But I, candidly, I'm not seeing the case for sanctions here.

MR. MARTINOVSKY: Well, if I may, Your Honor, sanctions could be imposed for either the entire appeal lacking any merit, which we've argued that it does, but also, and importantly, for various frivolous motions. And in this case, we have a ton of frivolous requests for judicial notice motions, which are nothing really but a blatant attempt to expand the record and to sneak in evidence before the court. And even if the court is convinced that there might be some merit to the appeal, I would request that the court take a look at the specific motions for judicial notice, which are, in fact, if read, not motions for judicial notice at all, and impose sanctions based on that.

PRESIDING JUSTICE GROVER: And did you wish to address any other points about sanctions or anything else?

MR. MARTINOVSKY: Just that if the court does not wish to go through the minutia of figuring out how much sanctions are applicable for the various multiple requests for judicial notice which were frivolous, we would request that this be remanded to a trial court for determination of the amount of the sanctions. Should the court be so inclined to rule.

PRESIDING JUSTICE GROVER: All right. Well, I think we understand your argument. And I'm assuming then that you are concluding.

MR. MARTINOVSKY: Yes, Your Honor.

* * *

REBUTTAL — ALEXANDER KOLCHINSKY

PRESIDING JUSTICE GROVER: Thank you very much. Then, Mr. Kolchinsky, you do have five minutes remaining. However, the only argument or issue to rebut is the sanctions issue. So rather than returning to your previous comments, I'll invite you to address that issue. I think the court has already decided on the sanctions.

MR. KOLCHINSKY: And there is nothing frivolous — the sanctions, not the appeal — especially coming from an attorney which violated the very provision that happened. He was hired by Piston, who was not a shareholder. So Mr. Martinovsky is not authorized to be an attorney on this court or any other court if being a neutral attorney defending Power Architects. The question to Mr. Martinovsky is, why is he defending Kesel if part of my shares have also hired him? Why is he defending Kesel against me? He's supposed to be a neutral Power Architects attorney.

PRESIDING JUSTICE GROVER: I think we're getting a good bit beyond the issue of sanctions.

MR. KOLCHINSKY: I'm sorry if I phrased it, but that's all I have to say.

PRESIDING JUSTICE GROVER: All right. Then, thank you very much. We really appreciate your appearance this morning. Mr. Martinovsky, also, thank you for appearing. We will submit this matter, and you'll have a written decision within 90 days. Thank you.

CASE NO. H052611 — GILBERG v. POWER ARCHITECTS

OPENING ARGUMENT — LARRY GILBERG

PRESIDING JUSTICE GROVER: That brings us to our remaining matter on calendar, Gilberg versus Power Architects Corporation. And I see Mr. Martinovsky is here representing Power Architects in this matter as well. And do we have an appearance from Mr. Gilberg? Yes, I can see you on screen. Good morning. Thank you for waiting for us to call your case. Would you go ahead and confirm your appearance and your time estimate, please?

MR. GILBERG: I estimate 11 minutes.

PRESIDING JUSTICE GROVER: Thank you. All right. And Mr. Martinovsky, I think there's no real reason for you to formally state your appearance here. We acknowledge you are here on behalf of Power Architects Corporation. So, Mr. Gilberg, if you're ready, you may go ahead.

MR. GILBERG: I'd like to first address the bankruptcy and criminal forfeiture. Section 1286.2 is a state statute. It cannot override federal exclusive jurisdiction under 28 U.S.C. § 1334. For federal criminal forfeiture under 21 U.S.C. § 853. The Supremacy Clause. Moncharsh versus Heily simply doesn't fly here. Moncharsh has nothing to do with federal jurisdiction or criminal jurisdiction for that matter.

In addition, I'd like to expand what was just stated. So, Kesel concealed his assets during his 2010 bankruptcy. 11 U.S.C. § 554(d) states the following: Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

This is very important. 18 U.S.C. § 3284 states the following: The concealment of the assets of a debtor in a case under Title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged —

JUSTICE LIE: Mr. Gilberg? Excuse me, and please pardon the interruption, but did you make this argument in the trial court? I'm not talking about Mr. Kolchinsky, I'm talking about you. Did you make the argument in the trial court about Kesel's status as a shareholder?

MR. GILBERG: You mean Judge Rosen, right? I addressed the jurisdiction issue, but I didn't go in detail. However, Alex Kolchinsky and I were in the same case. This was the same case with Judge Rosen, and the 117 pages is attached to the judgment. So it shows precisely what the judgment was based on.

The intent of the rhetoric — they decided they said the intent of Kesel hiding shares, it's not a matter for them to decide. How can — without the intent, how can Judge Rosen then state that I failed to prove? And by the way, she said that I did not prove criminal or bankruptcy forfeiture. Look at her — please look at her order. It was not Alex Kolchinsky. She said specifically, Gilbert failed to prove criminal or bankruptcy forfeiture. And how can I prove bankruptcy forfeiture when the panel simply said the panel deems it unnecessary to decide in the end why he did not disclose the shares?

