Marie Supv.
10/2/17 @
1227 hrs

Adam Bereki
c/o postal service address
818 Spirit
Costa Mesa, California CF 92626 CF

July 27, 2017

File complaint w/ DOJ
not DA

Orange County District Attorney
Special Prosecutions Unit
401 Civic Center Drive West
Santa Ana, CA 92701

Greetings,

Annexed hereto is a copy of a Motion regarding a case I am involved with in the Orange County Superior Court (30-2015-00805807) and the Fourth District Division 3 Appeals Court (G055075). The motion and the allegations of criminal conduct should be self-explanatory. I would appreciate a written letter from you acknowledging receipt of this document, a case number, and contact information for whom I can contact regarding progress/status updates. If you have any questions please feel free contact me. Your prompt attention to justice in protecting my Rights, and investigating these criminal matter is required.

Sincerely,

Adam Bereki – 949.241.6653, All rights reserved.

Please provide an email address so I can forward the exhibits to you.

Note: this is a civil action where criminal activity is taking place. This shall serve as a complaint to your ~~office~~

Adam Bereki, In Propria Persona
818 Spirit
Costa Mesa, California
abereki@gmail.com
949.241.6693

Superior Court of California

County of Orange

The Spartan Associates, Inc. v Karen and Gary Humphreys	Case No.: 30-2015-00805807 **FIRST AMENDED REPLY TO OPPOSITION OF:** MOTION TO COMPEL PRODUCTION OF BILL OF PARTICULARS, REPORTERS TRANSCRIPT; REQUEST FOR STATEMENT OF DECISION **MOTION TO DISQUALIFY JUDGE FOR CAUSE** AND: **MOTION TO VACATE VOID JUDGEMENT** **REQUEST FOR EMERGENCY PROTECTIVE ORDER (EPO) & CIVIL HARASSMENT RESTRAINING ORDER**

**************SPECIAL NOTICE TO COURT SEE PAGE 2**************

NOTICE TO COURT

THIS MOTION IS TO BE IMMEDIATELY DELIVERED TO THE PRESIDING JUDGE FOR REVIEW AND SUPERVISION.

I , Adam Bereki, of lawful age and competent to testify, do state the following facts which are true of my own personal knowledge to wit*:

I am experiencing emotional and psychological duress resulting from the domestic terrorism attacks by Plaintiffs, their counsel, and this court acting without lawful authority and in violation of numerous felony criminal codes as evidenced herein. I demand the court, Plaintiffs, and their counsel immediately cease and desist and am requesting an emergency protective order and civil harassment restraining order against William Bissell, and potentially Karen and Gary Humphreys and David Chaffee.

The following motions and the EXHIBITS annexed thereto are fully incorporated herein:

(1) Motion to Compel Bill of Particulars, Reporters Transcript, and Request For Statement of Decision Filed By Adam Bereki on 08/28/17.

(2) Opposition to above Motion to Compel filed by William Bissell on 9/13/17, "Opposition"

(3) Reply to Opposition filed by Adam Bereki on 9/2717, "Reply to Opposition"

(4) EXHIBIT [23]: Notice of Ruling.

On Wednesday, 9/27/17, I filed a 275 page Reply to Opposition and served it upon all parties and the court. Refer to EXHIBIT [24] for evidence of filing and service. Notice Mr. Bissell (Plaintiff's Counsel) was notified, then viewed and retrieved this document according to this One Legal Service Report that same day. At the time of this service, a hearing was scheduled for Friday, September 29, 2017 at 0930 hours in Department C-20 (Judge

David Chaffee's courtroom) for the motion. Due to the fact that my Reply to Opposition included a Motion to Disqualify "Judge" David Chaffee For Cause, I believed this would immediately place a stay on any of these proceedings until it was determined if in fact Mr. Chaffee would be disqualified and who the Judge would be that would hear the matters before the court. I had also specifically requested a Judge in a different county.

Prior to filing the Reply to Opposition, and in anticipation of the stay in proceedings resulting therefrom, I sent Mr. Bissell a notification email on Tue. 9/26/17 at 1043 hours. Refer to EXHIBIT [25]. Mr. Bissell never replied.

I also sent a similar email to Mr. Russo's firm on Thurs. 9/28/17 at 1404 hours. Mr. Russo's secretary, Barbie Yots replied "Thanks Adam." Refer also to EXHIBIT [25].

On Thurs. 9/28/17, I called Department C-20 numerous times in an attempt to confirm the hearing for Fri. 9/29/17 had been taken off calendar. I called at approx. 1100 hours, 1330 hours, and 1400 hours. No one answered the phone. My cell phone records are not included in these EXHIBITS but if necessary can be retrieved as evidence of these calls.

Based on the Proof of Service in EXHIBIT [24], I believed all parties had been notified of my filing and most specifically the Motion to Disqualify the Judge. I sent the emails to Mr. Bissell and Mr. Russo's firm to share it was my belief the proceedings had been cancelled and to receive their acknowledgement thereof or opposition if there was any. As sworn Officers of the Court, both have a duty to notify me in this situation if in fact the hearing would still be taking place or perhaps if they still had the intent on attending so as not to conduct an Ex Parte hearing without my knowledge and consent. This duty to the court supersedes any representation of their Client's interests and moreover would be in their Client's interest so as not to conduct a void hearing in violation of judicial process.

On Sat. 9/30/17, I received a sealed envelope addressed to me at the postal service address for 818 Spirit Costa Mesa, California from Mr. Bissell. Refer to EXHIBIT [24], a true and correct authenticated copy of the envelope and it's contents. The contents contained a Notice of Ruling for the hearing "Judge" David Chaffee and Mr. Bissell engaged in without lawful authority on Fri. 9/29/17 at 0930 hours in Department C-20 of the SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CENTRAL JUSTICE CENTER.

It is possible, given the fact I filed the Reply to Opposition/ Motion to Disqualify on Wed. 9/27/17, that Mr. Chaffee had not yet received it prior to conducting the hearing on 9/29/17. However, it would seem to be a fair presumption that about two business days to transfer a document a few hundred feet within the same building (to Department C-20) is reasonable. Despite this, it seems readily apparent Mr. Chaffee never read the Reply to Opposition/Motion to Disqualify or he is acting with such reckless and wanton disregard for the foundational principles of our government of defined and limited powers that he should be immediately removed from the bench and examined for competency.

The circumstances for Mr. Bissell however, are entirely different. Having received (and retrieved) the Reply to Opposition/Motion to Disqualify on Wed. 9/27/17, and my email of Tue 9/26/17, he had a duty to not only NOT conduct a proceeding he KNEW would be in my absence, but also to inform the Court of the Motion to Disqualify that stayed any further proceedings and to notify the court of my absence for that reason. Instead, he remained silent with clear intent on conducting the proceedings and receiving a "judgment" in his Clients favor by concealing facts known to him that would render any proceeding void for want of jurisdiction due to, at the very least, fraud on the court. Bissell's actions are unequivocally a violation of his Oath of Office and very arguably Treason to our Constitutions.

Mr. Bissell clearly had intent to, and did proceed under color of law as an officer of the court to obtain yet another "judgment" against me in clear violation of judicial process. His actions further evidence his ongoing attempts in these proceedings to violate my Rights and intentionally inflict emotional and psychological harm upon me, further depriving me of Liberty and to take my money, property, and Liberty without lawful authority.

On Sun. 10/1/17, I visited the Superior Court Website at occourts.org. Refer to EXHIBIT [26]. Upon accessing the Court's docket file assigned to this case, I noticed two additional documents had been filed to the Record. One was ROA 265, a Proposed Order. The other, ROA 264, Minutes Finalized for Motion to Compel Production. I purchased copies of these documents and downloaded them. The screen capture, receipt, and downloaded documents are true and correct authenticated copies of what I received from the occourts.org website pursuant to this transaction.

The minute order produced by David Chaffee evidences that Mr. Bissell was in attendance for the hearing and not me.

Nowhere in the Minute Order does Chaffee state that Bissell has informed him of the Reply to Opposition/Motion to Disqualify Judge For Cause I filed.

Assuming David Chaffee had not yet received the Reply to Opposition/Motion to Disqualify Judge and is acting in "good faith" despite Mr. Bissell's derelictions of duty and Oath of Office, it is therefore relevant to examine if the Court had jurisdiction to proceed anyway.

Mr. Bissell is NOT a party to *this* action. While it is true he represents the Humphreys, it is their authority as a party that moves the court, not William Bissell's. Refer to EXHIBIT [15]: Opposition to Motion, Pages 1204-1209. This document, which offers

testimony to the court in opposition to my Motion, needs to be under penalty of perjury and verified by Plaintiffs which it is NOT.

Refer to Pages 1210-1211, Declaration in Support of Opposition. Again, Mr. Bissell is not a party to this action. While his testimony *may* be offered as a witness in support of Plaintiffs, they need to be the ones to testify as to the exact damages they incurred which needs to be supported by authenticated evidence [ie (1) a Billing Statement from The Law of Offices of William Bissell evidencing the exact hourly rate they were billed and the number of hours billed for, and (2) an authenticated canceled check or other evidence of payment, and most importantly (3) how they could possibly be damaged by my lawful exercise of Rights in an action they brought against me and upon which received unlawful judgement through fraud on the court and violations of judicial process].

Please see Trinsey v Pagliaro, 229 F. Supp. 647:

> "Statements of counsel in their briefs or argument while enlightening to the Court are not sufficient for purposes of granting a motion to dismiss or summary judgment."

Without competent sworn testimony by Plaintiffs regarding authenticated evidence pertaining to their damages in Bissell's Motion For Sanctions, the court lacked (and continues to lack) subject matter jurisdiction to render ANY judgment whatsoever– including a judgment for sanctions.

Furthermore, while Mr. Bissell's declaration under penalty of perjury in support of damages for sanctions may (and that's a very arguable may) have been partially reasonable when he signed and submitted it to the court, it became perjurious based on his criminal actions. As a result of Bissell's breach of duties and frauds on the court, his

clients could no longer be (and arguably never were) damaged as a result of my actions, but most certainly will be by his.

I believe Mr. Bissell has undeniably committed multiple crimes to gain a civil advantage.

Referring back to Mr. Chaffee's Minute Order EXHIBIT [26], he states the following:

> "The court DENIES Cross-Defendant ADAM BILECKI's motion for four reasons:
>
> First, Bilecki has failed to serve a notice of motion specifying what relief he seeks, from whom he is seeking it, what the legal basis of his motion is. It remains unclear whether Bilecki seeks to compel the court or Defendants GARY and KAREN HUM PREYS to take some action."

While I am a Pro Per litigant, I cannot imagine given the circumstances, how the following decisions would not also apply in this instance:

> Haines v Kerner, 404 US 459:
>
> Pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.
>
> Platsky v Cia, 953 F.2d 25:
>
> Court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.

So, the very first thing Mr. Chaffee does is inform us that he's erred by not informing me how my pleadings were deficient and how to repair them (if in fact they are which I don't believe).

Examining the Motion I filed it is very clear what relief I am seeking: (1)A copy of the Reporters Transcript, (2) To Compel Plaintiffs to Answer the Bill of Particulars pertaining to the nature and cause of their accusations and (3) a Statement of Decision from the Court of it's findings of facts and conclusions of Law. Please refer to this Motion by way of Declaration on Pages 1189-1202. I believe the remaining reasons for denial Chaffee states are also clearly stated therein.

The remaining reasons justifying and in contradiction to Mr. Chaffee's ruling are all covered in my Reply to Opposition which Mr. Bissell was also fully aware of, yet again failed to notify the court of.

In my Reply to Opposition, I gave Notice to Mr. Bissell and the Humphreys and stated in no uncertain terms their actions appeared – based on the unambiguous evidence I provided – to be clear violations of judicial process, the penal code, violations of Oath's of Office and arguably Treason. Despite this Notice, which under ordinary circumstances may have given a sane person a moment of introspection or pause for reflection, Mr. Bissell seems to have completely ignored all of the above and then taken his criminal actions a step further by knowingly instigating a hearing without any lawful authority whatsoever. This evidences his willful, wanton, and careless disregard for the Law and my Rights as well as his intention of inflicting intentional emotional and psychological distress.

Refer to EXHIBIT [27]. Mr. Bissell then (it appears), in furtherance of his crimes, electronically filed a false and fraudulent judicial document on 9/29/17 at 1556 hours, the Order For Sanctions [Proposed].

It is for these reasons (and those stated in the other Motions I've filed) I am under duress by the actions of Mr. Bissell (and potentially Plaintiffs) as well as the Court. Mr. Bissell, on behalf of Plaintiffs (who may be unknowing of his actions) appears to have the

clear and unambiguous intent of violating criminal law and judicial process in repeated efforts to intentionally inflict emotional and psychological warfare and distress upon me, otherwise known as domestic terrorism. I demand this Court order William Bissell to cease and desist, immediately suspend his license to practice law pending a full competency examination, and issue a Civil Harassment Restraining Order against him.

While I began this Declaration giving David Chaffee the benefit of the doubt, it has also become clear as a result of his repeated unlawful actions in this case he is not competent as a neutral fact finder (in at the very least this matter) and should also have his license to practice law immediately suspended along with his seat on the bench as a "judge" pending a full competency examination.

The court shall consider my reporting this matter to the supervising judicial officer of this court my compliance with 18 US 2382.

I am still unsure why the court and Plaintiffs are so resistant to providing a copy of the Reporters Transcript of the proceedings and answers to questions presented in a Bill of Particulars pertaining to the nature and cause of the accusations. These are not unreasonable requests especially considering the court has rules which forbid me from making my own audio recording to use on appeal. The nature and cause of the accusations, including any fictions or presumptions of law relied upon are foundational to an action of this qausi–criminal nature.

Finally, and as a result of my research pertaining to this Motion, please see Portillo v Superior Court, 10 Cal. App 4th 1829:

> "A review of the file shows that Defendant filed a timely Notice of Appeal and moved for the Appointment of Counsel on Appeal.... When a Notice of Appeal is filed, the trial court loses jurisdiction to do anything with the case

> that would affect the judgment until determination of the appeal. People v. Perez (1979) 23 Cal.3d 545, 554 [153 Cal.Rptr. 40, 591 P.2d 63]. Therefore, this Court is without jurisdiction to modify the sentence, or to address issues which are properly before the Appellate Court. Moreover, a transcript for purposes of appeal is forthcoming to the Defendant as Appellant."

At this moment, it doesn't seem to me the court ruling on the Reporters Transcript, Bill of Particulars, and Statement of Decision (pursuant to my motion) would directly effect the judgement in this case since they were actually Facts necessary to make my appeal. However, assuming jurisdiction where it never had it (and conspiring with Mr. Bissell in doing so), as well as rendering judgement on a motion for sanctions without jurisdiction most certainly effects the judgement in this case.

Due to this direct attack on jurisdiction in this court pursuant to this First Amended Motion, this court has a non-discretionary duty (and jurisdiction to) vacate the void judgements in this case. See:

> MacMillan Petroleum Corp. v Griffin, 99 Cal. App 523, 533.
> A court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree— a void order.
>
> Bennett v Wilson, 122 Cal. 509:
> "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless."

Once jurisdiction has been challenged it is presumed that the court lacks jurisdiction unless or until the evidentiary sufficiency is proved and submitted to the record.

The presumption is that a court lacks jurisdiction on a particular issue until it is has been demonstrated that jurisdiction over the subject matter exists.

The facts showing the existence of jurisdiction must be affirmatively in the record. If jurisdiction is challenged the burden is on the party claiming jurisdiction to demonstrate the court has jurisdiction over the subject matter. The limits upon jurisdiction must be neither disregarded nor evaded. The requirement to submit admissible evidence upon the record proving jurisdiction once jurisdiction is challenged is **mandatory.** The supreme court of the united States as well as lower courts have consistently reaffirmed the requirement that once jurisdiction is challenged those who claim jurisdiction must submit evidence to prove the validity of the claim.

* * *

Mr. Bissell and Mr. Chaffee's breach of their sworn duties has resulted in and continues to result in harm to me. The court and Counsel have a sworn duty to support our Constitutions and the court, to protect my Rights.

Damages

In the preparation of this motion, I have incurred the loss of my property (time and energy) in the defense of my Rights as a result of William Bissell's unlawful actions.

1. Sat. 9/30/17- 9 hours– Research, Phone Meeting With Advisory Counsel @ $347.50 per hour = $3127.50
2. Sun 10/1/17- 11.5 hours- Meeting with Advisory Counsel, Research, Writing of this motion and Compilation of Exhibits as well as filing of Motion on 10/2/17 @ $347.50 per hour = $3996.25
3. Psychological and Emotional Distress resulting from the intentional infliction thereof and violations of Rights under color of law- to be further determined and substantiated.

4. Reasonably, the minimum amount of the award should be what Counsel and the court attempted to take from Adam Bereki without lawful authority– $848,000 plus costs of approx. $31,000.

The Elements of Psychological and Emotional Distress I have experienced (and continue to to varying degrees) as a result of the continued unlawful actions of the court and William Bissell on behalf of Plaintiffs are: panic and anxiety attacks, severe depression including suicidal thoughts (no, I am not a danger to myself or others), severe headaches, neck and upper back tension, body tremors, loss of appetite, social inactivity, gut/digestion problems and pain, fear of physical and other harm, loss of liberty, and decreased ability to earn an income. My medical records are obviously confidential but will support thousands of dollars in Emergency Room visits to multiple hospitals, and observations, tests, and treatment by specialists including psychologists. I am currently under the care of a doctor whom I see three days per week to mitigate the intensity of stress in my body in an attempt to cope.

The court has a non-discretionary duty to lop off a dead limb of the judicial tree (void judgment) so as not to cause me further harm.

If damages are allowable once the court vacates the void judgements, the court will please allow me leave to finalize and consolidate all of the evidence and calculations of damages.

[*My training and experience in law enforcement seems to compel me to include both legal arguments and statements of known facts in one document labeled "declaration". In police work this is how I was trained write reports. I am not a lawyer and do not have any official legal training. Clearly, legal arguments are not in their entirety factual representations I have personal knowledge of beyond the research and other experiences I have surrounding them. My declaration under penalty of perjury applies only to those facts stated herein I

obviously have direct personal knowledge of which may include some legal arguments and not others.]

I declare under penalty of perjury the foregoing is true and correct. Executed on October 2, 2017 in Costa Mesa, California.

Adam Bereki
All Rights Reserved
Without Prejudice

EXHIBIT 23

2015

WILLIAM G. BISSELL
ATTORNEY AT LAW
14 CORPORATE PLAZA DRIVE, SUITE 120
NEWPORT BEACH, CALIFORNIA 92660

92626
29 SEP '17
PM 1

FIRST-CLASS
062S-1636149265
92660

B65450.07

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

92626-308818

WILLIAM G. BISSELL, ESQ. State Bar #93527
Law Offices of William G. Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
Telephone: (949) 719-1159
Telefax No: (949) 719-1158

Attorney for Gary Humphreys,
Karen Humphreys

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC. Plaintiff, vs. GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual, and DOES 1 through 25 Inclusive Defendants. AND RELATED CROSS-ACTION	Case Number 30-2015-00805807 Assigned for all purposes to: Hon. David Chaffee Dept. C-20 **NOTICE OF RULING** Unlimited Civil- [Amount Exceeds $25,000.00] Date: September 29,2017 Time: 9:30 a.m. Dept: C-20 Action Filed: August 21, 2015 Judgment Entered: April 20, 2017

10/1/17

The motion of Cross-Defendant Adam Bereki, for Order Compelling Responses to Bill of Particulars came on regularly for hearing on September 29, 2017 at 9:30 a.m. in Department 20 of the above captioned court, the Honorable David Chaffee judge presiding. The Defendants Gary Humphreys and Karen Humphreys appeared by counsel William Bissell, no other appearance having been made.

After considering the papers filed in support of and in opposition to the motion and the argument of counsel present and for good cause appearing, the court ruled as follows:

The court DENIED Cross-Defendant ADAM BEREKI's motion for four reasons:

First, Bereki failed to serve a notice of motion specifying what relief he seeks, from whom he is seeking it, what the legal basis of his motion is. It is unclear whether Bereki seeks to compel the court or Defendants GARY and KAREN HUMPREYS to take some action.

Second, in his moving papers, Bereki failed to carry his burden to cite a statute or case law which would authorize the court to order the court reporter to provide him with a free reporter's transcript of the trial, so that he can pursue his civil appeal.

Third, although Bereki insists that the motion is NOT a discovery motion, he fails to specify what kind of motion it is. And the motion is confusing because it is captioned as a type of

Notice of Ruling

10/4/17

discovery motion. If it is a discovery motion seeking a bill of particulars under CCP 454, then Defendants argue correctly in their Opposition that the motion is untimely because the trial is over and judgment has already been entered. The discovery cut-off was 30 days before the initial trial date. (CCP 2024.020.)

Fourth, the request for a bills of particulars appears to be irrelevant. In their Opposition, Defendants argue correctly that a bill of particulars only applies where there is an action on an account, but here their Cross-Complaint does not allege a claim based on an account. (*Casaretto v. DeLucchi* (1946) 76 Cal.App.2d 800.)

In Opposition, Defendants Gary and Karen Humpreys request an award of monetary sanctions. That request was granted by virtue of Mr.Bereki having, without substantial justification and in the absence of other circumstances that would make the imposition of the sanctions unjust, used a discovery method, i.e. "Bill of Particulars" in a manner that does not comply with its specified procedures in violation of Code of Civil Procedure §2023.010(b). Monetary Sanctions in the amount of $1,500.00 were ordered against Defendant Bereki to be paid to the Humphreys within 30 days.

//

//

//

6/1/17

Dated: September 29,2017

Respectfully submitted,

William G. Bissell
Attorney for Gary Humphreys and
Karen Humphreys

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

September 29, 2017, I served the within:

Notice of Ruling

in said action by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as follows:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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

Executed on September 29, 2017, at Newport Beach, California.

William Bissell

10/17

EXHIBIT 24

Your name: Adam Bereki

Case Nu: 30-

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
09/27/2017 at 11:49:00 AM
Clerk of the Superior Court
By e Clerk, Deputy Clerk

b. ☐ The court denies your request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hea you filed with your original request. If the papers were a notice of appeal, the appeal ma

(1) ☐ The court denies your request because it is incomplete. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- File a new revised request that includes the items listed below *(specify incomplete items):*

(2) ☐ The court denies your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested *(specify reasons):*

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about *(specify questions regarding eligibility):*

☐ Bring the following proof to support your request if reasonably available:

Hearing Date → Date: Time: Name and address of court if different from page 1:
Dept.: Rm.:

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: 6-21-17

Signature of (check one): ☑ *Judicial Officer* ☐ *Clerk, Deputy*

TIMOTHY J. STAFFORD

Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

☑ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from *(city):* Santa Ana, California on the date below.

Date: 10/2/17 Clerk: Rochelle McAdams, Deputy

Revised July 1, 2009

This is a Court Order. R. McADAMS

Order on Court Fee Waiver (Superior Court)

1086

10/1/17

2024

Information Confirmation Acceptance

PAYMENT ACCEPTED
YOUR TRANSACTION HAS BEEN APPROVED

Order ID	CIVIL22388316
Payment Confirmation Code	024212
Payment Amount	$26.05
Payment Transaction Date	10/01/2017
Email Address	abereki@gmail.com
Billing Name	Adam Bereki
Telephone Number	
Credit Card Type	Visa
Credit Card Number	***7818
Expiration Date	07/2019
Zip Code	92626

To view your purchased documents click on the [View Documents] button below.
Once you leave this website or close your web browser you can regain access to your purchased documents by returning to the Civil Public Website and clicking on the button [View Previously Purchased Documents].
Your documents are accessible from this site for two weeks from the date of purchase. The documents included in this transaction will remain available until **October 15, 2017.**
You will need to supply your *Email Address [abereki@gmail.com] and *Payment Confirmation Code [024212] to access your documents.

This is your court issued receipt. Please print and keep this page for your records.

Print this page

10/1/17

ONE LEGAL®

Confirmation #: 21117575

Case Title: THE SPARTAN ASSOCIATES, INC. vs. GARY HUMPHREYS

Thank you for choosing One Legal. If you have any questions about this order, please email us at support@onelegal.com.

CASE INFORMATION

Court Name:	Orange County, Superior Court of California
Court Branch:	Central Justice Center Santa Ana
Case Title:	THE SPARTAN ASSOCIATES, INC. vs. GARY HUMPHREYS
Case Category:	Civil - Unlimited
Case Type:	Contract - Other
Case #:	30-2015-00805807-CU-CO-CJC

ORDER DETAILS

Order Type:	eFiling-eService
Filing order #:	11402050
Date/Time Submitted:	9/27/2017 11:46 AM PT
Contact Name:	Adam Bereki
Attorney Name:	none
Email Notification:	Contact

DOCUMENTS

Document Type	Document Title	Pages Uploaded
Reply to Opposition	Reply to Opposition	275
Reply to Opposition	Reply to Opposition	275
Notice of Confirmation of Filing	Notice of Confirmation of Filing	1

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6/1/17

eSERVICE RECIPIENTS

Name	Email
Brianna Morales	bmorales@hausmansosa.com
Diana Ball	dball@hausmansosa.com
John Russo	byots@russoandduckworth.com
JOHN SCOTT RUSSO	srusso@russoandduckworth.com
Palacios, Laura	lpalacios@hausmansosa.com
William Bissell	wbissell@wgb-law.com
Bereki, Adam	abereki@gmail.com

Order Details

ORDER RECEIPT (/OrderReceipt/Index/21117575)

Order Number: 11402050 Order Status: Filing Complete Order Type: eFiling & eService

Information **eService**

Electronic Service Recipients

Name	Email	Status	
Bereki, Adam	abereki@gmail.com	**Viewed** *Retrieved* *Notification Sent*	**9/27/2017 11:47:30 AM** *9/27/2017 11:47:26 AM* *9/27/2017 11:46:49 AM*
Brianna Morales	bmorales@hausmansosa.com	**Notification Sent**	**9/27/2017 11:46:48 AM**
Diana Ball	dball@hausmansosa.com	**Notification Sent**	**9/27/2017 11:46:49 AM**
John Russo	byots@russoandduckworth.com	**Viewed** *Retrieved* *Notification Sent*	**9/27/2017 12:39:28 PM** *9/27/2017 11:46:51 AM* *9/27/2017 11:46:49 AM*
JOHN SCOTT RUSSO	srusso@russoandduckworth.com	**Retrieved** *Notification Sent*	**9/27/2017 11:52:20 AM** *9/27/2017 11:46:49 AM*
Palacios, Laura	lpalacios@hausmansosa.com	**Viewed** *Retrieved* *Notification Sent*	**9/27/2017 3:18:35 PM** *9/27/2017 3:18:30 PM* *9/27/2017 11:46:49 AM*
William Bissell	wbissell@wgb-law.com	**Viewed** *Retrieved* *Notification Sent*	**9/27/2017 12:31:55 PM** *9/27/2017 12:31:48 PM* *9/27/2017 11:46:49 AM*

1

1 - 7 of 7 items

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Version: 6.0.11701

10/1/17

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: 700 W. Civic Center Drive CITY AND ZIP CODE: Santa Ana CA 92701 BRANCH NAME: Central Justice Center	FOR COURT USE ONLY
SHORT TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2015-00805807-CU-CO-CJC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange Court. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By:	Adam Bereki
On Behalf of:	Adam Bereki; CCMS ID: 75553937
Transaction Number:	1424843
Court Received Date:	09/27/2017
Court Received Time:	11:49:13 AM
Filed Date:	09/27/2017
Filed Time:	11:49 AM
Fee Amount Assessed:	$0.00
Case Number:	30-2015-00805807-CU-CO-CJC
Case Title:	THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS
Location:	Central Justice Center
Case Type:	Contract - Other
Case Category:	Civil - Unlimited
Jurisdictional Amount:	> 25000

Documents Electronically Filed/Received	Status
Reply to Opposition	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider	OneLegal
Email:	support@onelegal.com
Contact Person:	Customer Support
Phone:	8009388815

10/1/17

EXHIBIT 25

Gmail

Friday.

Adam Bereki <abereki@gmail.com> Tue, Sep 26, 2017 at 10:43 AM
To: "wbissell wgb-law. com" <wbissell@wgb-law.com>

Hi Bill. Just a heads up. My reply to your opposition is going to including a motion to disqualify the judge along with some other issues. There's no way we'll be doing anything on Friday. I should have something to you today or tomorrow but wanted to give you a courtesy email.

Sincerely,

Adam Bereki.

Sent from my iPhone

10/1/17

Gmail

Court Tomorrow

Adam <abereki@gmail.com> Thu, Sep 28, 2017 at 2:04 PM
To: Barbie Yots <byots@russoandduckworth.com>

Hey Barb- I highly doubt anyone there was planning on attending the hearing tomorrow in my case at C-20 .... however after filing the Opposition yesterday I'm certain its been cancelled.. I notified Bill Bissell. I've attempted to call the court multiple times today however no one is answering. I'll let you know when I find out the date/time/location of the next hearing.

I hope you have a nice weekend.

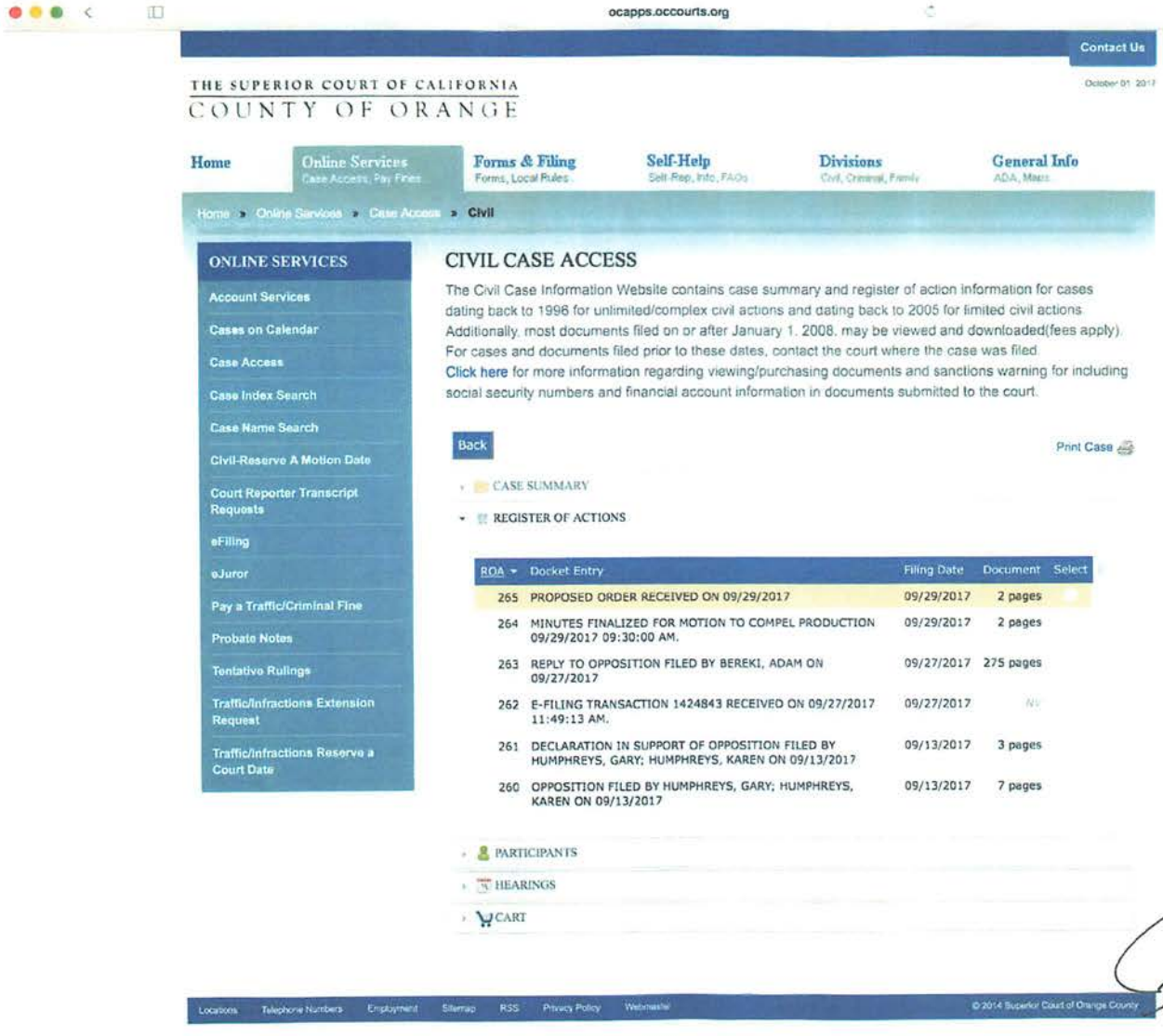
Adam

Barbie Yots <byots@russoandduckworth.com> Thu, Sep 28, 2017 at 2:52 PM
To: Adam <abereki@gmail.com>

Thanks Adam.

Sent from my iPhone
[Quoted text hidden]

EXHIBIT 26



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October 01 2017

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

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- Traffic/Infractions Reserve a Court Date

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The Civil Case Information Website contains case summary and register of action information for cases dating back to 1998 for unlimited/complex civil actions and dating back to 2005 for limited civil actions. Additionally, most documents filed on or after January 1, 2008, may be viewed and downloaded(fees apply). For cases and documents filed prior to these dates, contact the court where the case was filed.
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Back

Print Case

CASE SUMMARY

REGISTER OF ACTIONS

RDA	Docket Entry	Filing Date	Document	Select
265	PROPOSED ORDER RECEIVED ON 09/29/2017	09/29/2017	2 pages	
264	MINUTES FINALIZED FOR MOTION TO COMPEL PRODUCTION 09/29/2017 09:30:00 AM.	09/29/2017	2 pages	
263	REPLY TO OPPOSITION FILED BY BEREKI, ADAM ON 09/27/2017	09/27/2017	275 pages	
262	E-FILING TRANSACTION 1424843 RECEIVED ON 09/27/2017 11:49:13 AM.	09/27/2017	NV	
261	DECLARATION IN SUPPORT OF OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 09/13/2017	09/13/2017	3 pages	
260	OPPOSITION FILED BY HUMPHREYS, GARY; HUMPHREYS, KAREN ON 09/13/2017	09/13/2017	7 pages	

PARTICIPANTS

HEARINGS

CART

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10/1/17

2034

Information Confirmation Acceptance

PAYMENT ACCEPTED
YOUR TRANSACTION HAS BEEN APPROVED

Order ID	CIVIL22388110
Payment Confirmation Code	060510
Payment Amount	$15.00
Payment Transaction Date	10/01/2017
Email Address	abereki@gmail.com
Billing Name	Adam Bereki
Telephone Number	
Credit Card Type	Visa
Credit Card Number	***7818
Expiration Date	09/2019
Zip Code	92626

To view your purchased documents click on the [View Documents] button below.
Once you leave this website or close your web browser you can regain access to your purchased documents by returning to the Civil Public Website and clicking on the button [View Previously Purchased Documents].
Your documents are accessible from this site for two weeks from the date of purchase. The documents included in this transaction will remain available until **October 15, 2017.**
You will need to supply your *Email Address [abereki@gmail.com] and *Payment Confirmation Code [060510] to access your documents.

This is your court issued receipt. Please print and keep this page for your records.

Print this page

10/1/17

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 09/29/2017 TIME: 09:30:00 AM DEPT: C20

JUDICIAL OFFICER PRESIDING: David Chaffee
CLERK: Cora Bolisay
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: Adriana Arreola

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

EVENT ID/DOCUMENT ID: 72651604

EVENT TYPE: Motion to Compel Production
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Compel Production/Inspection of Documents or Things, 08/25/2017

APPEARANCES
William G. Bissell, from Law Offices of William G. Bissell, present for Defendant,Respondent on Appeal,Cross - Complainant(s).
Adam Bereki, self represented Cross - Defendant, is not present.

The Court hears from Mr. Bissell and modifies the tentative ruling as follows:

Motion to Compel Production of Bill of Particulars and Reporter's Transcript

The court DENIES Cross-Defendant ADAM BILECKI's motion for four reasons:

First, Bilecki has failed to serve a notice of motion specifying what relief he seeks, from whom he is seeking it, what the legal basis of his motion is. It remains unclear whether Bilecki seeks to compel the court or Defendants GARY and KAREN HUMPREYS to take some action.

Second, in his moving papers, Bilecki fails to carry his burden to cite a statute or case law which would authorize the court to order the court reporter to provide him with a free reporter's transcript of the trial, so that he can pursue his civil appeal.

Third, although Bilecki insists that the motion is NOT a discovery motion, he fails to specify what kind of motion it is. And the motion is confusing because it is captioned as a type of discovery motion. If it is a discovery motion seeking a bill of particulars under CCP 454, then Defendants argue correctly in their Opposition that the motion is untimely because the trial is over and judgment has already been entered. The discovery cut-off was 30 days before the initial trial date. (CCP 2024.020.)

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CASE TITLE: THE SPARTAN ASSOCIATES, INC. vs. HUMPHREYS

CASE NO: **30-2015-00805807-CU-CO-CJC**

Fourth, the request for a bills of particulars appears to be irrelevant. In their Opposition, Defendants argue correctly that a bill of particulars only applies where there is an action on an account, but here their Cross-Complaint does not allege a claim based on an account. (*Casaretto v. DeLucchi* (1946) 76 Cal.App.2d 800.)

Sanctions awarded to defendant/Cross-Complainant in the amount of $1,500.00

Mr. Bissell shall serve notice of this ruling.

10/11/17

DATE: 09/29/2017
DEPT: C20

MINUTE ORDER

EXHIBIT 27

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
09/29/2017 at 03:56:44 PM
Clerk of the Superior Court
By eClerk, Deputy Clerk

2597919

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC. Plaintiff, vs. GARY HUMPHREYS, an individual; KAREN HUMPHREYS, an individual, and DOES 1 through 25 Inclusive Defendants. And Related Cross-Action	30-2015-00805807 Assigned for all purposes to: Hon. David Chaffee Dept. C-20 **ORDER RE SANCTIONS [Proposed]** Unlimited Civil- [Amount Exceeds $25,000.00] Date: September 29,2017 Time: 9:30 a.m. Dept: C-20 Action Filed: August 21, 2015 Judgment Entered: April 20, 2017

ORDER

The request of Defendants/Cross-Complainants Gary Humphreys and Karen Humphreys for an order to impose sanctions pursuant to Code of Civil Procedure §2023.010(b) against Cross-Defendant Adam Bereki, as set forth in Defendant's opposition to the motion of Cross-Defendant Adam Bereki to Compel Responses to Bill of Particulars, came on regularly for hearing by the court

10/17

on September 29, 2017. The Defendants appeared by counsel William Bissell, no other appearance having been made.

On proof made to the satisfaction of the court, the court finds that an order granting the request is justified in that Cross-Defendant Bereki, without substantial justification and in the absence of other circumstances that would make the imposition of the sanctions unjust, used a discovery method, i.e. "Bill of Particulars" in a manner that does not comply with its specified procedures in violation of Code of Civil Procedure §2023.010(b). Accordingly,

IT IS ORDERED that the request be, and it hereby is, granted in favor of defendants Gary Humphreys and Karen Humphreys,(the Humphreys) and that the Humphreys are awarded the sum of $1,500.00 for their attorney's fees and expenses, and cross-defendant Adam Bereki, is ordered to pay the Humphreys this sum within 30 days.

Dated:

_____

Judge of the Court

2040

POS-050/EFS-050

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: In Propia Persona NAME: Adam Bereki FIRM NAME: STREET ADDRESS: c/o Postal Service Address 818 Spirit CITY: Costa Mesa, California STATE: ZIP CODE: CF 92626 CF TELEPHONE NO.: 949.241.6693 FAX NO.: E-MAIL ADDRESS: abereki@gmail.com ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center	CASE NUMBER: 30-2015-00805807
PLAINTIFF/PETITIONER: The Spartan Associates, Inc. DEFENDANT/RESPONDENT: Karen and Gary Humphreys	JUDICIAL OFFICER: Chaffee
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: C-20

1. I am at least 18 years old.
   a. My residence or business address is *(specify):*
      c/o Postal Service Address
      818 Spirit
      Costa Mesa, California
   b. My electronic service address is *(specify):*
      abereki@gmail.com

2. I electronically served the following documents *(exact titles):*
   First Amended Reply to Motion to Opposition, Motion to Disqualify Judge For Cause, Request For Civil Restraining Order and EPO, Motion to Vacate Void Judgment

   ☐ The documents served are listed in an attachment. *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:
   a. Name of person served: William Bissell/ Scott Russo/ Carlos Sosa

      On behalf of *(name or names of parties represented, if person served is an attorney):*
      Karen & Gary Humphreys/ The Spartan Associates, Inc., /Suretec Insurance
   b. Electronic service address of person served *:*
      wbissell@wgb-law.com/ srusso@russoandduckworth.com/ bmorales@hausmansosa.com
   c. On *(date):*

      ☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date: October 2, 2017

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

Adam Bereki
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
POS-050/EFS-050 [Rev. February 1, 2017]

PROOF OF ELECTRONIC SERVICE
(Proof of Service/Electronic Filing and Service)

Cal. Rules of Court, rule 2.251
www.courts.ca.gov

4041

privacy, please press the Clear This Form button after yc Print this form Save this form Clear this form

Adam Bereki, In Propria Persona
818 Spirit
Costa Mesa, California
abereki@gmail.com
949.241.6693

Superior Court of California

County of Orange

The Spartan Associates, Inc.	Case No.: 30-2015-00805807
v	REPLY TO OPPOSITION OF MOTION TO COMPEL PRODUCTION OF BILL OF PARTICULARS, REPORTERS TRANSCRIPT; REQUEST FOR STATEMENT OF DECISION
Karen and Gary Humphreys	MOTION TO DISQUALIFY JUDGE FOR CAUSE

NOTICE

To all parties and their Attorneys of Record and the Court:

SPECIAL NOTICES TO COURT:

(1) There are irreconcilable conflicts of interest in this case involving "Judge" David Chaffee, "Clerk" Cora Bolisay and others. Cause will be evidenced under declaration herein.

(2) A court reporter is requested for this hearing. However, Adam Bereki is unable to afford to pay for the reporters services. In the event the court will not provide the reporter's services and the transcript of the proceedings free of charge, the court will please allow him to make his own digital audio recording and that this recording be allowed as part of the designated record on appeal or otherwise as evidence of the proceedings. If approved, a digital copy will be provided to other counsel at no cost via cloud sharing known as Dropbox. The court shall inform Adam Bereki about the procedures for submitting a digital copy to the court if it desires to have one. Adam Bereki will not be transcribing the recording, nor be responsible for any fees in doing so.

NOTICE IS HEBERY GIVEN that on UNKNOWN/TBD date in UNKNOWN/TBD department of the UNKNOWN/TBD court, at UNKNOWN/TBD location, Defendant Adam Bereki will move for an order compelling: (1) Karen & Gary Humphreys to provide responses to the Bill of Particulars relating to jurisdiction and venue (the nature and cause of the accusations), (2) for the court to produce the evidence of the reporters transcript for all hearings and motions and the trial that commenced in this case, and (3) make a request for the court to provide a Statement of Decision.

This motion is made on the grounds that as part of his Appeal and filing of a Petition for Non-Statutory Federal Writ of Habeas Corpus, Adam Bereki will be challenging the subject matter jurisdiction of the trial court. In doing so and in order to present a meaningful and substantive Appeal complete with all the facts necessary (and the rights of judicial process afforded him in doing so), he will need the information contained in the Bill of Particulars as it directly relates to matters of jurisdiction and venue which to his knowledge appear nowhere on the record (in their complete form) of this case. The answers to the Bill of Particulars and the Reporters Transcripts (which evidence each of the proceedings) are crucial to Adam Bereki's right to be heard and to be provided the factual sufficiency of the determination that the trial court had jurisdiction to render its quasi-criminal judgment.

This Motion will be based on the original Motion, Plaintiffs Opposition, this Reply to Opposition, on the accompanying Affidavits of Adam Bereki, the Demand for Bill of Particulars, and other evidence as annexed hereto – all served and filed herewith – and on such evidence as may be presented at the hearing of the motion.

All EXHIBITS are annexed hereto as if fully incorporated herein.

The following summary is provided on the grounds of a different Judge being assigned to hear this matter.

Refer first to Bereki's original Motion to Compel and opposing Counsel's opposition, EXHIBIT [15]. A trial was conducted on March 27-28, 2017 that ultimately found Bereki "guilty" of violating the contractors state license "law" for not being a licensed contractor (7031(b)). As such, he was ordered to pay back all of the monies paid to him plus costs amounting to approx. $870,000. Bereki is currently appealing this case and has received an extension of time. In order to prepare for the appeal he needs a copy of the Reporters Transcript which he cannot afford in part because he is, according to the Contractor's State License Board, suspended from "lawful" business for unlawful reasons. Bereki also needs to know the exact nature and cause of the accusations (including any presumptions or fictions of law) against him. He served Plaintiffs with a Demand for Bill of Particulars which they have refused to answer. This motion is to compel the production of the Reporters Transcript and Bill of Particulars so that he may exercise his Right to a meaningful and substantive Appeal and Petition for Non-Statutory Federal Writ of Habeas Corpus (constructive custody).

Some of the arguments in this Motion may seem extraneous to it's original intent to compel production of the Bill of Particulars and Reporters Transcript and Request for Statement of Decision. The reason I have included these arguments is in part to evidence the very necessity of being provided the requested documents as they are foundational to my Appeal and Petition.

All pages numbered in the top right corner are pursuant to this Motion. Most of the page number appearing in the bottom right corner are from the Clerk's Transcript provided for by the Superior "court" and filed on appeal in this matter.

Synopsis

Trial Court Judgement is Void and Unconstitutional

The judgement in the trial court is void for want of subject matter jurisdiction because Plaintiffs and the court repeatedly violated judicial process.

—The court issued a judgement order in violation of judicial process failing to acknowledge a direct attack of jurisdiction before rendering judgement.

> See Platsky v Cia, 953 F.2d 25:
> Court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.
>
> [Or, if court just simply ignores the litigant altogether—ed]

—There was no knowing, voluntary, and intelligent waiver of right to jury trial.

—Adam Bereki was denied the effective assistance of counsel.

—Court issued a Directed Verdict that Adam Bereki was a "person" required to be licensed. The statutory construction of 7025 B&P appears to only apply to legal fictions (corporations), not natural or other persons. See 7150 B&P. A relegation of one's humanity to a fiction with no Rights is cruel and unusual punishment and involuntary servitude.

—Plaintiff's failed to establish all of the elements of a claim upon which relief could be granted thus failing to give the court is subject matter jurisdiction. Plaintiff's failed to: establish damages in fact (not fiction), provide sworn testimony regarding authenticated evidence that Adam Bereki had a duty

and it was breached, and failed to prove numerous presumptions.

—7096 B&P defines a "licensee" as a qualifying individual and Responsible Managing Officer. Bereki was both. How could he then be alleged to be "unlicensed"?

—"Contractor" is a public office (See Ops CA Atny. Gen.) requiring voluntary oath or affirmation of office and/or election. It is unlawful to require a private person to take public office.

—Void judgement for lack of judicial process is a Bill of Attainder/Pains and Penalties and Unconstitutional resulting in subjection to a jurisdiction of law foreign to our Constitution and Laws.

The court has a non-discretionary duty to lop off a dead limb of the judicial tree (void judgment) so as not to cause Adam Bereki further harm and to relieve him of unlawful constructive custody.

Remedy: Vacate void judgment of the trial court.

CSLB Judgement Void and Unconstitutional

The Contractor's State License Board is committing the following unlawful Acts relegating Adam Bereki to Constructive Custody and preventing his appeal and Petition for Habeas Corpus.

—The Board conducted a "mandatory arbitration" hearing that suspended and revoked Bereki's company license (and therefore his ability to receive a license in his name) without notifying him of the proceedings. He notified the Board in writing of its error and requested an appeal. The Chief of Enforcement replied denying Bereki's objections and affirming the integrity of the proceedings. The proceedings are void for want of jurisdiction for violation of judicial process and unconstitutionality.

—The Board is conducting "mandatory arbitration" proceedings without statutory authority and in violation of the separation of powers clause. All judgements thereof are also Bill of Attainder for want of judicial process.

—The Board requires waivers of the Constitutionally protected Rights to trial by Jury and Appeal in order to obtain a license. This is unconstitutional. A person can't be compelled under duress and coercion to waive Constitutional Rights to accept a government privilege allegedly required by law.

— An application for contractors license is a unilateral contract of adhesion/ quasi–contract. A licensee therefore cannot be sued for breach of contract for specific performance.

It is unlawful for a court to render judgment against anyone for specific performance of the

licensing laws when requirements for a license violate the Constitution.

Remedy: Vacate Judgment of Board and issue restraining order or Writ of Mandate for Board to cease and desist unlawful activity.

Bill of Particulars

Violations of statutory regulations in commerce are public offenses resulting in quasi–criminal proceedings. Defendants must be provided the nature and cause of accusations/ jurisdiction and venue of all charges against them including any presumptions and fictions of law relied upon. Failing to do so violates the Constitution and judicial process. Plaintiffs failed to do so and continue to, preventing Bereki from filing a meaningful and substantive Appeal and Petition. This is yet another violation of judicial process resulting in loss of subject matter jurisdiction of the trial court and/or Appeal court.

Remedy: Vacate the void judgement. If the court refuses to vacate the void judgement, Plaintiffs shall be ordered to produce the answers contained on the Bill of Particulars.

Reporters Transcript

Rules of Court forbid a party from making their own recording of trial proceedings and using that recording on Appeal. Bereki cannot afford the approx. $1000 cost of the transcript in order to present a meaningful and substantive Appeal and Petition.

See Miranda v Arizona 384 US 436, 491 :

"Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them."

Rules of Court don't apply to a Petition or other action invoking Constitutional Rights. If the court is going to make the rule forbidding recordings by private parties then it must bear the burden of providing them.

Alleged Violations of: Criminal Law, The State Bar Act, and Judicial Conduct

The Facts stated in the foregoing Declaration allege Plaintiffs and/or their Counsel and THE STATE OF CALIFORNIA have violated the following laws in pursuance of committing fraud upon the court and denying Adam Bereki's Right to Judicial process, relegating him to constructive custody:

Forgery (470 PC): Creation of false judicial records.

Burglary (459 PC): Entering the courthouse to commit grand or petit theft or any felony.

Filing false or fraudulent judicial records.

236 PC– False Imprisonment (constructive custody)

529 PC– False Personation

118PC- Perjury

Breach of Duties under the State Bar Act and Oath of Office to protect and defend this Constitution.

Fraud OnThe Court

Abuse of Process

DECLARATION OF ADAM BEREKI

I, Adam Bereki, a lawful de jure, jus sanguinis California Citizen (Article IV, Section 2 of the Constitution for the united States [1787-1791] (Corfield v Coryell, 4 Wash. C.C. 371) and/or Article II, Section 1 of the California Constitution (1849) [Van Valkenberg v Brown, 43 Cal. 43]), being first duly subscribed and sworn, declare under penalty of perjury the following facts which are true of my own personal knowledge, to wit*:

I have a Right to know the nature and cause of the accusations/charges against me– period! At any time! This Right is unalienable and secured by the California State Constitution of 1849 (and the bastardized version of 1879 *allegedly* in full force and effect), the Constitution for the united States [1787-1791], and dates all the way back to the Magna Carta of 1215 if not before.

The unperviewed 6th Article of Amendment states it very clearly: "... *and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence*."

The Humphreys ignoring the Lawful Demand For Bill of Particulars I filed, their failure to provide these most essential elements on the record of this case to establish subject matter jurisdiction, and now Counsel's opposition to this Motion to Compel Production are clear and unequivocal usurpations of my Rights resulting in harm and damages (as evidenced below). These actions, in addition to those of the "court" are unequivocal violations of judicial process that prevented me from putting on a meaningful and substantive defense and now prevent me from filing an Appeal and Petition.

As evident in his Opposition to this Motion, Counsel seems to think my Right to know the nature and cause of the accusations against me emanates from statutory

privileges or "discovery" as outlined in the Code of Civil Procedure or not. The icing on the proverbial cake is Counsel's brazen attempt to sanction me upon the exercise of my Rights for filing this Motion under the guise of it being a misuse of the discovery process. Mr. Bissell's actions are a direct violation of his oath to support our Constitutions.

One has to wonder where Plaintiffs resistance to answering questions concerning the nature and cause of the accusations they've made against me is coming from? If they're not going to provide this most basic information and a judgement can be rendered without it, why even bother to have a "trial"?

The crux of Counsel's supposed "Opposition" stems from his erroneous notion this case was civil. His opening argument quotes Shakespeare whereby he claims "the nature of an object does not change simply by calling it another name". I agree. So let's apply this same reasoning and stop pretending this action was civil when in fact it's quasi-criminal. A quasi-criminal action involves the violation of a regulatory statute.

Contracting without a license is allegedly a **public offense** regulated by the STATE OF CALIFORNIA. The mere fact the STATE is involved in such regulation make's it a public offense in commerce. It doesn't miraculously transform into a private or civil matter just because Counsel or the "court" wants to pretend so. If this case was in fact a purely private civil contract dispute (which I believe it is), then the STATE (in pursuance of Counsel's purely civil arguments) would be impairing the obligations of private contracts with its regulatory schemes in violation of the federal Constitution (which I believe it is). However, only if contracting is purportedly deemed a public matter subject to regulation could the STATE even attempt to masquerade with meddling in the private matters of it's creators, aka "We the People" with its tyrannical and treasonous fingers.

Plaintiffs cannot invoke "protection" of the **public** *commercial* regulatory statutes of the *Business* and Professions code while pretending the matter is *private/civil.*

Referring to Business and Professions Code Section 7028, we find the legislature has clearly indicated **criminal** penalties for violation of this statutory regulation:

> "(a) Unless exempted from this chapter, it is a **misdemeanor** for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:
>
> (b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by **imprisonment in a county jail not exceeding six months**, or by both that fine and imprisonment.
>
> (h) For any conviction under this section, **a person who utilized the services of the unlicensed person is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses**, regardless of whether he or she had knowledge that the person was unlicensed."

In order to sustain the factual sufficiency of subject matter jurisdiction for the court to make it's ruling, the Humphreys had to present competent sworn testimony and authenticated evidence I violated section 7028(a) in order to achieve restitution under section 7031(b). The fact they failed to substantiate this, including that I had such a public duty to be licensed and was in breach thereof which resulted in damages in Fact is of enormous consequence. They failed to prove even one dollar of damages in Fact. Their supposed "injuries" are just another fiction or presumption of "law". Without establishing all of the elements of a claim, the court has no subject matter jurisdiction to make a ruling/ judgement. (more on this forthcoming)

In State v Wilkinson, 202. Ariz. 27, the Arizona supreme Court stated in an unlicensed contractor case:

> "Indeed, the original conception of restitution, and the form with the most direct link to criminal conduct, is that of **forcing the criminal to yield up to**

his victim the fruits of the crime. The crime is thereby made worthless to the criminal. This form of criminal restitution is sanctioned not only by history but also by its close relationship to the retributive and deterrent purposes of criminal punishment."

A **directed verdict** of guilt aka "judgment" was rendered against me in this case pursuant to 7031(b) B&P to make restitution to the Plaintiffs by repaying all of the monies they had paid me. We could call it a "judgement" but it's really restitution for a public offense emanating from the "court's" factual determination (appearing nowhere on the record mind you) that I was a "person" pursuant to 7025 B&P and therefore, pursuant to 7028 B&P, required to be licensed as a public officer known as a "contractor".

See Bass v US, 784 F.2d 1282 as excerpted below:

"The appellant, Gary W. Bass, was convicted by a jury of nine counts of willfully submitting false or fraudulent income tax withholding exemption statements to his employers in violation of Sec. 7205 of the Internal Revenue Code.1 On appeal, Bass asserts seven points of error, including (1) that the district court should **not** have instructed the jury that, as a matter of law, he was an "employee," and (2) that the disclosure of his employment records was in violation of the notice provisions of 26 U.S.C. § 7609.

This court finds that the district court usurped the role of the jury as the fact–finder when it instructed that, as a matter of law, Bass was an "employee." Because this instruction **directed a verdict** as to an essential element of the offense charged, we reverse Bass's conviction and remand for a new trial."

I am not a "person" as defined in 7025 B&P. Part of my Right in obtaining the Bill of Particulars is to evidence this factual determination was an element of the "crime" required

to be proven (yet was never even mentioned at "trial"). Plaintiffs have the burden of proof of establishing subject matter jurisdiction and without this essential element (and many others) failed to empower the court to render a verdict/ "judgement".

One question of enormous importance emanates from this issue of whether I am such a "person" as defined in 7025 or, a "natural person" as referenced in Article 10 under "Home Improvement Business", Section 7150, which states:

> "Person" as used in *this* article is limited to natural persons, notwithstanding the definition of person in Section 7025. (emphasis added)

To be clear this case involved "home improvement".

If and only if I am a hypothetically a "natural person", what *may* be considered to be a flesh and blood human being (as opposed to a statutory or fictitious person, such as a "corporation" as stated in 7025 B&P) then immediately we discover 7031(b) was intended to apply to fictitious NOT natural persons. 7031(b) falls under the 7025 definition of "person" NOT the 7150 "natural person". **(Natural Person is NOT part of the 7025 definition of person.)**

Clearly the legislature had intent to differentiate these various type of "persons" to whom the code applies to and did so. Plaintiffs and the "court" don't get to do to the ole' "switch-a-roo" and relegate lawful status and standing to meet their fraudulent needs to obtain a "judgement". Refer to Opinion 58-170 of the California Attorney General:

> "Further, any construction should be avoided which implies the Legislature was ignorant of the meaning of the language employed in a statute or that it was used with words in vain, the legal intendment being that each and every

clause was inserted for some useful and sensible purpose (Prager v Israel, 15 Cal.2d 89)"

In the context of 7031(b) applying only to legal fictions such as corporations however – and to give credit where it is due – Counsel's arguments of this being a "civil action" become a whole lot more reasonable and plausible. At that juncture, we're not dealing with Rights secured by the Constitution but rather statutory privileges afforded to creations of the STATE (aka corporations), not actual human beings!

It would undeniably be cruel and unusual punishment to deprive me under the color of Law of my status and standing as a human being with creator endowed unalienable Rights. That would be what we call slavery or involuntary servitude. Moreover, it is another violation of judicial process to presume a specific status.

By no coincidence, Mr. Chaffee even wrote a paper discussing similar concepts entitled "The Erosion of Citizenship". One point he missed was that one of the most prolific ways this "erosion" has taken place in our country is by equating the revocable statutory privileges of corporations with unalienable Rights secured to the People. What we find however is that according to one of the architects of the so-called 14th Amendment, was that this was their secret intent.

For the record, I am a living breathing human being, not a fiction of law!

The factual sufficiency evidencing a claim and empowering the court with subject matter jurisdiction does not appear on the record in this case. I am therefore appealing the "judgement" on these grounds and others. Yet in order to do so by having all of the facts, presumptions, and fictions of law relied upon to allegedly sustain subject matter jurisdiction, Plaintiffs must provide them in full disclosure so that I may be fully informed

and argue them. This is what nature and cause of the accusation/ jurisdiction and venue are!

Even assuming arguendo this was a purely civil action, a direct challenge to jurisdiction (as done in the Writ of Error served upon Plaintiffs **prior to** judgement), still requires them to provide the factual sufficiency of a claim giving rise to subject matter jurisdiction which they and the court not only **ignored**, but **rejected** in further violation of judicial process (more discussion on this below).

On yet a *seemingly* unrelated but very intertwined issue, the so-called "Application For Original Contractor's License" is really a unilateral contract of adhesion or quasi-contract. It is entirely unconstitutional because under duress and coercion the Contractor's State License Board threatens fines and incarceration if one does not "apply" yet the very "application" requires an undisclosed waiver of Rights secured by the Constitution for the united States [1787-1791, which is impossible. Nowhere in the "application" is there any disclosure whatsoever one will have to waive their Rights to trial by jury and appeal and be *subject* to the Board's "mandatory arbitration program." Moreover, because it is a unilateral contract of adhesion, an action cannot be maintained against a "licensee" for breach of contract under specific performance!

Can someone please then tell me how in the world, given this state of abysmal and wholly unconstitutional affairs, any human being could ever be found guilty of violating the Contractor's State License "law" for, at the very least, failing to apply for a license?

I speak from personal experience with this tyrannical agency (the CLSB). Refer to:

EXHIBIT [19] Pages 1229-1249: An Application For Original Contractors License. Nowhere in this application is there any admonition or disclosure as is required for there to be a knowing, voluntary, and intelligent waiver of Rights. See Johnson v Zerbst, 304 US

458. This, assuming unalienable Rights could even be waived, which they can't. They are un–a–lien–able (not lienable). This EXHIBIT was compiled from documents I personally received from the CSLB pursuant to a public information request– see pages 1229-1230.

Refer to EXHIBIT [18]: The Board executed "mandatory arbitration proceedings" resulting in the suspension and revocation of my company's license without ever even notifying me personally (as the Qualifying Individual on the License) of the proceedings! I repeatedly notified the Board of it's unlawful proceedings yet David R. Fogt, "Chief of the Enforcement Division" refused to acknowledge my claims and insisted upon the integrity of the proceedings (See my letter and his reply on pages 1224-1225). Mr. Fogt has since been promoted to Registrar. The CALIFORNIA STATE BAR Licensed "attorney" who also took place in this criminal racket is Jamie Handrick Bar#21663. This EXHIBIT was compiled from certified documents I personally received from the CSLB. (Mrs. Handrick in her response to my Bar complaint is likely to provide "proof" of service via USPS certified mail. These mailings were to a business either she and/or the CSLB knew was closed for – in my estimation – over a year while the CSLB fumbled the "complaint". Furthermore, the CSLB was notified when I had a phone conversation with Investigator Bassett long antecedent to the "arbitration", that the business had closed and the address for service of process was mine as indicated on the license application under "qualifying individual". Of even further interest (thought not included in these exhibits) is the case file from the AMCC – the CSLB's outside arbitration agency whom appears to have never been provided with my address either!)

There seems to be a rather obvious pattern and practice of the STATE OF CALIFORNIA to refuse to acknowledge claims of its own wrongdoing including taking action without lawful authority. And upon notification of this, it just continues on anyway.

(Note: I have included a certification of documents from the CSLB, though because I opened and unstapled the documents to be able to scan them, am unsure if this is the

correct certification for the arbitration file. If it's not, I do have a sealed and unopened second document request where such certification surely resides untampered. The documents nevertheless are those I received from the CSLB.)

Refer to EXHIBIT [19]: A Public Records Act Request to the CSLB pertaining to "mandatory arbitration". Notice the mandatory arbitration program guide, and the "statutory authority" quoted in the copies provided by the Board subsequent to my request.

Wouldn't all this be even more fascinating if there wasn't even a statute authorizing the CSLB to execute "mandatory arbitration"? Refer to EXHIBIT [19] Page 1251, Section 7085 Referral to Arbitration. You'll notice that while it *appears* to be mandatory in subdivision (b), subdivision (b) then states "inclusive of subdivision (a)", which states "upon **concurrence of both the licensee and the complainant**"... in other words CONSENT or a knowing, voluntary, and intelligent waiver of Rights. Well, where is this waiver of Rights? I demand to know! I have never made such a waiver.

Refer to page 1227. If this isn't the biggest smoking gun of all, I can't imagine what could be... This page came from the certified document package I requested from the CSLB for the "arbitration proceeding" they conducted.

One might then wonder under what lawful authority the Board even conducted the hearing to begin with, assuming *hypothetically* they gave lawful notice...The answer is there isn't any such lawful authority– a violation of the separation of powers clauses, false imprisonment, filing false records, etc etc... all of which unambiguously relegate me to constructive custody without Lawful authority– a trespass viet armis.

Please also refer to Opinion 58-170 of the California Attorney General where he unequivocally reveals a contractor is in fact a [public] "office". I have never taken a

voluntary oath or been publicly elected or appointed to this public office. Nor could I lawfully elect myself into this public office by simply filling out an application form.

According to Mr. Bissell, his clients are the public officers, "persons" (aka individuals), who fall within the provisions of 7025 B&P– yet another presumption of law proven nowhere on the record.

Without proof of both presumptions, the court again lacked subject matter jurisdiction to render judgement. Furthermore, "when one conveys a false impression by the disclosure of some facts and the concealment of others, such concealment is in effect false representation that what is disclosed is the whole truth." State v Coddington, 135 Ariz. 480, See also 532PC- Theft by False Pretenses.

"The power to create presumptions is not a means of escape from constitutional restrictions". Bailey v Alabama, 219 US 219.

All the powers of the government *[including ALL of its civil enforcement powers against the public—ed]* must be carried into operation by individual agency, either through the medium of public officers, or contracts made with [private—ed] individuals. See e.g. Osborn v Bank of US, 22 US 738 (1824).

"It is a truism that rights or privileges represented by a contract, judgment, or certificate of license literally cease to exist upon becoming void by operation of law. From the earliest times the courts of this State have held to this principle and declared that proceedings, including those in the courts, based upon a void act or upon some event which cuts off rights, once existing, by operation of law cannot be the basis of any further action or of any valid proceeding. See Sutro v Petit 74 Cal. 332; Branham v The Mayor, 24 Cal. 585, etc. etc." Cal. Op. Atny. Gen. Opinion 47-175.

The trial court, being a court of limited jurisdiction can proceed only in a case where the issues are violations by a person holding a valid license or upon an application for a license to determine the applicant's qualifications. Where there is in fact no license, the court has no jurisdiction to proceed. (See e.g. Cal. Op. Atny. Gen. Opinion 47-175, and O'neil v Department of Professional and Vocational Standards, 7. Cal. App. 2d 395).

"Since a license to conduct any of the regulated activities is a mere statutory privilege – a creature of statute – it is at all times subject to legislative control, including destruction or termination by the legislative process". Cal. Op. Atny. Gen. Opinion 47-175.

A STATE cannot convert a Constitutional Right (such as gainful employment in the construction industry) into a privilege and then require a license and charge a fee for it. (See e.g. Murdock v. Pennsylvania, 319 US 105). It's pretty obvious the unlawful way the STATE OF CALIFORNIA did this was yet another presumption all "contractors" were incompetent to do business without the STATE'S competency hearing, aka "Application For Original Contractors License". Where's the proof of this presumption at "trial"?

See EXHIBIT [22] For Attorney General Opinions.

Another aspect in counsel's opposition is his argument that a Bill of Particulars is really a veiled discovery request. Please see USA v Smith, 776 F.2d 1104 (1985):

> "Historically and functionally, the bill of particulars is closely related to the indictment. Bills of particulars, relative to indictments, have a brief history. Nevertheless, that history closely ties the bill of particulars to the indictment. Originally, indictments set forth the accusation in great detail and there was no need for supplementation. The modern trend, however, has been towards more skeletal accusations combined with procedures providing access to the omitted details if the defense has a legitimate need for them. WHARTON, CRIMINAL PROCEDURE, Sec. 355 (12th ed. 1975). Federal Rule of Criminal Procedure 7(f) provides the opportunity for such access. That rule authorizes the court to "direct the filing of a bill of particulars" (emphasis added). This is in marked contrast to the provisions of

Rule 16, which authorize the court to direct that the government "furnish to the defendant " certain specified items of discovery. In this context, we believe Rule 7(f) provides some evidence that bills of particulars were regarded by the drafters of the rules as supplements to the indictment **rather than as pretrial discovery.**

Turning to the functions performed by a bill of particulars, we again find them more akin to the functions of an indictment than to discovery. While it is true, as appellant stresses, that a bill of particulars, like discovery, provides information to the defendant for use in his or her defense, the same can be said of the indictment. A bill of particulars, unlike discovery, is not intended to provide the defendant with the fruits of the government's investigation. See, e.g., United States v. Hill, 589 F.2d 1344, 1352 (8th Cir.); cert. denied, 442 U.S. 919, 99 S. Ct. 2843, 61 L. Ed. 2d 287 (1979); 8 MOORE'S FEDERAL PRACTICE p 7.06 (2nd ed, 1985 Rev.). Rather, it is intended to give the defendant only that minimum amount of information necessary to permit the defendant to conduct his own investigation. United States v. Manetti, 323 F. Supp. 683, 696 (D. Del. 1971). More importantly, a bill of particulars, like the indictment, is designed to define and limit the government's case. As with the indictment, there can be no variance between the notice given in a bill of particulars and the evidence at trial. United States v. Neff, 212 F.2d 297, 309 (3d Cir. 1954); United States v. Murray, 297 F.2d 812 (2d Cir.) cert. denied 369 U.S. 828, 82 S. Ct. 845, 7 L. Ed. 2d 794 (1962)."

This court has a duty to protect and defend my Constitutionally recognized Rights against all enemies, foreign and domestic. One of the issues in this case however is that it is also acting in concert with Plaintiff's and their counsel,to deny my Right to judicial process.

Courts of limited jurisdiction are empowered by one source: sufficiency of pleadings, meaning one of the parties appearing before the inferior court must literally give the court its judicial power by completing jurisdiction.

Oklahoma may say it best: We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article,".

Article 7, Section 7, Oklahoma Constitution. However, this "unlimited original jurisdiction of all justiciable matters" can only be exercised by the district court through the filing of **pleadings which are sufficient to invoke the power of the court to act.** The requirement for a verified information to confer subject matter jurisdiction on the court and empower the court to act has been applied to both courts of record and not of record. ... [V]erification of the information is more than merely a "guaranty of good faith" of the prosecution. It, in fact, is **required to vest the district court with subject matter jurisdiction, which in turn empowers the court to act**. Only by the filing of an information which complies with this mandatory statutory requirement can the district court obtain subject matter jurisdiction in the first instance which then empowers the court to adjudicate the matters presented to it. Chandler V. State, 96 Okl.Cr. 344, 255 P.2d 299, 301-2 (1953), Smith V. State, 152 P.2d 279, 281 (Okl.Cr. 1944); *City of Tulsa*, 554 P.2d at 103; Nickell V. State, 562 P.2d 151 (Okl.Cr. 1977); Short v. State, 634 P.2d 755, 757 (Okl.Cr. 1981); Byrne V. State, 620; Buis v State, 190 OK CR 28.

Subject matter jurisdiction cannot be waived and most certainly can be lost. One of the ways it can be lost is by violation of judicial process...

"Trial" in this case took place on March 27th and 28th, 2017 before "Judge" David R. Chaffee in Department C-20.

All EXHIBITS annexed hereto are fully incorporated herein.

Please refer to EXHIBIT [1]: Clerk's Transcript: Chronological Index of THE SPARTAN ASSOCIATES, INC vs. GARY HUMPHREYS, 30-2015-00805807 throughout this declaration.

On 4/18/17, after "trial" but before judgement was rendered, I served all parties with a Writ of Error/ Order to Vacate judgement. I believe this Writ to be a challenge to jurisdiction due to numerous errors appearing on the record (or lack thereof) having direct

effect on the court's subject matter jurisdiction to render any ruling. This order/ direct attack on jurisdiction is shown on the Clerk's Transcript as "Proposed Order Received On 4/18/17", and is annexed hereto as EXHIBIT [2].

Refer to EXHIBIT [3], the One Legal E-Service Notification of Service/Retrieval By Parties shows that **all** parties in this case both viewed and retrieved the order that same day, 4/18/17.

Motion to vacate judgment or order is direct attack. In re Guardianship of Dahnke (Cal. App. 1923), 64 Cal. App. 555, 222 P. 381, 1923 Cal. App. LEXIS 278.

Jurisdiction can be challenged at any time, most particularly when I had neither effective assistance of counsel and/or had no way to know about the absence of jurisdiction since there are no meaningful and substantive curricula in the mandatory public "education" system for the study of the Constitution, history and laws of the united States.

When jurisdiction is challenged, it is incumbent upon the party asserting jurisdiction to prove, on the record wherein there are no jurisdictional failings. Where the court has actual knowledge of a jurisdictional failing, the court has a non-discretionary duty to dismiss the matter and vacate all orders relative to the matter which support the plaintiff.

Upon receipt of the direct attack on jurisdiction, the court had a duty to (1) inform me if my pleading was defective and how to correct it (if it was defective) and/or (2) take no action until Plaintiffs met their burden of proof. Either or both of these duties is attributable to at least the oath of office of the "judge" pursuant to Article VI, Section 3 of the Constitution for the united States [1787-1791] since he is bound by "this Constitution and laws enacted in pursuance thereof. Neither happened. Refer to Judge Chaffee's Oaths of Office relevant to the time periods of this case, EXHIBIT [21], which I accept.

While I now understand some of my arguments in the Writ may not be entirely accurate legally, it is rather clear the **substance** therein indicates multiple problems with facts of Plaintiffs failing to establish a claim and jurisdiction. I did the best I could given the fact I attended the mandatory public school (Fool) system (and graduated with honors) where there was no such training or eduction in matters of this type whatsoever! While I am a Pro Per litigant, I cannot imagine given the circumstances, how the following decisions would not also apply in this instance:

> See Haines v Kerner, 404 US 459:
> Pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.
>
> And, Platsky v Cia, 953 F.2d 25:
> Court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.

On 4/20/17, three court business days after the direct attack was filed, Mr. Chaffee, without lawful authority (having apparently ignored my direct attack on jurisdiction) proceeded to sign an order of judgement for $848,000 against me. This is a violation of judicial process in that I have a Right to be heard and present a defense. It is the duty of the Court to protect my Rights.

Challenging the factual sufficiency of a claim and subject matter jurisdiction prior to a court's order for judgement by way of a signed affidavit is not an abuse of process.

I recognize since I have filed an appeal, that may be the proper forum to attack the jurisdiction of the trial court proceedings, opportunities the trial court has unequivocally

and repeatedly denied my Right to. This being said, the Supreme Court of the US has stated I must be a belligerent claimant in person in demand of my Rights. Furthermore:

> MacMillan Petroleum Corp. v Griffin, 99 Cal. App 523, 533.
> A court may set aside a void order at any time. An appeal will not prevent the court from at any time lopping off what has been termed a dead limb on the judicial tree— a void order.
>
> Bennett v Wilson, 122 Cal. 509:
> "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless."

There continues to be a failure of judicial process in this court and by Plaintiffs and their counsel. As such, I believe it is imperative to further substantiate these claims so that I am not further denied my Right to a meaningful and substantive appeal and Petition for Non-Statutory Writ of Habeas Corpus by being provided the Bill of Particulars and Reporters Transcript evidencing the proceeding(s). The following evidences of deprivation of rights and fraud on the court will provide factual sufficiency of the abuse of judicial process and how important – as evidence by the crimes committed – the reporters transcripts and answers to the Bill of Particulars clearly are.

Refer to EXHIBIT [4]: I received this letter in the mail at postal service address: 818 Spirit Costa Mesa, California on or about April 27, 2017. It is addressed to me from William Bissell, Plaintiffs counsel. I personally opened the envelope and found: (1) the "Judgment" purportedly signed by David Chaffee, (2) Notice of Entry of Judgement signed by William Bissell, and (3) Proof of Service Dated April 24, 2017, signed by William Bissell.

Without first addressing the merits of the direct attack on jurisdictional grounds and the Humphreys proof the court had subject matter jurisdiction, Mr. Chaffee had no authority to order a judgment. The Clerk of Court, Cora Bolisay, had no authority to enter any judgment.

The fraudulent "judgment" appearing in the record of this case dated April 20, 2017 is void for lack of subject matter jurisdiction having been violated by failure to adhere to judicial process and deprivation of Rights under color of law. Failure to adhere to judicial process renders any judgement thereof a Bill of Attainder or Pains and Penalties in violation of Article 1 Section 9 of the bastardized version of the California Constitution allegedly in effect (1879) and Article 1 Section 9 or 10 of the Constitution for the united States [1787-1791].

See County of Ventura v Tillett, 133 Cal. App. 3d 105:

> "In a contested proceeding, no court may render judgement without conforming to the Constitutional guarantees which afford due process of law."
>
> "A judgement is void on its face if the court which rendered the judgement lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which it had no power to grant."

The court, if in fact it had subject matter jurisdiction, loses it upon violating judicial process.

See Elliott v. Lessee of Piersol, 26 U.S. 328 (1828):

> Where a court has jurisdiction, it has a right to decide any question which occurs in the cause, and whether its decision be correct or otherwise, its judgments, until reversed, are regarded as binding in every other court. **But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers.**

Very arguably, Mr. Chaffee, already disqualified as herein above mentioned, committed an act or acts of treason to the Constitution by exercising jurisdiction which the trial "court" did not have (see e.g. Cohens v Virginia 6 wheat. 264).

Mr. Bissell, who appears to have authored the judgment form on 4/4/17 (prior to the jurisdictional attack) should have, upon its receipt with Mr. Chaffee's signature, immediately informed him or the court of its serious error and taken remedial action. Instead, he acted in concert, having then apparently drafted and signed form CIV-130, the Notice of Entry of Judgement and Proof of Service by First Class Mail under penalty of perjury on April 24, 2017. Bissell then purportedly placed these documents in the envelope bearing his name and in violation of 18 USC 1341, used the United States Postal Service to serve me and the other parties with false judicial records attempting to extort my property under color of law. The Notice of Entry of Judgement and Proof of Service by First Class Mail were filed electronically in the Superior Court on 4/24/17 at 1355 hours. These documents appear at pages 1017 and 1018 of the Clerk's Transcript and are included in EXHIBIT [4]. Clerk Bolisay appears to have filed the fraudulent judgement on 4/20/17.

The "lawyers" and "judge" in this case are all active licensed members in apparent good standing of the CALIFORNIA STATE BAR Association. Having likely each received a JD in law, been admitted to the Bar and practicing/studying law for a combined near half century, they reasonably should know the basic elements of judicial process foundational

to our federated republican form of government of defined and limited powers. "This includes fair opportunity to present evidence in court and be heard and that judgement rendered be based on an evaluation of the evidence on each side, findings of fact, and conclusions of law". Violations of judicial process are a breach of their duties and oaths of office to support and defend our State and Federal Constitutions.

Refer to EXHIBIT [5]. On 4/24/17, I received a Notice of Rejection of Electronic Filing via email from the One Legal electronic filing service I used in filing the order. The Notice stated "the court deny the request to vacate the judgement". This "Notice of Rejection of Electronic Filing" however is nowhere in the Clerk's Transcript. Neither is a minute order or signature from a Judge or evidence of a hearing, because none took place as lawfully should have. The court had no authority whatsoever to reject/deny a jurisdictional challenge.

As a police officer for nearly ten years, it was my duty to respond to calls for service and acknowledge people when they asked for my assistance no matter how frivolous or benign I may have thought their problem to be. I can't see how as a public official, Mr. Chaffee's duties differ in any way at all. While every matter before the court is guaranteed judicial process, surely an action with the ramifications of causing financial ruin (ie a near million dollar judgement) qualifies. Moreover, I paid the court in good faith they would perform their duties. Dare we even get into constructing an artifice to take money under false pretense and racketeering under color of law?

On 7/17/17 I called Department C-20 and spoke with the Clerk, Cora Bolisay. Refer to EXHIBIT [13], my affidavit of our conversation. Clerk Bolisay told me the judge (apparently referring to Judge Chaffee, the judge in her courtroom) is the one who denied the order, after first telling me she had.

Refer to EXHIBIT [6]. On 4/25/17, it appears Mr. Bissell then authored, signed, and presented form EJ-001 (Abstract of Judgement–Civil and Small Claims) to the court and paid the $25 fee for filing. Deputy Clerk, A. Dang accepted it. The documents included in this EXHIBIT are pages 1023 through 1026 of the Clerk's Transcript (In these acts, it is unclear but suspected Mr. Bissell committed Burglary by entering the courthouse to record this document and pay the fees. Whether he entered the courthouse or not, he filed this false and fraudulent document with intent to extort my property under color of law in further violation of judicial process and deprivation of my Rights.

Refer to EXHIBIT [7]. On 4/26/17 Mr. Bissell then used the United States Postal Service in furtherance of his crimes to mail me, via certified mail, return receipt requested, a copy of his fraud upon the court. On or about April 29, 2017, I received this envelope in person near the postal service address of 818 Spirit Costa Mesa, California. The postal carrier handed me the envelope and requested I sign for the return receipt request. I did. EXHIBIT [7] is a true and correct copy of the envelope and the contents I received therein. Included in this EXHIBIT is a print out of the USPS information for the certified mail tracking number on the envelope. I personally entered this tracking number on the USPS website at tools.usps.com and printed out the return.

Up until September 18, 2017 or within a few days thereof, I believed the Judgement signed by Mr. Chaffee, filed in the court, and served upon me by Mr. Bissell (along with all documents served upon me and filed in the court) were in fact lawful orders. I relied upon the sworn duties of Judge Chaffee, Clerk Bolisay and other Clerk's of court, William Bissell, and Scott Russo under sworn duty to protect and defend my Rights secured by the California Constitution and the Constitution for the united States [1787-1791].

While I had serious doubts concerning the jurisdictional defects I believed to exist in the case, I believed the orders were still executed under lawful authority and treated them as such as evidenced by a Notice of Trespass letter I personally sent to Mr. Bissell for my

mother. Clearly the orders appear and feel to have some validity (however unlawful that may be) or I wouldn't also be compelled to author this Declaration or file an appeal. Hold this thought...

On or about May 4, 2017 I received a letter from Hugh Nguyen, Clerk-Recorder, which included yet another copy of the fraudulent abstract of judgement served upon me by Mr. Bissell. The Clerk-Recorder's letter stated "Please find enclosed a recent recording that may affect your property... A lien has been recorded in our office that references your last known address. A copy of the recorded lien has been included for your reference. For your information, a lien is a claim against real or personal property for the satisfaction of some debt or duty." Refer to EXHIBIT [8].

I believed, based on this letter and the validity of the judgement itself, that the Humphreys had placed a lien on the property at 818 Spirit Costa Mesa, California, that is listed in my name or my living trust. While the property is in my name or my trusts name, all rights to it belong to my mother, Roseanne Bereki. I showed her copies of the Abstract Judgement served upon me by Mr. Bissell, as well as the letter from the Clerk-Recorder. She too believed a judgement had been filed upon the property. After a brief discussion, we then felt it best to notify the Humphreys of the true and correct ownership interests in the property. Refer to EXHIBIT [8] , Pages 1128-1130, Affidavit of Roseanne Bereki and Pages 1131-1134, declarations of Attorney's David D. Robin and James G. Bohm.

On 5/15/17, I sent the Humphreys this notice of trespass signed by my mother, Roseanne Bereki, along with the two witness affidavits to Mr. Bissell. The letter informed the Humphreys they were trespassing on the title to her property by filing a lien upon it.

Of significance is the letter Mr. Bissell wrote back to my mother in response where he states "The Humphreys actions consist of filing an abstract of the judgment which indicates only that judgement has been entered against Adam Bereki, the amount of that

judgement and Adam's last known address, all of which is 100% accurate and fully sanctioned under the law." (emphasis added) Bissell's letter is annexed hereto as EXHIBIT [8].

While we later discovered no lien had in fact been filed, the Humphrey's actions aren't even remotely "accurate or fully sanctioned under the law". In fact, they are a trespass upon it.

Rewinding for just a moment… The challenge to jurisdiction was filed on 4/18/17. It was unlawfully denied on 4/24/17. In continuance of, and as if the challenge to jurisdiction did not even exist, Mr. Bissell then filed a Memorandum of Costs on 4/21/17. Mr. Russo did the same on behalf of Spartan (my company) on 5/8/17.

Subsequent to the Memorandums on Costs filed by Russo and Bissell:

-Russo filed a Notice of Motion and Motion to Tax Costs also on 5/8/17.
-Bissell filed an Opposition and Declaration In Support of the Opposition of the Motion to Tax Costs on 5/24/17.
-Russo replied to Bissell's opposition on 6/1/17.

If we examine the documents surrounding the Motions to Tax Costs, nowhere is there any mention of the jurisdictional challenge filed on 4/18/17. Again, despite having been served, the other parties carried on unLawfully as if it didn't even exist in concert with the court, seemingly leading the way.

While Mr. Russo may not believe he represents me any longer (a subject for another discussion… or that he was ever effective in representing me to begin with), Spartan's interests are mine. A jurisdictional challenge clearly affects Spartan's interest and Russo's failure to acknowledge it is a further breach of his duties to both me and Spartan.

Refer to EXHIBIT [9]: Opposition/Response To Motion To Tax Costs and Bissell's Declaration In Opposition To Motion To Tax Costs.

Please turn to the page numbered 1058 in the top right corner (or 1060 in the bottom right corner—Clerk's Transcript page number). You'll notice Mr. Bissell hasn't signed the declaration under penalty of perjury. The document was not rejected by the court as it should have been and undoubtedly had to be relied upon for this motion. Although less relevant, the same issue occurs on page 1153/1055 in Bissell's opposition, though not an affidavit.

Refer to EXHIBIT [10]: Minute Order 6/9/17. Mr. Chaffee, again without lawful authority, awards Plaintiffs their costs as stated therein.

True to form, Mr. Bissell then allegedly authors the document entitled "Notice of Ruling on Motion to Tax Costs". According to his proof of service under penalty of perjury, he placed the false, fraudulent document in the mail on 6/9/17 to serve me, the other parties and the court as if was a Lawful order. Refer to EXHIBIT [11]: Notice of Ruling On Motion to Tax Costs served upon me via United States Mail on June 9, 2017. The documents included in EXHIBIT [11] are true and correct copies of what I received.

On, 6/13/17 I filed a notice of appeal to collaterally attack the jurisdiction of the court and void judgement.

At or about the time of filing the appeal, the picture began to get much clearer of what the ramifications for failure of judicial process and the deprivation of my Rights in this case really translated to in the Lawful sense. While I had strongly felt and intuitively sensed something was wrong, putting that in terms of Law and understanding the mechanisms of the "system" is something else entirely. One of the awakenings amongst the many was that these proceedings were actually quasi-criminal in nature and not purely civil as I was

told by my counsel prior to trial and as represented by Mr. Bissell in his Opposition to this Motion. Moreover, I was never given any sort of admonition by the court on the ramifications of waiving my Right to trial by jury as can only be done knowingly, voluntarily, and intelligently. Therefore, there was no waiver of jury at trial in my recollection.

Further discovering the serious jurisdictional defects in the record of this case I then served Plaintiffs with a lawful Demand for Bill of Particulars on 6/28/17. This was yet another challenge to jurisdiction and an absolute necessity so that I could prepare a meaningful and substantive Appeal to not be further deprived of liberty or property without judicial process as continued to be the case. The questions contained as the particulars are those effecting the foundation aspects of this case I have a Right to know and Plaintiffs have the burden of proving for the court to have sustained subject matter jurisdiction. Mr. Russo should have obtained this basic information nearly two years ago but clearly failed to.

On the Demand For Bill of Particulars, I stated "Your office brought this action against Adam Bereki where jurisdiction was alleged to exist and consequently judgement was allegedly found against him. To this end, the following questions are specifically posed to wit and do not represent an exhaustive list". Refer to EXHIBIT [12]. You will notice, all of the parties were again served, all viewed and retrieved the document. And again, <u>there was no acknowledgement or answer.</u>

On 8/30/17, I again called Department C-20 and this time spoke with a woman whom I believe to be first named "Adriana". Refer to EXHIBIT [14], my affidavit of our conversation.

Adriana told me (referring to the Bill of Particulars) my "statement for jurisdiction" was filed too late and is untimely because the court entered judgement. I asked her to

have this denial in writing. She told me no and to "bring it up in whatever papers I needed to file."

Again, no hearing, no minute order, no nothing. And this time, not even a notice of e-filing rejection.

* * *

When my company Spartan and I hired Mr. Russo, he told "us" that due to "our" limited fund resources "we" would not be getting "cadillac" representation. Rather, it would be something more like a "Chevy". He must have been speaking about Matchbox cars as compared to the real thing because "we" didn't even get representation on even the most foundational and/or elementary grounds. While it appears true that Mr. Russo did go through the motions of discovery, filing pleadings, and "trial" none of that is relevant without ensuring the court had subject matter jurisdiction and in doing so protecting the integrity of "our" actions. Jurisdiction is everything.

* * *

I have a Right to know the nature and cause of the accusations against me, including any presumptions or fictions of law relied upon in full disclosure.

I have a Right to a judicial court in the first instance.

The actions of this court and it's actors have very arguably established this was in no way a judicial court as evidenced by Article 3 of the Constitution for the united States [1787-1791]. See Cohen v Virginia, 6 wheat. 264.

One need only make quick study of the recent supreme Court decisions (and the cases referenced therein) such as US v Lopez, 514 US 549 and Reno v Condon, 528 US 141 to discover Congress's interstate commerce clause powers seem to have far usurped their Constitutional LIMITATIONS, extending now to what is arguably every facet of *American* life. Or should it now be called the United States of the District of Columbia?

The only "place" these licensing/franchise rackets and denials of judicial process could even perhaps remotely be permissible (?—ed) would be in a territory, aka the District of Columbia where the Constitution for the united States [1787-1791] does NOT apply and Congress' commerce clause powers therefore have NO limitation. What I mean is, it seems rather obvious we're in interstate commerce proceeding in a federal legislative territorial tribunal, not a judicial Constitutional court.

Where there's no judicial process, any and all allegedly applicable 'state' laws, rules, regulations, etc., even if lawfully enacted are relegated to a Bill of Attainder/Pains and Penalties. See the Constitution for the united States [1787-1791] Article 1, Section 9 or 10, or perhaps more appropriately the Northwest Ordinance of 1787.

It also seems prudent to remind counsel and this "court": any and all allegedly applicable 'state' laws, rules, regulations, etc., even if lawfully enacted, do not apply to any actions invoking Rights secured by the Constitution, since their misuse could, and very often would, result in denying a petitioner the Right to invoke the judicial power of the united States as the Justices said meaningfully in the case of Miranda v Arizona, 384 US 436,491:

"Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them."

In summation, all of this (at least to me) becomes so abundantly clear when held up against the light of my duties as a former police officer:

> Failing to respond to a call for help/service is a dereliction of duty. (The court has the same obligation not to ignore me or reject my request for service by filing an action, especially having taken my money in pursuance thereof.) The court breached it's duty.
>
> Making an arrest (violating someone's liberty) without establishing ALL of the facts that lead to the probable cause (jurisdiction/authority) to make that arrest would also be a dereliction of duty. (The court has no subject matter jurisdiction (authority) to render a judgement/verdict until Plaintiffs fully established ALL of the factual elements of a claim– including all presumptions of law.) The court breached it's duty.
>
> The duties of Counsel are also very similar to that of an officer. They have a sworn duty to protect and defend our Constitutions. This includes not taking unlawful action in the performance of their duty or when unlawful action is observed to immediately thwart it.

This is not rocket science folks, it's the basic foundation of our system of government. How can you possibly be in these positions of honor and trust if you are not going to follow the basic rules?

I remain under duress by the court's unlawful judgement and the unlawful actions of the CSLB, both of which appear to be in conflict with our Constitutions and laws yet are being fully enforced to take away my property and liberty under color of law.

I believe, based on the foregoing information I cannot have a fair and impartial hearing on this motion before "Judge" David Chaffee and am requesting a Judge in a different county.

In all fairness to Mr. Chaffee, I have NOT been able to actually confirm he ever read the direct challenge to jurisdiction. If by some strange happening in the court he was never actually privy to it, then all complaints contained herein shall be immediately dismissed. However, this does not relieve him of his other duty to render judgment only with subject matter jurisdiction which for the other reasons stated clearly he did not have. Nor does it relieve Mr. Bissell, who did receive it (see his admission EXHIBIT [20]) and as a result should have notified Mr. Chaffee.

David Chaffee, William Bissell, Scott Russo, Jamie Handpick, and David Fogt had duties as evidenced herein they failed to exercise. The breach of their duties has resulted in actual damages (and continues to) as evidenced below:

Damages

(1) Payments to Russo & Duckworth, LLP for alleged services of "representation" (?—ed): $11,500 (authenticated in an email dated 9/21/07. Actual bills available on request)

(2) Payments to SUPERIOR COURT OF CALIFORNIA-COUNTY OF ORANGE for alleged "hearings, trial, filing, etc. services" : $1500 (estimated). Actual charges are still under investigation as they are ongoing and will available on request.

(3) Payments to Legal Experts for consultations, study materials, and research: $3,500 (estimated). Charges are still being incurred and I am awaiting further invoices. Itemized charges available on request.

(4) My time and administrative expenses spent from the date of termination by the Humphreys (Approx. August of 2013), until now (and ongoing) in conducting legal research, organizing and preparing exhibits, responding to and initiating discovery requests and other proceedings, and all other activities directly or indirectly related to preserving, protecting, and defending my Constitutionally recognized Rights which were violated by the sham proceedings evidenced herein (including those of the CSLB and their subsequent denials of my Appeals).

My hourly rate is $347.50 and was in part derived as an average of Mr. Bissell's "customary billing rate" of $300 per hour and Mr. Russo's customary billing rate of $395 per hour. $1,500,000 (conservatively estimated)

(5) The intentional infliction of emotional distress resulting in several panic and anxiety attacks, depression, numerous emergency room visits as well as regular/ monitored care by numerous doctors. To Be Determined.

(6) The potential loss of the original cause of action, now, with interest, estimated to be $140,000.

In the short term, the court has an immediate and non–discretionary duty to vacate the void judgements in this case to prevent further harm to Adam Bereki and to release him from constructive custody. In the event it will not do so, it shall grant this motion to compel production of the Bill of Particulars and the Reporter's Transcript. A respectful Request For Statement of Decision remains as well.

Due to Mr. Bissell's Abuse of Process by behavior that generated this Motion to Compel and his attempt at sanctioning me for exercising my Lawful Rights, I request the court provide an award for damages to compensate me for my time in filing this motion. 65 hours @ $347.50= $22,587.50. (This award shall not in any way be considered a

settlement for the causes of action stated herein. It only pertains to my time in researching, writing, and filing this motion.)

* * *

Please also reference the California Code of Judicial Ethics [pursuant to the California Constitution Article 6, Section 18, Subd. (m)]:

> California Code of Judicial Ethics
>
> Canon 1. A judge shall uphold the integrity and independence of the judiciary.
>
> Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
>
> Canon 3. A judge shall perform the duties of judicial office impartially, competently, and diligently.
>
> Definitions:
>
> "Impartial," "impartiality," and "impartially" mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge.
>
> "Impropriety" includes conduct that violates the law, court rules, or provisions of this code, as well as conduct that undermines a judge's independence, integrity, or impartiality.
>
> "Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

In conclusion, I'll leave you in the capable hands of Mr. Willy Wonka:

> It's all *here* black and white, clear as crystal. You stole fizzy lifting drinks. You bumped into the ceiling which now has to be washed and sterilized so you get nothing. You lose. Good day sir! Wonka v Grandpa Joe, 30 June 71.

[*My training and experience in law enforcement seems to compel me to include both legal arguments and statements of known facts in one document labeled "declaration". In police work this is how we wrote reports. Clearly, legal arguments are not in their entirety factual representations I have personal knowledge of beyond the research and other experiences I have surrounding them. My declaration under penalty of perjury applies only to those facts stated herein I obviously have direct personal knowledge of which may include some legal arguments and not others.]

It has never been my intent to avoid responsibility for any actions I may or may not have taken in regards to the matters upon which this case is based. I have requested countless times to meet and confer with Plaintiffs, yet they seem intent on not doing so and instead engaging in practices such as those outlined herein. Prior to filing this Reply to their Opposition, I made another attempt to reach out to Mr. Bissell to inform him of these injustices before filing any sort of official complaints etc. That email and his responses are evidenced by EXHIBIT [20]. In his words "I saw nothing that would cause me to question the validity of the judgement by the court… Thank you for the opportunity to avoid the trouble that may befall me…I will just have to take my chances that the court will have the same view of your argument as I do."

I declare under penalty of perjury the foregoing is true and correct. Executed on September 27, 2017 in Costa Mesa, California.

Adam Bereki

my copy

2000

Adam Bereki, In Propria Persona
818 Spirit
Costa Mesa, California
abereki@gmail.com
949.241.6693

Per adriana in 10/2/17 @ 1345 hrs C-20 per the clerk my file stamped copies are confirmed copies - left per copies in court C-20

Superior Court of California

County of Orange

Case No.: 30-2015-00805807

The Spartan Associates, Inc.

v

Karen and Gary Humphreys

FIRST AMENDED
REPLY TO OPPOSITION OF:
MOTION TO COMPEL PRODUCTION OF BILL OF PARTICULARS, REPORTERS TRANSCRIPT; REQUEST FOR STATEMENT OF DECISION

MOTION TO DISQUALIFY JUDGE FOR CAUSE

AND:

MOTION TO VACATE VOID JUDGEMENT

REQUEST FOR EMERGENCY PROTECTIVE ORDER (EPO) & CIVIL HARASSMENT RESTRAINING ORDER

RECEIVED
SUPERIOR COURT OF CALIFORNIA
CENTRAL JUSTICE CENTER
OCT 02 2017
EXECUTIVE OFFICE

**************SPECIAL NOTICE TO COURT SEE PAGE 2**************

2040

POS-050/EFS-050

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: In Propia Persona NAME: Adam Bereki FIRM NAME: STREET ADDRESS: c/o Postal Service Address 818 Spirit CITY: Costa Mesa, California STATE: ZIP CODE: CF 92626 CF TELEPHONE NO.: 949.241.6693 FAX NO.: E-MAIL ADDRESS: abereki@gmail.com ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center	CASE NUMBER: 30-2015-00805807
PLAINTIFF/PETITIONER: The Spartan Associates, Inc. DEFENDANT/RESPONDENT: Karen and Gary Humphreys	JUDICIAL OFFICER: Chaffee
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: C-20

1. I am at least 18 years old.
   a. My residence or business address is *(specify):*
      c/o Postal Service Address
      818 Spirit
      Costa Mesa, California
   b. My electronic service address is *(specify):*
      abereki@gmail.com

2. I electronically served the following documents *(exact titles):*
   First Amended Reply to Motion to Opposition, Motion to Disqualify Judge For Cause, Request For Civil Restraining Order and EPO, Motion to Vacate Void Judgment

   ☐ The documents served are listed in an attachment. *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:
   a. Name of person served: William Bissell/ Scott Russo/ Carlos Sosa

      On behalf of *(name or names of parties represented, if person served is an attorney):*
      Karen & Gary Humphreys/ The Spartan Associates, Inc., /Suretec Insurance
   b. Electronic service address of person served *:*
      wbissell@wgb-law.com/ srusso@russoandduckworth.com/ bmorales@hausmansosa.com
   c. On *(date):*

      ☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date: October 2, 2017

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

Adam Bereki
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
POS-050/EFS-050 [Rev. February 1, 2017]

PROOF OF ELECTRONIC SERVICE
(Proof of Service/Electronic Filing and Service)

Cal. Rules of Court, rule 2.251
www.courts.ca.gov

privacy, please press the Clear This Form button after yo Print this form Save this form Clear this form

my copy

Adam Bereki, In Propria Persona
818 Spirit
Costa Mesa, California
abereki@gmail.com
949.241.6693

Superior Court of California

County of Orange

The Spartan Associates, Inc. v Karen and Gary Humphreys	Case No.: 30-2015-00805807 REPLY TO OPPOSITION OF MOTION TO COMPEL PRODUCTION OF BILL OF PARTICULARS, REPORTERS TRANSCRIPT; REQUEST FOR STATEMENT OF DECISION MOTION TO DISQUALIFY JUDGE FOR CAUSE

Your name: Adam Bereki

Case Nu: 30-

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
09/27/2017 at 11:49:00 AM
Clerk of the Superior Court
By e Clerk, Deputy Clerk

b. ☐ The court denies your request, as follows:

Warning! If you miss the deadline below, the court cannot process your request for hea you filed with your original request. If the papers were a notice of appeal, the appeal ma

(1) ☐ The court denies your request because it is incomplete. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- File a new revised request that includes the items listed below *(specify incomplete items):*

(2) ☐ The court denies your request because the information you provided on the request shows that you are not eligible for the fee waiver you requested *(specify reasons):*

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)*, form FW-006. You have 10 days after the clerk gives notice of this order (see date below) to:
- Pay your fees and costs, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. ☐ The court needs more information to decide whether to grant your request. You must go to court on the date below. The hearing will be about *(specify questions regarding eligibility):*

☐ Bring the following proof to support your request if reasonably available:

Hearing Date → Date: Time: Name and address of court if different from page 1:
Dept.: Rm.:

Warning! If item c is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: 6-21-17

Signature of (~~Check one~~): ☑ *Judicial Officer* ☐ *Clerk, Deputy*

TIMOTHY J. STAFFORD

Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation*, Form MC-410. (Civil Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one):* ☐ A certificate of mailing is attached.

☐ I handed a copy of this order to the party and attorney, if any, listed in ① and ②, at the court, on the date below.

☒ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in ① and ②, from *(city):* Santa Ana, California on the date below.

Date: 10/11/17 Clerk, by Rochelle McAdams, Deputy

Revised July 1, 2009

This is a Court Order. R. McADAMS

Order on Court Fee Waiver (Superior Court)

1086

10/1/17

STATE OF CALIFORNIA
PIU 1
(Rev. 02/2017)

DEPARTMENT OF JUSTICE

GENERAL FORM
COMMENTS/QUESTIONS

Please read the Information Collection, Use and Access notice on the following page.

Mail Form to:

Public Inquiry Unit
Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

Xavier Becerra
Attorney General

PUBLIC INQUIRY UNIT
(916) 210-6276/ (800) 952-5225 Toll Free - CA only
TTY/TDD (800) 735-2929 (California Relay Service)
For TTY/TDD outside California contact your state's relay service number at http://www.fcc.gov/cgb/dro/trsphonebk.html
AG Web Site: http://www.ag.ca.gov/

In sending this comment or question, I understand that the Attorney General cannot answer legal questions or give legal advice to me and cannot act as my personal lawyer. I also understand that the Attorney General may need to refer my complaint to a more appropriate agency for response.

SECTION 1 - TYPE OF COMMUNICATION

This is a general comment ☑ This is a general inquiry or question ☐

SECTION 2 - YOUR CONTACT INFORMATION
(To receive a response in writing, you must provide your mailing address)

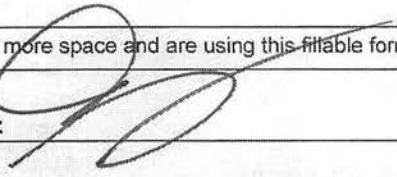
First Name: Adam	Middle Initial: A	Last Name: Bereki
Address: Postal Service Address: 818 Spirit		
City: Costa Mesa	State: California	Zip Code: [92626]
Home Phone: 949.241.66	Work Phone:	

SECTION 3 - COMMENT OR QUESTION(S)

Attach additional pages if more space is needed. Also attach copies of any supporting documentation. DO NOT SEND ORIGINALS. | Total # Pages Attached:

Attached, is a petition for review in the CA Supreme Court which evidences criminal racketeering on behalf of a number of elected officials and other employees of California. I am sending it to you as an initial complaint to the California Department of Justice for investigation. If you are not this agency, please forward this complaint to the appropriate persons. A thorough reading of the entire Petition is required to have a cursory understanding of the complex issues presented. Upon the opening of an investigation, I will provide further evidence.

[If you need more space and are using this fillable form, create a document (e.g. MS Word or WordPerfect) to print and attach.]

Signature: 

Date: 12/7/18

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

August 25, 2019

Dear Mr. Governor,

I believe it is your duty to ensure the laws are faithfully executed. Please find the attached letter evidencing a "trial" and "appeal" in California "Courts" in which my Rights secured by the California Constitution and the Constitution for the united States have been – and continue to be – violated by California "Court's" acting without any authority/subject matter jurisdiction. My letter evidences exactly how these usurpations are occurring in my case and countless others in similar cases.

This will be the only letter I send you. If you neglect to perform your duties, I intend to seek redress in an action against you in your individual capacity.

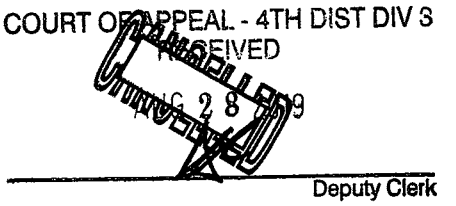
I'll anticipate your prompt and swift attention.

Sincerely,

Adam Bereki

August 25, 2019

Kathleen O' Leary
Thomas Goethals
Richard Aronson
601 W. Santa Ana Blvd.
Santa Ana, CA 92701



David Chaffee
via email to Megan Nomura:
megan@adrservices.com

James Di Cesare
Central Justice Center
700 W. Civic Center Dr.
Santa Ana CA 92701

Karen & Gary Humphreys
William Bissell
via email: wbissell@wgb-law.com

Good day.

This letter is in regards to a case you are directly involved with, Spartan v. Humphreys (Appeal No: G055075, Superior Ct No: 30-2015-00805807).

This is not ex parte communication as it has been sent to the opposing party. My intent is to contact you – if you are a public official – in your individual and private capacity.

I am writing to open a dialog with you about how we can, together, and without further intervention of the legal system, resolve the situation in which we are entangled.

Allow me to provide some background information:

In 2015, my company, "Spartan", sued Karen and Gary Humphreys, "the Humphreys", because they didn't pay about $82k in materials and labor for remodel construction work Spartan performed.

The Humphreys cross-complained against me and Spartan claiming negligence and other similar torts. Before trial on these issues, the Humphreys amended their first

cause of action for a complaint against me for contracting without a license pursuant to §7031(b) B&P, claiming their agreement was with me personally and not Spartan. They requested disgorgement in the amount of the entire amount of money they had paid for construction services (materials and labor) and to have this cause of action severed from all of their other causes.

At trial on the first amended cause *only*, Judge Chaffee ruled in favor of the Humphreys and ordered "disgorgement" against me in the amount of $848,000 along with dismissing Spartan's claim. This resulted in a forfeiture/penalty/fine to me of about $930,000.

I appealed the decision and the case was heard by Justices O'Leary, Aronson, and Goethals who affirmed Judge Chaffee's decision.

Here's the issue:

The judgment rendered violates California's public policy found at Civil Code §3517– "no one can profit from their own wrong", and various Articles and Amendments to the Constitution for the united States.

Civil Code §3517 is essentially the codification of an ancient common Law and equitable remedy of unjust enrichment, whereby, for example, a bank robber cannot keep the proceeds of his theft. Under this law, the return of "profits or ill-gotten gains" has not historically been considered punishment as long as the award *does not go beyond* these ill-gotten gains or profits, meant to simply restore the status quo.

I invite you to research *Meister v. Mensinger*, 230 Cal. App. 4th, 381 (2014) explaining California's public policy and "non-restitutionary disgorgement".

In this case, either Spartan or I or both were hired by the Humphreys to perform remodel work on their vacation home. Work began and continued for quite some time. The Humphreys paid $848,000 to Spartan and I. The money they paid was returned to them in the form of materials and labor. It was ***not*** all profit or gains Spartan or I experienced.

At "trial" no evidence was produced I (or Spartan for that matter) profited even one dollar. And herein lies the problem...

Because there was no evidence either Spartan or I had any profits or gains, the judgments rendered or affirmed by the "Courts" involved are entirely arbitrary and result in an excessive fine and cruel and unusual punishment.

My qualifying net worth is estimated to be about $30,000. Therefore, to impose a fine/punishment upon me, roughly thirty-one times my net worth that will financially destroy me is grossly unconstitutional.

The appellate "Court" held the trial "Court's" judgment was "non-punitive" and that there was substantial evidence to support a claim for *non-punitive* disgorgment. But this is only the case if there was evidence of profits or ill-gotten gains and the judgment was for that specific amount, nothing more. I am unable to find this substantial evidence, or any evidence for that matter to support this claim. If it exists, please show me where I can find it.

I also invite you to study Restatement (Third) of Restitution and Unjust Enrichment §51:

> "Restitution measured by the defendant's wrongful gain is frequently called "disgorgement."" Comment (a).
>
> "The principal focus of §51 is on cases in which unjust enrichment is measured by the defendant's profits, where the object of restitution is to strip the defendant of a wrongful gain (§§ 3, 49(4))". *Ibid.*
>
> "Status as a conscious wrongdoer is established in most cases by showing "knowledge of the underlying wrong to the claimant." *Ibid.*
>
> "The profit for which the wrongdoer is liable by the rule of §51(4) is the net increase in the assets of the wrongdoer, to the extent that this increase is attributable to the underlying wrong." Comment (e).
>
> "Disgorgement does not impose a general forfeiture: defendant's liability in restitution is not the whole of the gain from a tainted transaction, but the amount of the gain that is attributable to the underlying wrong." Comment (i).
>
> "The claimant's case is not merely that the defendant has committed a wrong to the claimant, but that the wrong has proximately resulted in an unjust gain to the defendant." *Ibid.*
>
> "Allegations that the defendant is a wrongdoer, and that the defendant's business is profitable, do not state a claim in unjust enrichment. By contrast, a claimant who is prepared to show a causal connection between defendant's wrongdoing and a measurable increase in the defendant's net assets will satisfy the burden of proof as ordinarily understood." *Ibid.*
>
> "As a general rule, the defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement. Denial of an otherwise appropriate deduction, by making the defendant liable in excess of

net gains, results in a punitive sanction that the law of restitution normally attempts to avoid." Comment (h).

See also: *Federal Sugar Refining Co. v. United States Sugar Equalization Board, Inc.*, 268 F. 575 (1920) and *Kokesh* v. SEC, 581 U.S. ____ (2017).

Even assuming arguendo such a fine/punishment were constitutional under the 8th Amendment, it would consequently require the heightened protections of criminal proceedings (which were also denied) and for this action to have been brought in the name of the People upon indictment or information under oath.

The effect of this plethora of violations of foundational Constitutional protections result in a deprivation of subject matter jurisdiction to the Court, and consequently, a piercing of the veil of judicial immunity. See for e.g. *Johnson v. Zerbst*, 304 U.S. 458 and *Windsor v. McVeigh*, 93 U.S. 274.

How could it possibly be considered there was a fair, impartial, meaningful and substantive hearing when a judgment was rendered and affirmed without any evidence?

The Humphreys and their counsel are also invited to research *Lugar v. Edmundson Oil Co. Inc.*, 457 U.S. 922.

You are not permitted to take my property and liberty under color of law, especially without just compensation. If, however, you can present some authority that evidences your behavior is not unlawful, I would be delighted to hear it.

Researching the history of my filings in this case evidences I have attempted – at every step of the way – to inform you of your behavior to mitigate the damages you are perpetrating upon me. I am taking this opportunity to inform you again as more damages will be incurred if you choose to continue. Another example – perhaps not on the record – is an email I sent to the Humphreys and their counsel, Bill Bissell more than two years ago:

From Bereki to Humphreys/Bissell:

Hi Bill,

I hope this finds you well. I called your office today to speak with you about what I believe to be a huge miscarriage of justice happening in this case surrounding the challenge to jurisdiction I filed on 4/18/17 before judgement was ordered in this case. If you have any interest in discussing this matter with me, I'd welcome that.

Reply From Humphreys/Bissell to Bereki:

Mr. Bereki: I reviewed your "Writ of Error" at the time it was filed with the court. I saw nothing in it that would cause me to question the validity of the judgment entered by the court. You have appealed the judgment and presumably you will be giving it your best shot with the Court of Appeal. Because appellate procedure is very deadline sensitive I suggest that your time might be better spent focusing on your argument to be made to the court than discussing your theories with me.

Reply From Bereki to Humphreys/Bissell:

...While I understand your position that you might think what I'm sharing is a legal "theory" I obviously believe otherwise and we can disagree. If I'm right though, you and the judge could be in a lot of trouble which is why I reached out to you first to see if you wished to speak with me humbly.

Reply From Humphreys/Bissell to Bereki:

Mr. Bereki: Thank you for your clarification and the opportunity to avoid the trouble that may befall me as a result of the trial conducted in this matter. As I remain unpersuaded by your position, I suppose I (and I guess Judge Chaffee as well) will just have to take my chances that the court will have the same view of your argument as I do.

While it is only my meaningless *opinion*, I find this behavior to be extraordinarily arrogant.

Wouldn't it be ironic if this entire time I have simply been stating the facts supported by law and the record while counsel and the "Court's" have been actively engaged in treason to the Constitution, based largely upon arrogance such as this?

None of you, in a million years would ever allow a judgment such as what you have done to me, to be done to you or one of your family.

I continue to wonder what a competent jury would think about all of this...

Pardon my bluntness, but it would seem to me even a room full of 4th graders would have no problem seeing a near million-dollar fine was punishment. It seems I'm not alone in this perspective. In *Town of Gilbert Prosecutor's Office v. Downie*, 218 Ariz. 466 (2008) the Arizona supreme Court stated:

"We find no significant difference between returning cash, one form of value, and returning other forms of value, such as permits, chattels, services, or other

property. *See United States v. Shepard,* 269 F.3d at 884, 887-88 (7th Cir. 2001). "Loss" is a concept rooted in value, not solely in the exchange of money." *Id.* p.25.

"In *Shepard* for example, the defendant embezzled funds from a hospital patient under the guise of making improvements to the patient's home. [*Id.* p.885]. The Seventh Circuit concluded that the starting point for determining restitution was the amount embezzled from the victim. *Id.* at 887. From this amount, the court subtracted expenditures made on improvements to the victim's home. *Id.* at 887-88. The court concluded that such expenditures did not differ "in principle from taking the money from one of [the victim's] bank accounts and depositing it in another." *Id.* p.17.

The Court went on to say:

"[A] rule of total disgorgement regardless of any benefit conferred on the victim...may lead to ***absurd or troubling results***." *Id.* p.24

"[A] homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but would nonetheless also retain the work performed. It is impossible for me to view such a victim as having suffered any loss, economic or otherwise..." Justice Hurwitz, concurring, *Id.* p.30.

The "absurd and troubling" results are precisely what is occurring here – the entire amount paid by the Humphreys is not remotely equivalent to the nonexistent evidence of any profits or gains I made.

You are each acutely aware of the harsh and unfair penalties that clearly violate constitutional restrictions resulting in cruel, unusual and/or excessive punishment by prosecuting §7031 actions. Yet you continue to conspire to do so anyway without authority. In *Rambeau v. Barker*, 2010 Cal. App.4th (2010) Unpub. Lexis 5610, in an opinion written by O'Leary (acting P.J.) stated:

"In [Alatriste v. Cesar's Designs 183 Cal. App. 4th 656, 673] the court rejected the unlicensed contractor's argument that disgorgement was "unfair and 'serves no purpose other than punishment. As noted, the legislative committee reports show that, in enacting section 7031[, subdivision (b)], **the Legislature was specifically aware that permitting reimbursement may result in harsh and unfair results to an individual contractor** and could result in unjust enrichment to a homeowner, **but nonetheless decided that the rule was essential** to effectuate the important public policy of deterring licensing violations and ensuring that all contractors are licensed.

The *Rambeau* "Court" then went on to support this behavior in total dereliction of its duty by pretending itself to be powerless to do anything about it ("[a]s a judicial body, we are not permitted to second-guess these policy choices"). *Id.* p.16.

Chief Justice Marshall addressed this issue in *Cohens v. Virginia*, 19 U.S. 264, (1821), nearly two centuries ago:

> "While weighing arguments drawn from the nature of government and from the general spirit of an instrument, and urged for the purpose of narrowing the construction which the words of that instrument seem to require, it is proper to place in the opposite scale those principles, drawn from the same sources, which go to sustain the words in their full operation and natural import. One of these, which has been pressed with great force by the counsel for the plaintiffs in error, is that the judicial power of every well constituted government must be coextensive with the legislative, and must be capable of deciding every judicial question which grows out of the Constitution and laws." *Id.* p. 384.

> "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts or whatever difficulties a case may be attended we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution." *Id.* p.404.

It was also contemporaneously addressed in *Vanhorne's Lesse*, infra. p. 309:

> "[I]f a legislative act oppugns a constitutional principle, the former must give way, and be rejected on the score of repugnance. I hold it to be a position equally clear and found, that, in such case, it will be the duty of the Court to adhere to the Constitution, and to declare the act null and void. The Constitution is the basis of legislative authority; it lies at the foundation of all law, and is a rule and commission by which both Legislators and Judges are to proceed. It is an important principle, which, in the discussion of questions of the present kind, ought never to be lost sight of, that the Judiciary in this country is not a subordinate, but co-ordinate, branch of the government."

And *Bauers v. Heisel*, 361 F.2d 581, 588 (3d. Circuit 1966):

> "Article 4, § 4 of the United States Constitution provides: "The United States shall guarantee to every State in this Union a Republican Form of Government * * *." The framers of the Constitution clearly evinced their belief that a separate and independent judiciary is an indispensable element of a republican form of government. See The Federalist, pp. 236, 303-305, 488 et seq., 494 et seq.

("[W]e know that the [Excessive Fine's] Clause *imposes upon this Court the duty*, when the issue is properly presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. *Furman v. Georgia*, 408 U.S. 238, 258 (1972).

("[T]his Court ...adopted the Framers' view of the Clause as a "constitutional check" to ensure that "when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives." That, indeed, is the only view consonant with our constitutional form of government. If the judicial conclusion that a punishment is "cruel and unusual" "depend[ed] upon virtually unanimous condemnation of the penalty at issue," then, "like no other constitutional provision, [the Clause's] only function would be to legitimize advances already made by the other departments and opinions already the conventional wisdom." We know that the Framers did not envision "so narrow a role for this basic guaranty of human rights." Goldberg & Dershowitz, Declaring the Death Penalty Unconstitutional, 83 Harv. L. Rev. 1773, 1782 (1970)") *Id.* p. 268.

For the "Court's" involved herewith to exercise jurisdiction never granted them while refusing to take jurisdiction in a case given them by the fundamental law is treason to the Constitution. For it denies a defendant the Right to invoke the judicial power of California and of the united States denying the inalienable Rights secured thereby.

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

If the judicial power of California is not coextensive with that of its Legislature then there is no separation of powers and the judicial branch is nothing more than a puppet of Legislative omnipotence instead of a check and balance to ensure a republican form of government. California's Constitution *does not* vest any judicial power whatsoever in the Legislative branch.

Furthermore:

> ("he who seeks equity must do equity"). §39, Maxims and Principles of Jurisdiction, Gibson, supra. p. 32. A Court of Equity has no power to unjustly enrich the homeowner (as stated above in *Rambeau* citing *Alatriste*) at the expense/punishment of the Contractor; and,
>
> ("He who comes into Equity must come with clean hands... Under the operation of this maxim, *the complainant must show* that the transaction from which his claim arises that there is nothing unconscientious in his conduct relative thereto, and *that the relief he seeks is equitable and not harsh or oppressive upon the defendant"*). *Id.* p. 36.

It should also be observed that the "Opinion" in by the appellate Court in this case is, in large part, a "copy and paste" from *Rambeau* citing the same erroneous federal authorities, irrational, and unlawful reasoning without any apparent contextual review to determine if they were ever correct to begin with. This further evidences I was never given a fair and impartial hearing at "trial" or on "appeal".

*****

As you have rendered or affirmed judgment against me without due process and effectively taken (and continue to take) my property without just compensation (or have participated in the conspiracy to do so), I first wanted to extend this notice to cease and desist and offer for restitution.

Second, I wanted it to be clear that I consider my time and labor one of the most precious blessings of life. I also consider the Rights secured to me by the Constitution for the united States, to be of priceless measure. Nevertheless, in the current and historical scheme of our society, these 'things' have been equated to commodities upon which monetary value is assigned.

The value I have assigned to my time and labor resulting from this deprivation of Rights and the time and labor necessary to affect a remedy and/or restitution is $1000 per hour.

I understand that even if you were to be inclined to realize the unlawful nature of your actions, you might then resort to the erroneous "shield" of judicial immunity to avoid taking responsibility thereof. But as we both know, this immunity is *not* absolute and is based upon having jurisdiction of the subject matter. Where exactly would we find that authority where the record evidences an arbitrary judgment *without* evidence and denial of: the assistance of counsel; trial by jury; the right to know the nature and cause of the accusation(s); proof beyond a reasonable doubt; proceedings according to the course of the common law; republican form of government; consent of the governed; protections of the eighth amendment; a lawful hearing; or the right to invoke the judicial power of the united States– all of which have been denied here...

It agree: ("[a] court is a creature of the Constitution and laws under which it exists. To exercise any power not derived from such Constitution and laws would necessarily be a usurpation"). *Ex Parte Knowles*, 5 Cal. 300 (Sup. Ct. 1855).

("What are [Courts]? Creatures of the Constitution; they owe their existence to the Constitution: they derive their powers from the Constitution: It is their commission; and, therefore, all their acts must be conformable to it, or else they will be void. The Constitution is the work or will of the People themselves, in their original, sovereign, and unlimited capacity. [Findings of fact and conclusions of law are] the work or will of a [Court] in their derivative and subordinate capacity. The one is the work of the Creator, and the other of the Creature. The Constitution fixes limits to the exercise of [judicial] authority, and prescribes the orbit within which it must move. In short, gentlemen, the Constitution is the sun of the political system, around which all Legislative, Executive and Judicial bodies must revolve. Whatever may be the case

in other countries, yet in this there can be no doubt, that every act of [a Court], repugnant to the Constitution, is absolutely void"). *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304.

("The constitution is the origin and measure of [judicial] authority. It says to [judges], thus far ye shall go and no further. Not a particle of it should be shaken; not a pebble of it should be removed. Innovation is dangerous. One incroachment [sic] leads to another; precedent gives birth to precedent; what has been done may be done again; thus radical principles are generally broken in upon, and the constitution eventually destroyed"). *Id.* p.311.

("Under the constitutional guaranties no right of an individual, valuable to him pecuniarily or otherwise can be justly taken away without its being done conformably to the principles of justice which afford due process of law, unless the law constitutionally otherwise provides. Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law. It excludes all arbitrary dealings with persons or property. It shuts out all interference not according to established principles of justice, one of them being the right and opportunity for a hearing: to cross-examine, to meet opposing evidence, and to oppose with evidence"). *Estate of Buchman*, 123 Cal. App. 2d 546, 560-61 (1954).

I am open to resolving this matter with you and invite any reasonable means you may have, whether individually, or collectively in doing so.

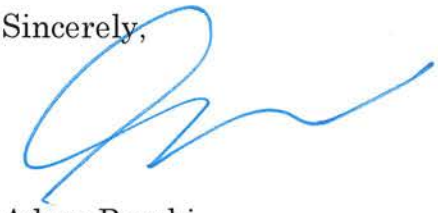
I will do my best to meet you with an open heart and mind in finding a resolution that leaves us both in honor and respect for the roles we have chosen to play in each other's lives.

At this juncture, I am requesting to be compensated for my time and expenses resulting from your choices. Being unable to afford an attorney to represent myself, and none seemingly having the knowledge to effectively do so, it was clear I had to do so myself and that this would be a full-time job with overtime. This has resulted in a multi-year venture where I have not been able to earn a 'conventional' living and is in large part, the result of your choices to not abide by the societal agreements we have pertaining to the authority conferred upon you and it's limits, otherwise known as due process.

Each of you has the authority to stop this behavior immediately. The fact that you don't exercise this authority, despite being fully empowered by law to do so is evidence of your continued support to violate the Constitution for the united States and deprive me of its protections and my property and liberty. ("The duties of this Court to exercise jurisdiction where it is conferred and not to usurp where it is not conferred are of equal obligation." *United States v. Deveaux,* 9 U.S. 61, 87 (1809).

If you have any questions, I am available and can be reached by cell phone at: 949.241.6693, or email: abereki@gmail.com. My mailing address is: 818 Spirit Costa Mesa, California 92626.

Sincerely,



Adam Bereki

COURT OF APPEAL-4TH DIST DIV 3
RECEIVED

AUG 28 2019

Deputy Clerk

State of California, Court of Appeal (revised 4-30-14)
Fourth Appellate District, Division Three
PO Box 22055, Santa Ana, CA 92702
Tel. (714)571-2600 FAX (714)664-0897
www.courts.ca.gov

Case Number G055075 Date: 08.30.19 Clerk _____

( ) Lack of service on
- ( ) Counsel _ _____
- ( ) Superior Court (rule 8.212(c)(1).)
- ( ) Defendant (rule 8.360(d)(1).) _____
- ( ) Attorney General / District Attorney—Unfair Competition Proceeding(rule 8.29).
- ( ) 4 copies Supreme Court (rule 8.44(b)(1).)
- ( ) Other _____

( ) Attorney listed not shown as attorney of record. File substitution (rule 8.36(b).)

( ) File notice of change of address (rule 8.32).

( ) Name, address, telephone number, and California State Bar Number of counsel must appear on the cover sheet (rule 8.204(b)(10)(D).)

( ) Motion to augment is premature / Record has not been filed.

( ) A party must attach to its motion a copy, if available, of any document or transcript that it wants added to the record (rule 8.155(a)(2).)

( ) Cover does not comply with rule 8.116 _____

( ) Motion/document is MOOT _____

( ) No original signature on
- ( )Document _____
- ( )Verification _____
- ( )Proof of Service _____

( ) Briefs/original proceedings require original plus 4 copies (rule 8.44(b)(1).)

( ) The document that is filed electronically shall have the same legal effect as an original paper document. Signatures on e-filed documents are considered originals. The parties shall retain original signed documents should disputes arise requiring the court to verify original signatures.

The court will not send out conformed copies of e-filings. A standard e-mail confirmation will be sent t you and shall serve as confirmation of the transmittal of a document to the court. If the confirmation returns unsuccessful, notify the court for the problem to be addressed.

SEE BACK OF PAGE.

( ) Briefs must include a certificate by appellate counsel or an unrepresented party stating the number of words in the brief (including footnotes)

( ) Civil briefs 14, 000 words (rule 8.204(c)(1).)
( ) Criminal briefs 25, 500 words (rule 8.360(b)(1).)
( ) Combined briefs not to exceed double word count (rule 8.204(c)(4) or 8.360(b)(4).)

( ) Each party must include a Certificate of Interested Parties in its principal brief. The Certificate must appear after the cover and before the tables. (rule 8.208(c)(1).)

( ) In civil cases, counsel shall mail to or deliver to the represented party a copy of each stipulation or application for additional time needed in preparing the record or filing briefs and attach evidence of such delivery, or certify in the stipulation or application that the copy has been delivered (rule 8.60(f)(1).)

( ) Motions and oppositions require Original plus 1 copy (rule 8.44)

(X) Lack jurisdiction (rule 8.264(b)) Opinion filed 10·31·18 Order filed_____

( ) Extensions require the original plus copies along with addressed, postage pre-paid envelopes for each party (rule 8.50(c).)

( ) Does not conform to CRC, rule 8.204 _____

_____

( ) Submit original: Electronic filing not acceptable for this document

( ) Electronic document must be in PDF format ( ) Document not attached to email

( ) Civil Case Information Statement:
( ) Lack of Service on _____
( ) Need file-stamped copy of signed judgment or order appealed
( ) Part III – Party and Attorney Information incomplete.

( ) Document not suitable for filing

( ) Other _____

_____

_____

G055075

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Superior Court of California
County of Orange

Chambers of
ERICK L. LARSH
ASSISTANT PRESIDING JUDGE

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CALIFORNIA 92701-4045
PHONE: (657)622-7010

October 19, 2019

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Re: Spartan v. Humphreys
Appeal No. G055075
Superior Court Case # 30-2015-00805807

Dear Mr. Bereki:

I am in receipt of your letter on August 25, 2019, and I am returning to you without a response.

Your communication appears to be an attempt to request the court change the decision of the previous judges or justices. The Orange County Superior Court is not the appellate or Supreme Court and as such, has no authority to act upon your arguments or requests.

If you believe this to be a Motion to Request for Reconsideration, then it must be timely and properly filed with the appropriate court and properly served on all parties. Your letter does not comply with the proper procedure.

I will consider this matter closed.

Very Truly Yours,

Erick L. Larsh
Assistant Presiding Judge

Cc: Presiding Judge Kirk H. Nakamura
Judge James Di Cesare

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com
949.241.6693

February 12,2020

US Department of Justice
Civil Rights Division
Criminal Section– 4CON
950 Pennsylvania Ave, NW
Washington, DC 20530

7018 2290 0000 0497 1828

RE: Criminal Complaint For Deprivation of Constitutional Rights by Public Officials of California

Good day.

Thank you for taking the time to hear my complaint.

This cover letter is a brief overview of my complaint. I am making a complaint at this time because I believe I now have enough facts and an understanding of the scope and nuances of the situation to provide you with a valid, constitutionally cognizable claim supported by sworn testimony and authenticated evidence.

I have included a USB drive with all of the Exhibits and other documents referenced herein. I recommend you begin with Exhibit [C] which is annexed to the file named "California Legislature Complaint" found in the "COMPLAINTS" folder. This document provides a detailed overview of the facts and law surrounding my complaint.

In 2017 I was fined $930,000 for allegedly performing construction work without a contractor's license in a purported "civil" case. See *The Spartan Associates, Inc. v. Humphreys*, 30-2015-00805807, Superior Court of California, County of Orange. (Exhibits [K,O] – Reporters Transcripts, EXHIBITS file).

The comparable criminal penalty for the same offense is a fine *up to* $5,000.

This fine imposed upon me is about 46 times my qualifying net worth, and 186 times the comparable criminal penalty.

I was a qualifying individual for my company's contractors license (see The Spartan Associates Inc, license #927244). I provided the experience requirements and passed the licensing exam. But because the Court found the alleged contract in the above case was with me personally instead of my licensed company, the Court claimed I was unlicensed and ordered the "return of all compensation paid" pursuant to §7031(b).

After receiving this excessive, cruel, and unusual punishment imposed by the Court, I knew something was terribly wrong and began investigating the law behind §7031 and how it came to be in California's Legislative History (Exhibits [N, P]). Suffice it say, there is no Constitutional basis for §7031's enactment or enforcement as applied by the Courts. It is a major and systemic criminal fraud being perpetrated upon me and the People of California.

In legal terms, California's Courts refer to penalties imposed by §7031 actions as "disgorgement". See the appellate Court opinion in *Bereki v. Humphreys*, "Opinion", Exhibit [A] annexed to the California Legislature Complaint.

The penalties imposed by the Courts are **not** disgorgement. Not even remotely.

Disgorgement is a very specific action requiring the surrender or giving up of **profits** illegally obtained. This is known in law as unjust enrichment and can be found in Civil Code §3517 of California's public policy. It is thoroughly explained in the case of *Meister v. Mensinger*, 230 Cal. App. 4th 381 (2014) and Restatement (third) of Restitution and Unjust Enrichment §51 detailing the specific nature of disgorgement actions. (See Exhibit [B]– annexed to California Legislature Complaint).

There is no evidence on the record of my case that I profited $930,000 or made any profits whatsoever. I did not profit $930,000.

There is no evidence on the record of my case that I performed the work as required by the statute.

It is criminal fraud and a violation of substantive due process for a judge to declare that evidence exists on the record of a case when it does not. This fraud has been perpetrated by Judge David Chaffee, (ret.) of the Superior Court of California, County of Orange; and Justices Kathleen O'Leary, Richard Aronson, and Thomas Goethals of the Fourth District Court of Appeal.

There is not one known California Court following the laws of restitution and unjust enrichment in these so called "disgorgement" cases California has been perpetrating upon its People for decades with the California Supreme Court leading the way. As a result, the judgments rendered thereby are not remedial or equitable as the Courts have repeatedly held, but instead, purely penal and minimally require all of the heightened protections of criminal proceedings which the Court's also deny further imposing excessive, cruel, and unusual punishment. This behavior is nothing short of a cascade failure of almost every protection found in the Bill of Rights against arbitrary and despotic government action depriving the Courts of in personam and subject matter jurisdiction.

As a result of this egregious fraudulent, criminal behavior including the deprivation of the Rights and protections as secured by the Constitution for the United States, I am on the verge of being forced into bankruptcy and subject to the forfeiture of my entire life estate. I have made every attempt at obtaining redress through the Court system by filing

appeals with the California Fourth District Court of Appeal, the California Supreme Court, and the US Supreme Court. Both the California and US Supreme Court declined to hear my case.

As a result of the Courts failure to take remedial action in the civil context, I recently called the Los Angeles FBI Office on 1/31/20 at about 1330 HRS to report these crimes. The call taker (unknown name or badge number) hung up on me after telling me the FBI doesn't investigate these cases.

On 2/7/20 at about 1445 hours I called the Santa Ana California Police Department (where the trial and appellate Courts are located) to make a criminal complaint. I asked for the "watch commander" and was transferred to a man named Sgt. Alcantar #2580. Admittedly Alcantar took the time to listen to my claims but refused to take a crime report. Under California law, fraud is a crime. See penal code §484. Judges are not above the law. Furthermore, it is a crime to violate substantive due process.

Additionally, I made a complaint by way of Petition for Redress of Grievance to the California Legislature on 1/31/20. This complaint is the "California Legislature Complaint" I have repeteadly referenced.

I am not alone being victimized by this criminal behavior. See for e.g. the case of *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014) and Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr, No. 10-41455-DS. where Mr. Paul Bardos was also forced into bankruptcy and unduly harmed after being fined $917,000.

California has refused to recognize that these actions they refer to as "disgorgement" are punitive and violate the 8th Amendments Excessive Fines Clause when they don't conform in any way to a disgorgement action in California State or Federal Law. See for e.g. the recent U.S. Supreme Court case of *Kokesh v. SEC*, 581 U.S.____ (2017). It is also noteworthy that at oral argument in *Kokesh*, Justice Gorsuch alluded to the fact that Federal Courts do not even have the statutory authority to commence disgorgement actions. This is a national issue and an epidemic. Billions of dollars are being taken from the defendants in these actions nationwide without statutory or Constitutional authority.

Obviously these are not just harmless legal errors. The Courts, such as in the instant case were made fully aware of the actual law of disgorgement actions. The Courts even admit both they and the legislature are aware of the "harsh and unfair" nature of these actions and yet they continue to perpetrate them. Moreover, the Fourth District Court of appeal refuses to do its constitutionally required duty to examine the constitutionality of the public policy in these actions.

While I am still awaiting a declaration and other evidence from Mr. Bardos, he has shared with me that he pleaded with the California legislature around the time of his case in 2013 and nothing has changed. This is not acceptable.

In further deprivation of my Rights, I have been suspended indefinitely from doing work in my profession as pursuant to Business and Professions Code §7071.17, my companies

license has been suspended until the unlawful judgment has been paid. As a result I cannot work to afford a lawyer to represent me and have been forced into a condition of involuntary servitude (see 18 USC §1859) by means of abuse of legal process to study law and perform this investigation to clear my good name and protect my property that has been stolen under color of law.

I expect a full, fair, and impartial investigation to be conducted into this matter, including an interview with me pertaining to the ongoing injuries I continue to sustain from this heinous and arbitrary abuse of power.

For further sworn declarations I have made and evidence refer the Federal District Court Case No. 8:19–CV-02050 (CBM) (ADSx), Bereki v. Humphreys.

This complaint shall also include each of the justices of the California Supreme Court who denied my Petition for writ of certiorari. While I understand their review in ordinary cases is discretionary, it becomes a matter of right when there is no other access to a judicial constitutional Court in California. As a result, the Justices thereof sitting en banc, have actively engaged in the commission of this fraud and deprivation of my rights.

This complaint shall also include the California Judicial Council, and California State Bar Association who have engaged in promulgating the California Civil Jury Instructions, CACI 4560 and 4561 which pertain to §7031 actions. See Exhibit [O] pp. 1621-1645. Most notable these jury instructions include none of the required elements of a disgorgement action in Equity. In fact, the elements prescribe a purely penal action for violation of a state statute.

Additionally, the California State Bar Association's members, including William George Bissell (in the instant case) are actively in prosecuting these actions. Mr. Bissell's oath of office can be found at Exhibit [P] pp. 1747-8.

It should again be noted my investigation into this fraud is ongoing and the information I am providing you is a debrief if you will, of what has taken me more than two years to discover as I do not have a law degree or any formal training in civil litigation. The record of documents I have provided herein evidences the course of my investigation and that I have been crying out for help for years to no avail. While at first glance there may be an issue pertaining to the accrual of my claims, I would ask how I could be expected to know, understand, and fully comprehend the nature of this fraud, deceit, and treason when it is being perpetrated by the very sophisticated and highly trained and experienced officials serving as judges, justices, and legislators. Moreover, these official have each taken a sworn oath and have a duty to protect my rights.

I remain open, willing, and fully available to discuss these issues with you so that together we can reach a solution that immediately stops this fraudulent criminal behavior and provides remedy to myself and the other People of California and our country who have been unduly harmed.

Sincerely,

Adam Bereki

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com
949.241.6693

February 12,2020

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95789–9052

7019 2280 0000 2309 0410

cc: Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

7019 2280 0000 2309 0427

RE: Complaint For Deprivation of Constitutional Rights by Public Officials of California

Good day.

Thank you for taking the time to hear my complaint.

This cover letter is a brief overview of my complaint. I am making a complaint at this time because I believe I now have enough facts and an understanding of the scope and nuances of the situation to provide you with a valid, constitutionally cognizable claim supported by sworn testimony and authenticated evidence.

I have included a USB drive with all of the Exhibits and other documents referenced herein. I recommend you begin with Exhibit [C] which is annexed the file named "California Legislature Complaint" found in the "COMPLAINTS" folder. This document provides a detailed overview of the facts and law surrounding my complaint.

In 2017 I was fined $930,000 for allegedly performing construction work without a contractor's license in a purported "civil" case. See *The Spartan Associates, Inc. v. Humphreys*, 30-2015-00805807, Superior Court of California, County of Orange. (Exhibits [K,O] – Reporters Transcripts, EXHIBITS file).

The comparable criminal penalty for the same offense is a fine *up to* $5,000.

This fine imposed upon me is about 46 times my qualifying net worth, and 186 times the comparable criminal penalty.

I was a qualifying individual for my company's contractors license (see The Spartan Associates Inc, license #927244). I provided the experience requirements and passed the licensing exam. But because the Court found the alleged contract in the above case was

with me personally instead of my licensed company, the Court claimed I was unlicensed and ordered the "return of all compensation paid" pursuant to §7031(b).

After receiving this excessive, cruel, and unusual punishment imposed by the Court, I knew something was terribly wrong and began investigating the law behind §7031 and how it came to be in California's Legislative History (Exhibits [N, P]). Suffice it say, there is no Constitutional basis for §7031's enactment or enforcement as applied by the Courts. It is a major and systemic criminal fraud being perpetrated upon me and the People of California.

In legal terms, California's Courts refer to penalties imposed by §7031 actions as "disgorgement". See the appellate Court opinion in *Bereki v. Humphreys*, "Opinion", Exhibit [A] annexed to the California Legislature Complaint.

The penalties imposed by the Courts are **not** disgorgement. Not even remotely.

Disgorgement is a very specific action requiring the surrender or giving up of **profits** illegally obtained. This is known in law as unjust enrichment and can be found in Civil Code §3517 of California's public policy. It is thoroughly explained in the case of *Meister v. Mensinger*, 230 Cal. App. 4th 381 (2014) and Restatement (third) of Restitution and Unjust Enrichment §51 detailing the specific nature of disgorgement actions. (See Exhibit [B]– annexed to California Legislature Complaint).

There is no evidence on the record of my case that I profited $930,000 or made any profits whatsoever. I did not profit $930,000.

There is no evidence on the record of my case that I performed the work as required by the statute.

It is criminal fraud and a violation of substantive due process for a judge to declare that evidence exists on the record of a case when it does not. This fraud has been perpetrated by Judge David Chaffee, (ret.) of the Superior Court of California, County of Orange; and Justices Kathleen O'Leary, Richard Aronson, and Thomas Goethals of the Fourth District Court of Appeal.

There is not one known California Court following the laws of restitution and unjust enrichment in these so called "disgorgement" cases California has been perpetrating upon its People for decades with the California Supreme Court leading the way. As a result, the judgments rendered thereby are not remedial or equitable as the Courts have repeatedly held, but instead, purely penal and minimally require all of the heightened protections of criminal proceedings which the Court's also deny further imposing excessive, cruel, and unusual punishment. This behavior is nothing short of a cascade failure of almost every protection found in the Bill of Rights against arbitrary and despotic government action depriving the Courts of in personam and subject matter jurisdiction.

As a result of this egregious fraudulent, criminal behavior including the deprivation of the Rights and protections as secured by the Constitution for the United States, I am on

the verge of being forced into bankruptcy and subject to the forfeiture of my entire life estate. I have made every attempt at obtaining redress through the Court system by filing appeals with the California Fourth District Court of Appeal, the California Supreme Court, and the US Supreme Court. Both the California and US Supreme Court declined to hear my case.

As a result of the Courts failure to take remedial action in the civil context, I recently called the Los Angeles FBI Office on 1/31/20 at about 1330 HRS to report these crimes. The call taker (unknown name or badge number) hung up on me after telling me the FBI doesn't investigate these cases.

On 2/7/20 at about 1445 hours I called the Santa Ana California Police Department (where the trial and appellate Courts are located) to make a criminal complaint. I asked for the "watch commander" and was transferred to a man named Sgt. Alcantar #2580. Admittedly Alcantar took the time to listen to my claims but refused to take a crime report. Under California law, fraud is a crime. See penal code §484. Judges are not above the law. Furthermore, it is a crime to violate substantive due process.

Additionally, I made a complaint by way of Petition for Redress of Grievance to the California Legislature on 1/31/20. This complaint is the "California Legislature Complaint" I have repeteadly referenced.

I am not alone being victimized by this criminal behavior. See for e.g. the case of *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014) and Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr, No. 10-41455-DS. where Mr. Paul Bardos was also forced into bankruptcy and unduly harmed after being fined $917,000.

California has refused to recognize that these actions they refer to as "disgorgement" are punitive and violate the 8th Amendments Excessive Fines Clause when they don't conform in any way to a disgorgement action in California State or Federal Law. See for e.g. the recent U.S. Supreme Court case of *Kokesh v. SEC*, 581 U.S.____ (2017). It is also noteworthy that at oral argument in *Kokesh*, Justice Gorsuch alluded to the fact that Federal Courts do not even have the statutory authority to commence disgorgement actions. This is a national issue and an epidemic. Billions of dollars are being taken from the defendants in these actions nationwide without statutory or Constitutional authority.

Obviously these are not just harmless legal errors. The Courts, such as in the instant case were made fully aware of the actual law of disgorgement actions. The Courts even admit both they and the legislature are aware of the "harsh and unfair" nature of these actions and yet they continue to perpetrate them. Moreover, the Fourth District Court of appeal refuses to do its constitutionally required duty to examine the constitutionality of the public policy in these actions.

While I am still awaiting a declaration and other evidence from Mr. Bardos, he has shared with me that he pleaded with the California legislature around the time of his case in 2013 and nothing has changed. This is not acceptable.

In further deprivation of my Rights, I have been suspended indefinitely from doing work in my profession as pursuant to Business and Professions Code §7071.17, my companies license has been suspended until the unlawful judgment has been paid. As a result I cannot work to afford a lawyer to represent me and have been forced into a condition of involuntary servitude (see 18 USC §1859) by means of abuse of legal process to study law and perform this investigation to clear my good name and protect my property that has been stolen under color of law.

I expect a full, fair, and impartial investigation to be conducted into this matter, including an interview with me pertaining to the ongoing injuries I continue to sustain from this heinous and arbitrary abuse of power.

For further sworn declarations I have made and evidence refer the Federal District Court Case No. 8:19–CV-02050 (CBM) (ADSx), Bereki v. Humphreys.

This complaint shall also include each of the justices of the California Supreme Court who denied my Petition for writ of certiorari. While I understand their review in ordinary cases is discretionary, it becomes a matter of right when there is no other access to a judicial constitutional Court in California. As a result, the Justices thereof sitting en banc, have actively engaged in the commission of this fraud and deprivation of my rights.

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I remain open, willing, and fully available to discuss these issues with you so that together we can reach a solution that immediately stops this fraudulent criminal behavior and provides remedy to myself and the other People of California and our country who have been unduly harmed.

Sincerely,

Adam Bereki

STATE OF CALIFORNIA
GOVERNMENT CLAIM
DGS ORIM 006 (Rev. 08/19)

DEPARTMENT OF GENERAL SERVICES
OFFICE OF RISK AND INSURANCE MANAGEMENT

CLAIMANT INFORMATION

LAST NAME	FIRST NAME		MIDDLE INITIAL
Bereki	Adam		A
INMATE OR PATIENT IDENTIFICATION NUMBER (if applicable)	BUSINESS NAME(if applicable)		
TELEPHONE NUMBER 949.241.6693	EMAIL ADDRESS abereki@gmail.com		
MAILING ADDRESS 818 Spirit	CITY Costa Mesa	STATE California	ZIP 92626
IS THE CLAIMANT UNDER 18 YEARS OF AGE? ☐ Yes ☒ No	INSURED NAME(Insurance Company Subrogation)		
IS THIS AN AMENDMENT TO A PREVIOUSLY EXISTING CLAIM? ☐ Yes ☒ No	EXISTING CLAIM NUMBER (if applicable)	EXISTING CLAIMANT NAME(if applicable)	

ATTORNEY OR REPRESENTATIVE INFORMATION

LAST NAME	FIRST NAME		MIDDLEINITIAL
TELEPHONE NUMBER	EMAIL ADDRESS		
MAILING ADDRESS	CITY	STATE	ZIP

CLAIM INFORMATION

STATE AGENCIES OR EMPLOYEES AGAINST WHOM THECLAIM IS FILED	DATE OF INCIDENT
See attached.	Ongoing

LATE CLAIM EXPLANATION (Required, if incident was more than six months ago)

DOLLAR AMOUNT OF CLAIM	CIVIL CASE TYPE(Required, if amount is more than $10,000)
See attached.	☐ Limited ($25,000 or less) ☒ Non-Limited (over $25,000)

DOLLAR AMOUNT EXPLANATION
See attached.

INCIDENT LOCATION
Orange County, California

SPECIFIC DAMAGE OR INJURY DESCRIPTION
See attached.

CIRCUMSTANCES THAT LED TO DAMAGE OR INJURY
See attached.

EXPLAIN WHY YOU BELIEVE THE STATE IS RESPONSIBLE FOR THE DAMAGE OR INJURY
See attached.

STATE OF CALIFORNIA
GOVERNMENT CLAIM
DGS ORIM 006 (Rev. 08/19)

DEPARTMENT OF GENERAL SERVICES
OFFICE OF RISK AND INSURANCE MANAGEMENT

AUTOMOBILE CLAIM INFORMATION

DOES THE CLAIM INVOLVE A STATE VEHICLE? ☐ Yes ☒ No	VEHICLE LICENSE NUMBER(if known)	STATE DRIVER NAME (if known)
HAS A CLAIM BEEN FILED WITH YOUR INSURANCE CARRIER? ☐ Yes ☒ No	INSURANCE CARRIER NAME	INSURANCE CLAIM NUMBER
HAVE YOU RECEIVED AN INSURANCE PAYMENT FOR THIS DAMAGE OR INJURY? ☐ Yes ☒ No	AMOUNT RECEIVED (if any)	AMOUNT OF DEDUCTIBLE(if any)

NOTICE AND SIGNATURE

I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to $10,000 (Penal Code section 72).

SIGNATURE	PRINTED NAME	DATE
	Adam Bereki	2/12/20

INSTRUCTIONS

- Include a check or money order for $25, payable to the State of California.
  - $25 filing fee is not required for amendments to existing claims.
- Confirm all sections relating to this claim are complete and the form is signed.
- Attach copies of any documentation that supports your claim. Do not submit originals.

Mail the claim form and all attachments to:
Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95798-9052

Claim forms can also be delivered to:
Office of Risk and Insurance Management
Government Claims Program
707 3rd Street, 1st Floor
West Sacramento, CA 95605
1-800-955-0045

Department of General Services Privacy Notice on Information Collection

This notice is provided pursuant to the Information Practices Act of 1977, California Civil Code Sections 1798.17 & 1798.24 and the Federal Privacy Act (Public Law 93-579).

The Department of General Services (DGS), Office of Risk and Insurance Management (ORIM), is requesting the information specified on this form pursuant to Government Code Section 905.2(c).

The principal purpose for requesting this data is to process claims against the state The information provided will/may be disclosed to a person, or to another agency where the transfer is necessary for the transferee-agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with California Civil Code Section 1798.25.

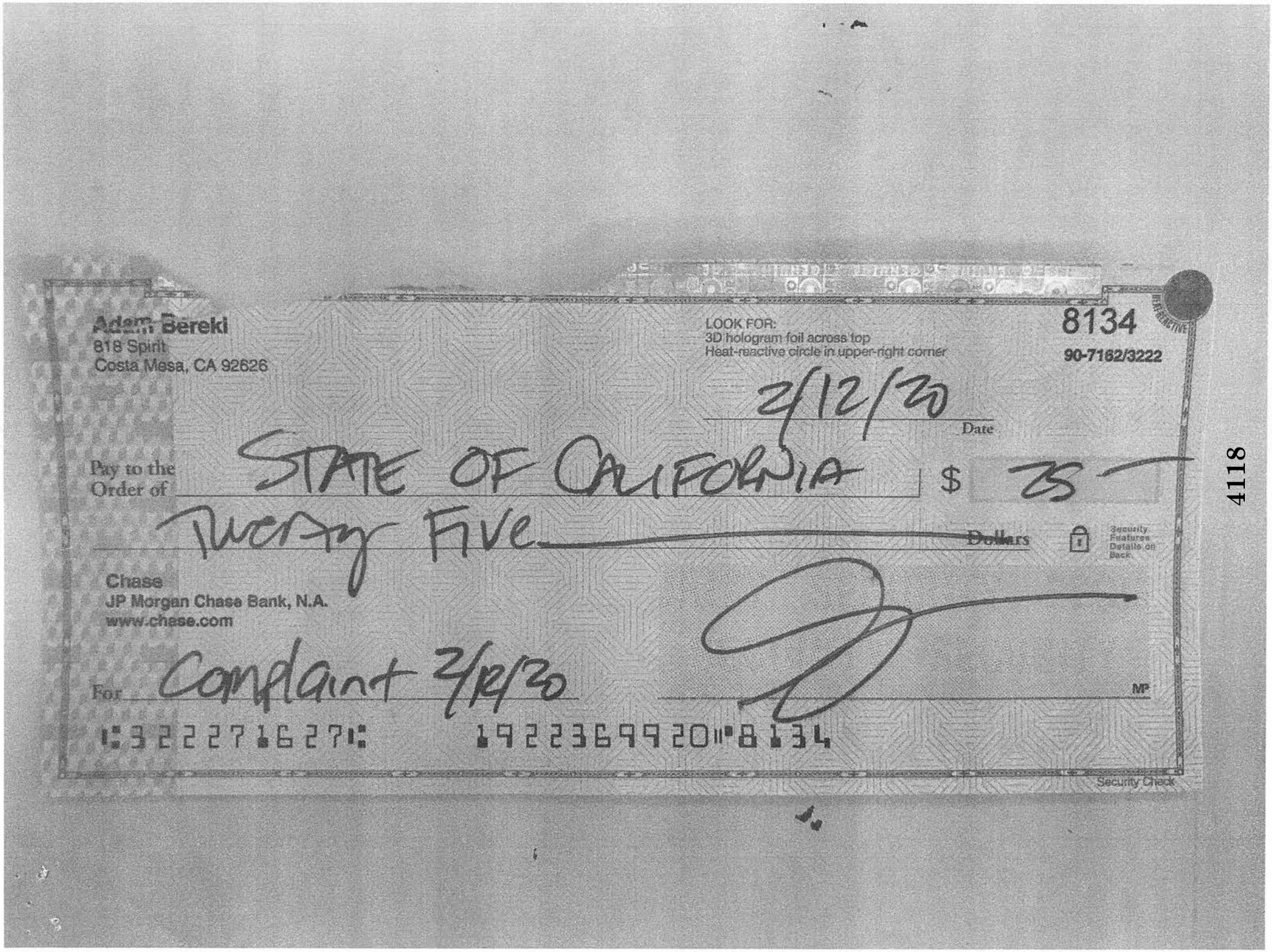
Individuals should not provide personal information that is not requested.

The submission of all information requested is mandatory unless otherwise noted. If you fail to provide the information requested to DGS, or if the information provided is deemed incomplete or unreadable, this may result in a delay in processing.

Department Privacy Policy
The information collected by DGS Is subject to the limitations in the Information Practices Act of 1977 and state policy (see State Administrative Manual 5310-5310.7). For more information on how we care for your personal information, please read the DGS Privacy Policy.

Access to Your Information
ORIM is responsible for maintaining collected records and retaining them for 5 years. You have a right to access records containing personal information maintained by the state entity. To request access, contact:

DGS ORIM
Public Records Officer
707 3rd St., West Sacramento, CA 95605
(916) 376-5300


Adam Bereki
818 Spirit
Costa Mesa, CA 92626
LOOK FOR:
3D hologram foil across top
Heat-reactive circle in upper-right corner
8134
90-7162/3222
2/12/20
Date
Pay to the Order of
STATE OF CALIFORNIA
$ 35
Twenty Five
Dollars
Security Features Details on Back
Chase
JP Morgan Chase Bank, N.A.
www.chase.com
For Complaint 2/12/20
MP
⑆322271627⑆ 1922369920⑈8134
Security Check

4118

SANTA ANA WINDOW SVCS
3101 W SUNFLOWER AVE
SANTA ANA, CA 92799-0100
056936-0115
(800)275-8777
02/12/2020 10:47 AM

Product	Qty	Unit Price	Price
First-Class Package Service 3 Days (Domestic) (SAN FRANCISCO, CA 94102) (Weight:0 Lb 1.90 Oz) (Estimated Delivery Date) (Saturday 02/15/2020)	1	$3.90	$3.90
Certified (USPS Certified Mail #) (70192280000023090427)			$3.55
Return Receipt (USPS Return Receipt #) (9590940247308344294093)			$2.85
First-Class Package Service 3 Days (Domestic) (WEST SACRAMENTO, CA 95798) (Weight:0 Lb 2.30 Oz) (Estimated Delivery Date) (Saturday 02/15/2020)	1	$3.90	$3.90
Certified (USPS Certified Mail #) (70192280000023090410)			$3.55
Return Receipt (USPS Return Receipt #) (9590940247308344294109)			$2.85
First-Class Package Service 3 Days (Domestic) (WASHINGTON, DC 20530) (Weight:0 Lb 1.90 Oz) (Estimated Delivery Date) (Saturday 02/15/2020)	1	$4.20	$4.20
Certified (USPS Certified Mail #) (70182290000004971828)			$3.55
Return Receipt (USPS Return Receipt #) (9590940247308344293775)			$2.85
Total:			$31.20

Debit Card Remit'd	$31.20
(Card Name:VISA) (Account #:XXXXXXXXXXXX7818) (Approval #) (Transaction #:977) (Receipt #:028084) (Debit Card Purchase:$31.20) (Cash Back:$0.00) (AID:A0000000980840 Chip)	

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

SAN FRANCISCO, CA 94102

OFFICIAL USE

Certified Mail Fee $3.55
Extra Services & Fees (check box, add fee as appropriate)
- Return Receipt (hardcopy) $0.00
- Return Receipt (electronic) $0.00
- Certified Mail Restricted Delivery $0.00
- Adult Signature Required $0.00
- Adult Signature Restricted Delivery $

Postage $3.90
Total Postage and Fees $10.30

0115 12
Postmark Here
02/12/2020

7019 2280 0000 2309 0427

Sent To: JUDICIAL COUNCIL OF CA
Street and Apt. No., or PO Box No.: 455 GOLDEN GATE AVE
City, State, ZIP+4®: SAN FRANCISCO, CA 94102-

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

WEST SACRAMENTO, CA 95798

OFFICIAL USE

Certified Mail Fee $3.55
Extra Services & Fees (check box, add fee as appropriate)
- Return Receipt (hardcopy) $0.00
- Return Receipt (electronic) $0.00
- Certified Mail Restricted Delivery $0.00
- Adult Signature Required $0.00
- Adult Signature Restricted Delivery $

Postage $3.90
Total Postage and Fees $10.30

0115 12
Postmark Here
02/12/2020

7019 2280 0000 2309 0410

Sent To: OFFICE OF RISK MGMT/GOVT CLAIMS
Street and Apt. No., or PO Box No.: PO BOX 942882, MS 414
City, State, ZIP+4®: WEST SACRAMENTO, CA 95798

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

WASHINGTON, DC 20530

OFFICIAL USE

Certified Mail Fee $3.55
Extra Services & Fees (check box, add fee as appropriate)
- Return Receipt (hardcopy) $0.00
- Return Receipt (electronic) $0.00
- Certified Mail Restricted Delivery $0.00
- Adult Signature Required $0.00
- Adult Signature Restricted Delivery $

Postage $4.20
Total Postage and Fees $10.60

0115 12
Postmark Here
02/12/2020

7018 2290 0000 0497 1828

Sent To: US DEPT OF JUSTICE CRIM-4 CON
Street and Apt. No., or PO Box No.: 950 PENNSYLVANIA AVE NW
City, State, ZIP+4®: WASHINGTON, DC 20530

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Get the free Informed Delivery® feature to receive automated notifications on your packages

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Remove ×

Tracking Number: 70192280000023090410

Your item was picked up at a postal facility at 4:46 am on February 20, 2020 in WEST SACRAMENTO, CA 95799.

Delivered

February 20, 2020 at 4:46 am
Delivered, Individual Picked Up at Postal Facility
WEST SACRAMENTO, CA 95799

Get Updates ∨

Text & Email Updates ∨

Tracking History ∧

February 20, 2020, 4:46 am
Delivered, Individual Picked Up at Postal Facility
WEST SACRAMENTO, CA 95799
Your item was picked up at a postal facility at 4:46 am on February 20, 2020 in WEST SACRAMENTO, CA 95799.

February 19, 2020, 11:13 am
Available for Pickup
WEST SACRAMENTO, CA 95799

February 19, 2020, 10:39 am
Arrived at Unit
WEST SACRAMENTO, CA 95799

February 18, 2020
In Transit to Next Facility

February 14, 2020, 12:28 am
Arrived at USPS Regional Destination Facility
SACRAMENTO CA DISTRIBUTION CENTER

February 12, 2020, 7:01 pm
Departed Post Office
SANTA ANA, CA 92799

February 12, 2020, 10:42 am
USPS in possession of item
SANTA ANA, CA 92799

Product Information

See Less

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Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback

USPS Tracking®

FAQs >

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Get the free Informed Delivery® feature to receive automated notifications on your packages

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(https://reg.usps.com/xsell?app=U· psTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st

Tracking Number: 70182290000004971828

Remove ×

Your item was delivered at 4:54 am on February 18, 2020 in WASHINGTON, DC 20530.

Delivered

February 18, 2020 at 4:54 am
Delivered
WASHINGTON, DC 20530

Get Updates ⌄

Text & Email Updates ⌄

Tracking History ⌃

February 18, 2020, 4:54 am
Delivered
WASHINGTON, DC 20530
Your item was delivered at 4:54 am on February 18, 2020 in WASHINGTON, DC 20530.

February 14, 2020, 11:53 am
Available for Pickup
WASHINGTON, DC 20530

February 14, 2020, 10:01 am

Arrived at Unit
WASHINGTON, DC 20018

February 14, 2020, 6:16 am
Arrived at USPS Regional Destination Facility
WASHINGTON DC DISTRIBUTION CENTER

February 13, 2020
In Transit to Next Facility

February 12, 2020, 7:11 pm
Arrived at USPS Regional Origin Facility
ANAHEIM CA DISTRIBUTION CENTER

February 12, 2020, 7:01 pm
Departed Post Office
SANTA ANA, CA 92799

February 12, 2020, 10:42 am
USPS in possession of item
SANTA ANA, CA 92799

Feedback

Product Information

See Less ^

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FAQs

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FAQs >

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(https://reg.usps.com/xsell?app=UspsTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st

Tracking Number: 70192280000023090410 Remove X

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

In-Transit

February 18, 2020
In Transit to Next Facility

Get Updates ∨

Text & Email Updates ∨

Tracking History ∧

February 18, 2020
In Transit to Next Facility
Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

February 14, 2020, 12:28 am
Arrived at USPS Regional Destination Facility
SACRAMENTO CA DISTRIBUTION CENTER

February 12, 2020, 7:01 pm

Departed Post Office
SANTA ANA, CA 92799

February 12, 2020, 10:42 am
USPS in possession of item
SANTA ANA, CA 92799

Product Information

See Less

Tracking Number: 70192280000023090427

Remove

Feedback

Your item was delivered to an individual at the address at 2:52 pm on February 18, 2020 in SAN FRANCISCO, CA 94102.

Delivered

February 18, 2020 at 2:52 pm
Delivered, Left with Individual
SAN FRANCISCO, CA 94102

Get Updates

Text & Email Updates

Tracking History

February 18, 2020, 2:52 pm
Delivered, Left with Individual
SAN FRANCISCO, CA 94102
Your item was delivered to an individual at the address at 2:52 pm on February 18, 2020 in SAN FRANCISCO, CA 94102.

February 15, 2020, 12:34 pm
Delivery Attempted - No Access to Delivery Location
SAN FRANCISCO, CA 94102

February 15, 2020, 11:18 am
Delivery Attempted - No Access to Delivery Location
SAN FRANCISCO, CA 94102

February 15, 2020, 8:22 am
Arrived at Unit
SAN FRANCISCO, CA 94124

February 14, 2020
In Transit to Next Facility

February 13, 2020, 2:17 am
Departed USPS Regional Facility
ANAHEIM CA DISTRIBUTION CENTER

February 12, 2020, 7:11 pm
Arrived at USPS Regional Origin Facility
ANAHEIM CA DISTRIBUTION CENTER

February 12, 2020, 7:01 pm
Departed Post Office
SANTA ANA, CA 92799

February 12, 2020, 10:42 am
USPS in possession of item
SANTA ANA, CA 92799

Product Information

See Less

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

US DEPT OF JUSTICE
CIVIL RIGHTS DIV.
CRIM. SECTION - 4 CON
950 PENNSYLVANIA AVE NW
WASHINGTON, DC 20530

9590 9402 4730 8344 2937 75

2. Article Number (Transfer from service label)

7018 2290 0000 0497 1828

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
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PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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GOVT CLAIMS PROG
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WEST SACRAMENTO, CA 95798-9052

9590 9402 4730 8344 2941 09

2. Article Number (Transfer from service label)

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A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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* JUDICIAL COUNCIL CASES
NOT RETURNED *

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com
949.241.6693

2ND COMPLAINT

February 21,2020

California State Assembly
Cottie Petrie-Norris
State Capitol, Room 3149
Sacramento, CA 95814

RE: Civil and Criminal Complaint For Deprivation of Constitutional Rights by Public Officials of California (amended 2/21/20).

Hi Cottie,

Please see the amended complaint attached hereto along with additional supporting evidence that was not provided in the initial complaint I made to your office via email to Jess Huang.

As I have been unable to make further contact with Jess who initially helped me, I do not know who she forwarded my initial complaint to. She has stopped responding to my email requests and phone calls for further information.

This complaint has already been made to the agencies listed on the complaint. However, in my initial complaint I also asked that you forward it to whatever California agency investigates the criminal activities of public officials. This amended complaint should also be forwarded thereto.

Also, I have made multiple requests to speak with you about this issue and have yet to receive any reply in weeks since I've made these requests. Could you please provide me with information about who is handling my complaint at the Legislative level?

Sincerely,

Adam Bereki

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com
949.241.6693

February 21,2020

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95798-9052

Administrative Director of the Judicial Council
455 Golden Gate Ave.
San Francisco, CA 94102-3688

Superior Court of California
County of Orange
Executive Officer
700 Civic Center Drive West
Santa Ana, California 92702-1994

Kevin J. Lane
Clerk of the Fourth Appellate District
Symphony Towers
750 B. Street, Suite 300
San Diego, CA 92101

Clerk Frank A. McGuire
California Supreme Court
350 McAllister St.
San Francisco, CA 94102

California State Assembly
Cottie Petrie-Norris
State Capitol, Room 3149
Sacramento, CA 95814π

US Department of Justice
Civil Rights Division
Criminal Section– 4CON
950 Pennsylvania Ave, NW
Washington, DC 20530

RE: Civil and Criminal Complaint For Deprivation of Constitutional Rights by Public Officials of California (amended 2/21/20).

Good day.

Thank you for taking the time to hear my complaint.

This cover letter is a brief overview of my complaint. I am making a complaint at this time because I believe I now have enough facts and an understanding of the scope and nuances of the situation to actually make a complaint and provide you with a valid, constitutionally cognizable claim supported by sworn testimony and authenticated evidence.

Attached hereto (or included with a previous complaint I mailed to your agency) is a USB drive with all of the Exhibits and other documents referenced herein. I recommend you begin with Exhibit [C] which is annexed to the file named "California Legislature Complaint" found in the "COMPLAINTS" folder. This document provides a detailed overview of the facts and law surrounding my complaint.

In 2017 I was fined $930,000 for allegedly performing construction work without a contractor's license in a purported "civil" case pursuant to Business and Professions Code sections §7031(a) and §7031(b). See *The Spartan Associates, Inc. v. Humphreys*, 30-2015-00805807, Superior Court of California, County of Orange. (Exhibits [K,O] – Reporters Transcripts, EXHIBITS file).

The comparable criminal penalty for the same offense is a fine *up to* $5,000.

This fine imposed upon me is about 46 times my qualifying net worth, and 186 times the comparable criminal penalty.

I was a qualifying individual for my company's contractors license (see The Spartan Associates Inc, license #927244). I provided the experience requirements and passed the licensing exam. But because "Judge" David Chaffee of the Superior Court of California, County of Orange found the alleged contract in the above case was with me personally instead of my licensed company, the Court claimed I was unlicensed and ordered the "return of all compensation paid" to the homeowner pursuant to §7031(b). It further dismissed the claim my company had made pursuant to §7031(a) for lack of standing despite the fact it performed the work on the project.

After receiving this excessive, cruel, and unusual punishment imposed by the Court, I knew something was terribly wrong. I filed an appeal in the Fourth Appellate District and began investigating the law behind §7031 and how it came to be in California's Legislative History (Exhibits [N, P]). Suffice it say, there is no Constitutional basis for §7031's enactment or enforcement as applied by the Courts. It is a major and systemic criminal fraud being perpetrated upon me and the People of California and has been for decades.

In legal terms, California's "Courts" refer to the penalties imposed by §7031 actions as "non-punitive", "disgorgement", an "equitable remedy", or "civil consequence". See the Fourth District Court of Appeal opinion in *Bereki v. Humphreys*, Exhibit [A], annexed to the California Legislature Complaint or 2018 Cal. App. Unpub. LEXIS 7469.

In astonishing contrast, there are a few rare instances in which a §7031 case made it outsides the despotic confines of California. In once case the Judge stated ("I begin by noting that the statute [referring to §7031] is draconian in its effect...[it] provides a heavy **penalty** indeed...") *American Sheet Metal, Inc. v. Em-Kay Engineering Co,*. 478 F. Supp. 809, 814 (1979).(emphasis added).

The penalties imposed by the Courts are **not** "disgorgement", "equitable", or "civil". Not even remotely. Refer to Exhibit [C] annexed to the California Legislature complaint for my brief on this issue.
Disgorgement is a very specific action requiring the surrender or giving up of **profits** illegally obtained. This is known in law as unjust enrichment and can be found in Civil Code §3517 of California's public policy. It is thoroughly explained in the case of *Meister v. Mensinger*, 230 Cal. App. 4th 381 (2014) and Restatement (third) of Restitution and Unjust Enrichment §51 detailing the specific nature of disgorgement actions. (See Exhibit [B]– annexed to the California Legislature Complaint).

There is no evidence on the record of my case in the Superior Court of California, County of Orange that I profited $930,000 or made any profits whatsoever. I did not profit $930,000. No accounting to determine profits was ever presented by the Plaintiff in this case.

There is also no evidence on the record that I performed the work as required by the statute. See for e.g. California Civil Jury Instruction CACI, §4560 (3).

It is criminal fraud and a violation of substantive due process for a judge to declare that evidence exists on the record of a case when it does not. This fraud has been perpetrated by Judge David Chaffee, (ret.) of the Superior Court of California, County of Orange; and Justices Kathleen O'Leary, Richard Aronson, and Thomas Goethals of the Fourth District Court of Appeal, who, in their concurring Opinion all found there was such evidence despite failing to cite in their opinion where on the record where they found it. This is because it simply does not exist.

There is not one known California Court following the laws of restitution and unjust enrichment in these so called "disgorgement" cases pursuant to §7031. California has been perpetrating this criminal fraud upon its People for decades with the California Supreme Court leading the way. As a result, the judgments rendered in these case are not remedial or equitable as the Courts have repeatedly held, but instead, purely penal and minimally require all of the heightened protections of criminal proceedings which the Court's also deny further imposing excessive, cruel, and unusual punishment. This behavior is nothing short of a cascade failure of almost every protection found in the Bill of Rights against arbitrary and despotic government action depriving the Courts of both *in personam* and subject matter jurisdiction.

As a result of this egregious, fraudulent, criminal behavior including the deprivation of the Rights and protections as secured by the Constitution for the United States, I am on the verge of being forced into bankruptcy and subject to the forfeiture of my entire life

estate. I have made every attempt at obtaining redress through the Court system by filing appeals with the California Fourth District Court of Appeal, the California Supreme Court, and the US Supreme Court. Both the California and US Supreme Court declined to hear my case.

As a result of the Courts' failure to take remedial action in the civil context, I recently called the Los Angeles FBI Office on 1/31/20 at about 1330 HRS to report these crimes. The call taker (unknown name or badge number) hung up on me after telling me the FBI doesn't investigate these cases.

On 2/7/20 at about 1445 hours I called the Santa Ana California Police Department (where the trial and appellate Courts are located) to make a criminal complaint. I asked for the "watch commander" and was transferred to a man named Sgt. Alcantar #2580. Admittedly Alcantar took the time to listen to my claims but refused to take a crime report. Under California law, fraud is a crime. See penal code §484. Judges are not above the law. Furthermore, it is a crime to violate substantive due process.

Additionally, I made a complaint by way of Petition for Redress of Grievance to the California Legislature on 1/31/20. This complaint is the "California Legislature Complaint" I have repeaeadly referenced. This complaint was made through the office of assemblywoman Cottie Petrie-Norris. Her office has mysteriously stopped responding to my attempts at communication or to obtain updates on the status of my complaint.

I am not alone in being victimized by this criminal behavior. See for e.g. the case of *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014) and Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr, No. 10-41455-DS. where Mr. Paul Bardos was also forced into bankruptcy and unduly harmed after being fined $917,000. Federal Bankruptcy Courts also appear to be involved in this conspiracy in that they are discharging fraudulent

California has refused to recognize that these actions they refer to as "disgorgement" are punitive and violate the 8th Amendments Excessive Fines Clause when they don't conform in any way to a disgorgement action in California State or Federal Law. See for e.g. the recent U.S. Supreme Court case of *Kokesh v. SEC*, 581 U.S._____ (2017). It is also noteworthy that at oral argument in *Kokesh*, Justice Gorsuch alluded to the fact that Federal Courts do not even have the statutory authority to commence disgorgement actions. If I recall correctly, his comment was "we're just making it up". My sentiments exactly! The abuse of so-called "disgorgement" action is a national issue and epidemic. Billions of dollars appear to be being unlawfully taken from defendants in these actions nationwide without any statutory, let alone Constitutional authority.

Obviously these are not just harmless legal errors. The Courts, such as in the instant case were made fully aware of the actual law of disgorgement actions. The Courts even admit both they and the legislature are aware of the "harsh and unfair" nature of these actions and yet they continue to perpetrate them and call them "equitable". Moreover, the Fourth District Court of appeal refuses to do its constitutionally required duty to examine the constitutionality of the public policy in these actions when properly challenged.

I have received information from Mr. Bardos that he pleaded with the California legislature around the time of his case in 2013 and obviously nothing has changed. This is not acceptable. Furthermore, in reviewing the Legislative history, there is nothing in the records at all indicating the necessity of these laws. Instead §7031(b) was promulgated on the whim of a Superior Court Judge who thought it should be so.

In further deprivation of my Rights, I have been suspended indefinitely from doing work in my profession as pursuant to Business and Professions Code §7071.17, my company's license has been suspended until the unlawful judgment has been paid or I file bankruptcy. As a result I cannot work to afford a lawyer to represent me and have been forced into a condition of involuntary servitude (see 18 USC §1859) by means of abuse of legal process to study law and perform this investigation to clear my good name and protect my property that has been stolen under color of law.

I expect a full, fair, and impartial investigation to be conducted into this matter, including an interview with me pertaining to the ongoing injuries I continue to sustain from this heinous and arbitrary abuse of power.

For further sworn declarations and evidence refer to Federal District Court Case No. 8:19–CV-02050 (CBM) (ADSx), Bereki v. Humphreys.

This complaint shall also include each of the justices of the California Supreme Court who denied my Petition for writ of certiorari in case number S252954. While I understand their review in ordinary cases is discretionary, it becomes a matter of right when there is no other access to a judicial constitutional Court in California. As a result, the Justices thereof sitting en banc, have actively engaged in the commission of this fraud and deprivation of my rights, not only in my case but in the previous cases in which they may have been involved in upholding §7031's constitutionality when the issue came before the Court– and there have been numerous cases.

This complaint shall also include the California Judicial Council, and California State Bar Association who have also conspired in committing this fraud by promulgating the California Civil Jury Instructions, CACI 4560 and 4561 which pertain to §7031 actions. See Exhibit [O] pp. 1621-1645. Most notably these jury instructions include none of the required elements of a disgorgement action in Equity. In fact, the elements prescribe a purely penal action for violation of a state statute. There is no requirement of an accounting for profits, no strict tracing that a defendant ever possessed the funds to be disgorged, nor are any offsets for the reasonable value of services allowed.

The California State Bar Association's members, including William George Bissell (in the instant case) are actively engaged in prosecuting these actions.

Additionally, "Judge" James Di Cesare of the Superior Court of California, County of Orange shall also be included in this complaint due to his failure to dismiss this case pursuant to a Motion to Vacate Void Judgment I filed post appeal for lack of *in personam* and subject matter jurisdiction. See also Penal Code §1382(a) and Exhibits [K,O].

It should again be noted my investigation into this fraud is ongoing and the information I am providing you is a debrief if you will, of what has taken me more than two years to discover as I do not have a law degree or any formal training in civil litigation. The record of documents I have provided herein evidences the course of my investigation and that I have been crying out for help for years to no avail. While at first glance there may be an issue pertaining to the accrual of my claims, I would ask how I could be expected to know, understand, and fully comprehend the nature of this fraud, deceit, and treason when it is being perpetrated by the very sophisticated and highly trained and experienced officials serving as judges, justices, and legislators of California; and when the mandatory public education system provides no instruction whatsoever in how to make such a complaint, let alone how to represent oneself against State sanctioned tyranny when there is no access to a judicial Constitutional Court anywhere in the State one is domiciled. Moreover, each of the officials involved in this case have taken a sworn oath and have a duty to protect my rights and those of the other People of California.

I remain open, willing, and fully available to discuss these issues with you so that together we can reach a solution that immediately stops this fraudulent criminal behavior and provides remedy to myself and the other People of California and our country who have been unduly harmed.

Please provide an email address so we can correspond more expediently. You can email me at abereki@gmail.com.

Sincerely,

Adam Bereki

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☐ Return Receipt (electronic)	$0.00
☐ Certified Mail Restricted Delivery	$0.00
☐ Adult Signature Required	$0.00
☐ Adult Signature Restricted Delivery	$
Postage	$0.55
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Total Postage and Fees	$4.10
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First-Class Package Service 2 Days (Domestic) (SANTA ANA, CA 92701) (Weight:0 Lb 2.00 Oz) (Estimated Delivery Date) (Monday 02/24/2020) (USPS Tracking #) (9500 1150 6991 0052 5349 15)	1	$3.80	$3.80
Total:			$27.70
Credit Card Remitd (Card Name:VISA) (Account #:XXXXXXXXXXXX8829) (Approval #:06630D) (Transaction #:816) (AID:A0000000031010 Chip) (AL:VISA CREDIT) (PIN:Not Required CHASE VISA)			$27.70

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Delivered

February 28, 2020 at 8:29 am
Delivered
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February 28, 2020, 8:29 am
Delivered
SACRAMENTO, CA 95852
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February 25, 2020
In Transit to Next Facility

February 23, 2020, 7:34 pm
Arrived at Hub
WEST SACRAMENTO, CA 95799

February 23, 2020, 7:33 pm
Departed USPS Regional Destination Facility
SACRAMENTO CA DISTRIBUTION CENTER

February 23, 2020, 12:59 am
Arrived at USPS Regional Destination Facility
SACRAMENTO CA DISTRIBUTION CENTER

February 21, 2020, 10:34 pm
Departed USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 21, 2020, 9:45 pm
Arrived at USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 21, 2020, 7:09 pm
Departed Post Office
SANTA ANA, CA 92799

February 21, 2020, 1:43 pm
USPS in possession of item
SANTA ANA, CA 92799

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Your item was delivered at 5:58 am on February 27, 2020 in WASHINGTON, DC 20530.

Delivered

February 27, 2020 at 5:58 am
Delivered
WASHINGTON, DC 20530

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February 27, 2020, 5:58 am
Delivered
WASHINGTON, DC 20530
Your item was delivered at 5:58 am on February 27, 2020 in WASHINGTON, DC 20530.

February 26, 2020, 10:24 am
Available for Pickup
WASHINGTON, DC 20530

February 26, 2020, 5:49 am

Feed

Arrived at Unit
WASHINGTON, DC 20018

February 25, 2020
In Transit to Next Facility

February 22, 2020, 2:48 am
Departed USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 21, 2020, 9:46 pm
Arrived at USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 21, 2020, 7:09 pm
Departed Post Office
SANTA ANA, CA 92799

February 21, 2020, 1:43 pm
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SANTA ANA, CA 92799

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Tracking Number: 70182290000004971804

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Your item was delivered to an individual at the address at 2:29 pm on February 24, 2020 in SAN FRANCISCO, CA 94102.

Delivered

February 24, 2020 at 2:29 pm
Delivered, Left with Individual
SAN FRANCISCO, CA 94102

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Tracking History ⌃

February 24, 2020, 2:29 pm
Delivered, Left with Individual
SAN FRANCISCO, CA 94102
Your item was delivered to an individual at the address at 2:29 pm on February 24, 2020 in SAN FRANCISCO, CA 94102.

February 24, 2020
In Transit to Next Facility

Feedba

February 24, 2020, 10:23 am
Arrived at Unit
SAN FRANCISCO, CA 94124

February 23, 2020, 5:29 pm
Departed USPS Regional Destination Facility
SAN FRANCISCO CA DISTRIBUTION CENTER

February 22, 2020, 4:03 pm
Arrived at USPS Regional Destination Facility
SAN FRANCISCO CA DISTRIBUTION CENTER

February 21, 2020, 11:06 pm
Departed USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 21, 2020, 9:54 pm
Arrived at USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 21, 2020, 7:09 pm
Departed Post Office
SANTA ANA, CA 92799

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SANTA ANA, CA 92799

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Delivered to Agent

February 24, 2020 at 4:55 pm
Delivered to Agent for Final Delivery
SAN DIEGO, CA 92101

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February 24, 2020, 4:55 pm
Delivered to Agent for Final Delivery
SAN DIEGO, CA 92101
Your item has been delivered to an agent for final delivery in SAN DIEGO, CA 92101 on February 24, 2020 at 4:55 pm.

February 24, 2020, 7:10 am
Out for Delivery
SAN DIEGO, CA 92101

February 24, 2020, 4:02 am
Arrived at Post Office
SAN DIEGO, CA 92101

February 23, 2020, 7:44 am
Arrived at USPS Facility
SAN DIEGO, CA 92101

February 23, 2020, 6:47 am
Departed USPS Regional Facility
SAN DIEGO CA DISTRIBUTION CENTER

February 22, 2020, 6:18 am
Arrived at USPS Regional Facility
SAN DIEGO CA DISTRIBUTION CENTER

February 22, 2020, 4:24 am
Departed USPS Regional Facility
ANAHEIM CA DISTRIBUTION CENTER

February 21, 2020, 6:46 pm
Arrived at USPS Regional Origin Facility
ANAHEIM CA DISTRIBUTION CENTER

February 21, 2020, 1:47 pm
USPS in possession of item
SANTA ANA, CA 92799

Feedback

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Tracking Number: 9500115069910052534892 Remove ×

Your item was delivered in or at the mailbox at 2:08 pm on February 24, 2020 in SAN FRANCISCO, CA 94102.

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Delivered

February 24, 2020 at 2:08 pm
Delivered, In/At Mailbox
SAN FRANCISCO, CA 94102

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Text & Email Updates ∨

Tracking History ∧

February 24, 2020, 2:08 pm
Delivered, In/At Mailbox
SAN FRANCISCO, CA 94102
Your item was delivered in or at the mailbox at 2:08 pm on February 24, 2020 in SAN FRANCISCO, CA 94102.

February 24, 2020, 7:10 am
Out for Delivery
SAN FRANCISCO, CA 94102

February 23, 2020, 1:27 pm
Arrived at Hub
SAN FRANCISCO, CA 94124

February 23, 2020, 12:15 am
Departed USPS Regional Facility
SAN FRANCISCO CA DISTRIBUTION CENTER

February 22, 2020, 4:11 pm
Arrived at USPS Regional Destination Facility
SAN FRANCISCO CA DISTRIBUTION CENTER

February 22, 2020
In Transit to Next Facility

February 21, 2020, 6:47 pm
Arrived at USPS Regional Origin Facility
ANAHEIM CA DISTRIBUTION CENTER

February 21, 2020, 1:47 pm
USPS in possession of item
SANTA ANA, CA 92799

Feedback

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Tracking Number: 9500115069910052534908

Remove X

Your item has been delivered to an agent at 9:03 am on February 24, 2020 in SACRAMENTO, CA 95813.

USPS Premium Tracking™ Available

Delivered

February 24, 2020 at 9:03 am
Delivered, To Agent
SACRAMENTO, CA 95813

Get Updates

Text & Email Updates

Tracking History

February 24, 2020, 9:03 am
Delivered, To Agent
SACRAMENTO, CA 95813
Your item has been delivered to an agent at 9:03 am on February 24, 2020 in SACRAMENTO, CA 95813.

February 24, 2020, 7:10 am
Out for Delivery
SACRAMENTO, CA 95814

Feedback

February 23, 2020, 9:26 am
Arrived at Hub
SACRAMENTO, CA 95813

February 23, 2020, 12:56 am
Arrived at USPS Regional Destination Facility
SACRAMENTO CA DISTRIBUTION CENTER

February 22, 2020
In Transit to Next Facility

February 21, 2020, 6:48 pm
Arrived at USPS Regional Origin Facility
ANAHEIM CA DISTRIBUTION CENTER

February 21, 2020, 1:47 pm
USPS in possession of item
SANTA ANA, CA 92799

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Tracking Number: 9500115069910052534915 Remove ×

Your item has been delivered and is available at a PO Box at 12:31 pm on February 22, 2020 in SANTA ANA, CA 92702.

USPS Premium Tracking™ Available ⌄

Delivered

February 22, 2020 at 12:31 pm
Delivered, PO Box
SANTA ANA, CA 92702

Get Updates ⌄

Text & Email Updates ⌄

Tracking History ⌃

February 22, 2020, 12:31 pm
Delivered, PO Box
SANTA ANA, CA 92702
Your item has been delivered and is available at a PO Box at 12:31 pm on February 22, 2020 in SANTA ANA, CA 92702.

February 22, 2020, 8:51 am
Out for Delivery
SANTA ANA, CA 92701

Feedback

February 22, 2020, 6:18 am
Arrived at Post Office
SANTA ANA, CA 92711

February 21, 2020, 9:23 pm
Departed USPS Regional Facility
ANAHEIM CA DISTRIBUTION CENTER

February 21, 2020, 6:29 pm
Arrived at USPS Regional Facility
ANAHEIM CA DISTRIBUTION CENTER

February 21, 2020, 1:47 pm
USPS in possession of item
SANTA ANA, CA 92799

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FAQs

U.S. Department of Justice
Civil Rights Division

Criminal Section
150 M Street NE
Washington DC 20002

JFF:cs:rc
DJ 144-12C-0
1075601

MAR 12 2020

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

Thank you for your correspondence. The Civil Rights Division relies on information from community members to identify potential civil rights violations. The Federal Bureau of Investigation and other law enforcement agencies conduct investigations for the Division. Therefore, you may want to contact your local FBI office or visit www.FBI.gov.

The Criminal Section is one of several Sections in the Civil Rights Division of the U.S. Department of Justice. We are responsible for enforcing federal criminal civil rights statutes. The Criminal Section prosecutes criminal cases involving:

- Civil rights violations by persons acting under color of law, such as federal, state, or other police officers or corrections officers;
- Hate crimes;
- Force or threats intended to interfere with religious activities because of their religious nature;
- Force or threats intended to interfere with providing or obtaining reproductive health services and
- Human trafficking in the form of coerced labor or commercial sex.

We cannot help you recover damages or seek any other personal relief. We also cannot assist you in ongoing criminal cases, including wrongful convictions, appeals, or sentencing. For more detailed information about the Criminal Section or the work we do, please visit our web page: www.justice.gov/crt/about/crm/.

We will review your letter to decide whether it is necessary to contact you for additional information. We do not have the resources to follow-up on or reply to every letter. If your concern is not within this Section's area of work, you may wish to consult the Civil Rights Division web page to determine whether another Section of the Division may be able to address your concerns: www.justice.gov/crt. Again, if you are writing to report a crime, please contact the federal and/or state law enforcement agencies in your local area, such as the Federal Bureau of Investigation or your local police department or sheriff's office.

Sincerely,
/s/
The Criminal Section

Adam A. Bereki
818 Spirit
Costa Mesa, California, [92626]
abereki@gmail.com
949.241.6693

March 13, 2020

Justice Elena Kegan
Circuit Justice for the Ninth Circuit
United States Supreme Court
1 First St. NE
Washington, DC 20543

Via Certified Mail:
7019 2280 0000 2309 5699

Madam Justice,

I recently called the Clerk's office with some questions pertaining to the Court's requirements for filing a Bill of Complaint in the Court's original jurisdiction. I spoke with a woman named "Laurie". (I'm unsure if this is the correct spelling of her name.)

I told Laurie that I have a claim upon the State of California where I am domiciled and upon which, by statute, the State has waived sovereign immunity. I also shared that there is no other available forum, State or Federal in which to present my case. I realize this is a very peculiar and unusual situation, but it is nevertheless true.

Laurie informed me that the Court's original jurisdiction is limited by statute. She read me 28 USC §1251 and shared that the Court does not have original jurisdiction over my case. She further read me a letter that the Court sends out involving this issue and told me if I filed my case the Court would send this letter rejecting my complaint pursuant to 28 USC §1251. Laurie told me she was concerned and didn't want me to bear the expense of producing booklets and wasting my time. She told me she would not send me a copy of the letter via email.

I shared with Laurie that Article III, Section 2, Clause 2 of the Constitution, says "In all Cases... in which a State shall be Party, the supreme Court shall have original Jurisdiction". I also read a quote form Chief Justice Marshall in Cohens v. Virginia:

> *"The Constitution gave to every person having a claim upon a State a right to submit his case to the Court of the nation. However unimportant his claim*

might be, however little the community might be interested in its decision, the framers of our Constitution thought it necessary for the purposes of justice to provide a tribunal as superior to influence as possible in which that claim might be decided." 19 U.S. 264, 383-4 (1821).

Laurie stated she didn't want to get into an argument with me over this issue. I assured her I wasn't interested in arguing either, but was very concerned that my case would be rejected by the Clerk and my right to obtain redress in the only forum possible denied, resulting in a heinous miscarriage of justice.

I have reviewed 28 USC §1251 and "In all Cases... in which a State shall be Party, the supreme Court shall have original Jurisdiction" is not included. If, as Laurie told me, 28 USC §1251 governs the original jurisdiction of this Court and not the Constitution, it presents a major structural jurisdictional error as Congress has no authority to amend the Constitution without following the procedures of Article V.

I don't believe Laurie is correct or that the Constitution has been unlawfully amended. I am writing to confirm this is just a clerical error and to notify the Court of my intent to file a Bill of Complaint in the Court's original jurisdiction so that it will not be rejected.

I realize the Court's original jurisdiction is reserved for extraordinary circumstances. They are present in this case and, as will be evidenced, there is no other forum available.

Please notify me in writing at your soonest opportunity of which authority governs the original jurisdiction of this Court and that my Complaint will not be returned rejected by the Clerk, or if so, on what authority.

Sincerely,

Adam Bereki

P.S. Please do not consider this a formal complaint against Laurie. That is not my intent. I feel she was doing her best to try to help me given the knowledge and training she had. She was very kind and helpful.

March 28, 2020

Madam Justice,

I'm sending you another copy of the attached letter because the usps certified tracking shows that it was not delivered. I'm uncertain if the letter was lost in transit or actually delivered but not scanned in as such. If you received the previous letter, kindly disregard this one. I've attached a copy of the previous letter and usps tracking for your reference.

I look forward to your response.

Sincerely,

Adam Bereki

RECEIVED
APR 13 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

April 15, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

In reply to your letter or submission referred to this office by on April 13, 2020, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. The Court does not give advice or assistance or answer legal questions on the basis of correspondence.

Your papers are herewith returned.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

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Tracking Number: 70192280000023095699

Remove ×

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

In-Transit

March 21, 2020
In Transit to Next Facility

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Tracking History ⌃

March 21, 2020
In Transit to Next Facility
Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

March 17, 2020, 5:48 am
Arrived at USPS Regional Destination Facility
WASHINGTON DC DISTRIBUTION CENTER

March 13, 2020, 11:58 pm

Feedback

4162

Departed USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

March 13, 2020, 8:07 pm
Arrived at USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

March 13, 2020, 7:06 pm
Departed Post Office
SANTA ANA, CA 92799

March 13, 2020, 9:59 am
USPS in possession of item
SANTA ANA, CA 92799

Product Information

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FAQs

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com
949.241.6693

April 15, 2020

California State Legislature
1315 10th St.
Sacramento, CA 95814

RE: Petition for Redress of Grievance, Civil and Criminal Complaint; Public Records Act Request.

To Whom It May Concern:

On January 31, 2020, I filed a Petition for Redress of Grievance, Civil and Criminal Complaint through the office of assemblywoman Cottie Petrie–Norris. I also filed amendments thereto on February 12, 2020, and February 21, 2020. Despite multiple attempts at reaching Ms. Petrie–Norris she has not returned my calls or letters. I am writing to ensure that my Petition has in fact been received and filed, an investigation conducted, and the complaint also forwarded to the appropriate agency for criminal investigation as I requested.

Pursuant to the Public Records Act, please provide all documents in your custody or control evidencing the receipt of my complaint, whom it has been assigned to for investigation (including the name, address, telephone number and email of both the agency and the personnel assigned); any policies, procedures, rules or regulations for the filing and handling of petitions for redress of grievance, and any findings of facts or conclusions of law made pursuant to the investigation if in fact one has been conducted.

Please feel free to email your response to abereki@gmail.com.

Sincerely,

Adam Bereki

File CA Legislature FU 0415

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com
949.241.6693

April 15, 2020

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95798-9052

Administrative Director of the Judicial Council
455 Golden Gate Ave.
San Francisco, CA 94102-3688

Superior Court of California
County of Orange
Executive Officer
700 Civic Center Drive West
Santa Ana, California 92702-1994

Kevin J. Lane
Clerk of the Fourth Appellate District
Symphony Towers
750 B. Street, Suite 300
San Diego, CA 92101

Clerk Frank A. McGuire
California Supreme Court
350 McAllister St.
San Francisco, CA 94102

California State Assembly
Cottie Petrie-Norris
State Capitol, Room 3149
Sacramento, CA 95814

US Department of Justice
Civil Rights Division
Criminal Section– 4CON
950 Pennsylvania Ave, NW
Washington, DC 20530

RE: (1) Follow Up of Petition For Redress of Grievance and Civil and Criminal Complaint For Deprivation of Constitutional Rights by Public Officials of California

(amended 2/21/20); 2) Public Records Act Request Regarding The Findings of The Investigation; (3) Complaint For Failure to Investigate.

Good day.

This is a generalized letter addressed to different agencies for which different complaints under various laws have been made. Certain issues forthwith may or may not pertain to the Petitions or Complaints filed with your agency.

I'm writing to follow up regarding the Petition for Redress of Grievance, Complaint and subsequent Amendment to the Complaint I filed with your agency on either January 31, 2020, February 12, 2020 or February 21, 2020, respectively.

I understand that due to the outbreak of Covid–19 normal services may be strained, non–existent, or slower than normal. However, some of the requirements involved in these complaints have jurisdictional requirements that are governed by law and to my knowledge those laws have not changed as a result of the outbreak.

I have not received any notification that you have opened and conducted an investigation pursuant to my aforementioned Petition for Redress of Grievance or Complaint(s) or what the results of those investigation(s) are. It is my understanding you have a duty to perform an investigation upon receipt of a complaint.

If you have conducted an investigation, please provide me with all documentation evidencing your findings of facts and conclusions of law and any other documents allowable by law pertaining to your investigation under the Public Records Act, Freedom of Information Act or any other acts, rules, or regulations requiring such disclosure. In the event you haven't conducted an investigation, and/or have no intent to, I'd appreciate you sharing this in writing as well. For convenience and expediency, please email me at abereki@gmail.com.

Due to the jurisdictional requirements in claim processing that may be applicable to your agency under the California Government Tort Claims Act; the fact that forty–five days is the time allotted under California law by which the claim has been deemed rejected; and that I have not been interviewed let alone contacted pertaining to your duty to investigate (whether or not your claim falls under the Tort Claims Act or not), this letter shall be taken as a further Amendment to the original Petition and/or Complaint adding an additional claim for failure to investigate.

I remain open and available to resolve this matter with you.

Sincerely,

Adam Bereki

30-2015-00805807
B ( )
618 SPIRIT
92626

6/2/20

US DOJ

202-514-2000

No case # 6/2/20
" Duty agent "
≈ 2015 hrs

(714) 939-8699
Orange County
FBI

Call to FBI
6/2/20
2:15 pm
1115am 07/13/20
will not provide any records

Mack Jenkins
Chief Pushin -
macjenkins@usdoj.gov

FBI Addtl
Info
09/15/20
3m.17
VM

6/3/20
620 AM
no jurisdiction
State
officials

US ATTORNEY
LA & SATPA A.A
(213) 894 2400

(714) 338-3500
Benjamin
Barron

Brendan Fox

COMPLAINT ABOUT A CALIFORNIA JUDGE, COURT COMMISSIONER OR REFEREE

Confidential under California Constitution
Article VI, Section 18, and Commission Rule 102

For information about the Commission on Judicial Performance and instructions on filling out and submitting this form, please visit our website at http://cjp.ca.gov.

6/3/20

Today's date: June 3, 2020

Your name: Adam Bereki

Your telephone number: 949–241–6693

Your address: 818 Spirit
Costa Mesa, California

Your attorney's name: N/A

Your attorney's telephone number:

Name of judge: David Chaffee (Ret.), Kathleen O'Leary, Thomas Goethals, Richard Aronson, Tani– Cantil–Sakauye, Ming Chin, ~~OR~~ Carol Corrigan, Goodwin H. Liu, Mariano Cuellar, Leondra Kruger, Joshua Groban.

Name of court commissioner or referee:

(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court. If you have done so, please attach copies of your correspondence to and from that court.)

Court: Superior Court of CA, County of Orange; Fourth District Court of Appeal, Div. 3; Supreme Court of California

County: Orange

Name of case and case number: Superior Court: 30-2015-00805807; Appeal: G055075; Sup. Ct. S252954

Date conduct occurred: Ongoing

Please specify what action or behavior of the judge, court commissioner or referee is the basis of your complaint. Provide relevant dates and the names of others present. (Use additional pages if necessary.)

The above named judges are perpetrating criminal fraud on the People of California by denying them rights secured by the California Constitution and the Constitution for the United States. I was ordered to forfeit about $930,000 for allegedly performing construction work without a contractors license pursuant to Business and Professions Code sections §7031(a) and (b). This fine is 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty. The California supreme Court has declared §7031(b) "imposes a strict penalty" yet the Courts refuse to recognize the excessive fines clause (Art 1, Sec. 17, or the the 8th Amendment). In my case (and that of many others), the Courts do not make an analysis about a defendants ability to pay, or consider the proportionality of the offense. This being an in personam forfeiture – and one capable of financially destroying a defendant – minimally requires defendants have all the of the heightened protections of criminal proceedings yet §7031 cases take place in a civil context. The lower Courts refuse to even recognize §7031's penal nature. As a result of the judgment against me a lien has been placed on a home upon which I am the legal title holder and my ability to earn a living in construction suspended. The People of California have no access to a judicial court in California to resolve these heinous miscarriages of justice.

Return to: **Commission on Judicial Performance**
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102
Telephone: **(415) 557-1200**
Fax: **(415) 557-1266**

11/17

Please contact me for a full interview regarding this complaint. I have included a copy of the complaint I have made with the California Legislature & supporting evidence on the included USB drive.

Thank you for your help & prompt investigation.

USB DRIVE

W/ 2/21/20 COMPLAINT

&

EXHIBITS INCLUDED

R: 6-15-20
Replied 6-15-20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

June 11, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

This letter is to acknowledge receipt of your recent complaint against a California judge(s). We appreciate your time and effort in bringing this matter to the commission's attention. We are presently reviewing this information and, if further information is needed, you will be contacted. You will be advised in writing, at a later date, of the commission's action in this matter.

To give you some information about the process, each complaint about a judge is voted upon by the commission. When a complaint states facts which could be misconduct, if the facts are true and there is not another explanation for what happened, the commission typically opens an investigation. The commission's staff will interview witnesses, review documents or files and conduct other investigation. If there is sufficient evidence supporting the complaint, the judge will be contacted and asked to respond to the allegations. The commission then reviews the available evidence, and the judge's response if the judge was contacted, to make a determination whether misconduct has occurred. Misconduct must be established by clear and convincing evidence, a higher standard than is required in civil cases but lower than in criminal cases. If the evidence does not support a finding of misconduct, the commission will close the case. The commission may also close the case if the misconduct was relatively minor and the judge has acknowledged the problem and taken steps to prevent it from happening again. If the evidence supports a finding of misconduct and the commission determines that discipline may be appropriate, the commission may proceed to impose discipline.

It may also be helpful to explain that the Commission on Judicial Performance is not a court. It does not have the authority to reverse a judge's decision, move your case to another department or court, disqualify a judge or otherwise get involved in your case. The commission's role is limited to reviewing allegations of judicial misconduct. A judge's legal rulings and discretionary decision-making, without more, are not a basis for review by the commission. Even if a judge's decision is later determined by an appellate

court to be legally incorrect, that by itself is not a violation of the Code of Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law or any purpose other than the faithful discharge of judicial duty.

Lastly, our office is not able to provide legal advice. If you wish to determine what legal avenues are available to you, you might consider contacting an attorney or legal services provider to see if they can help you.

Very truly yours,

Amy Ladine
Administrative Specialist

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102-2660

June 15, 2020

Dear Ms. Ladine,

I received your correspondence dated June 11, 2020. Thank you for acknowledging and replying to my complaint letter.

I was a bit confused about the process you shared in your letter and have the following questions. I would appreciate any clarity you could share so I can better under the process.

In paragraph 2, your letter states:

1) "...each complaint about a judge is voted upon by the commission".

   My question: Is this before or after the investigation is completed?

2) "When a complaint states facts which could be misconduct, if the facts are true and there is not another explanation for what happened, the commission typically opens an investigation".

   My questions: (a) Shouldn't the *investigation* determine if the facts stated in the complaint are true? It appears your letter states that factual determinations are made before an investigation begins (ie "if the facts are true the commission typically opens an investigation").

   (b) While I understand there must be a screening process to determine whether an investigation should be conducted, how will you know what the exact details of my complaint are without first interviewing me? I did write a brief one paragraph statement on the form provided by your agency and requested that your agency contact me for a full and complete statement of the allegations and facts upon which my complaint is based. However, based upon my

interpretation of your letter, it does not seem like this interview will be conducted unless your agency first decides to open an investigation.

Your letter also indicates "if a complaint states facts which could be misconduct". To be clear, I did not fashion the complaint letter as one containing all of the requisite allegations and evidence required for a complaint similar to one filed in Court as it seems your letter infers. I merely provided a brief statement of some facts I believed were enough to open an investigation and thereby begin a dialogue with you. Your agency needs to contact me for an interview to that I can provide a full and complete statement of facts and other evidence supporting my preliminary allegations of misconduct. I am available by phone, zoom, skype, or other digital person to person communication to facilitate this interview. Moreover, I believe it will save your agency countless hours of time wading through the morass of thousands of pages of documentation and I can quickly provide you with each piece relevant to fully support each of the requisite elements necessary to substantiate each of my claims. The interview can also be recorded for reference and evidence.

To provide some further insight, I have worked as a criminal and civil investigator for more than fifteen years. Based upon my training and experience an investigation must come first in order to determine the facts. This investigation entails an initial interview of the involved parties and witnesses to obtain all of the information necessary before any findings or recommendations whatsoever are made.

It's highly possible I may be misunderstanding your letter and therefore your agency's process. But it seems to me your process is the reverse of what I'm describing which (1) calls for factual determinations before evidence is gathered by a full and complete investigation; and, (2) the submission of a full and complete complaint containing each claim and all of the supporting evidence by a complainant before an investigation will even begin.

Please further elaborate on your process so that I can understand exactly what it entails to not only be in full compliance with the requirements, but also to object to any processes which are incongruent with competent fact finding.

Sincerely,

Adam Bereki

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102-2660

June 26, 2020

To Whom It May Concern:

Please include the following for your investigation in the complaint I recently made.

Sincerely,

/s/ Adam Bereki

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No. 20–55181

Adam Bereki,

Plaintiff–Appellant,

v.

Karen and Gary Humphreys,

Defendants–Appellees.

NOTICE / REQUEST FOR CONSIDERATION OF ADDITIONAL AUTHORITIES

Appeal from the Judgment of the United States District Court

For the Central District of California

Case No. 8:19–CV–02050

(Consuelo Bland Marshall)

Adam Bereki
818 Spirit
Costa Mesa, California 92626
949 | 241 | 6693
abereki@gmail.com
In Propria Persona

I respectfully submit the following additional authorities and request this Court's consideration thereof in further support of my Motion For Appointment of Counsel and to Proceed In Forma Pauperis (Dkt.3) and Statement of Why This Appeal Should Go Forward (Dkt.6). These are not new authorities presenting new arguments but rather authorities in further support of the arguments already presented.

*****

These additional authorities will provide support for the following issues raised in the District Court. First, that Business and Professions Code §7031 prescribes a penalty *not* disgorgement. Second, that because §7031 is penal, both the State trial and appellate Courts were required to apply the excessive fines clause protections, but refused to resulting in a void judgment. Third, that because §7031 is a public regulatory law pursuant to the police powers of California, Appellees were required to provide evidence of an injury in fact separate and apart from the whole community. They failed to present any such evidence. As a result, they lacked standing to any relief whatsoever, depriving the Court of subject matter jurisdiction resulting in a void judgment. The legislature cannot transfer the power Constitutionally conferred to the governor to ensure the laws are faithfully executed to the People. And Fourth, that for each of the aforementioned reasons, the District Court had subject matter

jurisdiction and therefore a non-discretionary duty to hear and determine this case.

a. §7031 Imposes a penalty, not "disgorgement"

Four days ago on Jun 22, 2020, the United States Supreme Court announced its opinion in *Liu v. SEC*, 2020 U.S. Lexis 3374, a case that vacated this Court's void judgment (754 Fed. Appx. 505 (2018)) and remanded it for further proceedings consistent with the opinion. In *Liu,* just like in the instant case, the District Court imposed a penalty under the guise and label of non-punitive equitable "disgorgement". On appeal, just like the instant case, this Court upheld the trial Court's findings for "disgorgement" when in fact and law no judgment for equitable disgorgement was ever made. A Court of equity has no jurisdiction to impose a penalty. As a result, the judgment was void.

The judgment imposed in *Liu* was a penalty as opposed to non-punitive disgorgement because the District Court required the Defendants to forfeit about $27 million dollars *without* offsets for potentially legitimate business expenses such as marketing, construction costs, and lease payments. In like fashion, offsets were also denied in the instant case. Appellees received more than a years-worth of remodel construction work on their custom vacation home that was never even evidenced to have been performed by me, but instead by my licensed company which is not a statutory violation. The State trial and appellate

Courts refused to consider these benefits conferred and ordered a full forfeiture of all of the compensation Appellees paid for the work even though the work was arguably valued at the same amount the Court ordered be forfeited. Moreover, $758,000 of the $930,000 ordered to be forfeited was paid directly to my company and money I never possessed.

Despite raising the exact issues addressed by the *Liu* Court and upon which the Court found in favor of the Defendants, the California Fourth District Court of Appeal found they were entirely without merit:

> "Bereki challenges its application [disgorgement] under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit- the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. [Citations]. Full disgorgement is required; offsets and reductions for labor and materials received are not permitted." Dkt. 3, Appendix [AE]– Opinion, p.11.

Yet in another case involving "disgorgement", the same appellate Court that included the the justice who authored the opinion in the instant case held that:

("[t]he elements of an unjust enrichment claim are the receipt of a benefit and the unjust retention of the benefit at the expense of another. The mere fact that a person benefits is not of itself sufficient to require the other to make restitution therefor. There is no equitable reason for invoking restitution when the plaintiff gets the exchange that he or she expected [such as a remodel to their home]"). *Peterson v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1593 (2008).

As the Supreme Court held in *Liu:*

"Courts may not enter disgorgement awards that exceed the gains made upon any business or investment, when both the receipts and payments are taken into the account." [Citations]; see also Restatement (Third) §51, Comment *h*, at 216 (reciting the general rule that a defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement). Accordingly, courts must deduct legitimate expenses before ordering disgorgement [...]. A rule to the contrary that "make[s] no allowance for the cost and expense of conducting [a] business" would be "inconsistent with the ordinary principles and practice of courts of chancery." p.29.

In the instant case, both the State trial and appellate Courts held Business and Professions Code §7031(b) was a cause of action for "disgorgement". But this is not true. §7031(b) mentions nothing about

disgorgement or any equitable remedy whatsoever. Moreover, "disgorgement" is not a term defined anywhere in California statutory law. There is, consequently, no known cause of action named "disgorgement".

But not only is §7031 not a cause of action for disgorgement, none of the requirements for stating an equitable claim for disgorgement were evidenced at trial including an accounting for profits and offsets for benefits conferred. In fact, the trial and appellate Courts both flatly refused to consider offsets.

In exact polarity, the California Supreme Court has unambiguously held §7031 imposes a "stiff all-or-nothing **penalty**" for violating the licensing laws and *not* equitable "disgorgement". *MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc.,* 36 Cal. 4th 412, 426 (2005).