May I please finish this point that I have? The concealment of the assets of a debtor in a case under Title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or discharge denied. And the period of limitations shall not begin to run until such final discharge or denial of discharge has occurred.

JUSTICE LIE: I think that assumes that the bankruptcy proceeding is actually litigated to a conclusion as opposed to dismissed.

MR. GILBERG: Exactly. So it was dismissed. So that means that it's ongoing.

JUSTICE LIE: Which means that there's no more bankruptcy.

MR. GILBERG: No, it's not discharged. It was dismissed, meaning that it stopped. Well, the U.S. Congress said the following: The period of limitations shall not begin to run until such final discharge or denial of discharge has occurred. Well, there is no word of dismissal.

So you will not find a single case where a state court validates assets hidden from federal bankruptcy court in a Chapter 11 dismissal case, because that's not the law. The concealment must end first. The court and PA know about Kesel's concealment. The federal court still doesn't know. The assets must be disclosed first.

JUSTICE LIE: So let's say, for the sake of argument, that Mr. Kesel remains subject to prosecution for bankruptcy fraud, criminal prosecution for bankruptcy fraud. Okay. That doesn't change the fact of the dismissal of the bankruptcy proceedings.

MR. GILBERG: Well, the simple question for this court: Can Kesel legally vote shares he illegally holds?

JUSTICE LIE: And I'm not convinced that that's a question for this court. Jurisdictionally, given the statutory limits on what a court can review of an arbitration proceeding. And I absolutely respect what's at stake, personally, for you in all of this. But as with Mr. Kolchinsky, we also have to be mindful of the limits of what the judicial branch can second-guess or review in the context of a petition to correct or vacate, or a petition to confirm, an arbitration award.

MR. GILBERG: Rewarding a debtor such as Kesel with millions of dollars would transform congressional intent to punish concealment into a reward for Mr. Kesel.

PRESIDING JUSTICE GROVER: This is really a policy-level argument as opposed to Justice Lie's point here about the very strict limits on judicial review of arbitration decisions. Because there is a state policy favoring arbitration and resolution of disputes.

MR. GILBERG: The point I made was that the state statute cannot override federal exclusion of jurisdiction and under the Supremacy Clause.

JUSTICE LIE: So I'm just not seeing how — assuming that bankruptcy fraud was committed by Mr. Kesel, you know, for the sake of argument — I'm not sure how the arbitration award or the confirmation of the arbitration award offends the Supremacy Clause, because Mr. Kesel could then be — could nonetheless be held into federal court for prosecution of what you allege is bankruptcy fraud, if that were the case.

MR. GILBERG: Well, let me say this. The criminal case — the criminal case states that it's — the shares are already part of U.S. government assets. Because let me read this: When the crime occurred, it automatically becomes under § 853 — it automatically becomes property of the United States. So it's already property of the United States. And § 853(p) states substitute assets forfeiture. Burden shifts immediately to Kesel, because he invested money during his criminal period, 1998 to 2000. So at that point, it becomes his burden to show that the money invested was from a legitimate source. And this is specifically — Judge Wilkins stated this is a jurisdiction of federal, Oakland federal district court. The case is open. And according to this case, the shares already belong to the U.S. government. And they never left the bankruptcy estate.

Furthermore, if you simply go by the agreement that we're discussing here, there's a provision, 4(b), which requires everything that you transfer back to any shareholder must be in writing. Well, the bankruptcy trustee never transferred shares back to Kesel, because there's nothing in writing according to 4(b). The trustee immediately became in the shoes of Kesel. And therefore, he was supposed to follow 4(b) and transfer shares back to Kesel in writing. But there's nothing in writing that the shares have ever been transferred.

And most of all, we have Provision 16 that is automatic — that says as soon as you receive relief, you're no longer a vendor to the company. The arbitration said, well, that's not a problem, because you should have purchased him out at 50%. And we could not do that because the shares belong to the trustee, not to Kesel. Therefore, we couldn't buy him out at 50%.

Kesel has complete control of his assets. And he should have updated his Schedule B. And he hasn't done that.

So I'd like to change the topic slightly. I'd like to say the following: There is no valid agreement that ever existed for Power Architects to sue me.

I never agreed to be sued by Power Architects. I'm a 25% owner of Power Architects. Power Architects is a signatory to the same agreement that requires 76% authorization. The signature page states, the corporation has caused this agreement to be signed by its duly authorized officers. I signed it as CEO. Alex Mednik signed it as president. See the Court Transcript, page 162.

Under the agreement, 4(a), PA acts only when 76% of ownership authorizes action. See the Court Transcript, page 143. Without 76%, PA never agreed to arbitration. Under Moncharsh v. Heily, there is simply no arbitration agreement to be enforced.

Provision 4(a) gives dissenters the right to demand rescission or a buyout when corporate action proceeds without 76%. I demanded both.