The result is that in California, a totally fictitious cause of action called "disgorgement" has been crafted by judicial fiat under the heading of Business and Professions Code §7031 that has no inherent remedial or equitable principles associated whatsoever and is being used to carefully conceal penalties that transcend centuries-old constitutional protections.

Despite the fact that countless defendants over decades have challenged §7031's penal nature, they have been met on nearly every

occasion by Courts who admit §7031 produces "harsh and unfair" penal results but then turn a blind eye to affording any Constitutional relief:

> "In [*Alatriste v. Cesar's Designs*, 183 Cal. App. 4th 656, 673] the court rejected the unlicensed contractor's argument that disgorgement was "unfair and 'serves no purpose other than punishment. As noted, the legislative committee reports show that, in enacting section 7031[, subdivision (b)], the Legislature was specifically aware that permitting reimbursement may result in harsh and unfair results to an individual contractor and could result in unjust enrichment to a homeowner, but nonetheless decided that the rule was essential to effectuate the important public policy of deterring licensing violations and ensuring that all contractors are licensed.

In other words, the Legislature and Courts know §7031 was not an equitable remedy for "disgorgement" because to receive relief in a Court of equity a Plaintiff must do equity. This cannot happen if the homeowner is unjustly enriched, which, in this instance, is simply another name for a penalty.

But the judicial abuse does not stop there. Even when the constitutionality of §7031 is directly challenged, the Courts refuse to take constitutionally mandated action, claiming themselves powerless to do anything about the unconstitutionality of the statute despite being a Court of review. ("As a judicial body, we are not permitted to second-guess

these policy choices"). *Rambeau v. Barker*, 2010 Cal. App. 4th (2010) Unpub. Lexis 5610. On its face and as applied §7031 imposes a virtually limitless penalty for violation of the licensing laws. The public policy choices of a State do not supersede State or Federal Constitutional protections.

Courts have a "solemn duty to look at the substance of things, whenever they enter upon the inquiry [of] whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution"). *Mugler v. Kansas*, 123 U.S. 623, 626 (1887). The Court of appeal refused to perform this inquiry despite my direct challenge on appeal.

The People of California and their businesses have repeatedly been threatened with or financially destroyed by this heinous abuse of power and dereliction of duty. See for e.g. the bankruptcy of Paul Bardos from a judgment in the amount of §917,043.09 for violating §7031(b). *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014). Mr. Bardos was ulimately forced into bankruptcy and lost his home despite the fact that he, like me, had met and passed all of the qualifications for a contractor's license.

"To accord a type of relief that has never been available before and especially a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a "default rule," not of flexibility but of omnipotence". *Grupo Mexicano De Dessarollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). "Even when sitting as a court in equity, we have no authority to craft a "nuclear weapon" of the law like the one advocated here". *Id.* p.333.

In his dissent in *Liu*, Justice Thomas aptly saw the writing on the wall criticizing the majority for, in effect, failing to go all the way by addressing all of the issues pertaining to the nationwide abuses surrounding "disgorgement". ("The majority's treatment of disgorgement as an equitable remedy threatens great mischief. The term disgorgement itself invites abuse because it is a word with no fixed meaning. As long as courts continue to award "disgorgement", both courts and the SEC will continue to have license to expand their own power". *Id.* pp. 37-39. No, they won't. It is a crime to violate due process. 18 USC §241-242. ("Under the constitutional guaranties no right of an individual, valuable to him pecuniarily or otherwise can be justly taken away without its being done conformably to the principles of justice which afford due process of law, unless the law constitutionally otherwise provides. Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law"). *Estate of Buchman*, 123 Cal. App. 2d 546, 559-60 (1954).

Because §7031 imposes a penalty and <u>not</u> the *non-punitive* equitable remedy of disgorgement, both the trial and appellate Courts had a mandatory, non-discretionary, ministerial duty to ensure the judgment minimally met the criteria required by the excessive fines clauses of both the California Constitution (Article I, Section 17) and the Constitution for the United States (Eight Amendment). I specifically raised this issue at trial and on appeal as well:

> "Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence- "an equitable remedy"- for performing work without a required contractor's license." Dkt. 3, Appendix [AE]– Opinion, p.8.

A few paragraphs later in the same opinion however, the appellate Court then contradicted itself admitting "[t]he disgorgement is not remedial in nature." *Id.* p.11. Disgorgement itself *is* considered remedial in nature. But when offsets are denied it is no longer disgorgement and instead purely penal.

Under the California Constitution, ("[t]he touchstone [...] inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability

to pay"). *People v. Cowan*, 47 Cal. App. 5th 32, 47 (2020). While the United States Supreme Court has not held whether wealth and income are relevant to the determination of proportionality, (*Id.* p. 46), the other factors mentioned above all bear on proportionality under the Eighth Amendment.

Both the State trial and appellate Courts refused to perform even one of these analyses despite the direct challenges to the trial Court's jurisdiction I made at both the trial and appellate level raising this precise issue. See First Amended Verified Complaint pp.97-101. (Dkt. 11 – District Court, case no. 8:19–CV–02050). ("[T]he [Excessive Fine's] Clause imposes upon this Court the duty, when the issue is properly presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. *Furman v. Georgia*, 408 U.S. 238, 258 (1972).

To reiterate, the judgment affirmed by the appellate Court for me to forfeit $930,000 is more than 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty of a fine up to $5,000[1]. ("As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood"). *Timbs v. Indiana, 586 U.S.* ____ 688 (2019) citing *BFI v. Kelco Disposal Inc.* , 492 U. S. 257, 271 (1989).

[1] Business and Professions Code §7028.

("A Court of California does not have jurisdiction to render judgment which violates California Constitution or the Constitution for the United States"). *County of Ventura v. Tillet*, 133 Cal. App. 3d 105, 110 (1982); Cal. Code of Civil Procedure §410.10;

While it is generally thought that subject matter jurisdiction applies only to the type of case (ie probate, juvenile etc.) it actually applies to *every issue* in a case and most certainly when the supreme Law of the Land withholds authority (jurisdiction) to not do a certain thing, such as impose an excessive fine. ("It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent"). *Gibbons v. Ogden*, 22 U.S. 1, 181. (1824).

Because the trial and appellate Courts refused to perform the requisite checks to ensure the judgment met State and Federal Constitutional restraints, the judgment is void for want of subject matter jurisdiction and a Bill of Attainder in violation of Article I, Section 10 because it imposes punishment without a judicial determination of rights.

b. Appellees Lacked Standing for Any Relief Whatsoever and the 'Judgment' Violates the Separation of Powers Doctrine

Because §7031 purports to create a cause of action for violation of a public regulatory law under the police powers of California – or what is more commonly known as a "public right" – Appellees were required to allege a concrete and particularized injury in fact that was actual and not hypothetical or conjectural to have standing. ("Even in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the [community]"). *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016) (Thomas, J. concurring) (internal quotations omitted). This is because California's tripartite and republican form of government constitutionally mandates that the executive shall ensure the laws are faithfully executed and does not grant the power to enforce the penal laws of the State to the People of California. §7031 is purely penal and prescribes punishment in the form of a complete forfeiture without any nexus to an injury stemming from the failure to be licensed. Justice Hurwitz, in his concurring opinion in *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (Sup. Ct. 2008) puts it best:

> "If the restitution statutes are read to require that the amount paid is invariably the measure of restitution, an untenable result would obtain -- a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but

would nonetheless also retain the work performed. It is impossible for me to view such a victim as having suffered any loss, economic or otherwise [...]" p. 30.

The police power must be exercised by the Constitutionally delegated agents of the People. ("To permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed"). *Id.* p 1553 (internal quotations omitted) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 557 (1992).

Appellees not only presented no evidence of an injury in fact, they deliberately filed a Motion for Severance[2] to sever each and every one of their causes of action that could have provided such standing. The Motion was granted by the Court allowing them to sever their first cause of action for "disgorgement" from all remaining causes. But the moment this happened Appellees were without standing and the Court without jurisdiction.

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[2] Dkt.20 Exhibit K part 1, p. 780 District Court. The District Court appears to have a made a clerical error in the numbering of the Trial Court transcript filed. The Motion For Severance is part of Exhibit K but may not be in Part 1 as labeled by the Court.

Appellees literally thought they could get a near million-dollar penal judgment in their favor by calling it "disgorgement" and trampling upon the foundational principles of law and equity that have governed this nation since its inception that make up our republican form of government. In the words of the Supreme Court of Arizona again, this abuse of power has lead to "absurd and troubling results", like a near million dollar fine for violating a simple licensing requirement. *Gilbert, supra* p.24.

While the California Constitution does not overtly have a "case or controversy" requirement like the United States Constitution, similar requirements are inherent in the separation of powers designating the three separate branches of California's government that vests each branch with certain distinct and exclusive powers. Specifically under Article V, Section 1, "The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed." The legislature has no authority to delegate this power to Appellees.

Additionally, California was admitted as a common law state into *this union* and ("[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed "to the whole community, considered as a community, in its social aggregate capacity." [Citation]. Such rights include "free

navigation of waterways, passage on public highways, and general compliance with regulatory law"). *Id.* p. 1551.

Finally, the judicial power of the United States must be capable of acting upon public rights cases such as this involving the private invocation of the police power of a State. A State cannot legislate the Constitution for the United States out of existence or prevent it from acting upon public rights cases by uprooting historical common law and standing doctrines upon which the judicial power of California and the United States are derived.

In response to this issue raised on appeal, the Court held:

> "Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor' s license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute." Dkt. 3, Appendix [AE]– Opinion, p.11.

As a result of Appellees failure to present any evidence of a concrete and particularized injury in fact separate and apart from the rest of the community while alleging violation of a public regulatory penal law, they

lacked constitutional standing[3] to any relief whatsoever. ("A lack of standing is a jurisdictional defect"). *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). See also First Amended Verified Complaint pp.73-82. (Dkt. 11 – District Court, case no. 8:19–CV–02050).

The Court therefore lacked subject matter jurisdiction and had a mandatory, non-discretionary, ministerial duty to dismiss the case. Instead, the Court went on to create the "great mischief" referred to by Justice Thomas, further resulting in a heinous miscarriage of justice that violates every single protection in the California Constitution and the Bill of Rights designed to guard against arbitrary despotic behavior by government. Each of these constitutional checks was created as a proverbial stop sign to completely withdraw power from government in each instance yet the Court blew through each and every stop sign like it didn't even exist with the appellate Court following suit.

The egregious abuses of power that took place in this case – and many others just like it – continue to cause me and others like Paul Bardos irreparable harm. By operation of statute as a result of the "judgment", I have been forbidden to work in my profession for more than three years pursuant to the permanent and indefinite suspension of my ability to act as a qualifying individual on a contractor's license. Business

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[3] *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009). Plaintiff must have standing for each type of relief sought.

and Professions Code §7071.17 requires this suspension until I either pay the fine, declare bankruptcy, or the judgment is vacated. I have also been forced into involuntary servitude to study law full time to seek redress in the hope my entire qualifying estate would not be destroyed by bankruptcy and taken by theft under color of law as is being attempted here.

c. Summary

In summation, the US Supreme Court's holdings in *Liu,* and the other cases mentioned herein, unequivocally demonstrate the judgment for "disgorgement" against me as upheld by the Fourth District Court of Appeal in case number G055075 is void because it is not "disgorgement" but instead a penal forfeiture. As a result, upon filing a complaint in the Federal District Court, the Court not only had a duty to ensure I was given a full and fair hearing at trial and on appeal –which clearly did not happen – but also to vacate the void judgement. California Penal Code section §1382 requires that the: "[c]ourt shall order the action to be dismissed... when a person has been held to answer for a public offense and an information is not filed against that person within 15 days". No information was clearly ever filed in the name of the People of California. See also Penal Code §949.

Because the actions taken in the instant case evidence California's anti-constitutional 'public policy' for handling §7031 cases, the People of California have nowhere else to turn but Federal Court to seek redress

for deprivations of rights secured by the California Constitution or the Constitution for the United States. For this reason alone, District Courts have authority to entertain independent actions in equity to vacate void judgments otherwise ("[a] Plaintiff [would be deprived] of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, [as required by] due process"). *Simes v. Huckabee*, 354 F.3d 823, 828 (8th Cir., 2004) citing *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir., 1983).

This Court has also held District Courts can entertain independent actions to vacate void judgments when such claims are also authorized by State law[4]. California law supports such actions. See *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998); Cal. Code of Civil Proc. §1916.

The United States Supreme Court has also made it repeatedly clear District Courts can entertain independent actions that attack State Court judgments as void: *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post Rooker); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre Rooker); *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604,

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[4] *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 993-994 (9th Cir. 2002); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122-3 (1915); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 189 (1920); *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995).

608–9 (1990); *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

Finally, for more than a century the United States Supreme Court has made it clear that judgments rendered in violation of due process are void and not entitled to full faith and credit elsewhere. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

Despite all of the aforementioned evidence demonstrating the State Court judgment is void, that I was never given a full and fair opportunity to litigate at trial or on appeal, that there has been no judicial determination of my rights, and that Federal Courts have subject matter jurisdiction to hear and determine cases like this, the District Court not only denied my relief with prejudice, but then falsely represented to this Court that my appeal was "frivolous" and taken on "bad faith" and then denied my motion to proceed in forma pauperis.

As a former police officer, I was shocked and deeply saddened to see the atrocity committed upon George Floyd by members of law enforcement whose fundamental duty is to protect and serve the people of their communities. While I am not literally being suffocated, the cries for help I have made to every applicable Court in the nation to stop the egregious abuse of force being perpetrated here echoes George's cries with resounding harmony. It is a heinous crime for a judicial officer to violate due process.

I request this Court vacate the State Court's void judgment as well as the void judgment of the District Court and remand it as quickly as practically possible with instructions to restore my in forma pauperis status and allow me to amend the complaint so that the case may proceed and I am able to obtain redress for the injuries resulting from the abominable miscarriages of justice perpetrated in this case.

Sincerely,

/s/ Adam Bereki
In Propria Persona
June 26, 2020

PROOF OF SERVICE

I hereby certify that I served a complete copy of the Notice dated June 26, 2020 upon the following parties on June 26, 2020:

Via email to:

wbissell@wgb-law.com
William Bissell
Attorney for Defendants
Karen and Gary Humphreys
14 Corporate Plaza Ste. 120
Newport Beach, CA 92660

Via First Class Mail to:

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013–1230

/s/ Adam Bereki 06/26/20

R: 6/27/20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

June 24, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

Thank you for your correspondence dated June 19, 2020. This matter is still under consideration. We will be in touch with you after the commission has reached a decision regarding your complaint.

Very truly yours,

Anjuli Fiedler

Anjuli Fiedler
Staff Counsel

AF:aap/L062420Bereki

Confidential under California Constitution,
Article VI, Section 18, and Commission Rule 102

f: 7/13/20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

July 9, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

At its July 2020 meeting, the Commission on Judicial Performance voted to close your complaint dated June 8, 2020.

Your complaint concerns legal rulings made by the judges. This commission is not a court and does not have the authority to reverse judicial decisions. Even if a judge's decision is later determined to be legally incorrect by an appellate court, that by itself is not a violation of the Code of Judicial Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. The information you have provided is not sufficient to establish any of those factors.

If you wish to provide additional information regarding your complaint, it will be considered. You should provide specific information that fully describes what the judges said or did that you believe was misconduct. You may wish to consult the "Filing a Complaint" and "FAQ's" tabs on the commission's website (http://cjp.ca.gov) for further information about what a complaint should contain.

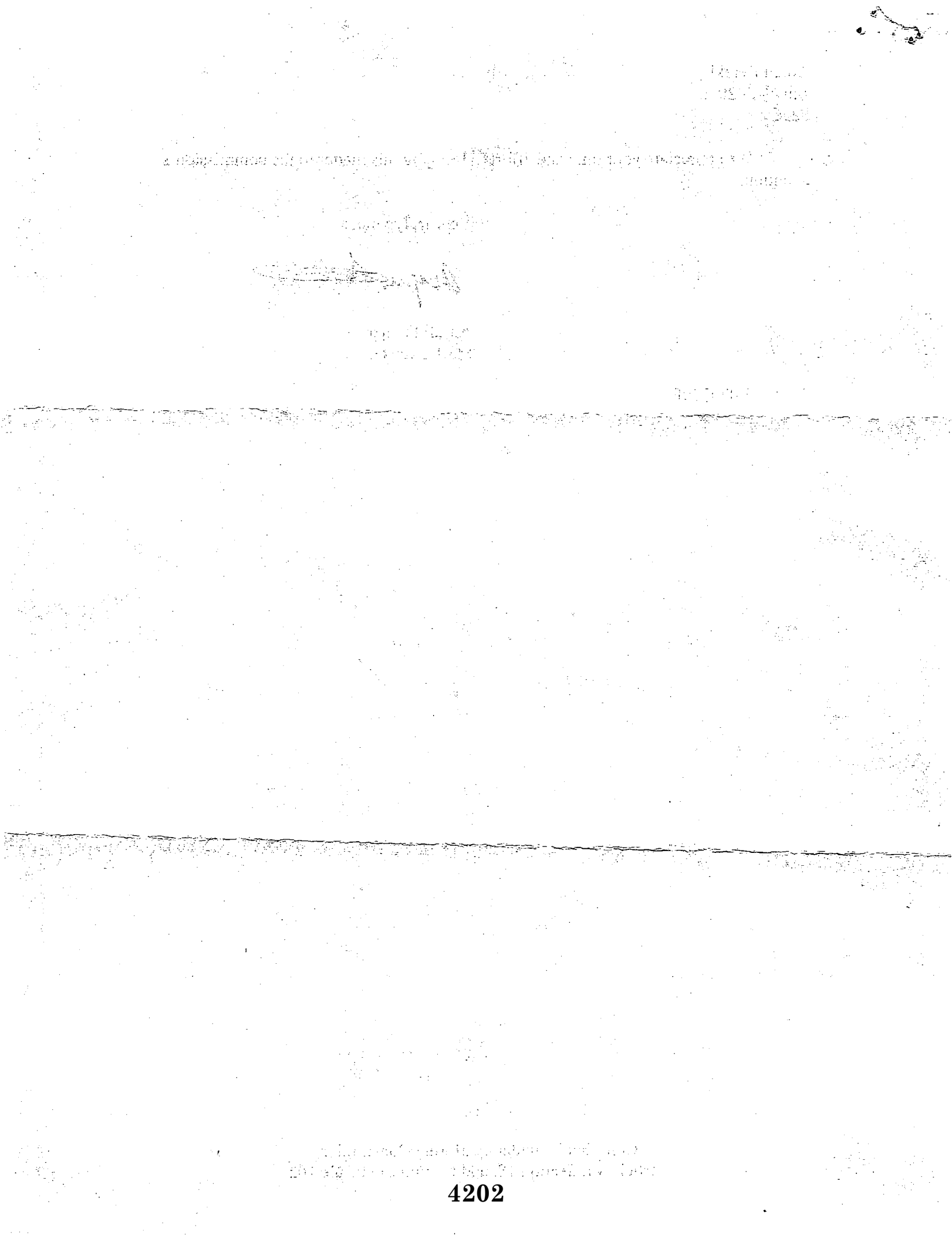
With respect to the legal proceedings that gave rise to your complaint, you may wish to consult an attorney or legal services provider to see if they can help you. This office cannot provide individuals with legal assistance.

We appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

Anjuli Fiedler
Staff Counsel

AF:aap/L070920Bereki



Gmail Adam Bereki <abereki@gmail.com>

Public Official Corruption

1 message

Adam <abereki@gmail.com> Wed, Jun 3, 2020 at 9:50 AM
To: mack.jenkins@usdoj.gov

Hi Mack,

My name is Adam Bereki. I'm a retired police officer from Southern california. I was given your name and email contact by Scott Garringer. I am having serious trouble with reporting criminal corruption by public officials. It seems that finding someone who will take accountability and immediate enforcement/ remedial action is also a large part of the corruption. Ironically, the recent situation involving George Floyd literally being choked out by public officials who refused to listen bears astonishing resemblance here.

My complaint primarily involves judges of California's Court system to the point where the corruption in these instances is so rampant, there is not even a Court in California where the People can make a claim and have their rights recognized while their property is being stolen under color of law. I realize this may sound a bit unbelievable but it is nevertheless the situation. I have reached out to local law enforcement to report this criminal behavior and they refuse to take a crime report. The FBI hung up on me during the first call after telling me they don't investigate criminal misconduct by public officials. I've since called back and another agent promptly took some sort of complaint but refused to give me a case number, his name, or way to track the progress of any investigation. He said he would "write it up" but couldn't assure that anything would be done– including an investigation. This is not acceptable.

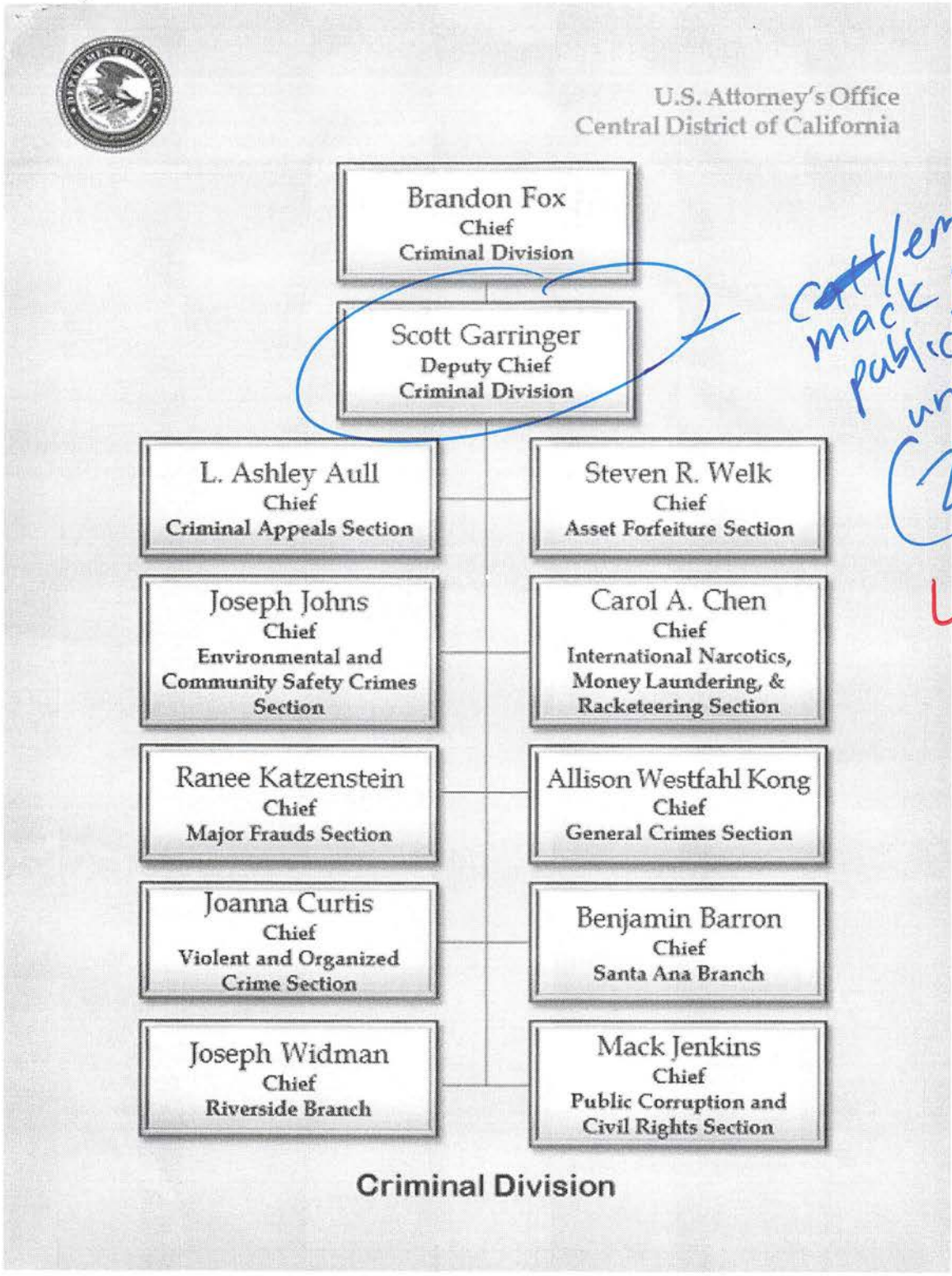
I appreciate the opportunity to speak with you about this on the phone so we can mutually exchange communication and find a path of resolution.

Please call me at your soonest convenience.

Sincerely,

Adam Bereki
949 241 6693

LM 9/11/20



call/email mack jenkins public corruption unit. (213) 894-2091 Um 9/11/01

DIVISION OVERVIEW

The Criminal Division, based in Los Angeles with branch offices in Riverside and Santa Ana, is responsible for prosecuting federal criminal cases in the Central District of California. AUSAs in the Criminal Division advise federal law enforcement agents on criminal investigations, present criminal cases to the grand jury, try criminal cases before the United States District Court, and represent the

Gmail Adam Bereki <abereki@gmail.com>

Citizen Complaint by Adam Bereki

3 messages

Adam <abereki@gmail.com> Mon, Jul 20, 2020 at 12:17 PM
To: "Plotnik, Elizabeth" <EPlotnik@santa-ana.org>, RRodriguez@santa-ana.org

Elizabeth,

Good afternoon. Please forward the attached complaint to Chief Valentin and any other necessary personnel. I have already copied Commander Rodriguez. I have also included a copy of several of the important cases I referenced. I have not yet received the Public Record Act request for a copy of the phone call between Sgt. Hernandez and I, but it should be preserved as evidence and included as Exhibit [C] with this complaint.

Thank you for your help.

Sincerely,

Adam Bereki

Exhibit A3 0_PHN3_2020_02_07_13_33_21_by_Start...	DIGITAL
Exhibit A1 Bereki PRA Response .pdf	
Exhibit A2 Records_retention_schedule_2006-045.pdf	NOT PRINTED
Exhibit A4.wav	DIGITAL
Exhibit A5 1_WC_2020_02_07_13_33_53_by_Start_Ti...	DIGITAL

4 attachments

Liu v. SEC, 2020 U.S. LEXIS 3374.pdf
624K

Exhibit B2 People v. Cowan, 47 Cal. App. 5th 32.pdf
968K

NOT PRINTED

Exhibit B1 Rodriguez Reponse to Reequest For Records 060520.pdf
1730K

Citizen Complaint to SAPD by Adam Bereki 0702020.pdf
4919K

Plotnik, Elizabeth <EPlotnik@santa-ana.org> Mon, Jul 20, 2020 at 12:27 PM
To: Adam <abereki@gmail.com>, "Rodriguez, Roberto" <RRodriguez@santa-ana.org>

Good Afternoon Mr. Bereki,

This email is to confirm that I have received your email below and will forward accordingly. Thank you Sir.

Respectfully,

ELIZABETH PLOTNIK

EXECUTIVE ASSISTANT TO CHIEF VALENTIN

Office of the Chief of Police | Santa Ana Police Department

Eplotnik@santa-ana.org | (714) 245-8003

###

[Quoted text hidden]

Adam <abereki@gmail.com> Mon, Jul 20, 2020 at 12:27 PM
To: "Plotnik, Elizabeth" <EPlotnik@santa-ana.org>

Thank you. I hope you're having a nice day. I appreciate your hard work.
[Quoted text hidden]

CITIZEN COMPLAINT FORM

NAME Adam Alan Bereki

HOME ADDRESS 818 Spirit COSTA MESA, CA 92626

WORK ADDRESS

HOME PHONE

WORK PHONE

CELL PHONE 949.241.6693

EMAIL abereki@gmail.com

DATE OF BIRTH 06/18/79

INVOLVED EMPLOYEE(S) NAME Gil Hernandez ID#

NAME Abel Alcantar ID#

DESCRIPTION IF NAME IS UNKNOWN

LOCATION OF OCCURRENCE VIA PHONE CALLS TO/FROM SAPD

DATE OF OCCURRENCE 5/20/20 — PRESENT TIME

DESCRIPTION OF EVENT (USE ADDITIONAL PAGES AS NECESSARY) SEE ATTACHED

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings related to the complaints must be retained by this agency for at least five years.

I have read and understand the above statement, and have presented true and accurate facts.

YOUR SIGNATURE

DATE 7/14/20

OFFICE USE ONLY

SAPD EMPLOYEE RECEIVING COMPLAINT

DATE TIME COPY OF COMPLAINT GIVEN TO COMPLAINANT: YES NO

This is a complaint against Sergeant Abel Alcantar and Sergeant Gil Hernandez for failure to: (1) perform their sworn duty as a law enforcement officer to support and defend the Constitution of the United States and the Constitution of California[1]; (2) perform their duty as required by the law enforcement code of ethics as adopted by Santa Ana Police Department, ("SAPD"), policy 100.3[2];

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[1] See SAPD policy 100.5: "All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions; and policy 102.3: All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102). The oath shall be as follows:

> "I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

[2] "Sworn members of this department will conduct themselves in accordance with the Law Enforcement Code of Ethics and all members will carry out their official duties in a manner that compliments the department's mission, vision and values statements."

> *As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice...*
>
> *I will be exemplary in obeying the law and the regulations of my department...*
>
> *I will enforce the law courteously and appropriately without fear or favor...*

and, (3) perform their duty as prescribed by SAPD policies 322.2[3] and 322.2.1[4].

The failure of Alcantar and Hernandez to perform these aforementioned duties involves my attempt with each of them, on separate occasions, to make a complaint and investigation into the criminal activities of public officials that are being perpetrated against me. These officials include 'judges' of the California Superior Court[5], 'justices' of the Fourth District Court of Appeal[6] and California Supreme Court, 'Governor' Gavin Newsom, 'Assemblywoman' Cottie Petrie-Norris, members of the State Bar Association[7], and others not mentioned or known. These officials are acting in concert without lawful authority to deprive me of my personal property protected by the California Constitution and the Constitution for the United States. These property includes my rights such as the inalienable right to my time and labor, gainful employment in my trade/profession, to judicial proceedings according to the course of the common law, to not be punished without a judicial hearing, and all of the rights and protections associated with due and judicial process.

The criminal and heinous disregard of these rights by the aforementioned officials pretending to act in a lawful capacity has resulted in a near million-dollar fine, the destruction of my right to earn a living in my trade/profession, subjection to involuntary servitude to study law to defend my rights and property, and essentially total financial destruction as the fine imposed is more than **46 times my qualifying net worth.**

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[3] "Written reports are required in all of the following situations on the appropriate department approved form unless otherwise approved by a supervisor."

[4] (As relevantly excerpted) "When a member responds to a call for service, or as a result of self-initiated activity becomes aware of any activity where a crime has occurred, the member shall document the incident regardless of whether a victim desires prosecution."

[5] David R. Chaffee, James J. Di Cesare

[6] Kathleen E. O'Leary, Thomas Goethals, Richard M. Aronson

[7] William G. Bissell

This is not law. This is an arbitrary and capricious use of force in reckless and wanton disregard of the fundamental law of our State and Nation primarily by judges who not only have a duty to know the law but have more than an estimated two centuries in combined experience.

As a result of this unlawful behavior I have suffered severe physical, psychological, emotional, financial, and social damages. Because my property has been taken by force without my consent by those entrusted with its care and protection, I fear my own safety and the safety of my family who have also been directly affected. Despite making complaints to the legislative, executive, and judicial branches of California's government, not one public official has come forward to take immediate and mandatory remedial action.

Furthermore, this is not an isolated incident. It is a pattern and practice these and other officials employed by the State of California have been perpetrating for decades. See for e.g. the similar case involving Paul Bardos, a man who was forced into bankruptcy for also allegedly not having a contractor's license. Bardos was fined §917,043.09 and ultimately lost his home in bankruptcy as he was unable to pay the fine. Like me, Bardos had taken the State's licensing exam and was determined qualified by the Contractor State Licensing Board to act as a qualifying individual for a contractor's license. *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014); Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr, No. 10-41455-DS. Another case was perpetrated by none other than the Judicial Council of California whereby the Council attempted to steal 22.7 million dollars from the company it hired to maintain California's Court buildings. *Judicial Council of California v. Jacobs Facilities, Inc.*, 239 Cal. App. 4th 882 (2015).

This is a very serious matter not only to me and my family, but many other People of California who have been victimized by this statewide corruption that permeates every branch of our government. The fact that I have reached out to the Santa Ana Police Department on behalf of myself and others and repeatedly been gaslighted by Alcantar and Hernandez in total denial that this behavior is criminal is reprehensible.

The United States Supreme Court seems to have no problem recognizing this issue:

> *"To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law [...]." Loan Ass'n v. Topeka,* 87 U.S. 665, 664 (1874).

These crimes principally occurred at the Superior Court of California, Central Justice Center (700 W. Civic Center Drive, Santa Ana) and the California 4th District Court of Appeal (601 W Santa Ana Blvd, Santa Ana) both of which are clearly within the jurisdiction of officers of the Santa Ana Police Department.

As part of the executive branch under Article V, Section 1 of the California Constitution, a police officer's duty includes "see[ing] that the law is faithfully executed". This is clearly reflected in the aforementioned oaths of office of every police officer, the policies and procedures of the Santa Ana Police Department and its adoption of the Law Enforcement Code of Ethics. It is imperative that this and the other relevant duties be followed because in our tripartite Republican form of government the executive is a check and balance to the usurpation of power by either or both of the other two branches which is in fact happening here.

> *("Basic to the constitutional structure established by the Framers was their recognition that [t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. The Federalist No. 47, p. 300 (H. Lodge ed. 1888) (J. Madison). To ensure against such tyranny, the Framers provided that the Federal Government would consist of three distinct Branches, each to exercise one of the governmental powers recognized by the Framers as inherently distinct. The Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." Northern*

Pipeline v. Marathon Pipeline, 458 U.S. 50, 57-8 (1982) (internal quotations omitted).

According to the California Constitution, California's government was set up in near mirrorlike tripartite fashion to that of the Constitution for the United States.

A republican form of government clearly cannot function and ceases to be a lawful Constitutional government when all three branches unite through dereliction of duty to create a monarchical innovation resulting in tyranny.

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On February 7, 2020, at about 1420 hours, I called the Santa Ana Police Department and asked to speak to the Watch Commander. I was transferred to an unknown extension and spoke with Sgt. Alcantar who answered the phone. I explained to Alcantar that I wanted to make a crime report against judges who, without authority, had issued a judgment under color of law to take my property without conforming to Constitutionally prescribed due/judicial process. I further explained that I had been unlawfully fined nearly one million dollars in direct violation of State and National Constitutional protections and that I believed this taking of my property without lawful authority was, at the very least, theft under the California penal code. Sgt. Alcantar didn't believe this behavior was a crime and refused to take a crime report.

On May 20, 2020, I filed a Public Records Act request to obtain the Santa Ana Police Department's policies and procedures for taking a crime report as well as a copy of the audio tape between Sgt. Alcanter and I. See Exhibit [A]. These records were emailed me to on June 4, 2020 by Elizabeth Plotnik, care of Commander Rodriguez.

In response to Plotnik's email, I sent a letter to Commander Rodriguez dated June 5, 2020, (Exhibit [B]) asking for certified copies of both he and Sgt. Alcantar's oaths of office as well as an invitation to continue the dialog with him about the criminal complaint I had attempted to file with

Sgt. Alcantar. In the response I provided more details about the situation along with the relevant Constitutional law on the subject.

I never received a response from Commander Rodriguez.

A month later on July 13, 2020 at 1104 hrs., I sent an email to Plotnik using the same email chain from the Public Records Act request. The email stated:

> "Hi Elizabeth,
>
> Would it be possible to set up a meeting - either virtually or in person - with Chief Valentin to discuss this matter? I expect it would take about twenty minutes of his time.
>
> Sincerely,
>
> Adam Bereki
> 949.241.6693"

That same day at 1208 hrs. I received a call from Sgt. Hernandez, apparently on behalf of Chief Valentin. I asked Hernandez if he had read the letter I sent to Commander Rodriguez in reply to the Public Records request. He said that he read it. I again iterated that I wished to make a criminal complaint and that I had reached out to schedule a meeting with the Chief based upon the fact that Commander Rodriguez had not replied to my letter and Sgt. Alcantar had refused to take a crime report.

Over the course of the fifty-three minutes Hernandez and I spent speaking with one another, he repeatedly insisted that the behavior I was describing by California judges to take my property without lawful authority was not a crime. I provided a couple of examples to Hernandez as talking points to further understand the factual foundation and legal basis of his conclusions that no crime had been committed. One such example was to suppose he and his wife were in court for divorce proceedings and that pursuant to statutory law, the judge was *only* authorized to order him to pay one thousand dollars to his wife. But

instead, the judge ordered him to pay one million dollars. I added that because the judge had no statutory or constitutional authority to make this order, that he was *not* acting in an official capacity and that as a result the order was ultra vires and void for want of subject matter jurisdiction. ("It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent"). *Gibbons v. Ogden*, 22 U.S. 1, 181. (1824). ("A Court of California does not have jurisdiction to render judgment which violates the California Constitution or the Constitution for the United States"). *County of Ventura v. Tillet*, 133 Cal. App. 3d 105, 110 (1982); Cal. Code of Civil Procedure §410.10.

I then asked Hernandez to share with me how this unlawful act of the judge in the example made without any statutory or constitutional authority was not the crime a theft (the taking property without lawful authority or consent). He could not provide an answer except to say that the judicial process was the means by which we in society had agreed to adjudicate our disputes and that when a judge made an error the proper process was to appeal. He made the point in a completely different situation that if the judge in his private capacity had confronted him on the street and taken something from him that would be theft and he would, in that instance, take a report.

I then proposed that in the same divorce scenario he (Herenandez) made an appeal and that all three of the appellate justices had found in favor of the trial Court's judgment, ordering him to pay a million dollars. I asked Hernandez what would happen then when the appellate Court also refused to follow the law? I don't recall he ever gave a direct answer.

At some point during our conversation the subject of the divorce example was changed and Hernandez went back to the situation involving my case and told me it was "over" and that I needed to accept the judgment and move on. He also told me that he believed the problem wasn't in the ruling of these four judges but with me and my interpretation of the law.

I responded by sharing that the unlawful ruling by the judges wasn't just my interpretation of the law, but that of our State and National Constitutions. I added that a very recent case involving a very similar

legal action had been vacated (determined void) by the US Supreme Court and remanded (sent back) to the Ninth Circuit Court of Appeal which was in error. That case is *Liu v. SEC*, 207 L. Ed. 2d 401 (2020).

I explained to Hernandez that the *Liu* case involved an equitable principle called "disgorgement" which falls under the laws of restitution and unjust enrichment. Under these principles a person cannot profit from their own wrong.

Restitution and unjust enrichment are nothing new to police work. To illustrate what disgorgement is, I used the example of a bank robber who stole $20k. If caught, he would be ordered to make restitution to the bank or in other words, to "disgorge" the $20k he was unjustly enriched. There is nothing more complicated here than simply giving back what was unlawfully taken.

Relating this legal principle of "disgorgement" back to my situation, I shared that both the trial and appellate Courts in my case had ordered me to "disgorge" nearly one million dollars to the Plaintiffs for allegedly performing remodel construction work on their home without a license. I shared that I had done the work and provided them with a near million-dollar remodel. Despite this, the Courts refused to accept the offsets of the work I performed. The Court ordered me to provide a full refund in the amount of $848,000 while forfeiting another $82,000 that the Plaintiffs had refused to pay. This resulted in a fine in the amount of $930,000[8]. A fine is not disgorgement!
Relating this back to the bank robbery example, the robber was solely ordered to give back what he unlawfully stole. I didn't steal anything. My company built the Plaintiffs a house with the money they paid pursuant to the agreement. The truth is the 'judges' are stealing from me under color of law and the judicial power of California.

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[8] It should be noted I have added a few details pertaining to my conversation with Sgt. Hernandez, such as the exact amounts I was fined that I did not provide during our conversation. The audio tape of the conversation serves as the evidence of exactly what was said between us. I have included these details here to provide further information for this complaint and to substantiate my allegations.

I also added that the principle of disgorgement *only* applies to profits and that there was no evidence I profited anything at trial. As a result, the judgment was a $930,000 fine and not disgorgement.

According to the principles of restitution, restitution is allowed only when the payor or has not obtained the benefit bargained for. (Restatement (first) of Restitution, section 47). See also *Comet Theater Enterprises, Inc v. Cartwright*, 195 F.2d 80, 83 (9th Circuit 1980) finding ("there is no equitable reason for invoking restitution When the plaintiff gets the exchange he expected"). Here, without evidence to the contrary the plaintiff got what they bargained for.

Hernandez replied saying something to the effect that what I was explaining was over his head. I completely understand. Frankly, I was just as blindsided by this at first at trial and on appeal. It took me years of research to understand what the "Court" had done. While there may be some fancy legalese buzzwords like "disgorgement" or "unjust enrichment" involved in my explanation, Hernandez is clearly a highly intelligent and sophisticated being and these concepts are not remotely over his head or without his ability to comprehend.

Turning more definitively to the actual law on this subject, it is imperative to examine our State and National Constitutions to see what they do and don't say about the limits of judicial authority and fines:

Article 6, Section 2, of the Constitution for the United States declares:

> *"This Constitution [...] shall be the* ***supreme Law of the Land; and the Judges in every State shall be bound thereby,*** *any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."*

The Eighth Amendment to the Constitution for the United States declares:

> *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."*

The Constitution of California at Article I, Section 17 declares:

> *"Cruel or unusual punishment may not be inflicted or excessive fines imposed."*

These quotes unequivocally demonstrate that the Constitution for the United States is the highest law of our country, not whatever judges make up arbitrarily. ("Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law"). *Estate of Buchman*, 123 Cal. App. 2d 546, 559-60 (1954).

Article 6, Section 2 declares State judges shall be bound by the Constitution and that no State law can transcend it.

The excessive fines clauses of both Constitutions declare that excessive fines shall <u>not</u> be imposed. There is absolutely no judicial discretion here.

The next question then is what is an "excessive fine" under California law? A recent California case, *People v. Cowan*, 47 Cal. App. 5th 32 (2020), held:

> *"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay."*[9]

<u>*NONE*</u> of the aforementioned excessive fine considerations were made by the trial or appellate Court judges in my case. This means that the

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[9] See also *Timbs v. Indiana, 586 U.S.* ____ 688 (2019) citing *BFI v. Kelco Disposal Inc.* , 492 U. S. 257, 271 (1989) ("As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood").

judgment was made without lawful authority because it violates the excessive fines clause that judges have a sworn non–discretionary ministerial duty to follow. It is the following of this duty that separates the lawful taking of property under the judicial power of California and/or the United States from theft.

Moreover, if I have no right to my time and labor (as reflected by the judgment) it means I am a slave and have been forced into involuntary servitude in violation of the Thirteenth Amendment.

"These privileges cannot be invaded without sapping the very foundations of republican government. [...] [A]ny government which deprives its citizens of the right to engage in any lawful pursuit, subject only to reasonable restrictions, or at least subject only to such restrictions as are reasonably within the power of government to impose, -- is tyrannical and unrepublican. And if to enforce arbitrary restrictions made for the benefit of a favored few, it takes away and destroys the citizen's property without trial or condemnation, it is guilty of violating all the fundamental privileges to which I have referred, and one of the fundamental principles of free government." *Live-Stock Dealers' & Butchers' Ass'n v. Crescent City Live-Stock Landing & Slaughter-House Co.*, 15 F. Cas. 649, 652, 1870

"The purposes for which men enter into society will determine the nature and terms of the social compact, and as they are the foundation of the legislative power, they will decide what are the proper objects of it. The nature and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free republican governments that no man should be compelled to do what the laws do not require nor to refrain from acts which the laws permit. There are acts which the federal or state legislature cannot do without exceeding their authority. There are certain vital principles in our free republican governments which will determine and overrule an apparent and flagrant abuse of legislative power, as to authorize manifest injustice by positive law or to take away that security for personal liberty or private property for the protection whereof of the government was established. An act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact cannot be considered a rightful

exercise of legislative authority. The obligation of a law in governments established on express compact and on republican principles must be determined by the nature of the power on which it is founded.

A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or in other words for an act which when done was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause, or a law that takes property from A and gives it to B. It is against all reason and justice for a people to entrust a legislature with such powers, and therefore it cannot be presumed that it has done it." *Calder v Bull*, 3 US 386, 388 (1798).

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During the call with Sgt. Hernandez, I also asked if we could go over Penal Code section §484 together so he could help me understand how it did not pertain to these circumstances. He refused and continued to reiterate there was no crime.

It's equally important to note, despite these accusations, that during the call Sgt. Hernandez was courteous and respectful. I also believe he is a man of integrity. What seems to have 'gone wrong' was that Hernandez either: (1) called me with his mind made up (due to prior conversations with others about this situation); (2) made his mind up during the call without fully understanding the true nature and scope of what had transpired; or, (3) lacked the sufficient training to be able to recognize when a crime of this nature, specifically involving the dereliction of duty of public officials had been committed. I suspect this a training issue that likely caused him to form his conclusions. Whatever the case, Hernandez concluded on the call that I didn't understand the law, that four judges couldn't possibly have gotten it wrong, that there was no crime, and therefore he would not take a report. He offered no explanation to the possibility that I may, in fact and law, be correct and did want to devote anymore of his time to inquiring into the facts and law of the situation.

CITIZEN COMPLAINT FORM
CONTINUED

I also feel it's imperative to share that I do not believe either Sgt. Alcantar or Hernandez are acting with malicious intent. I believe they are both genuine people. This being said, they have both taken a sworn oath to perform the constitutional and other lawfully prescribed duties of their office. Their dereliction of duty has and continues to cause me to sustain further irreparable injury.

While the facts of the criminal complaint I attempted to file with both Alcantar and Hernandez are undeniably unique, the core principles of law upon which my complaint rests are foundational to the administration of criminal law they have decades of combined experience in.

As this complaint involves criminal activity which is ongoing and continues to cause me irreparable injury, I request your investigation be handled in the most expeditious manner.

I remain entirely open and available to cooperate with your investigation and will gladly provide any additional information you may need to substantiate the legality of my claim and therefore the validity of this complaint. Please feel free to contact me by phone or email anytime during dayshift hours.

Sincerely,

7/20/20

Adam Bereki
949.241.6693

Adam Bereki
818 Spirit
Costa Mesa, California, USA
949.241.6693
abereki@gmail.com

June 5, 2020

Commander Rodriguez
Public Information Office
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

RE: Response to Public Records Act and Other Requests for Production

Commander Rodriguez,

Thank you (and Elizabeth) for your prompt, complete, and highly professional reply to my request. I appreciate your hard work and commitment to excellent service.

I'm writing to invite further dialog with you about the reason I contacted your department in the first place– to report criminal activity afoot in your jurisdiction. Like George Floyd I am crying out for your help to stop the criminal behavior being perpetrated upon me and thus far, Sgt. Alcantar, on behalf of your agency has turned a blind eye.

I have reviewed the documents you provided including the Santa Ana Police Department's policies and procedures as well as other duties prescribed by the Law Enforcement Code of Ethics, a peace officer's oath of office, and our State and National Constitutions and have summarized them below as they pertain to this situation:

CONSTITUTIONAL AND DEPARTMENT MANDATED DUTIES

100.3 ADHERENCE TO LAW ENFORCEMENT CODE OF ETHICS & MISSION, VISION, VALUES STATEMENTS

Sworn members of this department will conduct themselves in accordance with the Law Enforcement Code of Ethics and all members will carry out

their official duties in a manner that compliments the department's mission, vision and values statements.

The Law Enforcement Code of Ethics declares in relevant parts:

*As a law enforcement officer, **my fundamental duty** is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice...*

I will be exemplary in obeying the law and the regulations of my department...

I will enforce the law courteously and appropriately without fear or favor...

I will never engage in acts of corruption...

100.5 CONSTITUTIONAL REQUIREMENTS

All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

102.3 OATH OF OFFICE

All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102). The oath shall be as follows:

"I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

REPORTING REQUIREMENTS

322.2 REQUIRED REPORTING

Written reports are required in all of the following situations on the appropriate department approved form unless otherwise approved by a supervisor.

322.2.1 CRIMINAL ACTIVITY
When a member responds to a call for service, or as a result of self-initiated activity **becomes aware of any activity where a crime has occurred, the member shall document the incident** regardless of whether a victim desires prosecution. Activity to be documented in a written report includes:

(b) All felony crimes

*****

In an alleged "civil" case, I was fined $930,000 by a "judge" of the Superior Court of California, County of Orange for allegedly contracting without a construction license. This fine is about 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty of a fine *up to* $5000. It is clearly excessive, cruel, and unusual punishment and violates both Article I, Section 17 of the California Constitution and the Eight Amendment to the Constitution for the United States.

Just like members of your agency do not have the authority (jurisdiction) to violate the California Constitution, the Constitution for the United States, or the laws enacted in pursuance thereof, neither do judges. The excessive fines clauses found in both our State and National Constitutions declare that excessive fines shall NOT be imposed. There is clearly no judicial discretion here.

Therefore, if a judge or other public official were to take my property without any authority conferred by law, that would be theft. And in the case of usurping the judicial power of California and/or the United States to take my property without compensation by means of force or fear would be robbery. My personal property as well as real property that belongs to my mother, Roseanne Bereki, has been unlawfully taken and/or is in immediate danger of being taken by means of force and fear. I have suffered irreparable financial, social, emotional, and physical damages as a result of this unlawful behavior and am reporting it to you.

I have attached a very recent California Appellate Court decision regarding the duty the California Constitution imposes upon judges to perform an inquiry when ordering a fine so that it does not violate the California Constitution's excessive fines clause and take property that is not authorized by law:

> "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay." *People v. Cowan*, 47 Cal. App. 5th 32, 32 (2020).

None of these inquiries took place, rendering the judgment against me in violation of due process and void (without authority). Furthermore, as a result of this unlawful judgment, I have been held in a state of constructive custody whereby I have been restrained from earning a living in my profession because I have been suspended by operation of law from acting as a qualifying individual on a construction license until the fine is paid or I declare bankruptcy.

While it is not my intent in this letter to go over each aspect of the case, there are a plethora of other criminal deprivations of rights that also took place that must be reported and investigated.

My case is not just some anomaly. This has indeed been going on in California for decades and there are countless other victims who have been shut down by the Legislature and Courts when speaking out against this despotic behavior.

I realize this is sensitive matter. But as far I can tell, it is within your agency's jurisdiction because the crime occurred in Santa Ana and you have a sworn duty to take the appropriate action.

To be clear, I am not looking to be schmoozed by your agency simply taking a report and promptly putting it on the records shelf to await the shredder in a decade. I demand a thorough and complete investigation be conducted. I know exactly what that looks like having served as an officer for nearly a decade.

In the event you or your agency decide to continue to refuse to take a report and complete a full and fair investigation of my criminal complaint, I ask that you provide your agency's policy(ies) and procedure(s) as well as those of the California Constitution and the Constitution for the United States and any other laws, rules, or regulations that authorize you to do so as well as a certified copy of both your and Sgt. Alcantar's Oath of Office. I also recommend you review sections 18 USC §241 and §242 of the United States Code which deal with federal crimes for deprivation of rights and conspiracy to deprive rights, carefully noting they apply to "any person" which includes judges and police officers in dereliction of their duties:

> 18 USC §241

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 USC §242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

See also 42 USC §1983, the civil claim for deprivation of rights which not only applies to individuals, but also municipalities:

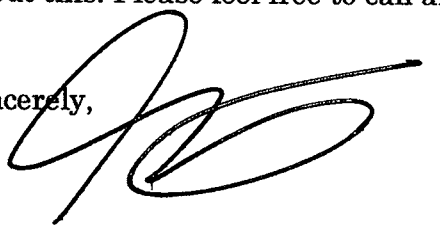
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for

redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

As I see it, your agency's failure to take a report and complete a full, fair, and impartial investigation constitutes a deprivation of my rights and a conspiracy with the other named public officials to deprive me of these rights protected by the California Constitution and the Constitution for the United States. Despite this, I believe you have the integrity to and will take remedial action now that I have brought the situation to your attention.

I am not interested in filing a complaint against Sgt. Alcantar at this time and am simply asking for you and the officers of your agency to perform the duties you have each taken an oath to. I am happy to speak with you over the phone or in person about this. Please feel free to call anytime during dayshift hours.

Sincerely,



Adam Bereki
949.241.6693

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Phil Bacerra
Nelida Mendoza
David Penaloza
Vicente Sarmiento
Jose Solorio

CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA

POLICE DEPARTMENT

60 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org/pd

June 4, 2020

Adam Bereki
abereki@gmail.com

SENT VIA EMAIL ONLY

Dear Mr. Bereki,

The City is in receipt of your request for Public Records dated May 20, 2020 wherein you requested the following:

1. The policy for the handling of criminal complaints, the policy for taking such complaints, as well as investigating them, and any requirements that criminal complaints be mandatorily taken and investigated.

   Department policies can be found on our website, using the link below. Please see Policy #322 – Report Preparation.
   https://www.santa-ana.org/pd/training-division/police-department-policies

2. Any notes or other records made pertaining to the above referenced call with Sgt. Alcantar, including a copy of the call log indicating the time, date and duration and other information digitally collected or otherwise pertaining to the call.

   No records exist.

3. A copy of the audio tape of the call – (it actually occurred in two segments as Alcantar had to call me back after briefing).

   The audio tape of the calls can be found in the folders attached. [1]

4. The first name of Sgt. Alcantar.

   Sergeant Alcantar's first name is Abel.

[1] As you will hear during your review of the audio tapes, portions of the recordings are inaudible. Please be advised the audio levels are connected with the phone system and not the user.

SANTA ANA CITY COUNCIL

Miguel A. Pulido, Mayor, mpulido@santa-ana.org
Juan Villegas, Mayor Pro Tem, Ward 5, jvillegas@santa-ana.org
Vicente Sarmiento, Ward 1, vsarmiento@santa-ana.org
David Penaloza, Ward 2, dpenaloza@santa-ana.org
Jose Solorio, Ward 3, jsolorio@santa-ana.org
Phil Bacerra, Ward 4, pbacerra@santa-ana.org
Nelida Mendoza, Ward 6, nmendoza@santa-ana.org

5. The name, address, telephone number, and email of your city's representative for serving legal process.

   Please contact the Office of the Clerk of the Council for serving legal process. The address is 20 Civic Center Plaza, Santa Ana, CA 92702, the phone number is (714) 647- 6520, and the email address CityClerk@santa-ana.org.

6. Your agency' policy for the storage or safekeeping of recordings made by people making telephonic complaints.

   Please see Policy #801 – Communications Division, on our Department website. Additionally, please see the City's Records Retention Schedule in the Resolution PDF document attached.
   https://www.santa-ana.org/pd/training-division/police-department-policies

If you have any questions, please contact me at (714) 245-8003.

Sincerely,

DAVID VALENTIN
Chief of Police

ROBERT RODRIGUEZ
Commander

ep

SANTA ANA CITY COUNCIL

Miguel A. Pulido	Juan Villegas	Vicente Sarmiento	David Penaloza	Jose Solorio	Phil Bacerra	Nelda Ma
Mayor	Mayor Pro Tem, Ward 5	Ward 1	Ward 2	Ward 3	Ward 4	Ward
mpulido@santa-ana.org	jvillegas@santa-ana.org	vsarmiento@santa-ana.org	dpenaloza@santa-ana.org	jsolorio@santa-ana.org	pbacerra@santa-ana.org	nmendoza@sa

SANTA ANA POLICE DEPARTMENT

CITIZEN'S COMPLAINT PROCEDURE AND FORM

MESSAGE FORM THE CHIEF OF POLICE

The Santa Ana Police Department is committed to creating and maintaining a safe, secure, and enjoyable environment for community members and visitors alike. We strive to provide fair, courteous, responsive, and effective service equally to all people while observing each individual's dignity and worth.

Therefore, it is the policy of the Santa Ana Police Department to accept and thoroughly investigate all complaints of alleged misconduct by any member of the department. The complaint process has two goals: To correct improper employee conduct and to protect employees from unwarranted criticism when their actions were lawful and justified.

The packet will provide you with the necessary information you will need to file a personnel complaint with the department. You can be assured that your complaint will be given our full and complete attention.

Should you have any questions about your complaint or the complaint process you are encouraged to contact the Internal Affairs Division at 714-245-8011.

David Valentin
CHIEF OF POLICE

SANTA ANA POLICE DEPARTMENT
CITIZEN'S COMPLAINT PROCEDURE AND FORM

The complaint form, which is the last page of this packet, should be used to file your complaint. You can attach as many additional pages as you need, along with any supporting evidence you might have. A copy of your complaint will either be given to you at the time you file the complaint or by mail. After you complete the complaint form, sign and mail it to the address below, or bring it directly to the Police Department.

MAIL COMPLAINT FORM TO:

SANTA ANA POLICE DEPARTMENT – M97
INTERNAL AFFAIRS DIVISION
P.O. BOX 1981
SANTA ANA, CA 92702

SUMMARY OF COMPLAINT PROCESS

After your complaint has been filed, it is assigned to be investigated. All available witnesses will be contacted, and any physical or other relevant evidence including records, reports, recordings and computer data will be collected and reviewed. You will be personally contacted by the investigating supervisor for an interview.

The completed investigation report is sent to the accused employee's manager for review and recommendation. The final disposition on the case will be made by the Chief of Police. When a complaint is sustained, the Chief will determine and administer appropriate corrective and/or disciplinary action up to, and including, termination.

State law generally requires the complaint investigation to be completed within one year of the Department becoming aware of it; however, the Chief of Police can modify this time frame depending on the complexity and sensitivity of the investigation or due to extenuating circumstances.

After the investigation has been completed and the Chief has made a final decision on the case, you will be notified of the results by mail.

If the employee receives disciplinary action as a result of your complaint, they have a right to appeal. This may include a hearing before the City Personnel Board, and you may be required to appear before the Board as a witness.

CITIZEN'S COMPLAINT PROCEDURES

HOW DO I FILE A COMPLAINT?

We would prefer to talk with you about your complaint in person; however, complaints will be accepted by mail, telephone, or via the Department's internet web page, http://www.ci.santaana.ca.us/pd/commendationorcomplaint.asp . Concerns can often be addressed to the complaining party's satisfaction without requiring a formal complaint. You can contact the on-duty Watch Commander at **714-245-8700** to initiate or inquire about filing a complaint.

WHO CAN MAKE A COMPLAINT?

Anyone can file a complaint, if they truly and honestly believe a police employee has acted improperly.

WHO INVESTIGATES A CITIZEN'S COMPLAINT?

Complaints of alleged misconduct are typically investigated by Internal Affairs Division. Their investigation is reviewed by the manager of the involved employee and the Chief of Police.

WHAT WILL HAPPEN TO THE EMPLOYEE?

That will depend on the results of the investigation. If the employee is found to be at fault, the complaint will be SUSTAINED and the appropriate corrective and/or disciplinary action will be taken. If they acted properly, they will be EXONERATED. If the facts show that the complaint is false, the complaint will be UNFOUNDED. In those cases where the department is unable to determine the validity of the complaint and cannot arrive at any other conclusions, the complaint will be NOT SUSTAINED. If the investigation concludes that the involved employee's conduct was not misconduct but rather an issue of department service procedure, the department may revise the applicable policy or procedure.

WHAT IS MY COMPLAINT INVOLVES CRIMINAL BEHAVIOR?

The District Attorney's Office may be consulted on any complaint that alleges criminal conduct on the part of any employee. The District Attorney's Office may conduct an independent criminal investigation while the internal investigation is pending.

WILL I BE TOLD OF THE RESULTS OF THE INVESTIGATION?

YES – At the conclusion of the investigation and review by the Chief of Police, you will be notified of the results by mail as required by law. Due to legal restriction, you will only be given the finding of the investigation of whether your complaint was SUSTAINED, UNFOUNDED, EXONERATED, NOT SUSTAINED, or is one of SERVICE OR PROCEDURE. The department is prohibited by law from revealing specific personnel actions taken against an employee.

CITIZEN COMPLAINT FORM

NAME _____

HOME ADDRESS _____

WORK ADDRESS _____

HOME PHONE _____ WORK PHONE _____

CELL PHONE _____ EMAIL _____

DATE OF BIRTH _____

INVOLVED EMPLOYEE(S) NAME _____ ID# _____

NAME _____ ID# _____

DESCRIPTION IF NAME IS UNKNOWN _____

LOCATION OF OCCURRENCE _____

DATE OF OCCURRENCE _____ TIME _____

DESCRIPTION OF EVENT (USE ADDITIONAL PAGES AS NECESSARY) _____

You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizens' complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports or findings related to the complaints must be retained by this agency for at least five years.

I have read and understand the above statement, and have presented true and accurate facts.

YOUR SIGNATURE _____ DATE _____

OFFICE USE ONLY

SAPD EMPLOYEE RECEIVING COMPLAINT _____

DATE _____ TIME _____ COPY OF COMPLAINT GIVEN TO COMPLAINANT: YES NO

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Phil Bacerra
Nelida Mendoza
David Penaloza
Vicente Sarmiento
Jose Solorio

CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA

CITY MANAGER'S OFFICE
20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

Police Department

July 29, 2020

Adam Alan Bereki
818 Spirit
Costa Mesa, CA 92626

Subject: Citizen's Complaint – PSU2020-0035

Mr. Bereki,

We received your complaint regarding the actions of our police employee(s). Sgt. M. Macchiaroli has been assigned to investigate your complaint. Please contact her at your earliest convenience to discuss your complaint. She can be reached at (714) 245-8017. In the near future, she will attempt to contact you in order to further her investigation.

Sincerely,

David Valentin
Chief of Police

Robert Rodriguez, Commander
Internal Affairs

SANTA ANA CITY COUNCIL

Miguel A. Pulido, Mayor, mpulido@santa-ana.org
Juan Villegas, Mayor Pro Tem, Ward 5, jvillegas@santa-ana.org
Vicente Sarmiento, Ward 1, vsarmiento@santa-ana.org
David Penaloza, Ward 2, dpenaloza@santa-ana.org
Jose Solorio, Ward 3, jsolorio@santa-ana.org
Phil Bacerra, Ward 4, pbacerra@santa-ana.org
Nelida Mendoza, Ward 6, nmendoza@santa-ana.org

CITY OF SANTA ANA
POLICE DEPARTMENT
60 CIVIC CENTER PLAZA
P.O. BOX 1981
SANTA ANA, CA 92702

DIAL EMERGENCY 911 FIRE POLICE MEDICAL

CERTIFIED MAIL™

7008 2810 0001 8042 5574

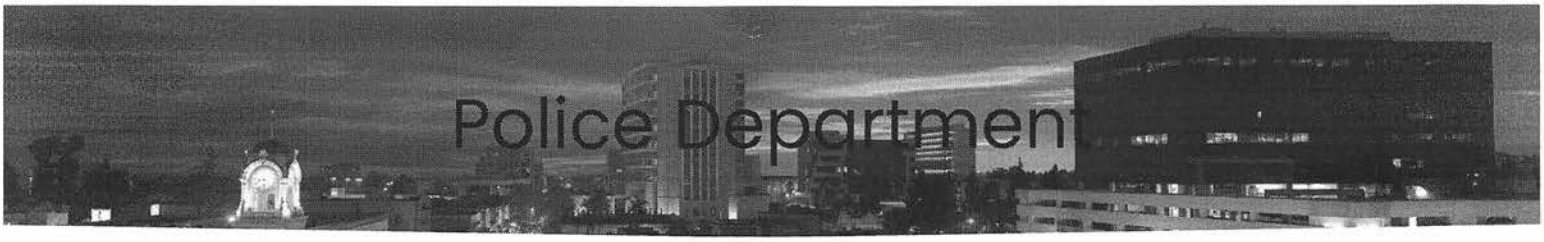
Hasler FIRST-CLASS MAIL
07/31/2020
US POSTAGE $006.90⁰
ZIP 92701
011D12603965

11-14-415
Internal Affairs

Adam Alan Bereki
818 Spirit
Costa Mesa, CA 92626

8/3

92626-308918



Office of Chief of Police

Additional Information

2019 Year End Review (/sites/default/files/PD%20Attachments/2

Meet Your Executives - David Valentin, Police Department (https://www.youtube.com/watch?v=Z8c3p4DHcpI)

2019-2024 Santa Ana PD Strategic Plan (/sites/default/files/PD%20Attachments/F 02-2019(2).pdf)

2019 Community Oriented Policing Philosophy (/sites/default/files/PD%20Attachments/F %20Policing%20Philosophy%202019.pdf)

IACP Leadership Forward Film Project 2017 (/sites/default/files/Documents/IACPFilmRelease-October2017.pdf)

Video (https://www.youtube.com/watch?v=VugjYFEU40c)

I (/node/191)nternal Affairs Division (https://www.santa-ana.org/pd/professional-standards-division)

Honor Guard (/node/146)

Budget Summary (/node/149)

Welcome to *your* Santa Ana Police Department's website! My name is Davic Valentin and I am honored to serve as the Chief of Police in leading the mer and women of the Santa Ana Police Department. Whether you live, work worship, attend school, or you're simply visiting our fine city, please consider *us your* police department.

I, along with the men and women of this organization, proudly serve you with 150 years of law enforcement history in Santa Ana (City Anniversary 1869-2019). It is our priority to serve you with the utmost professionalism, integrity and transparency. We strive to build and sustain community trust with al members of our diverse community, with the purpose of creating an all-inclusive and collaborative public safety partnership.

The Santa Ana Police Department has a long history of facilitating c community oriented policing philosophy and initiatives, which date back tc the 1970's. We served as a pioneer in this policing framework decades ago established best national practices and have been the foundation of how we business today. Focused on community based and traditional policing efforts provide for a balanced approach to enhancing safety in Santa Ana. We understand the unique characteristics that makes Santa Ana a great city to serve as a police officer or professional staf member of any rank in any of our four policing districts. We appreciate the collective needs of our diverse neighborhoods, businesses and the key role we represent and serve as the seat of Orange County.

We focus on serving all stakeholders, equally; while focusing on making Santa Ana a safer place to live, work, worship attend school, and visit.

Please feel free to navigate *your* Department's website for the latest information, as well as the relevant updates you car find on our social media platforms.

Sincerely,

DAVID VALENTIN

Chief of Police

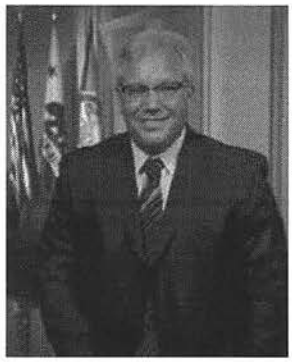
Santa Ana Police Department

###

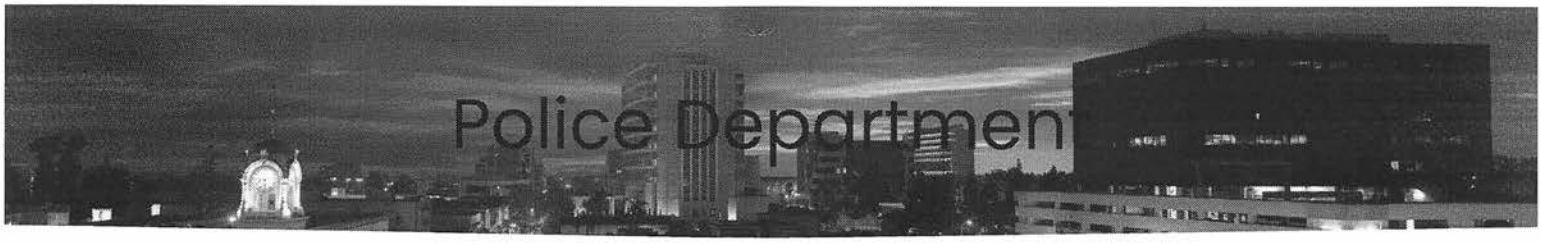
Chief Valentin's Executive Officer, Commander Robert Rodriguez (https://www.santa-ana.org/commander-robert-rodriguez), handles a variety of special projects for the Chief and also oversees the Public Information Officer, Internal Affairs Division (https://www.santa-ana.org/pd/internal-

affairs-division), and the Honor Guard. Internal Affairs is staffed by three police sergeants, a police corporal, and two part-time office assistants. This unit is responsible for investigating allegations of employee misconduct, officer-involved shootings, in-custody deaths, as well as conducting organizational audits and representing the Department in providing records during court hearings. The Honor Guard is a voluntary assignment of members who represent the Department at funerals and other public functions.

The Police Legal Advisor, Tamara Bogosian, is a Santa Ana Assistant City Attorney who is assigned full-time to provide legal advice to the Chief of Police and the entire Department. In addition, the Police Legal Advisor often represents the Department in litigation and other legal functions pertaining to police and public safety matter.



The Public Information Officer (PIO), Corporal Anthony Bertagna, is responsible for providing timely and transparent information to the media and members of the public concerning police matters. By actively utilizing social media platforms such as Facebook, Twitter, Nixle, and Instagram, the Department has increased its ability to efficiently provide the public with information concerning public safety matters.



Internal Affairs Division

Additional Information

Office of the Chief of Police (/node/133)

Open Government (https://www.santa-ana.org/pd/open-government-initiative)

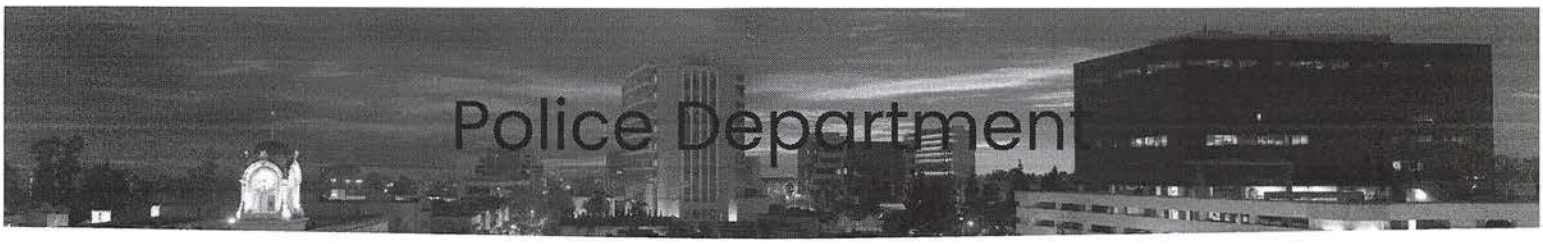
File a Commendation or Complaint (/node/162)

Officer Involved Shooting / In-Custody Death Protocol (/sites/default/files/pd/Officer-Involved-Shooting-In-Custody-Death-Protocol-2019-02-21.pdf)

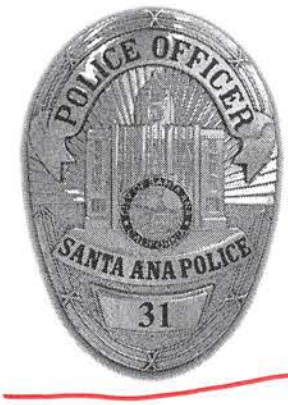
The Internal Affairs Division, under the command of Commander Robert Rodriguez (https://www.santa-ana.org/commander-robert-rodriguez), is responsible for assisting the Senior Management Team in ensuring compliance with state laws and departmental standards as well as adherence to departmental values.

These responsibilities involve the investigation of complaints of misconduct, officer-involved shootings, in custody death investigations, civil claims, and conducting organizational audits of all types.

The Internal Affairs Division helps generate and maintain the trust of the community. This trust is critical to the success of policing efforts and represents the most valuable resource, besides its people, that a police department has to fight crime and reduce fear in the community.



Police Department



The mission of the Santa Ana Police Department is to deliver public safety services to our community with the utmost professionalism and integrity. Our values act as the guideline for the discretionary use of police powers and are the basis by which employee actions are evaluated.

Additional Information

About SAPD (/node/582)

Recruitment (/node/567)

Organizational Chart (/sites/default/files/PD%20Attachments/OrgChart%20-%2007.20.pdf)

Department Bureaus (/node/198)

Administration Bureau (/node/199)

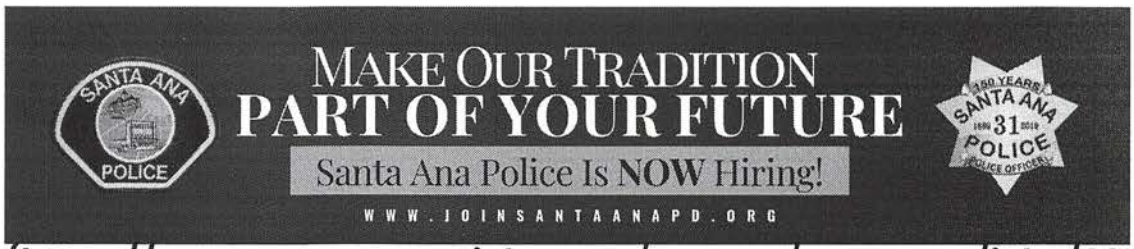
Investigations Bureau (/node/202)

Field Operations Bureau (/node/201)

Jail Bureau (/node/204)

Family Justice Center (https://www.santa-ana.org/family-justice-center)

Department Policies (/pd/police-department-policies)



(https://www.governmentjobs.com/careers/santaana/jobs/26! recruit-bilingual-and-non-bilingual?keywords=recruit&pagetype=jobOpportunitiesJobs)

Top Services -

Search

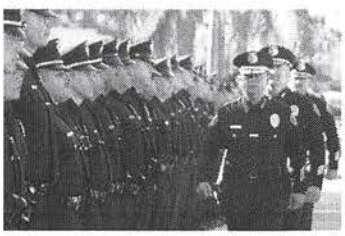
$ File a Complaint / Commendation Form (/node/82)

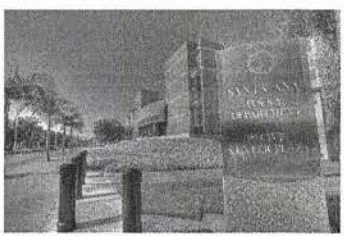
Parking Tickets (https://www.citationprocessingcenter.com/)

ePolicing Report (/node/197)

A LEADER IN COMMUNITY ORIENTED POLICING

OUR STANDARD (https://www.youtube.com/watch?v=-y9MSfaR2w4)





Anti-Illegal Fireworks Outreach (https://www.santa-ana.org/pd/anti-illegal-fireworks-outreach)

Kids Corner (/node/221)

FAQ's (/node/209)

Crime Mapping (https://www.crimemapping.com/map/agency/340)

Annual Reports (/node/158)

Forms (/node/82)

Social Media Terms of Use (/pd/social-media-terms-use)

(https://www.facebook.com/santaanapd)

(https://twitter.com/SantaAnaPD?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eser

(https://www.instagram.com/santaana_pd/)

(http://nixle.com/santa-ana-police-department/)

(https://www.youtube.com/channel/UCzivM4l35Ct9W688osllc3Q)

Police Chief Information Sharing

Welcome to your Santa Ana Police Department's website!

Read More >

Employment Opportunities

If you have the commitment to help others and your community and want to have a career that makes a difference, consider a position with the Santa Ana Police Department.

Read More >

Location/ Hours Information

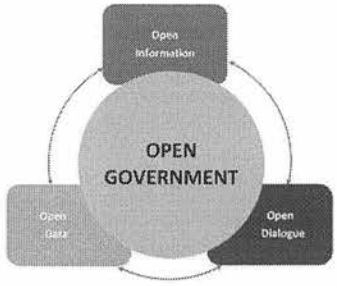
The Police Department is located at the corner of Civic Center Drive and Boyd Way. This page provides address and contact information for all city police facilities.

Read More >

Community Oriented Policing Leadership

We are proud to be a leader in community policing and forging stronger, mutually respectful relationships between our citizens and our law enforcement personnel.

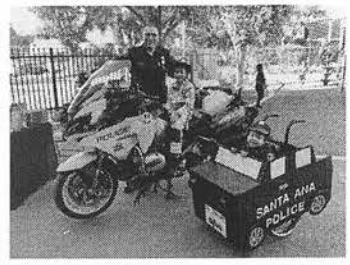
Read More >



Open Government & Transparency Initiative

We provide policing data to increase transparency and accountability to the community we proudly serve, so that we may build and strengthen community trust.

Read More >



Community Engagement 2020 Programs and Events

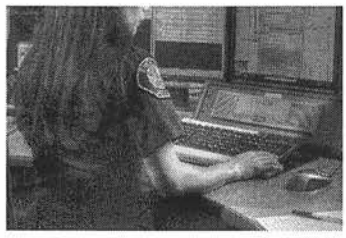
The Santa Ana Police Department encourages community participation in public safety and offers a variety of ways for members of the community to become engaged in making Santa Ana a safer place to live, work, and play.

Read More >

Parking Tickets

If you have received a citation and wish to view it's information, make a payment or submit an appeal, our Citation Processing Center is the place to start.

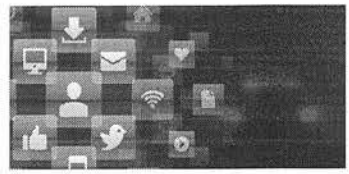
Read More >



E-Police Reporting

For non-emergency situations, you may file a police report online.

Read More >



Media Relations

Read More >

Police News

Keyword Post Date **Apply >**

(/latest-news/family-justice-center-and-other-domestic-violence-resources-centro-de-justicia-familiar)

April 30, 2020

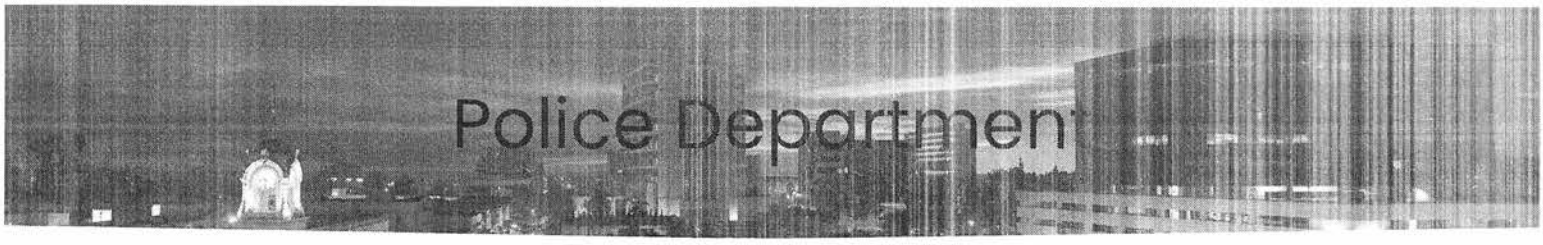
Family Justice Center and Other Domestic Violence Resources // Centro de Justicia Familiar y Otros Recursos para la Violencia Domestica (/latest-news/family-justice-center-and-other-domestic-violence-resources-centro-de-justicia-familiar)

Category: COVID-19 (/taxonomy/term/111), Police (/taxonomy/term/24)

Police Events

Apply >

No Record Found



Community Policing

Since The 1970's, The Santa Ana Police Department Has Incorporated The Community Oriented Policing (COP) Philosophy As Part Of Our Traditions And Principles To Reduce Crime

Community Oriented Policing (COP) is a policing philosophy based on several key values and beliefs:

- COP considers that the mission of the police is to provide professional, disciplined policing services designed to ensure the safety and security of our community
- COP embraces two key policing strategies: Response to Incidents and Problem Oriented Policing
- COP balances the use of these two strategies through careful, continuous analysis of activity patterns that permit a different police response to different community needs
- COP requires the professional commitment and creative involvement of every member of the police department, associated public and private agencies and members of the community
- COP recognizes that, regardless of a person's socio-economic status, race, national origin, language, age or religion, each person has a right to high quality police services
- COP also recognizes that crime and disorder are only part of the many issues that police have to deal with in a complex and dynamic city
- COP is a philosophy by which all police services are provided to the community, including all the following fundamental police functions:
  - Responding to the public's call for police assistance
  - Enforcing the law
  - Maintaining order in the community
  - Providing emergency services
  - Preventing crime
  - Investigating criminal activity
  - Arresting and interviewing offenders
  - Collecting and analyzing evidence
  - Assisting with the prosecution of offenders
  - Testifying in court
  - Incarcerating offenders and managing the jail
  - Traffic management and services
  - Organized crime intelligence gathering and investigation
  - Vice control
  - Investigating drug related crimes
  - White collar crime
  - Juvenile crime
  - Dispute resolution
  - Community education
  - Providing information and referral
  - Special event management
  - Providing police service for special community circumstances
  - Working with other law enforcement agencies at the local, state and federal levels.

2019-2024 Santa Ana Police Department Strategic Plan (/sites/default/files/PD%20Attachments/FINAL%20FINAL%20SP%202019%2007-02-2019(2).pdf)

20 Civic Center Plaza,
Santa Ana,CA 92701
(714) 647-5400

Libraries (/library)
Parks and Recreation (/parks)
Who Do I Call? (/who-do-i-call)

Living in Santa Ana (/residents/homeowners-renters)
How to pay a bill (/residents/bill-pay-city-services)
Read More (/residents/information-new-residents)

Location & Hours (/city-hall)
Departments (/departments)
City Council (/mayor-and-city-council)

Incentives (/cd/economic-development)
Business License (/finance/business-license)
Read More (/finance/starting-new-business)

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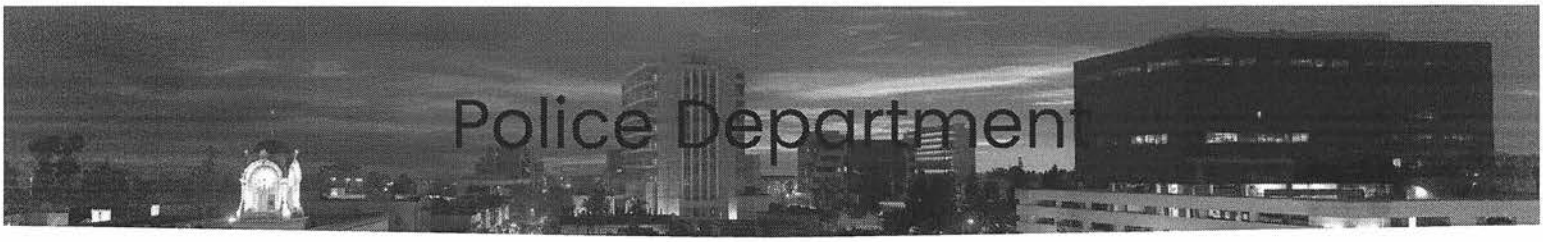


About Santa Ana Police Department

Additional Information

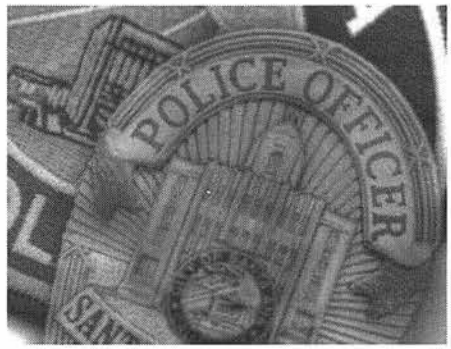
2019 Community Oriented Policing Philosophy (/sites/default/files/PD%20Attachments/FINAL%20UPDATED%20-%20Policing%20Philosophy%202019.pdf)

2019-2024 Santa Ana PD Strategic Plan (/sites/default/files/PD%20Attachments/FINAL%20FINAL%20SP%202019%2007-02-2019(2).pdf)

Community Oriented Policing Philosophy (/node/68)

Community Oriented Policing Awards (/sites/default/files/PD%20Attachments/SAPD%20COP%20Awards%20-%20rev%2008-2019.pdf)

Office of the Chief of Police (/node/133)



Mission

The Mission of the Santa Ana Police Department is to provide effective police services with integrity, respect, and compassion while fostering strong partnerships with the community we serve.

Vision

The Santa Ana Police Department is committed to enhancing relationships with the community we serve by leading with transparency and integrity. We will accomplish our vision by using traditional and innovative methods of policing and striving for excellence through training, self-discipline, and leadership.

Values

Teamwork

We are committed to ensuring our entire organization will work with integrity and transparency in addressing the needs of our community.

Excellence

We will handle every call for service, investigations, or task to the best of our abilities.

Accountability

We are responsible for our words and our actions.

Making A Difference

We will remain steadfast in our mission recognizing we stand for all that is good and stand against all that threatens the safety of the community we serve.

(714) 647-5400

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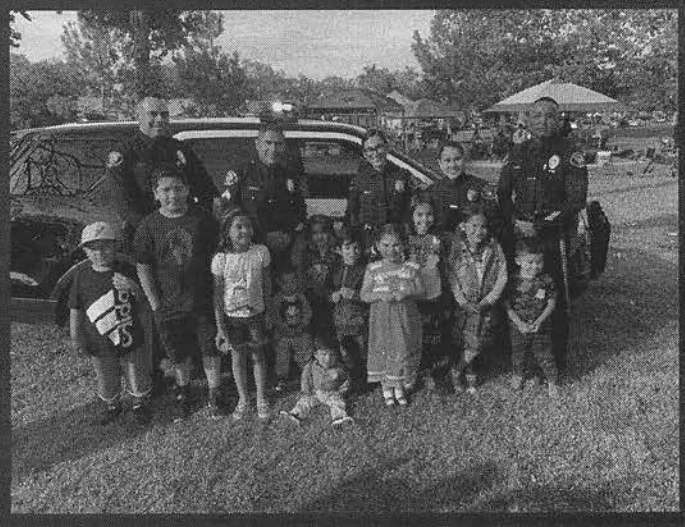
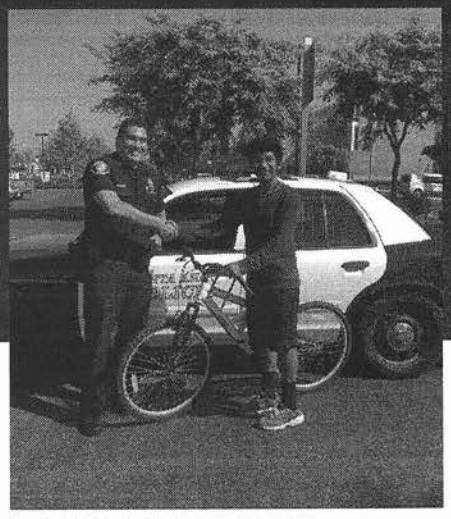
SANTA ANA POLICE DEPARTMENT

STRATEGIC PLAN

2019-2024





CHIEF DAVID VALENTIN

Teamwork

Excellence

Accountability

Making A Difference

JULY 2019

4246

9/16/20

Word cloud established in 2017 by the Office of Chief of Police David Valentin with input by Police Department personnel.

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5 Executive Summary

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8-12 Strategic Goals and Objectives

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MESSAGE FROM CHIEF VALENTIN

I am proud to share with you our **2019-2024 Five-Year Strategic Plan**. This framework is intended to complement and directly support the broader city-wide Strategic Plan. In March 2019, we published our newly revised Community Oriented Policing Philosophy, which reaffirmed the manner in which we deliver policing services, equitably to everyone in our City. This Strategic Plan process also involved revising our Department Mission, Vision and Values. Throughout 2018, our Department engaged in a systematic assessment of community and employee priorities.

Our Strategic Plan builds on the Policing Philosophy, in that it identifies what our community expects us to accomplish. Essentially, the Philosophy spells out *"how"* we will provide police services and the Strategic Plan clearly states *"what"* we will focus on as a Department.

Community-based policing is the bedrock of the manner in which we deliver police services, which successfully dates back to the mid 1970's in Santa Ana. During feedback sessions facilitated by the Orange County Human Relations Commission, we heard firsthand from you, the residents and stakeholders of our community, on how important continuing to generate and sustain community relations are to our success. We also validated that our community supports traditional policing efforts as well. Our Department prides itself in engaging in constitutionally defensible, dignified and respectful police actions. We will focus on hiring the best possible candidates to fill our sworn and professional staff ranks; reduce response times to emergency calls for service; proactively impact and prevent crime; provide exceptional 21st century training and technology to reduce liability exposure; and most critically, continue to build and sustain community trust through genuine relationship building with the community. Please take the time to review this plan as it clearly states our priorities and goals moving forward.

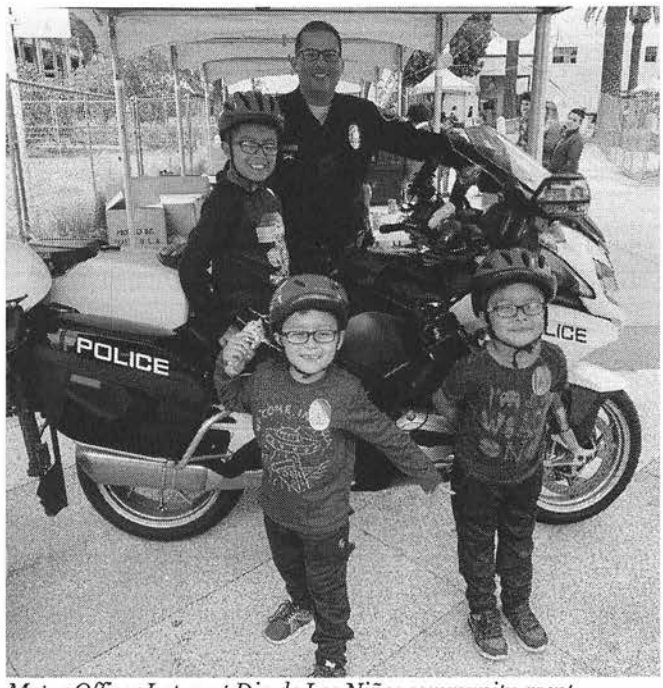
I am incredibly proud of the men and women of this Department. They are dedicated professionals committed to *Teamwork, Excellence, Accountability* and *Making a Difference* for everyone in our City. Supported by the City Council and City Manager, we will continue our unwavering focus of providing exceptional police services to everyone in Santa Ana.

Sincerely,

DAVID VALENTIN
CHIEF OF POLICE

EXECUTIVE SUMMARY

The Santa Ana Police Department 2019-2024 Strategic Plan is a statement of intent and purpose. Consistent with the mandates and directives of the City of Santa Ana 5-Year Strategic Plan, the intent of the Police Department's Strategic Plan is to create a guiding document to help build the envisioned, desired future for the community we serve and the Police Department. Its purpose is to frame the goals, priorities, and objectives, as well as to identify the issues, outcomes and efforts necessary to achieve success for the future.



Motor Officer Lopez at Dia de Los Niños community event.

STRATEGIC PLANNING PROCESS

In June 2018, the Santa Ana Police Department formed the Strategic Plan Committee. In the fall of 2018, community meetings were conducted in partnership with the Orange County Human Relations Commission to assess community policing priorities. Through these sessions, it was evident many residents were concerned over issues of safety and crime rates. Consistent feedback also indicated strong support for the Department by the community. Additionally, Department staff participated in a survey to determine organizational priorities.

TOP FOUR COMMUNITY PRIORITIES

- Impacting Gang Crime
- Addressing Homelessness and Mental Health
- Prostitution-Related Crime
- Drug Sales and Use

EMPLOYEE ORGANIZATIONAL PRIORITIES

- Recruitment and Retention
- Training
- City-Wide Crime Suppression Team
- Career Development

Tactical Dispatchers training with Crisis Negotiation Team.

MISSION STATEMENT

The mission of the Santa Ana Police Department is to provide effective police services with integrity, respect, and compassion while fostering strong partnerships with the community we serve.

VISION

The Santa Ana Police Department is committed to enhancing relationships with the community we serve by leading with transparency and integrity. We will accomplish our vision by using traditional and innovative methods of policing and striving for excellence through training, self-discipline, and leadership.

Honor Guard in Washington, DC for National Police Memorial.

Honor Guard at State Capitol, Sacramento for California Peace Officers Memorial Candlelight Vigil.

Honoring The Santa Ana Police Department Fallen Four

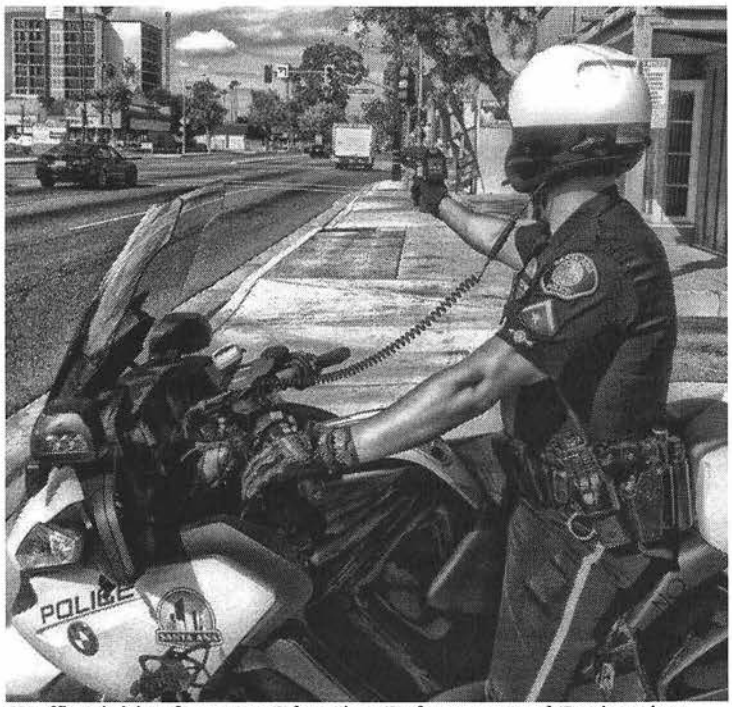
Motor Officer Edwin R. Jensen
03/03/1931

Assistant Team Leader Daniel A. Hale
11/12/1972

Officer Nelson A. Sasscer
06/04/1969

Sergeant John A. Aguilar
06/30/1998

VALUES



Traffic Division focuses on Education, Enforcement and Engineering

TEAMWORK

We are committed to ensuring our entire organization will work with integrity and transparency in addressing the needs of our community.

EXCELLENCE

We will handle every call for service, investigation, or task to the best of our abilities.

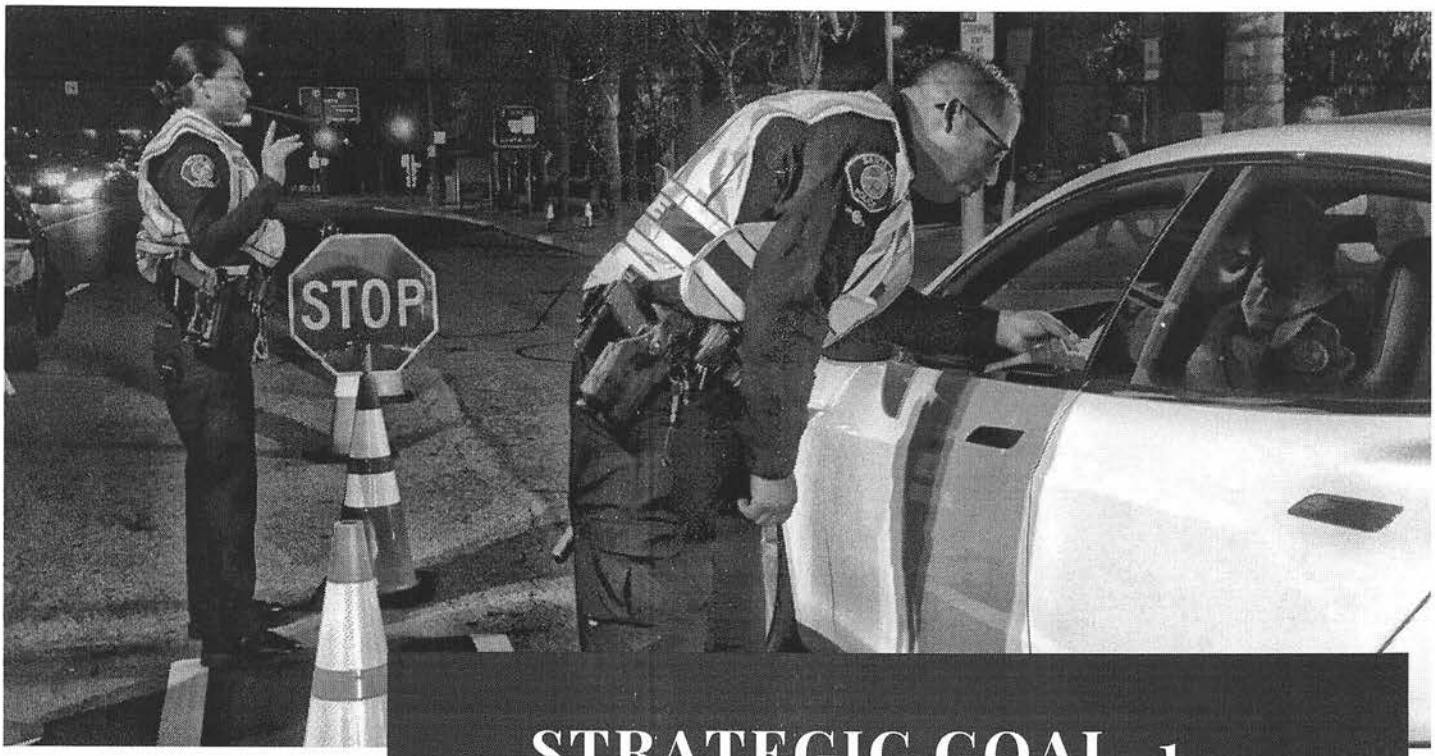
ACCOUNTABILITY

We are responsible for our words and our actions.

MAKING A DIFFERENCE

We will remain steadfast in our mission recognizing we stand for all that is good and stand against all that threatens the safety of the community we serve.

Tradition - Santa Ana PD commemorative badge celebrates the City of Santa Ana's 150th anniversary.



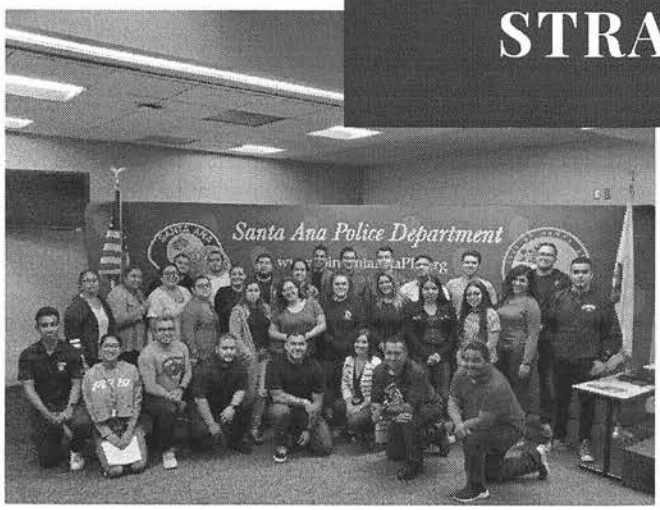
STRATEGIC GOAL 1

INCREASE THE PUBLIC'S SAFETY

- Reduce and proactively target gang crime
- Implement strategies to address high crime areas
- Implement plan for reducing response times to calls for service
- Continue to address homelessness-related crime led by a comprehensive citywide plan as directed by the City Manager
- Implement directed patrol enforcement initiatives
- Increase traffic education and enforcement
- Expand data driven crime prevention programs

Santa Ana PD K9 and Bloodhound Unit

STRATEGIC GOAL 2



INCREASE COMMUNITY ENGAGEMENT

- Continue to enhance transparency initiatives
- Expand partnerships with local organizations
- Expand partnerships with neighborhood associations by assigning district-based Police Officers and Police Service Officers
- Involve Communications Personnel in community meetings
- Explore the development of a youth academy
- Create pathways through various youth mentorship programs to motivate future generations to pursue a law enforcement career

Top - 7th Session of Santa Ana PD Citizen Academy Class - 2019

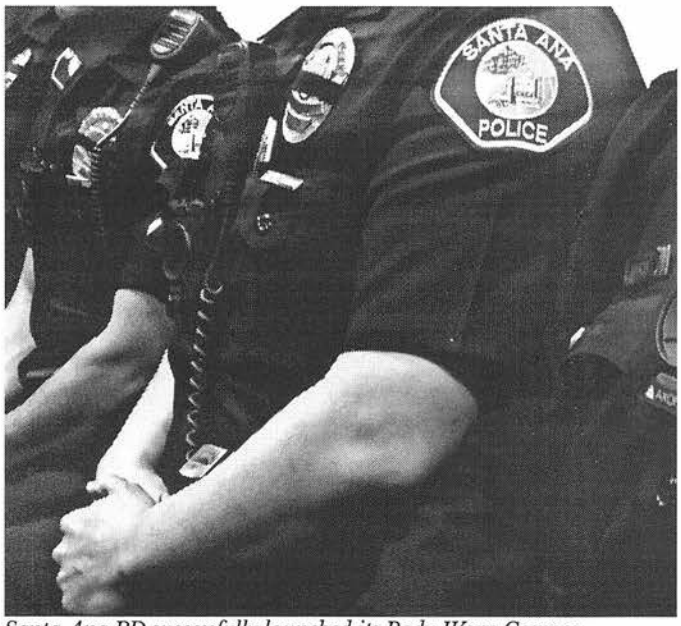
Middle - K9, Motor and PSO's at Cornerstone Resource Community Fair

Bottom - Officer Macchiaroli with future Santa Ana PD officer at "Pizza with Police" community event

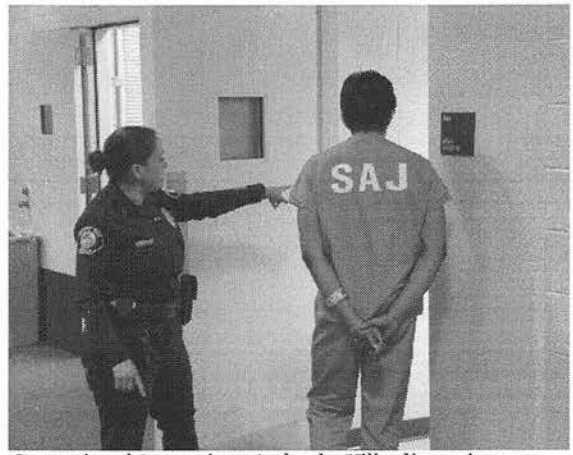
STRATEGIC GOAL 3

INCREASE OPERATIONAL EXCELLENCE AND EFFICIENCY

- Leverage technology to improve performance
- Continue to establish best practices for Body Worn Camera Program, including audit procedures
- Expand use of digital and social media platforms across all operations
- Research and update case management technologies for the Investigations Bureau
- Publicize crime data on Department website
- Continue to explore next generation 911 technologies (e.g., Text 9-1-1)
- Enhance customer service training for all Department personnel to better serve our diverse community
- Install high-tech security systems to identify and prohibit dangerous contraband from entering the Jail Facility



Santa Ana PD successfully launched its Body Worn Camera Program on September 1, 2017; establishing an industry best practice



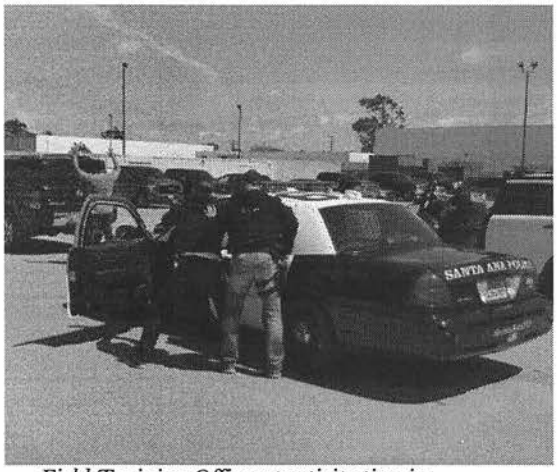
Correctional Supervisor Andrade-Villa directs inmate into our 512 bed Type 2 Direct Supervision Jail Facility

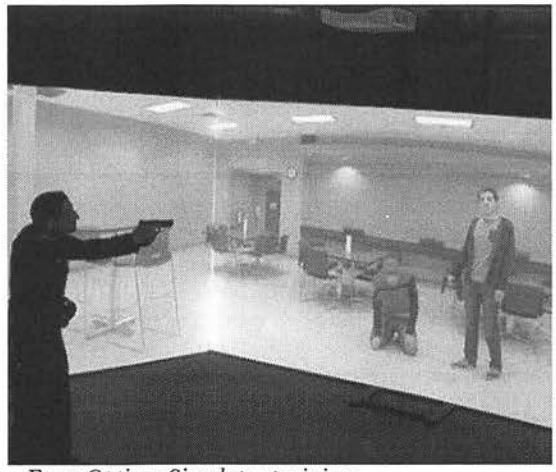
STRATEGIC GOAL 4

TRAIN, DEVELOP AND MENTOR PERSONNEL

Tactical Emergency Casualty Care (TECC) training

- Develop a formal mentoring program for new employees
- Re-establish in-house leadership training
- Identify division-specific training needs (Department Training Plan) to limit liability exposure
- Cross-training for Patrol Officers to investigative assignments
- Integrate employees training plan into the employee evaluation process to link the individual, their assignment, and their career goals
- Explore development of Sergeant Field Training Program
- Development of standardized Roll Call Training Program
- Continue to evaluate and test new equipment platforms, to serve as a law enforcement training leader


Field Training Officers participating in de-escalation training

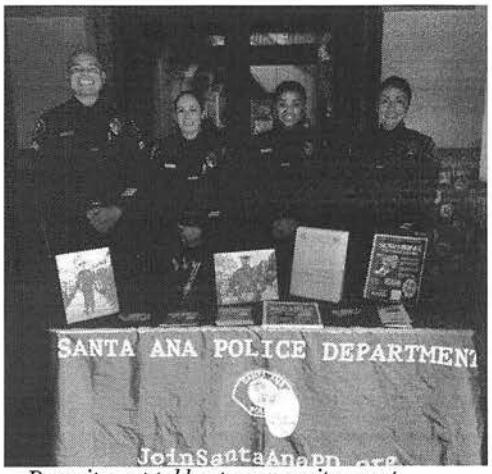

Force Options Simulator training

STRATEGIC GOAL 5

RECRUITMENT, BRANDING AND SUCCESSION PLANNING

Recruitment booth at Santa Ana PD Open House event

Officer Rojo at recruitment event in Camp Pendleton at Camp Horno



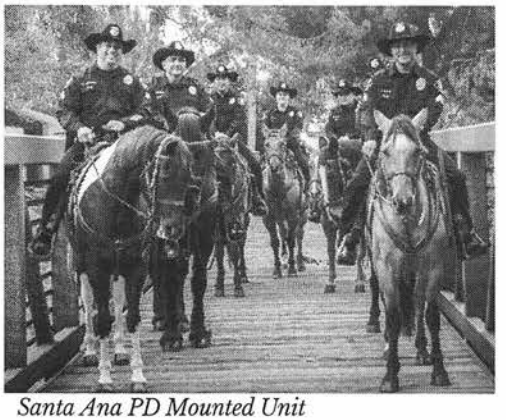
Recruitment table at community event, with sworn Officers and professional staff

- Fill all Police Officer vacancies
- Continue to fill all professional staff vacancies
- Identify effective, consistent and engaging methods to bolster the Department's social media presence for recruiting new Officers and professional staff
- Attract experienced Police Officer candidates for lateral hire
- Streamline efficiency in hiring process methodologies
- Expand the Explorer and Cadet pathway programs
- Develop and implement formal succession plan
- Brand ***www.joinsantaanapd.org***

Recruitment team at United States Army, Fort Irwin National Training Center

Fast Track Testing - physical agility test, pre-background screening and Sergeant oral interview, all in a single day

SUMMARY



Santa Ana PD Mounted Unit

The Santa Ana Police Department 5-Year Strategic Plan was developed by a team of sworn personnel and professional staff who volunteered for this important task of shaping our Department's future in direct support of serving our diverse community. The committee represented a cross-section of the Organization at all levels. As such, all Department personnel have a tremendous stake in the successful implementation of this Strategic Plan to develop a shared vision for our ideal future.

ACKNOWLEDGEMENTS

City of Santa Ana

Miguel A. Pulido **Mayor**

Juan Villegas **Mayor Pro Tem** Ward 5
Vicente Sarmiento **Councilmember** Ward 1
David Penaloza **Councilmember** Ward 2
Jose Solorio **Councilmember** Ward 3
Cecilia Iglesias **Councilmember** Ward 6

Kristine Ridge, **City Manager**

In partnership and collaboration with
Orange County Human Relations

STRATEGIC PLAN COMMITTEE

Commander Robert Rodriguez
Sergeant Sergio Enriquez
Sergeant Andy Alvarez
Sergeant Oscar Lizardi
Sergeant Joe Marty
Corporal Daniel Alcala
Corporal Sergio Caro
Detective Jerry Corona
Officer Sonia Rojo
Lead PSD Gabriela Jilek
CS Claudia Andrade-Villa
CO Elizabeth Alvare

Graphic Design: Yessenia Aspeitia
Executive Producer: Chief David Valentin

LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. *I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.*

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. *With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.*

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. *I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.*

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. *I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession -* ***LAW ENFORCEMENT.***

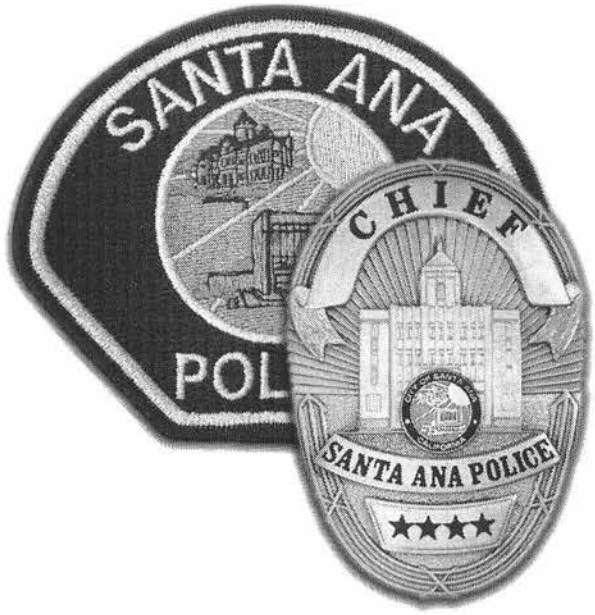
First time in over 30 years, on November 1, 2018, the Department conducted a department-wide formal inspection of all sworn members of every rank.

PUBLISHED JULY 2019

SANTA ANA POLICE DEPARTMENT

COMMUNITY ORIENTED POLICING PHILOSOPHY

March 2019



DAVID VALENTIN
CHIEF OF POLICE

09/16/20

POLICING PHILOSOPHY

At the Santa Ana Police Department, we pride ourselves on the ***service*** we provide ***to all people*** in Santa Ana. We police the city from two foundational tenets: community-based policing and traditional enforcement efforts. This combined approach has served the residents of Santa Ana and the police department well for decades. It has proven to reduce crime while building relationships and sustaining community trust.

The ***relationship*** between our community and our police department is at the ***core of community-based policing***. ***Trust*** is an essential component of our relationship with the community. We ***build and maintain trust*** by ***telling the truth***, ***being transparent***, ***sharing successes***, ***admitting mistakes***, and growing from every ***interaction with our community.*** We will continue to ***engage the community*** utilizing one-on-one, group, and town hall meetings. We will use traditional media and social media platforms to enhance our community engagement efforts. We will be ***responsive to our community's concerns*** and ***explain our decision-making process*** to them. Our communication will involve ***listening to concerns*** and ***sharing relevant information*** with our community. Our community will know the nation's finest police department serves them.

Traditional enforcement is how we perform our foundational efforts such as ***calls for service*** and ***proactive police work***. As employees of the Santa Ana Police Department, we ***understand the difference between an isolated event*** needing a police response ***and a problem needing a long-term solution***. Each requires a different approach. An incident requiring a police response will be prioritized based on several factors, including the seriousness of the incident and the threat to public safety. Whereas, a problem needing a long-term solution will involve a ***collaborative approach*** by leveraging community stakeholders, city and county (state and federal, where appropriate) resources, and members of our community. Traditional enforcement is how we enforce the law, with ***respect for the Constitution, the laws of the State of California and our Department Policies.***

Criminals prey on the community, the innocent, and all that is good. As employees of the Santa Ana Police Department, we will not allow this and we must ***protect those who cannot protect themselves***. We will ***hold criminals accountable*** for their actions and we expect the ***community to hold us responsible for our actions***. Criminals must know ***the community and their police department work together to address crime***. We will utilize city, state, and federal laws with the support of the community to hold law violators accountable for their actions. When a criminal's ill intent exploits a member of our community, we will ***enforce the law – legally, ethically, and morally***. We will not rest in our efforts because criminals never rest. We must strive to be ahead of them in every aspect.

In combination, community-based policing supported by traditional policing efforts allow us to accomplish ***our mission of providing effective police services with integrity, respect, and compassion***. We will never be without crime or criminals; nevertheless, we will not allow our community to live with the fear of crime. ***We, the members of the Santa Ana Police Department, exist for the sole purpose of serving our community; centered on servant leadership, and making it a safe place to live, work, and visit.***

MISSION

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VISION

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ACKNOWLEDGEMENTS

City of Santa Ana

Miguel A. Pulido, Mayor

Juan Villegas, Mayor Pro Tem - Ward 5
Vicente Sarmiento, Ward 1
David Peñaloza, Ward 2
Jose Solorio, Ward 3
Cecilia Iglesias, Ward 6

Policing Philosophy Committee

Deputy Chief Eric Paulson
Commander Chuck Elms
Sergeant Sergio Enriquez
Detective Sergeant Julian Rodriguez
Sergeant Roland Andrade
Detective Corporal Maria Lopez
Officer Gabriel Esparza
Lead Police Service Officer Gabriela Laufer
Lead Police Services Dispatcher Helen Hernandez
Correctional Supervisor Michelle Monreal
Senior Correctional Officer Juan Cante

★ ★ ★ ★

DAVID VALENTIN
CHIEF OF POLICE

Gmail Adam Bereki <abereki@gmail.com>

Fwd: Daily Journal Appellate Report Face Page - 06/23/20

1 message

James Bohm <jbohm@aol.com> Tue, Jun 23, 2020 at 8:38 AM
Reply-To: James Bohm <jbohm@aol.com>
To: "abereki@gmail.com" <abereki@gmail.com>

Look at the first attachment. The supreme court just came down with a case on restitution

-----Original Message-----
From: Receptionist. <Receptionist12@bohmwildish.com>
To: BW Attorneys <BWAttorneys@bohmwildish.com>; jennifer <jwilson@mvmlawyers.com>; Homa Hariri <hhariri@mvmlawyers.com>; Lynn Moodie <LMoodie@mvmlawyers.com>; Thomas E. Francis, Esq. <TFrancis@bohmwildish.com>
Cc: Judy Gonzalez <jgonzalez@bohmwildish.com>
Sent: Tue, Jun 23, 2020 8:14 am
Subject: Daily Journal Appellate Report Face Page - 06/23/20

Please see attached face page. Newspaper may be found at reception if you would like to view.

Thank you,

Cynthia Lopez | Administrative Assistant
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695 Town Center Drive, Suite 700
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BOHM WILDISH & MATSEN, LLP

2 attachments

Daily Journal Appellate Rpt. 06.23.20.pdf
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DAILY APPELLATE REPORT

TUESDAY, JUNE 23, 2020

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■ U.S. Supreme Court

ORDERS

Kansas v. Boettger

District: Kansas
Page: 6066

SECURITIES

Liu v. Securities and Exchange Commission

Disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under 15 U.S.C. Section 78u(d)(5).

District: 9th U.S. Circuit Court of Appeals
Pages: iii & 6054

■ 9th U.S. Circuit Court of Appeals

BANKRUPTCY

In re Nanette Marie Sisk

When there is no objection, bankruptcy plan need not include fixed duration because no express provision of Chapter 13 prohibits plans with estimated lengths.

District: 9th U.S. Circuit Bankruptcy Appellate Panel
Pages: iii & 6068

STATUTORY INTERPRETATION

Scott v. Arnold

'McDonough Power Equipment, Inc. v. Greenwood' which permits new trial where juror lies and hides fact during voir dire that would have permitted juror to be stricken for cause, accommodates prejudice analysis.

District: USDC Northern District of California
Pages: iv & 6077

■ California Courts of Appeal

ADMINISTRATIVE AGENCIES

Stanford Vina Ranch Irrigation Co. v. State of California

State Water Resources Control Board has authority to regulate unreasonable use of water by adopting regulations establishing minimum flow requirements protecting migration of threatened fish species during drought conditions.

District: 3DCA
Pages: iv & 6080

ANTI-SLAPP

Simmons v. Bauer Media Group USA, LLC

Anti-SLAPP statute cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law.

District: 2DCA/4
Pages: v & 6094

ARBITRATION

Olabi v. Neutron Holdings, Inc.

Motion to compel arbitration was properly denied because parties' arbitration agreement broadly excluded PAGA actions.

District: 1DCA/5
Pages: v & 6098

Continued on page ii

Adam Bereki
818 Spirit
Costa Mesa, California
949.241.6693
abereki@gmail.com

Justice Clarence Thomas
United States Supreme Court
1st St. NE
Washington, DC 20543

June 26, 2020

Justice Thomas,

Thank you for your time. I'm writing in regard to your recent dissenting opinion in *Liu v. SEC*. You were spot on with the "great mischief" surrounding "disgorgement" actions and the usurpation of power associated therewith. In 2019, I filed a Petition for Writ of Certiorari[1] involving this very issue. Unfortunately, the Court declined to hear it. Nevertheless, attached, please find my most recent filing in the 9th Circuit regarding California's abuse of "disgorgement" for nearly a hundred years. Untold numbers of the People of California have been financially destroyed by this abuse and there is no California Court that will recognize rights secured by either the State or Federal Constitution in at least these types of cases. Moreover, when I tried to obtain relief in the Federal District Court in the Central District of California, the Court dismissed my case with prejudice under Rooker-Feldman and collateral estoppel.

While I've never heard of it happening before, I ask the Courts permission to file a late amicus brief in *Liu* and for the Court to reconsider its opinion fully addressing the rampant abuse of "disgorgement" you alluded to. Or in the alternative, to grant Certiorari in my case. As you'll see in the attached filing and my Petition, I have the perfect case that details exactly how disgorgement is being abused and the clarity the Court needs to make to prevent these abuses that are happening nationwide.

In the event the 9th Circuit fails to perform its duty to vacate the judgment, I'll look forward to meeting you in the forthcoming original jurisdiction case as there will effectively be no other Court in the nation upon which to obtain redress.

---

[1] Bereki v. Humphreys, 18-1416

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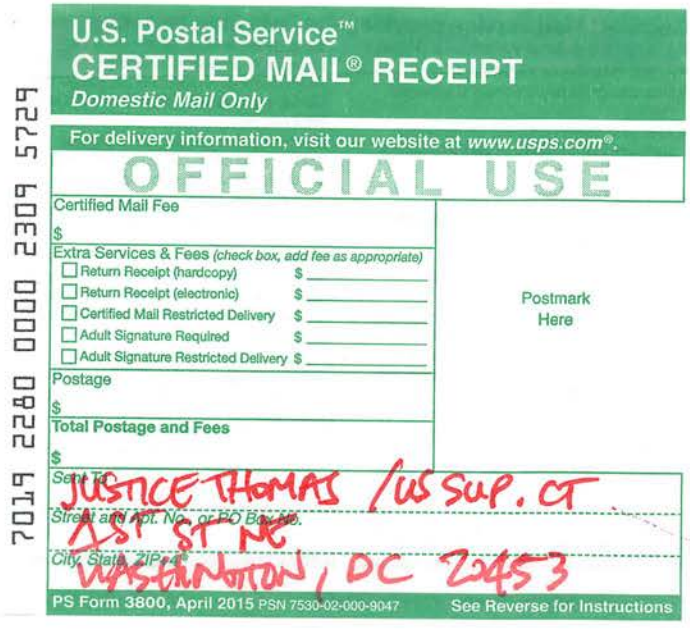
Sincerely,

Adam Bereki



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Feedback

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Chief Justice:
John Roberts

Justices:
Ruth Ginsburg
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Samuel Alito, Jr.
Sonia Sotomayor
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Neil Gorsuch
Brett Kavanaugh

United States Supreme Court
1st St. NE
Washington, DC 20543

July 7, 2020

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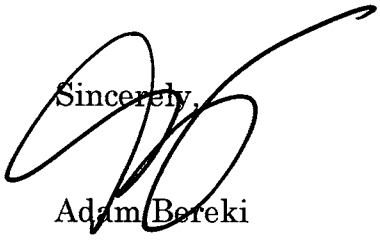
Thank you again for your time and careful consideration. I appreciate your hard work and the unique ways you each contribute to our justice system.

Sincerely,



Adam Bereki

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Justice Clarence Thomas
United States Supreme Court
1st St. NE
Washington, DC 20543

July 7, 2020

Justice Thomas,

Thank you for your time. The following is a letter I sent to you via certified mail on June 26, 2020, that does not appear to have ever arrived according to the tracking results (attached). As a result, I am resending the letter.

*****

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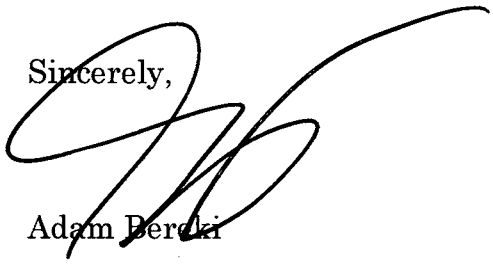

Adam Berdi

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Chief Justice:
John Roberts

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Adam Bereki

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PROOF OF SERVICE

I hereby certify that I served a complete copy of each of the letters with attached notices to each of the justices of the United States Supreme Court upon the following parties on July 7, 2020:

Via email
to wbissell@wgb-law.com

William Bissell
Attorney for Defendants
Karen and Gary Humphreys
14 Corporate Plaza Ste. 120
Newport Beach, CA 92660

Via First Class Mail

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013–1230

/s/ Adam Bereki, July 7, 2020

Adam Bereki
818 Spirit
Costa Mesa, California
949.241.6693
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Chief Justice:
John Roberts

Justices:
Ruth Ginsburg
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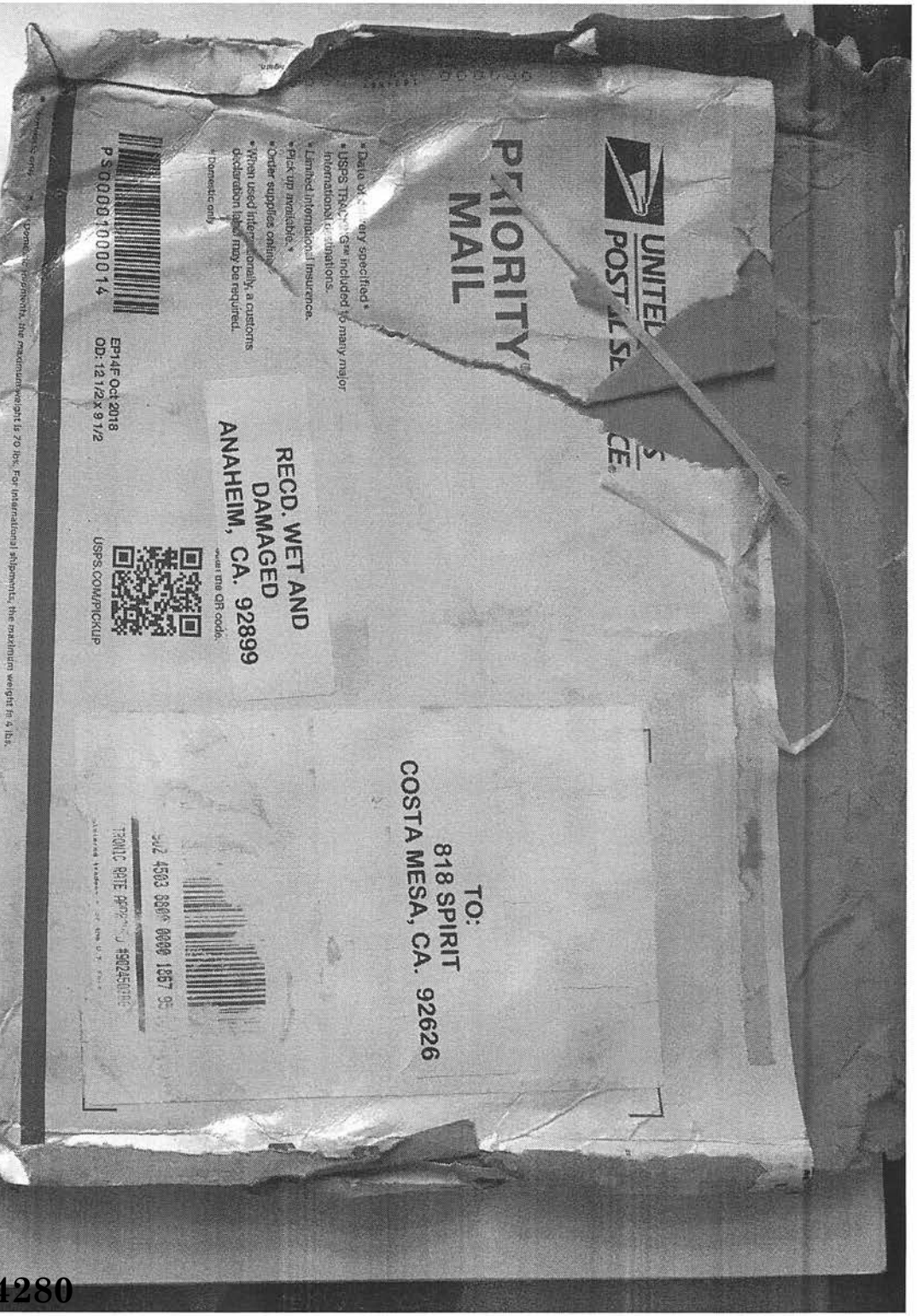

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July 31, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

In reply to your letter or submission referred to this office by on July 15, 2020, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. The Court does not give advice or assistance or answer legal questions on the basis of correspondence.

Your papers are herewith returned.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

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

July 31, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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Scott S. Harris, Clerk
By: COPY

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Enclosures

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abereki@gmail.com

Chief Justice:
John Roberts

Justices:
Ruth Ginsburg
Steven Breyer
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Sincerely,

Adam Bereki

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No. 20–55181

Adam Bereki,

Plaintiff–Appellant,

v.

Karen and Gary Humphreys,

Defendants–Appellees.

NOTICE / REQUEST FOR CONSIDERATION OF ADDITIONAL AUTHORITIES

Appeal from the Judgment of the United States District Court

For the Central District of California

Case No. 8:19–CV–02050

(Consuelo Bland Marshall)

Adam Bereki
818 Spirit
Costa Mesa, California 92626
949 | 241 |6693
abereki@gmail.com
In Propria Persona

I respectfully submit the following additional authorities and request this Court's consideration thereof in further support of my Motion For Appointment of Counsel and to Proceed In Forma Pauperis (Dkt.3) and Statement of Why This Appeal Should Go Forward (Dkt.6). These are not new authorities presenting new arguments but rather authorities in further support of the arguments already presented.

*****

These additional authorities will provide support for the following issues raised in the District Court. First, that Business and Professions Code §7031 prescribes a penalty *not* disgorgement. Second, that because §7031 is penal, both the State trial and appellate Courts were required to apply the excessive fines clause protections, but refused to resulting in a void judgment. Third, that because §7031 is a public regulatory law pursuant to the police powers of California, Appellees were required to provide evidence of an injury in fact separate and apart from the whole community. They failed to present any such evidence. As a result, they lacked standing to any relief whatsoever, depriving the Court of subject matter jurisdiction resulting in a void judgment. The legislature cannot transfer the power Constitutionally conferred to the governor to ensure the laws are faithfully executed to the People. And Fourth, that for each of the aforementioned reasons, the District Court had subject matter

jurisdiction and therefore a non-discretionary duty to hear and determine this case.

a. §7031 Imposes a penalty, not "disgorgement"

Four days ago on Jun 22, 2020, the United States Supreme Court announced its opinion in *Liu v. SEC*, 2020 U.S. Lexis 3374, a case that vacated this Court's void judgment (754 Fed. Appx. 505 (2018)) and remanded it for further proceedings consistent with the opinion. In *Liu,* just like in the instant case, the District Court imposed a penalty under the guise and label of non-punitive equitable "disgorgement". On appeal, just like the instant case, this Court upheld the trial Court's findings for "disgorgement" when in fact and law no judgment for equitable disgorgement was ever made. A Court of equity has no jurisdiction to impose a penalty. As a result, the judgment was void.

The judgment imposed in *Liu* was a penalty as opposed to non-punitive disgorgement because the District Court required the Defendants to forfeit about $27 million dollars *without* offsets for potentially legitimate business expenses such as marketing, construction costs, and lease payments. In like fashion, offsets were also denied in the instant case. Appellees received more than a years-worth of remodel construction work on their custom vacation home that was never even evidenced to have been performed by me, but instead by my licensed company which is not a statutory violation. The State trial and appellate

Courts refused to consider these benefits conferred and ordered a full forfeiture of all of the compensation Appellees paid for the work even though the work was arguably valued at the same amount the Court ordered be forfeited. Moreover, $758,000 of the $930,000 ordered to be forfeited was paid directly to my company and money I never possessed.

Despite raising the exact issues addressed by the *Liu* Court and upon which the Court found in favor of the Defendants, the California Fourth District Court of Appeal found they were entirely without merit:

> "Bereki challenges its application [disgorgement] under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit- the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. [Citations]. Full disgorgement is required; offsets and reductions for labor and materials received are not permitted." Dkt. 3, Appendix [AE]– Opinion, p.11.

Yet in another case involving "disgorgement", the same appellate Court that included the the justice who authored the opinion in the instant case held that:

("[t]he elements of an unjust enrichment claim are the receipt of a benefit and the unjust retention of the benefit at the expense of another. The mere fact that a person benefits is not of itself sufficient to require the other to make restitution therefor. There is no equitable reason for invoking restitution when the plaintiff gets the exchange that he or she expected [such as a remodel to their home]"). *Peterson v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1593 (2008).

As the Supreme Court held in *Liu:*

"Courts may not enter disgorgement awards that exceed the gains made upon any business or investment, when both the receipts and payments are taken into the account." [Citations]; see also Restatement (Third) §51, Comment *h*, at 216 (reciting the general rule that a defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement). Accordingly, courts must deduct legitimate expenses before ordering disgorgement [...]. A rule to the contrary that "make[s] no allowance for the cost and expense of conducting [a] business" would be "inconsistent with the ordinary principles and practice of courts of chancery." p.29.

In the instant case, both the State trial and appellate Courts held Business and Professions Code §7031(b) was a cause of action for "disgorgement". But this is not true. §7031(b) mentions nothing about

disgorgement or any equitable remedy whatsoever. Moreover, "disgorgement" is not a term defined anywhere in California statutory law. There is, consequently, no known cause of action named "disgorgement".

But not only is §7031 not a cause of action for disgorgement, none of the requirements for stating an equitable claim for disgorgement were evidenced at trial including an accounting for profits and offsets for benefits conferred. In fact, the trial and appellate Courts both flatly refused to consider offsets.

In exact polarity, the California Supreme Court has unambiguously held §7031 imposes a "stiff all-or-nothing **penalty**" for violating the licensing laws and *not* equitable "disgorgement". *MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (2005).

The result is that in California, a totally fictitious cause of action called "disgorgement" has been crafted by judicial fiat under the heading of Business and Professions Code §7031 that has no inherent remedial or equitable principles associated whatsoever and is being used to carefully conceal penalties that transcend centuries-old constitutional protections.

Despite the fact that countless defendants over decades have challenged §7031's penal nature, they have been met on nearly every

occasion by Courts who admit §7031 produces "harsh and unfair" penal results but then turn a blind eye to affording any Constitutional relief:

> "In [*Alatriste v. Cesar's Designs*, 183 Cal. App. 4th 656, 673] the court rejected the unlicensed contractor's argument that disgorgement was "unfair and 'serves no purpose other than punishment. As noted, the legislative committee reports show that, in enacting section 7031[, subdivision (b)], the Legislature was specifically aware that permitting reimbursement may result in harsh and unfair results to an individual contractor and could result in unjust enrichment to a homeowner, but nonetheless decided that the rule was essential to effectuate the important public policy of deterring licensing violations and ensuring that all contractors are licensed.

In other words, the Legislature and Courts know §7031 was not an equitable remedy for "disgorgement" because to receive relief in a Court of equity a Plaintiff must do equity. This cannot happen if the homeowner is unjustly enriched, which, in this instance, is simply another name for a penalty.

But the judicial abuse does not stop there. Even when the constitutionality of §7031 is directly challenged, the Courts refuse to take constitutionally mandated action, claiming themselves powerless to do anything about the unconstitutionality of the statute despite being a Court of review. ("As a judicial body, we are not permitted to second-guess

these policy choices"). *Rambeau v. Barker*, 2010 Cal. App. 4th (2010) Unpub. Lexis 5610. On its face and as applied §7031 imposes a virtually limitless penalty for violation of the licensing laws. The public policy choices of a State do not supersede State or Federal Constitutional protections.

Courts have a "solemn duty to look at the substance of things, whenever they enter upon the inquiry [of] whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution"). *Mugler v. Kansas*, 123 U.S. 623, 626 (1887). The Court of appeal refused to perform this inquiry despite my direct challenge on appeal.

The People of California and their businesses have repeatedly been threatened with or financially destroyed by this heinous abuse of power and dereliction of duty. See for e.g. the bankruptcy of Paul Bardos from a judgment in the amount of §917,043.09 for violating §7031(b). *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014). Mr. Bardos was ulimately forced into bankruptcy and lost his home despite the fact that he, like me, had met and passed all of the qualifications for a contractor's license.

"To accord a type of relief that has never been available before and especially a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a "default rule," not of flexibility but of omnipotence". *Grupo Mexicano De Dessarollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). "Even when sitting as a court in equity, we have no authority to craft a "nuclear weapon" of the law like the one advocated here". *Id.* p.333.

In his dissent in *Liu*, Justice Thomas aptly saw the writing on the wall criticizing the majority for, in effect, failing to go all the way by addressing all of the issues pertaining to the nationwide abuses surrounding "disgorgement". ("The majority's treatment of disgorgement as an equitable remedy threatens great mischief. The term disgorgement itself invites abuse because it is a word with no fixed meaning. As long as courts continue to award "disgorgement", both courts and the SEC will continue to have license to expand their own power". *Id.* pp. 37-39. No, they won't. It is a crime to violate due process. 18 USC §241-242. ("Under the constitutional guaranties no right of an individual, valuable to him pecuniarily or otherwise can be justly taken away without its being done conformably to the principles of justice which afford due process of law, unless the law constitutionally otherwise provides. Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law"). *Estate of Buchman*, 123 Cal. App. 2d 546, 559-60 (1954).

Because §7031 imposes a penalty and <u>not</u> the *non-punitive* equitable remedy of disgorgement, both the trial and appellate Courts had a mandatory, non-discretionary, ministerial duty to ensure the judgment minimally met the criteria required by the excessive fines clauses of both the California Constitution (Article I, Section 17) and the Constitution for the United States (Eight Amendment). I specifically raised this issue at trial and on appeal as well:

> "Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence- "an equitable remedy"- for performing work without a required contractor's license." Dkt. 3, Appendix [AE]– Opinion, p.8.

A few paragraphs later in the same opinion however, the appellate Court then contradicted itself admitting "[t]he disgorgement is not remedial in nature." *Id.* p.11. Disgorgement itself *is* considered remedial in nature. But when offsets are denied it is no longer disgorgement and instead purely penal.

Under the California Constitution, ("[t]he touchstone [...] inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability

to pay"). *People v. Cowan*, 47 Cal. App. 5th 32, 47 (2020). While the United States Supreme Court has not held whether wealth and income are relevant to the determination of proportionality, (*Id.* p. 46), the other factors mentioned above all bear on proportionality under the Eighth Amendment.

Both the State trial and appellate Courts refused to perform even one of these analyses despite the direct challenges to the trial Court's jurisdiction I made at both the trial and appellate level raising this precise issue. See First Amended Verified Complaint pp.97-101. (Dkt. 11 – District Court, case no. 8:19–CV–02050). ("[T]he [Excessive Fine's] Clause imposes upon this Court the duty, when the issue is properly presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. *Furman v. Georgia*, 408 U.S. 238, 258 (1972).

To reiterate, the judgment affirmed by the appellate Court for me to forfeit $930,000 is more than 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty of a fine up to $5,000[1]. ("As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood"). *Timbs v. Indiana, 586 U.S.* ____ 688 (2019) citing *BFI v. Kelco Disposal Inc.* , 492 U. S. 257, 271 (1989).

[1] Business and Professions Code §7028.

("A Court of California does not have jurisdiction to render judgment which violates California Constitution or the Constitution for the United States"). *County of Ventura v. Tillet,* 133 Cal. App. 3d 105, 110 (1982); Cal. Code of Civil Procedure §410.10;

While it is generally thought that subject matter jurisdiction applies only to the type of case (ie probate, juvenile etc.) it actually applies to *every issue* in a case and most certainly when the supreme Law of the Land withholds authority (jurisdiction) to not do a certain thing, such as impose an excessive fine. ("It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent"). *Gibbons v. Ogden,* 22 U.S. 1, 181. (1824).

Because the trial and appellate Courts refused to perform the requisite checks to ensure the judgment met State and Federal Constitutional restraints, the judgment is void for want of subject matter jurisdiction and a Bill of Attainder in violation of Article I, Section 10 because it imposes punishment without a judicial determination of rights.

b. Appellees Lacked Standing for Any Relief Whatsoever and the 'Judgment' Violates the Separation of Powers Doctrine

Because §7031 purports to create a cause of action for violation of a public regulatory law under the police powers of California – or what is more commonly known as a "public right" – Appellees were required to allege a concrete and particularized injury in fact that was actual and not hypothetical or conjectural to have standing. ("Even in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the [community]"). *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016) (Thomas, J. concurring) (internal quotations omitted). This is because California's tripartite and republican form of government constitutionally mandates that the executive shall ensure the laws are faithfully executed and does not grant the power to enforce the penal laws of the State to the People of California. §7031 is purely penal and prescribes punishment in the form of a complete forfeiture without any nexus to an injury stemming from the failure to be licensed. Justice Hurwitz, in his concurring opinion in *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (Sup. Ct. 2008) puts it best:

> "If the restitution statutes are read to require that the amount paid is invariably the measure of restitution, an untenable result would obtain -- a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but

would nonetheless also retain the work performed. It is impossible for me to view such a victim as having suffered any loss, economic or otherwise [...]" p. 30.

The police power must be exercised by the Constitutionally delegated agents of the People. ("To permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed"). *Id.* p 1553 (internal quotations omitted) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 557 (1992).

Appellees not only presented no evidence of an injury in fact, they deliberately filed a Motion for Severance[2] to sever each and every one of their causes of action that could have provided such standing. The Motion was granted by the Court allowing them to sever their first cause of action for "disgorgement" from all remaining causes. But the moment this happened Appellees were without standing and the Court without jurisdiction.

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[2] Dkt.20 Exhibit K part 1, p. 780 District Court. The District Court appears to have a made a clerical error in the numbering of the Trial Court transcript filed. The Motion For Severance is part of Exhibit K but may not be in Part 1 as labeled by the Court.

Appellees literally thought they could get a near million-dollar penal judgment in their favor by calling it "disgorgement" and trampling upon the foundational principles of law and equity that have governed this nation since its inception that make up our republican form of government. In the words of the Supreme Court of Arizona again, this abuse of power has lead to "absurd and troubling results", like a near million dollar fine for violating a simple licensing requirement. *Gilbert, supra* p.24.

While the California Constitution does not overtly have a "case or controversy" requirement like the United States Constitution, similar requirements are inherent in the separation of powers designating the three separate branches of California's government that vests each branch with certain distinct and exclusive powers. Specifically under Article V, Section 1, "The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed." The legislature has no authority to delegate this power to Appellees.

Additionally, California was admitted as a common law state into *this union* and ("[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed "to the whole community, considered as a community, in its social aggregate capacity." [Citation]. Such rights include "free

navigation of waterways, passage on public highways, and general compliance with regulatory law"). *Id.* p. 1551.

Finally, the judicial power of the United States must be capable of acting upon public rights cases such as this involving the private invocation of the police power of a State. A State cannot legislate the Constitution for the United States out of existence or prevent it from acting upon public rights cases by uprooting historical common law and standing doctrines upon which the judicial power of California and the United States are derived.

In response to this issue raised on appeal, the Court held:

> "Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor' s license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute." Dkt. 3, Appendix [AE]– Opinion, p.11.

As a result of Appellees failure to present any evidence of a concrete and particularized injury in fact separate and apart from the rest of the community while alleging violation of a public regulatory penal law, they

lacked constitutional standing[3] to any relief whatsoever. ("A lack of standing is a jurisdictional defect"). *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). See also First Amended Verified Complaint pp.73-82. (Dkt. 11 – District Court, case no. 8:19–CV–02050).

The Court therefore lacked subject matter jurisdiction and had a mandatory, non-discretionary, ministerial duty to dismiss the case. Instead, the Court went on to create the "great mischief" referred to by Justice Thomas, further resulting in a heinous miscarriage of justice that violates every single protection in the California Constitution and the Bill of Rights designed to guard against arbitrary despotic behavior by government. Each of these constitutional checks was created as a proverbial stop sign to completely withdraw power from government in each instance yet the Court blew through each and every stop sign like it didn't even exist with the appellate Court following suit.

The egregious abuses of power that took place in this case – and many others just like it – continue to cause me and others like Paul Bardos irreparable harm. By operation of statute as a result of the "judgment", I have been forbidden to work in my profession for more than three years pursuant to the permanent and indefinite suspension of my ability to act as a qualifying individual on a contractor's license. Business

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[3] *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009). Plaintiff must have standing for each type of relief sought.

and Professions Code §7071.17 requires this suspension until I either pay the fine, declare bankruptcy, or the judgment is vacated. I have also been forced into involuntary servitude to study law full time to seek redress in the hope my entire qualifying estate would not be destroyed by bankruptcy and taken by theft under color of law as is being attempted here.

c. Summary

In summation, the US Supreme Court's holdings in *Liu,* and the other cases mentioned herein, unequivocally demonstrate the judgment for "disgorgement" against me as upheld by the Fourth District Court of Appeal in case number G055075 is void because it is not "disgorgement" but instead a penal forfeiture. As a result, upon filing a complaint in the Federal District Court, the Court not only had a duty to ensure I was given a full and fair hearing at trial and on appeal –which clearly did not happen – but also to vacate the void judgement. California Penal Code section §1382 requires that the: "[c]ourt shall order the action to be dismissed... when a person has been held to answer for a public offense and an information is not filed against that person within 15 days". No information was clearly ever filed in the name of the People of California. See also Penal Code §949.

Because the actions taken in the instant case evidence California's anti-constitutional 'public policy' for handling §7031 cases, the People of California have nowhere else to turn but Federal Court to seek redress

for deprivations of rights secured by the California Constitution or the Constitution for the United States. For this reason alone, District Courts have authority to entertain independent actions in equity to vacate void judgments otherwise ("[a] Plaintiff [would be deprived] of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, [as required by] due process"). *Simes v. Huckabee*, 354 F.3d 823, 828 (8th Cir., 2004) citing *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir., 1983).

This Court has also held District Courts can entertain independent actions to vacate void judgments when such claims are also authorized by State law[4]. California law supports such actions. See *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal.App.4th 1228, 1239 (1998); Cal. Code of Civil Proc. §1916.

The United States Supreme Court has also made it repeatedly clear District Courts can entertain independent actions that attack State Court judgments as void: *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post Rooker); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre Rooker); *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604,

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[4] *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 993-994 (9th Cir. 2002); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122-3 (1915); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 189 (1920); *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995).

608–9 (1990); *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

Finally, for more than a century the United States Supreme Court has made it clear that judgments rendered in violation of due process are void and not entitled to full faith and credit elsewhere. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

Despite all of the aforementioned evidence demonstrating the State Court judgment is void, that I was never given a full and fair opportunity to litigate at trial or on appeal, that there has been no judicial determination of my rights, and that Federal Courts have subject matter jurisdiction to hear and determine cases like this, the District Court not only denied my relief with prejudice, but then falsely represented to this Court that my appeal was "frivolous" and taken on "bad faith" and then denied my motion to proceed in forma pauperis.

As a former police officer, I was shocked and deeply saddened to see the atrocity committed upon George Floyd by members of law enforcement whose fundamental duty is to protect and serve the people of their communities. While I am not literally being suffocated, the cries for help I have made to every applicable Court in the nation to stop the egregious abuse of force being perpetrated here echoes George's cries with resounding harmony. It is a heinous crime for a judicial officer to violate due process.

I request this Court vacate the State Court's void judgment as well as the void judgment of the District Court and remand it as quickly as practically possible with instructions to restore my in forma pauperis status and allow me to amend the complaint so that the case may proceed and I am able to obtain redress for the injuries resulting from the abominable miscarriages of justice perpetrated in this case.

Sincerely,

/s/ Adam Bereki
In Propria Persona
June 26, 2020

PROOF OF SERVICE

I hereby certify that I served a complete copy of the Notice dated June 26, 2020 upon the following parties on June 26, 2020:

Via email to:

wbissell@wgb-law.com
William Bissell
Attorney for Defendants
Karen and Gary Humphreys
14 Corporate Plaza Ste. 120
Newport Beach, CA 92660

Via First Class Mail to:

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013–1230

/s/ Adam Bereki 06/26/20

PROOF OF SERVICE

I hereby certify that I served a complete copy of each of the letters with attached notices to each of the justices of the United States Supreme Court upon the following parties on July 7, 2020:

Via email
to wbissell@wgb-law.com

William Bissell
Attorney for Defendants
Karen and Gary Humphreys
14 Corporate Plaza Ste. 120
Newport Beach, CA 92660

Via First Class Mail

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013–1230

/s/ Adam Bereki, July 7, 2020

Adam Bereki
818 Spirit
Costa Mesa, California
abereki@gmail.com | 949.241.6693

Governor Gavin Newsom
1303 10th St. Ste. 1173
Sacramento, CA 95814

June 29, 2020

Governor Newsom,

Pursuant to Article V, Section 1 of the California Constitution, it is your duty to ensure the laws are faithfully executed. You will take notice of the attached document clearly evidencing how you are in dereliction of your duty.

Sincerely,

Adam Bereki

Adam Bereki
818 Spirit
Costa Mesa, California
abereki@gmail.com | 949.241.6693

Tani Cantil-Sakouye
California Supreme Court
350 McAllister St.
San Francisco, CA 94102

June 29, 2020

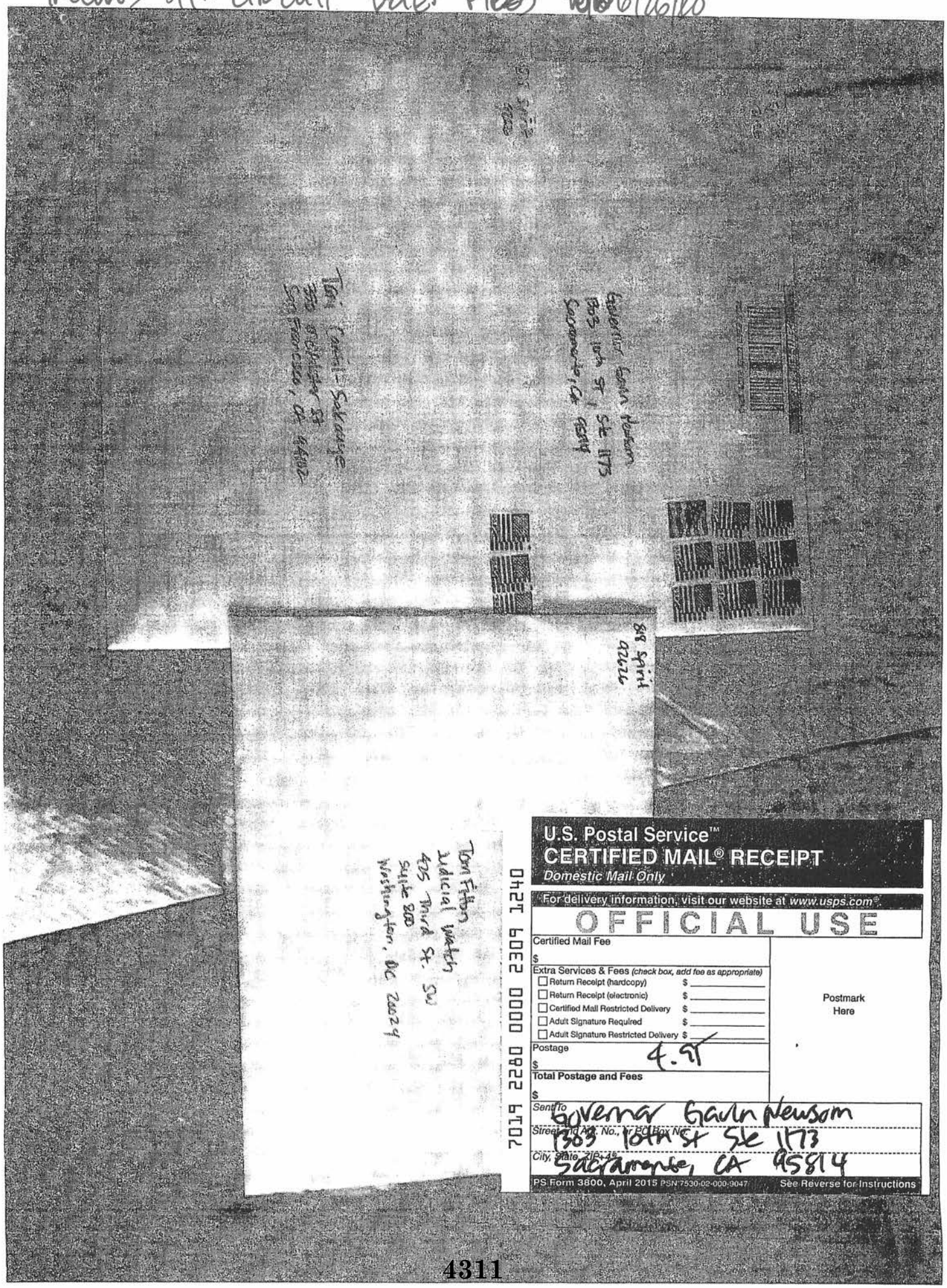
Tani,

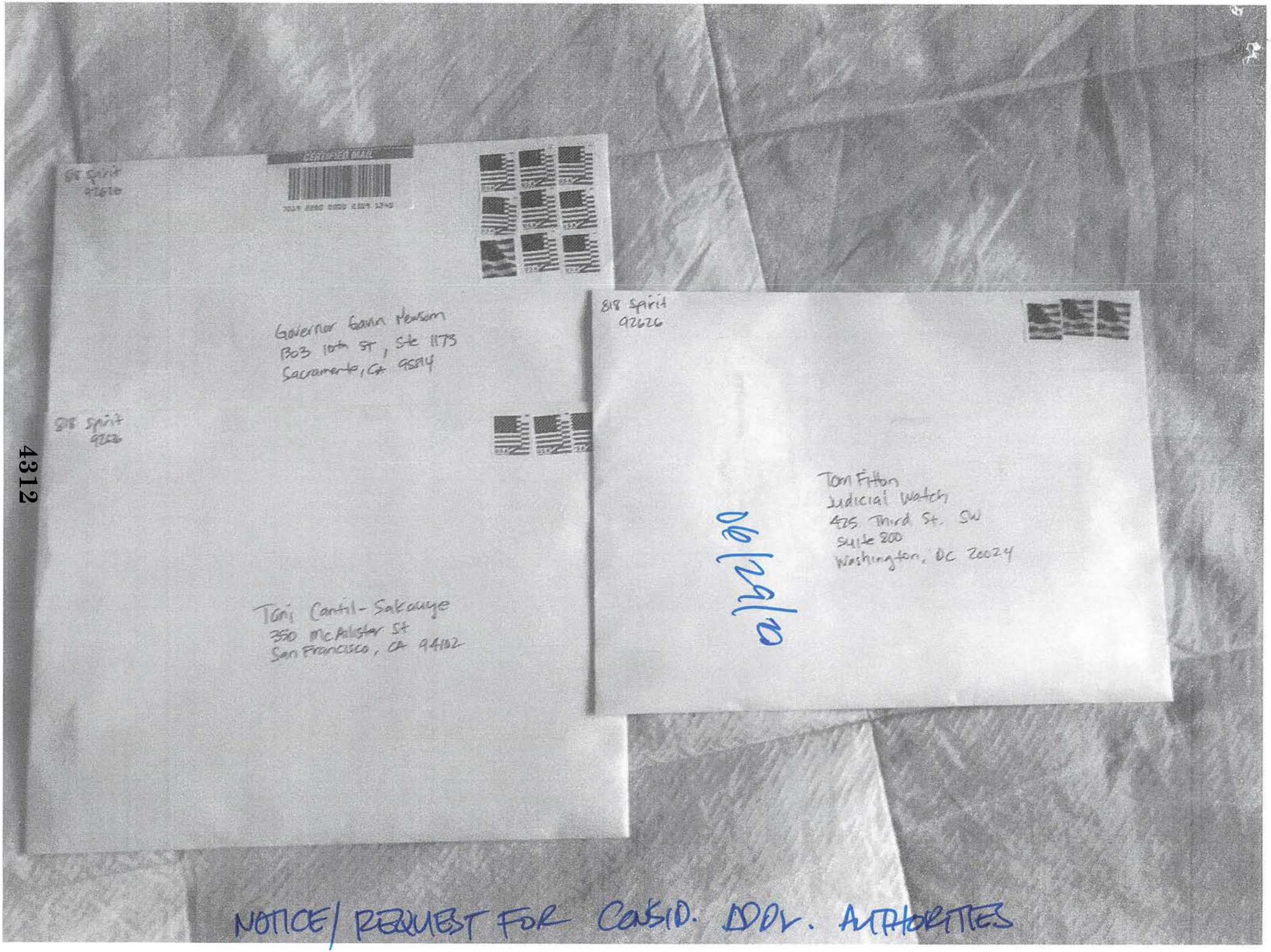
You are hereby noticed in both your capacity as Chief Justice of the California Supreme Court and Chair of the Judicial Council of California that heinous abuses of power and dereliction of Constitutionally mandated and sworn duties are being perpetrated by California judges, members of the California Bar, and the Judicial Council. I expect you'll take immediate investigative and remedial action. I have also filed a complaint with the Commission on Judicial Performance, as well as a Government Tort Claim.

Sincerely,

Adam Bereki

INCLUDES 9TH CIRCUIT BRIEF FILED 10/6/20

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Tori Cantil-Sakauye
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NOTICE/ REQUEST FOR CASID. DOC. AUTHORITIES

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No. 20–55181

Adam Bereki,

Plaintiff–Appellant,

v.

Karen and Gary Humphreys,

Defendants–Appellees.

NOTICE / REQUEST FOR CONSIDERATION OF ADDITIONAL AUTHORITIES

Appeal from the Judgment of the United States District Court

For the Central District of California

Case No. 8:19–CV–02050

(Consuelo Bland Marshall)

Adam Bereki
818 Spirit
Costa Mesa, California 92626
949 | 241 |6693
abereki@gmail.com
In Propria Persona

I respectfully submit the following additional authorities and request this Court's consideration thereof in further support of my Motion For Appointment of Counsel and to Proceed In Forma Pauperis (Dkt.3) and Statement of Why This Appeal Should Go Forward (Dkt.6). These are not new authorities presenting new arguments but rather authorities in further support of the arguments already presented.

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These additional authorities will provide support for the following issues raised in the District Court. First, that Business and Professions Code §7031 prescribes a penalty *not* disgorgement. Second, that because §7031 is penal, both the State trial and appellate Courts were required to apply the excessive fines clause protections, but refused to resulting in a void judgment. Third, that because §7031 is a public regulatory law pursuant to the police powers of California, Appellees were required to provide evidence of an injury in fact separate and apart from the whole community. They failed to present any such evidence. As a result, they lacked standing to any relief whatsoever, depriving the Court of subject matter jurisdiction resulting in a void judgment. The legislature cannot transfer the power Constitutionally conferred to the governor to ensure the laws are faithfully executed to the People. And Fourth, that for each of the aforementioned reasons, the District Court had subject matter

jurisdiction and therefore a non-discretionary duty to hear and determine this case.

a. §7031 Imposes a penalty, not "disgorgement"

Four days ago on Jun 22, 2020, the United States Supreme Court announced its opinion in *Liu v. SEC*, 2020 U.S. Lexis 3374, a case that vacated this Court's void judgment (754 Fed. Appx. 505 (2018)) and remanded it for further proceedings consistent with the opinion. In *Liu,* just like in the instant case, the District Court imposed a penalty under the guise and label of non-punitive equitable "disgorgement". On appeal, just like the instant case, this Court upheld the trial Court's findings for "disgorgement" when in fact and law no judgment for equitable disgorgement was ever made. A Court of equity has no jurisdiction to impose a penalty. As a result, the judgment was void.

The judgment imposed in *Liu* was a penalty as opposed to non-punitive disgorgement because the District Court required the Defendants to forfeit about $27 million dollars *without* offsets for potentially legitimate business expenses such as marketing, construction costs, and lease payments. In like fashion, offsets were also denied in the instant case. Appellees received more than a years-worth of remodel construction work on their custom vacation home that was never even evidenced to have been performed by me, but instead by my licensed company which is not a statutory violation. The State trial and appellate

Courts refused to consider these benefits conferred and ordered a full forfeiture of all of the compensation Appellees paid for the work even though the work was arguably valued at the same amount the Court ordered be forfeited. Moreover, $758,000 of the $930,000 ordered to be forfeited was paid directly to my company and money I never possessed.

Despite raising the exact issues addressed by the *Liu* Court and upon which the Court found in favor of the Defendants, the California Fourth District Court of Appeal found they were entirely without merit:

> "Bereki challenges its application [disgorgement] under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit- the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. [Citations]. Full disgorgement is required; offsets and reductions for labor and materials received are not permitted." Dkt. 3, Appendix [AE]– Opinion, p.11.

Yet in another case involving "disgorgement", the same appellate Court that included the the justice who authored the opinion in the instant case held that:

("[t]he elements of an unjust enrichment claim are the receipt of a benefit and the unjust retention of the benefit at the expense of another. The mere fact that a person benefits is not of itself sufficient to require the other to make restitution therefor. There is no equitable reason for invoking restitution when the plaintiff gets the exchange that he or she expected [such as a remodel to their home]"). *Peterson v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1593 (2008).

As the Supreme Court held in *Liu:*

"Courts may not enter disgorgement awards that exceed the gains made upon any business or investment, when both the receipts and payments are taken into the account." [Citations]; see also Restatement (Third) §51, Comment *h*, at 216 (reciting the general rule that a defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement). Accordingly, courts must deduct legitimate expenses before ordering disgorgement [...]. A rule to the contrary that "make[s] no allowance for the cost and expense of conducting [a] business" would be "inconsistent with the ordinary principles and practice of courts of chancery." p.29.

In the instant case, both the State trial and appellate Courts held Business and Professions Code §7031(b) was a cause of action for "disgorgement". But this is not true. §7031(b) mentions nothing about

disgorgement or any equitable remedy whatsoever. Moreover, "disgorgement" is not a term defined anywhere in California statutory law. There is, consequently, no known cause of action named "disgorgement".

But not only is §7031 not a cause of action for disgorgement, none of the requirements for stating an equitable claim for disgorgement were evidenced at trial including an accounting for profits and offsets for benefits conferred. In fact, the trial and appellate Courts both flatly refused to consider offsets.

In exact polarity, the California Supreme Court has unambiguously held §7031 imposes a "stiff all-or-nothing **penalty**" for violating the licensing laws and *not* equitable "disgorgement". *MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc.,* 36 Cal. 4th 412, 426 (2005).

The result is that in California, a totally fictitious cause of action called "disgorgement" has been crafted by judicial fiat under the heading of Business and Professions Code §7031 that has no inherent remedial or equitable principles associated whatsoever and is being used to carefully conceal penalties that transcend centuries-old constitutional protections.

Despite the fact that countless defendants over decades have challenged §7031's penal nature, they have been met on nearly every

occasion by Courts who admit §7031 produces "harsh and unfair" penal results but then turn a blind eye to affording any Constitutional relief:

> "In [*Alatriste v. Cesar's Designs*, 183 Cal. App. 4th 656, 673] the court rejected the unlicensed contractor's argument that disgorgement was "unfair and 'serves no purpose other than punishment. As noted, the legislative committee reports show that, in enacting section 7031[, subdivision (b)], the Legislature was specifically aware that permitting reimbursement may result in harsh and unfair results to an individual contractor and could result in unjust enrichment to a homeowner, but nonetheless decided that the rule was essential to effectuate the important public policy of deterring licensing violations and ensuring that all contractors are licensed.

In other words, the Legislature and Courts know §7031 was not an equitable remedy for "disgorgement" because to receive relief in a Court of equity a Plaintiff must do equity. This cannot happen if the homeowner is unjustly enriched, which, in this instance, is simply another name for a penalty.

But the judicial abuse does not stop there. Even when the constitutionality of §7031 is directly challenged, the Courts refuse to take constitutionally mandated action, claiming themselves powerless to do anything about the unconstitutionality of the statute despite being a Court of review. ("As a judicial body, we are not permitted to second-guess

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The People of California and their businesses have repeatedly been threatened with or financially destroyed by this heinous abuse of power and dereliction of duty. See for e.g. the bankruptcy of Paul Bardos from a judgment in the amount of §917,043.09 for violating §7031(b). *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014). Mr. Bardos was ulimately forced into bankruptcy and lost his home despite the fact that he, like me, had met and passed all of the qualifications for a contractor's license.

"To accord a type of relief that has never been available before and especially a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a "default rule," not of flexibility but of omnipotence". *Grupo Mexicano De Dessarollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). "Even when sitting as a court in equity, we have no authority to craft a "nuclear weapon" of the law like the one advocated here". *Id.* p.333.

In his dissent in *Liu*, Justice Thomas aptly saw the writing on the wall criticizing the majority for, in effect, failing to go all the way by addressing all of the issues pertaining to the nationwide abuses surrounding "disgorgement". ("The majority's treatment of disgorgement as an equitable remedy threatens great mischief. The term disgorgement itself invites abuse because it is a word with no fixed meaning. As long as courts continue to award "disgorgement", both courts and the SEC will continue to have license to expand their own power". *Id.* pp. 37-39. No, they won't. It is a crime to violate due process. 18 USC §241-242. ("Under the constitutional guaranties no right of an individual, valuable to him pecuniarily or otherwise can be justly taken away without its being done conformably to the principles of justice which afford due process of law, unless the law constitutionally otherwise provides. Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law"). *Estate of Buchman*, 123 Cal. App. 2d 546, 559-60 (1954).

Because §7031 imposes a penalty and <u>not</u> the *non-punitive* equitable remedy of disgorgement, both the trial and appellate Courts had a mandatory, non-discretionary, ministerial duty to ensure the judgment minimally met the criteria required by the excessive fines clauses of both the California Constitution (Article I, Section 17) and the Constitution for the United States (Eight Amendment). I specifically raised this issue at trial and on appeal as well:

> "Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence- "an equitable remedy"- for performing work without a required contractor's license." Dkt. 3, Appendix [AE]– Opinion, p.8.

A few paragraphs later in the same opinion however, the appellate Court then contradicted itself admitting "[t]he disgorgement is not remedial in nature." *Id.* p.11. Disgorgement itself *is* considered remedial in nature. But when offsets are denied it is no longer disgorgement and instead purely penal.

Under the California Constitution, ("[t]he touchstone [...] inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability

to pay"). *People v. Cowan*, 47 Cal. App. 5th 32, 47 (2020). While the United States Supreme Court has not held whether wealth and income are relevant to the determination of proportionality, (*Id.* p. 46), the other factors mentioned above all bear on proportionality under the Eighth Amendment.

Both the State trial and appellate Courts refused to perform even one of these analyses despite the direct challenges to the trial Court's jurisdiction I made at both the trial and appellate level raising this precise issue. See First Amended Verified Complaint pp.97-101. (Dkt. 11 – District Court, case no. 8:19–CV–02050). ("[T]he [Excessive Fine's] Clause imposes upon this Court the duty, when the issue is properly presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. *Furman v. Georgia*, 408 U.S. 238, 258 (1972).

To reiterate, the judgment affirmed by the appellate Court for me to forfeit $930,000 is more than 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty of a fine up to $5,000[1]. ("As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood"). *Timbs v. Indiana, 586 U.S.* ____ 688 (2019) citing *BFI v. Kelco Disposal Inc.* , 492 U. S. 257, 271 (1989).

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[1] Business and Professions Code §7028.

("A Court of California does not have jurisdiction to render judgment which violates California Constitution or the Constitution for the United States"). *County of Ventura v. Tillet*, 133 Cal. App. 3d 105, 110 (1982); Cal. Code of Civil Procedure §410.10;

While it is generally thought that subject matter jurisdiction applies only to the type of case (ie probate, juvenile etc.) it actually applies to *every issue* in a case and most certainly when the supreme Law of the Land withholds authority (jurisdiction) to not do a certain thing, such as impose an excessive fine. ("It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent"). *Gibbons v. Ogden*, 22 U.S. 1, 181. (1824).

Because the trial and appellate Courts refused to perform the requisite checks to ensure the judgment met State and Federal Constitutional restraints, the judgment is void for want of subject matter jurisdiction and a Bill of Attainder in violation of Article I, Section 10 because it imposes punishment without a judicial determination of rights.

b. Appellees Lacked Standing for Any Relief Whatsoever and the 'Judgment' Violates the Separation of Powers Doctrine

Because §7031 purports to create a cause of action for violation of a public regulatory law under the police powers of California – or what is more commonly known as a "public right" – Appellees were required to allege a concrete and particularized injury in fact that was actual and not hypothetical or conjectural to have standing. ("Even in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the [community]"). *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016) (Thomas, J. concurring) (internal quotations omitted). This is because California's tripartite and republican form of government constitutionally mandates that the executive shall ensure the laws are faithfully executed and does not grant the power to enforce the penal laws of the State to the People of California. §7031 is purely penal and prescribes punishment in the form of a complete forfeiture without any nexus to an injury stemming from the failure to be licensed. Justice Hurwitz, in his concurring opinion in *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (Sup. Ct. 2008) puts it best:

> "If the restitution statutes are read to require that the amount paid is invariably the measure of restitution, an untenable result would obtain -- a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but

would nonetheless also retain the work performed. It is impossible for me to view such a victim as having suffered any loss, economic or otherwise [...]" p. 30.

The police power must be exercised by the Constitutionally delegated agents of the People. ("To permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed"). *Id.* p 1553 (internal quotations omitted) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 557 (1992).

Appellees not only presented no evidence of an injury in fact, they deliberately filed a Motion for Severance[2] to sever each and every one of their causes of action that could have provided such standing. The Motion was granted by the Court allowing them to sever their first cause of action for "disgorgement" from all remaining causes. But the moment this happened Appellees were without standing and the Court without jurisdiction.

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[2] Dkt.20 Exhibit K part 1, p. 780 District Court. The District Court appears to have a made a clerical error in the numbering of the Trial Court transcript filed. The Motion For Severance is part of Exhibit K but may not be in Part 1 as labeled by the Court.

Appellees literally thought they could get a near million-dollar penal judgment in their favor by calling it "disgorgement" and trampling upon the foundational principles of law and equity that have governed this nation since its inception that make up our republican form of government. In the words of the Supreme Court of Arizona again, this abuse of power has lead to "absurd and troubling results", like a near million dollar fine for violating a simple licensing requirement. *Gilbert, supra* p.24.

While the California Constitution does not overtly have a "case or controversy" requirement like the United States Constitution, similar requirements are inherent in the separation of powers designating the three separate branches of California's government that vests each branch with certain distinct and exclusive powers. Specifically under Article V, Section 1, "The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed." The legislature has no authority to delegate this power to Appellees.

Additionally, California was admitted as a common law state into *this union* and ("[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed "to the whole community, considered as a community, in its social aggregate capacity." [Citation]. Such rights include "free

navigation of waterways, passage on public highways, and general compliance with regulatory law"). *Id.* p. 1551.

Finally, the judicial power of the United States must be capable of acting upon public rights cases such as this involving the private invocation of the police power of a State. A State cannot legislate the Constitution for the United States out of existence or prevent it from acting upon public rights cases by uprooting historical common law and standing doctrines upon which the judicial power of California and the United States are derived.

In response to this issue raised on appeal, the Court held:

> "Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor' s license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute." Dkt. 3, Appendix [AE]– Opinion, p.11.

As a result of Appellees failure to present any evidence of a concrete and particularized injury in fact separate and apart from the rest of the community while alleging violation of a public regulatory penal law, they

lacked constitutional standing[3] to any relief whatsoever. ("A lack of standing is a jurisdictional defect"). *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). See also First Amended Verified Complaint pp.73-82. (Dkt. 11 – District Court, case no. 8:19–CV–02050).

The Court therefore lacked subject matter jurisdiction and had a mandatory, non-discretionary, ministerial duty to dismiss the case. Instead, the Court went on to create the "great mischief" referred to by Justice Thomas, further resulting in a heinous miscarriage of justice that violates every single protection in the California Constitution and the Bill of Rights designed to guard against arbitrary despotic behavior by government. Each of these constitutional checks was created as a proverbial stop sign to completely withdraw power from government in each instance yet the Court blew through each and every stop sign like it didn't even exist with the appellate Court following suit.

The egregious abuses of power that took place in this case – and many others just like it – continue to cause me and others like Paul Bardos irreparable harm. By operation of statute as a result of the "judgment", I have been forbidden to work in my profession for more than three years pursuant to the permanent and indefinite suspension of my ability to act as a qualifying individual on a contractor's license. Business

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[3] *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009). Plaintiff must have standing for each type of relief sought.

and Professions Code §7071.17 requires this suspension until I either pay the fine, declare bankruptcy, or the judgment is vacated. I have also been forced into involuntary servitude to study law full time to seek redress in the hope my entire qualifying estate would not be destroyed by bankruptcy and taken by theft under color of law as is being attempted here.

c. Summary

In summation, the US Supreme Court's holdings in *Liu,* and the other cases mentioned herein, unequivocally demonstrate the judgment for "disgorgement" against me as upheld by the Fourth District Court of Appeal in case number G055075 is void because it is not "disgorgement" but instead a penal forfeiture. As a result, upon filing a complaint in the Federal District Court, the Court not only had a duty to ensure I was given a full and fair hearing at trial and on appeal –which clearly did not happen – but also to vacate the void judgement. California Penal Code section §1382 requires that the: "[c]ourt shall order the action to be dismissed... when a person has been held to answer for a public offense and an information is not filed against that person within 15 days". No information was clearly ever filed in the name of the People of California. See also Penal Code §949.

Because the actions taken in the instant case evidence California's anti-constitutional 'public policy' for handling §7031 cases, the People of California have nowhere else to turn but Federal Court to seek redress

for deprivations of rights secured by the California Constitution or the Constitution for the United States. For this reason alone, District Courts have authority to entertain independent actions in equity to vacate void judgments otherwise ("[a] Plaintiff [would be deprived] of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, [as required by] due process"). *Simes v. Huckabee*, 354 F.3d 823, 828 (8th Cir., 2004) citing *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir., 1983).

This Court has also held District Courts can entertain independent actions to vacate void judgments when such claims are also authorized by State law[4]. California law supports such actions. See *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998); Cal. Code of Civil Proc. §1916.

The United States Supreme Court has also made it repeatedly clear District Courts can entertain independent actions that attack State Court judgments as void: *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post Rooker); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre Rooker); *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604,

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[4] *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 993-994 (9th Cir. 2002); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122-3 (1915); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 189 (1920); *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995).

608–9 (1990); *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

Finally, for more than a century the United States Supreme Court has made it clear that judgments rendered in violation of due process are void and not entitled to full faith and credit elsewhere. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

Despite all of the aforementioned evidence demonstrating the State Court judgment is void, that I was never given a full and fair opportunity to litigate at trial or on appeal, that there has been no judicial determination of my rights, and that Federal Courts have subject matter jurisdiction to hear and determine cases like this, the District Court not only denied my relief with prejudice, but then falsely represented to this Court that my appeal was "frivolous" and taken on "bad faith" and then denied my motion to proceed in forma pauperis.

As a former police officer, I was shocked and deeply saddened to see the atrocity committed upon George Floyd by members of law enforcement whose fundamental duty is to protect and serve the people of their communities. While I am not literally being suffocated, the cries for help I have made to every applicable Court in the nation to stop the egregious abuse of force being perpetrated here echoes George's cries with resounding harmony. It is a heinous crime for a judicial officer to violate due process.

I request this Court vacate the State Court's void judgment as well as the void judgment of the District Court and remand it as quickly as practically possible with instructions to restore my in forma pauperis status and allow me to amend the complaint so that the case may proceed and I am able to obtain redress for the injuries resulting from the abominable miscarriages of justice perpetrated in this case.

Sincerely,

/s/ Adam Bereki
In Propria Persona
June 26, 2020

PROOF OF SERVICE

I hereby certify that I served a complete copy of the Notice dated June 26, 2020 upon the following parties on June 26, 2020:

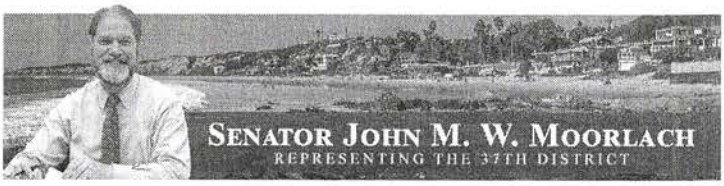
Via email to:

wbissell@wgb-law.com
William Bissell
Attorney for Defendants
Karen and Gary Humphreys
14 Corporate Plaza Ste. 120
Newport Beach, CA 92660

Via First Class Mail to:

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013–1230

/s/ Adam Bereki 06/26/20



My Offices

Email Me

To share your opinion with Senator Moorlach CLICK HERE.

My Offices

Capitol Office

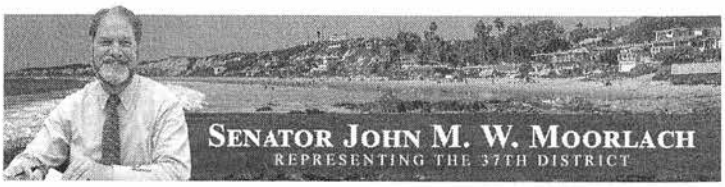
State Capitol, Room 2048
Sacramento, CA 95814
Phone: (916) 651-4037
Fax: (916) 651-4937

District Office

940 South Coast Drive, Suite 185
Costa Mesa, CA, 92626
Phone: (714) 662-6050
Fax: (714) 662-6055

Search

Lence (916) 651-4037
-alexa xfer to
- called 08/17/20 @ 1105 hrs -
Senator "really busy & not accepting any appointments in person or phone & send correspondence by mail. 8/17/20



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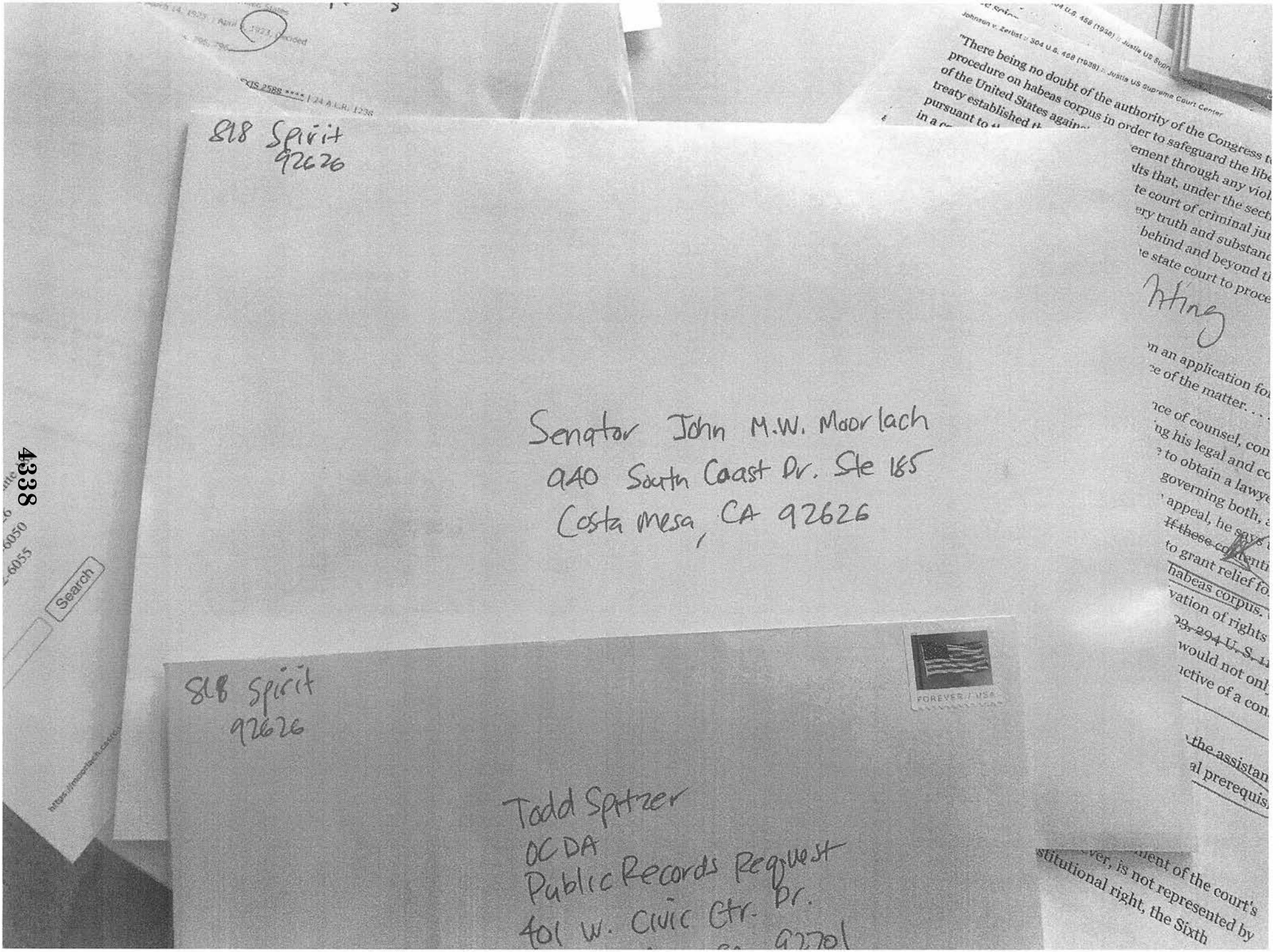
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OC DA
Public Records Request
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Gmail Adam Bereki <abereki@gmail.com>

Called sen moorlach off sacramento

1 message

Adam Bereki <abereki@gmail.com> Tue, Aug 25, 2020 at 4:22 PM
To: Adam Bereki <abereki@gmail.com>

Spoke to Spencer. Requested info on petition for redress of grievance.

He said he'd never heard of it but took my name and number and would get back to me.

Sent from my iPhone

Gmail Adam Bereki <abereki@gmail.com>

Called Sen Moorlach Office to Speak With Spencer on 08/27/20

1 message

Adam <abereki@gmail.com> Fri, Aug 28, 2020 at 7:13 AM
To: Adam Bereki <abereki@gmail.com>

Left message with female secretary.

Gmail Adam Bereki <abereki@gmail.com>

Petition For Redress- Adam Bereki

8 messages

Adam <abereki@gmail.com> Tue, Sep 1, 2020 at 11:17 AM
To: lance.christensen@sen.ca.gov

Hi Lance,

We spoke on the phone a few weeks ago about my filing a Petition for Redress of Grievance with Sen. Moorlach. Im writing to: (1) determine if you or spencer had found out anymore pertaining to the proper procedures for filing a petition for redress of grievance with the legislature; and, (2) whether you have received the petition I sent to Sen. Moorlach's office and what action you have taken.

Thank you for your help,

Sincerely,

Adam Bereki
949 241 6693

Christensen, Lance <Lance.Christensen@sen.ca.gov> Thu, Sep 3, 2020 at 7:29 PM
To: Adam <abereki@gmail.com>

Adam,

Your package has still not reached our district office for me to review. I've advised staff to alert me the moment they receive it.

In the meantime, I'll review with the Office of Legislative Counsel and see if they have better information on a process I'm not aware of.

Sincerely,

Lance

Lance Christensen

Chief of Staff

Senator John M. W. Moorlach (SD-37)

(916) 651-4037

[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Sep 4, 2020 at 8:19 AM
To: "Christensen, Lance" <Lance.Christensen@sen.ca.gov>

Lance,

Thank you so much for your reply. I checked the tracking number on the package and it shows delivered at the district office in costa mesa on August 18, 2020. See attached USPS tracking.

Attached, I have included several of the preliminary files (included in the documents I mailed) that establish my claim for redress and the unconstitutionality of the statute (Business and Professions Code §7031(b)). Also included are recent filings in the 9th circuit Court of Appeal that further establish these facts based on recent judgments from the US Supreme Court. These files are called "Bereki 9th Circuit 1" and "Bereki 9th Circuit 2".

I will send another email with the exhibits referred to in each of the letters below.

I'll look forward to hearing from you about any directions you find for ensuring my Petition is properly submitted, heard, and remediated.

Please feel free to call me with any questions.

Sincerely,

Adam Bereki
949 241 6693

California Legislature Complaint 013120.pdf

Complaint Letter to John Moorlach 081620.pdf

COMPLAINT TO MOORLACH 081620.docx

[Quoted text hidden]

3 attachments

Moorlach Delivery.pdf
117K

Bereki 9th Circuit 2.pdf
237K

Bereki 9th Circuit 1.pdf
377K

Christensen, Lance <Lance.Christensen@sen.ca.gov> Fri, Sep 4, 2020 at 1:45 PM
To: Adam <abereki@gmail.com>

Thanks, Adam.

I've done a quick review of the legal documents. I've also communicated with the Office of Legislative Counsel. They have indicated that there is no singular or formal process for a person to petition the Legislature for a redress of grievances. The emails and phones suffice for your petition. They also suggested that unless your case is connected to a judicial or administrative case or against the legislature – wherein we may need to take action or at least monitor the situation – there really is no other process that you need to go through unless it if your intent to change the law.

By calling, emailing, and otherwise contacting a legislative office, the Legislature is constrained as a separate but equal branch of government in what action it may take and may use its resources only for legislative purposes. Therefore, we can assist you if you have a proposal for a change in state law or if you would like our assistance in contacting another government agency.

However, as a legislative office, we are not empowered to enforce or adjudicate the law, which are functions assigned to the executive and judicial branches of our state government. As we discussed previously over the phone, if you are interested in pursuing any actions with the executive or judicial branch, you should contact those branches or speak with an attorney. We cannot provide you with legal advice or assistance in that regard.

Due to strict protocols of the Senate, I am severely restricted to time I am allowed in the office. If you would like to further clarify your intent, reply to this email and we can go from there.

[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Sep 4, 2020 at 2:04 PM
To: "Christensen, Lance" <Lance.Christensen@sen.ca.gov>

Lance,

Thank you for your expedient help and thorough reply.

1) Based on your reply, I consider my Petition for Redress submitted to the California Legislature through both you and assembly-woman Cottie Petria Norris.

2) I would like my Petition addressed. Since you stated there does not seem to be any protocol, it would be reasonable to me that the Legislature would conduct a formal inquiry/investigation into my allegations and make findings of fact and conclusions of law as a power within its legislative capacity to rectify an injustice it created. Then, if the Legislature found the law was unconstitutional, it could then compensate the many People of California who have been injured by this atrocity for damages. Obviously changing the law would also be of paramount importance so that it complied with State and Federal Constitutional provisions.

Sincerely,

Adam Bereki

[Quoted text hidden]

Christensen, Lance <Lance.Christensen@sen.ca.gov> Fri, Sep 4, 2020 at 3:47 PM
To: Adam <abereki@gmail.com>

Adam,

I understand your request. You are among the thousands of requests we get from our constituents for special hearings, audits and reviews of dozens of laws, governmental agencies and adverse actions that we get every year. We take each one of them seriously. Where we can help a constituent, we do. If there is a bill we can draft that has a chance of advancing through the legislative process, we draft the bill. Our record there is clear. If there is an egregious governmental problem impacting our constituents, we've queried them in hearings and held them accountable through the budget process.

If you are interested in contacting the chair of any of the policy or fiscal committees that deal with contractor licenses, you can find them here and here. They control the calendar and agendas of all committees under their purview.

However, what you are asking us to do is extra-legislative. What you suggest is a judicial hearing. That is where the constitutionality of law is decided, not in the legislature. If that were the case, we would have far fewer laws than we have now. It is the advice of the Office of Legislative Counsel that you hire an attorney.

With that, I am closing out your request as there is nothing more that our office can do for you.

I wish you well.

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

COMPLAINT TO MOORLACH 081620.docx

[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Fri, Sep 4, 2020 at 4:21 PM
To: G Cressend <gcressend@gmail.com>

Here is the response I got from a California senator whom I submitted my petition for redress of grievance to for them Violating constitutional law and stealing millions of dollars from constituents.

Sent from my iPhone

Begin forwarded message:

From: "Christensen, Lance" <Lance.Christensen@SEN.CA.GOV>
Date: September 4, 2020 at 3:48:00 PM PDT
To: Adam <abereki@gmail.com>
Subject: RE: Petition For Redress- Adam Bereki

[Quoted text hidden]

Adam <abereki@gmail.com> Tue, Sep 8, 2020 at 9:41 AM
Draft To: "Christensen, Lance" <Lance.Christensen@sen.ca.gov>

[Quoted text hidden]

Gmail Adam Bereki <abereki@gmail.com>

Re: Petition For Redress- Adam Bereki– ADDITIONAL EXHIBITS

1 message

Adam <abereki@gmail.com> Fri, Sep 4, 2020 at 8:30 AM
To: "Christensen, Lance" <Lance.Christensen@sen.ca.gov>

Lance,

The remaining exhibits that were mailed to the district office are attached to this email.

Sincerely,

Adam Bereki

- **EXHIBIT A-H.pdf**
- **EXHIBIT I REPORTERS TRANSCRIPT 032717.pdf**
- **EXHIBIT J REPORTERS TRANSCRIPT 032817.pdf**
- **EXHIBIT K CLERKS TRANSCRIPT PART 1 OF 3 8:19–...**
- **EXHIBIT K CLERKS TRANSCRIPT PART 2 OF 3 8:19–...**
- **EXHIBIT K CLERKS TRANSCRIPT PART 3 OF 3 8:19–...**
- **EXHIBIT L TRIAL EXHIBITS 8:19–CV–02050.pdf**
- **EXHIBIT M 8:19–CV–02050.pdf**
- **EXHIBIT N OCR 7031B LEGISLATIVE HISTORY OCR.pdf**
- **EXHIBIT O AMENDED TRIAL COURT TRANSCRIPT.pdf**
- **EXHIBIT P PUBLIC RECORDS REQUESTS W BATES.pdf**

On Thu, Sep 3, 2020 at 7:29 PM Christensen, Lance <Lance.Christensen@sen.ca.gov> wrote:

> Adam,
>
> Your package has still not reached our district office for me to review. I've advised staff to alert me the moment they receive it.
>
> In the meantime, I'll review with the Office of Legislative Counsel and see if they have better information on a process I'm not aware of.
>
> Sincerely,
>
> Lance
>
> **Lance Christensen**

Chief of Staff

Senator John M. W. Moorlach (SD-37)

(916) 651-4037

From: Adam <abereki@gmail.com>
Sent: Tuesday, September 01, 2020 11:18 AM
To: Christensen, Lance <Lance.Christensen@SEN.CA.GOV>
Subject: Petition For Redress- Adam Bereki

Hi Lance,

We spoke on the phone a few weeks ago about my filing a Petition for Redress of Grievance with Sen. Moorlach. Im writing to: (1) determine if you or spencer had found out anymore pertaining to the proper procedures for filing a petition for redress of grievance with the legislature; and, (2) whether you have received the petition I sent to Sen. Moorlach's office and what action you have taken.

Thank you for your help,

Sincerely,

Adam Bereki

949 241 6693

Gmail Adam Bereki <abereki@gmail.com>

FW: OCSD Location

2 messages

Knutson, Gary L <gknutson@ocsd.org> Tue, Sep 1, 2020 at 1:25 PM
To: "abereki@gmail.com" <abereki@gmail.com>

Sir,

Reference our conversation I'll look forward to meeting you tomorrow (Wednesday 9/2/20) @ 9am. Please check in with the officer in the lobby and he will have the deputy meet with you. I have attached a map for your reference. All of our buildings share the same address, which can be a little confusing. I've circled our building in red.

Regards,

Gary Knutson | Lieutenant

ORANGE COUNTY SHERIFF'S DEPARTMENT

North Patrol Bureau | City of Villa Park Police Services

550 N. Flower Street | Santa Ana | California | 92703

Office (714) 647-4094 | Cell (714) 474-4342 | gknutson@ocsd.org

The men and women of the Orange County Sheriff's Department are dedicated to the protection of all we serve. We provide exceptional law enforcement services free from prejudice or favor, with leadership, integrity, and respect.

For more information, scan the QR Code below or visit: www.ocsd.org/faqs

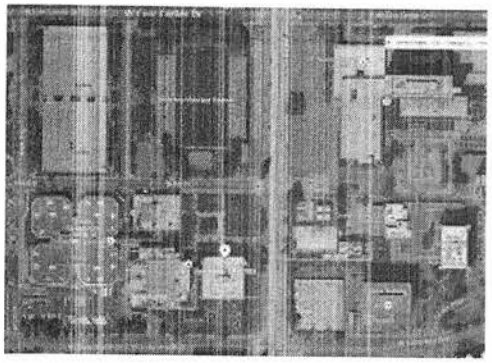
DR #: 20-029161

Date: 9/2/20

Integrity without compromise | Service above self
Professionalism in the performance of duty | Vigilance in safeguarding our community

www.ocsd.org

2 attachments



OCSD HQ map.PNG
2293K

ORANGE COUNTY SHERIFF'S DEPARTMENT

image001.png
133K

Adam <abereki@gmail.com> Tue, Sep 1, 2020 at 1:27 PM
To: "Knutson, Gary L" <gknutson@ocsd.org>

Gary,

Thank you for your kindness and help. I appreciate your help with the directions too. I'll look forward to meeting you tomorrow.

Sincerely,

Adam Bereki
[Quoted text hidden]

Adam <abereki@gmail.com> Wed, Sep 2, 2020 at 12:57 PM
To: "Knutson, Gary L" <gknutson@ocsd.org>

Gary,

Thank you for your kindness and professionalism in seeing that I was able to make a complaint through your department. I appreciated you coming to introduce yourself as well. Could you please share with me how I would get a copy of the report when it's ready? (I realize it may take a few days).

Sincerely,

Adam Bereki

[Quoted text hidden]

Knutson, Gary L <gknutson@ocsd.org> Wed, Sep 2, 2020 at 2:18 PM
To: Adam <abereki@gmail.com>

You're welcome sir. I hope everything works out for you. To request a report go to our website www.ocsd.org and look under the "How do i..." tab. There you will find a section to Request a copy of the report. It will probably take about two weeks for the report to be ready.

Regards,

Gary

[Quoted text hidden]

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links.
Forward suspicious messages to Helpdesk@ocsd.org.

ORANGE COUNTY
SHERIFF'S DEPARTMENT

DON BARNES
SHERIFF-CORONER

D. FOSTER

DEPUTY SHERIFF #3340

B. MILBERY # 9838

dfoster@ocsd.org
O: 714-647-7000
550 N. Flower St, Santa Ana, CA 92703

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DR #: 20-029161

Date: 9/2/20

Integrity without compromise | Service above self
Professionalism in the performance of duty | Vigilance in safeguarding our community

www.ocsd.org

Adam Bereki
818 Spirit
Costa Mesa, California, USA
949.241.6693
abereki@gmail.com

Senator JW Moorlach
Via email to Chief of Staff:
Lance.Christensen@sen.ca.gov

September 8, 2020

RE: Petition for Redress of Grievance by Adam Bereki

Lance,

Thank you for your response. Please see the following:

1) I just wanted to confirm that Senator Moorlach (whose office I've contacted) has reviewed my complaint and agrees with the findings you presented in your email response dated 9/4/20 as his Chief of Staff. Please ask Sen. Moorlach to draft a short email with his signature or a signed letter stating that the decision not to protect me and my rights by not intervening in the current and ongoing deprivation of my State and Federal Constitutional rights by unconstitutional legislative action pursuant to Business and Professions Codes §7031(a), §7031(b), and §7071.17 is his official response.

Please also ask that Sen. Moorlach respond to each of the following questions:

2) In my email to Lance dated 9/4/20, I asked:

> "[For] the Legislature [to] conduct a formal inquiry/investigation into my allegations and make findings of fact and conclusions of law as a power within its legislative capacity to rectify an injustice it created. Then, if the Legislature found the law was unconstitutional, it could then compensate the many People of California who have been injured by this atrocity for damages. Obviously changing the law would also be of paramount importance so that it complied with State and Federal Constitutional provisions.

In Lance's reply that same day, he stated:

> ["[...] [W]hat you are asking us to do is extra-legislative. What you suggest is a judicial hearing. That is where the constitutionality of law is decided, not in the legislature. If that were the case, we would have far fewer laws than we have now."]

I'm a bit confused by Lance's reply. Is he saying that the legislature does not decide whether a law is constitutional or not before passing it? Or that if an unconstitutional law is brought to its attention the legislature has no authority to do anything about it? It's my understanding the legislature has no authority whatsoever to pass a law that is unconstitutional as the authority to create/enact law only extends to those laws that are within constitutional bounds.

When I spoke with Lance on the phone the other day he also told me unconstitutional laws are passed all the time. If what he shared on the phone and in his reply email is true, something seems terribly wrong and unlawful with the manner in which the California Legislature is conducting its business.

The legislature appears to have quasi-judicial capabilities as it delegates administrative agencies powers to perform these fact-findings functions that I requested. Indeed the Congress of the United States conducts interviews, investigations, and hearings all the time. Are these not quasi-judicial functions? Does Congress then, based upon these investigations, ereate a findings of facts and conclusions of law and/or take remedial or other action? Of course it does. So then how does the California Legislature not have this power?

3) Lance's email states "where we can help a constituent we do." How come your office does not think you can help me and as a result have closed my complaint? I have presented competent evidence of unconstitutional laws and behavior of the Legislature that is actively harming me and other People of California leading in some cases to total financial destruction. Is your refusal to not intervene not a blatant denial of equal protection under the law? Is the situation I presented not "an egregious governmental problem impacting [y]our constituents"? This problem has been going on for decades. Others have petitioned the legislature regarding this unconstitutional law and nothing has happened.

4) Where is the "consent of the governed" when the California Legislature has not changed in size proportionally to ensure the people are fairly represented since

1879? How can there be a republican form of government when the legislative, judicial, and executive branches unite to create tyranny or "monarchical innovation" by passing and enforcing unconstitutional laws and then when informed about this respond by "clos[ing] out your request as there is nothing more that our office can do for you?"

5) Please identify and provide all of the records in your custody and control of the Bills Lance refers to that your office has drafted pertaining to complaints made by constituents for the last five years to support that your "record there is clear" (in helping redress problems identified by constituents).

6) Please provide all documents in your custody or control pertaining to the "unconstitutional laws" Lance referred to that have been passed by the California Legislature for the last five years.

I've attached scan copy of the emails between Lance and I for your reference.

PLEASE OPEN MY COMPLAINT & BEGIN AN INVESTIGATION.

Sincerely,

Adam Bereki

Adam Bereki
818 Spirit
Costa Mesa, California, USA
949.241.6693
abereki@gmail.com

September 8, 2020

Orange County Sheriff's Department
(hereafter "OCSD")
Via Email: prarequests@ocsd.org

RE: Public Records Act Request

1. Please provide a copy of Information Report DR# 20-029161.

Please email your response to this request within the time allotted by law to abereki@gmail.com. I will respond that I have received it. Thank you for your time and help. If you have any questions please don't hesitate to call or email at the phone number or email address provided above.

Sincerely,
/s/ Adam Bereki, September 8, 2020

20-029161

(714) 647-1851 GAL NORTH DIV.

INV. Anderson (714) 647-1884

PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] *(Part 1 enacted 1872.)*

TITLE 13. OF CRIMES AGAINST PROPERTY [450 - 593g] *(Title 13 enacted 1872.)*

CHAPTER 4. Forgery and Counterfeiting [470 - 483.5] *(Chapter 4 enacted 1872.)*

470. (a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

(e) Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any forged bill or note, it is not necessary to prove the incorporation of the bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that the bill or note is forged or counterfeited.

(Amended by Stats. 2005, Ch. 295, Sec. 5. Effective January 1, 2006.)

PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] *(Part 1 enacted 1872.)*

TITLE 13. OF CRIMES AGAINST PROPERTY [450 - 593g] *(Title 13 enacted 1872.)*

CHAPTER 5. Larceny [484 - 502.9] *(Chapter 5 enacted 1872.)*

484. (a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.

(b) (1) Except as provided in Section 10855 of the Vehicle Code, where a person has leased or rented the personal property of another person pursuant to a written contract, and that property has a value greater than one thousand dollars ($1,000) and is not a commonly used household item, intent to commit theft by fraud shall be rebuttably presumed if the person fails to return the personal property to its owner within 10 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.

(2) Except as provided in Section 10855 of the Vehicle Code, where a person has leased or rented the personal property of another person pursuant to a written contract, and where the property has a value no greater than one thousand dollars ($1,000), or where the property is a commonly used household item, intent to commit theft by fraud shall be rebuttably presumed if the person fails to return the personal property to its owner within 20 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented.

(c) Notwithstanding the provisions of subdivision (b), if one presents with criminal intent identification which bears a false or fictitious name or address for the purpose of obtaining the lease or rental of the personal property of another, the presumption created herein shall apply upon the failure of the lessee to return the rental property at the expiration of the lease or rental agreement, and no written demand for the return of the leased or rented property shall be required.

(d) The presumptions created by subdivisions (b) and (c) are presumptions affecting the burden of producing evidence.

(e) Within 30 days after the lease or rental agreement has expired, the owner shall make written demand for return of the property so leased or rented. Notice addressed and mailed to the lessee or renter at the address given at the time of the making of the lease or rental agreement and to any other known address shall constitute proper demand. Where the owner fails to make such written demand the presumption created by subdivision (b) shall not apply.

(Amended by Stats. 2000, Ch. 176, Sec. 1. Effective January 1, 2001.)

Gmail Adam Bereki <abereki@gmail.com>

secure: #20-029161

1 message

Report Request <ReportRequest@ocsd.org> Tue, Sep 15, 2020 at 8:43 AM
To: "abereki@gmail.com" <abereki@gmail.com>

Report Request (ReportRequest@ocsd.org) has sent you a protected message.

Read the message

Learn about messages protected by Office 365 Message Encryption.

Privacy Statement

Email encryption powered by Office 365. Learn More
Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

message_v4.rpmsg
825K

Call w/ Inv. Anderson
714 647 1884
20-029161
09/15/20

ORANGE COUNTY SHERIFF'S DEPARTMENT CALIFORNIA

DR # 20-029161

INFORMATION REPORT

ORIGINAL

Reporting Area: North Uninc

EVENT SUMMARY

Date Occurred: Wednesday, 9/2/2020 08:17

Date Reported: Wednesday, 9/2/2020 08:17

Incident Location: 550 N Flower St, Santa Ana CA 000000000

Naloxone Deployed? ☐ **Use of Force** ☐

Brief Description of Incident: INFORMATION REPORT

OTHER

Name: CHAFFEE, DAVID **Age:**

Position/Title: JUDGE

Sex	Race
M	

REPORTEE

Name: BEREKI, ADAM ALAN **DOB:** 6/18/1979 **Age:** 41

Address: 818 Spirit , Costa Mesa CA 92626

Email: ABEREKI@GMAIL.COM **Cell Phone:** (949)241-6693 **Home Phone:** **Other Phone:**

Sex	Race
M	White

OTHER

Name: HUMPHREYS, GARY **Age:**

Sex	Race
M	

OTHER

Name: HUMPHREYS, KAREN **Age:**

Sex	Race
F	

PROPERTY/EVIDENCE

Related Offense: INFO REPORT

Property Description: PAPERWORK

NARRATIVE

On Wednesday, September 2, 2020, Deputy D. Foster #3340 and I were dispatched to Orange County Sheriff's Department Headquarters, located at 550 N. Flower Street in the City of Santa Ana, reference a report.

Upon arrival, we spoke to Adam Alan Bereki (06/18/1979). Adam told us the following: Adam is a former police officer with the Huntington Beach Police Department and was medically retired about 10 years ago. After retiring, Adam started a construction company, Spartan Associates. Adam obtained a contractor's license under Spartan Associates and not under his own name.

From April 2012 to August 2013, Spartan Associates was contracted by Gary and Karen Humphreys

ORIGINAL

Reporting Area: North Uninc

(NFD) to remodel a condominium in Newport Beach. In August of 2013, Gary and Karen terminated Spartan Associates. At that time, Gary and Karen had paid Spartan Associates $848,000.00 and still had a pending balance of $82,000.00 that they refused to pay Spartan Associates. Spartan Associates attempted to negotiate the price owed with Gary and Karen but they rejected all negotiations. In August of 2015, Spartan Associates filed a lawsuit [Case#2015-00805807] against Gary and Karen, for the time and materials owed, which amounted to $82,000.00.

On February 16, 2016, Gary and Karen filed a motion for summary judgement. Gary and Karen initially asserted they entered an agreement with Spartan Associates for construction on their condominium. In early 2017, Gary and Karen filed a 1st amended cross complaint with new info. Gary and Karen amended that they contracted with Adam and not Spartan Associates.

On April 20, 2017, the court found that Adam did not have a contracting license in his name, therefore he violated B&P 7031(b). Judge David R. Chaffee ruled that Adam was to pay Gary and Karen $848,000 in Disgorgement. Adam disagreed with the judgement based on the fact that Adam felt they had contracted with his company. Neither Adam nor Spartan Associates ever had a formal contract with Gary and Karen and all agreed to items were in an email chain which Adam did not provide. Adam provided me a statement with a list of checks written by Gary and Karen for all work completed. In this list there are 7 checks written to Adam and 10 checks written to Spartan Associates.

Due to the $848,000.00 owed by Adam, a lien was placed on 818 Sprint, Costa Mesa, CA. 92626. Adam stated in November 2010, his mother Roseanne Bereki (09/25/1953) took over as legal owner of the residence and Adam's name is on the legal title. Adam also lost his business' contractors license.

On March 18, 2017, Adam filed a Writ of Error with the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after, Adam received an email stating they denied the request to vacate judgement.

On June 6, 2017, Adam again went to the Orange County Superior Court and challenged the jurisdiction of the court. Shortly after the court responded and fined Adam approximately $1,500.00, for abuse of discovery. Adam's motion was again denied.

On January 10, 2018, Adam filed an appeal with the Fourth Appellate District Court of Appeal. On October 31, 2018, Adam received the Appeal Court judgement, stating all arguments had no merit.

On October 28, 2019, Adam filed a complaint with the US Supreme Court. On February 27, 2020, the court denied Adam's case, due to the appeal being frivolous.

Adam believes that B&P 7031(b) is unconstitutional and the $848,000.00 disgorgement was given to him as a fine and a fine can only be levied if he is charged with a crime. Adam cited MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 36 Cal. 4th 412 and Rambeau v. Barker, 2010 Cal. App. Unpub. Lexis S610 to prove that the violation of B&P 7031(b) and subsequent penalties were imposed illegally and unjustly. Adam stated the fine levied under B&P 7031(b) is actually criminal forfeiture. Adam provided a definition of criminal forfeiture under US v. Seifuddin, 820 F.2d 1074, "If the statute under which the forfeiture alleged is penal, it will be treated as criminal

ORIGINAL

Reporting Area: North Uninc

forfeiture." Under People V. Cowan, 47 Cal. App. 5th 32, Adam believes his forfeiture was an excessive fine and his ability to pay was not taken into consideration. The courts rejected these claims stating his amount owed is Disgorgement and not a fine.

Adam also believes the amount was excessive because it did not take into consideration the amount of materials and work completed on the construction project. Adam asserted that his company completed $848,000.00 worth of work therefore he should only have to pay back any profit he made on the project. Adam cited, US Supreme Court Case Liu V. SEC, 2020 Lexis 3374. This case states: "the profit-based measure of unjust enrichment reflects a foundational principle: It would be inequitable that a wrongdoer should make a profit out of his own wrong. At the same time courts recognize that the wrongdoer should not profit by his own wrong, they also recognized the countervailing equitable principle that the wrongdoer should not be punished by paying more than a fair compensation to the person wronged."

Adam stated his rights have been violated under Title 18, U.S.C., Section 242 –Deprivation of Rights under the Color of Law. Adam believes he has been given an excessive fine by the courts that is cruel and unusual punishment. Adam believes his 5th, 6th, 7th, 8th and 14th Amendment Rights have been violated. Adam believes that Judge Chaffee is in violation of CPC 211- Robbery and CPC 484g Theft by False Pretense, by imposing the $848,000.00 fine. At the conclusion of the initial judgment, Adam has subsequently represented himself in every court with self-taught legal knowledge. Adam has met with attorneys regarding his case but does not have the funds necessary to retain them as council. Adam has exhausted all legal avenues in the courts to rectify his perceived constitutional violations.

Adam came to the Sheriff's Department as a last resort in an attempt to prove his Constitutional rights have been violated. As the Sheriff's Department is an agent of the Executive Branch of the State Government, Adam would like to use our agency as Checks and Balances with the Legislative and Judicial Branches of the State Government. Adam stated he would hold the Sheriff's Department responsible if we failed to adequately investigate his claims.

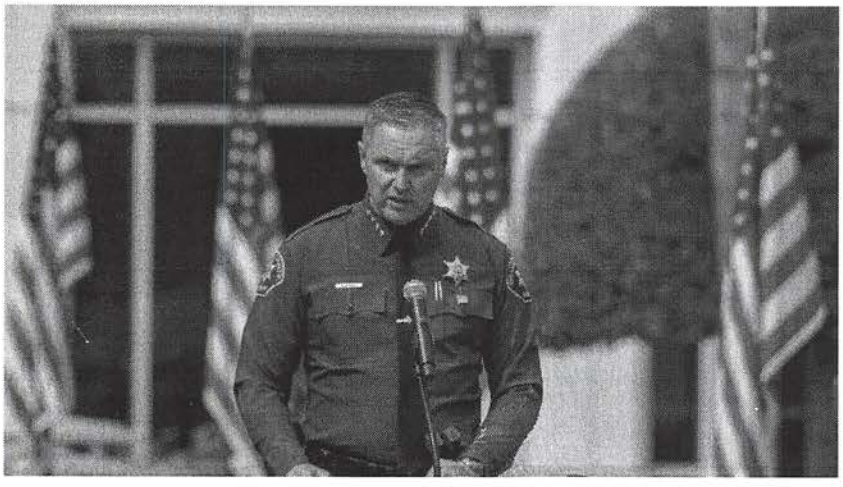
INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Reporting Officer	Milbery, B. 09838	☐	9/6/2020
Assisting Officer	Foster, D. 03340	☐	9/6/2020
Approving Officer	Castro, M. 05307	☐	9/6/2020

9/20/20

NEWS • News

Spate of deputy misconduct cases casts harsh spotlight on OC Sheriff's Department

The agency 'is broken beyond repair, and these are only the latest examples," said a senior attorney for the ACLU



Orange County Sheriff Don Barnes speaks to a gathering of first responders and dignitaries in the outdoor Pat Nixon Amphitheater at the Richard Nixon Presidential Library and Museum in Yorba Linda on Friday, September 11, 2020 during a ceremony honoring the victims of the Sept. 11 terrorist attacks. (Photo by Leonard Ortiz, Orange County Register/SCNG)

By TONY SAAVEDRA | tsaavedra@scng.com | Orange County Register

PUBLISHED: September 20, 2020 at 6:15 a.m. | UPDATED: September 20, 2020 at 6:15 a.m.