Finally, in his opposition, Mr. Martinovsky — on judicial notice, page 7, filed August 29 — Mr. Martinovsky stated: "Exhibit 1, PA tax returns, is being introduced by Appellant to show that Mednik and Kesel did not have 76% voting power, but there has never been a dispute." Thus, they always knew that they lacked 76% and still continued to sue me.

I was not silent. I demanded. Judge Rosen stated in her ruling, Gilberg contends that the panel ignored Provisions 7 and 4. As detailed in my jurisdiction motion, I and Alex Kolchinsky — we have about 30.5%, and they have 69.6%. They cannot reach 76% to sue me. Mr. Martinovsky confirmed that. That's undisputed.

Mr. Kesel testified — Kesel and his group required 76% votes. Kesel himself said, under oath, most important was 76% that we negotiated.

JUSTICE LIE: Mr. Gilberg, again, apologies for the interruption, but can you tell me whether when you were in the trial court, did you challenge the authority of Power Architects to proceed, either in opposing the petition to compel or —

MR. GILBERG: Yes. So Judge Rosen stated in her ruling —

JUSTICE LIE: I'm not asking what Judge Rosen stated. I'm asking whether you — not Mr. Kolchinsky, but you — through your lawyer, raised in the trial court your argument that Power Architects lacked the power to proceed, either by compelling arbitration or either in the proceedings on the petition to compel or in the proceedings on vacatur or correction of the award.

MR. GILBERG: We have raised Provision 4, and Provision 4 was not followed.

JUSTICE LIE: So does that mean that you say you generically raised Provision 4 but you did not specifically argue that Power Architects lacked authority to proceed against you?

MR. GILBERG: We stated that Kesel did not, you know, have bankruptcy and things of that matter. And as I said before, I'm disputing the judgment here, which has 117 pages attached to that, and I have a right. And according to Kabran — let me just say this, most important: The California Supreme Court confirmed in Kabran v. Sharp Memorial Hospital, a party may raise this defect about jurisdiction for the first time on appeal. And the court has to examine this. This is exactly what I'm doing now. I'm raising jurisdiction on appeal. We are on appeal. I'm raising it now, and I would appreciate that the court does not deny me that right.

PRESIDING JUSTICE GROVER: Mr. Gilberg, I'm going to invite you to perhaps stop your opening argument there. Just given the passage of time, we'll hear from Mr. Martinovsky, and then you will still have a few minutes to rebut any arguments that he makes. And Mr. Martinovsky, you may go ahead.

* * *

ARGUMENT — MICHAEL MARTINOVSKY (RESPONDENT)

MR. MARTINOVSKY: May it please the court. The Respondent will again submit on the briefings and again request that the court examine both the substance of the appeal as a whole and the substance of the individual motions filed in this appeal in its consideration of sanctions in this case.

PRESIDING JUSTICE GROVER: Thank you very much. So, Mr. Gilberg, that's a very narrow argument for you to rebut. But if you wish to address sanctions or any other of Mr. Martinovsky's points, you may do so now in the three minutes that you have remaining.

* * *

CERTIFICATION

This transcript was prepared from the video recording of the oral argument proceedings held on January 6, 2026, before the Court of Appeal, Sixth Appellate District, State of California, available at:

https://jcc.granicus.com/player/clip/6827?view_id=36&redirect=true.

The video segment transcribed runs from approximately 1:10:00 to 1:50:00.

I, Larry Gilberg, certify that this transcript is a true and accurate representation of the oral argument proceedings as recorded in the publicly available video.

Dated: February 25, 2026

LARRY GILBERG
221 Meridian Ave. #408
Miami Beach, FL 33139
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Appellant: Self-Represented "In Pro Per

EXHIBIT G-7

Plea Agreement of Mark Alexander Kesel
United States v. Kesel, Case No. CR-00-40242 CW
United States District Court, Northern District of California
Executed December 8, 2003 (Hon. Claudia Wilken)

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FILED
DEC - 8 2003
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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ALL DISCOUNT LABORATORY SUPPLY, Defendant.	No. CR-00-40242 CW PLEA AGREEMENT

All Discount Laboratory Supply ("ADLS"), by and through its managing partner Mark Alexander Kesel, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. ADLS agrees to plead guilty to count Two of the captioned Superseding Indictment (charging it with conspiracy to distribute equipment, chemicals, products and/or materials which may be used to manufacture a controlled substance or listed chemical, knowing, intending or having reasonable cause to believe that the equipment, chemicals, products or

Document No. 282
District Court
Criminal Case Processing

materials would be used to manufacture a controlled substance, in violation of Title 21, United States Code, Section 846), and count Thirty-Nine of the captioned Superseding Indictment (charging it with Conspiracy to Launder Monetary Instruments, in violation of Title 18, United States Code, Section 1956(h)). ADLS agrees that the elements of the offense and the maximum penalties are as follows:

Count Two

a. a conspiracy existed to distribute equipment, chemicals, products and/or materials which may be used to manufacture a controlled substance or listed chemical, knowing, intending or having reasonable cause to believe that the equipment, chemicals, products or materials would be used to manufacture a controlled substance

b. the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

i.	Maximum prison sentence	10 years
ii.	Maximum fine	$250,000
iii.	Maximum supervised release term	3 years
iv.	Mandatory special assessment	$ 100.00

v. Other possible consequences of guilty plea

a. Mandatory and discretionary denial of federal benefits upon conviction of drug offenses, 21 U.S.C. § 862 and §862a;

b. Deportation

Count Thirty-Nine

a. defendant agreed with at least one other person

b. to launder money

c. the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it

d. the defendant commits at least one overt act in furtherance of the conspiracy

i.	Maximum prison sentence	20 years
ii.	Maximum fine	$500,000 or twice the value of the property involved in the transaction
iii.	Maximum supervised release term	5 years
iv.	Mandatory special assessment	$100
v.	Other possible consequences of guilty plea	
	a. Deportation	

ADLS also agrees to admit and agree that proceeds derived from these conspiracies are forfeitable to the government, as alleged in the Forfeiture Allegation contained in the Superseding Indictment, and as more specifically set forth in Paragraph 8 below.

ADLS understands that, because it is pleading guilty to more than one count, the Court may order the sentences on those counts to run consecutively.

2. ADLS agrees that it is guilty of the offenses to which it will plead guilty, and agrees that the following facts are true: Among other things, ADLS sold chemicals and equipment that can be used to manufacture controlled substances such as methamphetamine. ADLS' employees and others agreed to sell these materials when they had reasonable cause to believe that they would be used to manufacture a controlled substance. ADLS' managing partner and day manager also agreed to pay ADLS' suppliers with money derived from selling materials which they had reasonable cause to believe would be used to manufacture a controlled substance.

ADLS agrees that if the matter went to trial, the government would present evidence that during the during the relevant time frame, ADLS' employees received numerous visits from DEA and BNE representatives, who told them several times about the rules and regulations concerning the sale of chemicals and equipment that can be used to manufacture drugs such as methamphetamine. ADLS managing partner, Mark Kesel, was present for at least one of these visits. The government would present evidence that ADLS' employees were told that they should not sell these items to anyone they knew or had reasonable cause to believe would use them to manufacture drugs. It would also present evidence that they were also given written criteria to use to evaluate customers, to help them determine whether they were going to use the chemicals or equipment to make drugs.

ADLS agrees that notwithstanding this, it sold large amounts of chemicals and equipment to people that the management and employees knew or had reasonable cause to believe would use them to manufacture drugs. If the case proceeded to trial, the government would be able to prove that some of ADLS' customers purchased large amount of chemicals, would not set up corporate accounts, paid for their purchases with large amounts of cash, and bought more than one thing that in combination would make a controlled substance. These factors, and others, gave ADLS' employees and management reasonable cause to believe that these customers were using the chemicals and items that ADLS sold them to manufacture controlled substances.

These sales generated substantial amounts of money, which ADLS' employees and management knew represented the proceeds of a specified unlawful activity (specifically, our agreement to sell chemicals and equipment that we had reasonable cause to believe would be used to manufacture a controlled substance, as outlined above). Mark Kesel agreed with Vladimir Kotlyarenko to use some of this money to purchase additional Freon, to continue to have inventory to sell to the customers identified above. ADLS agrees that purchasing additional Freon constituted an overt act in furtherance of the agreement to use these proceeds to promote the sale of chemicals and equipment to customers ADLS knew or had reasonable cause to believe would use them to manufacture controlled substances.

Between 1998 and 2000 (inclusive). ADLS sales of chemicals and equipment to customers ADLS knew or had reasonable cause to believe would use them to manufacture controlled substances generated approximately $11,748,771 in gross sales to ADLS. ADLS agrees that as the proceeds of an illegal activity, some or all this money is forfeitable to the government and should be forfeited under 21 U.S.C. § 853.

The defendant and its attorney stipulate and agree that there is an independent factual basis for the defendant's guilty plea in this matter.

3. ADLS agrees to give up all rights that it would have if it chose to proceed to trial,

including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

4. ADLS agrees to give up its right to appeal its conviction, the judgment, and orders of the Court. ADLS also agrees to waive any right I may have to appeal my sentence.

5. ADLS agrees not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. ADLS agrees not to ask the Court to withdraw its guilty pleas at any time after they are entered, unless the Court declines to sentence the defendant as set forth in paragraph 8, below. ADLS agrees that the government may withdraw from this agreement if the Court does not accept the agreed upon sentence set out below.