For one week, it seemed like the Orange County Sheriff's Department was aflame in bad news. Four different revelations about larcenous or fraudulent misconduct by sheriff's personnel erupted the week of Sept. 7.

Deputies and civilian jailers allegedly falsified their reserve military orders to get paid for more time than they actually served. A deputy also was arrested that week on suspicion of repeatedly burglarizing a Yorba Linda home where he had been sent earlier on a death call. A female deputy was charged with taking a suspect's debit card and giving it to her son, who used it. And yet another deputy was indicted by the grand jury for falsifying a police report to make it appear he had booked evidence, including drugs and a knife, when he had not.

ADVERTISEMEN

This was against a backdrop of two recent department scandals — deputies improperly using jailhouse informants to secure evidence against targeted inmates, and systematically mishandling property evidence by booking it late, or sometimes not at all.

Since Feb. 1, at least seven Orange County deputies and one recruit have been criminally charged for various misdeeds.

What's going on?

It all begs the question, what's going on with the Orange County Sheriff's Department? Does Sheriff Don Barnes deserve credit for rooting out some of the problems or criticism for allowing them to occur in the first place? He has been sheriff less than two years, but was the undersheriff before that, virtually running day-to-day operations for years.

Barnes notes that the vast majority of deputy misconduct was discovered internally, by his own people.

"The thousands of employees that do great work every day, they're aghast. They don't like that some are tarnishing their credibility," he said.

If Barnes is on trial for seeking out problems, correcting them and disciplining the misbehaving parties, then, he says, he is guilty as charged.

'Broken beyond repair'

Some see it differently.

"The Orange County Sheriff's Department is broken beyond repair, and these are only the latest examples," said Somil Trivedi, senior staff attorney at the ACLU's Criminal Law Reform Project. The American Civil Liberties Union is locked in litigation against the department over jail conditions.

"Instead of giving (him) credit for investigating some of these scandals, we should be asking why he has so many scandals to begin with," Trivedi said.

With 4,000 employees, Orange County has one of the largest sheriff's departments in the state. Some experts say the larger the department, the more problems it will have.

"Every large organization has misconduct happening and it's a question of how the command staff is rooting it out," said Katherine Mader, a retired Los Angeles County Superior Court judge and the first inspector general for the Los Angeles Police Department. "I was horrified as I went over the complaints in the LAPD as to how much was papered over.

"It's totally troubling, but the sorts of issues here have gone on for years in large police agencies and it's just not found out about."

Deserves credit for audits

Mader said Barnes deserves credit for proactively launching audits on the mishandling of evidence and cheating among military reservists in the department.

In the evidence scandal, the explosive audit found that nearly one-third of the evidence collected from February 2016 to February 2018 was not booked by the end of the deputies' shifts, as required by policy. Nearly 300 bookings were tardy by more than a month, creating questions about chain of custody. One official from the Public Defender's Office said thousands of criminal cases could be affected.

A second audit found that dozens of deputies had lied in their official reports, saying they had booked evidence when they had not. That evidence included knives, guns, drugs, money and photos. Indeed, in the case involving the deputy who was indicted by the grand jury, a conviction was vacated when it became clear the evidence was missing.

In the military scandal, an Army reservist was caught in January cheating on his orders, submitting paperwork to get paid for more time than he actually served. Barnes launched a review that determined four more deputies and two correctional workers had allegedly falsified their military orders to serve as reservists.

"It's looking like he is doing something good to clean up the department," Mader said. "Whether he really is or not is up for discussion."

In both the evidence and military scandals, Barnes did not release the audits publicly until forced by pending stories in the Orange County Register. Barnes referred the military problems to "the appropriate federal officials," eschewing District Attorney Todd Spitzer. Sheriff's officials would not say which federal officials were given the case.

Why no local prosecution?

Lawrence Rosenthal, a professor at the Fowler School of Law at Chapman University in Orange, contends Barnes should have sent the military cases to Spitzer because they can be prosecuted in state court, which moves more quickly.

"If you are referring something to federal authorities, you're putting it on the slow boat to China," said Rosenthal, a retired federal prosecutor.

Barnes responded that since the military is a branch of the federal government, those authorities have the first right of refusal.

Rosenthal also criticized Barnes for not better publicizing the cases, which he said would increase the deterrent effect on deputies.

"The sheriff's failure to act with maximum aggression gets to me, and the fact he isn't shows he's not good at solving this type of problem," he said. "(Barnes) gets credit for doing the minimum. ... If you placed the bar as low as possible, yes, he jumped over it."

Barnes: Not a chest thumper

Barnes said it's not his style to hold "self-aggrandizing" news conferences or fly banners noting his accomplishments in disciplining employees.

"If I'm being criticized because I didn't hold a big press conference, that is an assertion you can make," he said. "But it's not that I didn't act."

Jodi Balma, a political science professor at Fullerton College, doesn't believe the offenders are disciplined enough.

"It's all fine and good to discover the problem, but what do you do to make sure that you are making an example?" Balma said. "If it's just paid leave, and then you get a slap on the wrist, that's hardly a punishment."

Barnes and his staff have tightened policies and procedures to keep deputies from repeating their missteps.

But critics point out that no one was penalized for misusing informants in violation of inmates constitutional rights; only two deputies so far have been convicted for mishandling evidence and lying about it — both pleaded guilty to misdemeanors with no jail time or fines.

Some deputies have been terminated.

Barnes said he has no control over criminal penalties and contends firing deputies is hardly a slap on the wrist. "I don't know what their barometer is for accountability," the sheriff said of his critics.

Bryan Selzer, a former police officer whose company LEFTA Systems creates training software for law enforcement, was optimistic about Orange County's department.

"I would not panic yet," Selzer said. "It's just too big of an organization to look at everything every single day."

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SPONSORED CONTENT

At 66, Kathie Lee Gifford And Her Partner Are Still Together

By mortgageafterlife

Tony Saavedra | Reporter

Tony Saavedra is an investigative reporter specializing in legal affairs for the Orange County Register. His work has been recognized by the National Headliner Club, the Associated Press Sports Editors, the California Newspaper Publishers Association, the Orange County Trial Lawyers Association and the Orange County Press Club. His stories have led to the closure of a chain of badly-run group homes, the end of a state program that placed criminals in inappropriate public jobs and the creation of a civilian oversight office for the Orange

County Sheriff's Department, among other things. Saavedra has covered the Los Angeles riots, the O.J. Simpson case, the downfall of Orange County Sheriff-turned felon Michael S. Carona and the use of unauthorized drugs by Olympian Carl Lewis. Saavedra has worked as a journalist since 1979 and has held positions at several Southern California newspapers before arriving at the Orange County Register in 1990. He graduated from California State University, Fullerton, in 1981 with a bachelor of arts in communication.

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August 18, 2020

Via United States Mail To:

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95798-9052

Administrative Director of the Judicial Council
455 Golden Gate Ave.
San Francisco, CA 94102-3688

Superior Court of California
County of Orange
Executive Officer
700 Civic Center Drive West
Santa Ana, California 92702-1994

Kevin J. Lane
Clerk of the Fourth Appellate District
Symphony Towers
750 B. Street, Suite 300
San Diego, CA 92101

Clerk Frank A. McGuire
California Supreme Court
350 McAllister St.
San Francisco, CA 94102

RE: Public Records Act Request

Good day.

Please provide all documents in your custody or control evidencing your duties under the California Constitution, the Constitution for the United States, California Statutes, or any other rules, regulations, policies, or procedures pertaining to the handling of claims under the California Tort Claims Act. Specifically, I am interested in all documents that evidence your duties to 1) receive the complaint, 2)perform an investigation, 3) make findings of fact and conclusions, and/or 4) provide redress or remedy based on the findings of your investigation. If there are no documents pursuant to any of these itemized requests, please say so. Your response should not be limited to only these four categories. I have included

them to narrow your search specific categories but am all interested in the other duties of your offices. This request should also include any job postings, employment fliers standard operating procedure manuals, policy manuals, etc... involving the topic of handling these tort claims.

Sincerely,

Adam Bereki

08/18/20

Gmail Adam Bereki <abereki@gmail.com>

Public Records Request

1 message

PAJAR <PAJAR@jud.ca.gov> Tue, Sep 1, 2020 at 10:56 AM
To: "abereki@gmail.com" <abereki@gmail.com>
Cc: PAJAR <PAJAR@jud.ca.gov>

Good morning,

Your attached request was received by the Judicial Council of California, the California Supreme Court, and the Court of Appeal, Fourth Appellate District on Monday, August 24. The Judicial Council's "Public Access to Judicial Administrative Records" (PAJAR) team responds on behalf of all three entities to requests to inspect "judicial administrative records" pursuant to rule 10.500 of the California Rules of Court. (All references in this email to "rules" are to the California Rules of Court.) You can find information about rule 10.500, the process for requesting records, and the types of records available through this process at *www.courts.ca.gov/publicrecords.htm*.

In the attachment, you request "all documents … evidencing [the] duties" of the Administrative Director and of the two reviewing courts' clerk/executive officers, under federal and state law, and "any other rules, regulations, policies or procedures pertaining to the handling of claims under the California [Government] Claims Act." (Gov. Code, § 810 et seq.)

Attached, please find the documents describing the duties of the two clerk/executive officers. The comparable description for the Administrative Director position is available on the California Courts website. (See https://www.courts.ca.gov/documents/JCspec-3011.pdf.) We have no other responsive records.

The PAJAR team is not able to provide legal advice or perform legal research for the public. You may, however, wish to review the following authorities, which may include information relevant to your inquiry: Cal. Rules of Court, rules 10.80 (Administrative Director duties), 10.1020 (reviewing court clerk/executive officer duties), and 10.201–10.203 (management of claims and litigation).

Sincerely,

Public Access to Judicial Administrative Records

Legal Services | Leadership Services Division

Judicial Council of California

455 Golden Gate Avenue

San Francisco, California 94102-3688

415-865-7796 | PAJAR@jud.ca.gov

www.courts.ca.gov/publicrecords.htm

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2 attachments

Request.pdf
134K

Records.pdf
246K

STATE OF CALIFORNIA
Judicial Branch
Supreme Court

Class Code: 2204
January 1998
Revised: July 2018

CLERK/EXECUTIVE OFFICER OF THE SUPREME COURT

DEFINITION

Under policy direction, serves as the court's executive officer with responsibility for planning, organizing, coordinating, and directing with full authority and accountability the management of the Office of the Clerk of the Court and all non-judicial administrative support activities for the Supreme Court; performs related work as assigned.

CLASS CHARACTERISTICS

This is the highest executive-level class in the Clerk/Executive Officer series. The incumbent is responsible for managing personnel and non-judicial programs within organizational and policy confines of the Supreme Court, including full authority, responsibility, and accountability for the Office of the Clerk of the Court and all administrative support activities, including human resources, information systems, facility management, court security, and finance.

EXAMPLES OF DUTIES *(illustrative only)*

- Plans and implements administrative and operational programs and policies for the Supreme Court and for the Office of the Clerk of the Court.
- Plans, organizes, administers, reviews, and evaluates the work of staff, through subordinate managers and/or supervisors; oversees or provides for the selection, training, professional development, and discipline of staff; supervises assigned staff.
- Develops and/or revises administrative policies and procedures.
- Reviews and responds to correspondence and inquiries regarding interpretation of court policies and procedures.
- Develops, administers, and monitors budget for the Supreme Court.
- Coordinates facility and space planning.
- Manages the procurement of supplies and equipment.
- Provides a full range of human resources support for the court.
- Coordinates information systems activities.
- Administers a variety of business services support including telephone systems, fax capability, and mail and duplicating services.
- Coordinates court security.
- Represents the court to internal and external customers, including the other branches of government, on issues pertaining to the court.

WORKING CONDITIONS

- Attend meetings outside of normal working hours.
- Work occasional evening and weekend hours.
- Required to travel statewide as necessary.

QUALIFICATIONS

Knowledge of:

- Policies and procedures associated with civil and criminal appeals before the Supreme Court.
- Functions, procedures, rules, and regulations of the Clerk's Office.
- California Rules of Court and the rule-making process.
- Management principles and practices, including goal setting; employee development; program development, implementation, and evaluation; and the supervision of employees.
- Principles and practices of budget development and administration.
- Administrative principles, practices, and procedures associates with human resources, business services, information systems, finance, security, and other services found in a court.
- Problem-solving and conflict resolution methods and techniques.
- The operation of personal computers and the use of specified computer applications, such as word processing and spreadsheets.
- Principles and techniques of preparing effective oral presentations.
- Principles and techniques of preparing a variety of effective written materials.

Ability to:

- Develop and implement court administrative programs, policies, and procedures.
- Develop and implement goals, objectives, and work standards.
- Manage programs and staff often through subordinate supervisors.
- Translate goals, objectives, and policies into day-to-day operations.
- Develop effective work teams and motivate individuals to meet goals and objectives and provide services in the most effective and efficient manner.
- Maintain fiscal, legal, and statistical records and prepare necessary summaries and reports.
- Develop and administer the court's budget.
- Apply effective methods of office administration in the areas of purchasing, human resources, budgeting and accounting, information systems, and other business services related to the operation of the court.
- Use initiative and independent judgment within general policy guidelines.
- Apply problem-solving and conflict resolution methods and techniques.
- Operate personal computers and use specified computer applications, such as word processing and spreadsheets.
- Communicate effectively in English, orally and in writing.
- Establish and maintain effective working relationships with those contacted in the course of the work.

– Use tact and discretion in dealing with those contacted in the course of the work.

Licenses and Certificates:
None.

Education and Experience:
Equivalent to possession of a bachelor's degree, preferably in court administration or a related field, and six years of court management experience, including a minimum of two years of increasingly responsible management experience. Additional relevant education may be substituted for up to two years of experience. A law degree may be substituted for two years of experience.

OR

Two years as an Assistant Clerk/Executive Officer.

STATE OF CALIFORNIA
Judicial Branch
Courts of Appeal

Class Code: 2208
January 1998
Revised: July 2018

CLERK/EXECUTIVE OFFICER OF AN APPELLATE COURT

DEFINITION

Under policy direction, serves as the court's executive officer with responsibility for planning, organizing, coordinating, and directing with full authority and accountability the management of the Office of the Clerk of the Court and all non-judicial administrative support activities for an entire appellate court; performs related work as assigned.

CLASS CHARACTERISTICS

This is an executive-level class in the Clerk/Executive Officer series. Incumbents are responsible for managing personnel and non-judicial programs within organizational and policy confines of an appellate court, including full authority, responsibility, and accountability for the Office of the Clerk of the Court and all administrative support activities, including human resources, information systems, facility management, and finance.

EXAMPLES OF DUTIES *(illustrative only)*

- Plans and implements administrative and operational programs and policies for the court and for the Office of the Clerk of the Court.
- Directs, plans, organizes, administers, reviews, and evaluates the work of staff, often through subordinate managers and/or supervisors; oversees or provides for the selection, training, professional development, and discipline of staff; supervises assigned staff.
- Develops and/or revises administrative policies and procedures.
- Reviews and responds to correspondence and inquiries regarding interpretation of court policies and procedures.
- Develops, administers, and monitors budget of an appellate court.
- Coordinates facility and space planning.
- Manages the procurement of supplies and equipment.
- Ensures a full range of human resources support is provided for the court.
- Coordinates information systems activities.
- Administers a variety of business services support including telephone systems, fax capability, and mail and duplicating services.
- Coordinates court security.

- Represents the court to internal and external customers, including the other branches of government, on issues pertaining to the court.

WORKING CONDITIONS

- Attend meetings outside of normal working hours.
- Work occasional evening and weekend hours.
- Required to travel statewide as necessary.

QUALIFICATIONS

Knowledge of:

- Policies and procedures associated with appeals and original proceedings before an appellate court.
- Functions, procedures, rules, and regulations of the Clerk's Office.
- California Rules of Court and rule making procedures.
- Management principles and practices, including goal setting; employee development; program development, implementation, and evaluation; and the supervision of employees.
- Principles and practices of budget development and administration.
- Administrative principles, practices, and procedures associates with human resources, business services, information systems, finance, security, and other services found in a court.
- Problem-solving and conflict resolution methods and techniques.
- The operation of personal computers and the use of specified computer applications, such as word processing and spreadsheets.
- Principles and techniques of preparing effective oral presentations.
- Principles and techniques of preparing a variety of effective written materials.

Ability to:

- Develop and implement court administrative programs, policies, and procedures.
- Develop and implement goals, objectives, and work standards.
- Directs and/or manage programs and staff often through subordinate managers and/or supervisors.
- Translate goals, objectives, and policies into day-to-day operations.
- Develop and direct effective work teams and motivate individuals to meet goals and objectives and provide services in the most effective and efficient manner.
- Maintain fiscal, legal, and statistical records and prepare necessary summaries and reports.
- Develop and administer the court's budget.
- Apply effective methods of office administration in the areas of purchasing, human resources, budgeting and accounting, information systems, and other business services related to the operation of the court.
- Use initiative and independent judgment within general policy guidelines.
- Apply problem-solving and conflict resolution methods and techniques.

- Operate personal computers and use specified computer applications, such as word processing and spreadsheets.
- Communicate effectively in English, orally and in writing.
- Establish and maintain effective working relationships with those contacted in the course of the work.
- Use tact and discretion in dealing with those contacted in the course of the work.

Licenses and Certificates:
None.

Education and Experience:
Equivalent to possession of a bachelor's degree, preferably in court administration or a related field, and six years of court management experience, including a minimum of two years of increasingly responsible management experience. A law degree may be substituted for two years of experience.

OR

Two years as an Assistant Clerk/Executive Officer.

STATE OF CALIFORNIA
Judicial Branch
Judicial Council of California

Class Code: 3011
Band/Grade/Subgrade: F101
FLSA Status: Exempt
Established: January 1, 2016
Revised: September 1, 2020

Administrative Director

JOB FAMILY DEFINITION

This classification falls within the Management Job Family, encompassing a range of work in which incumbents are responsible for providing management of functions with responsibility for organization-wide outcomes, applying advanced management principles that have critical impact on the organization and on the public. Incumbents exercise strategic thinking with organization-wide application and impact and develop and implement programs and operations critical to the Judicial Council and the judicial branch. This class specification represents the type and level of work performed recognizing that specific work assignments may differ from one unit to another and from one incumbent to another.

CLASS SUMMARY

This is a single incumbent, executive-level class. An incumbent serves as the top executive officer of the Judicial Council organization reporting to the Judicial Council. Responsibilities include comprehensive management and leadership for the organization including policy development and interpretation, administration of programs, processes, functions, budget, and staff.

DISTINGUISHING CHARACTERISTICS

The Administrative Director is distinguished from all other classifications in that it is the top leadership staff position in the Judicial Council organization.

EXAMPLES OF ESSENTIAL DUTIES *(The duties listed are illustrative only and represent the core areas of responsibilities; specific position assignments will vary depending on business needs.)*

- Leads and executes the policy direction of the Judicial Council; has lead responsibility for, and is accountable to, the Chief Justice and the Judicial Council in carrying out their policies throughout the judicial branch.
- Serves as primary administrative advocate for the judicial branch and principal advisor to the Chief Justice and the Judicial Council.
- Represents and serves as the spokesperson for the California court system, the Chief Justice, and the Judicial Council.
- Serves as secretary to the Judicial Council.
- Provides the highest-level policy, strategic, operational, and programmatic leadership for the organization.
- Engages and builds support and consensus on judicial branch issues and reforms among the leadership of the judicial branch and the state executive and legislative branches and key justice system stakeholders.
- Provides direction to and collaborates with the Executive Office leadership team.
- Initiates, directs, and leads statewide programs and projects that provide support to the Supreme Court, appellate, and trial courts to improve and enhance services and meet the diverse current and future needs.
- Performs other duties of a similar nature and level as assigned.

EXAMPLES OF POSITION SPECIFIC RESPONSIBILITIES *(Illustrative Only)*

This is a single incumbent classification.

MINIMUM QUALIFICATIONS

EDUCATION AND EXPERIENCE

Bachelor's degree, and 10 years of executive-level organizational administration experience, inclusive of other requirements as determined by the Judicial Council of California. *An additional four years of professional experience as noted above may substitute for the bachelor's degree. Or, additional directly related experience and/or education may be substituted on a year-for-year basis.*

LICENSING AND CERTIFICATIONS

- None

KNOWLEDGE OF

- Applicable federal, state, and local laws, codes, regulations, and/or ordinances;
- The judicial branch and its role in state government;
- Other government structures and relationships;
- Current and emerging issues confronting courts and state and local government;
- Management and organizational development principles and practices;
- Principles and practices of executive and strategic leadership;
- Principles and practices of intergovernmental relations;
- Budget and legislative process;
- Managerial principles;
- Conflict resolution and negotiation strategies;
- Principles of, and techniques for, preparing and delivering effective oral presentations;
- Applicable work rules and policies; and
- Applicable business equipment and desktop applications.

SKILL IN

- Directing the interpretation and application of applicable laws, codes, regulations, and standards;
- Identifying needs and issues;
- Developing programs and initiatives;
- Advocating for the California court system;
- Providing problem-solving and conflict resolution;
- Managing, supervising, evaluating, and motivating senior-level staff;
- Directing strategic planning efforts;
- Directing the development and implementation of multiple, diverse and interrelated goals, objectives, policies, procedures, and work standards;
- Effectively collaborating with others;
- Public speaking;
- Exercising business and political acumen;
- Providing risk management;
- Utilizing a computer, relevant software applications, and/or other equipment as assigned;
- Effectively communicating; and
- Maintaining effective working relationships with colleagues, customers, and the public.

WORKING CONDITIONS, ADA AND OTHER REQUIREMENTS

The Judicial Council is an equal opportunity employer. The Judicial Council will comply with its obligations under the law to provide equal employment opportunities to qualified individuals with disabilities.
Positions in this class typically require: sitting, stooping, kneeling, crouching, reaching, standing, walking, pushing, pulling, lifting, fingering, grasping, talking, hearing, seeing, and repetitive motions.

Sedentary Work: Exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently or constantly to lift, carry, push, pull or otherwise move objects. Sedentary work involves sitting most of the time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

Incumbents generally work in a typical office environment with adequate light and temperature. The Judicial Council will make all reasonable efforts to minimize the need for employees to travel by taking advantage of virtual conferencing tools as much as possible. However, this position may require frequent statewide travel and out of state travel as necessary.

Please Note: *The Judicial Council classifies work based on organizational need. The distinguishing characteristics, essential duties and minimum qualifications described in this specification relate to the body of work required and not to the attributes of an incumbent assigned to perform the work.*

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2020 California Rules of Court

Rule 10.80. Administrative Director of the Courts (Administrative Director)

(a) Functions

The Administrative Director, appointed by the Judicial Council under article VI, section 6 of the Constitution, performs those functions prescribed by the Constitution and laws of the state, or delegated to the director by the Judicial Council or the Chief Justice.

(Subd (a) amended effective July 29, 2014; adopted as unlettered subd effective January 1, 1999; previously lettered subd (a) and amended effective August 14, 2009.)

(b) Accountability

The Administrative Director is accountable to the council and the Chief Justice for the performance of the Judicial Council staff. The Administrative Director's charge is to accomplish the council's goals and priorities.

(Subd (b) amended effective July 29, 2014; adopted effective August 14, 2009.)

(c) Interpretation of policies

The Administrative Director may use any reasonable interpretation of Judicial Council policies to achieve the council's goals, consistent with the limitations from the council and the Chief Justice.

(Subd (c) adopted effective August 14, 2009.)

(d) Responsibilities

In carrying out these duties, the Administrative Director is responsible for allocating the financial and other resources relating to the Judicial Council staff (including, for example, funding the operation of advisory bodies and other activities) to achieve the branch goals and policies adopted by the Judicial Council of California.

(Subd (d) amended effective July 29, 2014; adopted effective August 14, 2009.)

(e) Reports

The Administrative Director reports to the Judicial Council at least once annually on the progress made toward achieving the council's goals. When the council sets the direction on projects or programs that require more than one year to complete, the Administrative Director will report back to the council at regular intervals on their status and significant developments.

(Subd (e) adopted effective August 14, 2009.)

Rule 10.80 amended effective July 29, 2014; adopted as rule 6.80 effective January 1, 1999; previously amended and renumbered effective January 1, 2007; previously amended effective August 14, 2009.

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2020 California Rules of Court

Rule 10.201. Claim and litigation procedure

(a) Definitions

As used in this chapter:

(1) "Judicial branch entity" is as defined in Government Code section 900.3;

(2) "Judge" means a judge or justice of a judicial branch entity;

(3) "Legal Services" means the Judicial Council's Legal Services office; and

(4) "Litigation Management Committee" means the Litigation Management Committee of the Judicial Council.

(Subd (a) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(b) Procedure for action on claims

To carry out the Judicial Council's responsibility under Government Code section 912.7 to act on a claim, claim amendment, or application for leave to present a late claim against a judicial branch entity or a judge, Legal Services, under the direction of the Administrative Director, must:

(1) On receipt of a claim, claim amendment, or application for leave to present a late claim forwarded by a judicial branch entity, promptly consult with a representative of that entity about the merits of the claim, claim amendment, or application for leave to present a late claim;

(2) Grant or deny an application for leave to present a late claim under Government Code section 911.6(b);

(3) If determined by Legal Services to be appropriate, refer a claim or claim amendment for further investigation to a claims adjuster or other investigator under contract with the Judicial Council;

(4) Reject a claim if it is not a proper charge against the judicial branch entity or judge;

(5) Allow a claim in the amount justly due as determined by Legal Services if it is a proper charge against the judicial branch entity and the amount is less than $100,000; and

(6) Make recommendations to the Litigation Management Committee regarding proposed settlements of claims requiring payments of $100,000 or more.

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007 and December 9, 2008.)

(c) Allowance and payment of claims

The following may allow and authorize payment of any claim arising out of the activities of a judicial branch entity or judge:

(1) Legal Services, under the direction of the Administrative Director, if the payment is less than $100,000; or

(2) The Litigation Management Committee, for any claim.

(Subd (c) amended effective January 1, 2016; previously amended effective December 9, 2008.)

(d) Settlement of lawsuits and payment of judgments

The following may settle lawsuits, after consultation with the affected entity and any judge or employee being defended by the Judicial Council, and authorize payment of judgments arising out of the activities of a judicial branch entity or judge:

(1) Legal Services, under the direction of the Administrative Director, if the payment is less than $100,000 and the lawsuit does not raise issues of significance to the judicial branch; or

(2) The Litigation Management Committee, for any settlement or judgment.

(Subd (d) amended effective January 1, 2016; previously amended effective December 9, 2008.)

Rule 10.201 amended effective January 1, 2016; adopted as rule 6.201 effective January 1, 2003; previously amended and renumbered as rule 10.201 effective January 1, 2007; previously amended effective December 9, 2008.

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2020 California Rules of Court

Rule 10.202. Claims and litigation management

(a) Intent

The intent of this rule is to:

(1) Ensure that the trial and appellate courts are provided with timely, quality legal assistance; and

(2) Promote the cost-effective, prompt, and fair resolution of actions, proceedings, and claims that affect the trial and appellate courts and involve justices of the Courts of Appeal or the Supreme Court, trial court judges, subordinate judicial officers, court executive officers or administrators, or employees of the trial and appellate courts.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2003.)

(b) Duties of Legal Services

To carry out the duty of the Judicial Council to provide for the representation, defense, and indemnification of justices of the Courts of Appeal or the Supreme Court, judges, subordinate judicial officers, court executive officers and administrators, and trial and appellate court employees under part 1 (commencing with section 810) to part 7 (commencing with section 995), inclusive, of the Government Code, Legal Services, under the direction of the Administrative Director and the Chief Counsel, must:

(1) Develop, manage, and administer a litigation management program for investigating and resolving all claims and lawsuits affecting the trial and appellate courts;

(2) Provide legal assistance to the trial or appellate court, and to any justice, judge, subordinate judicial officer, court executive officer or administrator, and trial or appellate court employee who is named as a defendant or responsible party, subject to the defense and indemnification provisions of part 1 (commencing with section 810) to part 7 (commencing with section 995), inclusive, of the Government Code, on receipt of notice of a claim or lawsuit affecting the trial or appellate court or of a dispute that is likely to result in a claim or lawsuit;

(3) Select and direct any counsel retained to represent any trial or appellate court, justice, judge, subordinate judicial officer, court executive officer or administrator, and trial or appellate court employee being provided legal representation under (2), after consultation with the trial or appellate court and any such individual defendant;

(4) Make settlement decisions in all claims and lawsuits other than those identified in (5), after consultation with the affected trial or appellate court, and any justice, judge, subordinate judicial officer, court executive officer or administrator, and trial or appellate court employee being provided legal representation under (2);

(5) Make recommendations to the Litigation Management Committee regarding proposed settlements of claims or lawsuits requiring payments of $100,000 or more or raising issues of significance to the judicial branch;

(6) Develop and implement risk avoidance programs for the trial and appellate courts;

(7) Provide an annual report to the Litigation Management Committee concerning the litigation management program; and

(8) Provide an annual report to each trial and appellate court concerning claims and lawsuits filed against that trial or appellate court.

(Subd (b) amended effective January 1, 2016; previously amended effective July 1, 2002, January 1, 2003; January 1, 2007, and December 9, 2008.)

(c) Duties of trial and appellate courts

The trial and appellate courts must:

(1) Notify Legal Services promptly on receipt of notice of a dispute that is likely to result in a claim or lawsuit, or of a claim or lawsuit filed, against the court, a justice, a judge or subordinate judicial officer, a court executive officer or administrator, or a court employee, and forward the claim and lawsuit to Legal Services for handling; and

(2) Consult with Legal Services regarding strategic and settlement decisions in claims and lawsuits.

(Subd (c) amended effective January 1, 2016; previously amended effective July 1, 2002, January 1, 2003, and January 1, 2007.)

(d) Disagreements about major strategic decisions

Following consultation with Legal Services, a presiding judge or administrative presiding justice may object to a proposed decision of Legal Services about major strategic decisions, such as retention of counsel and proposed settlements, by presenting to Legal Services a written statement of the objection. Legal Services must present the written objection to the Litigation Management Committee, which will resolve the objection.

(Subd (d) amended effective January 1, 2016; adopted effective January 1, 2003; previously amended effective January 1, 2007.)

Rule 10.202 amended effective January 1, 2016; adopted as rule 6.800 effective January 1, 2001; previously renumbered as rule 6.202 effective January 1, 2003; previously amended and renumbered as rule 10.202 effective January 1, 2007; previously amended effective July 1, 2002, and December 9, 2008.

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2020 California Rules of Court

Rule 10.203. Contractual indemnification

(a) Intent

The intent of this rule is to facilitate the use of contractual indemnities that allocate legal risk and liability to parties that contract with a superior court or Court of Appeal, the Supreme Court, or the Judicial Council (a "judicial branch entity" as defined in Gov. Code, § 900.3).

(Subd (a) amended effective January 1, 2016.)

(b) Defense and indemnification provisions

Notwithstanding rule 10.14, 10.201, or 10.202, a judicial branch entity may enter into a contract that requires the contractor or the contractor's insurer to indemnify, defend, and hold harmless the entity and its officers, agents, and employees against claims, demands, liability, damages, attorney fees, costs, expenses, or losses arising from the performance of the contract. Upon receipt of notice of a claim or lawsuit that may be subject to contractual indemnities, the judicial branch entity must notify Legal Services, which will manage the claim or lawsuit to obtain the benefits of the contractual indemnities to the extent consistent with the interests of the public and the judicial branch.

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007.)

Rule 10.203 amended effective January 1, 2016; adopted as rule 6.203 effective October 15, 2003; previously amended and renumbered as rule 10.203 effective January 1, 2007.

Title 10, Judicial Administration Rules(Division 2, Administration of the Judicial Branch(Chapter 5, Management of Human Resources; renumbered effective January 1, 2013; adopted as Chapter 6.

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2020 California Rules of Court

Rule 10.1020. Reviewing court clerk/executive officer

(a) Selection

A reviewing court may employ a clerk/executive officer selected in accordance with procedures adopted by the court.

(Subd (a) amended effective January 1, 2018.)

(b) Responsibilities

Acting under the general direction and supervision of the administrative presiding justice, the clerk/executive officer is responsible for planning, organizing, coordinating, and directing, with full authority and accountability, the management of the office of the clerk/executive officer and all nonjudicial support activities in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, and maximizes the use of judicial and other resources.

(Subd (b) amended effective January 1, 2018.)

(c) Duties

Under the direction of the administrative presiding justice, the clerk/executive officer has the following duties:

(1) *Personnel*

The clerk/executive officer directs and supervises all court employees assigned to the clerk/executive officer or by the administrative presiding justice and ensures that the court receives a full range of human resources support;

(2) *Budget*

The clerk/executive officer develops, administers, and monitors the court budget and develops practices and procedures to ensure that annual expenditures are within the budget;

(3) *Contracts*

The clerk/executive officer negotiates contracts on the court's behalf in accord with established contracting procedures and applicable laws;

(4) *Calendar management*

The clerk/executive officer employs and supervises efficient calendar and caseflow management, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques;

(5) *Technology*

The clerk/executive officer coordinates technological and automated systems activities to assist the court;

(6) *Facilities*

The clerk/executive officer coordinates facilities, space planning, court security, and business services support, including the purchase and management of equipment and supplies;

(7) *Records*

The clerk/executive officer creates and manages uniform record-keeping systems, collecting data on pending and completed judicial business and the court's internal operation as the court and Judicial Council require;

(8) *Recommendations*

The clerk/executive officer identifies problems and recommends policy, procedural, and administrative changes to the court;

(9) *Public relations*

The clerk/executive officer represents the court to internal and external customers-including the other branches of government-on issues pertaining to the court;

(10) *Liaison*

The clerk/executive officer acts as liaison with other governmental agencies;

(11) *Committees*

The clerk/executive officer provides staff for judicial committees;

(12) *Administration*

The clerk/executive officer develops and implements administrative and operational programs and policies for the court and the office of the clerk/executive officer; and

(13) *Other*

The clerk/executive officer performs other duties as the administrative presiding justice directs.

(Subd (c) amended effective January 1, 2018; previously amended effective January 1, 2007.)

(d) Geographically separate divisions

Under the general oversight of the clerk/executive officer, an assistant clerk/executive officer of a geographically separate division has responsibility for the nonjudicial support activities of that division.

(Subd (d) amended effective January 1, 2018.)

Rule 10.1020 amended effective January 1, 2018; repealed and adopted as rule 76.1 effective January 1, 2005; amended and renumbered effective January 1, 2007.

[Back to Top]

Gmail Adam Bereki <abereki@gmail.com>

Orange County Superior Court - Public Records Request - Response

2 messages

PIO <PIO@occourts.org> Thu, Aug 27, 2020 at 3:06 PM
To: PIO <PIO@occourts.org>, Adam Bereki <abereki@gmail.com>

Hello Mr. Bereki,

Attached find a letter responsive to your request.

Sincerely,

Kostas Kalaitzidis | Public Information Officer

Orange County Superior Court
700 W. Civic Center Dr.

Santa Ana, CA 92701

657.622.7097 (Phone)

714.647.4849 (Fax)

kkalaitzidis@occourts.org

www.occourts.org

8-27-2020_Bereki_Response.pdf
89K

Adam <abereki@gmail.com> Thu, Aug 27, 2020 at 4:12 PM
To: PIO <PIO@occourts.org>

Received. Thank you for your help.
[Quoted text hidden]

Superior Court of California
County of Orange

JEFF WERTHEIMER
GENERAL COUNSEL

CENTRAL JUSTICE CENTER
700 CIVIC CENTER DRIVE WEST
P.O. BOX 1994
SANTA ANA, CA 92702-1994
PHONE: (657) 622-7723
FAX: (657) 622-8261

Aug. 27, 2020

Adam Bereki
C/O 818 Spirit
Costa Mesa, CA 92626
Tel: 949.241.6693

Sent via email: Abereki@gmail.com

Re: Request for information and records under Court Rule 10.500

Dear Mr. Bereki:

This letter is in response to your request for records received by the Superior Court of California, County of Orange, on Aug. 24, 2020, pursuant to Rule 10.500 of the California Rules of Court, which applies to judicial administrative records.

> Your specific requests are for *"... all documents in your custody or control evidencing your duties under the California Constitution, the Constitution of the United States, California Statutes, or any other rules, regulations, policies, or procedures pertaining to the handling of claims under the California Tort Claims Act. Specifically, I am interested in all documents that evidence your duties to:*
>
> *1. Receive the complaint*
> *2. Perform an investigation*
> *3. Make findings of fact and conclusions, and/or*
> *4. Provide redress or remedy based on the findings of your investigation.*
>
> *If there are no documents pursuant to any of these itemized requests, please say so. Your response should not be limited to only these four categories. I have included them to narrow your search specific categories but (I) am all interested in the other duties of your offices. This request should also include any job postings, employment fliers, standard operating procedure manuals, policy manuals, etc. involving the topic of handling these tort claims."*

In response to your request, Court staff conducted a thorough review and determined that the Court does not have documents responsive to your request. Also, please note that statutes,

Constitutional provisions or regulations of the state and federal governments are not administrative records of the Court, therefore not subject to Rule 10.500 of the California Rules of Court.

If you have additional questions, please do not hesitate to contact me.

Very truly yours,

Jeff Wertheimer
General Counsel

Bis Client
92626

Office of Risk & Ins. Mgmt.
Trust Claims
PO Box 989052, MS414
West Sacramento, CA
95798-9052

Bis Client
92626

Kevin T. Lane
Clerk of Fourth App. District
Symphony Towers
750 B. Street Suite 300
San Diego, CA 92101

Bis Client
92626

Frank A. McGuire Clerk
California Supreme Court
350 McAllister St.
San Francisco CA 94102

Bis Client
92626

Superior Court of Calif.
Executive Officer
700 Civic Center Dr. West
Santa Ana, CA 92702-

8/27/20

Bis Client
92626

California State Assembly
Cottie Petrie-Mccas
State Capitol, Room 3144
Sacramento, CA 95814

Careers (/OHR/Careers) Translate

Share: (http://www.ca.gov) (mailto:?subject=Office%20of%20Risk%20and%20Insurance%20Management&body=%0ahttps%3A%2F%2Fwww.dgs.ca.gov%2FORIM%0a%0a)

DGS (/) **Office of Risk and Insurance Management** (https://www.dgs.ca.gov/ORIM)

For example, how to sell to the state? SEARCH

< DGS HOME (/) HOME (/ORIM) SERVICES (/ORIM/SERVICES) FORMS (/ORIM/FORMS) NEWS (/ORIM/NEWS) ABOUT (/ORIM/ABOUT) CO

Divisional Videos: ORIM

Office
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FEATURED SERVICES

MORE »

Submit Governor's Employee Safety Awards Nominations

State agencies can submit nominations for the Governor's Employee Safety Awards (GESA), a statewide safety recognition program, to the Office of Risk and Insurance Management. (https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/Submit-Governors-Employee-Safety-Awards-Nominations)

Enroll in Defensive Driver Training

State agencies can enroll in Defensive Driver Training (DDT) that was developed to help reduce the number, severity, and cost of vehicle-related collisions. The training is also available to non-state employees.

(https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/Enroll-in-Defensive-Driver-Training)

Request Risk Management Consulting for State Agencies

State agencies can request analysis and advice on insurance and risk management issues from the Office of Risk and Insurance Management (ORIM).

(https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/Request-Risk-Management-Consulting)

FEATURED LINKS

Defensive Driver Training

Complete Defensive Drivers training online as

2019-20 State Motor Vehicle Premium Assessment

Letter of Self-Insurance

The State of California is self-insured. To obtain

well as enroll into Behind-the-Wheel, one-on-one, and Van Driver training here. (/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/Enroll-in-Defensive-Driver-Training)

2019-20 State Motor Vehicle Premium Assessment management memo. (/ORIM/News/Page-Content/Office-of-Risk-and-Insurance-Management-News-List-Folder/2019-20)

a self-insurance letter, please email your request along with any additional documentation to: RiskManagement@dgs.ca.gov. (mailto:riskmanagement@dgs.ca.gov?subject=Request for a letter of self-insurance)

CONTACT

Office of Risk and Insurance Management

707 Third Street, First Floor
West Sacramento, CA 95605

- Phone (916) 376-5300
- Send an email (mailto:kevin.tateyama@dgs.ca.gov;%20sean.rood@dgs.ca.gov)
- Report a web problem (mailto:kevin.tateyama@dgs.ca.gov;%20sean.rood@dgs.ca.gov?subject=Report%20a%20web%20problem)

CONNECT WITH US

(https://twitter.com/califdgs) (https://www.instagram.com/dgscalif/?hl=en) (https://www.facebook.com/CalDGS/?ref=settings) (https://www.youtube.com/user/CalifDGS) (https://www.linkedin.com/company/cadgs)

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Gmail Adam Bereki <abereki@gmail.com>

Criminal Complaint Public Corruption

1 message

Adam <abereki@gmail.com> Tue, Sep 8, 2020 at 2:01 PM
To: piu@doj.ca.gov

Hello,

Could you please provide the specific instructions on how to make a criminal complaint with your office pertaining to criminal corruption by public officials?

Feel free to call, email, or write me: (I would prefer someone call me due to the sensitive nature of the complaint so we can easily and effectively communicate.)

Sincerely,

Adam Bereki
818 Spirit
Costa Mesa, California

949.241.6693.

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

PUBLIC INQUIRY UNIT
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

September 11, 2020

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your email of September 8, 2020 to the Office of the Attorney General.

If you have information about criminal misconduct, you may wish to contact the local district attorney in the area where the alleged crime occurred. The district attorney has primary responsibility for the investigation and prosecution of alleged violations of state laws. You may also want to share this information with your county grand jury. In California, grand juries have the authority to investigate allegations of misconduct on the part of local agencies.

Again, thank you for contacting the Office of the Attorney General.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For XAVIER BECERRA
Attorney General

State *of* California Department *of* Justice

XAVIER BECERRA
Attorney General

Division of Criminal Law

The mission of the Division of Criminal Law is to uphold the Attorney General's constitutional responsibility to represent the People of California in criminal cases. Our Division is organized into the following six sections:

Appeals, Writs and Trials handles post-conviction proceedings, including prosecuting felony criminal appeals in state court and representing the state in habeas corpus cases brought in federal court. Deputies also handle criminal investigations, conduct evidentiary hearings, and prosecute felonies in cases in which the local district attorney has been recused. Deputies appear regularly in the California Court of Appeal, California Supreme Court, United States District Court, and Ninth Circuit Court of Appeals.

Bureau of Medi-Cal Fraud and Elder Abuse conducts statewide investigations and prosecutes fraud relating to the activities of medical providers receiving funding under the Medi-Cal system. The section also reviews and prosecutes reports of elder abuse and neglect of patients housed in federally funded nursing home facilities.

Correctional Writs & Appeals represents the state in civil rights actions involving state prisoners. This section also represents the Department of Corrections, Board of Prison Terms, Youth Authority and the Department of Mental Health and their employees in cases regarding policies, practices or conditions of confinement of inmates.

eCrime Unit investigates and prosecutes multi-jurisdictional cases involving identity theft, cyber-crime, and criminal activity involving the use of electronic devices or networks. The Unit also participates in regional high-tech task forces and provides training and support to local agencies on technology-related crime issues.

Financial Fraud and Special Prosecutions investigates and prosecutes complex criminal cases occurring in California, primarily related to financial, securities, mortgage, and environmental fraud; public corruption, including violations of California's Political Reform Act; "underground economy" offenses, including tax and revenue fraud and counterfeiting; transnational organized crime and human trafficking. Vertical teams of prosecutors, investigators, auditors, and paralegals often work with federal and local authorities on cases involving multi-jurisdictional criminal activity.

Victims' Services Unit provides assistance, notification, information, and support to victims and their families in criminal trials and appeals prosecuted by the Attorney General's Office. VSU also monitors and responds to public inquiries received from crime victims and advises victims of their rights as enacted in Marsy's Law and related measures.

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State *of* California Department *of* Justice

XAVIER BECERRA
Attorney General

Federal Habeas Corpus

Crime Victims' Rights

RESOURCES - If you are a victim of a federal crime:

Who is a Federal Victim?

A federal crime victim is "a person directly or proximately harmed as a result of the commission of a federal offense, or an offense within the District of Columbia" 18 U.S.C. § 3771 (e).

To Report a Federal Crime: Contact:
The United States Department of Justice or
The Federal Bureau of Investigation (FBI)

If you are a Victim or Witness of a Federal Crime

If you have been identified as a victim or witness in a case prosecuted by the one of the following offices and wish to obtain court room support, assistance, informational brochures or for general information about services, please contact the U.S. Attorney's Office Victim/Witness Assistance Program.

Under federal law, after state claims have been reviewed, an inmate (the petitioner) may raise federal constitutional claims in federal court. The inmate may file a petition for writ of habeas corpus. The petitioner argues that the conviction and/or sentence should be overturned because the conviction was obtained in violation of his or her federal constitutional rights. The Attorney General responds to petitions of writ of habeas corpus filed by state inmates.

Federal Habeas Corpus Proceedings

For federal habeas corpus proceedings in federal court, crime victims have the following rights:

- **Presence at Public Proceedings.** The right not to be excluded from the federal habeas corpus proceeding, unless the court determines that testimony by the victim would change if that victim heard other testimony at that proceeding. 18 U.S.C. § 3771(a)(3)
- **Right to be Heard at Public Proceedings.** The right to be reasonably heard at any public proceeding in the district court involving the release, plea, sentencing, or any parole proceeding of the defendant. 18 U.S.C. § 3771(a)(4)

- **Proceedings Free from Delay.** The right to proceedings free from unreasonable delay. 18 U.S.C. § 3771(a)(7)
- **Fairness; Respect for Dignity and Privacy.** The right to be treated with fairness and with respect for the victim's dignity and privacy. 18 U.S.C. § 3771(a)(8)

These rights should not be confused with the rights provided under the California Crime Victims' Bill of Rights – Marsy's Law. Marsy's Law provides all victims with rights and due process in state proceedings; however, the Federal Crime Victims' Rights stated above provide victims with rights in federal habeas corpus proceedings.

For additional information on the protection, enforcement, and advancement of victim rights in Federal proceedings:

- U.S. Department of Justice
- National Crime Victim Law Institute
- National Crime Victim Bar Association

Federal Restitution:

Under federal law, restitution is mandatory for some, but not all, types of crimes. It is important for victims, who may be entitled to restitution, to keep a record of their losses, medical expenses, property damage and counseling expenses, with receipts when possible. This information will be needed by the probation department if the defendant is convicted and ordered to pay restitution. It is also important to fill out and submit a Declaration of Victim Loss Statement. This statement is provided by the U.S. Probation Department, after a defendant has been convicted at trial or has pleaded guilty. If you are a victim in a federal crime that is being prosecuted by the U.S. Attorney's office, the Victim/Witness Unit will typically notify you of the process for making a claim for restitution.

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State *of* California Department *of* Justice

XAVIER BECERRA
Attorney General

Victims' Services Unit

Contact Us

California Attorney General's Office
P.O. Box 944255 Sacramento, CA 94244-2550
Phone Toll-free: (877) 433-9069

PUBLIC INQUIRY UNIT
(800) 952 5225

You may also send us an e-mail using the form below.

Please do not use this form to file a complaint against a business. If you are a victim of consumer or financial fraud, please file a complaint with our Public Inquiry Unit, using the online forms available at
http://oag.ca.gov/consumers.

If you wish to report a crime, please file a report with the police or sheriff's department http://www.post.ca.gov/le-agencies.aspx **in the area where the crime occurred. Local law enforcement authorities are responsible for investigating violations of law within their jurisdictions. After investigating the crime, the local law enforcement authorities may forward the case to the county district attorney's office for prosecution, if appropriate. The decision whether or not to file criminal charges will then be made by the locally elected district attorney.**

* Indicates a Required Field.

Your Information

First Name *

Middle initial

Last Name *

Address Line *

Address Line 2

City *

State *

California

Zip Code *

Zip4

Email Address *

Confirm Email Address

Area Code

Phone Number *

Your Comments

message *

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Special Committee on Legislative Ethics

Committee Members	District	Office & Contact Information
Luz M. Rivas (Chair)	Dem - 39	Contact Assembly Member Luz M. Rivas **Capitol Office, Room 2160** P.O. Box 942849, Sacramento, CA 94249-0039; (916) 319-2039
Jordan Cunningham (Co-Chair)	Rep - 35	Contact Assembly Member Jordan Cunningham **Capitol Office, Room 4102** P.O. Box 942849, Sacramento, CA 94249-0035; (916) 319-2035
Marc Berman	Dem - 24	Contact Assembly Member Marc Berman **Capitol Office, Room 6011** P.O. Box 942849, Sacramento, CA 94249-0024; (916) 319-2024
Steven S. Choi, Ph.D.	Rep - 68	Contact Assembly Member Steven S. Choi, Ph.D. **Capitol Office, Room 2016** P.O. Box 942849, Sacramento, CA 94249-0068; (916) 319-2068
Heath Flora	Rep - 12	Contact Assembly Member Heath Flora **Capitol Office, Room 3098** P.O. Box 942849, Sacramento, CA 94249-0012; (916) 319-2012
Eloise Gómez Reyes	Dem - 47	Contact Assembly Member Eloise Gómez Reyes **Capitol Office, Room 4015** P.O. Box 942849, Sacramento, CA 94249-0047; (916) 319-2047

Ceremonial Role Events and Ticket/Pass Distributions (Form 802) [pdf]

Chief Counsel:
Adam E. Silver
Location: 1020 N Street, Room 300
Phone: (916) 319-3752

called 9/11/20 ~1045 & emailed
See File "LEGISLATURE ADAM SILVER 091120"

Gmail Adam Bereki <abereki@gmail.com>

Petition For Redress of Grievance– Adam Bereki

3 messages

Adam <abereki@gmail.com> Fri, Sep 11, 2020 at 11:00 AM
To: adam.silver@asm.ca.gov

Adam,

Thank you again for your time and help with this matter.

I was fined about $930,000 according to Business and Professions Codes §7031(a) and §7031(b) for allegedly performing construction work without a license. I believe these laws are unconstitutional because they impose excessive fines in violation of our State and Federal Constitutional protections. Additionally, because these laws are purely penal pursuant to the police powers of California, they cannot be brought by a private a party in a civil case. As a result of these laws, untold numbers of the People of California and their companies have been financially destroyed by outrageous, cruel, and unusual fines and punishment.

In addition to the $930,000 fine (which is about 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty), B&P Code §7071.17 requires an instant license suspension without even an administrative hearing. As a result, I have been unlawfully restrained from earning a living in my profession as a contractor for several years as I attempt to obtain redress. (I had in fact become a qualifying individual for a contractors license in my company's name.)

I filed a Petition For Redress of Grievance with Cottie Petrie Norris' office on Jan 31, 2020 with her associate, Jess Huang. I have since sent multiple emails, certified letters, and made numerous phone calls in an attempt to speak with Cottie and obtain her help. With the exception of acknowledging receipt of my Petition, no follow up calls, emails, or letters have been responded to by her or her office.

I would specifically like the California Legislature to investigate the unconstitutionality of Business and Professions Codes §7031(a), §7031(b), and §7071.17. I am glad to provide support with any documents, testimony, or evidence to aid in this investigation or inquiry into how the law is unconstitutional and has directly harmed me and others. Upon completion of the investigation– if it is found the laws are unconstitutional – I would like them to be repealed by the legislature and for the legislature to provide restitution and damages to myself and the countless other victims of this abuse. Additionally, over $3 million dollars of the People's money allocated to the judicial branch was wasted by the judicial council in its attempts to 'prosecute' a business it hired to maintain California's court buildings under §7031(b). This heinous abuse of law and the power conferred to the legislature and Courts by the People has to stop.

Sincerely,

Adam Bereki
949 241 6693

Silver, Adam <Adam.Silver@asm.ca.gov> Fri, Sep 11, 2020 at 11:14 AM
To: Adam <abereki@gmail.com>

Thank you for forwarding that along. I'll will check-in with Petrie-Norris' office and circle back soon.

From: Adam <abereki@gmail.com>
Sent: Friday, September 11, 2020 11:00:50 AM
To: Silver, Adam
Subject: Petition For Redress of Grievance– Adam Bereki

[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Sep 11, 2020 at 11:15 AM
To: "Silver, Adam" <Adam.Silver@asm.ca.gov>

Great. Thank you again so much.

A
[Quoted text hidden]

Gmail Adam Bereki <abereki@gmail.com>

Senate Rule 12.3 and Standards of Conduct

2 messages

Medlock, Stacey <Stacey.Medlock@sen.ca.gov> Fri, Sep 11, 2020 at 11:13 AM
To: "abereki@gmail.com" <abereki@gmail.com>

Per our phone conversation. If you feel there has been a violation of the Senate Standards of Conduct you may file a formal compliant pursuant to Senate Rule 12.3. I have provided the links below for both the Rule and Standards of Conduct. I hope this is helpful.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SR4 – Senate Standing Rules Committee on Legislative Ethics 12.3 (scroll down to Committee on Legislative Ethics)

https://seth.senate.ca.gov/sites/seth.senate.ca.gov/files/senate_standards_of_conduct_11.18.pdf - Senate Standards of Conduct

Stacey Medlock

Senate Committee on Legislative Ethics

1020 N Street, Room 554

Sacramento, CA 95814

916-651-1507 office

Adam <abereki@gmail.com> Fri, Sep 11, 2020 at 11:13 AM
To: "Medlock, Stacey" <Stacey.Medlock@sen.ca.gov>

Stacey,

I received your message. Thank you for your help.

Adam
[Quoted text hidden]

SENATE STANDARDS OF CONDUCT

WHEREAS, Public office is a public trust; and

WHEREAS, That trust is eroded by actions that appear to place the private interests of public officials above the public good; and

WHEREAS, The proper operation of democratic government requires that public officials be independent and impartial, that government policy and decisions be made through the established processes of government, that public officials not use public office to obtain personal benefits, that public officials avoid actions that create the appearance of using public office to obtain a personal benefit, and that the public have confidence in the integrity of its government and public officials; and

WHEREAS, In pursuit of these goals; now, therefore, be it

Resolved by the Senate of the State of California, That the Standards of Conduct of the Senate are as follows:

First—Each Senator shall conduct himself or herself so as to justify the high trust reposed in him or her by the people and to promote public confidence in the integrity of the Senate.

Second—A Senator or officer or employee of the Senate shall not engage in unethical conduct or tolerate such conduct by others. Each Senator and each officer or employee of the Senate has a responsibility to report any apparent and substantial violation of these standards and to consult with the Senate Committee on Legislative Ethics or, at the option of the individual, the Senate ombudsperson regarding the propriety of any conduct that may violate these standards. Moreover, a Senator or officer or employee of the Senate shall not retaliate against a person who reports a possible violation of these standards or consults about conduct that may violate these standards, or against a person who the Senator, officer, or employee believes made such a report.

Third—Each Senator and each officer or employee of the Senate has an obligation to exercise his or her independent judgment on behalf of the people of California, rather than for personal gain or private benefit.

(a) A Senator or officer or employee of the Senate shall not seek or accept anything from anyone that would interfere with the exercise of his or her independent judgment.

(b) A Senator or officer or employee of the Senate shall not accept outside employment that is inconsistent with the conscientious performance of his or her duties.

(c) A Senator shall not use the prestige of his or her office, and an officer or employee of the Senate shall not use the status of his or her position, for material or financial gain or private benefit.

Fourth—Each Senator has an obligation to provide energetic and diligent representation, and each officer or employee of the Senate has an obligation to provide energetic and diligent service on behalf of the Senate, with due consideration for the interests of all of the people of California.

(a) Each Senator and each officer or employee of the Senate has an obligation to be informed and prepared, recognizing all sides of an issue.

(b) Each Senator and each officer or employee of the Senate, when intervening on behalf of a constituent with any governmental agency, shall make every effort to ensure that decisions affecting any constituent are made on their merits and in a fair and equitable manner.

(c) Each Senator shall be accessible to all constituents, making a special effort to attend to the concerns of those who might not otherwise be heard.

(d) Each Senator shall fairly characterize the issues confronting the Legislature and accurately inform the public regarding the conduct of his or her office.

Fifth—Each Senator and each officer or employee of the Senate has an obligation to the public and to his or her colleagues to be informed about, and abide by, the rules that govern the proceedings of the Senate and the Legislature.

(a) Each Senator shall perform his or her duties with courtesy and respect for both colleagues and those who may appear before the Senate.

(b) In exercising the power of confirmation, each Senator shall act with due regard for the general welfare of the people of California.

(c) Each Senator and each officer or employee of the Senate, when exercising oversight functions with respect to any governmental agency, shall act in an informed fashion, with attention to the underlying policies being implemented and with due respect for the independence of the agency.

Sixth—Each Senator, and each officer or employee of the Senate, acting in a position of leadership shall exercise his or her power and carry out his or her responsibility so as to enhance reasoned and visible decision-making by the Senate.

Seventh—Each Senator has an obligation to treat each officer or employee of the Senate with fairness and without discrimination, and to ensure that each officer or employee performs only those tasks for which there is a legislative or governmental purpose.

Eighth—Each officer or employee of the Senate has an obligation to perform his or her properly assigned duties using his or her best judgment with diligence and a duty of loyalty to the Senate as an institution.

Ninth—Each Senator and each officer or employee of the Senate has an obligation to make proper use of public funds.

(a) A Senator or an officer or employee of the Senate shall not use state resources for personal or campaign purposes.

(b) Each officer or employee of the Senate is free to volunteer for, and participate in, campaign activities on his or her own time, but an officer or employee of the Senate shall not be intimidated, coerced, or compelled, as a condition of continued appointment or employment, to either volunteer time or contribute money to a candidate or campaign.

(c) A Senator or an officer or employee of the Senate shall not discuss legislative business of any kind while attending or hosting an event at which campaign funds or contributions are solicited, provided, or discussed.

Tenth—Each Senator and each officer or employee of the Senate shall uphold the Constitution of California and the Constitution of the United States, and shall adhere to the spirit and the letter of the laws, rules, and regulations governing officeholder conduct.

Eleventh—Each Senator and each officer or employee of the Senate shall conduct himself or herself in the performance of his or her duties in a manner that does not discredit the Senate.

Twelfth—Each Senator and each officer or employee of the Senate is expected to report to the proper authority any apparent and substantial violation of these standards or related statutes, regulations, or rules, and to consult with the Senate ombudsperson, the Senate Committee on Legislative Ethics, or any other appropriate governmental agency regarding the propriety of any conduct that may violate these standards.

Any questions about ethics contact the Senate Committee on Legislative Ethics
1020 N STREET • ROOM 554 • SACRAMENTO, CA 95814 • TELEPHONE: 916-651-1507 • FAX: 916-445-1046

11/2018

SR-4 (2019-2020)

SHARE THIS:

ENROLLED DECEMBER 05, 2018

PASSED IN SENATE DECEMBER 03, 2018

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE RESOLUTION NO. 4

Introduced by Senator Atkins

December 03, 2018

Relative to the Standing Rules of the Senate for the 2019–20 Regular Session

LEGISLATIVE COUNSEL'S DIGEST

SR 4, Atkins.

Resolved by the Senate of the State of California, That the following rules be, and the same are hereby adopted as, the Standing Rules of the Senate for the 2019–20 Regular Session:

STANDING RULES OF THE SENATE

Convening and Sessions

Hours of Meeting

1.The Senate shall meet at 9:00 a.m. daily, except Saturdays and Sundays, unless otherwise ordered by the Senate.

Calling to Order

2.The President pro Tempore, Vice Chair of the Committee on Rules, or senior member present shall call the Senate to order at the hour stated and, if a quorum is present, shall proceed with the order of business.

Attendance of Senators

3.No Senator may be absent from attendance upon the Senate without first obtaining leave. A lesser number than a quorum of the Senate is authorized to send the Sergeant at Arms for any and all absent Senators at the expense of the absent Senators, unless an excuse for nonattendance made to the Senate when a quorum is present shall be judged sufficient, and in that case the expense shall be paid out of the Senate Operating Fund. The President pro Tempore, or less than a quorum present, shall have the power to issue process directly to the Sergeant at Arms to compel the attendance of Senators absent without leave. Any Senator who refuses to obey that process, unless sick or unable to attend, shall be deemed guilty of contempt of the Senate, and the Sergeant at Arms shall have power to use force as may be necessary to compel the attendance of the absent Senator, and for this purpose the Sergeant at Arms may command the force of the county, or of any county in the state.

Order of Business

4.The order of business shall be as follows:

(1) Rollcall.

(2) Prayer by the Chaplain.

(3) Pledge of Allegiance.

(4) Privileges of the Floor.

(5) Communications and Petitions.

(6) Messages from the Governor.

(7) Messages from the Assembly.

(8) Reports of Committees.

(9) Motions, Resolutions, and Notices.

(10) Introduction and First Reading of Bills.

(11) Consideration of Daily File:

(a) Second Reading.

(b) Special Orders.

(c) Unfinished Business.

(d) Third Reading.

(12) Announcement of Committee Meetings.

(13) Leaves of Absence.

(14) Adjournment.

Executive Sessions

5.When a motion is adopted to close the doors of the Senate, on the discussion of any business that may require an executive session, the Presiding Officer shall require all persons, except the Senators, Secretary, Minute Clerk, and Sergeant at Arms, to withdraw, and during the discussion of that business the doors shall remain closed. Every Senator and officer present shall keep secret all matters and proceedings concerning which secrecy shall be enjoined by order of the Senate.

Officers of the Senate

The President

6.The President may preside upon invitation of the Senate.

The President pro Tempore

7.The President pro Tempore shall take the Chair and call the Senate to order at the hour of the meetings of the Senate. The President pro Tempore is the Presiding Officer of the Senate.

It shall be the particular responsibility of the President pro Tempore to secure the prompt and businesslike disposition of bills and other business before the Senate. The President pro Tempore shall maintain order in the Senate Chamber and, in case of a disturbance or disorderly conduct outside the bar or in the gallery, the President pro Tempore shall have the power to order the same cleared.

The President pro Tempore shall serve ex officio as a member of all Senate and joint committees of which the President pro Tempore is not a regular member, with all of the rights and privileges of that membership except the right to vote. In counting a quorum of any of these committees, the President pro Tempore may not be counted as a member.

The Vice Chair of the Committee on Rules shall, in the absence of the President pro Tempore, perform the duties, and have all powers and authority, of the President pro Tempore.

Presiding by Senators

8.The President pro Tempore of the Senate may name a Senator to perform the duties of the Chair in the absence of the President pro Tempore. The Senator so named shall be vested, during that time on the floor, with all the powers of the President pro Tempore, and the Senator who performs these duties shall be known as the Presiding Officer.

In the absence of the President pro Tempore or the Vice Chair of the Committee on Rules, any Senator may perform the duties of the Chair.

Secretary of the Senate

9.It shall be the duty of the Secretary of the Senate to attend every session, call the roll, and read all bills, amendments, and resolutions, and all papers ordered read by the Senate or the Presiding Officer.

The Secretary of the Senate shall superintend all printing to be done for the Senate.

The Secretary of the Senate shall certify to, and transmit to, the Assembly all bills, joint and concurrent resolutions, constitutional amendments, and papers requiring the concurrence of the Assembly, after their passage or adoption by the Senate.

The Secretary of the Senate shall also keep a correct Journal of the proceedings of the Senate, and shall notify the Assembly of the action by the Senate on all matters originating in the Assembly and requiring action on the part of the Senate.

The Secretary of the Senate shall have custody of all bills, documents, papers, and records of the Senate and may not permit any of the bills, documents, records, or papers to be taken from the Desk or out of the Secretary of the Senate's custody by any person, except in the regular course of the business of the Senate.

The Secretary of the Senate is the Executive Officer of the Committee on Rules and shall act as its authorized representative in all matters delegated to the Secretary of the Senate by the committee.

Initiative measures received by the Secretary of the Senate in accordance with Section 9034 of the Elections Code shall be transmitted to the Committee on Rules and referred by the Committee on Rules to the appropriate committee.

Sergeant at Arms of the Senate

10.The Sergeant at Arms shall attend the Senate during all of its sittings, and shall execute the commands of the Senate from time to time, together with all process issued by its authority, as shall be directed to the

Sergeant at Arms by the President pro Tempore. The Sergeant at Arms is authorized to arrest for contempt all persons outside the bar, or in the gallery, found in loud conversation or otherwise making a noise to the disturbance of the Senate. The actual expenses of the Sergeant at Arms for every arrest and for each day's custody and release, and the Sergeant at Arms's traveling expenses, shall be paid out of the Senate Operating Fund.

The Sergeant at Arms shall place copies of all bills, joint and concurrent resolutions, constitutional amendments, Journals, Histories, and Files, when printed, on the desks of Senators, at least one hour previous to the opening of the session. If printed copies are not available, electronic copies will suffice for purposes of this rule.

Elected and Appointed Officers

10.5.On the first day of each session, the President pro Tempore, members of the Committee on Rules, Secretary of the Senate, and Sergeant at Arms shall be elected by a majority vote of the duly elected and qualified Members of the Senate and shall serve until their successors are elected and qualify. The Committee on Rules shall appoint an Assistant Secretary, a Minute Clerk, a Chaplain, and other employees with such duties as the committee requires.

Officers and Employees Compensation: Approval

10.6.The Controller is hereby authorized and directed to draw warrants in favor of officers and employees who render services to the Senate, as certified by the Committee on Rules or by its authorized representative, from the fund set aside for the pay of officers and employees of the Senate at the rate of compensation certified by the committee or its representative, and the Treasurer is hereby directed to pay the same.

Committees of the Senate

Appointment of Committees

11.The Committee on Rules shall consist of the President pro Tempore of the Senate, who shall be the chair of the committee, and four other Members of the Senate to be elected by the Senate. There is a vacancy on the committee in the event a member ceases to be a Member of the Senate or resigns from the Committee on Rules. Any vacancy occurring during a summer, interim study, or final recess, except in the case of the President pro Tempore, shall be filled by the remaining members of the Committee on Rules. A vacancy occurring at any other time shall be filled by election by the Senate.

The Committee on Rules shall appoint all other committees of the Senate and shall designate a chair and vice chair of each committee.

In making committee appointments, the Committee on Rules shall give consideration to seniority, preference, and experience. However, in making committee appointments, the Committee on Rules shall, as far as practicable, give equal representation to all parts of the state.

Standing Committees

12.The standing committees of the Senate and subjects to be referred to each are set out below. The provisions set forth below as to the assignment of bills are intended as a guide to the Committee on Rules, but are not binding upon the committee.

(1) Rules, 5 members. Proposed amendments to the rules and other matters relating to the business of the Legislature.

The standing committees of any regular session shall be the standing committees of concurrent special or extraordinary sessions unless otherwise ordered by the Senate.

Committee on Legislative Ethics

12.3. (a) (1) The Committee on Legislative Ethics is hereby created. The committee shall be appointed by the Committee on Rules and shall consist of six Senators, at least two of whom are members of the political

party having the greatest number of members in the Senate and at least two of whom are members of the political party having the second greatest number of members in the Senate. The members of the committee shall serve two-year terms. The President pro Tempore and the Minority Floor Leader shall serve as ex officio, nonvoting members of the committee. A member of the Committee on Rules shall not be appointed to the committee.

(2) The Committee on Rules shall select a Chair and a Vice Chair, who may not be members of the same political party. The Chair may not serve more than two consecutive two-year terms, and the Committee on Rules shall select a successor who is not a member of the same political party as the immediately previous Chair.

(3) Vacancies in the committee shall be filled within 30 days by the Committee on Rules for the remainder of a term.

(4) If a complaint is filed against a member of the committee, the Committee on Rules shall temporarily replace the member with a Senator of the same political party, who shall serve until the complaint is dismissed by the committee or the Senate takes action as it deems appropriate, whichever occurs earlier.

(5) The Committee on Rules, upon the recommendation of the Committee on Legislative Ethics, may retain or appoint a Chief Counsel to assist the committee in carrying out its functions. The staff of the committee shall be considered permanent and professional, and shall perform their duties in a nonpartisan manner. Neither staff of the committee, nor persons currently contracted to provide services for the committee, shall engage in partisan activities regarding a Senate or Assembly election campaign.

(6) (A) The Committee on Rules, after consulting with the Chair and Vice Chair of the Committee on Legislative Ethics, shall appoint an ethics ombudsperson to facilitate the receipt of information about potential ethical violations, and to assist the Senate in ensuring that the information is referred, if appropriate, to Senate offices or state or federal agencies that can assess the information and provide remedies for retaliatory conduct if needed, and ensure that an informant or complainant does not suffer adverse consequences with respect to that person's employment in violation of paragraph (1) of subdivision (u). The identity of the informant or complainant shall be kept confidential unless that person otherwise consents.

(B) The ombudsperson may be a Senate employee with other duties, but the ombudsperson's role as ombudsperson shall be independent of those other duties and, in this role, the ombudsperson shall report directly to the Secretary of the Senate. The Secretary of the Senate shall ensure that the ombudsperson has the ability to consult with outside legal counsel when needed to help assess the appropriate referral of information received pursuant to this paragraph.

(C) The ombudsperson shall be accessible to Senators and officers and employees of the Senate who wish to provide information or seek guidance about ethical standards or possible violations before filing a formal complaint pursuant to subdivision (c). Members of the public may also provide information regarding possible violations. All communications made pursuant to this subparagraph shall be confidential between the informant or complainant and the ombudsperson. In appropriate cases, especially where repeated or systematic violations appear to have occurred, the ombudsperson may refer the information to the Chair of the Committee on Rules, the Chair of the Committee on Legislative Ethics, the Secretary of the Senate, or all three; however, the identity of the informant or complainant shall be kept confidential unless that person otherwise consents.

(D) The Senate shall maintain a public hotline telephone number for purposes of contacting the ombudsperson. Complaints received through the hotline shall be considered informal complaints, and the nature and existence of the complaints shall be kept confidential.

(b) The committee shall do all of the following:

(1) The committee shall formulate and recommend, for adoption by the Senate, standards of conduct for Senators and officers and employees of the Senate in the performance of their legislative responsibilities. The Ethics Manual for Members, Officers, and Employees of the United States House of Representatives, as

prepared by the Staff of the Committee on Standards of Official Conduct, 102nd Congress Second Session (United States Government Printing Office, Washington, 1992), the Code of Ethics (Article 2 (commencing with Section 8920) of Chapter 1 of Part 1 of Division 2 of Title 2 of the Government Code), and Joint Rule 44 shall serve as guides in the formulation of the standards of conduct.

(2) At the request of any Senator or officer or employee of the Senate, the committee shall provide an advisory opinion with respect to the standards of conduct of the Senate on the general propriety of past, current, or anticipated conduct of that Senator, officer, or employee. The opinion shall be rendered within 21 days unless the Chair and Vice Chair agree otherwise. The committee may, with appropriate deletions to ensure the privacy of the individuals concerned, publish the advisory opinions for the guidance of other Senators, officers, or employees.

(3) The committee shall develop, issue, and annually update a clear, informative, and usable manual for the Senate based on the standards of conduct adopted by the Senate, including any advisory opinions published pursuant to paragraph (2).

(4) The committee shall conduct periodic workshops, at least once each calendar year, for Senators and officers and employees of the Senate, including workshops specifically designed for newly elected Senators and newly appointed officers and employees. At least once in each biennial session, each Senator and each officer or employee of the Senate shall attend one of these workshops. The workshops shall include, but not be limited to, a comprehensive review of all applicable statutes and Senate rules. At least once in each biennial session, each Senator shall also attend an individual training or review session conducted by the Chief Counsel of the committee.

(5) After adoption by the Senate of the standards of conduct, the committee shall receive and review complaints alleging violations of the standards of conduct by Senators, or officers or employees of the Senate, in accordance with the procedures specified in this rule.

(6) The committee shall maintain a record of its investigations, hearings, and other proceedings. All information, testimony, records, complaints, documents, and reports filed with, submitted to, or made by the committee, and all records and transcripts of any investigations or hearings of the committee, shall be confidential and shall not be open to inspection by any person other than a member of the committee, the staff of the committee, or any person engaged by contract or otherwise to perform services for the committee, except as otherwise specifically provided for in this rule. Any member of the committee or any person on the staff of the committee who, during the person's tenure with the committee or anytime thereafter, and without authorization, discloses, by writing, verbal communication, or conduct, or reveals in any way, in whole, in part, or by way of summary, any information, testimony, record, complaint, document, report, or transcript that is confidential shall be subject to discipline. In the case of a contract for the performance of services for the committee, the contract shall expressly prohibit any party to the contract from, without authorization, disclosing, by writing, verbal communication, or conduct, or from revealing in any way, in whole, in part, or by way of summary, any information, testimony, record, complaint, document, report, or transcript that is confidential. The committee may, by a majority vote of the membership of the committee, authorize the release of any records, complaints, documents, reports, and transcripts in its possession to the appropriate enforcement agency if the committee determines that there is probable cause to believe that the violation or violations alleged in the complaint would constitute a felony or if the committee determines that the information is material to any matter pending before the enforcement agency.

(c) (1) Any person may file a formal complaint with the committee that alleges a violation of the standards of conduct. A formal complaint does not include information provided to the ombudsperson pursuant to paragraph (6) of subdivision (a), unless the person who contacted the ombudsperson elects to file a complaint that complies with this subdivision and subdivision (d).

(2) Except as provided in paragraphs (3) and (4), a complaint shall not be filed more than 18 months after the date that the alleged violation occurred.

(3) If the committee determines that the person filing the complaint did not know, or through the exercise of

reasonable diligence could not have known, of the alleged violation within 18 months after the date that the alleged violation occurred, the complaint may be filed within three years after the date that the alleged violation occurred.

(4) If a complaint is filed within 60 days prior to an election at which a Senator or officer or employee is a candidate for elective office, the complaint shall be returned to the person filing the complaint, and the person shall be informed that the complaint may be filed with an appropriate enforcement agency and may be refiled with the committee after the election. The period of time for filing the complaint shall be extended for 60 days.

(5) A complaint shall not be filed if it alleges a violation that occurred prior to the adoption of the standards of conduct.

(d) A formal complaint shall satisfy all of the following requirements:

(1) It shall be in writing.

(2) It shall state the name and contact information of the person filing the complaint.

(3) It shall state the name of the Senator, or the name and position or title of the officer or employee of the Senate, who is alleged to have committed a violation of the standards of conduct.

(4) It shall set forth allegations that, if true, would constitute a violation of the standards of conduct. The allegations shall be stated with sufficient clarity and detail to enable the committee to make a finding pursuant to subdivision (h).

(5) It shall state the date of the alleged violation.

(6) It shall include a statement that the allegations are true of the person's own knowledge or that the person believes them to be true, and may include documents in the possession of the party filing the complaint relevant to, or supportive of, the allegations.

(e) The committee, on its own motion, two-thirds of the membership concurring, may initiate a proceeding by filing a complaint that complies with paragraphs (1) to (5), inclusive, of subdivision (d).

(f) The committee shall promptly send a copy of a complaint to the Senator, or officer or employee of the Senate, alleged to have committed the violation, who shall thereafter be designated as the respondent.

(g) If a complaint is filed by a person other than the committee, the Chair and Vice Chair of the committee shall examine the complaint to determine whether it was filed in accordance with this rule and any rules of the committee.

(h) Within seven days after the complaint is filed, the Chair and Vice Chair shall provide to the committee a copy of the complaint and their opinion as to whether the allegations in the complaint, if true, would constitute a violation of the standards of conduct. If the committee, by a two-thirds vote of its membership, finds that the allegations, if true, would constitute a violation of the standards of conduct, the committee shall hold a hearing within 30 days to conduct a preliminary inquiry. If two-thirds of the membership of the committee fails to find that the allegations, if true, would constitute a violation of the standards of conduct, it shall dismiss the complaint and so notify the person who filed the complaint and the respondent, and the complaint shall not be made public.

(i) At the preliminary inquiry, the respondent may respond to the allegations in the complaint by written statement or oral testimony. If two-thirds of the membership of the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct, the committee shall issue a count-by-count statement of alleged violations. If two-thirds of the membership of the committee fails to find that probable cause exists, the committee shall dismiss the complaint. In either event, the committee shall immediately notify the respondent and the person who filed the complaint of its action. If the committee finds that probable cause exists, the statement of alleged violations shall be made public within seven days.

(j) Within 21 days after the issuance of the statement of alleged violations, the respondent may file an answer that admits or denies each count. Upon request of the respondent, the committee may grant the respondent an additional 21 days to respond.

(k) Within 60 days after the issuance of the statement of alleged violations, the committee shall hold a disciplinary hearing. If a majority of the membership of each party on the committee fails to find that the respondent committed a violation of the standards of conduct, the committee shall dismiss the complaint. If a majority of the membership of each party on the committee finds by clear and convincing evidence that the respondent committed a violation of the standards of conduct, the committee shall take the following action:

(1) If the respondent is a Senator, it shall hold a hearing to determine an appropriate sanction.

(2) If the respondent is an officer or employee, it shall transmit its findings to the Committee on Rules for appropriate action.

(l) (1) At the hearing to determine an appropriate sanction, two-thirds of the membership of the committee shall determine whether the violation is serious or minor.

(2) If the committee determines that a violation is minor or fails to determine that a violation is serious, two-thirds of the membership of the committee (A) shall, if it determines that the violation bears upon the exercise of a right or privilege, recommend that the Committee on Rules deny or limit that right or privilege and shall transmit its findings and recommendation to the Committee on Rules, or (B) shall impose any lesser sanction, including, but not limited to, issuing a private letter of admonishment for an inadvertent, technical, or otherwise de minimis violation, which shall not be considered discipline. Within 15 days after the imposition of a lesser sanction, the respondent may appeal the sanction imposed to the Committee on Rules.

(3) If the committee determines that a violation is serious, two-thirds of the membership of the committee shall recommend that the Senate take one or more of the following actions and shall transmit its findings and recommendation to the Senate:

(A) The denial or limitation of any right or privilege, if the violation bears upon the exercise of that right or privilege.

(B) A reprimand for a serious violation.

(C) A censure for a more serious violation.

(D) A suspension or expulsion for a most serious violation.

(m) The Senate shall, within 15 legislative days after receiving the findings and recommendation, vote on the recommendation of the committee. The Senate, by 21 votes, may deny or limit any right or privilege of, reprimand, or censure the Senator or, by 27 votes, may suspend or expel the Senator.

(n) The committee or Senate may defer any action required by this rule if other proceedings have been commenced on the same matter.

(o) (1) At all hearings, the Chief Counsel of the committee shall present the case. All relevant and probative evidence shall be admissible unless it is privileged. Witnesses may be called and cross-examined by the committee and the respondent, and exhibits and other documents may be entered into the record. The respondent shall have the right to be represented by legal counsel or any other person of the respondent's choosing.

(2) If the committee receives, at any time, any exculpatory information relating to the alleged violation, the committee shall make the information available to the respondent. The committee and the respondent shall comply with requests for discovery consistent with Sections 1054, 1054.1, and 1054.3 of the Penal Code.

(p) If the committee determines that the complaint was filed with malicious intent, it may request that the Committee on Rules reimburse the expenses incurred by the respondent.

(q) At any time during the proceedings, the respondent may admit to the commission of a violation of the standards of conduct. If the respondent admits some but not all of the violations alleged in the complaint or the counts set forth in the statement of alleged violations, the committee shall find that the admitted violations constituted a violation of the standards of conduct and may continue the proceedings to determine whether the other alleged violations constituted violations of the standards of conduct. If the respondent admits to all alleged violations, the committee shall find that the admitted violations constituted a violation of the standards of conduct, terminate the preliminary inquiry or disciplinary hearing, and take the action required by paragraph (1) or (2) of subdivision (k).

(r) Meetings of the committee shall not be open to the public until the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct. Subsequent meetings of the committee or Senate shall be public, and notice of any meeting shall be published in the Senate File for four calendar days prior to the meeting.

(s) If the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct, the transcript of any testimony given, or any documents admitted into evidence, at a public hearing and any report prepared by the committee subsequent to that finding that states a final finding or recommendation shall be open to public inspection.

(t) Upon request of the respondent, the committee may permit the respondent to inspect, copy, or photograph books, papers, documents, photographs, or other tangible objects that relate to the allegations in the complaint. If the committee finds that probable cause exists for believing that the respondent committed a violation of the standards of conduct, the committee shall permit the respondent to inspect, copy, or photograph books, papers, documents, photographs, or other tangible objects that relate to the statement of alleged violations.

(u) (1) A Senator or officer or employee of the Senate shall not directly or indirectly use or attempt to use that person's official authority or influence to intimidate, threaten, coerce, command, or attempt to intimidate, threaten, coerce, or command any other person for the purpose of interfering with the right of the other person to file a complaint with the committee, testify before, or in any way cooperate with, the committee or any panel.

(2) For the purpose of paragraph (1), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(3) Nothing in this subdivision shall be construed to authorize any person to disclose information, the disclosure of which is otherwise prohibited by law.

(v) The committee may adopt rules governing its proceedings not inconsistent with this rule. The provisions of Joint Rule 36 relating to investigating committees apply to the committee to the extent those provisions are consistent with this rule.

(w) The powers and procedures set forth in subdivisions (b) to (v), inclusive, confer independent authority and shall not be limited or altered by Joint Rule 45.

(x) Where confidentiality is required pursuant to this rule, confidentiality shall be maintained only to the extent that disclosure of the confidential information is not otherwise required by law.

General Research Committee

12.5. The General Research Committee is hereby created pursuant to Section 11 of Article IV of the California Constitution, which relates to legislative committees. The committee consists of the 40 Senators, and the President pro Tempore is its chair. The committee is allocated all subjects within the scope of legislative regulation and control, but may not undertake any investigation that another committee has been specifically requested or directed to undertake. The General Research Committee may act through

subcommittees appointed by the Committee on Rules. Each member of the General Research Committee is authorized and directed to receive and investigate requests for legislative action made by individuals or groups and to report thereon to the full committee.

The committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Senate Rules and the Joint Rules of the Senate and Assembly. However, neither the committee nor its members may issue a subpoena without the prior approval of the Committee on Rules. The committee has the following additional powers and duties:

(a) To contract with other agencies, public or private, for the rendition and affording of services, facilities, studies, and reports to the committee as the committee deems necessary to assist it to carry out the purposes for which it is created.

(b) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope established by this rule, and to direct the sheriff of any county to serve subpoenas, orders, and other process issued by the committee.

(c) To meet and act at any place within the State of California and, when authorized in writing by the Committee on Rules to do so, to meet and act outside the state to carry out its duties.

(d) To report its findings and recommendations to the Legislature and the people from time to time.

(e) To act during sessions of the Legislature, including any recess.

(f) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this rule.

The Committee on Rules may allocate, from time to time, to the General Research Committee from the Senate Operating Fund those sums that are necessary to permit the General Research Committee and the members thereof to carry out the duties imposed on them. In addition, the Committee on Rules may allocate to any subcommittee from the Senate Operating Fund those sums that the Committee on Rules deems necessary to complete the investigation or study conferred upon that subcommittee.

12.6. A select committee is a subcommittee of the General Research Committee. Staff providing services to a select committee are Senate employees assigned by the Committee on Rules to the General Research Committee.

(a) A Senator who proposes to establish a select committee shall submit to the Committee on Rules a written request that includes all of the following:

(1) A description of the topic to be addressed by the select committee and a general work plan and timetable, including hearings, anticipated work product, and staffing needs and other anticipated resource demands.

(2) A statement by the Senator proposing the select committee that the Senator has discussed the Senator's plans with the chair of the standing committee having jurisdiction over the subject matter of the proposed select committee. The statement shall describe any objections that chair has to the establishment of the proposed select committee.

(b) A select committee may be established only by a resolution adopted by the Committee on Rules that specifies the jurisdiction of the select committee. In making this decision, the Committee on Rules shall consider any objections to that action raised by the chair of a standing committee having jurisdiction over the subject matter of the proposed select committee.

(c) The Committee on Rules shall appoint the members of a select committee. A select committee may act only with regard to the particular study or investigation assigned to it by the Committee on Rules.

(d) A select committee is terminated automatically upon the adjournment of the regular session in which it is established, or at an earlier time specified in the resolution. In deciding whether to reestablish a select

committee established in a previous regular session, the Committee on Rules shall consider the extent to which the select committee successfully achieved its assigned objectives.

Additional Committee on Rules Powers

12.7.In addition to other rights, duties, and powers vested in the Committee on Rules, the committee and the members thereof shall have and exercise all of the rights, duties, and powers of the General Research Committee and the members thereof, as provided in Rule 12.5, with authority to act on any subject allocated by Rule 12.5 to the General Research Committee.

Committee on Rules

13. (a) The Committee on Rules is charged with the general responsibility for the administrative functioning of the Senate. The committee has general charge of the books, documents, and other papers and property of the Senate and shall see that the same are properly kept, cared for, filed, or otherwise disposed of in accordance with applicable law and rules. The committee also has the duties of making studies and recommendations designed to promote, improve, and expedite the business and procedure of the Senate and its committees, including investigating committees consisting wholly or in part of Members of the Senate, and of proposing any amendments to the rules deemed necessary to accomplish those purposes.

(b) The Committee on Rules shall continue in existence during any recess of the Legislature until the convening of the next regular session, and shall have the same powers and duties as while the Senate is in session. The committee has the authority to fill vacancies in any Senate committee or in the Senate membership of any joint committee.

(c) The committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to the Committee on Rules and its members.

(d) The committee may make available to any Senate or joint committee, or any Member of the Senate, assistance in connection with the duties of the committee or other legislative matters as the personnel resources under the direction of the committee or its other facilities permit.

(e) (1) All employees on the payroll of the Senate are employees of the Senate and not of individual members, and they are under the direct control of the Committee on Rules. The Committee on Rules has general supervision over all employees of the Senate and the powers and duties to suspend, discipline, or discharge any employees when necessary. Any insubordination or inefficiency on the part of any employee shall be reported to the Committee on Rules.

(2) A Senator or officer or employee of the Senate shall not retaliate against an employee of the Senate for reporting information to the Senate Committee on Rules, the Senate Committee on Legislative Ethics, or any government or law enforcement agency regarding a possible violation of the Senate Standards of Conduct or any state or federal law or regulation, or because the Senator, officer, or employee believes that the employee reported or may report such information, if the employee who reported the information reasonably believed that the information disclosed a violation of the Senate Standards of Conduct or any state or federal law or regulation.

(f) The committee shall make available and furnish to the Members of the Senate, and the Senate committees, personnel resources as may be reasonably necessary for the Members and the committees to carry out their duties.

(g) The Committee on Rules constitutes the Committee on Introduction of Bills and has charge of the engrossment and enrollment of bills, the contingent expenses of the Senate, and legislative printing, except insofar as these functions are delegated to the Secretary of the Senate.

(h) The rooms, passages, and buildings set apart for the use of the Senate are under the direction of the Committee on Rules, and the committee may assign the press desks in the Senate Chamber to accredited

newspaper representatives.

(i) Executive communication of nominations sent by the Governor, or any other entity with the authority to make appointments, to the Senate for confirmation shall be referred to the Committee on Rules, unless otherwise ordered by the Senate, without debate.

(j) The Committee on Rules shall, at each regular session, appoint a Member of the Senate to serve on the Judicial Council and has the authority during any joint recess to fill any vacancy in that position that occurs during the recess.

(k) When a report of a joint legislative committee is delivered to the Senate Desk, the Committee on Rules shall refer it to a standing committee for review and appropriate action.

Expenses of Senate Committees

13.1.All claims for expenses incurred by investigating committees of the Senate, the Secretary of the Senate, and the Sergeant at Arms shall be approved by the Committee on Rules or its authorized representative before the claims are presented to the Controller.

All proposed expenditures, including furniture, equipment, and other property, but not including stationery supplies, shall be approved by the Committee on Rules or its authorized representatives before the expenses are incurred, unless the expenditure is specifically exempted from the provisions of this rule by the resolution authorizing it.

A warrant may not be drawn in payment of any claim for expenses until the approval of the Committee on Rules, or its authorized representative, has been obtained in accordance with this rule.

The Committee on Rules may adopt rules and regulations limiting the amount, time, and place of expenses and allowances to be paid to employees of Senate investigating committees and regulating the terms and conditions of employment of their employees. Copies of all rules and regulations adopted pursuant to this rule shall be distributed to the chair of every investigating committee.

Alteration, Repair, and Improvement to Senate

13.2.The Committee on Rules is authorized and directed to incur and pay expenses of the Senate not otherwise provided for as the committee determines are reasonably necessary, including the repair, alteration, improvement, and equipping of the Senate Chamber and the offices provided for the Senate in the State Capitol.

In order to avoid unanticipated reversions of appropriations for contingent expenses, the Committee on Rules may designate the appropriation from which payment shall be made pursuant to allocations to committees or for other purposes. If insufficient money is available in any appropriation to pay all claims pursuant to allocations charged against it, the committee shall designate another appropriation from which the allocations shall be paid.

Rooms and Property of Senate

13.3.The Committee on Rules is responsible for the safekeeping of Senate property. The Director of General Services is directed to maintain the Senate Chamber and all the committee rooms and other rooms used by the Senators and officers of the Senate in a condition that they will be available for the use of the Senate at any time. It is further directed that no persons other than the Members, officers, and employees of the Senate may occupy or use the offices, committee rooms, or other rooms now occupied by the Senate without permission as hereinafter provided, that the desks, furniture, and other equipment of the Senate shall be at the disposal of the Committee on Rules, and that no person except Members of the Senate may occupy any of the Senate's offices or make use of Senate equipment without permission of the committee or its authorized representative.

Inventory of Senate Property

13.4.The Committee on Rules is authorized and directed, through its authorized representative, to make and maintain a complete inventory of all property of the Senate, including all property in the possession or control of any Senate committee. The Committee on Rules has custody and control of all property of the Senate and shall adopt rules or orders as it may determine are necessary relating to the purchase, care, custody, and use or disposal thereof.

Status of Standing Rules for Regular Session

13.5.The adoption of the Standing Rules for any special session are not to be construed as modifying or rescinding the Standing Rules of the Senate for a regular session.

Operating Expense Fund

13.6.The Committee on Rules is the committee identified in Section 9126 of the Government Code. The balance of all money in the Senate Operating Fund, including money now or hereafter appropriated by the Legislature, except sums that are made available specifically for purposes other than the expenses of designated committees, is hereby made available to the Committee on Rules for any charges or claims it may incur in carrying out the duties imposed upon it by these rules or by Senate or concurrent resolution.

Rules Committee Appointees

13.8.The Committee on Rules shall review its nonlegislator appointees every two years. That review shall be completed not later than the 120th calendar day of the regular session in which the review is undertaken.

Schedule of Committee Meetings

14.The Committee on Rules shall propose to the Senate such schedules for regular meetings of the standing committees as will permit all members of each committee to attend without a conflict of committee engagements.

The committee may also propose such special committee meetings or special schedules of committee meetings as will facilitate the business of the Senate. Those schedules may provide a special schedule of committee meetings upon certain days of the week or to meet any special condition that may arise.

Powers of Standing Committees

16.Each standing committee of the Senate to which a proposed law or bill is assigned has full power and authority during the session of the Legislature, or any recess thereof, to make an investigation and study concerning any proposed law or bill as the committee shall determine necessary to enable it to properly act thereon.

In the exercise of the power granted by this rule, each committee may appoint a secretary and employ clerical, legal, and technical assistants as may appear necessary when money has been made available therefor by the Senate.

Each standing committee is authorized and empowered to summon and subpoena witnesses, to require the production of papers, books, accounts, reports, documents, records, and papers of every kind and description, to issue subpoenas, and to take all necessary means to compel the attendance of witnesses and to procure testimony, oral and documentary. However, no committee may issue a subpoena, nor may a committee require testimony under oath, without the prior approval of the Committee on Rules.

The Sergeant at Arms, or other person designated by the Sergeant at Arms or by the committee, shall serve any and all subpoenas, orders, and other process that may be issued by the committee, when directed to do so upon a vote of the majority of the membership of the committee.

Each of the members of the standing committees is authorized and empowered to administer oaths, and all of the provisions of Chapter 4 (commencing with Section 9400) of Part 1 of Division 2 of Title 2 of the Government Code, relating to the attendance and examination of witnesses before the Legislature and the committees thereof, apply to the committees.

All officers of this state, including the head of each department, agency, and subdivision thereof, all employees of the departments, agencies, and subdivisions of the state, the Legislative Counsel, and all other persons, whether connected with the state government or not, shall give and furnish to these committees upon request such information, records, and documents as the committees deem necessary or proper for the achievement of the purposes for which each standing committee was created.

Each standing committee may meet at the State Capitol and do any and all things necessary or convenient to enable it to exercise the powers and perform the duties herein granted to it, and may expend such money as may be made available by the Senate for that purpose, except that no committee may incur any indebtedness unless money has been first made available therefor.

Funerals

17.5.The Chair or Vice Chair of the Committee on Rules may designate any one or more of the Members of the Senate as a Senate committee to attend funerals in appropriate circumstances. The Members so designated may receive expenses as provided in Joint Rule 35.

The Chair or Vice Chair of the Committee on Rules, or any Member of the Senate designated by either of these officers, may incur such expense as may be necessary for the purchase on behalf of the Senate of suitable floral pieces for the funeral.

All expenses incurred pursuant to this rule shall be paid out of the money allocated from the Senate Operating Fund to the Committee on Rules and disbursed, after certification by the Chair or Vice Chair of the committee or by the committee's disbursing officer appointed and designated therefor by the committee, upon warrants drawn by the Controller upon the Treasury.

Expenditures

18.A member of a committee may not incur any expense chargeable to the Senate unless authorized by resolution of the Senate.

The Committee on Rules shall provide, by rules and regulations, for the manner of authorizing expenditures by Members, committees, and officers and employees of the Senate that are not otherwise authorized by law, these rules, or the Joint Rules of the Senate and Assembly, and for the payment of the expenditures from the Senate Operating Fund upon certification of claims therefor to the Controller by the Committee on Rules or its authorized representative.

Printing of Reports

18.5.All requests for the printing of reports of Senate committees shall be made to the Committee on Rules.

The Committee on Rules shall determine if the report is to be printed, the number of copies needed, and whether or not the report shall be printed in the Journal.

If the report is to be printed by the Office of State Publishing, it shall hold the type for each Senate committee report for a period of 90 days from the date of the first printing or for such other time as the Committee on Rules deems necessary.

Procedures and Rules

Resolutions and Constitutional Amendments

19.Joint, concurrent, and Senate resolutions, and constitutional amendments shall be treated the same as bills under these rules, except that they shall have only one official reading, which reading shall occur after they have been reported by committee.

Parliamentary Rules

20.In all cases not provided for by the Constitution, these rules, the Joint Rules of the Senate and Assembly, or statute, the authority shall be the latest edition of Mason's Manual or the custom and usage of the Senate.

Suspension of Rules or Amending of Rules

21.A standing rule of the Senate may not be adopted, amended, or repealed except upon an affirmative vote of a majority of the membership of the Senate, one day's notice being given, except that any rule not requiring more than a majority vote may be temporarily suspended without that notice by a vote of a majority of the membership of the Senate. A rule requiring a two-thirds vote on any question may be amended only by a two-thirds vote on one day's notice, except that a rule requiring a two-thirds vote may be temporarily suspended without that notice by a two-thirds vote.

All proposed amendments to these rules shall, upon presentation, be referred to the Committee on Rules without debate.

Suspension of the Joint Rules

21.1.Pursuant to Joint Rule 33, a joint rule may not be suspended by the Senate except with the concurrence of 27 Members unless a lower vote is prescribed by these rules or the Joint Rules of the Senate and the Assembly.

Permission of Committee on Rules

21.2.Notwithstanding Rule 21 or 21.1, a Senate or Joint Rule may not be suspended unless the Committee on Rules determines that an extraordinary circumstance exists that justifies the suspension.

Rules Governing Standing Committees

21.5.Except as otherwise provided in these rules, standing committees of the Senate shall be governed as follows:

(a) The officers of each Senate committee shall be a chair, vice chair, and secretary.

(b) The chair shall preside at meetings when present except when the committee is considering a bill of which the chair is the sole author or the lead author. Whenever the chair is not presiding, the vice chair shall assume the duties of the chair. In the absence of both, a member designated by the chair shall preside.

(c) The secretary shall keep a complete record of the meetings and actions taken by the committee. Bills and other measures favorably acted upon shall be reported to the Senate as expeditiously as the reports can be prepared.

(d) The committee shall meet in regular session on the day and hour designated by the Committee on Rules. Adjourned meetings or special meetings shall be held at the time fixed in the adjourning motion, or, for a special meeting, on the call of the chair.

(e) A special meeting may be called by the chair, with the approval of the Committee on Rules, by giving reasonable notice to all members of the committee, either in writing or by telephone, specifying the purpose of the meeting, the time and place thereof, and the matters to be considered at the meeting. Notice of hearing of bills as required by subdivision (a) of Joint Rule 62 may also be given in the Daily File. A matter may not be considered at the special meeting unless specified in the notice.

A special meeting shall be scheduled so as to permit all members of the committee to attend without conflict with other scheduled committee meetings.

(f) A majority of the membership of the committee shall constitute a quorum. A vote of a majority of the membership of the committee shall be required to table a bill, remove it from the table, or reconsider a vote on a bill.

(g) Action may not be taken on any measure outside of a duly constituted committee meeting.

(h) The chair shall set the hearings of bills and arrange the calendar for committee hearings. Notice of hearing of any bill shall be given to the author and other persons requiring notice. A bill may not be considered in the absence of the author without the author's consent, except that a bill may be presented by the author's

representative who is authorized in writing.

(i) A committee or a subcommittee thereof, by a majority vote of the membership of the committee, may meet in executive session for any purpose authorized by Section 9029 of the Government Code. Otherwise, all meetings shall be open and public.

(j) The chair shall direct the order of presentation of the arguments for and against matters for consideration by the committee, and shall permit questions to be asked by members of the committee in an orderly fashion and in keeping with proper decorum.

(k) Further consideration of a bill that has been voted out of a committee or defeated shall be by reconsideration only, as follows:

(1) A motion to reconsider a vote by which a bill is voted out shall be in order, and shall be voted upon at the same meeting. If the motion is carried by a vote of a majority of the membership of the committee, the bill may be considered at that meeting, provided the author is present, or at a subsequent meeting.

(2) The procedure for reconsideration of a bill that has been defeated shall conform to the requirements of subdivision (a) of Joint Rule 62. Any bill as to which reconsideration has been granted pursuant to this paragraph may not be heard again until a subsequent meeting of the committee, after being calendared in the Daily File.

(l) Any bill that has been laid on the table and is removed from the table at a later meeting may not be heard again until a subsequent meeting of the committee, after being calendared in the Daily File and after notice.

(m) When a committee adopts proposed amendments to a bill, the bill may be taken up for vote at that meeting or, if the committee or author requests, sent out to print before final action. If the amendments are not in proper form, they shall be prepared and submitted to the chair for approval before being reported to the Desk. Amendments submitted by the author that, in the opinion of the committee chair, are major or substantial shall be submitted to the committee at least two legislative days before the bill is scheduled for hearing.

(n) A bill may not be set for hearing, nor may any notice thereof be published, by a Senate committee until the bill has been referred to the committee by the Committee on Rules.

(o) The chair may appoint, with the permission of the Committee on Rules, subcommittees of one or more members to consider and recommend to the full committee action on matters as may be assigned to the subcommittee for consideration from time to time by the chair. The chair may assign and reassign members of, and matters to, the various subcommittees. The recommendation of a subcommittee may be accepted by a vote of a majority of the members of the committee.

(p) In all cases not provided for by this rule, the Senate Rules, the Joint Rules of the Senate and Assembly, or statute, the authority shall be the latest edition of Mason's Manual.

Additional Rules

21.6.Committees may adopt additional rules that are not in conflict with Rule 21.5 or any other rule.

Reporting Measures Out of Committee

21.7.The vote of a majority of the membership of a standing committee shall be required to report a bill, constitutional amendment, concurrent resolution, or joint resolution out of committee.

A vote of a majority of all members of a standing committee who are present and voting shall be required to report a Senate resolution out of committee.

Press Participation

21.8.Accredited press representatives may not be excluded from any public legislative meeting or hearing, and may not be prohibited from taking photographs of, televising, or recording the committee or house hearings,

subject to the following conditions:

(1) This rule extends to all public legislative meetings.

(2) Lights may be used only when cameras are filming and, when possible, proceedings in hearing rooms and the chamber shall be filmed without lights.

(3) Every effort should be made to set up filming equipment before hearings or sessions begin.

(4) The committee chair or the Committee on Rules shall be notified, as far in advance of the proceedings as possible, that recordings and television cameras will be present and filming.

(5) To the extent practical, flash cameras shall not be used.

(6) Photographs shall be taken in an orderly and expeditious manner so as to cause the least possible inconvenience to the committee or to the Members in the chamber.

However, the chair of a committee may request any person to relocate or remove any object, or discontinue the use of any equipment, that is situated or used in a manner so as to disrupt the proceedings or to create a potential danger to, or substantially obstruct the view of, members of the committee or the public.

In case any person fails to respond to a request of the chair to relocate, remove, or discontinue the use of the objects or equipment, the committee may, by majority vote, require it.

Introduction and Reference of Measures

Introduction, First Reading, and Reference of Measures

22.Any Senator desiring to introduce a bill, constitutional amendment, concurrent resolution, joint resolution, or Senate resolution shall send it to the Senate Desk.

When received at the Secretary's desk, a bill shall, under the proper order of business, be numbered, read, printed, and referred by the Committee on Rules to a standing committee. The Committee on Rules shall check all Assembly measures before reference to committee and shall designate the committee to which they shall be referred.

All joint resolutions, concurrent resolutions, and Senate resolutions shall be automatically referred to the Committee on Rules upon introduction, and may be rereferred to any other standing committee upon the vote of a majority of the membership of the Committee on Rules.

Unless otherwise ordered by the Senate without debate, the assignment of the measure shall then be complete and, after printing, the Secretary shall deliver the measure to the committee designated by the Committee on Rules.

Under the order of Messages from the Assembly, the Secretary shall read each Assembly bill the first time and shall read the name of the committee to which the bill has been assigned by the Committee on Rules. Unless otherwise ordered by the Senate without debate the assignment of the bill shall then be complete, and the Secretary shall deliver the bill to the committee so designated.

Bill Introduction Limitation

22.5.(a) A Member of the Senate may introduce or subsequently author not more than 40 bills in the regular session.

(b) This rule may be suspended with respect to a particular bill by approval of the Committee on Rules.

(c) This rule does not apply to a constitutional amendment, any type of resolution, or a bill introduced by a committee.

Short Title

22.6.A bill may not add a short title that names a current or former Member of the Legislature.

Bills Assigning, Requesting, or Requiring Studies

22.7.A bill that assigns, requests, or requires a study, or is amended to assign, request, or require a study, shall be rereferred to the Committee on Rules.

Introduction of Bills by a Committee

23.(a) A standing committee may introduce a bill germane to any subject within the proper consideration of the committee in the same manner as any Member. A committee bill shall contain the signatures of all of the members of the committee.

(b) A committee may amend into a bill related provisions germane to the subject and embraced within the title and, with the consent of the author, may constitute that bill a committee bill.

Bill Introduction Deadline

23.5.The Senate Desk shall remain open for the introduction of bills from 9:00 a.m. to 5:00 p.m. on the days designated in subdivision (a) of Joint Rule 54 as the deadlines for the introduction of bills in the first and second years of the regular session.

Introduction of Bills and Resolutions at Special Sessions

24.Whenever, at any special session, a bill or resolution is received at the Desk, under the order of Introduction of Bills, it shall be referred to the Committee on Rules, which shall decide whether or not the bill or resolution can properly be considered at the session. If, in the judgment of the Committee on Rules, the bill or resolution can be considered, the committee shall report the bill or resolution back and designate the committee to which it shall be assigned. Thereafter the bill or resolution shall be assigned a number by the Secretary, read the first time, and referred to the committee recommended by the Committee on Rules unless otherwise referred on motion without debate.

Resolutions

24.5.A Senate concurrent resolution or Senate resolution may be introduced relating to a present or former state or federal elected official or a member of the official's immediate family. Other resolutions for the purpose of commendation or congratulation of any person, group, or organization, or for the purpose of expressing sympathy, regret, or sorrow on the death of any person, shall be prepared as Rules Committee resolutions and presented to the Committee on Rules for appropriate action.

The Committee on Rules may approve exceptions to this rule for Senate resolutions. The Secretary may not accept for introduction any Senate resolution that is contrary to this rule unless it is accompanied by the approval of the Committee on Rules.

Senate Resolutions

25.All Senate resolutions eligible to be introduced under the rules, upon being presented, shall be given a number by the Secretary. A Senate resolution shall be printed, and indexed in the History and Journal.

Bills Authored by a Former Member

26.Whenever a bill in the Senate is authored by an individual who is no longer a Member of the Legislature, upon a request of a committee or current Member of the house in which the bill was introduced, the Senate Committee on Rules may authorize that committee or Member to be the author of that bill. Absent that authorization, action may not be taken by a committee or the Senate with respect to a bill authored by a former Member.

Bills in Committee

Author's Amendments

27.Upon request of the author of a bill, the chair of the committee to which the bill has been referred may, by

the chair's individual action taken independently of any committee meeting, cause the bill to be reported to the Senate with the recommendation that amendments submitted by the author be adopted and the bill be reprinted as amended and rereferred to the committee.

Withdrawing a Bill From Committee

28.A bill or resolution may not be withdrawn from committee except upon written notice being first given to the Committee on Rules and by 21 votes of the Senate.

Consent Calendar

28.3.(a) If a Senate bill or Assembly bill is amended in the Senate to create a new bill or to rewrite the bill, a standing committee may not place the bill on its consent calendar, and may not report the bill out of committee with the recommendation that it be placed on the consent calendar on the floor.

(b) For purposes of this rule, an amendment creates a new bill or rewrites the bill if the amendment (1) changes the subject of the bill to a new or different subject, or (2) adds a new subject to the bill that is different from, and not related to, the contents of the bill.

Referral of Bills

28.4.(a) If a Senate bill or Assembly bill is amended in the Committee on Appropriations to create a new bill or to rewrite the bill and the chair of the committee determines pursuant to Senate Rule 28.8 that (1) any additional state costs are not significant and do not and will not require the appropriation of additional state funds, and (2) the bill will cause no significant reduction in revenues, the bill shall be reported to the Senate with the recommendation that it be placed on second reading, except that the bill first shall be referred to the Committee on Rules. Upon receipt of the bill, the Committee on Rules shall either refer the bill to an appropriate policy committee or order that the bill be placed on second reading.

(b) For purposes of this rule, an amendment creates a new bill or rewrites the bill if the amendment (1) changes the subject of the bill to a new or different subject, or (2) adds a new subject to the bill that is different from, and not related to, the contents of the bill.

Measures to be Authored

28.5.Each bill, constitutional amendment, or resolution shall be authored by a Member or committee of the Legislature before it is considered or voted on by a committee or the Senate. Each amendment to a bill, constitutional amendment, or resolution shall be signed by a Member or committee of the Legislature prior to adoption by the Senate. A bill may be authored only by a Member or committee of the house of origin. A Member other than a Member of the house of origin may be a "principal coauthor" or "coauthor."

Vote in Committee

28.7.Voting on the disposition of bills, constitutional amendments, concurrent resolutions, and joint resolutions by committees shall be by rollcall vote only. A rollcall vote shall be taken on a motion to amend only if requested by any member of the committee or the author of the measure. All rollcall votes taken in committees shall be promptly transmitted by their respective chairs to the Secretary of the Senate, who shall cause a record of the rollcall votes to be printed in the Journal.

This rule does not apply to:

(a) Procedural motions that do not have the effect of disposing of a bill.

(b) Withdrawal of a bill from a committee calendar at the request of an author.

(c) A committee's return of a bill to the Senate, if the bill has not been voted on by the committee.

(d) The assignment of bills to committee.

On a legislative day when the President pro Tempore or Minority Floor Leader is in attendance, the President

pro Tempore or Minority Floor Leader, in the absence of any objection, may instruct the committee secretary of a committee of which the President pro Tempore or Minority Floor Leader is a member to add the President pro Tempore's or Minority Floor Leader's vote to any previously announced vote that was taken while the President pro Tempore or Minority Floor Leader was performing the responsibilities of the office of President pro Tempore or Minority Floor Leader, provided the outcome of the vote is not thereby changed. This provision does not apply to any rollcall after adjournment of the legislative day during which the rollcall in question was taken. The intent of this paragraph is to allow the President pro Tempore and the Minority Floor Leader to carry out the unique and special duties of their offices without losing the opportunity to vote on matters before the committees of which they are members.

Appropriations Committee

28.8.Any bill referred to the Committee on Appropriations pursuant to Joint Rule 10.5 that does not appropriate money may not be set for hearing and shall, along with any nonsubstantive amendments, promptly be reported to the Senate with the recommendation it be placed on second reading if the chair of the committee determines that (a) any additional state costs are not significant and do not and will not require the appropriation of additional state funds, and (b) the bill will cause no significant reduction in revenues.

State-Mandated Local Program Bills

28.9.(a) Any bill having a digest that, pursuant to Section 17575 of the Government Code, indicates that the bill imposes a state-mandated local program on local agencies or school districts shall be rereferred to the Committee on Appropriations. The bill may not be rereferred to the Committee on Governance and Finance.

(b) Any bill rereferred to the Committee on Appropriations pursuant to this rule that does not appropriate money and does not contain a complete disclaimer of all of the provisions of Section 905.2 of, and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of, the Government Code, need not be set for hearing and may, along with any nonsubstantive amendments, be reported to the Senate with the recommendation that it be placed on second reading if the chair of the committee determines, after consideration of the analyses of local costs prepared by the Legislative Analyst and the Department of Finance, that (1) any additional local costs are not significant and (2) the bill will cause no significant reduction in local revenues.

For the purposes of this rule, "complete disclaimer" means a provision in a bill that prohibits local agencies and school districts from filing claims with the Commission on State Mandates for reimbursement for the costs of unfunded mandated programs or services.

(c) Whenever the Assembly amends and passes a Senate bill and the Senate must concur in the amendments, upon the request of any Senator the bill shall be rereferred to the Committee on Appropriations if, based upon the Legislative Counsel's Digest of the Assembly amendments or an analysis prepared pursuant to Rule 29.8, the bill (1) imposes state-mandated local costs without providing adequate reimbursement, or (2) contains a complete disclaimer. The Committee on Appropriations shall make a recommendation to the Senate regarding whether the Senate should concur in the Assembly amendments.

(d) Any bill referred to the Committee on Appropriations solely pursuant to this rule, and that otherwise would not be rereferred to the committee pursuant to Joint Rule 10.5, is not subject to subparagraph (a)(2), (a)(5), (a)(6), (a)(10), (a)(12), (b)(1), (b)(2), (b)(5), (b)(8), (b)(9), (b)(13), or (b)(15) of Joint Rule 61.

Display Bills

28.10.A display bill shall not be heard or acted on in any committee, or voted on by the Senate. For purposes of this rule, "display bill" means a bill that sets forth substantive changes in or additions to existing law but states in the text of the bill that its provisions are set forth for display purposes only, or words of like effect.

Consideration of Bills

Order of Making Files

29.When bills are reported from committee they shall be placed upon the Daily File, to be kept by the

Secretary as follows: All bills when reported to the Senate by the committee shall be placed at the foot of the Second Reading Senate or Assembly File, in the order in which the reports are made and, after the second reading, shall be placed at the foot of the Senate or Assembly Third Reading File, in the order of reading. Unless otherwise ordered by the Senate, the File shall be taken up in the following order: Senate Second Reading File, Assembly Second Reading File, Special Orders, Unfinished Business, Senate Third Reading File, and Assembly Third Reading File. The bills upon the third reading shall be considered in the order in which they appear upon the File, unless otherwise ordered by the Senate.

A Senate bill returned from the Assembly for concurrence in Assembly amendments may not be considered until it appears under Unfinished Business on the Daily File pursuant to Joint Rule 26.5 and an analysis is provided to each Senator pursuant to Senate Rule 29.8.

An inactive file shall be kept, to which bills and resolutions may be transferred at the request of the author, or on motion. Bills shall be so transferred when they have been passed on third reading file without action three successive times. Bills and resolutions may be transferred from the inactive file to the second reading file on motion and, after being read the second time, the bills shall take their place regularly on third reading file and be available for consideration and passage.

Bills, resolutions, and other questions may be transferred from the unfinished business file to the inactive file upon request or motion and may be returned to the unfinished business file by request or on motion.

Placement of any question on the inactive file shall not prejudice the question.

Strike From File

29.2.A motion to strike any bill, resolution, or other question from the File shall require 21 votes. That bill, resolution, or other question may not be acted upon again during the session.

Measures Amended From the Floor

29.3.(a) The consideration of a bill, constitutional amendment, concurrent resolution, joint resolution, or Senate resolution that has been amended by amendments offered from the floor, except committee amendments reported with measures or amendments offered with a motion to amend and rerefer to committee, is not in order until the amended measure has been in print for not less than one legislative day. Any measure so amended shall be placed on the second reading file.

(b) A bill, constitutional amendment, concurrent resolution, joint resolution, or Senate resolution shall not be recommended for amendment by any committee after the last day specified in the Joint Rules for the 2019–20 Regular Session to amend bills on the floor, as specified in paragraph (14) of subdivision (a) of Joint Rule 61 for odd-numbered years, and in paragraph (17) of subdivision (b) of Joint Rule 61 for even-numbered years.

Bills Approving Memoranda of Understanding

29.4.The Senate may not pass a bill that approves a memorandum of understanding, for purposes of Section 3517.5 and following of the Government Code, until the final version of the subject memorandum of understanding is received by the Secretary of the Senate and made available for review for seven legislative days and its availability for review noted in the Senate Daily Journal for that period.

Amended Forms of Measures

29.5.No bill, constitutional amendment, concurrent resolution, joint resolution, or Senate resolution may be considered for passage unless and until a copy of the measure as last amended is on the desk of each Member in printed or electronic form.

Conference Reports

29.6.(a) No conference committee on any bill, other than the Budget Bill and the budget implementation bills, may approve any substantial policy change in any bill if that substantial policy change has been defeated in a policy committee of the Senate during the current legislative session.

(b) For purposes of subdivision (d) of Joint Rule 29.5, the term "heard" means that a printed bill with substantially similar language was before the appropriate committee and taken up at a regular or special hearing of the committee during the current legislative session, or that an amendment, which was drafted and given a request number or approved as to form by Legislative Counsel, was before the committee and taken up at a regular or special hearing of the committee.

Conference Committee Meetings

29.7.Before the adoption of a conference report by the Senate, any Senator may raise a point of order and put the following question to the chair of the Committee on Conference from the Senate: "Did the Committee on Conference meet at a public meeting attended by at least two of the Assembly Members and two of the Senate Members of the Committee on Conference and adopt the conference report by an affirmative rollcall vote of not less than two of the Assembly Members and two of the Senate Members constituting the Committee on Conference?" If the chair answers this question in the negative, the conference report shall be returned to the Committee on Conference and may not be further considered by the Senate until the committee has met at a public meeting attended by at least two of the Assembly Members and two of the Senate Members of the committee, and has adopted the conference report by an affirmative rollcall vote of not less than two of the Assembly Members and two of the Senate Members constituting the committee.

Analysis of Measures, Conference Reports, and Floor Amendments

29.8.(a) With the exception of the Budget Bill and budget implementation bills, no bill, constitutional amendment, concurrent resolution, joint resolution, Senate resolution, unfinished business item, or report of a conference committee may be considered unless and until an analysis thereof has been prepared by the Office of Senate Floor Analyses and placed upon the desks of the Senators, unless otherwise ordered by the President pro Tempore.

(b) An amendment from the floor is not in order unless and until the amendment has been reviewed by the Office of Senate Floor Analyses. Upon a request by the Chair or Vice Chair of the Committee on Rules, or by the lead author of the measure to which a substantive amendment is proposed from the floor, an analysis thereof shall be prepared by the Office of Senate Floor Analyses and placed upon the desks of the Senators.

Consideration of Conference Reports

29.9.No conference report may be adopted by the Senate until it has been in print for two days prior to being taken up by the Senate.

Referral of Bills

29.10.(a) If the analysis, prepared in accordance with subdivision (b) of Rule 29.8, of proposed floor amendments to a bill, other than the Budget Bill, discloses that the amendments create a new bill or rewrite the current form of the bill, upon adoption of the amendments the bill shall be reprinted and referred to the Committee on Rules.

(b) When amendments adopted pursuant to subdivision (a) rewrite the bill, as specified in subdivision (e), the Committee on Rules shall either refer the bill to a standing committee or hold the bill. If the bill is referred to a standing committee, the standing committee shall meet and act upon the bill no later than the next scheduled hearing of the committee. If the bill is referred to a standing committee during a time when standing committees are not meeting, the standing committee shall meet and act upon the bill as directed by the Committee on Rules and, in any event, within two legislative days of receipt of the bill. Upon receipt of the bill, the committee by a vote of a majority of the membership may do any of the following: (1) hold the bill, (2) return the bill to the Senate floor for consideration, or (3) rerefer the bill to fiscal committee pursuant to Joint Rule 10.5.

If the bill is referred to a standing committee during the time when no committee may meet, the Committee on Rules shall grant permission to suspend the joint rule to allow the committee to meet as directed by the Committee on Rules.

If the bill is referred to the Committee on Rules on the last legislative day preceding a joint recess, the Committee on Rules and, if the bill is referred to a standing committee, the standing committee, shall meet and act upon the bill before adjourning for the recess. If the bill is referred to the Committee on Rules on any of the three legislative days preceding February 1 or September 1 of an even-numbered year, the Committee on Rules and, if the bill is referred to a standing committee, the standing committee, shall meet and act upon the bill on the same legislative day.

(c) When amendments adopted pursuant to subdivision (a) create a new bill, as specified in subdivision (f), the bill shall be referred to the Committee on Rules. The Committee on Rules, by a vote of a majority of its membership may either (1) hold the bill, or (2) refer the bill to the appropriate standing committee subject to all of the time and other limitations provided in these rules and the Joint Rules for the hearing and passage of bills.

(d) If the analysis, prepared in accordance with subdivision (a) of Rule 29.8, of a bill, other than the Budget Bill, that is returned to the Senate for a vote on concurrence discloses that the Assembly amendments create a new bill or rewrite the bill as passed by the Senate, the bill shall be referred to the Committee on Rules. The Committee on Rules by a vote of a majority of its membership may either (1) refer the bill to an appropriate standing committee, (2) recommend that the bill be taken up for consideration of the Assembly amendments, or (3) hold the bill.

If the bill is referred to a standing committee, the committee shall meet and act upon the bill no later than the next scheduled hearing of the committee. If the bill is referred to a standing committee during a time when standing committees are not meeting, the standing committee shall meet and act upon the bill as directed by the Committee on Rules and, in any event, within two legislative days of receipt of the bill. Upon receipt of the bill, the standing committee by a majority vote of the membership may either (1) hold the bill, or (2) return the bill to the Senate floor for consideration of the bill as amended in the Assembly.

If the bill is referred to a standing committee during the time when no committee may meet, the Committee on Rules shall grant permission to suspend the joint rule to allow the committee to meet as directed by the Committee on Rules.

If the bill is referred to the Committee on Rules on the last legislative day preceding a joint recess, the Committee on Rules and, if the bill is referred to a standing committee, the standing committee, shall meet and act upon the bill before adjourning for the recess. If the bill is referred to the Committee on Rules on any of the three legislative days preceding February 1 or September 1 of an even-numbered year, the Committee on Rules and, if the bill is referred to a standing committee, the standing committee, shall meet and act upon the bill on the same legislative day.

(e) An amendment rewrites a bill if the amendment (1) is germane to the previous version of the bill but adds a new subject to the bill that is different from, but related to, the contents of the bill, or (2) is not described in subdivision (f) and makes a change of fiscal or policy significance that may be appropriate for review by a standing committee.

(f) An amendment creates a new bill if the amendment changes the subject of the bill to a new or different subject.

Special Order

30.Any measure or subject may, by vote of a majority of those voting, be made a special order and, when the time fixed for its consideration arrives, the Presiding Officer shall lay it before the Senate.

Messages From the Governor or Assembly

31.Messages from the Governor or from the Assembly may be introduced at any stage of business except while a question is being put, while the ayes and noes are being called, or while a Senator is addressing the Senate.

Messages from the Governor or from the Assembly may be considered when indicated in the order of business

or at any other time by unanimous consent or upon motion.

Engrossing Measures

32.All Senate bills, constitutional amendments, and joint and concurrent resolutions shall be engrossed after each amendment and before final action is taken on them in the Senate. Engrossment shall consist of comparing the printed engrossed measure with the original measure introduced and any amendments adopted to ascertain that it is correct, and making necessary technical corrections. When a measure is reported correctly engrossed it shall be substituted for the original measure.

Enrolling Measures

33.All Senate measures shall be enrolled immediately following their final passage and receipt from the Assembly. An enrolled copy of every bill, constitutional amendment, or resolution shall be printed and examined to ascertain that it is a true and accurate copy of the measure as it was passed. It shall then be authenticated by the signature of the Secretary of the Senate or a designee, and the Chief Clerk of the Assembly or a designee, and transmitted to the Governor or Secretary of State, as the case may be.

Debate

Statement of Motion

34.A motion may not be debated until it is distinctly announced by the Presiding Officer, and it shall be reduced to writing if desired by any Senator, and read by the Secretary, before it is debated.

Regulations as to Speaking

35.(a) When a Senator desires to address the Senate, the Senator shall rise at the Senator's desk, address the Presiding Officer, and, when recognized, proceed to speak through the public address system.

(b) A Senator may not speak more than twice in any one debate on the same day, and at the same stage of the bill, without leave; Senators who have once spoken are not again entitled to the floor (except for explanation) so long as any Senator who has not spoken desires to speak.

(c) When two or more Senators arise at the same time to address the Senate, the Presiding Officer shall designate the Senator who is entitled to the floor.

(d) A Senator may not be interrupted when speaking, and no question may be asked of the Senator except through the Presiding Officer.

(e) The author of a bill, motion, or resolution shall have the privilege of closing the debate.

Order in Debate

36.When a Senator is called to order, the Senator shall sit down until the Presiding Officer has determined whether or not the Senator is in order. Every question of order shall be decided by the Presiding Officer, subject to an appeal to the Senate by any Senator. If a Senator is called to order for words spoken, the objectionable language shall immediately be taken down in writing by the Secretary of the Senate.

Right to Address the Senate

37.A person other than a Member of the Senate may not address the Senate while it is in session, except that the Senate may resolve itself into a Committee of the Whole and, while sitting as a Committee of the Whole, may be addressed by persons other than Members.

Questions and Motions

Amendments to Measures

38.When amendments to a measure are reported by a committee or offered from the floor, the amendments shall be submitted in writing.

Adoption of amendments to any measure in the Senate prior to third reading, other than by rollcall, shall not preclude subsequent consideration, in committee or on the third reading of the measure, of the amendments or any part thereof by the Senate.

Amendments to Be Germane

38.5.Every amendment proposed must be germane. In order to be germane, an amendment must relate to the same subject as the original bill, resolution, or other question under consideration.

A point of order may be raised that the proposed amendment or an amendment now in the bill, resolution, or other question under consideration is not germane, so long as the question is within control of the body. In that case the President pro Tempore shall decide whether the point of order is well taken. In the absence of the President pro Tempore, the Vice Chair of the Committee on Rules shall decide whether the point of order is well taken. If, in the opinion of the President pro Tempore or the Vice Chair of the Committee on Rules, the point of order is well taken, the question of germaneness shall upon the motion of the President pro Tempore or the Vice Chair of the Committee on Rules be referred to the Committee on Rules for determination. The Committee on Rules shall make its determination by the following legislative day. If the point of order is raised and referral is made on the last legislative day preceding a joint recess, the Committee on Rules shall make its determination before adjourning for the recess.

The proposition shall remain on file until the determination is made. If, upon consideration of the matter, the Committee on Rules determines that the amendment is not germane, the bill, resolution, or other question shall be stricken from the file and may not be acted upon during the remainder of the session, provided that the author of a bill, resolution, or other question shall be given the opportunity to amend the bill, resolution, or other question to delete the portions that are not germane, in which case the bill, resolution, or other question may continue to be acted upon. If the Committee on Rules determines that the amendment is germane, the bill, resolution, or other question may thereafter be acted upon by the house.

Notwithstanding Rule 21, this rule may not be suspended unless the Committee on Rules determines that an extraordinary circumstance and overwhelming public interest exist that justify the suspension.

Amendments From the Floor

38.6.Amendments to a bill, constitutional amendment, concurrent resolution, joint resolution, or Senate resolution offered from the floor, except committee amendments reported with measures or amendments offered with a motion to amend and rerefer to committee, are not in order unless and until a copy of the proposed amendments provided by the author has been placed upon the desks of the Members.

Motion to Lay on the Table

39.When an amendment proposed to any pending measure is laid on the table, it may not carry with it or prejudice the measure.

Division of a Question

40.If a question in debate contains more than one distinct proposition, any Senator may have the same divided.

The Previous Question

41.The previous question shall be put in the following form: "Shall the question be now put?" It shall require a majority vote of the Senators present, and its effect shall be to put an end to all the debate except that the author of the bill or the amendment shall have the right to close, and the question under discussion shall thereupon be immediately put to a vote.

Call of the Senate

42.Upon a motion being carried for a call of the Senate, the Presiding Officer shall immediately order the doors to be closed, and shall direct the Secretary to call the names of the absentees as disclosed by the last previous rollcall. Thereupon, a Member may not be permitted to leave the Senate Chamber except by written

permission of the President pro Tempore or, in the absence of the President pro Tempore, the Vice Chair of the Committee on Rules or, in the absence of the Vice Chair of the Committee on Rules, another member of the Committee on Rules designated for that purpose by the President pro Tempore or the Vice Chair of the Committee on Rules. Those Members who are found to be absent and for whom no excuse or insufficient excuses are made may, by order of those present, be taken into custody, as they appear, or may be sent for and then taken into custody by the Sergeant at Arms whenever found, or by special messenger to be appointed for that purpose. In the absence of a quorum, a majority of the Members present may order a rollcall of the Senate and compel the attendance of absentees in the manner above provided.

A call of the Senate may be ordered after the roll has been called and prior to the announcement of the vote. A call of the Senate may be dispensed with at any time upon a majority vote of the Senators present, that action to become effective upon completion of the rollcall and the announcement of the vote upon the matter for which the call was ordered.

A recess may not be taken during a call of the Senate. During any call, the call may be made to apply also to other items of business by a motion made and adopted by a majority vote of the Members present. Under those circumstances, when the call of the Senate is dispensed with as to any item of business, the call is deemed to be continued in effect until other items of business that have been made subject to the call by a majority of the Members present have been acted upon. When a call of the Senate is ordered, pending the announcement of the vote upon the completion of a rollcall, the pending rollcall shall become unfinished business, the consideration of which shall be continued until further proceedings under the call of the Senate are dispensed with, when it will forthwith become the order of business before the Senate.

A motion to adjourn is not in order during a call of the Senate.

Reconsideration

43.On the day on which a vote has been taken on any question, a motion to reconsider the vote may be made by any Member. Reconsideration may be granted only once.

The motion may be considered on the day made or on the succeeding legislative day, but may not be further postponed without the concurrence of 30 Members.

A vote by which a bill was passed may not be reconsidered on the last legislative day preceding the interim study joint recess or the final recess, and a vote by which the bill was passed may not be reconsidered on a Senate bill introduced during the first year of the biennium of the legislative session on January 31, or on the last legislative day immediately preceding January 31, of an even-numbered year.

When reconsideration of the vote by which any bill has passed has been demanded, the Secretary may not transmit it to the Assembly until the demand has been disposed of or the time for reconsideration has expired, but if the bill has already been transmitted to the Assembly the demand for reconsideration shall be preceded by a motion to request the Assembly to return the bill. The motion shall be put to a vote immediately without debate and, if not adopted, shall preclude a demand for reconsideration.

A demand to reconsider the vote on any debatable question opens the main question to debate, and the vote on the reconsideration shall be on the merits of the main question.

Voting by Senate

Rescinding

43.5.An action whereby a bill has been passed or defeated may not be rescinded without the concurrence of 27 Members.

Voting on Rollcall

44.Whenever a rollcall is required by the Constitution or rules, or is ordered by the Senate or demanded by three Members, every Member within the Senate shall without debate answer "Aye" or "No" when the Member's name is called.

The names of Members shall be called alphabetically.

A Senator may not vote or change the Senator's vote after the announcement of the vote by the Presiding Officer.

On a legislative day when the President pro Tempore or Minority Floor Leader is in attendance throughout a session, the President pro Tempore or Minority Floor Leader, in the absence of any objection, may instruct the Secretary of the Senate to add the vote of the President pro Tempore or Minority Floor Leader to any previously announced vote that was taken while the President pro Tempore or Minority Floor Leader was performing the responsibilities of the office of President pro Tempore or Minority Floor Leader, provided the outcome of the vote is not thereby changed. This provision does not apply to any rollcall after adjournment of the legislative day during which the rollcall in question was taken. The intent of this paragraph is to allow the President pro Tempore and the Minority Floor Leader to carry out the unique and special duties of their offices without losing the opportunity to vote on matters before the Senate.

Excused From Voting

45.When a Senator declines or fails to vote on call of the Senator's name, the Senator may, after completion of the rollcall and before the announcement of the vote, be required to assign the reasons therefor and, the Senator having assigned them, the Presiding Officer shall submit the question to the Senate: "Shall the Senator, for the reasons assigned by the Senator, be excused from voting?" which question shall be decided without debate. Unless the Senator is excused from voting, the Senator shall be required to vote.

Voting by Presiding Senator

46.When any Member is presiding over the Senate, the Member shall vote on rollcall the same as though the Member were not presiding.

Vote Required

47.Unless otherwise required by the Constitution, the Joint Rules of the Senate and Assembly, or these rules, any action that can be taken by the Senate requires only a majority vote of the Senate, a quorum being present.

The following actions require 32 votes:

(1) To pass a bill amending specified provisions of the Tobacco Tax and Health Protection Act of 1988 (Prop. 99, Nov. 8, 1988; Sec. 30130, R.& T.C.).

(2) To pass a bill amending the Clean Air and Transportation Improvement Act of 1990 (Prop. 116, June 5, 1990; Sec. 99605, P.U.C.).

(3) To pass a bill amending the California Wildlife Protection Act of 1990 (Sec. 8, Prop. 117, June 5, 1990).

(4) To pass a bill amending specified provisions of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (Sec. 9(c), Prop. 56, Nov. 8, 2016).

(5) To pass a bill amending the Emergency Ambulance Employee Safety and Preparedness Act (Prop. 11, Nov. 6, 2018; Sec. 890, Lab. C.).

(6) To pass a bill amending the Prevention of Cruelty to Farm Animals Act (Sec. 8, Prop. 12, Nov. 6, 2018).

The following actions require 30 votes:

(7) To dispense with the constitutional provision requiring a 30-calendar-day delay after introduction before a bill may be heard by any committee or acted upon by either house (Constitution, Art. IV, Sec. 8(a)).

(8) To postpone the reconsideration of a vote beyond the first legislative day succeeding the day the motion was made.

(9) To pass a bill amending the Death Penalty Reform and Savings Act of 2016 (Sec. 20, Prop. 66, Nov. 8, 2016).

The following actions require 28 votes:

(10) To pass a bill amending the statutory provisions, other than the bond provisions, of the California Stem Cell Research and Cures Act (Sec. 8, Prop. 71, Nov. 2, 2004).

(11) To pass a bill amending the statutory provisions of the Victims' Bill of Rights Act (Sec. 9, Prop. 9, Nov. 4, 2008).

The following actions require 27 votes:

(12) To pass an urgency clause and urgency statute (Constitution, Art. IV, Sec. 8(d)).

(13) To dispense with the constitutional provision requiring the reading of bills on three several days (Constitution, Art. IV, Sec. 8(b)(1)).

(14) To waive the 72-hour notice period for a bill if the Governor has submitted to the Legislature a written statement that dispensing with the notice period for that bill is necessary to address a state of emergency (Constitution, Art. IV, Sec. 8(b)(2)).

(15) To pass a bill over the Governor's veto (Constitution, Art. IV, Sec. 10).

(16) To prescribe compensation and reimbursement for travel and living expenses of the Members of the Legislature (Constitution, Art. IV, Sec. 4).

(17) To propose an amendment to or revision of the Constitution (Constitution, Art. XVIII, Secs. 1, 2).

(18) To amend or withdraw a proposed legislative constitutional amendment or revision (Constitution, Art. XVIII, Sec. 1).

(19) To classify or exempt personal property for property taxation purposes (Constitution, Art. XIII, Sec. 2).

(20) To permit an exemption of real property from taxation (Constitution, Art. XIII, Sec. 7).

(21) To remove a member of the Public Utilities Commission (Constitution, Art. XII, Sec. 1).

(22) To reconsider the vote by which a concurrent resolution proposing a constitutional amendment is defeated.

(23) To rescind the action whereby a bill has been passed or defeated.

(24) To suspend the rule against lobbying in the Senate Chamber.

(25) To concur in Assembly amendments to, or adopt a report of a committee on conference concerning, a constitutional amendment or bill that requires 27 votes for passage.

(26) To concur in Assembly amendments to, or adopt a report of a committee on conference concerning, a Senate bill that contains an item or items of appropriation subject to Section 12(d) of Article IV of the Constitution.

(27) To amend an initiative statute that permits that action and requires 27 votes for passage.

The following action requires 22 votes:

(28) To pass a bill amending the Safety for All Act of 2016 (Sec. 13, Prop. 63, Nov. 8, 2016).

The following actions require 21 votes:

(29) To adopt, amend, or suspend the rules, except as provided in Rule 21.

(30) To pass a bill, unless under other rules a greater vote is required (Constitution, Art. IV, Sec. 8(b)).

(31) To adopt a joint or concurrent resolution.

(32) To reconsider a bill, or a joint or concurrent resolution.

(33) To confirm an appointment by the Governor, unless a greater vote is required by statute, or to reconsider the same.

(34) To recall a bill from committee.

(35) To concur in Assembly amendments to, or adopt a report of a committee on conference concerning, a joint or concurrent resolution or bill that requires 21 votes for passage.

(36) To change a rate of bank and corporation taxation, or tax on insurers, for state purposes (Constitution, Art. XIII, Secs. 27, 28).

(37) To strike from file.

(38) To adopt a resolution that does not favor a Governor's Reorganization Plan (Sec. 12080.5, Gov. Code).

Actions requiring 14 votes:

(39) To reconsider a vote by which a concurrent resolution proposing a constitutional amendment was adopted.

Vote Required for Amendments

48.A constitutional amendment or bill requiring a vote of two-thirds of the Members elected to the Senate for final adoption or passage may be amended by a majority of those voting.

Contents of Senate Journal

Proceedings to Be Printed

49.The proceedings of the Senate, when not acting as a Committee of the Whole, shall be entered in the Journal as concisely as possible, care being taken to record a true and accurate account of the proceedings.

The Journal shall state the name of the Senator presenting each Assembly bill, concurrent or joint resolution, or constitutional amendment to the Senate for final action.

Every vote of the Senate shall be recorded in the Journal.

Titles of Measures to Be Printed

50.The titles of all bills, joint and concurrent resolutions, and constitutional amendments when introduced and when acted upon by the Senate, and a brief statement of the contents of each petition, memorial, or paper presented to the Senate, shall be printed in the Journal.

Other Matters to Be Printed

51.Messages from the Governor (other than annual messages and inaugural addresses) shall be printed in the Journal, unless otherwise ordered by the Senate.

Letters of transmittal presenting reports of committees and reports of state departments and agencies as shall be made to the Senate pursuant to law or resolution adopted by the Senate shall be printed in the Journal, but the reports shall be printed in the Appendix to the Journal unless otherwise directed by the Senate.

Duty of Secretary to Order Printing

52.It shall be the duty of the Secretary of the Senate, and the Secretary of the Senate is hereby directed, to order for the Senate the necessary printing, including stationery for the Members, and to audit and approve all bills for printing to be charged to the Senate. The Secretary of the Senate shall order from the Office of State

Publishing the number of copies of bills, Journals, Histories, Files, forms, and other printing as shall be necessary.

It shall further be the duty of the Secretary of the Senate to order bills and other legislative publications for which there is a demand, to be printed before the supply of same shall become exhausted.

Printing Only on Written Orders; Rush Orders

53.The Office of State Publishing may not charge any printing or other work to the Senate except as required by law unless the Office of State Publishing has a written order from the Secretary of the Senate prior to beginning the printing or other work. All printing orders by the Secretary of the Senate shall be delivered as directed by the Secretary of the Senate. The Secretary of the Senate may, when necessity requires it, order from the Office of State Publishing the printing that the Secretary of the Senate deems necessary to be printed in advance of the regular order of business, under a specially prepared written order to be known as a "Rush Order."

The Senate Chamber

Admission to the Senate Chamber

55.(a) Persons who are not Members, officers, or employees of the Senate may be admitted to the Senate Chamber only as follows:

1. The Members, officers, and assistant clerks of the Assembly.

2. The Legislative Counsel or the Legislative Counsel's representatives.

3. The accredited press, radio, and television representatives.

4. Former State Senators and Assembly Members.

5. Visitors in the chairs reserved for that purpose, on invitation of the President pro Tempore or a Senator or on presentation of a pass.

(b) While the Senate is in session a person, except Members of the Legislature, may not engage in influencing the passage or defeat of legislation in any way in the Senate Chamber.

(c) A person meeting the definition of a lobbyist in Section 82039 of the Government Code may not be admitted to the Senate Chamber while the Senate is in session.

(d) Only Members and officers of the Senate and Assembly, former Members of the Senate, assistant clerks of the Senate and the Assembly, the Legislative Counsel or the Legislative Counsel's representatives, Senate employees for the purpose of delivering messages and when so directed by a Member of the Senate, and members of the press who have seats assigned to them may be permitted on the Floor of the Senate.

(e) The Senate Chamber is the Senate Chamber proper, the adjoining hallway, Rooms 3030, 3046, 3191, 3195, and 3196 of the Capitol Annex, and Room 215 of the Capitol.

(f) The Floor of the Senate is all of the Senate Chamber except the adjoining hallway and the rooms listed in subdivision (e), the visitors seating area, and the western portion of Room 3191.

(g) Notwithstanding any other provision of this rule, any person may be admitted to Room 3191 and Room 215 to attend a meeting of a Senate, Assembly, joint, or conference committee.

(h) Notwithstanding any other provision of this rule, a person may not be permitted on the Floor of the Senate while it is in session unless the person is wearing formal business attire. Accredited camerapersons, sound technicians, and photographers are exempt from this requirement. Floor of the Senate, for this purpose, has the same meaning set forth in subdivision (f).

(i) This rule may be suspended by a vote of two-thirds of the Members of the Senate.

SENATE LEGISLATIVE ETHICS COMMITTEE (/)

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Ethics Review and Recent Documents

Review and Reflection - Ethics in Principle and Practice

On April 23, 2014, the State Senate devoted an entire day to a review and reflection of ethical issues and the Senate Standards of Conduct. The review of "Ethics in Principle and Practice" entailed separate group sessions for Senators only, and for Senate Office Chiefs of Staff, Office Directors and Committee Chief Consultants. Following those group sessions, the material was reviewed in individual office staff meetings.

The group sessions included a presentation on "Strengthening a Culture of Ethics" by Scott Raecker, CEO of the Josephson Institute of Ethics and executive director of Character Counts at Drake University. The nonprofit Josephson Institute in Los Angeles has worked with corporations, governmental agencies and professionals on strengthening standards of conduct in individual and institutional decision-making.

A separate segment involved a panel of local legal experts who presented a variety of hypothetical scenarios to facilitate discussion and dialogue on ethical and legal issues.

The power points used by Mr. Raecker, and those outlining the hypothetical scenarios, are contained in the links below. You will also find a link to the California Senate Standards of Conduct.

Click here (/sites/seth.senate.ca.gov/files/Senate_Members_Ethics_Review_Presentation_-_Adobe_Acrobat_Pro1.pdf) for the Senate Members Ethics Review
Click here (/sites/seth.senate.ca.gov/files/Senate_Staff_Ethics_Review.pdf) for the Senate Staff Ethics Review
Click here (/sites/seth.senate.ca.gov/files/Strengthening%20a%20Culture%20of%20Ethics%20April%202(for "Strengthening a Culture of Ethics"
Click here (/sites/seth.senate.ca.gov/files/senate_standards_of_conduct_11.18.pdf) for the Revised Senate Standards of Conduct

(http://www.legislature.ca.gov/footer/use_privacy_policy.html) Accessibility (https://senate.ca.gov/accessibility) Back to Top Feedback (https://senate.ca.gov/feedback) Senate Jobs Available (https://senate.ca.gov/senatejobs) Copyright © 2014 State of California

SENATE STANDARDS OF CONDUCT

WHEREAS, Public office is a public trust; and

WHEREAS, That trust is eroded by actions that appear to place the private interests of public officials above the public good; and

WHEREAS, The proper operation of democratic government requires that public officials be independent and impartial, that government policy and decisions be made through the established processes of government, that public officials not use public office to obtain personal benefits, that public officials avoid actions that create the appearance of using public office to obtain a personal benefit, and that the public have confidence in the integrity of its government and public officials; and

WHEREAS, In pursuit of these goals; now, therefore, be it

Resolved by the Senate of the State of California, That the Standards of Conduct of the Senate are as follows:

First—Each Senator shall conduct himself or herself so as to justify the high trust reposed in him or her by the people and to promote public confidence in the integrity of the Senate.

Second—A Senator or officer or employee of the Senate shall not engage in unethical conduct or tolerate such conduct by others. Each Senator and each officer or employee of the Senate has a responsibility to report any apparent and substantial violation of these standards and to consult with the Senate Committee on Legislative Ethics or, at the option of the individual, the Senate ombudsperson regarding the propriety of any conduct that may violate these standards. Moreover, a Senator or officer or employee of the Senate shall not retaliate against a person who reports a possible violation of these standards or consults about conduct that may violate these standards, or against a person who the Senator, officer, or employee believes made such a report.

Third—Each Senator and each officer or employee of the Senate has an obligation to exercise his or her independent judgment on behalf of the people of California, rather than for personal gain or private benefit.

(a) A Senator or officer or employee of the Senate shall not seek or accept anything from anyone that would interfere with the exercise of his or her independent judgment.

(b) A Senator or officer or employee of the Senate shall not accept outside employment that is inconsistent with the conscientious performance of his or her duties.

(c) A Senator shall not use the prestige of his or her office, and an officer or employee of the Senate shall not use the status of his or her position, for material or financial gain or private benefit.

Fourth—Each Senator has an obligation to provide energetic and diligent representation, and each officer or employee of the Senate has an obligation to provide energetic and diligent service on behalf of the Senate, with due consideration for the interests of all of the people of California.

(a) Each Senator and each officer or employee of the Senate has an obligation to be informed and prepared, recognizing all sides of an issue.

(b) Each Senator and each officer or employee of the Senate, when intervening on behalf of a constituent with any governmental agency, shall make every effort to ensure that decisions affecting any constituent are made on their merits and in a fair and equitable manner.

(c) Each Senator shall be accessible to all constituents, making a special effort to attend to the concerns of those who might not otherwise be heard.

(d) Each Senator shall fairly characterize the issues confronting the Legislature and accurately inform the public regarding the conduct of his or her office.

Fifth—Each Senator and each officer or employee of the Senate has an obligation to the public and to his or her colleagues to be informed about, and abide by, the rules that govern the proceedings of the Senate and the Legislature.

(a) Each Senator shall perform his or her duties with courtesy and respect for both colleagues and those who may appear before the Senate.

(b) In exercising the power of confirmation, each Senator shall act with due regard for the general welfare of the people of California.

(c) Each Senator and each officer or employee of the Senate, when exercising oversight functions with respect to any governmental agency, shall act in an informed fashion, with attention to the underlying policies being implemented and with due respect for the independence of the agency.

Sixth—Each Senator, and each officer or employee of the Senate, acting in a position of leadership shall exercise his or her power and carry out his or her responsibility so as to enhance reasoned and visible decision-making by the Senate.

Seventh—Each Senator has an obligation to treat each officer or employee of the Senate with fairness and without discrimination, and to ensure that each officer or employee performs only those tasks for which there is a legislative or governmental purpose.

Eighth—Each officer or employee of the Senate has an obligation to perform his or her properly assigned duties using his or her best judgment with diligence and a duty of loyalty to the Senate as an institution.

Ninth—Each Senator and each officer or employee of the Senate has an obligation to make proper use of public funds.

(a) A Senator or an officer or employee of the Senate shall not use state resources for personal or campaign purposes.

(b) Each officer or employee of the Senate is free to volunteer for, and participate in, campaign activities on his or her own time, but an officer or employee of the Senate shall not be intimidated, coerced, or compelled, as a condition of continued appointment or employment, to either volunteer time or contribute money to a candidate or campaign.

(c) A Senator or an officer or employee of the Senate shall not discuss legislative business of any kind while attending or hosting an event at which campaign funds or contributions are solicited, provided, or discussed.

Tenth—Each Senator and each officer or employee of the Senate shall uphold the Constitution of California and the Constitution of the United States, and shall adhere to the spirit and the letter of the laws, rules, and regulations governing officeholder conduct.

Eleventh—Each Senator and each officer or employee of the Senate shall conduct himself or herself in the performance of his or her duties in a manner that does not discredit the Senate.

Twelfth—Each Senator and each officer or employee of the Senate is expected to report to the proper authority any apparent and substantial violation of these standards or related statutes, regulations, or rules, and to consult with the Senate ombudsperson, the Senate Committee on Legislative Ethics, or any other appropriate governmental agency regarding the propriety of any conduct that may violate these standards.

Any questions about ethics contact the Senate Committee on Legislative Ethics
1020 N STREET • ROOM 554 • SACRAMENTO, CA 95814 • TELEPHONE: 916-651-1507 • FAX: 916-445-1046

11/2018

California Senate
Wednesday, April 23, 2014

Strengthening a Culture of Ethics

"We shape the culture; the culture shapes the character."

- Dr. Tom Lickona and Dr. Matt Davidson

Google Search

- California Senate Ethics
  - 8,860,000 (population 38.04 million)
  - 40 Senate Seats
  - District constituents over 930,000
- Iowa Senate Ethics
  - 2,710,000 (population 3 million)
  - 50 Senate Seats
  - District constituents over 60,000

Government Ethics in California

- Constitution
  - Article IV Legislative
- Law
  - California Ethics In Government Law
    Title 2. Division 2. Part 1.
    Chapter 1. Article 2. (8920 8926)
    Code of Ethics
- Rules
  - Standing Rules of the Senate
  - Standards and Conduct of the Senate

ARTICLE 2. Code of Ethics [8920 - 8926] *(Article 2 added by Stats. 1966, 1st Ex. Sess., Ch. 163.)*

8920. (a) No Member of the Legislature, state elective or appointive officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.

(b) No Member of the Legislature shall do any of the following:

8926. Every person who knowingly and willfully violates any provision of this article is guilty of a misdemeanor. Every person who conspires to violate any provision of this article is guilty of a felony.

Standards of Conduct
of the Senate
(Senate Resolution 38 adopted by the Senate May 4, 1992)

The Standards of Conduct of the Senate are as follows:

First—That each Senator and each officer and employee of the Senate has an obligation to exercise his or her independent judgment on behalf of the people of California, rather than for any personal gain or private benefit.

Second—That each Senator has an obligation to provide energetic and diligent representation, and each officer and employee of the Senate has an obligation to provide energetic and diligent service on behalf of the Senate, with due consideration for the interests of all of the people of California.

Third—That each Senator and each officer and employee of the Senate has an obligation to the public and to his or her colleagues to be informed about, and abide by, the rules that govern the proceedings of the Senate and the Legislature.

Wall Street Journal

April 17, 2014

Members of both parties agree the scandals have left a stain on the capitol.

The recent Field poll suggests the scandals have made an impression on voters. After giving increasingly favorable ratings over the past four years, just 43% of eligible voters approved of legislators performance, down from 46% in March.

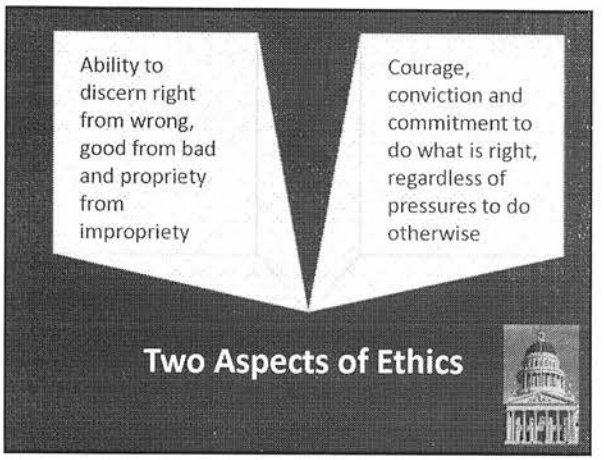
What's Being Said

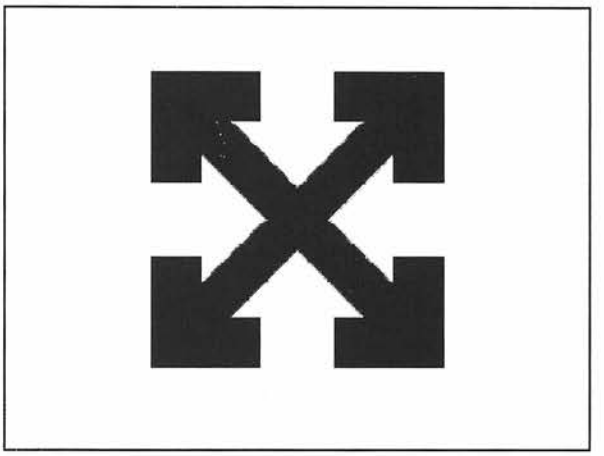
"They're at this rather critical moment," the Legislature in 2014 is "either going to be defined by the indictments, or it's going to be defined by their response."

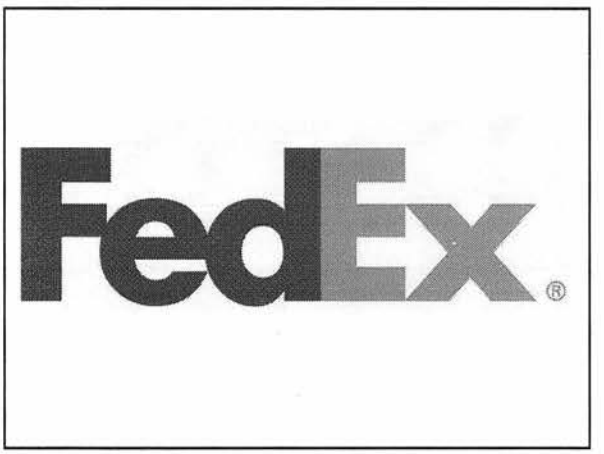
Ethics

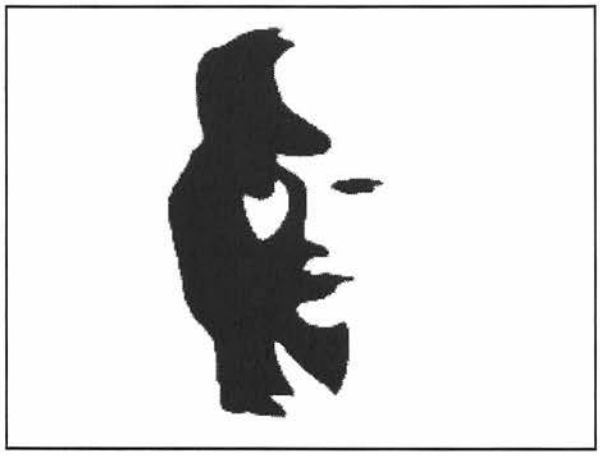
The term comes from the Greek word *ethos*, which means character

Ethics is about right and wrong standards of duty and virtue that that indicate how we should behave

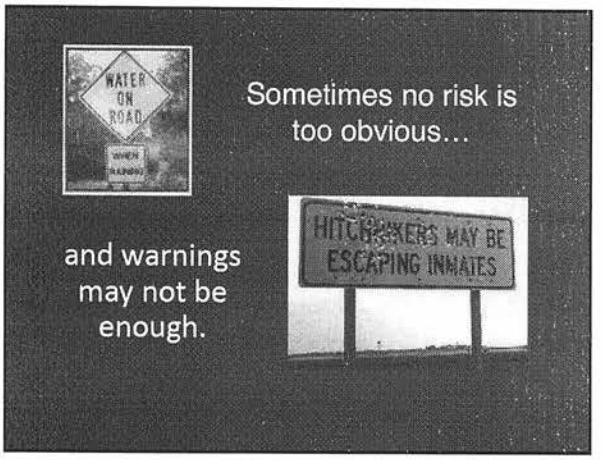

Ability to discern right from wrong, good from bad and propriety from impropriety
Courage, conviction and commitment to do what is right, regardless of pressures to do otherwise
Two Aspects of Ethics

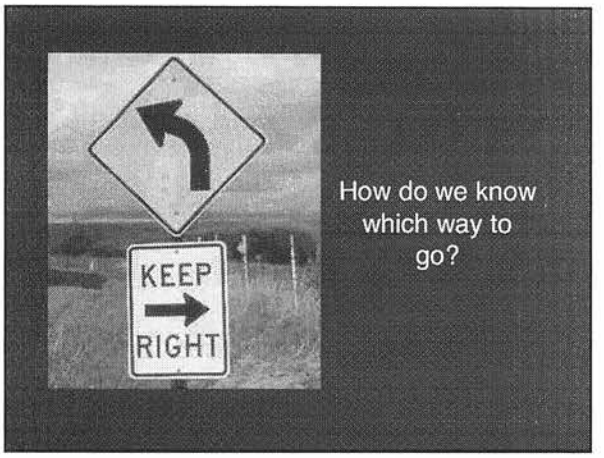



FedEx

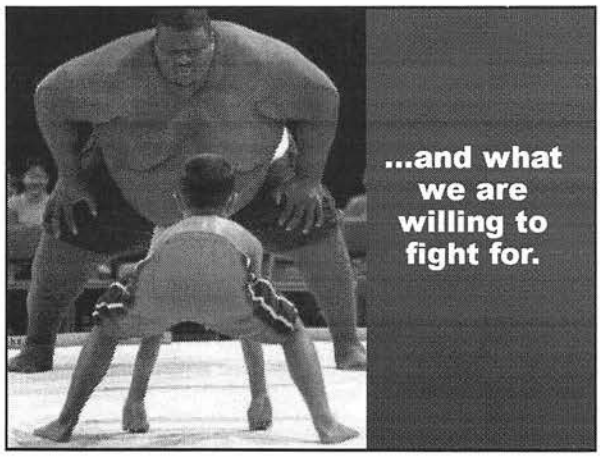


ONE WAY
ONE WAY
ONE WAY
ONE WAY
SPEED LIMIT 40
Our world is full of inconsistent messages


WATER ON ROAD
Sometimes no risk is too obvious…
and warnings may not be enough.
HITCHHIKERS MAY BE ESCAPING INMATES


KEEP RIGHT
How do we know which way to go?

Our values determine what we will stand for…



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Third—That each Senator and each officer and employee of the Senate has an obligation to the public and to his or her colleagues to be informed about, and abide by, the rules that govern the proceedings of the Senate and the Legislature.

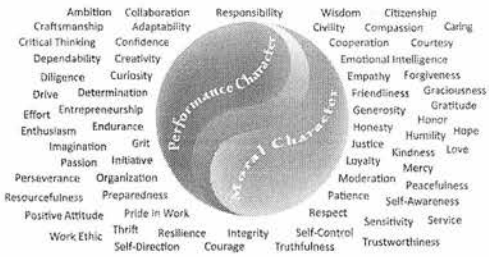
Stated and Operational Values

- **Stated Values: What we say we value and the level of importance we say we attach to the value.**
- **Operational Values: What we actually value as revealed by our actions and how we make decisions and resolve conflicts among competing values.**

How Do We Bring Ethics to Life?

How do we move from
a rules based compliance culture
to a values based ethical culture?

Character Based Leadership



Culture of Excellence & Ethics

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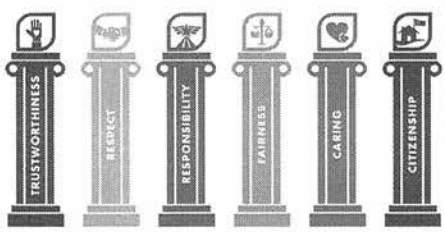
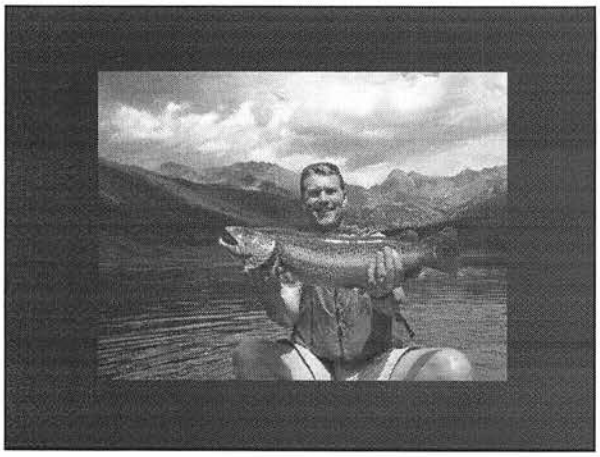
www.excellenceandethics.org

The Six Pillars of Character℠



Trustworthiness

- Honesty
- Integrity
- Loyalty
- Promise Keeping



Excellence & Ethics® Tools

Integrity-In-Action Essentials

- **Discernment:**
  Being able to identify/recognize and make well-reasoned ethical decisions.
- **Conscience:**
  Sense of obligation to do the right thing.
- **Competence:**
  Demonstrating the "know-how" needed to translate knowledge into action, including seeking additional assistance and expertise.
- **Identity:**
  The degree to which our character and integrity are central to our sense of self.

Excellence & Ethics® Tools

Rules of an Active Conscience

What NOT to do to keep your conscience as a guide for your integrity.

- **Don't distort.**
  Don't exaggerate or blow things out of proportion.
- **Don't create an enemy.**
  Don't avoid the truth by finding or creating an enemy to fight against.
- **Don't play the victim.**
  Don't rationalize to convince self or others that I/we are really the victim.
- **Don't fan the flames.**
  Don't get self/others fired-up so that emotion clouds reason.
- **Don't be a gamer.**
  Don't try to convince self/others that it isn't wrong, "just how the game is played."
- **Don't let ego get in the way.**
  Don't let "being right" interfere with "getting it right."

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Excellence & Ethics® Tools

Intervention Continuum

Action: To intercede, mediate, arbitrate, get involved, or otherwise stand up for people and principles.

Do nothing	Seek help from others	Intervene yourself

Required: Courage, Responsibility, Good Judgment

"There are no innocent bystanders."

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www.excellenceandethics.org

Respect

The essence of respect is to show solemn regard for the worth of people, including oneself.

The duty of respect is to treat all people with respect regardless of how they treat you.

"Sir, I will treat you
like a gentleman not
because you are one,
but because I am one."
Thomas Jefferson

RESPECT
demand it
facebook

Responsibility

- Do Your Duty
- Be Accountable
- Pursue Excellence
- Exercise Self Control

"Too many people are ready to carry the stool when the piano needs to be moved."

Unknown

Fairness

- Be Consistent
- Listen and Be Open
- Follow Established Rules
- Treat People Equitably

Two Aspects of Fairness

1. Process *how* we make decisions.

   The moral obligation arising from this concern is *to make decisions fairly;* this is called *procedural* fairness.

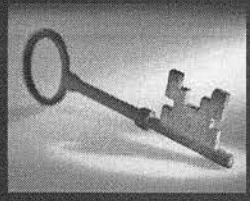
2. Results *what* we decide, the substance of the decision.

   The moral obligation is to make *fair decisions;* this is called *substantive* fairness.

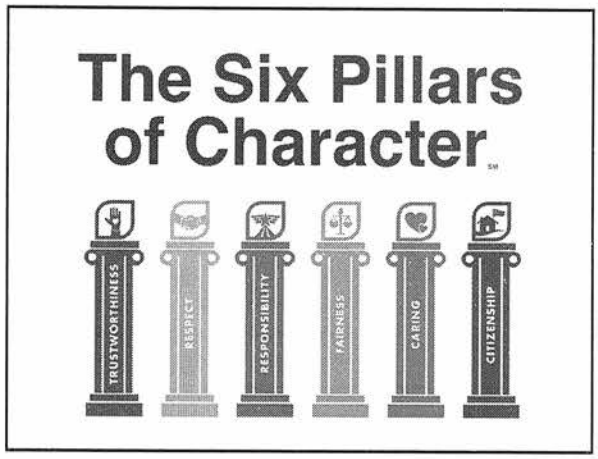
Six Theories of Fairness

1. Merit
2. Need
3. Might
4. Equality
5. Seniority
6. Effort

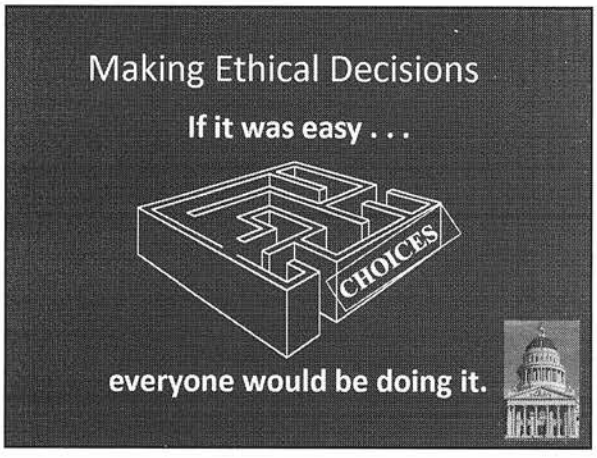
Key to Fairness

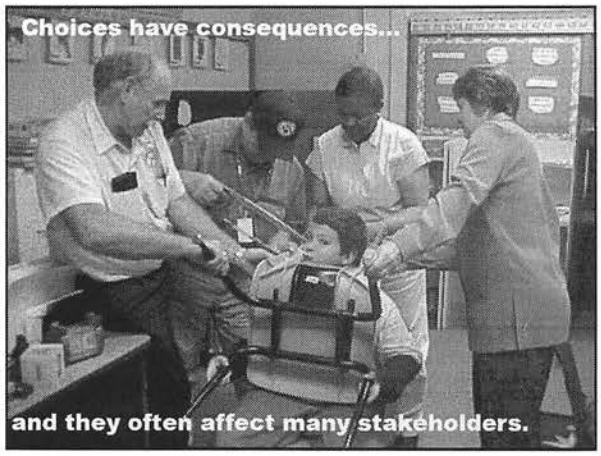


Gather Information
Pre Established Rules
Consistently Applied


The Six Pillars of Character℠
TRUSTWORTHINESS
RESPECT
RESPONSIBILITY
FAIRNESS
CARING
CITIZENSHIP

Culture of Excellence & Ethics
Developing positive and productive relationships
Demonstrating emotional intelligence, integrity, and responsibility
Communicating and collaborating with efficiency and effectiveness
Exhibiting creativity and innovation, critical thinking and problem-solving
Culture of Excellence & Ethics™ Focus Areas
Managing priorities and reducing stress
Leading and serving others
Committing to high standards and continuous improvement
Living a balanced, purposeful, and healthy life


Making Ethical Decisions
If it was easy . . .
CHOICES
everyone would be doing it.



Types of Decisions

- **RIGHT FROM WRONG**
  Eliminate clearly unethical options; doing the right thing, not doing wrong.
- **RIGHT FROM RIGHT**
  Deciding what to do when we must choose between competing "goods."
- **WRONG FROM WRONG**
  Choosing the lesser of negatives where each choice requires violation of an ethical principle.

Making Ethical Decisions

- Governing Documents
  - Constitution
  - California Law
  - Senate Code of Conduct
- Publicity Test
- Role Model Test
- Parenting Test
- Bell, Book and Candle Test
- Rule of Respect
- Rule of Universality
- Golden Rule
- Ethics-Based Decision-Making Model

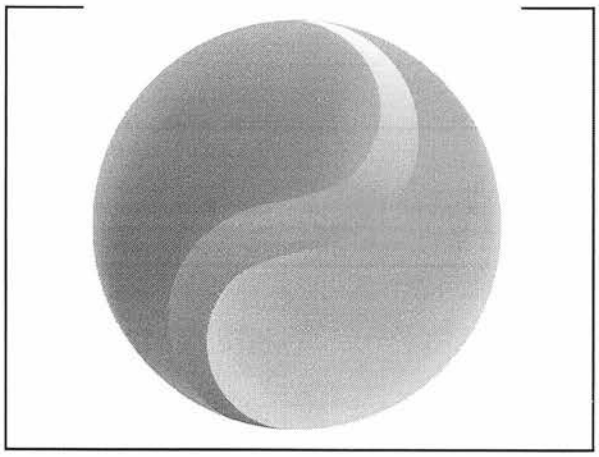
Ethical Decision-Making Model

- Ethical decisions take into account the interests and well being of all persons likely to be affected by your actions ("stakeholders")
- Ethical decisions put the core ethical values of trustworthiness, respect, responsibility, fairness, caring and citizenship above others.
- If it is *clearly necessary* to violate one core ethical value *to honor another core ethical value*, do the thing that you sincerely believe will *produce the greatest amount of good in the long run.*

Stop And Think

Roadblocks to Ethics

- Fear
- Unwillingness to lose
- Lack of will
- Impulsiveness
- Rationalization
- Procrastination
- Fatalism
- Cynicism
- Victimism
- Not my job ism



Character is power

Booker T. Washington

The Power to
Be a Leader

5:37 AM Fri Sep 11
seth.senate.ca.gov
9%

next fundraiser, including the committee ID number, so that he/she can include it on the check they plan to send.

For questions regarding ethics, contact:

Cary Rudman – (916) 651-1507
Ombudsperson, Senate Committee on Legislative Ethics

Daniel Alvarez– (916) 651-4120
Secretary of the Senate, Senate Rules Committee

9/21/20

Left msg. w/ Ser.
Morning Office 9/21/20
(916) 651-4017

See CALL WITH SEN MORNING STAFF 09/24/20

Gmail Adam Bereki <abereki@gmail.com>

Bereki Dr 20-029161

1 message

Adam <abereki@gmail.com> Thu, Dec 17, 2020 at 12:59 PM
To: eweidenkeller@ocsd.org, mleeb@ocsd.org, "Knutson, Gary L" <gknutson@ocsd.org>, jhallock@ocsd.org

Lt. Knutson,

Pursuant to a recent public records act request on your agency, I received a copy of the information report I filed as well as the supplemental investigation reports by Sgt. Andersen and Inv. Leeb pertaining to my allegations of fraud and deprivation of constitutional rights by judges and other public officials that I recently spoke with you and Commander Hallock about.

After receiving the supplemental reports made by Inv. Leeb, I called and left a message to speak with him on 12/2/20 . He has not returned my call. On 12/14/20, I also sent him an email and have not received a reply.

The essence of Inv. Leeb's findings in his supplemental report dated 11/4/20 states: "given that there is no criminal activity able to be discovered from what has been reported, this case will be closed pending any additional information." The report was approved by whom I suspect is Leeb's supervisor, E.Weidenkeller.

My phone message and email specifically asked Inv. Leeb to share the factual findings and legal basis of his conclusions that "there [was] no criminal activity able to be discovered." This information should very reasonably be part of his investigation report but is nowhere to be found. Inv. Leeb needs to explain exactly how he resolved each issue presented in my complaint. This includes but is not limited to how he determined there was constitutional authority for the judge/State of California to fine me $930,000 without any of the heightened protections of the excessive fine clause and in direct violation of the separation of powers declared in Article V of the California Constitution. A person, whether a civilian or public official who takes property without Constitutionally prescribed due process commits theft and/or fraud and potentially robbery if done under the full force of the State as in this case.

The fact that Inv. Leeb contacted the OCDA and CA DOJ who allegedly were not interested in prosecuting the case does not absolve him or the OCSD of their duty to fully and impartially investigate my valid claims and take remedial action including action to protect my liberty and property from unlawful taking.

If the OCSD or Inv. Leeb do not understand the law surrounding the claims I have made, I remain totally willing and available to help. I provided a significant amount of case law to the reporting officer who told me it would be booked into evidence so ti could be reviewed by the investigator. Despite this, there no indication in Inv. Leeb's reports that he read any of the cases or how he determined them to be incorrect or not relevant in relation to my claims. This is also information that should reasonably be included in his investigation report.

While I cannot be sure, it feels to me like Leeb spoke with County Counsel and perhaps the other aforementioned agencies and concluded, with little to no research of the actual law pertaining to the issues in my complaint, that what the judge/Court did was lawful based on the Opinion of the appellate Court that was also involved and then subsequently closed the case. This is not acceptable. How under any rational basis could a $930,000 fine for a simple licensing law violation could be lawful without any of the Constitutional protections of the excessive fines clause that specifically prohibit this behavior?

In another public records act request to your agency, I received copies of police academy training manuals from POST known as Learning Domains ("LD"). LD2 specifically reviews Constitutionally protected rights and Law Enforcement's duties to enforce the law and protect the public against the arbitrary deprivation thereof by government. I have enclosed it for reference. On page 1-5 it says "To be effective leaders, peace officers must be aware of the

EXHIBIT–D 4469

constitutional rights of all individuals [...] and the role the criminal justice system has in protecting those rights." Investigator Leeb has clearly not performed an adequate and full investigation before abritrarily closing my case and told me the OCSD is not going to protect me or my property in this situation. Please inform me if this is in fact the official position of the OCSD or order Inv. Leeb to fully perform his sworn duties.

Please feel free to contact me with any questions.

Sincerely,

Adam Bereki
949.241.6693

LD_02_V-6.4.pdf
441K

EXHIBIT–D 4470

Gmail Adam Bereki <abereki@gmail.com>

Bereki Dr 20-029161

Adam <abereki@gmail.com> Fri, Dec 18, 2020 at 8:54 AM
To: eweidenkeller@ocsd.org, mleeb@ocsd.org, "Knutson, Gary L" <gknutson@ocsd.org>, jhallock@ocsd.org, Rcauoette@ocsd.org

Correction, after reviewing my records, I spoke with Commander Caouette not Assist. Sheriff* Hallock before speaking with you, Lt. Knutson. I have therefore included him in this communication.

Sincerely,

Adam Bereki

---------- Forwarded message ---------
From: **Adam** <abereki@gmail.com>
Date: Thu, Dec 17, 2020 at 12:59 PM
Subject: Bereki Dr 20-029161
To: <eweidenkeller@ocsd.org>, <mleeb@ocsd.org>, Knutson, Gary L <gknutson@ocsd.org>, <jhallock@ocsd.org>

[Quoted text hidden]

LD_02_V-6.4.pdf
441K

EXHIBIT–D 4471

Gmail Adam Bereki <abereki@gmail.com>

Bereki Dr 20-029161

Knutson, Gary L <gknutson@ocsd.org> Fri, Dec 18, 2020 at 9:00 AM
To: Adam <abereki@gmail.com>

Adam,

Thank you for contacting me with this matter. I will look into it and get back to you.

Lieutenant Gary Knutson

Orange County Sheriff's Department

North Patrol Bureau Commander

Chief of Villa Park Police Services

Ofc. (714) 647-4094

From: Adam <abereki@gmail.com>
Sent: Friday, December 18, 2020 8:55 AM
To: Weidenkeller, Ehren J <eweidenkeller@ocsd.org>; Leeb, Michael C <MLEEB@ocsd.org>; Knutson, Gary L <gknutson@ocsd.org>; Hallock, Jeffrey A <JHallock@ocsd.org>; Rcauoette@ocsd.org
Subject: [EXTERNAL] Fwd: Bereki Dr 20-029161

Correction, after reviewing my records, I spoke with Commander Caouette not Assist. Sheriff* Hallock before speaking with you, Lt. Knutson. I have therefore included him in this communication.

[Quoted text hidden]

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

EXHIBIT–D 4472

Forward suspicious messages to Helpdesk@ocsd.org.

EXHIBIT–D 4473

Gmail Adam Bereki <abereki@gmail.com>

Bereki Dr 20-029161

Adam <abereki@gmail.com> Fri, Dec 18, 2020 at 9:01 AM
To: "Knutson, Gary L" <gknutson@ocsd.org>

You're welcome. Thank you for your prompt and courteous reply. I appreciate you and your accountability, Gary.

Adam
[Quoted text hidden]

EXHIBIT–D 4474

Gmail Adam Bereki <abereki@gmail.com>

20-029161

1 message

Adam <abereki@gmail.com> Mon, Dec 14, 2020 at 4:06 PM
To: mleeb@ocsd.org

Hi Mike,

I called and left a message for you last week to speak about your findings pertaining to the complaint I filed that you closed and have not received a return call. I am interested in knowing the factual findings and legal basis associated with your determination to close my case. These findings don't appear to be documented in your report and reasonably should be given each of the issues I raised.

My phone number is 949 241 6693.

Thank you for your help.

Sincerely,

Adam Bereki

EXHIBIT–D 4475

Gmail Adam Bereki <abereki@gmail.com>

Bereki 20-029161 /2 Additional Info

1 message

Adam <abereki@gmail.com> Sun, Dec 20, 2020 at 8:32 AM
To: eweidenkeller@ocsd.org, mleeb@ocsd.org, "Knutson, Gary L" <gknutson@ocsd.org>, jhallock@ocsd.org, rcaouette@ocsd.org

Lt. Knutson,

Here are two very profound sets of documents that I feel are critical to your enquiry. The first is a public records act request I served on the OCDA. It asks for the ten most recent filings and prosecutions for violation of Business and Professions Code §7028 –the criminal statute for contracting without a license. Upon receipt of the documents from the DA, I picked the top seven cases listed amongst the two categories and researched the penalties on the Court's website. The highest monetary penalty was a fine for $700. I was fined $930,000.

The excessive fines clauses of the California Constitution and the Constitution for the United States are **mandatory** upon judges. They both require the penalty to be proportional to offense. California's excessive fine clause requires an additional test– that the defendant be able to pay the fine. The judges in my case refused to apply the excessive fines clause provisions. A $930,000 fine is more than 46 times my qualifying net worth and 186 times the comparable maximum criminal monetary fine of $5,000.

Additionally, according to Article V of the California Constitution, a violation of the public regulatory law, a public offense, such as contracting without a license, must be prosecuted by the executive power of the State– ie the District Attorney. I was 'prosecuted' by a private party and not given any of the heightened protections of criminal or quasi-criminal proceedings, all of which are also **mandatory** upon judges. None of the judges involved in this case have recognized these Constitutional protections either.

Despite all of the foregoing, Leeb closed the case on the grounds that it "does not appear to have any criminal activity."

I've included the records request to the DA and the chart I made as Exhibit 1.

The second set of documents pertains to the communication I had with the California Attorney General referred to in Inv. Leeb's supplemental report dated 11/4/20. Leeb's report reads to me as if I made a complaint to the Attorney General and that because the AG did not find anything substantive in the complaint, it was never forwarded to the AG's special investigations unit for further research. This is not true. In September 2020, I sent the AG a request to find out their procedures for filing a complaint against public officials. I received a letter in reply that said to contact my local district attorney or the grand jury. No report on this subject matter was made to the AG in September 2020. So the apparent conclusion that there was no substance to my claim is false because I never made a claim to the AG. My claim was made to the OCSD. (The AG's website also directs people to contact their local agency). Leeb did not ask the DOJ officer for a copy of the alleged complaint, or even what the substance was for his investigation. As a result, it appears the AG has never seen my complaint to make the determination that Leeb's report seems to imply.

I am very troubled by Leeb's investigative tactics (and Weidenkellers approval thereof) that resulted in closing my case without actually performing an investigation. "Shopping around" to see who may want to take over and investigate the case so it could be handed off is not an investigation. Neither is shopping for a prosecutor before a complete investigation has been performed. All of the information I've provided you herein was at Leeb's fingertips but apparently dismissed as the quickest way to closing the case.

I realize this is a sensitive matter but am VERY confident with the OCSD's ability to handle it. I suspect that when this happens, it may open up to be one of the most profound cases of criminal judicial misconduct in California if not US

History. As I've mentioned before, there are other victims of this sham legal process and the law applies to judges – especially those acting without any authority and in direct violation of the Constitution – as much as it does to each of us.

I've included my letter to the AG and his response as Exhibit 2.

If I may also make a recommendation as strange as it may sound – please look into the facts and law of my case and see what I'm saying first hand without the opinions of others no matter what their apparent qualifications. It seems to me that Leeb got some – or perhaps all of his legal opinion – from County Counsel. Based on the information I have – which is of course subject to change – there is no legal basis for County Counsel's wholly absurd opinion. No one in their right mind would agree that a $930,000 fine is lawful, fair, and within constitutional parameters.

Thank you again for your attention, service, and willingness to be involved.

Adam Bereki
949.241.6693

---

2 attachments

EXHIBIT 1.pdf
1713K

EXHIBIT 2.pdf
1164K

Criminal Fines and Probation For Contracting Without a License

Case Number	Fine	Other	Filing Date	Charged With
20CM01815	$700.00	1 yr. Inf. Prob on Counts 1 & 2, §700 fine, Count 2.	2/3/20	1) §7028(a) 2) §7027.1a
20CM01812	$700.00	1 yr. Inf. Prob on Counts 1 & 2, §700 fine, Count 2.	2/3/20	1) §7028(a) 2) §7027.1a
20CM01735		3yrs Inf. Prob., 40hrs. Community Svc.	2/3/20	1) §7028(a)
19CM00522		3yrs. Inf. Prob Count 1, $700 fine Count 2, 88hrs. Community Svc. In Lieu of Count 2	1/16/19	1) §7028(a) 2) §7027.1a
20CM01827		3yrs. Inf. Prob. 10hrs. Community Svc.	1/31/20	1) §7028(a)
19CM04299		3yrs. Inf. Prob. 10hrs. Community Svc.	5/10/19	1) §7028(a)
19CM07319		3yrs. Inf. Prob. 10hrs. Community Svc.	7/23/19	1) §7028(a)

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Case Search | Calendar | Tutorial

Case Detail

Case Number: 20CM01815 Printable Version
OC Pay Number: 10147825
Originating Court: Central
Pay or Appear by: -
Traffic School Completion Date: -
Next Payment Date: 12/18/2020

Defendant: Samimi, Ramin
Demographics...
Names...

Case Status: Convicted
Details...

Case Stage: -	**Release Status:** Released on Own Recognizance		**DMV Hold:** N
Charging Document: Complaint	**Mandatory Appearance:** Y	**Amendment #:** 0	

Case Info

Counts
4 counts found, displaying all counts.1

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Dispo Date

EXHIBIT–D 4479

1	0	11/21/2019	7028(a) BP	M	License required to operate as a contractor	GUILTY	12/18/2020	Pled Guilty	12/18/2020
2	0	11/21/2019	7027.1(a) BP	M	Advertise As Contractor Without License	GUILTY	12/18/2020	Pled Guilty	12/18/2020
3	0	11/21/2019	7153(a) BP	M	Home improvement salesman w/o registration			Dismissed	12/18/2020
4	0	11/21/2019	16240 BP	M	Engage In Business Without License			Dismissed	12/18/2020

Co Defendants
No co-defendants found for this case

Participants
4 professionals found, displaying all professionals.1

Role	Badge	Name
Interpreter		Faress, Amir
District Attorney		Young, James
District Attorney		Upton-Stuart, Darris Cornelius
District Attorney		Johnson, Emily

Hearing Info

Scheduled Hearings
No scheduled hearings found for this case

Heard Hearings
6 hearings found, displaying all hearings.1

Date	Time	Hearing Type - Reason	Courtroom	Hearing Status
02/20/2020	08:30 AM	Arraignment -	C54	Heard
04/30/2020	08:30 AM	Arraignment -	C54	Cancel
05/28/2020	08:30 AM	Chambers Work -	C54	Heard
08/14/2020	08:30 AM	Arraignment -	C54	Cancel
12/04/2020	08:30 AM	Arraignment -	C54	Heard
12/18/2020	08:30 AM	Arraignment -	C54	Heard

Sentencing

EXHIBIT–D 4480

Sentences
2 sentences found, displaying all sentences.1

Count	Sentence Date	Sentence	Due Date
1,2	12/18/2020	1 years Probation	
2	12/18/2020	$700.00 Fines	

State Institutions
No institution records found for this case

Probation
One probation found.1

Sent Seq #	Type	Term	End Date	Status
1	INFORMAL	1 years	12/17/2021	History...

Mandatory Supervision
No Mandatory Supervisons found for this case

Release Info

Bail
No cash bail found for this case

Bonds
No bond bail found for this case

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EXHIBIT–D 4481

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Case Search | Calendar | Tutorial

Case Detail

Case Number: 20CM01812 Printable Version
OC Pay Number: 10147767
Originating Court: Central
Pay or Appear by: -
Traffic School Completion Date: -
Next Payment Date: 02/16/2021

Defendant: Garcia, Galdino Gil
Demographics...
Names...

Case Status: Convicted
Details...

Case Stage: -	**Release Status:** Released on Own Recognizance		**DMV Hold:** N
Charging Document: Complaint	**Mandatory Appearance:** Y	**Amendment #:** 0	

Case Info

Counts
4 counts found, displaying all counts.1

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Dispo Date

1	0	11/20/2019	7028(a) BP	M	License required to operate as a contractor	GUILTY	12/04/2020	Pled Guilty	12/04/2020
2	0	11/20/2019	7027.1(a) BP	M	Advertise As Contractor Without License	GUILTY	12/04/2020	Pled Guilty	12/04/2020
3	0	11/20/2019	7153(a) BP	M	Home improvement salesman w/o registration			Dismissed	12/04/2020
4	0	11/20/2019	16240 BP	M	Engage In Business Without License			Dismissed	12/04/2020

Co Defendants
No co-defendants found for this case

Participants
4 professionals found, displaying all professionals.1

Role	Badge	Name
Interpreter		Araoz, Luis
Interpreter		Espinoza, Maria de la Luz
District Attorney		Young, James
District Attorney		Johnson, Emily

Hearing Info

Scheduled Hearings
No scheduled hearings found for this case

Heard Hearings
5 hearings found, displaying all hearings.1

Date	Time	Hearing Type - Reason	Courtroom	Hearing Status
02/20/2020	08:30 AM	Arraignment -	C54	Heard
04/30/2020	08:30 AM	Arraignment -	C54	Cancel
05/28/2020	08:30 AM	Chambers Work -	C54	Heard
08/14/2020	08:30 AM	Arraignment -	C54	Cancel
12/04/2020	08:30 AM	Arraignment -	C54	Heard

Sentencing

Sentences

EXHIBIT–D 4483

2 sentences found, displaying all sentences.1

Count	Sentence Date	Sentence	Due Date
1,2	12/04/2020	1 years Probation	
2	12/04/2020	$700.00 Fines	

State Institutions
No institution records found for this case

Probation
One probation found.1

Sent Seq #	Type	Term	End Date	Status
1	INFORMAL	1 years	12/03/2021	History...

Mandatory Supervision
No Mandatory Supervisons found for this case

Release Info

Bail
No cash bail found for this case

Bonds
No bond bail found for this case

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Case Search | Calendar | Tutorial

Case Detail

Case Number: 20CM01735 Printable Version
OC Pay Number: 10145391
Originating Court: Central
Pay or Appear by: -
Traffic School Completion Date: -
Next Payment Date: -

Defendant: Zepeda-Flores, Miguel
▣ Demographics...
▣ Names...

Case Status: Convicted
▣ Details...

Case Stage: -	**Release Status:** Released on Own Recognizance		**DMV Hold:** N
Charging Document: Complaint	**Mandatory Appearance:** Y	**Amendment #:** 0	

Case Info

Counts
2 counts found, displaying all counts.1

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Dispo Date

1	0	11/20/2019	7028(a) BP	M	License required to operate as a contractor	GUILTY	10/15/2020	Pled Guilty	10/15/2020
2	0	11/20/2019	7027.1(a) BP	M	Advertise As Contractor Without License	NOT GUILTY	02/20/2020	Dismissed	10/15/2020

Co Defendants
No co-defendants found for this case

Participants
3 professionals found, displaying all professionals.1

Role	Badge	Name
Retained Attorney		Amezcua, Alfredo
Interpreter		Sandoval, Ricardo
District Attorney		Young, James

Hearing Info

Scheduled Hearings
No scheduled hearings found for this case

Heard Hearings
6 hearings found, displaying all hearings.1

Date	Time	Hearing Type - Reason	Courtroom	Hearing Status
02/20/2020	08:30 AM	Arraignment -	C54	Heard
04/30/2020	08:30 AM	Pre Trial -	C4	Cancel
05/12/2020	08:30 AM	Chambers Work -	C4	Heard
07/08/2020	09:00 AM	Pre Trial -	C4	Heard
07/15/2020	08:30 AM	Pre Trial -	C4	Cancel
10/15/2020	08:30 AM	Pre Trial -	C4	Heard

Sentencing

Sentences
2 sentences found, displaying all sentences.1

Count	Sentence Date	Sentence	Due Date
1	10/15/2020	3 years Probation	
1	10/15/2020	40 hours Community Service	10/15/2021

EXHIBIT–D 4486

State Institutions
No institution records found for this case

Probation
One probation found.**1**

Sent Seq #	Type	Term	End Date	Status
1	INFORMAL	3 years	10/14/2023	▣ History...

Mandatory Supervision
No Mandatory Supervisons found for this case

Release Info

Bail
No cash bail found for this case

Bonds
No bond bail found for this case

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Case Search | Calendar | Tutorial

Case Detail

Case Number: 19CM00522 Printable Version
OC Pay Number: 9726254
Originating Court: Central
Pay or Appear by: -
Traffic School Completion Date: -
Next Payment Date: 09/14/2020

Defendant: Baez, Leonardo
Demographics...
Names...

Case Status: Convicted
Details...

Case Stage: -	**Release Status:** Released on Own Recognizance		**DMV Hold:** N
Charging Document: Complaint	**Mandatory Appearance:** Y	**Amendment #:** 0	

Case Info

Counts
4 counts found, displaying all counts.1

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Dispo Date

1	0	10/18/2018	7028(a) BP	M	License required to operate as a contractor	GUILTY 03/12/2020	Pled Guilty	03/12/2020
2	0	10/18/2018	7027.1(a) BP	M	Advertise As Contractor Without License	GUILTY 03/12/2020	Pled Guilty	03/12/2020
3	0	10/18/2018	7153(a) BP	M	Home improvement salesman w/o registration		Dismissed	03/12/2020
4	0	10/18/2018	16240 BP	M	Engage In Business Without License		Dismissed	03/12/2020

Co Defendants
No co-defendants found for this case

Participants
2 professionals found, displaying all professionals.1

Role	Badge	Name
District Attorney		Young, James
District Attorney		Upton-Stuart, Darris Cornelius

Hearing Info

Scheduled Hearings
No scheduled hearings found for this case

Heard Hearings
9 hearings found, displaying all hearings.1

Date	Time	Hearing Type - Reason	Courtroom	Hearing Status
01/24/2019	08:30 AM	Arraignment -	C54	Heard
03/28/2019	08:30 AM	Arraignment -	C54	Heard
04/09/2019	01:30 PM	Arraignment -	C57	Heard
04/12/2019	08:30 AM	Arraignment -	C54	Heard
04/18/2019	08:30 AM	Arraignment -	C54	Heard
05/09/2019	08:30 AM	Arraignment -	C54	Heard
06/20/2019	08:30 AM	Arraignment -	C54	Heard
03/03/2020	08:30 AM	Arraignment Failed to Appear	C54	Heard
03/12/2020	08:30 AM	Arraignment -	C54	Heard

Sentencing

EXHIBIT–D 4489

Sentences
3 sentences found, displaying all sentences.**1**

Count	Sentence Date	Sentence	Due Date
1,2	03/12/2020	3 years Probation	
2	03/12/2020	$700.00 Fines	
2	03/12/2020	88 hours Service in lieu of fine	09/14/2020

State Institutions
No institution records found for this case

Probation
One probation found.**1**

Sent Seq #	Type	Term	End Date	Status
1	INFORMAL	3 years	03/11/2023	History...

Mandatory Supervision
No Mandatory Supervisons found for this case

Release Info

Bail
No cash bail found for this case

Bonds
No bond bail found for this case

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EXHIBIT–D 4490

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Case Search | Calendar | Tutorial

Case Detail

Case Number: 20CM01827 Printable Version
OC Pay Number: 10147910
Originating Court: Central
Pay or Appear by: -
Traffic School Completion Date: -
Next Payment Date: -

Defendant: Rodriguez, Uriel Banuelos
Demographics...
Names...

Case Status: Convicted
Details...

Case Stage: -	**Release Status:** Released on Own Recognizance		**DMV Hold:** N
Charging Document: Complaint	**Mandatory Appearance:** Y	**Amendment #:** 0	

Case Info

Counts
2 counts found, displaying all counts.1

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Dispo Date

EXHIBIT–D 4491

1	0	11/21/2019	7028(a) BP	M	License required to operate as a contractor	GUILTY 02/27/2020	Pled Guilty	02/27/2020
2	0	11/21/2019	7027.1(a) BP	M	Advertise As Contractor Without License		Dismissed	02/27/2020

Co Defendants
No co-defendants found for this case

Participants
3 professionals found, displaying all professionals.1

Role	Badge	Name
Interpreter		Espinoza, Maria de la Luz
District Attorney		Young, James
Interpreter		Molina, Sergio

Hearing Info

Scheduled Hearings
No scheduled hearings found for this case

Heard Hearings
2 hearings found, displaying all hearings.1

Date	Time	Hearing Type - Reason	Courtroom	Hearing Status
02/13/2020	08:30 AM	Arraignment -	C54	Heard
02/27/2020	08:30 AM	Arraignment -	C54	Heard

Sentencing

Sentences
2 sentences found, displaying all sentences.1

Count	Sentence Date	Sentence	Due Date
1	02/27/2020	3 years Probation	
1	02/27/2020	10 hours Community Service	09/21/2020

State Institutions
No institution records found for this case

Probation

EXHIBIT–D 4492

One probation found.1

Sent Seq #	Type	Term	End Date	Status
1	INFORMAL	3 years	02/26/2023	History...

Mandatory Supervision
No Mandatory Supervisons found for this case

Release Info

Bail
No cash bail found for this case

Bonds
No bond bail found for this case

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Case Search | Calendar | Tutorial

Case Detail

Case Number: 19CM04299 Printable Version
OC Pay Number: 9842872
Originating Court: Central
Pay or Appear by: -
Traffic School Completion Date: -
Next Payment Date: -

Defendant: Cabanas-Corona, Felipe
▣ Demographics...
▣ Names...

Case Status: Convicted
☑ Details...

Case Stage: -	**Release Status:** Released on Own Recognizance		**DMV Hold:** N
Charging Document: Complaint	**Mandatory Appearance:** Y	**Amendment #:** 0	

Case Info

Counts
4 counts found, displaying all counts.1

Seq	S/A	Violation Date	Section Statute	OL	Violation	Plea	Plea Date	Disposition	Dispo Date

EXHIBIT–D 4494

1	0	03/06/2019	7028(a) BP	M	License required to operate as a contractor	GUILTY	12/19/2019	Pled Guilty	12/19/2019
2	0	03/06/2019	7027.1(a) BP	M	Advertise As Contractor Without License			Dismissed	12/19/2019
3	0	03/06/2019	7153(a) BP	M	Home improvement salesman w/o registration			Dismissed	12/19/2019
4	0	03/06/2019	16240 BP	M	Engage In Business Without License			Dismissed	12/19/2019

Co Defendants
No co-defendants found for this case

Participants
5 professionals found, displaying all professionals.1

Role	Badge	Name
Interpreter		Sanchez-Menes, Ben F.
Interpreter		Espinoza, Maria de la Luz
District Attorney		Young, James
Retained Attorney		Wynn, Justin
District Attorney		Upton-Stuart, Darris Cornelius

Hearing Info

Scheduled Hearings
No scheduled hearings found for this case

Heard Hearings
7 hearings found, displaying all hearings.1

Date	Time	Hearing Type - Reason	Courtroom	Hearing Status
05/23/2019	08:30 AM	Arraignment -	C54	Heard
07/11/2019	08:30 AM	Arraignment -	C54	Heard
08/22/2019	08:30 AM	Arraignment -	C54	Heard
08/22/2019	08:30 AM	Arraignment -	C54	Heard
10/17/2019	08:30 AM	Arraignment -	C54	Heard
11/14/2019	08:30 AM	Arraignment -	C54	Heard
12/19/2019	08:30 AM	Arraignment -	C54	Heard

EXHIBIT–D 4495

Sentencing

Sentences
2 sentences found, displaying all sentences.1

Count	Sentence Date	Sentence	Due Date
1	12/19/2019	3 years Probation	
1	12/19/2019	10 hours Community Service	08/17/2020

State Institutions
No institution records found for this case

Probation
One probation found.1

Sent Seq #	Type	Term	End Date	Status
1	INFORMAL	3 years	12/18/2022	History...

Mandatory Supervision
No Mandatory Supervisons found for this case

Release Info

Bail
No cash bail found for this case

Bonds
No bond bail found for this case

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ORANGE COUNTY SHERIFF'S DEPARTMENT CALIFORNIA

DR #: 20-029161

CLOSE CASE REQUEST

ORIGINAL COPY

REASON FOR CASE CLOSURE

OTHER - ENTER REASON BELOW

Other Reason for Case Clearance: Case does not appear to have any criminal activity

ADDITIONAL DETAILS FOR CLOSING/INACTIVATING CASE

On Monday, November 2, 2020 I contacted Bill Wagner (619-719-8470) who works at the California Department of Justice's, Special Investigations Team. I asked Wagner to take a look at this case to assess whether or not it is something that his team would investigate. He agreed, and I emailed him the initial crime report and Investigator Anderson's supplemental report.

On Tuesday, November 3, 2020, Wagner contacted me and told me the following. After reviewing the reports he noted that Bereki had contacted the California Attorney General's Office and communicated with their Public Information Unit in early September of 2020. He went on to relay that the Public Information Unit would have directed the case to his team had they thought anything criminal in nature had occurred. Therefore his team does not have any further interest in this case at this time.

Given that there is no criminal activity able to be discovered from what has been reported, this case will be closed pending any additional information.

OFFICER INVOLVEMENT	OFFICER NAME	DATE
Investigating Officer	Leeb, M. 08787	11/4/2020
Approving Officer	Weidenkeller, E. 04050	11/4/2020

Gmail Adam Bereki <abereki@gmail.com>

Criminal Complaint Public Corruption

1 message

Adam <abereki@gmail.com> Tue, Sep 8, 2020 at 2:01 PM
To: piu@doj.ca.gov

Hello,

Could you please provide the specific instructions on how to make a criminal complaint with your office pertaining to criminal corruption by public officials?

Feel free to call, email, or write me: (I would prefer someone call me due to the sensitive nature of the complaint so we can easily and effectively communicate.)

Sincerely,

Adam Bereki
818 Spirit
Costa Mesa, California

949.241.6693.

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

PUBLIC INQUIRY UNIT
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

September 11, 2020

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your email of September 8, 2020 to the Office of the Attorney General.

If you have information about criminal misconduct, you may wish to contact the local district attorney in the area where the alleged crime occurred. The district attorney has primary responsibility for the investigation and prosecution of alleged violations of state laws. You may also want to share this information with your county grand jury. In California, grand juries have the authority to investigate allegations of misconduct on the part of local agencies.

Again, thank you for contacting the Office of the Attorney General.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For XAVIER BECERRA
Attorney General

EXHIBIT–D 4499

EXHIBIT–D 4500

State of California Department of Justice

XAVIER BECERRA
Attorney General

Division of Criminal Law

The mission of the Division of Criminal Law is to uphold the Attorney General's constitutional responsibility to represent the People of California in criminal cases. Our Division is organized into the following six sections:

Appeals, Writs and Trials handles post-conviction proceedings, including prosecuting felony criminal appeals in state court and representing the state in habeas corpus cases brought in federal court. Deputies also handle criminal investigations, conduct evidentiary hearings, and prosecute felonies in cases in which the local district attorney has been recused. Deputies appear regularly in the California Court of Appeal, California Supreme Court, United States District Court, and Ninth Circuit Court of Appeals.

Bureau of Medi-Cal Fraud and Elder Abuse conducts statewide investigations and prosecutes fraud relating to the activities of medical providers receiving funding under the Medi-Cal system. The section also reviews and prosecutes reports of elder abuse and neglect of patients housed in federally funded nursing home facilities.

Correctional Writs & Appeals represents the state in civil rights actions involving state prisoners. This section also represents the Department of Corrections, Board of Prison Terms, Youth Authority and the Department of Mental Health and their employees in cases regarding policies, practices or conditions of confinement of inmates.

eCrime Unit investigates and prosecutes multi-jurisdictional cases involving identity theft, cyber-crime, and criminal activity involving the use of electronic devices or networks. The Unit also participates in regional high-tech task forces and provides training and support to local agencies on technology-related crime issues.

Financial Fraud and Special Prosecutions investigates and prosecutes complex criminal cases occurring in California, primarily related to financial, securities, mortgage, and environmental fraud; public corruption, including violations of California's Political Reform Act; "underground economy" offenses, including tax and revenue fraud and counterfeiting; transnational organized crime and human trafficking. Vertical teams of prosecutors, investigators, auditors, and paralegals often work with federal and local authorities on cases involving multi-jurisdictional criminal activity.

Victims' Services Unit provides assistance, notification, information, and support to victims and their families in criminal trials and appeals prosecuted by the Attorney General's Office. VSU also monitors and responds to public inquiries received from crime victims and advises victims of their rights as enacted in Marsy's Law and related measures.

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EXHIBIT–D 4502

State of California Department of Justice

XAVIER BECERRA
Attorney General

Federal Habeas Corpus

Crime Victims' Rights

RESOURCES - If you are a victim of a federal crime:

Who is a Federal Victim?

A federal crime victim is "a person directly or proximately harmed as a result of the commission of a federal offense, or an offense within the District of Columbia" 18 U.S.C. § 3771 (e).

To Report a Federal Crime: Contact:
The United States Department of Justice or
The Federal Bureau of Investigation (FBI)

If you are a Victim or Witness of a Federal Crime

If you have been identified as a victim or witness in a case prosecuted by the one of the following offices and wish to obtain court room support, assistance, informational brochures or for general information about services, please contact the U.S. Attorney's Office Victim/Witness Assistance Program.

Under federal law, after state claims have been reviewed, an inmate (the petitioner) may raise federal constitutional claims in federal court. The inmate may file a petition for writ of habeas corpus. The petitioner argues that the conviction and/or sentence should be overturned because the conviction was obtained in violation of his or her federal constitutional rights. The Attorney General responds to petitions of writ of habeas corpus filed by state inmates.

Federal Habeas Corpus Proceedings

For federal habeas corpus proceedings in federal court, crime victims have the following rights:

- **Presence at Public Proceedings.** The right not to be excluded from the federal habeas corpus proceeding, unless the court determines that testimony by the victim would change if that victim heard other testimony at that proceeding. 18 U.S.C. § 3771(a)(3)
- **Right to be Heard at Public Proceedings.** The right to be reasonably heard at any public proceeding in the district court involving the release, plea, sentencing, or any parole proceeding of the defendant. 18 U.S.C. § 3771(a)(4)

EXHIBIT–D 4503

- **Proceedings Free from Delay.** The right to proceedings free from unreasonable delay. 18 U.S.C. § 3771(a)(7)
- **Fairness; Respect for Dignity and Privacy.** The right to be treated with fairness and with respect for the victim's dignity and privacy. 18 U.S.C. § 3771(a)(8)

These rights should not be confused with the rights provided under the California Crime Victims' Bill of Rights – Marsy's Law. Marsy's Law provides all victims with rights and due process in state proceedings; however, the Federal Crime Victims' Rights stated above provide victims with rights in federal habeas corpus proceedings.

For additional information on the protection, enforcement, and advancement of victim rights in Federal proceedings:

- U.S. Department of Justice
- National Crime Victim Law Institute
- National Crime Victim Bar Association

Federal Restitution:

Under federal law, restitution is mandatory for some, but not all, types of crimes. It is important for victims, who may be entitled to restitution, to keep a record of their losses, medical expenses, property damage and counseling expenses, with receipts when possible. This information will be needed by the probation department if the defendant is convicted and ordered to pay restitution. It is also important to fill out and submit a Declaration of Victim Loss Statement. This statement is provided by the U.S. Probation Department, after a defendant has been convicted at trial or has pleaded guilty. If you are a victim in a federal crime that is being prosecuted by the U.S. Attorney's office, the Victim/Witness Unit will typically notify you of the process for making a claim for restitution.

Office of the Attorney General Accessibility Privacy Policy Conditions of Use Disclaimer © 2020 DOJ

State of California Department of Justice

XAVIER BECERRA
Attorney General

Victims' Services Unit

Contact Us

California Attorney General's Office
P.O. Box 944255 Sacramento, CA 94244-2550
Phone Toll-free: (877) 433-9069

PUBLIC INQUIRY UNIT
(800) 952 5225

You may also send us an e-mail using the form below.

Please do not use this form to file a complaint against a business. If you are a victim of consumer or financial fraud, please file a complaint with our Public Inquiry Unit, using the online forms available at
http://oag.ca.gov/consumers.

If you wish to report a crime, please file a report with the police or sheriff's department http://www.post.ca.gov/le-agencies.aspx **in the area where the crime occurred. Local law enforcement authorities are responsible for investigating violations of law within their jurisdictions. After investigating the crime, the local law enforcement authorities may forward the case to the county district attorney's office for prosecution, if appropriate. The decision whether or not to file criminal charges will then be made by the locally elected district attorney.**

* Indicates a Required Field.

Your Information

First Name *

Middle Initial

Last Name *

Address Line *

Address Line 2

City *

State *

California

Zip Code *

Zip4

Email Address *

Confirm Email Address

Area Code

Phone Number *

Your Comments

message *

I'm not a robot

reCAPTCHA

Send Message

MAYOR
Vicente Sarmiento
MAYOR PRO TEM
David Penaloza
COUNCILMEMBERS
Phil Bacerra
Johnathan Ryan Hernandez
Jessie Lopez
Nelida Mendoza
Thai Viet Phan

CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA

SANTA ANA POLICE DEPARTMENT
20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

Police Department

December 22, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92646

Subject: Citizen's Complaint – PSU2020-0035

Mr. Bereki,

Your complaint regarding the actions of our police employee(s) has been investigated. Your allegations that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct.

The Santa Ana Police Department is committed to providing quality service. You can be assured that your complaint was treated seriously and a thorough investigation was conducted. Should you have any questions about this investigation, you may contact Commander J. Rodriguez at (714) 245-8705.

Sincerely,

David Valentin
Chief of Police

Robert Rodriguez, Commander
Internal Affairs

SANTA ANA CITY COUNCIL

Vicente Sarmiento, Mayor, vsarmiento@santa-ana.org
David Penaloza, Mayor Pro Tem, Ward 2, dpenaloza@santa-ana.org
Thai Viet Phan, Ward 1, tphan@santa-ana.org
Jessie Lopez, Ward 3, jessielopez@santa-ana.org
Phil Bacerra, Ward 4, pbacerra@santa-ana.org
Johanthan Ryan Hernandez, Ward 5, jryanhernandez@santa-ana.org
Nelida Mendoza, Ward 6, nmendoza@santa-ana.org

CERTIFIED MAIL™

7008 2810 0001 8042 9916

Hasler
12/23/2020
US POSTAGE $006.90²
ZIP 92701
011D12603965
FIRST-CLASS MAIL

CITY OF SANTA ANA
POLICE DEPARTMENT
60 CIVIC CENTER PLAZA
P.O. BOX 1981
SANTA ANA, CA 92702

DIAL 911 EMERGENCY FIRE POLICE MEDICAL

11-14-415
Internal Affairs

Adam Bereki
818 Spirit
Costa Mesa, CA 92646

92626-308918

EXHIBIT–D 4508

Gmail Adam Bereki <abereki@gmail.com>

PSU2020-0035

1 message

Adam <abereki@gmail.com> Wed, Dec 30, 2020 at 11:35 AM
To: "Rodriguez, Roberto" <RRodriguez@santa-ana.org>

Robert,

I received your letter dated December 22, 2020 whereby you stated the SAPD's findings that my allegations: "that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct." In my view, your findings don't actually address the nature of my complaints. I wanted to make sure that the SAPD's findings are in fact in response to the allegations I made as I see them.

First, I'm unaware of any duty that requires a police officer to file a criminal complaint against anyone. If there were such a duty, I suspect it could be very troubling. Therefore, I'm not surprised your investigation arrived at the conclusion stated in your letter. But that wasn't my complaint. I reported violations of my rights and the taking of my property by public officials of California acting without authority and in violation of due process. Officers of the State of California – such as police officers as members of the executive branch – have a constitutional duty to investigate these claims upon report because the government of California is forbidden from taking liberty or property without due process of law by both the California Constitution and the Constitution for the United States. See for e.g. the Fifth and Fourteenth Amendments, and Article I, §10 of the Constitution for the U.S. You, "Sgt." Hernandez, and "Sgt." Alcantar refused to document and investigate my claims. This failure to investigate is the basis of the duty at the heart of my complaint, not that a criminal complaint was not made. It would also be unreasonable and unfair to require anyone to make a criminal complaint without first conducting an investigation. If in any way the SAPD perceived me as making such a request, that was never my intent.

Please clarify your/the SAPD's findings and conclusions to reflect the nature of my complaint. Is it your/the SAPD's finding that "Sgt.'s" Alcantar and Hernandez had no duty to investigate my claims and therefore, the fact that they refused to perform an investigation, did not rise to the level of misconduct?"

Thank you for your time and further clarity.