7. The government and ADLS agree that pursuant to USSG §§ 8C2.2(b) and 8C3.3(b), it is readily ascertainable through a preliminary determination of the minimum fine range that ADLS is not and is not likely to become able (even on an installment schedule) to pay a minimum guideline fine. ADLS agrees that, regardless of any other provision in this agreement, the government may and will provide to the Court and the Probation Office all information relevant to the charged offenses or the sentencing decision.

8. ADLS and the government agree that as a result of the application of USSG §§ 8C2.2(b) and 8C3.3(b), a guideline fine is unnecessary. The parties agree that the following sentence is appropriate in this case: In lieu of a guideline fine, ADLS shall dissolve, disband, and cease to exist. All assets of ADLS in any form, including but not limited to all chemicals and equipment seized therefrom in December 2000, all accounts payable due or which may come due to ADLS, all funds in any and all accounts held by or for the benefit of ADLS, any tax return which may be or may become due to ADLS, all stocks, bonds, real estate holdings, ownership interests owned by, held for the benefit of, or representing any beneficial interest of ADLS, shall be forfeited to the government in satisfaction of a judgment of forfeiture pursuant to ADLS'

admission of the forfeiture allegation as set forth in Paragraph 2 above. Based upon the information currently known to it, the government believes that ADLS does not have an ownership or beneficial interest in Multimetrix. All physical assets currently located at ADLS that the government intends to seize pursuant to this agreement shall be identified for forfeiture by December 15, 2003. All such physical assets may be seized and held by the United States Marshal's Service, or their designee, pending resolution of forfeiture proceedings. The parties specifically agree that ADLS' account at Bay Bank of Commerce shall be used to pay ADLS' bills, attorney's fees, dissolution costs and disposal fees, and that any funds deposited to that account for the purpose of satisfying those costs or fees shall be used solely for that purpose, and not transferred to the government. If, as a result of any post-arrest act or omission of the defendant or any of its co-defendants, any of ADLS' assets cannot be located upon the exercise of due diligence, has been transferred or sold to or deposited with, a third person, has been placed beyond the jurisdiction of the Court, has been substantially diminished in value, or has been commingled with other property which without difficulty cannot be subdivided, any and all interest ADLS has in any other property (not to exceed the value of the above forfeitable property) shall be forfeited to the United States. ADLS and its partners, constituents, agents, employees, and any other individuals authorized to speak or act therefor, agree that All Discount Laboratory Supply shall never reform, re-open or reconstitute under any name for any purpose. The amount of ADLS' forfeiture shall not be reduced or offset by the forfeiture of any assets of any other defendant to the United States. Before sentencing, co-defendants Mark Kesel and Vladimir Kotlyarenko, will, upon request of the Court, the government, or the U.S. Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning ADLS' assets and its ability to pay. ADLS agrees to pay the special assessment at the time of sentencing.

9. ADLS agrees not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence. ADLS also agrees not to violate the terms of my pretrial release (if any); intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; or fail to comply with any of the other promises I

have made in this Agreement. ADLS agrees that, if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises in this agreement, including those set forth in paragraphs 12 through 14 below, but I will not be released from my guilty plea.

10. ADLS agrees that this Agreement contains all of the promises and agreements between the government and me, and I will not claim otherwise in the future.

11. ADLS agrees that this Agreement binds the U.S. Attorney's Office for the Northern District of California only, and does not bind any other federal, state, or local agency.

The Government's Promises

12. The government agrees to move to dismiss any open charges pending against the defendant in the captioned superseding indictment at the time of sentencing.

13. The government agrees not to file or seek any additional charges, or pursue any civil actions, against the defendant or its partners that could be filed as a result of the investigation that led to the captioned superseding indictment.

14. The government agrees that the appropriate sentence in this case should be as set forth in paragraph 8 above, unless the defendant violates the agreement as set forth in paragraph 9 above.

The Defendant's Affirmations

15. The defendant confirms that it has had adequate time to discuss this case, the evidence, and this Agreement with its attorney, and that he has provided me with all the legal advice requested.

16. The defendant confirms that while its representatives considered signing this Agreement, and at the time its representatives signed it, its representatives were not under the influence of any alcohol, drug, or medicine.

17. The defendant confirms that its decision to enter a guilty plea is made knowing the charges that have been brought against it, any possible defenses, and the benefits and possible detriments of proceeding to trial. The defendant also confirms that its decision to plead guilty is made voluntarily, and no one coerced or threatened it to enter into this agreement.

18. ADLS understands that this plea agreement is made pursuant to a package deal and that it will only have effect if its co-defendants Mark Kesel and Vladimir Kotlyarenko both plead guilty pursuant to our respective plea agreements.

I am the authorized representative of defendant All Discount Laboratory Supply. In that capacity, I have read this agreement and carefully reviewed every part of it with the attorneys of defendant All Discount Laboratory Supply. I am authorized to enter into this agreement on the behalf of defendant All Discount Laboratory Supply. The representations contained in this agreement are true to the best of my knowledge and belief.