Sincerely,

Adam Bereki

EXHIBIT–D 4509

Adam Bereki
818 Spirit
Costa Mesa, California 92626
Abereki@gmail.com | 949.241.6693

mailed 12/28/20

Newsom mailed 12/28/20

City of Santa Ana
Clerk of the Council, M-30
20 Civic Center Plaza, 8th Floor
Santa Ana, CA 92701

mailed 12/28/20
email david valentin 12/28/20

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95798-9052

December 28, 2020

RE: Ongoing California Tort Claims Act Violations and Petitions for Redress of Grievance Concerning Deprivation of Constitutional Rights by Public Officials of California Acting Without Constitutional, Statutory, or Other Lawful Authority.

This amended complaint shall be referred to as the Fourth Amended Complaint. It contains new complaints in the ongoing deprivation of my Constitutionally protected rights by the Santa Ana Police Department and its officers: Abel Alcantar, Gil Hernandez, David Valentin, Robert Rodriguez, Michelle Macchiaroli; Governor Gavin Newsom, and others who may not be known at the time of this complaint.

On April 20, 2017, I was unlawfully fined $930,000 in a "civil case" for allegedly performing construction work in California without a contractor's license.[1] This, despite the fact that I was qualified by the Contractor's State License Board as a "qualifying individual" of my company's class B general construction license (lic #927244) and the fact that Article V of the California Constitution exclusively vests the power to ensure the law is faithfully executed in the governor, not in the private parties who 'prosecuted' me. The Court refused to recognize that it had no subject matter jurisdiction to make the judgement award pursuant to Article V, or to award a penalty that is more than forty-six times my qualifying net worth.

On February 12, 2020, I filed an initial "Complaint for Deprivation of Constitutional Rights by Public Officials of California." Exhibit [4-A].

On February 21, 2020, I filed a First Amended Complaint. Exhibit [4-B].

[1] Case #30-2015-00805807 (Superior Court of California, County of Orange).

On April 15, 2020, I filed another complaint for failure to investigate my claims for deprivations of rights. Exhibit [4-C].

Please review these documents for the specific details of the complaints.

In furtherance of my attempts to obtain redress for deprivations of my rights and protection against the unlawful taking of my property, I called the Santa Ana Police Department ("SAPD") on February 7, 2020 to make a complaint. I spoke with Sgt. Abel Alcantar. After sharing the nature of my complaint to Alcantar, he refused to take a report or to investigate my claims. [Exhibit 4-D].

On June 5, 2020, I made another complaint via email to Commander Robert Rodriguez. Rodriguez refused to reply to my email and to my knowledge, has refused to investigate my complaint. [Exhibit 4-E]

On July 13, 2020, I sent a letter to SAPD Chief David Valentin via his secretary, Emily Plotnik, requesting to speak with him about this matter. About an hour later I received a call from Sgt. Gil Hernandez on behalf of Chief Valentin. I told Hernandez I wanted to make a complaint for the aforementioned reasons. Hernandez told me he was not going to take a report or investigate my claims. [Exhibit 4-D]

On July 20, 2020, I filed a Citizen Complaint against Sgt's Alcantar and Hernandez for failure to investigate my claims and to protect my rights and property from unlawful taking by public officials acting without authority. Exhibit [4-D].

On August 5, 2020, I spoke with Internal Affairs Sgt. Michelle Macchiaroli regarding her investigation of my Citizen Complaint that was assigned case number PSU2020-0035. Macchiaroli told me the SAPD would investigate my Citizen Complaint but was not going to investigate my claims for deprivation of rights and property.

On 12/28/20 I received a letter from Commander Rodriguez on behalf of Chief Valentin stating that my "allegations that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct."

As members of the executive branch of the California government, Alcantar, Hernandez, Macchiaroli, and Rodriguez had a duty to investigate my claims of deprivation of rights and the unlawful taking of my property by public officials of California acting without authority. Their refusal to do so and sanction thereof by Chief Valentin, along with their failure to properly investigate my Citizen Complaint and require their subordinates to perform their sworn Constitutional duties constitutes: (1) repeated violations of due process and deprivation of the right to petition the executive branch of government for redress of grievance; and (2) a

conspiracy to deprive me of the protections of the California Constitution and the Constitution for the United States resulting in the taking of my property without lawful authority.

Furthermore, based on SAPD's admissions pursuant to numerous public records act requests, none of its supervisory or command staff (including Alcantar, Hernandez, Rodriguez, or Macchiaroli, with the exception of Chief Valentin) appear to lawfully be in office as they have not taken an oath of office as required by Article XX of the California Constitution for their respective office. Article XX declares:

> "Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, **shall, before they enter upon the duties of their respective offices**, take and subscribe the following oath or affirmation [...]."

While Alcantar, Hernandez, Rodriguez, and Macchiaroli[2] appear to have taken an oath of office for the office of police officer, they are no longer serving in that office as they have been promoted to supervisory positions with entirely different duties and responsibilities – such as the investigation of Citizen Complaints – commensurate with an increase in compensation. For example, Chief Valentin took an oath of office as Chief of Police, not as a police officer. The same applies to judges as they move from Superior to appellate Courts despite the fact they are still simply "judging". An appellate justice occupies a completely different office from a superior Court Judge. Just as the office of a police sergeant is entirely different from that of a police officer.

Having failed to comply with the provisions of Article XX, none of these officers appear to be lawfully in office, clothed with the power to investigate or make determinations pertaining to my complaint, or entitled to accept compensation and benefits from the public treasury for an office they do not hold and are refusing to perform the duties of.

Pursuant to Article V of the California Constitution, the governor shall see that the law is faithfully executed. Despite my repeated complaints to him, Governor Gavin Newsom has refused to ensure that the legislative, judicial, and administrative officials involved in this complaint are acting within Constitutional bounds. This constitutes yet another complaint to his office for failure to perform his Constitutional duties, including ensuring the duties of the offices within the executive branch are performed as further required by Gov. Code §12011 "The Governor shall see that all offices are filled and their duties performed" and Gov. Code §12010 "The Governor shall supervise the official conduct of all executive and ministerial officers."

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[2] The Santa Ana Police Department refused to produce the oath of office for Sgt. Macchiaroli but assured me she had one for the office of police officer.

I have and continue to be unduly harmed by the actions of the public officials involved in this claim by either their usurpation of power or refusal to exercise the powers vested in them upon which they have taken a sworn oath to execute.

Respectfully Submitted,

12-28-20

Adam Bereki

CLAIM AGAINST THE CITY OF SANTA ANA
(For damages to person or personal property)

A claim against the City of Santa Ana must be filed with the Clerk of the Council of the City of Santa Ana within **six (6) months** after which the incident or event occurred. Be sure your claim is against the City of Santa Ana, not another public entity. Where space is insufficient, please use additional paper and identify the paragraph(s) being answered.

Completed claims must be delivered or mailed to:

Clerk of the Council, City of Santa Ana, 20 Civic Center Plaza, 8th Floor, P.O. Box 1988, Santa Ana, CA 92702

For Official Use Only

CLAIM NO: _____

RESERVE FOR FILING STAMP

Received via:
☐ U.S. Mail ☐ Over the Counter
☐ Interoffice Mail/Tube

1. **Claimant Information**

Name of Claimant: Adam A. Bereki
(First Name / Middle Name / Last Name)

Post Office Address: 818 Spirit, Costa Mesa, California 92626
(Street Address / City/State / Zip Code)

Phone Number: 949.241.6693 Date of Birth: 06/18/79

2. **Name and address to which notices should be sent, if other than above. If represented by an attorney, provide attorney information.**

Name of Addressee:

Post Office Address:
(Street Address / City/State / Zip Code)

Phone Number:

3. **The date, place, and other circumstances of the occurrence or transaction from which the claim arises.**

Date of Occurrence: See attached. Time of Occurrence:

Location:

Circumstances giving rise to this claim:

4. **General description of the indebtedness, obligation, injury, damage or loss incurred so far as you now know.**

See attached.

5. **The name(s) of the public employee(s) or department causing the injury, damage, or loss, if known.**

See attached.

6. **If amount claimed totals less than $10,000:** Provide the amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of your claim, including the estimated amount of any related potential future injury, damage, or loss, insofar as it may be known as of the date of your claim, together with the basis of computation of the amount claimed (include copies of all bills, invoices, estimates, etc.).

Total amount claimed and basis for computation:

If amount claimed exceeds $10,000: If the amount claimed exceeds ten thousand dollars ($10,000), you need not provide a dollar amount in the claim. However, your claim must indicate whether it would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs, does not exceed $25,000. An unlimited case is one in which the recovery sought is more than $25,000. (See CCP§86)

☐ **Limited Civil Case** ☑ **Unlimited Civil Case**

You are required to provide the information requested above in order to comply with Government Code §910. Additionally, in order to conduct a timely investigation and possible resolution of your claim, the City of Santa Ana requests that you answer the following questions.

7. **Medicare Secondary Payer Act:** Effective January 1, 2010, the Medicare Secondary Payer Act (Federal Law) requires the City to report all claims involving payments for bodily injury and/or medical treatments. If you are seeking medical damages you must provide your social security number. The City will be unable to process your medical claim without this information.

Social Security Number:

8. **Name, address and phone number of any witnesses to the occurrence or transaction from which the claim arises.**

See attached.

9. **If the claim involves medical treatment for a claimed injury, please provide the name, address, and phone number of any doctors or hospitals providing treatment.** *If applicable, please attach any medical bills or reports or similar documents supporting your claim.*

Not applicable at this time but subject to reevaluation.

10. If the claim relates to an automobile accident, provide the following information:

Auto Insurance Company: Phone Number:

Post Office Address:

Policy Number:

Insurance Broker/Agent: Phone Number:

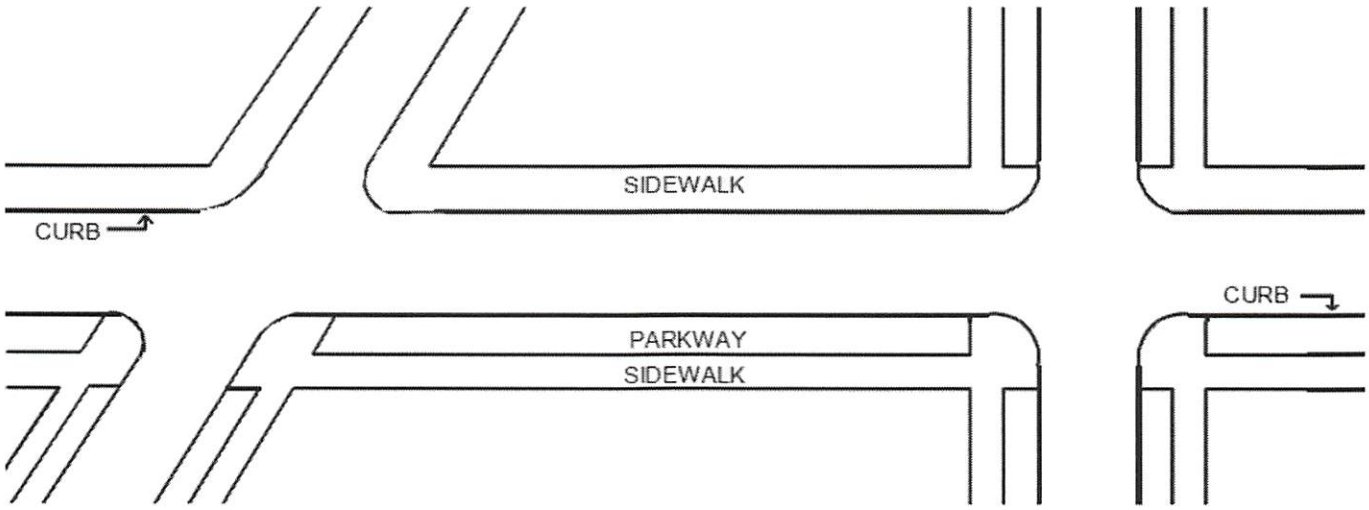
Post Office Address:

Vehicle License No.: Vehicle Make/Model/Year:

Drivers License No.: State Issued: Expiration:

If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

For all accident claims, complete the diagram showing the direction and position of autos or property involved. Please identify the street names, vehicle/pedestrian location, area of impact, etc. and indicate where North is on the diagram. Note: if the diagram below does not fit the situation, attach hereto a proper diagram signed by claimant.



WARNING: Presentation of a false claim is a felony (Penal Code §72). Pursuant to CCP§1038, The City may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith with reasonable cause.

Signature of Claimant **Date** 12/28/20

LATE CLAIM: If you are filing a claim after six (6) months after the date of incident, but not exceeding one (1) year, you must file an "APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM TO THE CITY OF SANTA ANA," which may be obtained from the Clerk of the Council or Risk Management.

Gmail Adam Bereki <abereki@gmail.com>

Tort Claim

1 message

Adam <abereki@gmail.com> Mon, Dec 28, 2020 at 9:39 AM
To: "Plotnik, Elizabeth" <EPlotnik@santa-ana.org>, dvalentin@santa-ana.org

Emily,

Please ensure Chief Valentin receives the following complaint. I have included him, but was unsure if the email I used is correct.

Chief,

Please see the attached Government Tort Claim. I have also mailed this claim to the Clerk of Council as required. The claim references numerous Exhibits, most of which are already in your possession. The Exhibits were too large and numerous to include via email, but they have been included in the letter mailed to the Clerk of Council on a USB drive, with USPS tracking.

SAPD TORT CLAIM FILED 122820.pdf
2118K

EXHIBIT–D 4517

Adam Bereki
818 Spirit
Costa Mesa, California 92626
Abereki@gmail.com | 949.241.6693

Governor Gavin Newsom
1303 10th St. Ste 1173
Sacramento, Ca 95814

December 28, 2020

RE: Ongoing California Tort Claims Act Violations and Petitions for Redress of Grievance Concerning Deprivation of Constitutional Rights by Public Officials of California Acting Without Constitutional, Statutory, or Other Lawful Authority.

Governor,

Please see attached.

Sincerely,

Adam Bereki

Beverly
818 Sprat
92626

CITY OF SANTA ANA
CLERK OF THE COUNCIL, M-30
20 CIVIC CENTER PLAZA 8TH FLOOR
SANTA ANA, CA 92701

Governor Gavin Newsom
1303 10TH ST STE 1173
SACRAMENTO, CA 95814

OFFICE OF RISK & INS. MGMT.
Gov't Claims Program
PO Box 989052, MS414
West SACRAMENTO, CA 95798-9052

Beverly
818 Sprat
92626

EXHIBIT–D 4519

SAPD TORT CLAM
NEWSOM

UNITED STATES POSTAL SERVICE.

SANTA ANA WINDOW SVCS
3101 W SUNFLOWER AVE
SANTA ANA, CA 92799-0100
(300)275-8777

12/28/2020 10:33 AM

Product	Qty	Unit Price	Price
First-Class Mail® Package	1		$3.80

Santa Ana, CA 92701
Weight: 0 lb 2.10 oz
Estimated Delivery Date
Thu 12/31/2020
Tracking #:
9500 1150 6990 0363 8171 97

CITY OF SANTA ANA

First-Class Mail® Package 1 $3.90

West Sacramento, CA 95798
Weight: 0 lb 2.10 oz
Estimated Delivery Date
Sat 01/02/2021
Tracking #:
9500 1150 6990 0363 8172 03

OFFICE OF RISK & INS. MGMT.

First-Class Mail® Package 1 $3.90

Sacramento, CA 95814
Weight: 0 lb 2.30 oz
Estimated Delivery Date
Sat 01/02/2021
Tracking #:
9500 1150 6990 0363 8172 10

NEWSOM

Grand Total: $11.60

Credit Card Remitted $11.60
Card Name: VISA
Account #: XXXXXXXXXXXX9114
Approval #: 95029D

USPS Tracking®

FAQs >

Track Another Package +

Get the free Informed Delivery® feature to receive automated notifications on your packages

Learn More

(https://reg.usps.com/xsell?app=U· psTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st

Tracking Number: 9500115069900363817197

Remove ×

Your item has been delivered and is available at a PO Box at 8:36 am on December 29, 2020 in SANTA ANA, CA 92702.

USPS Premium Tracking™ Available ⌄

Delivered

December 29, 2020 at 8:36 am
Delivered, PO Box
SANTA ANA, CA 92702

Get Updates ⌄

Text & Email Updates ⌄

Tracking History ⌄

Premium Tracking ⌄

Product Information ⌄

See Less ^

Feedba

EXHIBIT-D 4521

Tracking Number: 9500115069900363817203 Remove ×

Your item was delivered at 11:20 am on December 30, 2020 in WEST SACRAMENTO, CA 95799.

USPS Premium Tracking™ Available ∨

Delivered

December 30, 2020 at 11:20 am
Delivered
WEST SACRAMENTO, CA 95799

Get Updates ∨

See More ∨

Tracking Number: 9500115069900363817210 Remove ×

Your item was picked up at a postal facility at 8:32 am on December 30, 2020 in SACRAMENTO, CA 95813.

USPS Premium Tracking™ Available ∨

Delivered

December 30, 2020 at 8:32 am
Delivered, Individual Picked Up at Postal Facility
SACRAMENTO, CA 95813

Get Updates ∨

See More ∨

Can't find what you're looking for?

EXHIBIT–D 4522

R- 1/7/21

AdminSure

3380 Shelby Street
Ontario, CA 91764

Telephone (909)861-0816
Fax (909)860-3995
www.adminsure.com

RETURN OF UNTIMELY CLAIM

January 05, 2021

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Reference:		
	Principal:	City of Santa Ana
	Loss Date:	04/20/2017
	Claim(s) Made:	12/28/2020
	Claimant(s):	Bereki, Adam A.
	Our File Number:	21-152841

Dear Mr. Bereki:

We are the Third-Party Administrator and handle the liability claims for the City of Santa Ana.

The claim you presented to the City of Santa Ana on 12/28/2020 is being returned because it was not presented within six (6) months after the date of occurrence as required by law. See Section 901 and 911.2 of the California Government Code. Because the claim was not presented within the time allowed by law, no action will be taken on this claim.

Your only recourse at this time is to apply, without delay, to the City of Santa Ana for leave to present a late claim. See Sections 911.4 to 912.2 inclusive, and Section 946.6 of the California Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the California Government Code.

You may seek the advice of an attorney of your choice in connection of this matter. If you desire to consult with an attorney, you should do so immediately.

Sincerely,

Michael Hedtke

Michael Hedtke
Liability Administrator
(909)493-3374
mhedtke@adminsure.com

Enc.: Claim form submitted by Adam Bereki

cc: City of Santa Ana

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO }

I am over the age of 18 years and not a party to the within action. My business address is 3380 Shelby Street Ontario, CA 91764.

On January 05, 2021, I served the documents entitled *RETURN OF UNTIMELY CLAIM* by placing a true copy thereof, enclosed in a sealed envelope, via U.S. Mail, addressed as follows:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

[X] {BY MAIL} As follows: I am "readily familiar" with the business practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Ontario, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] {BY PERSONAL SERVICE} I caused such envelope to be delivered by hand to the offices of the addressee.

[ ] {BY FACSIMILE MACHINE} I caused the above-referenced document to be transmitted via facsimile machine on January 05, 2021 to the interested parties at the facsimile number noted above.

[X] {STATE} I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 05, 2021

Signature

Michael Reed

Print Name

Adam Bereki
818 Spirit
Costa Mesa, California 92626
Abereki@gmail.com | 949.241.6693

City of Santa Ana
Clerk of the Council, M-30
20 Civic Center Plaza, 8th Floor
Santa Ana, CA 92701

& VIA EMAIL TO CHIEF VALENTIN
12/28/20

Office of Risk and Insurance Management
Government Claims Program
P.O. Box 989052, MS414
West Sacramento, CA 95798-9052

December 28, 2020

RE: Ongoing California Tort Claims Act Violations and Petitions for Redress of Grievance Concerning Deprivation of Constitutional Rights by Public Officials of California Acting Without Constitutional, Statutory, or Other Lawful Authority.

This amended complaint shall be referred to as the Fourth Amended Complaint. It contains new complaints in the ongoing deprivation of my Constitutionally protected rights by the Santa Ana Police Department and its officers: Abel Alcantar, Gil Hernandez, David Valentin, Robert Rodriguez, Michelle Macchiaroli; Governor Gavin Newsom, and others who may not be known at the time of this complaint.

On April 20, 2017, I was unlawfully fined $930,000 in a "civil case" for allegedly performing construction work in California without a contractor's license.[1] This, despite the fact that I was qualified by the Contractor's State License Board as a "qualifying individual" of my company's class B general construction license (lic #927244) and the fact that Article V of the California Constitution exclusively vests the power to ensure the law is faithfully executed in the governor, not in the private parties who 'prosecuted' me. The Court refused to recognize that it had no subject matter jurisdiction to make the judgement award pursuant to Article V, or to award a penalty that is more than forty-six times my qualifying net worth.

On February 12, 2020, I filed an initial "Complaint for Deprivation of Constitutional Rights by Public Officials of California." Exhibit [4-A].

On February 21, 2020, I filed a First Amended Complaint. Exhibit [4-B].

[1] Case #30-2015-00805807 (Superior Court of California, County of Orange).

On April 15, 2020, I filed another complaint for failure to investigate my claims for deprivations of rights. Exhibit [4-C].

Please review these documents for the specific details of the complaints.

In furtherance of my attempts to obtain redress for deprivations of my rights and protection against the unlawful taking of my property, I called the Santa Ana Police Department ("SAPD") on February 7, 2020 to make a complaint. I spoke with Sgt. Abel Alcantar. After sharing the nature of my complaint to Alcantar, he refused to take a report or to investigate my claims. [Exhibit 4-D].

On June 5, 2020, I made another complaint via email to Commander Robert Rodriguez. Rodriguez refused to reply to my email and to my knowledge, has refused to investigate my complaint. [Exhibit 4-E]

On July 13, 2020, I sent a letter to SAPD Chief David Valentin via his secretary, Emily Plotnik, requesting to speak with him about this matter. About an hour later I received a call from Sgt. Gil Hernandez on behalf of Chief Valentin. I told Hernandez I wanted to make a complaint for the aforementioned reasons. Hernandez told me he was not going to take a report or investigate my claims. [Exhibit 4-D]

On July 20, 2020, I filed a Citizen Complaint against Sgt's Alcantar and Hernandez for failure to investigate my claims and to protect my rights and property from unlawful taking by public officials acting without authority. Exhibit [4-D].

On August 5, 2020, I spoke with Internal Affairs Sgt. Michelle Macchiaroli regarding her investigation of my Citizen Complaint that was assigned case number PSU2020-0035. Macchiaroli told me the SAPD would investigate my Citizen Complaint but was not going to investigate my claims for deprivation of rights and property.

On 12/28/20 I received a letter from Commander Rodriguez on behalf of Chief Valentin stating that my "allegations that the sergeants failed to perform their duties as required of a police officer by not taking a criminal complaint did not rise to the level of misconduct."

As members of the executive branch of the California government, Alcantar, Hernandez, Macchiaroli, and Rodriguez had a duty to investigate my claims of deprivation of rights and the unlawful taking of my property by public officials of California acting without authority. Their refusal to do so and sanction thereof by Chief Valentin, along with their failure to properly investigate my Citizen Complaint and require their subordinates to perform their sworn Constitutional duties constitutes: (1) repeated violations of due process and deprivation of the right to petition the executive branch of government for redress of grievance; and (2) a

conspiracy to deprive me of the protections of the California Constitution and the Constitution for the United States resulting in the taking of my property without lawful authority.

Furthermore, based on SAPD's admissions pursuant to numerous public records act requests, none of its supervisory or command staff (including Alcantar, Hernandez, Rodriguez, or Macchiaroli, with the exception of Chief Valentin) appear to lawfully be in office as they have not taken an oath of office as required by Article XX of the California Constitution for their respective office. Article XX declares:

> "Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, **shall, before they enter upon the duties of their respective offices**, take and subscribe the following oath or affirmation [...]."

While Alcantar, Hernandez, Rodriguez, and Macchiaroli[2] appear to have taken an oath of office for the office of police officer, they are no longer serving in that office as they have been promoted to supervisory positions with entirely different duties and responsibilities – such as the investigation of Citizen Complaints – commensurate with an increase in compensation. For example, Chief Valentin took an oath of office as Chief of Police, not as a police officer. The same applies to judges as they move from Superior to appellate Courts despite the fact they are still simply "judging". An appellate justice occupies a completely different office from a superior Court Judge. Just as the office of a police sergeant is entirely different from that of a police officer.

Having failed to comply with the provisions of Article XX, none of these officers appear to be lawfully in office, clothed with the power to investigate or make determinations pertaining to my complaint, or entitled to accept compensation and benefits from the public treasury for an office they do not hold and are refusing to perform the duties of.

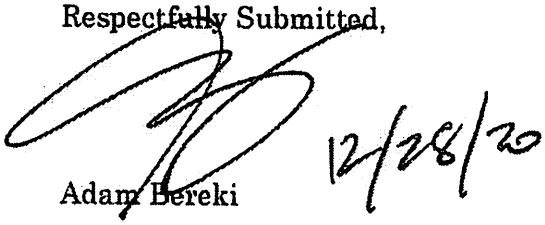
Pursuant to Article V of the California Constitution, the governor shall see that the law is faithfully executed. Despite my repeated complaints to him, Governor Gavin Newsom has refused to ensure that the legislative, judicial, and administrative officials involved in this complaint are acting within Constitutional bounds. This constitutes yet another complaint to his office for failure to perform his Constitutional duties, including ensuring the duties of the offices within the executive branch are performed as further required by Gov. Code §12011 "The Governor shall see that all offices are filled and their duties performed" and Gov. Code §12010 "The Governor shall supervise the official conduct of all executive and ministerial officers."

---

[2] The Santa Ana Police Department refused to produce the oath of office for Sgt. Macchiaroli but assured me she had one for the office of police officer.

I have and continue to be unduly harmed by the actions of the public officials involved in this claim by either their usurpation of power or refusal to exercise the powers vested in them upon which they have taken a sworn oath to execute.

Respectfully Submitted,



Adam Bereki 12/28/20

EXHIBIT–D 4528

10. If the claim relates to an automobile accident, provide the following information:

Auto Insurance Company: Phone Number:

Post Office Address:

Policy Number:

Insurance Broker/Agent: Phone Number:

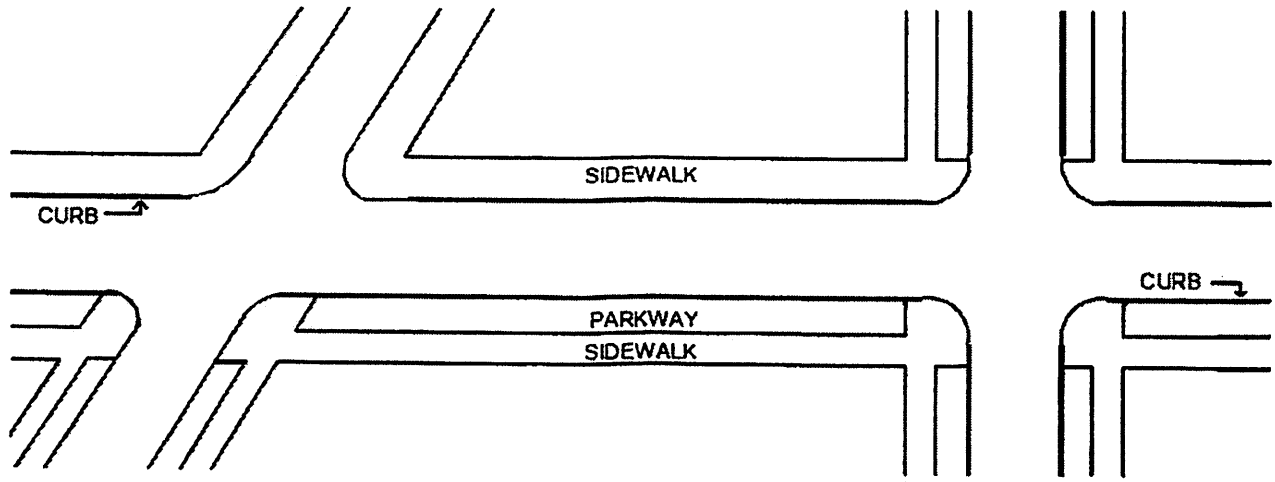
Post Office Address:

Vehicle License No.: Vehicle Make/Model/Year:

Drivers License No.: State Issued: Expiration:

If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

For all accident claims, complete the diagram showing the direction and position of autos or property involved. Please identify the street names, vehicle/pedestrian location, area of impact, etc. and indicate where North is on the diagram. Note: if the diagram below does not fit the situation, attach hereto a proper diagram signed by claimant.



WARNING: Presentation of a false claim is a felony (Penal Code §72). Pursuant to CCP§1038, The City may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith with reasonable cause.

Signature of Claimant

12/28/20
Date

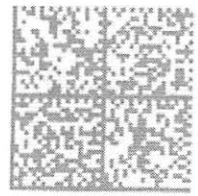
LATE CLAIM: If you are filing a claim after six (6) months after the date of incident, but not exceeding one (1) year, you must file an "APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM TO THE CITY OF SANTA ANA," which may be obtained from the Clerk of the Council or Risk Management.

EXHIBIT–D 4529

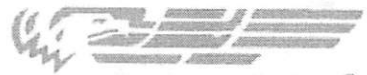
AdminSure

3380 Shelby Street
Ontario, California 91764-5566

TIME SENSITIVE
MATERIAL



U.S. POSTAGE PITNEY BOWES



ZIP 91764 $ 000.65⁰
02 4W
0000343061 JAN 05 2021

926263089 C051

EXHIBIT–D 4530

Gmail Adam Bereki <abereki@gmail.com>

PRA Request 2/5/21

4 messages

Adam <abereki@gmail.com> Fri, Feb 5, 2021 at 10:55 AM
To: Prarequests <prarequests@ocsd.org>

Good day,

On 12/17/20 and 12/20/20, I made a complaint via email to Lt. Gary Knutson, Commander Ross Caouette, Undersheriff Jeff Hallock, and Inv. Mike Leeb regarding the handling of case number 20-029161.

On 12/18/20, Lt. Knutson responded and told me he would look into the matter and get back to me.

As this complaint pertains to the abuse of authority/dereliction of duty by members of all three branches of California's government and includes the taking of my liberty and property without due process, it is of paramount importance that immediate remedial action be taken. After more than a month, I have not received a response from Lt. Knutson.

To follow up, I sent Knutson an email on 1/22/21. My email requested that he share the status of his investigation. He did not respond. I sent another follow up email on 2/3/21 and have not received a response.

Please provide all documents in your custody or control evidencing the following:

All notes, emails, audio recordings, reports, supplemental reports, memorandums, or any other documents pertaining to my email complaints on 12/17/20 and 12/20/20 involving case number 20-029161 and the investigation thereof. This request should include copies of each of the emails I've sent that were received by Leeb, Knutson, Weidenkeller, Hallock, Caouette (or others) and any documents these (or any other) people created pursuant to the investigation of my email complaint. To be clearer, please include every email from abereki@gmail.com received by each of the aforementioned individuals as part of this request is to verify their receipt of my complaints.

2) The date of assignment to each post/position/office within the Orange County Sheriff's Department for Gary Knutson, Ehren Weidenkeller, Jeff Hallock, and Ross Caouette. (For example, the date of appointment to Deputy, Sergeant, and Lieutenant for Gary Knutson).

This request should also include the signed oath of office for each appointment to each post/position/office for each of the aforementioned individuals as required by Article XX, Sec 3

EXHIBIT–D 4531

of the California Constitution whereby: "Members of the Legislature, and all **public officers** and employees, **executive,** legislative, and judicial, except such inferior officers and employees as may be by law exempted, **shall, before they enter upon the duties of their respective offices**, take and subscribe the following oath or affirmation..."

Sincerely,

Adam Bereki

Adam <abereki@gmail.com> Fri, Feb 5, 2021 at 10:55 AM
To: "Knutson, Gary L" <gknutson@ocsd.org>

[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Feb 5, 2021 at 10:57 AM
To: jhallock@ocsd.org, rcaouette@ocsd.org

--------- Forwarded message ---------
From: **Adam** <abereki@gmail.com>
Date: Fri, Feb 5, 2021 at 10:55 AM
Subject: PRA Request 2/5/21
To: Prarequests <prarequests@ocsd.org>

[Quoted text hidden]

Prarequests <Prarequests@ocsd.org> Tue, Feb 16, 2021 at 9:51 AM
To: Adam <abereki@gmail.com>

Mr. Bereki,

Please see the attached letter regarding your request.

Thank you,

Helen Vasquez

OCSD I Records Division I CPRA

[Quoted text hidden]

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links.
Forward suspicious messages to Helpdesk@ocsd.org.

EXHIBIT–D 4532

A. Bereki.pdf
195K

EXHIBIT–D 4533

Gmail Adam Bereki <abereki@gmail.com>

Claim 21-152841 Adam Bereki

1 message

Adam <abereki@gmail.com> Thu, Jan 7, 2021 at 12:57 PM
To: mehedtke@adminsure.com, dvalentin@santa-ana.org

Good day.

Please see my response (attached) to your "Return of Untimely Claim" letter I received today.

010720 RESPONSE TO UNTIMELY CLAIM RETURN ADMINSURE.pdf
55K

EXHIBIT–D 4534

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

City of Santa Ana
Clerk of the Council M-30
20 Civil Center Plaza, 8th Floor
Santa Ana, California 92701

cc: via email:
Admin Sure
Attn. Michael Hedtke
3380 Shelby St.
Ontario, California 91764
mhedtke@adminsure.com

Chief David Valentin
dvalentin@santa-ana.org

January 7, 2021

RE: Return of Untimely Claim, Claim Number 21-152841

To Whom It May Concern at the City of Santa Ana:

On January 7th, 2021, I received a letter from Michael Hedtke, Liability Administrator of Admin Sure, the Third-Party Administrator of liability claims for the City of Santa Ana. In his letter, Mr. Hedtke stated "[t]he claim you presented to the City of Santa Ana on 12/28/2020 is being returned because it was not presented within six (6) months after the date of occurrence as required by law" and "[b]ecause the claim was not presented within the time allowed by law, no action will be taken on this claim." Also noted on the first page of the letter is a reference section that states "Loss date: 4/20/17."

I'm unsure how the loss date of 4/20/17 was determined by Mr. Hedtke as I never made a claim for a loss with the City of Santa Ana for any incident that happened on 4/20/17. The paragraph I included in my complaint that detailed an incident that happened on 4/20/17 in the Superior Court of California, County of Orange was to provide background for the basis of my complaint with the City of Santa Ana that happened years later and in multiple incidents throughout 2020. These events with the Santa Ana Police Department ("SAPD") culminated in a Citizen Complaint I

made on July 20, 2020. In response thereto, I received a letter from the SAPD that my complaint did not rise to the level of misconduct on December 28, 2020. My claim to the City of Santa Ana under the Tort Claims Act pertaining to these incidents was made **that same day on December 28, 2020** and is well within the six months of the date of occurrence. It couldn't be anymore timely. I have therefore complied with the requirements for submitting a claim and find no rational basis to AdminSure's findings or refusal to investigate my claim that are not grounded in fact or law.

Please notify me immediately if you intend not to investigate my claim despite the clear evidence of my compliance with the Tort Claims Act by filing a timely claim.

Sincerely,

/s/ Adam Bereki

Gmail Adam Bereki <abereki@gmail.com>

Bereki 01/22/21

1 message

Adam <abereki@gmail.com> Fri, Jan 22, 2021 at 8:19 AM
To: "Knutson, Gary L" <gknutson@ocsd.org>

Hi Gary,

Just touching base to see if you could share how your investigation is going. Could you please share what steps you've taken and where things are at?

Sincerely,

Adam Bereki

EXHIBIT–D 4537

Gmail Adam Bereki <abereki@gmail.com>

License Agreement 01/22/21

6 messages

Adam <abereki@gmail.com> Fri, Jan 22, 2021 at 12:06 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Bill,

Based upon my research it seems that pursuant to Business and Professions Code §7071.17 if I were to work out "an accord" with the Humphreys, the licensing board would likely reinstate my license that is suspended indefinitely pursuant for failure to pay the judgement awarded to the Humphreys. My question is, under what terms and conditions would the Humphreys consider "an accord". If I understand their most recent offer, would it mean payment to them of the $300k? I don't have $300k. Additionally, are there any other agreements they are open to that don't involve compensation that would allow me to get my license back and earn a living as a contractor?

Thanks for your help.

Sincerely,

Adam Bereki

---

wbissell wgb-law.com <wbissell@wgb-law.com> Fri, Jan 22, 2021 at 2:09 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

I will check with the Humphreys but last indication is that any accord/satisfaction of judgment would require payment of $300,000.00.
[Quoted text hidden]

Law Office of William G. Bissell

14 Corporate Plaza Drive, Suite 120

Newport Beach, CA 92660

(949) 719-1159

wbissell@wgb-law.com

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Adam <abereki@gmail.com> Fri, Jan 22, 2021 at 4:06 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you for checking with them. I just wanted to be sure of the exact terms.
[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Thu, Feb 4, 2021 at 12:35 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill. Any word back?

Thanks

Adam.

Sent from my iPhone

> On Jan 22, 2021, at 4:06 PM, Adam <abereki@gmail.com> wrote:
>
> [Quoted text hidden]

---

wbissell wgb-law.com <wbissell@wgb-law.com> Thu, Feb 4, 2021 at 2:34 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam Bereki <abereki@gmail.com>

Adam, The Humphreys are firm on a minimum accord and satisfaction amount of $300,000.
[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Thu, Feb 4, 2021 at 2:54 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you.

Sent from my iPhone

> On Feb 4, 2021, at 2:34 PM, wbissell wgb-law.com <wbissell@wgb-law.com> wrote:
>
> [Quoted text hidden]

EXHIBIT–D 4539

Gmail Adam Bereki <abereki@gmail.com>

Bereki- F/U 02/03/21

1 message

Adam <abereki@gmail.com> Wed, Feb 3, 2021 at 10:26 AM
To: "Knutson, Gary L" <gknutson@ocsd.org>

Hi Gary,

On December 18, 2020, after contacting you about the Inv. Leeb's handling of the investigation into my complaint you shared that you'd look into the matter and get back with me.

On 1/22/21 I sent a follow up email to check in and ask for an update on progress as I hadn't heard back. I haven't received a reply as of today, February 3, 2021.

Could you please share the status of your investigation or if I should consider Inv. Leebs findings of fact and conclusions of law as the OCSD's final decision regarding my complaint?

I appreciate your attention and prompt reply.

Sincerely,

Adam Bereki

EXHIBIT–D 4540

Gmail Adam Bereki <abereki@gmail.com>

License Agreement 01/22/21

6 messages

Adam <abereki@gmail.com> Fri, Jan 22, 2021 at 12:06 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Bill,

Based upon my research it seems that pursuant to Business and Professions Code §7071.17 if I were to work out "an accord" with the Humphreys, the licensing board would likely reinstate my license that is suspended indefinitely pursuant for failure to pay the judgement awarded to the Humphreys. My question is, under what terms and conditions would the Humphreys consider "an accord". If I understand their most recent offer, would it mean payment to them of the $300k? I don't have $300k. Additionally, are there any other agreements they are open to that don't involve compensation that would allow me to get my license back and earn a living as a contractor?

Thanks for your help.

Sincerely,

Adam Bereki

---

wbissell wgb-law.com <wbissell@wgb-law.com> Fri, Jan 22, 2021 at 2:09 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

I will check with the Humphreys but last indication is that any accord/satisfaction of judgment would require payment of $300,000.00.
[Quoted text hidden]

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wbissell@wgb-law.com

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Adam <abereki@gmail.com> Fri, Jan 22, 2021 at 4:06 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you for checking with them. I just wanted to be sure of the exact terms.

[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Thu, Feb 4, 2021 at 12:35 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill. Any word back?

Thanks

Adam.

Sent from my iPhone

> On Jan 22, 2021, at 4:06 PM, Adam <abereki@gmail.com> wrote:
>
> [Quoted text hidden]

---

wbissell wgb-law.com <wbissell@wgb-law.com> Thu, Feb 4, 2021 at 2:34 PM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam Bereki <abereki@gmail.com>

Adam, The Humphreys are firm on a minimum accord and satisfaction amount of $300,000.

[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Thu, Feb 4, 2021 at 2:54 PM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you.

Sent from my iPhone

> On Feb 4, 2021, at 2:34 PM, wbissell wgb-law.com <wbissell@wgb-law.com> wrote:
>
> [Quoted text hidden]

EXHIBIT–D 4542

Gmail Adam Bereki <abereki@gmail.com>

Offer 02/10/21

1 message

Adam <abereki@gmail.com> Wed, Feb 10, 2021 at 11:37 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Hi Bill,

I'm writing to propose another offer between the Humphreys, Spartan, and I:

As I'm sure you're aware, on January 1, 2021 the California homestead exemption increased to $600,000. Here's a link to the CCP:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=704.730&lawCode=CCP

Assuming the Court found I was the legal and beneficial owner of the Spirit property, the maximum exemption of $600,000 would apply. The exemption would fully shield all of the equity in the property as the equity is less than the homestead when taking into account the balance due on the mortgage. If I then filed bankruptcy to discharge the judgment, the Humphreys would not receive any money from the sale of the property.

Alternatively, if the Court found my mother was the true owner, the Humphreys would not receive any money from the sale of the property and would have to remove the lien.

Obviously litigating who owned the property would seem to be a further expense to both the Humphreys, my mom, and I and would not result in them receiving any money on the judgment no matter what the determination.

Additionally, the Humphreys are aware of my belief about the unconstitutional and unlawful nature of the judgment. As they are also aware, I have been unduly harmed in a myriad of ways including suspension of my ability to act as a contractor resulting in hundreds of thousands of dollars in lost income.

I understand the Humphreys may not agree with me on any level. But I believe I have valid meritorious claims on these and other damages and deprivation of rights issues and that there are remedies still available to me to pursue against them. For example, while the litigation between the Humphreys and I has continued, I have also perfected government tort claims against the State of California in which California has waived sovereign immunity. I can therefore bring a damages claim in federal court for deprivation of rights. The unconstitutional judgment (as I see it) obtained by the Humphreys and the damages and deprivation of rights issues associated therewith would absolutely be germain to this litigation.

I understand that it appears I have "lost" at every attempt I have made to obtain justice under the Constitution and law as I see it, but that does not mean the same would be true in any proceeding action(s). In fact I believe the contrary would be true and that not only would the judgment be vacated, but that I would also be awarded damages and potentially punitive damages against the Humphreys and others for blatant violations of constitutional law resulting in deprivations of my rights and liberty.

I would like to move forward in my life without suffering further irreparable harm by filing bankruptcy to discharge the judgment and without continuing litigation with the Humphreys. Therefore, the offer I'm proposing is for the Humphreys and I and Spartan to completely walk away from any and all claims and move on with our lives. This would involve a complete and full dismissal of the judgment so that I could get my license back and earn a living. It would also require the Humphreys tp remove the lien on the Spirit property. Spartan would in turn dismiss it's claim against the Humphreys and the Humphreys would dismiss all remaining claims against Spartan and I. I would also dismiss all claims against the Humphreys. Filing bankruptcy and the irreparable harm associated therewith that I

EXHIBIT–D 4543

believe would be attributed at least in part to the unlawful actions of the Humphreys would also be avoided.

I remain open and available to any further ideas, discussions, offers, or resolutions the Humphreys may have as well.

Sincerely,

Adam

EXHIBIT–D 4544

Gmail Adam Bereki <abereki@gmail.com>

Offer 2/10/21- Confirmation

3 messages

Adam <abereki@gmail.com> Wed, Feb 17, 2021 at 10:51 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Bill,

Could you please confirm that you received my offer to the Humphreys that I sent via email on 2/10/21 and that you delivered it to them?

Sincerely,

Adam Bereki

---

wbissell wgb-law.com <wbissell@wgb-law.com> Wed, Feb 17, 2021 at 11:09 AM
Reply-To: "wbissell wgb-law.com" <wbissell@wgb-law.com>
To: Adam <abereki@gmail.com>

Yes as to both.
[Quoted text hidden]

Law Office of William G. Bissell

14 Corporate Plaza Drive, Suite 120

Newport Beach, CA 92660

(949) 719-1159

wbissell@wgb-law.com

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EXHIBIT–D 4545

Adam <abereki@gmail.com> Wed, Feb 17, 2021 at 11:10 AM
To: "wbissell wgb-law.com" <wbissell@wgb-law.com>

Thank you.
[Quoted text hidden]

EXHIBIT–D 4546

Gmail Adam Bereki <abereki@gmail.com>

OCSD Tort Claim/ Lawsuit

Adam <abereki@gmail.com> Fri, Feb 26, 2021 at 1:24 PM
To: jhallock@ocsd.org, dbarnes@ocsd.org

Jeff,

I called Sheriff Barnes office this morning in the hopes of having twenty minutes of his time to discuss the OCSD's mishandling of my complaint and deprivation of my Constitutional rights. My intent was to speak with him about the situation and see if we we could find a way to resolve it without me having to file a formal complaint and ultimately a lawsuit against the OCSD and its employees. When I called, I spoke to Bonnie who repeatedly told me she would not schedule an appointment for me to speak with Sheriff Barnes and to "just file the complaint." I can't imagine this is the way the OCSD handles matters of a sensitive nature like this and wanted to reach out to you first.

Could you please speak with the Sheriff and see if he is interestied in meeting to see if we could find a resolution? I'd sure appreciate it. I'm open to any form of communication he'd like to have but think the formality of meeting in person would be most beneficial.

Sincerely,

Adam Bereki
949.241.6693

(PS I've included what I suspect to be the Sheriff's email address in this communication but as I'm not sure he will receive it, I'm sending it to you.)

NO RESPONSE
4/1/21

EXHIBIT D- 4547

Gmail Adam Bereki <abereki@gmail.com>

OCSD Tort Claim/ Lawsuit

postmaster@ocsd.org <postmaster@ocsd.org> Fri, Feb 26, 2021 at 1:24 PM
To: abereki@gmail.com

Delivery has failed to these recipients or groups:

dbarnes@ocsd.org

The email address you entered couldn't be found. Please check the recipient's email address and try to resend the message. If the problem continues, please contact your email admin.

Diagnostic information for administrators:

Generating server: BGBProdS1050.ad.ocsd.local

dbarnes@ocsd.org
Remote Server returned '550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient not found by SMTP address lookup'

Original message headers:

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 BGBProdS1050.ad.ocsd.local (172.21.25.154) with Microsoft SMTP Server
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 2021 21:24:36 +0000
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Authentication-Results: spf=pass (sender IP is 209.85.219.175)
 smtp.mailfrom=gmail.com; ocsd.org; dkim=pass (signature was verified)
 header.d=gmail.com;ocsd.org; dmarc=pass action=none
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```


EXHIBIT D- 4548

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 Fri, 26 Feb 2021 13:24:35 -0800 (PST)
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Date: Fri, 26 Feb 2021 13:24:24 -0800
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Subject: [EXTERNAL] OCSD Tort Claim/ Lawsuit
To: <jhallock@ocsd.org>, <dbarnes@ocsd.org>
Content-Type: multipart/alternative; boundary="0000000000000ba8e405bc43e591"
Return-Path: abereki@gmail.com
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EXHIBIT D- 4549

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 (UTC)
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X-OrganizationHeadersPreserved: SJ0PR09MB7375.namprd09.prod.outlook.com
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X-OriginatorOrg: ocsheriff.onmicrosoft.com

Final-Recipient: rfc822;dbarnes@ocsd.org
Action: failed
Status: 5.1.10
Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient not found by SMTP address lookup

---------- Forwarded message ---------
From: Adam <abereki@gmail.com>
To: <jhallock@ocsd.org>, <dbarnes@ocsd.org>

EXHIBIT D- 4550

Cc:
Bcc:
Date: Fri, 26 Feb 2021 13:24:24 -0800
Subject: [EXTERNAL] OCSD Tort Claim/ Lawsuit
Jeff,

I called Sheriff Barnes office this morning in the hopes of having twenty minutes of his time to discuss the OCSD's mishandling of my complaint and deprivation of my Constitutional rights. My intent was to speak with him about the situation and see if we we could find a way to resolve it without me having to file a formal complaint and ultimately a lawsuit against the OCSD and its employees. When I called, I spoke to Bonnie who repeatedly told me she would not schedule an appointment for me to speak with Sheriff Barnes and to "just file the complaint." I can't imagine this is the way the OCSD handles matters of a sensitive nature like this and wanted to reach out to you first.

Could you please speak with the Sheriff and see if he is interestied in meeting to see if we could find a resolution? I'd sure appreciate it. I'm open to any form of communication he'd like to have but think the formality of meeting in person would be most beneficial.

Sincerely,

Adam Bereki
949.241.6693

(PS I've included what I suspect to be the Sheriff's email address in this communication but as I'm not sure he will receive it, I'm sending it to you.)

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links. Forward suspicious messages to Helpdesk@ocsd.org.

EXHIBIT D- 4551

Gmail Adam Bereki <abereki@gmail.com>

Public Records Act Request- Bereki 03/08/21

1 message

Adam <abereki@gmail.com> Mon, Mar 8, 2021 at 9:05 AM
To: "Conlon, Claire" <Claire.Conlon@asm.ca.gov>

To Cottie Petrie-Norris,

Pursuant to the California Public Records Act, please provide all documents in your custody and control evidencing each and every complaint and/or Petition for redress of Grievance I have made to your office for deprivation of constitutionally protected rights AND your investigation pursuant to each complaint/Petition. This request should include all email or other communication your office has had with other state or federal officials along with all investigation reports or other findings made by them or your office in pursuance of your investigation. If you are aware of other agencies/personnel who have custody of related records, please provide the name of the agency/personnel and their contact information.

I request you email this information to me in the time required by law to this email address (abereki@gmail.com).

Sincerely,

Adam Bereki
949.241.6693

NO RESPONSE
4/1/21

EXHIBIT D- 4552

Certified Mail #7019 2280 0000 2309 1356

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Assemblywoman Cottie Petrie-Norris
19712 Mac Arthur Blvd. Ste 150
Irvine, CA 92612

March 14, 2021

RE: Records Request and Status Update– SECOND REQUEST

Please provide all documents in your custody or control evidencing each of the complaints I have made to your office for deprivation of my Constitutionally protected rights and your investigation(s) thereunder. Also, please provide a status update on your investigation into each of these claims as I have not received any response from your agency.

Sincerely,

Adam Bereki

NO RESPONSE
4/5/21

EXHIBIT D- 4553

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

DGSORIM
Public Records Officer
707 3rd St., West Sacramento, CA 95605
916.376.5300

RE: Copy Request, 02/24/21

Good day,

I've filed numerous claims under my name, Adam Bereki, with your office and have not received a response.

Please provide all of the information you have pertaining to each of the claims you've received and your investigation thereof. Please include a copy of each claim, the date you received the claim, any claim numbers you assigned, and the dispositions (findings) for each claim (if any). If necessary and applicable, this request can be treated as having been made under the California Public Records Act.

Please scan and email these documents to me at: abereki@gmail.com

Sincerely,

Adam Bereki

NO RESPONSE
4/5/21

Gmail Adam Bereki <abereki@gmail.com>

Adam Bereki

1 message

Adam <abereki@gmail.com> Sun, Feb 7, 2021 at 10:41 AM
To: gcinfo@dgs.ca.gov

Good day,

I've filed numerous claims under my name, Adam Bereki, and have not received a response from your agency.

Please provide all of the information you have pertaining to each of the claims you've received and your investigation thereof. Please include a copy of each claim, the date you received the claim, any claim numbers you assigned, and the dispositions (findings) for each claim (if any). If necessary and applicable, this request can be treated as having been made under the California Public Records Act.

Sincerely,

Adam Bereki

NO RESPONSE
4/5/21

EXHIBIT D- 4555

Certified Mail #7019 2280 0000 2309 1332

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Government Claims Program
Office of Risk and Insurance Management
Department of General Services
P.O. Box 989052 MS-414
West Sacramento, CA 95798-9052

March 14, 2021

RE: Records Request and Status Update– THIRD REQUEST

Please provide all documents in your custody or control evidencing each of the complaints I have made to your office for deprivation of my Constitutionally protected rights. This request should also include all claims made under the California Tort Claims Act and your investigation(s) thereof. Also, please provide a status update on your investigation into each of these claims as I have not received any response from your agency.

Sincerely,

Adam Bereki

EXHIBIT D- 4556

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$

Total Postage and Fees
$

Postmark Here

7019 2280 0000 2309 1356

Sent To
AW COTTE PEIRCE-NORRIS
Street and Apt. No., or PO Box No.
19712 MACARTHUR BLVD #150
City, State, ZIP+4®
IRVINE, CA 92612

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$

Total Postage and Fees
$

Postmark Here

7019 2280 0000 2309 1332

Sent To
OFFICE RISK & INS. MGMT
Street and Apt. No., or PO Box No.
PO BOX 989052 MS-414
City, State, ZIP+4®
WEST SACRAMENTO, CA 95798-9052

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$

Extra Services & Fees (check box, add fee as appropriate)
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$

Total Postage and Fees
$

Postmark Here

7019 2280 0000 2309 1349

Sent To
GUBNIW NEWSOM
Street and Apt. No., or PO Box No.
1303 10TH ST STE 1173
City, State, ZIP+4®
SACRAMENTO, CA 95814

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

REQUESTS FOR DOCUMENTS OF ALL COMPLAINTS

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Gavin Newsom
1303 10th St., Suite 1173
Sacramento, CA 95814

March 1, 2021

RE: Public Records Act Request

Please provide all documents in your custody or control evidencing each of the complaints I have made to your office for deprivation of my Constitutionally protected rights. This request should also include all claims made under the California Tort Claims Act and your investigation(s) thereof.

Sincerely,

Adam Bereki

EXHIBIT D- 4558

Certified Mail #7019 2280 0000 2309 1349

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814

March 14, 2021

RE: Records Request and Status Update– SECOND REQUEST

Please provide all documents in your custody or control evidencing each of the complaints I have made to your office for deprivation of my Constitutionally protected rights. This request should also include all claims made under the California Tort Claims Act and your investigation(s) thereof. Also, please provide a status update on your investigation into each of these claims as I have not received any response from your agency.

Sincerely,

Adam Bereki

EXHIBIT D- 4559

OFFICE OF THE GOVERNOR

March 15, 2021

Via U.S. Mail

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Public Records Act Request

Dear Mr. Bereki:

This letter is in response to your correspondence received March 5, 2021, requesting "…all documents in your custody or control evidencing each of the complaints I have made to your office for deprivation of my Constitutionally protected rights. This request should also include all claims made under the California Tort Claims Act and your investigation(s) thereof."

We are extending the time to respond, for the reasons set forth in Government Code, section 6253, subdivisions (c)(2) and (c)(3). We will provide a further response to these requests on or before March 29, 2021.

Thank you for contacting Governor Newsom's office.

Sincerely,

David Sapp

DAVID SAPP
Deputy Legal Affairs Secretary

EXHIBIT D- 4560

OFFICE OF THE GOVERNOR
SACRAMENTO, CA 95814

SACRAMENTO CA 957
16 MAR 2021 PM 6 L

Adam Bereki
813 Spirit
Costa Mesa, CA 92626

92626-308918

EXHIBIT D- 4561

OFFICE OF THE GOVERNOR

March 26, 2021

Via U.S. Mail

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Request for Records

Dear Mr. Bereki:

This letter is in response to your correspondence received March 5, 2021, requesting "…all documents in your custody or control evidencing each of the complaints I have made to your office for deprivation of my Constitutionally protected rights. This request should also include all claims made under the California Tort Claims Act and your investigation(s) thereof."

Please find enclosed a USB drive containing all records found responsive to your request. This letter also responds to your identical request that we received via U.S. Mail on March 22, 2021.

Thank you for contacting Governor Newsom's office.

Sincerely,

David Sapp

DAVID SAPP
Deputy Legal Affairs Secretary

EXHIBIT D- 4562

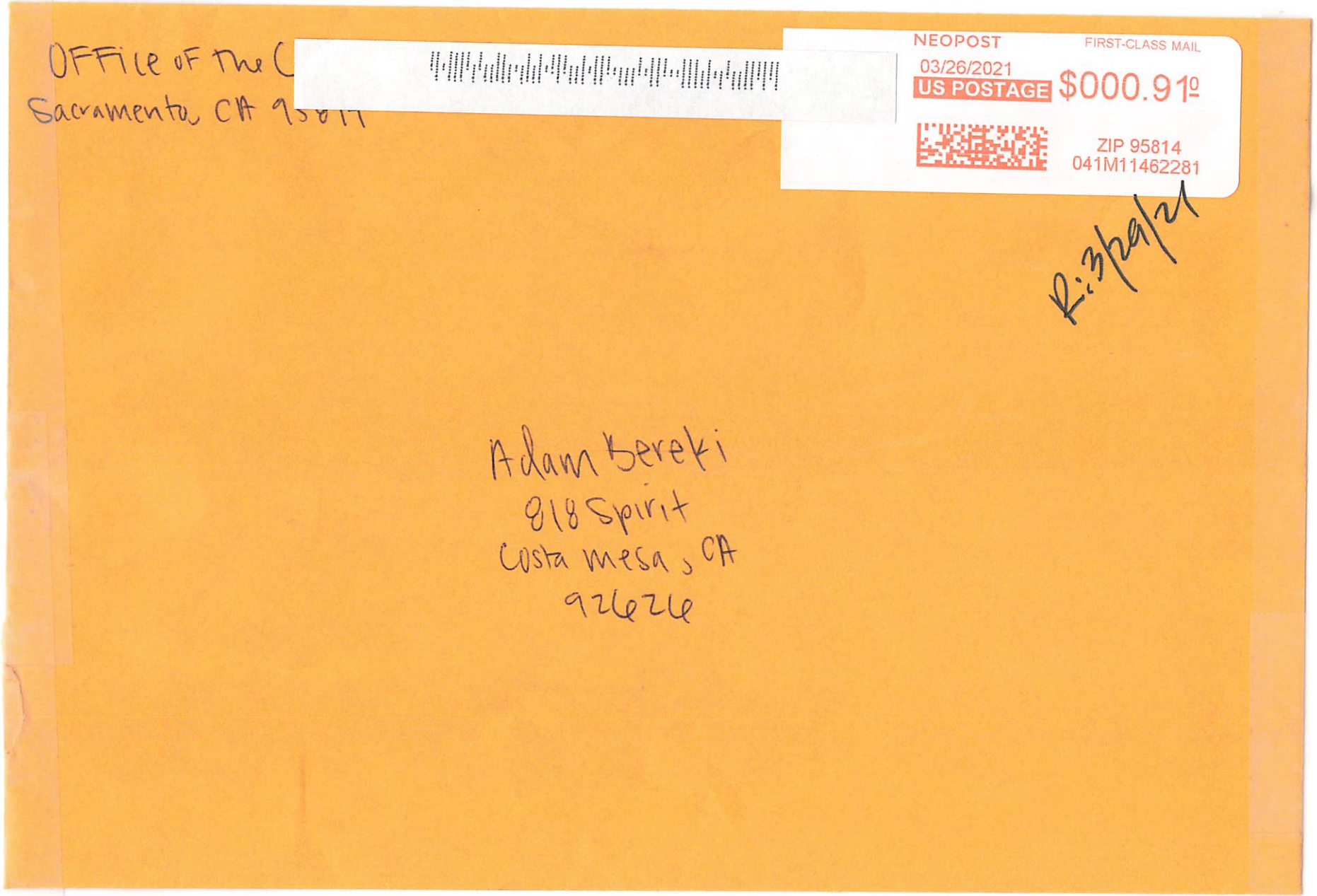

EXHIBIT D- 4563

Gmail Adam Bereki <abereki@gmail.com>

(no subject)

1 message

Adam <abereki@gmail.com> Sun, Mar 28, 2021 at 10:03 AM
To: Prarequests <prarequests@ocsd.org>

Good day,

Please provide all documents verifying the correct mailing address (at the Sheriff's Department) and email for the following employees:

Don Barnes, Ross Caouette, Mike Leeb, Jeff Hallock, Gary Knutson, Ehren Weidenkeller; Alejandro Salceda; Sherri Demaio

Sincerely,

Adam Bereki

EXHIBIT D- 4564

Gmail Adam Bereki <abereki@gmail.com>

RE: [EXTERNAL]

1 message

Prarequests <Prarequests@ocsd.org> Mon, Mar 29, 2021 at 9:23 AM
To: Adam <abereki@gmail.com>

Hello Mr. Bereki,

Please see the following responsive records to your request:

- Sheriff-Coroner Don Barnes- ddbarnes@ocsd.org
- Under Sheriff Jeff Hallock- JHallock@ocsd.org
- Assistant Sheriff Ross Caouette- rcaouette@ocsd.org
- Captain Gary Knutson gknutson@ocsd.org
- Lieutenant Ehren Weidenkeller eweidenkeller@ocsd.org
- Investigator Michael Leeb MLEEB@ocsd.org
- Deputy Sheriff Sherri Demaio- SLDemaio@ocsd.org
- Alejandro Salceda- separated

Mailing address: 550 North Flower Street, Santa Ana, CA 92703.

Thank you,

Helen Vasquez

OCSD | Records Division | CPRA

EXHIBIT D- 4565

From: Adam <abereki@gmail.com>
Sent: Sunday, March 28, 2021 10:04 AM
To: Prarequests <Prarequests@ocsd.org>
Subject: [EXTERNAL]

Good day,

Please provide all documents verifying the correct mailing address (at the Sheriff's Department) and email for the following employees:

Don Barnes, Ross Caouette, Mike Leeb, Jeff Hallock, Gary Knutson, Ehren Weidenkeller; Alejandro Salceda; Sherri Demaio

Sincerely,

Adam Bereki

Attention: This email originated from an **external source**. Use caution when opening attachments or clicking on links. Forward suspicious messages to Helpdesk@ocsd.org.

EXHIBIT D- 4566

Gmail Adam Bereki <abereki@gmail.com>

David Chaffee

1 message

Adam <abereki@gmail.com> Mon, Mar 29, 2021 at 9:41 AM
To: Megan Nomura <megan@adrservices.com>

Hi Megan,

Could you please provide a mailing address and email address for official correspondence for Mr. Chaffee.

Thank you,

Adam Bereki

NO PDAY
4/5/21

EXHIBIT D- 4567

Request #21-462

OPEN

As of March 29, 2021, 9:32am

Request Visibility: Embargoed -- Will be auto-published 1 hours after closure

Details

Please provide all documents evidencing the email address for the following police personnel:

Abel Alcantar
Gilbert Hernandez
Michelle Macchiaroli
David Valentin

You can email this information to me at abereki@gmail.com

+ Read more

Received

March 29, 2021 via web

Departments

None Assigned

Requester

Adam Bereki

abereki@gmail.com

Documents

Public (pending)

(none)

EXHIBIT D- 4568

Requester
(none)

Staff

Point of Contact
City Clerk

Timeline

External Message Requester + Staff

This will acknowledge that the City of Santa Ana received your Public Records Act request on. The City will respond within ten (10) days of receipt of this request as prescribed by Section 6253 of the California Public Records Act (Government Code sections 6250 et seq.).
Please be advised, Public Records Request are only reviewed during regular business hours, from 8 a.m. to 5 p.m. Monday thru Thursday and alternating Fridays.
Visit the online Holiday and Closed Friday Schedule at https://www.santa-ana.org/holiday-and-closed-friday-schedule

March 29, 2021, 9:26am

Request Opened Public

Request received via web

March 29, 2021, 9:26am

EXHIBIT D- 4569

Gmail Adam Bereki <abereki@gmail.com>

[External Message Added] City of Santa Ana public records request #21-462

1 message

City of Santa Ana Public Records <support@nextrequest.com> Mon, Mar 29, 2021 at 10:27 AM
Reply-To: cityofsantaanaca_21-462-requester-notes@inbound.nextrequest.com
To: abereki@gmail.com

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Santa Ana Public Records

A message was sent to you regarding record request #21-462:

Abel Alcantar - AAlcantar@santa-ana.org

Gilbert Hernandez - ghernandez@santa-ana.org

Michelle Macchiaroli - MMacchiaroli@santa-ana.org

David Valentin - DValentin@santa-ana.org

View Request 21-462

http://cityofsantaanaca.nextrequest.com/requests/21-462

EXHIBIT D- 4570

10/28/21

Dorin Joe Det Sgt msg (R)

(949) 241-6693

Gmail Adam Bereki <abereki@gmail.com>

Adam Bereki– Criminal Complaint and Complaint for Deprivation fo Constitutional Rights

3 messages

Adam <abereki@gmail.com> Sat, Oct 30, 2021 at 10:42 AM
To: djoe@nbpd.org

Darrin,

Please see the attached letter. I'm grateful for your help.

For your convenience, I've included the attachments to the letter itself and separately to this email.

Sincerely,

Adam Bereki

4 attachments

Letter to Sgt. Joe 103021.pdf
1802K

Walt Rankin & Associates, Inc. v. City of Murrieta, 84 Cal. App. 4th 605.pdf
1065K

Lujano v. County of Santa Barbara, 190 Cal. App. 4th 801.pdf
358K

Learning Domain 2.pdf
441K

Joe, Darrin <DJoe@nbpd.org> Tue, Nov 2, 2021 at 3:15 PM
To: Adam <abereki@gmail.com>

Hi Adam,

Thank you for sending me this information. What I am most interested in is the documents from your case in question, i.e. minutes, case summary, verdict, etc. This would allow me to know what arguments were made and why the courts found it necessary to arrive at the ruling they did. Without knowing the particulars, I cannot begin to understand whether or not your constitutional rights have been violated.

Thank you,

EXHIBIT [D]–4572

Detective Sergeant Darrin Joe

Newport Beach Police Department

Property Crimes Unit

870 Santa Barbara Dr.

Newport Beach, CA 92660

djoe@nbpd.org

(949) 644-3763

From: Adam <abereki@gmail.com>
Sent: Saturday, October 30, 2021 10:42 AM
To: Joe, Darrin <DJoe@nbpd.org>
Subject: Adam Bereki– Criminal Complaint and Complaint for Deprivation fo Constitutional Rights

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Wed, Nov 17, 2021 at 4:42 PM
To: "Joe, Darrin" <DJoe@nbpd.org>

Hi Darrin,

Could you please give me an update on your response to my last email and your investigation into my complaint?

Sincerely,

Adam Bereki

On Nov 2, 2021, at 3:15 PM, Joe, Darrin <DJoe@nbpd.org> wrote:

[Quoted text hidden]

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

October 30, 2021

Sgt. Darrin Joe
Newport Beach Police Department
djoe@nbpd.org

RE: Criminal Complaint and Complaint for Deprivation of Rights Secured by the California Constitution and the Constitution for the United States of America

Darrin,

Thank you for making time to speak with me yesterday. I truly appreciate your integrity and willingness to ask questions and be involved. After we spoke, I put together some of the evidence of my complaint that you requested. But it occurred to me there was a more pertinent issue that had to be addressed first...

During our conversation, you shared a few times that you weren't sure about how you/the NBPD could help if a crime hadn't been committed and that you were struggling a bit with finding a penal code that would apply to the situation- if any.

For a moment, I'd like to put the issue of criminality aside and return to the primary duties of law enforcement as summarized in Learning Domain 2 of the Basic Police Academy– I've attached a copy to this letter. The Learning Domain explains many of the **mandatory, non-discretionary** duties of police officers. For example on page 1-5 it says: "Law enforcement officers are **bound to protect** the rights and freedoms of *all* individuals as guaranteed in the U.S. Constitution, Bill of Rights, and later amendments. By abiding by the principles of procedural justice, peace officers will ensure agreement with all Constitutional Amendments." (Bolded emphasis added).

In other words, whether a crime has been committed or not, law enforcement has a mandatory duty to protect my rights, liberty and property, as secured by our State and National Constitutions, from unlawful government action. When a complaint is made to a law enforcement officer involving a deprivation of Constitutionally protected rights, they have a **mandatory duty** to intervene and investigate. There is no discretion like in complaints made between citizens. This is because if law enforcement had discretion of whether they would intervene and protect

deprivations of Constitutional rights or not, they could effectively overrule or supersede the Constitution simply by deciding on a whim they didn't feel like taking action. That is not how a government of defined and limited powers works. The provisions of our Constitutions are **mandatory and prohibitory** and cannot be overridden by the discretion of public officials. (See for e.g. Article I, section 26 of the California Constitution and Article VI, section 2 of the Constitution for the United States of America). Equally, executive immunity does not apply to a failure to perform mandatory duties. I have also attached the California caselaw on these subjects for your review.

I hope this clarifies where I'm coming from a bit more and the requirement of the NBPD to receive my complaint concerning allegations of the deprivation of my constitutionally protected rights (and potentially violations of the California Penal Code and United States Code). The NBPD has mandatory, non-discretionary duty to make a full, fair, and impartial investigation into my claims. See also Article I, section 3 of the California Constitution guaranteeing the right of the People for to petition any branch of their government for redress of grievance.

If you have any questions, please don't hesitate call. I'm entirely open to discussing any of this further and to hearing a different perspective supported by lawful authority, if you have one. If not, please let me know when you or another investigator is available to make a formal complaint. I suspect it will take an hour or two to review evidentiary documents and to explain exactly how the Constitutional rights (and potential penal code) violations have occurred and **continue to occur.**

Sincerely,

/s/ Adam Bereki

Lexis Walt Rankin & Associates, Inc. v. City of Murrieta, 84 Cal. App. 4th 6C
Search: Everything
Client: katie frame Folders History He

Document: Walt Rankin & Associates, Inc. v. City of Murrieta, 84 Cal. App. 4th 605 Actions

Go to Page Search Document

Walt Rankin & Associates, Inc. v. City of Murrieta, 84 Cal. App. 4th 605

Copy Citation

Court of Appeal of California, Fourth Appellate District, Division Two

October 31, 2000, Decided

No. E024139.

Reporter

84 Cal. App. 4th 605 * | 101 Cal. Rptr. 2d 48 ** | 2000 Cal. App. LEXIS 840 *** | 2000 Cal. Daily Op. Service 8824 | 2000 Daily Journal DAR 11652

WALT RANKIN & ASSOCIATES, INC., Plaintiff and Appellant, v. CITY OF MURRIETA, Defendant and Respondent.

Prior History: [***1] APPEAL from the Superior Court of Riverside County. Super. Ct. No. CIV277293. Victor L. Miceli, Judge.

Disposition: The judgment is reversed. Rankin is to recover its costs on appeal.

Core Terms

surety, insurer, payment bond, mandatory duty, public entity, Undertaking Law, immunity, provisions, solvency, subcontractor, contractor, corporate surety, trial court, investigate, license, attorney's fees, sections, certificate, bonds, clerk's certificate, stop notice, Proximate, documents, contends, attorney in fact, personal surety, prescribed, entity, words, reasonable diligence

Case Summary

Procedural Posture

Plaintiff subcontractor appealed summary judgment entered in favor of defendant city by the Superior Court of Riverside County (California), in an action alleging defendant negligently breached a mandatory duty when failing to determine the sufficiency of a surety providing a payment bond under Cal. Civ. Code §§3247, 3248.

Overview

Unable to obtain payment under a bond accepted by defendant city when executing a public contract, plaintiff subcontractor sued, alleging defendant breached a mandatory duty when failing to take certain actions before accepting the bond. The trial court granted summary judgment to defendant. The court reversed. Plaintiff did not waive its objection to the bond. Interpreting Cal. Civ. Code §§3247, 3248 in conjunction with the Bonds and Undertakings Law, Cal. Civ. Proc. Code §995.010 et seq., defendant had a mandatory duty to ensure that the subject bond be executed by one of the three categories of insurers identified in Cal. Civ. Proc. Code §995.310. Under Cal. Civ. Proc. Code §995.660 (a)(3), defendant also had a mandatory duty to require the surety to submit a county clerk's certificate showing that it was an admitted surety insurer. Defendant breached those duties, the breach proximately caused plaintiff's losses, and defendant was not immune from liability for that breach. However, plaintiff was not entitled to recover attorney fees from defendant.

Outcome

Summary judgment for defendant city reversed. Defendant had and breached a duty to plaintiff to require the surety who provided the subject payment bond to be an admitted surety insurer or to confirm the sufficiency of the surety prior to accepting the bond. Defendant's breach of that duty proximately caused plaintiff's damages.

▼ LexisNexis® Headnotes

Torts > Public Entity Liability > Liability > General Overview

HN1 **Public Entity Liability, Liability**
See Cal. Gov't Code § 815(b). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > Public Entity Liability > Immunities > General Overview
View more legal topics

HN2 **Public Entity Liability, Immunities**
Conceptually, questions of statutory immunity do not become relevant until it has been determined that the government entity owes a duty of care to the plaintiff and would be liable in the absence of such immunity. Accordingly, although analytically the issues are somewhat related, a court must address the question of statutory liability for breach of a mandatory duty prior to the question of statutory immunity. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > Public Entity Liability > Immunities > General Overview
View more legal topics

HN3 **Public Entity Liability, Immunities**
See Cal. Gov't Code § 815(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > Public Entity Liability > Liability > General Overview

HN4 **Public Entity Liability, Liability**
In the absence of a constitutional requirement, public entities may be held liable only if a statute is found declaring them to be liable. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > Public Entity Liability > Liability > General Overview

HN5 **Public Entity Liability, Liability**
See Cal. Gov't Code § 815.6. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Civil Procedure > Trials > Jury Trials > Province of Court & Jury
Torts > Public Entity Liability > Liability > General Overview

HN6 **Jury Trials, Province of Court & Jury**
Application of Cal. Gov't Code § 815.6 requires that the enactment at issue be obligatory, rather than merely discretionary or permissive, in its directions to the public entity; it must require, rather than merely authorize or permit, that a particular action be taken or not taken. It is not enough, moreover, that the public entity have been under an obligation to perform a function if the function itself involves the exercise of discretion. Whether an enactment is intended to impose a mandatory duty, as opposed to a mere obligation to perform a discretionary function, is a question of law for the court. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Torts > ... > Elements > Duty > General Overview
View more legal topics

HN7 **Elements, Duty**
Liability under Cal. Gov't Code § 815.6 does not require that the enactment establishing a mandatory duty itself manifest an intent to create a private right of action. When an enactment establishes a mandatory governmental duty and is designed to protect against the particular kind of injury the plaintiff suffered, § 815.6 provides that the public entity "is liable" for an injury proximately caused by its negligent failure to discharge the duty. It is § 815.6, not the predicate enactment, that creates the private right of action. If the predicate enactment is of a type that supplies the elements of liability under § 815.6--if it places the public entity under an obligatory duty to act or refrain from acting, with the purpose of preventing the specific type of injury that occurred--then liability lies against the agency under § 815.6, regardless of whether private recovery liability would have been permitted, in the absence of § 815.6, under the predicate enactment alone. More like this Headnote

Shepardize® - Narrow by this Headnote (6) 2

Governments > Local Governments > Claims By & Against
Torts > Public Entity Liability > Liability > General Overview

HN8 Local Governments, Claims By & Against
A local government cannot, by its own ordinance, exempt itself from liability under the California's Tort Claims Act, of which Cal. Gov't Code, § 815.6 is a part. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > Legislation > Interpretation

HN9 Legislation, Interpretation
An enactment's language is an important guide in determining legislative intent. To this extent, the usual rule with California codes is that "shall" is mandatory and "may" is permissive unless the context requires otherwise. At the same time though, not every statute that uses the word "shall" is obligatory rather than permissive, and there may be factors other than statutory language that may indicate that apparently obligatory language was not intended to foreclose a government entity's exercise of discretion. More like this Headnote

Shepardize® - Narrow by this Headnote (9)

Torts > Negligence > Elements
View more legal topics

HN10 Negligence, Elements
Cal. Gov't Code § 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting § 815.6 as a basis for liability; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered. All three elements must be met before a government entity is required to confront the rebuttable presumption of negligence. More like this Headnote

Shepardize® - Narrow by this Headnote (5) 2

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN11 Types of Contracts, Guaranty Contracts
Cal. Civ. Code §3247 requires a payment bond as a condition of being awarded a contract by a public entity. More like this Headnote

Shepardize® - Narrow by this Headnote (3) 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN12 Types of Contracts, Guaranty Contracts
See Cal. Civ. Code §3247(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN13 Types of Contracts, Guaranty Contracts
Former Cal. Civ. Code §3248(a)-(d), amended by 1998 Cal. Stat. ch. 857, sets forth the requirements for approval of a payment bond required as a condition of being awarded a contract by a public entity. More like this Headnote

Shepardize® - Narrow by this Headnote (3) 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN14 Types of Contracts, Guaranty Contracts
Cal. Civ. Code §3248 was amended by 1998 Cal. Stat. ch. 857, § 1. The amendment provides that it applies only to contracts entered into on or after January 1, 1999. 1998 Cal. Stat. ch. 857, § 14. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN15 **Types of Contracts, Guaranty Contracts**
Nothing on the face of either Cal. Civ. Code §§3247 or 3248 requires that a surety be an admitted surety insurer or mandates a public entity to investigate the solvency of the surety. Rather, the plain language of those sections requires only that a payment bond be provided where the public contract involves an expenditure over $ 25,000, and that the bond follow the requirements of § 3248. More like this Headnote

Shepardize® - Narrow by this Headnote (4) 1 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN16 **Types of Contracts, Guaranty Contracts**
Under Cal. Civ. Code §3248(a)(1) a payment bond filed as prerequisite to execution of a public contract is required to be not less than one hundred percent of the total amount payable by the terms of the contract. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > Legislation > Interpretation

HN17 **Legislation, Interpretation**
A court's primary task in construing a statute is to determine the legislature's intent. The court turns first to the words themselves for the answer. When statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it. Where a statute is theoretically capable of more than one construction courts choose that which comports with the intent of the legislature. Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > Legislation > Interpretation

HN18 **Legislation, Interpretation**
When two statutes relate to the same subject, ordinarily the more specific and particular provision will govern as against the more general provision, although the latter standing alone is broad enough to include the subject addressed by the more particular provision. However, this rule applies only to the extent the two provisions cannot be reconciled. When reconciliation is possible, the two statutes must be construed in reference to each other, so as to harmonize the two in such a way that no part of either becomes surplusage. It must be presumed that the legislature intended every word, phrase and provision in a statute to have meaning and to perform a useful function. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Governments > Legislation > Interpretation
Public Contracts Law > Types of Contracts > Local Government Contracts

HN19 **Types of Contracts, Guaranty Contracts**
Cal. Civ. Code §§3247, 3248 cannot be read in isolation but must instead be read in conjunction with the Bonds and Undertakings Law, Cal. Civ. Proc. Code §995.010 et seq. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN20 **Types of Contracts, Guaranty Contracts**
See Cal. Civ. Proc. Code §995.020(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN21 **Types of Contracts, Guaranty Contracts**
See Cal. Civ. Proc. Code §995.930(c). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN22 **Types of Contracts, Guaranty Contracts**
See Cal. Civ. Proc. Code §995.910. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN23 Types of Contracts, Guaranty Contracts
The Bond and Undertaking Law, Cal. Civ. Proc. Code §995.010 et seq., does not affirmatively define the term bond "given in an action or proceeding." Rather, it describes this term only by exclusion. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN24 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.140(b). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Governments > Fiduciaries

HN25 Types of Contracts, Guaranty Contracts
A "bond" for purposes of the Bond and Undertaking Law, Cal. Civ. Proc. Code §995.010 et seq., includes a surety, indemnity, fiduciary, or like bond or undertaking executed either by both the principal and sureties, or by the sureties alone. Cal. Civ. Proc. Code §995.140(a)(1), (2). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Criminal Law & Procedure > Preliminary Proceedings > Bail > General Overview

HN26 Types of Contracts, Guaranty Contracts
Although the Bond and Undertaking Law, Cal. Civ. Proc. Code §995.010 et seq., does not define the phrase, "given in an action or proceeding," the Code of Civil Procedure identifies "actions" and "proceedings" as the two classes of "judicial remedies," Cal. Civ. Proc. Code §21, i.e., remedies administered by the courts of justice, or by judicial officers empowered for that purpose by the Constitution and statutes of the State of California. Cal. Civ. Proc. Code §20. The Code of Civil Procedure further defines an "action" as an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Cal. Civ. Proc. Code §22. In this context, the word "action" is synonymous with a lawsuit. On the other hand, the word "proceeding" is broader. Under Cal. Civ. Proc. Code §23, every other remedy is a special proceeding. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Bids & Formation > Offer & Acceptance > Acceptances & Awards
View more legal topics

HN27 Types of Contracts, Guaranty Contracts
A payment bond under Cal. Civ. Code §§3247, 3248 is not procured in connection with a lawsuit or related proceeding. To the contrary, it must be obtained as a condition of being awarded a public contract. In this manner, a payment bond under §§ 3247, 3248 is more like a bond given as a condition of a license or permit, Cal. Civ. Code §995.140(b), which is distinguishable from one given in an action or proceeding, Cal. Civ. Proc. Code §995.910. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN28 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.140(b). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN29 Types of Contracts, Guaranty Contracts
See former Cal. Civ. Proc. Code §1057b (repealed; restated in Cal. Civ. Proc. Code, § 995.650). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN30 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.650. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > Legislation > Interpretation

HN31 Legislation, Interpretation
When the legislature amends a statute, California courts presume it was fully aware of the prior judicial construction of that statute. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Insurance Company Operations > Conducting Business > Certificates of Authority
Civil Procedure > ... > Bonds > Sureties > General Overview
View more legal topics

HN32 Conducting Business, Certificates of Authority
An admitted surety insurer is defined in Cal. Civ. Proc. Code §995.120 as (a) a corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code. (b) For the purpose of application of this chapter to a bond given pursuant to any statute of this state, the phrases "admitted surety insurer", "authorized surety company", "bonding company", "corporate surety", and comparable phrases used in the statute mean 'admitted surety insurer' as defined in this section. Cal. Civ. Proc. Code §995.120(a), (b). More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN33 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.310. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Civil Procedure > ... > Bonds > Sureties > General Overview

HN34 Types of Contracts, Guaranty Contracts
Although Cal. Civ. Code §3096 defines a "payment bond" as a bond with good and sufficient sureties, neither § 3096, Cal. Civ. Proc. Code §3247, nor Cal. Civ. Proc. Code §3248 defines what constitutes a "sufficient surety." Rather, that term is encompassed by Cal. Civ. Proc. Code §995.310's requirement that a bond be executed by one sufficient admitted surety insurer, two or more sufficient personal sureties, or any combination of sufficient personal sureties and admitted surety insurers. More like this Headnote

Shepardize® - Narrow by this Headnote (3) 1 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Civil Procedure > ... > Bonds > Sureties > General Overview
Public Contracts Law > Types of Contracts > Local Government Contracts

HN35 Types of Contracts, Guaranty Contracts
Cal. Civ. Proc. Code §995.310 imposed a mandatory duty on a public entity to require a surety that guarantees a Cal. Civ. Code §3247 payment bond to be an admitted surety insurer or to require two or more sufficient personal sureties or a combination of sufficient personal sureties and admitted surety insurers. More like this Headnote

Shepardize® - Narrow by this Headnote (5) 1 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Governments > Courts > Court Personnel
Public Contracts Law > Types of Contracts > Local Government Contracts

HN36 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.660(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN37 **Types of Contracts, Guaranty Contracts**
See Cal. Civ. Proc. Code §995.660(b). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN38 **Types of Contracts, Guaranty Contracts**
Cal. Civ. Code §3247 requires a payment bond be filed with and approved by the public entity. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Governments > Local Governments > Administrative Boards
Torts > Public Entity Liability > Liability > General Overview

HN39 **Local Governments, Administrative Boards**
Cal. Gov't Code § 815.6 imposes liability for breach of a mandatory duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty. More like this Headnote

Shepardize® - Narrow by this Headnote (2)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN40 **Types of Contracts, Guaranty Contracts**
Before entering into a contract, a public entity has a mandatory duty under Cal. Civ. Proc. Code §995.660(a)(3) to investigate a surety's sufficiency by requiring it to submit a county clerk's certificate showing that it is an admitted surety insurer. More like this Headnote

Shepardize® - Narrow by this Headnote (4) 1 1

Business & Corporate Compliance > ... > Insurance Company Operations > Conducting Business > Certificates of Authority
View more legal topics

HN41 **Conducting Business, Certificates of Authority**
See Cal. Civ. Proc. Code §995.120. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > State Insurance Commissioners & Departments > Authorities & Powers > Examinations & Investigations
View more legal topics

HN42 **State Insurance Commissioners & Departments, Examinations & Investigations**
Cal. Ins. Code §105 defines surety insurance and Cal. Ins. Code §700 defines the requirements for admission of an insurance company. Admission under that section requires conformance to all of the requirements of the Insurance Code including requirements designed to assure financial solvency. In effect, the Insurance Commissioner investigates and approves financial solvency before admitting an insurance company. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Estate, Gift & Trust Law > Estate Planning > Powers of Attorney > Limited Powers
Public Contracts Law > Types of Contracts > Local Government Contracts

HN43 **Types of Contracts, Guaranty Contracts**
Cal. Civ. Proc. Code §995.410 provides that a bond may be approved or disapproved on the basis of the affidavit of the sureties. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Estate, Gift & Trust Law > Estate Planning > Powers of Attorney > Limited Powers
Public Contracts Law > Types of Contracts > Local Government Contracts

HN44 **Types of Contracts, Guaranty Contracts**
The submission of a special power of attorney can be one of the conditions of acceptance of the surety under Cal. Civ. Proc. Code §995.630, but this section does not affect the duty of a public entity to determine that the insurer of a bond submitted pursuant to Cal. Civ. Code §3247 is an admitted surety insurer. More like this Headnote

Shepardize® - Narrow by this Headnote (3) 1 1

Business & Corporate Compliance > ... > Insurance Company Operations > Conducting Business > Foreign Insurers
Governments > Local Governments > Finance
Insurance Law > Regulators > State Insurance Commissioners & Departments > General Overview
View more legal topics

HN45 Conducting Business, Foreign Insurers
Cal. Civ. Proc. Code §995.640 provides for the issuance of a county clerk's certificate attesting that the certificate of authority for an admitted surety insurer is in effect. The section provides that the county clerk shall rely on information provided by the Insurance Commissioner pursuant to Cal. Ins. Code §12070 et seq. Cal. Ins. Code §12070 requires the Insurance Commissioner to provide a list of admitted surety insurers to the respective county clerks. This system informs interested persons of the admitted status of any foreign insurer, and it provides a basis for an inference of financial solvency. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Civil Procedure > Remedies > Bonds > Objections to Bonds
Public Contracts Law > Types of Contracts > Local Government Contracts

HN46 Types of Contracts, Guaranty Contracts
Cal. Civ. Proc. Code §995.670 provides that a public agency, acting to approve a bond, or in resolving an objection to the sufficiency of an admitted surety insurer, may not impose other requirements than those stated in Cal. Civ. Proc. Code §660. More like this Headnote

Shepardize® - Narrow by this Headnote (2) 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN47 Types of Contracts, Guaranty Contracts
Cal. Civ. Proc. Code §§995.660, 995.670 are limitations upon public agencies' duty to gather information, rather than sections that require the obtaining of all such information. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Public Contracts Law > Types of Contracts > Local Government Contracts

HN48 Types of Contracts, Guaranty Contracts
The payment bond required under Cal. Civ. Code §3247 inures to the benefit of subcontractors working on a public project and is intended to provide additional protection against defaulting general contractors. More like this Headnote

Shepardize® - Narrow by this Headnote (2) 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Civil Procedure > ... > Bonds > Sureties > Liability

HN49 Types of Contracts, Guaranty Contracts
The stop notice and payment bond remedies (for subcontractors working on public projects) are cumulative. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > ... > Elements > Causation > Intervening Causation
View more legal topics

HN50 Causation, Intervening Causation
Proximate cause is legal cause, as distinguished from the laymen's notion of actual cause, and is always, in the first instance, a question of law. Proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury, or damage complained of, and without which such result would not have occurred. More like this Headnote

Shepardize® - Narrow by this Headnote (7) 2

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN51 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.020(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN52 Types of Contracts, Guaranty Contracts
Under the Bonds and Undertakings Law, Cal. Civ. Proc. Code §995.010 et seq., a "corporate surety" is simply another name for an "admitted surety insurer." Cal. Civ. Proc. Code §995.120(b). More like this Headnote

Shepardize® - Narrow by this Headnote (2)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts

HN53 Types of Contracts, Guaranty Contracts
See Cal. Civ. Proc. Code §995.120(b). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > Public Entity Liability > Immunities > General Overview

HN54 Public Entity Liability, Immunities
Cal. Gov't Code § 815(b) only states that a public entity is entitled to any immunity set forth by statute. The section itself does not provide the public entity with immunity. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > Local Governments > Claims By & Against
Torts > Public Entity Liability > Immunities > General Overview

HN55 Local Governments, Claims By & Against
Immunities that assertedly insulate a public entity from liability for damages caused by any activity related to the failure to enforce a law and/or to the granting or revoking, or refusal to grant or revoke, a license, permit, or other authorization, Cal. Gov't Code §§ 818.2, 818.4, are intended to confer immunity only in connection with discretionary activities, and not in connection with mandatory duties that cannot be ignored. More like this Headnote

Shepardize® - Narrow by this Headnote (3)

Torts > Public Entity Liability > Immunities > General Overview

HN56 Public Entity Liability, Immunities
See Cal. Gov't Code § 818.2. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Torts > Public Entity Liability > Immunities > General Overview

HN57 Public Entity Liability, Immunities
See Cal. Gov't Code § 818.4. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

HN58 Remedies, Costs & Attorney Fees
California follows the "American" rule whereby each party is to bear its own attorney fees in litigation, unless otherwise provided by contract or statute. More like this Headnote

Shepardize® - Narrow by this Headnote (6)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

HN59 Types of Contracts, Guaranty Contracts
Cal. Civ. Code §3248(b) requires a payment bond to include a provision for attorney fees. The required clause provides for an award of attorney fees in case suit is brought upon the bond. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Guaranty Contracts
Civil Procedure > Remedies > Bonds > Execution of Bonds
View more legal topics

HN60 **Types of Contracts, Guaranty Contracts**
See Cal. Civ. Code §3250. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

▼ Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

In an action by a subcontractor on a public works project against the city that let the contract, filed after the general contractor failed to pay plaintiff the amount due on the contract and the surety did not respond to plaintiff's demand on the payment bond, the trial court entered judgment for the city. The court found that the city did not have a mandatory duty to require the surety providing a payment bond under Civ. Code, §§ 3247 and 3248, to be an admitted surety insurer or to confirm the sufficiency of the surety prior to accepting the bond. The surety was a foreign corporation not licensed as a surety in California or any other state and was not authorized to do business in the state. (Superior Court of Riverside County, No. CIV277293, Victor Miceli ▾, Judge.)

The Court of Appeal reversed. The court held that the trial court erred in finding the city did not have a mandatory duty to require the surety providing the payment bond to be an admitted surety insurer or to confirm the sufficiency of the surety prior to accepting the bond. The statutory scheme under Civ. Code, §§ 3247 and 3248, which requires a payment bond as a condition of being awarded a contract by a public entity, must be construed with reference to the Bond and Undertaking Law, Code Civ. Proc., § 995.010 et seq., and those sections construed together impose a mandatory duty under Gov. Code, § 815.6, on a government entity awarding a public contract to take certain measures to ensure that the payment bond surety is a sufficient admitted surety insurer under Code Civ. Proc., § 995.310. Thus, the city had a mandatory duty under Code Civ. Proc., § 995.660, subd. (a)(3), to investigate the surety's sufficiency by requiring it to submit a county clerk's certificate showing that it was an admitted surety insurer. Because the city did not do so it was liable for breach of its mandatory duty. (Opinion by Hollenhorst ▾, J., with Ramirez ▾, P. J., and Gaut ▾, J., concurring.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports

CA(1a) **(1a)** ***CA(1b)*** **(1b)** ***CA(1c)*** **(1c)** ***CA(1d)*** **(1d) Government Tort Liability § 3.2—Grounds for Relief—Mandatory Duty—Failure of City to Ascertain That Surety on Subcontractor's Bond Was Admitted Surety: Public Works and Contracts § 18—Sureties.**

--In an action by an unpaid subcontractor on a public works project against a city, the trial court erred in finding the city did not have a mandatory duty to require the surety providing a payment bond under Civ. Code, §§ 3247 and 3248, to be an admitted surety insurer or to confirm the sufficiency of the surety prior to accepting the bond. The statutory scheme under Civ. Code, §§ 3247 and 3248, which require a payment bond as a condition of being awarded a contract by a public entity, must be construed with reference to the Bond and Undertaking Law, Code Civ. Proc., § 995.010 et seq., and those sections construed together impose a mandatory duty under Gov. Code, § 815.6, on a government entity awarding a public contract to take certain measures to ensure that the payment bond surety is a sufficient admitted surety insurer under Code Civ. Proc., § 995.310. Thus, the city had a mandatory duty under Code Civ. Proc., § 995.660, subd. (a)(3), to investigate the surety's sufficiency by requiring it to submit a county clerk's certificate showing that it was an admitted surety insurer. Because the city did not do so it was liable for breach of its mandatory duty. Code Civ. Proc., § 995.910, which imposes a duty on the beneficiary of a bond to make some investigation as to the sufficiency of the surety and to timely raise the issue, is only applicable to bonds given in connection with an action or proceeding. Moreover, the statutory bond was intended to protect against the risk suffered by plaintiff--the insolvency of the surety--and the breach of that duty was the proximate cause of plaintiff's injury.

[See 5 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 160.]

CA(2) **(2) Government Tort Liability § 2—As Governed by Statute.**

--Under Gov. Code, § 815, subd. (a), all government tort liability must be based on statute. In the absence of a constitutional requirement, public entities may be held liable only if a statute is found declaring them to be liable.

CA(3a) **(3a)** ***CA(3b)*** **(3b) Government Tort Liability § 3.2—Grounds for Relief—Mandatory Duty—Failure to Discharge.**

--Application of Gov. Code, § 815.6 (liability of public entity for failing to discharge a mandatory duty), requires that the enactment at issue be obligatory, rather than merely discretionary or permissive, in its directions to the public entity; it must require, rather than merely authorize or permit, that a particular action be taken or not taken. It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. Whether an enactment is intended to impose a mandatory duty, as opposed to a mere obligation to perform a discretionary function, is a question of law for the court. The

language of the enactment is an important guide in determining legislative intent, and the usual rule with statutes is that "shall" is mandatory and "may" is permissive unless the context requires otherwise. Section 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting § 815.6 as a basis for liability; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered. All three elements must be met before a government entity is required to confront the rebuttable presumption of negligence.

CA(4) **(4) Government Tort Liability § 3.2—Grounds for Relief—Mandatory Duty—Failure to Discharge.**

--Liability under Gov. Code, § 815.6 (liability of public entity for failing to discharge a mandatory duty), does not require that the enactment establishing a mandatory duty itself manifest an intent to create a private right of action. When an enactment establishes a mandatory governmental duty and is designed to protect against the particular kind of injury the plaintiff suffered, § 815.6 provides that the public entity is liable for an injury proximately caused by its negligent failure to discharge the duty. It is § 815.6, not the predicate enactment, that creates the private right of action. If the predicate enactment is of a type that supplies the elements of liability under § 815.6--if it places the public entity under an obligatory duty to act or refrain from acting, with the purpose of preventing the specific type of injury that occurred--then liability lies against the agency under § 815.6, regardless of whether private recovery liability would have been permitted, in the absence of § 815.6, under the predicate enactment alone. To require that the legislative body enacting the predicate law must have intended to create a private right of action would reduce § 815.6 to a virtual nullity and, with regard to local enactments, would have the bizarre effect of placing with local governmental entities the decision whether they will be liable or immune under state law.

CA(5) **(5) Statutes § 29—Construction—Language—Legislative Intent.**

--A court's primary task in construing a statute is to determine the Legislature's intent. The court turns first to the words themselves for the answer. When statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it. Where a statute is theoretically capable of more than one construction courts choose that which comports with the intent of the Legislature. Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible.

CA(6) **(6) Statutes § 51—Construction—Codes—Conflicting Provisions.**

--When two statutes relate to the same subject, ordinarily the more specific and particular provision will govern as against the more general provision, although the latter standing alone is broad enough to include the subject addressed by the more particular provision. However, this rule applies only to the extent the two provisions cannot be reconciled. When reconciliation is possible, the two statutes must be construed in reference to each other, so as to harmonize the two in such a way that no part of either becomes surplusage. It must be presumed that the Legislature intended every word, phrase, and provision in a statute to have meaning and to perform a useful function.

CA(7) **(7) Public Works and Contracts § 17—Laborers and Materialmen—Bonds.**

--The payment bond required on public works contracts under Civ. Code, § 3247, inures to the benefit of subcontractors and is intended to provide additional protection against defaulting general contractors. The purposes of the stop notice remedy include protecting subcontractors against defaulting contractors by ensuring payment of moneys due under subcontracts; solving the problem created by a senior foreclosure that destroys the value of a junior mechanic's lien; and permitting a subcontractor to bring an action against the owner and the original contractor to enforce the stop notice. The purposes of the public works payment bond include providing material suppliers and subcontractors an additional means of compensation; being a substitute for the mechanic's lien remedy; and creating a primary obligation by the surety whose liability is independent of a contractual relationship with the subcontractor or material supplier. The stop notice and payment bond remedies are cumulative.

CA(8) **(8) Negligence § 15—Elements of Actionable Negligence—Proximate Cause.**

--Proximate cause is legal cause, as distinguished from the laymen's notion of actual cause, and is always, in the first instance, a question of law. Proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury or damage complained of and without which such result would not have occurred.

CA(9) **(9) Government Tort Liability § 2.2—Immunity—Mandatory Duty.**

--Immunities that are asserted to insulate a public entity from liability for damages caused by any activity related to the failure to enforce a law or to the granting or revoking, or refusal to grant or revoke, a license, permit, or other authorization (Gov. Code, §§ 818.2, 818.4), were intended to confer immunity only in connection with discretionary activities, and not in connection with mandatory duties that cannot be ignored.

CA(10) **(10) Bonds § 5—Actions—Attorney Fees.**

--Civil Code, § 3248, subd. (b), which requires a payment bond to include a provision for attorney fees, with the required clause providing for an award of attorney fees "in case suit is brought upon the bond" was not applicable to a tort action against a city for failure to perform a mandatory duty to ensure that the payment bond surety was a sufficient admitted surety under Code Civ. Proc., § 995.310.

Counsel: Ashley, Brady & Cerniglia and Sam J. Cerniglia for Plaintiff and Appellant.

Harper & Burns and John R. Harper for Defendant and Respondent.

Bill Lockyer, Attorney General, Richard W. Bakke, Leslie Branman Smith and Gregory S. Price, Deputy Attorneys General, for J. Clark Kelso, Acting Insurance Commissioner, as Amicus Curiae.

Judges: Opinion by Hollenhorst, J., with Ramirez, P. J., and Gaut, J., concurring.

Opinion by: HOLLENHORST

Opinion

[*609] [**52] **HOLLENHORST, J.**

In an action by a subcontractor for negligent breach of a mandatory duty against the City of Murrieta (City), the trial court entered judgment for the City. The subcontractor appeals, contending the trial court erred in finding the City did not have a mandatory duty to require the surety providing a payment bond under Civil Code sections 3247 and **[*610]** 3248 1 to be an admitted surety insurer or to confirm the sufficiency of the surety prior to accepting the bond.

[***2] The resolution of this appeal requires us to determine several issues of first impression, including: (1) must the statutory scheme under sections 3247 and 3248, requiring a payment bond as a condition of being awarded a contract by a public entity, be construed with reference to the Bond and Undertaking Law, Code of Civil Procedure section 995.010 et seq; and (2) if so, do those sections construed together impose a mandatory duty under Government Code section 815.6 on a government entity awarding a public contract to take certain measures to ensure the payment bond surety is a sufficient admitted surety insurer under Code of Civil Procedure 995.310. We answer these questions in the affirmative and reverse the judgment of the trial court. Other issues will be addressed in this opinion as they arise.

I.

Facts and Procedural History

In lieu of trial, the parties submitted a stipulation of agreed facts. The following undisputed facts are taken from the stipulation.

After soliciting bids for the construction of a playground park project, the City awarded the subject construction contract to general contractor Michael Bahash, [***3] doing business as KLM Engineering (KLM) on March 21, 1995. As part of the bid solicitation process and the award of the contract, KLM was required under sections 3247 and 3248 to provide a payment bond to the City. On March 27, 1995, a payment bond, also referred to as a labor and materials bond, was executed by Red Sea Group, Ltd. (Red Sea), as surety, through its attorney in fact, Sergei N. Klimow, an Arizona attorney. The form of the bond had been provided by the City to Red Sea after the form initially submitted by Red Sea was in an unacceptable format.

The City inquired of Mr. Klimow regarding the surety on the bond and his execution of the bond as the surety's attorney in fact. In response, Mr. Klimow furnished the City with a copy of his special power of attorney, recorded June 7, 1994, in San Bernardino County, California, executed by Red Sea's president, David Pesnell. Mr. Klimow further provided the City with a letter from California's Secretary of State, dated December 13, 1994, acknowledging Red Sea's filing on that [**53] date of a statement by a foreign **[*611]** lending institution, pursuant to Corporations Code section 2104. 2 The City [***4] approved the bond without further investigation.

On May 3, 1995, Walt Rankin & Associates, Inc. (Rankin) entered into a contract with KLM to supply and install the playground equipment at the park for the subcontract price of $ 100,514. Prior to its bidding on and completion of its subcontract, Rankin did not make any inquiry regarding the payment bond approved by the City, nor did Rankin inquire [***5] about the financial condition of Red Sea. Rankin completed installation of the playground equipment on or about June 15, 1995, and demanded payment from KLM on June 30, 1995, in the amount of $ 100,514.

When KLM failed to make payment, Rankin initiated statutory stop notice procedures. Pursuant to Rankin's stop notice, the City withheld the remaining sum due to KLM, $ 63,000, and on April 17, 1996, disbursed that amount to Rankin, leaving a balance of $ 37,514 due under the subcontract. Rankin's demands under the payment bond were unsuccessful and the $ 37,514 balance due to Rankin remains unpaid.

As it turned out, Red Sea was a Turks and Caicos Islands corporation that maintained and did its business out of offices in Tucson, Arizona. Red Sea was not licensed as a surety by either the California or Arizona state insurance departments, nor any other state, and Red Sea was not a corporation authorized to do business in California. Shortly after the bond in this case was given, Mr. Klimow resigned as attorney in fact for both Red Sea and its president, Mr. Pesnell. Mr. Pesnell was subsequently indicted in the United States District Court, District of Arizona, in connection with his [***6] participation in an "Individual Surety Bonding Program." Mr. Pesnell pled guilty to fraudulent misrepresentation. In mid-1996, Red Sea and Mr. Pesnell vacated their Tucson, Arizona office, leaving rent owing in excess of $ 20,000; "since then, their

EXHIBIT [D]–4587

whereabouts are unknown, and their assets are non-existant [*sic*] or unable to be located."

On July 8, 1996, Rankin filed a verified complaint alleging five causes of action: (1) breach of contract against KLM; (2) enforcement of its stop notice against the City; (3) recovery against Red Sea Group, Ltd., on the **[*612]** payment bond; (4) fraud by Sergei N. Klimow; and (5) negligence by the City and failure to perform a statutory duty. The City filed an answer to the complaint on September 4, 1996. 3 On May 18, 1998, the City and Rankin filed the above mentioned stipulation of agreed facts together with exhibits, and agreed that the trial court could decide the issues in the case based on that stipulation in lieu of trial.

[***7] Rankin requested a statement of decision pursuant to Code of Civil Procedure section 632, which the trial court issued on November 24, 1998. In its statement of decision, the trial court ruled that the City did not have a duty under Civil Code sections 3247 and 3248 to require a surety providing a payment bond to be an admitted surety insurer or to confirm the solvency [**54] of the surety. Rankin challenges this ruling on appeal.

II.

Mandatory Duty

CA(1a) **(1a)** On appeal, Rankin challenges the trial court's ruling that the City did not have a duty to determine whether the entity providing a payment bond for its public works project was an admitted surety insurer. According to Rankin, it was not enough for the City to "make inquiry" of the attorney in fact, examine a letter provided by the attorney in fact from the Secretary of State acknowledging Red Sea's filing of a statement by a foreign lending institution (Corp. Code, § 2104), and look at the attorney in fact's recorded special power of attorney. Rather, Rankin contends the City had a mandatory duty to refer to the county clerk's [***8] register of admitted surety insurers, telephone the California Department of Insurance to inquire whether Red Sea was licensed as a surety, and contact the Secretary of State to ascertain Red Sea's qualifications to do business in California. The City responds that no such mandatory duty exists and makes reference to the immunity provision contained in Government Code section 815, subdivision (b). 4

In sorting out the issues presented, we must follow a logical sequence of inquiry, keeping in mind that HN2 [***9] conceptually, questions of statutory immunity **[*613]** do not become relevant until it has been determined that the government entity owes a duty of care to the plaintiff and would be liable in the absence of such immunity. (*Davidson v. City of Westminster* (1982) 32 Cal. 3d 197, 201-202 [185 Cal. Rptr. 252, 649 P.2d 894].) Accordingly, although analytically the issues are somewhat related, we must address the question of statutory liability for breach of a mandatory duty prior to the question of statutory immunity. (*Creason v. Department of Health Services* (1998) 18 Cal. 4th 623, 630 [76 Cal. Rptr. 2d 489, 957 P.2d 1323].)

CA(2) **(2)** We begin our analysis with the well-established rule that HN3 "[u]nder the California Tort Claims Act (Gov. Code, § 810 et seq.), 'a public entity is not liable for injury arising from an act or omission except as provided by statute. (Gov. Code, § 815, subd. (a); [citation].)' [Citation.] Thus, in California, 'all government tort liability [***10] must be based on statute [citation].' [Citation.] ' "HN4 In the absence of a constitutional requirement, public entities may be held liable only if a statute . . . is found declaring them to be liable." ' [Citation.]" (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal. 4th 925, 932 [80 Cal. Rptr. 2d 811, 968 P.2d 522], fn. omitted.)

One such statute is Government Code section 815.6. HN5 It provides: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

CA(3a) **(3a)** HN6 "[A]pplication of section 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary [***11] or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken. [Citation.] It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. [Citation.]" CA(4) **(4)** (See. fn. 5.) (*Haggis v. City of Los Angeles*(2000) 22 Cal. 4th 490, 498 [93 Cal. Rptr. 2d 327, 993 P.2d 983] (*Haggis*).) [**55] 5 CA(3b) **(3b)** Whether an enactment is intended to impose a mandatory duty, as **[*614]** opposed to a mere obligation to perform a discretionary function, is a question of law for the court. (*Haggis*, at p. 499.)

[***12] HN9

The enactment's language is an important guide in determining legislative intent. (*Haggis*, *supra*, 22 Cal. 4th 490, 499.) To this extent, the usual rule with California codes is that "shall" is mandatory and "may" is permissive unless the context requires otherwise. (*Roseville Community Hosp. v. State of California* (1977) 74 Cal. App. 3d 583, 587-588, fn. 4 [141 Cal. Rptr. 593]; Gov. Code, §§ 5, 14.) At the same time, though, not every statute that uses the word "shall" is obligatory rather than permissive, and there may be factors other than statutory language that may indicate that apparently obligatory language was not intended to foreclose a government entity's exercise of discretion. (*Haggis*, at p. 499.)

" HN10 'Government Code section 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty [***13] . . .; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability . . .; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered.' [Citation.]" (*Becerra v. County of Santa Cruz* (1998) 68 Cal. App. 4th 1450, 1458 [81 Cal. Rptr. 2d 165].) All three elements must be met before a government entity is required to confront the rebuttable presumption of negligence. (*Braman v. State of California* (1994) 28 Cal. App. 4th 344, 349 [33 Cal. Rptr. 2d 608]; *Brenneman v. State of California* (1989) 208 Cal. App. 3d 812, 816-817, fn. 2 [256 Cal. Rptr. 363].)

A. *Is There an Enactment Imposing a Mandatory Duty?*

CA(1b) **(1b)** Rankin contends the City had a mandatory duty under various statutory provisions to investigate Red Sea's status and solvency

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prior to accepting the payment bond. We examine each statute in turn.

[*615] 1. *Mandatory Duty Under Sections 3247 and 3248.*

The trial court ruled that sections 3247 and 3248 did not impose a duty on the City to confirm Red Sea's solvency prior to [**56] accepting the payment [***14] bond or to require that Red Sea be an admitted surety insurer before accepting it as surety on the bond. Rankin contends the trial court erred in so ruling.

HN11 Section 3247 requires a payment bond as a condition of being awarded a contract by a public entity. ***HN12*** It provides in relevant part as follows: "(a) Every original contractor to whom is awarded a contract by a public entity, except as provided in subdivision (d) of Section 7103 of the Public Contract Code, involving an expenditure in excess of twenty-five thousand dollars ($ 25,000) for any public work shall, before entering upon the performance of the work, *file a payment bond with and approved by the officer or public entity* by whom the contract was awarded. . . ." (Italics added.)

HN13 Former section 3248 sets forth the requirements for approval: "To be approved the payment bond shall satisfy all of the following requirements: [***15] [P] (a) Be in a sum not less than that prescribed in the following paragraph which is applicable to the total amount payable: [P] . . . [P] (b) Provide that if the original contractor . . . fails to pay [a subcontractor] that the sureties will pay for the same, and . . . in case suit is brought upon the bond, a reasonable attorney's fee, to be fixed by the court. . . . [P] (c) By its terms inure to the benefit of [the subcontractor] so as to give a right of action to such persons or their assigns in any suit brought upon the bond. [P] (d) Be in the form of a bond and not a deposit in lieu of a bond." 6

[***16] ***HN15***

We discern nothing on the face of either section 3247 or 3248 requiring that the surety be an admitted surety insurer or mandating a public entity to investigate the solvency of the surety. Rather, the plain language of those sections requires only that a payment bond be provided where the public contract involves an expenditure over $ 25,000, and that the bond follow the requirements of section 3248. Here, a payment bond was provided as required by section 3247 because the public contract contemplated an expenditure in excess of $ 25,000. 7 As required by section 3248, the payment bond provided by Red Sea (1) was for the sum of $ 238,280, an amount not **[*616]** less than the prescribed amount under subdivision (a)(1); 8 (2) provided that if KLM, the original or general contractor, failed to pay for "any work or labor thereon of any kind . . . ." Red Sea would pay for same and in "case suit is brought upon [the] bond," Red Sea would pay costs and reasonable expenses and fees, including reasonable attorney fees, to be fixed by the court; (3) by its terms inured to the benefit of [***17] Rankin, and (4) was in the form of a bond. The plain language of sections 3247 and 3248 does not require more.

2. *The Bond and Undertaking Law, Code of Civil Procedure Section 995.010 et seq.*

Rankin, however, contends that "merely" meeting the "bare requirements" for approval under sections 3247 and 3248 is insufficient to protect laborers and materialmen such as itself and that sections 3247 and 3248 must be read in conjunction with certain provisions of the Bond and Undertaking Law, Code of Civil Procedure section 995.010 et [***18] seq. According to Rankin, these sections collectively imposed a duty on the City to determine whether [**57] Red Sea was an admitted surety insurer and to investigate Red Sea's solvency. The City, on the other hand, maintains there is no duty or requirements beyond those in sections 3247 and 3248.

In order to resolve the dispute over whether sections 3247 and 3248 should be interpreted according to their own plain terms or in conjunction with provisions outside the terms of those sections, we look to well-settled rules of statutory construction. ***CA(5)*** **(5)** " ***HN17*** '[O]ur primary task in construing a statute is to determine the Legislature's intent.' [Citation.] 'The court turns first to the words themselves for the answer.' [Citation.] 'When statutory language is . . . clear and unambiguous there is no need for construction, and courts should not indulge in it.' [Citation.] 'Where a statute is theoretically capable of more than one construction we choose that which comports with the intent of the Legislature. [Citations.] Words must be construed in context, and statutes must be harmonized, [***19] both internally and with each other, to the extent possible. [Citations.]' " (*Alford v. Department of Motor Vehicles* (2000) 79 Cal. App. 4th 560, 565-566 [94 Cal. Rptr. 2d 222].)

CA(6) **(6)** "***HN18*** When two statutes relate to the same subject, ordinarily the more specific and particular provision will govern as against the more general provision, although the latter standing alone is broad enough to include the subject addressed by the more particular provision. [Citations.] However, **[*617]** this rule applies only to the extent the two provisions cannot be reconciled. [Citations.] When reconciliation is possible, the two statutes must be construed 'in reference to each other, so as to "harmonize the two in such a way that no part of either becomes surplusage." [Citations.]' [Citation.] It must be presumed that 'the Legislature intended "every word, phrase and provision . . . in a statute . . . to have meaning and to perform a useful function." ' [Citation.]" (*Gonzalez v. County of Tulare* (1998) 65 Cal. App. 4th 777, 786-787 [76 Cal. Rptr. 2d 707].) [***20]

CA(1c) **(1c)** Upon reviewing the statutory scheme in this manner, we conclude ***HN19*** sections 3247 and 3248 cannot be read in isolation but must instead be read in conjunction with the Bond and Undertaking Law (Code Civ. Proc., § 995.010 et seq.). This conclusion follows from examination of the statutory scheme.

In 1982, the California Law Revision Commission found that "the codes provide for more than 500 different bonds and undertakings, each governed by similar but not identical procedural statutes. [P] The proliferation of procedural statutes to govern bonds and undertakings is unnecessary. The rules applicable to such matters as the manner of execution of a bond or undertaking, the number and qualifications of sureties, the giving of a new or additional bond or undertaking if the original bond or undertaking becomes insufficient, the limitation on liability of a surety to the amount of the bond or undertaking, and the ability to give a cash or equivalent deposit in lieu of a bond or undertaking, are the same for all bonds and undertakings. Repetition of such procedural [***21] rules in every statute that provides for a bond or undertaking is not only wasteful and adds to the complexity and length of the statutes, but also creates the likelihood of inconsistent wording and interpretation where the rules should be the same. [P] . . . The Law Revision Commission recommends that the procedural bond and undertaking provisions be compiled into one statute and that the duplicative provisions be repealed or deleted from the codes." (Recommendation Relating to Statutory Bonds and Undertakings (Nov. 1982) 16 Cal. Law Revision Com. Rep. (1982) pp. 507-508.) In accordance with the commission's recommendations, the Bond and Undertaking Law was enacted, and duplicative provisions were deleted from various codes. One of the amended provisions was Civil Code section 3248. It was amended to eliminate duplicative provisions, [**58]

including the subjects now covered by Code of Civil Procedure sections 995.310 (sureties on bond), 996.460 (judgment of liability), and 996.470 (limitation of liability of surety). (16 Cal. Law Revision Com. Rep., *supra,* at p. 567.)

The clear legislative intent to consolidate the [***22] procedural requirements for surety bonds in one place is expressed in the statute itself: "***HN20*** The provisions **[*618]** of this chapter apply to a bond or undertaking executed, filed, posted, furnished, or otherwise given as security pursuant to any statute of this state, except to the extent the statute prescribes a different rule or is inconsistent." (Code Civ. Proc., § 995.020, subd. (a).) In view of the legislative history, and since the provisions of the Bond and Undertaking Law do not prescribe a different rule and are not inconsistent with those set forth in Civil Code sections 3247 and 3248, we hold that sections 3247 and 3248 must be construed in conjunction with the Bond and Undertaking Law.

3. *Waiver of Any Mandatory Duty.*

Having so determined, we are faced squarely with the City's contention that if the Bond and Undertaking Law is to be construed with Civil Code sections 3247 and 3248, Rankin waived any recovery by failing to timely object to the bond. [***23] According to the City, there is a statutory procedure for objecting to the sufficiency of the bonds "[c]ommencing at Code of Civil Procedure [s]ection 995.910." The City argues that section 995.910 imposed a duty on Rankin to make some investigation as to the sufficiency of the surety and to timely raise the issue. Because Rankin admittedly did not make any investigation as to the payment bond given in this case, the City concludes Rankin's action is barred. 9

Rankin responds by pointing out that ***HN22*** [***24] Code of Civil Procedure section 995.910 expressly states that "[t]his article governs objections to a bond *given in an action or proceeding.*" (Italics added.) Rankin asserts the payment bond in question here was not a bond given in an action or proceeding. We agree.

HN23 "The Bond and Undertaking Law does not affirmatively define the term bond 'given in an action or proceeding.' Rather, it describes this term only by exclusion, ***HN24*** stating that '[a] bond provided for or given "in an action or proceeding" *does not include* a bond provided for, or given as, a condition of a license or permit.' (§ 995.140, subd. (b), italics added.) ***HN25*** More generally, a 'Bond' for purposes of the Bond and Undertaking Law includes '[a] surety, indemnity, fiduciary, or like bond' or 'undertaking' executed either by both the principal and sureties, or by the sureties alone. (§ 995.140, subd. [***25] (a)(1), (2).)" (*Grade-Way Construction Co. v. Golden Eagle Ins. Co.* (1993) 13 Cal. App. 4th 826, 830 [16 Cal. Rptr. 2d 649], fn. omitted.) Additionally, ***HN26*** "[a]lthough the Bond and Undertaking Law does not define the phrase, **[*619]** 'given in an action or proceeding,' the Code of Civil Procedure identifies 'actions' and 'proceedings' as the two classes of 'judicial remedies' (§ 21), i.e., remedies 'administered by the [c]ourts of justice, or by judicial officers empowered for that purpose by the Constitution and statutes of this [s]tate.' (§ 20.) The Code of Civil Procedure further defines an 'action' as 'an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.' (§ 22.) In this context, the word 'action' is synonymous with a lawsuit. On the other hand, the word 'proceeding' is broader. Under section 23, '[e]very other remedy is a special proceeding.' " (*Grade-Way* [**59] *Construction*, at [***26] pp. 832-833.)

Based on the above analysis, the payment bond given in this case was not a bond given in an action or proceeding. ***HN27*** A payment bond under Civil Code sections 3247 and 3248 is not procured in connection with a lawsuit or related proceeding. To the contrary, it must be obtained as a condition of being awarded a public contract. In this manner, a payment bond under sections 3247 and 3248 is more like a bond given as a condition of a license or permit, which is distinguishable from one given in an action or proceeding. (***HN28*** See Code Civ. Proc., § 995.140, subd. (b) ["A bond provided for or given 'in an action or proceeding' does not include a bond provided for, or given as, a condition of a license or permit"].) As such, Rankin did not waive its claim by failing to object under Code of Civil Procedure sections 995.910 to 995.960, as those sections do [***27] not apply to payment bonds given pursuant to Civil Code sections 3247 and 3248.

Nor is Rankin's claim waived under *Chodos v. Insurance Co. of North America* (1981) 126 Cal. App. 3d 81 [178 Cal. Rptr. 829], as contended by the City. First, though not an issue considered by the *Chodos* court, we note that the *Chodos* case involved a bond given in an action or proceeding, i.e., an appeal, whereas this case does not. Second, the statutory scheme considered in *Chodos* was amended by the Legislature in a manner we view as intending to eliminate the waiver argument set forth by the *Chodos* opinion.

In *Chodos*, the Second Appellate District construed Code of Civil Procedure former sections 1056 (repealed; restated in Code Civ. Proc., §§ 995.120, 995.310, 995.610, 995.630) and 1057b (repealed; restated in Code Civ. Proc., § 995.650). ***HN29*** Former section 1057b read as [***28] follows: "A corporate surety, as provided in Section 1057a, *shall not be required to justify unless the person excepting to the sufficiency of the surety serves and files:* [P] (1) The county clerk's certificate provided for in Section 1057a stating that **[*620]** the surety has not been certified to him by the Insurance Commissioner as an admitted surety insurer or that the certificate of the surety has been surrendered, revoked, canceled, annulled or suspended and not thereafter renewed; or [P] (2) An affidavit stating facts which establish the insufficiency of the bond or surety." (Italics added.) Because the plaintiff in *Chodos* had not timely objected to the bond filed to stay the enforcement of the underlying judgment (Code Civ. Proc., § 917.1), the court held that plaintiff had waived his right to except to the insufficiency of the bond. (*Chodos v. Insurance Co. of North America, supra,* 126 Cal. App. 3d 81, 84-85.)

HN30 Former section 1057b is restated in Code of Civil Procedure section 995.650 [***29] as follows: "If an objection is made to the sufficiency of an admitted surety insurer, the person making the objection shall attach to and incorporate in the objection one or both of the following: [P] (a) The certificate of the county clerk of the county in which the court is located stating that the insurer has not been certified to the county clerk by the Insurance Commissioner as an admitted surety insurer or that the certificate of authority of the insurer has been surrendered, revoked, canceled, annulled, or suspended and has not been renewed. [P] (b) An affidavit stating facts that establish the insufficiency of the insurer."

Significantly, Code of Civil Procedure section 995.650 is similar to the former statute in all material respects except that it omits the first sentence of former section 1057b that "[a] corporate surety . . . shall not be required to justify unless the person excepting to the sufficiency of the surety serves and files" certain documents. Because we must presume the Legislature was aware of the *Chodos* opinion when it repealed the former statute and omitted the phrase from Code of Civil Procedure section 995.650 [***30] (see *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 572 [88 Cal. Rptr. 2d 19, 981 [**60] P.2d 944] [***HN31*** "when the Legislature amends a statute, we presume it was fully aware of the prior judicial construction"]), we view that omission as an intent by the Legislature to no longer require a person to except to the sufficiency

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of the surety before a corporate surety will be held accountable.

We find no other basis in the statutory scheme for holding Rankin's failure to object to constitute a waiver. Therefore, we turn now to the issue of whether sections 3247 and 3248, when analyzed in conjunction with the Bond and Undertaking Law, impose a mandatory duty on a government entity to determine whether the surety is an admitted surety insurer prior to accepting a payment bond from that surety and to investigate a surety's solvency.

[*621] 4. *Mandatory Duty Under Civil Code Sections 3247 and 3248 and Code of Civil Procedure Section 995.010 et seq.*

a. *Code of Civil Procedure Section 995.310* [***31] .

Rankin contends a mandatory duty was imposed on the City by Code of Civil Procedure section 995.310 to ensure that the surety giving the bond was authorized and licensed by the Insurance Commissioner as an "admitted surety insurer." According to Rankin, the City breached this duty by not requiring Red Sea to be an admitted surety insurer. 10

[***32] ***HN33***

Code of Civil Procedure section 995.310 states: "Unless the statute providing for the bond requires execution by an admitted surety insurer, a bond shall be executed by two or more sufficient personal sureties or by one sufficient admitted surety insurer or by any [**61] combination of sufficient personal sureties and admitted surety insurers."

The plain language of the statute does not per se impose a duty on a public entity. Nevertheless, we are unable to ignore the mandatory language of the statute imposing a duty to ensure that the subject bond be executed by one of the three categories of insurers identified in Code of Civil Procedure section 995.310. As the public entity is the one required to approve the subject bond, it stands to reason that the public entity must be the one to require compliance with Code of Civil Procedure section 995.310. Any other interpretation would render the provision meaningless.

That Code of Civil Procedure section 995.310 [***33] imposes a mandatory duty on a public entity to require that the bond be executed by one of the three categories of insurers becomes more apparent when our discussion above regarding the Legislature's amendment of Civil Code former section 3248 to delete provisions duplicated in the Bond and Undertaking Law is added to the analysis. As detailed above (see *ante*, part II.A.2), the portion deleted from section 3248 required the payment bond to "be executed by either two or more good and sufficient sureties or by a corporate surety" in order to be approved. This requirement is now contained in Code of Civil Procedure section 995.310.

[*622] In addition, ***HN34*** although Civil Code section 3096 defines a "payment bond" as "a bond with good and sufficient sureties," neither section 3096, 3247 nor 3248 defines what constitutes a "sufficient surety." Rather, that term is encompassed by Code of Civil Procedure section 995.310's requirement that a bond be executed by one sufficient admitted surety insurer, two or [***34] more sufficient personal sureties, or any combination of sufficient personal sureties and admitted surety insurers.

HN35 We conclude Code of Civil Procedure section 995.310 imposed a mandatory duty on the City either to require Red Sea to be an admitted surety insurer or to require two or more sufficient personal sureties or a combination of sufficient personal sureties and admitted surety insurers. Since the City failed to determine that Red Sea was an admitted surety insurer, it failed to perform a mandatory duty. Accordingly the trial court erred in concluding that "The City does not owe a duty to Plaintiff to determine the status of the insurer being an admitted surety insurer."

b. *Code of Civil Procedure Section 995.660*.

Rankin advances the argument that, in addition to determining that the insurer was an admitted surety insurer, the City was required to investigate the solvency of the proposed surety pursuant to Code of Civil Procedure section 995.660. According to Rankin, that section [***35] imposed a mandatory duty on the City to investigate the sufficiency of the surety prior to approving the payment bond.

HN36 Code of Civil Procedure section 995.660, subdivision (a) provides that "[i]f an objection is made to the sufficiency of an admitted surety insurer on a bond *or if the bond is required to be approved*, the insurer shall submit to the court or officer the following documents . . . ." (Italics added.) 11

[***36] The second phrase of Code of Civil Procedure section 995.660, subdivision (a) requires the insurer to submit, upon request, the specified documents "if the bond is required to be approved." Civil Code ***HN38*** section 3247 requires a **[*623]** payment bond to be filed with and approved by the public entity. Therefore, because a payment bond is required to be approved, an insurer giving a payment bond is obligated to provide the documents listed in section 995.660, subdivision (a), within 10 days of its receipt of a request to submit the document.

Rankin argues that the City ignored these provisions by failing to request these documents in order to determine the sufficiency of the surety. We disagree. The text of the section, as set forth in footnote 11, *ante*, requires the insurer to submit the documents listed in Code of Civil Procedure section 995.660, subdivision (a)(1), (2) and (4) upon request. Subdivision (a)(3) requires the insurer to submit the county clerk's certificate within 10 days of receipt of [***37] the certificate.

The plain implication is that only the county clerk's certificate should normally [**62] be submitted. The other documents are submitted only upon request of the approving agency. The issue of whether a request should have been made in any particular case must be resolved under ***HN39*** Government Code section 815.6, which, as discussed further below, imposes liability for breach of a mandatory duty "unless the public entity establishes that it exercised reasonable diligence to discharge the duty." In the normal case, the public agency's receipt of the county clerk's certificate sufficiently discharges the agency's duty to use reasonable diligence to determine that the bond is given by a sufficient admitted surety insurer because the Insurance Commissioner has investigated and approved the insurance company's solvency prior to placing the company on the list of admitted surety insurers.

In its amicus curiae brief, and its request for judicial notice, the Insurance Commissioner points out that, if the City had sought such a county clerk's certificate [***38] in this case, it would have been unsuccessful. In other words, if the City had followed the statutory procedure, it would have discovered that Red Sea was not an admitted surety insurer, regardless of the sufficiency issue. The Insurance Commissioner also

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points out that its Internet web page **[*624]** allows anyone to determine whether a company is an admitted insurer or not. 12

HN40 We therefore hold that the City had a mandatory duty under Code of Civil Procedure section 995.660, subdivision (a)(3) to investigate Red Sea's sufficiency by requiring it to submit a county clerk's certificate showing that it was an admitted surety insurer. It did not do so, and accordingly, it is liable for breach of its mandatory duty under Government Code section 815.6 [***39] .

In the exercise of reasonable diligence under Government Code section 815.6, the City could have performed its mandatory duty by obtaining a certificate directly from the county clerk, or otherwise verifying that the surety was an admitted surety insurer. However, the City could reasonably rely on the Insurance Commissioner's certification of solvency which is inherent in the approval of an out-of-state insurer as an admitted insurer, and it did not have a duty to take other steps to investigate the financial sufficiency of the insurer under Code of Civil Procedure section 995.660 unless such an investigation was required in the exercise of reasonable diligence.

c. *Other Sections of the Bond and Undertaking Law.*

In addition to Code of Civil Procedure sections 995.310 and 995.660, other sections of the Bond and Undertaking Law are relevant to the issue of the scope of the City's mandatory duty. We have previously mentioned Code of Civil Procedure section 995.020, which defines the application of the law to statutory bonds or undertakings. HN41 [***40] Code of Civil Procedure section 995.120 defines the term "admitted surety insurer" to mean "a corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code." HN42 Insurance Code section 105 defines surety insurance and Insurance Code section 700 defines the requirements for admission of an insurance company. Admission under that section requires conformance to all of the requirements of the Insurance Code including requirements designed to assure financial solvency. In effect, the Insurance Commissioner investigates and approves financial solvency before admitting an insurance company. Thus, verification by the City that the surety is an admitted surety insurer under Code of Civil Procedure section 995.310 would [***41] have avoided the issues that arose here. HN43

[**63] Code of Civil Procedure section 995.410 provides that a bond may be approved or disapproved on the basis of the affidavit of the sureties. This **[*625]** section does not aid the City because the special power of attorney submitted by Red Sea's attorney in fact did not represent that Red Sea was an admitted surety insurer.

HN44 The submission of a special power of attorney can be one of the conditions of acceptance of the surety under Code of Civil Procedure section 995.630, but this section does not affect the duty of the City to determine that the insurer is an admitted surety insurer.

HN45 Code of Civil Procedure section 995.640 is also relevant because it provides for the issuance of a county clerk's certificate attesting that the certificate of authority [***42] for an admitted surety insurer is in effect. The section provides that the county clerk shall rely on information provided by the Insurance Commissioner pursuant to Insurance Code section 12070 et seq. Section 12070 requires the Insurance Commissioner to provide a list of admitted surety insurers to the respective county clerks. As discussed above, this system informs interested persons of the admitted status of any foreign insurer, and it provides a basis for an inference of financial solvency.

HN46 Finally, Code of Civil Procedure section 995.670 provides that a public agency, acting to approve a bond, or in resolving an objection to the sufficiency of an admitted surety insurer, may not impose other requirements than those stated in Code of Civil Procedure section 660. This section supports the conclusion that HN47 Code of Civil Procedure sections 995.660 and 995.670 [***43] are limitations upon the public agencies' duty to gather information, rather than sections that require the obtaining of all such information.

In any event, for the reasons stated above, we hold that the City had a mandatory duty under the Bond and Undertaking Law to determine that the surety on the bond was an admitted surety insurer.

B. *Did the Enactment Intend to Protect Against the Kind of Risk Suffered by Rankin?*

CA(7) **(7)** HN48 The payment bond required under Civil Code section 3247 inures to the benefit of subcontractors such as Rankin and is intended to provide additional protection against defaulting general contractors. (*Pacific Employers Ins. Co v. State of California* (1970) 3 Cal. 3d 573, 576 [91 Cal. Rptr. 273, 477 P.2d 129] [discussing Gov. Code, former §§ 4200-4210, from which Civ. Code, § 3247 was derived]. 13) As was recently summarized: "The purposes of the stop notice remedy include: to protect subcontractors against **[*626]** defaulting contractors by ensuring payment of moneys due under subcontracts [citations]; [***44] to solve the problem created by a senior foreclosure which destroys the value of a junior mechanic's lien [citations]; and to permit a subcontractor to bring an action against the owner and the original contractor to enforce the stop notice. [Citation.] The purposes of the public works payment bond include: providing material suppliers and subcontractors an additional means of compensation [citations]; being a substitute for the mechanic's lien remedy [citations]; and creating a primary obligation by the surety whose liability is independent of a contractual relationship with the subcontractor or material supplier. [Citations.] HN49 The stop notice and payment bond remedies are cumulative. [Citations.]" (*Capitol Steel Fabricators, Inc. v. Mega Construction Co.* (1997) 58 Cal. App. 4th 1049, 1060-1061 [68 Cal. Rptr. 2d 672].)

[***45] Given the purpose of the stop notice and payment bond remedies to protect subcontractors from defaulting contractors, there can be little dispute but that the approval scheme contemplated by Civil Code section 3248 and Code of Civil Procedure section 995.310 is likewise intended to inure to the benefit of subcontractors such as Rankin, [**64] so as to provide protection against noncompliant general contractors and sureties. In other words, the statutes were intended to protect against the harm suffered by Rankin, i.e., nonpayment by a nonqualified surety.

C. *Was the Breach of the Mandatory Duty a Proximate Cause of Rankin's Injuries?*

The final question in the three-pronged analysis is whether the City's breaches of the mandatory duties contained in Code of Civil Procedure section 995.310, requiring that the surety have been an admitted surety insurer or that additional sureties be supplied, proximately caused Rankin's injuries.

CA(8) **(8)** " ' " 'HN50 Proximate cause is legal cause, as distinguished from [***46] the laymen's notion of actual cause, and is always, in the first instance, a question of law.' " [Citations.] Proximate cause " 'is that cause which, in natural and continuous sequence, unbroken by any

efficient intervening cause, produced the injury [or damage complained of] and without which such result would not have occurred.' " [Citation.]' . . ." (*State of California v. Superior Court* (1984) 150 Cal. App. 3d 848, 857 [197 Cal. Rptr. 914].)

The court below found that Rankin had failed to establish causation because it had failed to show that the surety was insolvent at the time the bond was accepted by the City. According to the trial court, "if the insurer was solvent at the time of approval of its bond, a bond claimant would not incur damage by failure of a surety to be an admitted surety insurer."

[*627] Rankin argues on appeal that it was not required to prove Red Sea was insolvent at the time the City accepted its payment bond because had Red Sea been an admitted surety insurer as required by Code of Civil Procedure section 995.310, it would have been required to be financially viable as prescribed under the [***47] Insurance Code as well as regulated by the Insurance Commissioner. In support of its argument, Rankin cites the following quotation from *Huckell v. Matranga* (1979) 99 Cal. App. 3d 471, 480 [160 Cal. Rptr. 177]: "An indemnity agreement by individuals differs markedly from an indemnity bond by a corporate surety. First and foremost is the fact that the life of a signator to an indemnity agreement is uncertain and on his death claims against the estate must be asserted or they may be lost. The party seeking to assert the protection afforded by the agreement would be compelled to maintain a constant vigil on the life of the indemnitor, know his residence and, in the event of his death, obtain the information about any probate proceedings instituted. The life of a corporate surety, on the other hand, continues indefinitely and successors in interest are easily traced. [P] Second, the financial ability of the individual indemnitor is not always known or established and, even if it were, could change with the fortunes of time. The real value of the agreement may be lost. More importantly, there is no control over the indemnitor to assure his investments will be prudently [***48] managed. The corporate surety, on the other hand, must maintain certain paid-in capital and surplus (see Ins. Code, § 12050 et seq.), and is closely regulated in policy matters by the Insurance Commissioner of the State of California (Ins. Code, § 1170 et seq.) . . . ." (Fn. omitted.)

We find the above discussion regarding corporate sureties instructive. Although *Huckell* dealt with indemnity bonds, the Bond and Undertaking Law still applied (***HN51*** see Code Civ. Proc., § 995.020, subd. (a) ["The provisions of this chapter apply to a bond or undertaking executed, filed, posted, furnished, or otherwise given as security pursuant to any statute of this state, except to the extent the statute prescribes a different rule or is inconsistent"]), and ***HN52*** under that law, a "corporate surety" is simply another name for an "admitted surety insurer." (***HN53*** [***49] See § 995.120, subd. (b) ["For the purpose of application of this [**65] chapter to a bond given pursuant to any statute of this state, the phrase[] . . . 'corporate surety,' . . . mean[s] 'admitted surety insurer' as defined in this section"]. 14)

We agree with Rankin that if Red Sea had been an admitted surety insurer as required by section Code of Civil Procedure 995.310, it would have been required to have maintained certain capital and surplus and would have been regulated by the Insurance Commissioner. On the other hand, if the City had **[*628]** properly determined that Red Sea was not an admitted surety insurer as it had a duty to do, the City would have been required to reject Red Sea as surety and KLM as well unless and until the latter came up with a payment bond properly provided by an admitted surety insurer or by otherwise sufficient sureties. ***CA(1d)*** **(1d)** Therefore, because the City did not comply with its [***50] duty to determine whether Red Sea was an admitted surety insurer, its breach of that duty proximately resulted in Rankin's injuries, i.e., nonpayment of the remainder due under its subcontract with KLM.

III.

Immunity

CA(9) **(9)** The next question is whether the City is entitled to any statutory immunity. Although the City refers to ***HN54*** Government Code section 815, subdivision (b), 15 that section only states that the City is entitled to any immunity set forth by statute. The section itself does not provide the City with immunity. The City has not cited any other statutory provision and our own research has failed to disclose any statute under which the City may be entitled to immunity.

The closest immunities we have found are ***HN55*** [***51] those that assertedly insulate a public entity from liability for damages caused by any activity related to the failure to enforce a law and/or to the granting or revoking, or refusal to grant or revoke, a license, permit, or other authorization. (Gov. Code, §§ 818.2, 16 818.4. 17) However, our Supreme Court has held that these immunities were intended to confer immunity only in connection with discretionary activities, and not in connection with mandatory duties that cannot be ignored. (*Morris v. County of Marin* (1977) 18 Cal. 3d 901, 911-917 [136 Cal. Rptr. 251, 559 P.2d 606] [no immunity under Gov. Code, §§ 818.2 and 818.4 where county violated mandatory duty under Lab. Code, § 3800 to require county, before issuing building permit, to ascertain that each application for building permit carries workers' compensation insurance]; see also *Trewin v. State of California* (1984) 150 Cal. App. 3d 975 [198 Cal. Rptr. 263, 41 A.L.R.4th 104] [no immunity under Gov. Code, § 818.4 where Department of Motor Vehicles **[*629]** [***52] violated mandatory duty to refrain from issuing or renewing driver's license to person who department has determined cannot safely operate vehicle]; *Young v. City of Inglewood* (1979) 92 Cal. App. 3d 437 [154 Cal. Rptr. 724] [no immunity under Gov. Code, § 818.4 where city violated mandatory duty to ensure that recipient of building permit was duly licensed contractor]; *Elson v. Public Utilities Commission* (1975) 51 Cal. App. 3d 577, 580-582 [124 Cal. Rptr. 305] [no immunity under Gov. Code, § 818.4 where commission violated mandatory duty to revoke license of [**66] bus company that did not maintain liability insurance]; *Elton v. County of Orange* (1970) 3 Cal. App. 3d 1053 [84 Cal. Rptr. 27] [no immunity under Gov. Code, §§ 818.2 and 818.4 where county violated mandatory duty under state regulations to inspect conditions in foster home].) Application of Government Code section 818.2 or 818.4 immunity to mandatory liability under Government Code section 815.6 [***53] would, in words of the *Elton* court, "completely eviscerate" section 815.6. (*Elton*, at p. 1059 [referring to Gov. Code, § 818.2 immunity].)

[***54] Having failed to find any statutory basis for granting the City immunity from its failure to discharge its mandatory duties, we must conclude the City is not entitled to immunity.

IV.

Attorney Fees

EXHIBIT [D]–4593

As a final matter, we address the issue of attorney fees for the underlying action. ***HN58*** California follows the "American" rule whereby each party is to bear its own attorney fees in litigation, unless otherwise provided by contract or statute. (*Pacific Custom Pools, Inc. v. Turner Construction Co.* (2000) 79 Cal. App. 4th 1254, 1267 [94 Cal. Rptr. 2d 756]; Code Civ. Proc., § 1021.) Rankin asserts it is entitled to attorney fees under Civil Code sections 3248 and 3250.

CA(10) **(10)** ***HN59*** Section 3248, subdivision (b) requires a payment bond to include a provision for attorney fees. The required clause provides for an award of attorney fees "in case suit is brought upon the bond." The subject bond in this case included the [***55] required provision.

HN60 Section 3250 in turn provides: "The filing of a stop notice is not a condition precedent to the maintenance of an action against the surety or sureties on the payment bond. An action on the payment bond may be maintained separately from and without the filing of an action against the public entity by whom the contract was awarded or any officer thereof. In any action, the court shall award to the prevailing party a reasonable attorney's fee, to be taxed as costs."

[*630] The City maintains that sections 3248 and 3250 pertain to an action on a bond and while the present action is an action on a bond as against the contractor and the insurer, it is not an action on a bond as against the City. Rather, the action against the City is for its negligent failure to perform a mandatory duty.

We agree. Section 3248 clearly requires the bond to contain a provision for attorney fees when suit is brought upon the bond. The reference in section 3250 to fees "in any action" refers, in our view, to any action on the bond, as described in the preceding sentence. The action [***56] here was like the separate action referred to in the preceding sentence, and it was not an action on the bond, or an action to enforce payment of the bond. Instead, as the City contends, it is in the nature of a tort action against the City for failure to perform a mandatory duty. Accordingly, Rankin is not entitled to recover its attorney fees.

V.

DISPOSITION

The judgment is reversed. Rankin is to recover its costs on appeal.

Ramirez, P. J., and Gaut, J., concurred.

Footnotes

1 All further statutory references are to the Civil Code unless otherwise indicated.

2 Corporations Code section 2104 declares, in pertinent part, that "Any foreign lending institution which has not qualified to do business in this state and which engages in any of the activities set forth in subdivision (d) of Section 191 shall be considered by such activities to have appointed the Secretary of State as its agent for service of process for any action arising out of any such activities, and, on or before June 30th of each year, shall file a statement showing the address to which any notice or process may be sent in the manner and with the effect provided in Section 2111."

3 KLM appeared in propria persona but did not participate in any pretrial proceedings or respond to Rankin's discovery requests; on April 8, 1998, summary judgment was entered against KLM. Red Sea also appeared in propria persona (by its president, Mr. Pesnell) and also did not participate in any pretrial proceedings or respond to Rankin's discovery requests; on Rankin's motion, Red Sea's answer was stricken on the ground that a corporation cannot appear in propria persona. Mr. Klimow was dismissed from the action on April 15, 1998.

4 Under Government Code section 815, subdivision (b), ***HN1*** "The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person."

5 However, as recently explained by our Supreme Court in *Haggis, supra*, 22 Cal. 4th 490, 499-500, ***HN2*** "liability under section 815.6 [does not] require[] that the enactment establishing a mandatory duty *itself* manifest an intent to create a private right of action . . . . When an enactment establishes a mandatory governmental duty and is designed to protect against the particular kind of injury the plaintiff suffered, section 815.6 provides that the public entity 'is liable' for an injury proximately caused by its negligent failure to discharge the duty. *It is section 815.6, not the predicate enactment, that creates the private right of action.* If the predicate enactment is of a type that supplies the elements of liability under section 815.6--if it places the public entity under an obligatory duty to act or refrain from acting, with the purpose of preventing the specific type of injury that occurred--then liability lies against the agency under section 815.6, regardless of whether private recovery liability would have been permitted, in the absence of section 815.6, under the predicate enactment alone. [Citation.]

"[To require that the legislative body enacting the predicate law must have intended to create a private right of action] would reduce section 815.6 to a virtual nullity and, with regard to local enactments, would have the bizarre effect of placing with *local* governmental

entities the decision whether they will be liable or immune under *state* law. We have previously rejected the notion that ***HN8*** a local government can, by its own ordinance, exempt itself from liability under the state's Tort Claims Act, of which section 815.6 is a part. [Citation.]" (Original italics, fn. omitted; see also *id.*, at p. 500, fn. 2 [disapproving Court of Appeal opinions, including *Zolin v. Superior Court* (1993) 19 Cal. App. 4th 1157, 1164-1166 [23 Cal. Rptr. 2d 871] and *State of California v. Superior Court* (1992) 8 Cal. App. 4th 954, 958 [10 Cal. Rptr. 2d 527], to the extent they hold to the contrary].)

6 Section 3248 was amended in 1998 (Stats. 1998, ch. 857, § 1). ***HN14*** The amendment provides that it applies only to contracts entered into on or after January 1, 1999. (*Id.*, ch. 857, § 14.) Because the matter arose under the prior version, all references to section 3248 will be to the text applicable at that time, that is, as amended by Statutes 1982, chapter 517, section 84, page 2329.

7 The contract entered into between KLM and the City contemplated construction of the City's project for the amount of $ 238,280.

8 ***HN16*** Under section 3248, subdivision (a)(1), the payment bond was required to be not less than "[o]ne hundred percent of the total amount payable by the terms of the contract . . . ."

9 See Code of Civil Procedure section 995.930, subdivision (c): ***HN21*** "If no objection is made within the time required by statute, the beneficiary is deemed to have waived all objections except upon a showing of good cause for failure to make the objection within the time required by statute or of changed circumstances."

10 ***HN32*** An admitted surety insurer is defined in Code of Civil Procedure section 995.120 as "(a) . . . a corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code. [P] (b) For the purpose of application of this chapter to a bond given pursuant to any statute of this state, the phrases 'admitted surety insurer,' 'authorized surety company,' 'bonding company,' 'corporate surety,' and comparable phrases used in the statute mean 'admitted surety insurer' as defined in this section."

11 The documents required to be submitted under Code of Civil Procedure section 995.660, subdivision (a) are: "(1) The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond to do so, within 10 calendar days of the insurer's receipt of a request to submit the instrument.

"(2) A certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner, within 10 calendar days of the insurer's receipt of a request to submit the copy.

"(3) A certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted, within 10 calendar days of the insurer's receipt of the certificate.

"(4) Copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, within 10 calendar days of the insurer's receipt of a request to submit the statements."

Code of Civil Procedure section 995.660, ***HN37*** subdivision (b) provides that "[i]f the admitted surety insurer complies with subdivision (a), and if it appears that the bond was duly executed, that the insurer is authorized to transact surety insurance in the state, and that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond, the insurer is sufficient and shall be accepted or approved as surety on the bond, subject to Section 12090 of the Insurance Code."

12 We grant the Insurance Commissioner's request that we take judicial notice of its official Web site.

13 (See Historical and Statutory Notes, 11A West's Ann. Civil Code (1993 ed.) foll. § 3247, p. 502.)

14 See footnote 10, *ante*, for the definition of an "admitted surety insurer."

15 For the text of Government Code section 815, subdivision (b), see footnote 4, *ante*.

16 Government Code section 818.2 provides: ***HN56*** "A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law."

17 Government Code section 818.4 provides: HN57 "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked."

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November 3, 2010, Filed

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Reporter

190 Cal. App. 4th 801 * | 118 Cal. Rptr. 3d 707 ** | 2010 Cal. App. LEXIS 2041 ***

YVETTE LUJANO, a Minor, etc., Plaintiff and Appellant, v. COUNTY OF SANTA BARBARA et al., Defendants and Respondents.

Subsequent History: [***1] The Publication Status of this Document has been Changed by the Court from Unpublished to Published December 3, 2010.
Modified and rehearing denied by Lujano v. County of Santa Barbara, 2010 Cal. App. LEXIS 2174 (Cal. App. 2d Dist., Dec. 30, 2010)
Time for Granting or Denying Review Extended Lujano (Yvette) v. County of Santa Barbara, 2011 Cal. LEXIS 2513 (Cal., Mar. 1, 2011)
Review denied by Lujano v. County of Santa Barbara, 2011 Cal. LEXIS 2704 (Cal., Mar. 16, 2011)

Prior History: Superior Court of Santa Barbara County, No. 1244546, Denise de Bellefeuille, Judge.

Core Terms

arrest, excessive force, summary judgment, arm, favorable termination, informal probation, right arm, handcuffing, cause of action, malicious, invalidated, juvenile, rights, wrist

Case Summary

Procedural Posture
Plaintiff claimant appealed a summary judgment from the Superior Court of Santa Barbara County (California), which ruled that defendants, a county and two of its sheriff's deputies, had no liability on her complaint for false arrest and use of excessive force.

Overview
The claimant, a minor, was arrested for obstructing an investigation after one of the deputies warned her. The other deputy began to handcuff her while holding her left wrist. Another police officer who was not a county employee grabbed her right arm. She later complained of pain and was treated for a broken right arm. The charge of obstructing an investigation was resolved by informal probation under Welf. & Inst. Code, § 654. The trial court found that there was probable cause to arrest

the claimant, that the deputies used reasonable force to take her into custody and were entitled to qualified immunity, and that the county could not be liable under either 42 U.S.C. § 1983 or state law because neither deputy violated her rights. The court held that the claimant's acceptance of informal probation was not a favorable termination allowing for civil tort liability in a § 1983 action; thus, her claim for civil damages arising from her arrest was barred. Moreover, the deputy who warned her could not be liable because he did not participate in the arrest, and there were no facts showing that the deputy who held her left wrist knew or should have known of the injury to her right arm.

Outcome
The court affirmed the judgment of the trial court.

▼ LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment ▾ > Entitlement as Matter of Law ▾ > General Overview ▾
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HN1 **Summary Judgment, Entitlement as Matter of Law**
A party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. A defendant satisfies this burden by showing one or more elements of the cause of action in question cannot be established, or that there is a complete defense to that cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. In determining whether these burdens have been met, an appellate court reviews the record de novo. More like this Headnote

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Civil Procedure > Appeals ▾ > Summary Judgment Review ▾ > Standards of Review ▾

HN2 **Summary Judgment Review, Standards of Review**
As a corollary of the de novo review standard, an appellate court may affirm a summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court. More like this Headnote

Shepardize® - Narrow by this Headnote (5)

Civil Rights Law > ... > Scope ▾ > Law Enforcement Officials ▾ > Excessive Force ▾

HN3 **Law Enforcement Officials, Excessive Force**
A plaintiff cannot maintain a 42 U.S.C. § 1983 civil rights claim for excessive force absent proof that her conviction has been invalidated by appeal or other proceeding. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Civil Rights Law > ... > Scope ▾ > Law Enforcement Officials ▾ > General Overview ▾

HN4 **Scope, Law Enforcement Officials**
A 42 U.S.C. § 1983 claim calling into question the lawfulness of a plaintiff's conviction or confinement is not cognizable until the conviction or confinement has been invalidated. Case law has analogized a § 1983 claim in such circumstances to the common law cause of action for malicious prosecution, which similarly includes the termination of the prior criminal proceeding in favor of the accused as an element of the cause of action. This requirement avoids parallel litigation over the issues of probable cause and guilt, and it precludes the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction. Furthermore, to permit a convicted criminal defendant to proceed with a malicious prosecution claim would permit a collateral attack on the conviction through the vehicle of a civil suit. More like this Headnote

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Civil Rights Law > ... > Scope > Law Enforcement Officials > General Overview

HN5 Scope, Law Enforcement Officials
The hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to 42 U.S.C. § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied to actions for malicious prosecution. Thus, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus. More like this Headnote

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Criminal Law & Procedure > Juvenile Offenders > Sentencing > Sentencing Alternatives
Family Law > Delinquency & Dependency > Delinquency Proceedings

HN6 Sentencing, Sentencing Alternatives
Welf. & Inst. Code, § 654, authorizes a probation officer to place a minor on a program of informal supervision if, after investigation of an application for a petition to make a minor a ward of the court under Welf. & Inst. Code, § 602, the officer concludes that the minor is or will soon be within the jurisdiction of the juvenile court. The juvenile court has jurisdiction under § 602 when a minor violates a law defining a crime. The alternative to informal probation under § 654 is to file court proceedings. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Civil Rights Law > ... > Scope > Law Enforcement Officials > General Overview
Criminal Law & Procedure > Juvenile Offenders > Sentencing > Sentencing Alternatives
Family Law > Delinquency & Dependency > Delinquency Proceedings

HN7 Scope, Law Enforcement Officials
Accepting informal probation under Welf. & Inst. Code, § 654, is not a favorable termination allowing for civil tort liability in an action brought under 42 U.S.C. § 1983. More like this Headnote

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Civil Rights Law > ... > Scope > Law Enforcement Officials > Excessive Force

HN8 Law Enforcement Officials, Excessive Force
Case law has unequivocally rejected the idea that mere presence at a search or membership in a group, without personal involvement in and a causal connection to the unlawful act, can create liability under 42 U.S.C. § 1983. An officer cannot be liable for excessive force unless he had a realistic opportunity to intercede. An officer's duty to intervene does not arise until a person's constitutional rights are being violated in the officer's presence and there must be sufficient time to do so. A claim of excessive force is analyzed under an analysis that requires a careful balancing of the nature and quality of the intrusion on a person's liberty with the countervailing governmental interests at stake to determine whether the use of force was objectively reasonable under the circumstances. More like this Headnote

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Civil Rights Law > ... > Section 1983 Actions > Elements > General Overview

HN9 Section 1983 Actions, Elements
The Ninth Circuit has rejected the team effort standard that allows the jury to lump all the defendants together, rather than require it to base each individual's liability under 42 U.S.C. § 1983 on his own conduct. More like this Headnote

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▼ Headnotes/Summary

Summary

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court granted summary judgment to a county and two of its sheriff's deputies on a complaint for false arrest and use of excessive force. The claimant, a minor, was arrested for obstructing an investigation after one of the deputies warned her. The other deputy began to handcuff her while holding her left wrist. Another police officer who was not a county employee grabbed her right arm. She later complained of pain and was treated for a broken right arm. The charge of obstructing an investigation was resolved by informal probation under Welf. & Inst. Code, § 654. The trial court found that there was probable cause to arrest the claimant, that the deputies used reasonable force to take her into custody and were entitled to qualified immunity, and that the county could not be liable under either 42 U.S.C. § 1983 or state law because neither deputy violated her rights. (Superior Court of Santa Barbara County, No. 1244546, Denise de Bellefeuille ▾, Judge.)

The Court of Appeal affirmed, holding that the claimant's acceptance of informal probation was not a favorable termination allowing for civil tort liability in a § 1983 action; thus, her claim for civil damages arising from her arrest was barred. Moreover, the deputy who warned her could not be liable because he did not participate in the arrest, and there were no facts showing that the deputy who held her left wrist knew or should have known of the injury to her right arm. Having elected to proceed under Welf. & Inst. Code, § 654, having submitted to the power of the state and its programs for counseling and education, and having obtained a shield to further prosecution upon successful completion of the program, the claimant could not complain that she was barred from seeking civil redress under § 1983. Her option was to deny her culpability and put the state to its proof. What she could not do was take advantage of the leniency of the state and thereafter pursue a civil claim for damages. (Opinion by Perren ▾, J., with Yegan ▾, Acting P. J., and Coffee ▾, J., concurring.) **[*802]**

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Civil Rights § 7.1—Federal Civil Rights Statute—Excessive Force—Favorable Termination Rule.**

A plaintiff cannot maintain a 42 U.S.C. § 1983 civil rights claim for excessive force absent proof that the plaintiff's conviction has been invalidated by appeal or other proceeding.

CA(2) **(2) Civil Rights § 7.1—Federal Civil Rights Statute—Claims Asserting Unlawful Conviction or Confinement—Favorable Termination Rule.**

A 42 U.S.C. § 1983 claim calling into question the lawfulness of a plaintiff's conviction or confinement is not cognizable until the conviction or confinement has been invalidated. Case law has analogized a § 1983 claim in such circumstances to the common law cause of action for malicious prosecution, which similarly includes the termination of the prior criminal proceeding in favor of the accused as an element of the cause of action. This requirement avoids parallel litigation over the issues of probable cause and guilt, and it precludes the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction. Furthermore, to permit a convicted criminal defendant to proceed with a malicious prosecution claim would permit a collateral attack on the conviction through the vehicle of a civil suit.

CA(3) **(3) Civil Rights § 7.1—Federal Civil Rights Statute—Claims Asserting Unlawful Conviction or Confinement—Favorable Termination Rule.**

The hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to 42 U.S.C. § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of the plaintiff's conviction or confinement, just as it has always applied to actions for malicious prosecution. Thus, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus.

CA(4) **(4) Delinquent Children § 107—Dispositions—Informal Probation.**

Welf. & Inst. Code, § 654, authorizes a probation officer to place a minor on a program of informal supervision if, after investigation of an application for a petition to make a minor a ward of the court under Welf. & Inst. Code, § 602, the officer concludes that the minor is or will soon be within **[*803]** the jurisdiction of the juvenile court. The juvenile court has jurisdiction under § 602 when a minor violates a law defining a crime. The alternative to informal probation under § 654 is to file court proceedings.

CA(5) **(5) Civil Rights § 7.1—Federal Civil Rights Statute—Favorable Termination Rule—Informal Probation.**

Accepting informal probation under Welf. & Inst. Code, § 654, is not a favorable termination allowing for civil tort liability in an action brought under 42 U.S.C. § 1983.

CA(6) **(6) Civil Rights § 7.1—Federal Civil Rights Statute—Favorable Termination Rule—Informal Probation.**

A minor's acceptance of informal probation in resolving a juvenile court action was not a favorable termination of that action, and it barred her 42 U.S.C. § 1983 claim for civil damages arising from her arrest.

[Cal. Forms of Pleading and Practice (2010) ch. 113, Civil Rights: The Post-Civil War Civil Rights Statutes, § 113.14; 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, §§ 825, 845.]

CA(7) **(7) Civil Rights § 7.1—Federal Civil Rights Statute—Excessive Force—Personal Involvement Required for Liability.**

Case law has unequivocally rejected the idea that mere presence at a search or membership in a group, without personal involvement in and a causal connection to the unlawful act, can create liability under 42 U.S.C. § 1983. An officer cannot be liable for excessive force unless he or she had a realistic opportunity to intercede. An officer's duty to intervene does not arise until a person's constitutional rights are being violated in the officer's presence and there must be sufficient time to do so. A claim of excessive force is analyzed under an analysis that requires a careful balancing of the nature and quality of the intrusion on a person's liberty with the countervailing governmental interests at stake to determine whether the use of force was objectively reasonable under the circumstances.

CA(8) **(8) Civil Rights § 7.1—Federal Civil Rights Statute—Liability Based on Individual Conduct.**

The Ninth Circuit has rejected the team effort standard that allows the jury to lump all the defendants together, rather than require it to base each individual's liability under 42 U.S.C. § 1983 on his or her own conduct.

Counsel: Esparza Law Group and Luis Esparza for Plaintiff and Appellant.

Dennis Marshall, County Counsel, and Michael M. Youngdahl, Deputy County Counsel, for Defendants and Respondents.

Judges: Opinion by Perren, J., with Yegan, Acting P. J., and Coffee, J., concurring.

Opinion by: Perren **[*804]**

Opinion

[**708] **PERREN, J.**—Yvette Lujano, through her guardian ad litem, Maria del Carmen Lujano, appeals an order granting summary judgment to the County of Santa Barbara (County) and two Santa Barbara County Sheriff's Department deputies on her complaint for false arrest and use of excessive force. We affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On June 2, 2006, respondents Bryan Munana and Mark Ward, along with a third sheriff's deputy and two Regents of the University of California (Regents) police [**709] officers were dispatched to an apartment building in Isla Vista in response to a call by Lujano's mother that Lujano had been beaten up in a fight with several other girls.

When the deputies arrived, Lujano was standing outside the building with her [***2] cousin, Susana, and her brother, Rufino. Rufino was wearing a white tank top with a red stain on the front that Deputy Munana thought was blood. As the officers approached them, the three individuals turned around and walked down a passage between the apartment buildings. Munana parked his vehicle and followed them. He saw Lujano and Susana enter Lujano's residence. Rufino stopped outside the residence when commanded to do so by Munana. As Munana was talking to Rufino, Lujano stepped out of the apartment and protested Rufino's detention in a loud, angry voice. Lujano's mother arrived and joined her daughter in protesting Rufino's detention. A crowd, including gang members, formed to watch the confrontation.

Deputy Ward arrived and separated Lujano from her brother by walking her a few steps to the side without touching her. Ward told Lujano they were conducting an investigation and that she was preventing them from doing their jobs. He warned her she would be arrested if she continued to obstruct the investigation. Lujano failed to heed the warning, and Munana arrested Lujano for obstructing the investigation. (Pen. Code, § 148.)

Munana ordered Lujano to place her hands behind her back. [***3] At the same time, he reached for her left wrist to guide it behind her for handcuffing and to move her further away from Rufino. Lujano attempted to pull her hands away from Munana, but he was able to grasp her left wrist. Lujano continued to resist, and Munana briefly lost his grip on her wrist. University of California Police Officer Seth Clark grabbed Lujano's right arm, and Munana then regained control of her left arm. The officers pushed Lujano's arms behind her back for handcuffing.

[*805]

During the process of handcuffing, Lujano's hair caught on one of the officer's arms. Lujano attempted to release her hair by turning and pulling her head and raising her right arm. Munana and Clark thought Lujano was attempting to escape. Clark pulled Lujano's right arm toward the lower portion of her back. Munana continued to hold Lujano's left arm and secured the handcuffs. Once in handcuffs, Lujano complained of pain in her right hand and upper arm. Ward was not involved in making the arrest.

Munana drove Lujano to the Isla Vista patrol station and then to Goleta Valley Hospital where she was diagnosed and treated for a broken right arm. She was booked into juvenile hall that evening on the Penal Code section 148 [***4] charge. The charge was resolved by Lujano's agreement to six months of informal probation under Welfare and Institutions Code section 654.

Lujano filed a complaint based on the arrest against the County, Munana and Ward, and against the Regents and Clark. She alleged state law and 42 United States Code section 1983 (section 1983) claims for false arrest, battery, negligence, intentional infliction of emotional distress, excessive force, and "acts or omissions of public employees."[1]

All parties moved for summary judgment or in the alternative for summary [**710] adjudication. The court granted the County defendants' motion for summary judgment. The court reasoned: "[S]ince the underlying criminal charge did not terminate in [Lujano's] favor, a favorable judgment in this action would be inconsistent with her agreement to probation to dispose of that criminal matter (*Heck v. Humphrey* (1994) 512 U.S. 477 [129 L. Ed. 2d 383, 114 S. Ct. 2364]) and ... there was probable cause to arrest her and the force used to take her into custody was reasonable." The court also ruled that Munana and Ward were entitled to qualified immunity from section 1983 liability, finding that "Deputy Munana merely grasped [Lujano's] left wrist to handcuff her. [***5] Deputy Ward did not even participate in the arrest." The court concluded that the County could not be liable under either section 1983 or state law because neither of the individual defendants had violated Lujano's rights. [2]

On appeal, Lujano asserts that granting summary judgment was error as to the excessive force claim because a jury could infer that Munana caused **[*806]** injury to Lujano's right arm while grabbing her left arm and Ward may be liable because he failed to prevent a fellow officer from physically assaulting Lujano.

DISCUSSION

The Trial Court Did Not Err in Granting Summary Judgment.

Standard of Review

HN1 "A 'party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he ... is entitled to judgment as a matter of law.' [Citation.] A defendant satisfies this burden by showing ' "one or more elements of" the "cause of action" in question "cannot be established," or that "there is a complete defense" ' to that cause [***6] of action. [Citation.] ' "Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show that a triable

issue of one or more material facts exists as to that cause of action or a defense thereto." ' [Citation.] ... In determining whether these burdens have been met, we review the record de novo. [Citation.]" (*Susag v. City of Lake Forest* (2002) 94 Cal.App.4th 1401, 1407–1408 [115 Cal. Rptr. 2d 269].)

HN2 As " 'a corollary of the de novo review standard, the appellate court may affirm a summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court. [Citation.]' [Citation.]" (*California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22 [4 Cal. Rptr. 3d 785].)

Lack of Favorable Termination Bars Claim

CA(1) **(1)** In *Yount v. City of Sacramento* (2008) 43 Cal.4th 885 [76 Cal. Rptr. 3d 787, 183 P.3d 471] (*Yount*), our Supreme Court held, consistent with *Heck v. Humphrey, supra*, 512 U.S. 477 (*Heck*), that ***HN3*** a plaintiff cannot maintain a section 1983 civil rights claim for excessive force absent proof that her conviction under Penal Code section 148, subdivision (a), has been invalidated by appeal or other [**711] proceeding. 3 *Yount* applied this rule to a no contest plea. (*Yount, supra*, at pp. 894–895.)

[*807]

CA(2) **(2)** In reaching its decision, our Supreme Court noted that the favorable termination requirement of *Heck* is based on a similar requirement in civil malicious prosecution actions. It stated: "Our discussion begins with *Heck* ... which first established that ***HN4*** a section 1983 claim calling into question the lawfulness of a plaintiff's conviction or confinement is not cognizable until the conviction or confinement has been invalidated. [Citation.] *Heck* analogized a section 1983 claim in such circumstances to the common law cause of action for malicious prosecution, which similarly includes [***8] the termination of the prior criminal proceeding in favor of the accused as an element of the cause of action. 'This requirement "avoids parallel litigation over the issues of probable cause and guilt ... and it precludes the possibility of the claimant [*sic*] succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction." [Citation.] Furthermore, "to permit a convicted criminal defendant to proceed with a malicious prosecution claim would permit a collateral attack on the conviction through the vehicle of a civil suit." [Citation.] This Court has long expressed similar concerns for finality and consistency and has generally declined to expand opportunities for collateral attack [citations]. ***CA(3)*** **(3)** We think ***HN5*** the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to [section] 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it has always applied [***9] to actions for malicious prosecution.' [Citation.] Thus, 'in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a [section] 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus [citation].' [Citation.]" (*Yount, supra*, 43 Cal.4th at pp. 893–894, quoting *Heck, supra*, 512 U.S. at pp. 483–487.)

CA(4) **(4)** Here, Lujano avoided being prosecuted on the criminal charge by agreeing to six months' informal probation under section 654. ***HN6*** That section authorizes a probation officer to place a minor on a program of informal supervision if, "after investigation of an application for a petition" to make a minor a ward of the court under section 602, the officer concludes that the minor is or will soon be within the jurisdiction of the juvenile court. The **[*808]** juvenile court has jurisdiction under section 602 [***10] [**712] when a minor violates a law defining a crime. The alternative to informal probation under section 654 is to file court proceedings. (*Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 746 [187 Cal. Rptr. 144, 653 P.2d 648].)

HN7 ***CA(5)*** **(5)** Accepting informal probation is not a favorable termination allowing for civil tort liability. (See *Pattiz v. Minye* (1998) 61 Cal.App.4th 822, 826 [71 Cal. Rptr. 2d 802] [Favorable termination of a criminal case sufficient to support a malicious prosecution cause of action must reflect plaintiff's innocence of the misconduct. If the resolution leaves some doubt concerning plaintiff's innocence, it is not a favorable termination.]; *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 881 [6 Cal. Rptr. 2d 151] [For a termination to be favorable it must reflect " ' "the opinion of someone, either the trial court or the prosecuting party, that the action lacked merit or if pursued would result in a decision in favor of the defendant." ' "]; see also *Nuno v. County of San Bernardino* (C.D.Cal. 1999) 58 F.Supp.2d 1127, 1136–1137 ["Absent an allegation in the [complaint] that the plaintiff's [Penal Code] section 148 conviction has been reversed on appeal, expunged by executive order, invalidated by a state tribunal or is [***11] called into question by a ... writ of habeas corpus, plaintiff simply has no section 1983 cause of action ... ."]; *Susag v. City of Lake Forest, supra*, 94 Cal.App.4th at p. 1411 [" 'If resolution of the underlying action leaves a residue of doubt about the plaintiff's innocence or liability, it is not a favorable termination sufficient to support a cause of action for malicious prosecution.' "].)

CA(6) **(6)** Lujano's acceptance of informal probation in resolving the juvenile court action was not a "favorable termination" of that action, and bars her claim for civil damages arising from her arrest. 4 The *Heck* rule disposes of Lujano's state law claims as well. (*Yount, supra*, 43 Cal.4th at p. 902.) 5

EXHIBIT [D]–4603

In her petition for rehearing, Lujano asserts that under our analysis a juvenile who accepts informal probation under section 654 "could never prevail in a lawsuit claiming that excessive force was used to effectuate a lawful arrest." This conclusion posits three possible outcomes when management under section 654 is considered: (1) proceed with section 654 management, (2) file a section 602 petition, or (3) close the investigation without further action. There is, however, a fourth option: The minor and the minor's "parent or guardian" may refuse to accept informal probation. (§ 654.) The **[*809]** probation officer would then determine whether to seek the filing of a petition or close the file.[6] (§ 653.5.)

Lujano accepted section 654 management. In doing so, she consented to participate [**713] in counseling or education programs as well as, inter alia, temporary placement in shelter care facilities should that be merited. (§ 654, subd. (a).) Moreover, successful completion of the specific program or programs delineated under section 654 would result in a bar to further prosecution for the offense. (§ 654.2, subd. (a); Cal. Rules of Court, rule 5.514(e)(2).) Having elected to proceed under section 654, having submitted to the power of the state and its programs for counseling and education, and having obtained a shield to further prosecution upon successful completion of the program, Lujano may not now complain that she is barred from seeking civil redress under section 1983. Her option was to deny her culpability and put the state to its proof. (*Yount v. City of Sacramento, supra*, 43 Cal.4th at p. 897.) What she may not do is take advantage of the leniency of the state and thereafter pursue a civil claim for damages.

No Triable Issue of Fact as to Police Officer Liability for Excessive Force

Our analysis disposes of Lujano's excessive force claims as a matter of law. Nonetheless, [***12] we briefly address her contention that summary judgment was improperly granted because a jury could find that deputies Ward and Munana used excessive force in arresting her. The contention is without merit. Deputy Ward did not participate in the arrest.

HN8 ***CA(7)*** **(7)** In *Jones v. Williams* (9th Cir. 2002) 297 F.3d 930, 939, the court unequivocally "reject[ed] the idea that mere presence at a search or membership in a group, without personal involvement in and a causal connection to the unlawful act, can create liability under section 1983." (See also *Chuman v. Wright* (9th Cir. 1996) 76 F.3d 292, 294 [being a mere bystander to colleagues' conduct insufficient to support § 1983 liability].) Ward cannot be liable for excessive force unless he had a realistic opportunity to intercede. (*Ibid.*)

An officer's duty to intervene does not arise until a person's constitutional rights are being violated in the officer's presence and there must be sufficient time to do so. (*O'Neill v. Krzeminski* (2d Cir. 1988) 839 F.2d 9, 11.) A claim of excessive force is analyzed under the framework set forth by the Supreme **[*810]** Court in *Graham v. Connor* (1989) 490 U.S. 386 [104 L. Ed. 2d 443, 109 S. Ct. 1865]. That analysis "requires a careful balancing of ' "the [***13] nature and quality of the intrusion [on a person's liberty with]" ' ... the countervailing governmental interests at stake" to determine whether the use of force was objectively reasonable under the circumstances. (*Id.* at p. 396.)

Here, there were no facts or circumstances which would have led Deputy Ward to believe that Lujano's constitutional rights were being violated. The undisputed evidence shows that the officers who arrested Lujano merely placed her arms behind her back for handcuffing, using the force necessary to restrain her when she resisted. Lujano did not indicate that her right arm had been injured until she was being driven to the police station. No reasonable trier of fact could find either that Deputy Ward knew that Lujano's constitutional rights were being violated by others or that he had a realistic opportunity to intercede to prevent the violation.

CA(8) **(8)** The undisputed facts show that Deputy Munana did no more than hold Lujano's left wrist and push her left arm behind her back for handcuffing. Without [**714] more, he cannot be liable for using excessive force. In *Chuman v. Wright, supra*, 76 F.3d at page 295, ***HN9*** the Ninth Circuit rejected "the 'team effort' standard [that] allows the jury [***14] to lump all the defendants together, rather than require it to base each individual's liability on his own conduct."

There are no facts that Deputy Munana did anything other than use the force necessary to restrain Lujano so that she could be handcuffed. There are no facts showing that he knew or should have known that her right arm had been injured during the arrest. Summary judgment was properly granted because Deputy Munana himself did not use excessive force in handcuffing Lujano.

The judgment is affirmed. Respondents shall recover costs on appeal.

Yegan, Acting P. J., and Coffee, J., concurred.

A petition for a rehearing was denied December 30, 2010, and on December 3, 2010, and December 30, 2010, the opinion was modified to read as printed above. Appellant's petition for review by the Supreme Court was denied March 16, 2011, S189731. Kennard, J., and Werdegar, J., were of the opinion that the petition should be granted.

Footnotes

1 All statutory references are to the Welfare and Institutions Code unless otherwise stated.

2 The trial court denied the Regents' and Clark's motion for summary judgment, while granting them summary adjudication on the state and federal law false arrest causes of action. They are not parties to this appeal.

3 In [***7] the trial court, Lujano's counsel agreed that *Heck* barred Lujano's excessive force claims. On appeal, Lujano makes no argument concerning the applicability and effect of *Heck* in her opening brief. She has not filed a reply brief countering respondents' arguments in this regard. For this reason alone, we may deem the issue abandoned. (*Spitler v. Children's Institute International* (1992) 11 Cal.App.4th 432, 442 [14 Cal. Rptr. 2d 197].) However, we have discretion to consider controlling questions of law on appeal whether raised by counsel or not. (*Myers Building Industries, Ltd. v. Interface Technology, Inc.* (1993) 13 Cal.App.4th 949, 957, fn. 3 [17 Cal. Rptr. 2d 242].)

4 In *Yount* the action went forward because the officers allegedly used deadly force (shooting) which was unjustified. There is no claim that such force was used in the instant matter.

5 Lujano makes no argument concerning the County's liability. We deem the point waived. (*Spitler v. Children's Institute International, supra*, 11 Cal.App.4th at p. 442.)

6 Lujano did not allege that any exception to the *Heck* rule applied and she did not request a *Heck* hearing to prove that the alleged excessive force was independent of the crime for which she was charged. (*Heck v. Humphrey, supra*, 512 U.S. 477; *Yount, supra*, 43 Cal.4th at pp. 895–896.)

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CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Basic Course Workbook Series

Student Materials

Learning Domain 2
Criminal Justice System
Version 6.4

EXHIBIT [D]–4606

Basic Course Workbook Series
Student Materials
Learning Domain 2
Criminal Justice System
Version 6.4

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THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.
Executive Director

LD 2: Criminal Justice System

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EXHIBIT [D]–4612

Preface

Introduction

Student workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course training requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student workbook elements

The following elements are included in each workbook:

- chapter contents, including a synopsis of key points,
- supplementary material, and
- a glossary of terms used in this workbook.

How to Use the Student Workbook

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning prior to classroom attendance, for test preparation, and for remedial training.

Workbook format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Preface and How to Use the Workbook, which provide an overview of how the workbook fits into the POST Instructional System and how it should be used.
2	Refer to the Chapter Synopsis at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary for a definition of important terms. The terms appear throughout the text and are bolded and underlined the first time they appear (e.g., **term**).

EXHIBIT [D]–4614

Chapter 1

Introduction to the Criminal Justice System

Overview

Learning need

To be effective leaders, peace officers must be aware of the constitutional rights of all individuals within the United States, regardless of citizenship status, and the role the criminal justice system has in protecting those rights.

Learning objectives

The following table identifies the learning objectives for this chapter

After completing study of this chapter, the student will be able to:	Objective ID
• Identify the freedoms and rights afforded to individuals under the U.S. Constitution, the Bill of Rights, and later amendments	2.01.1
• Identify how the U.S. Constitution amendments apply to the actions and conduct of peace officers	
- First Amendment	2.01.2
- Fourth Amendment	2.01.3
- Fifth Amendment	2.01.4
- Sixth Amendment	2.01.5
- Eighth Amendment	2.01.6
- Fourteenth Amendment	2.01.7
• Discuss the components and primary goals of the criminal justice system	2.01.8

Continued on next page

Overview, Continued

In this chapter

This chapter focuses on the constitutionally protected rights of individuals and how those rights apply to the criminal justice system. Refer to the table below for a specific topic.

Topic	See Page
Constitutionally Protected Rights	1-3
Criminal Justice System	1-13
Chapter Synopsis	1-15
Workbook Learning Activities	1-16

EXHIBIT [D]–4616

Constitutionally Protected Rights

Introduction

A **constitution** is a written document that embodies the basic laws of a nation or state. The U.S. Constitution as well as the California Constitution identifies the powers and duties of the government and the rights that are afforded to all individuals in our country or state.

U.S. constitution

The U.S. Constitution sets forth the highest law of the land which all public officials are bound by oath to enforce. It became effective in 1789 upon ratification by nine of the thirteen states (all remaining states ratified it by May 1790). Today the U.S. Constitution remains the longest lasting written constitution in the world.

The authors of the U.S. Constitution established this document "in order to form a more perfect Union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty."

Framework of government

The U.S. Constitution establishes the basic framework of government, dividing the lawmaking power among three branches of government. Each branch is separate and has the power to restrain the other branches.

The branches of government include the:

- executive branch
- legislative branch
- judicial branch

Continued on next page

EXHIBIT [D]–4617

Constitutionally Protected Rights, Continued

Bill of rights

Along with establishing the powers of government, the U.S. Constitution places limits on those powers. The original U.S. Constitution contained only a few provisions guaranteeing individual rights.

The first session of the U.S. Congress proposed ten **amendments** or changes to the constitution to further clarify the rights of individuals under the U.S. Constitution. These amendments, commonly referred to as the **Bill of Rights** were sent to the states and were ratified in December 1791.

Since that time additional amendments have been added to the U.S. Constitution. Today there are 27 amendments. The Bill of Rights and the later amendments limit the power of state and local governments as well as the federal government.

Ethics

The criminal justice system gives law enforcement two extraordinary powers:

- the power of arrest
- the power to use deadly force

The authority to do so does not come from the rule of an authoritarian dictator. Rather it comes from the will and consent of the people who put their trust in law enforcement to use that power with the utmost of care and restraint. This is why it is important to emphasize that peace officers do not confer "police powers" on themselves. These powers come to the criminal justice system from the people they serve.

Basic rights and freedoms

The basic rights and freedoms protected by the U.S. Constitution and its amendments apply to all individuals in the United States *regardless of citizenship*. The following table identifies a number of the freedoms and rights which cannot be taken away by the government.

Continued on next page

Constitutionally Protected Rights, Continued

Law enforcement and basic rights

Law enforcement officers are bound to protect the rights and freedoms of *all* individuals as guaranteed in the U.S. Constitution, Bill of Rights, and later amendments. By abiding by the principles of procedural justice, peace officers will ensure agreement with all Constitutional Amendments.

Six amendments have direct impact on peace officers' actions and conduct.

Amendment	Basic Rights and Freedoms
First	• Freedom of religion • Freedom of speech • Freedom of the press • Freedom of assembly • Right to petition the government for a redress of grievances
Fourth	• Freedom from unreasonable searches and seizures
Fifth	• Freedom from being tried twice for the same crime • Freedom from self-incrimination
Sixth	• Right to be told of charges when arrested • Right to a speedy trial • Right to a public trial by an impartial jury • Right to confront witnesses • Right to counsel
Eighth	• Freedom from excessive **bail** • Freedom from cruel and unusual punishments
Fourteenth	• Basic right of a defendant in a judicial proceeding • The requisites for trial (**due process**) • Right to equal protection of the laws

Continued on next page

EXHIBIT [D]–4619

Constitutionally Protected Rights, Continued

First amendment

Peace officers are required to ensure that a person's First Amendment rights are protected and enforced, by allowing individuals to speak freely, exercise their religious beliefs, and peaceably assemble. It is also the responsibility of peace officers to protect these individual rights against infringement by others.

Amendment I : Restrictions on Powers of Congress	
Text	"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the individual's Government for a redress of grievances."
Elements	• Separation of church and state • Government cannot endorse any religion • All individuals must be allowed to worship, or not worship, as they choose • All individuals have the right to freedom of expression of their ideas (i.e., freedom of speech, press, and assembly) • Individuals who feel they have been wronged have the right to petition the government to rectify the circumstances
Provisions	• The rights of free speech must be exercised reasonably. Individuals do not have the right to: - shout "fire!" in a crowded auditorium - scream or shout to the point of disturbing the peace - disturb an orderly assembly, a church service, or a session of the court - incite a riot - urge others to commit a crime - accost others in a public place with language likely to produce a violent response - falsely report the presence of an explosive device (bomb)

Continued on next page

Constitutionally Protected Rights, Continued

Fourth amendment

All peace officers must respect each individual's right to be secure in his or her home, papers, and belongings against unreasonable search and seizure. To protect those rights, officers must be aware of and abide by warrant requirements and related procedures which must be followed when obtaining a warrant.

Amendment IV - Searches, Seizures, and Warrants	
Text	"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."
Elements	• *Unreasonable* searches and seizures are not allowed • Search and arrest warrants must show *probable cause* and must specifically identify items or individuals to be searched or seized
Provisions	• The Fourth Amendment does *not* give individuals an *absolute right* to privacy; neither does it prohibit all searches • When performing a legal arrest, officers may thoroughly search a person along with that person's effects for any weapons and/or contraband without a warrant. Officers may also properly seize such items for use as evidence • An individual's home may not be used as a place of refuge for criminals • On fresh and immediate pursuit, officers may follow a criminal who has taken refuge in a house or building, and may force their way into the building without a warrant to make the arrest

NOTE: The provisions of the Fourth Amendment are discussed in greater detail in Learning Domain 16: *Search and Seizure.*

Continued on next page

Constitutionally Protected Rights, Continued

Fifth amendment

Peace officers need to understand the relationship between a person's right against self-incrimination and their responsibility to advise individuals of their right to remain silent when applicable.

Amendment V - Criminal Proceedings, Condemnation of Property	
Text	"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
Elements	• Protection against a second prosecution after acquittal or conviction (**double jeopardy**) • Protection against self-incrimination • Due process before legal actions
Provisions	• Individuals may not be tried for the same offense twice • Individuals cannot be compelled to testify against themselves at a criminal case • Individuals must be afforded due process of law before they can be deprived of life, liberty, or property

Continued on next page

Constitutionally Protected Rights, Continued

Sixth amendment

Officers must be aware of and respect the constitutional rights of all individuals concerning criminal procedure. The Sixth Amendment entitles a suspect to the assistance of counsel once adversary judicial proceedings have commenced. This right also affects an officer's ability to question a suspect and obtain admissible statements.

Amendment VI - Mode of Trial in Criminal Proceedings	
Text	"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."
Elements	• Individuals who have been accused of a crime have the right to: - a speedy and public trial by a jury - be informed of the accusations against them - confront their accusers - subpoena witnesses for their defense - have legal counsel
Provisions	• Any violation of the rights noted in this amendment may result in: - exclusion of evidence - dismissal of the case and/or - criminal liability to the officer or the officer's agency

NOTE: Peace officers should take care not to refer a defendant to any particular attorney, as this would be a conflict of interest.

Continued on next page

EXHIBIT [D]–4623

Constitutionally Protected Rights, Continued

Eighth amendment

The purpose of bail is to ensure the return of the suspect at subsequent proceedings. Unless the right to bail before trial is preserved, the presumption of innocence would lose its meaning.

When an assignment involves the supervision of prisoners, it becomes the officer's responsibility to safeguard all prisoners' rights to be protected from cruel and unusual punishment.

Amendment VIII - Bails, Fines, Punishments	
Text	"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
Elements	• Excessive bails and fines are not allowed • Punishment must be reasonable based on the crime
Provisions	• Defendants have a right to bail before conviction to permit the unhampered preparation of a defense • Bail serves to prevent the infliction of punishment prior to conviction • The courts have established limitations on what is acceptable punishment, thereby defining "cruel and unusual" punishment • Punishments of torture (such as drawing and quartering, disemboweling alive, beheading, public dissecting, and burning alive) and all others in the same line of unnecessary cruelty are forbidden by this amendment

NOTE: Prisoners can be informed of their rights but officers are not allowed to refer any prisoner to a particular bail agent.

Continued on next page

Constitutionally Protected Rights, Continued

Fourteenth amendment

The Fourteenth Amendment was added to the Bill of Rights in 1868 after the Civil War. It has led the way to ensuring that peace officers apply the law equally to all people regardless of race, creed, nationality, religious preference, national origin, wealth, or status.

Amendment XIV - Citizenship, Due Process, and Equal Protection	
Text	"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."
Elements	• No state may: - limit privileges or immunities of U.S. citizens - deny due process of the law to any person - deny equal protection of the law to any person
Provisions	• Persons protected under the U.S. Constitution cannot be denied life, freedom, or their property without a course of legal proceedings by the government justifying the action • Due process of the law begins at the point of the initial investigation • States may provide further rights not defined by the U.S Constitution

EXHIBIT [D]–4625

Criminal Justice System

Introduction

The criminal justice system is a complex structure through which individuals suspected of a crime are apprehended by a law enforcement component, accused and tried by a judicial component, and if convicted, punished by a corrections component.

Leadership

The criminal justice system can be frightening and frustrating to law-abiding community members. Court delays, testifying, cross-examination, and legal fees can all be viewed as indignities over and above the original victimization. Peace officers must act as leaders by helping others to understand and respect the processes designed to protect an individual's rights.

Components and primary goals

The criminal justice system is made up of three components:

- law enforcement
- judicial
- corrections

Each component has its own unique function, departments, and goals. For the criminal justice system as a whole to meet its major goals, each component must function together with the others as a *total system*, rather than as a collection of independent agencies and organizations.

Continued on next page

Components and primary goals (continued)

There are seven primary goals of the criminal justice system. Ideally, each should be considered equal; yet in reality, a particular goal may be considered more important by one component or individual within the criminal justice system.

The following table identifies the primary goals of the criminal justice system.

Goal	Additional Information
Guarantee Due Process	• Due process of the law is guaranteed by the U.S. and California Constitutions, overseen by the courts, and practiced daily by peace officers
Prevent Crime	• Crime prevention is more than the apprehension of offenders • Peace officer presence in the community and interactions with citizens also serves to prevent crime
Protect Life and Property	• Peace officers must be dedicated to protect and defend the members of their communities as well as those individuals' property
Uphold and Enforce the Law	• The law enforcement component of the justice system has the *primary* responsibility to uphold the law • The judiciary system, through rulings of the court, and the corrections component also play a role in enforcement

Continued on next page

Components and primary goals (continued)

Goal	Additional Information
Dispense Equal Justice	• The Fourteenth Amendment of the U.S. Constitution guarantees equal justice under the law to all persons • Individuals from each component of the criminal justice system must treat all persons equally, fairly, and with justice
Apprehend Offenders	• Apprehending offenders deprives them of their liberty and requires them to answer the criminal charges brought against them
Assure Victim's Rights	• In the effort to apprehend and deal with the criminal, the criminal justice system cannot overlook the victim • Victims must be made aware of their rights and of the services that are available to them

Chapter Synopsis

Learning need

To be effective leaders, peace officers must be aware of the constitutional rights of all individuals within the United States, regardless of citizenship status, and the role the criminal justice system has in protecting those rights.

Constitutionally protected rights [2.01.1]

The basic rights and freedoms protected by the U.S. Constitution and its amendments apply to all individuals in the United States *regardless of citizenship status*

Components and primary goals [2.01.8]

Procedural Justice (Voice, Neutrality, Respect, and Trustworthiness)

An approach to policing based o giving people the opportunity to tell their story, remaining neutral in the decision-making and behavior, treating people with respect, and explaining actions in a way that communicates caring for people's concerns to demonstrate trustworthiness.

The criminal justice system is made up of three components:

- law enforcement
- judicial
- corrections

There are seven primary goals of the criminal justice system:

- guarantee due process of the law
- prevent crime
- protect life and property
- uphold and enforce the law
- dispense equal justice
- apprehend offenders
- assure victims' rights

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. Specifically, whose rights are protected by the U.S. Constitution and its amendments? Would an illegal alien enjoy these protections? How about a person traveling in the country as a tourist?

2. List the three primary components of the criminal justice system. In your own words, describe how you think each component complements the others.

Continued on next page

Activity questions (continued)

3. Without looking back into the chapter, list as many of the primary goals of the criminal justice system as you can. Which one(s) do you most closely associate with your own reason(s) for pursuing a career in law enforcement? Explain your answer.

4. A woman disrupted a community meeting by loudly shouting unflattering comments about the town's mayor. When the woman was removed from the meeting by peace officers, she shouted, "You're violating my constitutional rights! I have a right to my opinions! I have a right to be heard!" Is her statement correct? Explain the rationale for your answer.

Continued on next page

Activity questions (continued)

5. Match the rights and privileges in the left column with the appropriate Amendment in the right column.

Right/Freedom	Amendment
a. Freedom from self-incrimination	_____ First Amendment
b. Freedom from excessive bail	
c. Freedom of the press	_____ Fourth Amendment
d. Right to equal protection of the law	_____ Fifth Amendment
e. Freedom from unreasonable searches and seizures	_____ Sixth Amendment
f. Right to a public trial by an impartial jury	_____ Eighth Amendment
g. Freedom of speech	_____ Fourteenth Amendment
h. Right to due process	
i. Right to be told of charges when arrested	
j. Right to counsel	
k. Freedom from cruel and unusual punishment	

Chapter 2

Law Enforcement

Overview

Learning need

Peace officers must realize that law enforcement is not solely the function of police and sheriff agencies. There are many other federal, state, and local law enforcement agencies that are part of the criminal justice system.

Learning objectives

The chart below identifies the student learning objectives for this chapter

After completing study of this chapter, the student will be able to:	Objective ID
• List the primary federal, state, and local law enforcement agencies within the criminal justice system	2.02.14

In this chapter

This chapter focuses on law enforcement agencies that comprise the law enforcement component of the criminal justice system. Refer to the chart below for a specific topic.

Topic	See Page
Law Enforcement Agencies	2-2
Chapter Synopsis	2-4
Workbook Learning Activities	2-5

EXHIBIT [D]–4633

Law Enforcement Agencies

Introduction

There are many federal, state and local law enforcement agencies that are part of the criminal justice system.

Agencies with law enforcement responsibilities in California

Federal, state and local agencies have law enforcement responsibilities in California. Specific law enforcement authority (e.g., arrest/firearm authority) for each is determined by law. Some examples of such agencies are noted in the following table:

Federal Agencies
U. S. Department of Homeland Security
Federal Bureau of Investigation (FBI)
Drug Enforcement Administration (DEA)
U. S. Marshal Service
Immigration and Customs Enforcement (ICE)
Alcohol, Tobacco, and Firearms Division (ATF)
Secret Service (SS)
U.S. Postal Inspectors (USPS)
Armed Forces Police

Continued on next page

Agencies with law enforcement responsibilities in California (continued)

State Agencies
Youth and Adult Correctional Agency
California Highway Patrol (CHP)
Department of Alcoholic Beverage Control (ABC)
Department of Fish and Game (F&G)
Department of Forestry and Fire Protection (DOF)
Department of Justice (DOJ)
Department of Insurance (DOI)
Department of Motor Vehicles (DMV)
Department of Parks and Recreation (DPR)
Franchise Tax Board (FTB)
Office of State Fire Marshal (SFM)
University/College Police Departments
Department of Health Services (CDHS)

Local Agencies
Airport Police
County Marshals
Housing Police
Municipal Police
School District Police
Sheriffs' Departments
Transportation Police
Port Authority Police

Chapter Synopsis

Learning need	Peace officers must realize that law enforcement is not solely the function of police and sheriff agencies. There are many other federal, state, and local law enforcement agencies that are part of the criminal justice system.
Law enforcement agencies with responsibilities in California [2.02.14]	Federal, state, and local agencies have law enforcement responsibilities in California. Specific law enforcement authority (e.g., arrest/firearm authority) for each is determined by law

EXHIBIT [D]–4636

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. List agencies with law enforcement responsibilities in California:

   a) Federal agencies (list four):

   b) State agencies (list six):

   c) Local Agencies (list five):

2. Describe a situation where Federal and State agencies might work together to resolve a law enforcement problem.

Continued on next page

EXHIBIT [D]–4637

Activity questions (continued)

3. Give an example of an incident in which two or more local law enforcement agencies might combine efforts.

Workbook Corrections

Suggested corrections to this workbook can be made by going to the POST website at: www.post.ca.gov

Continued on next page

Student notes

Chapter 3

Judicial System

Overview

Learning need

Peace officers must understand the judicial component of the criminal justice system because much of their work results in cases that go to court.

Learning objectives

The chart below identifies the student learning objectives for this chapter

After completing study of this chapter, the student will be able to...	Objective ID
• Discuss the objectives of the Judicial component of the criminal justice system	2.03.10
• Discuss the organization of the California court system, including positions commonly recognized as part of the judicial system	2.03.11
• Discuss the judicial process in criminal cases	2.03.12

In this chapter

This chapter focuses on the judicial system. Refer to the chart below for a specific topic.

Topic	See Page
California Court System	3-2
Judicial Process for Criminal Cases	3-4
Chapter Synopsis	3-7
Workbook Learning Activities	3-8

EXHIBIT [D]–4641

California Court System

Introduction

According to the U.S. Constitution, the judicial power of the United States shall be vested in one Supreme Court "and such inferior courts as Congress may deem necessary." This system of higher and lower courts makes up the judicial component of the criminal justice system.

Judicial system objectives

The objectives of the judicial component of the criminal justice system include:

- providing due process of the law
- rendering fair judgments
- dispensing just punishment
- assuring victim's rights

California court system organization and positions

The California court system is based upon the federal system. It is comprised of one State Supreme Court, lower **trial courts**, and higher courts called **appellate courts** to listen to **appeals** from the lower courts. The following table identifies the primary functions of the two levels of courts.

Level	Court	Primary Function
Lower	Trial Courts	• Receive evidence and consider cases involving criminal activity or civil disputes
Higher	Appellate Courts	• Referred to as the *higher courts* of the judicial system • Hear appeals from lower trial courts

Continued on next page

EXHIBIT [D]–4642

California Court System, Continued

California court system organization and positions (continued)

Several positions are commonly recognized as part of the judicial component of the criminal justice system. The following table identifies the primary positions within the judicial system.

	Responsibilities
Judges	• Administering justice in a fair and impartial manner by applying the facts of the law
Prosecuting Attorneys	• Prosecuting individuals accused of criminal activities • Protecting public rights and privileges
Defense Attorneys	• Defending the accused • Defending the rights and privileges of citizens

EXHIBIT [D]–4643

Judicial Process for Criminal Cases

Introduction

In criminal cases the judicial process begins once an offender has been arrested or indicted for a crime. The function of the judicial process in criminal cases is to determine a defendant's guilt or innocence.

Judicial process

Before a criminal case reaches trial, several preliminary proceedings must occur. The basic steps in a felony prosecution are shown below.

Steps	Description
Arrest	Taking a person into custody • in a case • in the manner authorized by law
Arraignment	The legal procedure where the court informs defendants of • the nature of the charges against them • their eligibility for bail • their constitutional rights to - counsel at all stages of the judicial process - plead guilty or not guilty to the charges, and - a trial by court or by a jury
Right to Bail	A defendant's constitutional right to • reasonable bail - to permit the unhampered preparation of a defense before trial

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EXHIBIT [D]–4644

Judicial Process for Criminal Cases, Continued

Judicial process (continued)

Proceeding	Description
Bail	• **Right to Bail** - A defendant's constitutional right to reasonable bail - to permit the unhampered preparation of a defense before trial • A security deposited with a competent court or magistrate - to ensure that the accused person will appear for trial when summoned
Preliminary hearing	A screening procedure used in felony cases to determine • if there is enough evidence - to hold a defendant for trial
Indictment	• An indictment is an accusation in writing formally charging a person with a crime or public offense • Many states, including California, also use the grand jury indictment process to bring serious felony criminal cases to trial • It is the grand jury's responsibility to determine if there is sufficient cause to believe that a person has committed a crime and should be made to stand trial • A grand jury indictment is filed with the superior court by the district attorney. The court then issues a warrant and the offender is arrested. The defendant is then held for arraignment in superior court

Continued on next page

Judicial Process for Criminal Cases, Continued

Judicial process (continued)

Proceeding	Description
Trial	• A formal, judicial examination and determination • of issues (law or fact) between parties
Sentencing	A judgment that is formally pronounced by the court • upon the defendant - after conviction - in a criminal prosecution
Grand Jury	A body of a set number of citizens from within a county • sworn to receive - complaints and - accusations in criminal cases • responsible for determining if there is sufficient cause to believe that an individual - has committed a crime and - should be made to stand trial

EXHIBIT [D]–4646

Chapter Synopsis

Learning need

Peace officers must understand the judicial component of the criminal justice system because much of their work results in cases that go to court.

Judicial system objectives [2.03.10]

The objectives of the judicial component of the criminal justice system include providing due process of the law, rendering fair judgments, dispensing just punishment, and assuring victim's rights

California court system organization and positions [2.03.11]

The California court system is based upon the federal system. It is comprised of:

- one State Supreme Court
- lower trial courts
- higher courts, called appellate courts
  - to listen to appeals from the lower courts

There are several positions commonly recognized as part of the judicial component of the criminal justice system. The primary positions are judges, magistrates, prosecuting attorneys, and defense attorneys

Judicial process [2.03.12]

In criminal cases the judicial process begins once an offender has been arrested or indicted for a crime

EXHIBIT [D]–4647

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. A 23-year-old male is arrested in California for possession of cocaine base for sale, a felony. Outline the step-by-step judicial process that must take place to bring the suspect to trial.

2. List the primary positions commonly recognized as part of the judicial system, and describe their responsibilities.

Continued on next page

EXHIBIT [D]–4648

Activity questions (continued)

3. List the different levels of courts in the California court system, and their primary functions.

4. What are the differences between an arraignment and a preliminary hearing? What takes place during each procedure?

Arraignment	Preliminary Hearing

Continued on next page

EXHIBIT [D]–4649

Student notes

Chapter 4

Corrections, Parole and Probation

Overview

Learning need

Peace officers should recognize that the California Department of Corrections and Rehabilitation (CDCR) is a component of the criminal justice system. Officers must also be familiar with the differences between parole and probation conditions, and their role in the enforcement of those conditions.

Learning objectives

The chart below identifies the student learning objectives for this chapter

After completing study of this chapter, the student will be able to:	Objective ID
• Discuss the objectives and responsibilities of the correction's component of the criminal justice system	2.04.1
• Recall the definitions of parole and probation	2.04.3 2.04.4
• Identify the differences between - parole - probation	 2.04.5 2.04.6

Continued on next page

EXHIBIT [D]–4651

Overview, Continued

In this chapter

This chapter focuses on the corrections system. Refer to the chart below for a specific topic.

Topic	See Page
Corrections	4-3
Parole and Probation	4-5
Chapter Synopsis	4-9
Workbook Learning Activities	4-10

EXHIBIT [D]–4652

Corrections

Introduction

When an offender is arrested by law enforcement and found guilty by the judicial process, the government has the right to punish the offender. A wide range of punishment and treatment options are available to the government.

Corrections objectives

The objectives of the corrections component of the criminal justice system include:

- confining prisoners
- rehabilitating prisoners
- supervising parolees and probationers in the community
- assuring victim's rights

Corrections agencies' responsibilities

The State of California and local agencies have distinct responsibilities in the corrections component of the criminal justice system.

The California Department of Corrections and Rehabilitation (CDCR) of the State of California is responsible for the oversight of both major components of the state's correctional system for convicted felons:

- CDCR is responsible for the incarceration of convicted adults (generally 18 years or older)
  - The Board of Prison Terms (BOPT) is responsible for the administration of parole conditions of prisoners (18 years or older) released from CDC institutions
- The CDCR is responsible for the incarceration of convicted youthful offenders (generally ages 13 years to 25 years of age)
  - The Youthful Offender Parole Board (YOPB) is responsible for the administration of parole conditions of wards (13 years to 25 years of age) released from the custody of CDCR - Juvenile Division

Continued on next page

Corrections agencies' responsibilities (continued)

The following table identifies these responsibilities.

Department	Responsibility
California Department of Corrections (CDC)	• operates the State's adult prison system • confines felons who have been sentenced to state prison
California Board of Prison Terms	• supervises inmates who have been released on parole from CDCR
California Department of Corrections and Rehabilitation – Juvenile Division	• operates the State's youthful offender detention system • confines offenders (wards) between the ages of 13 and 25
Youthful Offender Parole Board (YOPB)	• supervises wards who have been released on parole from CDCR – Juvenile Division
Local Government Agencies	• oversees the operation of detention facilities that confine people - awaiting trial - sentenced to less than one year

Parole and Probation

Introduction

The primary role of both parole and probation is to protect the community from future criminal acts of individuals who have been convicted of a crime, imprisoned and subsequently released back into the community.

Parole vs. probation

The following table provides definitions and descriptions of **parole** and **probation**.

	Parole is...	*Probation is...*
Administered by	• Parole and Community Services of the CDCR, or • CDCR – Juvenile Division	• county probation departments
Definition	• a conditional release from a state prison which allows an individual to serve the remainder of a sentence	• the suspension of the imposition or execution of a sentence and the order (by the court) of conditional and revocable release in(to) the community *Penal Code Section 1203)* • a sentencing option for an individual convicted of a criminal offense

Continued on next page

EXHIBIT [D]–4655

Parole vs. probation (continued)

	Parole is...	*Probation is...*
Imposition	• imposed by an administrative board at a parole hearing • dependent upon: - statutory requirements - the type of sentence being served - institutional recommendations	• imposed at the court's discretion in the county where the offense occurred
Revocable by	• parole agent • administrative board review	• probation officer recommendation • court enactment

Continued on next page

Parole and Probation, Continued

Conditions

Several general conditions of parole and probation may be imposed on a convicted person. The following table identifies these conditions.

Conditions of *Parole*	Conditions of *Probation*
Parolees must: • comply with all instructions of their parole officers • not travel more than 50 miles from their residence without prior approval from their parole officers • not be absent from their county of residence for more than 48 hours or leave the State of California without prior written approval from their parole officers • inform their parole officers within 72 hours of any change of employment, employment location, or termination of employment	Probationers are commonly required to: • comply with all instructions of and maintain contact with their probation officer • not use alcohol or other intoxicants • not associate with certain specified individuals • not possess firearms or other weapons

Continued on next page

Conditions (continued)

Conditions of *Parole*	Conditions of *Probation*
• not engage in conduct prohibited by law; must inform their parole officers if they are arrested for a felony or misdemeanor crime • not own, use, have access to, or have under their control any: - firearm, ammunition, or weapon listed in *Penal Code Section 12020* - knife with a blade longer than two inches • the officer must know about the parole conditions before the search. An officer may conduct a parole search without reasonable suspicion but cannot conduct a parole search for arbitrary, capricious or harassment reasons	Probationers *may* be required to: • serve time in jail as an alternative to prison • pay a fine • make restitution • secure a bond • participate on work projects • submit to drug testing • submit to warrantless searches at any time without reasonable suspicion of criminal activity on the part of the probationer

Summary probation

Probationary conditions ordered by the court, following a conviction. A probation officer does not formally supervise a person on summary probation. Only the court can sanction a summary probationer for violations of the conditions of summary probation *(Penal Code Section 1203(b))*.

Generally, officers cannot arrest a person for violation of summary probation. Officers must submit a report to the court notifying the court of the violation of the terms of the subject's summary probation.

Chapter Synopsis

Learning need

Peace officers should recognize that the California Department of Corrections and Rehabilitation (CDCR) is a component of the criminal justice system. Officers must also be familiar with the differences between parole and probation conditions, and their role in the enforcement of those conditions.

Corrections objectives and responsibilities [2.04.1]

The objectives of the corrections component of the criminal justice system include:

- confining prisoners
- rehabilitating prisoners
- supervising parolees and probationers in the community
- assuring victim's rights

Parole and probation [2.04.3, 2.04.4]

The primary role of both parole and probation is to protect the community from future criminal acts of individuals who have been convicted of a crime, imprisoned and subsequently released back into the community

Differences between parole and probation [2.04.5, 2.04.6]

Parole is a conditional release from a state prison which allows an individual to serve the remainder of a sentence

Probation is the suspension of the imposition or execution of a sentence and the order (by the court) of conditional and revocable release in(to) the community. *Penal Code Section 1203),* a sentencing option for an individual convicted of a criminal offense

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity question

1. Consider the stated objectives of the corrections component of the justice system. How do these objectives serve to aid in attaining the major goals of the entire criminal justice system?

2. In your own words, describe the differences between parole and probation.

Continued on next page

EXHIBIT [D]–4660

Activity questions (continued)

3. John Wilson is on parole and would like to attend his niece's wedding in another state. What conditions must he meet in order to make the trip? How long can he remain? What must he do if he wishes to stay longer than the allotted time period? How would your answers differ if he were on probation rather than parole?

Continued on next page

Workbook Learning Activities, Continued

Student notes

EXHIBIT [D]–4662

Glossary

Introduction	**The key vocabulary terms for LD 2: Criminal Justice System are listed below with the definitions as they apply to this workbook.**
amendments	Modifications or changes made for the better, such as amendments to the U.S. Constitution
appeals	Requests to a higher court to review or revise decisions made by lower court
appellate courts	Referred to as the higher courts of the judicial system; hear appeals from lower trial courts
arrest	Taking a person into custody in a case, and in the manner authorized by the law
arraignment	Legal procedure where the court informs defendants of the nature of the charges against them and of their constitutional rights to have counsel, to plead guilty or not guilty, and to have a jury trial
bail	A security deposited with a competent court or magistrate to ensure that the accused person will appear for trial when summoned
Bill of Rights	The first ten amendments to the U.S. Constitution
competent court	Any court, civil or criminal, having authority to handle a particular case
constitution	A written document that embodies the basic laws of a nation or state

Continued on next page

Glossary, Continued

due process	A course of legal proceedings according to the rules and principles which have been established by the government; basic rights of a defendant in judicial proceedings and the requisites for a fair trial
grand jury	A body of a set number of citizens from within the county who are sworn to receive complaints and accusation in criminal cases; responsible for determining if there is sufficient cause to believe a person has committed a crime and should be made to stand trial
indictment	An accusation in writing formally charging a person with a crime or public offense
magistrate	An officer of the court having power to issue a warrant for the arrest of a person charged with a public offense
parole	A conditional release from confinement which allows an individual to serve the remainder of a sentence outside of prison
preliminary hearing	A screening procedure used in felony cases to determine if there is enough evidence to hold a defendant for trial
probation	A sentencing option for an individual convicted of a criminal offense
right to bail	A defendant's constitutional right to reasonable bail to permit the unhampered preparation of a defense before trial
sentencing	A judgment that is formally pronounced by the court upon a defendant after conviction in a criminal trial

Continued on next page

Glossary, Continued

trial	A formal judicial examination and determination of issues (law or fact) between parties
trial courts	Referred to as the lower courts; receive evidence and consider cases involving criminal activity or civil disputes

EXHIBIT [D]–4665

Gmail Adam Bereki <abereki@gmail.com>

Criminal Complaint; Complaint for Deprivations of Constitutional Rights; Petition for Redress of Grievance

1 message

Adam <abereki@gmail.com> Wed, Nov 3, 2021 at 10:57 AM
To: djoe@nbpd.org

Darrin,

Please see the attached Complaint first. It will explain the other supporting documents and evidence attached to this email.

Thank you again for your help.

Sincerely,

Adam Bereki

5 attachments

- **People v. Cowan.pdf**
  1053K
- **Eisenberg Village etc. v. Suffolk Construction Co., Inc., .pdf**
  443K
- **Building Permits.pdf**
  724K
- **Judgment Order.pdf**
  609K
- **Complaint: Petition for Redress of Grievance.pdf**
  130K

EXHIBIT [D]–4666

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

November 3, 2021

Sgt. Darrin Joe
Newport Beach Police Department
djoe@nbpd.org

RE: Criminal Complaint and Complaint for Deprivation of Rights Secured by the California Constitution and the Constitution for the United States of America; Petition for Redress of Grievance

Subject Address: 436 Via Lido Nord Newport Beach, California

Darrin,

The following are the five main issues we spoke about on the phone on October 29, 2021. Each issue is supported by documents referenced below that are attached to the November 3, 2021 email.