Dated: 12·8·03

MARK ALEXANDER KESEL
authorized representative of ALL DISCOUNT LABORATORY SUPPLY
Defendant

KEVIN V. RYAN
United States Attorney

Dated: 12/8/03

KAREN D. BEAUSEY
AUDRA S. IBARRA
Assistant United States Attorneys

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: 12-8-03

RANDOLPH DAAR, ESQ.
Attorney for Defendant ADLS

EXHIBIT G-8

Preliminary Order of Forfeiture as to Mark Alexander Kesel
United States v. Kesel, Case No. CR-00-40242 CW
United States District Court, Northern District of California
(Hon. Claudia Wilken)

ORIGINAL

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MARK ALEXANDER KESEL, Defendant.	Case No. CR 00-~~40042~~ 40242 CW ~~[PROPOSED]~~ PRELIMINARY ORDER OF FORFEITURE

On October 16, 2003, the United States charged defendant Mark Alexander Kesel in a Second Superseding Indictment with violations of, *inter alia*, Title 21, United States Code, Section 846 (conspiracy) in violation of Title 21, United States Code, Section 843(a)(7) and Title 18, United States Code, Section 1956(h) (conspiracy to launder monetary instruments) in violation of Title 21, United States Code, Section 846. In the Second Superseding Indictment, the United States also sought forfeiture of $1,150,000 (amount of proceeds that he obtained, directly and indirectly as a result of said violations) pursuant to Title 21, United States Code, Sections 853.

On December 8, 2003, defendant Mark Alexander Kesel pled guilty to said charges and consented to the forfeiture to the United States all of his right, title and interest in $1,150,000 and in the Glassware and Lab Apparatus listed in Attachment A.

///

///

Document No. 450

IT IS HEREBY ORDERED that the United States Marshal Service shall seize the aforesaid property for disposition pursuant to law, subject to the provisions of Title 21, United States Code, Section 853 and the plea agreement.

IT IS FURTHER ORDERED that if any of the property subject to forfeiture as a result of any act or omission of the defendant -

1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third party;
3. has been placed beyond the jurisdiction of the Court;
4. has been substantially diminished in value; or
5. has been commingled with other property which cannot be divided without difficulty;

other property shall also be subject to forfeiture, pursuant to Title 21, United States Code, Section 853 and the plea agreement.

Upon issuance of the Preliminary Order of Forfeiture, the United States will, in those jurisdictions where the subject assets are located, publish notice in a newspaper of general circulation of the United States' intent to dispose of the assets in such manner as the Attorney General may direct.

That upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture in which the interest of all parties, if any, will be addressed.

The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in property that is the subject of this Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

Pursuant to Fed. R. Crim. P. 32.2(b)(3), this Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing and shall be made part of the sentence and included in the judgment. If no third party files a timely claim, this Order shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2).

Following the Court's disposition of all petitions filed, or if no such petitions are filed within the time prescribed by law, upon proof of publication and proof of notice to any persons known

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to have alleged an interest in the property, the United States shall have clear title to each of the asset described in Exhibit A, attached hereto.

ORDERED this 13th day of April, 2004.

Dated: APR 13 2004

CLAUDIA WILKEN
United States District Judge

APPENDIX G-9

Excerpts — Petitioner's Motion to Determine Jurisdiction
Court of Appeal, Sixth Appellate District, No. H052611

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

Case No. H052611 (related Case No. H052610)

LARRY GILBERG.
Plaintiff and Appellant,

v.

POWER ARCHITECTS, CORPORATION,
Defendants and Respondents.

Appeal from the Superior Court of Santa Clara County
Case No. 20CV368701

Honorable Amber E. Rosen, Judge Presiding
(Prior Ruling by Honorable Drew C. Takaichi, Judge)
(Prior Ruling by Honorable Maureen A. Folan, Judge)

MOTION TO DETERMINE JURISDICTION BEFORE RESOLUTION OF OTHER ISSUES

LARRY GILBERG
221 Meridian Ave. #408
Miami Beach, FL 33139
larrygilberg@comcast.net
Appellant: Self-Represented "In Pro Per

NOTICE OF CONSTITUTIONAL JURISDICTIONAL CHALLENGE

TO THE CALIFORNIA COURT OF APPEAL, SIXTH APPELLATE DISTRICT:

Appellant Larry Gilberg hereby moves this Court for an order determining, as a threshold jurisdictional matter under California appellate procedure, whether Respondents possessed valid corporate authority to initiate the underlying arbitration proceedings that form the basis of this appeal.

I. SUMMARY OF ARGUMENT

Power Architects lacked authority to initiate arbitration on behalf of shareholders Mednik and Kesel —appellants' 31% blocking power of shareholdes Gilberg and Kolchinsky prevented required 76% supermajority while Mednik and Kesel held only 35%, far bellow 76% required.

Additionally, Kesel's bankruptcy filing automatically transferred his undisclosed shares to federal estate property under 11 U.S.C. § 541, eliminating his voting rights and no shares.