Issue 1– Malicious Prosecution:

I was unlawfully *criminally* prosecuted in a *civil* case by a private party for *allegedly* committing a public offense (contracting without a construction license pursuant to Business and Professions Codes §7028 and §7031(b)). See Penal Code §15 for the definition of a crime/public offense. Penal Code §15 applies here because I *allegedly* committed a public offense and was fined $848,000.

This prosecution was highly unlawful and unconstitutional because the entirety of the executive power of California (the power to enforce the law and commence prosecutions) is vested in the Governor by Article VI, section 1 of the California Constitution. As a result, private parties are forbidden from prosecuting other private parties for crimes or public offenses.

During the "trial" I was *also* not afforded the assistance of counsel, the right to know the true nature and cause of the accusation, or the right to a trial by jury. All of these substantive due process violations also deprived the Court of authority to impose any punishment whatsoever.

Issue 2– Excessive Fine, Cruel and Unusual Punishment:

"[A Judge] must act judicially in all things, and cannot [...] transcend the power conferred by the law."

Under the excessive fine's clauses of both the Constitutions of California[1] and the United States of America, there are simple and straightforward inquiries a State official must make when imposing a civil or criminal penalty. The purpose of these inquiries are to provide "protection against [...] abuses of government's punitive or criminal-law-enforcement authority."[2]

Under the excessive fines clause(s), "[t]he touchstone [...] constitutional inquiry [...] is the principle of proportionality."[3] The "considerations bearing on proportionality [are]: (1) the defendants culpability; (2) the relationship between the harm and the penalty; [and], (3) the penalties in similar statutes."[4] Under the California Constitution, there is a fourth inquiry, which includes the "defendants ability to pay."[5] (See Nov. 2nd email for a copy of People v. Cowan case cited in the footnotes below).

The Judge in my case refused to perform any of these inquiries. The evidence he refused to perform any of these inquiries is in the fact that I was fined $848,000, an amount more than forty times my qualifying net worth. To demonstrate that the punishment for committing the public offense offense is penal, the California Supreme Court held: "the Legislature's obvious intent [of enacting Business and §7031(b) was] to impose a stiff all-or-nothing **penalty** for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[6]

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[1] See Article I, section 17 prohibiting excessive fines and cruel and unusual punishment; and, Article 1, section 26 stating that all provisions of the Constitution are MANDATORY! In other words, the Judge has no discretion to follow these rules or not.

[2] *People v. Cowan*, 47 Cal. App. 5th 32, 44 (2020) citing *Timbs v. Indiana*, 586 U.S. ____ (2019) and *Austin v. United States*, 509 U.S. 602, 610 (1993).

[3] *People v. Cowan*, 47 Cal. App. 5th 32, 47 (2020) citing *People ex rel Lockyer v. R.J Reynolds Tobacco Corp.*, 37 Cal. 4th 707, 728 (Cal. Supreme Ct. 2005) and *United States v. Bajakajian*, 524 U.S. 321 (1998). Internal quotations omitted.

[4] *Id.*

[5] *Id.* Article I, §17.

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

The first document evidencing that I was fined $848,000 without authority is the Court's "Judgment "Order" (see Nov. 3rd email "Judgment Order").

The "Judgment Order" says "Damages $848,000". See for e.g. the case of *Birdsall v. Coolidge,*[7] defining damages as:

> "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

I'm not aware of any evidence of an injury presented at "trial". In other words, the "Judgment Order" is not truly for "Damages", but is really a disguise for a fine.

A recent California Court of Appeal held the following regarding this issue: "the [penalty] mandated by [Business and Professions Code] section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." (I've attached this case to the November 3rd email, see "Eisenberg Village etc. v. Suffolk Construction Co., Inc."

For further evidence, see Business and Professions Code §7031(b). Notice that it says *nothing* about damages.

Issue 3– My company was the contractor on the project that performed the work, not me.

During the project in question, my company, The Spartan Associates, Inc., obtained several building permits from the City of Newport Beach Building Department. See Nov. 3rd email- "Building permits". On each of the Building Permits, The Spartan Associates, Inc. is listed as the contractor, not me. The obvious question is how could I be prosecuted for unlicensed contracting when the City of NB determined my company was the contractor and was licensed.

Issue 4– Fraudulent Judgment Lien Attached to Real Property:

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

As a result of these heinous unconstitutional frauds being perpetrated upon me, a judgment lien has attached to the real property my living trust is the legal title holder of. The lien is obviously fraudulent because the judgment is false and fraudulent, without authority and void. I will provide the evidence of the lien once we get through these other issues first. If needed now, just let me know, or you can find it on the Superior Court's website under case #30-2015-00805807, Bereki v. Humphreys, along with the entire Clerk's Transcript of the case. The year of the case is 2015.

Issue 5– Additional Excessive, Cruel and Unusual Punishment- License Suspension

Also as a result of the fraudulent judgment, my ability to earn a living as a contractor was suspended without even a hearing let alone a full, fair, and impartial trial pursuant to Business and Professions Code §7071.17. This is further excessive, cruel, and unusual punishment as I have a right to earn a living in my profession and cannot be deprived of counsel, judicial proceedings, or a jury trial before being punished. There is no evidence of this unlawful judgment as it took place without any hearing at all. This is what's known in law as a Bill of Pains and Penalties as it is punishment imposed by the Legislature without a judicial determination of rights. See Article 1, section 10 of the Constitution for the United States of America.

*****

In addition to all of the foregoing, my investigation has uncovered numerous other cases effecting the People of California where this fraud, deceit, and treason has, and continues to be perpetrated for nearly one hundred years. It is unknown how many cases there are as the Superior Court records systems has no means of searching judgments for specific statutory offenses like §7031(b). The following are a few other cases I located because an appeal was filed, including one where another man was forced into bankruptcy and lost his home:

> *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. See *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS.
>
> *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and Court costs awarded against *MW Erectors, Inc.* pursuant to §7031(a).

Banis Restaurant Design, Inc. v. Serrano, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of an $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a).

Hydrotech Systems, Ltd. v. Oasis Waterpark, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against Hydrotech pursuant to §7031(a).

White v. Cridlebraugh, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

This is serious criminal behavior and egregious abuse of authority that cannot be passed off as just "being unhappy with a judgment". In addition to violating both the California Constitution and the Constitution for the United States of America, I believe the behavior I've evidenced above is also a violation of the following California Penal Codes:

"§532 (a) Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property, whether real or personal, [...] is punishable in the same manner and to the same extent as for larceny of the money or property so obtained."

"§470 (c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: [...] county order or warrant, or request for the payment of money, [...] or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, [...] or other power to receive money, [...] or convey any goods, chattels, lands, or tenements, or other estate, real or personal [...]"

During our call, I also mentioned Penal Code §211. Without question my rights, liberty, and property are being taken by force of the legislative, executive,

and judicial power of California without authority and I am in fear for my safety and continued well-being. In the words of the U.S. Supreme Court:

> *"To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law [...]."*[8]

Thank you again for your help, Darrin. If you have any questions please don't hesitate to call.

Sincerely,

/s/ Adam Bereki

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[8] *Loan Ass'n v. Topeka*, 87 U.S. 665, 664 (1874).

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Court of Appeal of California, First Appellate District, Division Four

March 27, 2020, Opinion Filed

A156253

Reporter

47 Cal. App. 5th 32 * | 2020 Cal. App. LEXIS 256 ** | 260 Cal. Rptr. 3d 505

THE PEOPLE, Plaintiff and Respondent, v. RON COWAN, Defendant and Appellant.

Notice: CERTIFIED FOR PARTIAL PUBLICATION*

REVIEW GRANTED. See Cal. Rules of Court, rules 8.1105 and 8.1115 (and corresponding Comment, par. 2, concerning rule 8.1115(e)(3)), June 17, 2020, S261952.

Subsequent History: Review granted by, Review pending at **People v. Cowan**, 2020 Cal. LEXIS 3741 (Cal., June 17, 2020) Request granted **People v. Cowan**, 2020 Cal. LEXIS 4306 (Cal., June 25, 2020)

Prior History: [**1] Superior Court of San Francisco City and County, No. 229497/18005814, No. 229498/18010055, Ethan P. Schulman, Judge.

Core Terms

fine, ability to pay, excessive fines, restitution fine, sentencing, probation, due process, equal protection, punitive, indigent, courts, recoupment, conc, facilities, cases, fundamental rights, inability to pay, mandatory, ability-to-pay, trial court, classification, amounts, restitution, monetary, jail, indigent defendant, deprivation, nonpunitive, purposes, funding

Case Summary

Overview

HOLDINGS: [1]-In a burglary prosecution, the sentencing trial court should not have imposed court operations and facilities assessments, or a restitution fine, without giving defendant, on request, an opportunity to present evidence and argument on ability to pay because the assessments were "fines" for purposes of the excessive fines prohibitions in U.S. Const., 8th Amend. and Cal. Const., art. I, § 17. A sentencing court may not impose court operations or facilities assessments or restitution fines without giving the defendant, on request, an opportunity to present evidence and argument why such monetary exactions exceed his ability to pay.

Outcome

In all other respects, the judgment is affirmed.

▼ LexisNexis® Headnotes

Criminal Law & Procedure > Sentencing ▾ > Fines ▾ > Excessive Fines ▾

HN1 **Fines, Excessive Fines**

Court operations and court facilities assessments and a restitution fine must be treated as punitive in nature and thus may be analyzed as fines for purposes of U.S. Const., 8th Amend.; Cal. Const., art. I, § 17. More like this Headnote

Shepardize® - Narrow by this Headnote (11)

Criminal Law & Procedure > Sentencing ▾ > Fines ▾ > Excessive Fines ▾

HN2 **Fines, Excessive Fines**

The Eighth Amendment's protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority, and applies to civil and criminal penalties alike. A monetary sanction that cannot fairly be said solely to serve a remedial purpose will be subject to scrutiny as an Eighth Amendment fine if it can only be explained as serving in part to punish. Even assuming a fine serves some remedial purpose, it will be considered punishment for purposes of applying U.S. Const., 8th Amend., if it also serves either retributive or deterrent purposes. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Criminal Law & Procedure > Sentencing ▾ > Fines ▾ > Excessive Fines ▾

HN3 **Fines, Excessive Fines**

Whether fees and assessments imposed on convicted defendants are sufficiently punitive to invoke U.S. Const., 8th Amend., presents a closer question than whether a restitution fine is, but the standard asks merely whether they are partially punitive. The nature of the proceeding in which a sanction is rendered—criminal or civil—is a powerful indicator of the sanction's character. More like this Headnote

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Criminal Law & Procedure > Sentencing ▾ > Fines ▾ > Excessive Fines ▾

HN4 **Fines, Excessive Fines**

Court operations and court facilities assessments under Pen. Code, § 1465.8; Gov. Code, § 70373, as well as a restitution fine, must be treated as "fines" for purposes of the excessive fines prohibitions in the United States and California Constitutions. More like this Headnote

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EXHIBIT [D]–4674

Criminal Law & Procedure > Sentencing > Fines > Excessive Fines

HN5 Fines, Excessive Fines
Ability to pay is relevant to excessiveness of a fine under U.S. Const., 8th Amend.; Cal. Const., art. I, § 17. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Criminal Law & Procedure > Sentencing > Fines > Excessive Fines

HN6 Fines, Excessive Fines
The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay. More like this Headnote

Shepardize® - Narrow by this Headnote (17)

Criminal Law & Procedure > Sentencing > Fines > Excessive Fines

HN7 Fines, Excessive Fines
A defendant's ability to pay is appropriately considered in determining whether there are constitutional limitations on the amounts of fines and fees imposed. Under U.S. Const., 8th Amend.; Cal. Const., art. I, § 17, a sentencing court may not impose court operations or facilities assessments or restitution fines without giving the defendant, on request, an opportunity to present evidence and argument why such monetary exactions exceed his ability to pay. More like this Headnote

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Criminal Law & Procedure > Sentencing > Fines > Excessive Fines
View more legal topics

HN8 Fines, Excessive Fines
Ordinarily a reviewing court, having examined the relevant considerations, can decide for itself whether a fine or penalty is unconstitutionally excessive, but where a defendant's excessive fine objection raises factual questions, a remand is required so that the trial court can make the necessary findings as a predicate to the excessiveness determination and weigh the relevant factors in the first instance. In imposing a fine, on the other hand, ability to pay becomes a critical factor. Making an ability-to-pay record in the trial court need not entail a contested evidentiary hearing in every case. It can often be done by simple offer of proof. But it must be done where an excessive fines objection is interposed. More like this Headnote

Shepardize® - Narrow by this Headnote (10)

Criminal Law & Procedure > Sentencing > Fines > Excessive Fines

HN9 Fines, Excessive Fines
The evaluation of ability to pay a fine must include future ability to pay. The appropriate inquiry—whether a defendant is presently able to pay or has any reasonable prospect of paying—must take into account the totality of the defendant's financial obligations in court-imposed debt. More like this Headnote

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Criminal Law & Procedure > Sentencing > Fines > Excessive Fines

HN10 Fines, Excessive Fines
A defendant bears the burden of proving inability to pay a challenged assessment or fine. More like this Headnote

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Headnotes/Summary

Summary

[*32] CALIFORNIA OFFICIAL REPORTS SUMMARY

Defendant pled guilty to second degree burglary. The trial court imposed a 16-month jail term and, over defendant's inability-to-pay objection, imposed operations and court facilities assessments and the minimum restitution fine. (Superior Court of San Francisco City and County, Nos. 229497/18005814 and 229498/18010055, Ethan P. Schulman, Judge.)

The Court of Appeal reversed the 16-month term of incarceration, remanded for further sentencing proceedings, and otherwise affirmed the judgment. The trial court should not have imposed the operations and court facilities assessments, or the minimum restitution fine, without giving defendant an opportunity to present evidence and argument on ability to pay. The assessments were "fines" for purposes of the excessive fines prohibitions in U.S. Const., 8th Amend., and Cal. Const., art. I, § 17. A sentencing court may not impose court operations or facilities assessments or restitution fines without giving the defendant, on request, an opportunity to present evidence and argument why such monetary exactions exceed his or her ability to pay. (Opinion by Streeter, J., with Pollak, P. J., and Tucher, J., concurring. Concurring opinion by Streeter, J. (see p. 50).)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Criminal Law § 503—Probation—Conditions—Payment of Fine; Restitution.**

The Eighth Amendment's protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority, and applies to civil and criminal penalties alike. A monetary sanction that cannot fairly be said solely to serve a remedial purpose will be subject to scrutiny as an Eighth Amendment fine if it can only be explained as serving in part to punish. Even assuming a fine serves some remedial purpose, it will be considered punishment for purposes of applying U.S. Const., 8th Amend., if it also serves either retributive or deterrent purposes. Whether fees and assessments imposed on convicted defendants are sufficiently punitive to invoke U.S. Const., 8th Amend., presents a closer question than whether a restitution fine is, but the standard asks merely whether they are partially punitive. The nature of the proceeding in which a sanction is rendered—criminal or civil—is a powerful indicator of the sanction's character.

CA(2) **(2) Criminal Law § 503—Sentencing—Fines and Assessments—Excessive.**

Court operations and court facilities assessments under Pen. Code, § 1465.8 and Gov. Code, § 70373, as well as restitution fines, must be treated as "fines" for purposes of the excessive fines prohibitions in the United States and California Constitutions.

CA(3) **(3) Criminal Law § 503—Sentencing—Fines and Assessments—Excessive—Considerations.**

The touchstone of the constitutional inquiry under the excessive fines clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay. A defendant's ability to pay is appropriately considered in determining whether there are constitutional limitations on the amounts of fines and fees imposed.

EXHIBIT [D]–4676

CA(4) **(4) Criminal Law § 503—Sentencing—Fines and Assessments—Excessive—Ability to Pay.**

In a burglary prosecution, the sentencing trial court should not have imposed court operations and facilities assessments without giving defendant, on request, an opportunity to present evidence and argument on ability to pay.

[Erwin et al., Cal. Criminal Defense Practice (2020) ch. 91, § 91.121.]

CA(5) **(5) Criminal Law § 503—Sentencing—Fines and Assessments—Excessive—Ability to Pay.**

The evaluation of ability to pay a fine must include **[*34]** future ability to pay. The appropriate inquiry—whether a defendant is presently able to pay or has any reasonable prospect of paying—must take into account the totality of the defendant's financial obligations in court-imposed debt. A defendant bears the burden of proving inability to pay a challenged assessment or fine.

Counsel: Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Jeffrey M. Laurence, Assistant Attorney General, René A. Chacón and Bruce Ortega, Deputy Attorneys General, for Plaintiff and Respondent.

Judges: Opinion by Streeter, J., with Pollak, P. J., and Tucher, J., concurring. Concurring opinion by Streeter, J.

Opinion by: Streeter, J.

Opinion

STREETER, J.—Ron Cowan appeals from a final judgment and sentence entered after a guilty plea, preceded by the denial of a motion to suppress evidence. The grounds for appeal are three-fold. First, Cowan argues that his detention in a traffic stop prior to his arrest violated the Fourth Amendment for lack of reasonable suspicion to detain. Second, Cowan challenges as an abuse of discretion a 16-month jail term imposed upon him as part of a grant of probation—a so-called "hammer," to which he consented as part of his plea—for his failures to appear at sentencing and at a probation interview appointment. Third, Cowan attacks the court operations and court facilities [**2] assessments and the minimum restitution fine imposed on him over his inability-to-pay objection under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 [242 Cal. Rptr. 3d 268] (*Dueñas*).

In the unpublished portion of this opinion, we reject Cowan's argument that he was detained in violation of the Fourth Amendment. We also reverse the 16-month jail sentence, not because imposing it as a hammer was an abuse of discretion, but because imposing a jail term that exceeds 12 months as a condition of probation is an unauthorized sentence under Penal Code section 19.2. In the published portion of the opinion, we conclude the trial court erred in overruling Cowan's inability-to-pay objection. On the ability-to-pay issue, we hold that, upon proper objection, a sentencing court must allow a defendant facing imposition of a minimum restitution fine or court operations and court facilities assessments to present evidence and argument why these financial exactions exceed his ability to pay.

[*35]

We ground our ability-to-pay holding on an excessive fines analysis under the Eighth Amendment and under article I, section 17 of the California Constitution, rather than the due process analysis *Dueñas* rests upon. While we ultimately reach a result similar to that in *Dueñas*, we order a disposition that is different in some respects from that ordered by the *Dueñas* panel. We shall direct that, [**3] upon remand, Cowan has the burden of proving inability to pay; that assessment of Cowan's ability to pay shall include not only present ability to pay but whether he has any reasonable prospect of paying in the future; and that, should the court find the restitution fine to be excessive, the appropriate disposition is to decline to impose it, not to stay it.

I. BACKGROUND

On April 14, 2018, at about 6:10 p.m., San Francisco Police Sergeant James O'Malley was on patrol in the area of Polk and Grove Streets when he was approached by a woman, identified as "Arie," who said she believed two white males were breaking into a car nearby. Sergeant O'Malley went to the location of the reported break-in and found an empty parking space

where glass shards were on the ground. On the way, a second witness, identified as James Scott, said he saw one of the suspects, a man wearing a yellow jacket with dread-style hair, use what appeared to be a cell phone to break the left rear passenger window of a "newer" "white" car that looked "similar to a Nissan Ultima [*sic*]" and reach into it. Scott then saw a second man, who was nearby, eventually get in the car with the first man, at which point they drove [**4] off together. The second man had long hair.

After driving in the vicinity of Market Street and Civic Center looking for the stolen car, 39 minutes after leaving the scene of the break-in Sergeant O'Malley drove off to respond to a call from dispatch about a matter near Larch Way and Eddy Street. While en route to that area, on westbound Eddy Street at the intersection of Gough Street, Sergeant O'Malley saw a white Ford Fusion waiting there with a missing or rolled down left rear passenger window and a bicycle lying across the back seat. The driver of the Fusion had "kind of a dreadlocks style" hair, the passenger had long hair, and both were white.

Sergeant O'Malley then decided to do an investigative stop and made a U-turn. At that point, the Fusion accelerated quickly, squealing its tires, but was forced to stop in the midst of a traffic jam. Sergeant O'Malley and multiple other officers who had been called in for backup converged on the car in heavy traffic. Neither man in the car was wearing a yellow jacket. Cowan, the driver of the car, was placed in handcuffs at the scene, and then taken to a cold show where he was identified by Scott as one of the two suspects who drove off in [**5] the burgled car.

[*36]

Cowan filed a motion to suppress, arguing lack of reasonable suspicion to detain him in the traffic stop on Eddy Street. The motion was denied. After pleading guilty to second degree auto burglary (Pen. Code, § 459), Cowan, pending preparation of the probation report and sentencing, agreed to a 16-month hammer (i.e., imposition of a 16-month term in county jail if he failed to appear for his sentencing hearing or to his probation department interview). He failed to appear at both sentencing and his probation interview. At a continued sentencing hearing, the court rejected Cowan's excuses for these failures to appear—he claimed he was late to court because he had trouble finding a place to stow his backpack, and that he left a voicemail with the probation department asking to reschedule—and then sentenced Cowan to three years' formal probation, subject to the 16-month hammer. The court also imposed a $300 restitution fine (Pen. Code, § 1202.4), a $40 court operations assessment (Pen. Code, § 1465.8), and a $30 court facilities assessment (Gov. Code, § 70373).

Appealing from the judgment of conviction and the sentence, Cowan argues that: (1) the court erroneously denied his preplea motion to suppress because his detention 39 minutes after [**6] and eight to 10 blocks from the scene of the break-in based on nothing more than that he was a white man with dread-style hair, driving a white car, is not enough to justify a detention under *Terry v. Ohio* (1968) 392 U.S. 1 [20 L. Ed. 2d 889, 88 S. Ct. 1868] (*Terry*); (2) the court abused its discretion in imposing the 16-month hammer because there is no substantial evidence that Cowan's failures to show up to the sentencing hearing and to his probation department appointment were willful; and (3) we should either strike the restitution fine and the assessments or stay them under *Dueñas*. We reject the first argument, but find merit to the second and third.

II., III. [*] [NOT CERTIFIED FOR PUBLICATION]

IV. ASSESSMENTS AND RESTITUTION FINE

Cowan argues that, under *Dueñas, supra*, 30 Cal.App.5th 1157, the trial court violated his federal and state rights to due process by imposing the $70 in assessments and the $300 restitution fine—both of which are statutory minimums for such assessments and fines—without determining his ability to pay. At sentencing, Cowan's counsel stated that Cowan "has no ability to pay. So most, if not all, of these fines and penalties should not be assessed because he has no ability [**7] to pay." The Attorney General acknowledges that an **[*37]** objection on *Dueñas* grounds was made, that as a result the forfeiture doctrine is not applicable, and that Cowan's attack on the restitution fine and the assessments is cognizable on appeal. We must therefore address the merits of this issue.

A. *People v. Dueñas*

After little more than a year on the books, the facts and the issues at stake in *Dueñas* are by now well known, but they bear repeating as background before we proceed further. The case involved a homeless probationer, Velia Dueñas, who suffered from cerebral palsy and was unable to work. (*Dueñas, supra*, 30 Cal.App.5th at p. 1160.) Ms. Dueñas's driver's license was suspended when she could not pay some juvenile citations she received as a teenager. (*Id.* at p. 1161.) She was then

EXHIBIT [D]–4678

convicted of a series of misdemeanor offenses for driving with a suspended license, and in each case was given the impossible choice whether to "pay" mandatory fees and fines—which she could not do because of her poverty—or go to jail. (*Ibid.*) And after serving jail time in the first three of these cases, she still faced outstanding debt, which mounted with each conviction. (*Ibid.*)

Upon her fourth conviction for driving with a suspended license, Ms. Dueñas [**8] was placed on probation and again ordered to pay mandatory assessments and fines. (*Dueñas, supra*, 30 Cal.App.5th at pp. 1161–1162.) In an effort to put a stop to these spiraling fees and fines, Ms. Dueñas objected, on due process and equal protection grounds, to a $40 Penal Code section 1465.8 court operations assessment, a $30 Government Code section 70373 court facilities assessment, and a $150 Penal Code section 1202.4 restitution fine. (*Dueñas, supra*, at pp. 1163–1164.) The core of her theory was that these statutes unconstitutionally "use the criminal law, which is centrally concerned with identifying and punishing only blameworthy decisions, to punish the blameless failure to pay by a person who cannot pay because of her poverty. The laws, moreover, are irrational: They raise no money because people who cannot pay do not pay." (*Id.* at p. 1164.) As one sociological study put it, the laws' function is akin to "[d]rawing [b]lood from [s]tones." 2

A Second District, Division Seven panel agreed. The panel held that Government Code section 70373 and Penal Code section 1465.8—which are silent on the issue of ability to pay—"if imposed without a determination that the defendant is able to pay, are ... fundamentally unfair" and that "imposing these assessments upon indigent defendants without a determination that [**9] they have the present ability to pay violates due process" under the federal and **[*38]** state Constitutions. (*Dueñas, supra*, 30 Cal.App.5th at p. 1168.) Treating the restitution fine separately, the panel held that "although Penal Code section 1202.4 bars consideration of a defendant's ability to pay unless the judge is considering increasing the fee over the statutory minimum, the execution of any restitution fine imposed under this statute must be stayed unless and until the trial court holds an ability to pay hearing and concludes that the defendant has the present ability to pay [it]." (*Id.* at p. 1164.)

While the *Dueñas* panel takes care to announce its holding in due process terms, 3 the foundation for its two-part disposition—a reversal of the order imposing the assessments for failure to consider ability to pay, and a stay of execution of the restitution fine pending an ability-to-pay hearing—ultimately rests on a synthesis of due process and equal protection principles. (See *Griffin v. Illinois* (1956) 351 U.S. 12, 17 [100 L.Ed. 891, 76 S.Ct. 585] (plur. opn. of Black, J.) (*Griffin*); *Bearden v. Georgia* (1983) 461 U.S. 660, 665–667 [76 L. Ed. 2d 221, 103 S. Ct. 2064] (*Bearden*); *In re Antazo* (1970) 3 Cal.3d 100, 107–109 [89 Cal. Rptr. 255, 473 P.2d 999] (*Antazo*).) This blend of due process and equal protection, described in *Dueñas* as "*Griffin-Antazo-Bearden* analysis" (*Dueñas, supra*, 30 Cal.App.5th at p. 1168), "'call[s] for procedures in criminal trials which allow no invidious discriminations between persons and different groups [**10] of persons'" (*id.* at p. 1166) and bars a state from "inflict[ing] ... punishment on indigent convicted criminal defendants solely on the basis of their poverty." (*Ibid.*)

Applying *Griffin-Antazo-Bearden* analysis to the assessments and the fine imposed on Ms. Dueñas, starting first with the assessments, the panel begins from the premise that neither the court operations assessment nor the court facilities assessment is "intended to be punitive in nature." (*Dueñas, supra*, 30 Cal.App.5th at p. 1165; see *People v. Alford* (2007) 42 Cal.4th 749, 757 [68 Cal. Rptr. 3d 310, 171 P.3d 32] (*Alford*) [Pen. Code, § 1465.8]; *People v. Fleury* (2010) 182 Cal.App.4th 1486, 1492–1494 [106 Cal. Rptr. 3d 722] [Gov. Code, § 70373].) But by loading these two nominally nonpunitive assessments on top of Ms. Dueñas's sentence, along with the "additional, potentially devastating" financial consequences to which they exposed her, the governing statutes, in effect, "transform a funding mechanism for the courts into additional punishment for a criminal conviction for those unable to pay." (*Dueñas, supra*, at p. 1168.) This, the panel concludes, amounts to inflicting punishment solely because of an indigent's poverty. (*Id.* at pp. 1166–1168.)

[*39]

Central to the analysis in *Dueñas* is its reading of the statutory scheme of which Government Code section 70373 and Penal Code section 1465.8 were part. The court points out that these statutes were part of court funding legislation largely directed to the civil sphere. (*Dueñas, supra*, 30 Cal.App.5th at p. 1165.) While the Legislature authorized fee waivers [**11] as a "protective mechanism [to] lessen[] the disproportionate burden that these fundraising fees present to indigent litigants" (*id.* at p. 1166; see Gov. Code, § 68632, subds. (a)–(c)), it provided no such accommodation to criminal defendants. (*Dueñas, supra*, at p. 1166.) Relying on *Jameson v. Desta* (2019) 5 Cal.5th 594 [234 Cal. Rptr. 3d 831, 420 P.3d 746], the *Dueñas* panel concludes that since assessments imposed under these statutes are "part of a larger statutory scheme [designed] to raise revenue to fund court operations, [they] should be treated no differently than their civil counterparts enacted in the same legislation and imposed only on those with the means to pay them." (*Dueñas, supra*, at p. 1169.)

The focus of the analysis for the restitution fine in *Dueñas* is slightly different. There, the panel recognizes that restitution fines are punitive in nature and may be imposed as a condition of probation. (*Dueñas, supra*, 30 Cal.App.5th at p. 1169; see

People v. Hanson (2000) 23 Cal.4th 355, 363 [97 Cal. Rptr. 2d 58, 1 P.3d 650] (*Hanson*); Pen. Code, § 1202.4, subd. (m).) So instead of barring imposition altogether, the panel stays execution until an ability-to-pay hearing is held. (*Dueñas, supra*, at pp. 1164, 1172.) In doing so, the panel focuses on disparities in treatment among defendants, comparing those who are able to pay to those who are not. (*Id.* at p. 1170.) Because of the express statutory prohibition on consideration of ability to pay at the time of imposition, and because, unlike probationers who are able to pay their fines, [**12] indigent probationers who are unable to pay will never be entitled to automatic expungement of their convictions for successful completion of probation, the panel concludes that "the criminal justice system punishes indigent defendants in a way that it does not punish wealthy defendants." (*Ibid.*) To avoid an interpretation of the statute that would result in a constitutional violation, the *Dueñas* court ordered a stay pending an ability-to-pay hearing at which the People will bear the burden. (*Id.* at pp. 1164, 1172.)

B. The *Dueñas* Critics

We preface our analysis with a brief summary of a series of Court of Appeal opinions over the last year taking the view that there is "no general due process and equal protection authority which *requires* a court to conduct a *preassessment present ability-to-pay* hearing" for fines, fees or assessments. (*People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1039 [247 Cal. Rptr. 3d 850] (conc. opn. of Benke, Acting P. J.) (*Gutierrez*).) These opinions, some issued **[*40]** by appellate panels (*People v. Hicks* (2019) 40 Cal.App.5th 320, 322 [253 Cal. Rptr. 3d 116], review granted Nov. 26, 2019, S258946 (*Hicks*); *People v. Aviles* (2019) 39 Cal.App.5th 1055, 1060–1061 [252 Cal. Rptr. 3d 727] (*Aviles*)), and others by individual justices writing separately, 4 either reject *Dueñas* outright or reject its reasoning while distinguishing it factually. 5 They criticize *Dueñas* for misreading *Griffin*, which they contend applies [**13] only to financial barriers impeding access to courts (*Hicks, supra*, at pp. 325–326; *Aviles, supra*, at pp. 1065, fn. 23, 1068), and for similarly misreading the offspring of that opinion, *Antazo*, decided by our Supreme Court, and *Bearden*, decided by the United States Supreme Court, each of which they contend applies only to incarceration for failure to pay monetary penalties. (*Hicks, supra*, at pp. 325–326; see *Aviles, supra*, at pp. 1065, fn. 23, 1069.) 6

The majority opinion in *Kopp* is notable for its more nuanced critique of *Dueñas*. The *Kopp* majority organizes its analysis around a distinction between monetary charges imposed on convicted criminal defendants that are punitive in nature and those that are not. Directing its attention only to nonpunitive assessments, *Kopp* agrees, "to some extent, with the court's conclusion in *Dueñas* that due process requires the trial court to conduct an ability to pay hearing and ascertain a defendant's ability to pay before it imposes court facilities and court operations assessments under Penal Code section 1465.8 and Government Code section 70373, if the defendant requests such a hearing." (*Kopp, supra*, 38 Cal.App.5th at p. 95.) Mindful that neither of the two appellants involved there had been allowed to make a record as to their financial condition, the court vacates and remands, but does so in a way that sets a higher bar for defendants seeking to establish [**14] inability to pay than *Dueñas* does. (*Id.* at pp. 95–96.) The *Kopp* court emphasizes that, on remand, the appellants must bear the burden of proving inability to pay and that the trial court could take into account not just present ability to pay at the time of sentencing, but future ability to pay such as capability to earn prison wages. (*Id.* at p. 96.)

Moving on from this cautious embrace of *Dueñas*'s treatment of nonpunitive assessments, *Kopp* declines to follow the *Dueñas* panel's approach to **[*41]** punitive fines. (*Kopp, supra*, 38 Cal.App.5th at p. 96.) Consistent with the reasoning in *Aviles* and Justice Benke's concurrence in *Gutierrez*, *Kopp* holds that punitive fines should be challenged under the excessive fines clauses of the federal and state Constitutions. (*Kopp, supra*, at pp. 96–97.) Within the framework of excessive fines protections, *Kopp* holds, punitive fines are governed by a four-factor test for excessiveness under the Eighth Amendment and under article I, section 17 of the state Constitution. (*Kopp, supra*, at p. 97.) Of these four factors—the defendant's culpability, the relationship between the harm and the penalty, the penalties imposed in similar statutes, and the defendant's ability to pay—*Kopp* points out that *Dueñas* focuses on only one, ability to pay. (*Id.* at pp. 97–98; see *id.* at p. 96.) The *Kopp* majority therefore orders that, on remand, appellants, if they wish, could [**15] challenge the fines imposed on them upon a consideration of all four relevant factors. (*Id.* at pp. 56–57, 97–98 & fn. 25.) 7

The Attorney General's treatment of *Dueñas* in this case essentially adopts the stance of the *Kopp* majority, though he sees no need for a remand since in his view any *Dueñas* error was harmless. He "does not take issue with the *Dueñas* opinion insofar as it holds the imposition of assessments for court operations and court facilities may not be imposed where a defendant demonstrates the inability to pay." He also concedes that imposition of the assessments "implicates due process" and states that "respondent does not seek to uphold [them] ... on those who have no ability to pay." Neither the $40 court operations assessment nor the $30 court facilities assessment is punitive in nature, he points out. "Both were enacted to fund the operations of the justice system. [Citations.] These [fees] by their own terms, are only imposed on those who seek access to the justice system and are convicted of a crime." But the Attorney General draws the line at "punishment in the form of fines,"

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which he describes as "a cornerstone of our criminal justice system." Because restitution fines [**16] "advance[] the state's legitimate interests in punishing the guilty for their offenses," the Attorney General contends that "*Dueñas* was wrongly decided on that point and should not be followed." 8

[*42]

C. Analysis

"There is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence. ... [Because] fines are a source of revenue ... , it makes sense to scrutinize governmental action more closely when the State stands to benefit." 9

While we do not join the courts that have declared *Dueñas* to have been wrongly decided, we do agree with an insight put forward in some of the opinions taking that position. A suitable framework for analyzing the constitutionality of the restitution fine imposed here, as well as the assessments, in our view, is the excessive fines prohibition in the Eighth Amendment and its counterpart under the California Constitution, article I, section 17. (E.g., *Gutierrez, supra*, 35 Cal.App.5th at p. 1040 (conc. opn. of Benke, Acting P. J.); *Kopp, supra*, 38 Cal.App.5th at p. 99 (conc. & dis. opn. of Benke, Acting P. J.).) 10 An excessive fines analysis "allows for a consistent and fair review of fines and fees imposed on individuals [while they are focused both legally and factually in the trial court], with [**17] the appeal process remaining available for further review." (*Kopp, supra*, at p. 100 (conc. & dis. opn. of Benke, Acting P. J.).) 11

[*43]

1. *The Restitution Fine and the Assessments All Qualify as "Fines" for Purposes of the Eighth Amendment and Article I, Section 17 of the California Constitution*

Underlying the Attorney General's position on Cowan's ability-to-pay objection is the implicit premise that the restitution fine is subject to scrutiny as an Eighth Amendment "fine," while the assessments are nonpunitive and therefore do not fall within the ambit of federal or state constitutional prohibitions on excessive fines. We do not agree with that premise. ***HN1*** Taking the analysis a step further than that of the *Kopp* majority or Justice Benke in her separate opinions in *Gutierrez* and *Kopp*, we believe that all of the monetary exactions at issue here must be treated as punitive in nature and thus may be analyzed as "fines" for purposes of the Eighth Amendment and article I, section 17 of the California Constitution. (*Aviles, supra*, 39 Cal.App.5th at p. 1071; *Cota, supra*, 45 Cal.App.5th at pp. 800–801 (conc. & dis. opn. of Dato, J.).)

"'[T]he method' courts use to determine 'what constitutes punishment varies depending upon the context in which the question arises.'" (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1108 [232 Cal. Rptr. 3d 714, 417 P.3d 191], quoting *People v. Castellanos* (1999) 21 Cal.4th 785, 795 [88 Cal. Rptr. 2d 346, 982 P.2d 211] (plur. opn. of George, C. J.) (plur. opn.) (*Castellanos*).) The conventional approach, which applies in double jeopardy and [**18] ex post facto cases, proceeds in two steps. (*United States v. Ward* (1980) 448 U.S. 242, 248–249 [65 L. Ed. 2d 742, 100 S. Ct. 2636].) We look initially to "whether the Legislature intended the provision to constitute punishment" and we go no further if that intent is plain from the face of the statute or the legislative history. (*Castellanos, supra*, at p. 795 (plur. opn. of George, C. J.); see *Alford, supra*, 42 Cal.4th at p. 755.) If, on the other hand, "'the intention was to enact a regulatory scheme that is civil and nonpunitive,'" we look further to "'whether the statutory scheme is "'so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil'"'" (*Alford, supra*, at p. 755) under the multifactor test in *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 168–169 [9 L. Ed. 2d 644, 83 S. Ct. 554] (*Mendoza-Martinez*), which sets forth seven "'useful guideposts.'" (*Castellanos, supra*, at p. 802 **[*44]** (conc. & dis. opn. of Kennard, J.).) 12 Under this approach, "'we ordinarily defer to the legislature's stated intent'" (*Castellanos, supra*, at p. 795 (plur. opn. of George, C. J.)), and "'"only the clearest proof" will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.' [Citations]." (*Id.* at p. 802 (conc. & dis. opn. of Kennard, J.).)

If we were to apply this two-step *Ward/Mendoza-Martinez* analytical paradigm, the Attorney General's bifurcated analysis of the restitution fine and the assessments might be warranted. Because [**19] the charge imposed under Penal Code section 1202.4 is denominated a "fine" and is levied only on convicted criminals, there would be no need to go beyond the face of the statute to justify the conclusion that the Legislature intended restitution fines to be punitive in nature. 13 By contrast for the assessments, the phrases "court operations assessment" and "court facilities assessment" signal an intent to raise revenue for the courts, and the legislative history confirms that objective. 14 Even granting that there may be some ambiguity because the assessments are imposed only on criminal convictions, we cannot say by "'"the clearest proof" that "the [assessments are] so punitive either in purpose or effect as to negate [the Legislature's] intention" to deem [them] "civil."'" (*Castellanos, supra*, 21 Cal.4th at p. 795 (plur. opn. of George, C. J.).)

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HN2 ***CA(1)*** **(1)** But a different approach is called for in the context of excessive fines. The Eighth Amendment's "protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority," and applies to civil and criminal penalties alike. (*Timbs, supra*, 586 U.S. at p. [139 S.Ct. at p. 686]; see *Austin v. United States* (1993) 509 U.S. 602, 610 [125 L. Ed. 2d 488, 113 S. Ct. 2801] (*Austin*).) Because monetary "sanctions frequently serve more than one purpose" (*ibid.*) and have "multiple effects" (*People v. Ruiz, supra*, 4 Cal.5th at p. 1108), *Austin* announced a test [**20] for identifying an Eighth Amendment "fine" that is both simpler and broader than the more complex *Ward/Mendoza-Martinez* approach. Under *Austin*, because **[*45]** "'[t]he notion of punishment ... cuts across the division between the civil and the criminal law,'" a monetary sanction that cannot "'fairly be said *solely* to serve a remedial purpose'" will be subject to scrutiny as an Eighth Amendment fine if it "can only be explained as serving in part to punish." (*Austin, supra*, at p. 610, italics added; see *People ex rel. State Air Resources Bd. v. Wilmshurst* (1999) 68 Cal.App.4th 1332, 1350 [81 Cal. Rptr. 2d 221] (*Wilmshurst*) ["[e]ven assuming a fine serves *some* remedial purpose, it will be considered punishment [for purposes of applying the Eighth Amendment] if it *also* serves either retributive or deterrent purposes"].)

HN3 ***CA(2)*** **(2)** While we accept the Attorney General's view that the restitution fine imposed under Penal Code section 1202.4 is punitive in nature, we do not agree that the court facilities and court operations assessments are nonpunitive. "Whether fees and assessments imposed on convicted defendants are sufficiently punitive to invoke the Eighth Amendment presents a closer question [than whether a restitution fine is], but we must keep in mind that the standard asks merely whether they are *partially* punitive." (*Cota, supra*, 45 Cal.App.5th at p. 800 (conc. & dis. opn. of Dato, J.).) Even though the Legislature's court-funding objectives in enacting [**21] Government Code section 70373 and Penal Code section 1465.8 unmistakably point to a nonpunitive intent, we cannot say that assessments imposed under these statutes solely serve a civil, remedial purpose. The nature of the proceeding in which a sanction is rendered—criminal or civil—is a powerful indicator of the sanction's character. (*In re Alva* (2004) 33 Cal.4th 254, 272 [14 Cal. Rptr. 3d 811, 92 P.3d 311].) The assessments at issue here are imposed "on every conviction for a criminal offense." (Pen. Code, § 1465.8; Gov. Code, § 70373.) Because these assessments are "conditioned on the commission of a crime" (*Department of Revenue of Mont. v. Kurth Ranch* (1994) 511 U.S. 767, 781 [128 L. Ed. 2d 767, 114 S. Ct. 1937]), we think they can only be explained as serving, in part, to punish. Accordingly, we conclude that, under *Austin*, ***HN4*** the assessments, as well as the restitution fine, must be treated as "fines" for purposes of the excessive fines prohibitions in the federal and state Constitutions.

2. *Ability To Pay Is an Important Consideration in Evaluating Whether These "Fines" Are "Excessive" Under the Excessive Fines Prohibitions of the Eighth Amendment and Article I, Section 17 of the California Constitution*

In evaluating excessiveness, the starting point for analysis—though not the end of it—is *United States v. Bajakajian* (1998) 524 U.S. 321 [141 L. Ed. 2d 314, 118 S. Ct. 2028] (*Bajakajian*), where the United States Supreme Court announced an excessiveness test that has been recognized by California courts as applicable to both the federal and state excessive fines clauses. **[*46]** There, the high court upheld [**22] a lower court's refusal to impose a $357,144 forfeiture for the federal offense of taking more than $10,000 in currency through customs without reporting it. (*Id.* at p. 324.) Concluding that the amount of the forfeiture sought by the government was grossly disproportionate to the gravity of the offense and the harm that it caused, the court found that the amount of the proposed forfeiture would violate the Eighth Amendment. (*Bajakajian, supra*, at pp. 324, 337–340.)

What is most salient about *Bajakajian*, in our view, is something the Supreme Court did not address. In a footnote, the court left open the question whether "wealth or income are relevant to the proportionality determination" or whether a deprivation of one's livelihood may bear on the Eighth Amendment excessiveness analysis. (*Bajakajian, supra*, 524 U.S. at p. 340, fn. 15.) Federal circuit courts have divided on this question. Some have held that ability to pay is relevant, either as part of a proportionality inquiry (e.g., *United States v. Viloski* (2d Cir. 2016) 814 F.3d 104, 111 (*Viloski*)) **15** or in addition to it (*United States v. Levesque* (1st Cir. 2008) 546 F.3d 78, 83–85 (*Levesque*)). And others have held ability to pay has no bearing on the *Bajakajian* analysis (e.g., *United States v. Dubose* (9th Cir. 1998) 146 F.3d 1141, 1145–1146), **16** with most arriving at that conclusion in the context of forfeiture orders, where the issue of ability to pay is often irrelevant in any event because the issue there generally is confiscation of [**23] identified assets rather than imposition of a monetary sanction.

How the high court will resolve the relevance of ability to pay in Eighth Amendment excessive fines analysis remains to be seen. Although we find notable a passing observation in *Timbs* that the excessive fines clause traces its "venerable lineage" back to the Magna Carta, which safeguarded the "'contenement'" of Englishmen and "required that economic sanctions ... 'not be so large as to deprive [an offender] of his livelihood'" (*Timbs, supra*, 586 U.S. at p. [139 S.Ct. at pp. 687–688]), **17** we need not take the discussion of this background point in *Timbs* as a prediction of what the high **[*47]** court's ultimate answer will be, for California courts have already held that ***HN5*** ability to pay is relevant to excessiveness, and they have

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done so in applying both the Eighth Amendment and article I, section 17 of the California Constitution. (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 728 [36 Cal. Rptr. 3d 814, 124 P.3d 408] (*Lockyer*).) 18

At issue in *Lockyer* was a fine of $14,826,200 imposed on a tobacco company, R.J. Reynolds, for giving out free cartons of cigarettes at various public gatherings in violation of a statute prohibiting the "'nonsale distribution'" of cigarettes on public premises. (*Lockyer, supra*, 37 Cal.4th at p. 712.) R.J. Reynolds attacked the fine as violative of the excessive fines prohibitions in the federal and state Constitutions and argued that [**24] its statutory violations were in good faith. (*Id.* at pp. 727–728.) In analyzing whether good faith is relevant to the determination of whether a fine or penalty is constitutionally excessive, the court concluded that it was not necessary to undertake a separate due process analysis. (*Id.* at p. 728.) The court held that this defense was cognizable, and remanded for the trial court "to determine whether defendant believed, in good faith, that its conduct conformed" to the statute it was charged with violating. (*Id.* at p. 731.)

CA(3) **(3)** The key here is not *Lockyer*'s precise holding on good faith, but its reading of the test for excessiveness. Observing that article I, section 17 of the California Constitution provides "similar protection[]" to the Eighth Amendment's excessive fines clause, the court centered its analysis on *Bajakajian, supra*, 524 U.S. 321. ***HN6*** It began with the overarching premise in *Bajakajian* that "'[t]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality'" (*Lockyer, supra*, 37 Cal.4th at p. 728), and then went on to list the following four considerations bearing on proportionality: "(1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay." (*Ibid.*) Of these factors, only the first three were at issue in *[**25] Bajakajian*. For the fourth factor—ability to pay—the *Lockyer* court relied not only on *Bajakajian*, but also on the Court of Appeal decision in *Sainez, supra*, 77 Cal.App.4th at pages 1320–1322. (*Lockyer, supra*, at p. 728.) Notably, *Sainez* relied on *Lippert, supra*, 148 F.3d 974, one of the federal circuit cases taking the more **[*48]** expansive view that ability to pay is relevant to excessiveness under *Bajakajian*. (*Sainez, supra*, 77 Cal.App.4th at p. 1322.) 19

HN7 ***CA(4)*** **(4)** It is apparent from *Lockyer* that California courts, borrowing from a line of federal circuit cases, have adopted a broad reading of *Bajakajian* in which ability to pay must be taken into account as a factor bearing on proportionality. "The critical question is whether a defendant's ability to pay is appropriately considered in determining whether there are constitutional limitations on the amounts of fines and fees imposed. If it is, [Cowan] should be afforded a hearing at which he can attempt to make his case." (*Cota, supra*, 45 Cal.App.5th at p. 799 (conc. & dis. opn. of Dato, J.).) We think it is. Because ability to pay is an element of the excessive fines calculus under both the federal and state Constitutions, we conclude that a sentencing court may not impose court operations or facilities assessments or restitution fines without giving the defendant, on request, an opportunity [**26] to present evidence and argument why such monetary exactions exceed his ability to pay.

HN8 "Ordinarily a reviewing court, having examined the relevant considerations, can decide for itself whether a fine or penalty is unconstitutionally excessive" (*Lockyer, supra*, 37 Cal.4th at p. 731), but where a defendant's excessive fine objection raises factual questions, a remand is required so that the trial court can make the necessary findings as a predicate to the excessiveness determination and weigh the relevant factors in the first instance. (*Ibid.*) Here, it must be borne in mind that "[p]roportionality is likely to be the most important issue in a forfeiture case, since the claimant-defendant is able to pay by forfeiting the disputed asset." (*Hines, supra*, 88 F.3d at p. 664.) "In imposing a fine, on the other hand, ability to pay becomes a critical factor." (*Ibid.*) 20 Making an ability-to-pay record in the trial court need not entail a contested evidentiary hearing in every case. It can **[*49]** often be done by simple offer of proof. But it must be done where an excessive fines objection is interposed.

3. *Guidance on Remand*

In remanding, we add three final observations for the trial court's guidance.

HN9 ***CA(5)*** **(5)** First, *[**27] Dueñas* speaks of "present ability to pay" (*Dueñas, supra*, 30 Cal.App.5th at p. 1164), but we agree with *Kopp* that the evaluation of ability to pay must include future ability to pay. (*Kopp, supra*, 38 Cal.App.5th at p. 96.) That is more consistent with the statutory scheme. (Pen. Code, § 1202.4, subd. (d) ["Consideration of a defendant's inability to pay" in setting the amount of the fine "may include his or her future earning capacity"].) It is also more consistent with prior law. (*People v. Kay* (1973) 36 Cal.App.3d 759, 763 [111 Cal. Rptr. 894].) The appropriate inquiry—aptly summarized in *Kay* as whether a defendant is presently able to pay or has any reasonable prospect of paying—must take into account the totality of Cowan's financial obligations in court-imposed debt. (Cf. *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1532 [98 Cal. Rptr. 3d 1] [construing Pen. Code, § 1202.5; ability-to-pay inquiry "includes ... an evaluation of the totality of an accused's financial responsibilities"].) 21

HN10 Second, although *Dueñas* can be read to suggest that the People must bear the burden of proving a defendant's ability to pay a challenged assessment or fine (*Dueñas, supra*, 30 Cal.App.5th at p. 1172), we agree with the courts that have since held a defendant bears the burden of proof on that issue. (*Santos, supra*, 38 Cal.App.5th at p. 934; *Kopp, supra*, 38 Cal.App.5th at p. 96; *People v. Castellano* (2019) 33 Cal.App.5th 485, 490 [245 Cal. Rptr. 3d 138] [same division that decided *Dueñas* holding that defendant must "in the first instance contest ... his or her ability to pay the [charges] to be imposed and at a hearing present evidence [**28] of his or her inability to pay"].) Thus, on **[*50]** remand, upon proper objection, the court must hold a hearing at which defendant will have an opportunity to bear his burden of proof on the issue of ability to pay.

Third, and finally, our analysis of the restitution fine as an excessive fines matter leads us to a different disposition than the *Dueñas* court reached with respect to mandatory minimum fines imposed under Penal Code section 1202.4, subdivision (b)(1). Under the holding in *Dueñas* these mandatory minimum fines must continue to be imposed, subject to a stay of execution where inability to pay is shown. (*Dueñas, supra*, 30 Cal.App.5th at p. 1172.) But because the right to be free from excessive fines under the federal and state Constitutions prohibits *imposition* of excessive fines, it would not be an appropriate remedy in this case should an excessive fines determination be made to allow imposition of a restitution fine subject to a stay. If, upon remand, an excessive fines objection is made and upheld, the ruling will amount to a determination that the clause in Penal Code section 1202.4, subdivision (c) barring consideration of ability to pay—"[a] defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine"—is unconstitutional as applied, thus [**29] prohibiting imposition of the fine altogether.

V. DISPOSITION

The sentence to a 16-month term of incarceration is reversed. The cause is remanded for further sentencing proceedings consistent with this opinion. In all other respects, the judgment is affirmed.

Pollak, P. J., and Tucher, J., concurred.

Concur by: Streeter, J.

Concur

STREETER, J., Concurring.—While I concur in the lead opinion, I write separately to explain my preference for an additional rationale and to make clear that I do not subscribe to the view that *People v. Dueñas* (2019) 30 Cal.App.5th 1157 [242 Cal. Rptr. 3d 268] (*Dueñas*) was wrongly decided. If there is a shortcoming in *Dueñas*'s reasoning, in my view, it is that the panel there chose to frame its analysis exclusively in due process terms, without delving into other sources of constitutional protection, and without considering the degree to which state and federal law may diverge in these other areas. (*Dueñas, supra*, at pp. 1168, fn. 4, 1171, fn. 8.)

A recent concurrence and dissent by Justice Dato in *People v. Cota* (2020) 45 Cal.App.5th 786 [259 Cal. Rptr. 3d 419] (*Cota*) prefigures the approach we take in this case and raises some perceptive questions about the opinions that have rejected *Dueñas*. I share the concerns he expresses and will try to pick up where he left off, tackling some of the "doctrinal nuances" (*id.* at p. 801) I **[*51]** think make a difference here. While I agree that fines [**30] and fees imposed in criminal cases may be analyzed as an excessive fines matter, as do a number of leading scholars who have written in the area,[1] I do not agree that simply because an excessive fines analysis is fitting, it must be applied in lieu of other sources of constitutional protection —such as the right to equal protection or to due process—as if we were bound to follow something akin to the statutory interpretation canon favoring the specific over the general. I know of no such rule in constitutional adjudication.[2]

Below, I analyze the additional sources of constitutional protection that I think are implicated here, parsing them one by one. First, I address the assessments as a matter of equal protection and due process under federal law. I then turn to an analysis of the restitution fine together with the assessments, applying principles of equal protection under the California Constitution. Ultimately, although I agree that in dealing with the monetary exactions before us the excessive fines clause of the Eighth Amendment and its state law counterpart, article I, section 17 of the California Constitution, provide a suitable framework for constitutional analysis, it is my view that the California [**31] equal protection guarantee is more suitable. In fact, I think there are good reasons to base the holding here solely on state equal protection grounds, and I would do so.

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EXHIBIT [D]–4684

I. FEDERAL LAW

A. Equal Protection

Government Code section 70373 and Penal Code section 1465.8 create, in effect, "'user' fee[s]" levied only on those in the criminal justice system who suffer convictions. (*People v. Rivera* (1998) 65 Cal.App.4th 705, 711 [76 Cal. Rptr. 2d 703].) Because these fees are mandatory—allowing no opportunity for an indigent defendant facing them to demonstrate that delinquency and its consequences are unavoidable—I believe their imposition without consideration of ability to pay violates the precept that "[t]here can be no equal justice" where the kind of justice "a man gets depends on the amount of money he has." (*Griffin v. Illinois* (1956) 351 U.S. 12, 19 [100 L.Ed. 891, 76 S.Ct. 585] (plur. opn. of Black, J.) (*Griffin*).) The *Hicks* court describes this principle as nothing more than a "sentiment." (*People v. Hicks* (2019) 40 Cal.App.5th 320, 328 [253 Cal. Rptr. 3d 116], review granted Nov. 26, 2019, No. S258946 (*Hicks*).) I think it deserves more respect than that. Some might say Justice Powell's opinion in *University of California Regents v. Bakke* (1978) 438 U.S. 265 [57 L. Ed. 2d 750, 98 S. Ct. 2733] is the most influential modern equal protection decision announced by plurality. I would say it is Justice Black's opinion in *Griffin*.

Although the *Dueñas* opinion opens by invoking the broad principle of *Griffin*, it immediately turns to a due process [**32] analysis, relying heavily on *Bearden v. Georgia* (1983) 461 U.S. 660 [76 L. Ed. 2d 221, 103 S. Ct. 2064] (*Bearden*) and concluding that the assessments imposed under Government Code section 70373 and Penal Code section 1465.8 amount to "additional punishment." (*Dueñas, supra*, 30 Cal.App.5th at p. 1168; see *id.* at pp. 1166–1169.) I agree that an analysis treating the assessments as punitive accords with Eighth Amendment precedent—and produces essentially the same result, guaranteeing a right to be heard on the issue of ability to pay, while barring rote imposition in every case—but I would prefer to see us stay true to *Griffin* within its conventional frame as an equal protection case, which is how our Supreme Court reads it. (See *People v. Reese* (2017) 2 Cal.5th 660, 664–668 [214 Cal. Rptr. 3d 706, 390 P.3d 364].)

The federal equal protection analysis here turns on two United States Supreme Court cases, *James v. Strange* (1972) 407 U.S. 128 [32 L. Ed. 2d 600, 92 S. Ct. 2027] (*James*), and *Fuller v. Oregon* (1974) 417 U.S. 40 [40 L. Ed. 2d 642, 94 S. Ct. 2116] (*Fuller*). *James* and *Fuller*, like *Bearden*, descend from *Griffin*, but within a different branch of *Griffin*'s progeny. Both involve so-called recoupment statutes under which criminal defendants for whom counsel is appointed may be ordered to reimburse the cost of their appointed counsel, with the reimbursement order then being enforceable as a civil judgment.

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James arose under a recoupment statute in Kansas. The appellee there, David Strange, was arrested and charged with a felony, appeared before a magistrate, professed indigency, accepted appointed counsel, ultimately [**33] pled guilty to a reduced charge, and was placed on probation. (*James, supra*, 407 U.S. at p. 129.) The Kansas Judicial Administrator then requested reimbursement under the recoupment statute in the amount of $500 within 60 days, subject to entry of a civil judgment in that amount upon failure to pay. (*Ibid.*) Strange attacked the statute as facially unconstitutional, and a three-judge federal district court upheld the challenge, finding it constituted an impermissible burden on the right to counsel under *Gideon v. Wainwright* (1963) 372 U.S. 335 [9 L. Ed. 2d 799, 83 S. Ct. 792]. (*James, supra*, at pp. 128–129.) The United States Supreme Court affirmed, but chose to rule on equal protection grounds instead, citing *Rinaldi v. Yeager* (1966) 384 U.S. 305 [16 L. Ed. 2d 577, 86 S. Ct. 1497] (*Rinaldi*) (*James, supra*, at p. 140), which struck down a statute authorizing recoupment from incarcerated indigent defendants of the costs of appellate transcripts. (*Id.* at pp. 134–140.)

Rinaldi is part of an extensive body of high court precedent applying the equal justice principle of *Griffin*. The focus of attack in *James* was a feature of the Kansas statute denying defendants facing recoupment the benefit of an "array of protective exemptions Kansas has erected for other civil judgment debtors, including restrictions on the amount of disposable earnings subject to garnishment, protection of the debtor from wage garnishment at times of severe [**34] personal or family sickness, and exemption from attachment and execution on a debtor's personal clothing, books, and tools of trade." (*James, supra*, 407 U.S. at p. 135.) The Supreme Court's opinion is not about ensuring meaningful access to a hearing on the merits—which is what the three-judge district court focused upon, relying on *Gideon* (*James, supra*, at p. 134; *Strange v. James* (D.Kan. 1971) 323 F.Supp. 1230, 1233–1234)—but unequal treatment of indigent criminal defendants compared to other civil judgment debtors. (*James, supra*, at pp. 135–136.)

Noting that the challenged statute applied to both convicted defendants and acquitted defendants, the high court saw no rational basis for treating either differently from other civil debtors. "The indigent defendant who is found guilty is uniquely disadvantaged in terms of the practical operation of the statute," the Supreme Court found. (*James, supra*, 407 U.S. at p. 139.) "A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the State that such a defendant, upon satisfaction of the criminal penalties imposed,

be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship. There is limited incentive to seek legitimate employment when, after serving a sentence during which [**35] interest has accumulated on the indebtedness for legal services, the indigent **[*54]** knows that his wages will be garnished without the benefit of any of the customary exemptions." (*Ibid.*)

The Supreme Court acknowledged the interests Kansas had in defraying the burgeoning costs of funding publicly appointed counsel in an era of expanding criminal dockets. "Such trends have heightened the burden on public revenues, and recoupment laws reflect legislative efforts to recover some of the added costs," the court observed. (*James, supra*, 407 U.S. at p. 141.) But despite the legitimacy of these interests, the court held that they "are not thwarted by requiring more even treatment of indigent criminal defendants with other classes of debtors ... . State recoupment laws ... need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect. The statute before us embodies elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law." (*Id.* at pp. 141–142.)

James must be read together with *Fuller*, another recoupment case decided two terms later. *Fuller* involved the state of Oregon's recoupment statute. The question in *Fuller* was "whether Oregon may constitutionally [**36] require a person convicted of a criminal offense to repay to the State the costs of providing him with effective representation of counsel, when he is indigent at the time of the criminal proceedings but subsequently acquires the means to bear the costs of his legal defense." (*Fuller, supra*, 417 U.S. at p. 41.) Like the appellee in *James*, Prince Eric Fuller, an indigent, was charged with a felony, accepted publicly appointed counsel, entered a plea, and was placed on probation. (*Id.* at pp. 41–42.) Under the Oregon recoupment statute, as in Kansas, failure to pay reimbursement resulted in entry of a civil judgment, subjecting criminal defendants to civil collection along with other civil judgment debtors. (*Id.* at p. 47.) The Oregon Court of Appeals distinguished *James*, rejecting a challenge to the sentencing court's authority to require reimbursement as a condition of probation. (*State v. Fuller* (1973) 12 Ore. App. 152 [504 P.2d 1393, 1395].)

The high court affirmed, citing key differences between the Oregon statute and the Kansas statute. First, "[t]he convicted person from whom recoupment is sought ... retains all the exemptions accorded other judgment debtors." (*Fuller, supra*, 417 U.S. at p. 47.) Second, "the requirement of repayment 'is never mandatory.'" (*Id.* at p. 44.) Third, defendants facing recoupment had the ability to argue against [**37] recoupment on the ground of "'manifest hardship'" to them or their immediate families. (*Id.* at pp. 45–46.) Thus, the Supreme Court explained, "revocation of probation is not a collection device used by the State to enforce debts to it, but is a sanction imposed for 'an intentional refusal to obey the order of the court.'" (*Id.* at p. 48, fn. 9.) And "[s]ince an order to repay can be entered only when a convicted person is **[*55]** financially able but unwilling to reimburse the State, the constitutional invalidity found in *James v. Strange* simply does not exist." (*Ibid.*)

Insofar as Cowan attacks the constitutionality of the court operations and court facilities assessments, *James* controls this case. By their plain terms and their legislative history, neither of the statutes under which these assessments were imposed is intended to be punitive in nature, and outside of the Eighth Amendment context they must be treated as nonpunitive. "Both were enacted as parts of more comprehensive legislation intended to raise funds for California courts. Penal Code section 1465.8 was enacted in 2003 as part of a law that increased a number of court-related fees, including small claims court filing fees, civil litigation filing fees, civil motions fees, and appellate filing fees; [**38] it also imposed new court fees, such as a fee for complex litigation, probate filing fees, and a fee for certain court reporter services. (Assem. Republican Bill Analysis of Assem. Bill No. 1759 (2003–2004 Reg. Sess.).)" (*Dueñas, supra*, 30 Cal.App.5th at p. 1165.)

"As its name suggests, equal protection of the laws assures that people who are "'similarly situated for purposes of [a] law'" are generally treated similarly by the law. [Citation.] Thus, "'[t]he first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.'" (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 644 [209 Cal. Rptr. 3d 532] (*Vergara*).) Under the user fee scheme the *Dueñas* court outlines, which broadly applies to civil and criminal litigants, all litigants subject to these fees are similarly situated. But while the Legislature "has recognized the deleterious impact of increased court fees on indigent people" (*Dueñas, supra*, 30 Cal.App.5th at p. 1165; see Gov. Code, § 68630, subd. (a)), it has accommodated only indigent *civil* litigants with fee waivers (Gov. Code, § 68631).

By singling out criminal defendants from among all litigants who are required to pay fees devoted to court funding and subjecting them, and them alone, to harsher treatment, the California Legislature has created a classification [**39] comparable to the one at issue in *James*. The same thing that was said there may be said here. Despite the state's considerable interest in defraying court operations and court facilities costs, we see no "need ... [to] blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect." (*James, supra*, 407 U.S. at pp. 141–142.) It is of course true that holding only convicted persons automatically to account regardless of circumstances may be justified by their criminality, but that is not the stated intent of the legislation. And even if in reality it was the actual justification, that just shows "[t]he statute[s] before us embod[y] elements of punitiveness and discrimination which violate the rights of citizens to

equal treatment under the law." (*Id.* at p. 142.)

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Fuller draws a line that circumscribes revenue-raising in the form of user fees imposed singularly on convicted criminal defendants. What saved the cost recoupment statute there was (1) it was not mandatory; (2) it accommodated for inability to pay; and (3) by recognizing the same exemptions to civil collection against criminal debtors that civil debtors enjoyed, it treated all debtors, both criminal and civil, equally. (*Fuller, supra*, 417 U.S. at pp. 44–47.) None of that [**40] is true here. The "potentially devastating consequences" inflicted by mandatory assessments on indigent defendants "in effect transform a funding mechanism for the courts into additional punishment for a criminal conviction for those unable to pay." (*Dueñas, supra*, 30 Cal.App.5th at p. 1168.)

In *People v. Amor* (1974) 12 Cal.3d 20 [114 Cal. Rptr. 765, 523 P.2d 1173], our Supreme Court rejected a federal equal protection challenge to the California recoupment statute, Penal Code section 987.8. It did so in reliance on *Fuller* (*Amor, supra*, at p. 27), pointing out that recoupment is imposed only on those determined to have the ability to pay (*id.* at p. 31). *James* cannot be distinguished on that ground or any other ground found sufficient to save Penal Code section 987.8 in *Amor*. I would therefore join the *Dueñas* panel in concluding that the court facilities and court security assessments "should be treated no differently than their civil counterparts enacted in the same legislation and imposed only on those with the means to pay them." (*Dueñas, supra*, 30 Cal.App.5th at p. 1169.) But under federal law, I would do so explicitly on equal protection as well as due process grounds.

B. Due Process

The key to the federal due process analysis—and, of course, the centerpiece of the opinion in *Dueñas*—is *Bearden, supra*, 461 U.S. 660, a case that requires a close reading because of its unique place in the evolution of *Griffin*'s equal justice principle. *Bearden* [**41] involved a probation revocation for failure to pay a fine and restitution. After observing that "[t]his Court has long been sensitive to the treatment of indigents in our criminal justice system" (*id.* at p. 664), the *Bearden* court framed the issue to be decided there as a matter of fairness, describing the question as "whether a sentencing court can revoke a defendant's probation for failure to pay the imposed fine and restitution, absent evidence and findings that the defendant was somehow responsible for the failure or that alternative forms of punishment were inadequate." (*Id.* at p. 665.) While acknowledging that a defendant who willfully fails to pay a fine may be jailed, the high court held that automatic revocation of probation—without inquiry into a defendant's ability to pay, or exploring alternatives short of incarceration for those unable to pay—cannot survive constitutional scrutiny. (*Id.* at pp. 670–672.)

[*57]

Bearden cited *Griffin* as the genesis of the equal justice principle it applied (*Bearden, supra*, 461 U.S. at pp. 664–665), which makes sense, because for many years equal protection was the accepted mode of analysis in cases following from *Griffin*, consistent with *James*. (See, e.g., *Williams v. Illinois* (1970) 399 U.S. 235, 241–242 [26 L. Ed. 2d 586, 90 S. Ct. 2018] (*Williams*); *Tate v. Short* (1971) 401 U.S. 395 [28 L. Ed. 2d 130, 91 S. Ct. 668]; *Rinaldi, supra*, 384 U.S. at pp. 307–308, 310–311; *Douglas v. California* (1963) 372 U.S. 353, 355–357 [9 L. Ed. 2d 811, 83 S. Ct. 814] (*Douglas*).) 3 Indeed, the most direct precursor to *Bearden* [**42], the California Supreme Court's decision in *In re Antazo* (1970) 3 Cal.3d 100 [89 Cal. Rptr. 255, 473 P.2d 999], held that jailing a defendant for inability to pay a fine violated equal protection (*id.* at pp. 103–104) based on a long line of cases that "consistently reaffirmed [*Griffin*'s] fundamental principle of equal justice" (*id.* at p. 110). *Bearden* introduced a new approach, opting to place its holding within an interest balancing framework that "emphasizes fairness between the State and the individual dealing with the State" (*Ross v. Moffitt* (1974) 417 U.S. 600, 609 [41 L. Ed. 2d 341, 94 S. Ct. 2437]; see *Bearden, supra*, at p. 665.)

Drawing largely from a reading of *Griffin* proposed in a series of separate opinions authored by Justice Harlan 4 and adopted in *Boddie v. Connecticut* (1971) 401 U.S. 371, 382 [28 L. Ed. 2d 113, 91 S. Ct. 780], the *Bearden* court explained, "[a] due process approach has the advantage in this context of directly confronting the intertwined question of the role that a defendant's financial background can play in determining an appropriate sentence. When the court is initially considering what sentence to impose, a defendant's level of financial resources is a point on a spectrum rather than a classification. Since indigency in this context is a relative term rather than a classification, **[*58]** fitting 'the problem of this case into an equal protection framework is a task too Procrustean to be rationally accomplished[.]' [**43] [Citation.] The more appropriate question is whether consideration of a defendant's financial background in setting or resetting a sentence is so arbitrary or unfair as to be a denial of due process." (*Bearden, supra*, 461 U.S. at p. 666, fn. 8.) This is fundamentally a procedural due process test—an analytical approach which characteristically features interest balancing—as confirmed by the fact that, in

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support of it, the court cited leading procedural due process cases.[5]

Doctrinally, to be sure, the *Bearden* analysis has elements of both equal protection and due process. To resolve the question presented there as a matter of equal protection, the *Bearden* court explained, "one must determine whether, and under what circumstances, a defendant's indigent status may be considered in the decision to revoke probation." (*Bearden, supra*, 461 U.S. at p. 666.) But because that amounts to the same thing as "asking directly the due process question of whether and when it is fundamentally unfair or arbitrary for the State to revoke probation when an indigent is unable to pay [a] fine" (*ibid.*), the court announced a multifactor balancing test in which "[d]ue process and equal protection principles converge." (*Id.* at p. 665.)[6] Instead of utilizing a traditional equal protection approach [**44] focused on invidious discrimination against a suspect class or the traditional substantive due process approach of identifying a burden on a fundamental right, the court announced a new, hybrid test in the following terms: "the issue cannot be resolved by resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into such factors as 'the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose.'" (*Bearden, supra*, at pp. 666–667, quoting *Williams, supra*, 399 U.S. at p. 260 (conc. opn. of Harlan, J.).)[7] **[*59]** Because it requires an ends-means inquiry and consideration of alternatives, the *Bearden* test calls for a form of heightened scrutiny—more rigorous than rational basis, but less rigorous than strict scrutiny. Nothing in the high court's enunciation of the test suggests a limitation to deprivations of physical freedom or impediments on access to court.

To the extent this balancing test "wove together two distinct strands" of precedent spawned by *Griffin* (*Hicks, supra*, 40 Cal.App.5th at p. 325), the weaving was done in *Bearden*, not *Dueñas*. Applying it here, there can be no real [**45] debate about the ends-means inquiry and the availability of means more precisely fitted to the legislative objective of funding the courts. It is irrational to impose a funding burden on litigants who are unable to pay, for collection from them, by definition, is futile. The same legislative objective can be achieved in a less costly way, since the cost of futile collection efforts would be saved by screening out those who have no ability to pay. Certainly, for those most needy, the first two *Bearden* factors weigh heavily; the "nature" of the "'individual interest affected'" may include the potential loss of shelter, transportation, food and clothing, and its "extent" (*Bearden, supra*, 461 U.S. at pp. 666–667) can be a lifetime of "cascading consequences" (*Dueñas, supra*, 30 Cal.App.5th at p. 1163). Given the poor fit between means and objectives, the determinative factor in the interest balancing analysis is whether what the *Dueñas* court called the "potentially devastating consequences" of imposing assessments on someone who is unable to pay (*id.* at p. 1168) should be given any weight at all in evaluating the individual interest.

One of the main lines of criticism of *Dueñas* is that it went "beyond its foundations" (*Hicks, supra*, 40 Cal.App.5th at p. 327) by applying *Griffin* outside the context of jailing people for [**46] failure to pay fines or depriving them of access to court. (*People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1039 [247 Cal. Rptr. 3d 850] (conc. opn. of Benke, Acting P. J.).) But that misreads *Griffin*, which enunciates a simple equal protection principle (*People v. Reese, supra*, 2 Cal.5th at p. 665) that was long ago extended beyond the context of access to justice, in both criminal and civil cases. (*Jones v. Governor of Florida* (11th Cir. 2020) 950 F.3d 795, 818 ["whether sounding in equal protection or due process, *Griffin*'s equality principle is straightforward: the state may not treat criminal defendants more harshly on account of their poverty"].)

[*60]

Mayer v. City of Chicago (1971) 404 U.S. 189 [30 L. Ed. 2d 372, 92 S. Ct. 410], for example, involved an indigent defendant convicted on nonfelony charges who received a fine for each offense. (*Id.* at pp. 190–191.) He wished to appeal based on prosecutorial misconduct and insufficient evidence, but could not do so because the state provided free transcripts only for felony cases. (*Ibid.*) The *Mayer* court rejected the city of Chicago's effort to distinguish *Griffin* on the ground that the defendant there was incarcerated. (*Id.* at p. 196.) Also illustrative is *James, supra*, 407 U.S. at page 128, the defense fees recoupment case discussed above. Neither incarceration nor access to justice was at stake there. The case concerned, purely and simply, "squalid discrimination" (*Griffin, supra*, 351 U.S. at p. 24 (conc. opn. of Frankfurter, J.)) against indigent criminal defendants for no reason but [**47] their poverty. (See *Johnson v. Bredesen* (6th Cir. 2010) 624 F.3d 742, 749 [recognizing that the *James* court was "concerned about discriminatory garnishment of the wages with which a debtor 'supports himself and his family'" and "found that the admittedly 'legitimate' interests of the state paled in comparison to 'the hopes of indigents for self-sufficiency and self-respect'"].)

Nor has the application of *Griffin* been strictly confined to the effects of wealth-based discrimination *within* the criminal justice system. Courts have been selective in their extension of *Griffin* in the civil context—just as they have been selective in recognizing new "fundamental rights"—but its equal justice principle has been applied in a number of settings where the discriminatory injury at issue was a civil disability having nothing to do with loss of physical liberty (see, e.g., *Boddie v. Connecticut, supra*, 401 U.S. 371 [right to seek divorce]; *M.L.B. v. S.L.J.* (1996) 519 U.S. 102 [136 L. Ed. 2d 473, 117 S. Ct.

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555] [right to defend against termination of parental rights]) or access to justice (see, e.g., *Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663, 668 [16 L. Ed. 2d 169, 86 S. Ct. 1079] [relying on *Griffin* in striking down poll taxes]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 598, 602–604, 608–609 [96 Cal. Rptr. 601, 487 P.2d 1241] (*Serrano I*) [relying on *Griffin* to support the holding that wealth is a suspect classification, while recognizing education as a fundamental interest]).

Dueñas implicitly recognizes that the severity of civil burdens [**48] flowing from the court-imposed criminal debt may trigger heightened scrutiny under *Griffin* as a form of wealth discrimination. There is nothing particularly novel about this reading of *Griffin* and its progeny. (E.g., *Jones v. Governor of Florida*, *supra*, 950 F.3d at p. 809 ["heightened scrutiny applies in this case because we are faced with a narrow exception to traditional rational basis review: the creation of a wealth classification that punishes those genuinely unable to pay fees, fines, and restitution more harshly than those able to pay"].) In rejecting a broad reading of *Griffin*, the *Hicks* court suggests that, to give some defendants but not others relief for inability to pay amounts to a **[*61]** form of "'inverse discrimination'" (*Hicks*, *supra*, 40 Cal.App.5th at p. 327, quoting *Williams*, *supra*, 399 U.S. at p. 244), but of course the point of heightened scrutiny in equal protection analysis is to recognize and protect against *invidious* discrimination. Those with the means to pay who are held to that obligation, while others are not, suffer no such discrimination.

The factual premises on which the *Dueñas* court relied have been well-documented. What *Hicks* dismisses as "language found in ... dicta" in *Rivera v. Orange County Probation Dept.* (9th Cir. 2016) 832 F.3d 1103, 1112, footnote 7 (discussing the "debt trap" that court-imposed fees and fines can lay for indigent populations) and *People v. Neal* (2018) 29 Cal.App.5th 820, 827–828 [240 Cal. Rptr. 3d 629] (describing [**49] how court-imposed debt creates a "significant barrier for individuals seeking to rebuild their lives after a criminal conviction") (*Hicks*, *supra*, 40 Cal.App.5th at p. 328) is broadly supported by a number of judicial opinions,[8] reports from blue chip judicial reform study groups,[9] publications from research centers at leading universities,[10] and a rich field of published work by individual scholars in diverse fields,[11] all focusing on a growing national trend in criminal courts of using fees and assessments for court funding,[12] and the recognized need to address the disproportionate impact these charges have on low-income populations **[*62]** and minority communities.[13] "[O]ur Chief Justice underscored the urgency of this issue in her 2019 State of the Judiciary address, stating that we 'must ensure ... fines and fees no longer fall on those least able to afford them.' [Citation.] Echoing her concerns, the Administrative Director of California's Judicial Council has remarked that fines and fees create a 'destitution pipeline.'" (*Cota*, *supra*, 45 Cal.App.5th at p. 798, fn. omitted (conc. & dis. opn. of Dato, J.).) Our Legislature has been focused upon this difficult set of issues for several years.[14] The issue at hand is not the wisdom or adequacy of the limited steps the Legislature has [**50] taken so far to deal with it, but more narrowly whether the imposition of mandatory assessments without an ability-to-pay determination is constitutional.

In addressing this issue, I accept some widely acknowledged realities. In our complex scheme of criminal fees and fines, what may appear in isolation to be tiny amounts are in fact just the foundation for the imposition of much larger amounts. Thus, court-imposed debt, even in small amounts, may threaten an indigent person's means of subsistence[15] when penalties, interest and collections costs flowing from default are considered. In addition to blocking access to early probation termination and hindering eligibility for expungement,[16] delinquency on court-ordered debt may diminish prospects for employment and housing,[17] disqualify the debtor from government benefits and professional licenses,[18] put public housing out of reach,[19] and create incentives to obtain money by illegal means, thus working at cross-purposes **[*63]** with the rehabilitative goals of criminal [**51] sentencing, probation, and reentry.[20] And because court-ordered debt is not subject to any statute of limitations[21] and not dischargeable in bankruptcy,[22] the consequences can last a lifetime, effectively resulting in what amounts to perpetual punishment. Velia Dueñas's case provides a particularly vivid example of these "cascading consequences." (*Dueñas*, *supra*, 30 Cal.App.5th at p. 1163; see *id.* at pp. 1161–1163.) I agree that the facts there may be considered "extreme" (*People v. Caceres* (2019) 39 Cal.App.5th 917, 923 [252 Cal. Rptr. 3d 709]), but I am not convinced they are unusual, given the close association between crime, mental illness, and chronic drug addiction.

In light of these realities, I think the courts declaring *Dueñas* to have been wrongly decided not only fail to appreciate the rigor of *Bearden*'s balancing test, but adopt too narrow a conception of due process as its procedural protections have been "worked out over many decades of constitutional litigation." (*Randone v. Appellate Department* (1971) 5 Cal.3d 536, 548–549 [96 Cal. Rptr. 709, 488 P.2d 13].) It requires no "alteration of principles of due process" (*id.* at p. 551) to conclude that, by putting at risk the only "means to obtain essential food, clothing, housing, and medical care" an indigent may have (*Goldberg v. Kelly* (1970) 397 U.S. 254, 264 [25 L. Ed. 2d 287, 90 S. Ct. 1011] (*Goldberg*)), the imposition of unpayable court-funding assessments without considering ability to pay exposes the person assessed to [**52] summary deprivation of property (i.e., money demanded by the state that would otherwise be used to pay for that person's basic necessities of life).[23]

According to the critics of *Dueñas*, whatever hardships might be brought about by court-ordered debt are unfortunate, but not constitutionally cognizable. The underlying premise is that *Griffin* and its progeny address only deprivations of constitutionally

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fundamental rights. (See *People v. Santos* (2019) 38 Cal.App.5th 923, 937–938 [251 Cal. Rptr. 3d 483] (dis. opn. of Elia, J.) ["*Dueñas* did not involve the right to access the courts, the **[*64]** defendant's liberty interests, or any other fundamental right"].) But what these critics overlook is that there *is* a fundamental right at stake here—the right to be free from constitutionally excessive fines. (*Timbs v. Indiana* (2019) 586 U.S. [203 L. Ed. 2d 11, 139 S.Ct. 682, 689] (*Timbs*).) Thus, even assuming it is correct that *Bearden* applies only to deprivations so serious as to be deemed constitutionally fundamental, we have a threatened deprivation of that magnitude here, which triggers the *Bearden* test.

Because all of the opinions criticizing the due process analysis in *Dueñas* dismiss the burdens of unpayable debt as constitutionally insignificant, none of them [**53] actually carries out the weighing process required by *Bearden*. The *Hicks* court does, however, provide a sketch of the competing interests before declaring the proper balance to be a matter for the legislative domain. It acknowledges, on the one hand, the importance of fair and evenhanded treatment of "criminal defendants, many of whom are people of little or no means," and, on the other, the state's interest in generating revenue to "help defray the costs of operating the court system" and for programmatic victim restitution. (*Hicks, supra*, 40 Cal.App.5th at p. 328.) According to the *Hicks* court, the holding in *Dueñas* grants a form of "immunity," which not only "relieves the indigent probationer of any duty to make any effort to repay his debts and thereby rehabilitate himself" (*Hicks, supra*, 40 Cal.App.5th at pp. 327–328), but "is ... inconsistent with the operation of probation," since probation "typically lasts a number of years ... and thus gives probationers a significant period of time to repay their financial obligations" by their bona fide efforts or a change in their circumstances. (*Hicks*, at p. 328, citation omitted.)

Respectfully, I fail to see how *Dueñas* grants an "immunity." The rule laid down there requires an individualized showing of indigency. Correctly understood and applied, [**54] this is not an automatic exemption. It applies only to a sub-population of indigent criminal defendants who we know are certain to default the moment an assessment is imposed, with a perpetual cycle of ever mounting, unescapable debt to follow. These defendants have no ability to demonstrate their rehabilitation through financial accountability; no ability to contribute anything to court funding; and no reasonable prospects for any change in circumstance. For them, like Sisyphus, extended time to pay means only condemnation to a task that can never be achieved. The odious history of debt peonage in this country may seem foreign to us—it is associated with race discrimination and economic oppression in other states, in a bygone era—but before looking the other way here, we should consider the echoes of that regime in our system of criminal justice "user fees."

While Government Code section 70373 and Penal Code section 1465.8 are silent on the issue of whether a court must consider a defendant's ability to **[*65]** pay, the *Dueñas* court reads these provisions to require it for those who, through no fault of their own, face unpayable assessments. Normally, courts "may not make a silent statute speak by inserting language the Legislature did not put [**55] in the legislation" (*Yeager v. Blue Cross of California* (2009) 175 Cal.App.4th 1098, 1103 [96 Cal. Rptr. 3d 723]), but I do not share the view that *Dueñas* rewrote Government Code section 70373 and Penal Code section 1465.8 "by judicial fiat." (*People v. Gutierrez, supra*, 35 Cal.App.5th at p. 1038 (conc. opn. of Benke, Acting P. J.).) There is a substantial constitutional question here, at least. Whether *Dueñas*'s holding with respect to the assessment statutes is read to rest on constitutional grounds (violation of due process) or on statutory grounds (the statutes must be read in pari materia with civil fee imposition statutes affording in forma pauperis relief to indigents), 24 I believe its conclusion is right either way—as a federal constitutional matter under *Bearden*, or as a statutory matter under the rule that, where possible, we interpret statutes to preserve their constitutionality. 25 Certainly, I see no need to reject the Attorney General's concession on the point. Coming from the chief law enforcement officer in the state, that concession deserves respectful consideration in our constitutional calculus. 26

II. STATE LAW

Although in my view, the assessments at issue in this case do not survive constitutional scrutiny under either the federal equal protection or due process clauses, the restitution fine is another matter. I do not doubt that, if evaluated under rational basis review, the imposition [**56] of a mandatory minimum restitution fine under Penal Code section 1202.4 on all convicted criminal defendants, without consideration of ability to pay, is constitutionally valid and enforceable. Where any rationally conceivable justification will suffice, the state is free to "use[] a shotgun instead of a rifle to accomplish its legitimate end." (*Johnson v. Bredesen, supra*, 624 F.3d at p. 748.) *Bearden* interest balancing presents a closer question, but in the end, because the burden remains with the challenger under that more exacting test, I think the state **[*66]** must still prevail. There may be some overbreadth in the statute, but it serves an important penological purpose, even if some defendants are so poor that they lack the ability to respond to the rehabilitative objective of the fine by paying it. Regardless of any given individual defendant's ability to pay, the imposition of an automatic fine across the board—with no exceptions—sends a deterrent and retributive message. The Legislature enjoys the prerogative of weighing the importance of sending such a

message in absolute, unqualified terms.[27] This is, in essence, the point of view advanced by the Attorney General, and I do not disagree with him, at least as a federal constitutional matter.

But it is here, I think, that California's state equal protection guarantee—which is broader than its federal counterpart—makes a crucial difference. It is well established that our state charter is a document of "independent force." (*People v. Buza* (2018) 4 Cal.5th 658, 684 [230 Cal. Rptr. 3d 681, 413 P.3d 1132]; *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 352 [276 Cal. Rptr. 326, 801 P.2d 1077]; see also *Serrano v. Priest* (1976) 18 Cal.3d 728, 764 [135 Cal. Rptr. 345, 557 P.2d 929] (*Serrano II*).) My preference would be to address and resolve all of the constitutional issues presented here—with regard to the assessments as well as the restitution fine—as an equal **[*67]** protection matter under article I, section 7, and article IV, section 16 of the California Constitution. We in the California judiciary have a long history of taking independent steps on pressing issues of the day, most commonly in discrimination cases.[28] The deeper inquiry into California constitutional law not only probes directly into what is at issue—the disparate impact of these assessments and fines on the poor (see *People v. Santos, supra*, 38 Cal.App.5th at p. 939 (dis. opn. of Elia, J.))—but at the same time elevates the standard of review to strict scrutiny, thus answering one of the principal criticisms of *Dueñas*. (See *People v. Lowery* (2020) 43 Cal.App.5th 1046, 1057, fn. 15 [257 Cal. Rptr. 3d 216] [*Dueñas* "neither articulated what fundamental liberty interest was at stake nor set forth a standard of review"].)

Where strict scrutiny applies, """"*the state* bears the burden of establishing not only that it has a *compelling* interest which justifies [**58] the law but that the distinctions drawn by the law are *necessary* to further its purpose."""" (*In re Marriage Cases, supra*, 43 Cal.4th at p. 832, original italics; see *Serrano II, supra*, 18 Cal.3d at p. 761.) This heightened standard of review applies "when the 'distinction drawn by a statute rests upon a so-called "suspect classification" or impinges upon a fundamental right.'" (*Vergara, supra*, 246 Cal.App.4th at p. 645.) Essentially adopting the dissenting view in *Rodriguez* (see, *ante*, fn. 7; *Rodriguez, supra*, 411 U.S. at pp. 98–99 (dis. opn. of Marshall, J.)), the *Serrano II* court held that under the California Constitution, wealth is a suspect classification for equal protection purposes when combined with infringement of a fundamental right. (*Serrano II, supra*, at p. 768; *Serrano I, supra*, 5 Cal.3d at pp. 597–598.)[29]

We have both in this case. Penal Code section 1202.4, on its face, discriminates based on poverty. Subdivision (b) of that section provides that, "[i]n every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling **[*68]** and extraordinary reasons for not doing so and states those reasons on the record." And under subdivision (c), a defendant's "[i]nability to pay may be considered ... in increasing the amount of the restitution fine in excess of the minimum."[30] My particular concern is the caveat in Penal Code section 1202.4, subdivision (c) providing that inability [**59] to pay "shall not be considered a compelling and extraordinary reason not to impose a restitution fine." By that caveat, the Legislature has expressly withdrawn a defense to the imposition of a minimum fine for the only group of people who need it—those lacking the ability to pay. Thus, it discriminates based on impecuniousness not merely by disparate impact, but on its face.

The assessment statutes, Government Code section 70373 and Penal Code section 1465.8, may also be analyzed under article I, section 7 and article IV, section 16 of the California Constitution. Under our state equal protection guarantee, laws that """discriminate explicitly between groups of people,""" as well as laws that, """though evenhanded on their face, in operation have a disproportionate impact on certain groups,""" are subject to equal protection scrutiny. (*Vergara, supra*, 246 Cal.App.4th at p. 644.) The two assessment statutes at issue apply in the same way to rich and poor alike and thus are facially neutral. But at bottom, the problem *Dueñas* spotlights is the sheer arbitrariness of imposing court-funding assessments on convicted criminal defendants without inquiring into ability to pay, which has the effect of adding punishment for some defendants depending on the accident of their relative poverty. The disparate impact on those who cannot pay is, in my view, cognizable [**60] as a matter of equal protection under state equal protection principles.

"[T]o me, singling out the poor to bear a burden not placed on any other class of citizens tramples the values that the Fourteenth Amendment was designed to protect." (*James v. Valtierra* (1971) 402 U.S. 137, 145 [28 L. Ed. 2d 678, 91 S. Ct. 1331] (dis. opn. of Marshall, J.).)[31] In a closely divided five to four decision, the United States Supreme Court turned away from this point of view as a matter of federal law in *Rodriguez, supra*, 411 U.S. at pages 18–29, but the California Supreme Court embraced it as a matter of state law in *Serrano II, supra*, 18 Cal.3d at pages 761–766. While the textbook version of equal protection law that is taught to this day in law schools nationwide takes *Rodriguez* as settled doctrine, which is correct and understandable for courses taught from the standpoint of national law, it is not often remembered that *Serrano II* charted a different course under the California Constitution. We would break no new ground in applying *Serrano II* here.

[*69]

In that pivotal case, our Supreme Court—squarely faced with the choice of following *Rodriguez* in lockstep under the California Constitution—chose its own path after giving "'respectful consideration'" (*People v. Buza, supra*, 4 Cal.5th at p. 684) to the

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then-recent opinion in *Rodriguez*. "[T]he fact that a majority of the United States Supreme Court [chose] ... to contract the [**61] area of active and critical analysis under the strict scrutiny test for federal constitutional purposes can have no effect upon the existing construction and application afforded our own constitutional provisions" in a wealth discrimination case where fundamental interests are at stake, the court declared. (*Serrano II, supra*, 18 Cal.3d at p. 765, fn. omitted.) So far as I know, that remains the law in our state. Until otherwise instructed by the California Supreme Court, I see no reason to confine *Serrano II* to its facts or to depart from the principle of law announced in that case, which is essentially the *Griffin* equal justice principle applied in the context of fundamental civil rights.

I have already identified the fundamental civil right at stake here—the right to be free from excessive fines. To determine whether an individual right or interest is so firmly rooted under California law as to be recognized as fundamental, we must look first to "the treatment afforded particular rights and interests by the provisions of our state Constitution," a consideration that must be "accorded significant consideration," though not "conclusive weight." (*Serrano II, supra*, 18 Cal.3d at p. 768, fn. 48.) Under article I, section 17 of the California Constitution, "Cruel or unusual punishment may not be inflicted or excessive fines imposed." [**62] Even more significantly, as noted above, in *Timbs, supra*, 586 U.S. at p. [139 S.Ct. at p. 689], the United States Supreme Court recently found the excessive fines clause of the Eighth Amendment to be so "'fundamental to our scheme of ordered liberty'" that it warrants application to the states through the due process clause of the Fourteenth Amendment.

Recognizing that we are dealing with wealth-based discrimination and that the discrimination affects a fundamental right, the question becomes whether the failure to inquire into ability to pay burdens this right in a manner that triggers strict scrutiny. Or, to frame the issue more specifically in the language of California fundamental rights cases, does Penal Code section 1202.4 have a "real and appreciable impact on" the right or "significantly interfere[] with" it? (*Vannier v. Superior Court* (1982) 32 Cal.3d 163, 171 [185 Cal. Rptr. 427, 650 P.2d 302] (*Vannier*).) This is a different question than whether it is possible to say, on this record, the right has been violated. "When a statutory classification impinges a fundamental right (and does not involve a suspect classification), strict scrutiny will apply unless the effect on the fundamental right is merely 'incidental,' 'marginal,' or 'minimal.'" (*Vergara, supra*, 246 Cal.App.4th at p. 645.)

[*70]

As the lead opinion explains, because the right to be free from excessive fines applies at the moment a fine is imposed, the conclusion seems to me [**63] unavoidable that all three of the challenged statutes at issue here have a "real and appreciable impact" (*Vannier, supra*, 32 Cal.3d at p. 171) on the ability of indigent defendants to assert this fundamental right. (*Vergara, supra*, 246 Cal.App.4th at p. 640.) That is because, for the right to provide meaningful protection, an ability-to-pay inquiry must take place and an adequate record must be made *before* an assessment or fine is imposed. To bar a sentencing court from taking ability to pay into account in imposing the fine creates an obstacle to asserting the right to avoid its imposition. The question of excessiveness cannot be meaningfully evaluated in the trial court or on appeal unless the defendant has a right to object and make a record on the issue of ability to pay, before suffering the assessment or fine.

At the final, strict scrutiny step in the analysis, the state bears the heavy burden of demonstrating that the challenged infringement of a fundamental right is justified by a compelling state interest and may not be carried out any other way. (*In re Marriage Cases, supra*, 43 Cal.4th at p. 832; *Serrano II, supra*, 18 Cal.3d at p. 761.) The Attorney General has not attempted to meet that burden, other than to suggest that the imposition of mandatory minimum fines under Penal Code section 1202.4 serves to punish, in addition to promoting rehabilitation and deterrence. [**64] True enough, but since all defendants are permitted to interpose inability-to-pay objections as a basis to argue against the amount of a restitution fine above the minimum, I see no compelling reason why the same objection may not be made available to defendants who wish to argue against the imposition of a minimum fine on that basis, without sacrificing any clarity of purpose or significantly undermining the effectiveness of the state's penological objectives.

III. CONCLUSION

"Criminal fines and fees in California are among the highest in the country." 32 The inability of many defendants "to satisfy court-ordered debt is reflected in the large amount of outstanding debt and the courts' inability to collect it" 33—total delinquencies stood at $10.581 billion as of fiscal year-end 2019, 34 of which $1.32 billion has been written off as uncollectible since 2012 35—and the disparate impact of these massive delinquencies on low-income populations and minority communities has been acknowledged as a **[*71]** matter of concern by the Chief Justice of California, by the Administrative Director of our Judicial Council, as well as by the United States Department of Justice. 36

Against this backdrop, it is tempting [**65] to dismiss the relatively small amounts of court-imposed debt in this case as de

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minimis, but we should bear in mind that while the specific amounts at issue are small, the size of a single fine or fee is not an accurate indicator of its impact within a given case or on a given defendant. Under our complex system of criminal fines and fees, which has been aptly likened to the tax code (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1533 [98 Cal. Rptr. 3d 1] (conc. opn. of Kriegler, J.)), what may appear at first blush to be small financial charges are often, in practice, simply the foundational blocks on which additional layers of mandatory penalty assessments are imposed, resulting in debt that can easily run into the thousands of dollars before default charges begin to mount.

Because this system of criminal fines and fees—with its enormous overhang of uncollectible debt—presents fairness and equity issues that are, in many respects, peculiar to our state, I believe we should look to the California Constitution as the fulcrum of analysis here, building from federal standards but without yoking ourselves to them.[37] Proceeding solely under state law, I would adopt the lead opinion's excessive fines analysis and reach the same disposition it does, while placing [**66] that analysis within the overall framework of California's equal protection guarantee. To date, excessive fines objections have been entertained in published California appellate cases only in the civil context and only in commercial litigation, generally for corporate entities.[38] I suspect no one would dispute that the right to be free from excessive fines should be available to natural persons as well. The equal **[*72]** protection guarantee, as we understand and apply it in California, makes clear that it extends to all persons, rich and poor alike.

Regardless of the mode of analysis, however, the bottom line for me is this: We, and our colleagues in *Dueñas*, using different analytical approaches, have recognized a constitutionally compelled "safety net" that is available to a sub-population of indigent criminal defendants who, through no fault of their own, face monetary sanctions they will never be able to pay. Imposing such sanctions without the "safety net" we have recognized, as I see it, is a form of mindless cruelty comparable to the treatment of Josef K. in Kafka's The Trial. I cannot accept the view that we are powerless to address it, whether proceeding under the excessive fines analysis [**67] set out in the lead opinion, a federal equal protection or federal due process analysis, or preferably—looking to the California Constitution—through the framework of equal protection under state law, while folding an excessive fines analysis within it.

Footnotes

[*] Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts II. and III. of the lead opinion.

[*] See footnote, *ante*, page 32.

[2] Harris et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States* (2010) 115 Am. J. Soc. 1753.

[3] *Dueñas, supra*, 30 Cal.App.5th at page 1171 (focus of due process inquiry is whether "it is 'fundamentally unfair' to use the criminal justice system to impose punitive burdens on probationers who have 'made all reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of [their] own'"); *id.* at page 1167 ("[i]mposing unpayable fines on indigent defendants is ... unfair").

[4] *Gutierrez, supra*, 35 Cal.App.5th at page 1034 (conc. opn. of Benke, Acting P. J.); *People v. Kopp* (2019) 38 Cal.App.5th 47, 98 [250 Cal. Rptr. 3d 852] (conc. & dis. opn. of Benke, Acting P. J.), review granted Nov. 13, 2019, S257844 (*Kopp*); *People v. Santos* (2019) 38 Cal.App.5th 923, 936 [251 Cal. Rptr. 3d 483] (dis. opn. of Elia, J.) (*Santos*).

[5] *People v. Caceres* (2019) 39 Cal.App.5th 917, 926–929 [252 Cal. Rptr. 3d 709]; see also *People v. Cota* (2020) 45 Cal.App.5th 786, 794–795 [259 Cal.Rptr.3d 419] (*Cota*); *People v. Adams* (2020) 44 Cal.App.5th 828, 831 [257 Cal. Rptr. 3d 871]; *People v. Lowery* (2020) 43 Cal.App.5th 1046, 1049, 1054–1055 [257 Cal. Rptr. 3d 216]; *People v.*

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Kingston (2019) 41 Cal.App.5th 272, 279–281 [254 Cal. Rptr. 3d 118].

6 See also *Gutierrez, supra*, 35 Cal.App.5th at pages 1038–1039 (conc. opn. of Benke, Acting P. J.); *Kopp, supra*, 38 Cal.App.5th at page 99 (conc. & dis. opn. of Benke, Acting P. J.); *Santos, supra*, 38 Cal.App.5th at pages 937–938 (dis. opn. of Elia, J.).

7 The same court that decided *Dueñas*—Division Seven of the Second District—recently issued an opinion in *People v. Belloso* (2019) 42 Cal.App.5th 647, 649, 656–662 [255 Cal. Rptr. 3d 640], review granted March 11, 2020, S259755, adhering to its prior holding after considering and rejecting the various criticisms leveled in *Hicks* and *Aviles*.

8 We acknowledge, as did the *Dueñas* court (*Dueñas, supra*, 30 Cal.App.5th at p. 1164, fn. 1), that some significant legislative steps have been taken to mitigate the harshness of the mandatory imposition of criminal fees and fines. For example, "the Legislature [has] implemented several mechanisms over the last decade to help individuals reduce the impacts of their court-ordered debt." (Judicial Council of Cal., Rep. on the Statewide Collection of Delinquent Court-Ordered Debt for 2018–19, December 2019, p. 2.) Among the most notable are "authoriz[ation of] two amnesty programs, eliminat[ing] the provisions that required courts to place a hold or suspension on a driver's license for failure to pay traffic violations, increas[ing] the awareness and availability of community service in lieu of cash payments for fines, and encourag[ing] courts to develop procedures to determine an individual's ability to pay." (*Ibid.*)

Also, more recently, the Legislature passed Assembly Bill No. 927 (2019–2020 Reg. Sess.), a bill providing that, for any "fine, fee, or assessment related to a criminal or juvenile proceeding involving a misdemeanor or felony, prior to imposition, the court shall make a finding, based on a contested hearing or on stipulation of counsel, that the defendant or minor has the ability to pay." (Assem. Bill No. 927 (2019–2020 Reg. Sess.) § 1.) The Governor returned Assembly Bill No. 927 (2019–2020 Reg. Sess.) without signature, stating his support for it but expressing the view that, while "[w]e must tackle the issue of burdensome fines, fees and assessments that disproportionately drag low-income individuals deeper into debt and away from full participation in their communities[,] ... I do not believe that requiring a hearing on defendants' ability to pay is the best approach in every case." (Governor's veto message to Assem. on Assem. Bill No. 927 (Oct. 9, 2019) Recess J. No. 14 (2019–2020 Reg. Sess.) p. 3651.)

9 *Harmelin v. Michigan* (1991) 501 U.S. 957, 978–979, footnote 9 [115 L. Ed. 2d 836, 111 S. Ct. 2680] (lead opn. of Scalia, J.).

10 The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Article I, section 17 of the California Constitution states: "Cruel or unusual punishment may not be inflicted or excessive fines imposed."

11 In his opening appellate brief, Cowan bases his challenge to the assessments and the restitution fine primarily on due process principles as outlined in *Dueñas*. But he also argues generally in his opening brief that, under *Dueñas*, the imposition of these monetary sanctions violates the excessive fines clause as well. Cowan states: "As discussed in *Dueñas*, imposition of the fines and fees challenged here, without a finding that the defendant has the present ability to pay, constitutes a violation of due process, equal protection *and the right to be free from excessive fines* under the United States and California Constitutions." (Italics added; quoting *Timbs v. Indiana* (2019) 586 U.S. [203 L. Ed. 2d 11, 139 S.Ct. 682] (*Timbs*).) We conclude Cowan has adequately presented this issue on appeal. (See *Dueñas, supra*, 30 Cal.App.5th at p. 1171, fn. 8 [stating due process and excessive fines analyses are similar]; *Cota, supra*, 45 Cal.App.5th at p. 799 (conc. & dis. opn. of Dato, J.) ["the particular constitutional label [appellant] attaches to his [inability-to-pay] argument is unimportant"]; cf. *People v. Petri* (2020) 45 Cal.App.5th 82, 87 [258 Cal. Rptr. 3d 466] [declining to review restitution fine under excessive fines clause because defendant did not raise an Eighth Amendment challenge in his opening brief on appeal].)

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12 "Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned are all relevant to the inquiry." (*Mendoza-Martinez, supra*, 372 U.S. at pp. 168–169, fns. & italics omitted; see *Alford, supra*, 42 Cal.4th at p. 757.)

13 *Hanson, supra*, 23 Cal.4th at page 361 (for double jeopardy purposes restitution fine imposed under Pen. Code, § 1202.4 is punitive).

14 *Alford, supra*, 42 Cal.4th at pages 755–758 (for purposes of the prohibition on ex post facto laws court security fee imposed under Pen. Code, § 1465.8, subd. (a)(1) is not punitive); *People v. Knightbent* (2010) 186 Cal.App.4th 1105, 1111–1112 [112 Cal. Rptr. 3d 884] (same, relying on *Alford*; court facilities assessment imposed under Gov. Code, § 70373, subd. (a)(1)).

15 See also *United States v. Lippert* (8th Cir. 1998) 148 F.3d 974, 978 (*Lippert*).

16 See also *United States v. Smith* (8th Cir. 2011) 656 F.3d 821, 827–828; *United States v. Dicter* (11th Cir. 1999) 198 F.3d 1284, 1292, footnote 11; *United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.* (11th Cir. 1999) 175 F.3d 1304, 1311.

17 The court's reference to the "contenement" of Englishmen and the deprivation of livelihood is consistent with scholarly literature arguing that the original meaning of the Eighth Amendment's excessive fines clause prohibits fines so severe as to deprive a defendant of his or her "contenement" or livelihood, understood as the ability to secure the necessities of life. (See McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause* (2013) 40 Hastings Const. L.Q. 833, 854–872.) As explained by one commentator (who is cited extensively by the court in its historical discussion of the excessive fines clause in *Browning-Ferris Industries v. Kelco Disposal* (1989) 492 U.S. 257, 269 [106 L. Ed. 2d 219, 109 S. Ct. 2909]), "the great object" of provisions of the Magna Carta limiting fines was that "[i]n no case could the offender be pushed absolutely to the wall: his means of livelihood must be saved to him." (McKechnie, Magna Carta: A Commentary on the Great Charter of King John (2d ed. 1914) p. 287; see also Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History* (1987) 40 Vand. L.Rev. 1233, 1259–1260 & fn. 154.)

18 See also *People v. Overstock.com, Inc.* (2017) 12 Cal.App.5th 1064, 1091 [219 Cal. Rptr. 3d 65]; *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1322 [92 Cal. Rptr. 2d 418] (*Sainez*); *Wilmshurst, supra*, 68 Cal.App.4th at page 1350.

19 *Sainez* was not the first California appellate opinion to adopt the view that ability to pay is relevant to excessiveness under *Bajakajian*. *Wilmshurst*—which the *Sainez* court cited—adopted that view as well, and it too relied on federal circuit precedent in line with *Viloski* and *Lippert*. (See *Wilmshurst, supra*, 68 Cal.App.4th at p. 1350, citing *United States v. Hines* (8th Cir. 1996) 88 F.3d 661, 664 (*Hines*).)

20 *Wilmshurst, supra*, 68 Cal.App.4th 1332, applying this aspect of the reasoning in *Hines*, holds that ability to pay stands on its own as an excessiveness consideration, wholly outside of the proportionality framework of *Bajakajian*. (*Id.* at p. 1350 ["The defendants' concern with the relationship between the amount of the fines and nature of their offenses or the amounts of fines imposed in other cases is consequently irrelevant; it is their ability to pay which is the constitutional lodestar"].) While this doctrinal nuance aligns with federal circuit-level authority on the point (see

Levesque, supra, 546 F.3d at pp. 83–85), the treatment of ability to pay as an excessiveness consideration outside of *Bajakajian*'s proportionality framework appears to be inconsistent with *Lockyer*'s holding that ability to pay is but one among several other proportionality factors under *Bajakajian*. Without going as far as *Wilmshurst* or *Levesque* does on this fine (but important) point of doctrine, we do agree that in cases involving fines or fees the relative weight to be given ability to pay in the proportionality calculus is much more important than it is in a forfeiture case.

21 While the totality of a defendant's financial responsibility in the ability-to-pay inquiry on a restitution fine includes any direct victim restitution that is ordered, we do not address whether direct victim restitution orders themselves constitute "fines" for purposes of the Eighth Amendment or article I, section 17 of the California Constitution. "'Payment of direct victim restitution'"—which is constitutionally mandated by article I, section 28, subdivision (b) of the California Constitution—"'goes directly to victims and compensates them for economic losses they have suffered because of the defendant's crime.' [Citations.] Restitution fines are payable to the state's 'Restitution Fund.' [Citation.] 'The purposes of the two kinds of restitution are different. The imposition of a restitution fine is punishment. [Citation.] The purpose of direct victim restitution, however, is to reimburse the victim for economic losses caused by the defendant's criminal conduct, i.e., to make the victim reasonably whole. [Citations.] Secondary goals of direct restitution include rehabilitation of the defendant and deterrence of future criminality.' [Citation.]" (*People v. Allen* (2019) 41 Cal.App.5th 312, 321 [254 Cal. Rptr. 3d 134].)

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1 See Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison* (2018) 65 UCLA L.Rev. 2, 97–98 (*Challenging the Modern Debtors' Prison*); McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause* (2013) 40 Hastings Const. L.Q. 833, 901.

2 The Attorney General suggests one with respect to the restitution fine. On that issue, he contends the Eighth Amendment is exclusively applicable, citing *Graham v. Connor* (1989) 490 U.S. 386 [104 L. Ed. 2d 443, 109 S. Ct. 1865], to support the idea. I am not persuaded that *Graham* has any relevance here. That case arose under title 42 United States Code section 1983 (section 1983) and involved a damages claim for use of excessive force by a police officer during an arrest in violation of the Fourth Amendment. At issue was the liability-creating standard governing excessive force claims in that context. Because section 1983 is not itself the source of substantive rights, the high court concluded that "[t]he validity of [a section 1983] claim must ... be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized 'excessive force' standard." (*Graham, supra*, at p. 394; see also *Albright v. Oliver* (1994) 510 U.S. 266, 273 [127 L. Ed. 2d 114, 114 S. Ct. 807] (plur. opn. of Rehnquist, C. J.) ["'generalized notion of "substantive due process"'"].) As later explained in *United States v. Lanier* (1997) 520 U.S. 259 [137 L. Ed. 2d 432, 117 S. Ct. 1219], "*Graham* simply requires that if a constitutional claim"—read in context, a claim for damages—"is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." (*Id.* at p. 272, fn. 7.) Suffice it to say this is not a section 1983 case and we are not here called upon to invoke substantive due process as the basis for a damages claim.

3 See *Williams, supra*, 399 U.S. at page 244 ("We hold only that the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status"); *Tate v. Short, supra*, 401 U.S. at pages 397–398 ("We held [in *Williams*] that the Illinois statute as applied to [the defendant there] worked an invidious discrimination solely because he was too poor to pay the fine, and therefore violated the Equal Protection Clause. [¶] Although the instant case involves offenses punishable by fines only, petitioner's imprisonment for nonpayment constitutes precisely the same unconstitutional discrimination"); *Rinaldi, supra*, 384 U.S. at page 311 ("We may assume that a State can validly provide for recoupment of the cost of appeals from those who later become financially able to pay. But any such provision must, under the Equal Protection Clause, be applied with an even hand"); *Douglas, supra*, 372 U.S. at page 355 ("We agree ... with Justice Traynor of the California Supreme Court, who said that the '[d]enial of counsel on appeal [to an indigent] would seem to be a discrimination at least as invidious as that condemned in [*Griffin*]'").

4 *Douglas, supra*, 372 U.S. at page 363 (dis. opn. of Harlan, J.) ("The real question in this case, I submit, and the only one that permits of satisfactory analysis, is whether or not [a] state rule [denying appointment of appellate counsel for indigents], as applied in this case, is consistent with the requirements of fair procedure guaranteed by the

Due Process Clause"); see also *Griffin, supra*, 351 U.S. at pages 29–39 (dis. opn. of Harlan, J.); *Williams, supra*, 399 U.S. at pages 259–266 (conc. opn. of Harlan, J.).

5 *Bearden, supra*, 461 U.S. at page 666, footnote 7 (citing *Morrissey v. Brewer* (1972) 408 U.S. 471 [33 L. Ed. 2d 484, 92 S. Ct. 2593]; *Gagnon v. Scarpelli* (1973) 411 U.S. 778 [36 L. Ed. 2d 656, 93 S. Ct. 1756]).

6 Cf. *Smith v. Robbins* (2000) 528 U.S. 259, 276 [145 L. Ed. 2d 756, 120 S. Ct. 746] (""[t]he precise rationale for the *Griffin* and *Douglas* lines of cases has never been explicitly stated, some support being derived from the Equal Protection Clause of the Fourteenth Amendment and some from the Due Process Clause of that Amendment."' [Citation.] But our case law reveals that, as a practical matter, the two clauses largely converge to require that a State's procedure 'affor[d] adequate and effective appellate review to indigent defendants'").

7 Justice Marshall, who joined the *Bearden* opinion, long advocated a similar kind of interest balancing approach in equal protection cases as a clarifying alternative to what he viewed as the high court's "rigidified" tiers of scrutiny in traditional equal protection analysis. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 98–99 [36 L. Ed. 2d 16, 93 S. Ct. 1278] (dis. opn. of Marshall, J.) (*Rodriguez*) ["A principled reading of what this Court has done reveals that it has applied a spectrum of standards in reviewing discrimination allegedly violative of the Equal Protection Clause. This spectrum clearly comprehends variations in the degree of care with which the Court will scrutinize particular classifications, depending, I believe, on the constitutional and societal importance of the interest adversely affected and the recognized invidiousness of the basis upon which the particular classification is drawn"]; *Dandridge v. Williams* (1970) 397 U.S. 471, 520–521 [25 L. Ed. 2d 491, 90 S. Ct. 1153] (dis. opn. of Marshall, J.).) Depending on the "importance of the interests being affected and the relevance of personal wealth to those interests" (*Rodriguez, supra*, at p. 122 (dis. opn. of Marshall, J.)), Justice Marshall took the view that "[p]ersonal poverty may entail much the same social stigma as historically attached to certain racial or ethnic groups." (*Id.* at p. 121.)

8 E.g., *Jones v. Governor of Florida, supra*, 950 F.3d 795; *Cain v. White* (5th Cir. 2019) 937 F.3d 446, 450; *Commonwealth v. Henry* (2016) 475 Mass. 117 [55 N.E.3d 943, 950–951]; *State v. Blazina* (2015) 182 Wn.2d 827 [344 P.3d 680, 684]; *People v. Love* (1997) 177 Ill.2d 550 [227 Ill.Dec. 109, 687 N.E.2d 32, 35–36]; see Fernandes et al., *Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform* (2019) 15 Ann. Rev. L. & Soc. Sci. 397, 411.

9 Commission on the Future of California's Court System, Judicial Branch of California, Report to the Chief Justice (2017) Recommendation 2.3: Refine the Adjudication and Settlement of Fines, Fees, and Assessments, pages 71–84 (Future Commission Report); National Task Force on Fines, Fees and Bail Practices, National Center for State Courts, *Principles on Fines, Fees, and Bail Practices* (Dec. 2017) <https://www.ncsc.org/~/media/Files/PDF/Topics/Fines%20and%20Fees/Principles%201%2017%2019.ashx> (as of Mar. 27, 2020); Beckett et al., Washington State Minority & Justice Commission, The Assessment and Consequences of Legal Financial Obligations in Washington State (Aug. 1, 2008) (Assessment & Consequences of LFOs).

10 The Arthur Liman Center for Public Interest Law, Twenty-First Annual Colloquium, Yale Law School, Who Pays? Fines, Fees, Bail, and the Cost of Courts (April 5–6, 2018); Criminal Justice Program, Harvard Law School, Confronting Criminal Justice Debt: A Guide for Policy Reform (2016).

11 E.g., Colgan, *Fines, Fees, and Forfeitures* (2017) 18 Criminology, Crim. Just., Law & Soc'y 22, 23 (*Fines, Fees and Forfeitures*) (summarizing scholarship from "a variety of fields, including law, sociology, economics, and criminology"); Birckhead, *The New Peonage* (2015) 72 Wash. & Lee L.Rev. 1595, 1602–1605; Harris, A Pound of Flesh: Monetary Sanctions as Punishment for the Poor (2016).

12 *Cota, supra*, 45 Cal.App.5th at page 796 (conc. & dis. opn. of Dato, J.).

13 Futures Commission Report, *supra*, Appendix 2.3C: Recent Developments Regarding Fines and Fees, page 83, footnote 6 (quoting September 2016 press release by Office of Justice Programs, United States Department of Justice (<www.prnewswire.com/news-releases/office-of-justice-programs-awards-nearly-3-million-to-reduce-unnecessary-confinement-save-corrections-costs-300328290.htm> [as of Mar. 27, 2020])).

14 Judicial Council of California, Report on the Statewide Collection of Delinquent Court-Ordered Debt for 2018–2019 (Dec. 2019), page 2 (2019 Judicial Council Delinquent Debt Report).

15 *Challenging the Modern Debtors' Prison, supra*, 65 UCLA L.Rev. at page 10 ("[a]s one person struggling to pay explained, even '$10 doesn't sound like a lot, but it is a lot when you're living on $300 a month'" (quoting Assessment & Consequences of LFOs, *supra*, p. 36)).

16 *Dueñas, supra*, 30 Cal.App.5th at page 1171 ("In this statutory scheme, ... the wealthy defendant is offered an ultimate outcome that the indigent one will never be able to obtain—the successful completion of all the terms of probation and the resultant absolute right to relief from the conviction, charges, penalties, and disabilities of the offense. At best, indigent defendants who cannot pay their restitution fine can try to persuade a trial court to exercise its discretion to grant them relief, despite their failure to comply with all terms of probation").

17 *Fines, Fees and Forfeitures, supra*, at page 25.

18 *Fines, Fees and Forfeitures, supra*, at page 25.

19 *Fines, Fees and Forfeitures, supra*, at page 25.

20 *Fines, Fees and Forfeitures, supra*, at page 25.

21 Penal Code section 1214, subdivision (e)(1)–(2).

22 Title 11 United States Code section 523(a)(7).

23 *Goldberg, supra*, 397 U.S. at page 262, footnote 8 (citing Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues* (1965) 74 Yale L.J. 1245, 1255; Reich, *The New Property* (1964) 73 Yale L.J. 733). My focus here is on federal due process standards, but it bears noting that as a matter of due process under the California Constitution (Cal. Const., art. I, §§ 7, subd. (a), 15), we eschew the question whether there is some entitlement "that can be defined as 'liberty' or 'property,'" and instead ask more broadly "what procedural protections are constitutionally required in light of the governmental and private interests at stake." (*People v. Ramirez* (1979) 25 Cal.3d 260, 264 [158 Cal. Rptr. 316, 599 P.2d 622] (plur. opn. of Mosk, J.) (*Ramirez*).) We do so because "[t]he federal approach ... undervalues the important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society" (*id.* at p. 267), which is

precisely what is at stake here on the private interest side of the balance.

24 The concluding citation in the assessments section of the *Dueñas* opinion to *Jameson v. Desta* (2018) 5 Cal.5th 594, 622 [234 Cal. Rptr. 3d 831, 420 P.3d 746], a statutory interpretation case (*Jameson*, at p. 599), suggests the latter. (*Dueñas, supra*, 30 Cal.App.5th at p. 1169.)

25 *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 594 [131 Cal. Rptr. 361, 551 P.2d 1193]; see *Syrek v. California Unemployment Insurance Appeals Board* (1960) 54 Cal.2d 519, 526 [7 Cal. Rptr. 97, 354 P.2d 625] ("'The power of a court to declare a statute unconstitutional is an ultimate power; its use should be avoided if a reasonable statutory construction makes the use unnecessary,'" quoting *Ashwander v. Valley Authority* (1936) 297 U.S. 288, 346 [80 L.Ed. 688, 56 S. Ct. 466] (conc. opn. of Brandeis, J.)).

26 Cf. *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 15–16 [112 Cal. Rptr. 786, 520 P.2d 10] (accepting concession by the Attorney General made in the course of discharging his "paramount duty to represent the public interest" on the ultimate "constitutional fact" that the challenged enactment bore no rational relationship to its legislative objective).

27 Assuming rational basis review or *Bearden* interest balancing applies, that is a sufficient justification to uphold the validity of Penal Code section 1202.4. To illustrate another type of policy concern specific to restitution fines that should properly be weighed by the Legislature, not the courts, as a counterbalance to any concern for imposing unpayable debt on indigents, the *Hicks [**57]* court suggests that the holding in *Dueñas* "significantly undercuts the statewide Restitution Fund (§ 1202.4, subd. (e))," and thus potentially calls into question the state's ability "to continue providing some measure of restitution and solace to ... crime victims." (*Hicks, supra*, 40 Cal.App.5th at p. 329.)

I see no need to venture into any of this for a justification. Worthy as the point is in the abstract, its premise is flawed when the scheme for distributing revenues generated by criminal fines and fees is taken into account. Total criminal fines and fees collected every year are distributed to over 50 state funds (including the statewide restitution fund) in addition to many local funds. (Legis. Analyst Rep., Improving California's Criminal Fine and Fee System (Jan. 2016) p. 8.) The revenue sources for these funds are governed by a complex formula for distribution among the funds (*id.* at pp. 8–10), and within that distribution formula victim restitution has first priority (*id.* at p. 12, figure 6; see also Legis. Analyst Rep., Restructuring the Court-Ordered Debt Collection Process (Nov. 2014) pp. 8, 12, figure 5). Because of this favored status, it does not follow that for every dollar in reduced restitution fine revenue resulting from consideration of inability to pay, there will be a reduction in revenue going to the restitution fund, much less one that would "significantly undercut[]" the fund. (*Hicks, supra*, 40 Cal.App.5th at p. 329.)

I grant the possibility, to be sure, that this supposition about undercutting the victim restitution fund is the kind of """rational speculation""" that might suffice to justify a discriminatory legislative classification under the rational basis test. (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881 [183 Cal. Rptr. 3d 96, 341 P.3d 1075].) While I am inclined to think it fails to meet even that test because it "'completely ignore[s]'" the "'realities of the subject matter'" (*ibid.*), I do think that, at the very least, the issue illustrates the importance of who bears the burden of proof.

28 In addition to *Serrano II, supra*, 18 Cal.3d 728, see *In re Marriage Cases* (2008) 43 Cal.4th 757, 837–838 [76 Cal. Rptr. 3d 683, 183 P.3d 384] (same-sex marriage); *Perez v. Sharp* (1948) 32 Cal.2d 711, 715–718 [198 P.2d 17] (plur. opn. of Traynor, J.) (interracial marriage); *People v. Wheeler* (1978) 22 Cal.3d 258, 284–286 [148 Cal. Rptr. 890, 583 P.2d 748] (racially motivated peremptory challenges in jury selection); see also *Ramirez, supra*, 25 Cal.3d at pages 264–269 (plur. opn. of Mosk, J.) (procedural due process; eligibility for drug rehabilitation treatment rather than imprisonment); *People v. Brisendine* (1975) 13 Cal.3d 528, 548–551 [119 Cal. Rptr. 315, 531 P.2d 1099] (search and seizure; scope of search incident to arrest); *People v. Cahan* (1955) 44 Cal.2d 434, 447–451 [282 P.2d 905] (search and seizure; exclusionary rule).

29 Notably, in recognizing wealth as a suspect class, *Serrano I* relied on *Griffin* (*Serrano I, supra*, 5 Cal.3d at p. 604 [wealth classifications have been previously recognized in cases involving the "rights of defendants in criminal cases"]), while *Rodriguez* distinguished it (*Rodriguez, supra*, 411 U.S. at pp. 20–21; see also *id.* at p. 25 [rejecting claim that a cognizable class of "'poor' people" can be defined for equal protection purposes since poverty exists "along a continuum"]; *Bearden, supra*, 461 U.S. at p. 666, fn. 8 ["a defendant's level of financial resources is a point on a spectrum rather than a classification"]).

30 The fine must be set in a range from a minimum of $300 to a maximum of $10,000, for a felony, and a range of $150 to $1,000, for a misdemeanor. (Pen. Code, § 1202.4, subd. (b)(1).)

31 See Foner, The Second Founding: How the Civil War and Reconstruction Remade the Constitution (2019) page 78.

32 Futures Commission Report, *supra*, at page 71.

33 Futures Commission Report, *supra*, at page 75.

34 2019 Judicial Council Delinquent Debt Report, *supra*, chart 6: Outstanding Court-Ordered Debt 2008-09 through 2018–19, page 8.

35 2019 Judicial Council Delinquent Debt Report, *supra*, at chart 5: Outstanding Balance Discharged from Accountability 2012–13 through 2018–19, page 7.

36 *Cota, supra*, 45 Cal.App.5th at p. 798 (conc. & dis. opn. of Dato, J.); 2019 Judicial Council Delinquent Debt Report, page 2; Futures Commission Report, *supra*, Appendix 2.3C: Recent Developments Regarding Fines and Fees, page 83 and footnote 6.

37 E.g., *Ramirez, supra*, 25 Cal.3d at page 265 (plur. opn. of Mosk, J.) (setting forth due process standards under art. I, § 7, subd. (a), and § 15 of the Cal. Const. in an analysis beginning with United States Supreme Court cases decided under counterpart federal standards but concluding that "[t]he reasoning of such cases ... requires some refinement in order to determine the appropriate standards for invoking the state [due process] clauses"); see Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law (2018) 132 Harv. L.Rev. 811, pages 174–190 (making the case for "judicial federalism" as a mode of constitutional decision making in which state courts make greater use of their own state constitutions than they traditionally have done).

38 *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707 [36 Cal. Rptr. 3d 814, 124 P.3d 408]; *People v. Overstock.com, Inc.* (2017) 12 Cal.App.5th 1064 [219 Cal. Rptr. 3d 65]; *People ex rel. State Air Resources Bd. v. Wilmshurst* (1999) 68 Cal.App.4th 1332 [81 Cal. Rptr. 2d 221]; *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302 [92 Cal. Rptr. 2d 418]; cf. *Adams v. Murakami* (1991) 54 Cal.3d 105 [284 Cal. Rptr. 318, 813 P.2d 1348] (civil award of punitive damages may not be sustained absent proof of defendant's financial condition).

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August 26, 2020, Opinion Filed

B297247

Reporter

53 Cal. App. 5th 1201 * | 2020 Cal. App. LEXIS 814 ** | 268 Cal. Rptr. 3d 334

EISENBERG VILLAGE OF THE LOS ANGELES JEWISH HOME FOR THE AGING, Plaintiff and Appellant, v. SUFFOLK CONSTRUCTION COMPANY, INC., Defendant and Respondent.

Subsequent History: Time for Granting or Denying Review Extended Eisenberg Village of the Los Angeles Jewish Home for the Aging v. Suffolk Construction Co., Inc., 2020 Cal. LEXIS 6979 (Cal., Oct. 5, 2020)
Request denied by Eisenberg the L.A. Jewish Home v. Suffolk Constr. Co., 2020 Cal. LEXIS 8136 (Cal., Nov. 24, 2020)

Prior History: [**1] APPEAL from a judgment of the Superior Court for Los Angeles County, No. LC100462, Huey P. Cotton, Jr., Judge.

Disposition: Affirmed.

Core Terms

contractor, disgorgement, license, discovery rule, statute of limitations, unlicensed contractor, one-year, cause of action, forfeiture, accrued, restitution, trial court, qualifier, applicable statute of limitation, contractor's license, hot water, equitable, four-year, argues, summary adjudication motion, completed construction, direct supervision, limitations period, compliance, prescribed, provisions, discovers

Case Summary

Overview
HOLDINGS: [1]-Because an assisted living facility failed to bring a disgorgement claim against its builder within one year after the completion or cessation of performance, the claim was barred. The disgorgement provided in Bus. & Prof. Code, § 7031, subd. (b), is a penalty and thus the one-year period in Code Civ. Proc., § 340, subd. (a) applies. Such claims accrue upon the completion or cessation of the performance of the act or contract at issue. The discovery rule does not apply.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Real Property Law > Construction Law > Contractors & Subcontractors
Governments > Legislation > Statute of Limitations > Time Limitations

Real Property Law > Construction Law > Contracts

HN1 Construction Law, Contractors & Subcontractors
The one-year statute of limitation applies to claims for disgorgement under Bus. & Prof. Code, § 7031, subd. (b). The discovery rule does not apply, and a § 7031, subd. (b) claim accrues upon the completion or cessation of the performance of the act or contract at issue. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Civil Procedure > ... > Pleadings > Heightened Pleading Requirements > Capacity & Legal Existence
Governments > Legislation > Statute of Limitations > Time Limitations

HN2 Heightened Pleading Requirements, Capacity & Legal Existence
Because Bus. & Prof. Code, § 7031, subd. (b), does not prescribe a limitation period, the applicable statute of limitation must be found in this title of the Code of Civil Procedure. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Real Property Law > Construction Law > Contractors & Subcontractors
Governments > Legislation > Statute of Limitations > Time Limitations
Real Property Law > Construction Law > Contracts

HN3 Construction Law, Contractors & Subcontractors
The catch-all statute of limitations, Code Civ. Proc., § 343, does not apply to a Bus. & Prof. Code, § 7031, subd. (b), claim. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Real Property Law > Construction Law > Contractors & Subcontractors
Governments > Legislation > Statute of Limitations > Time Limitations
Real Property Law > Construction Law > Contracts
Torts > Business Torts > Unfair Business Practices > Remedies

HN4 Construction Law, Contractors & Subcontractors
The disgorgement provided in Bus. & Prof. Code, § 7031, subd. (b), is a penalty. Accordingly, Code Civ. Proc., § 340, subd. (a), the one-year statute of limitation, applies to disgorgement claims brought under § 7031, subd. (b). More like this Headnote

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Governments > Legislation > Statute of Limitations > Time Limitations

HN5 Statute of Limitations, Time Limitations
Generally speaking, a cause of action accrues at the time when the cause of action is complete with all of its elements. The plaintiff's ignorance of the cause of action ordinarily does not delay the running of the statute of limitation. More like this Headnote

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Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Governments > Legislation > Statute of Limitations > Time Limitations
View more legal topics

HN6 Types of Contracts, Construction Contracts
The discovery rule does not apply to claims under Bus. & Prof. Code, § 7031, subd. (b). Thus, the ordinary rule of accrual applies, i.e., the claim accrues when the cause of action is complete with all of its elements. In the case of a § 7031, subd. (b), claim, the cause of action is complete when an unlicensed contractor completes or ceases performance of the act or contract at issue. More like this Headnote

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▼ Headnotes/Summary

Summary
[*1201] CALIFORNIA OFFICIAL REPORTS SUMMARY

An assisted living facility brought a disgorgement claim (Bus. & Prof. Code, § 7031, subd. (b)) five years after construction of the facility was completed, alleging that the contractor was not duly licensed at all times during performance. The trial court granted summary judgment for the contractor, finding that the claim was barred by the one-year statute of limitations for penalties or forfeitures (Code Civ.

Proc., § 340, subd. (a)). (Superior Court for Los Angeles County, No. LC100462, Huey P. Cotton, Jr., Judge.)

The Court of Appeal affirmed the judgment, holding that the one-year statute of limitations applies to claims for disgorgement under Bus. & Prof. Code, § 7031, subd. (b), that the discovery rule does not apply, and that a § 7031, subd. (b), claim accrues upon the completion or cessation of the performance of the act or contract at issue. Because the facility failed to bring its § 7031(b) claim within one year after the completion or cessation of performance, the claim was barred. (Opinion by Willhite, Acting P. J., with Collins and Currey, JJ., concurring.)

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Building and Construction Contracts § 7—Licensing—Disgorgement Claims—Statute of Limitations.**

Because Bus. & Prof. Code, § 7031, subd. (b), does not prescribe a limitation period, the applicable statute of limitations must be found in this title of the Code of Civil Procedure. The catchall statute of limitations (Code Civ. Proc., § 343) does not apply to a § 7031, subd. (b) claim.

CA(2) **(2) Building and Construction Contracts § 7—Licensing—Disgorgement Claims—Statute of Limitations—One Year.**

Because an assisted living facility failed to bring a disgorgement claim against its builder within one year after the completion or cessation of performance, the claim was barred. The disgorgement provided in Bus. & Prof. Code, § 7031, subd. (b), is a penalty. Accordingly, Code Civ. Proc., § 340, subd. (a), the one-year statute of limitations, applies.

[Cal. Forms of Pleading and Practice (2020) ch. 104, Building Contracts, § 104.83.]

CA(3) **(3) Limitation of Actions § 17—Period of Limitation—Accrual.**

Generally speaking, a cause of action accrues at the time when the cause of action is complete with all of its elements. The plaintiff's ignorance of the cause of action ordinarily does not delay the running of the statute of limitations.

CA(4) **(4) Building and Construction Contracts § 7—Licensing—Disgorgement Claims—Discovery Rule.**

The discovery rule does not apply to claims under Bus. & Prof. Code, § 7031, subd. (b). Thus, the ordinary rule of accrual applies, i.e., the claim accrues when the cause of action is complete with all of its elements. In the case of a § 7031, subd. (b) claim, the cause of action is complete when an unlicensed contractor completes or ceases performance of the act or contract at issue.

Counsel: Cox, Castle & Nicholson, Robert Begland and Robert Campbell for Plaintiff and Appellant.

K&L Gates, Hector H. Espinosa, Kevin S. Asfour, Samira F. Torshizi and Timothy L. Pierce for Defendant and Respondent.

Judges: Opinion by Willhite, Acting P. J., with Collins and Currey, JJ., concurring.

Opinion by: Willhite, Acting P. J.

Opinion

[*1203]

WILLHITE, Acting P. J.—Section 7031 of the Business and Professions Code[1] was enacted to deter unlicensed building contractors by (1) preventing them from bringing or maintaining an action to collect compensation for performance of any work for which a license is required (§ 7031, subd. (a)), and (2) allowing any person who utilizes the services of an unlicensed contractor to bring an action for disgorgement of all compensation paid for the performance of any act or contract, regardless whether there was any fault in the contractor's work (§ 7031, subd. (b); hereafter section 7031(b)). This case presents two issues of first impression related to claims for disgorgement under section 7031(b). First, what statute of limitations applies to such claims? And second, when do those claims accrue?

In the present case, plaintiff Eisenberg Village of the Los Angeles Jewish Home for the Aging (Eisenberg) [**2] asserted a section 7031(b) claim for disgorgement against Suffolk Construction Company, Inc. (Suffolk), five years after Suffolk completed construction of Eisenberg's 108-unit assisted living facility in Reseda (the Project). The trial court granted Suffolk's motion for summary adjudication of the claim, finding that Code of Civil Procedure section 340, subdivision (a), the one-year statute of limitations applicable to penalties or forfeitures, applied and that Eisenberg knew or easily could have discovered the facts giving rise to the claim more than one year before it filed its claim. Eisenberg appeals, contending the trial court erred by applying the one-year statute and by misapplying the discovery rule, and that triable issues of material fact existed regarding whether Eisenberg knew or should have known of the wrongful conduct at issue.

HN1 We hold that the one-year statute of limitations applies to claims for disgorgement under section 7031(b). We also hold that the

discovery rule does not apply, and that a section 7031(b) claim accrues upon the completion or cessation of the performance of the act or contract at issue. Because Eisenberg failed to bring its section 7031(b) claim within one year after the completion or cessation of Suffolk's performance, we affirm the judgment.

BACKGROUND

In late [**3] 2007, Eisenberg entered into a contract with Suffolk (the Contract) to construct the Project, which had been designed by architectural firm DLR Group (DLR).[2] The first page of the Contract provided Suffolk's California contractor's license number. The Contract included a provision entitled **[*1204]** "Contractor's License." In that provision, Suffolk represented and warranted that all contractors and subcontractors performing work on the Project would be validly licensed during the performance of that work. The provision also stated, in all capital letters (and as required by statute), that contractors are required by law to be licensed and are regulated by the Contractors' State License Board (the Board or CSLB), which has jurisdiction to investigate complaints regarding a patent act or omission filed within four years of the alleged violation, or complaints regarding a latent act or omission as to structural defects filed within 10 years of the alleged violation. Most importantly, the provision stated, again in all capital letters and as required by statute, that any questions regarding a contractor may be referred to the registrar of the CSLB, and provided the mailing address for doing so.

Suffolk completed construction [**4] of the Project in June 2010. Eisenberg paid Suffolk just over $49 million for its work.

After residents had moved into the Project shortly after its completion, problems developed with the hot water supply to the residences. Suffolk worked to remedy the problems. As more residents moved into the Project, the problems returned, and Suffolk continued to try to remedy the problems. In March 2012, Eisenberg received a citation from the State Department of Social Services for supplying hot water to residential units at a temperature above the level allowed by law. Eisenberg contacted DLR and Suffolk to see what could be done to fix the problems with the hot water system. Suffolk agreed to work with Eisenberg to try to fix the problem; DLR did not.

In June 2013, Eisenberg filed a complaint for breach of contract and negligence against DLR, alleging that certain issues Eisenberg experienced at the Project regarding the HVAC system, hot water delivery system, plumbing, and plumbing fixtures were caused by DLR's work. Eisenberg did not name Suffolk in the complaint because Suffolk had agreed to try to fix the hot water issue. Instead, Eisenberg and Suffolk entered into a dispute resolution [**5] and tolling agreement in which the parties agreed to try to resolve their disputes in mediation and to toll any applicable statute of limitations while they did so.

The tolling agreement expired in 2014, and in March of that year Eisenberg amended its complaint to add Suffolk as a defendant, alleging breach of contract and negligence claims against it based upon the same issues alleged in the original complaint against only DLR. In January 2015, Eisenberg and Suffolk attempted to resolve the dispute in mediation, but were unsuccessful. According to Eisenberg's chief executive officer and president, it was not until the mediation failed in early 2015 that Eisenberg "began to investigate the merits of its claims against Suffolk ... [and] discovered for the first **[*1205]** time ... a potential issue with respect to Suffolk's compliance with the California contractor's state license laws." Based upon this investigation, Eisenberg filed a second amended complaint in May 2015 that added a section 7031(b) claim for disgorgement against Suffolk.

Suffolk filed a demurrer to the disgorgement cause of action, asserting several grounds, including that it was barred by the one-year statute of limitations. The trial court [**6] overruled the demurrer; as to the statute of limitations, the court found it was not possible to determine at that stage when Eisenberg should have been aware of the facts supporting its claim. Two days after the court ruled, Eisenberg filed a motion for summary adjudication of its disgorgement claim, which the trial court denied.

Four months later, Suffolk brought its own motion for summary adjudication of the disgorgement claim. As we explain in more detail in section A.3.c., *post*, the trial court found that the one-year statute of limitations applicable to claims for penalties or forfeitures applied, and that Eisenberg's claim was time-barred because it knew or easily could have discovered the facts giving rise to the claim more than a year before it filed its claim against Suffolk. The court ultimately entered judgment in favor of Suffolk,[3] from which Eisenberg now appeals.

DISCUSSION

A. *Preliminary Matters*

To facilitate our discussion of the parties' contentions on appeal, we begin with a summary of the applicable law, an explanation of Eisenberg's disgorgement claim, and a more detailed discussion of the summary adjudication motion.

1. *Applicable Law*

Contractors in California are governed [**7] by the Contractors' State License Law (the contractors' law). (§ 7000 et seq.) Under that law, all contractors must be licensed by the Board. If the contractor is an individual, that individual must qualify for a license by passing a written examination to show that he or she has the requisite degree of knowledge and experience in **[*1206]** the classification applied for[4] and general knowledge of the building, safety, health, and lien laws of the state. (§§ 7065, subd. (a), 7068, subd. (a).) If the contractor is a corporation (such as Suffolk), it must qualify for a license through one person, referred to as a qualifier. (§§ 7068, subd. (b)(3), 7025, subd. (c).) That qualifier must be "a responsible managing officer or responsible managing employee who is qualified for the same license classification as the classification being applied for." (§ 7068, subd. (b)(3).) A responsible managing employee (RME) is "an individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that [RME] is the qualifying person on behalf of the applicant." (§ 7068, subd. (c).)

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At the time of construction at issue in this appeal, the contractors' law provided that the qualifier "shall be responsible for exercising that direct supervision and control [**8] of his or her employer's or principal's construction operations as is necessary to secure full compliance with the provisions of this chapter and the rules and regulations of the board relating to the construction operations." (Former § 7068.1, subd. (a); see Stats. 1991, ch. 145, § 1, p. 1353.)[5] CSLB regulations provide that "'direct supervision and control' includes any one or any combination of the following activities: supervising construction, managing construction activities by making technical and administrative decisions, checking jobs for proper workmanship, or direct supervision on construction job sites." (Cal. Code Regs., tit. 16, § 823, subd. (b).)

One of the primary purposes of the contractors' law is to protect the public. (See § 7000.6.) To that end, one of its provisions requires all contractors to include certain language prominently in their contracts informing those with whom they contract that all contractors are required to be licensed, and providing information about how to contact the CSLB to file a complaint or obtain information about the contractor. (§ 7030.) The contractors' law also includes several provisions designed to deter contractors from operating without a valid license: It provides for citations to be issued by [**9] the CSLB against unlicensed contractors assessing civil penalties (§ 7028.7); criminal proceedings against unlicensed contractors that could result in jail time, criminal fines, and restitution orders (§ 7028); and a unique provision, section 7031.

[*1207]

Subdivision (a) of section 7031 provides that no person engaged in the business or acting in the capacity of a contractor may bring or maintain any action for the collection of compensation for the performance of any act or contract where a license is required without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract. Subdivision (b)—the provision at issue in this appeal—provides: "Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract." (Subd. (e) addresses substantial compliance with licensure requirements, and is not at issue here.)

Section 7031(b) does not require the plaintiff seeking disgorgement to have suffered any injury. That is because "'"[s]ection 7031 represents a legislative determination that the importance of [**10] deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation [or requiring them to disgorge compensation already paid] ... ."'" (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423 [30 Cal. Rptr. 3d 755, 115 P.3d 41] (*MW Erectors*), italics omitted; see also *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 518–520 [100 Cal. Rptr. 3d 434].)

2. *Eisenberg's Disgorgement Claim*

The facts relevant to Eisenberg's section 7031(b) claim for disgorgement are as follows. Gregory Hescock was Suffolk's RME under Suffolk's license at the time the Contract was signed. At that time, Hescock worked out of Suffolk's Irvine office.[6] In the last half of 2008, Hescock transferred to Suffolk's Boston office and moved to Massachusetts; nevertheless, he remained Suffolk's designated RME on its California license.

Eisenberg alleges in its complaint that it was not aware at any time during the construction of the Project that Hescock was the RME under Suffolk's California license, and that it first discovered a potential issue regarding the status of Suffolk's RME in February 2015. Eisenberg alleges that, after Hescock transferred to Suffolk's Boston office, he did not attend any meetings concerning the Project, did not communicate [**11] with any representative of Eisenberg (including the project manager for the Project) or DLR, and did not exercise direct supervision and control over anyone at Suffolk in connection with the Project. As a result, according to Eisenberg, Suffolk did not have a **[*1208]** bona fide qualifier as RME, and therefore Suffolk was not duly licensed as a contractor at all times during Suffolk's performance of the Contract. Thus, Eisenberg alleges that under section 7031(b), Suffolk must disgorge all payments Eisenberg made as compensation for Suffolk's work on the Project.

3. *Suffolk's Motion for Summary Adjudication*

a. *Suffolk's Motion*

Suffolk sought summary adjudication of Eisenberg's section 7031(b) claim on four grounds.

First, Suffolk contended the claim was barred by the one-year statute of limitations applicable to actions under a statute for a penalty or forfeiture (Code Civ. Proc., § 340). It argued that under Eisenberg's theory of the case, the claim accrued in 2008, when Hescock moved to Massachusetts and allegedly failed to fulfill the requirements of an RME, or at the latest in June 2010, when the construction was completed. It asserted that the discovery rule did not apply to claims brought under section 7031(b) because that rule is an equitable rule, and there [**12] is no equitable basis for applying it to a section 7031(b) claim, which does not require any injury to the plaintiff. But even if the discovery rule applied, Suffolk argued Eisenberg's claim nevertheless would be time-barred because Eisenberg knew in 2008 that Hescock had moved and no longer was attending meetings regarding the Project, and his status as Suffolk's RME was a matter of public record.[7]

Second, Suffolk argued that Eisenberg's claim failed as a matter of law because section 7068.1 does not provide for automatic—and retroactive—suspension of a contractor's license upon its violation, namely, the RME's failure to "exercis[e] that direct supervision and control of his or her employer's or principal's construction operations as is necessary to secure full compliance with the provisions of this chapter and the rules and regulations of the board relating to the construction operations" (former § 7068.1, subd. (a)). Instead, findings must be made and disciplinary action taken to suspend the contractor's license. And, because section 7031(b) provides for disgorgement only against an "unlicensed contractor," Suffolk argued Eisenberg's claim necessarily failed.

Suffolk's third and fourth arguments related to whether the evidence was such that Eisenberg [**13] would not be able to prove that Hescock fulfilled the requirements of an RME.

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[*1209]

b. *Eisenberg's Opposition*

Eisenberg argued in opposition to Suffolk's motion that its claim was not barred by the statute of limitations, and that there were disputed facts regarding whether Hescock satisfied his duties as Suffolk's RME and whether his conduct would result in automatic suspension of Suffolk's license. With regard to the statute of limitations, Eisenberg argued that the discovery rule applied to section 7031(b) claims because the rule applies to all invasions of legal rights. It argued that it did not know (and had no duty to inquire into) the identity of Suffolk's RME until its attorney advised it of the potential claim in 2015. But Eisenberg argued that, in any event, its claim was timely filed because a section 7031(b) claim is really a claim for rescission, which is subject to a four-year statute of limitations under Code of Civil Procedure section 337, subdivision (c) (or the four-year statute applicable to claims under the unfair competition law (Bus. & Prof. Code, § 17208)), or it falls under the three-year statute of limitations that governs claims upon a liability created by statute, other than a penalty or forfeiture (Code Civ. Proc., § 338, subd. (a)).

c. *Trial Court's Ruling*

After requesting, and receiving, supplemental briefing [**14] on certain issues, including the applicability of the delayed discovery rule to the statute of limitations, the trial court granted Suffolk's motion on the statute of limitations ground. The court found that the one-year statute governing claims for penalties or forfeitures applied. Although the court declined to decide if the discovery rule applied, it found that even if it did, Eisenberg knew or easily could have discovered the facts making up the claim more than a year before Eisenberg filed its section 7031(b) claim because (1) the Contract provided Suffolk's license number (on the first page); (2) the identity of Suffolk's RME was public information that easily could be accessed; and (3) the undisputed evidence showed that Eisenberg knew that Hescock had moved to Massachusetts in late 2008 and did not participate in meetings regarding the construction or visit the construction site.

B. *The Parties' Contentions on Appeal*

On appeal, Eisenberg contends the trial court erred in finding the one-year statute of limitations applies, arguing that a four-year or three-year statute should apply because (1) there is no statute specifying the limitations period for disgorgement, so Code of Civil Procedure section 343 applies; (2) a Business and Professions Code section 7031(b) claim is [**15] akin to a restitution claim under the unfair competition law (Bus. & Prof. Code, § 17200 et seq.), which specifies a four-year limitations period; (3) other provisions in the **[*1210]** contractors' law specify a four-year or three-year limitations period; and (4) disgorgement is similar to a refund or restitution, to which Code of Civil Procedure section 338, subdivision (a) applies. But even if the one-year statute applies, Eisenberg argues that it did not discover its claim until its lawyer conducted an investigation after receiving discovery in 2014. In essence, Eisenberg argues that, as a layperson, it could not be expected to know the intricacies of the licensing laws, and therefore it had no obligation to conduct an investigation to determine the identity of Suffolk's RME.

As it argued in its summary adjudication motion, Suffolk argues in its respondent's brief that the one-year statute of limitations applies to a section 7031(b) claim, and that Eisenberg's claim accrued in 2008, when Hescock moved to Massachusetts, or no later than June 2010, when construction was completed. It also argues that the discovery rule does not apply because (1) it is an equitable rule; (2) the claim does not involve an "injury"; (3) the facts necessary to establish the elements of the claim were not hidden; [**16] and (4) the Legislature did not provide for application of the rule. It also argues that even if the discovery rule applies, the facts giving rise to the claim were known or publicly available in 2008, and Eisenberg's ignorance of the law did not toll the running of the statute of limitations. [8]

Suffolk has the better argument.

1. *Which Statute of Limitations Applies?*

CA(1) **(1)** Part 2 of title 2 of chapter 1 of the Code of Civil Procedure sets forth statutes of limitations applicable to civil actions. The first provision of that title states: "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute." (Code Civ. Proc., § 312.) ***HN2*** Because section 7031(b) does not prescribe a limitation period, the applicable statute of limitations must be found in this title of the Code of Civil Procedure. [9]

The parties identify three such statutes that might apply: (1) the three-year statute applicable to "[a]n action upon a liability created by statute, other than **[*1211]** a penalty or forfeiture" (Code Civ. Proc., § 338, subd. (a)); (2) the one-year statute applicable to "[a]n action upon a statute for a penalty or forfeiture, if [**17] the action is given to an individual, or to an individual and the state, except if the statute imposing it prescribes a different limitation" (Code Civ. Proc., § 340, subd. (a)); or (3) the four-year statute that applies to "[a]n action for relief not hereinbefore provided for" (Code Civ. Proc., § 343 (the catchall statute)).

Given that the disgorgement at issue here is a liability created by statute, the applicable limitations statute must be either Code of Civil Procedure section 338, subdivision (a) (if the disgorgement is not a penalty or forfeiture) or Code of Civil Procedure section 340, subdivision (a) (if it is a penalty or forfeiture). ***HN3*** Thus, contrary to Eisenberg's assertion, the catchall statute does not apply to a section 7031(b) claim. The issue to be resolved, then, is whether section 7031(b) disgorgement is a penalty or forfeiture.

Eisenberg contends that section 7031(b) disgorgement is not a penalty, but rather is restitution. In making this contention, it points to the Supreme Court's definition of restitution in *Clark v. Superior Court* (2010) 50 Cal.4th 605 [112 Cal. Rptr. 3d 876, 235 P.3d 171] (*Clark*): "The word 'restitution' means the return of money or other property obtained through an improper means to the person from whom the property was

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taken. [Citations.] 'The object of restitution is to restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest.' [Citation.]" (*Id.* at p. 614, italics omitted.) The Supreme Court [**18] contrasted restitution, which it noted "is not a punitive remedy" (*ibid.*), with a penalty, which it described as "a recovery '"without reference to the actual damage sustained"'" (*ibid.*).

Eisenberg argues that, since section 7031(b) measures the recovery as "what was taken from the plaintiff," it constitutes restitution rather than a penalty. However, contrary to Eisenberg's characterization, recovery under section 7031(b) is not of something that was "taken"; it is recovery of compensation paid under the terms of a contract. Section 7031 does not invalidate that contract. Rather, it precludes an unlicensed contractor (but not the other party to the contract) from enforcing the contract (§ 7031, subd. (a)), and, *if the other party to the contract brings a timely action*, it requires the unlicensed contractor to return all compensation received from that party, regardless whether that party sustained any actual damage (§ 7031(b)). Moreover, recovery of all compensation paid to the unlicensed contractor does not—and is not intended to—"'restore the status quo.'" (*Clark, supra*, 50 Cal.4th at p. 614.) Instead, for reasons of policy (to deter contractors from operating without a valid license), it provides a windfall to the plaintiff, at the expense of the unlicensed contractor, since the plaintiff [**19] also retains the work completed by the contractor.

[*1212]

HN4 *CA(2)* **(2)** When viewed in this context, it is clear that the disgorgement provided in section 7031(b) is a penalty. It deprives the contractor of any compensation for labor and materials used in the construction while allowing the plaintiff to retain the benefits of that construction. And, because the plaintiff may bring a section 7031(b) disgorgement action regardless of any fault in the construction by the unlicensed contractor, it falls within the Supreme Court's definition of a penalty: "a recovery '"without reference to the actual damage sustained."'" 10 (*Clark, supra*, 50 Cal.4th at p. 614.) Accordingly, we hold that Code of Civil Procedure section 340, subdivision (a), the one-year statute of limitations, applies to disgorgement claims brought under section 7031(b).

2. *When Does a Disgorgement Claim Accrue?*

CA(3) **(3)** Having determined that the one-year statute of limitations applies, we must determine when a section 7031(b) claim accrues. (See Code Civ. Proc., § 312 ["Civil actions ... can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued"].) *HN5* "Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 [27 Cal. Rptr. 3d 661, 110 P.3d 914] (*Fox*).) The plaintiff's ignorance of the cause of action ordinarily does not delay the running [**20] of the statute of limitations. (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 187 [98 Cal. Rptr. 837, 491 P.2d 421].) However, over the years, courts (and, in some instances, the Legislature) have altered the traditional accrual rule for certain kinds of causes of action by applying the discovery rule.

[*1213]

Under the discovery rule, accrual of a qualifying cause of action is postponed "until the plaintiff discovers, or has reason to discover, the cause of action, until, that is, [the plaintiff] at least suspects, or has reason to suspect, a factual basis for its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 389 [87 Cal. Rptr. 2d 453, 981 P.2d 79].) Or, put another way, the statute of limitations does not begin to run until "the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [245 Cal. Rptr. 658, 751 P.2d 923].) "'The policy reason behind the discovery rule is to ameliorate a harsh rule that would allow the limitations period for filing suit to expire before a plaintiff has or should have learned of the latent injury and its cause.'" (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797–798 [123 Cal. Rptr. 3d 578, 250 P.3d 181].)

The Supreme Court has explained that "the discovery rule most frequently applies when it is particularly difficult for the plaintiff to observe or understand the breach of duty, or when the injury itself (or its cause) is hidden or beyond what the ordinary person could [**21] be expected to understand." (*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1248 [7 Cal. Rptr. 3d 576, 80 P.3d 676]; see also *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 831 [195 Cal. Rptr. 421] ["A common thread seems to run through all the types of actions where courts have applied the discovery rule. The injury or the act causing the injury, or both, have been difficult for the plaintiff to detect"].) It is an equitable rule, intended to avoid unjustly depriving plaintiffs of a remedy for their injuries when they have been diligent in seeking to protect their rights. (*Shively, supra*, 31 Cal.4th at pp. 1249–1250.)

In light of the equitable basis for the discovery rule, it makes little sense to apply the rule to claims for disgorgement under section 7031(b). A section 7031(b) claim does not require that the plaintiff suffer any injury, or at least an injury in the sense used by the courts to justify an equitable exception to the ordinary rules of accrual. The fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm (other than, perhaps, some sort of psychic harm in knowing that he or she hired someone who was not in compliance with the law).11 Moreover, the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor. Thus, holding that the discovery rule does not apply to [**22] section 7031(b) claims does not produce a harsh result for plaintiffs. To the extent a plaintiff *does* suffer an injury caused **[*1214]** by an unlicensed contractor that is not easily or immediately discoverable, the discovery rule would continue to apply to other claims seeking recovery for any damages the plaintiff suffered.

In contrast, if we were to hold that the discovery rule applied, it would be nearly impossible to formulate rules for its application that could be consistently applied while staying true to the policies underlying statutes of limitations, i.e., "protecting parties from 'defending stale claims, where factual obscurity through the loss of time, memory or supporting documentation may present unfair handicaps' ... [and] stimulat[ing] plaintiffs to pursue their claims diligently." (*Fox, supra*, 35 Cal.4th at p. 806, citations omitted.) Since section 7031(b) does not require any injury to the plaintiff, what kinds of facts would give rise to a reason to suspect a factual basis for the claim? If the plaintiff has no duty to investigate whether the contractor was properly licensed absent some sort of facts that would put him or her on notice, there would be, in effect, no time limitation at all in most cases.

For example, say a plaintiff contracts with a contractor [**23] to construct a building for several million dollars. Unbeknownst to the plaintiff,

the contractor either did not have a valid license, or its license was suspended during part of the construction. The building is built, and there are no problems with the construction or the building. Ten years later, the plaintiff's business is failing and he or she is looking for a source of funds. He or she happens to come across an article about a section 7031(b) case, or speaks to an attorney who happens to have knowledge of section 7031(b), so the plaintiff decides to check the contractor's license records and discovers that the license had lapsed or been suspended during the construction, i.e., the plaintiff "discovers" the "wrongdoing." If the discovery rule applied, the plaintiff could file a section 7031(b) claim and get back all the compensation paid for construction of a building that the plaintiff has used (and presumably will continue to use) without any problems for 10 years. An absurd result, to be sure, but there would be no principled way to avoid it under the discovery rule, because there was no reason for the plaintiff to suspect that the contractor's license had lapsed or been suspended during the construction.

HN6 *CA(4)* **(4)** To avoid such [**24] absurd results, and because there is no reason in equity to apply it, we hold that the discovery rule does not apply to section 7031(b) claims. Thus, the ordinary rule of accrual applies, i.e., the claim accrues "'when the cause of action is complete with all of its elements.'" (*Fox, supra*, 35 Cal.4th at p. 806.) In the case of a section 7031(b) claim, the cause of **[*1215]** action is complete when an unlicensed contractor completes or ceases performance of the act or contract at issue.[12]

3. *Application to This Case*

In the present case, Suffolk completed its construction of the Project in June 2010. Thus, Eisenberg's section 7031(b) claim ordinarily would be time-barred after June 2011. In this case, however, Suffolk apparently did some additional work to remedy the hot water problem Eisenberg was experiencing immediately after completion of construction and in 2012, although it is unclear from the record whether such work would be considered to be work under the original Contract or under a new agreement. In any event, however, it is clear that by the time Eisenberg amended its complaint to allege claims against Suffolk for breach of contract and negligence, Suffolk had ceased all performance under any agreement with Eisenberg. That amended complaint was filed on March [**25] 25, 2014. Eisenberg did not allege its section 7031(b) claim until it filed its second amended complaint on May 18, 2015, more than a year later. Thus, the trial court correctly found that Eisenberg's section 7031(b) claim is barred by the one-year statute of limitations set forth in Code of Civil Procedure section 340, subdivision (a).

DISPOSITION

The judgment is affirmed. Suffolk shall recover its costs on appeal.

Collins, J., and Currey, J., concurred.

Footnotes

[1] Further undesignated statutory references are to the Business and Professions Code.

[2] DLR is the successor in interest to the original architectural firm.

[3] More than a year and half after the trial court granted Suffolk's motion for summary adjudication, Eisenberg dismissed the other causes of action against Suffolk in accordance with a settlement agreement.

[4] There are three branches of contracting: (1) general engineering contracting; (2) general building contracting; and (3) specialty contracting. (§ 7055.) A specialty contractor is a contractor whose principal contracting business involves the use of specialized building trades or crafts. (§ 7058, subd. (a).)

[5] The current version of section 7068.1 provides that the qualifier "shall be responsible for exercising that direct supervision and control of his or her employer's or principal's construction operations to secure compliance with this chapter and the rules and regulations of the board." (§ 7068.1, subd. (a).)

[6] Suffolk apparently has offices in several places, including outside of California; its official address for its California license is in San Francisco.

[7] We note that a contractor's license is a public record, and that the CSLB offers a free online service that allows any member of the public to check the status of a contractor's license and to obtain information regarding the contractor's qualifying individual.

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8 Alternatively, Suffolk argues that we should affirm on the ground that Eisenberg has no section 7031(b) claim as a matter of law because there is no automatic suspension of a contractor's license for a violation of section 7068.1, and therefore Suffolk was never unlicensed, or on the ground that Eisenberg failed to raise a triable issue of material fact as to whether Hescock complied with the duties required of an RME. In light of our conclusion that Eisenberg's claim is time-barred, we need not address these arguments.

9 For this reason, we decline Eisenberg's invitation to apply to section 7031(b) claims the four-year statute of limitations applicable to claims for restitution under California's unfair competition law, which statute is found in the Business and Professions Code, since section 7031(b) is not part of the unfair competition law.

10 That section 7031 imposes a penalty or forfeiture has been recognized by the Supreme Court, albeit not in the context of determining which statute of limitations applies to claims for disgorgement under section 7031(b). For example, in *MW Erectors, supra*, 36 Cal.4th 412, the Supreme Court examined whether subdivision (a) of former section 7310 precluded a contractor who was unlicensed during only a part of the construction from suing to recover compensation for work completed while the contractor was licensed. The court found the language of section 7031 "convey[ed] the Legislature's obvious intent to impose a stiff all-or-nothing penalty for unlicensed work." (*MW Erectors*, at p. 426.) And in an earlier case, the Supreme Court referred to "'the severity of this sanction and of the forfeitures which [section 7031] necessarily entails'" in upholding the application of the substantial compliance doctrine in construing section 7031. (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 282 [211 Cal. Rptr. 703, 696 P.2d 95].) (The Legislature subsequently amended the statute to limit the application of the doctrine to a narrow category of cases, making it clear it intended that § 7031 be a severe sanction. (Stats. 1994, ch. 550, § 1, p. 2803).) Although both of these cases involved subdivision (a) of section 7031, the legislative history of the amendment to add subdivision (b) to the statute shows it was added to ensure that unlicensed contractors "are not able to avoid the full measure of the [contractors' law's] civil penalties." (*White v. Cridlebaugh, supra*, 178 Cal.App.4th at p. 520.)

11 We do not discount the fact that an unlicensed contractor may not have the skills necessary to competently perform the job for which he or she was hired, and thus might cause injury to the plaintiff by improperly performing the job. But such an injury is not an element of a claim for disgorgement under section 7031(b); all that is required is that the contractor performed an act or contract and did not possess a valid license sometime during that performance.

12 At oral argument, Suffolk's counsel argued we should hold that a section 7031(b) claim accrues at the time each payment is made under the construction contract. Such a holding would be inconsistent with the statute, however, since a plaintiff is entitled to recover all compensation paid to a contractor under a contract if that contractor was unlicensed at any time during the performance of the contract (except when subd. (e) of § 7031 applies).

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City of Newport Beach - Building Division
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Date : 11-14-2012

Permit # : X2012-2116
Job Address: 436 VIA LIDO NORD NB
Owner : HUMPHREYS GARY
Contractor : SPARTAN ASSOCIATES INC THE
Description : 800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE

Plan Check # : 1552-2012
MFP / ELEC
MECH / PLUM

TYPE	ITEM#	DESCRIPTION	DATE	SIGNATURE
COMB	2200	Pre-Grade Meeting		
COMB	2210	Soil Pipe		
COMB	2220	Sewer		
COMB	2230	Water Pipe Underground		
COMB	2240	Gas Pipe Underground		
COMB	2250	Underslab/Floor Mechanical		
COMB	2260	Ufer Ground		
COMB	2270	Underground Electrical		
COMB	2280	Rough Grade Approval		
COMB	2290	WQ-Best Management Practices		
COMB	2300	Erection Pads		
COMB	2310	Foundation/ Setbacks/Footings		
COMB	2330	Slab on Grade		
COMB	2340	Area Drains		
		DO NOT COVER/POUR CONCRETE UNTIL ABOVE IS SIGNED OFF		
		ROUGH		
COMB	2350	Masonry Pre-Grout/Wall Steel		
COMB	2370	Slab or Deck		
COMB	2380	Rough Plumbing		
COMB	2390	Gas Pipe		
COMB	2400	Rough HVAC		
COMB	2410	Hood		
COMB	2420	Fireplace Throat		
COMB	2430	Under Floor Plumbing		
COMB	2440	Under Floor Electrical		
COMB	2450	Rough Electric Residential		
COMB	2460	Rough Conduit Walls - Commercial		
COMB	2470	Rough Wiring Ceilings - Commercial		
COMB	2480	Rough Electrical Service		
COMB	2490	Floor Framing & Sheathing		
COMB	2500	Rough Wall Framing - Commercial		
COMB	2510	Roof Framing, Sheathing & Building Ht		
COMB	3005	Exterior Shear & Hold Downs		
COMB	2520	COMPLETE FRAMING		
		DO NOT COVER WORK UNTIL ABOVE SIGNED OFF		
		INTERIOR & EXTERIOR		
COMB	2540	Insulation/Densglass		
COMB	2550	Drywall		
COMB	2560	Suspended Ceiling		
COMB	2570	Shower Lath		
COMB	2580	Exterior Lath		
COMB	2590	Plaster-Scratch		
COMB	2530	Other Electrical		
COMB	2350	Other Plumbing		
COMB	2425	Other Mechanical		
COMB	2600	Other Building		
COMB	2610	Gas Pressure Test		
COMB	2617	Grading / Drainage Final		
COMB	3000	Electrical Final		
COMB	3001	Mechanical Final		
COMB	3002	Plumbing Final		
COMB	3004	Fire Dept Final 949/644-3105		
COMB	2620	FINAL BUILDING		
		DO NOT OCCUPY UNTIL FINAL INSPECTIONS ARE SIGNED OFF		

call the inspection request line at 949/644-3255 or visit the City website at http://www.newportbeachca.gov and select Online Services
Inspections (only for permits in approved status) must be requested before 8:00 A.M. the day of the inspection

Please use the following list of permit code when calling for an inspection:
PRESS:
'0' for **combination / X permit**
'1' for building / B permit
'3' for electrical / E permit
'4' for mechanical / H permit
'5' for grading / G permit
'6' for harbor / M permit
'7' for pool and spa / S permit
'8' for fire / F permit

7/12/13 PARTIAL FOOTINGS SEE PLANS BJ

Inspector Notes are located on the reverse side.

34-1

City of Newport Beach **Building Division**

PO Box 1768 Newport Beach, California 92658-8915 , Permit Counter Telephone (949)644-3288 Inspection Requests/Telephone (949)644-3255

COMB Permit No: X2012-2116
PROJECT NUMBER: 1552-2012

Combination Type - MFP/ ELEC/ MECH/ PLUM/

Job Address: 436 VIA LIDO NORD NB
Description:800 SF INTERIOR REMODEL, 188SF DEMO TO COMBINE 2ND FLOOR UNITS (B & C) TO CREATE 1, REROOF THE ENTIRE HOUSE "WORK IN PROGRESS"

INSPECTOR

Inspector Area: 1
TOGETHER

Legal Desc.: P M 105-43 PAR 1 UNIT 3 OF PROJECT LOCATED ON AP 423-191-08

Owner: HUMPHREYS GARY
Address: 505 AUGUSTA DR
MORAGA CA 94556
Phone:

Applicant: BEREKI ADAM
Address: 436 VIA LIDO NORD #B
NEWPORT BEACH CA 92663
Phone: 949-241-6693

Contractor: SPARTAN ASSOCIATES INC THE
Address: 436 VIA LIDO NORD #B
NEWPORT BEACH CA 92663
Phone: 949-241-6693
Con State Lic: 927244
Lic Expire: 01/31/2013
Bus Lic:
Lic Exp Date: 06/30/2013
Workers' Compensation Insurance
Carrier: NORCAL ARS INS
Policy No: SCWC699550
Expire: 07/05/2013

Architect: OVERLEY RICK
Address: 13221 SAFFORD ST
GARDEN GROVE CA 92843
Phone: 714-537-2132 State Lic:9858

Engineer: WONG ARIV NATHANIEL
Address: 180 S PROSPECT AVE #110
TUSTIN CA 92780
Phone: (714)368-1898 State Lic:C-055045

Designer:
Address:
Phone:

Code Edit : 2010
Type of Construction: V - B
Occupancy Group: B
Added /New sq.ft. Bldg: -188
Added /New sq. ft. Garage: 0
No of Stories: 2
No. Units : 2
Bldg Height: .0
Bldg Sprinklers: N
Flood Zone:
Issued Date: 11/14/2012

Building Setbacks: Front: / Rear: /
Left: / Right: /
Use Zone:
Parking Spaces: 0
Fire Hazard Zone : N

Special Conditions: C2012-014 INSTALL OR VERIFY SMOKE AND CARBON MONOXIDE DETECTORS ARE EXISTING PER CRCR 314.1 & 315

Date: 10/31/-14

☒ CANCEL ☐ EXPIRED

Refundable: ☐ 80% or ☐ 100% refund to whom:

☐ Scan plan ☒ Discard plan
(work started) (no work started)

Note: Left to 2013 2851 for Inspection

Insp. initials:

Construction Valuation:	$400,000.00				
Building Permit Fee:	$2,806.00	Solar System PC:	$0.00	Planning Department:	
Plan Check Fee:	$2,020.32	Excise Tax:	$0.00	Plan check Fee :	$1,010.16
Overtime Plan Ck:	$0.00			Fair Share:	$0.00
Investigation Fee:	$2,806.00			SJH Trans :	$0.00
Record Management :	$240.00	Grading Permit Fee:	$0.00	In-lieu Housing Fee :	$0.00
Energy Compliance:	$240.00	Grading PC Fee:	$0.00	Public Works Department -	
CA Seismic Safety :	$0.00	Wet Insp. Fee :	$0.00	Park Ded Calc :	$0.00
Disabled Access :	$0.00			P/W Plan Check :	$0.00
Fee Increase: Fee:	$0.00	Electrical %:	$392.84	San Dist :	$0.00
Additional Fee :	$0.00	Mechanical %:	$280.60	NMUSD Fee:	$0.00
Hazardous Mat :	$0.00	Plumbing %:	$561.20		
Building Green Fee :	$16.00				
TOTAL FEE :	$9,394.21	Plan Check Fee :	$2,020.32	Fee Due at Permit Issuance :	$7,373.89

		Fire Department	
		Fire Inspection:	$0.00
		Fire Plan Review:	$0.00
		Demolition Fee:	$0.00
		Building Dept Adm	$0.00
		General Service	$0.00
		Refund Deposit	$0.00
			$0.00
			$0.00

PROCESSED BY: LD
ZONING APPROVAL: BMZ
GRADING APPROVAL:

PUBLIC WORKS APPROVAL:
PLAN CHECK BY: AN
APPROVAL TO ISSUE: AN

PERMITS EXPIRE 180 DAYS AFTER ISSUANCE OR LAST VALID INSPECTION.

R 34145

0153

EXHIBIT [D]–4712

City of Newport Beach — Buildi.. ivision — PLUMBING Permit No: P2013-0

PO Box 1768 Newport Beach, California 92658-8915 Permit Counter Telephone (949)644-3288 Inspection Requests/Telephone (949)644-3255

VTL ON SPREADSHEET 4/11/13 INSPECTOR

) Address: 436 VIA LIDO NORD Bldg: 1 Floor: Suite:
scription of Work: PLUM - SEWER LINE RPR
X2012-2116
pector Area: 1 Code Edit 2010
gal Description: P M 105-43 PAR 1 UNIT 3 OF PROJECT LOCATED ON AP 423-191-08
GETHER

'ner: HUMPHREYS GARY
dress: 505 AUGUSTA DR
MORAGA CA 94556
one:
ued Date: 04/11/2013
icessed By:

Contractor: SPARTAN ASSOCIATES INC THE
Address: 818 SPIRIT
COSTA MESA CA 92626
Phone: 949-241-6693
Con State Lic: 927244
Lic Expire: 01/31/2015
Bus Lic: BT30039638
Lic Exp Date: 06/30/2013

Worker's Compensation Insurance -
Carrier : NORGUARD INS
Policy No: SPWC359950
Expire : 07/05/2013

34-31

FEES

Bathroom Fixtures			Kitchen Fixtures			Misc.			Misc.			Other	
oilet:	0	$0.00	Kitchen Sink:	0	$0.00	Water Piping:	0	$0.00	Roof Drain:	0	$0.00		$0.00
idet	0	$0.00	Garbage Disp:	0	$0.00	Water Softener:	0	$0.00	Grease Trap:	0	$0.00		$0.00
rinal	0	$0.00	Bar Sink:	0	$0.00	Water Heater:	0	$0.00	Grease Interceptor:	0	$0.00		
ath Tub:	0	$0.00	Vegetable Sink:	0	$0.00	Gas up to 4 outlets:	0	$0.00	P-Trap:	0	$0.00	Record Mgmt Fee:	$1.00
hower Stall:	0	$0.00	Ice Maker:	0	$0.00	Gas over 4 outlets:	0	$0.00	Sewer			Investigation:	$0.00
Vash Basin:	0	$0.00	Dishwasher:	0	$0.00	Backflow up to 2":	0	$0.00	Sewer:	0	$0.00	Plan Check:	$0.00
ydro-Mass Tub:	0	$0.00	Lndry/Trap:	0	$0.00	Backflow over 2":	0	$0.00	Sewer Alter/Repair:	1	$32.00	Issuance:	$0.00
loor Sink:	0	$0.00	Regulator:	0	$0.00	Hose Bibb:	0	$0.00	Sewer Abandon:	0	$0.00	Supplemental Fee:	$9.00
loor Drain:	0	$0.00	Lawn Sprinkler:	0	$0.00	Drinking Fountain:	0	$0.00					

TOTAL: $42.00 Plan Check Fee : $0.00 Fee Due at Permit Issuance : $42.00

PERMITS EXPIRE 180 DAYS AFTER ISSUANCE OR LAST VALID INSPECTION

EXHIBIT [D]–4713

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

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)
William Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
TELEPHONE NO.: (949) 719-1159 FAX NO. (Optional)
E-MAIL ADDRESS (Optional): wbissell@wgb-law.com
ATTORNEY FOR (Name): Gary Humphreys & Karen Humphreys

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
APR 20 2017
DAVID H. YAMASAKI, Clerk of the Court
BY: C Bolivar DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

PLAINTIFF: The Spartan Associates, Inc.

DEFENDANT: Gary Humphreys, Karen Humphreys et al

CASE NUMBER
2015-00805807

Judge David Chaffee

JUDGMENT

☐ By Clerk ☑ By Court ☐ By Default ☐ On Stipulation ☑ After Court Trial ☐ Defendant Did Not Appear at Trial

JUDGMENT

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

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

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

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

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

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

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

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

Form Approved for Optional Use
Judicial Council of California
JUD-100 [New January 1, 2002]

JUDGMENT

Code of Civil Procedure, §§ 585, 664.6

EXHIBIT [D]–4714

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

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

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

5. **Parties.** Judgment is

a ☐ for plaintiff *(name each)*

and against defendant *(names)*:

☐ Continued on Attachment 5a.

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

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

☐ Continued on Attachment 5c.

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

6 **Amount.**

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

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

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

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

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

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

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

Date: APR 2 0 2017

☐ _____
JUDICIAL OFFICER
DAVID R. CHAFFEE

Date ☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE *(Optional)*

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

Date:

Clerk, by _____, Deputy

Gmail Adam Bereki <abereki@gmail.com>

Follow Up to Nov. 4, Phone Conversation- Adam Bereki

1 message

Adam <abereki@gmail.com> Sat, Nov 6, 2021 at 8:10 AM
To: djoe@nbpd.org

Darrin,

Thank you for your time during our phone conversation on November 4th. I thought a bit more about what we both shared. It seems to me that the issue is whether the judgment against me is for damages or for punishment in the form of a fine or forfeiture. If it's for damages, then I agree: you're right, my rights haven't been violated, it was truly a civil case, and there's been no crime. But obviously if I were fined or ordered to forfeit $848k without lawful authority, then something (as you said) is really wrong. Therefore, it seems imperative to go straight to the heart of this issue and come up with lawful definitions of "damages" and a "fine" to be able to discern the Court's Judgment Order.

If it's ok with you, I'd like to try something different. Thus far, I've been providing all the definitions of terms and case law to support the conclusions I've shared with you. I'd like to ask you to do that this time. I'm confident that this will reveal exactly whether a crime and/or a deprivation of my Constitutionally protected rights have been violated. Please also keep in mind that one of the crime's I've alleged has been committed against me is fraud. As you're well aware, fraud often works by distorting reality so what is in fact a lie is made to seem to be true. In this sense, I've alleged that the Court's Judgment Order is not really for damages, but is in fact and law, a fine.

1) What is the definition of damages?

a. What is your source/authority for this definition?

2) What is the definition of a fine/punishment?

a. What is your source/authority for this definition?

3) What is the definition of a forfeiture?

a. What is your source/authority for this definition?

4. Please copy and paste Business and Professions Code section §7031(b) here:

a. Which of the above (damages, fine, or forfeiture) does §7031(b) authorize the Judge to award?

If you experience difficulty coming up with the answers to these questions, please don't hesitate to call. We can look

EXHIBIT [D]–4716

at case law or other valid sources and find the answer together. I'm here to help.

Sincerely,

/s/ Adam Bereki

Gmail 11/19/21 Adam Bereki <abereki@gmail.com>

FW: OCDA FORMAL PRA RESPONSE -BERECKI B&P 7028.pdf

4 messages

Hernandez, Denise <Denise.Hernandez@da.ocgov.com> Wed, Sep 23, 2020 at 11:36 AM
To: "abereki@gmail.com" <abereki@gmail.com>

Mr. Bereki,

Please find attached our formal response and responsive record to your PRA request.

Denise Hernandez

Sr. Deputy District Attorney

CONFIDENTIALITY NOTICE. This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

OCDA FORMAL PRA RESPONSE -BERECKI B&P 7028.pdf
705K

Adam <abereki@gmail.com> Wed, Sep 23, 2020 at 4:51 PM
To: "Hernandez, Denise" <Denise.Hernandez@da.ocgov.com>

Denise,

Thank you for your reply.

On the file you sent me, there is a field labeled "court-cd". can you please tell me if this the court where where the case was filed and if so, what the abbreviations mean?

Also, while your office may not maintain the database for the disposition records (ie fines, specific judgements) for these cases, I believe you have access to these databases and could therefore easily provide the relevant records to my request as they are part of the case handled by your office. I would really appreciate you sharing this information.

Sincerely,

Adam Bereki

[Quoted text hidden]

Adam <abereki@gmail.com> Thu, Sep 24, 2020 at 7:05 AM

EXHIBIT [D]–4718

To: "Hernandez, Denise" <Denise.Hernandez@da.ocgov.com>

Denise,

Additionally, with respect to your responses to requests 3 and 4, you state that your agency does have records but then cite that the public records act does not require you to create records that do not exist. This seems contradictory to me. Please provide the records that your agency possesses in response to my lawful requests even if they are publicly available. I have lawfully asked your agency to provide its documents under the Public Records Act for a specific reason and this request does not require you to create records you already possess.

If you have any questions, please don't hesitate to call.

Sincerely,

Adam
949 241 6693

On Wed, Sep 23, 2020 at 11:36 AM Hernandez, Denise <Denise.Hernandez@da.ocgov.com> wrote:
[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Nov 19, 2021 at 12:19 PM
To: "Joe, Darrin" <djoe@nbpd.org>

Darrin,

I am working on sending you the records pursuant to our conversation on November 18th that you requested. I wanted to also send you the following documents separately as they contain a forwarded email/ Public Records Act Request Response that I received from the Orange County DA's Office. The response from the DA lists the recent prosecutions and convictions for Business and Professions Code §7028a (the criminal statute for contracting without a license). I'm sharing this because you can see the punishment that is imposed by the Courts for a first time offense in each case- generally an average fine of $700 and/or 1-3 yrs informal probation or both etc. NOT a fine for $848,000. While I did not research every case, I began working on a spreadsheet that provides the information of the cases provided by the DA. I've included the spreadsheet with this email in PDF form. In NONE of the cases I researched was there a fine for $848,000. Also noteworthy is that the MAXIMUM fine for a first offense under §7028a is $5,000. This is obviously important because it shows, amongst other things, how outrageous and highly unconstitutional the fine I received under Business and Professions Code §7031(b) when compared to what is recognized as a criminal case for the SAME conduct. Another monumental question is: by what Constitutional authority could a "Judge" fine me 169 TIMES the MAXIMUM criminal penalty in a "civil" case for allegedly committing the same conduct? This, when the City of Newport Beach Building Department listed my company(not me) as the Contractor on the Building Permit for the project.....

Sincerely,

Adam Bereki
[Quoted text hidden]

---

2 attachments

OCDA FORMAL PRA RESPONSE -BERECKI B&P 7028.pdf
705K

CRIMINAL FINES FOR CONTRACTING WITHOUT A LICENSE.numbers
177K

Criminal Fines and Probation For Contracting Without a License

Case Number	Fine	Other	Filing Date	Charged With
20CM01815	$700.00	1 yr. Inf. Prob on Counts 1 & 2, §700 fine, Count 2.	2/3/20	1) §7028(a) 2) §7027.1a
20CM01812	$700.00	1 yr. Inf. Prob on Counts 1 & 2, §700 fine, Count 2.	2/3/20	1) §7028(a) 2) §7027.1a
20CM01735		3yrs Inf. Prob., 40hrs. Community Svc.	2/3/20	1) §7028(a)
19CM00522		3yrs. Inf. Prob Count 1, $700 fine Count 2, 88hrs. Community Svc. In Lieu of Count 2	1/16/19	1) §7028(a) 2) §7027.1a
20CM01827		3yrs. Inf. Prob. 10hrs. Community Svc.	1/31/20	1) §7028(a)
19CM04299		3yrs. Inf. Prob. 10hrs. Community Svc.	5/10/19	1) §7028(a)
19CM07319		3yrs. Inf. Prob. 10hrs. Community Svc.	7/23/19	1) §7028(a)

Gmail Adam Bereki <abereki@gmail.com>

Response to 11/18/21 Conversation

1 message

Adam <abereki@gmail.com> Tue, Nov 23, 2021 at 9:40 AM
To: "Joe, Darrin" <djoe@nbpd.org>

Hi Darrin,

Please see the attached response letter and the supporting documents you requested. I'm here to be supportive in any way I can so please don't hesitate to reach out if you have any questions or need further clarity about something.

Sincerely,

Adam Bereki

6 attachments

- **Response to Darrin Joe 11:23:21.pdf**
  84K
- **Exhibit [C] Lewis & Queen v. N. M. Ball Sons, 48 Cal. 2d 141– NO EQUITABLE REMEDIES.pdf**
  530K
- **EXHIBIT [A2] MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 115 Cal. App. 4th 512– 4th DISTRICT COURT OF APPEAL.pdf**
  632K
- **Exhibit [B] Asdourian v. Araj, 38 Cal. 3d 276– FORFEITURE.pdf**
  628K
- **Exhibit [D] Takings Clause- Cornell.pdf**
  1343K
- **Exhibit [A1] MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 36 Cal. 4th 412– PENALTY.pdf**
  928K

Darrin,

I'm grateful for the time and energy you continue to share in helping me resolve this matter with truth and integrity. Thank you.

In follow up to our phone conversation on November 18, 2021 , here are the documents and other info you requested:

1. The case of *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412 where the California Supreme Court, in 2005, held that "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing **penalty** for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it." (Bold emphasis added). This quote can be found on page 426 of the opinion, attached as Exhibit [A1].
2. The case of *MW Erectors v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 115 Cal. App. 4th 512, attached as Exhibit [A2]. I'm sharing this case to evidence that the Superior Court trial Judge (David R. Chaffee)[1] in *MW Erectors* was the *same Judge* in my case, and, that like my case, this case also went to the Fourth District Court of Appeal on appeal. Also noteworthy is that one of the appellate Justices, Kathleen O' Leary, was also one of the Justices on my appeal. (You'll find her name at the end of the Opinion from the Fourth District in my case). The significance of the *MW Erectors* case is that the Fourth District Court of Appeal, O'Leary, and Chaffee had direct experience and first hand knowledge of the case and the Supreme Courts ruling finding that 7031b imposed a **penalty**, not disgorgement. Nowhere did the Supreme Court hold that §7031b was a cause of action for an "equitable remedy" or "disgorgement" or that it was "non-punitive." If needed, I can also share the Reporters Transcript from the trial in my case where Chaffee references the *MW Erectors* case as the basis of his judgment.
3. The case of *Asdourian v. Araj*, 38 Cal. 3d 276 (Cal. Supreme Ct. 1985) where the California Supreme Court held that" "[i]n view of the severity of this sanction [of §7031] and of the **forfeitures** which it necessarily entails [...]." Quotations and citation omitted. Bolded emphasis added. This quote can be found on page 282 of the opinion, attached as Exhibit [B]. I'm sharing this because the Supreme Court also referred to the penalties of §7031(b) as a forfeiture which they are. They are a penal (or punitive) total forfeiture.
4. The case of *Lewis & Queen v. N. M. Ball Sons,* 48 Cal 2d. 141 (Cal. Supreme Ct. 1957) where the California Supreme Court held that "courts may not resort to equitable considerations in defiance of section 7031." This holding says without

[1] Evidence of this is on page one of this Opinion under "Prior History".

any ambiguity that Courts cannot resort to equitable considerations (like disgorgement) because §7031 calls for punishment in the form of a forfeiture and NOT an equitable remedy. The holding can be found on page 152, attached as Exhibit [C].

During our call, (if I remember correctly) you mentioned a few times that the issues I was raising could essentially just be considered "a matter of interpretation of the law." I thought about this some more and wanted to add that what I've shared is not *my* interpretation of the law, but that of the Supreme Courts of California and the United States. These are the highest Courts in our State and Country whose duty is to say what the law is. Just like ordinary citizens have to rely on the holdings of these Courts, so do Judges and all other public officials. But even higher than these interpretations are the commandments of our Constitutions which impose **mandatory** non-discretionary duties on all public officials. There is no room for interpretation of the law or ambiguity in the commandment of Article I, §26 of the California Constitution that declares "Cruel or unusual punishment may not be inflicted or excessive fines imposed." The same goes for the 8th Amendment to the Constitution for the United States that declares "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

You also asked that I provide you a bit of information on what's known as the "takings clause" and unlawful seizures.

The taking clause deals with government taking private property for public use without compensating the owner. The prohibitions against these unconstitutional takings can be found at Art. I, §19 of the Cal. Constitution and the 5th Amendment to the Constitution for the United States. You can research more about takings from this article on Cornell's website here: https://www.law.cornell.edu/wex/takings. Ive also attached the article as Exhibit [D]. While there appears to be a lot of balancing tests to determine whether the circumstances in this case would qualify as a "taking" or not, my argument would go straight to whether the Court had authority to take any of my money, property, liberty, or rights in the first place. As I've shared, the Court was without authority because private parties are prohibited from prosecuting other private parties and the Court is forbidden to impose any fine or "taking" without performing the tests required thereunder.

With regard to unlawful seizures, see Article I, §13 of the Cal. Constitution declaring "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated" and the Fourth Amendment to the Constitution for the United States declaring "The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated..." Again, the test of whether an unlawful seizure of my rights, liberty, property, and money have occurred is first whether the government had any authority to take them.

The whole point it seems around unlawful takings and seizures is just another word for theft or taking property without lawful authority.

In further research, I came up Pen. Code §182 that I also feel is very applicable to my complaints:

> (a) If two or more persons conspire:
> (1) **To commit any crime.**
> (2) **Falsely and maliciously to indict another for any crime, or to procure another to be charged** or arrested **for any crime.**
> (3) **Falsely to move or maintain any suit, action, or proceeding.**
> (4) **To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses** or by false promises with fraudulent intent not to perform those promises.
> (5) **To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.**

If you have any questions about any of these cases, or need additional supporting information, please don't hesitate to call.

Sincerely,

Adam Bereki

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Lewis & Queen v. N. M. Ball Sons, 48 Cal. 2d 141

Copy Citation

Supreme Court of California

March 19, 1957

S. F. No. 19563

Reporter
48 Cal. 2d 141 * | 308 P.2d 713 ** | 1957 Cal. LEXIS 173 ***

LEWIS AND QUEEN (a Partnership) et al., Appellants, v. N. M. BALL SONS (a Partnership) et al., Respondents

Subsequent History: [***1] Appellants' Petition for a Rehearing was Denied April 17, 1957. Carter, J., and Schauer, J., were of the Opinion that the Petition Should be Granted. Gibson, C. J., did not Participate Therein.

Prior History: APPEAL from a judgment of the Superior Court of Alameda County and from an order denying a new trial. Chris B. Fox, Judge.

Action for damages for breach of equipment rental agreements, for reasonable value of equipment alleged to have been held beyond agreed rental term, and on labor and material bonds and on stop notice bonds.

Disposition: Judgment affirmed; appeal from order dismissed. Judgment for defendants affirmed.

Core Terms

license, contractor, subcontractor, contracts, general contractor, partnership, rental agreement, parties, unlicensed, partner, subcontract, contracting business, cases, present case, illegality, venture, state contract, pari delicto, parkway, courts, rental, performance of an act, illegal transaction, illegal contract, trial court, unenforceable, enterprise, provisions, includes, proceeds

Case Summary

Procedural Posture
Defendant contractor entered into contracts with plaintiff subcontractor to remove concrete and supply construction equipment for road excavation. The subcontractor sued for breach of equipment rental agreements and the contractor cross-claimed. The Superior Court of Alameda County (California) held that the subcontractor was not entitled to maintain an action for compensation because it was not licensed as a contractor.

Overview
To circumvent a state rule limiting the amount of work subcontracted, the contractor and subcontractor divided five items of work assigned to the subcontractor under two contracts. The subcontractor brought an action against the contractor for breach of one of the contracts, an equipment rental agreement. The contractor cross-claimed. The lower court held that the subcontractor was not entitled to pursue a claim for compensation where it was not properly licensed as a contractor. In sustaining the lower court's judgment, the court held that (1) despite the form of the rental agreement the subcontractor actually undertook to and did construct a highway for the contractor and therefore acted as a contractor; (2) although one of the individual partner's of the partnership that acted as a subcontractor had a license, that was inadequate to satisfy the state's licensing requirements where the partnership did the contracting work; and (3) because the

EXHIBIT [D]–4725

subcontractor did not comply with the licensing requirements, it could not bring an action for compensation.

Outcome
The judgment of the lower court was affirmed and the subcontractor's appeal from the lower court's order denying a motion for a new trial was dismissed.

▼ LexisNexis® Headnotes

Governments > State & Territorial Governments ▼ > Licenses ▼

HN1 **State & Territorial Governments, Licenses**
See Cal. Bus. & Prof. Code § 7028. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments ▼ > Licenses ▼

HN2 **State & Territorial Governments, Licenses**
See Cal. Bus. & Prof. Code § 7026. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments ▼ > Licenses ▼

HN3 **State & Territorial Governments, Licenses**
Cal. Bus. & Prof. Code § 7030 makes it a misdemeanor for any person to act in the capacity of a contractor without a license. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Governments > State & Territorial Governments ▼ > Licenses ▼

HN4 **State & Territorial Governments, Licenses**
See Cal. Bus. & Prof. Code § 7031. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments ▼ > Licenses ▼

HN5 **State & Territorial Governments, Licenses**
See Cal. Bus. & Prof. Code § 7025. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments ▼ > Licenses ▼

HN6 **State & Territorial Governments, Licenses**
See Cal. Bus. & Prof. Code § 7029. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Contracts Law > Types of Contracts ▼ > Lease Agreements ▼ > General Overview ▼
Governments > State & Territorial Governments ▼ > Licenses ▼

HN7 **Types of Contracts, Lease Agreements**
Where the evidence shows that in spite of the form of a rental agreement, a subcontractor actually undertakes to and does in fact "construct a highway" for a contractor, it thereby acts as a contractor within the meaning of Cal. Bus. & Prof. Code § 7026. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Civil Procedure > Judgments ▼ > Relief From Judgments ▼ > Motions for New Trials ▼
Contracts Law > Defenses ▼ > Illegal Bargains ▼

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial
View more legal topics

HN8 Relief From Judgments, Motions for New Trials
Whatever the state of the pleadings, when the evidence shows that a plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, a court has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids. It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not raise the issue. The court may do so of its own motion when the testimony produces evidence of illegality. It is not too late to raise the issue on motion for new trial, in a proceeding to enforce an arbitration award, or even on appeal. More like this Headnote

Shepardize® - Narrow by this Headnote (42) 2 2

Contracts Law > Contract Interpretation > Parol Evidence > General Overview
Evidence > Admissibility > Statements as Evidence > Parol Evidence
View more legal topics

HN9 Contract Interpretation, Parol Evidence
The parol evidence rule does not exclude evidence showing that a contract lawful on its face is in fact part of an illegal transaction. Cal. Civ. Proc. Code §1856. The policy in favor of narrowing the issues in dispute, which normally confines the court to those made by the pleadings, and the policy of the parol evidence rule favoring the conclusiveness of integrated written agreements, both give way before the importance of discouraging illegal conduct. To this end, the trial court must be free to search out illegality lying behind the forms in which the parties have cast the transaction to conceal such illegality. More like this Headnote

Shepardize® - Narrow by this Headnote (10) 1

Governments > State & Territorial Governments > Licenses

HN10 State & Territorial Governments, Licenses
Cal. Bus. & Prof. Code § 7029 expressly requires individual licensees who engage jointly in the contracting business to obtain an additional, joint license. Undoubtedly there are situations in which substantial compliance with the licensing requirements satisfies the policy of the statute. However, where one partner is licensed individually and there is no partnership license, there can be no question but that this is a clear violation of the statutes regulating the contracting business. More like this Headnote

Shepardize® - Narrow by this Headnote (21) 1 1 2

Governments > State & Territorial Governments > Licenses

HN11 State & Territorial Governments, Licenses
Where a contractor does not comply with the California's licensing requirements, the contractor cannot bring or maintain any action in any court in California for the collection of compensation. Cal. Bus. & Prof. Code § 7031. More like this Headnote

Shepardize® - Narrow by this Headnote (8) 1 1 1

Contracts Law > Defenses > Illegal Bargains
Governments > State & Territorial Governments > Licenses

HN12 Defenses, Illegal Bargains
Even in the absence of a provision such as Cal. Bus. & Prof. Code § 7031, the courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act. The reason for this refusal is not that the courts are unaware of possible injustice between the parties, and that the defendant may be left in possession of some benefit he should in good conscience turn over to the plaintiff, but that this consideration is outweighed by the importance of deterring illegal conduct. Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place. More like this Headnote

Shepardize® - Narrow by this Headnote (47) 2 1

Contracts Law > Defenses > Illegal Bargains
Criminal Law & Procedure > Sentencing > Fines
Governments > State & Territorial Governments > Licenses

HN13 Defenses, Illegal Bargains
In some cases a statute making conduct illegal, in providing for a fine or administrative discipline excludes by implication the additional penalty involved in holding the illegal contract unenforceable; or effective deterrence is best realized by enforcing the plaintiff's claim rather than leaving the defendant in possession of the benefit; or the forfeiture resulting from unenforceability is disproportionately harsh

considering the nature of the illegality. In each such case, how the aims of policy can best be achieved depends on the kind of illegality and the particular facts involved. However, a court is not free to weigh these considerations in a case involving Cal. Bus. & Prof. Code § 7031. Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of the state. More like this Headnote

Shepardize® - Narrow by this Headnote (86) 2 4

Contracts Law > Defenses > Illegal Bargains
Governments > State & Territorial Governments > Licenses

HN14 **Defenses, Illegal Bargains**
An action against a third party to enforce directly an illegal contract, not merely to obtain an accounting for profits arising from one, is a situation that falls squarely within Cal. Bus. & Prof. Code § 7031. More like this Headnote

Shepardize® - Narrow by this Headnote (5)

Contracts Law > Defenses > Illegal Bargains
Governments > State & Territorial Governments > Licenses

HN15 **Defenses, Illegal Bargains**
When the legislature enacts a statute forbidding certain conduct for the purpose of protecting one class of persons from the activities of another, a member of the protected class may maintain an action notwithstanding the fact that he has shared in the illegal transaction. The protective purpose of the legislation is realized by allowing the plaintiff to maintain his action against a defendant within the class primarily to be deterred. In this situation it is said that the plaintiff is not in pari delicto. But subcontractors are not always in the class to be protected simply because they are subcontractors. However, when the person who does not have a license is a subcontractor, he should not be allowed to recover where it would destroy the protection of those who dealt with him, and they are in the class the legislature intends to protect whether they are owners or general contractors. More like this Headnote

Shepardize® - Narrow by this Headnote (22) 1 2

Governments > State & Territorial Governments > Licenses

HN16 **State & Territorial Governments, Licenses**
Cal. Bus. & Prof. Code § 7026, stating that "the term contractor includes subcontractor," clearly imposes on unlicensed subcontractors the same disabilities as on unlicensed general contractors. More like this Headnote

Shepardize® - Narrow by this Headnote (5)

▼ Headnotes/Summary

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Licenses—Contractors.**

--A partnership which actually undertook to "construct a highway" for another partnership acted as a contractor within the meaning of Bus. & Prof. Code, § 7026.

CA(2) **(2) Contracts—Effect of Illegality.**

--Whatever the state of the pleadings, when the evidence shows that plaintiff in substance seeks to enforce an illegal contract or to recover compensation for an illegal act, the court has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids.

CA(3) **(3) Id.—Effect of Illegality.**

--It is immaterial that the parties, whether by inadvertence or consent, do not raise the issue of an illegal contract at the trial, since the court may do so on its own motion when the testimony produces evidence of illegality; and it is not too late to raise the issue on motion

for new trial, in a proceeding to enforce an arbitration award, or even on appeal.

CA(4) **(4) Evidence—Extrinsic Evidence—Invalidating Instrument.**

--The parol evidence rule does not exclude evidence showing that a contract lawful on its face is in fact part of an illegal transaction. (Code Civ. Proc., § 1856.)

CA(5) **(5) Contracts—Effect of Illegality: Evidence—Extrinsic Evidence—Invalidating Instrument.**

--The policy in favor of narrowing the issues in dispute, which normally confines the court to those made by the pleadings, and the policy of the parol evidence rule favoring the conclusiveness of integrated written instruments, both give way before the importance of discouraging illegal conduct, since to this end the trial court must be free to search out illegality lying behind the forms in which the parties have cast the transaction to conceal such illegality.

CA(6) **(6) Licenses—Contractors.**

--A partnership which acted as a contractor under Bus. & Prof. Code, § 7026, did not substantially comply with the requirement of § 7028, making it unlawful for any person to act in the capacity of a contractor without having a license therefor, because one partner held an individual license, since the "person" that did the contracting work, namely, the partnership, had no license.

CA(7) **(7) Id.—Contractors.**

--Bus. & Prof. Code, § 7029, expressly requires individual licensees who engage jointly in the contracting business to obtain an additional, joint license.

CA(8) **(8) Id.—Contractors.**

--The fact that a licensed partner of a contracting business supervised actual construction work did not make it less necessary for the other partner to procure a license, though his activities may have been confined to book-keeping and the search for new business, since the statutory provisions setting forth the qualifications for a license and the causes for disciplinary action against licensees show that the Legislature was as much concerned to protect the public from dishonesty and incompetence in the administration of the contracting business as in the actual use of bricks, mortar and earthmoving equipment (Bus. & Prof. Code, §§ 7068, 7069, 7120) and furthermore show that, if the contractor is a partnership, the experience, knowledge and integrity of each partner is a vital consideration in determining whether to issue a license. (Bus. & Prof. Code, §§ 7067, 7069, 7071.)

CA(9) **(9) Id.—Nonpayment as Affecting Contracts.**

--A partnership which entered into a subcontract to supply equipment, remove concrete and apply water on a parkway construction job, but which did not comply with the licensing statute, cannot "bring or maintain any action in any court of this State for the collection of compensation." (Bus. & Prof. Code, § 7031.)

CA(10) **(10) Id.—Nonpayment as Affecting Contracts.**

--Though the general contractor for whom an unlicensed partnership performed work on a parkway construction job was paid in full by the state, it was not required to turn over to the partnership the proceeds from the state contract attributable to the partnership's labor, since, even in the absence of a prohibitory statute such as Bus. & Prof. Code, § 7031, the courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act; the consideration that the contractor may be left in possession of some benefit which it should in good conscience turn over to the partnership is outweighed by the importance of deterring illegal conduct.

CA(11) **(11) Id.—Nonpayment as Affecting Contracts.**

--Bus. & Prof. Code, § 7031, represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts.

CA(12) **(12) Id.—Nonpayment as Affecting Contracts.**

--An action by an unlicensed partnership against a contractor to enforce directly an illegal contract for work on a parkway construction job, not merely to obtain an accounting for profits arising from one, falls squarely within Bus. & Prof. Code, § 7031, precluding recovery for work done in the capacity of contractor by one who is not licensed.

CA(13) **(13) Id.—Nonpayment as Affecting Contracts.**

--The courts may not resort to equitable considerations, such as unjust enrichment, in defiance of Bus. & Prof. Code, § 7031, precluding recovery for work done in the capacity of contractor by one who is not licensed.

CA(14) **(14) Contracts—Effect of Illegality—Parties not in Pari Delicto.**

--When the Legislature enacts a statute forbidding certain conduct for the purpose of protecting one class of persons from the activities of another, a member of the protected class may maintain an action notwithstanding the fact that he has shared in the illegal transaction; the protective purpose of the legislation is realized by allowing plaintiff to maintain his action against a defendant within the class primarily to be deterred, and in such situation plaintiff is not *in pari delicto*.

CA(15) **(15) Licenses—Nonpayment as Affecting Contracts.**

--The class protected by a licensing statute includes those who deal with a person required by the statute to have a license, and subcontractors are not always in the class to be protected simply because they are subcontractors.

CA(16) **(16) Id.—Nonpayment as Affecting Contracts.**

--When the person required to have a license is a general contractor, the protected class includes subcontractors, materialmen, employees and owners dealing with the general contractor.

CA(17) **(17) Id.—Nonpayment as Affecting Contracts.**

--When the person required to have a license but did not have one is a subcontractor, he is not to be protected from his own unlicensed activities; to allow him to recover would destroy the protection of those who dealt with him, and they are in the class the Legislature intended to protect whether they are owners or general contractors. (Disapproving *Matchett* v. *Gould*, 131 Cal. App.2d 821, 281 P.2d 524.)

CA(18) **(18) Id.—Nonpayment as Affecting Contracts.**

--An unlicensed subcontractor may not maintain an action against a general contractor for work performed simply because the action is against a licensed member of plaintiff's own profession, rather than against the owner for whose benefit the work was done; general contractors as much as owners are entitled to raise the defense of lack of license in the subcontractor.

CA(19a) **(19a)** ***CA(19b)*** **(19b) Id.—Nonpayment as Affecting Contracts.**

--A subcontractor who did not have a contractor's license at the time work was performed under a subcontract may not maintain an action against sureties on labor and material bonds posted by a licensed general contractor in compliance with Gov. Code, § 4200, and on stop notice bonds posted by such contractor pursuant to Code Civ. Proc., § 1184e (now § 1192.1), since the subcontractor's object is to obtain by indirect means compensation for unlicensed work.

CA(20) **(20) Id.—Nonpayment as Affecting Contracts.**

--Actions to enforce an arbitration award and to foreclose a mechanic's lien are within the meaning of Bus. & Prof. Code, § 7031, precluding recovery for work done in the capacity of contractor by one who is not licensed.

CA(21) **(21) Id.—Nonpayment as Affecting Contracts.**

--In an action by an unlicensed subcontractor against sureties on labor and material bonds posted by a licensed general contractor in compliance with Gov. Code, § 4200, and on stop notice bonds posted by such contractor pursuant to Code Civ. Proc., § 1184e (now § 1192.1), the defense of illegality is available to a surety if it is available to his principal; the obligation of the sureties on such bonds was not to pay for labor merely by virtue of the fact that it had been expended on a construction job, but was an obligation to pay only if the subcontractor established, without reference to the bond, a legal and valid claim for compensation. (Civ. Code, § 2810.)

Counsel: Howard B. Crittenden, Jr., for Appellants.

Thelen, Marrin, Johnson & Bridges, Gordon Johnson and Dario De Benedictis for Respondents.

Judges: In Bank. Traynor, J. Shenk, J., Spence, J., and McComb ▾, J., concurred. Carter, J. ▾, dissents. Schauer, J. ▾, concurred.

Opinion by: TRAYNOR ▾

Opinion

[*144] [**715] Plaintiffs George W. Lewis and Paul C. Queen are engaged in the contracting business as the partnership of Lewis and Queen, hereinafter referred to as plaintiff. Defendant Ball Sons, hereinafter referred to as defendant, is also in the contracting business.

[*145] [***2] In June, 1949, defendant was awarded two contracts by the state, each contract for the construction of a separate section of the Hollywood Parkway. Defendant then entered into four contracts with plaintiff. With respect to the work to be done on each section of the parkway, there were two contracts between plaintiff and defendant. The first was entitled a "subcontract," and under it plaintiff agreed to remove concrete encountered during excavation of the roadway and apply water needed in the process of compacting the ground. The second was entitled an "equipment rental agreement," and under it plaintiff agreed to provide defendant with construction equipment for road excavation, "overhaul," and compacting.

Plaintiff brought this action for damages for breach of the equipment rental agreements and for the reasonable rental value of equipment alleged to have been held beyond the agreed rental term. Plaintiff also sought to recover against sureties on labor and material bonds posted by defendant in compliance with Government Code, section 4200, before commencing work on the parkway, and stop notice bonds posted by defendant [**716] pursuant to Code of Civil Procedure, section [***3] 1184e (now § 1192.1) after the present dispute arose. Defendant answered denying that it had breached the rental agreements, and filed a cross-complaint in which it alleged a breach of the agreements by plaintiff and sought to recover overpayments made to plaintiff.

The trial court found that before the execution of the rental agreements plaintiff and defendant had entered into an oral agreement that plaintiff would undertake as a single subcontract the removal of concrete, application of water, excavation, overhaul, and compacting of original ground. Defendant then discovered that if it subcontracted all of this work, it would violate provisions in its contracts with the state that required it to perform with its own organization work of a value of not less than fifty per cent of the value of all the work embraced in the state contracts. The parties agreed therefore, with the intention of circumventing the provisions in the state contracts, to divide the five items of work under each state contract between two writings, a subcontract and an equipment rental agreement. Notwithstanding the form of these writings, it remained the agreement of the parties that plaintiff would perform [***4] all five items of work as an integrated subcontract operation.

[*146] There was substantial evidence to support these findings. The rental agreements themselves provided for compensation based on the number of cubic yards of earth moved or square yards compacted rather than on the period of time during which defendant had use of the equipment, and the rental term was the time required to do the work called for by the state contracts. Testimony indicated that plaintiff furnished and retained control over both operating and supervisory employees, that it moved equipment to and from other jobs without defendant's consent, and that it carried on the work under both subcontracts and rental agreements with the same personnel, equipment, and accounting. Defendant paid wages, payroll taxes, and compensation insurance for employees operating the machines, but these costs were charged against amounts owing plaintiff under the rental agreements and so ultimately were borne by it. Monthly progress reports from defendant to plaintiff were on a single form and made no segregation between charges attributable to work under the rental agreements and charges attributable to work under the [***5] subcontracts. The evidence, especially the testimony of Stanley Ball, tended to show that for all practical purposes the work was conducted by plaintiff, and that defendant exercised only such control as was necessary to coordinate the various subcontractors working on the parkway.

The trial court concluded that plaintiff had agreed to act and had in fact acted as a contractor within the meaning of section 7026 of the Business and Professions Code, and that because it had done so without the license required by section 7028, it was barred by section 7031 from maintaining any action for compensation. Lewis had an individual license, but neither Queen nor the partnership of Lewis and Queen had licenses. The court held, in the alternative, that the rental agreements were unenforceable because they violated the provisions in the state contracts against subcontracting more than a certain amount of the total work. Since we have concluded that plaintiff's failure to obtain a license prevented it from maintaining any action for compensation, we have no cause to consider this alternative ground. The court entered judgment for defendant on the complaint and for plaintiff on the cross-complaint. [***6] Plaintiff appeals from the judgment against it. [*♣]

[*147] ***HN1*** Section 7028 of the Business and Professions Code makes it unlawful for "any person to engage in the business or act in the capacity of a contractor within this [**717] State without having a license therefor. . . ." ***HN2*** Section 7026 defines a contractor as "any person, who . . . does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road . . . or improvement. . . ." "The term contractor includes subcontractor. . . ." ***HN3*** Section 7030 makes it a misdemeanor for any person to act in the capacity of a contractor without a license. ***HN4*** Section 7031 provides that, "No person engaged in

EXHIBIT [D]–4731

the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this State [***7] for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract."

Furthermore, ***HN5*** section 7025 states that the "person" required to have a license by section 7028 includes a partnership, and ***HN6*** section 7029 makes it unlawful for two individuals, "each of whom has been issued a license to engage separately in the business . . . of a contractor . . . to jointly . . . act in the capacity of a contractor . . . without first having secured an additional license for acting in the capacity of such a joint venture or combination. . . ."

CA(1) **(1)** ***HN7*** The evidence shows that in spite of the form of the rental agreements plaintiff actually undertook to and did in fact "construct a highway" for defendant, and thereby acted as a contractor within the meaning of section 7026. (See *Albaugh v. Moss Constr. Co.*, 125 Cal.App.2d 126, 132-133 [269 P.2d 936]; *Phillips v. McIntosh*, 51 Cal.App.2d 340, 343 [124 P.2d 835]; *cf. Harrison v. Shamalian*, 110 Cal.App.2d 500 [243 P.2d 82]; *Andrew v. Conner* [***8] , 101 Cal.App.2d 621 [225 P.2d 943].)

Plaintiff contends, however, that because defendant admitted in its answer that equipment had been furnished under the written rental agreements, the trial court was precluded from finding that the actual agreements were subcontracts because it should have restricted its findings to the issues made by the pleadings. There is no merit in this contention. ***CA(2)*** **(2)** ***HN8*** Whatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court **[*148]** has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids. (*Wells v. Comstock*, 46 Cal.2d 528, 532 [297 P.2d 961]; *Franklin v. Nat C. Goldstone Agency*, 33 Cal.2d 628, 629 [204 P.2d 37]; *Fewel & Dawes, Inc. v. Pratt*, 17 Cal.2d 85, 92 [109 P.2d 650]; *Endicott v. Rosenthal*, 216 Cal. 721, 728 [16 P.2d 673]; *Tevis v. Blanchard*, 122 Cal.App.2d 731, 732-734 [266 P.2d 85]; see *Owens v. Haslett*, 98 Cal.App.2d 829, 835-836 [221 P.2d [***9] 252].) ***CA(3)*** **(3)** It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not raise the issue. The court may do so of its own motion when the testimony produces evidence of illegality. (*Norwood v. Judd*, 93 Cal.App.2d 276, 277-278, 282 [209 P.2d 24].) It is not too late to raise the issue on motion for new trial (*Pacific Wharf & Storage Co. v. Standard American Dredging Co.*, 184 Cal. 21, 23-24 [192 P. 847]), in a proceeding to enforce an arbitration award (*Franklin v. Nat C. Goldstone Agency*, 33 Cal.2d 628, 629 [204 P.2d 37]), or even on appeal. (*Morey v. Paladini*, 187 Cal. 727, 733-734 [203 P. 760].) In the present case the issue was in fact raised during the trial.

Equally without merit is plaintiff's contention that because the rental agreements stated that they contained all provisions agreed to by the parties, the parol evidence rule precluded the admission of other evidence showing the true nature of the agreement between the parties and that plaintiff had in fact acted as a contractor. ***CA(4)*** **(4)** ***HN9*** The parol evidence rule does not exclude evidence showing that a contract lawful on its face is in fact part of an illegal [***10] transaction. (Code Civ. Proc., § 1856; *Endicott v.* [**718] *Rosenthal*, 216 Cal. 721, 728 [16 P.2d 673]; *May v. Herron*, 127 Cal.App.2d 707, 710-711 [274 P.2d 484]; *Kennerson v. Salih Brothers*, 123 Cal.App.2d 371, 374 [266 P.2d 871]; *De Armas v. Dickerman*, 108 Cal.App.2d 548, 551-552 [239 P.2d 65].) ***CA(5)*** **(5)** The policy in favor of narrowing the issues in dispute, which normally confines the court to those made by the pleadings, and the policy of the parol evidence rule favoring the conclusiveness of integrated written agreements, both give way before the importance of discouraging illegal conduct. To this end, the trial court must be free to search out illegality lying behind the forms in which the parties have cast the transaction to conceal such illegality.

CA(6) **(6)** Plaintiff contends that even if it acted as a contractor **[*149]** under section 7026, it substantially complied with the requirement of section 7028, since Lewis held an individual license. The "person" that did the contracting work, and was required by section 7028 to have a license, however, was the partnership of Lewis and Queen, and it had no license. Nor did Queen individually. [***11] ***CA(7)*** **(7)** ***HN10*** Section 7029, furthermore, expressly requires individual licensees who engage jointly in the contracting business to obtain an additional, joint license. (*Cf. Joseph v. Drew*, 36 Cal.2d 575, 578 [225 P.2d 504]; *Wise v. Radis*, 74 Cal.App. 765, 773 [242 P. 90].)

Undoubtedly there are situations in which substantial compliance with the licensing requirements satisfies the policy of the statute. (See *Gatti v. Highland Park Builders, Inc.*, 27 Cal.2d 687, 689-691 [166 P.2d 265]; *Citizens State Bank of Long Beach v. Gentry*, 20 Cal.App.2d 415, 419-420 [67 P.2d 364]; *cf. Oddo v. Hedde*, 101 Cal.App.2d 375 [225 P.2d 929].) The facts of the present case, however, with one partner licensed individually and no partnership license, are precisely those in *Loving & Evans v. Blick*, 33 Cal.2d 603 [204 P.2d 23], and in that case we said, "There can be no question but that this case presents a clear violation of the statutes regulating the contracting business." (33 Cal.2d at 607; see also *Kirman v. Borzage*, 65 Cal.App.2d 156, 158-159 [150 P.2d 3]; *Holm v. Bramwell*, 20 Cal.App.2d 332, 335-336 [67 P.2d 114].) We distinguished [***12] *Gatti v. Highland Park Builders, Inc., supra*, on the ground that there both partners held individual licenses and during the performance of the contract a joint license was issued to them and a third person, and *Citizens State Bank of Long Beach v. Gentry, supra*, on the ground that in that case, although the plaintiff's license expired while the work was in progress, it was renewed in the name of a corporation controlled by him.

In both the Gatti and Gentry cases, any matter that might have formed the subject of inquiry by the licensing board in determining whether to issue an additional license was necessarily considered in connection with the licenses actually issued. In the present case, however, the board has never determined the qualifications of Queen. ***CA(8)*** **(8)** Plaintiff claims that this makes no difference, because it was Lewis who supervised the actual construction work and Queen merely kept the books and sought out new business for the partnership. But the statutory provisions setting forth the qualifications for a license, and the causes for disciplinary action against licensees, show that the Legislature was as much concerned **[*150]** to protect the public [***13] from dishonesty and incompetence in the administration of the contracting business as in the actual use of bricks, mortar, and earth-moving equipment. (E.g., §§ 7068, 7069, 7120.) Plaintiff's insistence that Queen knew nothing about actual construction simply emphasizes the importance of the board's passing on his qualifications to engage in any aspect of the contracting business. The statute makes it clear, furthermore, that if the contractor is a partnership, the experience, knowledge, and integrity of each partner is a vital consideration in determining whether to issue a license. (E.g., §§ 7067, 7069, 7071.) Finally, it is not clear that Queen's activities were in fact confined to bookkeeping and the search for new business. He participated with Lewis in the negotiations that led to the [**719] execution of the contracts, and he "walked the job," apparently to determine what problems would be encountered if the work was undertaken. The conclusion is inescapable that plaintiff did not substantially comply with the licensing requirements.

EXHIBIT [D]–4732

CA(9) (9) HN11 Since plaintiff did not comply with the statute, it cannot "bring or maintain any action in any court of this State for the collection [***14] of compensation. . . ." (§ 7031; Loving & Evans v. Blick, 33 Cal.2d 603 [204 P.2d 23].) CA(10) (10) Plaintiff contends, nevertheless, that because defendant has been paid in full by the state for all work done on the parkway, justice requires that it be compelled to turn over to plaintiff the proceeds from the state contracts attributable to plaintiff's labor.

One answer to this contention is that, HN12 even in the absence of a provision such as section 7031, the courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act. The reason for this refusal is not that the courts are unaware of possible injustice between the parties, and that the defendant may be left in possession of some benefit he should in good conscience turn over to the plaintiff, but that this consideration is outweighed by the importance of deterring illegal conduct. Knowing that they will receive no help from the courts and must trust completely to each other's good faith, the parties are less likely to enter an illegal arrangement in the first place. (See Takeuchi v. Schmuck, 206 Cal. 782, 786-787 [276 P. 345]; May v. Herron [***15] , 127 Cal.App.2d 707, 712 [274 P.2d 484]; Orlinoff v. Campbell, 91 Cal.App.2d 382, 388 [205 P.2d 67]; Wise v. Radis, 74 Cal.App. 765, 778 **[*151]** [242 P. 90]; Grodecki, *In Pari Delicto Potior Est Conditio Defendentis*, 71 L.Q.Rev. 254, 266-268.)

HN13 In some cases, on the other hand, the statute making the conduct illegal, in providing for a fine or administrative discipline excludes by implication the additional penalty involved in holding the illegal contract unenforceable; or effective deterrence is best realized by enforcing the plaintiff's claim rather than leaving the defendant in possession of the benefit; or the forfeiture resulting from unenforceability is disproportionately harsh considering the nature of the illegality. In each such case, how the aims of policy can best be achieved depends on the kind of illegality and the particular facts involved. (See Wilson v. Stearns, 123 Cal.App.2d 472, 481-482 [267 P.2d 59]; John E. Rosasco Creameries, Inc. v. Cohen, 276 N.Y. 274, 278-280 [11 N.E.2d 908, 118 A.L.R. 641]; 6 Corbin, Contracts 964-967 (1951); 2 Pomeroy, Equity Jurisprudence 137 (5th ed. 1941); Grodecki, *In Pari Delicto* [***16] *Potior Est Conditio Defendentis*, 71 L.Q.Rev. 254, 268.) But we are not free to weigh these considerations in the present case. CA(11) (11) Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of the state (Kirman v. Borzage, 65 Cal.App.2d 156, 158 [150 P.2d 3].) Moreover, even if we could take into account unjust enrichment of defendant, it is not at all clear that, had it reached the issue, the trial court would have found defendant indebted to plaintiff beyond what it had already paid.

Norwood v. Judd, 93 Cal.App.2d 276 [209 P.2d 24], Galich v. Brkich, 103 Cal.App.2d 187 [229 P.2d 89], and Wold v. Luigi Consentino & Sons, 109 Cal.App.2d 854 [241 P.2d 1032], do not support plaintiff's right to recover. Each of those cases involved an action by a partner or joint venturer to recover a share of profits arising from an illegal enterprise. It was held that, since the enterprise was terminated, [***17] since it was not illegal as such but only for want of a license, and since the action was not against a third person for whose protection the statute had been primarily [**720] enacted but against a partner or joint venturer, the purpose of the law would not be served by denying relief. We need not decide at this time whether an action for an accounting against a partner or joint venturer is "an action for the collection of **[*152]** compensation" within section 7031 (*cf.* Wise v. Radis, 74 Cal.App. 765, 775 [242 P. 90]) or, even if it is not, whether the indirect encouragement of an illegal enterprise resulting from the allowance of such an action is sufficient to outweigh the evil of unjust enrichment. (See Hooper v. Barranti, 81 Cal.App.2d 570, 575-578 [184 P.2d 688]; 32 A.L.R.2d 1345, 1387; Wade, *Restitution of Benefits Acquired Through Illegal Transactions*, 95 U.Pa.L.Rev. 261, 294-296; but see Denning v. Taber, 70 Cal.App.2d 253, 257-260 [160 P.2d 900].) CA(12) (12) The present HN14 action is against a third party, and is to enforce directly an illegal contract, not merely to obtain an accounting for profits arising from one. As *Norwood* v. *Judd* [***18] itself recognizes, this situation falls squarely within section 7031. (93 Cal.App.2d 276, 283.)

Plaintiff next contends that, by virtue of the fact that it is a subcontractor suing a general contractor rather than a general contractor suing an owner, neither section 7031 nor the general rule that illegal contracts are unenforceable bars its action. Matchett v. Gould, 131 Cal.App.2d 821 [281 P.2d 524], appears to make this distinction decisive. In that case the Crane Service Company and the defendants, all unlicensed contractors, decided to undertake the demolition of buildings for a school district. The understanding between Crane and the defendants was that Crane would make the bid and defendants supply the funds to pay the school district; that the defendants would then do the actual work of taking down the bricks, using for this purpose Crane's machines, for which a reasonable rental would be paid; the defendants would pay Crane for removing concrete and rough-grading the site, and all salvageable material would belong to the defendants. After the job was completed and the defendants had received all the revenues from the sale of salvage, they refused to pay Crane. [***19] Crane's assignee sued to enforce the contract.

The District Court of Appeal held that the plaintiff could recover in spite of section 7031. The first ground of its decision appears to be that, unless the plaintiff was allowed to recover the defendants would be unjustly enriched. CA(13) (13) As we have already pointed out, the courts may not resort to equitable considerations in defiance of section 7031. As an alternative ground, the court reasoned that Crane had in effect assigned the school district contract to defendants and then become their subcontractor; that subcontractors are in a class for whose protection the licensing statute was enacted (relying on our statement in Fraenkel v. Bank of **[*153]** *America*, 40 Cal.2d 845, 848 [256 P.2d 569], that the statute was designed "for the prevention of fraudulent acts by contractors resulting in loss to subcontractors, materialmen, employees, and owners of structures"); and that therefore a subcontractor can maintain an action on a contract with a general contractor, even though it is an illegal contract, because the subcontractor is not considered *in pari delicto*. (131 Cal.App.2d at 829.)

CA(14) (14) It is true that HN15 when the Legislature [***20] enacts a statute forbidding certain conduct for the purpose of protecting one class of persons from the activities of another, a member of the protected class may maintain an action notwithstanding the fact that he has shared in the illegal transaction. The protective purpose of the legislation is realized by allowing the plaintiff to maintain his action against a defendant within the class primarily to be deterred. In this situation it is said that the plaintiff is not *in pari delicto*. (Carter v. Seaboard Finance Co., 33 Cal.2d 564, 574 [203 P.2d 758]; McAllister v. Drapeau, 14 Cal.2d 102, 112 [92 P.2d 911, 125 A.L.R. 800]; Pollak v. Staunton, 210 Cal. 656, 662-663 [293 P. 26]; Elmers v. Shapiro, 91 Cal.App.2d 741, 754 [205 P.2d 1052]; see Grodecki, *In Pari Delicto Potior Est Conditio* [**721] *Defendentis*, 71 L.Q.Rev. 254, 265; Wade, *Restitution of Benefits Acquired Through Illegal Transactions*, 95 U.Pa.L.Rev. 261, 268-270.)

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CA(15) **(15)** But subcontractors are not always in the class to be protected simply because they are subcontractors, and we did not suggest otherwise in *Fraenkel v. Bank of America*, 40 Cal.2d 845, 848 [256 [***21] P.2d 569]. (See *Albaugh v. Moss Constr. Co.*, 125 Cal.App.2d 126, 132 [269 P.2d 936]; *Holm v. Bramwell*, 20 Cal.App.2d 332 [67 P.2d 114].) The class protected by the statute includes those who deal with a person required by the statute to have a license. CA(16) **(16)** When the person required to have a license is a general contractor, then the protected class includes subcontractors, materialmen, employees, and owners dealing with the general contractor. CA(17) **(17)** However, when the person who was required to have a license but did not have one is himself a subcontractor, such as plaintiff in the present case, he of course is not to be protected from his own unlicensed activities. To allow him to recover would in fact destroy the protection of those who dealt with him, and they are in the class the Legislature intended to protect whether they are owners or general contractors. (*Cf. Hedlund v. Sutter Medical Service Co.*, 51 Cal.App.2d 327, 333 [124 P.2d 878]; 2 Pomeroy, Equity Jurisprudence **[*154]** 142 (5th ed. 1941).) To the extent that it is contrary, the reasoning of *Matchett v. Gould*, 131 Cal.App.2d 821 [281 P.2d 524], is erroneous and is disapproved. Under [***22] the facts of the present case plaintiff is not in the class to be protected, and therefore is not relieved from the imputation of being *in pari delicto*. Its failure to obtain a license, and not any fault of defendant in this regard, made the transaction illegal.

CA(18) **(18)** There is no merit in plaintiff's further contention that it may maintain this action simply because it is an action against a licensed member of plaintiff's own profession, rather than against the owner for whose ultimate benefit the work was done. General contractors as much as owners are entitled to raise the defense of lack of a license in the subcontractor. If they were not, section 7031 would be no deterrent to subcontractors, since they generally do look to the general contractor for compensation. Yet HN16 section 7026, stating that "the term contractor includes subcontractor," clearly imposes on unlicensed subcontractors the same disabilities as on unlicensed general contractors. Cases from other jurisdictions cited by plaintiff (e.g., *Dow v. United States, for Use and Benefit of Holley*, 154 F.2d 707, 710 [10th Cir.]), do not involve statutory prohibitions like section 7031.

CA(19a) **(19a)** Plaintiff's final contention [***23] is that, even if it cannot recover on the rental agreements from defendant, the defense of lack of a license is not available to the sureties on the bonds. Section 7031 provides, however, that no person who acts as a contractor "may bring or maintain *any* action . . . for the collection of compensation for the performance of any act . . ." for which a license is required, without alleging and proving that he was licensed. (Italics added.) CA(20) **(20)** We have already held that an action to enforce an arbitration award is an action within the meaning of this provision (*Loving & Evans v. Blick*, 33 Cal.2d 603, 613 [204 P.2d 23]; *Franklin v. Nat C. Goldstone Agency*, 33 Cal.2d 628, 631-633 [204 P.2d 37]), and it is clear that an action to foreclose a mechanic's lien is also. (*Albaugh v. Moss Constr. Co.*, 125 Cal.App.2d 126, 132 [269 P.2d 936]; *Cash v. Blackett*, 87 Cal.App.2d 233, 237 [196 P.2d 585]; *Siemens v. Meconi*, 44 Cal.App.2d 641 [112 P.2d 904]; *Holm v. Bramwell*, 20 Cal.App.2d 332, 334 [67 P.2d 114].) CA(19b) **(19b)** In view of the purpose of section 7031, we can see no reason to distinguish an action on a bond. In all of these cases the object [***24] of the plaintiff is to obtain, more or less directly, compensation for unlicensed work. The deterrent purpose behind section 7031 would be frustrated if the **[*155]** plaintiff, prevented from obtaining compensation directly by an action on his contract, could obtain it indirectly by an action on a bond.

[**722] CA(21) **(21)** Moreover, even in the absence of section 7031, the defense of illegality is available to the surety if it is available to his principal. (*Wells v. Comstock*, 46 Cal.2d 528, 533 [297 P.2d 961]; Rest., Security, § 117, comment d.) *Lewis & Queen v. S. Edmondson & Sons*, 113 Cal.App.2d 705, 707-708 [248 P.2d 973], and *Pneucrete Corp. v. United States Fid. & Guar. Co.*, 7 Cal.App.2d 733, 736-740 [46 P.2d 1000], which are cited by plaintiff, in spite of broad language in the opinions do not hold otherwise. The obligation of the sureties on defendant's bonds was not to pay for labor merely by virtue of the fact that it had been expended on the parkway. It was an obligation to pay only if plaintiff established, without reference to the bond, a legal and valid claim for compensation. (See Civ. Code, § 2810; *Flickinger v. Swedlow Engineering* [***25] *Co.*, 45 Cal.2d 388, 393-394 [289 P.2d 214]; Rest., Security § 117, comment c.) This plaintiff has not done.

Appeal from order denying motion for new trial dismissed. Judgment affirmed.

Dissent by: CARTER

Dissent

CARTER, J. I dissent.

In my opinion, the strict construction placed upon Business and Professions Code sections, particularly section 7031, by the majority is unwarranted. Section 7031 is but a statutory declaration of the common law rule that a contract which violates a statute designated for the protection of the public is void and unenforceable. (*Levinson v. Boas*, 150 Cal. 185 [88 P. 825, 11 Ann.Cas. 661, 12 L.R.A.N.S. 575]; *Berka v. Woodward*, 125 Cal. 119 [57 P. 777, 73 Am.St.Rep. 31, 45 L.R.A. 420]; 12 Am.Jur., Contracts, § 158, p. 652.) This rule, however, is not applied where to do so does not serve the intended purpose of the statute. (*Wilson v. Stearns*, 123 Cal.App.2d 472, 478 [267 P.2d 59], citing *Harris v. Runnels*, 12 How. (U.S.) 79 [13 L.Ed. 901]; 12 Am.Jur., Contracts, § 162, p. 657.) At one time in this state, statutes, such as section 7031, which expressly deny the enforcement of contracts which violate a particular [***26] law, were strictly construed to prevent recovery. (See e.g., *Wise v. Radis*, 74 Cal.App. 765 [242 P. 90], involving a statute which prevented the enforcement of certain contracts by unlicensed real estate **[*156]** brokers.) More recently, however, section 7031, although literally applicable, has not been applied where enforcement of the contract was considered not to be adverse to the public interest sought to be protected by the pertinent Business and Professions Code sections. (*Gatti v. Highland Park Builders, Inc.*, 27 Cal.2d 687 [166 P.2d 265]; *Citizens State Bank v. Gentry*, 20 Cal.App.2d 415 [67 P.2d 364]; *Norwood v. Judd*, 93 Cal.App.2d 276 [209 P.2d 24]; *Galich v. Brkich*, 103 Cal.App.2d 187 [229 P.2d 89]; *Wold v. Luigi Consentino & Sons*, 109 Cal.App.2d 854 [241 P.2d 1032]; *Matchett v. Gould*, 131 Cal.App.2d 821 [281 P.2d 524].) The effect of these cases is that the common law exceptions to the rule are recognized as being preferable to a strict, literal construction of the statutory language. Accordingly, the conclusion of the majority -- that because plaintiff is within the statutory definition (subcontractor) [***27] and seeks recovery of his share of the proceeds arising from the work, it necessarily follows that recovery must be denied -- is based upon an incomplete analysis of the question presented. Rather, an examination should be made to determine whether the intended statutory purpose requires the denial of enforcement of this

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particular contract. Such an examination, it is submitted, demonstrates that the statute was not so intended.

The facts of this case are quite similar to those in *Norwood v. Judd, supra.* There, plaintiff and defendant had formed a partnership to conduct a contracting business. Defendant was a duly licensed contractor but neither plaintiff nor the partnership was. Plaintiff brought an action to recover his share of the business proceeds from his partner. Literally, Business and Professions Code, section 7031, would have barred plaintiff's action as it provides, in part, that: "No person engaged in the [**723] business or acting in the capacity of a contractor, may bring or maintain any action . . . for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving [***28] that he was a duly licensed contractor at all times during the performance of such act or contract." However, recovery was allowed and the court declared (93 Cal.App.2d at 286) that "It must be remembered that these licensing statutes are passed primarily for the protection and safety of the public. They are not passed for the benefit of a greedy partner who seeks to keep for himself all of the fruits of the partnership enterprise to the exclusion of another partner entitled to share therein. Where the illegal transaction has been terminated, public policy is not protected **[*157]** or served by denying one partner relief against the other." It was further noted (p. 288) that *Wise v. Radis, supra*, (applying the strict rule of construction) had been overruled in legal effect. Defendant's petition for a hearing in the Norwood case was denied by this court.

A similar problem was presented in *Galich v. Brkich, supra*, 103 Cal.App.2d 187. Plaintiff, apparently an unlicensed contractor, entered into a joint venture or partnership agreement with defendant. No license was obtained for the enterprise as required by Business and Professions Code, section 7029. In allowing [***29] recovery by plaintiff of the money due him for the contracting work performed by the venture, the court declared (p. 191) that "The contract in question was not *per se* contrary to any statute; public welfare and safety were not threatened, and public policy would not be protected or served by denying one partner relief against the other." Applying the reasoning of the Norwood case, *supra*, the court observed that ". . . the rule that courts will not lend their aid to the enforcement of an illegal agreement should not be 'blindly' extended to 'every case where illegality appears somewhere in the transaction.'" Defendant's petition for a hearing in this court was denied.

In *Wold v. Luigi Consentino & Sons, supra*, 109 Cal.App.2d 854, the same problem was again presented. The application of the statute was rejected, the court declaring (p. 857) that its main purpose was protection of *owners*.

Recovery was allowed in these cases because the actions were not against those whom the statute was intended to protect, that is, an owner or other member of the general public who is without knowledge of or experience in contracting affairs, and hence, is wholly dependent upon [***30] the competence of the contractor. Accordingly, the statute was not applied to allow an associate of an unlicensed individual to retain the proceeds rightfully owing to the latter. It seems clear that this principle is applicable here, despite the absence of a partnership or joint venture relationship, for in practical effect, the circumstances are identical. Two parties agreed to perform work for a third party and one of the two has withheld the other's share of the proceeds. Upon facts identical to those in the present case, the Second District Court of Appeal in *Matchett v. Gould, supra*, 131 Cal.App.2d 821, applied the principle of the partnership cases and allowed recovery. In that case, neither plaintiff, a subcontractor, nor defendant, a general contractor, was licensed. Upon completion **[*158]** of a contracting job for a third party, plaintiff sought the amount owing to him for the work performed. Analogizing to *Norwood v. Judd, supra*, the court allowed recovery and declared that the precise relationship between the parties, that is, whether partners or contractor and subcontractor, was not determinative and that the statute was not intended to prevent [***31] recovery where the unlicensed contractor has completed the job, where there is no serious moral turpitude [**724] involved and where a denial of recovery would permit unjust enrichment of one not intended to be protected, namely, the general contractor. Citing *Gatti v. Highland Park Builders, Inc., supra*, 27 Cal.2d 687, the court observed (131 Cal.App.2d at 829) that the statute was not intended as an "unwarranted shield for the avoidance of a just obligation."

Here, the majority, to sustain their decision that plaintiff is precluded from enforcing his contract, concludes that the reasoning of *Matchett v. Gould, supra*, is erroneous, although a petition for hearing in that case was denied by this court. The majority opinion further declares that "To allow him [plaintiff] to recover would in fact destroy the protection of those who dealt with him, and they are in the class the Legislature intended to protect whether they are owners or general contractors." What protection is to be afforded a general contractor? He is not in the position of a member of the public who desires contracting work performed and because of the disparity of knowledge and experience is [***32] extended statutory protection. Rather, his position is equal to that of the subcontractor and he is, therefore, able to judge the nature and quality of the subcontractor's performance for himself. If the statute was intended to "protect" a general contractor as a member of the public, as undeniably he is, then it should be applied to "protect," from one another, members of a partnership which has illegally undertaken contracting work. It has been seen, however, that the statute is not construed in such a fashion. In the interests of just and consistent application, it should not be so construed here. For this reason, I would reverse the judgment and remand the case for a determination of the cause on its merits.

Footnotes

[**] It also purports to appeal from an order denying a new trial. Such an order is not appealable, but may be reviewed on an appeal from a judgment. (Code Civ. Proc., § 956.)

EXHIBIT [D]–4735

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115 Cal. App. 4th 512 * | 9 Cal. Rptr. 3d 351 ** | 2004 Cal. App. LEXIS 131 *** | 2004 Cal. Daily Op. Service 983 | 2004 Daily Journal DAR 1198

MW ERECTORS, INC., Plaintiff and Appellant, v. NIEDERHAUSER ORNAMENTAL AND METAL WORKS COMPANY, INC., et al., Defendants and Respondents.

Notice: NOT CITABLE—SUPERSEDED BY GRANT OF REVIEW

Subsequent History: Time for Granting or Denying Review Extended MW Erectors Inc. v. Niederhauser Ornamental & Metal Works Co. Inc., 2004 Cal. LEXIS 3682 (Cal., Apr. 22, 2004)
Review granted, Depublished by MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 13 Cal. Rptr. 3d 301, 89 P.3d 733, 2004 Cal. LEXIS 4026 (Cal., 2004)
Later proceeding at MW Erectors v. Niederhauser Ornamental, 2004 Cal. LEXIS 6277 (Cal., June 30, 2004)
Later proceeding at MW Erectors v. Niederhauser Ornamental & Metal Works Co., Inc., 2004 Cal. LEXIS 7896 (Cal., Aug. 12, 2004)
Later proceeding at MW Erectors v. Niederhauser Ornamental & Metal Works Co., 2004 Cal. LEXIS 8577 (Cal., Sept. 8, 2004)
Request granted MW Erectors v. Niederhauser Ornamental & Metal Works Co. Inc., 2005 Cal. LEXIS 4966 (Cal., May 3, 2005)
Affirmed in part and reversed in part by, Superseded by Mw Erectors v. Niederhauser Ornamental & Metal Works Co., 2005 Cal. LEXIS 7443 (Cal., July 14, 2005)

Prior History: [***1] APPEAL from a judgment of the Superior Court of Orange County, No. 01CC00661, David R. Chaffee, Judge.

Disposition: Reversed and remanded.

Core Terms

license, contractor, ornamental, metals, unlicensed, subcontractor, performance of an act, structural steel, contracts, licensing requirements, duly licensed, void, summary judgment, cause of action, rails, substantial compliance, illegality, doctrine of substantial compliance, signing, summary judgment motion, qualifications, balcony, general contractor, seek compensation, perform work, partnership, foreman, cases, performance of work, trial court

Case Summary

Procedural Posture
Plaintiff subcontractor filed an action against defendants, a contractor, a general contractor, and sureties, seeking payment for work performed under two contracts. The Superior Court of Orange County (California) granted summary judgment to defendants. The subcontractor appealed from the grant of summary judgment and from the subsequently entered order awarding attorney fees to defendants.

Overview

The contractor hired the subcontractor under two contracts, one for structural steel work and the other for ornamental steelwork. Before completion of the work, the contractor cancelled the contracts. The subcontractor filed the instant suit, seeking payment for work performed. The trial court granted summary judgment to defendants on the ground that Cal. Bus. & Prof. Code §7031 prevented recovery for work performed on the contracts, because the subcontractor was not properly licensed. The court disagreed. Regarding the structural steel contract, the court held that § 7031 allowed recovery for work performed after the subcontractor obtained its Class C-51 license under Cal. Code Regs. tit. 16, § 832.51, even though no such license was held when the contract was executed. There was also a triable issue of material fact as to whether the Class C-51 license was sufficient for the ornamental steel contract, because both parties' experts had different interpretations of whether a C-51 license allowed the performance of ornamental work on structural building features. The contracts were not void ab initio, because there was not a violation of the statutory licensing requirements.

Outcome

The court reversed the grant of summary judgment and remanded the case to the trial court for a determination of whether a Class C-51 license was sufficient. The court also reversed the award of attorney fees and ordered that the subcontractor was to recover its costs on appeal.

▼ LexisNexis® Headnotes

Civil Procedure > Appeals ▾ > Standards of Review ▾ > De Novo Review ▾
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HN1 **Standards of Review, De Novo Review**

On review of a summary judgment, an appellate court examines the record de novo and independently determine whether the decision is correct. In undertaking our independent review of the evidence submitted, the appellate court applies the same three-step process required of the trial court: First, it identifies the issues raised by the pleadings, since it is these allegations to which the motion must respond; secondly, it determines whether the moving party's showing has established facts which negate the opponent's claims and justify a judgment in movant's favor; when a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue. More like this Headnote

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Civil Procedure > ... > Summary Judgment ▾ > Entitlement as Matter of Law ▾ > General Overview ▾

HN2 **Summary Judgment, Entitlement as Matter of Law**

Under summary judgment law, any party to an action, whether plaintiff or defendant, may move the court for summary judgment in his or her favor on a cause of action or defense (Cal. Code Civ. Proc. § 437c(a))--a plaintiff contending that there is no defense to the action, a defendant contending that the action has no merit. The court must grant the motion if all the papers submitted show that there is no triable issue as to any material fact (Cal. Code Civ. Proc. § 437c(c))--that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law--and that the moving party is entitled to a judgment as a matter of law (Cal. Code Civ. Proc. § 437c(c)). More like this Headnote

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Civil Procedure > ... > Summary Judgment ▾ > Burdens of Proof ▾ > General Overview ▾

HN3 **Summary Judgment, Burdens of Proof**

In moving for summary judgment, a defendant has met his or her burden of showing that a cause of action has no merit if he or she has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. Cal. Code Civ. Proc. § 437c(o)(2). More like this Headnote

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Governments > Legislation ▾ > Interpretation ▾

HN4 **Legislation, Interpretation**

In construing a statute, a court must ascertain the intent of the legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. More like this Headnote

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Governments > State & Territorial Governments ▾ > Licenses ▾

HN5 **State & Territorial Governments, Licenses**

See Cal. Bus. & Prof. Code § 7031. More like this Headnote

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Governments > Legislation > Interpretation

HN6 **Legislation, Interpretation**
A court must avoid a construction of a statute that makes some words surplusage. More like this Headnote

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Governments > Legislation > Interpretation
View more legal topics

HN7 **Legislation, Interpretation**
Cal. Bus. & Prof. Code § 7031(a) provides that a contractor may not maintain an action seeking compensation for the performance of any act or contract which requires a license unless he or she alleges having been duly licensed at all times during the performance of that act or contract. The statute very simply does not state that compensation may be sought only for completed contracts where the contractor was licensed start to finish. Rather, the statute permits contractors to seek compensation for any act if he or she alleges having been duly licensed during the performance of the act. The plain meaning of the words would indicate that the act in question, the one for which a license is required, is the same act for which compensation is sought. More like this Headnote

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Governments > Legislation > Interpretation

HN8 **Legislation, Interpretation**
A court gives effect to plain meaning of statute when words of statute are clear and unambiguous. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Contracts Law > Breach > Breach of Contract Actions > General Overview
Governments > State & Territorial Governments > Licenses

HN9 **Breach, Breach of Contract Actions**
As long as a contractor alleges he or she was duly licensed during the entire period of time he or she performed acts for which compensation is sought, his or her suit seeking recovery for payment on work performed is not necessarily barred just because the license was not in place when work on the contract was initially undertaken. No compensation is available for that initial period of time during which the contractor was not duly licensed, but as long as the contractor was thereafter licensed for the entire period of time during which acts were performed for which compensation is sought, compensation is available for those particular acts. More like this Headnote

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Governments > State & Territorial Governments > Licenses

HN10 **State & Territorial Governments, Licenses**
See Cal. Bus. & Prof. Code § 7031(e). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Standards of Performance > Substantial Performance
Governments > State & Territorial Governments > Licenses

HN11 **Standards of Performance, Substantial Performance**
Cal. Bus. & Prof. Code § 7031(e) and Cal. Bus. & Prof. Code § 7031(a) are consistent with respect to a contractor's initial licensing requirement. The contractor must have been licensed for the first time before undertaking the acts for which he or she seeks compensation. That does not mean that the contractor is unable to recover any monies due and owing under a contract if he or she had never been licensed before the date that work under the under the contract was initially undertaken. It just means that he or she can only recover for the acts performed while licensed, unless the substantial compliance doctrine applies to permit him or her to recover, in addition, for acts performed during any period of time when his or her license may have lapsed during the course of the project. The contractor cannot recover for those acts performed under the contract but before the contractor had obtained his or her license for the first time. More like this Headnote

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Governments > State & Territorial Governments > Licenses

HN12 **State & Territorial Governments, Licenses**
Regarding Cal. Bus. & Prof. Code § 7031, the purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. The licensing requirements provide minimal assurance that all persons offering such

services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. Section 7031 advances this purpose by withholding judicial aid from those who seek compensation for unlicensed contract work. The obvious statutory intent is to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay. The protective purposes of the licensing law cannot be satisfied in full measure unless the continuing competence and responsibility of those engaged in the work for which compensation is sought have been officially examined and favorably resolved. More like this Headnote

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Governments > State & Territorial Governments > Licenses

HN13 State & Territorial Governments, Licenses
See Cal. Code Regs. tit. 16, § 832.23. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments > Licenses

HN14 State & Territorial Governments, Licenses
See Cal. Code Regs. tit. 16, § 832.51. More like this Headnote

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Civil Procedure > ... > Preclusion of Judgments > Estoppel > Judicial Estoppel
View more legal topics

HN15 Estoppel, Judicial Estoppel
Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. Application of the doctrine is discretionary. The party invoking judicial estoppel must show that (1) the party against whom the estoppel is asserted took an inconsistent position in a prior proceeding and (2) that the position was adopted by the first tribunal in some manner such as by rendering a favorable judgment. More like this Headnote

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Contracts Law > Defenses > Illegal Bargains
Governments > State & Territorial Governments > Licenses

HN16 Defenses, Illegal Bargains
The void-for-illegality doctrine will not necessarily be applied in every instance in which there was a technical noncompliance with statutory licensing requirements. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Contracts Law > Defenses > Illegal Bargains

HN17 Defenses, Illegal Bargains
When it appears there is a violation of a regulating statute, the prescribed penalty is the equivalent of an express prohibition and a contract made contrary to its terms is void even though the statute does not pronounce the fact. The rule is not without exception, however, and before the rule can be applied in any case of a statute prohibiting or enjoining things to be done, with a prohibition or a penalty, or a penalty only for doing a thing which it forbids, the statute must be examined as a whole, to find out whether the makers meant a contract in contravention of it should be void. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Contracts Law > Breach > Breach of Contract Actions > General Overview
Governments > State & Territorial Governments > Licenses

HN18 Breach, Breach of Contract Actions
On the issue of whether a contractor can recover for work performed under a contract, whether the contractor was licensed on the date of signing a contract is not determinative. Whether the contractor is entitled to compensation for performance of work under the contracts will be determined by the proper application of Cal. Bus. & Prof. Code § 7031. More like this Headnote

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Contracts Law > Breach > Breach of Contract Actions > General Overview
Governments > State & Territorial Governments > Licenses

HN19 Breach, Breach of Contract Actions
Where a contractor was licensed at all times during the performance of the contract, Cal. Bus. & Prof. Code § 7031(a) presents no bar to

the collection effort and resort to the substantial compliance doctrine is unnecessary. More like this Headnote

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Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

A subcontractor on a large commercial project filed suit against a metal works company, asserting causes of action for breach of contract, reasonable value of services, quasi-contract, promissory estoppel, and payment bond. The subcontractor sought compensation for work on two contracts, the first for structural steel work, and the second for ornamental metals work. Its work was terminated before the project was completed and without it having obtained full payment of amounts it claims were due under the contracts. The metal works company filed a motion for summary judgment on the ground the subcontractor had not complied with the licensing requirements of Bus. & Prof. Code, § 7031. The subcontractor obtained a Class C-51 structural steel contractor license before the completion of the first contract and before starting work pursuant to the second contract, but it never held a Class C-23 ornamental metal contractor license while performing work under either contract. The trial court granted the metal works company's motion for summary judgment and awarded it attorney fees. (Superior Court of Orange County, No. 01CC00661, David R. Chaffee, Judge.)

The Court of Appeal reversed and remanded for further proceedings. The court held that Bus. & Prof. Code, § 7031, permitted the subcontractor to recover compensation for work performed while licensed and, that being the case, the structural steel work contract was neither illegal nor void. After entering into the structural steel work contract and undertaking performance, the subcontractor received a license with respect to the work under that contract. Therefore, the subcontractor satisfied the statutory licensing requirements with respect to any work for which it could receive compensation. The metal works company did not show that the statute provided a complete defense to the subcontractor's causes of action based on the structural steel work contract and did not meet its burden of showing that those causes of action had no merit. Because the statute did not preclude the subcontractor from seeking compensation for all acts performed under the structural steel work contract while it was licensed, summary judgment with respect to that contract was improper. Regarding the ornamental metal works contract, the **[*513]** subcontractor held the Class C-51 license during the entire period of performance. As long as the Class C-51 license was the proper license regarding the work performed under the ornamental metal works contract, the statute did not bar the recovery of compensation and the contract was not void. The subcontractor raised a triable issue of material fact as to whether the Class C-51 license was sufficient for the work performed under the ornamental metal works contract. Therefore, summary judgment with respect to the ornamental metal works contract was also improper. The court overturned the attorney fee award to the metal works company, as it was no longer the prevailing party. (Opinion by Moore, J., with O'Leary, Acting P. J., and Fybel, J., concurring.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports

CA(1) **(1) Statutes § 31—Construction—Language—Words and Phrases—Surplusage.**

Courts must avoid a construction of a statute that makes some words surplusage.

CA(2) **(2) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Compensation.**

Bus. & Prof. Code, § 7031, subd. (a), does not state that compensation may be sought only for completed contracts where the contractor was licensed start to finish. Rather, the statute permits contractors to seek compensation for any act if he or she alleges having been duly licensed during the performance of the act. The plain meaning of the words would indicate that the act in question, the one for which a license is required, is the same act for which compensation is sought.

CA(3) **(3) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Compensation.**

As long as a contractor alleges he or she was duly licensed during the entire period of time he or she performed acts for which compensation is sought, his or her suit is not necessarily barred just because the license was not in place when work on the contract was initially undertaken. No compensation is available for that initial period of time during which the contractor was not duly licensed, but as long as the contractor was thereafter licensed for the entire period of time during which acts were performed for which compensation is sought, compensation is available for those particular acts.

[*514] ***CA(4)*** **(4) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Compensation—Summary Judgment— Improper.**

EXHIBIT [D]–4741

Where a metal works company, as the defendant moving for summary judgment, did not show that Bus. & Prof. Code, § 7031, provided a complete defense to a lawsuit for compensation filed by a subcontractor, which was not initially licensed when it signed a contract to perform structural steel work on a commercial project, and the metal works company did not meet its burden of showing that the subcontractor's causes of action had no merit (Code Civ. Proc., § 437c, subd. (p)(2)), the burden did not shift to the subcontractor, as the plaintiff, to show that a triable issue of material fact existed as to the metal works company's defense, and it was error to grant summary judgment with respect to the causes of action pertaining to the contract. (Code Civ. Proc., § 437c, subd. (p)(2).)

CA(5) **(5) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Compensation—Summary Judgment— Improper.**

Where there were triable issues of material fact as to whether a subcontractor which was hired by a metal works company to perform ornamental metals work on a commercial project was properly licensed at all times during the performance of the contract and whether Bus. & Prof. Code, § 7031, subd. (a), precluded the subcontractor's suit for compensation against the metal works company, it was error to grant summary judgment with respect to the contract in favor of the metal works company.

CA(6) **(6) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Compensation—Judicial Estoppel.**

The doctrine of judicial estoppel did not apply to preclude a metal works company from contending a subcontractor seeking payment for work under two contracts was an unlicensed subcontractor on the ground the company had filed a cross-complaint against the subcontractor and filed a mechanic's lien against the property, based on the work the subcontractor performed, where the trial court did not adopt the company's allegedly inconsistent position so as to prejudice the subcontractor.

CA(7) **(7) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Compensation—Illegality of Contract—Subcontractor Licensed While Performing Work Under Contract.**

Bus. & Prof. Code, § 7031, did not bar total recovery to a subcontractor under a structural steel work contract, even though the subcontractor was not licensed on the day it undertook performance of the contract, where the subcontractor was licensed while performing most of the work under the contract.

[*515]

Counsel: Pine & Pine, Norman Pine, Beverly Tillett Pine; Gibbs, Giden, Locher & Turner and Richard J. Wittbrodt for Plaintiff and Appellant.

Arter & Hadden, William S. Davis, Jack W. Fleming; Lord, Bissell & Brook, William S. Davis; Musick Peeler & Garrett and Jack W. Fleming for Defendants and Respondents.

Judges: MOORE, J.; O'Leary, Acting P. J., and Fybel, J., concurred.

Opinion by: MOORE

Opinion

[352]** **MOORE, J.**—In this case, a subcontractor on a large commercial project has suffered the consequences of its failure to complete the application process and obtain the requisite contractor's license(s) before signing two separate contracts. The subcontractor's work was terminated before the projects were completed and without the subcontractor having obtained full payment of amounts it claims are due under the contracts. [**353] When the subcontractor filed its lawsuit seeking compensation, it was met with a successful motion for summary judgment, based on its noncompliance with the licensing requirements. The subcontractor asserts the trial court erred in granting the motion, [***2] because it had substantially complied with the applicable licensing requirements by obtaining a Class C-51 license before the completion of the first contract and before undertaking work pursuant to the second contract.

In reviewing the ruling on the first contract, we explore the application of Business & Professions Code section 7031 in the context where a contractor is not licensed on the day it undertakes performance of a contract, but becomes licensed before completion of the work. We also address whether, under such circumstances, the contract is illegal and void. We conclude that, in the situation described, the statutory provision permits the contractor to recover compensation for the acts performed while licensed and, that being the case, the contract is neither illegal nor void. As applied to this case, section 7031 does not bar the subcontractor from seeking compensation for all acts performed under the first contract while the subcontractor was licensed. Therefore, summary judgment with respect to the first contract was improper.

With respect to the second contract, the parties agree the subcontractor held the Class C-51 license during the [***3] entire period of performance. Therefore, as long as the Class C-51 license was the proper license with respect to the work to be performed under that contract, Business & Professions Code section 7031 presents no bar to the recovery of compensation and the contract is not void.

[*516] The defendants claim that a Class C-23 license was required for the performance of the work under the second contract and that the subcontractor did not hold the requisite license at any time during the performance of that contract. This is a matter we do not decide. Suffice it

EXHIBIT [D]–4742

to say, the subcontractor raised a triable issue of material fact as to whether the Class C-51 license was sufficient for the work performed under the second contract. Therefore, summary judgment was improper as to that contract as well.

We reverse the summary judgment and remand the case for further proceedings consistent with this opinion. In addition, we reverse the order awarding attorney fees.

I

FACTS

Turner Construction Company (Turner), as general contractor, hired Niederhauser Metal Works Company, Inc. (Niederhauser) 1 to perform certain "miscellaneous metals work" and [***4] "ornamental metals work" on Disney's Grand Californian Hotel. Niederhauser, in turn, subcontracted to MW Erectors, Inc. (MW) to perform certain work. Niederhauser and MW entered into a contract dated October 11, 1999, pursuant to which MW agreed to perform structural steel work. On November 12, 1999, Niederhauser and MW entered into a second contract, for the [**354] performance of certain ornamental metals work on the project.

MW began the structural steel [***5] work on or before December 3, 1999. It did not obtain its Class C-51 structural steel contractor license until December 21, 1999. (See Cal. Code Regs., tit. 16, § 832.51 [Class C-51 license explained].) It never held a Class C-23 ornamental metal contractor license while performing work under either contract. (See Cal. Code Regs., tit. 16, § 832.23 [Class C-23 license explained].)

MW filed a complaint against Niederhauser, Fidelity and Guaranty Insurance Company, and United States Fidelity and Guaranty Company. 2 [***6] MW alleged that Niederhauser had terminated its work under each of the contracts, **[*517]** without cause, on or about August 28, 2000. It requested $ 955,552.89 for miscellaneous metals work and $ 366,694 for ornamental metals work, as amounts purportedly owing under the two contracts. MW included the two bonding companies in the suit in an effort to collect on the payment bonds with respect to the two contracts. 3

The defendants filed a motion for summary judgment. They asserted simply that MW did not have a Class C-51 license when it began the structural steel work and never had a Class C-23 license when performing the ornamental metals work and that MW was therefore precluded by Business and Professions Code section 7031 from seeking compensation for work performed under those two contracts. The motion was granted and summary judgment was entered thereafter. MW appeals from the summary judgment and from the subsequently entered order awarding attorney fees.

II

DISCUSSION

A. Summary Judgment Review

HN1 On review of a summary judgment, we "examine the record de novo and independently determine whether [the] decision is correct. [Citation.]" (*Colarossi v. Coty US Inc.* (2002) 97 Cal.App.4th 1142, 1149 [119 Cal. Rptr. 2d 131].) In undertaking our independent review [***7] of the evidence submitted, we apply " 'the same three-step process required of the trial court: First, we identify the issues raised by the pleadings, since it is these allegations to which the motion must respond; secondly, we determine whether the moving party's showing has established facts which negate the opponent's claims and justify a judgment in movant's favor; when a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable, material factual issue. [Citations.]' " (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 644 [69 Cal. Rptr. 2d 296].)

"***HN2*** Under summary judgment law, any party to an action, whether plaintiff or defendant, 'may move' the court 'for summary judgment' in his [or her] favor on a cause of action ... or defense (Code Civ. Proc., § 437c, subd. (a))—a plaintiff 'contend[ing] ... that there is no defense to the action,' a defendant **[*518]** 'contend[ing] that [**355] the action has no merit' (*ibid.*). The court must 'grant[]' the 'motion' 'if all the papers submitted show' that 'there is no triable issue as to any [***8] material fact' (*id.*, § 437c, subd. (c))—that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law [citations]—and that the 'moving party is entitled to a judgment as a matter of law' (Code Civ. Proc., § 437c, subd. (c))." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 [107 Cal. Rptr. 2d 841, 24 P.3d 493].)

"***HN3*** [I]n moving for summary judgment, a 'defendant ... has met' his [or her] 'burden of showing that a cause of action has no merit if' he [or she] 'has shown that one or more elements of the cause of action ... cannot be established, or that there is a complete defense to that cause of action. Once the defendant ... has met that burden, the burden shifts to the plaintiff ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. ...' (Code Civ. Proc., § 437c, subd. (o)(2).)" 4 (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 849.)

[***9] *B. Pleadings*

(1) Amended complaint

In the first amended complaint, MW asserted causes of action for breach of contract, reasonable value of services, quasi-contract, promissory estoppel, and payment bond. Each cause of action was predicated on the assertion that MW had not been paid for its work on the hotel.

EXHIBIT [D]–4743

(2) Motion for summary judgment

In bringing its motion for summary judgment, Niederhauser sought to establish a complete defense to each cause of action, by citation to Business and Professions Code section 7031. [5] Subdivision (a) generally prohibits a contractor from maintaining an action to recover "compensation for the performance of any act or contract where a license is required ... without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract ...."

Niederhauser supported its [***10] motion with its separate statement of undisputed material facts showing that MW undertook work on the structural steel work contract before it obtained its Class C-51 structural steel license and that it never obtained a Class C-23 ornamental metals license while working **[*519]** on the ornamental metals work contract. Based on this information, Niederhauser argued in essence that MW was not licensed "at all times" during the performance of the structural steel work contract, and was never properly licensed during the performance of the ornamental metals work contract. Therefore, it contended it had shown a complete defense, under section 7031, subdivision (a), to a suit seeking compensation for performance of the work under either contract.

(3) Opposition to motion

In responding to Niederhauser's separate statement of undisputed facts, MW admitted that it began the structural steel work on or before December 3, 1999, but did not obtain its Class C-51 license until December 21, 1999. It also admitted that during the time it performed work on the hotel, it never obtained a Class C-23 license.

However, in its opposition to the motion, MW endeavored to raise two triable issues [**356] of fact with [***11] respect to Niederhauser's section 7031 defense. MW asserted that: (1) it had substantially complied with the requirements of section 7031; and (2) no Class C-23 license was required for the performance of the ornamental metals work contract. It also argued that Niederhauser was barred by the doctrine of judicial estoppel from contending that MW was unlicensed.

With respect to the substantial compliance argument, MW asked the court to focus on the qualifications and activities of Donald Parks, Jr., the sole owner and president of MW. Parks was the responsible managing officer of MW for the purpose of qualifying it for a Class C-51 license and was also the responsible managing officer of Metal-Weld Specialties Inc., of which he was president and 90 percent owner. He had previously qualified the latter company for a Class C-51 license. In his declaration in support of opposition to the summary judgment motion, Parks declared that he had applied for a Class C-51 license for MW in August 1999. He further declared that he had been informed in November 1999 that he had succeeded in qualifying MW for the license and that all that was needed for issuance of the license was proof of workers [***12] compensation insurance. In addition, he stated that he had directed his insurance broker to supply the necessary proof of insurance and then believed he had done all he could to comply with the requirements of the Contractors State License Board (Board). This evidence, MW argued, showed substantial compliance with section 7031.

With respect to the requirement of a Class C-23 license, MW cited certain evidence which we will discuss in detail below.

[*520] *(4) Reply to opposition*

Niederhauser, in reply to MW's opposition, argued that the judicial doctrine of substantial compliance had been abrogated by statute, as provided in former subdivision (d) of section 7031. [6] However, Niederhauser also noted that the subdivision provided one, and only one, situation in which the substantial compliance doctrine would be permitted to apply. Niederhauser asserted that the particular situation was not present in this matter and that MW had not satisfied the statutory requirements for the application of the substantial compliance doctrine. In addition, Niederhauser maintained that the law was clear that a Class C-23 license was required for the performance of the ornamental metals work contract. [***13]

We will address the section 7031 issues and the Class C-23 license issues in turn.

C. Business & Professions Code Section 7031

(1) Structural steel work contract

Whether MW is entitled to compensation for the performance of any of the structural steel work is determined by a careful examination of the language of section 7031. "***HN4*** In construing this statute, we must ' "ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according [***14] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. ..." '[Citation.]" (*Warmington* [**357] *Old Town Associates v. Tustin Unified School Dist.* (2002) 101 Cal.App.4th 840, 851 [124 Cal. Rptr. 2d 744].)

Section 7031, subdivision (a) provides: "***HN5*** Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person ...."

Niederhauser claims that subdivision (a) answers our question on its face, contending that subdivision bars suit by any contractor who cannot

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plead and **[*521]** prove it was licensed at all times during the performance of the contract, and MW has admitted that it was unlicensed when it undertook work on the structural steel work contract. We cannot agree with Niederhauser's [***15] argument, because it overlooks certain key words in the statute. ***HN6*** ***CA(1)*** **(1)** We must avoid a construction of the statute that makes some words surplusage. (*Warmington Old Town Associates v. Tustin Unified School Dist., supra,* 101 Cal.App.4th at p. 851.)

Subdivision (a) ***HN7*** provides that a contractor may not maintain an action seeking compensation "for the performance of any *act* or contract" which requires a license unless he or she alleges having been duly licensed "at all times during the performance of that *act* or contract ...." (Italics added.) ***CA(2)*** **(2)** The statute very simply does not state that compensation may be sought only for completed *contracts* where the contractor was licensed start to finish. Rather, the statute permits contractors to seek compensation for any *act* if he or she alleges having been duly licensed during the performance of the *act*. The plain meaning of the words would indicate that the act in question, the one for which a license is required, is the same act for which compensation is sought. (See *Slatkin v. White, supra,* 102 Cal.App.4th at p. 970 [***HN8*** court gives effect to plain meaning of statute when words of statute are clear [***16] and unambiguous].)

CA(3) **(3)** In other words, ***HN9*** as long as the contractor alleges he or she was duly licensed during the entire period of time he or she performed acts for which compensation is sought, his or her suit is not necessarily barred just because the license was not in place when work on the contract was initially undertaken. No compensation is available for that initial period of time during which the contractor was not duly licensed, but as long as the contractor was thereafter licensed for the entire period of time during which acts were performed for which compensation is sought, compensation is available for those particular acts.

The validity of this construction is underscored by a reading of section 7031, subdivision (e), on which the parties focus much of their argument. Subdivision (e) provides in pertinent part: "***HN10*** The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown [***17] at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know or reasonably [**358] should not have known that he or she was not duly licensed ...."

[*522] The first sentence of subdivision (e) provides that the substantial compliance doctrine shall not be applied if the contractor has *never* been licensed in the state. That sentence, standing alone, does not bar application of the doctrine as to contractors who have become licensed at some time during the performance of a contract. However, the second sentence of subdivision (e) sets forth three specific criteria that must be met in order for the doctrine to apply. The first of these three criteria is the most telling. It requires the contractor to have "been duly licensed ... prior to the performance of the *act* or contract ...." (Italics added.) Again, the language is in the disjunctive, requiring the contractor to have been duly licensed before performing either the *act* or the contract, [***18] for which compensation is sought. So, in order for the doctrine of substantial compliance to apply, the contractor must have been duly licensed before performing the act for which compensation is sought, and must have satisfied the remaining two criteria established in subdivision (e) as well.

We need not address those two criteria in this particular case, however, because they are not relevant to the matter before us. Niederhauser based its motion for summary judgment on MW's purported failure to comply with section 7031, subdivision (a). We need only look at one legal issue, the interpretation of subdivision (a), and stop there.

In this opinion, we discuss subdivision (e), pertaining to substantial compliance, simply to point out that both ***HN11*** that subdivision and subdivision (a) are consistent with respect to the contractor's initial licensing requirement. The contractor must have been licensed for the first time before undertaking the acts for which he or she seeks compensation. That does not mean that the contractor is unable to recover any monies due and owing under a contract if he or she had never been licensed before the date that work under the contract was initially [***19] undertaken. It just means that he or she can only recover for the acts performed while licensed, unless the substantial compliance doctrine applies to permit him or her to recover, in addition, for acts performed during any period of time when his or her license may have lapsed during the course of the project. The contractor cannot recover for those acts performed under the contract but before the contractor had obtained his or her license for the first time.

We observe that this interpretation may seem at odds with certain cases decided in years gone by. For example, in *Owens v. Haslett* (1950) 98 Cal. App. 2d 829 [221 P.2d 252], the trial court denied recovery to a contractor who was not licensed when he entered into the contract or when he commenced work, even though he obtained his license before the work was completed. However, the party who had hired the contractor was the only one who appealed—the contractor did not. Therefore, whether the contractor **[*523]** should have received compensation for some portion of the work was not at issue on appeal and the appellate court's comments thereon are dicta.

An even earlier case of interest is *Holm v. Bramwell* (1937) 20 Cal. App. 2d 332 [67 P.2d 114]. [***20] There, the property owner hired a general contractor to construct certain buildings, and agreed to pay him cost plus 10 percent. The general contractor subcontracted a portion of the work to an individual who was not licensed on signing the subcontract. The court did not permit the general contractor to recover from the property owner the money the general contractor had paid to the subcontractor, [**359] because the subcontractor was unlicensed at the time the subcontract was signed. The court based its decision in part on section 12 of the Contractors' License Law as then in effect. The relevant portion of that statute provided: " 'No person engaged in the business or acting in the capacity of a contractor [or subcontractor] ... shall bring or maintain any action in any court of this state for the collection of compensation for the performance of any act for which a license is required by this act, without alleging and proving that such person was a duly licensed contractor at the time the alleged cause of action arose.' " (*Id.* at p. 336.)

As is evident, the statutory provision at issue in *Holm v. Bramwell, supra,* 20 Cal. App. 2d 332 did not include the [***21] language of current section 7031, upon which the case before us turns. The *Holm* court did not address what it meant to require a contractor to allege that he or she was licensed "at all times during the performance of [the] act or contract." Therefore, the case is inapposite. Moreover, under the statutory provision at issue in *Holm*, the cause of action in question might have arisen upon signing of the contract, and if so, a license would have been required at that time. (See *Vitek, Inc. v. Alvarado Ice Palace, Inc.* (1973) 34 Cal. App. 3d 586, 591, fn. 5 [110 Cal. Rptr. 86].) The concerns are different under current section 7031, subdivision (a).

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Our construction of section 7031 is supported by the policy underlying that provision. As the Supreme Court stated in *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 [277 Cal. Rptr. 517, 803 P.2d 370], "***HN12*** The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill [***22] and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.] [¶] Section 7031 advances this purpose by withholding judicial aid from those who seek compensation for unlicensed contract work. The obvious statutory intent is to discourage persons who have failed to comply with the licensing law from **[*524]** offering or providing their unlicensed services for pay." The court continued: "The protective purposes of the licensing law cannot be satisfied in full measure unless the 'continuing competence and responsibility' of those engaged in the work for which compensation is sought have been officially examined and favorably resolved. [Citation.]" (*Id.* at p. 996.)

Here, MW's qualifications for licensure were officially examined and the issue of qualification was favorably resolved in the issuance of a Class C-51 license. The licensing requirements having been met, Niederhauser was assured that MW had the requisite qualifications to undertake work for which a Class C-51 license was required. That being the case, there is no reason why MW should be denied compensation for the acts performed during the [***23] period of time in which it was licensed. In keeping with the statutory intent of discouraging persons who have failed to comply with the licensing law from providing unlicensed services for pay, however, MW is properly denied compensation for acts performed during the period of time before it had acquired its license.

CA(4) **(4)** Niederhauser, as the moving defendant, did not show that section 7031 provided a complete defense to MW's causes of action based on the structural steel work contract and thus did not meet its burden of showing [**360] that those causes of action had no merit. (See Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 849.) Therefore, the burden did not shift to MW as the plaintiff to show that a triable issue of material fact exists as to Niederhauser's defense and it was error to grant summary judgment with respect to the causes of action pertaining to the structural steel work contract. (See Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 849.)

(2) Ornamental metals work contract

Where [***24] the ornamental metals work contract is concerned, the section 7031 issue is not the date in time when the license was obtained, but whether the correct license was ever obtained at all. In its motion, Niederhauser claimed that section 7031, subdivision (a) barred compensation for work under the ornamental metals work contract because MW *never* held a Class C-23 license during the performance of the work. In response, MW asserted that it already held the appropriate license, a Class C-51 license, before undertaking work on the ornamental metals work contract. As we shall show, MW succeeded in raising a triable issue of material fact as to whether it held the proper license.

D. Class C-23 License Requirement

In the first amended complaint, MW stated that, under the second contract it signed, it agreed to supply "all labor to erect certain ornamental metal **[*525]** materials for the Project which were listed and identified" in the attached exhibit B and thereafter referred to that contract as "the 'ornamental metals contract'." Exhibit B to the first amended complaint was a copy of the Niederhauser proposal presented to Turner. The work to be performed thereunder was described under [***25] the following topic headings: (1) "ornamental steel rails @ first level & balconies;" (2) "exterior ornamental aluminum rails at balconies;" (3) "ornamental steel rails at interior atrium area;" (4) "aluminum top cap at owners wood rails;" (5) "bronze rails at exterior site locations;" and (6) "site fence and gates." (Capitalization omitted.)

At first blush, it would appear a significant amount of the work was of the ornamental metals nature, due to the specific references to "ornamental" rails. However, in its opposition to the summary judgment motion, MW emphasized the structural and safety nature of the rails, not their ornamental aspect. It offered the Parks declaration in support of its position. According to Parks, the scope of work for the ornamental metals work contract was "essentially steel balcony railings." He further declared that this work was of "traditional [Class] C-51 scope."

Parks further explained: "The use of the word 'ornamental' in context of this project is a misnomer. These balcony rails are welded steel and are functionally no different that [*sic*] any other balcony or hand rail to hospitals, schools, industrial plants, commercial buildings, walkways [***26] and landscape improvements without any ornamental value. These balcony rails are critical life safety parts of the structure, and must withstand prescribed loads and forces as required by the Uniform Building Codes and engineering. Even if a [Class] C-23 license may in some instances be authorized to install such balcony rails that does not negate the fact that a [Class] C-51 license is also able to fabricate and install these components." In addition, he pointed out that "the specialty classifications do not specifically reference what license is required to fabricate metal stairs [**361] and landings, both of which require rails by the Uniform Building codes." **7**

[***27] **[*526]** Parks also provided other information to demonstrate that a Class C-23 license could not be required for the performance of the ornamental metals work contract. He declared that the replacement contractor Niederhauser hired to complete the contract, Western Construction Specialties, only held a Class C-51 license. **8**

[***28] Not surprisingly, at the hearing on the summary judgment motion, the trial court stated repeatedly that it was concerned there might be a triable issue of material fact with respect to the issue of whether the Class C-23 license was required for the ornamental metals work contract. In an effort to decide whether there was a triable issue or not, the court invited the parties to provide additional evidence.

MW provided the testimony of Robert Berrigan, an attorney retired from the staff of the Board. He was with the Board for 11 years and reviewed license classifications for 9 of those years. Before testifying in this matter, Berrigan both reviewed the specifications for the ornamental metals work contract and visited the site. He testified that a contractor with a Class C-23 ornamental metals license could perform the work described in the ornamental metals work contract. However, Berrigan also testified that a Class C-51 license was a "superior" license and that, for the most part, a Class C-51 license could do "all the work that a [Class] C-23 [could] do ... as long as it has taken place on the

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structure."

Berrigan further stated that, "in [his] judgment, the balcony [***29] rails form the structural integrity of the building, which makes it perform as a building. Therefore, a [Class] C-51 contractor is perfectly qualified to do it." He stated more specifically that a contractor with a Class C-51 license could perform ornamental metal work if it was part of the structure. He also said that balcony rails such as the ones in this project could be considered "structural members" within the meaning of the Class C-51 license classification.

Niederhauser provided the deposition testimony of Edward A. Backstrom. He testified that, in his opinion, the appropriate [**362] license for the ornamental metals work contract was a Class C-23 license.

The testimony of Parks and Berrigan was sufficient to raise a triable issue of material fact as to whether a Class C-51 license was appropriate for the **[*527]** performance of the ornamental metals work contract. *CA(5)* **(5)** Therefore, there was a triable issue of material fact as to whether MW was properly licensed at all times during the performance of the ornamental metals work contract and whether section 7031, subdivision (a) precluded MW's suit. The trial court erred in granting summary judgment with respect to the ornamental metals work contract. [***30] The matter must be reversed and remanded for a determination of whether the Class C-51 license was sufficient.

E. Judicial Estoppel

In its memorandum of points and authorities in opposition to the motion for summary judgment, MW also stated that Niederhauser was "judicially estopped to contend that MW was an unlicensed subcontractor." On appeal, MW explains that Niederhauser had filed a cross-complaint against Turner and filed a mechanic's lien against the property, based on the work that MW had performed. This, MW contends, was tantamount to an implied claim on Niederhauser's part that MW was duly licensed.

MW fails to successfully demonstrate that the doctrine of judicial estoppel should apply. "*HN15* Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. [Citations.] The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. [Citation.] Application of the doctrine is discretionary. [Citation.]" (*People ex rel. Sneddon v. Torch Energy Services, Inc.* (2002) 102 Cal.App.4th 181, 189 [125 Cal. Rptr. 2d 365].) [***31] "The party invoking judicial estoppel must show that (1) the party against whom the estoppel is asserted took an inconsistent position in a prior proceeding and (2) that the position was adopted by the first tribunal in some manner such as by rendering a favorable judgment. [Citation.]" (*Ibid.*)

CA(6) **(6)** In this case, even if the filing of either the cross-complaint or a mechanic's lien could be regarded as the taking of an inconsistent position, inasmuch as Niederhauser dismissed the cross-complaint, we do not see how the trial court adopted Niederhauser's "inconsistent position" so as to prejudice MW. Therefore, the second prong of the test was not satisfied. We decline to apply the doctrine.

F. Illegality of Contract

(1) Niederhauser's Argument

In its memorandum of points and authorities in support of its motion for summary judgment, Niederhauser cited the case of *Owens v. Haslett, supra*. **[*528]** 98 Cal. App. 2d 829. As we have previously noted, the *Owens* court stated, although in dictum, that the contractor who was unlicensed upon signing the contract, but obtained his license before completing the work, was properly denied recovery under section 7031. [***32] (*Id.* at p. 832.) It also addressed the issue of illegality of contract, because the party who had hired the contractor was pressing a contract-based cross-complaint and had appealed. The court held that both the contractor and the hiring party "were parties to an illegal contract and, as a general rule, to which there are exceptions, a party to an illegal contract can neither recover damages nor, by rescinding, recover the performance that he has rendered, or its value." (*Id.* at p. 833.) It [**363] affirmed the judgment denying the hiring party any relief on her cross-complaint, because she had failed to "bring herself within the exception permitting recovery to a party to an illegal contract who is not *in pari delicto*." (*Id.* at p. 836.)

In reaching its decision, the court in *Owens v. Haslett, supra*, 98 Cal. App. 2d 829 cited the language from *Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 607 [204 P.2d 23] wherein the Supreme Court stated: " '... It has been repeatedly declared in this state that "a contract made contrary to the terms of a law designed for the protection of the public and prescribing a penalty for [***33] the violation thereof is illegal and void, and no action may be brought to enforce such contract" [citing cases]; and that "whenever the illegality appears, ... the disclosure is fatal to the case." [Citing cases.]' " (*Owens v. Haslett, supra*, 98 Cal. App. 2d at p. 833.)

On appeal, Niederhauser again cites *Owens v. Haslett, supra*, 98 Cal. App. 2d 829, together with *Loving & Evans v. Blick, supra*, 33 Cal.2d 603, *Gatti v. Highland Park Builders, Inc.* (1946) 27 Cal.2d 687 [166 P.2d 265], and other early cases. (See, e.g., *General Ins. Co. v. Superior Court* (1972) 26 Cal. App. 3d 176 [102 Cal. Rptr. 541]; *Holm v. Bramwell, supra*, 20 Cal. App. 2d 332.) It is against this backdrop of early cases that Niederhauser argues both contracts were void ab initio because MW was unlicensed when it signed them. Niederhauser concludes that because the contracts are void, they are unenforceable and it is unnecessary to analyze section 7031 at all. Not so. As we shall show, under current law, the two contracts are not void just because MW was unlicensed on the date of signing.

(2) Supreme Court Cases: Gatti, Loving & Evans, and Lewis & Queen

[***34] We begin our analysis with a discussion of *Gatti v. Highland Park Builders, Inc., supra*, 27 Cal.2d 687. That case highlighted the interplay between section 7031 and the void-for-illegality doctrine.

In *Gatti v. Highland Park Builders, Inc., supra*, 27 Cal.2d 687, an individual who held a contractor's license entered into an agreement to

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[*529] provide carpenter labor on certain residential projects. The contractor's foreman was also individually licensed. A few months after the contract was signed, the hiring party agreed that the contractor and his foreman should perform the work on a partnership or joint venture basis. A license was subsequently issued in the names of the contractor, the foreman and a third party, but no license was issued in the names of the contractor and the foreman exclusively, either as partners or as joint venturers. The hiring party sought to avoid payment because the contractor and the foreman had failed to obtain a partnership license in their two names.

As the court in *Gatti v. Highland Park Builders, Inc., supra,* 27 Cal.2d 687 observed, "[s]ection 7029 [***35] provide[d] that it [was] unlawful for two or more licensees holding separate licenses to act jointly in the capacity of a contractor without first having secured an additional or joint license." (*Id.* at p. 689.) Since the contractor and the foreman did not have an additional or joint license in their two names alone, an issue arose as to their compliance with section 7031. The difficulty was in alleging that they were duly licensed at all times during the performance of the act or contract.

The hiring party asserted that the contract was void for illegality, because of the [**364] apparent violation of the licensing requirements. The court rejected the argument on the facts before it, having concluded that the contractor and the foreman had substantially complied with the statutory requirements. In reaching this conclusion, the court stated: "If defendant is allowed to defeat plaintiffs' legitimate claim on this technical ground, resting on an unnecessarily strict construction of the statutory provision for the *additional* joint contractor's license and denying any effect to the combination license in fact issued to plaintiffs and a third person as above recited, the [***36] legislative scheme in relation to the licensing of contractors, intended 'for the safety and protection of the public,' would become an unwarranted shield for the avoidance of a just obligation." (*Gatti v. Highland Park Builders, Inc., supra,* 27 Cal.2d at p. 690.)

The case before us, as distinguished from *Gatti v. Highland Park Builders, Inc., supra,* 27 Cal.2d 687, does not rest on the doctrine of substantial compliance, as we have explained above. However, *Gatti* is nonetheless of significance in addressing this case. The court in *Gatti* showed that ***HN16*** the void-for-illegality doctrine would not necessarily be applied in every instance in which there was a technical noncompliance with the statutory licensing requirements. It cautioned against permitting a defendant to avoid a legitimate claim on a technical ground and underscored the importance of the administrative review of a contractor's qualifications in fulfilling the goal of protecting the public.

[*530] In the case before us, of course, MW claims to have performed nearly $ 1 million in structural steel work for which it has not been compensated. Niederhauser seeks to avoid payment of 100 percent [***37] of that amount because MW had not yet received its license when the work was initially undertaken, even though MW was licensed when it performed the bulk of the work and current section 7031 permits recovery for the work MW performed while it was licensed. In our view, denying recovery in this instance is not within the spirit of *Gatti.*

Our analysis does not end there, however. As indicated above, the Supreme Court in *Loving & Evans v. Blick, supra,* 33 Cal.2d at page 607 used strong language about the void-for-illegality doctrine. In that case, a partnership was unlicensed at the time of contracting, and only one of the two partners was then licensed. Neither the partnership nor the second partner obtained a license before the performance of the contract was completed. The court addressed whether the partnership operated in violation of the law. (*Id.* at p. 606.) In order to answer this question, the court reviewed various Business & Professions Code licensing requirements, including those set forth in section 7031. The court ultimately held that the partnership had violated the applicable statutes regulating the contracting business and that the [***38] contract was illegal and void. (*Id.* at pp. 607-608.)

In reaching this decision, the court discussed the case of *Gatti v. Highland Park Builders, Inc., supra,* 27 Cal.2d 687, in which it had applied the substantial compliance doctrine. The court in *Loving & Evans v. Blick, supra,* 33 Cal.2d 603 indicated that the situation in *Gatti* was distinguishable from the one before it. In *Gatti*, both the contractor and the foreman were individually licensed at the time the contract was signed and remained licensed after they undertook performance of the work as a partnership or joint venture. In *Loving & Evans*, however, one of the partners was unlicensed during the entire period of performance [**365] of the contract. The *Loving & Evans* court said: "Thus, it is apparent that the licensing regulations enacted 'for the safety and protection of the public,' by prohibiting inexperienced persons from engaging in contracting work, were at no time here material permitted to function in determining the qualifications of [the unlicensed partner] therefor. Such disregard of the public policy underlying the state's licensing requirements cannot [***39] be correlated with the rationale governing the Gatti ... case[] .... [Citation.]" (*Loving & Evans v. Blick, supra,* 33 Cal.2d at p. 609.) By so stating, the court emphasized the importance of the administrative review of each individual partner's qualifications. Had the qualifications of both partners been reviewed and approved in *Loving & Evans*, the answer might have been different, as it was in *Gatti.*

[*531] The *Loving & Evans* court also stated that in the matter before it, the partnership, on reversal, would be permitted to "present to the trial court any matters which they may claim will show a substantial compliance with the licensing requirements so as to avoid the charge of illegality with respect to the contract in question." (*Loving & Evans v. Blick, supra,* 33 Cal.2d at p. 615.) The court thus implied that, just as in *Gatti v. Highland Park Builders, Inc., supra,* 27 Cal.2d 687, a contract would not necessarily be held void for illegality due to an apparent violation of the applicable licensing requirements, if those requirements could be deemed satisfied through the doctrine of substantial compliance.

We consider [***40] the teachings of *Loving & Evans v. Blick, supra,* 33 Cal.2d 603 in the case before us. As a technical point, MW was not licensed on the date it signed the contracts. Yet before undertaking the performance of any acts for which it may be permitted to seek compensation, based on our analysis of section 7031, it had received that license, at least with respect to the structural steel work contract. Therefore, it satisfied the requirements of section 7031 with respect to any work for which it may receive compensation. Viewed in that light, there is no violation of the section 7031 statutory licensing requirements. Moreover, the underlying purpose of those requirements is satisfied because the Board had had the opportunity to pass upon MW's qualifications, had approved them, and had issued a license to MW by the time MW commenced the performance of work for which it may be compensated. The statutory goal of protecting the public from unlicensed contractors was, to that material extent, fulfilled. Therefore, we see the decision in *Loving & Evans* as no bar to MW's recovery of compensation to the extent permitted by section 7031.

Loving & Evans v. Blick, supra, 33 Cal.2d 603 [***41] was not the last case in which the Supreme Court addressed the Business & Professions Code licensing requirements. It discussed them again in *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141 [308 P.2d 713], a case factually similar to *Loving & Evans*. There, it held that section 7031 barred an unlicensed subcontractor from recovery under a construction contract when the subcontractor was unlicensed throughout the entire period of performance. In response to the subcontractor's argument that justice

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required the general contractor to turn over the payment it had received attributable to the subcontractor's labor, the court stated: "One answer to this contention is that, even in the absence of a provision such as section 7031, the courts generally will not enforce an illegal bargain ...." (*Id.* at p. 150.)

[*532] [**366] However, the court continued: "In some cases, on the other hand, the statute making the conduct illegal, in providing for a fine or administrative discipline excludes by implication the additional penalty involved in holding the illegal contract unenforceable; or effective deterrence is best realized by enforcing the plaintiff's claim rather than leaving [***42] the defendant in possession of the benefit; or the forfeiture resulting from unenforceability is disproportionately harsh considering the nature of the illegality. In each such case, how the aims of policy can best be achieved depends on the kind of illegality and the particular facts involved. [Citations.] But we are not free to weigh these considerations in the present case. Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of the state. [Citation.]" (*Lewis & Queen v. N. M. Ball Sons, supra,* 48 Cal.2d at p. 151.)

The court thereupon rejected the subcontractor's unjust enrichment argument, having concluded that section 7031 barred recovery. In so doing, the court implied that when a contractor violated section 7031, the provisions of that section itself, not the void-for-illegality doctrine, would determine the outcome. ***CA(7)*** **(7)** In the case before us, of course, the provisions of section 7031, as we [***43] have already explained, do not bar total recovery under the structural steel work contract. This is because MW, unlike the subcontractor in *Lewis & Queen v. N. M. Ball Sons, supra,* 48 Cal.2d 141, was licensed while performing most of the work under that contract. Whether or not the provisions of section 7031 bar recovery under the ornamental metals work contract is a matter for the trial court's resolution, upon determining whether the Class C-23 license was adequate.

(3) Vitek, Inc.

A most elucidating case, *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d 586, followed *Lewis & Queen v. N. M. Ball Sons, supra,* 48 Cal.2d 141, albeit some years later. In *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d 586, the general contractor had an expired license when, on a Friday, it executed the contract for the construction of an ice skating rink. The following Monday, its licensed was renewed and it commenced work under the contract. There was no question but that all of the work was performed while the license was in effect. The court concluded at the outset that section 7031 had been [***44] satisfied. It therefore focused its attention on whether the contract was illegal and unenforceable because the **[*533]** contractor was unlicensed when the contract was executed. The court observed: "Many of the cases ... have stated a contract executed by an unlicensed person in violation of the law is illegal and void. We are convinced, however, that sort of broad statement is improper where the Legislature itself has defined the sanctions." (*Id.* at p. 591; footnote omitted.)

The court further explained: "Undoubtedly, the general rule in this state is that ***HN17*** when it appears there is a violation of a regulating statute, the prescribed penalty is the equivalent of an express prohibition and a contract made contrary to its terms is void even though the statute does not pronounce the fact. [Citations.] The rule is not without exception, however, and before the rule can be applied in any case of a statute prohibiting or enjoining things to be done, with a prohibition or a penalty, or [**367] a penalty only for doing a thing which it forbids, the statute must be examined as a whole, to find out whether the makers meant a contract in contravention of it should be void. [Citations.]" [***45] (*Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d 591-592.)

The *Vitek* court observed that the Legislature had made it a misdemeanor for a person to act as a contractor without having a license (§ 7028) and had barred recovery for compensation under a contract unless the contractor was licensed "at all times" during performance (§ 7031, subd. (a)). (*Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d at pp. 591, 594.) The *Vitek* court continued: "By this action, the Legislature has defined the perimeter of its sanctions. Section 7031 denies all recovery for performance unless the contractor had a license at all times *during performance*; if the Legislature had in mind that the contract was void, it could have acknowledged the fact by omitting the words 'during the performance ...' or said 'while so acting.' " (*Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d at p. 594.) The court concluded: "Possession of a license on the date of execution was not a matter of concern to the Legislature in its design for public protection as far as civil remedies are concerned. [Citation.]" (*Ibid.*)

[***46] *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d 586 squarely answers Niederhauser's question concerning whether the contracts before us are unenforceable due to illegality. They are not. Here, MW was unlicensed when it signed the contracts, as was the contractor in *Vitek* when it signed its contract. However, ***HN18*** just as the court in *Vitek* concluded, whether the contractor was licensed on the date of signing is not determinative. Whether MW is entitled to compensation for performance of work under the contracts will be determined by the proper application of section 7031, as we have already discussed.

[*534] However, Niederhauser challenges the soundness of the decision in *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d 586. It claims the case is "aberrant" and "was never good law on the grounds of voidness for illegality." Niederhauser maintains that *Vitek* contradicts the Supreme Court decisions in *Lewis & Queen v. N. M. Ball Sons, supra,* 48 Cal.2d 141 and *Latipac, Inc. v. Superior Court* (1966) 64 Cal.2d 278 [49 Cal. Rptr. 676, 411 P.2d 564]. We disagree.

The decision in *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d 586, [***47] contrary to Niederhauser's assertion, is consistent with *Lewis & Queen v. N. M. Ball Sons, supra,* 48 Cal.2d 141, and in fact relies upon its analysis. (*Vitek, Inc. v. Alvarado Ice Palace, Inc., supra,* 34 Cal. App. 3d at p. 592.) The court in each case addressed the illegality issue and in the end concluded that whether or not a contractor who is unlicensed on signing the contract is entitled to compensation is dictated by section 7031.

In *Latipac, Inc. v. Superior Court, supra,* 64 Cal.2d 278, the court held that a contractor who was licensed on the signing of the contract and for the first fifteen months after undertaking performance of the work had substantially complied with the requirements of section 7031, even though its license had expired before it completed the work. In determining whether to apply the substantial compliance doctrine, the court reviewed factors courts had utilized in the past. It focused on three factors, [**368] one of which was whether the contractor was licensed when the contract was signed.

Niederhauser stops here and argues *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra*, 34 Cal. App. 3d 586 [***48] is irreconcilable with *Latipac, Inc. v. Superior Court, supra*, 64 Cal.2d 278, because *Vitek* fails to recognize that licensure upon contract signing is "one of the elements of the substantial compliance doctrine." This argument fails for two reasons. First, the *Latipac* court emphasized that it did not undertake to determine whether the absence of any one of the three factors would preclude a finding of substantial compliance. The court specifically stated: "Since all these elements here concur, we need not determine whether any of them, singly or in more limited combination, would constitute 'substantial compliance.' " (*Id.* at p. 281.)

Second, and perhaps more importantly, we consider *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra*, 34 Cal. App. 3d 586 not for the application of the substantial compliance doctrine, but for its analysis of the issue of illegality of contract. *Latipac, Inc. v. Superior Court, supra*, 64 Cal.2d 278 did not **[*535]** address the question whether the void-for-illegality doctrine precludes a contractor who was unlicensed upon signing from seeking payment for any work performed under the contract, [***49] even work performed after the license was obtained. *Vitek* simply is not inconsistent with *Latipac*.

In closing, we note that *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra*, 34 Cal. App. 3d 586 was cited with approval in *Gaines v. Eastern Pacific* (1982) 136 Cal. App. 3d 679, 682 [186 Cal. Rptr. 421]. There, a general contractor's cross-complaint against a subcontractor was not barred where the general contractor was unlicensed on the signing of the contract but licensed before the services were performed. 9 [***50] As stated in *Gaines*, "The [*Vitek*] court concluded that the contract itself was not illegal; the Legislature in enacting section 7031 has denied recovery for unlicensed performance, not for the unlicensed execution of a contract. [Citation.]" (*Gaines v. Eastern Pacific, supra*, 136 Cal. App. 3d at p. 682.) *Vitek* is good law and provides the answer to the illegality question in this case. 10

G. Attorney Fees

MW also argues that if this court should reverse any portion of the summary judgment, it must also reverse the award of attorney fees, because Niederhauser would no longer be the prevailing party. Niederhauser, [**369] on the other hand, notes that under Civil Code section 3260, subdivision (g), the prevailing party in an action to recover funds wrongfully withheld under a construction contract is entitled to attorney fees and costs. It argues that it was the prevailing party below and will be again on appeal. As we have shown, however, the summary judgment was erroneously granted and we hereby reverse it. Niederhauser is no longer the prevailing party and the trial court's order awarding attorney fees must be reversed as [***51] well.

[*536] III

DISPOSITION

The summary judgment and the order awarding attorney fees are reversed. The case is remanded for further proceedings consistent with this opinion. MW shall recover its costs on appeal.

O'Leary, Acting P. J., and Fybel, J., concurred.

Footnotes

1 We observe inconsistencies in the record concerning the full and complete name of Niederhauser. It is variously referred to as: (a) Niederhauser Metal Works Company, Inc.; (b) Niederhauser Ornamental & Metal Works Company, Inc.; (c) Niederhauser Ornamental and Metal Works Co., Inc., dba Niederhauser Metal Works Co., Inc.; and (d) other similar names. However, it seems apparent that the parties have in all events intended to refer to one and the same corporation, whatever its proper legal name. We will simply refer to the corporation hereinafter as "Niederhauser."

2 Niederhauser, Fidelity and Guaranty Insurance Company, and United States Fidelity and Guaranty Company are all respondents on appeal and they have jointly filed a respondents' brief. For ease of reference, we will refer to them collectively as "Niederhauser" when describing their arguments.

3 Niederhauser filed a cross-complaint against Turner Construction Company, Walt Disney Imagineering Research & Development, Inc., and Walt Disney World Co. It ultimately dismissed the cross-complaint.

4 See now Code of Civil Procedure section 437c, subdivision (p)(2).

5 All further statutory references are to the Business & Professions Code, unless otherwise specifically noted.

6 "Effective January 1, 2002, subdivision (d) was relabeled subdivision (e), without any substantive change. (Stats. 2001, ch. 226, §

1; Cal. Const., art. IV, § 8, subd. (c); Gov. Code, § 9600.)" (*Slatkin v. White* (2002) 102 Cal.App.4th 963, 968-969, fn. 4 [126 Cal. Rptr. 2d 54].) We shall refer to the subdivision in question as subdivision (e) hereinafter.

7 The specialty classifications Parks mentioned are contained in California Code of Regulations, title 16, sections 832.23 and 832.51, respectively. With respect to the contractor holding a Class C-23 license, section 832.23 provides: "***HN13*** An ornamental metals contractor assembles, casts, cuts, shapes, stamps, forges, welds, fabricates and installs, sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, monel metal, stainless steel, steel, and/or any other metal for the architectural treatment and ornamental decoration of structures. This classification does not include the work of a sheet metal contractor."

As for the authorization of a structural steel contractor, California Code of Regulations, title 16, section 832.51 provides: "***HN14*** A structural steel contractor fabricates and erects structural steel shapes and plates, of any profile, perimeter or cross section, that are or may be used as structural members for buildings and structures, including the riveting, welding, rigging, and metal roofing systems necessary to perform this work."

8 We have found no evidence in the record corroborating the assertion that Western Construction Specialties was the replacement contractor, and we observe that Niederhauser makes no comment on this point. However, the record does contain a copy of a Board Certification of Records showing that Western Construction Specialties, Inc. held a Class C-51 license from January 1, 1999, through the date of the certification—December 13, 2001. Were it true that Niederhauser hired a contractor with only a Class C-51 license to complete the project, it would belie the assertion that a Class C-23 license was required, either that or show a pattern on Niederhauser's part of hiring improperly licensed contractors, perhaps deliberately.

9 We observe that *Gaines v. Eastern Pacific, supra*, 136 Cal. App. 3d 679 incorrectly describes *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra*, 34 Cal. App. 3d 586 as a case having to do with the substantial compliance doctrine. *Pacific Custom Pools, Inc. v. Turner Construction Co.* (2000) 79 Cal.App.4th 1254, 1261 [94 Cal. Rptr. 2d 756] makes the same mistake. The *Vitek* court specifically stated that "[t]he case at issue does not rely on the concept of substantial compliance." (*Vitek, Inc. v. Alvarado Ice Palace, Inc., supra*, 34 Cal. App. 3d 586, 591, fn. 5.) Rather, the holding in *Vitek* was based on the fact that ***HN19*** the contractor was licensed at all times during the performance of the contract, so section 7031, subdivision (a) presented no bar to the collection effort and resort to the substantial compliance doctrine was unnecessary. (*Id.* at p. 590.)

10 *Wilson v. Steele* (1989) 211 Cal. App. 3d 1053 [259 Cal. Rptr. 851], which Niederhauser also cites for the proposition that contracts by unlicensed contractors are void, is distinguishable. It does not have to do with the efforts of an unlicensed contractor to obtain compensation under section 7031, subdivision (a).

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Supreme Court of California

March 11, 1985

S.F. No. 24658

Reporter

38 Cal. 3d 276 * | 696 P.2d 95 ** | 211 Cal. Rptr. 703 *** | 1985 Cal. LEXIS 260 ****

KRIKOR ASDOURIAN, Plaintiff and Respondent, v. IBRAHIM ARAJ et al., Defendants and Appellants

Subsequent History: [****1] Appellants' petition for a rehearing was denied April 18, 1985. Mosk, J., was of the opinion that the petition should be granted.

Prior History: Superior Court of the City and County of San Francisco, Nos. 734753 and 734754, Robert J. Drewes, Judge.

Disposition: The judgments in favor of plaintiff are affirmed.

Core Terms

license, contractor, contracts, contractor's license, remodeling, substantial compliance, doctrine of substantial compliance, home improvement, duly licensed, own name, parties, competence, void, licensing requirements, managing officer, fictitious name, flats, performance of a contract, sole proprietorship, qualifications, partnership, literal, repairs, unjust enrichment, separate license, valid license, do business, compliance, managing, renewal

Case Summary

Procedural Posture

Defendants, real estate investor and his wife, appealed judgments of the Superior Court of the City and County of San Francisco (California), which held that plaintiff contractor was entitled to recover for the reasonable value of work that plaintiff performed on a garage conversion, the remodeling of flats, and home improvements to defendants' single family residence.

Overview

Defendants, real estate investor and his wife, argued that the trial court erred in awarding the money judgments to plaintiff contractor because plaintiff was not licensed as a contractor under Cal. Bus. & Prof. Code § 7031, and the oral contracts for the home improvement project were void under Cal. Bus. & Prof. Code § 7159. On appeal, the court affirmed the judgments in favor of plaintiff. The court applied the doctrine of substantial compliance with respect to § 7031, holding that plaintiff qualified for a contractor's license on behalf of his sole proprietorship, and the fact that the license was not issued in his name did not deprive defendants of the full protection contemplated by the license requirements of the Contractors License Law, Cal. Bus. & Prof. Code §

EXHIBIT [D]–4752

7000 et seq. The court held that the oral contracts for the remodeling work on defendants' residential property were enforceable even though the contracts did not comply with Cal. Bus. & Prof. Code § 7159. The court found that public policy was not served by denying plaintiff relief because it would unjustly enrich defendants for the work performed by plaintiff.

Outcome

The court affirmed the judgments in favor of plaintiff contractor and held that plaintiff was entitled to recover for the reasonable value of the work that he performed on behalf of defendants, real estate investor and his wife. The court held that plaintiff was entitled to recover because he substantially complied with the licensing requirements and because public policy did not favor defendants being unjustly enriched at plaintiff's expense.

▼ LexisNexis® Headnotes

Governments > Local Governments ▾ > Licenses ▾

HN1 **Local Governments, Licenses**

See Cal. Bus. & Prof. Code § 7031. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > Local Governments ▾ > Licenses ▾

HN2 **Local Governments, Licenses**

Cal. Bus. & Prof. Code § 7031 has as its purpose the enforcement of the Contractors License Law. Cal. Bus. & Prof. Code § 7000 et seq. That purpose is accomplished by denying a contractor access to the courts to recover for the fruits of his labor when he violates the statute. More like this Headnote

Shepardize® - Narrow by this Headnote (11)

Governments > State & Territorial Governments ▾ > Licenses ▾

HN3 **State & Territorial Governments, Licenses**

In exceptional circumstances the purposes of the Contractors License Law, Cal. Bus. & Prof. Code § 7000 et seq., are not furthered by strict enforcement of Cal. Bus. & Prof. Code §7031. In view of the severity of § 7031's sanction and of the forfeitures which it necessarily entails, the court's decisions record the court's reluctance to construe § 7031 more broadly than requisite to the achievement of its manifest purpose. The court does not insist on literal compliance in the situation in which the party seeking to escape his obligation received the full protection which the statute contemplates. Instead, the court employs the doctrine of "substantial compliance" to avoid the harsh consequences of strict application of § 7031. More like this Headnote

Shepardize® - Narrow by this Headnote (20) 1

Governments > State & Territorial Governments ▾ > Licenses ▾

HN4 **State & Territorial Governments, Licenses**

The substantial compliance doctrine is applied in several factual contexts. Most often, it is applied when the contractor's license expires before completion of a project, or where the license is not obtained until after the contract is executed. The doctrine also applies where, following a change in the form of the contractor's business, the entity performing the contract is slightly different from the entity named on the contract. More like this Headnote

Shepardize® - Narrow by this Headnote (8) 1

Governments > State & Territorial Governments ▾ > Licenses ▾

HN5 **State & Territorial Governments, Licenses**

If the facts clearly indicate that the contractor "substantially" complied with the statute and that such compliance afforded to the obligor the protection contemplated by the statute, the court rejects the obligor's attempt to escape liability. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments > Licenses

HN6 State & Territorial Governments, Licenses
See Cal. Bus. & Prof. Code § 7028.5. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments > Licenses

HN7 State & Territorial Governments, Licenses
See Cal. Bus. & Prof. Code § 7117(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Governments > State & Territorial Governments > Licenses

HN8 State & Territorial Governments, Licenses
The doctrine of substantial compliance is well-established in decisional law of the state of California. More like this Headnote

Shepardize® - Narrow by this Headnote (6) 1

Business & Corporate Compliance > ... > Contracts Law > Contract Formation > Execution & Delivery
View more legal topics

HN9 Contract Formation, Execution & Delivery
A "home improvement contract" is defined as an agreement between a contractor and an owner for the performance of a home improvement. Cal. Bus. & Prof. Code § 7151.2. A "home improvement" is defined as the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property. Cal. Bus. & Prof. Code § 7151. More like this Headnote

Shepardize® - Narrow by this Headnote (6)

Contracts Law > Statute of Frauds > General Overview

HN10 Contracts Law, Statute of Frauds
See Cal. Bus. & Prof. Code § 7159. More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Contracts Law > Remedies > Equitable Relief > General Overview
View more legal topics

HN11 Remedies, Equitable Relief
Generally a contract made in violation of a regulatory statute is void. Normally, courts will not lend their aid to the enforcement of an illegal agreement or one against public policy. However, the rule is not an inflexible one to be applied in its fullest rigor under any and all circumstances. A wide range of exceptions are recognized. The rule is not applied where the penalties imposed by the legislature exclude by implication the additional penalty of holding the contract void. Further, illegal contracts will be enforced to avoid unjust enrichment to the defendant at the expense of the plaintiff. More like this Headnote

Shepardize® - Narrow by this Headnote (52) 3

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Oral Agreements
Contracts Law > Statute of Frauds > General Overview
Criminal Law & Procedure > Sentencing > Fines

HN12 Types of Contracts, Oral Agreements
Violation of Cal. Bus. & Prof. Code § 7159 is a misdemeanor punishable by fine and/or imprisonment. Nothing in § 7159 declares that an oral contract entered into in contravention of § 7159 is void. More like this Headnote

Shepardize® - Narrow by this Headnote (4) 1

Contracts Law > Statute of Frauds > General Overview
View more legal topics

HN13 **Contracts Law, Statute of Frauds**
The penalties provided by Cal. Bus. & Prof. Code § 7159 are no longer exclusive, but there is no indication that the legislature intended that all contracts made in violation of § 7159 are void. Absent an express statutory prohibition, other exceptions to the general rule that illegal contracts are unenforceable may be applied. More like this Headnote

Shepardize® - Narrow by this Headnote (13) 1 1

Contracts Law > Statute of Frauds > General Overview
View more legal topics

HN14 **Contracts Law, Statute of Frauds**
In compelling cases, illegal contracts are enforced in order to avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff. In each case, the extent of enforceability and the kind of remedy granted depend upon a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts. More like this Headnote

Shepardize® - Narrow by this Headnote (37) 2

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

A contractor brought an action against a property owner who was a real estate investor to recover compensation for work performed on remodeling contracts. Judgments as to separate properties were entered in favor of plaintiff. (Superior Court of the City and County of San Francisco, Nos. 734753 and 734754, Robert J. Drewes, Judge.)

The Supreme Court affirmed, rejecting defendant's contentions that because the contracts were entered and performed in plaintiff's own name rather than in the name of his licensed sole proprietorship they were unenforceable under Bus. & Prof. Code, § 7031, denying access to courts of unlicensed contractors. Applying the substantial compliance doctrine, the court held that, since plaintiff qualified for a contractor's license on behalf of his sole proprietorship, since the fact the license was not issued in his name did not deprive defendants of the full protection contemplated by the license requirement of the Contractors' License Law (Bus. & Prof. Code, § 7000 et seq.), and since plaintiff substantially complied with § 7031, he should not be denied compensation for his work. The court further held that the oral contracts for the remodeling on residential property were enforceable, notwithstanding Bus. & Prof. Code, § 7159, requiring such contracts in excess of $ 500 to be in writing. (Opinion by Bird, C. J., with Broussard, Reynoso, Lucas, JJ., and Stephens, J., * concurring. Separate concurring opinion by Kaus, J. Separate dissenting opinion by Mosk, J.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports, 3d Series

CA(1a) **(1a)** ***CA(1b)*** **(1b)** ***CA(1c)*** **(1c) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Substantial Compliance Doctrine—License in Fictitious Name.**

--Under the substantial compliance doctrine, a contractor with a valid license in the fictitious name of his sole proprietorship was not barred by Bus. & Prof. Code, § 7031 (denying unlicensed contractors access to courts) from collecting compensation for work performed in transactions using his own name instead of the fictitious name appearing on the license. The purpose of the licensing requirement (protection of the public from perils incident to contracting with incompetent or untrustworthy contractors) was effectively realized. In connection with the issuance of the license in the fictitious name, the contractor's qualifications were examined and approved. The fact that the license was not issued in his name did not deprive the property owners of the full protection contemplated by the license requirements, the contractor substantially complied with § 7031, and thus should not be denied compensation for his work. (Disapproving *General Ins. Co.* v. *Superior Court* (1972) 26 Cal.App.3d 176 [102 Cal.Rptr. 541]

to the extent that it rests on the logic of the dissenting opinion in *Latipac, Inc. v. Superior Court* (1966) 64 Cal.2d 278 [49 Cal.Rptr. 676, 411 P.2d 564].)

CA(2) **(2) Building and Construction Contracts § 1—Purpose of License Law.**

--The general purpose of the Contractors' License Law (Bus. & Prof. Code, § 7000 et seq.) is to guard the public against the consequences of incompetent workmanship, imposition and deception.

CA(3) **(3) Building and Construction Contracts § 7—Actions—Necessity of Contractor's License—Strict Enforcement —Exceptions.**

--In exceptional circumstances the purposes of the Contractors License Law (Bus. & Prof. Code, § 7000 et seq.) are not furthered by strict enforcement of Bus. & Prof. Code, § 7031, denying to unlicensed contractors access to the courts. In view of the severity of the sanction and the forfeiture which it necessarily entails, the statute is not construed any more broadly than requisite to the achievement of its manifest purpose. Literal compliance is not insisted on in situations where the party seeking to escape his obligation has received the full protection which the statute contemplates; in that situation the doctrine of substantial compliance applies to avoid the harsh consequences of strict application.

CA(4a) **(4a)** ***CA(4b)*** **(4b)** ***CA(4c)*** **(4c) Building and Construction Contracts § 6—Actions—Necessity for Written Contract—Sanctions.**

--Bus. & Prof. Code, § 7159, providing that every home improvement contract over $ 500 must be in writing signed by the parties, and making violation punishable as a misdemeanor, did not bar a contractor from recovering for remodeling work in excess of $ 500 performed without written contracts, where to deny enforcement would be to impose an unduly harsh penalty on the contractor and leave the property owners unjustly enriched. The property owners were real estate investors and thus not members of the group primarily in need of the statute's protection; the contracts made in violation of the statute did not involve the kind of illegality which automatically renders an agreement void; the contractor and the property owner were friends, the contractor fully performed according to the oral agreements, and the property owner accepted the benefits thereof.

CA(5) **(5) Building and Construction Contracts § 3—Construction and Effect—Home Improvement Contracts—Necessity for Writing—Application.**

--Although real estate investors did not fall squarely into the class which Bus. & Prof. Code, § 7159, was most clearly enacted to protect, the statute, requiring home improvement contracts in excess of $ 500 to be in writing, clearly applies to all home improvement contracts over $ 500.

CA(6) **(6) Contracts § 7—Legality—Contracts in Violation of Statute—Enforcement.**

--The rule that a contract made in violation of a regulatory statute is void and will not be enforced is based on the rationale that the public importance of discouraging such prohibited transactions outweighs equitable considerations of possible injustice between the parties.

CA(7a) **(7a)** ***CA(7b)*** **(7b) Contracts § 13—Legality—Enforceability—Exceptions.**

--The rule against enforcement of contracts made in violation of a regulatory statute is not an inflexible one to be applied in its fullest rigor under any and all circumstances. The rule is not applicable when the penalties imposed by the Legislature exclude by implication the additional penalty of holding the contract void, and illegal contracts will be enforced to avoid unjust enrichment to defendant at the expense of the plaintiff. In each case the extent of enforceability and the kind of remedy granted depends on a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts.

CA(8) **(8) Building and Construction Contracts § 3—Construction and Effect—Home Improvement Contracts—**

Necessity for Writing—Penalties—Enforceability.

--Because the Legislature amended Bus. & Prof. Code, § 7159, requiring home remodeling contracts in excess of $ 500 to be in writing, to delete a provision that contracts in noncompliance with the statute shall not be deemed invalid, the presumption was that the Legislature did not intend the express misdemeanor penalty provisions of the statute to be exclusive. Where the Legislature undertakes to amend existing law by deleting an express provision of the previous statute, it is presumed the Legislature intended to change the law. However, there is no indication that the Legislature intended that all contracts made in violation of § 7159 are void. Absent an express statutory prohibition, other exceptions to the general rule that illegal contracts are unenforceable may be applicable. (Disapproving *Calwood Structures Inc. v. Herskovic* (1980) 105 Cal.App.3d 519 [164 Cal.Rptr. 463], to the extent it holds § 7159 excludes additional penalties by implication.)

Counsel: Charles O. Morgan, Jr., and G. Alfred Roensch for Defendants and Appellants.

Alan B. Axelrod and Axelrod & Blum for Plaintiff and Respondent.

Judges: Opinion by Bird, C. J., with Broussard, Reynoso, Lucas, JJ., and Stephens, J., [*] concurring. Separate concurring opinion by Kaus, J. Separate dissenting opinion by Mosk, J.

Opinion by: BIRD

Opinion

[*279] [**96] [***704] This case presents two issues. First, is a contractor barred from recovering compensation for work performed on remodeling contracts because he entered and performed the contracts in his own name rather than in the name of his licensed sole proprietorship? Second, is an oral home improvement contract for over $ 500 rendered void and unenforceable because it was not reduced to written form?

I.

Plaintiff, Krikor Asdourian, came to the United States in [****2] 1970. Prior to that time, he had worked as a contractor in Lebanon for 20 years. In 1970, he applied for a contractor's license with the Contractor's [**97] State License Board, as required by Business and Professions Code section 7028. [1] Plaintiff's credentials and qualifications were examined and approved by the board, and he passed the required examination. A license was issued to "Artko Remodeling and Construction" (Artko). Plaintiff's name and signature appear on the license as the "responsible managing party."

[*280] At the time the license was issued to Artko, plaintiff had planned to incorporate under that name. However, his business remained a sole proprietorship, and he sometimes did work under his own name. He did not obtain a separate license in his name or have the existing license changed. Since he had taken the examination and received the license, he did not believe that was required.

[****3] [***705] Defendants are Ibrahim Araj and his wife Dalal Araj. [2] Mr. Araj is a grocer who buys and sells real property for investment purposes. He cannot read or write English. Asdourian and Araj were introduced by a mutual acquaintance in 1976 and became friends.

The dispute between the parties involves three contracts for remodeling properties owned by defendants in San Francisco.

Lombard Street Garage

In late September or early October of 1976, [3] the parties entered into a written agreement to convert a garage on Lombard Street into a restaurant. Plaintiff signed his own name to the agreement. The contract contained a description of the work to be done and established a total price of $ 21,500. Plaintiff drew up the preliminary plans for the garage conversion and submitted them to the Bureau of Building Inspection of the San Francisco Department of Public Works. The bureau did not approve the plans because [****4] they failed to comply with a new building code requirement that the entire building be made earthquakeproof, windproof, and fireproof if more than 30 percent of the building were remodeled.

With defendant's knowledge and approval, plaintiff hired an engineer to prepare plans which would comply with the building code. Plaintiff informed defendant that the new plans would require a drastic expansion in the scope of the project with a cost increase of $ 30,000 to $ 35,000. Defendant accepted the price increase and directed plaintiff to proceed. [4] A permit was finally obtained and work began. It was not until defendant refused to make any further payments that plaintiff stopped working. At this point, the job had

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been substantially completed.

[****5] *Lombard Street Flats*

In addition to the garage, the Lombard Street building contained four flats. Plaintiff remodeled two of the flats for defendant in 1976 for a price **[*281]** of $ 11,000. There was no dispute regarding that work, and plaintiff was paid in full. After work on the garage was begun, defendant asked plaintiff to remodel the remaining two flats. No price was discussed. The work was similar to, but more extensive than, the previous remodeling on the other flats. Plaintiff completed this work, but was not fully paid.

San Fernando Way Property

In May of 1977, while plaintiff was working on the Lombard Street property, defendant asked him to perform repairs on a single family residence on San Fernando Way.

After plaintiff began the repairs, defendant requested that the kitchen and the bathroom be remodeled. Plaintiff was told to use "the finest materials" because defendant was thinking of moving into the [**98] house himself. No written contract was executed. There was conflicting testimony as to whether the parties agreed orally on a price. Plaintiff completed the remodeling in July of 1977. Subsequently, the house was rented.

When [****6] defendant refused to pay for the work on the Lombard Street and San Fernando Way properties, plaintiff obtained a mechanic's lien on the Lombard Street property. An action to enforce that lien was filed, as well as a separate action for the balance due on the remodeling of the San Fernando Way residence. These actions were consolidated. Defendants answered, denied the allegations, and filed a cross-complaint which alleged that plaintiff had not completed the work and had been overpaid.

[***706] After a three-day trial, the trial court found that defendant had agreed to compensate plaintiff for the reasonable value of his work, including labor, materials, overhead and profit, on the Lombard Street garage conversion and the remodeling of the Lombard Street flats. The reasonable value of the work performed on the Lombard Street property was found to be $ 83,812.45. Defendant was found to have paid $ 45,223.47 of that amount. The court also found that defendant had agreed to compensate plaintiff for the reasonable value of his work on the San Fernando Way residence, which was $ 19,278.15. Only $ 12,824.30 had been paid. Judgment was entered for plaintiff in the amount of $ [****7] 38,588.98 for the Lombard Street property, contingent on plaintiff's correction of certain "punch list" items 5 and a roof drainage problem. A separate judgment was entered in the amount of $ 6,453.85 on the San Fernando Way property.

[*282] Defendants appeal both judgments. They contend that (1) plaintiff was not licensed as a contractor under section 7031 and so cannot recover compensation for his work; and (2) any agreements between the parties for work on the San Fernando Way residence and the Lombard Street flats were oral and, therefore, void because they violate section 7159, which requires that all home improvement contracts for over $ 500 be in writing.

II.

CA(1a) **(1a)** Defendants claim that plaintiff is barred from collecting compensation by section 7031. ***HN1*** That section provides: "No person engaged in the business or acting in the capacity of a contractor, [****8] may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract . . . ." Plaintiff used his own name in these transactions instead of the name which appeared on the license. Therefore, defendants assert, he was not "duly licensed" and cannot bring an action to recover on the contracts.

Section 7031 is a part of the Contractors License Law (§ 7000 et seq.). The Contractors License Law provides a comprehensive scheme which governs contractors doing business in California. ***CA(2)*** **(2)** The general purpose of the law is "'to guard the public against the consequences of incompetent workmanship, imposition and deception. In order to procure a license an applicant is required to make a showing of good character and of a degree of experience and general knowledge of the building, health, safety and lien laws of this state, and of the rudimentary administrative principles of the contracting business, as the board deems necessary for the safety and protection [****9] of the public.'" (*Conderback, Inc. v. Standard Oil Co.* (1966) 239 Cal.App.2d 664, 677 [48 Cal.Rptr. 901]; see also § 7068.)

HN2 Section 7031 has as its purpose the enforcement of the Contractors License Law. That purpose is accomplished by denying a contractor "access to the courts to recover for the fruits of his labor . . . when he [**99] violates the statute." (*Jackson v. Pancake* (1968) 266 Cal.App.2d 307, 309 [72 Cal.Rptr. 111].)

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CA(3) **(3)** ***HN3*** However, in exceptional circumstances the purposes of the Contractors License Law are not furthered by strict enforcement of section 7031. "In view of the severity of this sanction and of the forfeitures which it necessarily entails, our decisions record our reluctance to construe [section 7031] more broadly than requisite to the achievement of its manifest purpose. We have not insisted on literal compliance in the situation in which **[*283]** the party seeking to escape his obligation has received the full protection which the statute contemplates." (*Latipac, Inc. v. Superior Court* (1966) 64 Cal.2d 278, 279-280 [49 Cal.Rptr. 676, 411 P.2d 564].) Instead, this court has [***707] employed the doctrine of "substantial [****10] compliance" to avoid the harsh consequences of strict application of section 7031.

HN4 The substantial compliance doctrine has been applied in several factual contexts. Most often, it has been applied when the contractor's license expired before completion of a project (*Latipac, supra*, 64 Cal.2d 278; *Airfloor Co. of California, Inc. v. Regents of University of California* (1978) 84 Cal.App.3d 1004 [149 Cal.Rptr. 130]; *Lewis v. Arboles Dev. Co.* (1970) 8 Cal.App.3d 812 [87 Cal.Rptr. 539]), or where the license was not obtained until after the contract was executed (*Gaines v. Eastern Pacific* (1982) 136 Cal.App.3d 679 [186 Cal.Rptr. 421]; *Vitek, Inc. v. Alvarado Ice Palace, Inc.* (1973) 34 Cal.App.3d 586 [110 Cal.Rptr. 86]).

The doctrine has also been applied where, following a change in the form of the contractor's business, the entity performing the contract was slightly different from the entity named on the contract. (*Weiman v. Superior Court* (1959) 51 Cal.2d 710 [336 P.2d 489]; *Gatti v. Highland Park Builders, Inc.* (1946) 27 Cal.2d 687 [166 P.2d 265]; *Citizens State Bank v. Gentry* (1937) 20 Cal.App.2d 415 [67 [****11] P.2d 364].)

Gatti, supra, 27 Cal.2d 687 was one of the earliest cases to employ the substantial compliance doctrine where the form of the contractor's business changed. In *Gatti*, plaintiffs (Gatti and Moore) were individually licensed as contractors. Gatti and defendant entered into a contract for some carpentry work. Moore was Gatti's construction foreman. Subsequently, Gatti and Moore decided to do the work as a partnership. The partnership did not obtain a separate license, although a license was later issued to Gatti, Moore, and a third person. This court found substantial compliance with the Contractors License Law and did not apply the strict prohibition of section 7031.

The *Gatti* court pointed out that formation of the partnership did not effect any change in the performance of the contract, since the same parties were performing and supervising the work. (*Gatti, supra*, 27 Cal.3d at p. 689.) Since a license was subsequently issued to Gatti, Moore, and a third person, "any matters which might form the basis of legitimate inquiry by the licensing board . . . were necessarily considered, and favorable action was taken thereon." (*Ibid.*)

The court refused [****12] to apply section 7031 literally. "If defendant is allowed to defeat plaintiffs' legitimate claim on this technical ground, resting on an **[*284]** unnecessarily strict construction of the statutory provision . . . the legislative scheme in relation to the licensing of contractors . . . would become an unwarranted shield for the avoidance of a just obligation." (*Id.*, at p. 690.) [6▲] Although the policy considerations are similar, the present case is even stronger than *Gatti*. Here, the form of plaintiff's business did not change at all. It remained a sole proprietorship. Plaintiff simply used a different *name* for the business.

This court last applied the doctrine of substantial compliance in *Latipac, Inc. v. Superior Court, supra*, 64 Cal.2d 278. [**100] In *Latipac*, plaintiff possessed a valid contractor's license at the time [****13] the contract was executed, but continued to perform under the contract after the license expired. Defendant sought to avoid payment on the contract because of plaintiff's failure to comply strictly with section 7031. The court denied defendant's writ, noting that ***HN5*** "[if] the facts clearly indicate that the contractor has 'substantially' complied with the statute and that such compliance has afforded to the obligor the protection contemplated by the statute, we have rejected the obligor's attempt to escape liability." (*Latipac, supra*, 64 Cal.2d at p. 281.)

Latipac set out the considerations which might warrant application of the doctrine [***708] of substantial compliance: "(1) the fact that plaintiff held a valid license at the time of contracting, (2) that plaintiff readily secured a renewal of that license and (3) that the responsibility and competence of plaintiff's managing officer were officially confirmed throughout the period of performance of the contract." (*Latipac, supra*, 64 Cal.2d at pp. 281-282.)

Since each of the factors was present in *Latipac*, the court declined to decide "whether any of them, singly or in more limited combination, would constitute [****14] 'substantial compliance.'" (*Latipac, supra*, 64 Cal.2d at p. 281.) However, the court emphasized that "the test must be *whether the contractor's 'substantial compliance with the licensing requirements satisfies the policy of the statute.*'" (*Ibid.*, italics added.) If the facts clearly indicate substantial compliance which satisfies the policy of the Contractors License Law, the failure to establish all of the *Latipac* factors should not defeat plaintiff's claim.

CA(1b) **(1b)** In this case, plaintiff obtained a license for his sole proprietorship under the name Artko. Plaintiff's name was on the license as the responsible managing party. At the time the license was issued, he intended to incorporate Artko. Had he done so, Artko would have become an entity separate from plaintiff. However, the incorporation never took place, and the business **[*285]** remained a sole proprietorship. Plaintiff was personally responsible for all debts and responsibilities incurred by the business, and the assets of the business were plaintiff's assets. In essence, plaintiff *was* Artko.

Plaintiff should have obtained a license in his own name in order to do business under that name. As previously [****15] noted, section 7031 requires that a contractor prove that he was "duly licensed" in order to collect compensation. ***HN6*** "It is unlawful for any person who is or has been a . . . responsible managing officer of a licensed . . . firm . . . to individually engage in the business or

individually act in the capacity of a contractor . . . without having a license in good standing to so engage or act." (§ 7028.5.) Further, ***HN7*** section 7117 makes "[acting] in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license . . . a cause for disciplinary action."

Since plaintiff did not have a license in his own name, he performed these contracts in violation of sections 7028.5 and 7117. Hence, he was not duly licensed. If literal compliance with section 7031 is required, he cannot legally maintain these actions. However, under the circumstances of this case, the policy of the Contractors License Law has been satisfied. Defendant should not be able to avoid his obligation to compensate plaintiff for the work he performed.

The first factor considered by the *Latipac* court was whether the plaintiff held a valid license at [****16] the time the contract was executed. Here, plaintiff's firm held a valid license at the time of the contracts. The license had been issued to Artko, but bore plaintiff's name as the responsible managing party. That license provided sufficient evidence of plaintiff's qualifications. The fact that plaintiff used his own name when he entered into the contracts is technically a violation of section 7028.5. However, it did not prevent defendant from receiving [**101] the full and effective protection of the statute. 7

[****17] The second factor mentioned in *Latipac*, license renewal, is not relevant here. There was no period during which plaintiff's business was not licensed, nor was [***709] there any change in the form of the business from the time the license was issued. Plaintiff simply used his own name in these transactions. The license, which officially attested to plaintiff's experience and qualifications, was effective throughout performance. There was no need to **[*286]** renew it for it did not expire. The purpose served by this factor, "confirmation [of] plaintiff's continuing competence and responsibility during the period of performance" (*Latipac, supra*, 64 Cal.2d at p. 283), was met by the existence of the valid license issued to Artko.

Plaintiff clearly meets the third *Latipac* factor, which requires official confirmation of "the responsibility and competence of plaintiff's managing officer . . . throughout the period of performance of the contract." (*Latipac, supra*, 64 Cal.2d at p. 282.) In *Latipac*, the license of the contracting corporation expired, but its "'responsible managing officer,'" Mr. Lee, was at all times the responsible managing officer of other [****18] corporations which held valid contractor's licenses. "[The] fitness of a corporation to enjoy a contractor's license lies in the competence and experience of the individual who qualifies on its behalf . . . . [para.] . . . The qualifications of Mr. Lee form the basis for the licenses of a number of these [other] corporations." (*Id.*, at p. 285.)

One of the corporations held a license throughout the period of performance. "The existence of this license necessarily evidences an official determination of the experience and competence of Mr. Lee, *the same experience and competence which would have been in issue in a consideration of plaintiff's application for renewal of its license*. This official confirmation of Mr. Lee's qualifications throughout the period of performance should exorcise any remaining doubt that the policy of the statute has been satisfied . . . ." (*Id.*, at pp. 285-286, italics added and omitted.)

Here, the competence and experience of plaintiff Asdourian formed the basis of the license issued to Artko. "'[Any] matters which might form the basis of legitimate inquiry by the licensing board' in determining the fitness of [Asdourian] to enjoy [****19] a license were 'necessarily considered' and resolved in connection with the issuance of the license to [Artko]." (*Latipac, supra*, 64 Cal.2d at p. 286; accord *Gatti, supra*, 27 Cal.2d at p. 689.)

Issuance of a license to Asdourian in his own name would not have provided defendant with any greater assurances that he was dealing with an experienced and competent contractor. Nor would it have provided any different information concerning the status or solvency of plaintiff's business. The business entity was precisely the same as that to which the license had been issued. The work would have been performed by the same employees, and supervised by the same person. Defendant would have obtained no better protection, and no different performance, had he contracted with Artko.

Despite the substantial compliance doctrine, some courts have continued to insist on strict compliance with section 7031. (See *Roy Brothers Drilling* **[*287]** *Co.* v. *Jones* (1981) 123 Cal.App.3d 175 [176 Cal.Rptr. 449]; *Brown v. Solano County Business Development, Inc.* (1979) 92 Cal.App.3d 192 [**102] [154 Cal.Rptr. 700]; *Weeks v. Merritt Bldg. & Constr. Co.* (1974) 39 [****20] Cal.App.3d 520 [114 Cal.Rptr. 209]; *General Ins. Co. v. Superior Court, supra*, 26 Cal.App.3d 176 [hereafter *General Insurance*]; *Frank v. Kozlovsky* (1970) 13 Cal.App.3d 120 [91 Cal.Rptr. 297]; *Steinwinter v. Maxwell* (1960) 183 Cal.App.2d 34 [6 Cal.Rptr. 496].)

Defendants rely primarily on the case of *General Insurance, supra*, 26 Cal.App.3d 176. In that case, the individual performing the work was duly licensed. However, he formed a corporation of which he was the sole owner, president, chairman of the board and responsible managing officer. The corporation [***710] did not obtain a license because of the mistaken belief that the personal license was sufficient. The corporation entered into a contract with defendant and completed performance. After defendant refused to render payment, the corporation brought an action to recover on the contract. The Court of Appeal issued a writ of mandate compelling summary judgment for the defendant because of plaintiff's failure to comply with section 7031. (*General Insurance, supra*, 26 Cal.App.3d at p. 185.)

Although the court in *General Insurance* admitted that "the ultimate statutory purpose [****21] is as well satisfied in the case at bench as it was in *Latipac*" (*General Insurance, supra*, 26 Cal.App.3d at p. 183), it nevertheless refused to apply the doctrine of substantial compliance. Relying on *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141 [308 P.2d 713], *Frank, supra*, 13 Cal.App.3d 120, and the dissent in *Latipac*, the court held that it was "'not free to weigh . . . [equitable] considerations . . . .'" (*General Insurance, supra*, 26

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Cal.App.3d at p. 184, original brackets.)

Notwithstanding the Court of Appeal's apparent agreement with the *dissent* in *Latipac*, it was not free to disregard the clear rule announced by the *majority*. ***HN8*** The doctrine of substantial compliance is well-established in decisional law of this state. (*Roy Brothers Drilling Co., supra*, 123 Cal.App.3d at p. 186.) As the court noted in *Latipac*, "[for] nearly three decades we have developed and applied to cases arising under section 7031 the doctrine of 'substantial compliance'; during that entire period the Legislature has indicated no hint of disapproval of this construction." (*Latipac, supra*, 64 Cal.2d at p. 281; see also Comment, *New Interpretations* [****22] *of California's Contractors' License Law* (1967) 1 U.S.F. L.Rev. 298, 301.)

It has now been almost *five* decades since the doctrine was first applied. The Legislature has manifested no disapproval. In the limited and extraordinary circumstances in which it is applied, the policies underlying the doctrine **[*288]** remain compelling. *Gatti, Latipac*, and the cases that have followed them continue to provide the framework for determining whether a contractor has substantially complied with section 7031. To the extent that *General Insurance, supra*, 26 Cal.App.3d 176 rests on the logic of the *Latipac* dissent, it is disapproved.

This case is more similar to *Schantz v. Ellsworth* (1971) 19 Cal.App.3d 289 [96 Cal.Rptr. 783]. In *Schantz*, the plaintiff was personally licensed as a real estate broker. He also did business under the fictitious name "Investment Trends." The plaintiff had not complied with section 2731 of the California Administrative Code, which requires a real estate broker using a fictitious name to obtain a license under the fictitious name. Section 10136, a parallel provision to section 7031, provides that no real estate broker or real [****23] estate salesman "shall maintain any action . . . for the collection of compensation . . . without alleging and proving that he was duly licensed . . . at the time the cause of action arose."

The plaintiff in *Schantz* was allowed to bring an action under a contract made and performed while using the fictitious name. The Court of Appeal held that all section 10136 "literally" requires is proof that the plaintiff was a "duly licensed" real estate [**103] broker. Therefore, it "does not preclude maintenance of [an] action by one who holds a valid real estate broker's license but who has failed to obtain . . . a license for the use of a fictitious name." (*Schantz, supra*, 19 Cal.App.3d at p. 293.)

The court acknowledged that failure to obtain a license for the fictitious name may be grounds for disciplinary action by the Real Estate Commissioner. (§ 10177, subd. (d).) However, it reasoned that "[the] purpose of the licensing requirement is to protect the public from the perils incident to dealing with incompetent or untrustworthy real estate practitioners. [Citations.] The statutory purpose, insuring [***711] the competency and trustworthiness of real estate practitioners, [****24] is satisfied by proof of plaintiff's valid real estate broker's license. It was in connection with the application for and issuance of that license that his competency and trustworthiness were examined." (*Schantz, supra*, 19 Cal.App.3d at pp. 292-293.)

The policy considerations here are indistinguishable from those in *Schantz*. Plaintiff obtained a license under the name "Artko." In connection with the issuance of that license, his qualifications were examined and approved. Although he used a different name and should have obtained a separate license to comply with section 7028.5, his qualifications did not change, nor did the status or form of his business. He was simply using a different name for the same sole proprietorship. Unlike the plaintiff in *Schantz*, he was using his *own* name so there was no need to file a fictitious **[*289]** business name statement. (See § 17900.) [8] As in *Schantz*, the plaintiff here has substantially complied with the licensing statute.

[****25] Defendant attempts to rely on a technicality to defeat plaintiff's claims. This technicality is unrelated to defendant's real dispute with plaintiff -- the *terms* of the remodeling agreements. That dispute was resolved by the trial court in plaintiff's favor. To allow defendant to prevail on a technicality would be to allow section 7031 to be used as a "'shield for the avoidance of a just obligation.'" (*Latipac, supra*, 64 Cal.2d at p. 281; *Gatti, supra*, 27 Cal.2d at p. 690.)

"The purpose of the licensing requirement is to protect the public from the perils incident to contracting with incompetent or untrustworthy contractors." (*Davis Co. v. Superior Court* (1969) 1 Cal.App.3d 156, 158 [81 Cal.Rptr. 453]; see also *Rushing v. Powell* (1976) 61 Cal.App.3d 597, 604 [130 Cal.Rptr. 110]; *Weeks, supra*, 39 Cal.App.3d at p. 525.) In this case, "the policy of the licensing statute has been effectively realized, and . . . defendant has received in full measure the protection intended by the Legislature." (*Latipac, supra*, 64 Cal.2d at p. 287.) As in *Latipac*, "[fidelity] to precedent and considerations of equity each preclude us from requiring the [****26] wholly gratuitous enrichment of defendant at the expense of plaintiff . . . ." (*Ibid.*) Plaintiff substantially complied with the Contractors License Law and should not be denied relief.

[**104] III.

CA(4a) **(4a)** Defendants also assert that plaintiff is barred under section 7159 from recovering for work completed on the San Fernando Way residence and the Lombard Street flats because there were no written contracts for those jobs. That section applies to "home improvement contracts" between a contractor and an "owner or tenant" for "work upon a building or structure for proposed repairing [or] remodeling" where the aggregate contract price exceeds $ 500.

[*290] Section 7159 provides that every such contract and any changes in the contract "shall be evidenced by a writing and shall be signed by all the parties to the contract . . . ." [9] ***HN9*** [***712] A "home improvement contract" is defined as an agreement between a contractor and an owner "for the performance of a home improvement . . . ." (§ 7151.2.) A "home improvement" is defined

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as "the repairing, remodeling, altering, converting, or modernizing of, or adding to, residential property . . . ." (§ 7151.)

[****27] A violation of section 7159 is punishable as a misdemeanor. Defendants contend that since the agreements between plaintiff and defendant did not conform to the requirements of section 7159, they are illegal and unenforceable as violative of public policy.

Plaintiff responds that section 7159 was intended to protect unsophisticated home owners and tenants from overreaching by unscrupulous contractors, not to protect persons such as defendants, who own several properties for investment purposes. If section 7159 does apply, plaintiff contends that a contract entered into in violation of the statute is not void because the exclusive remedies for noncompliance are those provided in the statute.

At least one court has agreed with plaintiff regarding the primary purpose of section 7159, concluding that the statute is "intended as a protection for *consumers* in an economic area which otherwise might well provide opportunity for abuse by contractors." (*Calwood Structures, Inc. v. Herskovic* (1980) 105 Cal.App.3d 519, 522 [164 Cal.Rptr. 463], italics added.)

An inexperienced tenant or homeowner, contracting for repairs or remodeling of his own home, might be much more vulnerable [****28] to a dishonest contractor than is an investor who derives income from improving and either selling or renting multiple properties. ***CA(5)*** **(5)** Defendants, as real estate investors, do not fall squarely into the class which section 7159 was most clearly enacted to protect.

However, even experienced real estate investors will benefit from the protection offered by section 7159. Contractors should be encouraged to **[*291]** utilize written contracts for *all* home improvement jobs, precisely to avoid the kind of dispute which arose here.

The agreements here do fall squarely within the statutory definitions. Plaintiff, a contractor, and defendant, an owner, contracted to repair and remodel residential property for a price which exceeded $ 500. **10** Given the clear statutory language and the important public policy which supports it, the statute, with its misdemeanor sanction, unquestionably *applies* in this situation. [**105] The question is whether noncompliance with section 7159 renders the contracts *void*.

[****29] ***CA(6)*** **(6)** ***HN11*** Generally a contract made in violation of a regulatory statute is void. (*Vitek, supra*, 34 Cal.App.3d at p. 591.) Normally, courts will not "'lend their aid to the enforcement of an illegal agreement or one against public policy . . . .'" (*Felix v. Zlotoff* (1979) 90 Cal.App.3d 155, 162 [153 Cal.Rptr. 301]; *Norwood v. Judd* (1949) 93 Cal.App.2d 276, 288-289 [209 P.2d 24].) This rule is based on the rationale that "the public importance of discouraging such prohibited transactions outweighs equitable considerations [***713] of possible injustice between the parties." (*Southfield v. Barrett* (1970) 13 Cal.App.3d 290, 294 [91 Cal.Rptr. 514].)

CA(7a) **(7a)** However, "the rule is not an inflexible one to be applied in its fullest rigor under any and all circumstances. A wide range of exceptions has been recognized." (*Southfield v. Barrett, supra*, 13 Cal.App.3d at p. 294.) For example, the rule will not be applied where the penalties imposed by the Legislature exclude by implication the additional penalty of holding the contract void. (*Vitek, supra*, 34 Cal.App.3d at pp. 591-592; *Calwood Structures, supra*, 105 Cal.App.3d at p. 522.) Further, illegal [****30] contracts will be enforced to avoid unjust enrichment to the defendant at the expense of the plaintiff. (*Southfield v. Barrett, supra*, 13 Cal.App.3d at p. 294.)

Plaintiff asserts that a contract entered into in violation of section 7159 is not for that reason void because the exclusive penalties for noncompliance are those provided in the statute.

HN12 Violation of section 7159 is a misdemeanor punishable by fine and/or imprisonment. Nothing in the statute declares that an oral contract entered into in contravention of section 7159 shall be void. ***CA(8)*** **(8)** Whether the statute is to be interpreted as providing exclusive penalties depends upon the **[*292]** intent of the Legislature. (*Calwood Structures, supra*, 105 Cal.App.3d at p. 522.)

The original version of section 7159, enacted in 1969 (Stats. 1969, ch. 1583, § 15, pp. 3220-3221) was effective from 1970 through 1975. It provided explicitly that "[contracts] which fail to comply with the provisions of this section shall not be deemed to be invalid solely because of noncompliance." (*Id.*, at p. 3221.) However, the statute was substantially amended in 1975, and this language was deleted. (Stats. 1975, ch. 511, § 1, pp. [****31] 1041-1042.)

"Where the Legislature undertakes to amend existing law by deleting an express provision of the previous statute, it is presumed the Legislature intended to change the law." (*People v. Schmel* (1975) 54 Cal.App.3d 46, 51 [126 Cal.Rptr. 317]; accord *Carlos v. Superior Court* (1983) 35 Cal.3d 131, 143 [197 Cal.Rptr. 79, 672 P.2d 862]; *In re Marriage of Banks* (1974) 42 Cal.App.3d 631, 636 [117 Cal.Rptr. 37].) Accordingly, this court must presume that the Legislature did not intend the express penalty provisions of section 7159 to be exclusive.

HN13 Although the penalties provided by section 7159 are no longer exclusive, there is no indication that the Legislature intended that *all* contracts made in violation of section 7159 are void. Absent an express statutory *prohibition*, other exceptions to the general rule that illegal contracts are unenforceable may be applied.

CA(7b) **(7b)** ***HN14*** In compelling cases, illegal contracts will be enforced in order to "avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff." (*Southfield v. Barrett, supra*, 13 Cal.App.3d at p. 294.) "'In each case, the extent of

enforceability and [****32] the kind of remedy granted depend upon a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts.'" (*South Tahoe Gas Co. v. Hofmann Land Improvement Co.* (1972) 25 Cal.App.3d 750, 759 [102 Cal.Rptr. 286].)

CA(4b) **(4b)** Application of these factors to the contracts at issue here supports the conclusion [**106] that they should be enforceable. First, the policy of section 7159 is to encourage written contracts for home improvements in order to protect unsophisticated consumers. (See *Calwood Structures, supra*, 105 Cal.App.3d at p. 522.) However, defendants are not members of the group primarily in need of the statute's protection. In this context, the misdemeanor penalties provided in the statute should be sufficient. It will not defeat the statutory policy to allow plaintiff to recover for the reasonable value of the work performed.

[*293] Second, a contract made in violation of section 7159 does not involve the kind of [***714] illegality which automatically renders an agreement void. The contracts at issue here were not *malum in se.* They were not immoral in character, inherently inequitable or designed [****33] to further a crime or obstruct justice. (See *Vitek, supra*, 34 Cal.App.3d at p. 593.) There was nothing "intrinsically illegal" about the agreements between plaintiff and defendant to repair and remodel the residential property. Rather, the contracts were *malum prohibitum*, and hence only *voidable* depending on the factual context and the public policies involved. (*Ibid.*)

Finally, the facts of this case support the conclusion that the contracts between plaintiff and defendant, while they violated section 7159, should nevertheless be enforced. Defendant is a real estate investor, not an unsophisticated homeowner or tenant. Further, because plaintiff and defendants were friends, who had had business dealings in the past, the failure to comply with the strict statutory formalities is, perhaps, understandable. (See *Calwood Structures, supra*, 105 Cal.App.3d at p. 522.) Plaintiff fully performed according to the oral agreements. Defendants accepted the benefits of the oral agreements. If defendants are allowed to retain the value of the benefits bestowed by plaintiff without compensating him, they will be unjustly enriched.

This case is similar to *Calwood Structures,* [****34] *supra*, 105 Cal.App.3d 519. In that case, the contractor entered into an oral agreement with the defendants for certain home improvements. When the work was completed, defendants refused to pay. An action to recover the balance was initiated, and the defendants demurred on the basis that the agreement had not been in writing as required by section 7159. The trial court sustained the demurrer.

The Court of Appeal reversed, relying in part on the exception to the general rule which permits enforcement of an illegal contract to prevent unjust enrichment. 11 The court concluded, "appellant undertook to provide certain home improvements at the instance and request of respondents and, so far as the complaint discloses, completed them. The parties, it is alleged, were social acquaintances and the liabilities incurred by appellant in carrying out the project arose only from the exercise of authority granted him **[*294]** seriatim by respondents . . . . Accordingly, 'the present case is one in which plaintiff [might] be entitled to some relief. The violation of law was one which did not involve serious moral turpitude; the policy of protecting the public from the future consequences [****35] of the contract will not be furthered [by denying relief] because the transaction has been completed; . . . defendant [could] be unjustly enriched at the expense of plaintiff . . .; and the penalty resulting from denial of relief [could] be disproportionately harsh in relation to the violation involved.'" (*Calwood Structures, supra*, 105 Cal.App.3d [**107] at p. 522, brackets and second and third ellipses in original.)

[****36] As a contractor, plaintiff should have been aware that the contracts were required to be in writing. 12 Indeed, a written [***715] contract and written modifications explicitly delineating the price for the work involved here would have avoided this litigation. Plaintiff's violation of the statute is a misdemeanor, punishable by fine or imprisonment. (§ 7159.) However, in this factual context, enforcing the oral agreements does not defeat the policy of the statute. The penalty which would result from the denial of relief would be disproportionately harsh in relation to the gravity of the violations.

[****37] IV.

CA(1c) **(1c)** Plaintiff qualified for a contractor's license on behalf of his sole proprietorship. The fact that the license was not issued in his name did not deprive defendants of the full protection contemplated by the license requirement of the Contractors License Law. Plaintiff substantially complied with section 7031. He should not be denied compensation for his work.

CA(4c) **(4c)** The oral contracts for the remodeling work on defendants' residential property are enforceable, notwithstanding section 7159. To deny relief would be to impose an unduly harsh penalty on plaintiff and to leave defendants unjustly enriched. Public policy would not be effectively served by allowing such an inequity.

The judgments in favor of plaintiff are affirmed.

Concur by: KAUS

Concur

[*295] **KAUS ▾, J.** I agree wholeheartedly. I write separately only to express my doubt that plaintiff is guilty of even a technical violation of section 7028.5 of the Business and Professions Code.

Section 7028.5 prohibits the responsible managing officer of a licensed "copartnership, corporation, firm, association *or other organization*" -- my emphasis -- to engage in business as an individual. Plaintiff was never an organization. [****38] He was always an individual, albeit one who called himself Artko from time to time. Therefore he could not possibly violate section 7028.5. There may have been a cosmetic defect in the way he procured his license, but even that was minimal since section 7068, subdivision (a) permits the issuance of a license to an individual who "shall qualify by personal appearance or by the appearance of his responsible managing employee."

Dissent by: MOSK ▾

Dissent

MOSK ▾, J. I dissent.

To achieve what they perceive as a desirable result, the majority employ equity in a simple contract action and in doing so they emasculate a legislative enactment that is clear and unambiguous.

Indeed, the majority concede, as they must, that "Since plaintiff did not have a license in his own name, he performed these contracts in violation of sections 7028.5 and 7117. Hence, he was not duly licensed. If literal compliance with section 7031 is required, he cannot legally maintain these actions." (*Ante*, p. 285.) Nevertheless [**108] the majority proceed by deft legerdemain to find that "the policy," if not the text, of the law has been satisfied. (*Ibid.*) This result, obtained by categorizing required [****39] compliance with the statute as "a technicality" (*ante*, p. 289), is untenable in an action at law.

To complete their total disregard of governing statutes, the majority even permit enforcement of an alleged oral contract for home improvements, despite section 7159 which makes it a crime to enter into such an agreement. It is inconceivable to me that a contract, specifically made illegal by the Legislature, can be enforced civilly on a theory that a civil judgment "does not defeat [***716] the policy of the statute." (*Ante*, p. 294.) The result may be that the plaintiff will enjoy the fruits of his money judgment in a jail cell.

The Court of Appeal reached the proper result in this case. Therefore I adopt as my own the relevant parts of the opinion of Justice Rouse, concurred in by Presiding Justice Kline and Justice Miller:

[*296] Defendants first contend that plaintiff was required to allege and prove that he possessed a valid contractor's license in his name in order to recover damages in this action.

Section 7031 of the Business and Professions Code [1] provides that "No person engaged in the business or acting in the capacity of a contractor, may bring or maintain [****40] any action in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract, except that such prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029."

In this case, no evidence was introduced of a contractor's license in the name of "Krikor Asdourian." Instead, the evidence established that the license was issued to "Artko Remodeling and Construction" (Artko). Plaintiff was the sole owner and operator of Artko and his name appears as the responsible managing party on the license.

Plaintiff argues that there is no legally significant distinction between "Krikor Asdourian" and "Artko," because Artko is merely another name [****41] under which he was doing business. In this instance, however, there is no evidence that plaintiff dealt with defendants in the capacity of Krikor Asdourian doing business as Artko. Artko's name does not appear on the contract for the construction work. Moreover, plaintiff testified that he never filed a fictitious name statement, because he was using the name Krikor Asdourian for his business.

Even assuming that Krikor Asdourian was doing business as Artko, plaintiff's argument is without merit. In *Rothwell v. Vaughn* (1920) 49 Cal.App. 429 [123 P. 611], the court acknowledged that there is a legally significant distinction between an individual and a fictitious business name. The issue there was whether an action could be maintained despite the fact that the plaintiff had not complied with the fictitious name statute. The court concluded that "As this contract was not made in the fictitious or partnership name, but was made in the individual names of the parties, it is clear that the section [former Civ. Code, § 2468] does not prohibit the parties maintaining an action of this nature." (P. 435.)

Plaintiff next relies on section 7025, which defines "person," as [****42] used in the chapter requiring the contractor's license, as "an individual, a firm, **[*297]** copartnership, corporation, association or other organization . . . ." Plaintiff then asserts that a fictitious business name does not fall within the language of this statute. Thus, he contends that there is only one "person" to be licensed pursuant to section 7031.

[**109] However, a "firm" is defined, among other things, as "the name, title, or style under which a company transacts business: the firm name . . . ." (Webster's Third New Internat. Dict. (3d ed. 1961) p. 856; "Business entity or enterprise. Unincorporated business . . . ." Black's Law Dict. (5th ed. 1979) p. 571, col. 1.) Under either of these definitions, Artko is a firm. 2 Thus, both Artko and Krikor Asdourian are "[persons]" within the meaning of section 7025 [***717] and each must comply with the licensing requirement of section 7031.

[****43] Therefore, in a literal application of section 7031, the license issued to Artko can be of no use to plaintiff as a means of satisfying the licensing requirement where Artko was not involved in either the execution or the performance of the contract.

Plaintiff next contends that the facts of this case merit the application of the doctrine of substantial compliance. He points out that the purpose of the licensing requirement is to protect the public against dishonest or incompetent persons becoming involved in the contracting business. (*Lewis & Queen* v. *N. M. Ball Sons* (1957) 48 Cal.2d 141, 149-150 [308 P.2d 713].) He asserts that consistent with this purpose, the doctrine of substantial compliance has been applied where, despite the failure to comply literally with the licensing requirements, the party seeking to escape his obligation has received the full protection which the statute contemplates. (*Latipac, Inc.* v. *Superior Court* (1966) 64 Cal.2d 278, 281 [49 Cal.Rptr. 676, 411 P.2d 564]; *Vitek, Inc.* v. *Alvarado Ice Palace, Inc.* (1973) 34 Cal.App.3d 586, 590 [110 Cal.Rptr. 86].) Case law, however, does not support plaintiff's position.

In *Lewis* [****44] *& Queen* v. *N. M. Ball Sons, supra*, 48 Cal.2d 141, one partner was individually licensed, but neither the other partner nor the partnership was. The partnership was not allowed to maintain an action. The California Supreme Court stated, "Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain **[*298]** any action for compensation in the courts of the state [citation]. [para.] . . . [The] courts may not resort to equitable considerations in defiance of section 7031." (*Id.*, at pp. 151-152.)

In *Latipac, Inc.* v. *Superior Court, supra*, 64 Cal.2d 278, the doctrine of substantial compliance was applied. However, in that case, the corporate plaintiff was licensed at the time the contract was executed and the plaintiff performed for 15 months before the license expired. The license was not renewed until two months after the contract terminated. The test for substantial compliance, as articulated by the court, was whether the policy of section [****45] 7031 had been satisfied. To answer that question, the court noted the following three considerations: "(1) the fact that plaintiff held a valid license at the time of contracting, (2) that plaintiff readily secured a renewal of that license and (3) that the responsibility and competence of plaintiff's managing officer were officially confirmed throughout the period of performance of the contract." (*Id.*, at pp. 281-282.) Since all three considerations were present in *Latipac*, the court did not "determine whether any of them, singly or in more limited combination, would constitute 'substantial compliance.'" (*Id.*, at p. 281.)

In *Vitek, Inc.* v. *Alvarado Ice Palace, Inc., supra*, 34 Cal.App.3d 586, substantial compliance with the statute was also found. Although the corporate plaintiff in that case did not possess a valid license at the time the contract was executed, the plaintiff was licensed prior to and during the performance of the contract. To reach its conclusion, the court [**110] focused on the specific language of section 7031 that a contractor must be licensed "*during the performance of such act or contract.*"

General Ins. Co. v. *Superior* [****46] *Court* (1972) 26 Cal.App.3d 176 [102 Cal.Rptr. 541], involved a factual situation more closely analogous to this case. There, the plaintiff corporation was not licensed at the time the contract was executed nor at any time during its performance. The appellate court acknowledged that, since plaintiff's sole owner, president, chairman of the board and responsible managing officer was personally licensed at all times and personally supervised the performance of the contract, the ultimate statutory purpose of [***718] protecting the public, as set forth by the *Latipac* court, was satisfied. However, the court nevertheless held that the doctrine of substantial compliance was inapplicable. (*Id.*, at p. 183.)

In this case, plaintiff was not licensed at the time the contract was executed nor at any time during its performance. However, plaintiff's business, Artko, of which plaintiff was the sole owner, supervisor, and responsible managing party, was duly licensed during this period. Obviously, Artko could never have received and maintained its license unless plaintiff had **[*299]** been able to demonstrate the requisite experience and knowledge deemed necessary for the [****47] safety and protection of the public. Under these circumstances, the ultimate purpose of section 7031 has been served.

However, the *General Ins. Co.* court went further and concluded that a more specific and immediate purpose of section 7031, the practical enforcement of the licensing requirement, must be considered. The court stated, "to disregard its corporate existence [citation] would nullify that part of the licensing law requiring a separate license for a corporation (see Bus. & Prof. Code, §§ 7068, subd. (c), 7069), and to hold that plaintiff has nevertheless substantially complied with Business and Professions Code, section 7031, requiring that it be duly licensed at all times during performance, would emasculate the statutory language and nullify the section's purpose of pragmatically enforcing the Contractors License Law." (26 Cal.App.3d at p. 184.)

Initially, we note that, in contrast to *General Ins. Co.* v. *Superior Court, supra*, 26 Cal.App.3d 176, this action involves an unlicensed individual plaintiff whose business is licensed. However, sections 7068 3 and 7069 are included in article 5, which encompasses licensing procedures, and they contemplate separate [****48] licenses for both individuals and corporations. To ignore the requirement that an individual must be personally licensed would also nullify the purpose of enforcing the Contractors License Law. (Bus. & Prof. Code, § 7000 et seq.)

[****49] Furthermore, as the court pointed out in *General Ins. Co. v. Superior Court, supra*, 26 Cal.App.3d 176, there is only one exception to section 7031: ". . . the situation in which a partnership has failed to secure a separate license but each of its partners is personally licensed." (*Id.*, at p. 184.) The court stated that "the creation of another exception is a matter for the Legislature, [**111] not the courts." (*Id.*, at p. 185.) In accordance with this reasoning, **[*300]** we find that an individual who brings an action in his name alone claiming that he is licensed by reason of a business of which he is an owner, but which is not a party to the action, may not recover damages. [End of Court of Appeal quotation.]

The judgment should be reversed.

Footnotes

[*] Assigned by the Chairperson of the Judicial Council.

[*] Assigned by the Chairperson of the Judicial Council.

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

[2] Subsequent references to "defendant" are intended to refer to Ibrahim Araj alone.

[3] The exact date of the agreement is unclear. Plaintiff apparently signed one copy of the contract on September 29th. The defendant signed another copy on October 4th.

[4] Plaintiff testified that defendant told him "I need the place, I am going to sell it . . . whatever extra expenses cost that [*sic*] is, I will give."

[5] According to the record, the term "punch list" refers to a list, prepared at the end of a construction project, of tasks that must be completed or redone.

[6] In 1961, the Legislature amended section 7031 to make the exception created in *Gatti* explicit in the statute. (Stats. 1961, ch. 1325, § 1, p. 3105.)

[7] At least two courts since *Latipac* have held that section 7031 does not require a license at the time of execution of a contract. (*Gaines, supra*, 136 Cal.App.3d 679; *Vitek, supra*, 34 Cal.App.3d 586; see also, *General Ins. Co. v. Superior Court* (1972) 26 Cal.App.3d 176 [102 Cal.Rptr. 541].) These courts have noted the statute requires the contractor to prove only that he was duly licensed at all times "*during the performance of* [*the*] *act or contract.*" (*Vitek, supra*, 34 Cal.App.3d at p. 590, italics in original.)

[8] The pertinent part of section 17900 provides: "(a) As used in this chapter, 'fictitious business name' means: [para.] (1) *In the case of an individual, a name that does not include the surname of the individual* or a name that suggests the existence of additional owners.

". . . .

"(b) A name that suggests the existence of additional owners within the meaning of subdivision (a) is one which includes such words as 'Company,' '& Company,' '& Son,' '& Sons,' '& Associates,' 'Brothers,' and the like, but not words that merely describe the business being conducted." (Italics added.)

The purpose of the fictitious name statute is to make a public record of persons doing business under a fictitious name, so that "those dealing with them may at all times know who are the individuals with whom they are dealing or to whom they are giving credit or becoming bound." (*Levelon Builders, Inc. v. Lynn* (1961) 194 Cal.App.2d 657, 662-663 [15 Cal.Rptr. 582].) Since plaintiff used his own name, defendant was fully aware at all times "with whom he was dealing" and "to whom he was becoming bound."

9 ***HN10*** -

The pertinent part of section 7159 provides: "This section shall apply only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to such transaction and who contracts with an owner or tenant for work upon a building or structure for proposed repairing, remodeling, altering, converting, or modernizing such building or structure and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars ($ 500). [para.] Every home improvement contract and any changes in the contract subject to the provisions of this section shall be evidenced by a writing and shall be signed by all the parties to the contract thereto. . . ."

10 Defendants do not argue that the contract for the conversion of the garage on Lombard Street into commercial space is subject to the requirements of section 7159. The conversion of a garage into a restaurant does not qualify as a "home improvement" under either the plain meaning of the statutory language or the apparent purpose of the legislation.

11 The court in *Calwood Structures* also based its holding in part upon a finding that the "'[excludes] by implication the additional penalty involved in holding the illegal contract unenforceable.'" (*Calwood Structures, supra*, 105 Cal.App.3d at p. 522.) The court was evidently unaware of the legislative history of section 7159, including the deletion of the provision which declared that contracts made in violation of the statute were not to be deemed invalid solely on that basis. To the extent that the decision in *Calwood Structures* is dependent upon this oversight, it is disapproved. However, the court also recognized that the contract was enforceable for the same reasons the contracts in the instant case should be enforced.

12 Lack of knowledge among contractors of regulations governing home improvement contracts is evidently a growing problem. At a public hearing of the Assembly Committee on Business and Professions in August of 1981, Armand Fontaine, executive vice president of the American Building Contractors Association, testified that a specialized board is needed to regulate contractors doing home improvements. According to Mr. Fontaine, "this is a very big problem with us. [You may have] the greatest builder in the world, but when he enters the home improvement area, he doesn't know that he's got some 50 or 60 different regulations he's got to abide by in the contract form . . . ." (Assem. Com. on Bus. & Prof. Contractors' State License Board: Needed Improvements in Administration, Structure and Law Enforcement (1981) p. 23.)

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1 Unless otherwise indicated, all statutory references are to the Business and Professions Code.

2 Moreover, assuming that plaintiff was doing business as Artko, section 17902, which defines "person," as used in the fictitious name context, does not include a "firm." The statute thus distinguishes between an individual and an individual doing business under a fictitious name.

3 At all times here pertinent, section 7068 provided that "The board shall require an applicant to show such degree of knowledge and experience in the classification applied for, and such general knowledge of the building, safety, health and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public. An applicant shall qualify in regard to his experience and knowledge in one of the following ways: [para.] (a) If an individual, he shall qualify by personal appearance or by the appearance of his responsible managing employee. [para.] (b) If a copartnership or a limited partnership, it shall qualify by the appearance of a general partner or a responsible managing employee. [para.] (c) *If a corporation, or any other combination or organization, it shall qualify by the appearance of the responsible managing officer, the responsible managing employee, or a member of the personnel of such applicant.* [para.] *A responsible managing employee for the purpose of this chapter shall mean an employee who is regularly employed by the applicant and is actively engaged in the classification of work for which such responsible managing employee is the qualifying person in behalf of the applicant.*" (Italics added.)

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Takings

Definition

A taking is when the government seizes private property for public use.

Overview

A taking can come in two forms. The taking may be physical, which means that the government literally takes the property from its owner). Or the taking may be constructive (also called a regulatory taking), which means that the government restricts the owner's rights so much that the governmental action becomes the functional equivalent of a physical seizure.

Just Compensation

The Fifth Amendment of the United States Constitution mandates that if the government takes private property for public use, the government must provide "just compensation." Typically, a "just compensation" is determined by an appraisal of the property's fair market value. However, depending on the size and unique nature of the land, it may be difficult to determine the fair market value.

Types of Takings

Many types of government action infringe on private property rights. Accordingly, the Fifth Amendment's compensation requirement is not limited to government seizures of real property. Instead, it extends to all kinds of tangible and intangible property, including but not limited to easements, personal property, contract rights, and trade secrets.

In *United States v. Dickinson*, 331 U.S. 745 (1947), the Supreme Court held that even if the government does not physically seize private property, the action is still a taking "when inroads are made upon an owner's use of it to an extent that, as between private parties, a servitude has been acquired either by agreement or in course of time."

Land Use Regulation

Many regulatory takings disputes arise in the context of land use regulation. *Agins v. City of Tiburon*, 447 U.S. 255 (1980), the Supreme Court held that it there is not a requirement for government compensation where such regulations "substantially advance legitimate governmental interests," and as long as the regulations do not prevent a property owner from making "economically viable use of his land."

Public Purpose

Courts broadly interpret the Fifth Amendment to allow the government to seize property if doing so will increase the general public welfare. In *Kelo v. City of New London*, 545 U.S. 469 (2005), the Supreme Court allowed a taking when the government used eminent domain to seize private property to facilitate a private development. The Court considered the taking to be a public use because the community would enjoy the furthering of economic development. Further, the *Kelo* court determined that a governmental claim of eminent domain is justified if the seizure is rationally related to a conceivable public purpose.

The *Kelo* decision significantly broadened the government's takings power. This caused significant controversy, and states were quick to act to quell concerns about this expansion of power. In response to *Kelo*, many states have passed laws which have restricted governments' takings abilities (such as implementing a stricter definition of what constitutes a "public use," requiring heightened levels of scrutiny to justify an action categorized as a taking, etc).

How Much Compensation is Just?

Generally, the government must pay the market value of seized property. There are, however, many exceptions. The government need not compensate a property owner for the portion of the property's value created by that government.

For example, in *United States v. Fuller*, 409 U.S. 488 (1973), the Supreme Court held that when the federal government condemned a rancher's grazing land, it did not owe compensation for the portion of the land's value derived from its proximity to adjacent, federally owned grazing land.

When is a Regulation a Taking?

Sometimes, a government regulation infringes upon private property ownership to such an extent that the regulation can be considered a taking, thus requiring just compensation. The Supreme Court, over a series of regulatory takings cases, has developed a 4-part test to determine whether a regulation is considered to be a taking.

1. Is the regulation a taking under *Loretto*?
    1. A government regulation is a taking when the government authorizes a permanent physical occupation of real/personal property
2. Is the regulation a taking under *Lucas*?
    1. The regulation is a taking when the regulation causes the loss of all economically beneficial/productive uses of the land, unless the regulation is justified by background principles of property law/nuisance law
3. Is the regulation a taking under *Nollan-Dolan*?
    1. The regulation is a taking if the government demands an exaction that lacks a nexus with a legitimate state interest or lacks proportionality to project's impacts
        1. Exaction – a requirement that the developer provides specified land, improvements, payments, or other benefits to the public to help offset the project's impacts
4. Is the regulation a taking under the *Penn Central* balancing test?
    1. Here a court will look at 3 factors:
        i. The character of the governmental action involved in the regulation
            1. If the government's action is a physical action, rather than a "regulatory invasion," then the action is almost certainly a taking
        ii. The extent to which the regulation has interfered with the owner's reasonable investment-backed expectations for the parcel as a whole
        iii. The regulation's economic impact on the affected prop owner

Noxious Use

Even if a government regulation is deemed a taking, it still may be viewed as justified, as long as it meets the noxious use test, also known as the Mugler-Hadacheck test. Under this test, a regulation adopted under the police power to protect the public health, safety, or welfare is not a taking, even if the taking reduces the value of property.

Remedies for Takings

Under *First Evangelical* (1987), the appropriate remedy for a taking will typically consist of compensatory damages.

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36 Cal. 4th 412 * | 115 P.3d 41 ** | 30 Cal. Rptr. 3d 755 *** | 2005 Cal. LEXIS 7443 **** | 2005 Cal. Daily Op. Service 6163 | 2005 Daily Journal DAR 8415

MW ERECTORS, INC., Plaintiff and Appellant, v. NIEDERHAUSER ORNAMENTAL AND METAL WORKS COMPANY, INC., et al., Defendants and Respondents.

Prior History: [****1] Superior Court of Orange County, No. 01CC00661, David R. Chaffee, Judge. Court of Appeal, Fourth Dist., Div. Three, Nos. G030681, GO30825.
MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc., 115 Cal. App. 4th 512, 9 Cal. Rptr. 3d 351, 2004 Cal. App. LEXIS 131 (Cal. App. 4th Dist., 2004)

Disposition: Reversed in part, affirmed in part.

Core Terms

contractor, license, unlicensed, duly licensed, licensure, substantial compliance, italics, contracts, performance of an act, void, contractor's license, recover compensation, licensing requirements, ornamental, courts, unlicensed contractor, nonlicensure, lapse, circumstances, doctrine of substantial compliance, performance of a contract, former subdivision, general contractor, judicial estoppel, not licensed, decisions, parties, subcontractors, unenforceable, purposes

Case Summary

Procedural Posture
Defendant contractor appealed from a judgment of the Court of Appeal of California, Fourth Appellate District, Division Three, which reversed a summary judgment in favor of the contractor in plaintiff subcontractor's action for money due under two contracts.

Overview
The parties executed contracts for the subcontractor's performance of structural steel work and ornamental steel work. The subcontractor did not obtain a structural steel contractor's license until several weeks after it began work under the structural contract. The court held that the contractor was not judicially estopped to assert nonlicensure as a bar to the subcontractor's recovery. Because the subcontractor was not duly licensed at all times during performance of the structural contract, as required by Cal. Bus. & Prof. Code § 7031(a), and could not alternatively establish its substantial compliance with the licensure requirements in that it had never held a valid California contractor's license prior to beginning performance under former § 7031(d), the subcontractor could not sue to recover any compensation for work performed under that contract. As the Contractors' State License Law, Cal. Bus. & Prof. Code § 7000 et seq., did not automatically void all contracts entered by unlicensed contractors, the subcontractor was not barred from recovering compensation for its work under the ornamental contract on the sole ground that it was unlicensed when it executed that agreement.

Outcome
The court reversed the judgment of the court of appeal insofar as it permitted the subcontractor to sue for compensation for work under the structural contract. The court affirmed the judgment in all other respects.

EXHIBIT [D]–4770

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HN1 **Estoppel, Judicial Estoppel**
Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. The doctrine most appropriately applies when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake. More like this Headnote

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Civil Procedure > ... > Preclusion of Judgments > Estoppel > Judicial Estoppel
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HN2 **Estoppel, Judicial Estoppel**
Judicial estoppel is an equitable doctrine, and its application, even where all necessary elements are present, is discretionary. More like this Headnote

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Civil Procedure > ... > Preclusion of Judgments > Estoppel > Judicial Estoppel
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HN3 **Types of Contracts, Construction Contracts**
See Cal. Bus. & Prof. Code § 7031(a). More like this Headnote

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Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN4 **Types of Contracts, Construction Contracts**
If the defendant controverts the plaintiff's proper licensure under Cal. Bus. & Prof. Code § 7031(a), the plaintiff must prove it by producing verified certificates establishing that he or she held all necessary licenses during performance of the work. Cal. Bus. & Prof. Code § 7031(d). More like this Headnote

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Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
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HN5 **Types of Contracts, Construction Contracts**
The bar of Cal. Bus. & Prof. Code § 7031(a) applies regardless of the equities. More like this Headnote

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HN6 **Types of Contracts, Construction Contracts**
Cal. Bus. & Prof. Code § 7031(a) will be applied, regardless of equitable considerations, even when the person for whom the work was performed has taken calculated advantage of the contractor's lack of licensure. Thus, it matters not that the beneficiary of the contractor's labors knew the contractor was unlicensed. Moreover, a contractor cannot circumvent § 7031(a) by alleging the beneficiary's false promise to pay despite the contractor's lack of licensure. More like this Headnote

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Contracts Law > Defenses > Illegal Bargains

HN7 **Types of Contracts, Construction Contracts**
Cal. Bus. & Prof. Code § 7031(a) makes clear that the bar extends to actions in law or equity and applies regardless of the merits of the cause of action. If licensure is controverted, the suing contractor must produce a verified certificate establishing that he or she was duly licensed during the performance of any act or contract covered by the action. Cal. Bus. & Prof. Code § 7031(d). More like this Headnote

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Contracts Law > Defenses > Illegal Bargains

HN8 **Types of Contracts, Construction Contracts**
One fails to meet the technical requirements set forth in Cal. Bus. & Prof. Code § 7031(a), and is ineligible to recover any compensation under the terms of that statute, if, at any time during performance of an agreement for contractor services, he or she was not duly licensed. More like this Headnote

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HN9 **Legislation, Interpretation**
In construing a statute, the reviewing court strives to ascertain and effectuate the legislature's intent. Because statutory language generally provides the most reliable indicator of that intent, the appellate court turns to the words themselves, giving them their usual and ordinary meanings and construing them in context. If the language contains no ambiguity, the court presumes the legislature meant what it said, and the plain meaning of the statute governs. If, however, the statutory language is susceptible of more than one reasonable construction, the court can look to legislative history and to rules or maxims of construction. The court may also consider the impact of an interpretation on public policy, for where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. More like this Headnote

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HN10 **Types of Contracts, Construction Contracts**
The Contractors' State License Law, Cal. Bus. & Prof. Code § 7000 et seq., does not require contractors to operate exclusively by formal contract; it simply seeks to deter them from offering or performing unlicensed services for pay. As amended in 1989, Cal. Bus. & Prof. Code § 7031(a) stresses that an unlicensed contractor may not sue for compensation in law or equity. This implies that licensed contractors have noncontractual remedies to recover for work not covered by a formal contract. Indeed, parties do sometimes operate without, or beyond the boundaries of, a formal contractual arrangement, under an implicit understanding that the contractor is working on a quantum meruit basis. More like this Headnote

Shepardize® - Narrow by this Headnote (34) 2

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN11 **Types of Contracts, Construction Contracts**
The reference to unlicensed performance of both "acts" and "contracts" ensures that one may not avoid the all-or-nothing bar against recovery for unlicensed services simply because there is no formal contract. In other words, one may not recover compensation for work accomplished under a contract unless duly licensed for the work at all times during the performance of that contract. Cal. Bus. & Prof. Code § 7031(a), and, in any event, he or she may not recover compensation for any "act" requiring a license unless duly licensed at all times during the performance of that act. More like this Headnote

Shepardize® - Narrow by this Headnote (40) 2

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN12 **Types of Contracts, Construction Contracts**
Together Cal. Bus. & Prof. Code § 7031(b), (c), (d), and (e) make clear the general rule denying recovery of all compensation for work requiring a contractor's license if a valid license was not in place when performance began, or if licensure lapsed at any time during the work. More like this Headnote

Shepardize® - Narrow by this Headnote (11)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains
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HN13 **Types of Contracts, Construction Contracts**
Cal. Bus. & Prof. Code § 7031(d) (1994) provided that the doctrine of substantial compliance could apply only when, among other things, the contractor, despite a later lapse in licensure, had been duly licensed as a contractor in California prior to the performance of the act or contract for which compensation is sought. More like this Headnote

Shepardize® - Narrow by this Headnote (18) 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains
View more legal topics

HN14 **Types of Contracts, Construction Contracts**
See Cal. Bus. & Prof. Code § 7031(d) (1994). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains
View more legal topics

HN15 **Types of Contracts, Construction Contracts**
In order to invoke the substantial compliance exception of Cal. Bus. & Prof. Code § 7031(d) (1994), a contractor who was technically unlicensed at any time during performance was required to establish that he or she had been duly licensed at some time before performance began. More like this Headnote

Shepardize® - Narrow by this Headnote (6)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
View more legal topics

HN16 **Types of Contracts, Construction Contracts**
By specifying that the substantial compliance doctrine applies only to those who "had been" duly licensed in California prior to the performance of the act or contract, Cal. Bus. & Prof. Code § 7031(d) (1994), the statute clearly contemplates that, in order to qualify for this exception, the contractor must have been duly licensed in California at some time before the performance began. More like this Headnote

Shepardize® - Narrow by this Headnote (7) 1

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains
View more legal topics

HN17 **Types of Contracts, Construction Contracts**
In 2003, the legislature amended Cal. Bus. & Prof. Code § 7031(e) to provide that one may establish substantial compliance, despite being unlicensed at some time during performance, if he or she (1) had been duly licensed prior to performance, (2) acted reasonably and in good faith to maintain proper licensure, (3) did not know or reasonably should not have known that he or she was not duly licensed when performance of the act or contract commenced, and (4) acted promptly and in good faith to reinstate his or her license upon learning it was invalid. More like this Headnote

Shepardize® - Narrow by this Headnote (34)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains
Transportation Law > Private Vehicles > Operator Licenses > Reinstatement
View more legal topics

HN18 **Types of Contracts, Construction Contracts**
As worded, Cal. Bus. & Prof. Code § 7031 explicitly contemplates a situation in which (1) the contractor had been licensed prior to performance, (2) the previously valid license had expired, or was suspended, at the time performance of the act or contract commenced and (3) the contractor, upon learning of the lapse, acted diligently to reinstate the license, § 7031(e). In an uncodified section of the 2003 amendments, the legislature found and declared that the changes made by this act do not constitute a change in, but are declaratory of, existing law. More like this Headnote

Shepardize® - Narrow by this Headnote (7)

Governments > Legislation > Interpretation

HN19 **Legislation, Interpretation**
A subsequent expression of the legislature as to the intent of a prior statute, although not binding on the court, may properly be used in determining the effect of the prior act. More like this Headnote

Shepardize® - Narrow by this Headnote (1)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN20 **Types of Contracts, Construction Contracts**
See Cal. & Bus. Prof. Code § 7031(a). More like this Headnote

Shepardize® - Narrow by this Headnote (0)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN21 **Types of Contracts, Construction Contracts**
The "act" of executing an agreement is not one for which a contractor seeks compensation; rather, he or she pursues payment for carrying out the contract in a satisfactory manner. Hence, the due licensure of which Cal. Bus. & Prof. Code § 7031(a) speaks is due licensure while the contract itself is being performed. More like this Headnote

Shepardize® - Narrow by this Headnote (3)

Business & Corporate Compliance > ... > Contracts Law > Standards of Performance > Delivery & Tender
Contracts Law > Defenses > Illegal Bargains

HN22 **Standards of Performance, Delivery & Tender**
Generally a contract made in violation of a regulatory statute is void. Under this general rule, where a law requires, for regulatory rather than revenue purposes, that one procure a license before offering or performing certain services and provides a penalty for violation, the contract of an unlicensed person to perform such services will not be upheld. More like this Headnote

Shepardize® - Narrow by this Headnote (7)

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN23 **Types of Contracts, Construction Contracts**
The Contractors' State License Law (CSLL), Cal. Bus. & Prof. Code § 7000 et seq., does not automatically void all contracts entered by unlicensed contractors. The statute expresses no such legislative intent. The CSLL imposes misdemeanor punishment, Cal. Bus. & Prof. Code §§ 7028, 7028.2, and authorizes both injunctive relief, Cal. Bus. & Prof. Code §§ 7028.3, 7028.4, and civil citations and penalties, Cal. Bus. & Prof. Code §§ 7028.6-7028.14, against persons who act as unlicensed contractors. It also expressly bars suits to collect compensation for unlicensed work, Cal. Bus. & Prof. Code § 7031(a), but does not extend the bar to persons who, though they performed while licensed, were unlicensed when they agreed to perform the work. This detailed and comprehensive enforcement scheme thus excludes by implication such an additional penalty. More like this Headnote

Shepardize® - Narrow by this Headnote (42) 3

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains

HN24 **Types of Contracts, Construction Contracts**
An agreement for contractor services has no wrongful object whose enforcement is forbidden by fundamental public policy, Cal. Civ. Code §§ 1595, 1596, 1598, merely because the contractor was unlicensed at the moment he or she executed it. Insofar as unlicensed execution of such a contract violates the regulatory provisions of the Contractors' State License Law (CSLL), Cal. Bus. & Prof. Code § 7000 et seq., the statute provides specified civil and criminal sanctions for such conduct. On the other hand, while the CSLL denies use of the courts to recover compensation for the unlicensed performance of contracting work, the statute nowhere extends that disability to a contractor's unlicensed agreement with a private entity. Courts will not, under such circumstances, extend the harsh sanction of forfeiture beyond the bounds set by the legislature absent a showing that such a result is essential to effectuate the statute's protective purposes. More like this Headnote

Shepardize® - Narrow by this Headnote (39) 3

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Construction Contracts
Contracts Law > Defenses > Illegal Bargains
View more legal topics

HN25 **Types of Contracts, Construction Contracts**
An offer, or acceptance of a solicitation, to perform unlicensed contract work is illegal. If the work offered or solicited is performed without a license, the contractor must rely solely on the other party's good faith for payment, and a claim for compensation will be disallowed under Cal. Bus. & Prof. Code § 7031, regardless of the balance of equities or the manner in which the claim is framed. Proper application of § 7031, and of the other sanctions provided by the Contractors' State License Law, Cal. Bus. & Prof. Code § 7000 et seq., thus rightly discourages contractors from entering arrangements for unlicensed work. More like this Headnote

Shepardize® · Narrow by this Headnote (10)

▼ Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court granted summary judgment in favor of a contractor in a subcontractor's action for money due under two contracts. The parties had executed contracts for the subcontractor's performance of structural steel work and ornamental steel work. The subcontractor did not obtain a structural steel contractor's license until several weeks after it began work under the structural contract. (Superior Court of Orange County, No. 01CC00661, David R. Chaffee, Judge.) The Court of Appeal of California, Fourth Dist., Div. Three, Nos. G030681 and G030825, reversed, holding that the subcontractor was entitled to prove amounts due for its work on the structural contract after the license was issued.

The Supreme Court reversed the judgment of the Court of Appeal insofar as it permitted the subcontractor to sue for compensation for work under the structural contract, and affirmed the judgment in all other respects. The court held that the contractor was not judicially estopped to assert nonlicensure as a bar to the subcontractor's recovery. Because the subcontractor was not duly licensed at all times during performance of the structural contract, as required by Bus. & Prof. Code, § 7031, subd. (a), and could not alternatively establish its substantial compliance with the licensure requirements in that it had never held a valid California contractor's license prior to beginning performance under former § 7031, subd. (d), the subcontractor could not sue to recover any compensation for work performed under that contract. As the Contractors' State License Law (Bus. & Prof. Code, § 7000 et seq.), did not automatically void all contracts entered into by unlicensed contractors, the subcontractor was not barred from recovering compensation for its work under the ornamental contract on the sole ground that it was unlicensed when it executed that agreement. (Opinion by Baxter, J., expressing the unanimous view of the court.) **[*413]**

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES
Classified to California Digest of Official Reports

CA(1) **(1) Estoppel and Waiver § 2—Judicial Estoppel—Definitions and Distinctions.**

Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. The doctrine most appropriately applies when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

CA(2) **(2) Estoppel and Waiver § 2—Judicial Estoppel—Application.**

Judicial estoppel is an equitable doctrine, and its application, even where all necessary elements are present, is discretionary.

CA(3) **(3) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

If the defendant in an action to recover compensation under a construction contract controverts the plaintiff's proper licensure under Bus. & Prof. Code, § 7031, subd. (a), the plaintiff must prove it by producing verified certificates establishing that he or she held all necessary licenses during performance of the work under § 7031, subd. (d).

CA(4) **(4) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

The bar of Bus. & Prof. Code, § 7031, subd. (a), applies regardless of the equities.

CA(5) **(5) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

Bus. & Prof. Code, § 7031, subd. (a), will be applied, regardless of equitable considerations, even when the person for whom the work was performed has taken calculated advantage of the contractor's lack of licensure. Thus, it matters not that the beneficiary of the contractor's labors knew the contractor was unlicensed. Moreover, a contractor cannot circumvent § 7031, subd. (a), by alleging the beneficiary's false promise to pay despite the contractor's lack of licensure.

CA(6) **(6) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

Bus. & Prof. Code, § 7031, subd. (a), makes clear that the bar extends to actions in law or equity and applies regardless of the merits of the cause of action. If licensure is controverted, § 7031, subd. (d), requires the suing contractor to produce a **[*414]** verified certificate establishing that he or she was duly licensed during the performance of any act or contract covered by the action.

CA(7) **(7) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

One fails to meet the technical requirements set forth in Bus. & Prof. Code, § 7031, subd. (a), and is ineligible to recover any compensation under the terms of that statute, if, at any time during performance of an agreement for contractor services, he or she was not duly licensed.

CA(8) **(8) Statutes § 30—Construction—Language—Literal Interpretation; Plain Meaning Rule.**

In construing a statute, the reviewing court strives to ascertain and effectuate the Legislature's intent. Because statutory language generally provides the most reliable indicator of that intent, the appellate court turns to the words themselves, giving them their usual and ordinary meanings and construing them in context. If the language contains no ambiguity, the court presumes the Legislature meant what it said, and the plain meaning of the statute governs. If, however, the statutory language is susceptible of more than one reasonable construction, the court can look to legislative history and to rules or maxims of construction. The court may also consider the impact of an interpretation on public policy, for where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.

CA(9) **(9) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

The Contractors' State License Law (Bus. & Prof. Code, § 7000 et seq.), does not require contractors to operate exclusively by formal contract; it simply seeks to deter them from offering or performing unlicensed services for pay. As amended in 1989, Bus. & Prof. Code, § 7031, subd. (a), stresses that an unlicensed contractor may not sue for compensation in law or equity. This implies that licensed contractors have noncontractual remedies to recover for work not covered by a formal contract. Indeed, parties do sometimes operate without, or beyond the boundaries of, a formal contractual arrangement, under an implicit understanding that the contractor is working on a quantum meruit basis.

CA(10) **(10) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

The reference to unlicensed performance of both "acts" and "contracts" ensures that one may not avoid the all-or-nothing bar against recovery for unlicensed services simply because there is no formal contract. In other words, one may not recover compensation for work accomplished under a contract unless duly licensed for the work at **[*415]** all times during the performance of that contract (Bus. & Prof. Code, § 7031, subd. (a)), and, in any event, he or she may not recover compensation for any "act" requiring a license unless duly licensed at all times during the performance of that act.

CA(11) **(11) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

Together Bus. & Prof. Code, § 7031, subds. (b), (c), (d), and (e) make clear the general rule denying recovery of all compensation for work requiring a contractor's license if a valid license was not in place when performance began, or if licensure lapsed at any time during the work.

CA(12) **(12) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts—Substantial Compliance Exception.**

Bus. & Prof. Code, § 7031, former subd. (d), as adopted in 1994, provided that the doctrine of substantial compliance could apply only when, among other things, the contractor, despite a later lapse in licensure, had been duly licensed as a contractor in California prior to the performance of the act or contract for which compensation was sought.

CA(13) **(13) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts—Substantial Compliance**

Exception.

In order to invoke the substantial compliance exception of Bus. & Prof. Code, § 7031, former subd. (d), as adopted in 1994, a contractor who was technically unlicensed at any time during performance was required to establish that he or she had been duly licensed at some time before performance began.

CA(14) **(14) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts—Substantial Compliance Exception.**

By specifying that the substantial compliance doctrine applies only to those contractors who had been duly licensed in California prior to the performance of the act or contract, Bus. & Prof. Code, § 7031, former subd. (d), as adopted in 1994, clearly contemplated that, in order to qualify for this exception, the contractor must have been duly licensed in California at some time before the performance began.

CA(15) **(15) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts—Substantial Compliance Exception.**

In 2003, the Legislature amended Bus. & Prof. Code, § 7031, subd. (e), to provide that a contractor may establish substantial compliance, despite being unlicensed at some time during performance, if he or she (1) had been duly licensed prior to performance, (2) acted reasonably and in good faith to maintain proper licensure, (3) did not know or reasonably should not have known that he or she was not duly licensed when performance **[*416]** of the act or contract commenced, and (4) acted promptly and in good faith to reinstate his or her license upon learning it was invalid.

CA(16) **(16) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts—Substantial Compliance Exception.**

As worded, Bus. & Prof. Code, § 7031, subd. (e), explicitly contemplates a situation in which (1) the contractor had been licensed prior to performance, (2) the previously valid license had expired, or was suspended, at the time performance of the act or contract commenced and (3) the contractor, upon learning of the lapse, acted diligently to reinstate the license. In an uncodified section of the 2003 amendments, the Legislature found and declared that the changes made by this act do not constitute a change in, but are declaratory of, existing law.

CA(17) **(17) Statutes § 42—Construction—Aids—Subsequent Expression of Legislature.**

A subsequent expression of the Legislature as to the intent of a prior statute, although not binding on the court, may properly be used in determining the effect of the prior act.

CA(18) **(18) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

The act of executing an agreement is not one for which a contractor seeks compensation; rather, he or she pursues payment for carrying out the contract in a satisfactory manner. Hence, the due licensure of which Bus. & Prof. Code, § 7031, subd. (a), speaks is due licensure while the contract itself is being performed.

CA(19) **(19) Contracts § 7—Legality—Contracts in Violation of Statute.**

Generally a contract made in violation of a regulatory statute is void. Under this general rule, where a law requires, for regulatory rather than revenue purposes, that one procure a license before offering or performing certain services and provides a penalty for violation, the contract of an unlicensed person to perform such services will not be upheld.

CA(20) **(20) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

The Contractors' State License Law (CSLL) (Bus. & Prof. Code, § 7000 et seq.), does not automatically void all contracts entered by unlicensed contractors. The statute expresses no such legislative intent. The CSLL imposes misdemeanor punishment (Bus. & Prof. Code, §§ 7028, 7028.2), and authorizes both injunctive relief (Bus. & Prof. Code, §§ 7028.3, 7028.4), and civil citations and penalties (Bus. & Prof. Code, §§ 7028.6–7028.14), against persons who act as unlicensed contractors. It also expressly bars suits to collect compensation for unlicensed work (Bus. & Prof. Code, § 7031, subd. (a)), but does not extend the bar to persons who, though they performed **[*417]** while licensed, were unlicensed when they agreed to perform the work. This detailed and comprehensive enforcement scheme thus excludes by implication such an additional penalty.

CA(21) **(21) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

EXHIBIT [D]–4777

An agreement for contractor services has no wrongful object whose enforcement is forbidden by fundamental public policy merely because the contractor was unlicensed at the moment he or she executed it. Insofar as unlicensed execution of such a contract violates the regulatory provisions of the Contractors' State License Law (CSLL) (Bus. & Prof. Code, § 7000 et seq.), the statute provides specified civil and criminal sanctions for such conduct. On the other hand, while the CSLL denies use of the courts to recover compensation for the unlicensed performance of contracting work, the statute nowhere extends that disability to a contractor's unlicensed agreement with a private entity. Courts will not, under such circumstances, extend the harsh sanction of forfeiture beyond the bounds set by the Legislature absent a showing that such a result is essential to effectuate the statute's protective purposes.

CA(22) **(22) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

An offer, or acceptance of a solicitation, to perform unlicensed contract work is illegal. If the work offered or solicited is performed without a license, the contractor must rely solely on the other party's good faith for payment, and a claim for compensation will be disallowed under Bus. & Prof. Code, § 7031, regardless of the balance of equities or the manner in which the claim is framed. Proper application of § 7031, and of the other sanctions provided by the Contractors' State License Law (Bus. & Prof. Code, § 7000 et seq.), thus rightly discourages contractors from entering arrangements for unlicensed work.

CA(23) **(23) Business and Occupational Licenses § 11—Absence of License as Affecting Contracts.**

A subcontractor was not barred from recovering compensation for its work under an ornamental steel contract on the sole ground that it was unlicensed when it executed that agreement. Application of the void contract principle is inappropriate where the subcontractor was fully licensed at all times during contractual performances under the Contractors' State License Law (Bus. & Prof. Code, § 7000 et seq.).

[7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 284B; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 491 et seq.]

[*418]

Counsel: Pine & Pine, Norman Pine, Beverly Tillett Pine; Gibbs, Giden, Locher & Turner, Richard J. Wittbrodt and Marion T. Hack for Plaintiff and Appellant.

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Weinberg, Roger & Rosenfeld and David A. Rosenfeld for District Council of Iron Workers for the State of California and Vicinity as Amicus Curiae on behalf of Plaintiff and Appellant.

Arter & Hadden, Lord, Bissell & Brook, William S. Davis; Arter & Hadden, Musick Peeler & Garrett and Jack W. Fleming for Defendants and Respondents.

Jones & Mayer, [****2] Kimberly Hall Barlow and Elena Q. Gerli for League of California Cities as Amicus Curiae on behalf of Defendants and Respondents.

Judges: Baxter, J., expressing the unaminous view of the court.

Opinion by: BAXTER [**43]

Opinion

[***758] **BAXTER, J.**—To protect the public, the Contractors' State License Law (CSLL; Bus. & Prof. Code, § 7000 et seq.) 1 imposes strict and harsh penalties for a contractor's failure to maintain proper licensure. Among other things, the CSLL states a general rule that, regardless of the merits of the claim, a contractor may not maintain any action, legal or equitable, to recover compensation for "the performance of any act or contract" unless he or she was duly licensed "*at all times* during the performance of that *act or contract*." (§ 7031, subd. (a) (section 7031(a)), italics added.)

Earlier case law softened the severity of this scheme by allowing contractors, [****3] though technically unlicensed at the time of performance, to show they had substantially complied with licensure requirements. However, the CSLL has since limited the availability of the substantial compliance exception. In particular, the statute specifies that "[t]he judicial doctrine of substantial compliance shall not apply" unless the contractor "*had* been duly licensed as a contractor in this state *prior* to the performance of the *act or contract*" for which licensure was required. (§ 7031, subd. (e), italics added; cf. *id.*, former **[*419]** subd. (d); Stats. 1994, ch. 550, § 1, p. 2803 (hereafter, references to section 7031, former subdivision [**44] (d) are to this version, unless otherwise noted).)

Here we address several questions about the application of these CSLL provisions. Our most significant conclusions are these: (1) Where applicable, section 7031(a) bars a person from suing to recover compensation for *any* work he or she did under an agreement for services requiring a contractor's license unless proper licensure was in place *at all times* during such contractual performance. (2) Section 7031(a) does not allow a contractor who was unlicensed at any time during [****4] contractual performance nonetheless to recover compensation for individual *acts* performed while he or she *was* duly licensed. (3) The statutory exception for substantial compliance is not available to a

EXHIBIT [D]–4778

contractor who had not been duly licensed at some time *before beginning* performance under the contract. (4) However, if fully licensed at all times during contractual *performance*, a contractor is not barred from recovering compensation for the work solely because he or she was unlicensed when the contract was *executed*.

To resolve this particular case, we further determine that the doctrine of judicial estoppel does not bar defendant, by virtue of allegedly inconsistent positions it took in related litigation, from contesting plaintiff's licensure.

These conclusions require that we affirm in part, and reverse in part, the Court of Appeal's judgment.

FACTS

The pertinent facts, as developed on defendant's motion for summary judgment, are essentially undisputed. Owner Disney Corporation (Disney) constructed a hotel, with Turner Construction Company (Turner) as the general contractor. Turner contracted with defendant Niederhauser Ornamental and Metal Works [****5] Company, Inc. (Niederhauser) to perform specialized metal work on the project.

Niederhauser, in turn, awarded two subcontracts to plaintiff MW Erectors, Inc. (MW). On or about October 11, 1999, [***759] Niederhauser and MW executed a contract for MW's performance of "structural" steel work (structural contract). On or about November 12, 1999, the same parties entered a second contract for MW's performance of "ornamental" steel work (ornamental contract).

MW began work under the structural contract on or before December 3, 1999, but did not obtain a C-51 structural steel contractor's license (see Cal. **[*420]** Code Regs., tit. 16, § 832.51) until December 21, 1999. Work on the ornamental contract began in early January 2000.

MW subsequently sued Niederhauser and Niederhauser's payment bonds, seeking alleged amounts due of $ 955,553 for work under the structural contract and $ 366,694 for work under the ornamental contract. 2 Niederhauser moved for summary judgment, alleging that MW's claim was barred under section 7031(a), because MW had not been properly licensed at all times during the performance of its contracts. Niederhauser asserted that MW had no C-51 license [****6] when it began performance of the structural steel contract, and that MW never obtained a C-23 ornamental metals license, which Niederhauser asserted was required for performance of the ornamental contract. Niederhauser also averred that MW could not demonstrate its substantial compliance with the C-51 license requirement because it had never held a California contractor's license before beginning work under the contracts in December 1999.

In its response to Niederhauser's motion, MW admitted that it needed a C-51 license for its work under both contracts, and that this license was not technically in place when MW began work on the structural contract. MW also admitted it never obtained a C-23 license. However, MW claimed there [****7] were triable issues that it was in substantial compliance with the C-51 license requirement at all times during its performance of both contracts, [**45] and that no C-23 license was necessary for work under the ornamental contract. In its own subsequent motion, MW asserted that Niederhauser was judicially estopped to contest licensure in any event because, in related litigation, Niederhauser had benefited by its implicit reliance on MW's proper licensing.

The superior court granted summary judgment for Niederhauser and dismissed MW's action. 3 MW appealed, urging that (1) it had shown substantial compliance with the C-51 license requirement, (2) it did not need a C-23 license, and (3) Niederhauser was judicially estopped to question licensure. In its respondent's brief, Niederhauser disputed these points, and also argued, for the first time, that both contracts were illegal, void, and unenforceable *ab initio* because MW was unlicensed when they were executed.

[****8] The Court of Appeal for the Fourth Appellate District, Division Three, reversed. The Court of Appeal first concluded that Niederhauser was not **[*421]** judicially estopped to contest MW's licensure. On the merits, however, the court reasoned as follows: The contracts were not void *ab initio* because of MW's unlicensed status when they were executed. Instead, MW's right to recover depended [***760] on its licensure during its *performance* of the contracts. Under section 7031(a), a contractor must be duly licensed at all times during performance of the "act or contract" for which compensation was sought. Thus, MW could not recover for work it performed under the agreements during the relatively short time *before* it had secured *either* a C-51 or C-23 license. Nonetheless, section 7031(a) allowed MW to obtain court-ordered compensation for every individual act it performed under its contracts *after* all necessary licensure was in place. Thus, MW was entitled to prove amounts due for its work on the structural contract *after* the C-51 license was issued. MW had a valid C-51 license at all times during performance of the ornamental contract. While MW never sought or obtained a C-23 license, [****9] MW raised a triable issue that the C-51 license was sufficient.

Niederhauser sought review, urging that section 7031(a) required due licensure at all times during performance of a contract, and that both contracts were void *ab initio* because MW was not licensed when they were executed. In its answer to the petition, MW asserted, as additional issues (Cal. Rules of Court, rule 28.1(c)), its claims of substantial compliance and judicial estoppel. We granted review. 4 We now conclude that the Court of Appeal's judgment must be affirmed in part and reversed in part.

DISCUSSION

1. *Judicial estoppel.*

MW renews its contention [****10] that Niederhauser is judicially estopped to raise MW's nonlicensure as a bar to MW's recovery because, in related litigation, Niederhauser took, and benefited from, the opposite position. MW asserts that in a lawsuit against the project's owner, Disney, and its general contractor, Turner, Niederhauser obtained money by implicitly representing that MW *was* fully licensed. Under these circumstances, MW insists, Niederhauser may not now assert MW's *nonlicensure* as a bar to MW's recovery of money due to MW from Niederhauser. For reasons we explain below, we agree with the Court of Appeal that application of the judicial estoppel doctrine is not appropriate here.

The evidence bearing on MW's judicial estoppel argument is sketchy. The record reflects that when MW sued Niederhauser for monies due under the **[*422]** two contracts between these parties, Niederhauser cross-complained against Turner and Disney for sums allegedly due and unpaid

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by Turner to Niederhauser. Niederhauser also noticed a mechanic's lien against the project for the sums it claimed it was owed by Turner. MW represents, and Niederhauser apparently does not [**46] dispute, that Niederhauser subsequently settled its claims against [****11] Disney and Turner for a substantial amount.

Neither Niederhauser's cross-complaint nor its mechanic's lien mentioned MW, its work, or its licensure. Nonetheless, MW asserts that a significant portion of the sums sought and obtained by Niederhauser from Turner and Disney were attributable to MW's work under its contracts with Niederhauser. MW urges that Niederhauser's claim of entitlement to such amounts implicitly relied on MW's due licensure because, even if it is itself licensed, a contractor may not use the courts to recover sums attributable to the work of an entity that lacked proper licensure. (Citing *Loving & Evans v. Blick* [***761] (1949) 33 Cal.2d 603, 612–613 [204 P.2d 23], and *Holm v. Bramwell* (1937) 20 Cal. App. 2d 332 [67 P.2d 114] (*Holm*).) Accordingly, MW maintains, Niederhauser is estopped to deny such licensure against MW itself.

CA(1) **(1)** " '***HN1*** "Judicial estoppel precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. [Citations.] ..." ' [Citation.] The doctrine [most appropriately] applies when: '(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial [****12] administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.' " (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 986–987 [12 Cal. Rptr. 3d 287, 88 P.3d 24] (*Aguilar*); see *Scripps Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 943 [134 Cal. Rptr. 2d 101]; *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183 [70 Cal. Rptr. 2d 96] (*Jackson*).)

CA(2) **(2)** " ' "The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. [Citation.]" ' " (*Aguilar, supra*, 32 Cal.4th 974, 986.) Consistent with these purposes, numerous decisions have made clear that ***HN2*** judicial estoppel *is an equitable doctrine*, and its application, even where all necessary elements are present, is discretionary. (E.g., *Aguilar, supra*, 32 Cal.4th 974, 986; *Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 735 [135 Cal. Rptr. 2d 415]; *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1245 [132 Cal. Rptr. 2d 57]; [****13] *People ex rel. Sneddon v. Torch Energy Services, Inc.* (2002) 102 Cal.App.4th 181, 189 [125 Cal. Rptr. 2d 365]; *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th **[*423]** 995, 1016 [79 Cal. Rptr. 2d 544]; see *M. Perez Co., Inc. v. Base Camp Condominiums Assn. No. One* (2003) 111 Cal.App.4th 456, 469 [3 Cal. Rptr. 3d 563]; *International Engine Parts, Inc. v. Feddersen & Co.* (1998) 64 Cal.App.4th 345, 351 [75 Cal. Rptr. 2d 178]; *Jackson, supra*, 60 Cal.App.4th 171, 184, fn. 8.)

CA(3) **(3)** Here, MW cannot invoke judicial estoppel for the simplest of reasons. Section 7031(a) expressly provides that, ***HN3*** "regardless of the merits," one may not "bring or maintain *any action*, or recover in law *or equity* in any action, ... for the collection of compensation for the performance of any act or contract where a license is required ... without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract." (Italics added.) ***HN4*** If the defendant then "controvert[s]" the plaintiff's proper licensure, the plaintiff must prove it by producing verified certificates establishing that he or she held all necessary licenses during performance of the work. (§ 7301, subd. [****14] (d).)

CA(4) **(4)** "Because of the strength and clarity of this policy" (*Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995 [277 Cal. Rptr. 517, 803 P.2d 370] (*Hydrotech*)), ***HN5*** the bar of section 7031(a) applies "[r]egardless of the equities." (*Hydrotech, supra*, at p. 997.) Indeed, it has long been settled that "the courts may not resort to equitable considerations in defiance of section 7031." (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 152 [308 P.2d 713] (*Lewis & Queen*).) " 'Section 7031 represents a legislative determination that the importance of deterring unlicensed persons [**47] from engaging in the contracting [***762] business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] ...' " (*Hydrotech, supra*, at p. 995, quoting *Lewis & Queen, supra*, at p. 151, italics in *Hydrotech*.)

Acceptance of MW's judicial estoppel argument would contravene this strong and clear statutory mandate. It would permit MW to disregard the statutory bar and to recover [****15] compensation for work that required a license, even if MW was not licensed "at all times" during the performance of that work. (§ 7031(a).) We decline to endorse such a result.

We are not persuaded otherwise by the possibility that, in its suit against Disney and Turner, Niederhauser did recover amounts attributable to MW's unlicensed work, and will thus be unjustly enriched if allowed to retain those funds. We have previously disregarded equitable considerations even though the result was to permit another entity to retain sums otherwise due to an unlicensed contractor.

[*424] Thus, in *Lewis & Queen*, the general contractor on a state highway project was sued by an unlicensed subcontractor for amounts due under the subcontracts. The subcontractor asserted, among other things, that because the state had paid the general contractor in full for the project, "justice require[d] that [the general contractor] be compelled to turn over to plaintiff the proceeds from the state contracts attributable to plaintiff's labor." (*Lewis & Queen, supra*, 48 Cal.2d 141, 150.) This court disagreed, concluding that the possibility of the defendant's unjust enrichment could not [****16] overcome the absolute prohibition against use of the courts to recover for unlicensed contract work. (*Id.* at pp. 150–151.)

CA(5) **(5)** ***HN6*** Section 7031(a) will be applied, regardless of equitable considerations, even when the person for whom the work was performed has taken calculated advantage of the contractor's lack of licensure. Thus, it matters not that the beneficiary of the contractor's labors knew the contractor was unlicensed. (*Hydrotech, supra*, 52 Cal.3d 988, 997; *Pickens v. American Mortgage Exchange* (1969) 269 Cal. App. 2d 299, 302 [74 Cal. Rptr. 788] (*Pickens*); *Cash v. Blackett* (1948) 87 Cal. App. 2d 233 [196 P.2d 585].) Moreover, a contractor cannot circumvent section 7031(a) by alleging the beneficiary's false promise to pay despite the contractor's lack of licensure. (*Hydrotech, supra*, 52 Cal.3d at pp. 997–1002.) Accordingly, we are convinced that Niederhauser is not estopped, on grounds of bad faith or unjust enrichment, from asserting a nonlicensure defense against MW.

Of course, the equitable doctrine of judicial estoppel targets not only unfairness between individual parties, but also abuse of the [****17] judicial system itself. Nothing we say here is intended to authorize or condone abusive manipulation of the courts. And the law provides means of avoiding such abuse, if any occurred, under the circumstances alleged here. Disney and Turner could have determined through normal discovery and investigation whether Niederhauser's cross-complaint and mechanic's lien included amounts attributable to the work of an unlicensed subcontractor. For all that appears, the two cross-defendants did precisely that before deciding to settle with Niederhauser. On the

other hand, if persuaded that they had no legal obligation to pay such amounts, they were free to assert the matter as an affirmative [***763] defense to Niederhauser's claims. 5

[****18] **[*425]** [**48] For all these reasons, we conclude that Niederhauser is not judicially estopped to assert MW's nonlicensure as a bar to MW's recovery. Accordingly, we turn to the merits of the licensure issues.

2. *Licensure during performance of "act or contract."*

CA(6) **(6)** Since the CSLL was adopted in 1939 (Stats. 1939, ch. 37, § 1, p. 381), section 7031 has declared that, except as expressly otherwise provided, a contractor may not sue to collect compensation for performance of "any act or contract" requiring a license without alleging that he or she was duly licensed "at all times during the performance of that act or contract." (§ 7031(a).) In 1989, ***HN7*** section 7031(a) was amended to make clear that the bar extends to actions "in law or equity" and applies "regardless of the merits of the cause of action." (Stats. 1989, ch. 368, § 1, p. 1509.) If licensure is controverted, the suing contractor must produce a verified certificate establishing that he or she "was duly licensed ... during the performance of any act or contract covered by the action." (§ 7031, subd. (d).)

MW concedes it needed a C-51 license to perform the work contemplated by the structural steel contract, but began work [****19] thereon before its C-51 license was formally issued on December 21, 1999. Thus, MW admits it "was [not] ... duly licensed ... at all times during the performance of that ... contract." (§ 7031(a).) The Court of Appeal nonetheless held that, while section 7031(a) bars MW from recovering compensation for *pre*license activities under the structural steel contract, MW may recover for all performance rendered under that contract *after* the C-51 license was issued. We disagree.

CA(7) **(7)** At the outset, the Court of Appeal's interpretation contravenes well-entrenched case law. Prior decisions express a consistent understanding that ***HN8*** one fails to meet the technical requirements now set forth in section 7031(a), and is ineligible to recover *any* compensation under the terms of that statute, if, *at any time* during performance of an agreement for contractor services, he or she was not duly licensed. (*Latipac, Inc. v. Superior Court* (1966) 64 Cal.2d 278, 280–281 [49 Cal. Rptr. 676, 411 P.2d 564] (*Latipac*); see *Pacific Custom Pools, Inc. v. Turner Construction Co.* (2000) 79 Cal.App.4th 1254, 1259–1260 [94 Cal. Rptr. 2d 756]; *ICF Kaiser Engineers, Inc. v. Superior Court* (1999) 75 Cal.App.4th 226, 230, fn. 3 [89 Cal. Rptr. 2d 88]; [****20] *Pickens, supra*, 269 Cal. App. 2d 299, 302; *Bierman v. Hagstrom Construction Co.* (1959) 176 Cal. App. 2d 771, 776–777 [1 Cal. Rptr. 826]; *Harrison v. Butte Steel Buildings, Inc.* (1957) 150 Cal. App. 2d 296, 302–303 [310 P.2d 126]; see *Slatkin v. White* (2002) 102 Cal.App.4th 963, 968 [126 Cal. Rptr. 2d 54] **[*426]** (*Slatkin*); see *Owens v. Haslett* (1950) 98 Cal. App. 2d 829, 832 [221 P.2d 252].) Our close examination of section 7031(a) confirms that these decisions are correct.

HN9 ***CA(8)*** **(8)** "In construing a statute, ' "we strive to ascertain and effectuate the Legislature's intent." [Citations.] Because [***764] statutory language "generally provide[s] the most reliable indicator" of that intent [citations], we turn to the words themselves, giving them their "usual and ordinary meanings" and construing them in context. ...' (*People v. Castenada* (2000) 23 Cal.4th 743, 746–747 [97 Cal. Rptr. 2d 906, 3 P.3d 278].) 'If the language contains no ambiguity, we presume the Legislature meant what it said, and the plain meaning of the statute governs.' (*People v. Robles* (2000) 23 Cal.4th 1106, 1111 [99 Cal. Rptr. 2d 120, 5 P.3d 176].) If, however, the statutory language is susceptible of more than one reasonable construction, [****21] we can look to legislative history (*ibid.*) and to rules or maxims of construction (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663 [3 Cal. Rptr. 3d 390, 74 P.3d 166]). '... [T]he court may [also] consider the impact of an interpretation on public policy, for "[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation." ' (*Ibid.*, quoting *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal. Rptr. 67, 743 P.2d 1323].)" (*People v. Smith* (2004) 32 Cal.4th 792, 797–798 [11 Cal. Rptr. 3d 290, 86 P.3d 348].)

Addressing section 7031's plain language, we note first its specific provision that "no person ... may bring or maintain any action, or recover in law or equity in any action ... [**49] for the collection of compensation for the performance of any *act or contract* [requiring] a [contractor's] license" unless he or she alleges (§ 7031(a), italics added), and can prove (§ 7031, subd. (d)), his or her due licensure "at all times" during such performance (§ 7031(a)). The words "at all times" convey the Legislature's obvious intent to impose a stiff all-or-nothing penalty for unlicensed work by specifying that [****22] a contractor is barred from *all* recovery for such an "act or contract" if unlicensed *at any time* while performing it. This all-or-nothing philosophy is directly at odds with the premise that contractors with lapses in licensure may nonetheless recover partial compensation by narrowly segmenting the licensed and unlicensed portions of their performance.

To conclude otherwise, the Court of Appeal focused on the words "act or contract." In the Court of Appeal's view, urged here by MW, the disjunctive phrasing of this passage plainly indicates that a contractor may recover compensation for *either* any "act" or any "contract" requiring a license, so long as he or she was duly licensed at all times during the performance of *either* the "act" or the "contract." Thus, the Court of Appeal reasoned, the contractor may recover compensation for each and every fully licensed "act," **[*427]** even if it occurred in furtherance of a "contract" and the contractor was not licensed "*at all times* during the performance of such ... *contract*" (italics added). We find this parsing of section 7031(a) unpersuasive.

Central to the Court of Appeal's reasoning was its assumption that if the phrase [****23] "act or contract" were construed to mean a contractor could not recover compensation for any work done under a "contract" unless the contractor was duly licensed at all times during performance of that "contract," the disjunctive word "act" would be superfluous. This, the Court of Appeal insisted, would violate the maxim against statutory interpretations that render some words surplusage. (E.g., *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 850 [123 Cal. Rptr. 2d 40, 50 P.3d 751].)

However, the Court of Appeal's strained construction defies the only plausible reading of section 7031(a)'s plain language. At the outset, while the Court of Appeal's interpretation gives meaning to the word "act," it violates the very maxim it seeks to apply by making the word "contract" [***765] surplusage. If a contractor, working to perform an agreement for services that require a license, may recover for any licensed "act" undertaken in the course of that performance, even if not duly licensed at other times during the work, there is no separate meaning to, or use for, the explicit statutory proviso that one may not maintain an action to recover compensation for the performance of any "contract where a license [****24] is required" unless he or she "was ... duly licensed ... *at all times* during the performance of that ... *contract*." (§ 7031(a), italics added.) 6

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On the other hand, Niederhauser argues that, contrary to the Court of Appeal's assumption, there is [****25] a sensible function for both "act" and "contract" as they appear in section 7031(a). In Niederhauser's view, "the disjunctive prohibition against compensation for an 'act' exists to deny any sort of recovery on a theory *other than* breach of contract." (Italics added.) Thus, Niederhauser asserts, "its purpose is to *broaden* the bar of [s]ection 7031 *beyond* a 'contract' to any [unlicensed] 'act' *with or without* a contract." (Italics added.)

CA(9) **(9)** We agree. ***HN10*** The CSLL does not require contractors to operate exclusively by formal contract; it simply seeks to deter them from offering or **[*428]** performing unlicensed services for pay. (See *Hydrotech, supra*, 52 Cal.3d 988, 995.) As amended in 1989, section 7031(a) stresses that an *unlicensed* contractor may not sue [**50] for compensation "in *law or equity*." (Italics added.) This implies that licensed contractors have noncontractual remedies to recover for work not covered by a formal contract. Indeed, parties do sometimes operate without, or beyond the boundaries of, a formal contractual arrangement, under an implicit understanding that the contractor is working on a quantum meruit basis. (See, e.g., *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 237 [115 Cal. Rptr. 2d 900, 38 P.3d 1120]; [****26] *C. Norman Peterson Co. v. Container Corp. of America* (1985) 172 Cal. App. 3d 628, 640 [218 Cal. Rptr. 592]; *Daugherty Co. v. Kimberly-Clark Corp.* (1971) 14 Cal. App. 3d 151, 156, 158 [92 Cal. Rptr. 120].)

CA(10) **(10)** It therefore appears clear that ***HN11*** the reference to unlicensed performance of both "acts" and "contracts" was intended to close a loophole, not to open one. Most reasonably read, this reference ensures that one may not avoid the all-or-nothing bar against recovery for unlicensed services simply because there is no formal contract. In other words, one may not recover compensation for work accomplished under a contract unless duly licensed for the work "*at all times* during the performance of that ... contract." (§ 7031(a), italics added), and, in any event, he or she may not recover compensation for any "act" requiring a license unless duly licensed "*at all times* during the performance of that act" (*ibid.*, italics added).

CA(11) **(11)** We confirm this construction by examining section 7031(a) in its statutory context. Similar "at all times" and "act or contract" [***766] language appears throughout the companion subdivisions of section 7031. (See *id.*, subds. [****27] (b) [one may sue to recover "all" compensation paid to unlicensed contractor "for performance of any act or contract"], (c) [security interest taken to secure payment for performance of any "act or contract" requiring a contractor's license is unenforceable unless contractor was duly licensed "at all times during the performance of the act or contract"], (d) [if due licensure is controverted, suing contractor must produce certificate proving such licensure was in place "at all times during the performance of any act or contract covered by the action"], and (e) [substantial compliance applies only where contractor "had been duly licensed ... prior to the performance of the act or contract," acted reasonably and in good faith to maintain licensure, neither knew nor should have known he or she was unlicensed "when performance of the act or contract commenced," and "acted promptly and in good faith to reinstate his or her license upon learning it was invalid"].) ***HN12*** Together these provisions make clear the general rule denying recovery of *all* compensation for work requiring a contractor's license if a valid license was not in place when performance began, or if licensure lapsed at [****28] any time during the work.

[*429] Our interpretation also conforms to the Legislature's express understanding when it amended section 7031 in 1989. The 1989 amendments, contained in Assembly Bill No. 841 (1989–1990 Reg. Sess.) (Assembly Bill No. 841), modified section 7031(a) to specify that an unlicensed contractor could not recover compensation "in law or equity," "regardless of the merits of the cause of action," and also added subdivision (d) (now subdivision (e)) to section 7031, abrogating the prior judicially developed doctrine of substantial compliance. (Stats. 1989, ch. 368, § 1, p. 1509; see discussion, *post*.) Legislative reports and analyses for Assembly Bill No. 841 uniformly described existing law as "prevent[ing] a person from pursuing legal action for payment for work requiring a contractor's license if the person was not duly licensed ... at all times during the project." 7 (Assem. Com. on Gov. Efficiency and Consumer Protection, Rep. on Assem. Bill No. 841, as amended Apr. 4, 1989, p. 1; Assem. Com. on Gov. Efficiency and Consumer Protection, 3d reading analysis of Assem. Bill No. 841, as amended Apr. 4, 1989, p. 1; Dept. of Consumer Affairs, analysis of Assem. [****29] Bill No. 841, as amended Apr. 4, 1989, p. 1; Cal. Dept. of Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 841 (Aug. 31, 1989) p. 1.) 8

[****30] **[*430]** [**51] [***767] MW urges that section 7031(a)'s disjunctive phrase "act or contract" cannot have meant to bar quantum meruit recovery for individual licensed acts as punishment for a lapse of licensure during other stages of contractual performance, because use of that phrase in the original CSLL far predated the 1989 Legislature's express decision to preclude such relief. We fail to see the point of this argument. The Legislature intended its 1989 amendments to narrow a "loophole" created by the *courts'* use of the substantial compliance doctrine to avoid "apply[ing] the licensing law strictly." (Assem. Com. on Gov. Efficiency and Consumer Protection, Rep. on Assem. Bill No. 841, as amended Apr. 4, 1989, p. 2; Assem. Com. on Gov. Efficiency and Consumer Protection, 3d reading analysis of Assem. Bill No. 841, as amended Apr. 4, 1989, p. 2.) If anything, the Legislature's 1989 action confirms, rather than undermines, the view that the phrase "act or contract" has never allowed contractors to distinguish, for purposes or recovery, among individual licensed and unlicensed "act[s]" in furtherance of a larger contract.

Several amici curiae 9 foresee dire consequences unless we affirm the Court [****31] of Appeal's construction of section 7031(a). These amici curiae predict that contractors who suffer momentary gaps in licensure while performing agreements for licensed services may abandon the work, even though they are by then fully licensed, because they will realize that they have already forfeited all right to sue for compensation for both past and future labor and materials expended on the projects. (Cf., *Slatkin, supra*, 102 Cal.App.4th 963, 969–971.)

However, as indicated above, it has been understood for decades that section 7031 precludes court recovery for any work performed under an agreement for construction services unless the contractor was duly licensed (or met the applicable standards for [****32] substantial compliance with licensure requirements) with respect to *all* the work performed thereunder. Even so, we are not aware that significant problems of the kind described by amici curiae have surfaced. The statute's purpose, to encourage careful adherence to the licensing laws, and to deter persons from offering or providing unlicensed contractor services for pay, has apparently been served. 10

[****33] **[*431]** [**52] [***768] But even if such problems had arisen, we could not depart from section 7031(a)'s clearly expressed purpose to bar recovery for *any* work performed under a construction services agreement unless the provider was duly licensed "at all times during the performance of that ... contract." Here, MW had no valid California contractor's license when it began work under the structural contract. Hence, unless MW can establish substantial compliance with applicable license requirements, it cannot recover, in its suit against Niederhauser, any compensation for its work under that contract. We turn to a consideration of the substantial compliance issue.

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3. *Substantial compliance with C-51 license requirement.*

Because the Court of Appeal concluded that section 7031(a) allowed MW to recover compensation for the great majority of its "act[s]" under the structural contract, insofar as a valid C-51 license was in place when MW performed those "act[s]," the court did not address MW's theory that it could recover in any event because it was, at all times during its work on the project, in substantial compliance with the C-51 licensing requirement. We now conclude that MW cannot establish [****34] substantial compliance.

CA(12) **(12)** MW entered the structural contract in 1999 and performed its work under that contract in 1999 and 2000. At those times, ***HN13*** section 7031, former subdivision (d) provided that the doctrine of substantial compliance could apply only when, among other things, the contractor, despite a later lapse in licensure, "had been duly licensed as a contractor in this state *prior to the performance of the act or contract*" for which compensation is sought. (Stats. 1994, ch. 550, § 1, p. 2803, italics added.) 11

[****35] ***CA(13)*** **(13)** Thus, ***HN15*** in order to invoke former subdivision (d)'s substantial compliance exception, a contractor who was technically unlicensed at any time during performance was required to establish that he or she had been duly licensed at some time *before* performance *began*. The obvious purpose of the subdivision was to limit application of the substantial compliance doctrine to **[*432]** those contractors who, at some time before beginning performance, *had* held valid California contractor's licenses.