The Panel exceeded constitutional authority by adjudicating federal bankruptcy estate property and criminal forfeiture matters exclusively within federal court jurisdiction under 28 U.S.C. § 1334(e)(1), then improperly returned the undisclosed shares to Kesel.

A. California's Mandatory Jurisdictional Analysis

Under California Code of Civil Procedure section 1294.2 and California appellate procedure, this Court has sua sponte authority to examine jurisdictional defects in arbitration awards, regardless of how presented below.

California Constitution Article VI, Section 10 grants California courts inherent judicial power to examine jurisdictional defects.

Key California Authority:

- Kabran v. Sharp Memorial Hospital (2017) 2 Cal.5th 330, 339: "The question of subject matter jurisdiction may be raised at any time during the pendency of the action."
- Rosenthal v. Great Western Financial Securities Corp. (1996) 14 Cal.4th 394, 420: "Jurisdictional defects based on lack of corporate authority cannot be waived by participation in proceedings."

• People v. Yeats (1977) 66 Cal.App.3d 874, 879: "An appellate court is free to accept new legal theories when the question is one of law alone."
• Yvanova v. New Century Mortgage Corp. (2016) 62 Cal.4th 919, 930: Void transactions are not subject to statutes of limitation.

California Evidence Code Authority:

• Evidence Code section 459(a): Appellate court has mandatory authority to take judicial notice regardless of opposition when examining jurisdictional defects.

B. Steel Co. Federal Constitutional Mandate in State Courts

Steel Co. v. Citizens for Better Environment (1998) 523 U.S. 83, 94-95 establishes the fundamental constitutional principle that "jurisdiction is a threshold matter that must be addressed before reaching the merits" and this requirement is "inflexible and without exception."

Steel Co.'s Core Holdings Applied to California Courts:

• Federal constitutional mandates bind state courts under Supremacy Clause
• Jurisdictional analysis cannot be waived or bypassed for procedural convenience
• Courts must examine jurisdiction sua sponte regardless of parties' arguments

- "Without jurisdiction the court cannot proceed at all in any cause"

This federal constitutional principle applies with equal force in California appellate courts reviewing arbitration awards, requiring threshold jurisdictional determination before any substantive consideration.

C. Constitutional Authority Supersedes Procedural Objections

Federal constitutional mandates supersede state procedural limitations under the Supremacy Clause. California Civil Procedure Code section 418.10 authorizes jurisdictional challenges with evidence, Evidence Code section 459(a) grants appellate courts mandatory authority for jurisdictional determinations, and California Constitution Article VI, Section 10 grants inherent judicial power to examine jurisdictional defects sua sponte.

Corporate authorization to initiate proceedings is jurisdictional, not merits. The mathematical impossibility of achieving required 76% supermajority creates a jurisdictional void that cannot be cured by arbitral consideration. Federal preemption over bankruptcy estate property is quintessentially jurisdictional under *Central Virginia Community College v. Katz* (2006) 546 U.S. 356..

D. Procedural Authority for Constitutional Challenges

Constitutional jurisdictional challenges transcend ordinary procedural limitations. CCP section 418.10 imposes no word limits on jurisdictional challenges. Jurisdiction is a threshold constitutional issue requiring courts to determine jurisdiction regardless of briefing format. Steel Co. mandate establishes that "jurisdiction is a threshold matter that must be addressed before reaching the merits."

Courts cannot ignore jurisdictional defects even in poorly presented motions due to sua sponte duty to examine jurisdiction. Constitutional requirements cannot be waived under any circumstances.

This motion is made pursuant to Federal Authorities including U.S. Constitution Article III (federal court jurisdiction), U.S. Constitution Article VI, Clause 2 (Supremacy Clause), Fourteenth Amendment (due process jurisdictional requirements), 28 U.S.C. sections 1331, 1334, 1367 (federal jurisdiction statutes), 11 U.S.C. sections 541, filing ultra vires and void ab initio. Corporation cannot litigate while in material breach of mandatory governance provisions.

REASON #2:

FEDERAL EXCLUSIVE JURISDICTION OVER BANKRUPTCY ESTATE PROPERTY

The Panel found: "On February 16, 2010, Kesel filed a Chapter 11 petition...Case No. 10-41653, signing the petition under penalty of perjury...Kesel owned PA shares but did not list them on the petition's Schedule B" (CT p. 76). Kesel's bankruptcy appears in Co-Plaintiff Kolchinsky's Case No. H052610 (CT pp. 87-105), Schedule B (CT pp. 95-99).

A. Panel Exceeded Constitutional Authority Over Federal Estate Property Panel's Own Finding: "Kesel's PA shares were part of the bankruptcy estate" (CT p. 77) - yet proceeded to adjudicate ownership of federal estate property without constitutional authority.