MW concedes it had never held a valid California contractor's license until, after commencing performance of the structural steel contract, it received its C-51 license. Hence, MW is ineligible, under section 7031, former subdivision (d), to invoke the doctrine of substantial compliance.

[***769] ***CA(14)*** **(14)** MW suggests it does qualify to demonstrate its substantial compliance during the entire period of performance because it was duly licensed before it *completed* performance. But again, such an assertion contravenes the plain statutory language. ***HN16*** By specifying that the substantial compliance doctrine applies only to those who "had been" duly licensed in this state "*prior to* the performance of the act or contract" [****36] (§ 7031, former subd. (d), italics added), the statute clearly contemplates that, in order to qualify for this exception, the contractor [***770] must have been duly licensed in California *at some time before* the performance began.

The trial court rejected MW's substantial compliance theory on just this ground. MW argues that, to do so, the trial court improperly "rewrote" section 7031, former subdivision (d) to add the words "the commencement of" between "prior to" and "the performance." Not so. The existing statutory language specifies that due licensure must have existed at some time "prior to" performance. That language cannot be squared with the notion that the contractor could first become licensed at some time *during* performance. The words that MW suggests the trial court added would be superfluous.

[**53] MW focuses on the first sentence in former subdivision (d) of section 7031, which provided that "[t]he judicial doctrine of substantial compliance shall not apply ... where the person who [acted as a contractor] has *never* been a duly licensed contractor in this state." (Italics added.) MW insists this means that if a contractor was duly licensed in California at "some point," [****37] he or she was eligible to establish substantial compliance with licensure requirements during performance of the work for which compensation is sought. Any other construction, MW insists, would render meaningless the word "never."

The argument lacks merit. MW's theory omits the proviso that, as one prong of substantial compliance, the contractor must show he or she had been duly licensed at some time "*prior to* the performance of the act or contract." (§ 7031, former subd. (d), italics added.)

The structure of section 7031, former subdivision (d) also belies MW's interpretation. After stating that one could not qualify for substantial compliance if he or she had "never" been licensed here, the subdivision continued: **[*433]** "*However*, the court may [find] substantial compliance ... if it is shown ... that the [contractor] (1) had been duly licensed ... prior to the performance of the act or contract. ..." (*Ibid.*, italics added.) Thus, the subdivision conveyed that a contractor who had "never" been licensed in this state was one who "had [not] been duly licensed ... prior to ... performance." (*Ibid.*)

Though MW argues otherwise, the legislative history of [****38] section 7031, former subdivision (d) confirms this construction. As added in 1989, former subdivision (d) flatly stated that "[t]he judicial doctrine of substantial compliance shall not apply to this section." (Stats. 1989, ch. 368, § 1, p. 1509.) In 1991, this absolute bar was softened by addition of language stating that a court could find substantial compliance under certain circumstances. These included that the person seeking compensation "was a duly licensed contractor during any portion of the *90 days immediately preceding* the performance of the act or contract for which compensation is sought." (Stats. 1991, ch. 632, § 1, p. 2937, italics added.)

In 1994, the Legislature rewrote the subdivision to the form it retained in 1999 and 2000. The requirement that the contractor must have had a license validly in effect at some time *within 90 days* before performance was dropped in favor of language requiring simply that the contractor must have been duly licensed "*prior to* [such] performance." (Stats. 1994, ch. 550, § 1, p. 2803, italics added.) Though the 1994 amendment thus expanded the time during which the necessary previous licensure could have been in place, [****39] it retained the concept that this period must have *preceded* the performance for which compensation was sought. 12

[****40] [**54] ***CA(15)*** **(15)** Finally, the Legislature has recently indicated it intends the substantial compliance doctrine, now set forth in subdivision (e) of section 7031, to **[*434]** apply in exactly this way. 13 ***HN17*** In 2003, the Legislature amended subdivision (e) to provide that one may establish substantial compliance, despite being unlicensed at some time during performance, if he or she (1) "had been duly licensed ... prior to ... performance ... , (2) acted reasonably and in good faith to maintain proper licensure, (3) did not know or reasonably should not have known that [**55] he or she was not duly licensed *when performance of the act or contract commenced*, and (4) *acted promptly and in good faith to reinstate his or her license upon learning it was invalid*." (Stats. 2003, ch. 289, § 1, italics added.)

CA(16) **(16)** Thus, ***HN18*** as currently worded, the [****41] statute explicitly contemplates a situation in which (1) the contractor had been licensed "prior to" performance, (2) the previously valid license had expired, or was suspended, at the time "performance of the act or contract *commenced*" and (3) the contractor, upon learning of the lapse, acted diligently to "reinstate" the license (§ 7031, subd. (e), italics added). In an uncodified section of the 2003 amendments, the Legislature "[found] and declare[d] that the changes made by this act do not constitute a change in, but are declaratory of, existing law." (Stats. 2003, ch. 289, § 2.)

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HN19 ***CA(17)*** **(17)** " '[A] subsequent expression of the Legislature as to the intent of [a] prior statute, although not binding on the court, may properly be used in determining the effect of [the] prior act.' [Citation.]" (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244 [62 Cal. Rptr. 2d 243, 933 P.2d 507].) Here, for reasons we have explained, the 2003 amendment seems entirely consistent with the prior statutory expression of the substantial compliance doctrine. No reason appears to reject the Legislature's assurance that the amendment merely clarified, and did not change, existing law. Hence, we conclude, [****42] it governs this case. (*Id.*, at p. 252.)

Because MW was not duly licensed "at all times" during performance of the structural [***771] contract (§ 7031(a)), and cannot alternatively establish its substantial compliance with the licensure requirements in that it had never held a valid California contractor's license "prior to" beginning performance (§ 7031, former subd. (d); see now *id.*, subd. (e)), MW cannot sue to recover any compensation for work performed under that contract. Insofar as related to this portion of MW's complaint, the summary judgment entered by the trial court was proper.

[*435] 4. *Validity of agreement executed by unlicensed contractor.*

Niederhauser concedes MW held a valid C-51 structural steel contractor's license at all times during MW's performance of the ornamental contract. However, Niederhauser notes that MW had no valid California contractor's license when it *executed* the ornamental contract. **14** Niederhauser urges that an agreement for work requiring a contractor's license is illegal, void, and unenforceable from the outset if the contractor was unlicensed at the time the agreement was entered. However, we agree with MW and the Court [****43] of Appeal that one may recover compensation under a contract for work requiring a license if he or she satisfied licensure requirements at all times while performing the contract, even if he or she was not licensed when the agreement was signed.

CA(18) **(18)** At the outset, we take note that allowing suit and recovery under such circumstances violates no express term of section 7031(a). That statute prohibits a contractor from suing ***HN20*** "for the collection of *compensation for the performance* of any act or contract where a license is required ... without alleging that he or she was a duly licensed contractor at all times during the *performance* of that [****44] act or contract." (*Ibid.*, italics added.) ***HN21*** The "act" of *executing* an agreement is not one for which a contractor seeks compensation; rather, he or she pursues payment for *carrying out* the contract in a satisfactory manner. (See *Vitek, Inc. v. Alvarado Ice Palace, Inc.* (1973) 34 Cal. App. 3d 586, 590 [110 Cal. Rptr. 86] (*Vitek*).) Hence, we conclude, the due licensure of which section 7031(a) speaks is due licensure while the contract itself is being performed.

Niederhauser points out that, wholly apart from section 7031, the CSLL makes it a misdemeanor "for any person to *engage in the business* or *act in the capacity* of a contractor within this state without having a license therefor ... ." (§ 7028, subd. (a), italics added.) The CSLL defines a "contractor" as one who, among other things, "undertakes to or offers to undertake to, or ... submits a bid to" engage in specified building and construction services. (§ 7026.) MW so acted in contravention of the CSLL, Niederhauser urges, when, lacking a license, it agreed to perform the services contemplated by the ornamental contract. The contract itself, Niederhauser posits, is therefore unlawful.

[****45] ***CA(19)*** **(19)** ***HN22*** Generally a contract made in violation of a regulatory statute is void. Under this general rule, where a law requires, for regulatory rather than **[*436]** revenue purposes, that one procure a license before offering or performing certain services and provides a penalty for violation, the contract of an unlicensed person to perform such services will not be [***772] upheld. (E.g., *Asdourian v. Araj* (1985) 38 Cal.3d 276, 291 [211 Cal. Rptr. 703, 696 P.2d 95] (*Asdourian*); see 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 491, p. 436.) "This rule is based on the rationale that 'the public importance of discouraging such prohibited transactions outweighs equitable considerations of possible injustice between the parties.' [Citation.]" (*Asdourian, supra*, at p. 291.)

The CSLL is a regulatory statute. It seeks to "protect the public from incompetence and dishonesty in those who provide building and construction services" and to "provide minimal assurance that all persons offering such services ... have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting [****46] business. [Citations.]" (*Hydrotech, supra*, 52 Cal.3d 988, 995.)

Accordingly, any number of cases, including decisions of this court, have stated that the courts will not enforce an agreement for contractor services executed by a person who was not duly licensed to perform them. (E.g., *Lewis & Queen, supra*, 48 Cal.2d 141, 150-151; *Loving & Evans v. Blick, supra*, 33 Cal.2d 603, 607-608; *Gatti v. Highland Park Builders, Inc.* (1946) 27 Cal.2d 687, 689 [166 P.2d 265]; *Holm, supra*, 20 Cal. App. 2d 332, 334-337; see *General Ins. Co. v. Superior Court* (1972) 26 Cal. App. 3d 176, 182 [102 Cal. Rptr. 541].) However, Niederhauser has cited no modern case under the CSLL, and we have found none, which applied this principle to deny recovery where a contractor, though not licensed at the time he or she executed the agreement, was fully licensed at all times during its performance. **15**

[****47] Moreover, the rule expressed by these decisions is not absolute, and many exceptions have arisen. (*Asdourian, supra*, 38 Cal.3d 276, 291.) One of these was stated in *Lewis & Queen, supra*, 48 Cal.2d 141: "In some cases ... the statute making the conduct illegal, in providing for a fine or administrative discipline *excludes by implication* the additional penalty involved in holding the illegal contract unenforceable." (*Id.*, at p. 151, italics added.)

In *Vitek, supra*, 34 Cal. App. 3d 586, the court, after examining specific [**56] provisions of the CSLL, applied this principle to conclude that one fully **[*437]** licensed during performance of a contract may recover even if unlicensed when the contract was entered. Plaintiff Vitek's contractor's license had expired and was not in effect on the Friday the construction contract was signed. The license was renewed the following Monday, the day the defendant made its first payment under the contract and Vitek began work. The license remained in effect until construction was complete. The trial court later awarded Vitek judgment for amounts due under the agreement. The defendants [****48] appealed, urging that recovery was barred because Vitek had not been duly licensed at all necessary times.

The Court of Appeal affirmed. The court first construed section 7031 as barring recovery only if the contractor was not duly licensed at all times during *performance* of a contract. Because Vitek's [***773] license had been continuously in effect during the entire period of construction, the court reasoned, section 7031 had been satisfied. (*Vitek, supra*, 34 Cal. App. 3d 586, 590.)

The court then considered whether, "wholly apart from Section 7031" (*Vitek, supra*, 34 Cal. App. 3d 586, 590), the contract was illegal and void, and therefore unenforceable, because Vitek had no valid license when it was executed, contrary to the CSLL's proscription against acting

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as a contractor while unlicensed. Acknowledging the general rule that contracts in violation of regulatory statutes are void, the court nonetheless reasoned that the individual statute, its provisions, and its purposes, must be examined to determine whether its deterrent purposes require the voiding of otherwise fair and moral agreements. (*Id.*, at pp. 592–593.)

In this [****49] regard, the *Vitek* court observed that "[t]he penalty provisions provided by the Legislature call for imposition of punishment for a misdemeanor where the party acts in the capacity of a contractor (§ 7028) and deny the party the right to bring or maintain [an] action [for compensation] based on *performance* (§ 7031). Normally, a court will not impose additional penalties for noncompliance with the licensing requirement. [Citations.]" (*Vitek, supra*, 34 Cal. App. 3d 586, 592, italics added.) The court reasoned that where, as here, the contract's object is not inherently wrongful or contrary to sound public policy, it will be deemed void "only if it falls within the area which the Legislature intended as part of deterrence necessary to protect the public interest." (*Id.*, at p. 593, fn. omitted.)

The court conceded that the CSLL's purpose is "to protect the administration of the licensing law as well as to protect the public from incompetent and untrustworthy artisans. [Citation.]" (*Vitek, supra*, 34 Cal. App. 3d 586, 594.) However, the court concluded, the Legislature had addressed the former concern solely [****50] by imposing misdemeanor sanctions for unlicensed acts other than the performance of unlicensed work, and had reserved the bar against **[*438]** civil suit for cases where the contractor was unlicensed during such performance. Under these circumstances, the court held, the civil bar should not be expanded beyond its explicit legislative bounds. (*Ibid.*)

Gaines v. Eastern Pacific (1982) 136 Cal. App. 3d 679 [186 Cal. Rptr. 421] (*Gaines*), reached a similar result. Eastern Pacific, acting as a general contractor, subcontracted concrete work for an apartment complex to Gaines. Gaines began work the next day, but Eastern Pacific did not receive its contractor's license until approximately a month later. Gaines later sued Eastern Pacific for breach of contract. Eastern Pacific cross-complained for damages arising from Gaines's alleged improper performance of its assigned work. Gaines appealed the cross-judgment in Eastern Pacific's favor, asserting Eastern Pacific's lack of licensure when the subcontract was executed. The Court of Appeal held, among other things, that Eastern Pacific's nonlicensure during the agreement's first month did not void the contract, thus precluding [****51] Eastern Pacific's recovery, because Eastern Pacific had not been called upon to perform services under the agreement, related to its counterclaim for damages, until well after its license was in place. As had *Vitek, supra*, 34 Cal. App. 3d 586, the *Gaines* court stressed that section 7031, [**57] by its terms, imposes a civil bar only against contractors who were not licensed at all times during their *performance*. (*Gaines, supra*, at p. 682.)

[***774] In *Asdourian, supra*, 38 Cal.3d 276, this court cited *Vitek, supra*, 34 Cal. App. 3d 586, in two respects pertinent to our analysis here. Plaintiff Asdourian performed three remodeling projects for defendant Araj, a real estate investor. These included work on converting a garage to a restaurant, and renovation jobs on a four-flat apartment building and a single-family home. Asdourian had personally qualified for a contractor's license, and a license had been issued to Artko Remodeling and Construction (Artko), his sole proprietorship, with Asdourian listed on the certificate as the responsible managing party. However, Asdourian technically violated the CSLL by accepting [****52] and performing the three projects in his own name, not Artko's. Moreover, in violation of statutes regulating the sale and provision of home improvements (§ 7150 et seq.), no written contracts covered the residential work.

Asdourian won judgment for amounts due and unpaid on the three projects. Araj appealed, asserting that Asdourian's recovery was barred by his nonlicensure, and that any agreements for improvement of the residential properties were void, and thus unenforceable, because they were not in writing. We affirmed.

Addressing the home improvement violation, the majority acknowledged the general rule that contracts in violation of regulatory statutes are invalid. However, the majority invoked *Vitek, supra*, 34 Cal. App. 3d 586, for the **[*439]** premise that "the rule will not be applied where the penalties imposed by the Legislature exclude by implication the additional penalty of holding the contract void." (*Asdourian, supra*, 38 Cal.3d 276, 291.)

As the *Asdourian* majority noted, the statutes in question made violation of the writing requirement a misdemeanor, but they nowhere expressly declared that a noncomplying contract was void. Though the [****53] Legislature had amended the original statutes to *remove* a provision explicitly stating that home improvement contracts were *not* void solely for failure to put them in writing, the majority concluded the Legislature had not thereby expressed an intent to invalidate *all* noncomplying contracts. The agreements in question, the majority noted, were not " 'intrinsically illegal' " (i.e., wrongful in their object) (*Asdourian, supra*, 38 Cal.3d 276, 293, quoting *Vitek, supra*, 34 Cal. App. 3d 586, 593); thus, they were not automatically void, but merely voidable "depending on the factual context and the public policies involved." (*Ibid.*) The majority observed that the requirement of written home improvement contracts was intended to protect unsophisticated homeowners, but defendant Araj was not unsophisticated, Asdourian performed the improvement projects fully and honestly, and denying him recovery under such circumstances would unjustly enrich Araj. (*Id.*, at pp. 293–294.)

As to the licensing violation, the majority concluded that Asdourian had substantially complied with licensure requirements, because his personal qualifications [****54] were the basis of Artko's license, which was in effect at all times during the relationship between the parties. Under those circumstances, the majority reasoned, a license issued in Asdourian's own name would not have provided Araj with any greater assurance that he was dealing with an experienced, competent, and qualified contractor. (*Asdourian, supra*, 38 Cal.3d 276, 286.) **16**

[***775] Noting that Asdourian used his own name when *entering* the transactions, in technical violation of section 7028.5 (no member of a licensed contracting business shall act individually as a contractor without having a valid license), the majority concluded that this "did not prevent [Araj] from receiving the full and effective protection of the statute." (*Asdourian, supra*, 38 Cal.3d 276, 285, fn. omitted.) Moreover, the majority observed, [****55] "[a]t least two courts ... have held that section 7031 does not require [**58] a license at the time of execution of a contract. (*Gaines, supra*, 136 Cal. App. 3d 679; *Vitek, supra*, 34 Cal. App. 3d 586; see also, *General Ins. Co. v. Superior Court*[, *supra*,] 26 Cal. App. 3d 176.) These courts have noted the statute requires the contractor to prove only that he was duly licensed at all time *'during the performance of* **[*440]** *[the] act or contract.'* (*Vitek, supra*, 34 Cal. App. 3d at p. 590, italics in original.)" (*Id.*, at p. 285, fn. 7.) **17**

[****56] ***CA(20)*** **(20)** We now confirm that ***HN23*** the CSLL does not automatically void all contracts entered by unlicensed contractors. As indicated in *Vitek, supra*, 34 Cal. App. 3d 586, the statute expresses no such legislative intent. The CSLL imposes misdemeanor punishment (§§ 7028, 7028.2) and authorizes both injunctive relief (§§ 7028.3, 7028.4) and civil citations and penalties (§§ 7028.6–7028.14) against

persons who act as unlicensed contractors. It also expressly bars suits to collect compensation for *unlicensed work* (§ 7031(a)), but does not extend the bar to persons who, though they performed *while licensed*, were unlicensed when they *agreed* to perform the work. This detailed and comprehensive enforcement scheme thus excludes by implication such an additional penalty.

Indeed, the Legislature has demonstrated, elsewhere in the CSLL, that it knows how to invalidate the agreements of unlicensed contractors when it wishes to do so. Section 7028.15, subdivision (e), as amended in 1990 (Stats. 1990, ch. 321, § 1, p. 1605), expressly provides that "[a]ny contract awarded [by a *public agency*] ... to[] a contractor who is not licensed pursuant to this chapter [****57] *is void*." (Italics added.) As noted, no CSLL provision similarly treats an unlicensed contractor's agreement with a private person or entity. 18

[***776] CA(21) (21) HN24 An agreement for contractor services has no wrongful object whose enforcement is forbidden by fundamental public policy (see Civ. Code, **[*441]** §§ 1595, 1596, 1598), merely because the contractor was unlicensed at the moment he or she executed [****58] it. Insofar as unlicensed execution of such a contract violates the CSLL's regulatory provisions, the statute provides specified civil and criminal sanctions for such conduct. (See text discussion, *ante*.) On the other hand, while the CSLL denies use of the courts to recover compensation for the unlicensed *performance* of contracting work, the statute nowhere extends that disability to a contractor's unlicensed agreement with a private entity. As *Asdourian, supra*, 38 Cal.3d 276, and *Vitek, supra*, 34 Cal. App. 3d 586, make clear, courts will not, under such circumstances, extend the harsh sanction of forfeiture beyond the bounds set by the Legislature absent a showing that such a result is essential to effectuate the statute's protective purposes.

[**59] We see no such necessity here. As indicated, the CSLL expressly provides multiple means of enforcing the general ban on acting as an unlicensed contractor, insofar as that prohibition includes the mere execution of contracting agreements while unlicensed. Though the Legislature barred recovery of compensation by unlicensed contractors under certain circumstances, it did not impose this bar against [****59] contractors who, though licensed at all times during performance of contracting work, had executed agreements for the work while unlicensed. No compelling reason exists to conclude that the public protective purposes of the CSLL can only be served by deeming such contracts illegal, void, and unenforceable on that basis alone.

Courts have reached similar conclusions under analogous provisions of the real estate broker licensing statutes. Where such statutes imposed criminal and civil penalties for nonlicensure, and also barred suits for compensation for the performance of acts requiring a license unless the broker was licensed "at the time the alleged cause of action arose," the decisions have consistently held that a broker who was unlicensed when he or she agreed to provide real estate services may nonetheless recover compensation if duly licensed at the time a buyer was procured. (*Fewel & Dawes, Inc. v. Pratt* (1941) 17 Cal.2d 85, 90 [109 P.2d 650] [agreeing that broker may recover if licensed at time contract is performed]; *McNichols v. Nelson Valley Bldg. Co.* (1953) 116 Cal. App. 2d 266, 271 [253 P.2d 744]; *Brenneman v. Lane* (1927) 87 Cal.App. 414, 417 [262 P. 400]; [****60] *Radich v. Cernokus* (1924) 65 Cal.App. 452, 454 [224 P. 124]; *Houston v. Williams* (1921) 53 Cal.App. 267, 270–272 [200 P. 55] [where compensation statute required licensure only when cause of action arose, "[b]y implication any earlier period was excluded"]; see *Estate of Lopez* (1992) 8 Cal.App.4th 317, 324 [10 Cal. Rptr. 2d 67] [where, under Probate Code, liability of decedent's estate for real estate broker's commission attached when sale was "consummated," broker's cause of action against estate "arose" at that time; hence, despite prior lapses in licensure, broker could sue for commission if then licensed].)

[*442] It is true that where contractors' licenses had lapsed *during performance*, pre-1989 decisions under the CSLL, applying the judicial doctrine of substantial [***777] compliance, stressed that due licensure at the time of contracting was an important factor in assuring the statute's protective purposes had been served. Thus, *Latipac, supra*, 64 Cal.2d 278, explained that licensure at the time of contracting "was crucial to the decisions of the other contracting party and to the prospective subcontractors and other creditors who might extend credit in reliance [****61] upon the validity of that contract. The key moment ... when the existence of the license becomes determinative is ... when the other party to the agreement must decide whether the contractor possesses the requisite responsibility and competence and whether [such other party] should, in the first instance, enter into the relationship. The license, as an official confirmation of the contractor's responsibility and experience, then plays its important role. Then, too, it serves as a basic determinant in the decision of prospective subcontractors and other creditors as to whether to extend credit to the contractor on the strength of the contract." (*Id.*, at p. 282; see also, e.g., *Steinwinter v. Maxwell* (1960) 183 Cal. App. 2d 34, 37–38 [6 Cal. Rptr. 496] [rejecting substantial compliance where contractor whose license lapsed during performance was not licensed at the time the contract was executed].)

For several reasons, however, we do not find this analysis dispositive here. First, while the pre-1989 decisions suggested that nonlicensure at the time of contracting was an *influential factor* in assessing substantial compliance, none deemed it [****62] crucial. *Asdourian, supra*, 38 Cal.3d 276, confirmed that *Latipac, supra*, 64 Cal.2d 278, had declined to decide if any of the "substantial compliance" factors discussed therein, singly or in combination, were necessary or sufficient. (*Asdourian, supra*, at p. 284.) *Asdourian* then proceeded to *find* substantial compliance although the contractor in that case, who had agreed in his own name to perform the work for which he sought compensation, had no [**60] personal license then, or at any time during performance. (*Id.*, at pp. 284–286, 289.) 19

Moreover, even if due licensure at the time of contracting favors the conclusion that the other party received the statute's [****63] full protection despite a *later lapse in licensure*, this does not mean nonlicensure at the time of contracting negates such protection where all performance *was* licensed. After all, as *Latipac, supra*, 64 Cal.2d 278, suggested, one contemplating professional dealings with a contractor—whether as a client, surety, general contractor or subcontractor—presumably will consider it important to determine **[*443]** at the outset whether the contractor is then duly licensed. If no valid license is then in place, such a party may simply decline to enter the relationship. 20

[****64] [***778] Post-1989 statutory revisions to the substantial compliance doctrine suggest the Legislature itself does not consider due licensure *at the precise moment of contracting* to be crucial to the CSLL's protections. As discussed above, section 7031 allows a contractor who suffers a license lapse *during performance* to establish substantial compliance, under specified circumstances, if he or she held a valid California contractor's license at some time "*prior to* the *performance* of the act or contract" for which compensation is sought. (*Id.*, subd. (e), italics added; see also *id.*, former subd. (d).) This broad language may include a person whose previously valid license had lapsed at the time the agreement was entered, or one who did not first obtain a valid license until after the contract was signed.

Niederhauser urges that upholding MW's right to recover on the ornamental steel contract, though MW had no license when that agreement was executed, would violate principles emphasized in *Hydrotech, supra*, 52 Cal.3d 988. We disagree. In that case, Hydrotech, a New York manufacturer of wave-simulation machinery, agreed with defendant Wessman, the [****65] general contractor for a California water park, to

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design and build a "surfing pool" at the park using Hydrotech equipment. According to Hydrotech, it expressed concern about California license requirements, but Wessman and the water park's owner persuaded Hydrotech to proceed, promising both to arrange for help from a licensed California contractor and, in any event, to pay for the equipment and services provided by Hydrotech. Hydrotech performed the agreed work without securing the necessary California license.

When a payment dispute arose, Hydrotech sued. The defendants asserted Hydrotech's nonlicensure as a bar. Hydrotech urged that the CSLL does not require a license for " 'isolated' " or " 'exceptional' " California transactions. (*Hydrotech, supra*, 52 Cal.3d 988, 992.) Alternatively, Hydrotech claimed that, even if section 7031 eliminates contractual or quasi-contractual claims seeking compensation for unlicensed work, the statute did not bar a fraud claim based on the defendants' *false* promise to pay despite their understanding that Hydrotech would do the work without a license.

[*444] We rejected both arguments. Confronting the fraud issue, we reasoned that [****66] "[r]egardless of the equities, section 7031 bars all actions, however they are characterized, which effectively seek 'compensation' for illegal *unlicensed contract work*. [Citation.]" (*Hydrotech, supra*, 52 Cal.3d 988, 997, italics added.) [**61] Hence, we concluded, Hydrotech could not circumvent the statute "by alleging that when the *illegal contract* was made, the other party had no intention of performing. Section 7031 places the risk of such bad faith squarely on the unlicensed contractor's shoulders. 'Knowing that they will receive no help from the courts *and must trust completely to each other's good faith*, the parties are less likely to enter an *illegal arrangement* in the first place. [Citations.]' " (*Id.*, at p. 998, quoting *Lewis & Queen, supra*, 48 Cal.2d 141, 150, second italics added by *Hydrotech*.)

Addressing the Court of Appeal's concern that denial of fraud claims would encourage general contractors to seek out and cheat unlicensed subcontractors, *Hydrotech* [***779] further observed that "the statutory disallowance of claims for payment by unlicensed subcontractors *is intended to deter such persons* [****67] *from offering their services, or accepting solicitations of their work*. That policy applies regardless of whether the other party's promise to pay for the work was honest or deceitful." (*Hydrotech, supra*, 52 Cal.3d 988, 998.)

CA(22) **(22)** As *Hydrotech* suggested, ***HN25*** an offer, or acceptance of a solicitation, to perform *unlicensed contract work* is illegal. If the work offered or solicited is performed without a license, the contractor must rely solely on the other party's good faith for payment, and a claim for compensation will be disallowed under section 7031, regardless of the balance of equities or the manner in which the claim is framed. Proper application of section 7031, and of the other sanctions provided by the CSLL, thus rightly discourages contractors from entering arrangements for unlicensed work. But *Hydrotech* did not consider whether an agreement for contractor services is void and unenforceable solely because the contractor, though fully licensed at all times during performance, was not licensed when the agreement was executed. Nothing in *Hydrotech* stands for the proposition that the contractor is barred from recovery in such a case.

Niederhauser [****68] notes that courts have concluded, under various other licensing laws, that contracts for performance of services requiring a license were illegal and void if executed by unlicensed persons. (E.g., *Styne v. Stevens* (2001) 26 Cal.4th 42, 51 [109 Cal. Rptr. 2d 14, 26 P.3d 343] [Talent Agency Act]; *Payne v. De Vaughn* (1926) 77 Cal.App. 399, 404 [246 P. 1069] [architect]; see generally 1 Witkin, Summary of Cal. Law, *supra*, Contracts, §§ 491-493, pp. 436-439.) Of course, we express no views on statutory schemes not at issue here. But we know of no modern decision that barred a suit to recover compensation by one who, though unlicensed when a contract **[*445]** for services was entered, was fully licensed at all times during performance, under a statute which expressly barred recovery only for nonlicensure at the latter time. For reasons we have expressed, we are satisfied that application of the void contract principle is inappropriate in such cases under the CSLL.

CA(23) **(23)** Accordingly, we conclude that MW is not barred from recovering compensation for its work under the ornamental contract on the sole ground that it was unlicensed when it executed that agreement.

CONCLUSION

The Court of Appeal's judgment [****69] is reversed insofar as it permits MW to sue for compensation for work under the structural contract. In all other respects, the judgment of the Court of Appeal, reversing the trial court's grant of summary judgment for Niederhauser, is affirmed.

George, C.J., Kennard, J., Werdegar, J., Chin, J., and Moreno, J., concurred.

Footnotes

1 All further unlabeled statutory references are to the Business & Professions Code.

2 Niederhauser and its bonding companies, Fidelity and Guaranty Insurance Company and United States Fidelity and Guaranty Company, were joint respondents on appeal and continue to submit joint briefing in this court. We hereafter refer to these defendants collectively as Niederhauser.

3 The superior court noted in its order that all of MW's evidentiary objections were overruled, but the court did not otherwise mention or discuss the issue of judicial estoppel.

4 Niederhauser did not reraise the C-23 license issue in its petition for review, and has given that issue no meaningful discussion in its opening and reply briefs. We therefore do not address it. (Cal. Rules of Court, rules 28.1(b)(1), 29(b)(1), 29.1(b)(2)(B), (3).)

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5 As noted above, section 7031(a) requires any person suing to recover compensation for work requiring a contractor's license to "*alleg*[e] that *he or she* was a duly licensed contractor at all times during the performance" of the work. (Italics added.) If the defendant then "controvert[s]" the plaintiff's licensure, the plaintiff must prove it by producing a "verified certificate." (§ 7301, subd. (d).) Thus, while the statutory scheme contemplates that nonlicensure must be raised as a defense, no statutory provision explicitly requires a duly licensed contractor who is suing for money attributable to the work *of another entity* to affirmatively allege that *the other entity* was duly licensed.

6 In attempting to explain this difficulty away, MW confirms it. As MW would have it, section 7031(a)'s disjunctive reference to "act or contract" simply means that if there was a lapse in licensure at any time during performance of a "contract," one cannot sue on the "entire contract," but may nonetheless invoke noncontractual remedies to recover the value of all "act[s]" performed on the project while he or she was duly licensed. Thus, the only penalty for a lapse of licensure during performance of a "contract" would be loss of compensation for particular unlicensed "act[s]." But the Legislature could have achieved that result by omitting all reference to "contract[s]" and simply barring suits to recover compensation for unlicensed "act[s]."

7 In *Hydrotech, supra*, 52 Cal.3d 988, we stressed that the 1989 amendments "underscored [the Legislature's] insistence on a strict application of section 7031 despite the balance of equities." (*Id.*, at p. 997, fn. 6.)

8 A similar understanding appears in the legislative history of the most recent amendments to section 7031. By 2003, the flat no-substantial-compliance rule adopted in 1989 had been softened to allow contractors to establish substantial compliance in certain circumstances, and therefore to recover compensation, despite technical lapses in licensure. (See text discussion, *post*.) Meanwhile, in 2001, the Legislature, using the same "act or contract" terminology set forth in other subdivisions of section 7031, including subdivision (a), had added subdivision (b) to the statute, providing that one who *employs* an unlicensed contractor may sue to recover "all compensation *paid* to the unlicensed contractor for performance of any act or contract." (Stats. 2001, ch. 226, § 1, italics added.) However, the 2001 amendment did not expressly provide contractors with a substantial compliance defense against such suits. In 2003, Assembly Member Horton introduced Assembly Bill No. 1386 (2003–2004 Reg. Sess.) (Assembly Bill No. 1386). The bill, which was ultimately adopted (Stats. 2003, ch. 289, § 1), amended subdivision (b) of section 7031 to provide explicitly that contractors may defend disgorgement suits by asserting substantial compliance. Legislative analyses explained that the defense was deemed necessary because "[c]urrently, a lapse of license for *even a single day* could lead to the owner's recovery of *100 percent* of the compensation paid to the contractor for work performed." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1386 as amended July 23, 2003, p. 2, italics added; see also, e.g., Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1386, as amended June 23, 2003, pp. 2–3.) It was also noted that the 2003 bill was "similar, but not identical, to [Assembly Bill No. 2693 (2001–2002 Reg. Sess.) (Assembly Bill No. 2693)], which was rejected by [the Senate Judiciary Committee in 2002]. Among other things, [Assembly Bill No.] 2693 sought to limit the consumer's recovery to the amount paid *during the time the contractor was unlicensed* ... . When [that] bill was heard, Committee members expressed concern that the bill *would go too far* in benefiting unlicensed contractors ... ." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1386, as amended June 23, 2003, p. 3, italics added.)

9 The District Council of Iron Workers of the State of California and Vicinity, the Western Steel Council, and the law firm of Abulaziz & Grossbart have submitted amicus curiae briefs in support of MW. The League of California Cities has submitted an amicus curiae brief on behalf of Niederhauser.

10 As we noted in *Hydrotech, supra*, 52 Cal.3d 988, section 7031 "advances [its] purpose [of protecting the public from the incompetent or dishonest provision of building and construction services] by withholding *judicial aid* from those who seek compensation for unlicensed contract work." (*Hydrotech, supra*, at p. 995, italics added.) But nothing in the statute precludes the satisfied beneficiary of such work from paying for it voluntarily. Business considerations may persuade the beneficiary to ignore license lapses it deems insignificant, and to continue compensating the contractor, in order to avoid disruption of progress on the project.

11 In 1999 and 2000, section 7031, former subdivision (d) provided in pertinent part: ***HN14*** "The judicial doctrine of substantial compliance shall not apply under this section where the person who engaged in the business or acted in the capacity of a contractor has never been a duly licensed contractor in this state. However, the court may determine that there has been substantial compliance with licensure requirements under this section if it is shown at an evidentiary hearing that the person who engaged in the business or acted in the capacity of a contractor (1) had been duly licensed as a contractor in this state prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain proper licensure, and (3) did not know or reasonably should not have known that he or she was not duly licensed. ..." (Stats. 1994, ch. 550, § 1, pp. 2803–2804.)

12 Reports and analyses of Senate Bill No. 1844 (1993–1994 Reg. Sess.) (Senate Bill No. 1844), which contained the 1994 amendments, illustrate the Legislature's understanding that the substantial compliance doctrine was intended to apply to contractors whose previously valid licenses had lapsed at the time of performance. Thus, referring to the proposed abandonment of the "90 days immediately preceding performance" rule in favor of a more flexible "prior to performance" standard, they commented that the proposed exceptions might unintentionally broaden the circumstances under which substantial compliance could be applied. Thus, they

EXHIBIT [D]–4788

asserted, the proposed standards might, "for example, permit the court to set aside the fact that a contractor's license may have been *expired* for up to two years (contractors are licensed on a biannual basis) ... ." (Sen. Bus. & Prof. Com., Rep. on Sen. Bill No. 1844, as introduced Feb. 27, 1994, p. 4, italics added; Assem. Com. on Consumer Protection, Governmental Efficiency and Economic Development, Rep. on Sen. Bill No. 1844, as amended July 1, 1994, p. 2, italics added; Sen. Rules Com., Off. of Sen. Floor Analyses, Rep. on Sen. Bill No. 1844, as amended July 1, 1994, p. 4, italics added.)

13 In 2001, when the Legislature added current subdivision (b) to section 7031, former subdivision (d) was relettered, without substantive change, as subdivision (e). (Stats. 2001, ch. 226, § 1.)

14 As noted above, MW admits it did not actually possess a valid C-51 license until December 21, 1999, more than a month after it executed the ornamental contract. Moreover, for reasons explained in the previous part of this opinion, MW cannot establish that it was in substantial compliance with C-51 licensure requirements when it executed the ornamental agreement.

15 In *Holm, supra*, 20 Cal. App. 2d 332, the court held that a licensed contractor could not recover, on a mechanic's lien, money voluntarily advanced to a subcontractor who was not licensed at the time the subcontract was entered, even though the subcontractor was perhaps duly licensed at all times during performance of the subcontract. We discuss *Holm* in greater detail below.

16 In this regard, *Asdourian*, a 1985 decision, applied the judicial doctrine of substantial compliance, which was abrogated by the Legislature in 1989.

17 As indicated above, an early case, *Holm, supra*, 20 Cal. App. 2d 332, held that because a subcontractor was unlicensed when the subcontract was executed, though perhaps fully licensed during performance, the subcontract was illegal, void, and unenforceable; hence, the general contractor could not recover, under a mechanic's lien, compensation attributable to the subcontractor's work. Significant in *Holm*'s reasoning (see *id.*, at p. 336) was the wording of the predecessor statute to section 7031, as then in effect. Unlike modern section 7031, this statute did not condition the right to sue for compensation upon licensure during *performance*; it more vaguely applied the civil bar based on lack of licensure "at the time the alleged cause of action arose." (Stats. 1931, ch. 578, § 12, pp. 1262–1263.) Such language could be construed to extend to causes of action that "arose" by virtue of agreements signed by unlicensed contractors. As noted below, however, cases construing analogous provisions of the statutes governing licensure of real estate brokers have concluded, contrary to *Holm*, that brokers may recover compensation if licensed at the time of performance, even if not licensed when they agreed to provide services for which a license was required. (See text discussion, *post*.)

18 Section 7028, which makes it a misdemeanor to "engage in the business or act in the capacity of a contractor" without holding a valid license, provides that for a second or subsequent violation, "the court shall [among other sanctions] impose a fine of 20 percent of the *price of the contract* under which the unlicensed person performed contracting work, or four thousand five hundred dollars ($ 4,500), whichever is greater ... ." (*Id.*, subd. (b), italics added.) There is no suggestion that the contract is necessarily void between the parties; in fact, the fine is assessed as a percentage of the contract price itself.

19 Indeed, decisions implying that substantial compliance *might* be found even where nonlicensure existed at the time the agreement was entered logically undermine the notion that an agreement executed by an unlicensed person is void and unenforceable from the outset.

20 In its present form, the CSLL requires all *prime* contracts (i.e., contracts between owners and their general contractors), and all home improvement, repair, or service contracts to caution against use of unlicensed contractors, and to advise how information about a contractor's licensure can be obtained. (§ 7030.) These requirements do not extend to contracts between general contractors and subcontractors, such as the agreement at issue here, presumably because all parties to subcontracts should be thoroughly familiar with licensure requirements. We express no view on the rights and remedies of one who justifiably relied, at the time an agreement was entered, on a contractor's *false representation* that he or she was then duly licensed.

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Gmail [redacted]

Additional Ideas For Redress/Relief

Adam <abereki@gmail.com> Wed, Nov 24, 2021 at 7:41 AM
To: "Joe, Darrin" <djoe@nbpd.org>

Darrin,

I wanted to share a few other ideas that came to mind that I believe are well within your/ The City of Newport Beach's executive capacity (and duty) to see that the law is faithfully executed and protect my rights, liberty, property, and money, (and that of many others) from unlawful seizure and taking whether or not any criminal complaint/investigation takes place. These actions include, but aren't limited to:

(1) The City of Newport Beach filing for a temporary and/or permanent restraining order or a temporary or permanent injunction to prevent enforcement of the unconstitutional and void judgment against me and the enforcement of all §7031 actions against the People of California;
(2) The City of Newport Beach filing a Petition for Writ of Mandamus in the Supreme Court of the United States ordering officials of the State of California to abide their sworn duties to follow the Constitution for the United States; (I say the Supreme Court of the United States because the criminal and unconstitutional activity I've alleged involves officials across all three branches of California government and lower Federal Courts (ie District Courts) will likely refuse to be involved based on the history in my case having sought redress in these Courts);
(3) The City of Newport Beach paying the illegal judgment causing the illegal and unconstitutional behavior against me to immediately be ceased and desisted and then, in its discretion, seeking remedial civil and/or criminal action against the criminal perpetrators;
(4) The City of Newport Beach filing for a temporary and/or permanent restraining order or a temporary or permanent injunction to prevent the Contractors State License Board and/or California Legislature from suspending my license without Constitutional authority and thereby restoring my ability to earn a living in my profession as a contractor;
(5) The City of Newport Beach filing for a temporary and/or permanent restraining order or a temporary or permanent injunction to prevent any foreclosure proceedings of the real property held in my living trust/estate based on this illegal and unconstitutional behavior. This would include any foreclosure proceedings for failure to pay property taxes as I can't very well pay the taxes if the State has unlawfully restrained me from earning a living in my profession as a contractor and I have been forced into involuntary servitude to act as an attorney to not only defend my rights, liberty, and property, but also to stop public officials from taking criminal and unconstitutional actions against me (and many other People of California).

Again, in my understanding of Constitutional law, any and/or all of these actions reasonably fall within the **mandatory** duty(ies) of the executive authority of California to protect my rights, liberty, and property (and those of the People of California) from unlawful government action. Frankly, as the actions taken against me (and many others) are so egregiously unlawful and unconstitutional and have gone on for years, it would seem prudent that the most immediate and swift action should be taken to immediately release me (us) from this deranged and perverted version of "law" and constructive custody.

Sincerely,

/s/ Adam Bereki

Note: In all cases where I use the word "me" I'm also referring to my estate.

Gmail Adam Bereki <abereki@gmail.com>

Petition For Redress of Grievance Harris/Roberts

3 messages

Adam <abereki@gmail.com> Mon, Dec 6, 2021 at 9:11 AM
To: "Joe, Darrin" <djoe@nbpd.org>

Hi Darrin,

I'm including you on the attached Petition for Redress of Grievance I'm filing today with the Chief Justice and Clerk of the United States Supreme Court. It's regarding the heinously unlawful and unconstitutional behavior of the Clerk of the United States Supreme Court refusing to file lawsuits (including mine) that results in denying the People of America their rights secured by the Constitution, including the right to have their rights determined by a judicial Constitutional Court. During my call with the Clerk, he admitted that this behavior is a pattern and practice of his office. While you have not been named on the Petition, it is my intent by notifying you and serving you, that I am making a formal complaint with your office as well pertaining to this issue and as part of your ongoing investigation into my complaints and attempts to seek redress.

Thank you for your dedicated service.

Sincerely,

/s/ Adam Bereki

PETITION FOR REDRESS OF GRIEVANCE 120621 HARRIS ROBERTS.pdf
430K

Joe, Darrin <DJoe@nbpd.org> Tue, Dec 7, 2021 at 4:48 PM
To: Adam <abereki@gmail.com>

Hi Adam:

I've been collaborating with some people to see what we can do to help you out. I'll give you a call tomorrow to catch you up.

Thanks for your patience!

-DJ

From: Adam <abereki@gmail.com>
Sent: Monday, December 6, 2021 9:11 AM
To: Joe, Darrin <DJoe@nbpd.org>
Subject: Petition For Redress of Grievance Harris/Roberts

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Tue, Dec 7, 2021 at 4:57 PM
To: "Joe, Darrin" <DJoe@nbpd.org>

Darrin,

Thank you very much for the message and continued support. I'll look forward to your call tomorrow.

Sincerely,

Adam

On Dec 7, 2021, at 4:48 PM, Joe, Darrin <DJoe@nbpd.org> wrote:

[Quoted text hidden]

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Scott S. Harris
Clerk, United States Supreme Court
1 First St., NE
Washington, DC 20543

John Roberts
Chief Justice, United States Supreme Court
1 First St., NE
Washington, DC 20543

December 6, 2021

RE: Petition for Redress of Grievance: Clerk Harris's Unwritten Policy and Practice to Exercise the Judicial Power of the United States to Deny Rights Secured by the Constitution and to Overrule Article III of the Constitution.

Good day,

I sent a lawsuit be filed in the Court under Article III of the Constitution on or about September 19, 2021. The suit was also in the form of a Petition for Redress of Grievance pursuant to the First Amendment. The suit/Petition were returned un-filed by Jacob Levitan on September 22, 2021 because they allegedly did not comply with the Court's procedural rules regarding form.

On November 15, 2021, I called the Court to speak with the Clerk's office to ensure that my complaint/petition would be amenable to the Rules and accepted upon re-presentment. At that time, Clerk Harris told me that my complaint would *not* be accepted because I was not one of the parties stated in 28 USC §1251 (ie a State, public minister, consul, etc.) under which the Court was authorized to exercise its original jurisdiction.

I explained that I was not filing my case pursuant to 28 USC §1251 because it did not apply. 28 USC §1251 *only* applies to an action involving the parties of the case. I further explained that I was filing my case under Article III, §2 of the Constitution, which vests the judicial power of the United States in "all Cases, in Law and Equity" arising under the Constitution. I also referred Harris to the case of *Cohens v. Virginia*, 19 U.S. 264 (1821), where this subject matter was directly addressed by the Court. The Court held that "a case arising under the constitution of laws of the United States, is cognizable in the Courts of the Union, whoever may be the parties to that case." *Id.* At 383.

Harris told me that:

> "We don't have original jurisdiction for one private litigant suing another private litigant."
>
> "We would not accept a filing like that."
>
> "The statute is what allows us to exercise jurisdiction."
>
> "Our jurisdiction is created by statute."
>
> "28 USC §1251 is the only authorization we have to file original actions."
>
> "I hear you but that's not the way our jurisdiction works. We are bound by the statute."
>
> "You can submit something but it's not going to be accepted for filing unless it falls in one of the provisions of 28 USC §1251."
>
> "It's not gonna be accepted for filing. I just don't want to put you through the trouble or expense of doing it."
>
> "This is not new. We've had Many people have tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

At the conclusion of the call, Harris told me he would get back to me with some examples of similar cases the Court had denied. He has not done so.

I called and left a follow-up message to speak with Harris on November 16, 2021. He has not returned my call.

Based on the foregoing, Clerk Harris appears to have a created and executed an unwritten policy and practice whereby he is unlawfully using his office to not only exercise the judicial power of the United States to deny rights guaranteed thereby (by refusing to file cases), but also to overrule Article III of the Constitution in violation of the amending procedures of Article V. As a result, I am unable to file my case in the only apparent judicial Court of the Nation with subject matter jurisdiction to hear and determine it.

Your prompt attention to and resolution of this egregiously unlawful and unconstitutional behavior is demanded.

Please also provide the rules of Court pertaining to the filing of a Petition for Redress of Grievance.

Sincerely,

Adam Berek

Gmail Adam Bereki <abereki@gmail.com>

Complaint/ Petition for Redress for Egregious Criminal Police Misconduct/Dereliction of Sworn Duties

4 messages

Adam <abereki@gmail.com> Thu, Dec 9, 2021 at 12:01 PM
To: pcarpentieri@nbpd.org, ddixon@newportbeachca.gov, bavery@newportbeachca.gov, dduffield@newportbeachca.gov, kmuldoon@newportbeachca.gov, nblom@newportbeachca.gov, jbrenner@newportbeachca.gov, woneill@newportbeachca.gov, "Joe, Darrin" <djoe@nbpd.org>, aharp@newportbeachca.gov
Bcc: William Henshall <youwinincourt@gmail.com>, G Cressend <gcressend@gmail.com>, Virginia Wells <ginnyw162@gmail.com>

Good day,

Please see the attached document labeled NBPD COMPLAINT- BEREKI. This Complaint will provide context and support for the other documents.

Sincerely,

Adam Bereki

3 attachments

Basic Police Academy Learning Domain 2.pdf
441K

NBPD COMPLAINT- BEREKI.pdf
68K

DARRIN JOE 120821.m4a
15532K

O'Neill, William <woneill@newportbeachca.gov> Thu, Dec 9, 2021 at 1:38 PM
To: Adam <abereki@gmail.com>

You're saying is that Business & Professions Code Section 7031 is essentially a criminal statute, that the judiciary shouldn't enforce it, but that your primary complaint is against our police department for refusing to arrest judges or legislators?

Will O'Neill

Newport Beach City Council

From: Adam <abereki@gmail.com>
Date: Thursday, December 9, 2021 at 12:02 PM
To: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, Diane Dixon <ddixon@newportbeachca.gov>, "Avery, Brad" <bavery@newportbeachca.gov>, "Duffield, Duffy" <dduffield@newportbeachca.gov>, "Muldoon, Kevin" <kmuldoon@newportbeachca.gov>, "Blom, Noah" <NBlom@newportbeachca.gov>, "Brenner, Joy" <JBrenner@newportbeachca.gov>, "O'Neill, William" <woneill@newportbeachca.gov>, "Joe, Darrin" <DJoe@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>
Subject: Complaint/ Petition for Redress for Egregious Criminal Police Misconduct/Dereliction of Sworn Duties

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

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Adam <abereki@gmail.com> Thu, Dec 9, 2021 at 1:54 PM
To: "O'Neill, William" <woneill@newportbeachca.gov>, "Carpentieri, Peter" <pcarpentieri@nbpd.org>, Diane Dixon <ddixon@newportbeachca.gov>, "Avery, Brad" <bavery@newportbeachca.gov>, "Duffield, Duffy" <dduffield@newportbeachca.gov>, "Muldoon, Kevin" <kmuldoon@newportbeachca.gov>, "Blom, Noah" <NBlom@newportbeachca.gov>, "Brenner, Joy" <JBrenner@newportbeachca.gov>, "Joe, Darrin" <DJoe@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>

William,

That's sort of correct. I am saying that §7031(a) and (b) are penal statutes that impose penal forfeitures for the commision of the public offense (as defined by Cal. Penal Code §15) of contracting without a license. See for e.g. *U.S. v. Seifuddin*, 820 F.2d 1074, 1076 (9th Cir. 1987) re penal forefeitures. I am also saying that because §7031 requires a total penal forfeiture, that the action must be brought by the executive and NOT private parties as ALL of the executive power of California is vested in the office of the Governor (Cal. Const. Article V). Furthermore, that even if §7031 was enforceable by private parties, that the Court is without authority to order excessive, cruel, and/or unusual punishment. My primary complaint is that Judges and Legislators of the State of California are acting WITHOUT Constitutional authority/subject matter jurisdiction and even upon due Notice are refusing to cease and desist their unlawful behavior. Furthermore, that it is the duty of the members of your police department (and all officers of the executive branch of government) to protect the rights, liberty, and property of the People and see that the law is faithfully executed. The officers of your department therefore, upon complaint, have a mandatory duty to investigate and intervene when Constitutional rights are being violated.

I welcome further discussion.

Sincerely,

Adam Bereki
[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Dec 10, 2021 at 11:45 AM
To: "O'Neill, William" <woneill@newportbeachca.gov>, "Carpentieri, Peter" <pcarpentieri@nbpd.org>, Diane Dixon <ddixon@newportbeachca.gov>, "Avery, Brad" <bavery@newportbeachca.gov>, "Duffield, Duffy" <dduffield@newportbeachca.gov>, "Muldoon, Kevin" <kmuldoon@newportbeachca.gov>, "Blom, Noah"

EXHIBIT [D]–4797

<NBlom@newportbeachca.gov>, "Brenner, Joy" <JBrenner@newportbeachca.gov>, "Joe, Darrin" <DJoe@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>

William,

Good morning.

I noticed you're a practicing attorney whose firm handles construct defect litigation. Please see the attached Brief in Support of Law that I feel will more fully explain my position in further response to your email yesterday. I also request that you disclose to me whether you have been involved in any way in the 'prosecution' of any cases pursuant to Business and Professions Code §7031 as I feel this would result in a serious conflict of interest to your investigation/handling of my complaint/petition. If you have been so involved, please provide the case number, case number, and Court to which each of the case(s) were filed/adjudicated. If you haven't been involved, I'd appreciate you sharing that information as well.

I welcome any further discussion you or any member of the City may offer in resolution of this complaint.

Sincerely,

Adam Bereki

[Quoted text hidden]

Additional Facts and Brief in Support of Law.pages
284K

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Complaint/ Petition for Redress of Grievance[1] for Egregious Criminal Police Misconduct/Dereliction of Sworn Duties

December 9, 2021

Attn:

Jon T. Lewis
Chief of Police
Newport Beach Police Department
via email to:
pcarpentieri@nbpd.org

Joe Cartwright
Deputy Chief
Detective Division
Newport Beach Police Department
via email to:
pcarpentieri@nbpd.org

Diane B. Dixon
District 1 - Council Member,
via email to:
ddixon@newportbeachca.gov

Brad Avery
District 2 - 2021 Mayor
via email to:
bavery@newportbeachca.gov

Duffy Duffield
District 3 - Council Member,
via email to:
dduffield@newportbeachca.gov

Kevin Muldoon
District 4 - 2021 Mayor Pro Tem

[1] Pursuant to Article I, Section 3 of the California Constitution and the First Amendment to the Constitution for the United States.

via email to:
kmuldoon@newportbeachca.gov

Noah Blom
District 5 - Council Member
via email to:
nblom@newportbeachca.gov

Joy Brenner
District 6 - Council Member
via email to:
jbrenner@newportbeachca.gov

Will O'Neill
District 7 - Council Member,
via email to:
woneill@newportbeachca.gov

Darrin Joe
Sergeant
Newport Beach Police Department
via email to:
djoe@nbpd.org

Aaron Harp
City Attorney
via email to:
aharp@newportbeachca.gov

Good day,

I'm writing to make a formal complaint of egregious criminal misconduct, the deprivation of Constitutional rights, and dereliction of sworn duties by Officers of the Newport Beach Police Department. (This is not to be construed as citizen complaint under the police department's internal affairs division).

In early 2012, my company was hired to do a custom remodel of a home located on Lido Isle. There was a civil dispute that arose between my company and the homeowners over payment for goods and services that ultimately resulted in a lawsuit. Despite the fact that the City of Newport Beach determined that my company was the

licensed contractor on the project and subsequently issuing a Building Permit in my company's name, the Court found that I was the contractor and that I was unlicensed. Consequently, the Court ordered me to forfeit the entire amount both I and my company were paid, $848,000, on top of allowing the homeowners to keep all of the work that occurred over the approximate year and a half of the project. Because I was denied equitable offset for the materials and labor that my company provided (about $930,000) the Court's judgment was a fine/punishment for allegedly contracting without a license. In other words, this wasn't a civil case for civil or punitive damages, but a purely penal forfeiture disguised under the veil of a civil case to convict and punish me without the heightened protections of criminal proceedings and due process.

The Constitutions of California and the United States both have mandatory non-discretionary due process provisions regarding the imposition of excessive fines and cruel and unusual punishments that all government officials must abide by when rendering punishment of any kind. For example, the excessive fines clause under the California Constitution requires that the fine be proportional to the offense, and that a person's ability to pay be taken into account. I was not afforded either of these due process protections at "trial" or ultimately in the appeal I filed. Moreover, the California Constitution flatly forbids private parties from prosecuting other private parties- that power is reserved entirely to the office of the Executive under which the District Attorney's Office resides. The result is that the Court had no authority to deprive me of due process or to excessively, cruelly, and unusually punish me.

According to the Supreme Court of the United States, it is treason for a Court to exercise jurisdiction (authority) when it doesn't have it.

> *"We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."*[2]

As a former local Police Officer with extensive experience in fraud and forensic investigation, I knew something was terribly wrong and began to investigate. Thus far, my investigation has revealed that my case wasn't just an anomaly where the "Court" made an honest mistake, but rather that this highly unconstitutional and criminal behavior is in fact California's "public policy" and that there are many other victims of this fraud, deceit, treason, and other crimes being perpetrated by the "Legislature" and "Judiciary" of California.

After exhausting all apparent remedies within the "Judicial" and "Legislative" departments of California government, I began making complaints to law enforcement agencies in their capacity as members of the executive branch whose duty it is to see

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

that the law is faithfully executed. This is what led me to contact Sgt. Darrin Joe of the Newport Beach Police Department, ("NBPD"), on or about November 4, 2021.

After several hours of phone calls and email exchanges over several weeks, including presenting substantial evidence to support to my claims that my rights were being violated; and that my money, property, and liberty had been (and continue to be) taken without lawful authority, Sgt. Joe called me on December 8, 2021 and told me (1) that the NBPD was not going to intervene; and (2) that this was something to be taken up in the Courts and that I had received due process. To see how clearly due process was ***not*** followed, it should be noted that the maximum criminal penalty for contracting without a license is $5,000, not $848,000. See Cal. Business and Professions Code §7028.

The reason I made a complaint to the NBPD was because I (and many other victims) clearly did not receive due process. Second, I have exhausted all apparent remedies in the Courts and it is self-evident that the "Judicial" branch of government *is the problem*, not the solution because it has adopted this behavior as a Statewide "public policy." It's my understanding of Constitutional law that this is the precise reason our State and National governments were divided into three separate co-equal branches- to act as checks and balances of each other. Third, the protection of my rights, liberty, and property is a *mandatory* duty for all law enforcement officers. Article I, §26 clearly declares that the duties of public officials arising under the Constitution are "mandatory and prohibitory", not discretionary.

During my conversations with Sgt. Joe, including the one on Dec. 8th, he repeatedly told me that he is not trained to handle these types of issues and that they are not within the scope of municipal law enforcement agencies. I'm confused as to where these statements are coming from. I don't dispute that he isn't telling the truth from his perspective, but as a former member of law enforcement that attended a basic police academy just like Sgt. Joe, I received direct and substantial training on these issues. They are very simple- the taking of money or property (including rights) without lawful authority is called theft. When the property is taken by means of force and/or fear, it's called robbery. My rights, liberty, property, and money have all been taken (and continue to be taken) by force of the "Legislative", "Judicial", and now the "Executive" power of California. I say the Executive because law enforcement has a clear and unambiguous duty to intervene when rights are being violated and is refusing to after proper notice.

Taking Sgt. Joe's statement's (that he didn't have the proper training) into account, I went so far as to send him the Learning Domain (training manual) from the Police Academy pertaining to Law Enforcement's mandatory duties to protect the rights, liberty, and property of the People. I also sent him some suggestions on how the Department/City could help (in addition to conducting a substantive criminal investigation) by obtaining a protective order or involving the City attorney to obtain an injunction etc.

Despite the foregoing, Sgt. Joe apparently believes nothing can be done or is required to be done in this situation by the NBPD under our State and National Constitutions. During our Dec. 8th conversation, he told me that he came to his decision after discussing the matter with his Deputy Chief, Lieutenant, and other colleagues, which either indicates this is indeed a systemic training issue, or that the NBPD has an unwritten policy to refuse to investigate and intervene in complaints for deprivation of rights and/or criminal activity are made when members of the "Legislature" and "Judiciary" are involved.

I'm not sure how much clearer Sgt. Joe and the NBPD's Constitutional duties can be than as stated on the first paragraph of the Law Enforcement Code of Ethics written on *page 2* of the NBPD Policy Manual:

> "As a law enforcement officer, my **fundamental duty** is to serve the community; to **safeguard lives and property**; to **protect the innocent against deception**, the weak against **oppression or intimidation** and the peaceful against violence or disorder; and **to respect the constitutional rights of all to liberty, equality and justice.**"

I understand this is a political hot potato and that many public officials across multiple branches of State and Federal government will be exposed for treason and other crimes, but the action required is precisely within the duty(ies) law enforcement officers have sworn an oath to uphold. If this is truly a training issue, such that the command staff of the Police Department (including Sgt. Joe as a Detective Supervisor) doesn't know and/or understand their duties under the Constitution, then I demand you take immediate action to remedy this issue, including by providing me with someone competent to perform a full, fair, and impartial investigation into my complaints who will intervene as required and abide their sworn Constitutional duties.

I remain befuddled as to how, with decades of law enforcement training and experience, Sgt. Joe and his colleagues/supervisors believe that the fraud, deceit, treason, and other crimes being perpetrated upon me and the other People of California is "due process", not criminal/ or warranting a criminal investigation, and that apparently have *discretion* to intervene by simply turning a blind eye.

I spent a few hours writing this letter because I want to see the officers of the NBPD receive the proper training (if that's the issue) and/or abide their sworn duties in addition to having this criminal racket stopped. But in the event this isn't a training issue and the officers of NBPD refuse to abide their sworn duties, rest assured there will be accountability.

Sincerely,

/s/ Adam Bereki

Note: I have included a copy of the Police Academy training manual mentioned above, along with a copy of the December 9th phone conversation with Sgt. Joe. The detailed records of my complaint to Sgt. Joe/the NBPD can be obtained from him directly.

Gmail Adam Bereki <abereki@gmail.com>

PDF Version of Brief in Support of Law

6 messages

Adam <abereki@gmail.com> Fri, Dec 10, 2021 at 11:47 AM
To: "O'Neill, William" <woneill@newportbeachca.gov>, "Carpentieri, Peter" <pcarpentieri@nbpd.org>, Diane Dixon <ddixon@newportbeachca.gov>, "Avery, Brad" <bavery@newportbeachca.gov>, "Duffield, Duffy" <dduffield@newportbeachca.gov>, "Muldoon, Kevin" <kmuldoon@newportbeachca.gov>, "Blom, Noah" <NBlom@newportbeachca.gov>, "Brenner, Joy" <JBrenner@newportbeachca.gov>, "Joe, Darrin" <DJoe@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>

Please see the attached version of the Brief in Support of Law. I realized after my last email that I sent you a version in Apple Pages that you may not be able to access. I apologize for any confusion.

Sincerely,

Adam Bereki

On Thu, Dec 9, 2021 at 1:54 PM Adam <abereki@gmail.com> wrote:

> William,
>
> That's sort of correct. I am saying that §7031(a) and (b) are penal statutes that impose penal forfeitures for the commision of the public offense (as defined by Cal. Penal Code §15) of contracting without a license. See for e.g. *U.S. v. Seifuddin*, 820 F.2d 1074, 1076 (9th Cir. 1987) re penal forefeitures. I am also saying that because §7031 requires a total penal forfeiture, that the action must be brought by the executive and NOT private parties as ALL of the executive power of California is vested in the office of the Governor (Cal. Const. Article V). Furthermore, that even if §7031 was enforceable by private parties, that the Court is without authority to order excessive, cruel, and/or unusual punishment. My primary complaint is that Judges and Legislators of the State of California are acting WITHOUT Constitutional authority/subject matter jurisdiction and even upon due Notice are refusing to cease and desist their unlawful behavior. Furthermore, that it is the duty of the members of your police department (and all officers of the executive branch of government) to protect the rights, liberty, and property of the People and see that the law is faithfully executed. The officers of your department therefore, upon complaint, have a mandatory duty to investigate and intervene when Constitutional rights are being violated.
>
> I welcome further discussion.
>
> Sincerely,
>
> Adam Bereki
>
> On Thu, Dec 9, 2021 at 1:38 PM O'Neill, William <woneill@newportbeachca.gov> wrote:
>
> > You're saying is that Business & Professions Code Section 7031 is essentially a criminal statute, that the judiciary shouldn't enforce it, but that your primary complaint is against our police department for refusing to arrest judges or legislators?
> >
> > **Will O'Neill**

Newport Beach City Council

From: Adam <abereki@gmail.com>
Date: Thursday, December 9, 2021 at 12:02 PM
To: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, Diane Dixon <ddixon@newportbeachca.gov>, "Avery, Brad" <bavery@newportbeachca.gov>, "Duffield, Duffy" <dduffield@newportbeachca.gov>, "Muldoon, Kevin" <kmuldoon@newportbeachca.gov>, "Blom, Noah" <NBlom@newportbeachca.gov>, "Brenner, Joy" <JBrenner@newportbeachca.gov>, "O'Neill, William" <woneill@newportbeachca.gov>, "Joe, Darrin" <DJoe@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>
Subject: Complaint/ Petition for Redress for Egregious Criminal Police Misconduct/Dereliction of Sworn Duties

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good day,

Please see the attached document labeled NBPD COMPLAINT- BEREKI. This Complaint will provide context and support for the other documents.

Sincerely,

Adam Bereki

Additional Facts and Brief in Support of Law.pdf
215K

Harp, Aaron <aharp@newportbeachca.gov> Fri, Dec 10, 2021 at 12:07 PM
To: Adam <abereki@gmail.com>
Cc: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Joe, Darrin" <DJoe@nbpd.org>

Good afternoon Mr. Bereki,

Our office has reviewed this matter and it is our opinion that the Police Department has acted appropriately regarding your complaint. In our view, this is civil dispute that is properly handled by the judiciary and not by the Police Department. Hence, the City of Newport Beach will be taking no action related to this matter.

We appreciate your reaching out to the City of Newport Beach and we sincerely hope that you can resolve this dispute.

Aaron C. Harp

City Attorney

City of Newport Beach

100 Civic Center Drive

Newport Beach, CA, 92660

Phone: (949) 644-3131

Fax: (949) 644-3139

Email: aharp@newportbeachca.gov

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[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Dec 10, 2021 at 12:47 PM

To: "Harp, Aaron" <aharp@newportbeachca.gov>

Good afternoon Aaron,

Thank you for your response. Could you please share the factual foundation and legal bases of your findings and conclusions that support your "opinion"? I believe I have a right to this information given the fact that I filed a Petition for Redress of Grievance pertaining to deprivations of Constitutional Rights and so that I can properly inform my "representatives" of changes I feel need to be made in our law (if any).

Sincerely,

Adam Bereki
[Quoted text hidden]

Harp, Aaron <aharp@newportbeachca.gov> Fri, Dec 10, 2021 at 1:22 PM
To: Adam <abereki@gmail.com>

Good afternoon Mr. Bereki,

Unfortunately, our office is unable to provide you with legal advice. As stated below, it is our opinion this matter falls within the purview of the judiciary.

Thank you,

[Quoted text hidden]

Adam <abereki@gmail.com> Fri, Dec 10, 2021 at 1:28 PM
To: "Harp, Aaron" <aharp@newportbeachca.gov>

Aaron,

Thank you, but I am not asking you for legal advice. I submitted a Petition for Redress of Grievance for a deprivation of Constitutionally protected rights by the executive branch of California government acting by and through the City of Newport Beach Police Department. As such, you apparently made findings of facts and conclusions of law that determined I was not entitled to Redress in the form of having my rights, liberty, and property protected by the Newport Beach Police Department. As such, I am asking you to provide the specific findings(s) you made along with the conclusion(s) of law you/your office relied upon to arrive at your determination. This is clearly not a request for legal advice.

Sincerely,

Adam Bereki
[Quoted text hidden]

Harp, Aaron <aharp@newportbeachca.gov> Fri, Dec 10, 2021 at 1:35 PM
To: Adam <abereki@gmail.com>

God afternoon Mr. Bereki,

I believe providing you with our legal reasoning, beyond what is set forth below, would constitute legal advice. The City has spent a significant amount of time looking into your claims and we will not be able to spend any additional time related to this matter.

I hope you enjoy the holidays.

[Quoted text hidden]

December 10, 2021

To all parties/entities addressed in my Complaint/ Petition dated December 9, 2021:

Please see the following, to be fully incorporated in my original Complaint/ Petition:

Additional Facts and Brief in Support of Law Pertaining to My Complaint/ Petition for Redress of Grievance for Egregious Criminal Police Misconduct/ Dereliction of Sworn Duties Dated December 9, 2021

The being referred to as "Petitioner", below, is me, Adam Bereki. The Humphreys are the customers of my construction company who filed the lawsuit against me/ prosecuted me for allegedly contracting without a license. This document will further evidence the fraudulent, criminal, and unconstitutional nature of the actions taken against me and many other People pursuant to California's "public policy" pertaining to unlicensed contracting under Business and Profession Code §7031.

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On March 27th and 28th 2017, Petitioner was maliciously prosecuted and excessively, cruelly, and unusually punished under the fraudulent pretense of a remedial civil action in equity for "disgorgement" for allegedly performing construction work without a license. During the so-called "trial" he was also denied all of the heightened protections of criminal proceedings including the assistance of counsel. He was then excessively fined $848,000 – an amount more than forty times his qualifying and estimated net worth – after the "Court" refused to recognize any of the protections of the excessive fines clause. As a result of the *ultra vires* proceedings, Petitioner was subjected to a bill of attainder or pains and penalties in

violation of Article I, §10 of the Constitution having been punished without a judicial determination of his rights. See Superior Court of California, County of Orange, case# 30-2015-00805807, incorporated and fully set forth herein.

The statute under which Petitioner was prosecuted, California Business and Professions Code §7031(b), is a public regulatory penal statute that governs contractor licensing under California's Contractor Licensing Laws, (Business & Professions Code, §§7000 et seq.). According to the Supreme Court of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing penalty for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[1] More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[2] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided if they perform work without a license.[3] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

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

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

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

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

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid."

Another obvious indication of §7031's purely penal nature is that the same conduct is made criminal by Business and Professions Code §7028. Notably, the *maximum* fine for a first offense under §7028 is $5,000, not $848,000.

§7031(b) also falls squarely within the definition of a crime or public offense under Cal. Penal Code §15:

> "[a] crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or, 5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State."

As this Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment [...]."[4]

Despite the excessive, cruel, and unusual punishment imposed on Petitioner, the Minute Order issued by Superior Court of California, County of Orange, "Judge" David Chaffee, (Appendix [A], pp.1–6; (Exhibit [A1]), reflects a judgment for "disgorgement of funds paid". According to this Court's recent decision in the case of

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

Liu v. SEC,[5] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, not the total penal forfeiture of an entire transaction without offsets for benefits conferred.

The obvious problem here is that equitable disgorgement of Petitioner's profits is not what Chaffee ordered. (Vf).[6] He ordered a total penal forfeiture of "all compensation paid" as stated in §7031(b) without offsets for benefits conferred. Equally troubling, §7031(b) mentions nothing about equitable disgorgement. Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is also not used anywhere in the legislative of history of §7031. And, as previously evidenced, the Legislature was perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

In his dissent in *Liu supra*, Justice Thomas aptly saw the writing on the wall surrounding the nationwide abuses of "disgorgement". He said "[t]he term disgorgement itself invites abuse because it is a word with no fixed meaning. [...] As long as courts continue to award "disgorgement", [Courts] will continue to have license to expand their own power."[7]

Even assuming §7031(b) called for a true claim of equitable disgorgement, Petitioner is unaware of any evidence on the trial "Court's" record that he profited even one dollar let alone the $848,000 awarded by Chaffee, or that he was unjustly enriched by purportedly performing the custom remodel work requested by the Humphreys. (Vf). See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

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

[6] All sentences with verified statements of fact end with "(Vf)" to be clearly discerned from legal arguments, historical statements, opinions, and perceptions. Statements with cited Exhibits to authenticated Court documents are considered Verified as well.

[7] *Liu v. SEC*, 140 S. Ct. 1936, 1953-54 (2020).

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

Even more astounding, the fraudulent "Proposed Judgment Order" filed by the Humphreys and their attorney, William G. Bissell,[8] (Exhibit [A3] pp.967-974), is an order for "Damages" (not "disgorgement") in the amount of $848,000. This order was later signed by Chaffee. See Appendix [B], pp. 7–8 or Exhibit [A2].

In addition to the fact there was no apparent evidence presented by the Humphreys to substantiate a claim for equitable disgorgement, Petitioner is also unaware of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with this Court's definition thereof. (Vf). See for e.g. the case of *Birdsall v. Coolidge,*[9] defining damages as:

> "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

According to the California Second District Court of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.,*[10] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or

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[8] All references to William Bissell shall also include The Law Offices of William G. Bissell.

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

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

she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the licensing laws are founded is purely hypothetical. Dating all the way back to the Magna Carta, punishment for an offense against the Crown was limited to "genuine [not hypothetical] harm".[11]

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include [...] general compliance with regulatory law."[12] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[13]

But not only did the Humphreys never state a claim for equitable disgorgement or damages, immediately before "trial" they specifically severed their claim for alleged damages from their First Amended First Cause of Action for "disgorgement". (Exhibit [A3] pp.780-791). Their intent was that by simply having a "trial" only on their First Cause of Action for "disgorgement", they would receive a total forfeiture in addition to keeping nearly one million dollars in work and therefore have no need to evidence any damages. This intent was specifically declared in Bissell's sworn Declaration in Support of the Motion for Severance. Therein, Bissell testified that "the amount to be disgorged [forfeited] would exceed

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[11] *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 271 (1989).

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

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

that amount of damages claimed by [the Humphreys] [and] there would be no need to put on evidence of either [Petitioner or his company's] liability or [the Humphreys] damages." Exhibit [A3] p.791. As a result, no damages were evidenced at "trial".

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The case against Petitioner is not an anomaly, it's the standard operating procedure here in Commiefornia. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.,*[14] where the so-called "Judicial" Council of California sought a $22.7 million dollar forfeiture under the same fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired to maintain the California Court buildings that had admittedly done a good job. In response to a public records request,[15] the "Judicial" Council admittedly spent over $3 million dollars of the People's tax dollars in its attempts to prosecute, punish, and likely financially destroy *Jacobs* due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. One has to wonder just what degree of sociopathy[16] it must take to spend more than three million dollars to try and ruin a company that provided quality service and caused no harm. This is the same "Judicial" Council, mind you, whose purported duty it is make the policies for California "Courts", "the largest Court system in the Nation" and who, acting in concert with the *ultra vires* actions of the California

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

[15] Exhibit [C] p. 1815. $3,307,408.78.

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

"Legislature" and "Governor" manufactured the bogus civil jury instructions for §7031(b).[17]

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a default rule, [...] not of flexibility but of omnipotence".[18] "Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[19]

It is unknown exactly how many other similar cases have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes like §7031, which has been in existence since 1929. The following are just a handful of other cases[20] Petitioner was able to locate because an appeal was filed:

> *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. See *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS.
>
> *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and Court costs awarded against *MW Erectors, Inc.* pursuant to §7031(a) upheld by the Cal. Supreme Court, awarded by... you guessed it, "Judge" Chaffee.
>
> *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of an $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a).

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[17] Judicial Council of California Civil Jury Instructions, CACI §4560 and §4561.

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

[19] *Id.* p.333. Internal quotations omitted.

[20] The facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.

Hydrotech Systems, Ltd. v. Oasis Waterpark, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against Hydrotech pursuant to §7031(a).

White v. Cridlebraugh, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District Courts enforce these same public policies. See for e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,[21] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a). See also the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

In each and every case Petitioner examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed – and consequently <u>any</u> protections guaranteed by the excessive fines clauses – they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution [...] of another."[22]

a. The Humphreys Lacked Standing to Prosecute Petitioner.

1. The history of criminal forfeiture laws.

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

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

In the case of *United States v. Seifuddin,*[23] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

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

Applying this criteria to the instant case, it is plainly obvious that the action against Petitioner was an *in personam* criminal forfeiture intended to punish him for allegedly performing construction work without a license. As a result, the rules of criminal procedure were required to be followed.

It should also be noted that because the "Judgment" is more than forty times Petitioner's qualifying and estimated net worth, it will force him into bankruptcy where he will be forced to forfeit all of his qualifying lands and goods. At common Law a total forfeiture of an offender's lands or goods or both was punishment for a felony or treason and was prosecuted by indictment.[24]

2. The Humphreys Intended to Prosecute Petitioner by subjecting him to an in personam criminal forfeiture.

In their First Amended Trial Brief, (Exhibit [A3] p.836), the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish Petitioner for violating the licensing laws by seeking an $848,000 fine/total forfeiture upon him. They claimed that:

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

[24] *Evans v. Willis*, 1908 OK 199, p.11 (OK Supreme Ct. 1908).

> "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

The Humphreys lacked Constitutional standing to prosecute Petitioner for the commission of a public offense because Article V, §1 of the California Constitution vests the executive power of California *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a . . . political society, and incorporates into a commonwealth."[25] The State of California admits the "remedy" prescribed by §7031(b) is in fact a sword.[26] Therefore, only the executive branch of the State could prosecute Petitioner, not the Humphreys.[27] "A lack of standing is a jurisdictional defect."[28]

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

[26] "The hiring party is entitled to enforce these remedies [§7031] through a defensive shield [§7031(a)] or an affirmative sword [§7031(b)]." *Alatriste v. Cesar's Designs, Inc.*, 183 Cal. App 4th 656, 664 (2010).

[27] *Robertson v. Watson*, 560 U.S. 272, 273 (2010) and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

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

Despite the foregoing, no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the Superior Court of California, County of Orange with personal and subject matter jurisdiction[29] to prosecute and punish Petitioner. (Vf). As a result, "Judge" Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[30] Instead, Chaffee arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no lawful authority whatsoever to do so, thereby committing fraud upon Petitioner and his estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of the fraudulent *ultra vires* "Judgment Order".

Sincerely,

/s/ Adam Bereki

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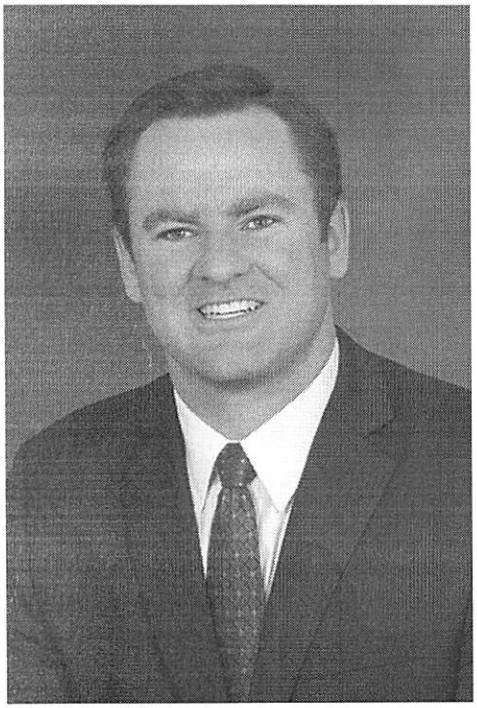
[29] "[J]urisdiction of all justiciable matters can only be exercised [...] through the filing of pleadings which are sufficient to invoke the power of the court to act." *Buis v State*, 1990 OK CR 28, p.4 (1990). Internal quotations omitted. "A person may not be punished for a crime without a formal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

[30] Cal. Penal Code §1382.

Will O'Neill, Esq.

Partner



Practice Areas

- Business
- Real Estate

Email: Mr. O'Neill
Direct: (714) 884-4139 (tel:7148844139)

Will O'Neill's extensive commercial litigation practice focuses on reaching business solutions to complex disputes. Clients have appreciated Will's efficiency and dedication to resolving disputes favorably, practically, and economically.

Will's leadership in local and statewide bar activities has helped develop a strong reputation among members of the bench and fellow attorneys. His leadership has included membership on the Board of the Association of Business Trial Lawyers (Orange County chapter), serving on the Executive Board for the University of California Hastings College of Law Board of Governors (President in 2016), and Trustee of the Celtic Bar Association. He has been recognized as Martindale Hubbell AV Rated and a Southern California Lawyers Rising Star/Super Lawyers every year since 2013.

Will has experience in a wide range of practice areas, including real estate development disputes, commercial lease disputes, trade secret misappropriation, breach of fiduciary duty, construction dispute litigation, franchise disputes, employee restrictive covenants, Stranger Originated Life Insurance (STOLI) disputes, and international and cross state litigation complexities. He has litigated actively in various arbitration forums, numerous counties throughout the State of California, and every Federal District Court in California. He has also handled appeals in the Ninth Circuit Court of Appeals and California Courts of Appeal. He has also served as local counsel to prominent firms in different parts of the United States.

Will's legal writings have appeared widely in numerous publications, including Managing IP, Federal Bar Association (Orange County Chapter), Orange County Lawyer, Association of Business Trial Lawyers Report, Orange County Business Journal, and a section of a Corporate Practice Series Portfolio for Bloomberg BNA. Will supports local and international charities, including World Vision, Compassion International, and Beta Foster Care.

Professional Recognition

Admissions

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EXHIBIT [D]–4822

INCIDENT/INVESTIGATION REPORT

Agency Name	Case#
Newport Beach Police Department	21008880
ORI: CA0301400	Date / Time Reported: 12/07/2021 10:35 Tue
	Last Known Secure: 04/20/2017 09:00 Thu
	At Found: 10/28/2021 14:04 Thu

INCIDENT DATA

Location of Incident	Gang Relat	Premise Type	Beat/Tract
870 SANTA BARBARA DR, Newport Beach CA	NO	Other Location	A3

	Crime Incident(s)	(Att)	Weapon / Tools	Activity	Entry	Exit	Security
#1	Suspicious Circumstances 925		NONE				
#2	Crime Incident	( )					
#3	Crime Incident	( )					

MO

VICTIM

# of Victims: 0 | Type: | Injury: | Domestic: N

	Victim/Business Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
V1								

Home Address | Home Phone

Employer Name/Address | Business Phone | Mobile Phone

VYR	Make	Model	Style	Color	Lic/Lis	VIN

OTHERS INVOLVED

CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: INDIVIDUAL/ NOT LAW ENFORCEMENT | Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
IO	BEREKI, ADAM ALAN		06/18/1979 Age 37	W	M		Non-Resident	

Home Address: 818 SPIRIT COSTA MESA, CA 92626 | Home Phone: 949-241-6693

Employer Name/Address: SELF | Business Phone: 714-960-8825 | Mobile Phone:

Type: | Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status

Home Address | Home Phone

Employer Name/Address | Business Phone | Mobile Phone

PROPERTY

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)

VI #	Code	Status Frm/To	Value	OJ	QTY	Property Description	Make/Model	Serial Number

Officer/ID#: JOE, D. (1219)

Invest ID#: JOE, D. (1219) | Supervisor: RODRIGUEZ, B. (1208)

Status | Complainant Signature | Case Status: Cleared / Non-crime 12/10/2021 | Case Disposition:

R_CS1IBR | Printed By: CBUCK, CAD3 | Sys#: 272146 | 12/21/2021 15:28

INCIDENT/INVESTIGATION REPORT

Newport Beach Police Department

Case # *21008880*

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

	IBR	Status	Quantity	Type Measure	Suspected Type	
DRUGS						

Assisting Officers

Suspect Hate / Bias Motivated:

INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 21008880 *Newport Beach Police Department*

NARRATIVE

The listed Involved Other party contacted NBPD Detectives to report suspicious circumstances.

Alcohol Related: No Involved Location: N/A
Reportable Use of Force: No
Hate Crime Related: No Weapon Involved: N/A
Victims' Bill of Rights Provided to Victim(s): No
Victim Advised of Confidentiality Provisions Per 293 PC: No
Victim Desires Confidentiality: N/A

On 10-28-2021, I was working as a detective sergeant, assigned to the Property Crimes Unit-West of the Newport Beach Police Department. I received a voice message from a subject who identified himself as Adam Bereki. In the message, Bereki stated he was dealing with "some very peculiar circumstances," and that he needed some help with "crimes being perpetrated by judges."

I contacted Bereki, a Costa Mesa resident, by telephone. Over the course of the following four weeks, I had several separate telephone conversations with Bereki, some lasting over an hour in length, where he described his situation. In summary, Bereki had a civil judgment against him in 2017 for $848,000.00 after a court (Orange County Superior Court in Santa Ana) determined he operated as a contractor without a license during a residential remodel project in Newport Beach. In 2018, Bereki appealed the decision to the California Court of Appeals, Fourth Appellate District, Division 3 in Santa Ana. The appellate court affirmed the lower court's decision.

Bereki insisted I investigate this case as a criminal matter, stating as a police officer, I was bound by the Constitution of the United States and the Constitution of the State of California to investigate the violation of his constitutional rights; in this case a violation of the 8th Amendment prohibiting excessive fines. Bereki also stated the crimes of fraud, theft, forgery, and robbery were committed by the judges involved in this decision, based on his interpretation of the judicial process and subsequent case law, as well as his belief the involved judges have been misinterpreting the law for years leading up to his case.

On 12-7-2021, I contacted Orange County Deputy District Attorneys [redacted] and [redacted] to discuss this case. Both DAs were in agreement that criminal courts have no jurisdiction to intervene in sustained civil judgments. They also stated that the Constitution protects people against the deprivation of life, liberty, or property in circumstances when they were not afforded the benefit of due process of law. DDA [redacted] advised me to recommend Bereki either file a motion for re-hearing of his case through the appellate court, or petition the Supreme Court of the United States to hear his case.

I relayed this information to Bereki, who adamantly disagreed. Bereki asked if he was permitted to contribute a written statement to this case. I told him he was free to do so. Bereki reminded me that he has contacted numerous different law enforcement agencies and spoken to numerous different police officers about this case, all of whom have refused to assist him. Bereki said a potential next step for him would be to sue all the departments and officers who did not investigate this case further, including me and the Newport Beach Police Department.

This case shall be categorized as a Suspicious Circumstance due to the lack of probable cause to indicate a violation of the California Penal Code has occurred. A printout of the decision from Bereki's appellate case was scanned into this file, along with the emails and attachments sent to me by Bereki.

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request: Police Related Records Request - Adam Bereki

Type:	Police Related Records Request	**Ticket #:**	466463
Location Type:	NONE	**Create Date:**	12/11/2021
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

EXHIBIT [D]– 4827

Comments & History

+ Add Comment

By:		Type:
David(user)	12/11/2021 8:36:21 AM	Details

Digital copies of all documents in the custody and control of the NBPD and City of Newport Beach pertaining to Police case #21-08880. This document request should include all crime/information reports, supplemental reports, copies of any documents booked into evidence or property, and copies of any evidence/property reports. Additionally, copies of all emails, notes, department and City inter-office memorandums or any other written communication between members of the Newport Beach Police Department, City of Newport Beach, Orange County District Attorney''s Office, or any other government agency or private party.

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D]– 4828

CITY OF NEWPORT BEACH
870 Santa Barbara Drive
Newport Beach, California 92660
949-644-3681
nbpd.org

Adam Bereki
abereki@gmail.com

December 20, 2021

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED December 11, 2021; NOTICE OF DETERMINATION

To Adam Bereki,

The Newport Beach Police Department received your California Public Records Act ("Act") (Govt. Code 6250 et seq.) request on December 11, 2021. This response will serve as the Department's notice of determination as to whether the request in or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code 6250 et seq.).

You requested a copy of police report #21-08880 and all "crime/information reports, supplemental reports, copies of any documents booked into evidence or property, and copies of any evidence/property reports The Newport Beach Police Department must deny your request for a copy of this police report due to the following exemption in accordance with the Act.

- Police Records: Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of...any state or local police agency, or any investigatory or security files compiled by any...local agency for correctional, law enforcement, or licensing purposes. (Gov. Code § 6254(f).)

However, since you you may request the report through our front desk at 949-644-3681.

You also requested all emails in relation to case #21-08880. These records have been provided and will be mailed to you due to them being produced on a USB drive.

If you have any questions regarding this matter, I can be contacted at (949) 644-3680 or mfear@nbpd.org.

Sincerely,

Matthew Fear
Records Supervisor
Newport Beach Police Department

EXHIBIT [D]– 4829

Gmail Adam Bereki <abereki@gmail.com>

PRAR-Bereki 12-11-2021

4 messages

Adam <abereki@gmail.com> Wed, Dec 29, 2021 at 4:58 PM
To: "Fear, Matthew" <mfear@nbpd.org>

Hi Matthew,

With regard to the PRAR for a copy of report 21-0880, I received a copy of the report yesterday. In reading Sgt. Joe's report, he states, "a copy of the decision from Bereki's appellate case was scanned into this file, along with the emails and attachments sent to me by Bereki." None of these documents were provided in the emails I requested or with the report documents I requested. Could you please provide all of them to me.

Sincerely,

Adam Bereki

Fear, Matthew <mfear@nbpd.org> Thu, Dec 30, 2021 at 6:51 AM
To: Adam <abereki@gmail.com>

Good morning Adam, please see attached which includes Part 1 of all documents that were scanned in with your report #21-8880, you will receive 2 more emails from me for the remaining attachments due to the file size. Let me know if you do not receive any of them, thank you.

MATTHEW FEAR
RECORDS SUPERVISOR

NEWPORT BEACH POLICE DEPARTMENT
870 SANTA BARBARA DRIVE, NEWPORT BEACH, CA 92660 | NBPD.ORG
MFEAR@NBPD.ORG | 949-644-3680

From: Adam [mailto:abereki@gmail.com]
Sent: Wednesday, December 29, 2021 4:59 PM
To: Fear, Matthew <mfear@nbpd.org>
Subject: PRAR-Bereki 12-11-2021

EXHIBIT [D]– 4830

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

[Quoted text hidden]

21008880 - 1.pdf
12007K

Fear, Matthew <mfear@nbpd.org>
To: Adam <abereki@gmail.com>

Thu, Dec 30, 2021 at 6:51 AM

Part 2

MATTHEW FEAR
RECORDS SUPERVISOR

NEWPORT BEACH POLICE DEPARTMENT
870 SANTA BARBARA DRIVE, NEWPORT BEACH, CA 92660 | NBPD.ORG
MFEAR@NBPD.ORG | 949-644-3680

From: Adam [mailto:abereki@gmail.com]
Sent: Wednesday, December 29, 2021 4:59 PM
To: Fear, Matthew <mfear@nbpd.org>
Subject: PRAR-Bereki 12-11-2021

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

Hi Matthew,

[Quoted text hidden]

21008880 - 2.pdf
5514K

Fear, Matthew <mfear@nbpd.org>
To: Adam <abereki@gmail.com>

Thu, Dec 30, 2021 at 6:53 AM

EXHIBIT [D]– 4831

Part 3 (final)

MATTHEW FEAR

RECORDS SUPERVISOR

NEWPORT BEACH POLICE DEPARTMENT

870 SANTA BARBARA DRIVE, NEWPORT BEACH, CA 92660 | NBPD.ORG

MFEAR@NBPD.ORG | 949-644-3680

From: Adam [mailto:abereki@gmail.com]
Sent: Wednesday, December 29, 2021 4:59 PM
To: Fear, Matthew <mfear@nbpd.org>
Subject: PRAR-Bereki 12-11-2021

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

Hi Matthew,

[Quoted text hidden]

21008880 - 3.pdf
27308K

EXHIBIT [D]– 4832

Gmail Adam Bereki <abereki@gmail.com>

PRAR

2 messages

Adam <abereki@gmail.com> Tue, Jan 4, 2022 at 2:43 PM
To: "Fear, Matthew" <mfear@nbpd.org>

Hi Matthew,

I hope you're having a nice day.

On the report I received, 21008880, the names of the two District Attorneys contacted by Sgt. Joe have been redacted. I don't believe the names of public officials acting in the course and scope of their duties are privileged information. Could you please provide me the names and in which context they are used in that paragraph of the report? Sgt. Joe refers to them together then only one of them pertaining to a specific statement.

Thank you,

Adam
949 241 6693

Fear, Matthew <mfear@nbpd.org> Wed, Jan 5, 2022 at 3:38 PM
To: Adam <abereki@gmail.com>

Good afternoon Adam, please see the attached un-redacted copy of your police report. Have a good rest of your day, thank you.

MATTHEW FEAR
RECORDS SUPERVISOR

NEWPORT BEACH POLICE DEPARTMENT
870 SANTA BARBARA DRIVE, NEWPORT BEACH, CA 92660 | NBPD.ORG
MFEAR@NBPD.ORG | 949-644-3680

From: Adam [mailto:abereki@gmail.com]
Sent: Tuesday, January 4, 2022 2:44 PM
To: Fear, Matthew <mfear@nbpd.org>
Subject: PRAR

EXHIBIT [D]– 4833

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

[Quoted text hidden]

21008880.pdf
22K

EXHIBIT [D]– 4834

INCIDENT/INVESTIGATION REPORT

Agency Name: *Newport Beach Police Department*			Case#: *21008880*
ORI: *CA0301400*			Date / Time Reported: *12/07/2021 10:35 Tue*
Location of Incident: *870 SANTA BARBARA DR, Newport Beach CA*	Gang Relat: *NO*	Premise Type: *Other Location*	Beat/Tract: *A3* — Last Known Secure: *04/20/2017 09:00 Thu* — At Found: *10/28/2021 14:04 Thu*

INCIDENT DATA

	Crime Incident(s)	(Att)	Weapon / Tools	Activity
#1	*Suspicious Circumstances 925*		Entry:	Exit: Security:
#2	Crime Incident	( )	Weapon / Tools	Activity
			Entry:	Exit: Security:
#3	Crime Incident	( )	Weapon / Tools	Activity
			Entry:	Exit: Security:

MO:

VICTIM

# of Victims: *0* — Type: — Injury: — Domestic: N

	Victim/Business Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
V1								

Home Address: — Home Phone:

Employer Name/Address: — Business Phone: — Mobile Phone:

VYR	Make	Model	Style	Color	Lic/Lis	VIN

OTHERS INVOLVED

CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)

Type: INDIVIDUAL/ NOT LAW ENFORCEMENT — Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status
IO	*BEREKI, ADAM ALAN*		*06/18/1979* Age *37*	*W*	*M*		*Non-Resident*	

Home Address: *818 SPIRIT COSTA MESA, CA 92626* — Home Phone: *949-241-6693*

Employer Name/Address: *SELF* — Business Phone: *714-960-8825* — Mobile Phone:

Type: — Injury:

Code	Name (Last, First, Middle)	Victim of Crime #	DOB / Age	Race	Sex	Relationship To Offender	Resident Status	Military Branch/Status

Home Address: — Home Phone:

Employer Name/Address: — Business Phone: — Mobile Phone:

PROPERTY

1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)

VI #	Code	Status Frm/To	Value	OJ	QTY	Property Description	Make/Model	Serial Number

Officer/ID#: *JOE, D. (1219)*

Invest ID#: *JOE, D. (1219)* — Supervisor: *RODRIGUEZ, B. (1208)*

Status — Complainant Signature: — Case Status: *Cleared / Non-crime* *12/10/2021* — Case Disposition:

R_CS1IBR — Printed By: MFEAR, REC-SR — Sys#: 272146 — 01/05/2022 15:36

EXHIBIT [D]– 4835

INCIDENT/INVESTIGATION REPORT

Newport Beach Police Department

Case # *21008880*

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

	IBR	Status	Quantity	Type Measure	Suspected Type	
DRUGS						

Assisting Officers

Suspect Hate / Bias Motivated:

INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 21008880 *Newport Beach Police Department*

NARRATIVE

The listed Involved Other party contacted NBPD Detectives to report suspicious circumstances.

EXHIBIT [D]– 4836

Alcohol Related: No Involved Location: N/A
Reportable Use of Force: No
Hate Crime Related: No Weapon Involved: N/A
Victims' Bill of Rights Provided to Victim(s): No
Victim Advised of Confidentiality Provisions Per 293 PC: No
Victim Desires Confidentiality: N/A

On 10-28-2021, I was working as a detective sergeant, assigned to the Property Crimes Unit-West of the Newport Beach Police Department. I received a voice message from a subject who identified himself as Adam Bereki. In the message, Bereki stated he was dealing with "some very peculiar circumstances," and that he needed some help with "crimes being perpetrated by judges."

I contacted Bereki, a Costa Mesa resident, by telephone. Over the course of the following four weeks, I had several separate telephone conversations with Bereki, some lasting over an hour in length, where he described his situation. In summary, Bereki had a civil judgment against him in 2017 for $848,000.00 after a court (Orange County Superior Court in Santa Ana) determined he operated as a contractor without a license during a residential remodel project in Newport Beach. In 2018, Bereki appealed the decision to the California Court of Appeals, Fourth Appellate District, Division 3 in Santa Ana. The appellate court affirmed the lower court's decision.

Bereki insisted I investigate this case as a criminal matter, stating as a police officer, I was bound by the Constitution of the United States and the Constitution of the State of California to investigate the violation of his constitutional rights; in this case a violation of the 8th Amendment prohibiting excessive fines. Bereki also stated the crimes of fraud, theft, forgery, and robbery were committed by the judges involved in this decision, based on his interpretation of the judicial process and subsequent case law, as well as his belief the involved judges have been misinterpreting the law for years leading up to his case.

On 12-7-2021, I contacted Orange County Deputy District Attorneys Bill Feccia and Clyde Von Der Ahe to discuss this case. Both DAs were in agreement that criminal courts have no jurisdiction to intervene in sustained civil judgments. They also stated that the Constitution protects people against the deprivation of life, liberty, or property in circumstances when they were not afforded the benefit of due process of law. DDA Feccia advised me to recommend Bereki either file a motion for re-hearing of his case through the appellate court, or petition the Supreme Court of the United States to hear his case.

I relayed this information to Bereki, who adamantly disagreed. Bereki asked if he was permitted to contribute a written statement to this case. I told him he was free to do so. Bereki reminded me that he has contacted numerous different law enforcement agencies and spoken to numerous different police officers about this case, all of whom have refused to assist him. Bereki said a potential next step for him would be to sue all the departments and officers who did not investigate this case further, including me and the Newport Beach Police Department.

This case shall be categorized as a Suspicious Circumstance due to the lack of probable cause to indicate a violation of the California Penal Code has occurred. A printout of the decision from Bereki's appellate case was scanned into this file, along with the emails and attachments sent to me by Bereki.

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request: Police Related Records Request - Adam Bereki

Type:	Police Related Records Request	**Ticket #:**	466512
Location Type:	NONE	**Create Date:**	12/12/2021
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

EXHIBIT [D]– 4838

Comments & History

+ Add Comment

By: Adam (user) | 12/12/2021 1:36:11 PM | **Type:** Comments

There is also one more call on October 29, 2021. I believe this call was before noon. I am unsure about the call on November 4, 2021.

The number called by Sgt. Joe is 949 241 6693 if that helps. Please feel to contact me if you need additional help locating these calls.

By: Adam(user) | 12/12/2021 1:33:08 PM | **Type:** Details

Digital copies of the audio conversations between Sgt. Darrin Joe and I on the following dates. During the calls Sgt. Joe either referred to me as "Mr. Bereki" or "Adam".

November 4, 2021 (before noon I believe).
November 18, 2021 (afternoon)
December 8, 2021 (afternoon)

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

APPS NEWPORT BEACH IT

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EXHIBIT [D]– 4839

CITY OF NEWPORT BEACH
870 Santa Barbara Drive
Newport Beach, California 92660
949-644-3681
nbpd.org

Adam Bereki
abereki@gmail.com

December 14, 2021

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED December 12, 2021; NOTICE OF DETERMINATION

To Adam Bereki,

The Newport Beach Police Department received your California Public Records Act ("Act") (Govt. Code 6250 et seq.) request on December 12, 2021. This response will serve as the Department's notice of determination as to whether the request in or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code 6250 et seq.).

You requested the audio conversations between yourself and Sgt. Darrin Joe. I have attached a CD with the requested audio recordings.

If you have any questions regarding this matter, I can be contacted at (949) 644-3680 or mfear@nbpd.org.

Sincerely,

Matthew Fear
Records Supervisor
Newport Beach Police Department

EXHIBIT [D] - 4840

NEWPORT BEACH POLICE DEPARTMENT
870 Santa Barbara, P.O. Box 7000, Newport Beach, CA 92658-7000

December 14, 2021

Enclosed are copies of the recordings of the telephone call(s) you requested.

J.M. Horton #1065
Communications Supervisor

EXHIBIT [D]– 4841

My Requests (main_view.aspx)
New Request (default.aspx)

Customer Information

Name: Adam Bereki
Phone #: 9492416693
Address: 818 Spirit
Costa Mesa, CA 92663
Email: abereki@gmail.com

Request Details

Request: General Records Request - Adam Bereki
Type: General Records Request
Ticket #: 466514
Location Type: NONE
Create Date: 12/12/2021
Location:
Status: COMPLETED
map it!
Case Worker: Eric Bryan

Attachments

466514_00514485.pdf	view (https://apps.newportbeachca.gov/quest/attachments/466514_00514485.pdf)
466514_14-Day_Extension_466514.pdf	view (https://apps.newportbeachca.gov/quest/attachments/466514_14-Day_Extension_466514.pdf)
466514_adam-bereki_NoD_466514.pdf	view (https://apps.newportbeachca.gov/quest/attachments/466514_adam-bereki_NoD_466514.pdf)
466514_Additional_Facts.pdf	view (https://apps.newportbeachca.gov/quest/attachments/466514_Additional_Facts.p
466514_Exchange.pdf	view (https://apps.newportbeachca.gov/quest/attachments/466514_Exchange.pdf)
466514_Redress_of_Grievance.pdf	view (https://apps.newportbeachca.gov/quest/attachments/466514_Redress_of_Grievance.p

Comments & History

+ Add Comment

EXHIBIT [D]– 4842

By: Eric Bryan (cnb) 1/5/2022 5:17:00 PM **Type:** Comments

Hello:

The City's Notice of Determination and records responsive to your request have been uploaded to this ticket.

Thank you,
Eric Bryan
Records Specialist

By: Cassandra Hearn (cnb) 1/3/2022 4:53:04 PM **Type:** Comments

Hello:

Please see the attached regarding your request. You will receive a Notice of Determination and any related records on or before January 17, 2022.

Thank you,

Cassandra Hearn
Department Assistant

By: Cassandra Hearn (cnb) 12/13/2021 2:57:39 PM **Type:** Assignment

Case assigned to: Eric Bryan

By: Adam(user) 12/12/2021 1:51:11 PM **Type:** Details

Copies of all document in the custody and control of the Newport Beach Police Department and City of Newport Beach pertaining to the Complaint/Petition for Redress of Grievance filed via email by Adam Bereki on December 9, 2021 and the Additional Facts/Brief in Support of Law Filed on December 10, 2021. Specifically, I am requesting a copy of the entire complaint and all supporting documents along with all documents created pertaining to investigation and disposition of the complaint. These documents may include (but are not limited to) emails between the City Council Members, Chief Jon T. Lewis, and other parties listed/not listed on the complaint; meeting minutes or other documents evidencing times and dates of any formal meetings pertaining to the complaint/petition; all documents relied upon by the City to make its findings and determinations; all call/video logs evidencing the date, time, number, length of call, and person called; any report numbers assigned or associated with the complaint; a digital copy of all recorded phone conversations; and any other documents whatsoever related to complaint/petition.

EXHIBIT [D]– 4843

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D]– 4844

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request:	General Records Request - Adam Bereki		
Type:	General Records Request	**Ticket #:**	466514
Location Type:	NONE	**Create Date:**	12/12/2021
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

Comments & History

+ Add Comment

EXHIBIT [D]– 4845

By:		Type:
Adam(user)	12/12/2021 1:51:11 PM	Details

Copies of all document in the custody and control of the Newport Beach Police Department and City of Newport Beach pertaining to the Complaint/Petition for Redress of Grievance filed via email by Adam Bereki on December 9, 2021 and the Additional Facts/Brief in Support of Law Filed on December 10, 2021. Specifically, I am requesting a copy of the entire complaint and all supporting documents along with all documents created pertaining to investigation and disposition of the complaint. These documents may include (but are not limited to) emails between the City Council Members, Chief Jon T. Lewis, and other parties listed/not listed on the complaint; meeting minutes or other documents evidencing times and dates of any formal meetings pertaining to the complaint/petition; all documents relied upon by the City to make its findings and determinations; all call/video logs evidencing the date, time, number, length of call, and person called; any report numbers assigned or associated with the complaint; a digital copy of all recorded phone conversations; and any other documents whatsoever related to complaint/petition.

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D]– 4846

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request:	Police Related Records Request - Adam Bereki		
Type:	Police Related Records Request	**Ticket #:**	466682
Location Type:	NONE	**Create Date:**	12/14/2021
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

EXHIBIT [D]– 4847

Comments & History

+ Add Comment

By:		Type:
Adam(user)	12/14/2021 9:34:22 AM	Details

All documents in the custody and control of the NB Police Department and City of Newport Beach evidencing: 1) the policies and standard operating procedures for handling citizen complaints for deprivation of constitutionally protected rights; 2)All training directives, training bulletins, training videos, and training courses involving handling citizen complaints for deprivation of constitutionally protected rights (this should include all materials from Peace Officer Standards and Training or other Supervisory Leadership Courses attended by members of the department and all curriculum presented in this courses); 3) a digital copy of all of the police department''s standard operating procedures; 4) a digital copy of the police department''s policy manual; 5)the names of any other manuals/guides used by the NBPD whereby procedures or protocols are detailed for the functioning of the police department and/or handling citizen complaints; 6) A digital copy of the most recent manual and training materials for the FBI Academy as attended by members of the NBPD; 7) a digital copy of the manual and training materials for SLI (the supervisory leadership institute) as attended by members of the NBPD; 8) A copy all policies whereby the NBPD and/or City of Newport Beach will refuse to investigate citizen complaints for deprivation of Constitutionally protected rights; 9) A copy of all policies whereby the NBPD and/or City of Newport Beach will refuse to investigate citizen complaints for deprivation of Constitutionally protected rights by members of the California

EXHIBIT [D]– 4848

Legislature and/or Judiciary; 10)A copy of all policies whereby the NPBD and/or City of Newport Beach will refuse to intervene upon receipt of a a citizen complaint for deprivation of Constitutionally protected rights; 11) A copy of all policies whereby the NBPD and/or City of Newport Beach will refuse to investigate citizen complaints for criminal activity by members of the California Legislature and/or Judiciary.

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D]– 4849

Name (Mr./ Mrs./ Miss/ Ms.):

_____

Home Address:

_____

_____

Business Address:

_____

_____

Home Phone: _____

Cell Phone: _____

Business Phone: _____

Email address: _____

I want to complain about (Badge / Officer / Car Number): _____

Date: _____

At (location): _____

At about (time): _____ (am/pm),

_____

_____

_____

_____

_____

_____

_____

(Attach as many additional sheets as necessary)

I declare under penalty of perjury that all the information I have set forth in this complaint is true.

You have the right to make a complaint against a Police Officer for any improper police conduct. California law requires this agency to have a procedure to investigate citizen complaints. You have the right to a written description in this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint. Even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Citizen complaints and any reports must be retained by this agency for at least five years.

You should also be aware that if you knowingly and maliciously make false accusations of misconduct against an officer, that officer may be able to seek money damages from you in a civil lawsuit.

I have read the above statement and I have read the above complaint report and declare under penalty of perjury that the foregoing complaint is a true and complete statement relative to the actions of the member(s) of the Newport Beach Police Department.

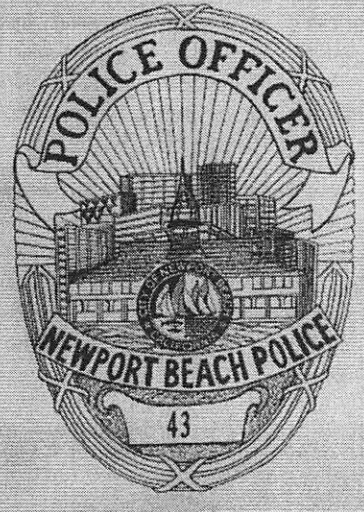
_____

Signature of Complainant Date

_____

Signature of Parent / Guardian Date

Do you have a **COMPLAINT?**



NEWPORT BEACH POLICE DEPARTMENT
870 SANTA BARBARA DRIVE
NEWPORT BEACH, CA 92660

(949) 644-3681

(Rev.4/17)

EXHIBIT [D]– 4850

The Newport Beach Police Department realizes it must be responsive to input from the citizens in our Community. The Department encourages citizens to report what they believe to be any acts of police misconduct. The complaint must be made in good faith, and we pledge to respond swiftly, thoroughly, and fairly to any such reports.

Not all contacts with the police are of an unfavorable nature which would cause a complaint to be made. The greater majority of our contacts involve public assistance, information, or in some cases, life-saving action by a police officer.

The Newport Beach Police Department is constantly seeking ways to improve our relationship with the Community. We have pledged ourselves to provide professional and dedicated police service. To help us maintain this objective, we sincerely appreciate your comments.

Jon T. Lewis
Chief of Police

DOES THAT MEAN THE POLICE DEPARTMENT WANTS COMPLAINTS?

Of course not. A complaint may mean that someone hasn't done a good enough job. But, we do want to know when our service needs to be improved or corrected.

BUT, WILL YOU LISTEN TO MY COMPLAINT?

Certainly, we want to find out what went wrong, if anything, so we can see that it doesn't happen again.

WHO WOULD INVESTIGATE MY COMPLAINT?

Either a member of our Professional Standards Unit or the officer's supervisor would investigate a complaint against an officer.

WELL, THEN WHO SHOULD I GO TO FIRST?

You should take a complaint about an officer to his/her supervisor. If he or she isn't there, ask for the on-duty supervisor. In some cases, it may be the same individual, especially if the complaint involves a uniformed officer.

BUT, I WANT TO TAKE THIS ALL THE WAY TO THE TOP. I WANT THE CHIEF OF POLICE TO KNOW.

And he will. The Chief of Police gets copies of **ALL** complaints against officers. The officer's supervisors are notified as well.

DO I HAVE TO COMPLAIN IN PERSON?

No. We prefer to talk to you in person, however, if there are valid reasons why this can't be done, your complaint can be made over the phone or by mail. Generally, we do not accept a complaint from another party on your behalf, as this would be considered hearsay information and could leave out important facts needed for the investigation. After receiving your complaint, a Department supervisor will contact you.

I'M UNDER 18. DO I HAVE THE RIGHT TO COMPLAIN?

Yes. Just bring one or both of your parents or guardians in with you.

WHAT WILL HAPPEN TO THE OFFICER?

That will depend on what the officer did. In some cases, it may result in the need for additional training. If his/her actions were criminal, they would be dealt with like any other person. If they were improper, but not criminal, he/she will be disciplined by the Chief of Police.

HOW THOROUGHLY WILL YOU REALLY INVESTIGATE?

Very thoroughly! We want to find out where we went wrong. On the other hand, if a person makes a FALSE complaint, we want to be able to make that determination as well.

WILL I BE TOLD HOW THE COMPLAINT CAME OUT?

Yes. You will be notified by the Department of the disposition of our investigation.

WHAT IF I'M NOT SATISFIED WITH THE RESULTS OF THE INVESTIGATION?

We sincerely hope that would never happen. If it did, an appointment may be made for you with the Chief of Police to discuss the complaint. You could also contact the City Manager for the City of Newport Beach; or, in some cases, you may contact the Orange County District Attorney. Our goal at the Newport Beach Police Department is to strive to insure that you will never need the information contained in this brochure. We don't want to fail in our continuing efforts to give YOU the best possible police service.

EXHIBIT [D]– 4851

CITY OF NEWPORT BEACH
870 Santa Barbara Drive
Newport Beach, California 92660
949-644-3681
nbpd.org

Adam Bereki
abereki@gmail.com

December 16, 2021

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED December 14, 2021; NOTICE OF DETERMINATION

To Adam Bereki,

The Newport Beach Police Department received your California Public Records Act ("Act") (Govt. Code 6250 et seq.) request on December 14, 2021. This response will serve as the Department's notice of determination as to whether the request in or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code 6250 et seq.).

Information regarding your request for policy information, standard operating procedures and training can be found on the Newport Beach Police Website at the following link:

https://www.nbpd.org/what-we-do/information/policies-and-training

A copy of the Newport Beach Police Department Policy Manual has also been attached for your review.

The Newport Beach Police Department has no responsive documents regarding your requests #6, #7.

I have also attached the in person form that citizens fill out when making complaints, which includes information on the process in which complaints are investigated.

If you have any questions regarding this matter, I can be contacted at (949) 644-3680 or mfear@nbpd.org.

Sincerely,

Matthew Fear
Records Supervisor
Newport Beach Police Department

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request: Police Related Records Request - Adam Bereki

Type:	Police Related Records Request	**Ticket #:**	466702
Location Type:	NONE	**Create Date:**	12/14/2021
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

EXHIBIT [D]– 4853

Comments & History

+ Add Comment

By:	12/14/2021	Type:
Adam(user)	11:09:52 AM	Details

A copy of the oaths of office for the following NBPD employees for each office/position occupied within the NBPD as required by Article XX of the Cal. Constitution: Darrin Joe (oath for police officer and sergeant); Chief Jon Lewis (all positions/offices held); Deputy Chief Joe Cartwright (oath for police officer, sergeant, lieutenant, deputy chief; The names of all supervisory personnel contacted by sergeant Darrin Joe involving case number 21-08880 and their oath(es) of office; Within this request please include dates of appointment to each position/office.

All documents evidencing the job descriptions and duties for each of the following positions/offices: Police Officer, Police Sergeant, Police Lieutenant; Police Deputy Chief; Police Chief; City Attorney, City Council Member, City Council Mayor; City Council Mayor Pro Tem

A Digital copy of the most recent edition of the handbook for City of Newport Beach boards, commissions, and committees; a digital copy of the City of Newport Beach employee handbook.

A digital copy of the NBPD Department Values Statements; a digital copy of the "Who We Serve" video located at: https://www.nbpd.org/who-we-serve; A digital copy of the "What we Do" video located at: https://www.nbpd.org/what-we-do

A digital copy of the charter for the city of Newport Beach

EXHIBIT [D]– 4854

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D]– 4855

CITY OF NEWPORT BEACH
870 Santa Barbara Drive
Newport Beach, California 92660
949-644-3681
nbpd.org

Adam Bereki
abereki@gmail.com

December 14, 2021

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED December 14, 2021; NOTICE OF DETERMINATION

To Adam Bereki,

The Newport Beach Police Department received your California Public Records Act ("Act") (Govt. Code 6250 et seq.) request on December 14, 2021. This response will serve as the Department's notice of determination as to whether the request in or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code 6250 et seq.).

You requested "...copy of the oaths of office for the following NBPD employees...". All Newport Beach Police Department employees use the same oath of office and it can be found in Newport Beach Police Policy 102.3 which I have attached.

You requested "All documents evidencing the job descriptions and duties for each of the following positions/offices...". All requested job descriptions and duties can be found at the following website:

https://www.governmentjobs.com/careers/newportbeach/classspecs

You requested "a digital copy of the charter for the city of Newport Beach" which has been attached for your review.

You requested a digital copy of the City of Newport Beach employee handbook and a copy of the City of Newport Beach boards, commissions and committee's handbook. I have attached the policy manual for both of these items. I have also attached a copy of the Newport Beach Police Vision Statement as found on our website.

Digital copies of the videos on the Newport Beach Police Department website are unavailable, however the videos can be found on YouTube under the Newport Beach Police Department account.

Regarding your request for "...all positions/offices held..." for Chief John Lewis and Deputy Chief Joe Cartwright, along with "The names of all supervisory personnel contacted by Sgt

EXHIBIT [D]– 4856

Darrin Joe involving case number 21-08880...", the Newport Beach Police Department must deny your request due to the following exemption in accordance with the Act.

- Records not in Existence: The City has no duty to create a record that does not exist at the time of a request. (Gov Code § 6252(e); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.)

If you have any questions regarding this matter, I can be contacted at (949) 644-3680 or mfear@nbpd.org.

Sincerely,

Matthew Fear
Records Supervisor
Newport Beach Police Department

Gmail Adam Bereki <abereki@gmail.com>

Objection to Dec. 14 2021 Determination

3 messages

Adam <abereki@gmail.com> Tue, Dec 21, 2021 at 11:47 AM
To: "Fear, Matthew" <mfear@nbpd.org>

Good day Matthew.

Please see the attached objection to your determinations.

Sincerely,

Adam Bereki

Objection to December 14 2021 Determination.pdf
22K

Fear, Matthew <mfear@nbpd.org> Wed, Dec 22, 2021 at 2:14 PM
To: Adam <abereki@gmail.com>

Good afternoon Adam, please see below regarding your objections:

1. Please see attached for all signed Oaths of Office that our Human Resources office had on file.
2. Regarding positions held for the following, see below for the position and start date:
    a. Sgt. Darrin Joe
        i. 8/10/2001 – Police Recruit
        ii. 2/12/2002 – Police Officer
        iii. 12/28/2013 – Police Sergeant
    b. Deputy Chief Joseph Cartwright
        i. 1/14/2002 – Police Officer
        ii. 1/30/2010 – Police Sergeant
        iii. 12/27/2014 Police Lieutenant
        iv. 1/2/2021 – Deputy Chief

EXHIBIT [D]– 4858

c. Chief Jon Lewis

i. 7/24/1991 – Police Cadet

ii. 10/12/1995 – Police Recruit

iii. 4/13/1996 – Police Officer

iv. 5/2/2005 – Police Sergeant

v. 1/30/2010 – Police Lieutenant

vi. 12/27/2014 – Deputy Chief

vii. 3/22/2016 – Police Chief

3. The superiors that Sgt. Joe contacted are:

a. Lieutenant Keith Krallman

b. Deputy Chief Joseph Cartwright

Thank you,

MATTHEW FEAR

RECORDS SUPERVISOR

NEWPORT BEACH POLICE DEPARTMENT

870 SANTA BARBARA DRIVE, NEWPORT BEACH, CA 92660 | NBPD.ORG

MFEAR@NBPD.ORG | 949-644-3680

From: Adam [mailto:abereki@gmail.com]
Sent: Tuesday, December 21, 2021 11:48 AM
To: Fear, Matthew <mfear@nbpd.org>
Subject: Objection to Dec. 14 2021 Determination

Warning, External email: The content or attachments contained in this message may be harmful. DO NOT CLICK links or attachments if you do not recognize the sender.

EXHIBIT [D]– 4859

3 attachments

Oath_Cartwright_Joseph_3.pdf
919K

Oath_Lewis_Jon_3.pdf
1363K

Oath_Joe_Darrin_1.pdf
30K

Adam <abereki@gmail.com> Wed, Dec 22, 2021 at 2:22 PM
To: "Fear, Matthew" <mfear@nbpd.org>

Matthew,

Thank you kindly for your continued prompt reply and service. I'm grateful.

Sincerely,

Adam Bereki

EXHIBIT [D]– 4860

Adam Bereki
C/o 818 Spirit
Costa Mesa, California 92626
949.241.6693 | abereki@gmail.com

Matthew Fear
Records Supervisor
City of Newport Beach
Newport Beach Police Department
Via email: mfear@nbpd.org

Date: December 21, 2021

RE: Objection to Notice of Determination Findings Dated December 14, 2021

Good day Matthew,

In your Notice of Determination dated 12/14/21:

1) you responded to my request for copies of oaths of office by providing me a blank copy of the oath of office. This is not what I requested. I requested copies of the actual oaths of office signed by each of the employees listed for each of the offices/ positions they have held within the Newport Beach Police Department as required Cal. Constitution Article XX since their employment began.
2) you responded to my request for all positions/offices held for the listed personnel by stating that the department had no records. This is not true. Both city personnel and the NBPD personnel offices have detailed records of each position/office held by each employee. While you may not need be required to create records of those that already exist, I am not asking for a mountain of documents pertaining to this request. Simply the date of each appointment to each office/position and the position held for each of the employees.It may be easier to create a simple spreadsheet than producing the documents.
3) You responded to to my request for the names of all supervisory personnel contacted by Sgt. Darrin Joe in re: DR#21-08880 by stating there were no records. Sgt. Joe told me on a recorded phone line that he contacted his superiors to make a determination of my complaint. The department cannot hide the names of the personnel that led to the resolution of a complaint or that were involved in the continuing alleged deprivation of my constitutionally protected rights by failing to create a record of their involvement or refusing to provide their names. The People have a right to know the names of all personnel involved in handling their complaints. If personnel were involved in the determination of my complaint, then their names must be provided whether a record exists or not.

Sincerely,

/s/ Adam Bereki

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, JOSEPH LEE CARTWRIGHT, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 07 day of JANUARY, 20 21.

Signature of Person Taking Oath

DEPUTY CHIEF / POLICE
Title or Department

Signature of Officer Administering Oath

Assistant to Chief of Police
Title of Officer Administering Oath

Revised 2009

EXHIBIT [D]– 4862

Human Resources

JAN 05 2015

Received by: MM

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Joseph Lee Cartwright, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 23rd day of December, 2014.

Signature of Person Taking Oath

Lieutenant
Title or Department

Signature of Officer Administering Oath

Dept. Assistant
Title of Officer Administering Oath

Revised 2009

EXHIBIT [D]– 4863

STATE OF CALIFORNIA
CITY OF NEWPORT BEACH
ORANGE COUNTY

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, JOSEPH LEE CARTWRIGHT, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Signature

POLICE OFFICER, NEWPORT BEACH
Title or Department

Subscribed and sworn to before me
this _____ day of _____,
20____.

City Clerk

EXHIBIT [D]– 4864

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Jon Lewis, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 22nd day of March, 2016.

Signature of Person Taking Oath

Chief of Police
Title or Department

Signature of Officer Administering Oath

City Clerk
Title of Officer Administering Oath

EXHIBIT [D]– 4865

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is required by Article XX, Section 3, of the Constitution of the State of California.

I, JON T. LEWIS, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 25th day of March, 2014.

Signature of Person Taking Oath

POLICE LIEUTENANT
Title or Department

Signature of Officer Administering Oath

Deputy City Clerk
Title of Officer Administering Oath

EXHIBIT [D]– 4866

Revised 2009

S T A T E O F C A L I F O R N I A
CITY OF NEWPORT BEACH
ORANGE COUNTY

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, JON T. LEWIS, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Signature

POLICE RECRUIT
Title or Department

Subscribed and sworn to before me
this_____day of_____,
19____.

City Clerk

STATE OF CALIFORNIA
CITY OF NEWPORT BEACH
ORANGE COUNTY

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, DARRIN SCOTT JOE, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Darrin Scott Joe
Signature

POLICE DEPARTMENT
Title or Department

Subscribed and sworn to before me
this 16 day of AUGUST,
20 01.

City Clerk

EXHIBIT [D]– 4868

POLICE OFFICER

Class Code: 200015A

Bargaining Unit: Police Association

CITY OF NEWPORT BEACH
Established Date: Sep 13, 2010
Revision Date: Nov 24, 2020

SALARY RANGE

$33.82 - $57.72 Hourly
$2,705.87 - $4,617.71 Biweekly
$5,862.72 - $10,005.04 Monthly
$70,352.67 - $120,060.51 Annually

DEFINITION:

To provide protection of persons and property within the community; patrol assigned area and interact with the community; and complete special assignments. Work an assigned shift and perform various law enforcement duties and protection services, including the prevention and investigation of crimes; the apprehension of law violators; collaboratively resolving community problems; maintenance of community safety and security; facilitate traffic flow and apply State and local traffic regulations.

SUPERVISION RECEIVED AND EXERCISED: Receives general direction from a Police Sergeant or an assigned Supervisor.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below to address business needs and changing business practices:

- Patrol an assigned area to prevent crime and protect the community by maintaining order and ensuring laws and regulations are adhered to;

- Respond to calls from general public and crime victims, traffic hazards; misdemeanors and felony incidents;

- Respond to radio, telephone or computer messages or instructions and complete the assignment;

- Investigate and analyze specific crime cases, perform arresting duties, issue citations and provide warnings; complete booking procedures and interview witnesses to gain information;

- Investigate and prepare reports on offenses, arrests, accidents, property damage, and administrative matters using a combination of writing and computer skills;

EXHIBIT [D]– 4869

- Analyze, suggest and implement solutions to police problems in an assigned area;
- Maintain uncooperative subjects;
- Appear in court on and off duty and give credible testimony;
- Transport prisoners;
- Drive a variety of vehicles in a safe and effective manner under a wide range of conditions;
- Capable of using a variety of firearms and weapons in a safe and effective manner during duty;
- Provide directions and information and arrange for assistance;
- Maintain accurate logs and records of work performed;
- Participate in training seminars, conferences and programs to stay abreast of current crime trends and innovative policing techniques;
- Inspect establishments licensed to serve alcoholic beverages; and
- Perform related duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Knowledge of:

Basic overview of law enforcement procedures and subjects as taught in the POST Basic Academy.

Ability to:

Learn modern policies and methods of police intervention, investigation and crime prevention methods; Learn to analyze police problems and develop effective solutions; Learn civil liability issues in police conduct; and learn rules of evidence and the laws governing the custody of persons;

Respond to needs for emergency service; arrest cooperative and non-cooperative subjects;

Exercise good judgment or social sensitivity in dealing with routine and unusual situations;

Perform all the cognitive and physical requirements of the job in a satisfactory manner;

Learn to use only objectively necessary force to control situations and persons, including

combative or fleeing suspects; Learn tactical and officer safety procedures;

Operate a variety of firearms and weapons safely and proficiently;

Learn, comprehend and effectively apply laws, and information, including City and department policies, rules and procedures;

Maintain composure and judgment during emergency or tense situations;

Adhere to the high standards of behavior and performance as defined by the organization; Effectively represent the Department in a variety of community and government settings;

Work extended hours and changing shifts when assigned or required;

Communicate clearly and concisely, both orally and in writing;

Regularly and predictably attend work;

Follow directions from a supervisor;

Understand and follow posted work rules and procedures;

Accept constructive criticism; and

Establish and maintain cooperative working relationship with those contacted in the course of work.

This position may be required to work overtime hours as needed.

PHYSICAL REQUIREMENTS AND ENVIRONMENTAL WORKING CONDITIONS: The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job.

Reasonable accommodations may be made to individuals with disabilities to perform the essential job functions.

Environment: Reactive emergency, natural or man-made disaster, and routine peace keeping environments with travel from site to site. The employee is regularly exposed to outside weather conditions; occasionally exposed to fumes or airborne particles, toxic or caustic chemicals, extreme cold, extreme heat, risk of electrical shock, risk of radiation, and vibration; potentially hostile environments; extensive public contact. The noise level in the work environment is usually moderate but may be very loud due to sirens, firearm training, etc. Incumbents required to work various shifts, including evenings and weekends, and may be required to travel outside City boundaries to attend meetings.

Physical: Primary functions require sufficient physical ability to work in a law enforcement setting and an office setting; restrain or subdue individuals; walk, stand, sit, or run for prolonged periods of time; occasionally stoop, bend, kneel, crouch, reach, and twist; occasionally climb and balance; regularly push, pull, lift, and/or carry light to moderate weights; frequently lift and/or move moderate to heavy weights; occasionally lift and/or move heavy weights; operate office equipment including use of computer keyboard; requires a sense of touch, finger dexterity, and gripping with hands and fingers; ability to speak and hear to exchange information; ability to operate a vehicle to travel to various locations; ability to

operate and use specialized law enforcement tools and equipment including guns and handcuffs.

Vision: See in the normal visual range with or without correction.

Hearing: Hear in the normal audio range with or without correction.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

Entry-level: Must have the ability to successfully complete a California POST Basic Academy and the City of Newport Beach Police Department Field Training Program.

Lateral: Must have successfully completed probationary period and training program at another law enforcement agency; and must possess current a POST Basic certificate.

Education: Equivalency to high school graduation*. College level coursework or other specialized training in police science, psychology, public administration or related field is highly desirable.

License/Certificate: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

ADDITIONAL REQUIREMENTS:

Must be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

Minimum age at time of appointment is 20.5 years.

Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

Be of good moral character, as determined by a thorough background investigation.

Be found to be free from any physical, emotional or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, that might adversely affect the exercise of the powers of a peace officer.

Record must be free from conviction of any felony or misdemeanor involving moral turpitude or domestic violence, and from an excessive number of citations for traffic violations. Background history should indicate responsibility, dependability, honesty, integrity, acceptable communication skills, good judgment and the ability to relate well to others.

All employees hired after January 1, 1999, shall not smoke or use tobacco products at any

EXHIBIT [D]– 4872

time while on or off duty.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

*High school graduation equivalency means to be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year, four-year, or advanced degree from an accredited college or university. The high school shall be either a United States public school, an accredited United States Department of Defense high school, or an accredited or approved public or nonpublic high school. Any accreditation or approval required by this subdivision shall be from a state or local government educational agency using local or state government approved accreditation, licensing, registration, or other approval standards, a regional accrediting association, an accrediting association recognized by the Secretary of the United States Department of Education, an accrediting association holding full membership in the National Council for Private School Accreditation (NCPSA), an organization holding full membership in AdvancED, an organization holding full membership in the Council for American Private Education (CAPE), or an accrediting association recognized by the National Federation of Nonpublic School State Accrediting Associations (NFNSSAA).

EXHIBIT [D]– 4873

POLICE SERGEANT

Class Code: 250040

Bargaining Unit: Police Management Association

CITY OF NEWPORT BEACH
Established Date: May 8, 2006
Revision Date: Jan 11, 2016

SALARY RANGE

$50.08 - $70.46 Hourly
$4,006.63 - $5,636.97 Biweekly
$8,681.04 - $12,213.43 Monthly
$104,172.43 - $146,561.17 Annually

DEFINITION:

To perform specific supervisory, administrative, technical, or specialized assignments in support of the Police Department. Serve as a Field Patrol Supervisor, Traffic Supervisor, or a supervisor of any of the various investigation units of the Detective Division. May be assigned as a supervisor in the following units: Personnel and Training, Community/Press Relations, or Professional Standards.

SUPERVISION RECEIVED AND EXERCISED: Receives general direction from a Police Lieutenant or other assigned supervisor; exercises direct supervision over Police Officers and civilian personnel.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

- Supervise Police Officers in patrolling their assigned beats;
- Assign patrol areas, special details, and shift work;
- Conduct briefings and provide special orders and instructions for the shift;
- Analyze daily activities and make field decisions on the dispatching and deployment of police units;
- Assist in employee counseling and disciplinary matters;
- Evaluate the performance of personnel as assigned;
- Relieve the Watch Commanders in their absence or at their direction;

EXHIBIT [D]– 4874

- Supervise detectives or investigators in the Detective or Traffic Divisions;
- Assist with investigations as appropriate;
- Review work of subordinate officers and civilian personnel and advise procedures and points of law;
- Coordinate recruiting and selection of personnel;
- Develop and administer in-service training;
- Contribute in developing policies and procedures;
- Serve as acting Lieutenant when assigned;
- Conduct personnel applicant investigations;
- Regularly and predictably attend work; and
- Perform other related duties as required or assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill and/or ability required.

Knowledge of:

Methods of effective supervision of personnel;

Criminal law, investigation and crime prevention methods;

Rules of evidence and the laws governing custody of persons;

Operational units in the Police Department;

Police records;

Civil liability issues in police conduct; and

Tactical and Officer safety procedures.

Ability to:

Deploy personnel effectively;

Direct personnel in their work and advise them on technical police problems;

EXHIBIT [D]– 4875

Assess the capabilities and limitations of operating units in the Police Department to facilitate proper utilization;

Communicate clearly and concisely, both orally and in writing;

Prepare accurate and comprehensive reports;

Analyze law enforcement situations and adopt effective programs for action;

Plan and coordinate the work of subordinates;

Effectively and tactfully counsel, mentor, and develop employees;

Interview and interrogate in a firm, diplomatic manner;

Recognize commendable work performed by employees and document it appropriately;

Appear for work on time;

Follow directions from a supervisor;

Understand and follow work rules and procedures;

Accept constructive criticism; and

Establish and maintain effective relationships with the public and fellow employees.

This position may be required to work overtime hours as needed.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Four years of experience as a Police Officer, including two years as a Police Officer with the Newport Beach Police Department, and currently employed by the Newport Beach Police Department.

Education: Graduation from an accredited or approved US high school or equivalent, and a minimum of 30 college units from an accredited college or university. College coursework in criminal justice, police science, public administration or related field is desirable.

License/Certificate: Possession of P.O.S.T. Basic Certificate.

Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Please Note: Prior to employment, the prospective candidate must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police

EXHIBIT [D]– 4876

Department.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

EXHIBIT [D]– 4877

POLICE LIEUTENANT

Class Code: 250065

Bargaining Unit: Police Management Association

CITY OF NEWPORT BEACH
Established Date: May 8, 2006
Revision Date: Jan 11, 2016

SALARY RANGE

$58.86 - $82.83 Hourly
$4,709.17 - $6,626.62 Biweekly
$10,203.20 - $14,357.69 Monthly
$122,438.37 - $172,292.22 Annually

DEFINITION:

To plan, direct and supervise the daily activities within a Division on an assigned shift, or perform as a manager responsible for a specialized function on a comparable level; and serve as a member of the Police Department Management Staff.

SUPERVISION RECEIVED AND EXERCISED: Receives general direction from the Chief of Police or an Assistant Police Chief; exercises direct supervision over Police Sergeants, Police Officers and civilian personnel.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

• Manage and coordinate the daily operations within a specified Division, shift or area; plan, organize, and direct the work of assigned personnel, including staff assignments, scheduling, training and evaluating personnel;

• Counsel and advise subordinate personnel; provide training where needed, develop, direct and assist with the training of staff to promote lateral and upward transition within the department;

• Resolve conflicts regarding management of the assigned function; ensure employee adherence to departmental policies and procedures; initiate employee discipline;

• Establish strategies and programs to meet divisional or area goals; conduct a continuing review of division activities and programs to identify problems and develop recommendations for improving services or implementing policy and procedural changes;

• Provide leadership by example;

EXHIBIT [D]– 4878

• Assist with the preparation and monitoring of the annual budget;

• Perform, supervise and coordinate specialized functions, including Executive Officer, Watch Commander, Traffic Services Lieutenant, Detective Services Lieutenant, Support Services Lieutenant and Professional Standards Lieutenant assignments;

• Monitor and direct daily field activities; review, evaluate and approve various reports; maintain and monitor the security of the police facility;

• Effectively counsel, advise and direct community members, leaders, and the general public;

• Develop and maintain effective working relationships with other City departments and outside agencies;

• Conduct staff projects and special studies as required; review, edit and approve delegated projects; prepare and present various reports;

• Develop policies and procedures; analyze existing programs and recommend improvements;

• Manage or conduct, as directed, criminal, civil, personnel and administrative investigations;

• Serve as an Acting Division Commander when assigned;

• Regularly and predictably attend work; and

• Perform other related duties as required or assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perfom each essential function. The requirements listed below are representative of the knowledge, skill and/or ability required.

Knowledge of:

Modern policies and methods of police administration, supervision, management training techniques, personnel administration, and leadership;

Budgeting procedures and techniques;

Related Federal, State and local laws, codes, ordinances and regulations;

Criminal law and procedure, particularly the laws of evidence, arrest and custody;

Police patrol, traffic, investigation, identification and crime prevention methods;

Civil liability issues in police conduct;

EXHIBIT [D]– 4879

Tactical and officer safety procedures; and

The rules and regulations of the City of Newport Beach and the Newport Beach Police Department.

Ability to:

Supervise, train and deploy personnel effectively;

Assess the capabilities and limitations of operating units to facilitate effective utilization;

Direct and advise personnel regarding technical police matters; administer evaluations and discipline;

Recognize commendable performance by employees and appropriately document such occurrences;

Perform complex analyses and recommend solutions;

Conduct thorough investigations and prepare accurate and comprehensive reports;

Demonstrate leadership skills; establish and maintain a positive work environment, free from the distractions associated with negative and disruptive behavior;

Analyze law enforcement issues in the community and develop effective resolutions;

Effectively represent the department in a variety of community and government settings;

Communicate clearly and concisely, both orally and in writing;

Appear for work on time;

Follow directions from a supervisor;

Understand and follow work rules and procedures;

Accept constructive criticism; and

Establish and maintain effective relationships with the public and fellow employees.

This position may be required to work overtime hours as needed.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Two years of experience as a Police Sergeant with the Newport Beach Police Department, and currently employed by the Newport Beach Police Department.

EXHIBIT [D]– 4880

Education: 60 college units or an AA Degree from an accredited college or university. Course work in criminal justice, police science, public administration or related field is desirable.

License/Certificate: Possession of P.O.S.T. Supervisory Certificate.

Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Additional Requirement: Prior to employment, the prospective candidate must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police Department.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

EXHIBIT [D]– 4881

ASSISTANT POLICE CHIEF

Class Code: 700003A

Bargaining Unit: Key & Management - Admin. Mgmt. Safety

CITY OF NEWPORT BEACH
Revision Date: Jul 30, 2014

SALARY RANGE

$90.35 - $109.83 Hourly
$7,228.30 - $8,786.54 Biweekly
$15,661.31 - $19,037.51 Monthly
$187,935.70 - $228,450.14 Annually

DEFINITION:

To assist the Police Chief in administering a variety of programs and services designed for the maintenance of law and order and protection of life and property within the City of Newport Beach; oversee the day-to-day activities of assigned operational division; manage program delivery of patrol, traffic, jail operations, parking enforcement, animal control, detectives, vice and intelligence, and/or crime analysis; act as Police Chief in his/her absence.

DISTINGUISHING CHARACTERISTICS: The Assistant Police Chief is the top level administrative management position reporting directly to the Police Chief. Incumbents may be assigned to Patrol, Traffic, and/or Detectives and assist in the management of support service functions, including budget and personnel administration. Employees at this level possess a thorough knowledge of City policies and procedures, principles of law enforcement management and administration, budget and personnel administration, employee discipline, and public service principles and practices.

SUPERVISION RECEIVED AND EXERCISED: The Assistant Police Chief receives administrative direction from the Police Chief and exercises direct supervision over safety and civilian professional, supervisory, and administrative support staff.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

- Assist the Police Chief in planning, implementing, and directing the services and activities related to the delivery of Police Department operations, including but not limited to, patrol, traffic, jail operations, parking enforcement, animal control, detectives, vice and intelligence, crime analysis, and budget and personnel administration; advise the Police Chief of all critical incidents;

- Establish strategies and programs to meet department operational objectives; participate in the development and implementation of annual departmental goals; continuously review operational activities and programs to identify issues and create solutions for improving police and public safety services; recommend and administer new policies and procedures to increase department efficiency and effectiveness;

- Coordinate department activities with other City departments and outside agencies; provide professional and technical advice and assistance on matters related to law enforcement and crime prevention; participate in professional and public meetings and organizations, department staff meetings, special committees, task forces and/or special projects;

- Conduct staff projects and special studies; review, edit, and approve delegated projects; prepare and present reports to the City Council, Civil Service Board, community groups, and outside agencies;

- Monitor, evaluate and document subordinate work performance; ensure City personnel policy, department policy, and employee labor agreements are implemented and applied consistently throughout the department;

- Implement staff training programs and standards; recommend and coordinate with subordinate supervisors on employee recognition, discipline, and termination;

- Analyze crime/arrest reports, trends, and related data; review daily, weekly, and monthly statistical crime, traffic, parking, and related reports;

- As assigned, oversee assignment of cases to investigators; review progress and confer with investigators on methods and procedures used in investigations; participate in managing major crime investigations;

- Receive complaints regarding employee misconduct; investigate misconduct allegations and make recommendations to the Police Chief;

- Participate in the development of the department budget including the forecast of revenue, expenses, and funds needed for staffing, equipment, materials, and supplies; guide subordinate managers in developing and administering division and unit budgets;

- Perform the duties of the Police Chief, when assigned;

- Regularly and predictably attend work; and

EXHIBIT [D]– 4883

- Perform other duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Knowledge of:

Advanced principles and practices of crime prevention and law enforcement programs and services, including criminal investigation, patrol, traffic control, animal control, care and custody of persons and property, and environmental protection;

Leadership and management principles and practices related to administration of a municipal police department;

Federal, State, and local laws, ordinances, codes and regulations, and recent court decisions affecting municipal law enforcement operations;

Principles and techniques of municipal budget administration;

Research and analysis reporting methods and procedures;

Use of firearms and other policing equipment;

Principles of personnel management including performance evaluation, performance improvement, discipline, and employee/labor relations;

Communication equipment and software applicable to the delivery of departmental services; and

Modern office practices, procedures, methods, and equipment.

Ability to:

Apply technical knowledge in a critical, time-sensitive manner and make appropriate decisions in the enforcement of law and order;

Analyze problems; identify alternative solutions, project consequences of proposed actions, and implement recommendations in support of goals;

Interpret and apply City and department policies, procedures, rules, and regulations;

Provide leadership to a diverse work force; encourage and motivate subordinates to deliver high-quality work; effectively supervise, train, and evaluate the work of subordinate personnel;

Exercise judgment and act quickly and calmly in emergency situations;

EXHIBIT [D]– 4884

Prepare and present staff reports and address concerns of City Council, Civil Service Board, City management and staff, community groups, and members of the public;

Stay abreast of innovations and standards in the field of law enforcement management;

Perform complex analyses and recommend solutions;

Gain cooperation through discussion and persuasion;

Assist in preparing and administering the department budget;

Meet the Newport Beach Police Department medical and fitness standards;

Maintain confidentiality of medical, personnel, and other privileged information;

Communicate clearly and concisely, both orally and in writing;

Accept constructive criticism; and

Establish and maintain cooperative working relationships with those contacted in the course of work.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Eight or more years of progressively responsible law enforcement work experience, including six years combined managerial and supervisory experience, three of which must be at the level of Police Lieutenant or above.

Education: Equivalent to completion of a Bachelor's Degree in criminal justice, law, management, public administration, or other related field. Master's Degree is desirable.

LICENSE AND CERTIFICATE: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Possession of P.O.S.T Management Certificate.

Please Note: Candidates deemed most qualified, as reflected in their application materials, will be invited to continue in the recruitment process. The prospective candidate must successfully complete a thorough background review, including being fingerprinted by the Newport Beach Police Department. The resulting report of your conviction history, (if any), will be evaluated along with the other information received in connection with your application. Except as otherwise required by law, a criminal conviction will not necessarily disqualify you from the position. The nature, date, surrounding circumstances, and the relevance of the offense to the position applied for may, however, be considered.

EXHIBIT [D]– 4885

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

EXHIBIT [D]– 4886

POLICE CHIEF

Class Code: 700002B

Bargaining Unit: Key & Management - Department Director
Safety

CITY OF NEWPORT BEACH
Established Date: Mar 2, 2010
Revision Date: Dec 8, 2015

SALARY RANGE

$81.23 - $123.06 Hourly
$6,498.56 - $9,844.94 Biweekly
$14,080.21 - $21,330.70 Monthly
$168,962.56 - $255,968.44 Annually

DEFINITION:

Under direction of the City Manager, the Police Chief is responsible for the administration, development, and advancement of the City's full service Police Department; to oversee and implement all programs and procedures related to crime prevention, law enforcement, and related policing services; to serve as a member of the City Manager's Executive Management Team; and to provide highly responsible and professional staff assistance to the City Manager and City Council.

SUPERVISION RECEIVED AND EXERCISED: Receives general administrative direction from the City Manager. Exercises general supervision over the entire department, and direct supervision over division managers and professional/administrative support staff.

CLASSIFICATION CHARACTERISTICS: The Police Chief is expected to exercise independent judgment, wisdom, and innovation in establishing and administering all Police Department operations, consistent with the City Manager's expectations and with concern for the entire City government organization. As an inspiring leader, the Police Chief must demonstrate integrity and promote ethical standards within the department, advocate collaboration with the community, and be a team member with the City organization. The Police Chief must be politically astute, but apolitical.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

• Advancing the interests of the department and the City, plans, directs, and oversees a variety of programs designed for the maintenance of law and order and protection of life and property within the City of Newport Beach; develops comprehensive plans to satisfy needs for departmental services to ensure the highest possible quality of life for residents and visitors;

• Ensuring the optimum and most efficient and effective use of staffing and resources, administers the overall operation of a full service police department, including hiring, personnel administration, office operations, budgeting, and community relations; serves as a member of the City's Executive Management Team and collaborates with other departments to resolve city-wide problems;

• Demonstrating a strong working knowledge of the legal system, confers with legal advisors and City officials regarding law enforcement issues; provides professional and technical advice and assistance to the City Manager and City Council on matters related to law enforcement services; represents the City as a witness in legal proceedings;

• Exhibiting exceptional communication skills, prepares and presents staff reports and related materials for City Council or public response; resolves issues raised by City Council members, community groups, employee associations, and the public; advocates the City's position in negotiations with various regulatory agencies to satisfy requirements;

• Building cohesive and collaborative departmental working relationships, plans, organizes, selects and supervises the work of departmental staff; establishes accountability throughout the department; promotes employee development through staff training and succession planning; ensures consistent application of City personnel policies and employee agreements;

• Demonstrating stewardship of public funds, directs the preparation and administration of the Police Department budget; participates in the forecast of revenue, expenses and additional funds needed; guides subordinate managers in developing and administering fiscally responsible budgets; carries out police functions in the most cost effective ways;

• Promoting a strong community policing program, establishes and maintains collaborative working relationships with property owners, community groups, business districts, and the public; represents the Police Department and the City at community and civic events;

• Regularly and predictably attend work; and

• Perform related duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Knowledge of:

Advanced principles and practices of crime prevention and law enforcement, including criminal investigation and identification, patrol, traffic control, animal control, records management, care and custody of persons and property and environmental protection;

Principles and practices of organization, administration and personnel management, and leadership of a law enforcement agency;

EXHIBIT [D]– 4888

Principles and techniques of municipal budget development and administration;

Applicable Federal, State and local laws, ordinances, codes and regulations;

Principles of supervision, training and performance evaluation;

Current technological and communication equipment and software applicable to the delivery of departmental services to internal and external customers;

Modern office practices, procedures, methods and equipment; and

The use of a PC and applicable software.

Ability to:

Effectively direct, plan and organize the activities of a comprehensive city-wide full service police department;

Critically analyze problems, identify alternative solutions, and implement recommendations in support of goals;

Understand the needs of a tourism-based community and its impact on public safety;

Promote collaboration and innovation;

Provide a stabilizing influence during periods of change;

Weigh risks and consequences and make clear decisions;

Equitably interpret and apply City policies, procedures, rules and regulations;

Diffuse conflict and gain cooperation through discussion and persuasion;

Motivate, select, supervise, and evaluate personnel;

Promote fiscal responsibility in administering a departmental budget;

Develop and maintain effective partnerships with community groups;

Build loyalty within the organization and advocate accessibility and responsiveness to the community;

Effectively and persuasively communicate, both orally and in writing; and

Establish and maintain cooperative working relationships with those contacted in the course of work.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge

EXHIBIT [D]– 4889

and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Seven years of increasingly responsible managerial and supervisory law enforcement experience, including having achieved the rank of Captain, Deputy/Assistant Chief or above.

Educaiton: Equivalent to completion of a Bachelor's degree in criminal justice, law, management, public administration, business administration, or a related field from an accredited college or university. A Master's degree is desirable.

License/Certificate: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Possession of P.O.S.T. Management Certificate at time of appointment.

Possession of P.O.S.T Executive Certificate desirable.

Completion of Federal Bureau of Investigation's National Academy is desirable.

Additional Requirement: Prior to employment, the prospective candidate must successfully complete a thorough background review, including being fingerprinted by Newport Beach Police Department.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

EXHIBIT [D]– 4890

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request:	General Records Request - Adam Bereki		
Type:	General Records Request	**Ticket #:**	467348
Location Type:	NONE	**Create Date:**	12/21/2021
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

Comments & History

+ Add Comment

EXHIBIT [D]– 4891

By:	12/21/2021	Type:
Adam(user)	11:55:21 AM	Details

A digital copy of the oaths of office for each of the following: 1) all of the current city council members; 2) the city attorney; 3) the City Manager

A digital copy of the City of Newport Beach policies and procedures for the handling, investigation, and resolution of Petitions for Redress of Grievance made pursuant to Article 1 of the California Constitution.

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D]– 4892

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Aaron Harp, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 23 day of August, 2011.

Aaron C. Harp
Signature of Person Taking Oath

City Attorney
Title or Department

Signature of Officer Administering Oath

Admin. Asst to the HR Director
Title of Officer Administering Oath

EXHIBIT [D]– 4893

STATE OF CALIFORNIA
COUNTY OF ORANGE
CITY OF NEWPORT BEACH

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Grace Kim Leung, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 15 day of August, 2018.

Signature of Person Taking Oath

City Manager
Title or Department

Signature of Officer Administering Oath

HR Manager
Title of Officer Administering Oath

EXHIBIT [D]– 4894

Revised 2009

CITY OF NEWPORT BEACH
100 Civic Center Drive
Newport Beach, California 92660
949 644-3005 | 949 644-3139 FAX
newportbeachca.gov/cityclerk

January 3, 2022

Delivery Via Quest for Ticket No. 467348

Adam Bereki

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED DECEMBER 21, 2021 NOTICE OF DETERMINATION

The City of Newport Beach ("City") has received and reviewed your California Public Records Act request dated December 21, 2021. This response will serve as the City's notice of determination as to whether the request in whole or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code §§ 6250 *et seq.*).

Based on your request for:

> A digital copy of the oaths of office for each of the following: 1) all of the current city council members; 2) the city attorney; 3) the City Manager.
>
> A digital copy of the City of Newport Beach policies and procedures for the handling, investigation, and resolution of Petitions for Redress of Grievance made pursuant to Article 1 of the California Constitution.

Please note all non-exempt, non-privileged, disclosable public records in possession of the City responsive to your request have been gathered and will be produced herewith.

Pursuant to the Public Records Act, the City shall make the records promptly available to any person, electronically and free of charge, or upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. The reimbursable costs associated with your request are calculated as follows: $0.03 per page for photocopying records and/or $0.49 per CD/DVD.

If you have any further questions, please contact this office.

Sincerely,

E. Bryan

Eric Bryan
Records

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Marshall "Duffy" Duffield, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 11th day of December, 2018.

Marshall "Duffy" Duffield
Member of City Council

Leilani I. Brown
City Clerk
City of Newport Beach

CITY OF NEWPORT BEACH CALIFORNIA

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Diane Brooks Dixon, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 11th day of December, 2018.

Diane Brooks Dixon
Member of City Council

Judge Steven D. Bromberg
Superior Court of California
County of Orange

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Kevin Muldoon, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 11th day of December, 2018.

Kevin Muldoon
Member of City Council

Judge John Adams
Superior Court of California,
County of Orange

OATH OR AFFIRMATION
OF ALLEGIANCE FOR
PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, William O'Neill, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 8th day of December, 2020.

William O'Neill
Member of the City Council

Honorable Lawrence J. O'Neill
United States District Judge

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Noah Blom, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 8th day of December, 2020.

Noah Blom
Member of City Council

Judge Steven D. Bromberg
Superior Court of California,
County of Orange

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Brad Avery, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 8th day of December, 2020.

Brad Avery
Member of the City Council

Leilani I. Brown
City Clerk
City of Newport Beach

CITY OF NEWPORT BEACH CALIFORNIA

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Brad Avery, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 8th day of December, 2020.

Brad Avery
Member of the City Council

Evelyn R. Hart
Former Mayor
City of Newport Beach

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Joy Brenner, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 11th day of December, 2018.

Joy Brenner
Member of City Council

Leilani I. Brown
City Clerk
City of Newport Beach

CITY OF NEWPORT BEACH CALIFORNIA

EXHIBIT [D]– 4903

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California }
County of Orange } ss.
City of Newport Beach }

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Joy Brenner, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this 11th day of December, 2018.

Joy Brenner
Member of City Council

Honorable Lynne Riddle (Ret.)
Judge, Federal Court

Document Certified Copy

(NOTES PP. 1-6)

2/1/22

Call w/ OCSD PUBLIC AFFAIRS SGT. HIGGINS

(714) 647-7042

(UNK. Name) SEE RECORDING

REFERRED TO OCDA → SPEC PROS. UNIT

" SHERIFF PIO COMPLAINT/NOTIFICATION"

→ CHP HAS JURISDICTION

2/1/22 CHP

(800) 835-5247

~ 1330 HRS

XFERRED TO — "DOUG" PSO ID# A18416 IRVINE CALL CTR.

→ CALL COURT & SPEAK TO CHP OFFICER

LOG # 230 from 2/1/22

(949) 784-6700

562 624 1177

MIKE CLEMENTS #14630

(714) 571-2600

CONFLICT OF INTEREST CONTRACT TO PROTECT

SANTA ANA CHP

(714) 567-6000

SGT. DAVE WHITE

(714) 571-2640 (MIKE CLEMENTS)

CHP SANTA ANA OFFICE | DAVID CHAFFEE

(714) 567-6000

"NICK" → OFCR. CARDOZA

(213) 830-7561 (COURTS DETAIL) SOUTHERN LOCATION

CHRIS GONZALES #16387

"JUDICIAL NOT INVESTIGATIVE UNIT"

2/2/22

[CHP OFFICER MIKE CLEMENTS]

2/2/22

CHP OFFICER CHRIS GONZALEZ #16387

WILL HAVE SUPV. CALL (CURRENTLY IN MEETING)

2/2/22 MIKE CLEMENTS & SGT. WHITE [ATING GON]

RESTART

DIDN'T OUTCOME, [BECOMES PRECEDENT] [LEGALLY BOUND]

4/4/22 CITY NB HUMAN RESOURCES RISK MGMT (949) 644-3300

LFT MSG.

OPT. 7 MARISSA

8 USA HORN

RISK. MGMT.

ASHLEY → KIM REESE

(WILL SEND EMAIL TO →

2/14/22 Chris CHP ~~judicially~~ Court security

call Felony Follow-up officer
Santa Ana CHP

Left message @ 1030 HRS.

~~Hamory~~?

CALL WHITE

1035 SGT. MORAN? 12:35
will CALL BACK 2:10
(714) 567-6000
emor

Common law
Court how do away
w/ common law

Grossman Allen/
Jaleric

EXHIBIT [D]– 4908

2/15/22

PET CANNELL ~~OCDA~~ -

3/21/22 ERNESTO MORAN / MEJIA

WED 11 3/23/22

ernesto.mejia@chp.ca.gov

(949) 424 5316

3/23/22 MET MEJIA SOUTH COAST PLAZA

Gmail

Adam Bereki– Criminal Judicial Misconduct and Deprivation of Constitutional Rights

Adam <abereki@gmail.com> Mon, Feb 14, 2022 at 2:08 PM
To: emoran@chp.ca.gov

Sgt. Moran,

Attached is the complaint I made to the Commission on Judicial Performance along with all of our correspondence. It is 32 pages. Page 1-2 is the initial complaint. On page 31-32 they commissions says that they "voted to close my complaint" and that the information I provided was "not sufficient" to establish disregard for fundamental rights, disregard of the law, or faithful discharge of duty etc.

This is blatantly false and not true.

I have included a recent case from the California Court of Appeal regarding excessive fines. In that case, the Court spells out the exact duties a judge must do before rendering any fine/punishment under our state and national constitution excessive fines clause protections. The judges/justices in my case (and many others) refused to apply ANY of them. Not to mention the facts that I was denied counsel, a trial by jury, and all of the heightened protections of criminal proceedings. The case I've attached is People v. Cowan. During our call, you said that you're "not stupid". So please take the time to read this entire case and see exactly what the court said. The opinion begins on page 6.

After reading the, please look up business and professions code §7028 regarding unlicsed contracting. Here's a link to the section on the state law website:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=7028&lawCode=BPC

You'll notice in subsection (b) that it says the maximum penalty for a first time offense is $5,000 Given this, you will likely be as befuddled as I am as to how the Court fined me $930,000 and how the Commission on Judicial Performance found no misconduct.

If you or any other State official can give me the State and National Constitutional authorities that authorize a Judge to take $930,000 from me in this case, I will retract my complaint and offer a formal apology. Until then, I believe officers of the CHP have a sworn duty under our State and National Constitutions to protect my rights, liberty, property, and money from unlawful taking and seizure by force (aka robbery) under color of law by rogue public officials acting without lawful authority.

I am here to answer any questions you may have and be as supportive as possible to your investigation.

Thank you for your time,

Sincerely,

Adam Bereki
949.241.6693
abereki@gmail.com

EXHIBIT [D]– 4911

2 attachments

Judicial Performance Complaint 060320.pdf
412K

Excessive Fines Clause Case. People v. Cowan, 47 Cal. App. 5th 32.pdf
968K

EXHIBIT [D]– 4912

COMPLAINT ABOUT A CALIFORNIA JUDGE, COURT COMMISSIONER OR REFEREE

Confidential under California Constitution
Article VI, Section 18, and Commission Rule 102

For information about the Commission on Judicial Performance and instructions on filling out and submitting this form, please visit our website at http://cjp.ca.gov.

Today's date: June 3, 2020

Your name: Adam Bereki

Your telephone number: 949-241-6693

Your address: 818 Spirit
Costa Mesa, California

Your attorney's name: N/A

Your attorney's telephone number:

Name of judge: David Chaffee (Ret.), Kathleen O'Leary, Thomas Goethals, Richard Aronson, Tani- Cantil-Sakauye, Ming Chin, OR Carol Corrigan, Goodwin H. Liu, Mariano Cuellar, Leondra Kruger, Joshua Groban.

Name of court commissioner or referee:

(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court. If you have done so, please attach copies of your correspondence to and from that court.)

Court: Superior Court of CA, County of Orange; Fourth District Court of Appeal, Div. 3; Supreme Court of California

County: Orange

Name of case and case number: Superior Court: 30-2015-00805807; Appeal: G055075; Sup. Ct. S252954

Date conduct occurred: Ongoing

Please specify what action or behavior of the judge, court commissioner or referee is the basis of your complaint. Provide relevant dates and the names of others present. (Use additional pages if necessary.)

The above named judges are perpetrating criminal fraud on the People of California by denying them rights secured by the California Constitution and the Constitution for the United States. I was ordered to forfeit about $930,000 for allegedly performing construction work without a contractors license pursuant to Business and Professions Code sections §7031(a) and (b). This fine is 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty. The California supreme Court has declared §7031(b) "imposes a strict penalty" yet the Courts refuse to recognize the excessive fines clause (Art 1, Sec. 17, or the the 8th Amendment). In my case (and that of many others), the Courts do not make an analysis about a defendants ability to pay, or consider the proportionality of the offense. This being an in personam forfeiture – and one capable of financially destroying a defendant – minimally requires defendants have all the of the heightened protections of criminal proceedings yet §7031 cases take place in a civil context. The lower Courts refuse to even recognize §7031's penal nature. As a result of the judgment against me a lien has been placed on a home upon which I am the legal title holder and my ability to earn a living in construction suspended. The People of California have no access to a judicial court in California to resolve these heinous miscarriages of justice.

Return to: **Commission on Judicial Performance**
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102
Telephone: **(415) 557-1200**
Fax: **(415) 557-1266**

11/17

Please contact me for a full interview regarding this complaint. I have included a copy of the complaint I have made with the California Legislature & supporting evidence on the included USB drive.

Thank you for your help & prompt investigation.

Gmail Adam Bereki <abereki@gmail.com>

Complaint Part 2

1 message

Adam <abereki@gmail.com> Mon, Feb 14, 2022 at 4:28 PM
To: emoran@chp.ca.gov

Sgt. Moran,

I realized I only sent you the first few pages of the Judicial Council complaint. Attached is the entire correspondence referenced in my first email.

Sincerely,

Adam Bereki

Bereki– Judicial Performance Complaint.pdf
4306K

EXHIBIT [D]– 4915

COMPLAINT ABOUT A CALIFORNIA JUDGE, COURT COMMISSIONER OR REFEREE

Confidential under California Constitution
Article VI, Section 18, and Commission Rule 102

For information about the Commission on Judicial Performance and instructions on filling out and submitting this form, please visit our website at http://cjp.ca.gov.

Today's date: June 3, 2020

Your name: Adam Bereki

Your telephone number: 949-241-6693

Your address: 818 Spirit
Costa Mesa, California

Your attorney's name: N/A

Your attorney's telephone number:

Name of judge: David Chaffee (Ret.), Kathleen O'Leary, Thomas Goethals, Richard Aronson, Tani- Cantil-Sakauye, Ming Chin, ~~OR~~ Carol Corrigan, Goodwin H. Liu, Mariano Cuellar, Leondra Kruger, Joshua Groban.

Name of court commissioner or referee:
(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court. If you have done so, please attach copies of your correspondence to and from that court.)

Court: Superior Court of CA, County of Orange; Fourth District Court of Appeal, Div. 3; Supreme Court of California

County: Orange

Name of case and case number: Superior Court: 30-2015-00805807; Appeal: G055075; Sup. Ct. S252954

Date conduct occurred: Ongoing

Please specify what action or behavior of the judge, court commissioner or referee is the basis of your complaint. Provide relevant dates and the names of others present. (Use additional pages if necessary.)

The above named judges are perpetrating criminal fraud on the People of California by denying them rights secured by the California Constitution and the Constitution for the United States. I was ordered to forfeit about $930,000 for allegedly performing construction work without a contractors license pursuant to Business and Professions Code sections §7031(a) and (b). This fine is 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty. The California supreme Court has declared §7031(b) "imposes a strict penalty" yet the Courts refuse to recognize the excessive fines clause (Art 1, Sec. 17, or the the 8th Amendment). In my case (and that of many others), the Courts do not make an analysis about a defendants ability to pay, or consider the proportionality of the offense. This being an in personam forfeiture – and one capable of financially destroying a defendant – minimally requires defendants have all the of the heightened protections of criminal proceedings yet §7031 cases take place in a civil context. The lower Courts refuse to even recognize §7031's penal nature. As a result of the judgment against me a lien has been placed on a home upon which I am the legal title holder and my ability to earn a living in construction suspended. The People of California have no access to a judicial court in California to resolve these heinous miscarriages of justice.

Return to: **Commission on Judicial Performance**
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102
Telephone: **(415) 557-1200**
Fax: **(415) 557-1266**

11/17

Please contact me for a full interview regarding this complaint. I have included a copy of the complaint I have made with the California Legislature & supporting evidence on the included USB drive.
Thank you for your help & prompt investigation.

Rec'd 6-15-20
Replied 6-15-20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

June 11, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

This letter is to acknowledge receipt of your recent complaint against a California judge(s). We appreciate your time and effort in bringing this matter to the commission's attention. We are presently reviewing this information and, if further information is needed, you will be contacted. You will be advised in writing, at a later date, of the commission's action in this matter.

To give you some information about the process, each complaint about a judge is voted upon by the commission. When a complaint states facts which could be misconduct, if the facts are true and there is not another explanation for what happened, the commission typically opens an investigation. The commission's staff will interview witnesses, review documents or files and conduct other investigation. If there is sufficient evidence supporting the complaint, the judge will be contacted and asked to respond to the allegations. The commission then reviews the available evidence, and the judge's response if the judge was contacted, to make a determination whether misconduct has occurred. Misconduct must be established by clear and convincing evidence, a higher standard than is required in civil cases but lower than in criminal cases. If the evidence does not support a finding of misconduct, the commission will close the case. The commission may also close the case if the misconduct was relatively minor and the judge has acknowledged the problem and taken steps to prevent it from happening again. If the evidence supports a finding of misconduct and the commission determines that discipline may be appropriate, the commission may proceed to impose discipline.

It may also be helpful to explain that the Commission on Judicial Performance is not a court. It does not have the authority to reverse a judge's decision, move your case to another department or court, disqualify a judge or otherwise get involved in your case. The commission's role is limited to reviewing allegations of judicial misconduct. A judge's legal rulings and discretionary decision-making, without more, are not a basis for review by the commission. Even if a judge's decision is later determined by an appellate

court to be legally incorrect, that by itself is not a violation of the Code of Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law or any purpose other than the faithful discharge of judicial duty.

Lastly, our office is not able to provide legal advice. If you wish to determine what legal avenues are available to you, you might consider contacting an attorney or legal services provider to see if they can help you.

Very truly yours,

Amy Ladine
Administrative Specialist

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102-2660

June 15, 2020

Dear Ms. Ladine,

I received your correspondence dated June 11, 2020. Thank you for acknowledging and replying to my complaint letter.

I was a bit confused about the process you shared in your letter and have the following questions. I would appreciate any clarity you could share so I can better under the process.

In paragraph 2, your letter states:

1) "...each complaint about a judge is voted upon by the commission".

   My question: Is this before or after the investigation is completed?

2) "When a complaint states facts which could be misconduct, if the facts are true and there is not another explanation for what happened, the commission typically opens an investigation".

   My questions: (a) Shouldn't the *investigation* determine if the facts stated in the complaint are true? It appears your letter states that factual determinations are made before an investigation begins (ie "if the facts are true the commission typically opens an investigation").

   (b) While I understand there must be a screening process to determine whether an investigation should be conducted, how will you know what the exact details of my complaint are without first interviewing me? I did write a brief one paragraph statement on the form provided by your agency and requested that your agency contact me for a full and complete statement of the allegations and facts upon which my complaint is based. However, based upon my

interpretation of your letter, it does not seem like this interview will be conducted unless your agency first decides to open an investigation.

Your letter also indicates "if a complaint states facts which could be misconduct". To be clear, I did not fashion the complaint letter as one containing all of the requisite allegations and evidence required for a complaint similar to one filed in Court as it seems your letter infers. I merely provided a brief statement of some facts I believed were enough to open an investigation and thereby begin a dialogue with you. Your agency needs to contact me for an interview to that I can provide a full and complete statement of facts and other evidence supporting my preliminary allegations of misconduct. I am available by phone, zoom, skype, or other digital person to person communication to facilitate this interview. Moreover, I believe it will save your agency countless hours of time wading through the morass of thousands of pages of documentation and I can quickly provide you with each piece relevant to fully support each of the requisite elements necessary to substantiate each of my claims. The interview can also be recorded for reference and evidence.

To provide some further insight, I have worked as a criminal and civil investigator for more than fifteen years. Based upon my training and experience an investigation must come first in order to determine the facts. This investigation entails an initial interview of the involved parties and witnesses to obtain all of the information necessary before any findings or recommendations whatsoever are made.

It's highly possible I may be misunderstanding your letter and therefore your agency's process. But it seems to me your process is the reverse of what I'm describing which (1) calls for factual determinations before evidence is gathered by a full and complete investigation; and, (2) the submission of a full and complete complaint containing each claim and all of the supporting evidence by a complainant before an investigation will even begin.

Please further elaborate on your process so that I can understand exactly what it entails to not only be in full compliance with the requirements, but also to object to any processes which are incongruent with competent fact finding.

Sincerely,

Adam Bereki

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102-2660

June 26, 2020

To Whom It May Concern:

Please include the following for your investigation in the complaint I recently made.

Sincerely,

/s/ Adam Bereki

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No. 20–55181

Adam Bereki,

Plaintiff–Appellant,

v.

Karen and Gary Humphreys,

Defendants–Appellees.

NOTICE / REQUEST FOR CONSIDERATION OF ADDITIONAL AUTHORITIES

Appeal from the Judgment of the United States District Court

For the Central District of California

Case No. 8:19–CV–02050

(Consuelo Bland Marshall)

Adam Bereki
818 Spirit
Costa Mesa, California 92626
949 | 241 | 6693
abereki@gmail.com
In Propria Persona

4177

EXHIBIT [D]– 4923

I respectfully submit the following additional authorities and request this Court's consideration thereof in further support of my Motion For Appointment of Counsel and to Proceed In Forma Pauperis (Dkt.3) and Statement of Why This Appeal Should Go Forward (Dkt.6). These are not new authorities presenting new arguments but rather authorities in further support of the arguments already presented.

*****

These additional authorities will provide support for the following issues raised in the District Court. First, that Business and Professions Code §7031 prescribes a penalty *not* disgorgement. Second, that because §7031 is penal, both the State trial and appellate Courts were required to apply the excessive fines clause protections, but refused to resulting in a void judgment. Third, that because §7031 is a public regulatory law pursuant to the police powers of California, Appellees were required to provide evidence of an injury in fact separate and apart from the whole community. They failed to present any such evidence. As a result, they lacked standing to any relief whatsoever, depriving the Court of subject matter jurisdiction resulting in a void judgment. The legislature cannot transfer the power Constitutionally conferred to the governor to ensure the laws are faithfully executed to the People. And Fourth, that for each of the aforementioned reasons, the District Court had subject matter

jurisdiction and therefore a non-discretionary duty to hear and determine this case.

a. §7031 Imposes a penalty, not "disgorgement"

Four days ago on Jun 22, 2020, the United States Supreme Court announced its opinion in *Liu v. SEC*, 2020 U.S. Lexis 3374, a case that vacated this Court's void judgment (754 Fed. Appx. 505 (2018)) and remanded it for further proceedings consistent with the opinion. In *Liu*, just like in the instant case, the District Court imposed a penalty under the guise and label of non-punitive equitable "disgorgement". On appeal, just like the instant case, this Court upheld the trial Court's findings for "disgorgement" when in fact and law no judgment for equitable disgorgement was ever made. A Court of equity has no jurisdiction to impose a penalty. As a result, the judgment was void.

The judgment imposed in *Liu* was a penalty as opposed to non-punitive disgorgement because the District Court required the Defendants to forfeit about $27 million dollars *without* offsets for potentially legitimate business expenses such as marketing, construction costs, and lease payments. In like fashion, offsets were also denied in the instant case. Appellees received more than a years-worth of remodel construction work on their custom vacation home that was never even evidenced to have been performed by me, but instead by my licensed company which is not a statutory violation. The State trial and appellate

Courts refused to consider these benefits conferred and ordered a full forfeiture of all of the compensation Appellees paid for the work even though the work was arguably valued at the same amount the Court ordered be forfeited. Moreover, $758,000 of the $930,000 ordered to be forfeited was paid directly to my company and money I never possessed.

Despite raising the exact issues addressed by the *Liu* Court and upon which the Court found in favor of the Defendants, the California Fourth District Court of Appeal found they were entirely without merit:

> "Bereki challenges its application [disgorgement] under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit- the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. [Citations]. Full disgorgement is required; offsets and reductions for labor and materials received are not permitted." Dkt. 3, Appendix [AE]– Opinion, p.11.

Yet in another case involving "disgorgement", the same appellate Court that included the the justice who authored the opinion in the instant case held that:

("[t]he elements of an unjust enrichment claim are the receipt of a benefit and the unjust retention of the benefit at the expense of another. The mere fact that a person benefits is not of itself sufficient to require the other to make restitution therefor. There is no equitable reason for invoking restitution when the plaintiff gets the exchange that he or she expected [such as a remodel to their home]"). *Peterson v. Cellco Partnership*, 164 Cal. App. 4th 1583, 1593 (2008).

As the Supreme Court held in *Liu:*

"Courts may not enter disgorgement awards that exceed the gains made upon any business or investment, when both the receipts and payments are taken into the account." [Citations]; see also Restatement (Third) §51, Comment *h*, at 216 (reciting the general rule that a defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement). Accordingly, courts must deduct legitimate expenses before ordering disgorgement [...]. A rule to the contrary that "make[s] no allowance for the cost and expense of conducting [a] business" would be "inconsistent with the ordinary principles and practice of courts of chancery." p.29.

In the instant case, both the State trial and appellate Courts held Business and Professions Code §7031(b) was a cause of action for "disgorgement". But this is not true. §7031(b) mentions nothing about

disgorgement or any equitable remedy whatsoever. Moreover, "disgorgement" is not a term defined anywhere in California statutory law. There is, consequently, no known cause of action named "disgorgement".

But not only is §7031 not a cause of action for disgorgement, none of the requirements for stating an equitable claim for disgorgement were evidenced at trial including an accounting for profits and offsets for benefits conferred. In fact, the trial and appellate Courts both flatly refused to consider offsets.

In exact polarity, the California Supreme Court has unambiguously held §7031 imposes a "stiff all-or-nothing **penalty**" for violating the licensing laws and *not* equitable "disgorgement". *MW Erectors, Inc. v. Neiderhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th 412, 426 (2005).

The result is that in California, a totally fictitious cause of action called "disgorgement" has been crafted by judicial fiat under the heading of Business and Professions Code §7031 that has no inherent remedial or equitable principles associated whatsoever and is being used to carefully conceal penalties that transcend centuries-old constitutional protections.

Despite the fact that countless defendants over decades have challenged §7031's penal nature, they have been met on nearly every

occasion by Courts who admit §7031 produces "harsh and unfair" penal results but then turn a blind eye to affording any Constitutional relief:

> "In [*Alatriste v. Cesar's Designs*, 183 Cal. App. 4th 656, 673] the court rejected the unlicensed contractor's argument that disgorgement was "unfair and 'serves no purpose other than punishment. As noted, the legislative committee reports show that, in enacting section 7031[, subdivision (b)], the Legislature was specifically aware that permitting reimbursement may result in harsh and unfair results to an individual contractor and could result in unjust enrichment to a homeowner, but nonetheless decided that the rule was essential to effectuate the important public policy of deterring licensing violations and ensuring that all contractors are licensed.

In other words, the Legislature and Courts know §7031 was not an equitable remedy for "disgorgement" because to receive relief in a Court of equity a Plaintiff must do equity. This cannot happen if the homeowner is unjustly enriched, which, in this instance, is simply another name for a penalty.

But the judicial abuse does not stop there. Even when the constitutionality of §7031 is directly challenged, the Courts refuse to take constitutionally mandated action, claiming themselves powerless to do anything about the unconstitutionality of the statute despite being a Court of review. ("As a judicial body, we are not permitted to second-guess

these policy choices"). *Rambeau v. Barker*, 2010 Cal. App. 4th (2010) Unpub. Lexis 5610. On its face and as applied §7031 imposes a virtually limitless penalty for violation of the licensing laws. The public policy choices of a State do not supersede State or Federal Constitutional protections.

Courts have a "solemn duty to look at the substance of things, whenever they enter upon the inquiry [of] whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution"). *Mugler v. Kansas*, 123 U.S. 623, 626 (1887). The Court of appeal refused to perform this inquiry despite my direct challenge on appeal.

The People of California and their businesses have repeatedly been threatened with or financially destroyed by this heinous abuse of power and dereliction of duty. See for e.g. the bankruptcy of Paul Bardos from a judgment in the amount of §917,043.09 for violating §7031(b). *Twenty Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2014). Mr. Bardos was ulimately forced into bankruptcy and lost his home despite the fact that he, like me, had met and passed all of the qualifications for a contractor's license.

"To accord a type of relief that has never been available before and especially a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a "default rule," not of flexibility but of omnipotence". *Grupo Mexicano De Dessarollo v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999). "Even when sitting as a court in equity, we have no authority to craft a "nuclear weapon" of the law like the one advocated here". *Id.* p.333.

In his dissent in *Liu*, Justice Thomas aptly saw the writing on the wall criticizing the majority for, in effect, failing to go all the way by addressing all of the issues pertaining to the nationwide abuses surrounding "disgorgement". ("The majority's treatment of disgorgement as an equitable remedy threatens great mischief. The term disgorgement itself invites abuse because it is a word with no fixed meaning. As long as courts continue to award "disgorgement", both courts and the SEC will continue to have license to expand their own power". *Id.* pp. 37-39. No, they won't. It is a crime to violate due process. 18 USC §241-242. ("Under the constitutional guaranties no right of an individual, valuable to him pecuniarily or otherwise can be justly taken away without its being done conformably to the principles of justice which afford due process of law, unless the law constitutionally otherwise provides. Due process of law does not mean according to the whim, caprice, or will of a judge; it means according to law"). *Estate of Buchman*, 123 Cal. App. 2d 546, 559-60 (1954).

Because §7031 imposes a penalty and <u>not</u> the *non-punitive* equitable remedy of disgorgement, both the trial and appellate Courts had a mandatory, non-discretionary, ministerial duty to ensure the judgment minimally met the criteria required by the excessive fines clauses of both the California Constitution (Article I, Section 17) and the Constitution for the United States (Eight Amendment). I specifically raised this issue at trial and on appeal as well:

> "Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence- "an equitable remedy"- for performing work without a required contractor's license." Dkt. 3, Appendix [AE]– Opinion, p.8.

A few paragraphs later in the same opinion however, the appellate Court then contradicted itself admitting "[t]he disgorgement is not remedial in nature." *Id.* p.11. Disgorgement itself *is* considered remedial in nature. But when offsets are denied it is no longer disgorgement and instead purely penal.

Under the California Constitution, ("[t]he touchstone [...] inquiry under the Excessive Fines Clause is the principle of proportionality. The following four considerations bear on proportionality: (1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability

to pay"). *People v. Cowan*, 47 Cal. App. 5th 32, 47 (2020). While the United States Supreme Court has not held whether wealth and income are relevant to the determination of proportionality, (*Id.* p. 46), the other factors mentioned above all bear on proportionality under the Eighth Amendment.

Both the State trial and appellate Courts refused to perform even one of these analyses despite the direct challenges to the trial Court's jurisdiction I made at both the trial and appellate level raising this precise issue. See First Amended Verified Complaint pp.97-101. (Dkt. 11 – District Court, case no. 8:19–CV–02050). ("[T]he [Excessive Fine's] Clause imposes upon this Court the duty, when the issue is properly presented, to determine the constitutional validity of a challenged punishment, whatever that punishment may be. *Furman v. Georgia*, 408 U.S. 238, 258 (1972).

To reiterate, the judgment affirmed by the appellate Court for me to forfeit $930,000 is more than 46 times my qualifying net worth and 186 times the comparable criminal monetary penalty of a fine up to $5,000[1]. ("As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood"). *Timbs v. Indiana, 586 U.S.* ____ 688 (2019) citing *BFI v. Kelco Disposal Inc.*, 492 U. S. 257, 271 (1989).

[1] Business and Professions Code §7028.

("A Court of California does not have jurisdiction to render judgment which violates California Constitution or the Constitution for the United States"). *County of Ventura v. Tillet*, 133 Cal. App. 3d 105, 110 (1982); Cal. Code of Civil Procedure §410.10;

While it is generally thought that subject matter jurisdiction applies only to the type of case (ie probate, juvenile etc.) it actually applies to *every issue* in a case and most certainly when the supreme Law of the Land withholds authority (jurisdiction) to not do a certain thing, such as impose an excessive fine. ("It is a rule of construction, acknowledged by all, that the exceptions from a power mark its extent"). *Gibbons v. Ogden*, 22 U.S. 1, 181. (1824).

Because the trial and appellate Courts refused to perform the requisite checks to ensure the judgment met State and Federal Constitutional restraints, the judgment is void for want of subject matter jurisdiction and a Bill of Attainder in violation of Article I, Section 10 because it imposes punishment without a judicial determination of rights.

b. Appellees Lacked Standing for Any Relief Whatsoever and the 'Judgment' Violates the Separation of Powers Doctrine

Because §7031 purports to create a cause of action for violation of a public regulatory law under the police powers of California – or what is more commonly known as a "public right" – Appellees were required to allege a concrete and particularized injury in fact that was actual and not hypothetical or conjectural to have standing. ("Even in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the [community]"). *Spokeo Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016) (Thomas, J. concurring) (internal quotations omitted). This is because California's tripartite and republican form of government constitutionally mandates that the executive shall ensure the laws are faithfully executed and does not grant the power to enforce the penal laws of the State to the People of California. §7031 is purely penal and prescribes punishment in the form of a complete forfeiture without any nexus to an injury stemming from the failure to be licensed. Justice Hurwitz, in his concurring opinion in *Town of Gilbert Prosecutors Office v. Downie*, 218 Ariz. 466 p.24 (Sup. Ct. 2008) puts it best:

> "If the restitution statutes are read to require that the amount paid is invariably the measure of restitution, an untenable result would obtain -- a homeowner who received flawless work from an unlicensed contractor would be refunded the full amount paid but

would nonetheless also retain the work performed. It is impossible for me to view such a victim as having suffered any loss, economic or otherwise [...]" p. 30.

The police power must be exercised by the Constitutionally delegated agents of the People. ("To permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important constitutional duty, to 'take Care that the Laws be faithfully executed"). *Id.* p 1553 (internal quotations omitted) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 557 (1992).

Appellees not only presented no evidence of an injury in fact, they deliberately filed a Motion for Severance[2] to sever each and every one of their causes of action that could have provided such standing. The Motion was granted by the Court allowing them to sever their first cause of action for "disgorgement" from all remaining causes. But the moment this happened Appellees were without standing and the Court without jurisdiction.

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[2] Dkt.20 Exhibit K part 1, p. 780 District Court. The District Court appears to have a made a clerical error in the numbering of the Trial Court transcript filed. The Motion For Severance is part of Exhibit K but may not be in Part 1 as labeled by the Court.

Appellees literally thought they could get a near million-dollar penal judgment in their favor by calling it "disgorgement" and trampling upon the foundational principles of law and equity that have governed this nation since its inception that make up our republican form of government. In the words of the Supreme Court of Arizona again, this abuse of power has lead to "absurd and troubling results", like a near million dollar fine for violating a simple licensing requirement. *Gilbert, supra* p.24.

While the California Constitution does not overtly have a "case or controversy" requirement like the United States Constitution, similar requirements are inherent in the separation of powers designating the three separate branches of California's government that vests each branch with certain distinct and exclusive powers. Specifically under Article V, Section 1, "The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed." The legislature has no authority to delegate this power to Appellees.

Additionally, California was admitted as a common law state into *this union* and ("[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed "to the whole community, considered as a community, in its social aggregate capacity." [Citation]. Such rights include "free

navigation of waterways, passage on public highways, and general compliance with regulatory law"). *Id.* p. 1551.

Finally, the judicial power of the United States must be capable of acting upon public rights cases such as this involving the private invocation of the police power of a State. A State cannot legislate the Constitution for the United States out of existence or prevent it from acting upon public rights cases by uprooting historical common law and standing doctrines upon which the judicial power of California and the United States are derived.

In response to this issue raised on appeal, the Court held:

> "Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor' s license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute." Dkt. 3, Appendix [AE]– Opinion, p.11.

As a result of Appellees failure to present any evidence of a concrete and particularized injury in fact separate and apart from the rest of the community while alleging violation of a public regulatory penal law, they

lacked constitutional standing[3] to any relief whatsoever. ("A lack of standing is a jurisdictional defect"). *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 496 (2018). *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). See also First Amended Verified Complaint pp.73-82. (Dkt. 11 – District Court, case no. 8:19–CV–02050).

The Court therefore lacked subject matter jurisdiction and had a mandatory, non-discretionary, ministerial duty to dismiss the case. Instead, the Court went on to create the "great mischief" referred to by Justice Thomas, further resulting in a heinous miscarriage of justice that violates every single protection in the California Constitution and the Bill of Rights designed to guard against arbitrary despotic behavior by government. Each of these constitutional checks was created as a proverbial stop sign to completely withdraw power from government in each instance yet the Court blew through each and every stop sign like it didn't even exist with the appellate Court following suit.

The egregious abuses of power that took place in this case – and many others just like it – continue to cause me and others like Paul Bardos irreparable harm. By operation of statute as a result of the "judgment", I have been forbidden to work in my profession for more than three years pursuant to the permanent and indefinite suspension of my ability to act as a qualifying individual on a contractor's license. Business

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[3] *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009). Plaintiff must have standing for each type of relief sought.

and Professions Code §7071.17 requires this suspension until I either pay the fine, declare bankruptcy, or the judgment is vacated. I have also been forced into involuntary servitude to study law full time to seek redress in the hope my entire qualifying estate would not be destroyed by bankruptcy and taken by theft under color of law as is being attempted here.

c. Summary

In summation, the US Supreme Court's holdings in *Liu,* and the other cases mentioned herein, unequivocally demonstrate the judgment for "disgorgement" against me as upheld by the Fourth District Court of Appeal in case number G055075 is void because it is not "disgorgement" but instead a penal forfeiture. As a result, upon filing a complaint in the Federal District Court, the Court not only had a duty to ensure I was given a full and fair hearing at trial and on appeal –which clearly did not happen – but also to vacate the void judgement. California Penal Code section §1382 requires that the: "[c]ourt shall order the action to be dismissed... when a person has been held to answer for a public offense and an information is not filed against that person within 15 days". No information was clearly ever filed in the name of the People of California. See also Penal Code §949.

Because the actions taken in the instant case evidence California's anti-constitutional 'public policy' for handling §7031 cases, the People of California have nowhere else to turn but Federal Court to seek redress

for deprivations of rights secured by the California Constitution or the Constitution for the United States. For this reason alone, District Courts have authority to entertain independent actions in equity to vacate void judgments otherwise ("[a] Plaintiff [would be deprived] of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, [as required by] due process"). *Simes v. Huckabee*, 354 F.3d 823, 828 (8th Cir., 2004) citing *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir., 1983).

This Court has also held District Courts can entertain independent actions to vacate void judgments when such claims are also authorized by State law[4]. California law supports such actions. See *Rochin v. Pat Johnson Manufacturing Co.*, 67 Cal. App.4th 1228, 1239 (1998); Cal. Code of Civil Proc. §1916.

The United States Supreme Court has also made it repeatedly clear District Courts can entertain independent actions that attack State Court judgments as void: *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post Rooker); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre Rooker); *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir. 2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604,

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[4] *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 993-994 (9th Cir. 2002); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122-3 (1915); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 189 (1920); *Davis v. Bayless*, 70 F.3d 367, 376 (5th Cir. 1995).

608–9 (1990); *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

Finally, for more than a century the United States Supreme Court has made it clear that judgments rendered in violation of due process are void and not entitled to full faith and credit elsewhere. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877).

Despite all of the aforementioned evidence demonstrating the State Court judgment is void, that I was never given a full and fair opportunity to litigate at trial or on appeal, that there has been no judicial determination of my rights, and that Federal Courts have subject matter jurisdiction to hear and determine cases like this, the District Court not only denied my relief with prejudice, but then falsely represented to this Court that my appeal was "frivolous" and taken on "bad faith" and then denied my motion to proceed in forma pauperis.

As a former police officer, I was shocked and deeply saddened to see the atrocity committed upon George Floyd by members of law enforcement whose fundamental duty is to protect and serve the people of their communities. While I am not literally being suffocated, the cries for help I have made to every applicable Court in the nation to stop the egregious abuse of force being perpetrated here echoes George's cries with resounding harmony. It is a heinous crime for a judicial officer to violate due process.

I request this Court vacate the State Court's void judgment as well as the void judgment of the District Court and remand it as quickly as practically possible with instructions to restore my in forma pauperis status and allow me to amend the complaint so that the case may proceed and I am able to obtain redress for the injuries resulting from the abominable miscarriages of justice perpetrated in this case.

Sincerely,

/s/ Adam Bereki
In Propria Persona
June 26, 2020

PROOF OF SERVICE

I hereby certify that I served a complete copy of the Notice dated June 26, 2020 upon the following parties on June 26, 2020:

Via email to:

wbissell@wgb-law.com
William Bissell
Attorney for Defendants
Karen and Gary Humphreys
14 Corporate Plaza Ste. 120
Newport Beach, CA 92660

Via First Class Mail to:

Office of the Attorney General
300 South Spring Street
Los Angeles, CA 90013–1230

/s/ Adam Bereki 06/26/20

R. 6/27/20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

June 24, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

Thank you for your correspondence dated June 19, 2020. This matter is still under consideration. We will be in touch with you after the commission has reached a decision regarding your complaint.

Very truly yours,

Anjuli Fiedler

Anjuli Fiedler
Staff Counsel

AF:aap/L062420Bereki

Confidential under California Constitution,
Article VI, Section 18, and Commission Rule 102

EXHIBIT [D]– 4945

F: 7/13/20

State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: http://cjp.ca.gov

July 9, 2020

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Mr. Bereki:

At its July 2020 meeting, the Commission on Judicial Performance voted to close your complaint dated June 8, 2020.

Your complaint concerns legal rulings made by the judges. This commission is not a court and does not have the authority to reverse judicial decisions. Even if a judge's decision is later determined to be legally incorrect by an appellate court, that by itself is not a violation of the Code of Judicial Ethics and is not misconduct. A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. The information you have provided is not sufficient to establish any of those factors.

If you wish to provide additional information regarding your complaint, it will be considered. You should provide specific information that fully describes what the judges said or did that you believe was misconduct. You may wish to consult the "Filing a Complaint" and "FAQ's" tabs on the commission's website (http://cjp.ca.gov) for further information about what a complaint should contain.

With respect to the legal proceedings that gave rise to your complaint, you may wish to consult an attorney or legal services provider to see if they can help you. This office cannot provide individuals with legal assistance.

We appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

Anjuli Fiedler
Staff Counsel

AF:aap/L070920Bereki

Confidential under California Constitution,
Article VI, Section 18, and Commission Rule 102

Gmail

Adam Bereki– Update 021722

1 message

Adam <abereki@gmail.com> Thu, Feb 17, 2022 at 7:50 AM
To: emoran@chp.ca.gov

Sgt. Moran,

Thank you for your continued hard work in helping me achieve integrity and accountability in public service.

I realize this situation is a bit unusual but nevertheless a reality requiring your commitment to honor your sworn oath to perform the duties of your office by investigating my complaints for criminal behavior under color of law and deprivation of Constitutionally protected rights by public officials.

Yesterday, you shared with me that you had reviewed the Court of Appeal opinion in my case but that you were having a hard time seeing how the judgement against me (by both the Superior Court and the Court of Appeal) was a fine.

The words forfeiture and fine are synonymous. I was required to forfeit "all compensation paid" for allegedly performing construction work without a license. In other words, the Court found I committed a public offense and that this was punishable by having to forfeit all of the monies that were paid to me.

This is exactly what the statute, Business and Professions Code §7031(b) says: "a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover **all compensation paid** to the unlicensed contractor for performance of any act or contract."

As I shared with you on the phone, my company ALREADY returned the monies paid in the form of materials and labor that the customer requested. Therefore, anything more than this amount would be punishing me beyond the authority of the statute. In other words a forfeiture or fine. Even more troubling, both I and my company were licensed!

Even if I wasn't licensed, the Court was required to take into account the materials and labor in the form of value that was already returned to the customer. Both Courts

EXHIBIT [D]– 4948

refused to do this!! The result is that the orders of both Courts for me to forfeit nearly a million extra dollars (on top of the monies that were already returned to the customer) is illegal and without authority.

Judges, like all public officials, are forbidden from taking something from one person to give to another unless they have constitutional or statutory authority. That authority does not exist in this case!

I know you know and understand that the essence of theft is the taking of property without lawful authority. Public officials can take your property as punishment for an offense, BUT THEY MUST HAVE CONSTITUTIONAL AND STATUTORY AUTHORITY TO DO SO AND IT MUST BE WITHIN LAWFUL PARAMETERS SO AS NOT TO BE EXCESSIVE. Without this authority, they are not acting in an official capacity and and in this case are committing State and Federal Crimes.

Ed, no one in their right mind would believe that a near million dollar penalty/fine/consequence for contracting without a license is reasonable and not excessive or even remotely proportional to the offense. I don't feel you believe it is either.

Despite the foregoing, at the end of our call, you told me that you could not find anything criminal about these "Judges" taking nearly one million dollars from me without lawful authority and that as a result you (the CHP) weren't going to investigate and intervene to stop this egregious criminal behavior that continues to cause me harm deprive me of my rights. When I asked you to put your determination not to investigate or intervene in writing, you told me that you would not do that.

I am here to help you in performing the sworn duties of your office, Sgt. Moran. I realize the nature of my complaint may be a little different from any you have investigated, but I nevertheless believe you have the tools and intelligence to perform a full, fair, and impartial investigation. It's really no different than any other crime investigation. I'm simply alleging my property is being taken without lawful authority and under color of law. It seems to me, the first and only thing to do in the investigation is to determine whether the "Judges' had authority to take my property. If they did, and you can point me to a statute or Constitutional authority that authorizes their behavior, then fine, I will concede and even apologize. But no State official has provided me with this information and I have not been able to find it myself either. In fact our Constitutions flatly prohibit it.

You will undoubtedly have to do some brief research to understand exactly how this

EXHIBIT [D]– 4949

crime is being orchestrated because fraud is involved. The nature of fraud is to conceal the truth around what is really transpiring and so far, based upon what you shared with me yesterday, you've been hoodwinked too.

During our call, you continually referred to the Court of Appeal opinion as if what the Court said was both true and the law. It's not. I've repeatedly alleged that the Court committed fraud, so you can't go to the person committing fraud to determine the truth.

While you absolutely must read the opinion and include it as part of your investigation, you also have to look beyond it to see how the scheme operates in the context of our State and National Constitutions that flatly prohibit the behavior of these "Judges".

As I've also shared, this is not just a scheme being perpetrated upon me, but upon many people of California through the Legislative, Executive and Judicial Branches. It's very deep and been going on for decades.

I know you sense something is terribly wrong, Ed. Follow that. You know what's fair and reasonable and what's not.

To further help your investigation, I've attached a recent case from the U.S. Supreme Court on this exact subject. The case is Liu v. SEC. Notice how the trial Court ordered the defendant to forfeit all millions of dollars without offset for the value they provide their customers. Then notice how the Supreme Court vacated the judgment of the trial Court because it was void and without authority! Same thing here!

I'll look forward to hearing from you (and the CHP) if and when you are ready to continue your investigation into the truth and to protect my rights, liberty, and property.

Sincerely,

Adam Bereki

Liu v. SEC, 140 S. Ct. 1936.pdf

EXHIBIT [D]– 4950

908K

EXHIBIT [D]– 4951

Gmail Adam Bereki <abereki@gmail.com>

Adam Bereki– 021722 Complaint to OCDA

1 message

Adam <abereki@gmail.com> Thu, Feb 17, 2022 at 9:53 AM
To: emoran@chp.ca.gov

Sgt. Moran,

Attached, please find the complaint that I just sent to the OCDA Special Investigation Unit Supervisor. It may help you with your investigation in determining whether in fact a crime has been committed and will evidence the scope of this egregious criminal misconduct. As noted, multiple attempts have been made to notify the DA's office and they have refused to abide their sworn duties as well.

Sincerely,

Adam Bereki

COMPLAINT OCDA 021722.pdf
244K

EXHIBIT [D]– 4952

Adam Bereki
C/o 818 Spirit
Costa Mesa, California
abereki@gmail.com | 949.241.6693

To: Supervisor, Special Investigations Unit
Orange County District Attorney
300 N. Flower St.
Santa Ana, CA 92703

February 17, 2022

RE: Criminal Complaint and Complaint for Deprivation of Constitutional Rights Under Color of Law by Public Officials

I. "Trial"

On March 27th and 28th 2017, I was maliciously prosecuted and excessively, cruelly, and unusually punished under the fraudulent pretense of a remedial civil action in equity for "disgorgement" for allegedly performing construction work without a license. During the so-called "trial" I was also denied all of the heightened protections of criminal proceedings including the assistance of counsel. I was then excessively fined $848,000 – an amount more than forty times my qualifying and estimated net worth – after the "Court" refused to recognize any of the protections of the excessive fines clause. As a result of the *ultra vires* proceedings, I was subjected to a bill of attainder or pains and penalties in violation of Article I, §10 of the Constitution (amongst other deprivations of rights) having been punished without a judicial determination of my rights. See Superior Court of California, County of Orange, case# 30-2015-00805807, incorporated and fully set forth herein.

The statute under which I was prosecuted, California Business and Professions Code §7031(b), is a public regulatory penal statute that governs contractor licensing under California's Contractor Licensing Laws, (Business & Professions Code,

§§7000 et seq.). According to the Supreme Court of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing penalty for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[1] More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[2] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided if they perform work without a license.[3] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

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

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid."

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

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

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

Another obvious indication of §7031's purely penal nature is that the same conduct is made criminal by Business and Professions Code §7028. Notably, the *maximum* fine for a first offense under §7028 is $5,000, not $848,000.

§7031(b) also falls squarely within the definition of a crime or public offense under Cal. Penal Code §15:

> "[a] crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or, 5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State."

As this the U.S. Supreme Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment [...]."[4]

Despite the excessive, cruel, and unusual punishment imposed upon me, the Minute Order issued by Superior Court of California, County of Orange, "Judge" David Chaffee, (Exhibit [A]), reflects a judgment for "disgorgement of funds paid". According to the U.S. Supreme Court's recent decision in the case of *Liu v. SEC*,[5] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, not the total penal forfeiture of an entire transaction without offsets for benefits conferred.

The obvious problem here is that equitable disgorgement of my profits is not what Chaffee ordered. He ordered a total penal forfeiture of "all compensation paid" as stated in §7031(b) without offsets for benefits conferred. Equally troubling, §7031(b) mentions nothing about equitable disgorgement. Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is

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

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

also not used anywhere in the legislative of history of §7031. And, as previously evidenced, the Legislature was perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

In his dissent in *Liu supra*, Justice Thomas aptly saw the writing on the wall surrounding the nationwide abuses of "disgorgement". He said "[t]he term disgorgement itself invites abuse because it is a word with no fixed meaning. [...] As long as courts continue to award "disgorgement", [Courts] will continue to have license to expand their own power."[6]

Even assuming §7031(b) called for a true claim of equitable disgorgement, I am unaware of any evidence on the trial "Court's" record that I profited even one dollar let alone the $848,000 awarded by Chaffee, or that I was unjustly enriched by purportedly performing the custom remodel work requested by the Humphreys. See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

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

Even more astounding, the fraudulent "Proposed Judgment Order" filed by the Humphreys (the Plaintiffs) and their attorney, William G. Bissell,[7] is an order for "Damages" (not "disgorgement") in the amount of $848,000. This order was later signed by Chaffee. See Exhibit [B].

In addition to the fact there was no apparent evidence presented by the Humphreys to substantiate a claim for equitable disgorgement, I am also unaware

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[6] *Liu v. SEC*, 140 S. Ct. 1936, 1953-54 (2020).

[7] All references to William Bissell shall also include The Law Offices of William G. Bissell.

of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with the U.S. Supreme Court's definition thereof. See for e.g. the case of *Birdsall v. Coolidge,*[8] defining damages as:

> "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

According to the California Second District Court of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.,*[9] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the licensing laws are founded is purely hypothetical. Dating all the way back to the Magna Carta, punishment for an offense against the Crown was limited to "genuine [not hypothetical] harm".[10]

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include [...] general compliance with regulatory

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

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

[10] *Browning-Ferris Indus. v. Kelco Disposal,* 492 U.S. 257, 271 (1989).

law."[11] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[12]

But not only did the Humphreys never state a claim for equitable disgorgement or damages, immediately before "trial" they specifically severed their claim for alleged damages from their First Amended First Cause of Action for "disgorgement". Their intent was that by simply having a "trial" only on their First Cause of Action for "disgorgement", they would receive a total forfeiture in addition to keeping nearly one million dollars in work and therefore have no need to evidence any damages. This intent was specifically declared in Bissell's sworn Declaration in Support of the Motion for Severance. Therein, Bissell testified that "the amount to be disgorged [forfeited] would exceed that amount of damages claimed by [the Humphreys] [and] there would be no need to put on evidence of either [my or my company's] liability or [the Humphreys] damages." As a result, no damages were evidenced at "trial".

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The case against me is not an anomaly, it's the standard operating procedure here in Commiefornia. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.,*[13] where the so-called "Judicial" Council of California sought a $22.7 million dollar forfeiture under the same fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired

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

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

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

to maintain the California Court buildings that had admittedly done a good job. In response to a public records request,[14] the "Judicial" Council admittedly spent over $3 million dollars of the People's tax dollars in its attempts to prosecute, punish, and likely financially destroy *Jacobs* due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. One has to wonder just what degree of sociopathy[15] it must take to spend more than three million dollars to try and ruin a company that provided quality service and caused no harm. This is the same "Judicial" Council, mind you, whose purported duty it is make the policies for California "Courts", "the largest Court system in the Nation" and who, acting in concert with the *ultra vires* actions of the California "Legislature" and "Governor" manufactured the bogus civil jury instructions for §7031(b).[16]

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a default rule, [...] not of flexibility but of omnipotence".[17] "Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[18]

It is unknown exactly how many other similar cases have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes

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[14] Exhibit [C] p. 1815. $3,307,408.78.

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

[16] Judicial Council of California Civil Jury Instructions, CACI §4560 and §4561.

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

[18] *Id.* p.333. Internal quotations omitted.

like §7031, which has been in existence since 1929. The following are just a handful of other cases[19] I was able to locate because an appeal was filed:

> *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. See *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS.
>
> *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and Court costs awarded against *MW Erectors, Inc.* pursuant to §7031(a) upheld by the Cal. Supreme Court, awarded by... you guessed it, "Judge" Chaffee.
>
> *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of an $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a).
>
> *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against Hydrotech pursuant to §7031(a).
>
> *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District Courts enforce these same public policies. See for e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,[20] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a). See also the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

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[19] The facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.

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

In each and every case I examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed – and consequently *any* protections guaranteed by the excessive fines clauses – they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution [...] of another."[21]

a. The Humphreys Lacked Standing to Prosecute Petitioner.

1. The history of criminal forfeiture laws.

In the case of *United States v. Seifuddin,*[22] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

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

Applying this criteria to the instant case, it is plainly obvious that the action against me was an *in personam* criminal forfeiture intended to punish me for allegedly performing construction work without a license. As a result, the rules of criminal procedure were required to be followed.

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

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

It should also be noted that because the "Judgment" is more than forty times my qualifying and estimated net worth, it will force me into bankruptcy where I will be forced to forfeit all of my qualifying lands and goods. At common Law a total forfeiture of an offender's lands or goods or both was punishment for a felony or treason and was prosecuted by indictment.[23]

2. The Humphreys Intended to Prosecute Petitioner by subjecting him to an in personam criminal forfeiture.

In their First Amended Trial Brief, the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish me for violating the licensing laws by seeking an $848,000 fine/total forfeiture upon him. They claimed that:

> "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

The Humphreys lacked Constitutional standing to prosecute me for the commission of a public offense because Article V, §1 of the California Constitution vests the executive power of California *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a . . . political society, and incorporates

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[23] *Evans v. Willis*, 1908 OK 199, p.11 (OK Supreme Ct. 1908).

into a commonwealth."[24] The State of California admits the "remedy" prescribed by §7031(b) is in fact a sword.[25] Therefore, only the executive branch of the State could prosecute me, not the Humphreys.[26] "A lack of standing is a jurisdictional defect."[27]

Despite the foregoing, no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the Superior Court of California, County of Orange with personal and subject matter jurisdiction[28] to prosecute and punish me. As a result, "Judge" Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[29] Instead, Chaffee arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no lawful authority whatsoever to do so, thereby committing fraud upon me and my estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of the fraudulent *ultra vires* "Judgment Order".

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

[25] "The hiring party is entitled to enforce these remedies [§7031] through a defensive shield [§7031(a)] or an affirmative sword [§7031(b)]." *Alatriste v. Cesar's Designs, Inc.*, 183 Cal. App 4th 656, 664 (2010).

[26] *Robertson v. Watson*, 560 U.S. 272, 273 (2010) and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

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

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

[29] Cal. Penal Code §1382.

II. "Appeal"- Fourth District Court of Appeals

On June 13, 2017, I timely appealed to the California Court of Appeals, Fourth Appellate District. The appeal was assigned to "Presiding Justice" Kathleen E. O'Leary and "Justices" Thomas M. Goethals, and Richard M. Aronson, (collectively "OLGA"), who arbitrarily affirmed Chaffee's "Judgment Order" finding that the fine imposed upon him was "disgorgement", a "non-punitive" "equitable remedy" and "civil consequence". See case #G055075, incorporated and fully set forth herein and OLGA's Opinion, Exhibit [C].

"Justices" OLGA first had a mandatory, non-discretionary, ministerial duty to first ensure the Fourth District Court of Appeals had personal and subject matter jurisdiction over me and the appeal.[30] Article I, §10 of the California Constitution does not vest any Court, let alone the Fourth District Court of Appeals with any known subject matter jurisdiction (ie in law and equity) to exercise the judicial Power of California on appeal. Second, because there is no power vested by the "Constitution of 1879" for the Legislature to vest Courts with any of the judicial power of California, Cal. Code of Civil Procedure §904.1(b), which purportedly makes appealable an order after final judgment, is without authority and void.[31]

Hypothetically assuming that the Court of Appeals had the requisite personal and subject matter to proceed with the appeal, "Justices" OLGA then had a mandatory, non-discretionary, ministerial duty to ensure the Superior Court of California, County of Orange had personal and subject matter jurisdiction over each issue in which the judicial power of California was exercised to deprive me of my

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[30] *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887).

[31] At the time of the "appeal" it should be noted that Petitioner believed and relied upon the fraud that the Cal. Constitution and §904.1(b) vested the Fourth District Court of Appeal with subject matter jurisdiction.

liberty and property.[32] For the reasons already evidenced, the Superior Court of California lacked both personal jurisdiction over me and subject matter jurisdiction over the case.

Instead of the performing these sworn duties, "OLGA" proceeded to commit fraud on me and his estate by treasonously exercising the judicial power of California under color of law to sustain the fraud, deceit, treason and other rights violations committed by Chaffee in conspiracy with the Humphreys and Bissell. Rather than actually reading §7031(b) – which clearly and unambiguously calls for a total penal forfeiture – and following the precedent of the Supreme Court of California finding that §7031(b) imposed both a penalty and a forfeiture, they decided to make up their own term of "disgorgement" and find that §7031(b) imposed an "equitable remedy" despite affirming Chaffee's "Order" of a total forfeiture. This, despite the fact that the Humphreys never even stated a claim for "equitable disgorgement". See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

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

I am unaware of any evidence on the trial "Court's" record that I was unjustly enriched $848,000, let alone $1. A Court of Equity "never lends its aid to enforce a forfeiture or penalty."[33]

Perhaps even more troubling is that I raised nearly all of the aforementioned issues presented here on "appeal" in my Opening Brief. OLGA's response was that

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[32] *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887).

[33] *Liu v. SEC*, 140 S. Ct. 1936, 1941. Internal quotations and citation omitted.

they found "no merit" to any of them, despite all of them aligning meritoriously with State and National Constitutional law. One august authority cited in my Brief was to the case of the *Town of Gilbert Prosecutors Office v. Downie*,[34] involving "disgorgement" and the criminal prosecution of an unlicensed contractor, where the Supreme Court of Arizona found that "a rule of total disgorgement [forfeiture] regardless of any benefit conferred on the victim [...] may lead to absurd or troubling results." Discussing the issue, the high Court found that "when determining the proper amount of restitution to be paid to a victim, consideration should be made for [the] value conferred on the victim;" *Id.* p.18. and, that restitution "should not compensate victims for more than their actual loss." *Id.* p.13. Citing both the Seventh[35] and Ninth[36] Circuit Courts of Appeals, the Gilbert Court declared that they "[found] no significant difference between returning cash, one form of value, and returning other forms of value, such as permits, chattels, services, or other property [and that the concept of] loss is [...] rooted in value, not solely in the exchange of money." *Id.* p.25. Explaining the Seventh Circuit case, the Court stated that "the defendant embezzled funds from a hospital patient under the guise of making improvements to the patient's home [and that] the starting point for determining restitution was the amount embezzled from the victim. From this amount, the court [then] subtracted expenditures made on improvements to the victim's home [and] concluded that such expenditures did not differ in principle from taking the money from one of [the victim's] bank accounts and depositing it in another."[37]

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

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

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

[37] *Id.* p.17. (Citations and internal quotations omitted).

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

Despite the foregoing, OLGA's opinion fails to even mention the *Gilbert* case let alone how they specifically arrived at §7031(b) being an "equitable remedy" or "disgorgement." How is it even remotely possible for the People to receive a full, fair, and impartial appeal if the "Court" is not actually going to hear a Plaintiff's arguments and provide a competent response to each of the issues that are actually raised?