Federal Automatic Transfer: 11 U.S.C. § 541(a)(1) operated automatically February 16, 2010: "creates an estate... comprised of all legal or equitable interests of the debtor in property as of commencement" - No court order required, permanent federal jurisdiction.

Exclusive Federal Authority: 28 U.S.C. § 1334(e)(1) grants federal courts "exclusive jurisdiction... of all property, wherever located, of the debtor... and of property of the estate." Statutory term "exclusive" admits no exceptions for private arbitration panels.

B. Federal Court "For Cause" Determination Required 11 U.S.C. § 349(b)(3) is conditional, not automatic: "Unless the court, for cause, orders otherwise... revests the property of the estate in the entity" - requires federal court determination.

California Authority: Central Virginia Community College v. Katz (2006) 546 U.S. 356, 369-70: Bankruptcy jurisdiction exclusively federal, cannot be exercised by state panels.

Concealed Assets Under Federal Law: 11 U.S.C. § 554(d): "Property that is neither abandoned nor administered remains property of the estate" - Kesel's concealed shares never administered.

Ninth Circuit Authority: Cusano v. Klein (264 F.3d 936 (9th Cir. 2001)): "Property that is neither abandoned nor administered remains property of the estate" even after case dismissal.

Moreover, if undisclosed PA shares automatically reverted to Kesel upon dismissal, this would render meaningless the criminal penalties under 18 U.S.C. § 152(3) for "knowingly and fraudulently" concealing assets from bankruptcy proceedings. This creates perverse incentives where debtors who hide assets get 100% recovery with no consequences, while honest debtors who disclose assets may lose them for "cause".

C. Ongoing Federal Criminal Violations 18 U.S.C. § 152(5): Criminalizes "knowingly and fraudulently receiv[ing] any material amount of property from a debtor" after bankruptcy filing.

(i). Panel's Own Factual Findings Establish "Knowing" Receipt Synchronized Distribution Evidence: The Panel found that "PA's records establish that Kolchinsky received profit distributions in the years that such distributions were made to Gilberg, Mednik and Kesel" (CT p. 103). This creates documented proof that all shareholders received distributions simultaneously, establishing a clear pattern of systematic dividend participation.

Legal Significance: Systematic participation in shareholder distributions over 12 years, while concealing share ownership from federal bankruptcy court, establishes "knowing" receipt under § 152(5) as a matter of law. The Panel's factual findings preclude any "inadvertent concealment" defense.

(ii). Mathematical Proof Using Panel's Own Methodology Key ownership structure per Panel (CT p. 44): · Gilberg: 50,000 shares · Mednik: 50,000 shares · Kesel: about 35,000 shares - OSM group allocation, all shares owned by Kesel now, adjusted with extra ADLS shares in 2001 (per August Agreement)

Ownership ratio: Kesel 35,000 ÷ Gilberg (same as Mednik) 50,000 = 25/35

(iii). Calculating Kesel's Dividend Receipts Using PA's Expert Data Data Source: Monica Ip, PA's expert witness hired by Mednik and Kesel, provided comprehensive dividend analysis (C-1049, Arbitration Exhibit 5, see Dividend Overpayment to Gilberg Table, CT pp. 93-94).

Panel's Methodology: "Dividend information through 2019 is derived from Ip's report... The 'Actual Dividends Received' column is based on Mednik's authorized dividends... because

K. Constitutional Argument Preserved:

Kolchinsky's Supremacy Clause argument: "federal statute... California courts must enforce it, even if it conflicts with state law" (CT p. 278, lines 1-5) - Judge Rosen provided no constitutional analysis despite explicit federal constitutional challenges.

L. Judge Folan's Order Does Not Grant PA Jurisdiction to Sue Gilberg

Judge Folan's January 12, 2021 order granted only defensive joinder: "Defendants Mednik and Kesel's Request for Joinder in the Petition to Compel Arbitration is GRANTED... Both Mednik and Kesel have standing to join in P.A's Petition to Compel Arbitration" but explicitly refused offensive authority: "The Court will not entertain their request to compel arbitration of their counterclaims" (CT p. 329).

Judge Folan's finding that "they remain shareholders until formal action is taken pursuant to the terms of the Shareholder Agreement" was made without awareness that Kesel failed to disclose PA shares on bankruptcy Schedule B, creating federal estate property issues under 11 U.S.C. § 541, void McCardle requires courts to address sua sponte before any substantive consideration.

C. No Procedural Bypass Permitted

McCardle's constitutional mandate operates independently of procedural rules or party conduct. Jurisdictional defects cannot be waived, delegated to arbitration panels, or cured through extensive briefing.

X. CONCLUSION

Under *Steel Co. v. Citizens for Better Environment* and *Ex parte McCardle*, this Court must examine corporate authorization defects as a threshold matter before any substantive consideration. The mathematical impossibility of achieving required 76% supermajority authorization creates jurisdictional void that compels sua sponte examination and complete vacatur of the arbitration award.

Respectfully submitted.
August 13th, 2025

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