Upon receiving OLGA's opinion affirming Chaffee's fraudulent "Judgment Order" (on Halloween of all days) I filed a Petition for Rehearing. The first issue stated "Error in Law: This Court erroneously ruled disgorgement is not a "penalty" contrary to US Supreme Court Jurisprudence." The Petition was denied without any explanation.

By affirming the fraud and the deprivations of rights, liberty, and property committed by Chaffee, "Justices" OLGA exercised the judicial power of California without personal and subject matter jurisdiction to further punish me by depriving me of my right to a full, fair, and impartial *judicial* appeal, equal protection of the law, and the taking of my rights, liberty and property without just compensation, resulting in a bill of pains and penalties.

"We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."[38]

III. Conclusion

There are additional complaints I would like to make about additional Judges along with Officials of the Legislative and Executive branches. Upon receiving this complaint and notifying me of your compliance with performing your sworn duties to open a full, fair, and impartial investigation, and to intervene to stop the heinous abuses of power by protecting my rights, liberty, and property, I will gladly send you the remaining complaints, supporting evidence and other documents, and participate in an interviewOC. Thus far, two separate local law enforcement agencies have contacted officials of your office regarding this matter and your office refused to do either.

Sincerely,

/s/ Adam Bereki

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

Gmail

Adam Bereki <abereki@gmail.com>

ADAM BEREKI- RESPONSE FROM COMPLAINT TO ATTNY GEN AND OCDA

1 message

Adam <abereki@gmail.com> Mon, Mar 7, 2022 at 1:52 PM
To: emoran@chp.ca.gov

Sgt. Moran,

As requested I made complaints to the Orange County District Attorney and the California Attorney General. The OCDA has not responded to my correspondence and they have refused to investigate and intervene in complaints that were brought to them on my behalf from two separate law enforcement agencies. I have included the certificate of service evidencing that I did in fact mail the complaint to them.

I received a response from the California Attorney General's office today. That office told me that they are unable to assist me and that the Commission on Judicial Performance has jurisdiction over my complaint. Please see the attached letter.

I have already sent you my complaint to the Commission on Judicial Performance. They refused to fully, fairly, and impartially investigate my complaint or to intervene to stop the theft of my rights, liberty, and property without lawful authority.

As a result of the foregoing, your office if the only remaining office in the State of California with authority to investigate my complaints and intervene. Please inform me in writing at your earliest convenience if you will abide your sworn duty to investigate and intervene. Again, I have been unlawfully restrained from earning a living as a contractor and an unlawful lien has been filed upon real property held in the name of my living trust. As I am unable to pay the mortgage and property tax payments, foreclosure is imminent and I continue to be egregiously harmed.

Sincerely,

Adam Bereki

EXHIBIT [D]– 4969

Gmail Adam Bereki <abereki@gmail.com>

DOCUMENTS ATTACHED

1 message

Adam <abereki@gmail.com>
To: emoran@chp.ca.gov

Mon, Mar 7, 2022 at 1:58 PM

2 attachments

RESPONSE FROM CA ATTNY GENERAL 030722.pdf
460K

COMPLAINT TO CAL ATTNY GENERAL AND RESPONSE.pdf
3133K

EXHIBIT [D]– 4970

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

PUBLIC INQUIRY UNIT
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

February 25, 2022

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your correspondence to the Office of the Attorney General.

While we appreciate the time and effort it has taken to contact our office, we are unable to assist you. The role of the Attorney General is to represent the People of California, collectively, in civil and criminal matters before trial courts, appellate courts, and the supreme courts of California and the United States. However, the Attorney General is prohibited by law from representing private individuals or providing legal advice, legal research or legal analysis to private individuals under any circumstances. As a result, the Attorney General cannot represent you in your private litigation or intercede on your behalf.

Therefore, we suggest that you consult with a private attorney to determine any civil remedies that may be available to you. An attorney would directly represent your interests and is the one whose advice would be most helpful to you.

Your complaint about the judge(s) involved in this case should be directed to the Commission on Judicial Performance. The Commission has exclusive jurisdiction over complaints against judges. You may contact the Commission as follows:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
Telephone: (415) 557-1200
Fax: (415) 557-1266
Internet: http://cjp.ca.gov

Your complaint about the attorney(s) involved in this case should be directed to the State Bar. The Bar has exclusive jurisdiction over complaints against attorneys. You may contact the Bar as follows:

State Bar of California
Intake Unit
845 S. Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 765-1000 (outside of CA) or (800) 843-9053 (toll free)
Internet: http://www.calbar.ca.gov

We regret that we are unable to assist you. However, we hope the information we have provided clarifies our restrictions in regard to your request. Thank you again for writing.

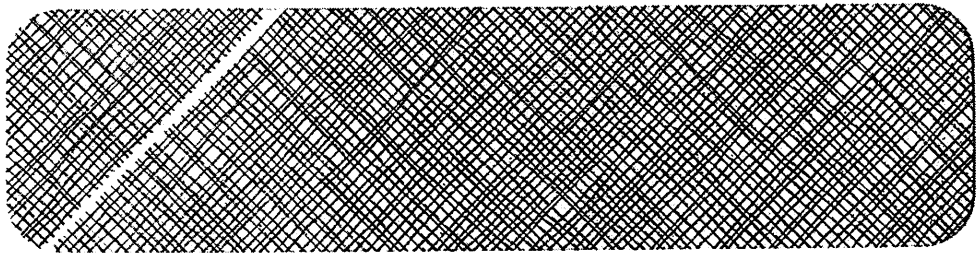
Sincerely,

Casey Hallinan
Public Inquiry Unit

For ROB BONTA
Attorney General

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

US POSTAGE PITNEY BOWES
ZIP 95814 $ 000.53⁰
02 4W
0000366252 MAR 03 2022



2/4/22

926283085 C051

EXHIBIT [D]– 4973

Gmail Adam Bereki <abereki@gmail.com>

Adam Bereki Interview Recording and Docs

1 message

Adam <abereki@gmail.com> Wed, Mar 23, 2022 at 3:43 PM
To: ernesto.mejia@chp.ca.gov

Ernesto,

Thank you so much for your time this morning. Here are the documents we discussed and the recording of the interview.(I did not include all the documents such as court cases that you had already). I've also included a copy of the lawsuit I attempted to file in the US Supreme Court that has a full breakdown of all of the issues we discussed today (and many more)- it's titled EMERGENCY PETITION.

I wanted to mention that we did not even get into the complaints to the members of the California Assembly and Senate as well as to the Judicial Council and Commission on Judicial Performance. I feel all these other complaints and issues may have been overwhelming. When you're ready, we can meet again and go over them. For the time being, if you want to review them, they are on my website under Exhibits (in the top menu bar) and Exhibit D- Complaints/ Government Tort Claims. All of the documents are in one large file and haven't yet been sorted out online for quick reference according to agency.

I've also included a copy of Learning Domain 2 regarding law enforcement duties to protect constitutional rights.

Sincerely,

Adam Bereki

INTERVIEW BY CHP OFFCR MEJIA 032322 EMAIL .m4a

3 attachments

EMERGENCY PETITION FOR WRIT(S) OF ERROR AND NON-STATUTORY HABEAS CORPUS.pdf
2041K

CHP INTERVIEW DOCUMENTS 032322.pdf
9273K

LD_02_V-6.4.pdf
441K

EXHIBIT [D]– 4974

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

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

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

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

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

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

All counsel answer ready for trial.

1st day of trial

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

All parties waived jury trial.

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

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

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

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

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

EXHIBIT [D]– 4975

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

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

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

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

MS. KAREN HUMPHREYS is sworn and testifies.

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

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

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

Ms. Karen Humphreys steps down.

MR. GARY HUMPHREYS is sworn and testifies.

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

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

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

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

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

MR. ADAM BEREKI is sworn and testifies.

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

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

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

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

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

evidence.

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

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

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

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

Mr. Adam Bereki steps down.

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

Mr. Gary Humphreys steps down.

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

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

EXHIBIT [D]– 4977

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

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

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

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

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

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

2nd day of trial

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

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

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

Mr. Adam Bereki waived closing argument.

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

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

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

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

EXHIBIT [D]– 4978

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

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

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

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

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

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

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

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

Counsels reached an agreement as set forth on the record.

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

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

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

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

EXHIBIT [D]– 4979

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

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

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

EXHIBIT [D]– 4980

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/04/2017 at 12:01:06 PM
Clerk of the Superior Court
By Enrique Velez,Deputy Clerk

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)
William Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660
TELEPHONE NO: (949) 719-1159 FAX NO (Optional)
E-MAIL ADDRESS (Optional): wbissell@wgb-law.com
ATTORNEY FOR (Name): Gary Humphreys & Karen Humphreys

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
APR 20 2017
DAVID H. YAMASAKI, Clerk of the Court
BY: DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

PLAINTIFF: The Spartan Associates, Inc.

DEFENDANT: Gary Humphreys, Karen Humphreys et al

CASE NUMBER
2015-00805807

Judge David Chaffee

JUDGMENT

☐ By Clerk ☑ By Court ☐ By Default ☐ On Stipulation ☑ After Court Trial ☐ Defendant Did Not Appear at Trial

JUDGMENT

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

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

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

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

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

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

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

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

Form Approved for Optional Use
Judicial Council of California
JUD-100 [New January 1, 2002]

Code of Civil Procedure, §§ 585, 664.6

EXHIBIT [D]– 4981

PLAINTIFF The Spartan Associates, Inc.

DEFENDANT Gary Humphreys, Karen Humphreys et al

CASE NUMBER 2015-00805807

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

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

5. **Parties.** Judgment is

a ☐ for plaintiff *(name each)*

and against defendant *(names)*:

☐ Continued on Attachment 5a.

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

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

☐ Continued on Attachment 5c.

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

6 **Amount.**

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

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

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

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

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

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

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

Date: APR 2 0 2017

☐ JUDICIAL OFFICER
DAVID R. CHAFFEE

Date ☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE *(Optional)*

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

Date:

Clerk, by _____, Deputy

EXHIBIT [D]– 4982

* CALIFORNIA CONSTITUTION - CONS

ARTICLE I DECLARATION OF RIGHTS [SECTION 1 - SEC. 32] *(Article 1 adopted 1879.)*

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

(Sec. 1 added Nov. 5, 1974, by Proposition 7. Resolution Chapter 90, 1974.)

SEC. 2. (a) Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

(b) A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

As used in this subdivision, "unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.

(Sec. 2 amended June 3, 1980, by Prop. 5. Res.Ch. 77, 1978.)

SEC. 3. (a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need

EXHIBIT [D]– 4983

for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

(Sec. 3 amended June 3, 2014, by Prop. 42. Res.Ch. 123, 2013.)

SEC. 4. Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

A person is not incompetent to be a witness or juror because of his or her opinions on religious beliefs.

(Sec. 4 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 5. The military is subordinate to civil power. A standing army may not be maintained in peacetime. Soldiers may not be quartered in any house in wartime except as prescribed by law, or in peacetime without the owner's consent.

(Sec. 5 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 6. Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.

(Sec. 6 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this State may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy

EXHIBIT [D]– 4984

the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this State, whenever rendered, which includes provisions regarding pupil school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979–80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this State and its public schools, preventing the waste of scarce fuel resources, and protecting the environment.

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked.

(Subdivision (a) amended Nov. 6, 1979, by Prop. 1. Res.Ch. 18, 1979. Other Source: Entire Sec. 7 was added Nov. 5, 1974, by Prop. 7; Res.Ch. 90, 1974.)

SEC. 7.5. Only marriage between a man and a woman is valid or recognized in California.

(Sec. 7.5 added Nov. 4, 2008, by Prop. 8. Initiative measure. Note: Ruled unconstitutional per Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921.)

SEC. 8. A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.

(Sec. 8 renumbered from Sec. 18 (of Art. 20) on Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.

(Sec. 9 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 10. Witnesses may not be unreasonably detained. A person may not be imprisoned in a civil action for debt or tort, or in peacetime for a militia fine.

(Sec. 10 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 11. Habeas corpus may not be suspended unless required by public safety in cases of rebellion or invasion.

(Sec. 11 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

EXHIBIT [D]– 4985

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

(Sec. 12 amended Nov. 8, 1994, by Prop. 189. Res.Ch. 95, 1994.)

SEC. 13. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

(Sec. 13 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

(Sec. 14 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 14.1. If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing.

(Sec. 14.1 added June 5, 1990, by Prop. 115. Initiative measure.)

SEC. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

(Sec. 15 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

(Sec. 16 amended June 2, 1998, by Prop. 220. Res.Ch. 36, 1996.)

SEC. 17. Cruel or unusual punishment may not be inflicted or excessive fines imposed.

(Sec. 17 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

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SEC. 18. Treason against the State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort. A person may not be convicted of treason except on the evidence of two witnesses to the same overt act or by confession in open court.

(Sec. 18 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 19. (a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(b) The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person.

(c) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.

(d) Subdivision (b) of this section does not apply when State or local government exercises the power of eminent domain for the purpose of acquiring private property for a public work or improvement.

(e) For the purpose of this section:

1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise, or otherwise.

2. "Local government" means any city, including a charter city, county, city and county, school district, special district, authority, regional entity, redevelopment agency, or any other political subdivision within the State.

3. "Owner-occupied residence" means real property that is improved with a single-family residence such as a detached home, condominium, or townhouse and that is the owner or owners' principal place of residence for at least one year prior to the State or local government's initial written offer to purchase the property. Owner-occupied residence also includes a residential dwelling unit attached to or detached from such a single-family residence which provides complete independent living facilities for one or more persons.

4. "Person" means any individual or association, or any business entity, including, but not limited to, a partnership, corporation, or limited liability company.

5. "Public work or improvement" means facilities or infrastructure for the delivery of public services such as education, police, fire protection, parks, recreation, emergency medical, public health, libraries, flood protection, streets or highways, public transit, railroad, airports and seaports; utility, common carrier or other similar projects such as energy-related, communication-related, water-related and wastewater-related facilities or infrastructure; projects identified by a State or local government for recovery from natural disasters; and private uses incidental to, or necessary for, the public work or improvement.

6. "State" means the State of California and any of its agencies or departments.

(Sec. 19 amended June 3, 2008, by Prop. 99. Initiative measure.)

SEC. 20. Noncitizens have the same property rights as citizens.

(Sec. 20 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 21. Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property.

(Sec. 21 renumbered from Sec. 8 (of Art. 20) on Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 22. The right to vote or hold office may not be conditioned by a property qualification.

(Sec. 22 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

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SEC. 23. One or more grand juries shall be drawn and summoned at least once a year in each county.

(Sec. 23 added Nov. 5, 1974, by Prop. 7. Res.Ch. 90, 1974.)

SEC. 24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this State in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States.

This declaration of rights may not be construed to impair or deny others retained by the people.

(Sec. 24 amended June 5, 1990, by Prop. 115. Initiative measure.)

Section 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.

(Sec. 25 added Nov. 8, 1910, by A.C.A. 14. Res.Ch. 44, 1909.)

SEC. 26. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

(Sec. 26 renumbered from Sec. 28 on June 8, 1976, by Prop. 14. Res.Ch. 5, 1976.)

SEC. 27. All statutes of this State in effect on February 17, 1972, requiring, authorizing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments within the meaning of Article 1, Section 6 nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution.

(Sec. 27 added Nov. 7, 1972, by Prop. 17. Initiative measure.)

SEC. 28. (a) The People of the State of California find and declare all of the following:

(1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.

(3) The rights of victims pervade the criminal justice system. These rights include personally held and

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enforceable rights described in paragraphs (1) through (17) of subdivision (b).

(4) The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

(5) Victims of crime have a collectively shared right to expect that persons convicted of committing criminal acts are sufficiently punished in both the manner and the length of the sentences imposed by the courts of the State of California. This right includes the right to expect that the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.

(6) Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.

(7) Finally, the People find and declare that the right to public safety extends to public and private primary, elementary, junior high, and senior high school, and community college, California State University, University of California, and private college and university campuses, where students and staff have the right to be safe and secure in their persons.

(8) To accomplish the goals it is necessary that the laws of California relating to the criminal justice process be amended in order to protect the legitimate rights of victims of crime.

(b) In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

(1) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

(2) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(3) To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

(4) To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

(5) To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(6) To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.

(7) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the

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victim is at issue.

(9) To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

(10) To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(11) To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

(12) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

(13) To restitution.

(A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

(B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

(C) All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

(14) To the prompt return of property when no longer needed as evidence.

(15) To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

(16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

(17) To be informed of the rights enumerated in paragraphs (1) through (16).

(c) (1) A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(2) This section does not create any cause of action for compensation or damages against the State, any political subdivision of the State, any officer, employee, or agent of the State or of any of its political subdivisions, or any officer or employee of the court.

(d) The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims. The court in its discretion may extend the right to be heard at sentencing to any person harmed by the defendant. The parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim.

(f) In addition to the enumerated rights provided in subdivision (b) that are personally enforceable by victims as provided in subdivision (c), victims of crime have additional rights that are shared with all of the People of the State of California. These collectively held rights include, but are not limited to, the following:

(1) Right to Safe Schools.All students and staff of public primary, elementary, junior high, and senior high schools, and community colleges, colleges, and universities have the inalienable right to attend campuses which

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are safe, secure and peaceful.

(2) Right to Truth-in-Evidence.Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(3) Public Safety Bail.A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

(4) Use of Prior Convictions.Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(5) Truth in Sentencing.Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.

(6) Reform of the parole process.The current process for parole hearings is excessive, especially in cases in which the defendant has been convicted of murder. The parole hearing process must be reformed for the benefit of crime victims.

(g) As used in this article, the term "serious felony" is any crime defined in subdivision (c) of Section 1192.7 of the Penal Code, or any successor statute.

(Sec. 28 amended Nov. 4, 2008, by Prop. 9. Initiative measure.)

SEC. 29. In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial.

(Sec. 29 added June 5, 1990, by Prop. 115. Initiative measure.)

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

(Sec. 30 added June 5, 1990, by Prop. 115. Initiative measure.)

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SEC. 31. (a) The State shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(b) This section shall apply only to action taken after the section's effective date.

(c) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(d) Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section.

(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.

(f) For the purposes of this section, "State" shall include, but not necessarily be limited to, the State itself, any city, county, city and county, public university system, including the University of California, community college district, school district, special district, or any other political subdivision or governmental instrumentality of or within the State.

(g) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing California antidiscrimination law.

(h) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law or the United States Constitution, the section shall be implemented to the maximum extent that federal law and the United States Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

(Sec. 31 added Nov. 5, 1996, by Prop. 209. Initiative measure.)

SEC. 32. (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

(Sec. 32 added Nov. 8, 2016, by Prop. 57. Initiative measure.)

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] *(Heading of Division 3 added by Stats. 1939, Ch. 30.)*

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

ARTICLE 2. Application of Chapter [7025 - 7034] *(Article 2 added by Stats. 1939, Ch. 37.)*

7031. (a) Except as provided in subdivision (e), no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that they were a duly licensed contractor at all times during the performance of that act or contract regardless of the merits of the cause of action brought by the person, except that this prohibition shall not apply to contractors who are each individually licensed under this chapter but who fail to comply with Section 7029.

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

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

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

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

(f) The exceptions to the prohibition against the application of the judicial doctrine of substantial compliance found in subdivision (e) shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom, except that the amendments to subdivisions (e) and (f) enacted during the 1994

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portion of the 1993–94 Regular Session of the Legislature shall not apply to either of the following:

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

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

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

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] *(Heading of Division 3 added by Stats. 1939, Ch. 30.)*

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

ARTICLE 2. Application of Chapter [7025 - 7034] *(Article 2 added by Stats. 1939, Ch. 37.)*

7028. (a) Unless exempted from this chapter, it is a misdemeanor for a person to engage in the business of, or act in the capacity of, a contractor within this state under either of the following conditions:

(1) The person is not licensed in accordance with this chapter.

(2) The person performs acts covered by this chapter under a license that is under suspension for failure to pay a civil penalty or to comply with an order of correction, pursuant to Section 7090.1, or for failure to resolve all outstanding final liabilities, pursuant to Section 7145.5.

(b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, or five thousand dollars ($5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars ($5,000) nor more than the greater amount of ten thousand dollars ($10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed person, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.

(e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.

(f) If the unlicensed person engaging in the business of or acting in the capacity of a contractor has agreed to furnish materials and labor on an hourly basis, "the contract price" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(g) Notwithstanding any other law, an indictment for any violation of this section by an unlicensed person shall be found, or information or a complaint shall be filed, within four years from the date of the contract proposal,

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contract, completion, or abandonment of the work, whichever occurs last.

(h) For any conviction under this section, a person who utilized the services of the unlicensed person is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether he or she had knowledge that the person was unlicensed.

(i) The changes made to this section by the act adding this subdivision are declaratory of existing law.

(Amended by Stats. 2014, Ch. 392, Sec. 3. (SB 315) Effective January 1, 2015.)

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PENAL CODE - PEN

PRELIMINARY PROVISIONS *(Preliminary Provisions enacted 1872.)*

15. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death;

2. Imprisonment;

3. Fine;

4. Removal from office; or,

5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

(Enacted 1872.)

EXHIBIT [D]– 4997

BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] *(Heading of Division 3 added by Stats. 1939, Ch. 30.)*

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

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

7071.17. (a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application for licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the bond is filed with the board. The bond required by this section is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the bond, satisfaction of judgment, or notarized copy of any accord applicable under this section is filed.

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

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

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

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

EXHIBIT [D]– 4998

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT [D]– 4999

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PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] *(Part 1 enacted 1872.)*

TITLE 7. OF CRIMES AGAINST PUBLIC JUSTICE [92 - 186.36] *(Title 7 enacted 1872.)*

CHAPTER 8. Conspiracy [182 - [185.]] *(Chapter 8 enacted 1872.)*

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action, or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment pursuant to subdivision (h) of Section 1170 for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170, or by a

EXHIBIT [D]– 5000

fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. When they receive a felony conviction for conspiring to commit identity theft, as defined in Section 530.5, the court may impose a fine of up to twenty-five thousand dollars ($25,000).

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

(Amended by Stats. 2011, Ch. 15, Sec. 272. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

EXHIBIT [D]– 5001

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PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] *(Part 1 enacted 1872.)*

TITLE 8. OF CRIMES AGAINST THE PERSON [187 - 248] *(Title 8 enacted 1872.)*

CHAPTER 4. Robbery [211 - 215] *(Chapter 4 enacted 1872.)*

211. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

(Enacted 1872.)

EXHIBIT [D]– 5002

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PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] *(Part 1 enacted 1872.)*

TITLE 13. OF CRIMES AGAINST PROPERTY [450 - 593g] *(Title 13 enacted 1872.)*

CHAPTER 4. Forgery and Counterfeiting [470 - 483.5] *(Chapter 4 enacted 1872.)*

470. (a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

(e) Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any forged bill or note, it is not necessary to prove the incorporation of the bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that the bill or note is forged or counterfeited.

(Amended by Stats. 2005, Ch. 295, Sec. 5. Effective January 1, 2006.)

EXHIBIT [D]– 5003

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PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680.4] *(Part 1 enacted 1872.)*

TITLE 13. OF CRIMES AGAINST PROPERTY [450 - 593g] *(Title 13 enacted 1872.)*

CHAPTER 5. Larceny [484 - 502.9] *(Chapter 5 enacted 1872.)*

487. Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars ($950), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars ($250).

(B) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars ($250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars ($250) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars ($250).

(3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars ($950) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile.

(2) A firearm.

(Amended by Stats. 2013, Ch. 618, Sec. 7. (AB 924) Effective January 1, 2014.)

EXHIBIT [D]– 5004

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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.16] *(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 3. OBLIGATIONS IMPOSED BY LAW [1708 - 1725] *(Part 3 enacted 1872.)*

1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights.

(Amended by Stats. 2002, Ch. 664, Sec. 38.5. Effective January 1, 2003.)

EXHIBIT [D]– 5005

GOVERNOR

* CALIFORNIA CONSTITUTION - CONS

ARTICLE V EXECUTIVE [SECTION 1 - SEC. 14] *(Article 5 added Nov. 8, 1966, by Prop. 1-a. Res.Ch. 139, 1966 1st Ex. Sess.)*

SECTION 1. The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed.

(Sec. 1 amended Nov. 5, 1974, by Prop. 11. Res.Ch. 96, 1974.)

SEC. 2. The Governor shall be elected every fourth year at the same time and places as members of the Assembly and hold office from the Monday after January 1 following the election until a successor qualifies. The Governor shall be an elector who has been a citizen of the United States and a resident of this State for 5 years immediately preceding the Governor's election. The Governor may not hold other public office. No Governor may serve more than 2 terms.

(Sec. 2 amended Nov. 6, 1990, by Prop. 140. Initiative measure.)

SEC. 3. The Governor shall report to the Legislature each calendar year on the condition of the State and may make recommendations.

(Sec. 3 amended Nov. 7, 1972, by Prop. 4. Res.Ch. 81, 1972.)

SEC. 4. The Governor may require executive officers and agencies and their employees to furnish information relating to their duties.

(Sec. 4 added Nov. 8, 1966, by Prop. 1-a. Res.Ch. 139, 1966 1st Ex. Sess.)

SEC. 5. (a) Unless the law otherwise provides, the Governor may fill a vacancy in office by appointment until a successor qualifies.

(b) Whenever there is a vacancy in the office of the Superintendent of Public Instruction, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, the Governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term. In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if such 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes.

(Sec. 5 amended Nov. 2, 1976, by Prop. 9. Res.Ch. 58, 1976.)

SEC. 6. Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by

EXHIBIT [D]– 5006

Gmail Adam Bereki <abereki@gmail.com>

Filing False and Fraudulent Judgment Lien- Penal Code 115

1 message

Adam <abereki@gmail.com> Wed, Apr 20, 2022 at 10:43 AM
To: "Mejia, Ernesto@CHP" <ernesto.mejia@chp.ca.gov>

Officer Mejia,

I recently came upon this penal code pertaining to filing a false and fraudulent judgment lien on the county record that attached to the real property held in my living trust. It's Penal Code 115:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=115&lawCode=PEN

Sincerely,

Adam Bereki

EXHIBIT [D]– 5007

Gmail Adam Bereki <abereki@gmail.com>

Notice of Forced Foreclosure/Bankruptcy and Unlawful Seizure/Taking of Property and Rights 04-10-22

4 messages

Adam <abereki@gmail.com> Sun, Apr 10, 2022 at 8:29 AM
To: ernesto.mejia@chp.ca.gov, emoran@chp.ca.gov

Notice to Agent is Notice to Principal.

Ed and Ernesto,

As I shared with you both resulting from the ongoing and **in progress** crimes and treason being perpetrated against me by rogue State and Federal officials, the next stage of the unlawful taking and seizure of my rights and property has begun. On 4/9/22, I received a Notice of Default and Intent to Accelerate from Shellpoint, the company in charge of servicing the loan for real property held in my living trust. As you'll recall, a lien resulting from the fraudulent judgments against me has been placed on the property in further attempt to steal my money and property and the beneficial interest held therein by my mother. (See attached).

Additionally and as direct as direct and proximate result of:

1) the fraudulent and illegal judgement(s) against me;
2) the unlawful conversion of my right to earn a living into a revocable privilege;
3) the indefinite suspension of my ability to obtain a license and earn gainful employment as a contractor without any hearing or lawful authority;
4) the fraudulent lien placed on the real property held in my living trust; and,
5) being forced into a condition of involuntary servitude to defend my rights and property against rogue official actors,

neither I nor my living trust are able to pay the mortgage payments, property taxes, and other personal and estate related expenses.

To pay for litigation related costs, basic living needs and medical expenses, I've been forced to use credit cards which I have become unable to pay. (See attached).

The result of all of the foregoing is obviously that despite all of my efforts to obtain a remedy from every branch of State and Nation government, I am being forced into foreclosure and/or bankruptcy or both as a means of continuing to perpetrate the aforementioned crimes against me and my mother.

As we've repeatedly discussed, it is your sworn duty to protect my rights and property from unlawful taking and seizure by criminals acting under color of law but without lawful authority as official State and Federal actors.

I recently also made a complaint to the office of the Orange County Treasurer-Tax Collector (Shari Friedenrich) so that her office would not be used as another instrument and weapon without authority. I have not received any response. (See attached). All of the complaints I have made to State and Federal actors can be found in the Exhibits section of my website http://www.thespiritoflaw.com.

Please respond by notifying me you received this Notice. As there is no apparent judicial Constitutional Court to go to at the State or Federal level, your offices appear to be the only authority to stop this heinous abuse of power.

Please also notify me of the status of your investigation.

EXHIBIT [D]– 5008

Respectfully,

Adam Bereki
949.241.6693

---

2 attachments

COMPLAINT OC TAX COLLECTOR AND CLERK.pdf
4646K

Notice of Default on Mortgage and Credit Cards.pdf
3103K

Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> Tue, Apr 12, 2022 at 6:20 AM
To: Adam <abereki@gmail.com>

Thanks for the update.

- Officer Mejia

From: Adam <abereki@gmail.com>
Sent: Sunday, April 10, 2022 8:30 AM
To: Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov>; Moran, Edward@CHP <EMoran@chp.ca.gov>
Subject: Notice of Forced Foreclosure/Bankruptcy and Unlawful Seizure/Taking of Property and Rights 04-10-22

[**Warning:** This email originated outside of CHP. Do not click links or attachments unless you recognize the sender and know the content is safe.]

[Quoted text hidden]

Adam <abereki@gmail.com> Tue, Apr 12, 2022 at 7:09 AM
To: "Mejia, Ernesto@CHP" <Ernesto.Mejia@chp.ca.gov>

You're welcome. Can you please share with me any updates you have?

SIncerely,

Adam
[Quoted text hidden]

Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> Fri, Apr 15, 2022 at 5:44 AM
To: Adam <abereki@gmail.com>

EXHIBIT [D]– 5009

Good morning Mr. Bereki,

I returned today to the office. I am still working your case.

[Quoted text hidden]

EXHIBIT [D]– 5010

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

January 13, 2022

Shari L. Friedenrich, CPA
Orange County Treasurer- Tax Collector
PO Box 1438
Santa Ana, California 92702-1438

Hugh Nguyễn
Orange County Clerk-Recorder
County Administration Building
601 N. Ross St.
Santa Ana, CA 92701

NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT.

RE: 2021-22 Secured Property Tax Bill For APN: 141-513-55
Petition For Redress of Grievance
California Public Records Act Request

PETITION FOR REDRESS OF GRIEVANCE

Good day,

I received your NOTICE OF PROPERTY TAX DELINQUENCY dated 1-7-22 on 1-13-22 wherein you stated that "[y]our secured property taxes that were due without penalty by December 10, 2021 have not been paid. The amount due is $4,632.43."

It appears that you have assessed a penalty in the amount of $421.30 [the amount you claim is now due minus the assessed taxes purportedly due on December 10, 2021 ($4,211.30)].

It is not now, nor has it ever been my intention to avoid paying a debt that I lawfully owe.

On April 20, 2017, a fraudulent, void judgment ('judgment") was rendered against me and my estate by the Superior Court of California, County of Orange. For a

ORIGINAL

EXHIBIT [D]– 5011

summary of why this judgment is fraudulent and void, see the attached Brief in Support of Law. Consequently, a fraudulent and void commercial judgment lien was filed with the California Secretary of State against my name and estate. See file number 177582830223. A fraudulent and void Abstract of Judgment was also filed with the Orange County Clerk-Recorder's office which purportedly attached to the property located at 818 Spirit Costa Mesa, California held in the name of The Adam Bereki Living Trust.

As a further consequence judgment (or an unlawful arbitration proceeding conducted by the Contractors State License Board), it appears that my ability to obtain a license to work as a general contractor has been suspended by operation of statute[1] without any hearing whatsoever until I either pay the judgment(s) or file bankruptcy. It also appears that my inalienable right to liberty and property in the form of my time and labor has been converted into a revocable commercial privilege pursuant to Business and Professions Code §7028, without any notice or a hearing. Subsequently, there is a threat of further financial punishment and/or incarceration or both (pursuant to §7028) if I were to engage in my profession despite the fact that I am not any of the corporate entities to which Chapter 9. Contractors, B&P §§7000 et seq. applies.

Despite appealing to every State and Federal authority for redress, along with the California Legislature and Executive branches, there does not appear to be any judicial Constitutional Court in the Nation to obtain a Lawful remedy as all apparent branches of our State and National government have united to form a "monarchical innovation" to impose absolute monarchy and despotism by overthrowing the Lawful Republican forms of government established by our Constitutions. For a complete history of each of the complaints I have made, please visit http://www.thespritoflaw.com, the entirety of which is incorporated and fully set forth herein.

My point is this: The State can't have it both ways. How could I possibly be expected to pay these property taxes when the State has usurped it's Lawful authority to maliciously prosecute and excessively, cruelly, and unusually punish me and then converted my inalienable right to earn a living into a privilege which it is has then indefinitely revoked until I comply with its arbitrary edicts or file bankruptcy? Aren't these taxes only supposed to be used to fund the offices of government by those who have taken *and* abide their oaths to support and protect the rights of the People secured by our Constitutions?

Would it not be fraud to collect taxes (such as these) when the monies (as evidenced) are used to pay 'officials' who refuse to abide their sworn duties and are thereby actively engaged in the overthrow of our governments? I believe it is.

Therefore, I am giving you NOTICE of this situation so that your office may not be used in furtherance of the fraud, deceit, treason, and other State and Federal crimes being perpetrated against me and apparently many other like situated People. I'll

[1] Cal. Business and Professions Code §7071.17 and/or §7085

expect you to perform a full, fair, and impartial investigation into my complaints and intervene as required by your sworn duty(ies) to stop this egregious deprivation of my rights and prevent this fraud upon me, my estate, the Public Treasury, and the People of California from continuing in any way.

Please keep in mind that the use of your office in furtherance of these crimes after having been given due notice may constitute a conspiracy to further deprive me of Constitutionally protected rights.

I remain entirely open and available to participate in any way with an unbiased investigation and to finding a Lawful remedy.

Sincerely,

Adam Bereki and Adam Bereki as
Trustee of the The Adam Bereki Living Trust

PUBLIC RECORDS ACT REQUEST
(Orange County Treasurer-Tax Collector)

Please provide all of the documents in your custody or control evidencing the following information:

1. The specific criteria used by the Orange County Treasurer- Tax Collector and/or any other public official(s) to determine the value of the property listed above;
2. The forms of money that are acceptable to actually pay (as opposed to discharge) these alleged tax obligations. Please keep in mind that Article I, §10 of the Constitution for the United States of America declares that "No State shall make anything but gold and silver coin a tender for payment of debts" and that the United States Supreme Court has stated that the debt remains due when discharging an obligation by means of paper currency.[2] Include the jurisdiction(s) recognized by the California Constitution(s) *and* the Constitution for the United States of America in which the forms of "payment" you request circulate.
3. The specific criteria used by the Orange County Treasurer- Tax Collector and/or any other public official(s) to determine the amount of property taxes due on the above property;
4. Definition of the term "payable" as used on the 2021-22 Secured Property Tax Bill For APN: 141-513-55;
5. Definition of the term "pay" as used on the 2021-22 Secured Property Tax Bill For APN: 141-513-55;
6. All statutory *and* Constitutional provision(s) allowing your office to assess a 10% penalty + $23 cost for purported or actual late payment; or any fees or penalties whatsoever;
7. A list detailing each specific charge attributed to the 2021-22 Secured Property Tax Bill and Notice of Property Tax Delinquency for APN: 141-513-55 and the statutory and Constitutional authorization(s) to make such charges;
8. A certified copy of the complete Charter (including any and all amendments) for the County or Orange;
9. All documents evidencing each and every duty a living being domiciled in the County of Orange has to the County of Orange and the State of California and how these duties relate to the payment of property taxes- if at all.
10. All documents evidencing how the Assessors Parcel Number was created and is related to Land Patents involving property located in the County of Orange.
11. All documents evidencing any and all bonds associated with the above property.
12. All documents evidencing (1) the County of Orange's Dunn and Bradstreet Number; (2) that the County of Orange is incorporated and a publicly traded for profit organization/corporation; and, (3) that the County of Orange operates in Interstate Commerce as defined by Article I, §8, Cl.17 of the Constitution for United States of America.

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

13. All documents evidencing each and every Constitutional and statutory duty of the Orange County Treasurer- Tax Collector and the Board of Supervisors. (Please include all documents involving job postings for these positions as well as all Policy and Operating Manuals that detail these duties and responsibilities).
14. All documents evidencing to whom or what agencie(s) the property taxes collected for the above property are paid to and how much is given to each entity.
15. A complete history of all taxes paid for the above property, including copies of all methods of payments indicating by whom the payments were made.

Sincerely,

Adam Bereki

F074-80.1

Address Service Requested

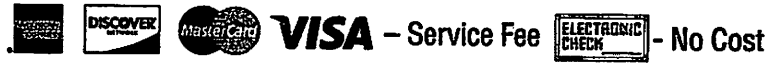
Pay at **ocgov.com/octaxbill** and also
view property tax bills, payments and online statement.

PRE SORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID
Santa Ana, CA
Permit No. 727

R: 1-13-22

EXHIBIT [D]– 5016

Pay taxes online by eCheck or credit card with same day credit and receipt



– Service Fee - No Cost

ocgov.com/octaxbill
Sign up for a secured property tax bill reminder by text/email
ocgov.com/taxreminder

ORANGE COUNTY TREASURER-TAX COLLECTOR
Shari L. Freidenrich, CPA
601 N. Ross Street, Santa Ana
P.O. Box 1438, Santa Ana, CA 92702-1438
Phone Hours: 9:00AM - 5:00PM (714) 834-3411

Date: 01-07-2022

0003417-0003417 STMT---- 375391
#BWNLTDY ******AUTO**SCH 5-DIGIT 92626
#1415 1355 2021 15#

BEREKI, ADAM TR
818 SPIRIT
COSTA MESA CA 92626-3089

Parcel #: 141-513-55.00
First Installment: $4,211.30
Basic Penalty & Fees: $421.13
Second Installment: $4,211.30
Amount Due: $8,843.73

Property Location: 818 SPIRIT COSTA MESA

NOTICE OF PROPERTY TAX DELINQUENCY

Your secured property taxes that were due without penalty by December 10, 2021 have not been paid. The amount now due is $4,632.43. If you wish to pay both the first and second installment of your property tax bill on or before April 11, 2022, the amount due will be $8,843.73.

You may use the attached payment stubs to pay your taxes by check, however we encourage you to "Go Green" and choose the ease and convenience of paying your bill by eCheck at no cost or by credit or debit card (a 2.29% service fee applies with a minimum charge of $1.95) at octreasurer.com/octaxbill.

Sign up for our tax reminder service and receive a text or email reminder 10 days before the last payment dates for each installment. Just register your cell phone number or email address at octreasurer.com/securedreminders.

If these property taxes are not paid by June 30, 2022, additional penalties of 1.5% per month (18% per year) will be added and will continue to accrue until the balance is paid in full. If you have any questions, please email us at ttcinfo@ttc.ocgov.com or call (714) 834-3411 Monday through Friday 9:00 a.m. - 5:00 p.m.

Shari L. Freidenrich, CPA
Orange County Treasurer Tax-Collector

Detach and return with 2nd installment payment

ORANGE COUNTY PROPERTY TAXES - SECOND INSTALLMENT

NOTE: THERE WILL BE A $26.00 FEE FOR EACH CHECK RETURNED BY THE BANK FOR ANY REASON.

PARCEL NUMBER	TAX YEAR
141-513-55.00	2021

BEREKI, ADAM TR

MAKE CHECK PAYABLE TO COUNTY OF ORANGE

ORANGE COUNTY TAX COLLECTOR
P.O. BOX 1438
SANTA ANA, CA 92702-1438

Please write parcel number on check. **2**

2ND INSTALLMENT DUE AMOUNT
$4,211.30

IF PAID: AFTER April 11, 2022
$4,655.43

U.S. DOLLAR ONLY
YOUR CANCELLED CHECK IS YOUR RECEIPT.

01141513550000620210204112200004211300630220000465543000000000000000006

Detach and return with 1st installment payment

ORANGE COUNTY PROPERTY TAXES - FIRST INSTALLMENT

NOTE: THERE WILL BE A $26.00 FEE FOR EACH CHECK RETURNED BY THE BANK FOR ANY REASON.

PARCEL NUMBER	TAX YEAR
141-513-55.00	2021

BEREKI, ADAM TR

MAKE CHECK PAYABLE TO COUNTY OF ORANGE

ORANGE COUNTY TAX COLLECTOR
P.O. BOX 1438
SANTA ANA, CA 92702-1438

Please write parcel number on check. **1**

1ST INSTALLMENT DUE AMOUNT
$4,632.43

To pay total due return both stubs by April 11, 2022 with payment of $8,843.73

U.S. DOLLAR ONLY
YOUR CANCELLED CHECK IS YOUR RECEIPT.

01141513550000620210112[illegible]463243000000000000000004

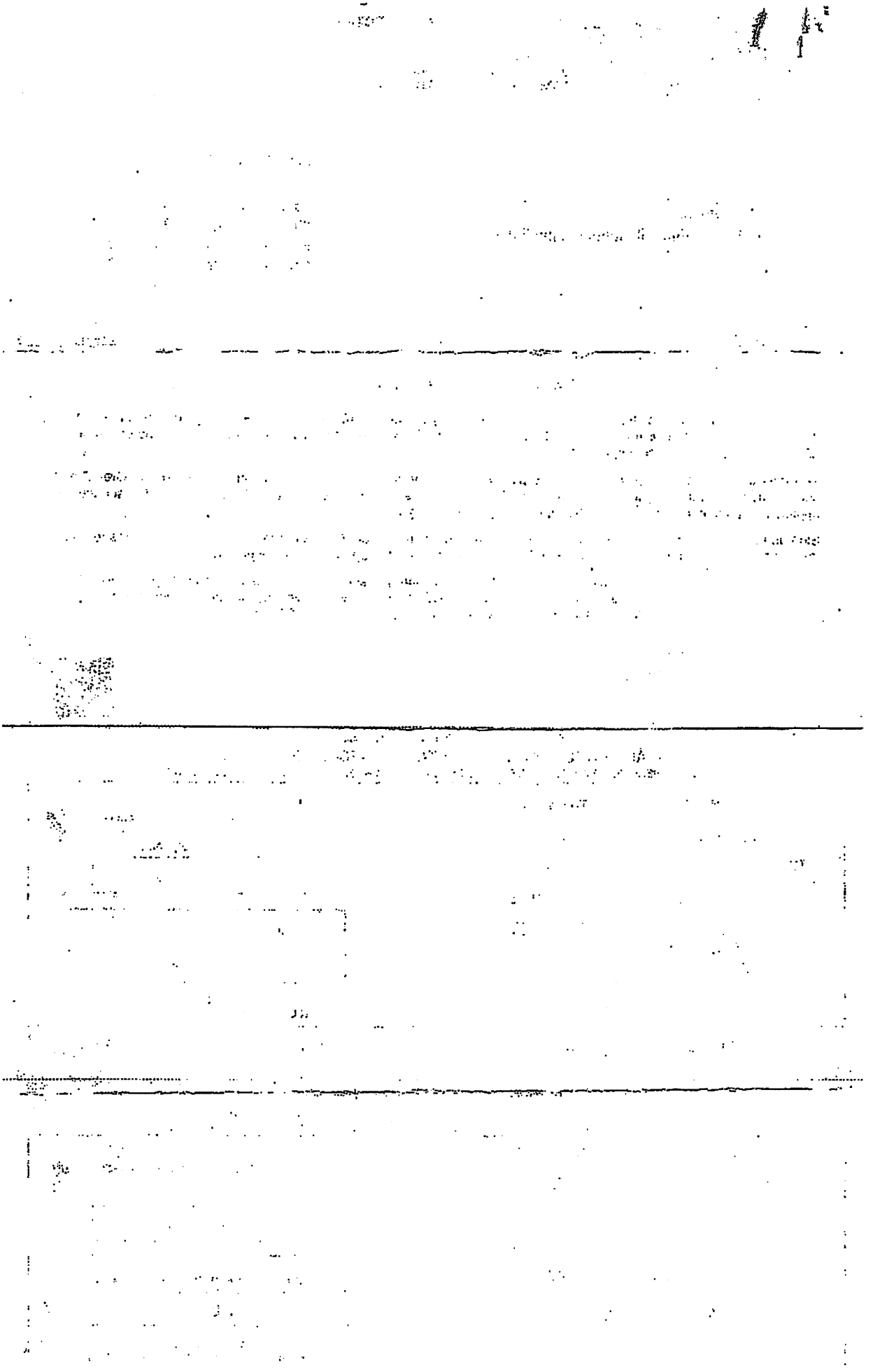


EXHIBIT [D]– 5019

Additional Facts and Brief in Support of Law Pertaining to My Petition for Redress of Grievance Dated January 13, 2022

This document will further evidence the fraudulent, criminal, and unconstitutional nature of the actions taken against me and many other People pursuant to California's "public policy" pertaining to unlicensed contracting under Business and Profession Code §7031.

The being referred to as "Petitioner", below, is me, Adam Bereki. The Humphreys are the customers of my construction company who filed the lawsuit against me/ prosecuted me for allegedly contracting without a license.

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On March 27th and 28th 2017, Petitioner was maliciously prosecuted and excessively, cruelly, and unusually punished under the fraudulent pretense of a remedial civil action in equity for "disgorgement" for allegedly performing construction work without a license. During the so-called "trial" he was also denied all of the heightened protections of criminal proceedings including the assistance of counsel. He was then excessively fined $848,000 – an amount more than forty times his qualifying and estimated net worth – after the "Court" refused to recognize any of the protections of the excessive fines clause. As a result of the *ultra vires* proceedings, Petitioner was subjected to a bill of attainder or pains and penalties in violation of Article I, §10 of the Constitution having been punished without a judicial determination of his rights. See Superior Court of California, County of Orange, case# 30-2015-00805807, incorporated and fully set forth herein.

The statute under which Petitioner was prosecuted, California Business and Professions Code §7031(b), is a public regulatory penal statute that governs contractor licensing under California's Contractor Licensing Laws, (Business & Professions Code, §§7000 et seq.). According to the Supreme Court of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing penalty for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[1] More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[2] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided if they perform work without a license.[3] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

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

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those

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

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

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

> using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed contractor and are then authorized by statute to sue to recover from the contractor all compensation paid."

Another obvious indication of §7031's purely penal nature is that the same conduct is made criminal by Business and Professions Code §7028. Notably, the *maximum* fine for a first offense under §7028 is $5,000, not $848,000.

§7031(b) also falls squarely within the definition of a crime or public offense under Cal. Penal Code §15:

> "[a] crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or, 5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State."

As this Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment [...]."[4]

Despite the excessive, cruel, and unusual punishment imposed on Petitioner, the Minute Order issued by Superior Court of California, County of Orange, "Judge" David Chaffee, (Appendix [A], pp.1–6; (Exhibit [A1]), reflects a judgment for "disgorgement of funds paid". According to this Court's recent decision in the case of *Liu v. SEC*,[5] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, not the total penal forfeiture of an entire transaction without offsets for benefits conferred.

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

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

The obvious problem here is that equitable disgorgement of Petitioner's profits is not what Chaffee ordered. (Vf).[6] He ordered a total penal forfeiture of "all compensation paid" as stated in §7031(b) without offsets for benefits conferred. Equally troubling, §7031(b) mentions nothing about equitable disgorgement. Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is also not used anywhere in the legislative of history of §7031. And, as previously evidenced, the Legislature was perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

In his dissent in *Liu supra*, Justice Thomas aptly saw the writing on the wall surrounding the nationwide abuses of "disgorgement". He said "[t]he term disgorgement itself invites abuse because it is a word with no fixed meaning. [...] As long as courts continue to award "disgorgement", [Courts] will continue to have license to expand their own power."[7]

Even assuming §7031(b) called for a true claim of equitable disgorgement, Petitioner is unaware of any evidence on the trial "Court's" record that he profited even one dollar let alone the $848,000 awarded by Chaffee, or that he was unjustly enriched by purportedly performing the custom remodel work requested by the Humphreys. (Vf). See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

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

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[6] All sentences with verified statements of fact end with "(Vf)" to be clearly discerned from legal arguments, historical statements, opinions, and perceptions. Statements with cited Exhibits to authenticated Court documents are considered Verified as well.

[7] *Liu v. SEC*, 140 S. Ct. 1936, 1953-54 (2020).

Even more astounding, the fraudulent "Proposed Judgment Order" filed by the Humphreys and their attorney, William G. Bissell,[8] (Exhibit [A3] pp.967-974), is an order for "Damages" (not "disgorgement") in the amount of $848,000. This order was later signed by Chaffee. See Appendix [B], pp. 7–8 or Exhibit [A2].

In addition to the fact there was no apparent evidence presented by the Humphreys to substantiate a claim for equitable disgorgement, Petitioner is also unaware of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with this Court's definition thereof. (Vf). See for e.g. the case of *Birdsall v. Coolidge,*[9] defining damages as:

> "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

According to the California Second District Court of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.,*[10] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the licensing laws are founded is purely hypothetical. Dating all the way back to the Magna Carta,

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[8] All references to William Bissell shall also include The Law Offices of William G. Bissell.

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

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

punishment for an offense against the Crown was limited to "genuine [not hypothetical] harm".[11]

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed to the whole community, considered as a community, in its social aggregate capacity. Such rights include [...] general compliance with regulatory law."[12] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[13]

But not only did the Humphreys never state a claim for equitable disgorgement or damages, immediately before "trial" they specifically severed their claim for alleged damages from their First Amended First Cause of Action for "disgorgement". (Exhibit [A3] pp.780-791). Their intent was that by simply having a "trial" only on their First Cause of Action for "disgorgement", they would receive a total forfeiture in addition to keeping nearly one million dollars in work and therefore have no need to evidence any damages. This intent was specifically declared in Bissell's sworn Declaration in Support of the Motion for Severance. Therein, Bissell testified that "the amount to be disgorged [forfeited] would exceed that amount of damages claimed by [the Humphreys] [and] there would be no need to put on evidence of either [Petitioner or his company's] liability or [the

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[11] *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 271 (1989).

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

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

Humphreys] damages." Exhibit [A3] p.791. As a result, no damages were evidenced at "trial".

*****

The case against Petitioner is not an anomaly, it's the standard operating procedure here in Commiefornia. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.,*[14] where the so-called "Judicial" Council of California sought a $22.7 million dollar forfeiture under the same fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired to maintain the California Court buildings that had admittedly done a good job. In response to a public records request,[15] the "Judicial" Council admittedly spent over $3 million dollars of the People's tax dollars in its attempts to prosecute, punish, and likely financially destroy *Jacobs* due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. One has to wonder just what degree of sociopathy[16] it must take to spend more than three million dollars to try and ruin a company that provided quality service and caused no harm. This is the same "Judicial" Council, mind you, whose purported duty it is make the policies for California "Courts", "the largest Court system in the Nation" and who, acting in concert with the *ultra vires* actions of the California "Legislature" and "Governor" manufactured the bogus civil jury instructions for §7031(b).[17]

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

[15] Exhibit [C] p. 1815. $3,307,408.78.

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

[17] Judicial Council of California Civil Jury Instructions, CACI §4560 and §4561.

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a default rule, [...] not of flexibility but of omnipotence".[18] "Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[19]

It is unknown exactly how many other similar cases have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes like §7031, which has been in existence since 1929. The following are just a handful of other cases[20] Petitioner was able to locate because an appeal was filed:

> *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. See *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS.
>
> *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and Court costs awarded against *MW Erectors, Inc.* pursuant to §7031(a) upheld by the Cal. Supreme Court, awarded by... you guessed it, "Judge" Chaffee.
>
> *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of an $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a).
>
> *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against Hydrotech pursuant to §7031(a).

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

[19] *Id.* p.333. Internal quotations omitted.

[20] The facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.

> *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District Courts enforce these same public policies. See for e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,[21] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a). See also the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

In each and every case Petitioner examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed – and consequently <u>any</u> protections guaranteed by the excessive fines clauses – they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution [...] of another."[22]

a. The Humphreys Lacked Standing to Prosecute Petitioner.

1. The history of criminal forfeiture laws.

In the case of *United States v. Seifuddin*,[23] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

> "the classical distinction between civil and criminal forfeiture was founded upon whether the penalty assessed was against the person or against the thing. Forfeiture against the person operated *in personam*

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

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

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

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

Applying this criteria to the instant case, it is plainly obvious that the action against Petitioner was an *in personam* criminal forfeiture intended to punish him for allegedly performing construction work without a license. As a result, the rules of criminal procedure were required to be followed.

It should also be noted that because the "Judgment" is more than forty times Petitioner's qualifying and estimated net worth, it will force him into bankruptcy where he will be forced to forfeit all of his qualifying lands and goods. At common Law a total forfeiture of an offender's lands or goods or both was punishment for a felony or treason and was prosecuted by indictment.[24]

2. The Humphreys Intended to Prosecute Petitioner by subjecting him to an in personam criminal forfeiture.

In their First Amended Trial Brief, (Exhibit [A3] p.836), the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish Petitioner for violating the licensing laws by seeking an $848,000 fine/total forfeiture upon him. They claimed that:

> "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant

[24] *Evans v. Willis*, 1908 OK 199, p.11 (OK Supreme Ct. 1908).

Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

The Humphreys lacked Constitutional standing to prosecute Petitioner for the commission of a public offense because Article V, §1 of the California Constitution vests the executive power of California *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a . . . political society, and incorporates into a commonwealth."[25] The State of California admits the "remedy" prescribed by §7031(b) is in fact a sword.[26] Therefore, only the executive branch of the State could prosecute Petitioner, not the Humphreys.[27] "A lack of standing is a jurisdictional defect."[28]

Despite the foregoing, no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the Superior Court of California, County of Orange with personal and subject matter

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

[26] "The hiring party is entitled to enforce these remedies [§7031] through a defensive shield [§7031(a)] or an affirmative sword [§7031(b)]." *Alatriste v. Cesar's Designs, Inc.*, 183 Cal. App 4th 656, 664 (2010).

[27] *Robertson v. Watson*, 560 U.S. 272, 273 (2010) and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

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

jurisdiction[29] to prosecute and punish Petitioner. (Vf). As a result, "Judge" Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[30] Instead, Chaffee arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no lawful authority whatsoever to do so, thereby committing fraud upon Petitioner and his estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of the fraudulent *ultra vires* "Judgment Order".

Sincerely,

/s/ Adam Bereki

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

[30] Cal. Penal Code §1382.

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First-Class Mail® Large Envelope Santa Ana, CA 92701 Weight: 0 lb 2.60 oz Estimated Delivery Date Sat 01/29/2022 Certified Mail® Tracking #: 70170660000009845522	1		$1.56 $3.75
Total			$5.31
First-Class Mail® Large Envelope Santa Ana, CA 92702 Weight: 0 lb 2.60 oz Estimated Delivery Date Sat 01/29/2022 Certified Mail® Tracking #: 70170660000009845539	1		$1.56 $3.75
Total			$5.31
Grand Total:			$10.62
Credit Card Remitted Card Name: VISA Account #: XXXXXXXXXXXX8829 Approval #: 05419D Transaction #: 248 AID: A0000000031010 AL: VISA CREDIT PIN: Not Entered		Chip	$10.62

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☐ Adult Signature Required	$0.00
☐ Adult Signature Restricted Delivery	$
Postage	$1.56
Total Postage and Fees	$5.31

0115 50

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City, State, ZIP+4®: Santa Ana, CA 92702-1438

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Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	$0.00
☐ Return Receipt (electronic)	$0.00
☐ Certified Mail Restricted Delivery	$0.00
☐ Adult Signature Required	$0.00
☐ Adult Signature Restricted Delivery	$
Postage	$1.56
Total Postage and Fees	$5.31

0115 50

Postmark Here
JAN 26 2022

Sent To: Hugh Nguyen OC Clerk-Recorder
Street and Apt. No., or PO Box No.: 601 N. Ross St.
City, State, ZIP+4®: Santa Ana, CA 92701

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT [D]– 5032

USPS Tracking®

FAQs >

Track Another Package +

Get the free Informed Delivery® feature to receive automated notifications on your packages **Learn More**

(https://reg.usps.com/xsell?app=UspsTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st

Tracking Number: 70170660000009845522 SHARI FRIEDENRICH OC TAX COLLECTOR Remove ×

Your item has been delivered to an agent for final delivery in SANTA ANA, CA 92701 on January 27, 2022 at 2:27 pm.

USPS Tracking Plus™ Available ∨

Delivered to Agent for Final Delivery

January 27, 2022 at 2:27 pm
SANTA ANA, CA 92701

Get Updates ∨

Text & Email Updates ∨

Tracking History ∧

January 27, 2022, 2:27 pm
Delivered to Agent for Final Delivery
SANTA ANA, CA 92701
Your item has been delivered to an agent for final delivery in SANTA ANA, CA 92701 on January 27, 2022 at 2:27 pm.

January 27, 2022, 4:08 am
Departed USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

EXHIBIT [D]– 5033

January 26, 2022, 11:37 pm
Arrived at USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

January 26, 2022, 9:03 am
USPS in possession of item
SANTA ANA, CA 92799

USPS Tracking Plus™ ⌄

Product Information ⌄

Feedback

See Less ^

Tracking Number: 70170660000009845539 HUGH NGUYEN — OC CLERK RECORDER

Remove ×

Your item has been delivered to an agent for final delivery in SANTA ANA, CA 92711 on January 28, 2022 at 6:47 am.

USPS Tracking Plus™ Available ⌄

Delivered to Agent for Final Delivery

January 28, 2022 at 6:47 am
SANTA ANA, CA 92711

Get Updates ⌄

Text & Email Updates ⌄

Tracking History ^

EXHIBIT [D]– 5034

January 28, 2022, 6:47 am
Delivered to Agent for Final Delivery
SANTA ANA, CA 92711
Your item has been delivered to an agent for final delivery in SANTA ANA, CA 92711 on January 28, 2022 at 6:47 am.

January 27, 2022, 4:08 am
Departed USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

January 26, 2022, 11:37 pm
Arrived at USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

January 26, 2022, 9:04 am
USPS in possession of item
SANTA ANA, CA 92799

USPS Tracking Plus™

Product Information

See Less

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

EXHIBIT [D]– 5035

Gmail

PUBLIC RECORDS ACT REQUEST (2ND REQUEST)- ADAM BEREKI

1 message

Adam <abereki@gmail.com> Thu, Feb 24, 2022 at 8:03 AM
To: ttcinfo@ttc.ocgov.com

Good day,

Please see the attached Public Records Act request.

Sincerely,

Adam Bereki

PRA REQUEST OC TAX COLLECTOR-2 BEREKI.pdf
38K

NO RESPONSE
3/28/22

EXHIBIT [D]– 5036

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

February 24, 2022

Shari L. Friedenrich, CPA
Orange County Treasurer- Tax Collector
PO Box 1438
Santa Ana, California 92702-1438

Via email only to: ttcinfo@ttc.ocgov.com

PUBLIC RECORDS ACT REQUEST- 2ND REQUEST
(Orange County Treasurer-Tax Collector)
APN: 141-513-55

Good day,

On or about January 13, 2022 I sent a Public Records Act request to your office via certified mail. According to the US Postal Service, it was delivered on January 27, 2022. As of February, 24, 2022 I have not received a response. Please comply with the statutory procedures surrounding this request and provide the documents as requested. I have copied and pasted the request I made below for your convenience:

Please provide all of the documents in your custody or control evidencing the following information:

1. The specific criteria used by the Orange County Treasurer- Tax Collector and/or any other public official(s) to determine the value of the property listed above;
2. The forms of money that are acceptable to actually pay (as opposed to discharge) these alleged tax obligations. Please keep in mind that Article I, §10 of the Constitution for the United States of America declares that "No State shall make anything but gold and silver coin a tender for payment of debts" and that the United States Supreme Court has stated that the debt remains due when discharging an obligation by means of paper currency.[1] Include the jurisdiction(s) recognized by the

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

California Constitution(s) *and* the Constitution for the United States of America in which the forms of "payment" you request circulate.
3. The specific criteria used by the Orange County Treasurer- Tax Collector and/or any other public official(s) to determine the amount of property taxes due on the above property;
4. Definition of the term "payable" as used on the 2021-22 Secured Property Tax Bill For APN: 141-513-55;
5. Definition of the term "pay" as used on the 2021-22 Secured Property Tax Bill For APN: 141-513-55;
6. All statutory *and* Constitutional provision(s) allowing your office to assess a 10% penalty + $23 cost for purported or actual late payment; or any fees or penalties whatsoever;
7. A list detailing each specific charge attributed to the 2021-22 Secured Property Tax Bill and Notice of Property Tax Delinquency for APN: 141-513-55 and the statutory and Constitutional authorization(s) to make such charges;
8. A certified copy of the complete Charter (including any and all amendments) for the County or Orange;
9. All documents evidencing each and every duty a living being domiciled in the County of Orange has to the County of Orange and the State of California and how these duties relate to the payment of property taxes- if at all.
10. All documents evidencing how the Assessors Parcel Number was created and is related to Land Patents involving property located in the County of Orange.
11. All documents evidencing any and all bonds associated with the above property.
12. All documents evidencing (1) the County of Orange's Dunn and Bradstreet Number; (2) that the County of Orange is incorporated and a publicly traded for profit organization/corporation; and, (3) that the County of Orange operates in Interstate Commerce as defined by Article I, §8, Cl.17 of the Constitution for United States of America.
13. All documents evidencing each and every Constitutional and statutory duty of the Orange County Treasurer- Tax Collector and the Board of Supervisors. (Please include all documents involving job postings for these positions as well as all Policy and Operating Manuals that detail these duties and responsibilities).
14. All documents evidencing to whom or what agencie(s) the property taxes collected for the above property are paid to and how much is given to each entity.
15. A complete history of all taxes paid for the above property, including copies of all methods of payments indicating by whom the payments were made.

Sincerely,

/s/ Adam Bereki

Gmail Adam Bereki <abereki@gmail.com>

Automatic reply: PUBLIC RECORDS ACT REQUEST (2ND REQUEST)- ADAM BEREKI

Inbox

ttc info <ttcinfo@ttc.ocgov.com> Thu, Feb 24, 2022 at 8:03 AM
To: Adam <abereki@gmail.com>

Thank you for using our 24/7 e-mail to contact us. Our goal is to respond to your inquiry within four business days.

If you need immediate assistance, please contact our Taxpayer Services staff at (714) 834-3411 between 9:00 am and 5:00 pm Monday through Friday.

If your question is related to the value of a property, please contact the Office of the Assessor directly at (714) 834-2727. The Assessor also handles ownership questions at (714) 834-5031, address changes at (714) 834-2939 and exemption questions (714) 834-3821.

If you did not receive a property tax bill, you can view and print it online at octreasurer.com/octaxbill. Please also consider "Going Green" by paying your property taxes online using eCheck (for free!) at octreasurer.com/octaxbill.

Sincerely,

Office of the Treasurer-Tax Collector

EXHIBIT [D]– 5039

P.O. Box 10826
Greenville, SC 29603
Phone: 866-316-1840
Fax: 866-467-1187
www.shellpointmtg.com

shellpoint
A DIVISION OF NEWREZ

Sent Via First-Class Mail®

04/04/2022

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626-3089

Loan Number: 0675931091
Property Address: 818 SPIRIT
COSTA MESA, CA 92626

NOTICE OF DEFAULT AND INTENT TO ACCELERATE

Dear ADAM BEREKI:

This letter is formal notice by Shellpoint Mortgage Servicing, the Servicer of the above-referenced loan acting on behalf of Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2, that you are in default under the terms of the documents creating and securing your Loan described above, including the Note and Deed of Trust/Mortgage/Security Deed ("Security Instrument"), for failure to pay the amounts due.

If you have questions about any of the items contained in this notice, or need any additional information, please contact Jessica Palacios at 8668252174, ext. 14542 whom we have designated as your single point of contact.

As of the date of this notice, the total amount required to cure the default is $24,871.65, which consists of the following:

Next Payment Due Date:		10/01/2021
Total Monthly Payments Due:		$24,305.82
10/01/2021	at	$3,472.26
11/01/2021	at	$3,472.26
12/01/2021	at	$3,472.26
01/01/2022	at	$3,472.26
02/01/2022	at	$3,472.26
03/01/2022	at	$3,472.26
04/01/2022	at	$3,472.26
Late Charges:		$520.83
Corporate Advance Balance:		$45.00
Unapplied Balance:		$0.00
TOTAL YOU MUST PAY TO CURE DEFAULT:		**$24,871.65**

You can cure this default by making a payment of $24,871.65 by 05/09/2022. Please note any additional monthly payments, late charges and other charges that may be due under the Note, Security Instrument and applicable law after the date of this notice must also be paid to bring your account current. For the exact amount you must pay to bring your loan current, please contact Jessica Palacios at 8668252174, ext. 14542. This letter is in no way intended as a payoff statement for your mortgage, it merely states an amount necessary

EXHIBIT [D]– 5040

to cure the current default. Please include your loan number and property address with your payment and send to:

Shellpoint Mortgage Servicing
P.O. Box 740039
Cincinnati, OH 45274-0039

Overnight:
Shellpoint Mortgage Servicing
55 Beatie Place
Suite 500
Greenville, SC 29601

To the extent your obligation has been discharged or is subject to the automatic stay in a bankruptcy case, this notice is for informational purposes only and does not constitute a demand for payment or an attempt to collect a debt as your personal obligation. If you are represented by an attorney, please provide us with the attorney's name, address, and telephone number.

IF YOU ARE UNABLE TO BRING YOUR ACCOUNT CURRENT, Shellpoint Mortgage Servicing offers consumer assistance programs designed to help resolve delinquencies and avoid foreclosure. These services are provided without cost to our customers. You may be eligible for a loan workout plan or other similar alternative to foreclosure. If you would like to learn more about these programs, you may contact Jessica Palacios at 8668252174, ext. 14542, Monday - Thursday 8:00AM to 6:00PM and Friday 8:00AM to 5:00PM to discuss possible options. You may also visit our website www.shellpointmtg.com. WE ARE VERY INTERESTED IN ASSISTING YOU.

You have a right to cure the default. To cure the default, you must pay the full amount of the default on this loan by the thirty-fifth (35th) day from the date of this letter which is 05/09/2022 (or if said date falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). Failure to cure the default on or before this date may result in acceleration of the sums secured by the Security Instrument and sale of the property.

You have the right to reinstate the loan after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and sale. If foreclosure proceedings are undertaken, we may pursue a deficiency judgment, if permitted by applicable law. Failure to respond to this letter may result in the loss of your property.

You may request from us the following documents:

- A copy of the promissory note;
- A copy of the deed of trust or mortgage;
- A copy of any assignment of the mortgage or deed of trust;
- A copy of your payment history since you were last less than sixty (60) days past due.

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8:00 a.m. or after 9:00 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

EXHIBIT [D]– 5041

Newrez LLC dba Shellpoint Mortgage Servicing is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Newrez LLC dba Shellpoint Mortgage Servicing's NMLS ID is 3013.

Attention Servicemembers and Dependents: Servicemembers on active duty, or a spouse or dependent of such a servicemember, may be entitled to certain protections under the Servicemembers Civil Relief Act ("SCRA") regarding the servicemember's interest rate and the risk of the foreclosure. SCRA and certain state laws provide important protections for you, including prohibiting foreclosure under most circumstances. If you are currently in the military service, or have been within the last twelve (12) months, please notify Shellpoint Mortgage Servicing immediately. When contacting Shellpoint Mortgage Servicing as to your military service, you must provide positive proof as to your military status. Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. Homeowner counseling is also available at agencies such as Military OneSource (www.militaryonesource.mil, 1-800-342-9647) and Armed Forces Legal Assistance (http://legalassistance.law.af.mil), and through HUD-certified housing counselors (http://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm). You can also contact Jessica Palacios toll-free at 8668252174, ext. 14542 if you have questions about your rights under SCRA.

For your benefit and assistance, there are government approved homeownership counseling agencies designed to help homeowners avoid losing their homes. To obtain a list of approved counseling agencies, please call 1-800-569-4287 or visit http://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. You may also contact the Homeownership Preservation Foundation's Hope hotline at 1-888-995-HOPE (4673).

Thank you for your prompt attention to this matter.

Sincerely,

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603
866-316-1840

EXHIBIT [D]– 5042

R 4/10/22

Shellpoint Mortgage Servicing
P.O. Box 9103
Temecula, CA 92589-9103

2368748562

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
Shellpoint Mortgage Servicing
P.O. Box 740039
Cincinnati, OH 45274-0039

Send Correspondence to:
Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603

20220404-354

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626-3089

W_CA_DEMAND

EXHIBIT [D]– 5043

fnbo

VISA

Account Number: 4418 4094 0814 5457
New Balance: $12,938.62
Minimum Payment Due: $258.77
Payment Due Date: ..... April 1, 2022

Make checks payable to First National Bank of Omaha

Amount of Payment Enclosed

$

First National Bank of Omaha
P.O. Box 2557
Omaha, NE 68103-2557

2253

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

45815
5201

Change of Address? If yes, please complete reverse side.

4418409408145457 0000000025877 0000012938626

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Signature® Visa®

Account Number:
4418 4094 0814 5457
Page 001 of 002

Account Summary

Previous Balance	$13,202.67
Payments	-$264.05
Other Credits	-$0.00
Purchases	+$0.00
Balance Transfers	+$0.00
Cash Advances	+$0.00
Fees Charged	+$0.00
Interest Charged	+$0.00
New Balance	**$12,938.62**
Statement Closing Date	03/04/22
Days in Billing Cycle	30
Total Credit Limit	$14,000.00
Available Credit	$1,061.00
Cash Limit	$2,800.00
Available Cash	$1,061.00

Payment Information

New Balance	$12,938.62
Minimum Payment Due	$258.77
Past Due Amount	$0.00
Payment Due Date	**April 1, 2022**

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For Example:

If you make no additional charges using this card and each month you pay ...	You will pay off the balance shown on this statement in about ...	And you will end up paying an estimated total of...
Only the minimum payment	21 years	$24,767
$425	3 years	$15,300 (Savings $9,467)

If you would like information about credit counseling services, call 1-888-486-8322.

Customer Service **Call: Toll Free 1-888-530-3626**
(TDD Telecommunications Device for the Deaf: 1-800-925-2833) (Balance Transfer Hotline: 1-877-388-8231)
Save Time and Stamps by Paying Online! **Visit: www.fnbo.com**
Remit to: First National Bank of Omaha, P.O. Box 2557, Omaha, NE 68103-2557

Smart Tips

Give your credit rating a little boost!

Paying over your minimum amount due can help reduce your account balance faster than you think - and a lower average balance can help add up to a higher credit score!

REWARDS SUMMARY

Earn rewards points everyday - you earn 1 point per $1 on Net Purchases. Review your rewards terms and conditions for complete details including limitations.

Point activity summary for the period covered by this statement:

4,029	Beginning point balance
0	Points earned on Net Purchases
0	Bonus points earned
0	Point adjustments
0	Points redeemed
0	Points expired
4,029	Current point balance

Points expiring on your next statement closing date 0
(Points expire on or after 5 years from the date they are awarded. To avoid losing points, please redeem them before they expire.)

Redeem your points for travel, gift cards, merchandise, cash back as a statement credit to your Account, an ACH deposit to any checking or savings account (ABA routing number required), or as a check sent to you by mail. You can redeem online 24/7 by accessing your Account at the web address listed above or by calling the Rewards Service Center at 888-801-7987 during hours of operation Monday through Friday, 8:00 a.m. to 11:00 p.m. Central Time, and Saturday and Sunday, 8:00 a.m. to 4:30 p.m. Central Time.

DXH

Issued by First National Bank of Omaha

EXHIBIT [D]– 5044

See reverse for additional information.

Continued next page

To ensure accuracy, please print clearly using upper-case letters and numbers only.
Please do not use Red Ink, Gel pens or Pencil.

CHANGE OF ADDRESS, PHONE, OR E-MAIL

Address _____

Apt/Bldg# _____

City _____

State, ZIP _____

Home Phone _____

Work Phone _____

Cell Phone _____

E-mail Address _____

If you have a Credit Card for business purposes, and are requesting an address change, we may request additional information.

COL2463D 0110 5004 DDN 07 220505 PAGE 00001 OF 00002 49615

Balance Subject to Interest Rate: Each "Balance Subject to Interest Rate" shown on the front of this statement for each Balance Category is determined using the average daily balance (including new purchases) method. Each such balance is calculated separately for each period that a particular rate was in effect (referred to below as a "Rate Period"). To get each average daily balance for each Balance Category, we first compute a "Daily Balance" for each day of the Rate Period as follows: (1) we start with the beginning balance of each day, (2) we add any new transactions and fees, and (3) we subtract any applicable payments, credits, or credit adjustments. Each average daily balance that is shown on the front is computed by adding up all the Daily Balances in the Rate Period and dividing the total by the number of days in the Rate Period (which shows on the front as "Days Rate Used"). In making these computations: (a) we may treat a credit balance as a balance of zero; and (b) we may delay adding fees to your balance; and (c) each day, we multiply your Daily Balance by the applicable daily periodic rate and add that amount to your balance to determine the next day's beginning balance.

Interest Charges: We figure the interest charges on your account and for each Balance Category by applying the applicable daily periodic rate to the applicable average daily balance and multiplying that product by the number of days in the Rate Period. All of the interest charges for each Balance Category will be totaled and that will be the total interest charged.

How to Avoid Paying Interest on Purchases: If you pay your New Balance as shown on the front of this billing statement by the Payment Due Date and if we also received payment in full of your New Balance as indicated on your previous billing statement by its Payment Due Date (or if that New Balance was zero or a credit), no interest charges will be assessed on Purchases shown on your next billing statement. Unless you have been specifically notified otherwise, no period is provided to repay non-Purchase balances without incurring interest charges—in other words, there is no interest-free (grace) period for Cash Advances or Balance Transfers.

Payment Requirements: Payments must be (1) accompanied by the top portion of this billing statement; (2) received no later than 5:00 p.m. (Central Time) on the Payment Due Date at the location we have specified for receipt of your payment, (3) made only by check or money order if your payment is made by mail, (4) made in U.S. Dollars, and (5) sent to the P.O. Box specified on the top of the front of this statement. If we accept a payment that does not comply with these requirements, there may be a delay in crediting your account, which may result in additional interest and fees. If your payment is returned unpaid by your bank for insufficient funds, we may re-present your check electronically.

Credit Limits: Only the "Cash Limit" portion of your Credit Limit is available for cash advances. "Available Credit" or "Available Cash" refers to the part of your Credit Limit or Cash Limit that was available as of this billing statement's closing date and may not reflect overlimit or credit balance amounts. We may raise or lower your Credit Limit and/or Cash Limit at any time and may restrict the amount that is available for Balance Transfers. After we credit a payment to your account, there may be a delay before it operates to restore your Available Credit or Available Cash.

BILLING RIGHTS SUMMARY

What To Do If You Think You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at: First National Bank of Omaha, P.O. Box 3696 Omaha, NE 68103-0696. In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors *in writing*. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question. While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase. To use this right, all of the following must be true: 1. The purchase must have been made in your home State or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.) 2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify. 3. You must not yet have fully paid for the purchase.

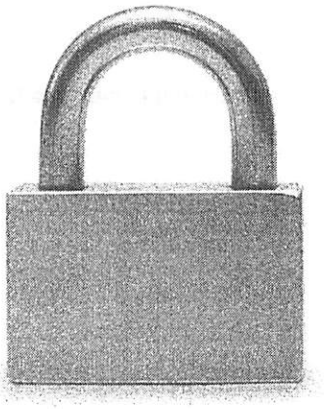
If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at: First National Bank of Omaha, P.O. Box 3696 Omaha, NE 68103-0696. While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

Liability for Unauthorized Use: If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at P.O. Box 3696 Omaha, NE 68103-0696 or the facsimile number 402-602-6098 or call us at 1-800-688-7070. You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed $50.

Information Provided to Credit Bureaus: Information about your account is periodically provided to one or more credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. If you think any information regarding you or your account is inaccurate, write to us on a seperate sheet at: P.O. Box 3412, Omaha, NE 68103-0412.

Safe & Secure

Enroll in **paperless statements** today to keep your information secure and cut down on personal information in the mail.



Transaction Detail

Trans Date	Post Date	Reference Number	Transaction Description	Credits (CR) and Debits
Payments and Other Credits				
2-24	2-24	74418002055027555027808	PAYMENT - THANK YOU	$264.05 (CR)
Fees				
Total Fees For This Period				**$0.00**
Interest Charged				
Interest Charge on Purchases				$0.00
Interest Charge on Cash Advances				$0.00
Interest Charge on Balances Transfers				$0.00
Total Interest For This Period				**$0.00**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account. (v) Variable Rate (f) Fixed Rate

Charge Summary	Annual Percentage Rate (APR)	Special Offer or Eligible Purchase APR Expiration Date	Balance Subject to Interest Rate	Days Rate Used	Interest Charge
Purchases	14.99% (v)	N/A	$0.00	30	$0.00
Cash Advance	25.24% (v)	N/A	$0.00	30	$0.00
Intro Bal Trans	0.00%	November 2022	$9,419.20	30	$0.00
Intro Purchases	0.00%	November 2022	$3,704.25	30	$0.00

2022 Total Year-to-Date

Total fees charged in 2022 ..... $0.00
Total interest charged in 2022 ..... $0.00

Additional Information Regarding Your Account

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

If you are an **active duty member of the United States Military**, you may be eligible for additional benefits on your account(s) under the Servicemembers Civil Relief Act (SCRA).

For additional information regarding SCRA benefits, please call 855-868-8446 or log in to the website listed on the front of your statement and click 'Resources' for more information.

Notice of Changes to your Account:

We have recently decreased the revolving credit and/or cash limit on your account.
Your revolving credit limit is now $13,600 and
your cash limit is now $2,750.
A detailed explanation for this change is being mailed
to the current address we have on file.

EXHIBIT [D]– 5046

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COLR04SD 8110 5004 DXH 07 220505 PAGE 00002 OF 00002 45815

EXHIBIT [D]– 5047

Citi Diamond Preferred® Card

citi

ADAM BEREKI
Member Since 2020 Account number ending in: 7981
Billing Period: 02/22/22-03/21/22

www.citicards.com
Customer Service 1-800-823-4086
TTY:711
BOX 6500 SIOUX FALLS, SD 57117

MARCH STATEMENT

Minimum payment due:	$106.00
New balance as of 03/21/22:	$7,077.00
Payment due date:	04/17/22

See the back of this statement for important information about how to avoid paying interest on purchases.

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40 and your APRs may be increased up to the Penalty APR of 29.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	18 year(s)	$14,164
$234	3 year(s)	$8,424 (Savings=$5,740)

For information about credit counseling services, call 1-877-337-8187.

Account Summary

Previous balance	$7,185.00
Payments	-$108.00
Credits	-$0.00
Purchases	+$0.00
Cash advances	+$0.00
Fees	+$0.00
Interest	+$0.00
New balance	**$7,077.00**

Credit Limit

Credit limit	$7,500
Includes $2,300 cash advance limit	
Available credit	$423
Includes $423 available for cash advances	

10030810-006160-0001-0002

798101

Make sure we have your most up-to-date income and housing information

Help us evaluate your account for future **credit limit increases** by providing or confirming your most recent income and housing information.

Securely log in to your account at **citi.com/updateincome**, or **call us toll-free at 1-855-209-8556**. TTY: Use **711** or other Relay Service.

FGEN002621

Savings Spotlight

Your Diamond Preferred Lifetime Savings:

$1,334.55

See page 3 to view your Savings Summary.

For Payments, send check to: CITI CARDS, PO BOX 78045, Phoenix, AZ, 85062-8045

citi

P.O. Box 6004
Sioux Falls, SD 57117-6004

Your Monthly Statement is Enclosed

Pay your bill from virtually anywhere with the Citi Mobile® App and Citi® Online

To download:
Text **'App15'** to **MyCiti (692484)**
or go to your device's app store.
Or visit **www.citicards.com**

Minimum payment due	$106.00
New balance	$7,077.00
Payment due date	04/17/22

Amount Enclosed: $

Account number ending in 7981
Please make check payable to CITI CARDS.

00026180 1 20902849 DTF 00006180

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

**N0006180

CITI CARDS
PO BOX 78045
Phoenix, AZ 85062-8045

15009 0010600 [illegible] 5424181451987981 1517

EXHIBIT [D]- 5048

About Interest Charges

How We Calculate Interest. We calculate it separately for each balance shown in the Interest Charge Calculation table. We use the **daily balance method (including current transactions)** if the Balance Subject to Interest Rate is followed by (D). We figure the interest charge by multiplying the daily balance by its daily periodic rate each day in the billing period. To get a daily balance, we take the balance at the end of the previous day, add the interest on the previous day's balance and new charges, subtract new credits or payments, and make adjustments. The Balance Subject to Interest Rate is the average of the daily balances. We use the **average daily balance method (including current transactions)** if the Balance Subject to Interest Rate is followed by (A). To get an average daily balance, we take the balance at the end of the previous day, add new charges, subtract new credits or payments, and make adjustments. We add all the daily balances and divide by the number of days in the billing period. We figure the interest charge by multiplying the average daily balance by the monthly periodic rate, or by the daily periodic rate and by the number of days in the billing period, as applicable.

Minimum Interest Charge. If we charge interest, it will be at least $0.50.

How to Avoid Paying Interest on Purchases. Your due date is at least 23 days after the close of each billing cycle. We will not charge you interest on purchases if you pay your monthly Citi Flex Plan Payment Amount (if any) plus your New Balance, excluding any Citi Flex Plan balances, by the due date each month. If you do not pay your monthly Citi Flex Plan Payment Amount plus your New Balance, excluding any Citi Flex Plan balances, by the due date each month, you will pay interest on your purchases from the date they're posted to your account until you pay such amount in full for two billing periods in a row. We will begin charging interest on cash advances and balance transfers on the transaction date. We will begin charging interest on a Citi Flex Plan balance at the start of the billing cycle following the billing cycle during which you created the Citi Flex Plan.

Your Rights

What To Do If You Find A Mistake On Your Statement.
If you think there is an error on your statement, write to us at the address for billing inquiries and correspondence shown on the front of your statement. In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.
You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.
While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IBSCSR-0919

Your Rights if You Are Dissatisfied With Your Credit Card Purchases.
If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.
To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these is necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us online or in writing at the Customer Service address shown on front of statement.
While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

Other Account and Payment Information

When Your Payment Will Be Credited. If we receive your payment in proper form at our processing facility by 5 p.m. local time there, it will be credited as of that day. A payment received there in proper form after that time will be credited as of the next day. Allow 5 to 7 days for payments by regular mail to reach us. There may be a delay of up to 5 days in crediting a payment we receive that is not in proper form or not sent to the correct address. The correct address for regular mail is the address on the front of the payment coupon. The correct address for courier or express mail is the Express Payments Address shown below.

Proper Form. For a payment sent by mail or courier to be in proper form, you must:

- Enclose a valid check or money order. No cash or foreign currency please.
- Include your name and the last four digits of your account number.

How to Report a Lost or Stolen Card. Call the Customer Service number at the top of the page.

Balance Transfers. Balance Transfer amounts are included in the "Purchases" line in the Account Summary.

Membership Fee. Some accounts are charged a membership fee. To avoid paying this fee, notify us that you are closing your account within 30 days of the mailing or delivery date of the statement on which the fee is billed.

Credit Reporting Disputes. We may report information about your account to credit bureaus. If you think we've reported inaccurate information, please write to us at Citi Brands Credit Bureau Disputes, PO Box 6241, Sioux Falls, SD 57117.

Payment Amount
You may pay all or part of your account balance at any time. However, you must pay, by the payment due date, at least the minimum payment due.

Payments other than by mail

Online. See the front of your statement on how to make a payment.

Phone. For phone payments, you authorize Citi to electronically debit your specified bank account by an ACH transaction in the amount and on such date that you indicate on the phone. You also authorize Citi to automatically debit your specified bank account every month, in the amount and on the same date each month that you indicate on the phone, until you withdraw your authorization. You may cancel a one-time phone payment or withdraw your authorization for automatic debits by calling the number on the front of your statement within the timeframe disclosed to you on the phone.

AutoPay. Visit **autopay.citicards.com** to enroll in AutoPay and have your payment amount automatically deducted each month on your payment date from the payment account you choose.

Express mail. Send payment by express mail to:

Citi Cards
Attention: Bankcard Payments Department
6716 Grade Lane
Building 9, Suite 910
Louisville, KY 40213

Crediting Payments other than by Mail. The payment cutoff time for Online Bill Payments, Phone Payments, and Express mail payments is midnight Eastern time. This means that we will credit your account as of the calendar day, based on Eastern time, that we receive your payment request.

If you send an eligible check, you authorize us to complete your payment by electronic debit. If we do, the checking account will be debited in the amount on the check. We may do this as soon as the day we receive the check. Also, the check will be destroyed.

Easily manage your contact info in the Citi Mobile® App

It's important we have your current contact info, so if it changes (including your mailing address), use the Citi Mobile App to easily update it.
Email: a*****i@gmail.com
Mobile: (***)***-6993

» **Log in to the Citi Mobile App and access your "Profile" page**

» **You can also update your contact information on citi.com/contactinformation, or call the number on the back of your card**

Don't have the app? Just text "AppIS" to MyCiti (692484) or visit your app store.

EXHIBIT [D]– 5049

79810L

00 080 257 082

Account Summary

Trans. date	Post date	Description	Amount
Payments, Credits and Adjustments			
	03/02	ELECTRONIC PAYMENT-THANK YOU	-$108.00

Fees charged

Total fees charged in this billing period	**$0.00**

Interest charged

Total interest charged in this billing period	**$0.00**

2022 totals year-to-date

Total fees charged in 2022	**$0.00**
Total interest charged in 2022	**$0.00**

Interest charge calculation

Days in billing cycle: **28**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Balance type	Annual percentage rate (APR)	Balance subject to interest rate	Interest charge
PURCHASES			
Standard Purch (Introductory Rate Expires 05/14/22)	0.00%	$0.00 (D)	$0.00
BalTrnOffer 4 (Balance Transfer Rate Expires 06/02/22)	0.00%	$5,943.11 (D)	$0.00
BalTrnOffer 5 (Balance Transfer Rate Expires 10/01/22)	0.00%	$1,164.75 (D)	$0.00
ADVANCES			
Standard Adv	25.24% (V)	$0.00 (D)	$0.00

Your Annual Percentage Rate (APR) is the annual interest rate on your account. APRs followed by (V) may vary. Balances followed by (D) are determined by the daily balance method (including current transactions).

Account messages

SAVINGS SPOTLIGHT DETAILS

INTEREST: If you have promotional balances on your account, we have estimated your savings. This savings is the difference between the interest that was assessed against the promotional balances using the promotional APRs and the estimated interest that would have been assessed against these same balances using the Enhanced Purchase APRs. This savings amount does not include any balance transfer fees. This savings is from your billing period covered by this statement.

NO LATE FEE: Savings on late fees is determined by reviewing your payments and calculating what your late fee would have been on your card without this benefit. If you paid late prior to May 2014, savings on late fees is determined by using a $15 late fee (if your minimum payment due was less than $15, we used that amount as the savings amount). This savings is from your billing period covered by this statement.

CITI EASY DEALS: If you made a purchase on Citi Easy Deals, your savings is the difference between the retail price and the price you paid. This savings is from the prior calendar month.

Please be sure to pay on time. If you submit your payment by mail, we suggest you mail it no later than 04/10/2022 to allow enough time for regular mail to reach us.

Savings Spotlight

Your Citi® Diamond Preferred® Savings Summary

From This Billing Period:

Interest: $80.37

CITI DIAMOND PREFERRED LIFETIME SAVINGS: **$1,334.55**

See Account Messages for more information about Savings Spotlight

Citi Easy Deals®

To find out your current tier: Visit citieasydeals.com or call the number provided above.

Deals you can access, by tier:

Base Tier
- Minimum Annual Purchases: $0.00
- Coupons for local dining and shopping

Enhanced Tier
- Minimum Annual Purchases: $100
- Base tier benefit
- Plus deals on gift cards and magazines

Plus Tier
- Minimum Annual Purchases: $500
- Base and Enhanced tier benefits
- Plus deals on merchandise, travel and daily deals

» For complete details, go to citieasydeals.com

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798102

EXHIBIT [D]– 5050

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Disclaimer:
In the coming weeks, we'll be initiating implementation of automatic linking functionality to link all your eligible Citi retail and credit card accounts to your existing User ID. Once this update takes place, you will be notified with a confirmation email. Linking your accounts to a single User ID will allow you to view your accounts in one convenient location while maintaining the ability to manage certain preferences for each account. As a reminder, for the security of your account(s), please do not share your login credentials with others, including authorized user(s).

Thanks for the smart choice of making payments without using the mail!
You haven't made a payment by mail in the last 3 or more months- doesn't it feel great not to have to worry about having stamps handy or a mailbox nearby? You can experience the same kind of freedom by going Paperless for statements too. Enroll today at Citi(R) Online or on the Citi Mobile(R) App!

Update or confirm your account information today
Help us evaluate your account for future credit limit increases by providing or confirming your most recent income and housing information. Securely log in to your account at citi.com/updateincome, or call us toll-free at 1-855-209-8556 TTY: Use 711 or other Relay Service

Costco Anywhere Visa® Card by Citi

ADAM A BEREKI
Member Since 2020 Account number ending in: 9114
Billing Period: 03/09/22-04/08/22

www.citicards.com
Customer Service 1-855-378-6467
TTY:711
PO Box 790046 ST. LOUIS, MO 63179-0046

APRIL STATEMENT

Minimum payment due:	**$167.79**
New balance as of 04/08/22:	**$3,685.99**
Payment due date:	**05/06/22**

See the back of this statement for important information about how to avoid paying interest on purchases.

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40 and your APRs may be increased up to the Penalty APR of 29.99%.

Minimum payment warning: If you make only the minimum payment each period, you will pay more in interest, and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on the statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	12 years	$7,026

For information about credit counseling services, call 1-877-337-8188 .

Your account is past due $54.00. Please pay at least the minimum payment due, which includes a past due amount.

Account Summary

Previous balance	$3,609.20
Payments	-$0.00
Credits	-$0.00
Purchases	+$0.00
Cash advances	+$0.00
Fees	+$29.00
Interest	+$47.79
New balance	**$3,685.99**

Credit Limit

Credit Limit	$4,000

Includes $0.00 cash advance limit

You're still getting a paper statement.
Why not try Paperless?

With these digital tools available to you, you won't be missing anything!

- **Instant access** to statements and most legal notices online, with statements now available on the **Citi Mobile® App**
- **Customizable** statement ready and payment due **notifications**
- Ability to **request historical statements** online and on the app

Click here to sign up for Paperless!

Costco Cash Rewards Summary

as of 04/08/22

$74.04

» See page 2 for more information about your rewards

For Payments, send check to: Citi Cards, PO BOX 78019, Phoenix, AZ, 85062-8019

citi
Costco Anywhere Visa® Card

PO Box 790057
Saint Louis, MO 63179-0057

Your Monthly Statement is Enclosed

Pay your bill from virtually anywhere with the Citi Mobile® App and Citi® Online

To download:
Text **'App15'** to **MyCiti (692484)**
or go to your device's app store.
Or visit **www.citicards.com**

Minimum payment due	**$167.79**
New balance	**$3,685.99**
Payment due date	**05/06/22**

Amount enclosed: $ _____.

Account number ending in 9114
Please make check payable to Citi Cards.

ADAM A BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

Citi Cards
PO BOX 78019
Phoenix, AZ 85062-8019

EXHIBIT [D]– 5052

ADAM A BEREKI

NOTICE OF CHANGES TO YOUR INTEREST RATES

You have triggered the Penalty APR of 29.990% by making a late payment and due to your credit performance. This change will impact your account as follows:

Transactions made on or after 04/29/2022: As of 06/09/2022, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 04/29/2022: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to these transactions as well.

CARDHOLDER SUMMARY

ADAM A BEREKI — Card ending in 9114

New Charges **$0.00**

ACCOUNT SUMMARY

Sale Date	Post Date	Description	Amount

ADAM A BEREKI

No Activity

Fees Charged

04/08	LATE FEE - MAR PAYMENT PAST DUE	$29.00
TOTAL FEES FOR THIS PERIOD		**$29.00**

Interest Charged

04/08	INTEREST CHARGED TO STANDARD PURCH	$47.79
TOTAL INTEREST FOR THIS PERIOD		**$47.79**

2022 totals year-to-date

Total fees charged in 2022	**$29.00**
Total interest charged in 2022	**$47.79**

Interest charge calculation

Days in billing cycle: **31**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Balance type	Annual percentage rate (APR)	Balance subject to interest rate	Interest charge
PURCHASES			
Standard Purch	15.49%(V)	$3,632.27 (D)	$47.79
ADVANCES			
Standard Adv	25.49%(V)	$0.00 (D)	$0.00

Your Annual Percentage Rate (APR) is the annual interest rate on your account. APRs followed by (V) may vary. Balances followed by (D) are determined by the daily balance method (including current transactions).

Account messages

Your account is past due. Please pay the minimum payment due immediately. If your payment has already been sent, thank you.

Costco Cash Rewards Summary

Total Costco Cash Rewards Balance:

$74.04

Costco Cash Rewards Summary

Costco Cash Rewards balance as of last statement ..... +$74.04

Earned this period ..... +$0.00

Total Costco Cash Rewards Balance Year To Date: **$74.04**

Costco Cash Rewards Earned This Period

4% on eligible gas worldwide, including gas at Costco[1] ..... +$0.00

3% on restaurants ..... +$0.00

3% on eligible travel worldwide ..... +$0.00

2% on Costco and Costco.com ..... +$0.00

1% on all other purchases ..... +$0.00

Total Earned: **$0.00**

» Visit citi.com/Costco for more information

[1] Up to $7,000 per year in purchases, then 1% cash back

EXHIBIT [D]– 5053

ADAM A BEREKI

Please note that if we received your pay by phone or online payment between 5 p.m. ET and midnight ET on the last day of your billing period, your payment was credited as of the date of receipt, but will not be reflected until your next statement.

Remember, any charges above your credit limit MUST BE PAID IN FULL by your statement's payment due date.

Please be sure to pay on time. If you submit your payment by mail, we suggest you mail it no later than 04/29/2022 to allow enough time for regular mail to reach us.

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Citi, and Citi with Arc Design are registered service marks of Citigroup Inc.
Visa® is a registered trademark of Visa International Service Association and used under license.

Privacy Notice: Please see the enclosed Privacy Notice for important information. Any choices you have made previously will continue to apply until you tell us to make a change.

Update or confirm your account information today Help us evaluate your account for future credit limit increases by providing or confirming your most recent income and housing information. Securely log in to your account at citi.com/updateincome, or call us toll-free at 1-877-313-6759 TTY: Use 711 or other Relay Service

EXHIBIT [D]– 5054

About Interest Charges

How We Calculate Interest. We calculate it separately for each balance shown in the Interest Charge Calculation table. We use the daily balance method (including new transactions). We figure the interest charge by multiplying the daily balance by its daily periodic rate each day in the billing period. To get a daily balance, we take the balance at the end of the previous day, add the interest on the previous day's balance and new charges, subtract new credits or payments, and make adjustments. The Balance Subject to Interest Rate is the average of the daily balances.

Minimum Interest Charge. If a minimum interest charge applies to your account, it will be at least $0.50.

How to Avoid Paying Interest on Purchases. Your due date is at least 23 days after the close of each billing cycle. We will not charge you interest on purchases if you pay your monthly Citi Flex Plan Payment Amount (if any) plus your New Balance, excluding any Citi Flex Plan balances, by the due date each month. If you do not pay your monthly Citi Flex Plan Payment Amount plus your New Balance, excluding any Citi Flex Plan balances, by the due date each month, you will pay interest on your purchases from the date they're posted to your account until you pay such amount in full for two billing periods in a row. We will begin charging interest on cash advances and balance transfers on the transaction date. We will begin charging interest on a Citi Flex Plan balance at the start of the billing cycle following the billing cycle during which you created the Citi Flex Plan.

Your Rights

What To Do If You Find A Mistake On Your Statement.
If you think there is an error on your statement, write to us at the address for billing inquiries and correspondence shown on the front of your statement. In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases.
If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these is necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us online or in writing at the Customer Service address shown on front of statement.

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

Other Account and Payment Information

When Your Payment Will Be Credited. If we receive your payment in proper form at our processing facility by 5 p.m. local time there, it will be credited as of that day. A payment received there in proper form after that time will be credited as of the next day. Allow 5 to 7 days for payments by regular mail to reach us. There may be a delay of up to 5 days in crediting a payment we receive that is not in proper form or not sent to the correct address. The correct address for regular mail is the address on the front of the payment coupon. The correct address for courier or express mail is the Express Payments Address shown below.

Proper Form. For a payment sent by mail or courier to be in proper form, you must:

- Enclose the attached payment coupon, with a valid check or money order. No cash or foreign currency please.
- Include your name and the last four digits of your account number.

How to Report a Lost or Stolen Card. Call the Customer Service number at the top of the page.

Balance Transfers. Balance Transfer amounts are included in the "Purchases" line in the Account Summary.

Credit Reporting Disputes. We may report information about your account to credit bureaus. If you think we've reported inaccurate information, please write to us at Citi Brands Credit Bureau Disputes, PO Box 6190, Sioux Falls, SD 57117.

Payment Amount. You may pay all or part of your account balance at any time. However, you must pay, by the payment due date, at least the minimum payment due.

COSTCO-0919

Payments other than by mail

Online. See the front of your statement on how to make a payment.

Phone. For phone payments, you authorize Citi to electronically debit your specified bank account by an ACH transaction in the amount and on such date that you indicate on the phone. You also authorize Citi to automatically debit your specified bank account every month, in the amount and on the same date each month that you indicate on the phone, until you withdraw your authorization. You may cancel a one-time phone payment or withdraw your authorization for automatic debits by calling the number on the front of your statement within the timeframe disclosed to you on the phone.

AutoPay. Visit autopay.citicards.com to enroll in AutoPay and have your payment amount automatically deducted each month on your payment date from the payment account you choose.

Express mail. Send payment by express mail to:

Citi Cards
Attention: Bankcard Payments Department
6716 Grade Lane
Building 9, Suite 910
Louisville, KY 40213

Crediting Payments other than by Mail. The payment cutoff time for Online Bill Payments, Phone Payments, and Express mail payments is midnight Eastern time. This means that we will credit your account as of the calendar day, based on Eastern time, that we receive your payment request.

If you send an eligible check, you authorize us to complete your payment by electronic debit. If we do, the checking account will be debited in the amount on the check. We may do this as soon as the day we receive the check. Also, the check will be destroyed.

EXHIBIT [D]– 5055

Gmail Adam Bereki <abereki@gmail.com>

Bereki- UCC Judgment Lien

4 messages

Adam <abereki@gmail.com> Thu, Apr 21, 2022 at 3:47 PM
To: Adam Bereki <abereki@gmail.com>

Officer Mejia,

I discovered that this false and fraudulent commercial judgment lien (also known as a UCC lien) was also filed with the Secretary of State by the Humphreys attorney, William Bissell, on their behalf. Please see attached. The document can be found online at the CA Sec. of State's Website below by searching my name. Please also notice that the amount on the UCC lien is also $949.32 MORE than what the "Court" actually ordered on the judgment.

https://bizfileonline.sos.ca.gov/search/ucc

Sincerely,

Adam Bereki

Bereki Judgment Lien.pdf
83K

Adam <abereki@gmail.com> Thu, Apr 21, 2022 at 3:52 PM
To: "Mejia, Ernesto@CHP" <ernesto.mejia@chp.ca.gov>

Officer Mejia,

I discovered that this false and fraudulent commercial judgment lien (also known as a UCC lien) was also filed with the Secretary of State by the Humphreys attorney, William Bissell, on their behalf. Please see attached. The document can be found online at the CA Sec. of State's Website below by searching my name like the image below. Please also notice that the amount on the UCC lien is also $949.32 MORE than what the "Court" allegedly ordered on the fraudulent judgment order. The original judgment amount was $848,000.

https://bizfileonline.sos.ca.gov/search/ucc

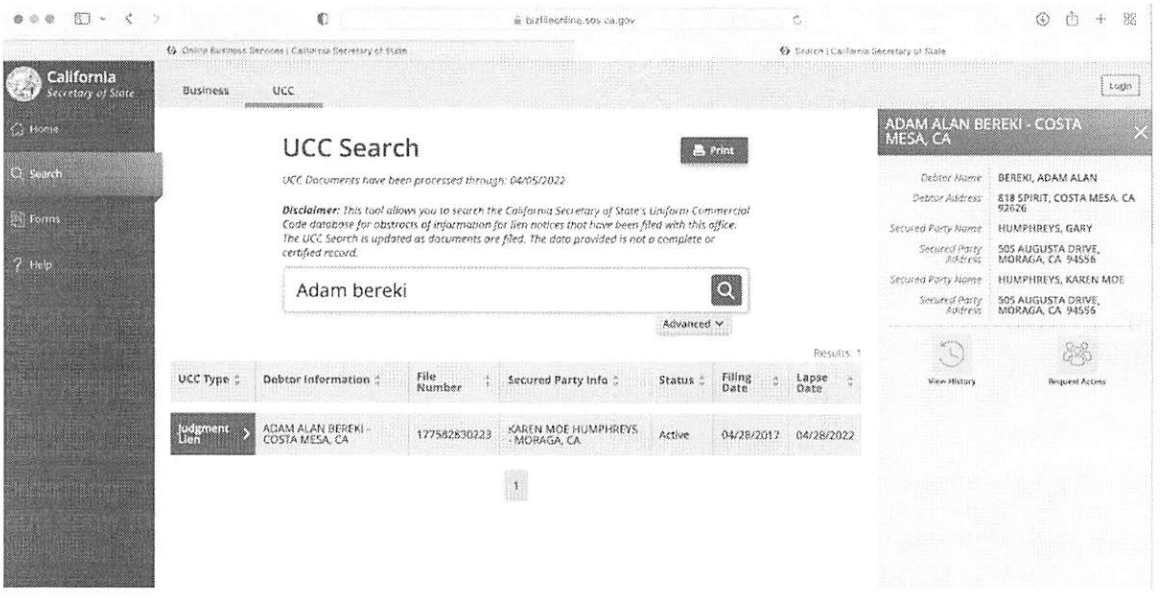
Please also see Cal. Penal Code 115 that I sent a few days ago in relation to this issue.

Thank you for your hard work and attention to detail.

Sincerely,

Adam Bereki

EXHIBIT [D]– 5056



Bereki Judgment Lien.pdf
83K

Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> Thu, Apr 21, 2022 at 4:14 PM
To: Adam <abereki@gmail.com>

Thank you sir, I'll pull it up when I get home

Get Outlook for Android

From: Adam <abereki@gmail.com>
Sent: Thursday, April 21, 2022 3:52:49 PM
To: Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov>
Subject: Bereki- UCC Judgment Lien

[**Warning:** This email originated outside of CHP. Do not click links or attachments unless you recognize the sender and know the content is safe.]
[Quoted text hidden]

Adam Bereki <abereki@gmail.com> Fri, Apr 22, 2022 at 6:45 AM
To: "Mejia, Ernesto@CHP" <Ernesto.Mejia@chp.ca.gov>

You're welcome. Thank you too for your diligent efforts and acknowledging my message.

> On Apr 21, 2022, at 4:14 PM, Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> wrote:
>
> Thank you sir, I'll pull it up when I get home
> [Quoted text hidden]

EXHIBIT [D]– 5057

[redacted]

NOTICE OF JUDGMENT LIEN

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

A. NAME & PHONE OF FILER'S CONTACT (optional)
William Bissell

B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

William Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660

17-7582830223
04/28/2017 17:00
FILED
CALIFORNIA
SECRETARY OF STATE
SOS
61057070002 UCC 1 FILING

THIS SPACE FOR FILING OFFICE USE ONLY

1. JUDGMENT DEBTOR'S EXACT LEGAL NAME –Insert only one name, either 1a or 1b. Do not abbreviate or combine names.

1a. ORGANIZATION'S NAME

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
BEREKI	ADAM	ALAN		
1c. MAILING ADDRESS	**CITY**	**STATE**	**POSTAL CODE**	**COUNTRY**
818 SPIRIT	COSTA MESA	CA	92626	US

2. JUDGMENT CREDITOR'S NAME– Do not abbreviate or combine names.

2a . ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE		SUFFIX
HUMPHREYS	GARY			
2c.. MAILING ADDRESS	**CITY**	**STATE**	**POSTAL CODE**	**COUNTRY**
505 AUGUSTA DRIVE	MORAGA	CA	94556	US

3. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.

A. *Title of court where judgment was entered:* SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE

B. Title of the action: THE SPARTAN ASSOCIATES, INC. v. GARY HUMPHREYS etc. et al

C. Number of this action: 30-2015-00805807

D. Date judgment was entered: April 20, 2017

E. Date of subsequent renewals of judgment (if any): n/a

F. Amount required to satisfy judgment at date of this notice: $ 848,929.32

G. Date of this notice: April 24, 2017

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

William Bissell Attorney
SIGNATURE – SEE INSTRUCTION NO. 4

Dated: April 24, 2015
(If not indicated, use same as date in item 3G.)

FOR: GARY HUMPHREYS & KAREN HUMPHREYS

EXHIBIT [D]– 5058

FILING OFFICE COPY

NOTICE OF JUDGMENT LIEN (FORM JL1) (Rev. 6/01)
Approved by the Secretary of State

JUDGMENT LIEN ADDENDUM

FOLLOW INSTRUCTIONS CAREFULLY (FRONT AND BACK OF FORM)

5. NAME OF JUDGMENT DEBTOR: (NAME OF FIRST DEBTOR ON RELATED JUDGMENT LIEN)

5a. ORGANIZATION'S NAME			
5b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

6. ADDITIONAL JUDGMENT DEBTOR – insert only one name (6a or 6b):

6a. ORGANIZATION'S NAME				
6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
6c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

7. ADDITIONAL JUDGMENT DEBTOR – insert only one name (7a or 7b):

7a. ORGANIZATION'S NAME				
7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ADDITIONAL JUDGMENT DEBTOR – insert only one name (8a or 8b):

8a. ORGANIZATION'S NAME				
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
8c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

9. ADDITIONAL JUDGMENT CREDITOR – insert only one name (9a or 9b):

9a. ORGANIZATION'S NAME				
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
HUMPHREYS	KAREN	MOE		
9c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
505 AUGUSTA DRIVE	*MORAGA*	*CA*	*94556*	*US*

10. ADDITIONAL JUDGMENT CREDITOR – insert only one name (10a or 10b):

10a. ORGANIZATION'S NAME				
10b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

6105707002

EXHIBIT [D]– 5059

CLAIM AGAINST THE CITY OF NEWPORT BEACH

(FOR DAMAGES TO PERSONS OR PERSONAL PROPERTY ALLOWABLE UNDER THE CALIFORNIA GOVERNMENT CODE – TORT CLAIM ACT)

CLERK'S DATE & TIME STAMP

Received by ____ via
U.S. Mail ☐
Inter-Office Mail ☐
Counter ☐ (FAX Not Accepted)

A claim must be filed with the City Clerk of the City of Newport Beach within 6 months after which the incident or event occurred. Be sure your claim is against The City of Newport Beach, not another public entity. Where space is insufficient, please use additional paper and identify information by paragraph number. Complete claims must be mailed or delivered to: The City Clerk, City of Newport Beach, City Hall 100 Civic Center Drive, P.O. 1768, Newport Beach, CA 92658-8915. Type or print in blue or black ink (no pencil). This document is a public record and may be posted on the internet.

TO THE HONORABLE MAYOR AND CITY COUNCIL, The City of Newport Beach, California

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

1. **NAME OF CLAIMANT:** Adam Bereki

   a. **ADDRESS OF CLAIMANT:** 818 Spirit (STREET ADDRESS) Costa Mesa, (CITY/STATE) CA 92626 (ZIP CODE)

   b. **PHONE NO.:** 949.241.6693 c. **DATE OF BIRTH:** 06/18/79

   d. **DRIVER'S LIC. NO.:** B6970543

Mailing Address:

2. Name, telephone and post office address to which claimant desires notices to be sent if other than above:

3. Occurrence or event from which the claim arises:

   a. **DATE:** 10/29/21 – 12/10/21 b. **TIME:** 1035 c. **PLACE** (exact and specific location): City of Newport Beach Also See attached.

   d. How and under what circumstances did damage or injury occur? Specify the particular occurrence, event, act or omission you claim caused the injury or damage (use additional paper if necessary):

   See attached.

   e. Names and addresses of all witnesses to this incident: See attached.

   f. What particular action by the City, or its employees, caused the alleged damage or injury? See attached

GLCLAIMFORM-1/08

EXHIBIT [D]– 5060

g. Names of City employees involved: See attached.

h. Give the names of any other party or parties involved in causing the alleged injury and/or damage: See attached

4. Give a description of the injury, property damage or loss, so far as is known at the time of this claim. If there were no injuries, state "no injuries." See attached.

5. Name and address of any other person injured for which you are the parent or legal guardian: Not applicable.

6. Name and address of the owner of any damaged property: Adam Bereki 818 Spirit Costa Mesa, CA 92626, The Living Trust of Adam Bereki

7. The amount of damages you are requesting to resolve your claim: See attached.

   a. Amount claimed as of this date: $ See attached.
   b. Estimated amount of future costs: $
   c. Total amount claimed: $
   d. Basis for computation of amounts claimed (include copies of all bills, invoices, estimates, etc.): See attached.

8. Names and addresses of all hospitals, doctors, medical providers (physical therapy), etc.
   a. See attached.
   b.
   c.
   d.

9. Any additional information that might be helpful in considering your claim: See attached.

* **FAILURE TO PROVIDE ANY OF THE ABOVE INFORMATION MAY RESULT IN THE RETURN OF YOUR CLAIM FOR INSUFFICIENCY AND MAY UNECESSARILY DELAY THE CITY'S PROMPT RESPONSE TO YOUR CLAIM.**

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM! (Penal Code §72; Insurance Code §556.1)

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 23rd day of May 2022 at Costa Mesa, California

Office of the City Clerk
Newport Beach, California

CLAIMANT'S SIGNATURE

GLCLAIMFORM-1/08

EXHIBIT [D]– 5061

CLAIM AGAINST THE CITY OF NEWPORT BEACH
(Additional responses to claim form dated 5/23/22)

For responses to questions 3 a, b, c, d, e, f, g, h, 4, 7, 8, 9.:

See the files named "CITY OF NB COMPLAINTS", "PHONE CALLS", and "ADDITIONAL COMPLAINTS TO STATE OFFICIALS" on the included USB drive. All of the documents on the USB drive are fully incorporated into this complaint.

Also see all of the documents and Exhibits at: http://www.thespiritoflaw.com. All of these documents and Exhibits can be viewed and/or downloaded and are fully incorporated into this complaint. For the specifics of the issues relating to this complaint, see the document entitled "Emergency Petition for Writs of Error and/or Non-Statutory Habeas Corpus". This document can be found under the "Procedural History" menu. Most of these documents can also be found on the USB Drive provided with this complaint under the file name "Bereki v. State of California et al."

Additionally:

f. The City of Newport Beach and its employees: (1) refused to perform their sworn mandatory, non-discretionary duties to fully, fairly, and impartially investigate my complaints for crimes and deprivations of rights being perpetrated against me and my estate by public officials and others acting under color of law but without lawful authority; (2) refused to perform their sworn mandatory, non-discretionary duties by failing to intervene to protect my rights, liberty, money, and property (and that of my estate) from being taken by force under color of law but without lawful authority; (3) refused to properly supervise subordinate personnel to ensure their sworn Constitutional and statutorily mandated duties were being followed; (4) maintained a policy and/or custom that included refusing to investigate and/or intervene in claims for criminal complaints and/or deprivations of rights made against Judges and/or other public officials of the STATE of CALIFORNIA and the UNITED STATES; (5) maintained a policy and/or custom that included refuse to properly supervise subordinate personel to ensure their sworn Constitutional and statutorily mandated duties were being followed; and, (6) conspired to commit all of the above with officials of the STATE OF CALIFORNIA and the UNITED STATES to deprive complainant and all like situated People of their rights, money, liberty, and property, including their right to a republican form of government.

g. Darrin Joe, Jon Lewis, Joe Cartwright, Diane Dixon, Brad Avery, Duffy Duffield, Kevin Muldoon, Noah Blom, Joy Brenner, Will O'Neill, Aaron Harp, and others not yet known or identified.

7. Complainant's injuries are ongoing. The complained of conduct continues to be perpetrated against complainant by the City and its employees and other parties as described herein as part of an apparent State and National conspiracy to overthrow the lawful republican forms of government of California and the United States. Complainant's injuries exceed $10,000 and the claim would not be a limited civil case.

8. Dr. Lina Zhan: 2675 Irvine Ave. #100, Costa Mesa, CA 92627 (949) 631-6042.
Dr. Neil Hersh: 24896 Chrisanta Dr. Mission Viejo, CA 92691 (661) 310-5768.
Dr. Mukunda Singh: 18430 Brookhurst Street, Suite 102 Fountain Valley, CA 92708 (949) 304-9748.

CITY OF NB - TORT CLAIM MAILED 5/24/22

UNITED STATES POSTAL SERVICE.

SANTA ANA WINDOW SVCS
3101 W SUNFLOWER AVE
SANTA ANA, CA 92799-0100
(800)275-8777

05/24/2022 02:23 PM

Product	Qty	Unit Price	Price
Money Order			$100.00
Serial#: 28181762504			
Money Order Fee			$1.45
Total			$101.45
First-Class Mail® Package	1		$4.50
Newport Beach, CA 92658			
Weight: 0 lb 1.50 oz			
Estimated Delivery Date			
Thu 05/26/2022			
Tracking #:			
9500 1150 6990 2144 1059 67			
Grand Total:			$105.95
Cash			$100.00
Credit Card Remitted			$5.95
Card Name: VISA			
Account #: XXXXXXXXXXXX8829			
Approval #: 09567D			
Transaction #: 442			
AID: A0000000031010		Chip	
AL: VISA CREDIT			
PIN: Not Required		CHASE VISA	

****
Every household in the U.S. is now eligible to receive a third set of 8 free test kits.
Go to www.covidtests.gov
****

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Preview your Mail
Track your Packages
Sign up for FREE @
https://informeddelivery.usps.com

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to: https://postalexperience.com/Pos
or scan this code with your mobile device,

or call 1-800-410-7420.

UFN: 056936-0115
Receipt #: 840-59260104-5-8475129-1
Clerk: 55

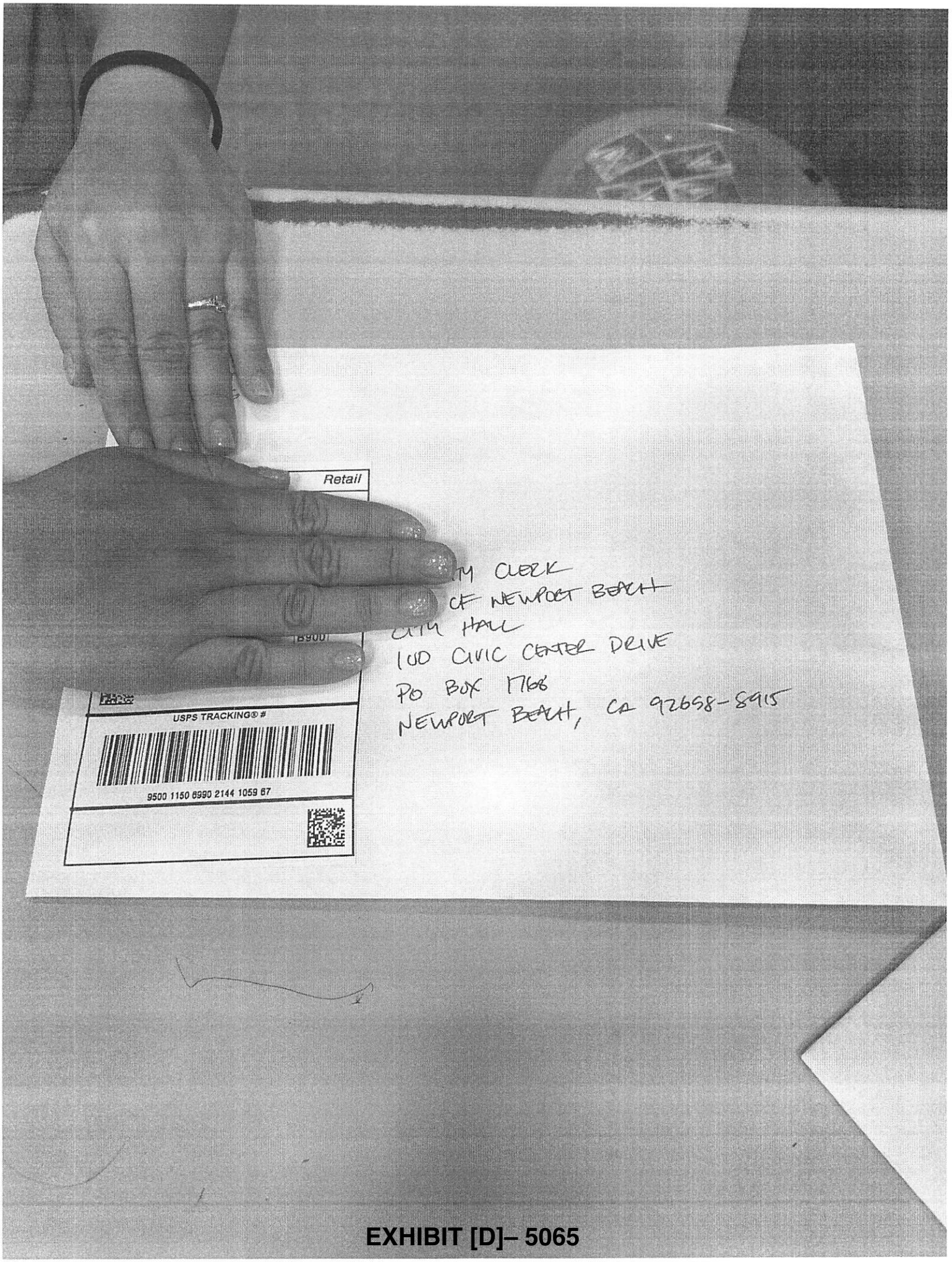


EXHIBIT [D]– 5065

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NOT INCLUDED

USPS Tracking®

FAQs >

Track Another Package +

Get the free Informed Delivery® feature to receive automated notifications on your packages

Learn More

(https://reg.usps.com/xsell?app=UspsTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st

Remove ×

Tracking Number: 9500115069902144105967

Your item has been delivered and is available at a PO Box at 8:33 am on May 25, 2022 in NEWPORT BEACH, CA 92658.

USPS Tracking Plus® Available

Delivered, PO Box

May 25, 2022 at 8:33 am
NEWPORT BEACH, CA 92658

Get Updates

Text & Email Updates

Tracking History

May 25, 2022, 8:33 am
Delivered, PO Box
NEWPORT BEACH, CA 92658
Your item has been delivered and is available at a PO Box at 8:33 am on May 25, 2022 in NEWPORT BEACH, CA 92658.

May 25, 2022, 5:57 am
Arrived at Post Office
NEWPORT BEACH, CA 92658

EXHIBIT [D]– 05067

May 25, 2022, 3:42 am
Arrived at USPS Facility
NEWPORT BEACH, CA 92658

May 25, 2022, 3:23 am
Departed USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

May 25, 2022, 2:51 am
Arrived at USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

May 25, 2022, 2:19 am
Departed USPS Regional Facility
ANAHEIM CA DISTRIBUTION CENTER

May 24, 2022, 11:12 pm
Arrived at USPS Regional Facility
ANAHEIM CA DISTRIBUTION CENTER

May 24, 2022, 2:22 pm
USPS in possession of item
SANTA ANA, CA 92799

Feedback

USPS Tracking Plus®

Product Information

See Less

Can’t find what you’re looking for?

Go to our FAQs section to find answers to your tracking questions.

EXHIBIT [D]– 05068

Gmail

Follow up.

Adam Bereki <abereki@gmail.com> Mon, Jun 6, 2022 at 1:44 PM
To: "Ernesto@CHP Mejia" <Ernesto.Mejia@chp.ca.gov>

Good day officer Mejia,

I'm writing to see when would be a good day this week to come to your office to meet about your investigation. I have some additional info for you and I'd like to learn where you're at in the investigation.

Sincerely,

Adam Bereki
949.241.6693

Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> Tue, Jun 7, 2022 at 10:10 AM
To: Adam Bereki <abereki@gmail.com>

Good morning Adam,

I just came back into the office today. Looking at my calendar, I don't have time this week. How is your availability for next week?

-----Original Message-----
From: Adam Bereki <abereki@gmail.com>
Sent: Monday, June 6, 2022 1:45 PM
To: Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov>
Subject: Follow up.

[Warning: This email originated outside of CHP. Do not click links or attachments unless you recognize the sender and know the content is safe.]

Adam Bereki <abereki@gmail.com> Wed, Jun 8, 2022 at 9:02 AM
To: "Mejia, Ernesto@CHP" <Ernesto.Mejia@chp.ca.gov>

Good morning Officer Mejia,

Thanks for your quick reply. I may be going out of town next week to visit my mom but haven't figured out the details. If I do, perhaps we could do a phone conference? Is there a day that works best for you?

Sincerely,

Adam

> On Jun 7, 2022, at 10:10 AM, Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> wrote:
>
> Good morning Adam,

Adam <abereki@gmail.com> Tue, Jun 14, 2022 at 3:05 PM
To: "Mejia, Ernesto@CHP" <Ernesto.Mejia@chp.ca.gov>

Good day Officer Mejia,

Im sure you're busy but just wanted to follow up with you– I'm still in town for a few days if you had some time to meet. Im also open to a phone conversation if that you help with your schedule.

Sincerely,

Adam

Adam <abereki@gmail.com> Mon, Jul 11, 2022 at 11:34 AM
To: "Mejia, Ernesto@CHP" <Ernesto.Mejia@chp.ca.gov>

Hi Officer Mejia,

I'm back in town and would like to meet with you to find out the status of your investigation. Is it still ongoing or have you closed it? Have you submitted any written reports and/or made any findings? Please let me know as soon as possible.

Sincerely,

Adam Bereki
949.241.6693

On Tue, Jun 7, 2022 at 10:10 AM Mejia, Ernesto@CHP <Ernesto.Mejia@chp.ca.gov> wrote:

Gmail Adam Bereki <abereki@gmail.com>

Filing False and Fraudulent Judgment Lien- Penal Code 115

1 message

Adam <abereki@gmail.com> Wed, Apr 20, 2022 at 10:43 AM
To: "Mejia, Ernesto@CHP" <ernesto.mejia@chp.ca.gov>

Officer Mejia,

I recently came upon this penal code pertaining to filing a false and fraudulent judgment lien on the county record that attached to the real property held in my living trust. It's Penal Code 115:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=115&lawCode=PEN

Sincerely,

Adam Bereki

Gmail Adam Bereki <abereki@gmail.com>

Bereki- UCC Judgment Lien

Adam <abereki@gmail.com>
To: "Mejia, Ernesto@CHP" <ernesto.mejia@chp.ca.gov>

Thu, Apr 21, 2022 at 3:52 PM

Officer Mejia,

I discovered that this false and fraudulent commercial judgment lien (also known as a UCC lien) was also filed with the Secretary of State by the Humphreys attorney, William Bissell, on their behalf. Please see attached. The document can be found online at the CA Sec. of State's Website below by searching my name like the image below. Please also notice that the amount on the UCC lien is also $949.32 MORE than what the "Court" allegedly ordered on the fraudulent judgment order. The original judgment amount was $848,000.

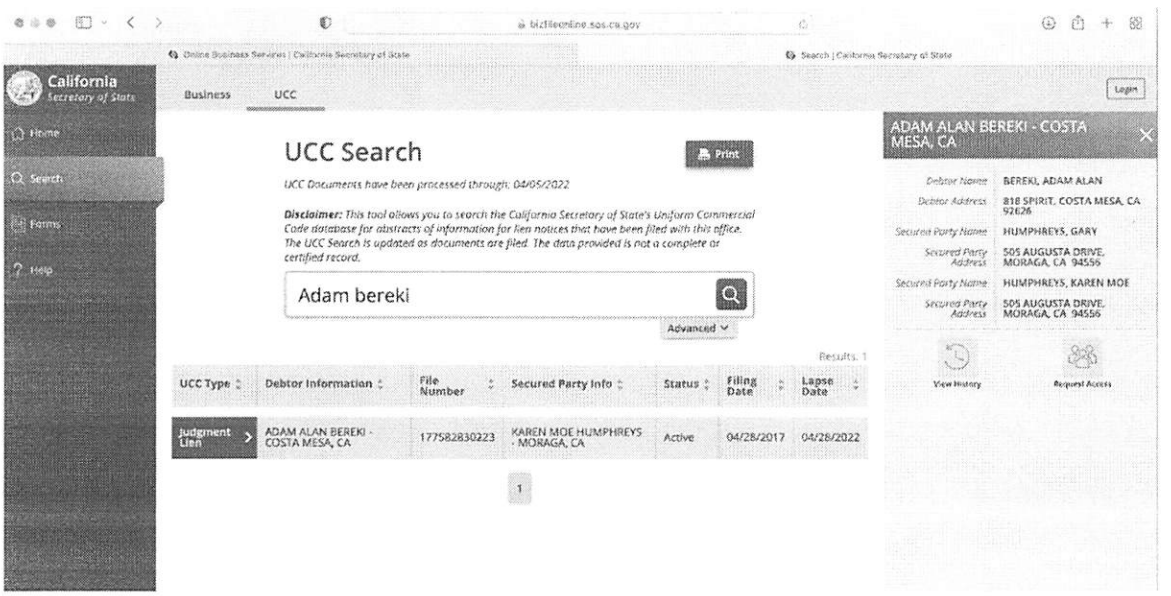
https://bizfileonline.sos.ca.gov/search/ucc

Please also see Cal. Penal Code 115 that I sent a few days ago in relation to this issue.

Thank you for your hard work and attention to detail.

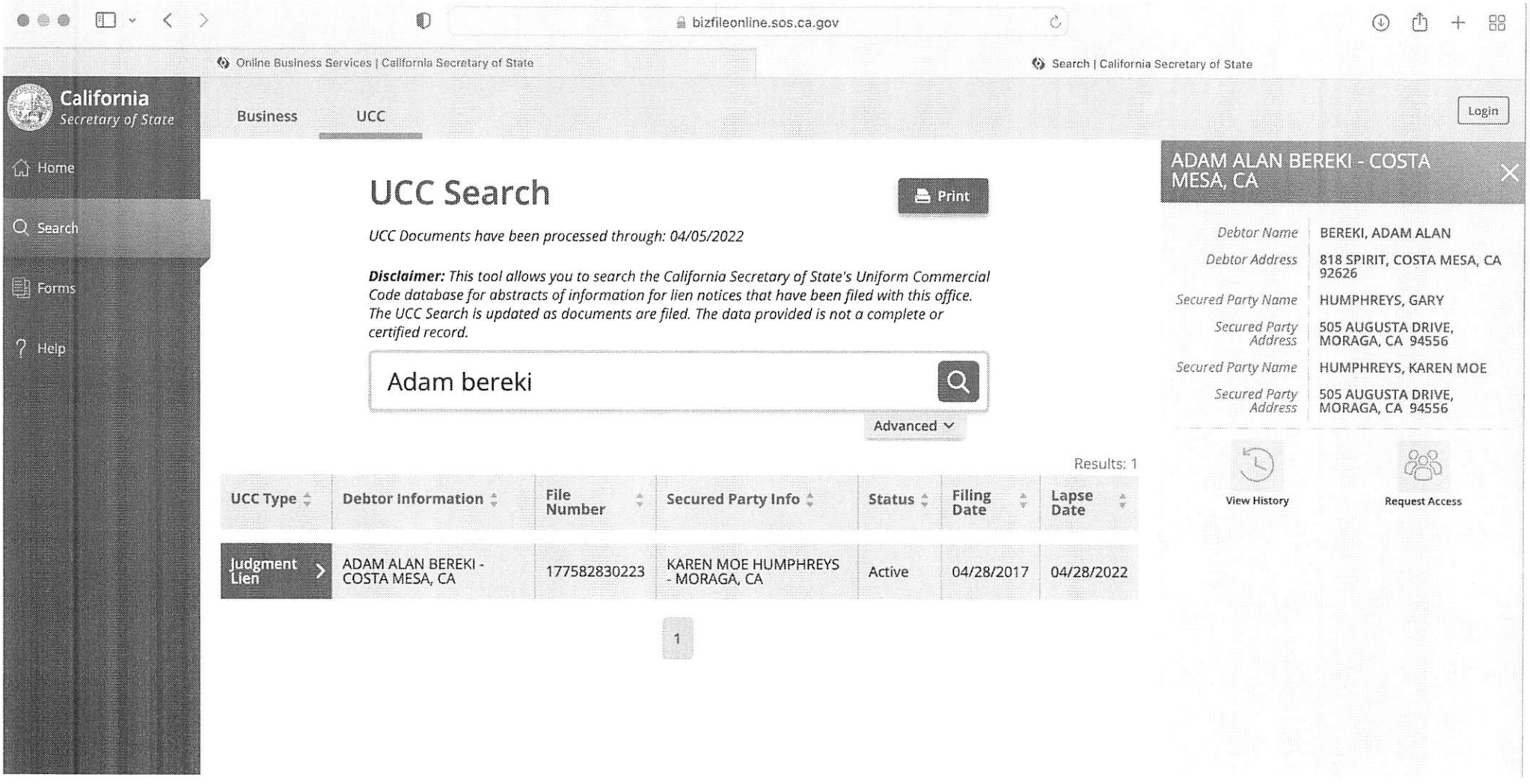
Sincerely,

Adam Bereki



Bereki Judgment Lien.pdf
83K

EXHIBIT [D] p.5072


bizfileonline.sos.ca.gov
Online Business Services | California Secretary of State
Search | California Secretary of State
California
Secretary of State
Business
UCC
Login
Home
Search
Forms
Help
UCC Search
Print
UCC Documents have been processed through: 04/05/2022
Disclaimer: This tool allows you to search the California Secretary of State's Uniform Commercial Code database for abstracts of information for lien notices that have been filed with this office. The UCC Search is updated as documents are filed. The data provided is not a complete or certified record.
Adam bereki
Advanced
Results: 1
UCC Type
Debtor Information
File Number
Secured Party Info
Status
Filing Date
Lapse Date
Judgment Lien
ADAM ALAN BEREKI - COSTA MESA, CA
177582830223
KAREN MOE HUMPHREYS - MORAGA, CA
Active
04/28/2017
04/28/2022
1
ADAM ALAN BEREKI - COSTA MESA, CA
Debtor Name
BEREKI, ADAM ALAN
Debtor Address
818 SPIRIT, COSTA MESA, CA 92626
Secured Party Name
HUMPHREYS, GARY
Secured Party Address
505 AUGUSTA DRIVE, MORAGA, CA 94556
Secured Party Name
HUMPHREYS, KAREN MOE
Secured Party Address
505 AUGUSTA DRIVE, MORAGA, CA 94556
View History
Request Access

[redacted]

NOTICE OF JUDGMENT LIEN

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

A. NAME & PHONE OF FILER'S CONTACT (optional)
William Bissell

B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

William Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660

17-7582830223
04/28/2017 17:00
FILED
CALIFORNIA
SECRETARY OF STATE
SOS
61057070002 UCC 1 FILING

THIS SPACE FOR FILING OFFICE USE ONLY

1. JUDGMENT DEBTOR'S EXACT LEGAL NAME –Insert only one name, either 1a or 1b. Do not abbreviate or combine names.

1a. ORGANIZATION'S NAME

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
BEREKI	ADAM	ALAN		
1c. MAILING ADDRESS	**CITY**	**STATE**	**POSTAL CODE**	**COUNTRY**
818 SPIRIT	COSTA MESA	CA	92626	US

2. JUDGMENT CREDITOR'S NAME– Do not abbreviate or combine names.

2a . ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE		SUFFIX
HUMPHREYS	GARY			
2c.. MAILING ADDRESS	**CITY**	**STATE**	**POSTAL CODE**	**COUNTRY**
505 AUGUSTA DRIVE	MORAGA	CA	94556	US

3. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.

A. *Title of court where judgment was entered:* SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE

B. Title of the action: THE SPARTAN ASSOCIATES, INC. v. GARY HUMPHREYS etc. et al

C. Number of this action: 30-2015-00805807

D. Date judgment was entered: April 20, 2017

E. Date of subsequent renewals of judgment (if any): n/a

F. Amount required to satisfy judgment at date of this notice: $ 848,929.32

G. Date of this notice: April 24, 2017

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

William Bissell Attorney
SIGNATURE – SEE INSTRUCTION NO. 4

Dated: April 24, 2015
(If not indicated, use same as date in item 3G.)

FOR: GARY HUMPHREYS & KAREN HUMPHREYS

EXHIBIT [D] p.5074

FILING OFFICE COPY

NOTICE OF JUDGMENT LIEN (FORM JL1) (Rev. 6/01)
Approved by the Secretary of State

JUDGMENT LIEN ADDENDUM

FOLLOW INSTRUCTIONS CAREFULLY (FRONT AND BACK OF FORM)

5. NAME OF JUDGMENT DEBTOR: (NAME OF FIRST DEBTOR ON RELATED JUDGMENT LIEN)

5a. ORGANIZATION'S NAME			
5b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

6. ADDITIONAL JUDGMENT DEBTOR – insert only one name (6a or 6b):

6a. ORGANIZATION'S NAME				
6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
6c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

7. ADDITIONAL JUDGMENT DEBTOR – insert only one name (7a or 7b):

7a. ORGANIZATION'S NAME				
7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ADDITIONAL JUDGMENT DEBTOR – insert only one name (8a or 8b):

8a. ORGANIZATION'S NAME				
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
8c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

9. ADDITIONAL JUDGMENT CREDITOR – insert only one name (9a or 9b):

9a. ORGANIZATION'S NAME				
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
HUMPHREYS	KAREN	MOE		
9c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
505 AUGUSTA DRIVE	*MORAGA*	*CA*	*94556*	*US*

10. ADDITIONAL JUDGMENT CREDITOR – insert only one name (10a or 10b):

10a. ORGANIZATION'S NAME				
10b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

6195707002

Notice/ complaint to CHP 04/10/22

Gmail

Adam Bereki <abereki@gmail.com>

Notice of Forced Foreclosure/Bankruptcy and Unlawful Seizure/Taking of Property and Rights 04-10-22

1 message

Adam <abereki@gmail.com> Sun, Apr 10, 2022 at 8:29 AM
To: ernesto.mejia@chp.ca.gov, emoran@chp.ca.gov

Notice to Agent is Notice to Principal.

Ed and Ernesto,

As I shared with you both resulting from the ongoing and **in progress** crimes and treason being perpetrated against me by rogue State and Federal officials, the next stage of the unlawful taking and seizure of my rights and property has begun. On 4/9/22, I received a Notice of Default and Intent to Accelerate from Shellpoint, the company in charge of servicing the loan for real property held in my living trust. As you'll recall, a lien resulting from the fraudulent judgments against me has been placed on the property in further attempt to steal my money and property and the beneficial interest held therein by my mother. (See attached).

Additionally and as direct as direct and proximate result of:

1) the fraudulent and illegal judgement(s) against me;
2) the unlawful conversion of my right to earn a living into a revocable privilege;
3) the indefinite suspension of my ability to obtain a license and earn gainful employment as a contractor without any hearing or lawful authority;
4) the fraudulent lien placed on the real property held in my living trust; and,
5) being forced into a condition of involuntary servitude to defend my rights and property against rogue official actors,

neither I nor my living trust are able to pay the mortgage payments, property taxes, and other personal and estate related expenses.

To pay for litigation related costs, basic living needs and medical expenses, I've been forced to use credit cards which I have become unable to pay. (See attached).

The result of all of the foregoing is obviously that despite all of my efforts to obtain a remedy from every branch of State and Nation government, I am being forced into foreclosure and/or bankruptcy or both as a means of continuing to perpetrate the aforementioned crimes against me and my mother.

As we've repeatedly discussed, it is your sworn duty to protect my rights and property from unlawful taking and seizure by criminals acting under color of law but without lawful authority as official State and Federal actors.

I recently also made a complaint to the office of the Orange County Treasurer-Tax Collector (Shari Friedenrich) so that her office would not be used as another instrument and weapon without authority. I have not received any response. (See attached). All of the complaints I have made to State and Federal actors can be found in the Exhibits section of my website http://www.thespiritoflaw.com.

Please respond by notifying me you received this Notice. As there is no apparent judicial Constitutional Court to go to at the State or Federal level, your offices appear to be the only authority to stop this heinous abuse of power.

Please also notify me of the status of your investigation.

EXHIBIT [D] p.5076

Respectfully,

Adam Bereki
949.241.6693

---

2 attachments

- **COMPLAINT OC TAX COLLECTOR AND CLERK.pdf** 4646K
- **Notice of Default on Mortgage and Credit Cards.pdf** 3103K

(See Digital version, not attached to this printed version)

P.O. Box 10826
Greenville, SC 29603
Phone: 866-316-1840
Fax: 866-467-1187
www.shellpointmtg.com

shellpoint
A DIVISION OF NEWREZ

Sent Via First-Class Mail®

04/04/2022

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626-3089

Loan Number: 0675931091
Property Address: 818 SPIRIT
COSTA MESA, CA 92626

NOTICE OF DEFAULT AND INTENT TO ACCELERATE

Dear ADAM BEREKI:

This letter is formal notice by Shellpoint Mortgage Servicing, the Servicer of the above-referenced loan acting on behalf of Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2, that you are in default under the terms of the documents creating and securing your Loan described above, including the Note and Deed of Trust/Mortgage/Security Deed ("Security Instrument"), for failure to pay the amounts due.

If you have questions about any of the items contained in this notice, or need any additional information, please contact Jessica Palacios at 8668252174, ext. 14542 whom we have designated as your single point of contact.

As of the date of this notice, the total amount required to cure the default is $24,871.65, which consists of the following:

Next Payment Due Date:		10/01/2021
Total Monthly Payments Due:		$24,305.82
10/01/2021	at	$3,472.26
11/01/2021	at	$3,472.26
12/01/2021	at	$3,472.26
01/01/2022	at	$3,472.26
02/01/2022	at	$3,472.26
03/01/2022	at	$3,472.26
04/01/2022	at	$3,472.26
Late Charges:		$520.83
Corporate Advance Balance:		$45.00
Unapplied Balance:		$0.00
TOTAL YOU MUST PAY TO CURE DEFAULT:		**$24,871.65**

You can cure this default by making a payment of $24,871.65 by 05/09/2022. Please note any additional monthly payments, late charges and other charges that may be due under the Note, Security Instrument and applicable law after the date of this notice must also be paid to bring your account current. For the exact amount you must pay to bring your loan current, please contact Jessica Palacios at 8668252174, ext. 14542. This letter is in no way intended as a payoff statement for your mortgage, it merely states an amount necessary

to cure the current default. Please include your loan number and property address with your payment and send to:

Shellpoint Mortgage Servicing
P.O. Box 740039
Cincinnati, OH 45274-0039

Overnight:
Shellpoint Mortgage Servicing
55 Beatie Place
Suite 500
Greenville, SC 29601

To the extent your obligation has been discharged or is subject to the automatic stay in a bankruptcy case, this notice is for informational purposes only and does not constitute a demand for payment or an attempt to collect a debt as your personal obligation. If you are represented by an attorney, please provide us with the attorney's name, address, and telephone number.

IF YOU ARE UNABLE TO BRING YOUR ACCOUNT CURRENT, Shellpoint Mortgage Servicing offers consumer assistance programs designed to help resolve delinquencies and avoid foreclosure. These services are provided without cost to our customers. You may be eligible for a loan workout plan or other similar alternative to foreclosure. If you would like to learn more about these programs, you may contact Jessica Palacios at 8668252174, ext. 14542, Monday - Thursday 8:00AM to 6:00PM and Friday 8:00AM to 5:00PM to discuss possible options. You may also visit our website www.shellpointmtg.com. WE ARE VERY INTERESTED IN ASSISTING YOU.

You have a right to cure the default. To cure the default, you must pay the full amount of the default on this loan by the thirty-fifth (35th) day from the date of this letter which is 05/09/2022 (or if said date falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). Failure to cure the default on or before this date may result in acceleration of the sums secured by the Security Instrument and sale of the property.

You have the right to reinstate the loan after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and sale. If foreclosure proceedings are undertaken, we may pursue a deficiency judgment, if permitted by applicable law. Failure to respond to this letter may result in the loss of your property.

You may request from us the following documents:

- A copy of the promissory note;
- A copy of the deed of trust or mortgage;
- A copy of any assignment of the mortgage or deed of trust;
- A copy of your payment history since you were last less than sixty (60) days past due.

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8:00 a.m. or after 9:00 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Newrez LLC dba Shellpoint Mortgage Servicing is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Newrez LLC dba Shellpoint Mortgage Servicing's NMLS ID is 3013.

Attention Servicemembers and Dependents: Servicemembers on active duty, or a spouse or dependent of such a servicemember, may be entitled to certain protections under the Servicemembers Civil Relief Act ("SCRA") regarding the servicemember's interest rate and the risk of the foreclosure. SCRA and certain state laws provide important protections for you, including prohibiting foreclosure under most circumstances. If you are currently in the military service, or have been within the last twelve (12) months, please notify Shellpoint Mortgage Servicing immediately. When contacting Shellpoint Mortgage Servicing as to your military service, you must provide positive proof as to your military status. Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. Homeowner counseling is also available at agencies such as Military OneSource (www.militaryonesource.mil, 1-800-342-9647) and Armed Forces Legal Assistance (http://legalassistance.law.af.mil), and through HUD-certified housing counselors (http://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm). You can also contact Jessica Palacios toll-free at 8668252174, ext. 14542 if you have questions about your rights under SCRA.

For your benefit and assistance, there are government approved homeownership counseling agencies designed to help homeowners avoid losing their homes. To obtain a list of approved counseling agencies, please call 1-800-569-4287 or visit http://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. You may also contact the Homeownership Preservation Foundation's Hope hotline at 1-888-995-HOPE (4673).

Thank you for your prompt attention to this matter.

Sincerely,

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603
866-316-1840

R 4/10/22

Shellpoint Mortgage Servicing
P.O. Box 9103
Temecula, CA 92589-9103

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
Shellpoint Mortgage Servicing
P.O. Box 740039
Cincinnati, OH 45274-0039

Send Correspondence to:
Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603

20220404-354

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626-3089

W_CA_DEMAND

fnbo

VISA

Account Number: 4418 4094 0814 5457
New Balance: $12,938.62
Minimum Payment Due: $258.77
Payment Due Date: ..... April 1, 2022

Make checks payable to First National Bank of Omaha

First National Bank of Omaha
P.O. Box 2557
Omaha, NE 68103-2557

2253

Amount of Payment Enclosed

$

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

45815
5201

Change of Address? If yes, please complete reverse side.

4418409408145457 00000000258?7 000000129386?

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Signature® Visa®

Account Number:
4418 4094 0814 5457
Page 001 of 002

Account Summary

Previous Balance	$13,202.67
Payments	-$264.05
Other Credits	-$0.00
Purchases	+$0.00
Balance Transfers	+$0.00
Cash Advances	+$0.00
Fees Charged	+$0.00
Interest Charged	+$0.00
New Balance	**$12,938.62**
Statement Closing Date	03/04/22
Days in Billing Cycle	30
Total Credit Limit	$14,000.00
Available Credit	$1,061.00
Cash Limit	$2,800.00
Available Cash	$1,061.00

Payment Information

New Balance	$12,938.62
Minimum Payment Due	$258.77
Past Due Amount	$0.00
Payment Due Date	**April 1, 2022**

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For Example:

If you make no additional charges using this card and each month you pay ...	You will pay off the balance shown on this statement in about ...	And you will end up paying an estimated total of ...
Only the minimum payment	21 years	$24,767
$425	3 years	$15,300 (Savings $9,467)

If you would like information about credit counseling services, call 1-866-486-6322.

Customer Service **Call: Toll Free 1-888-530-3626**
(TDD Telecommunications Device for the Deaf: 1-800-925-2833) (Balance Transfer Hotline: 1-877-388-8231)
Save Time and Stamps by Paying Online! **Visit: www.fnbo.com**
Remit to: First National Bank of Omaha, P.O. Box 2557, Omaha, NE 68103-2557

Smart Tips

Give your credit rating a little boost!

Paying over your minimum amount due can help reduce your account balance faster than you think - and a lower average balance can help add up to a higher credit score!

REWARDS SUMMARY

Earn rewards points everyday - you earn 1 point per $1 on Net Purchases. Review your rewards terms and conditions for complete details including limitations.

Point activity summary for the period covered by this statement:

4,029	Beginning point balance
0	Points earned on Net Purchases
0	Bonus points earned
0	Point adjustments
0	Points redeemed
0	Points expired
4,029	Current point balance

Points expiring on your next statement closing date 0
(Points expire on or after 5 years from the date they are awarded. To avoid losing points, please redeem them before they expire.)

Redeem your points for travel, gift cards, merchandise, cash back as a statement credit to your Account, an ACH deposit to any checking or savings account (ABA routing number required), or as a check sent to you by mail. You can redeem online 24/7 by accessing your Account at the web address listed above or by calling the Rewards Service Center at 888-801-7987 during hours of operation Monday through Friday, 8:00 a.m. to 11:00 p.m. Central Time, and Saturday and Sunday, 8:00 a.m. to 4:30 p.m. Central Time.

HXD

To ensure accuracy, please print clearly using upper-case letters and numbers only.
Please do not use Red Ink, Gel pens or Pencil.

CHANGE OF ADDRESS, PHONE, OR E-MAIL

Address _____

Apt/Bldg# _____

City _____

State, ZIP _____

Home Phone _____

Work Phone _____

Cell Phone _____

E-mail Address _____

If you have a Credit Card for business purposes, and are requesting an address change, we may request additional information.

COLR043D 0110 5004 DXH 07 223395 PAGE 00001 OF 00002 490515

Balance Subject to Interest Rate: Each "Balance Subject to Interest Rate" shown on the front of this statement for each Balance Category is determined using the average daily balance (including new purchases) method. Each such balance is calculated separately for each period that a particular rate was in effect (referred to below as a "Rate Period"). To get each average daily balance for each Balance Category, we first compute a "Daily Balance" for each day of the Rate Period as follows: (1) we start with the beginning balance of each day, (2) we add any new transactions and fees, and (3) we subtract any applicable payments, credits, or credit adjustments. Each average daily balance that is shown on the front is computed by adding up all the Daily Balances in the Rate Period and dividing the total by the number of days in the Rate Period (which shows on the front as "Days Rate Used"). In making these computations: (a) we may treat a credit balance as a balance of zero; and (b) we may delay adding fees to your balance, and (c) each day, we multiply your Daily Balance by the applicable daily periodic rate and add that amount to your balance to determine the next day's beginning balance.

Interest Charges: We figure the interest charges on your account and for each Balance Category by applying the applicable daily periodic rate to the applicable average daily balance and multiplying that product by the number of days in the Rate Period. All of the interest charges for each Balance Category will be totaled and that will be the total interest charged.

How to Avoid Paying Interest on Purchases: If you pay your New Balance as shown on the front of this billing statement by the Payment Due Date and if we also received payment in full of your New Balance as indicated on your previous billing statement by its Payment Due Date (or if that New Balance was zero or a credit), no interest charges will be assessed on Purchases shown on your next billing statement. Unless you have been specifically notified otherwise, no period is provided to repay non-Purchase balances without incurring interest charges—in other words, there is no interest-free (grace) period for Cash Advances or Balance Transfers.

Payment Requirements: Payments must be (1) accompanied by the top portion of this billing statement; (2) received no later than 5:00 p.m. (Central Time) on the Payment Due Date at the location we have specified for receipt of your payment, (3) made only by check or money order if your payment is made by mail, (4) made in U.S. Dollars, and (5) sent to the P.O. Box specified on the top of the front of this statement. If we accept a payment that does not comply with these requirements, there may be a delay in crediting your account, which may result in additional interest and fees. If your payment is returned unpaid by your bank for insufficient funds, we may re-present your check electronically.

Credit Limits: Only the "Cash Limit" portion of your Credit Limit is available for cash advances. "Available Credit" or "Available Cash" refers to the part of your Credit Limit or Cash Limit that was available as of this billing statement's closing date and may not reflect overlimit or credit balance amounts. We may raise or lower your Credit Limit and/or Cash Limit at any time and may restrict the amount that is available for Balance Transfers. After we credit a payment to your account, there may be a delay before it operates to restore your Available Credit or Available Cash.

BILLING RIGHTS SUMMARY

What To Do If You Think You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at: First National Bank of Omaha, P.O. Box 3696 Omaha, NE 68103-0696. In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors *in writing*. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question. While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase. To use this right, all of the following must be true: 1. The purchase must have been made in your home State or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.) 2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify. 3. You must not yet have fully paid for the purchase.

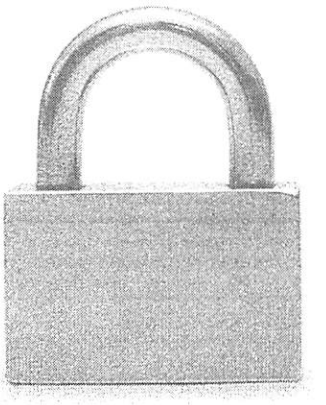
If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at: First National Bank of Omaha, P.O. Box 3696 Omaha, NE 68103-0696. While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

Liability for Unauthorized Use: If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at P.O. Box 3696 Omaha, NE 68103-0696 or the facsimile number 402-602-6098 or call us at 1-800-688-7070. You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed $50.

Information Provided to Credit Bureaus: Information about your account is periodically provided to one or more credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. If you think any information regarding you or your account is inaccurate, write to us on a separate sheet at: P.O. Box 3412, Omaha, NE 68103-0412.

Safe & Secure

Enroll in **paperless statements** today to keep your information secure and cut down on personal information in the mail.



Transaction Detail

Trans Date	Post Date	Reference Number	Transaction Description	Credits (CR) and Debits
Payments and Other Credits				
2-24	2-24	74418002055027555027808	PAYMENT - THANK YOU	$264.05 (CR)
Fees				
Total Fees For This Period				**$0.00**
Interest Charged				
Interest Charge on Purchases				$0.00
Interest Charge on Cash Advances				$0.00
Interest Charge on Balances Transfers				$0.00
Total Interest For This Period				**$0.00**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account. (v) Variable Rate (f) Fixed Rate

Charge Summary	Annual Percentage Rate (APR)	Special Offer or Eligible Purchase APR Expiration Date	Balance Subject to Interest Rate	Days Rate Used	Interest Charge
Purchases	14.99% (v)	N/A	$0.00	30	$0.00
Cash Advance	25.24% (v)	N/A	$0.00	30	$0.00
Intro Bal Trans	0.00%	November 2022	$9,419.20	30	$0.00
Intro Purchases	0.00%	November 2022	$3,704.25	30	$0.00

2022 Total Year-to-Date

Total fees charged in 2022 ..... $0.00
Total interest charged in 2022 ..... $0.00

Additional Information Regarding Your Account

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

If you are an **active duty member of the United States Military**, you may be eligible for additional benefits on your account(s) under the Servicemembers Civil Relief Act (SCRA).

For additional information regarding SCRA benefits, please call 855-868-8446 or log in to the website listed on the front of your statement and click 'Resources' for more information.

Notice of Changes to your Account:

We have recently decreased the revolving credit and/or cash limit on your account.
Your revolving credit limit is now $13,600 and
your cash limit is now $2,750.
A detailed explanation for this change is being mailed
to the current address we have on file.

This page intentionally left blank.

CDLR045D 8110 5004 DXH 07 220505 PAGE 00002 OF 00002 45515

Citi Diamond Preferred® Card

citi

ADAM BEREKI
Member Since 2020 Account number ending in: 7981
Billing Period: **02/22/22-03/21/22**

www.citicards.com
Customer Service 1-800-823-4086
TTY:711
BOX 6500 SIOUX FALLS, SD 57117

MARCH STATEMENT

Minimum payment due:	**$106.00**
New balance as of 03/21/22:	**$7,077.00**
Payment due date:	**04/17/22**

See the back of this statement for important information about how to avoid paying interest on purchases.

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40 and your APRs may be increased up to the Penalty APR of 29.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	18 year(s)	$14,164
$234	3 year(s)	$8,424 (Savings=$5,740)

For information about credit counseling services, call 1-877-337-8187.

Account Summary

Previous balance	$7,185.00
Payments	-$108.00
Credits	-$0.00
Purchases	+$0.00
Cash advances	+$0.00
Fees	+$0.00
Interest	+$0.00
New balance	**$7,077.00**

Credit Limit

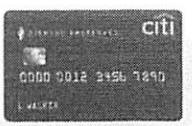
Credit limit	$7,500
Includes $2,300 cash advance limit	
Available credit	$423
Includes $423 available for cash advances	

Make sure we have your most up-to-date income and housing information

Help us evaluate your account for future **credit limit increases** by providing or confirming your most recent income and housing information.

Securely log in to your account at **citi.com/updateincome**, or **call us toll-free at 1-855-209-8556**. TTY: Use **711** or other Relay Service.

FGEN002621



Savings Spotlight

Your Diamond Preferred Lifetime Savings:

$1,334.55

See page 3 to view your Savings Summary.

For Payments, send check to: CITI CARDS, PO BOX 78045, Phoenix, AZ, 85062-8045

citi

P.O. Box 6004
Sioux Falls, SD 57117-6004

Your Monthly Statement is Enclosed

Pay your bill from virtually anywhere with the Citi Mobile® App and Citi® Online

To download:
Text **'App15'** to **MyCiti (692484)**
or go to your device's app store.
Or visit **www.citicards.com**

Minimum payment due	$106.00
New balance	$7,077.00
Payment due date	04/17/22
Amount Enclosed: $	

Account number ending in 7981
Please make check payable to CITI CARDS.

00026180 1 20902849 DTF 00006180

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

**N0006180

CITI CARDS
PO BOX 78045
Phoenix, AZ 85062-8045

15009 0010603 [illegible] 0542418145198798l 1517

EXHIBIT [D] p.5086

10030810-006180-0001-0002

798101

About Interest Charges

How We Calculate Interest. We calculate it separately for each balance shown in the Interest Charge Calculation table. We use the **daily balance method (including current transactions)** if the Balance Subject to Interest Rate is followed by (D). We figure the interest charge by multiplying the daily balance by its daily periodic rate each day in the billing period. To get a daily balance, we take the balance at the end of the previous day, add the interest on the previous day's balance and new charges, subtract new credits or payments, and make adjustments. The Balance Subject to Interest Rate is the average of the daily balances. We use the **average daily balance method (including current transactions)** if the Balance Subject to Interest Rate is followed by (A). To get an average daily balance, we take the balance at the end of the previous day, add new charges, subtract new credits or payments, and make adjustments. We add all the daily balances and divide by the number of days in the billing period. We figure the interest charge by multiplying the average daily balance by the monthly periodic rate, or by the daily periodic rate and by the number of days in the billing period, as applicable.

Minimum Interest Charge. If we charge interest, it will be at least $0.50.

How to Avoid Paying Interest on Purchases. Your due date is at least 23 days after the close of each billing cycle. We will not charge you interest on purchases if you pay your monthly Citi Flex Plan Payment Amount (if any) plus your New Balance, excluding any Citi Flex Plan balances, by the due date each month. If you do not pay your monthly Citi Flex Plan Payment Amount plus your New Balance, excluding any Citi Flex Plan balances, by the due date each month, you will pay interest on your purchases from the date they're posted to your account until you pay such amount in full for two billing periods in a row. We will begin charging interest on cash advances and balance transfers on the transaction date. We will begin charging interest on a Citi Flex Plan balance at the start of the billing cycle following the billing cycle during which you created the Citi Flex Plan.

Your Rights

What To Do If You Find A Mistake On Your Statement.
If you think there is an error on your statement, write to us at the address for billing inquiries and correspondence shown on the front of your statement. In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

IBSCSR-0919

Your Rights If You Are Dissatisfied With Your Credit Card Purchases.
If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these is necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us online or in writing at the Customer Service address shown on front of statement.

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

Other Account and Payment Information

When Your Payment Will Be Credited. If we receive your payment in proper form at our processing facility by 5 p.m. local time there, it will be credited as of that day. A payment received there in proper form after that time will be credited as of the next day. Allow 5 to 7 days for payments by regular mail to reach us. There may be a delay of up to 5 days in crediting a payment we receive that is not in proper form or not sent to the correct address. The correct address for regular mail is the address on the front of the payment coupon. The correct address for courier or express mail is the Express Payments Address shown below.

Proper Form. For a payment sent by mail or courier to be in proper form, you must:

- Enclose a valid check or money order. No cash or foreign currency please.
- Include your name and the last four digits of your account number.

How to Report a Lost or Stolen Card. Call the Customer Service number at the top of the page.

Balance Transfers. Balance Transfer amounts are included in the "Purchases" line in the Account Summary.

Membership Fee. Some accounts are charged a membership fee. To avoid paying this fee, notify us that you are closing your account within 30 days of the mailing or delivery date of the statement on which the fee is billed.

Credit Reporting Disputes. We may report information about your account to credit bureaus. If you think we've reported inaccurate information, please write to us at Citi Brands Credit Bureau Disputes, PO Box 6241, Sioux Falls, SD 57117.

Payment Amount
You may pay all or part of your account balance at any time. However, you must pay, by the payment due date, at least the minimum payment due.

00 080 257 082

Easily manage your contact info in the Citi Mobile® App

It's important we have your current contact info, so if it changes (including your mailing address), use the Citi Mobile App to easily update it.
Email: a*****i@gmail.com
Mobile: (***)***-6993

» **Log in to the Citi Mobile App and access your "Profile" page**

» **You can also update your contact information on citi.com/contactinformation, or call the number on the back of your card**

Don't have the app? Just text "AppIS" to MyCiti (692484) or visit your app store.

Payments other than by mail

Online. See the front of your statement on how to make a payment.

Phone. For phone payments, you authorize Citi to electronically debit your specified bank account by an ACH transaction in the amount and on such date that you indicate on the phone. You also authorize Citi to automatically debit your specified bank account every month, in the amount and on the same date each month that you indicate on the phone, until you withdraw your authorization. You may cancel a one-time phone payment or withdraw your authorization for automatic debits by calling the number on the front of your statement within the timeframe disclosed to you on the phone.

AutoPay. Visit **autopay.citicards.com** to enroll in AutoPay and have your payment amount automatically deducted each month on your payment date from the payment account you choose.

Express mail. Send payment by express mail to:
Citi Cards
Attention: Bankcard Payments Department
6716 Grade Lane
Building 9, Suite 910
Louisville, KY 40213

Crediting Payments other than by Mail. The payment cutoff time for Online Bill Payments, Phone Payments, and Express mail payments is midnight Eastern time. This means that we will credit your account as of the calendar day, based on Eastern time, that we receive your payment request.

If you send an eligible check, you authorize us to complete your payment by electronic debit. If we do, the checking account will be debited in the amount on the check. We may do this as soon as the day we receive the check. Also, the check will be destroyed.

Account Summary

Trans. date	Post date	Description	Amount
Payments, Credits and Adjustments			
	03/02	ELECTRONIC PAYMENT-THANK YOU	-$108.00

Fees charged

Total fees charged in this billing period	$0.00

Interest charged

Total interest charged in this billing period	$0.00

2022 totals year-to-date

Total fees charged in 2022	$0.00
Total interest charged in 2022	$0.00

Interest charge calculation

Days in billing cycle: **28**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Balance type	Annual percentage rate (APR)	Balance subject to interest rate	Interest charge
PURCHASES			
Standard Purch (Introductory Rate Expires 05/14/22)	0.00%	$0.00 (D)	$0.00
BalTrnOffer 4 (Balance Transfer Rate Expires 06/02/22)	0.00%	$5,943.11 (D)	$0.00
BalTrnOffer 5 (Balance Transfer Rate Expires 10/01/22)	0.00%	$1,164.75 (D)	$0.00
ADVANCES			
Standard Adv	25.24% (V)	$0.00 (D)	$0.00

Your Annual Percentage Rate (APR) is the annual interest rate on your account. APRs followed by (V) may vary. Balances followed by (D) are determined by the daily balance method (including current transactions).

Account messages

SAVINGS SPOTLIGHT DETAILS

INTEREST: If you have promotional balances on your account, we have estimated your savings. This savings is the difference between the interest that was assessed against the promotional balances using the promotional APRs and the estimated interest that would have been assessed against these same balances using the Enhanced Purchase APRs. This savings amount does not include any balance transfer fees. This savings is from your billing period covered by this statement.

NO LATE FEE: Savings on late fees is determined by reviewing your payments and calculating what your late fee would have been on your card without this benefit. If you paid late prior to May 2014, savings on late fees is determined by using a $15 late fee (if your minimum payment due was less than $15, we used that amount as the savings amount). This savings is from your billing period covered by this statement.

CITI EASY DEALS: If you made a purchase on Citi Easy Deals, your savings is the difference between the retail price and the price you paid. This savings is from the prior calendar month.

Please be sure to pay on time. If you submit your payment by mail, we suggest you mail it no later than 04/10/2022 to allow enough time for regular mail to reach us.

Savings Spotlight

Your Citi® Diamond Preferred® Savings Summary

From This Billing Period:

Interest: $80.37

CITI DIAMOND PREFERRED LIFETIME SAVINGS: **$1,334.55**

See Account Messages for more information about Savings Spotlight

Citi Easy Deals®

To find out your current tier: Visit citieasydeals.com or call the number provided above.

Deals you can access, by tier:

Base Tier
- Minimum Annual Purchases: $0.00
- Coupons for local dining and shopping

Enhanced Tier
- Minimum Annual Purchases: $100
- Base tier benefit
- Plus deals on gift cards and magazines

Plus Tier
- Minimum Annual Purchases: $500
- Base and Enhanced tier benefits
- Plus deals on merchandise, travel and daily deals

» For complete details, go to citieasydeals.com

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Disclaimer:
In the coming weeks, we'll be initiating implementation of automatic linking functionality to link all your eligible Citi retail and credit card accounts to your existing User ID. Once this update takes place, you will be notified with a confirmation email. Linking your accounts to a single User ID will allow you to view your accounts in one convenient location while maintaining the ability to manage certain preferences for each account. As a reminder, for the security of your account(s), please do not share your login credentials with others, including authorized user(s).

Thanks for the smart choice of making payments without using the mail!
You haven't made a payment by mail in the last 3 or more months- doesn't it feel great not to have to worry about having stamps handy or a mailbox nearby? You can experience the same kind of freedom by going Paperless for statements too. Enroll today at Citi(R) Online or on the Citi Mobile(R) App!

Update or confirm your account information today
Help us evaluate your account for future credit limit increases by providing or confirming your most recent income and housing information. Securely log in to your account at citi.com/updateincome, or call us toll-free at 1-855-209-8556 TTY: Use 711 or other Relay Service

Costco Anywhere Visa® Card by Citi

citi | COSTCO WHOLESALE

ADAM A BEREKI
Member Since 2020 Account number ending in: 9114
Billing Period: 03/09/22-04/08/22

www.citicards.com
Customer Service 1-855-378-6467
TTY:711
PO Box 790046 ST. LOUIS, MO 63179-0046

APRIL STATEMENT

Minimum payment due:	**$167.79**
New balance as of 04/08/22:	**$3,685.99**
Payment due date:	**05/06/22**

See the back of this statement for important information about how to avoid paying interest on purchases.

Your account is past due $54.00. Please pay at least the minimum payment due, which includes a past due amount.

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40 and your APRs may be increased up to the Penalty APR of 29.99%.

Minimum payment warning: If you make only the minimum payment each period, you will pay more in interest, and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on the statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	12 years	$7,026

For information about credit counseling services, call 1-877-337-8188 .

Account Summary

Previous balance	$3,609.20
Payments	-$0.00
Credits	-$0.00
Purchases	+$0.00
Cash advances	+$0.00
Fees	+$29.00
Interest	+$47.79
New balance	**$3,685.99**

Credit Limit

Credit Limit	$4,000

Includes $0.00 cash advance limit

You're still getting a paper statement.
Why not try Paperless?

With these digital tools available to you, you won't be missing anything!

- **Instant access** to statements and most legal notices online, with statements now available on the **Citi Mobile® App**
- **Customizable** statement ready and payment due **notifications**
- Ability to **request historical statements** online and on the app

Click here to sign up for Paperless!

Costco Cash Rewards Summary

as of 04/08/22

$74.04

» See page 2 for more information about your rewards

For Payments, send check to: Citi Cards, PO BOX 78019, Phoenix, AZ, 85062-8019

citi
Costco Anywhere Visa® Card

PO Box 790057
Saint Louis, MO 63179-0057

Your Monthly Statement is Enclosed

Pay your bill from virtually anywhere with the Citi Mobile® App and Citi® Online

To download:
Text **'App15'** to **MyCiti (692484)**
or go to your device's app store.
Or visit **www.citicards.com**

Minimum payment due	**$167.79**
New balance	**$3,685.99**
Payment due date	**05/06/22**
Amount enclosed: $	

Account number ending in 9114
Please make check payable to Citi Cards.

ADAM A BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

Citi Cards
PO BOX 78019
Phoenix, AZ 85062-8019

ADAM A BEREKI

NOTICE OF CHANGES TO YOUR INTEREST RATES

You have triggered the Penalty APR of 29.990% by making a late payment and due to your credit performance. This change will impact your account as follows:

Transactions made on or after 04/29/2022: As of 06/09/2022, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 04/29/2022: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to these transactions as well.

CARDHOLDER SUMMARY

ADAM A BEREKI	Card ending in 9114
New Charges	**$0.00**

ACCOUNT SUMMARY

Sale Date	Post Date	Description	Amount

ADAM A BEREKI

No Activity

Fees Charged

04/08	LATE FEE - MAR PAYMENT PAST DUE	$29.00
TOTAL FEES FOR THIS PERIOD		**$29.00**

Interest Charged

04/08	INTEREST CHARGED TO STANDARD PURCH	$47.79
TOTAL INTEREST FOR THIS PERIOD		**$47.79**

2022 totals year-to-date

Total fees charged in 2022	**$29.00**
Total interest charged in 2022	**$47.79**

Interest charge calculation

Days in billing cycle: **31**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

Balance type	Annual percentage rate (APR)	Balance subject to interest rate	Interest charge
PURCHASES			
Standard Purch	15.49%(V)	$3,632.27 (D)	$47.79
ADVANCES			
Standard Adv	25.49%(V)	$0.00 (D)	$0.00

Your Annual Percentage Rate (APR) is the annual interest rate on your account. APRs followed by (V) may vary. Balances followed by (D) are determined by the daily balance method (including current transactions).

Account messages

Your account is past due. Please pay the minimum payment due immediately. If your payment has already been sent, thank you.

Costco Cash Rewards Summary

Total Costco Cash Rewards Balance:
$74.04

Costco Cash Rewards Summary

Costco Cash Rewards balance as of last statement	+$74.04
Earned this period	+$0.00
Total Costco Cash Rewards Balance Year To Date:	**$74.04**

Costco Cash Rewards Earned This Period

4% on eligible gas worldwide, including gas at Costco[1]	+$0.00
3% on restaurants	+$0.00
3% on eligible travel worldwide	+$0.00
2% on Costco and Costco.com	+$0.00
1% on all other purchases	+$0.00
Total Earned:	**$0.00**

» Visit citi.com/Costco for more information

[1] Up to $7,000 per year in purchases, then 1% cash back

ADAM A BEREKI

Please note that if we received your pay by phone or online payment between 5 p.m. ET and midnight ET on the last day of your billing period, your payment was credited as of the date of receipt, but will not be reflected until your next statement.

Remember, any charges above your credit limit MUST BE PAID IN FULL by your statement's payment due date.

Please be sure to pay on time. If you submit your payment by mail, we suggest you mail it no later than 04/29/2022 to allow enough time for regular mail to reach us.

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Visa® is a registered trademark of Visa International Service Association and used under license.

Privacy Notice: Please see the enclosed Privacy Notice for important information. Any choices you have made previously will continue to apply until you tell us to make a change.

Update or confirm your account information today Help us evaluate your account for future credit limit increases by providing or confirming your most recent income and housing information. Securely log in to your account at citi.com/updateincome, or call us toll-free at 1-877-313-6759 TTY: Use 711 or other Relay Service

About Interest Charges

How We Calculate Interest. We calculate it separately for each balance shown in the Interest Charge Calculation table. We use the daily balance method (including new transactions). We figure the interest charge by multiplying the daily balance by its daily periodic rate each day in the billing period. To get a daily balance, we take the balance at the end of the previous day, add the interest on the previous day's balance and new charges, subtract new credits or payments, and make adjustments. The Balance Subject to Interest Rate is the average of the daily balances.

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To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these is necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
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Payment Amount. You may pay all or part of your account balance at any time. However, you must pay, by the payment due date, at least the minimum payment due.

COSTCO-0919

Payments other than by mail

Online. See the front of your statement on how to make a payment.

Phone. For phone payments, you authorize Citi to electronically debit your specified bank account by an ACH transaction in the amount and on such date that you indicate on the phone. You also authorize Citi to automatically debit your specified bank account every month, in the amount and on the same date each month that you indicate on the phone, until you withdraw your authorization. You may cancel a one-time phone payment or withdraw your authorization for automatic debits by calling the number on the front of your statement within the timeframe disclosed to you on the phone.

AutoPay. Visit autopay.citicards.com to enroll in AutoPay and have your payment amount automatically deducted each month on your payment date from the payment account you choose.

Express mail. Send payment by express mail to:

Citi Cards
Attention: Bankcard Payments Department
6716 Grade Lane
Building 9, Suite 910
Louisville, KY 40213

Crediting Payments other than by Mail. The payment cutoff time for Online Bill Payments, Phone Payments, and Express mail payments is midnight Eastern time. This means that we will credit your account as of the calendar day, based on Eastern time, that we receive your payment request.

If you send an eligible check, you authorize us to complete your payment by electronic debit. If we do, the checking account will be debited in the amount on the check. We may do this as soon as the day we receive the check. Also, the check will be destroyed.

Gmail Adam Bereki <abereki@gmail.com>

Notice of Forced Foreclosure/Bankruptcy and Unlawful Seizure/Taking of Property and Rights 04-10-22

Adam <abereki@gmail.com> Sun, Apr 10, 2022 at 8:29 AM
To: ernesto.mejia@chp.ca.gov, emoran@chp.ca.gov

Notice to Agent is Notice to Principal.

Ed and Ernesto,

As I shared with you both resulting from the ongoing and **in progress** crimes and treason being perpetrated against me by rogue State and Federal officials, the next stage of the unlawful taking and seizure of my rights and property has begun. On 4/9/22, I received a Notice of Default and Intent to Accelerate from Shellpoint, the company in charge of servicing the loan for real property held in my living trust. As you'll recall, a lien resulting from the fraudulent judgments against me has been placed on the property in further attempt to steal my money and property and the beneficial interest held therein by my mother. (See attached).

Additionally and as direct as direct and proximate result of:

1) the fraudulent and illegal judgement(s) against me;
2) the unlawful conversion of my right to earn a living into a revocable privilege;
3) the indefinite suspension of my ability to obtain a license and earn gainful employment as a contractor without any hearing or lawful authority;
4) the fraudulent lien placed on the real property held in my living trust; and,
5) being forced into a condition of involuntary servitude to defend my rights and property against rogue official actors,

neither I nor my living trust are able to pay the mortgage payments, property taxes, and other personal and estate related expenses.

To pay for litigation related costs, basic living needs and medical expenses, I've been forced to use credit cards which I have become unable to pay. (See attached).

The result of all of the foregoing is obviously that despite all of my efforts to obtain a remedy from every branch of State and Nation government, I am being forced into foreclosure and/or bankruptcy or both as a means of continuing to perpetrate the aforementioned crimes against me and my mother.

As we've repeatedly discussed, it is your sworn duty to protect my rights and property from unlawful taking and seizure by criminals acting under color of law but without lawful authority as official State and Federal actors.

I recently also made a complaint to the office of the Orange County Treasurer-Tax Collector (Shari Friedenrich) so that her office would not be used as another instrument and weapon without authority. I have not received any response. (See attached). All of the complaints I have made to State and Federal actors can be found in the Exhibits section of my website http://www.thespiritoflaw.com.

Please respond by notifying me you received this Notice. As there is no apparent judicial Constitutional Court to go to at the State or Federal level, your offices appear to be the only authority to stop this heinous abuse of power.

Please also notify me of the status of your investigation.

EXHIBIT [D] p.5094

Respectfully,

Adam Bereki
949.241.6693

---

2 attachments

COMPLAINT OC TAX COLLECTOR AND CLERK.pdf
4646K

Notice of Default on Mortgage and Credit Cards.pdf
3103K

AdminSure

3380 Shelby Street
Ontario, CA 91764

Telephone (909)861-0816
Fax (909)860-3995
www.adminsure.com

May 26, 2022

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Reference:	Principal:	City of Newport Beach
	Loss Date:	10/28/2021
	Claim(s) Made:	05/25/2022
	Claimant(s):	Bereki, Adam
	Our File Number:	22-164211

Dear Mr. Bereki:

We are the Third-Party Administrators handling the liability claims for the City of Newport Beach.

This is an acknowledgment of the claim you presented to the City of Newport Beach on 05/25/2022. In the future, you should address all information and inquiries to my attention.

Our investigation has begun and we will be communicating with you in the near future in regard to this matter.

Should you have any questions or wish to discuss this matter, please do not hesitate to contact the undersigned.

Sincerely,

David Santos
Liability Administrator
(909)493-3378
dsantos@adminsure.com

cc: City of Newport Beach

AdminSure

3380 Shelby Street
Ontario, California 91764-5566

1500 5803832525

US POSTAGE PITNEY BOWES

ZIP 91764 $ 000.53⁰
02 4W
0000383828 MAY 31 2022

Gmail

Complaint to Chief Lewis

Adam <abereki@gmail.com> Sat, Jun 4, 2022 at 9:39 AM
To: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>, "Joe, Darrin" <djoe@nbpd.org>

To Chief Lewis by email to Peter Carpintieri.

Good day Chief,

The following is an additional complaint pertaining to the handling of my recent complaints for deprivation of rights, fraud, treason and other crimes to "Sgt. Joe"/ the NBPD/City of NB. Upon receiving and investigating numerous records requests I made to the City, it is apparent that "Sgt.Joe" has not **subscribed** an oath of office as required by Article XX of the California Constitution for either the positions of police officer or police sergeant and therefore was not officially in office to make any determinations into my complaints or consequently to receive any compensation from the public treasury. Article XX, Section 3 mandates that officials **shall, before they enter upon the duties of their respective offices**, take **and** subscribe the listed oath. The only subscribed oath on file with your agency is from August 16, 2001, apparently for the position of police recruit which Joe was appointed to on 8/10/01. The 8/16/01 oath does not list the position he subscribed the oath for as should minimally be required but it nevertheless seems reasonable that it was the oath for the recruit position he was taking. It also was never signed by the City Clerk or another official that was empowered to administer the oath.

I'll expect your prompt full, fair, and impartial investigation into this matter as well as a determination of my previous complaints by an official that is lawfully in office. I remain open and available to cooperate with your investigation(s) and am in full support of the officers of the NBPD actually performing the duties they are required to take an oath for.

Based upon the other oaths I received and/or didn't receive in the records requests, the failure to follow Article XX appears to be a recurring dereliction of non-discretionary ministerial duty at your agency.

I've attached the only oath I received for Joe.

Sincerely,

Adam Bereki

Darrin Joe Oath 081601.pdf
112K

Adam <abereki@gmail.com> Sat, Jun 4, 2022 at 9:45 AM
To: dsantos@adminsure.com

Good day David,

I received your letter that you would be investigating my complaint on behalf of AdminSure. As part of the complaint you're investigating, please see the attached additional information and formal complaint I made to the Chief of NBPD today.

Sincerely,

Adam Bereki

Darrin Joe Oath 081601.pdf
112K

EXHIBIT [D] p.5099

STATE OF CALIFORNIA
CITY OF NEWPORT BEACH
ORANGE COUNTY

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, DARRIN SCOTT JOE, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Darrin Scott Joe
Signature

POLICE DEPARTMENT
Title or Department

Subscribed and sworn to before me
this 16 day of AUGUST,
20 01.

City Clerk

EXHIBIT [D]– 4868

Customer Information

Name:	Adam Bereki	**Phone #:**	9492416693
Address:	818 Spirit Costa Mesa, CA 92663	**Email:**	abereki@gmail.com

My Requests (main_view.aspx)
New Request (default.aspx)

Request Details

Request:	General Records Request - Adam Bereki		
Type:	General Records Request	**Ticket #:**	485430
Location Type:	NONE	**Create Date:**	6/4/2022
Location:		**Status:**	OPENED
map it!		**Case Worker:**	Not Assigned

Comments & History

+ Add Comment

EXHIBIT [D] p.5101

By:	6/4/2022 8:06:45 AM	Type:
Adam(user)		Details

Please provide all documents in your control pertaining to the City of Newport Beach contract(s) with AdminSure and all of the policies and procedures of AdminSure uses to investigate and make determinations of claims submitted to it. Also include the resume of David Santos, Liability Administrator for AdminSure, and all other documents evidencing his credentials and experience in investigating the types of claims submitted to the City by Adam Bereki. Also provide all documents evidencing the lawful authority(ies) whereby Bereki''s claim – submitted to executive branch officials for deprivation of rights, fraud, treason, and other crimes – can be handed off or assigned to a third party administrator for investigation.

Having technical issues? Send us an email (mailto:RevenueHelp@newportbeachca.gov?subject=Quest Issues).

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EXHIBIT [D] p.5102

Gmail

Complaint to Chief Lewis

Adam <abereki@gmail.com> Sat, Jun 4, 2022 at 9:39 AM
To: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>, "Joe, Darrin" <djoe@nbpd.org>

To Chief Lewis by email to Peter Carpintieri.

Good day Chief,

The following is an additional complaint pertaining to the handling of my recent complaints for deprivation of rights, fraud, treason and other crimes to "Sgt. Joe"/ the NBPD/City of NB. Upon receiving and investigating numerous records requests I made to the City, it is apparent that "Sgt.Joe" has not **subscribed** an oath of office as required by Article XX of the California Constitution for either the positions of police officer or police sergeant and therefore was not officially in office to make any determinations into my complaints or consequently to receive any compensation from the public treasury. Article XX, Section 3 mandates that officials **shall, before they enter upon the duties of their respective offices**, take **and** subscribe the listed oath. The only subscribed oath on file with your agency is from August 16, 2001, apparently for the position of police recruit which Joe was appointed to on 8/10/01. The 8/16/01 oath does not list the position he subscribed the oath for as should minimally be required but it nevertheless seems reasonable that it was the oath for the recruit position he was taking. It also was never signed by the City Clerk or another official that was empowered to administer the oath.

I'll expect your prompt full, fair, and impartial investigation into this matter as well as a determination of my previous complaints by an official that is lawfully in office. I remain open and available to cooperate with your investigation(s) and am in full support of the officers of the NBPD actually performing the duties they are required to take an oath for.

Based upon the other oaths I received and/or didn't receive in the records requests, the failure to follow Article XX appears to be a recurring dereliction of non-discretionary ministerial duty at your agency.

I've attached the only oath I received for Joe.

EXHIBIT [D] p.5103

Sincerely,

Adam Bereki

Darrin Joe Oath 081601.pdf
112K

Adam <abereki@gmail.com>
To: dsantos@adminsure.com

Sat, Jun 4, 2022 at 9:45 AM

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Sincerely,

Adam Bereki

Darrin Joe Oath 081601.pdf
112K

EXHIBIT [D] p.5104

STATE OF CALIFORNIA
CITY OF NEWPORT BEACH
ORANGE COUNTY

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

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Darrin Scott Joe
Signature

POLICE DEPARTMENT
Title or Department

Subscribed and sworn to before me
this 16 day of AUGUST,
20 01.

City Clerk

EXHIBIT [D]– 4868

Gmail Adam Bereki <abereki@gmail.com>

Complaint to Chief Lewis

Adam <abereki@gmail.com> Sat, Jun 4, 2022 at 9:39 AM
To: "Carpentieri, Peter" <pcarpentieri@nbpd.org>, "Harp, Aaron" <aharp@newportbeachca.gov>, "Joe, Darrin" <djoe@nbpd.org>

To Chief Lewis by email to Peter Carpintieri.

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Sincerely,

Adam Bereki

Darrin Joe Oath 081601.pdf
112K

Adam <abereki@gmail.com> Sat, Jun 4, 2022 at 9:45 AM
To: dsantos@adminsure.com

Good day David,

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Sincerely,

Adam Bereki
[Quoted text hidden]

Darrin Joe Oath 081601.pdf
112K

STATE OF CALIFORNIA
CITY OF NEWPORT BEACH
ORANGE COUNTY

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

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Darrin Scott Joe
Signature

POLICE DEPARTMENT
Title or Department

Subscribed and sworn to before me
this 16 day of AUGUST,
20 01.

City Clerk

CITY OF NEWPORT BEACH
870 Santa Barbara Drive
Newport Beach, California 92660
949-644-3681
nbpd.org

Adam Bereki
abereki@gmail.com

June 16, 2022

RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED June 14, 2022; NOTICE OF DETERMINATION

To Adam Bereki,

The Newport Beach Police Department received your California Public Records Act ("Act") (Govt. Code 6250 et seq.) request on June 14, 2022. This response will serve as the Department's notice of determination as to whether the request in or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code 6250 et seq.).

You requested the oaths of office for Darrin Joe. Please see the attachment which has the only oath of office on file for Darrin Joe.

If you have any questions regarding this matter, I can be contacted at (949) 644-3680 or mfear@nbpd.org.

Sincerely,

Matthew Fear
Records Supervisor
Newport Beach Police Department

Gmail Adam Bereki <abereki@gmail.com>

Costa Mesa Police Department

Sunny Fargeat <sf@jones-mayer.com> Fri, Jul 15, 2022 at 9:44 AM
To: "abereki@gmail.com" <abereki@gmail.com>
Cc: "Gregory P. Palmer" <gpp@jones-mayer.com>

Good Morning Mr. Bereki,

Attached please find correspondence from Attorney Greg Palmer for the Costa Mesa Police Department regarding your two recent requests.

Thank you.

JONES MAYER
LAW
www.jones-mayer.com

Sunny Fargeat

Legal Secretary

Jones Mayer | 3777 N. Harbor Blvd. | Fullerton, CA 92835

☎ (714) 446-1400 | 🖷 (714) 446-1448 | ✉ sf@jones-mayer.com

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is strictly prohibited.

CMPD - PRA Response to Mr. Bereki 7-15-22.pdf
250K

Adam <abereki@gmail.com> Fri, Jul 15, 2022 at 10:52 AM
To: Sunny Fargeat <sf@jones-mayer.com>
Cc: "Gregory P. Palmer" <gpp@jones-mayer.com>

Good morning Mr. Palmer,

Thank you for your response. In your letter you state that "The oaths of office of Chief Ron Lawrence, Sgt. Manson and Lt. Bryan Watkins are attached [...]" however their oaths are not attached. The only thing provided is a copy of the oath required by Cal. Const. Art. XX. Sec. 3. That section requires that the oath be both taken and **subscribed** for each office held by an official. The document request I made was for copies of the oaths that were actually subscribed by each of the officials for each position they have held within the CMPD. Pursuant to the Public Records Act, please provide these official documents to me.

While I appreciate your counsel to seek redress with the Orange County District Attorney's Office and the California Attorney General's Office, both have declined to investigate my complaints and to intervene as required by law. As the officers of the CMPD have sworn to abide these duties, I believe they have a mandatory, non-discretionary duty to do so, including whether the OCDA or CAL DOJ takes any action. Furthermore, some of the property that is under attack and being taken or seized without lawful authority is within the geographical limits of the City of Costa Mesa. The State has created this harm and danger to me and my estate and therefore its agents have a mandatory duty to intercede. The right to petition for redress of grievance under our State and National constitutions, includes ALL branches of government and makes no exclusion to municipal police agencies. Our Constitutions also apply in full force within the City of Costa Mesa. I believe it is an egregious dereliction of duty and violation of fundamental rights and due process for the officers of CMPD to refuse to investigate and intervene to protect my rights, liberty, and property, and that of my estate when these rights are clearly established law.

Sincerely,

Adam Bereki

Gregory P. Palmer <gpp@jones-mayer.com> Fri, Jul 15, 2022 at 11:59 AM
To: Adam <abereki@gmail.com>, Sunny Fargeat <sf@jones-mayer.com>
Cc: "WADKINS, BRYAN" <BWADKINS@costamesaca.gov>, "DIAZ, CARLOS" <CDIAZ@costamesaca.gov>

Mr Bereki:

I apologize. This was my oversight. I was told the oaths of office was attached and I should have, but did not proofread beyond just the cover letter. I understood that you wanted the actual oath of office that was signed and subscribed. Apparently, I did not communicate that well to the CMPD. I have corrected that and asked for the actual

oath documentation to be sent to me and as soon as I get them, they will be forwarded to you.

As for the second part of your response email, we consider the matter closed and will have no further comment to make. We will not further argue the point with you.

Greg Palmer

Jones Mayer

From: Adam <abereki@gmail.com>
Sent: Friday, July 15, 2022 10:52 AM
To: Sunny Fargeat
Cc: Gregory P. Palmer
Subject: Re: Costa Mesa Police Department

Good morning Mr. Palmer,

Thank you for your response. In your letter you state that "The oaths of office of Chief Ron Lawrence, Sgt. Manson and Lt. Bryan Watkins are attached [...]" however their oaths are not attached. The only thing provided is a copy of the oath required by Cal. Const. Art. XX. Sec. 3. That section requires that the oath be both taken and subscribed for each office held by an official. The document request I made was for copies of the oaths that were actually subscribed by each of the officials for each position they have held within the CMPD. Pursuant to the Public Records Act, please provide these official documents to me.

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Sincerely,

Adam Bereki

On Fri, Jul 15, 2022 at 9:43 AM Sunny Fargeat <sf@jones-mayer.com<mailto:sf@jones-mayer.com>> wrote:
Good Morning Mr. Bereki,

Attached please find correspondence from Attorney Greg Palmer for the Costa Mesa Police Department regarding your two recent requests.

Thank you.

[cid:18202ee29ca4cff311] <http://www.jones-mayer.com>

Sunny Fargeat
Legal Secretary

Jones Mayer | 3777 N. Harbor Blvd. | Fullerton, CA 92835
* (714) 446-1400 | 7 (714) 446-1448 | * sf@jones-mayer.com<mailto:sf@jones-mayer.com>
[Quoted text hidden]

JONES MAYER
LAW
www.jones-mayer.com

image001.png
12K

Adam <abereki@gmail.com> Fri, Jul 15, 2022 at 12:16 PM
To: "Gregory P. Palmer" <gpp@jones-mayer.com>
Cc: Sunny Fargeat <sf@jones-mayer.com>, "WADKINS, BRYAN" <BWADKINS@costamesaca.gov>, "DIAZ, CARLOS" <CDIAZ@costamesaca.gov>

Greg,

Thank you for your prompt and kind response regarding the oaths. I make mistakes too and it's no problem at all. I appreciate your diligence ensuring my records request is fulfilled.

After sending my previous response, I also noticed that there appears to be a date of promotion/appointment missing for Lt. Wadkins. If I understand correctly, he was appointed to police officer on 12/24/1995, correct? (you didn't provide the position he was appointed to). The next promotion date you gave for Lt. Wadkins is for Lieutenant on 1/3/21. Was he ever a Sergeant? If so, what was the date of this promotion?

As for the other point pertaining to my deprivation of rights complaint with the City, I have received your/the City's determination(s) and understand the City has considered my complaint "closed."

Sincerely,
Adam Bereki
[Quoted text hidden]

EXHIBIT [D] p.5113

July 15, 2022

U.S. Mail and Email: abereki@gmail.com
Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Re: Letter of July 11, 2022 and Public Records Act Request of July 13, 2022
Submitted to the City of Costa Mesa Police Department

Dear Mr. Bereki,

This office serves as the legal advisor to the City of Costa Mesa Police Department (CMPD) and it is in that capacity I write. Your letter of July 11, 2022 and Public Records Act (PRA) request dated July 13, 2022 have been sent to us for review and response.

Response to July 11, 2022 Letter

The official policy of the Costa Mesa Police Department may be found in the Police Department Policy Manual. The policy manual of the police department may be found online in the City's website.

That said, the CMPD is aware of the substance of your complaint as described to Sgt. Manson in your phone call with him. The department agrees with the manner in which Sgt. Manson dealt with your situation on the phone and his decision declining police services in response to the nature of your complaint. Nothing more will be done in response to your complaint.

If you find this response to be unacceptable, you may request the Orange County District Attorney's Office or the California Attorney General's Office to consider your request.

Public Records Act Request

In response to your July 13, 2022 PRA request, we respond as follows:

1. The oaths of office of Chief Ron Lawrence, Sgt. Manson and Lt. Bryan Watkins are attached to this response.

2. Chief Lawrence was sworn in on September 7, 2021. Lt. Bryan Watkins was appointed on December 24, 1995. He was promoted to Lieutenant on January 3, 2021. Sgt. Manson was first appointed on August 7, 1994. He was promoted to the rank of Sergeant on December 14, 2014. His first name is Michael.

Thank you for your inquiry. If you have any questions or concerns, please contact my office.

Very truly yours,

Gregory P. Palmer
Counsel for City of Costa Mesa
Police Department

GPP:sf
Enclosure
cc: Lieutenant Bryan Wadkins, Professional Standards Bureau, Costa Mesa Police Dept.

Oath of Office:

"I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

July 15, 2022

U.S. Mail and Email: abereki@gmail.com
Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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Submitted to the City of Costa Mesa Police Department

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Thank you for your inquiry. If you have any questions or concerns, please contact my office.

Very truly yours,

Gregory P. Palmer
Counsel for City of Costa Mesa
Police Department

GPP:sf
Enclosure
cc: Lieutenant Bryan Wadkins, Professional Standards Bureau, Costa Mesa Police Dept.

Oath of Office:

"I, (employee name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

JONES MAYER
LAW

3777 N. Harbor Blvd.
Fullerton, CA 92835

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MAILED FROM ZIP CODE 92835

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

92626-308918

Gmail

PROFESSIONAL STANDARDS COMPLAINT/ COMPLAINT FOR DEPRIVATION OF RIGHTS

Adam <abereki@gmail.com> Mon, Jul 11, 2022 at 8:18 AM
To: rlawrence@costamesaca.gov

Chief Lawrenece,

Thank you for being here and taking the time to hear my complaint. Please see the attached PDF document first as it will explain the situation. The other attached file is an audio recording of the incident.

I'll look forward to your prompt attention and determination of this matter.

Sincerely,

Adam Bereki

2 attachments

BEREKI COMPLAINT TO CMPD LAWRENCE 071122.pdf
38K

20220618-082722997-WC-5690-20220618082722997-2046-gQPJsxcz.wav
14180K

EXHIBIT [D] p.5122

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

July 11, 2022

Ron Lawrence
Chief
Costa Mesa Police Department
Via email to: rlawrence@costamesaca.gov

RE: Criminal Complaint and Complaint for Deprivation of Constitutionally Protected Rights by Public Officials

Chief Lawrence,

On June 18, 2022, I called your department to make a criminal complaint and complaint for deprivation of Constitutionally protected rights by public officials – namely superior Court Judges – who had taken (and continue take) my property without lawful authority. I spoke with Sgt. Manson who was the Watch Commander at the time. After sharing a brief synopsis of the issues with Sgt. Manson, he told me that the City of Costa Mesa would not investigate my complaint or intervene to protect my liberty and property, including a home that is within the City of Costa Mesa.

It is apparent to me that Sgt. Manson is egregiously in violation of his sworn duties and that he may need significant training on these issues. If that is indeed the case, I wanted to make you aware of this so he can get the training he needs, and also, to give the CMPD another opportunity to fulfill its Constitutionally mandated duties.

I have included a copy of the call with Sgt. Manson I obtained pursuant to a public records act request for you to review and hear the exact words that were spoken by both us.

It is my understanding that police officers of California have a sworn duty to protect and defend our Constitutions and the rights secured thereby, especially in a situation like this where the State itself has created the danger and continues to perpetrate the harm upon me and many other like-situated People of California.

Please inform me if Sgt. Manson's determinations to refuse to investigate my complaint and intervene to protect my liberty and property are indeed the official

policies of the City of Costa Mesa. If you are not the official empowered to make these official policy determinations, please forward this request to the proper official who is.

If Sgt. Manson's determinations are not the official policy(ies) of the City of Costa Mesa, then please have an officer contact me immediately to begin a proper investigation.

I remain open, available, and willing to cooperate with any investigation. Please feel free to contact me at the phone number of above and know that any communications we have will be recorded.

Sincerely,

/s/ Adam Bereki

Gmail [redacted]

Costa Mesa Police Department

Sunny Fargeat <sf@jones-mayer.com> Tue, Jul 19, 2022 at 3:43 PM
To: "abereki@gmail.com" <abereki@gmail.com>
Cc: "Gregory P. Palmer" <gpp@jones-mayer.com>

Good Afternoon Mr. Bereki,

Attached please find correspondence from Attorney Greg Palmer for the Costa Mesa Police Department which is a follow-up to your recent PRA request.

This recording will be placed on a flash drive and mailed you to you with the letter.

Thank you.

JONES MAYER
LAW
www.jones-mayer.com

Sunny Fargeat

Legal Secretary

Jones Mayer | 3777 N. Harbor Blvd. | Fullerton, CA 92835

☎ (714) 446-1400 | (714) 446-1448 | sf@jones-mayer.com

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---------- Forwarded message ----------
From: Administrator <postmaster@jones-mayer.com>
To: "abereki@gmail.com" <abereki@gmail.com>
Cc:
Bcc:
Date: Tue, 19 Jul 2022 22:43:48 +0000
Subject: Bereki and Lt_ Wadkins phone 7-11-22_MP3

Linked Attachment Download

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File Name

Bereki and Lt. Wadkins phone 7-11-22.MP3

File Size

37331910 Bytes

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---------- Forwarded message ----------
From: Administrator <postmaster@jones-mayer.com>
To: "abereki@gmail.com" <abereki@gmail.com>
Cc:
Bcc:
Date: Tue, 19 Jul 2022 22:43:48 +0000
Subject: CMPD - PRA Response to Mr_ Bereki - Follow Up re Oaths of Office 7-19-22_pdf

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Adam <abereki@gmail.com> Tue, Jul 19, 2022 at 6:35 PM
To: Sunny Fargeat <sf@jones-mayer.com>, "Gregory P. Palmer" <gpp@jones-mayer.com>, "WADKINS, BRYAN" <BWADKINS@costamesaca.gov>, rlawrence@costamesaca.gov

Good afternoon Sunny and Gregory,

Thank you for your message and for providing the documents I requested.

Gregory, I want to make sure that I understand your response. In your 7-19-22 letter, you state that "Per Human Resources Director Kasama Lee, the Chief's oath was on file with Human Resources because it was given at City Council. The oaths regarding Sgt. Manson and Lt. Wadkins do not exist in Human Resources or with the City Clerk Brenda Green."

Confirming: (1) there are no oaths of office for Manson for the positions of police officer and police sergeant; and, (2) there are no oaths of office for Wadkins for the positions of police officer, police sergeant, and police lieutenant?

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Thank you for your time.

Sincerely,

Adam Bereki

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To: "abereki@gmail.com" <abereki@gmail.com>
Cc:
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Date: Tue, 19 Jul 2022 22:43:48 +0000
Subject: Bereki and Lt_ Wadkins phone 7-11-22_MP3

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Bereki and Lt. Wadkins phone 7-11-22.MP3
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As for your other claims, we have told you before, that portion of the matter is closed and will not be further addressed.

Greg

From: Adam <abereki@gmail.com>
Sent: Tuesday, July 19, 2022 6:35 PM
To: Sunny Fargeat; Gregory P. Palmer; WADKINS, BRYAN; rlawrence@costamesaca.gov
Subject: Re: Costa Mesa Police Department

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Thank you.

[cid:182192828364cff311] <http://www.jones-mayer.com>

Sunny Fargeat
Legal Secretary

Jones Mayer | 3777 N. Harbor Blvd. | Fullerton, CA 92835
• (714) 446-1400 | 7 (714) 446-1448 | • sf@jones-mayer.com<mailto:sf@jones-mayer.com>
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image001.png
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To: "Gregory P. Palmer" <gpp@jones-mayer.com>
Cc: Sunny Fargeat <sf@jones-mayer.com>, "WADKINS, BRYAN" <BWADKINS@costamesaca.gov>, rlawrence@costamesaca.gov

Greg,

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I should also make you aware that foreclosure proceedings commenced on my home on July 7th, 2022. I received notice on Monday this week. This will force me into bankruptcy within the next 80 days or less.

Sincerely,

Adam Bereki

On Jul 19, 2022, at 6:53 PM, Gregory P. Palmer <gpp@jones-mayer.com> wrote:

Mr. Bereki:

EXHIBIT [D] p.5132

image001.png
12K

Gregory P. Palmer <gpp@jones-mayer.com> Tue, Jul 19, 2022 at 7:49 PM
To: Adam Bereki <abereki@gmail.com>

Other than to provide you with the date of Wadkins promotion to sergeant when I get it I will not respond any more to your emails.

Sent from my iPhone

On Jul 19, 2022, at 7:46 PM, Adam Bereki <abereki@gmail.com> wrote:

Greg,

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EXHIBIT [D] p.5133

As for your other claims, we have told you before, that portion of the matter is closed and will not be further addressed.

Greg

From: Adam <abereki@gmail.com>
Sent: Tuesday, July 19, 2022 6:35 PM
To: Sunny Fargeat; Gregory P. Palmer; WADKINS, BRYAN; rlawrence@costamesaca.gov<
mailto:rlawrence@costamesaca.gov>
Subject: Re: Costa Mesa Police Department

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EXHIBIT [D] p.5134

Thank you.

[cid:182192828364cff311] <http://www.jones-mayer.com<http://www.jones-mayer.com>>>

Sunny Fargeat
Legal Secretary

Jones Mayer | 3777 N. Harbor Blvd. | Fullerton, CA 92835
• (714) 446-1400 | 7 (714) 446-1448 | • sf@jones-mayer.com<mailto:sf@jones-mayer.com>
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Cc:
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image001.png
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July 19, 2022

U.S. Mail and Email: abereki@gmail.com
Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Re: Follow-Up Letter
Letter of July 11, 2022 and Public Records Act Request of July 13, 2022
Submitted to the City of Costa Mesa Police Department

Dear Mr. Bereki,

Enclosed please the Oath of Office for Chief Lawrence and a recording of your phone call with Lt. Wadkins.

Per Human Resources Director Kasama Lee, the Chief's oath was on file with Human Resources because it was given at City Council. The oaths regarding Sgt. Manson and Lt. Wadkins do not exist in Human Resources or with the City Clerk Brenda Green.

If you have any questions or concerns, please contact my office.

Very truly yours,

Gregory P. Palmer
Counsel for City of Costa Mesa
Police Department

GPP:sf
Enclosures
cc: Lieutenant Bryan Wadkins, Professional Standards Bureau, Costa Mesa Police Dept.

OATH OR AFFIRMATION OF ALLEGIANCE FOR PUBLIC OFFICERS AND EMPLOYEES

State of California,
County of Orange
City of Costa Mesa SS.

The Execution of this Oath is Required by Article XX, Section 3, of the Constitution of the State of California.

I, Ron Lawrence, Police Chief of the Costa Mesa Police Department, do solemnly affirm that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Subscribed and sworn to before me this
7th day of September 2021

CITY OF COSTA MESA CALIFORNIA
CITY OF THE ARTS
INCORPORATED 1953

Brenda Green
Signature of Officer Administering Oath

City Clerk
Title of Officer Administering Oath

Signature of Person Taking Oath

July 19, 2022

U.S. Mail and Email: abereki@gmail.com
Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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Brenda Green
Signature of Officer Administering Oath

City Clerk
Title of Officer Administering Oath

Signature of Person Taking Oath

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Fullerton, CA 92835

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Adam Bereki
818 Spirit
Costa Mesa, CA 92626

92626-308918

NO OATHS — MANSON of WADKINS

Gmail Adam Bereki <abereki@gmail.com>

Costa Mesa Police Department Records Request

WADKINS, BRYAN <BWADKINS@costamesaca.gov> Mon, Jul 25, 2022 at 4:36 PM
To: Adam Bereki <abereki@gmail.com>
Cc: "Gregory P. Palmer" <gpp@jones-mayer.com>

Mr. Bereki,

My appoligies for not immediately responding to this email chain as I have been and remain out of the office the past two weeks at an off sight training.

Here are my hiring and promotion dates you requested:

Hired as Police Officer: 12/24/1995
Promoted to Corporal: 11/27/2005
Promoted to Sergeant: 01/06/2008
Promoted to Lieutenant: 01/03/2021

Regards,

Lieutenant Bryan Wadkins
Costa Mesa Police Department
714-754-5292

From: Adam Bereki <abereki@gmail.com>
Sent: Tuesday, July 19, 2022 7:45 PM
To: Gregory P. Palmer <gpp@jones-mayer.com>
Cc: Sunny Fargeat <sf@jones-mayer.com>; WADKINS, BRYAN <BWADKINS@costamesaca.gov>; rlawrence@costamesaca.gov <rlawrence@costamesaca.gov>
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On Tue, Jul 19, 2022 at 3:43 PM Sunny Fargeat <sf@jones-mayer.com<mailto:sf@jones-mayer.com>> wrote:
Good Afternoon Mr. Bereki,

Attached please find correspondence from Attorney Greg Palmer for the Costa Mesa Police Department which is a follow-up to your recent PRA request.

This recording will be placed on a flash drive and mailed you to you with the letter.

Thank you.

[cid:182192828364cff311] <http://www.jones-mayer.com>

Sunny Fargeat
Legal Secretary

Jones Mayer | 3777 N. Harbor Blvd. | Fullerton, CA 92835
• (714) 446-1400 | 7 (714) 446-1448 | • sf@jones-mayer.com<mailto:sf@jones-mayer.com>
P Please consider the environment before printing this e-mail

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---------- Forwarded message ----------
From: Administrator <postmaster@jones-mayer.com<mailto:postmaster@jones-mayer.com>>
To: "abereki@gmail.com<mailto:abereki@gmail.com>" <abereki@gmail.com<mailto:aber
eki@gmail.com>>
Cc:
Bcc:
Date: Tue, 19 Jul 2022 22:43:48 +0000
Subject: Bereki and Lt_ Wadkins phone 7-11-22_MP3
Linked Attachment Download

The following attachment was removed from the associated email message. You may download the attachment, if you are sure that it is safe to do so, by clicking the Click Here to Download link below.

File Name
Bereki and Lt. Wadkins phone 7-11-22.MP3
File Size
37331910 Bytes
Click Here to Download<https://protect-us.mimecast.com/s/s6OsCxky0IF2GwQu8Hg7b>

This attachment file has passed various security checks, but this does NOT guarantee that the file is safe. You should only download the attachment if you know and trust the sender.

Attachment downloads are monitored and audited for security reasons.

---------- Forwarded message ----------
From: Administrator <postmaster@jones-mayer.com<mailto:postmaster@jones-mayer.com>>
To: "abereki@gmail.com<mailto:abereki@gmail.com>" <abereki@gmail.com<mailto:aber
eki@gmail.com>>
Cc:
Bcc:
Date: Tue, 19 Jul 2022 22:43:48 +0000
Subject: CMPD - PRA Response to Mr_ Bereki - Follow Up re Oaths of Office 7-19-22_pdf
Linked Attachment Download

The following attachment was removed from the associated email message. You may download the attachment, if you are sure that it is safe to do so, by clicking the Click Here to Download link below.

File Name
CMPD - PRA Response to Mr. Bereki - Follow Up re Oaths of Office 7-19-22.pdf
File Size
682502 Bytes
Click Here to Download<https://protect-us.mimecast.com/s/BmrUCADrLmhvm21fYTQtV>

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JONES MAYER
LAW
www.jones-mayer.com

image001.png
12K

Adam Bereki <abereki@gmail.com> Mon, Jul 25, 2022 at 5:39 PM
To: "WADKINS, BRYAN" <BWADKINS@costamesaca.gov>
Cc: "Gregory P. Palmer" <gpp@jones-mayer.com>

Thank you, Bryan. No apology necessary.

On Jul 25, 2022, at 4:37 PM, WADKINS, BRYAN <BWADKINS@costamesaca.gov> wrote:

JONES MAYER
LAW
www.jones-mayer.com

image001.png
12K

CM 7/20/22

ONLINE PUBLIC RECORDS REQUEST

5. Please describe the nature of the documents you are requesting. Please be as specific as possible for a timely response.

The oath of office for Gregory Palmer.
The contract(s) to perform city attorney services between Jones Mayer and the City of Costa Mesa.
All documents evidencing the precise duties and responsibilities of the City Attorney. Specifically, I am looking for all documents that authorize the City attorney to make final executive policy determinations for the City of Costa Mesa Police Department and the City of Costa Mesa.
All documents evidencing which officials of the City of Costa Mesa have final policymaking authority for the City of Costa Mesa Police Department.
The oaths of office for each city council member.

I'm not a robot
reCAPTCHA
Privacy - Terms

SUBMIT PREVIOUS PAGE

CMPD
CM-MGR GOVT

Gmail

Public Records Request #528 (Bereki) Oaths, Jones & Mayer, etc.

NGUYEN, DAVID <DAVID.NGUYEN@costamesaca.gov> Thu, Jul 28, 2022 at 4:30 PM
To: "abereki@gmail.com" <abereki@gmail.com>
Cc: "TAFOYA, KAREN" <KAREN.TAFOYA@costamesaca.gov>

Good afternoon,

This email serves as response to your public records request for the oath of office for: Gregory Palmer and all City Council members, contracts/agreements with Jones & Mayer, documents evidencing the duties and responsibilities of the City Attorney, and documents evidencing which officials have final policy making authority for the Costa Mesa Police Department. Below you will find a link from which you can access documents responsive to your request.

https://www.dropbox.com/sh/fde0g5mycej4sg5/AADQdUWaN-vYVh7vAR1nSfcYa?dl=0

Thank you and have a good day.

David Nguyen

City Clerk's Office

77 Fair Drive

Costa Mesa, Ca 92626

As City Hall has reopened, we encourage the public to take advantage of our appointment system. Appointments can be made at **www.costamesaca.gov/appointments**.

Please note that It is required that all guests check in with our Concierge Staff, located on the 1st Floor Lobby, upon arrival at City Hall.

EXHIBIT [D] p.5148

ORDINANCE NO. 18

AN ORDINANCE OF THE CITY OF COSTA MESA CREATING AND ESTABLISHING A CITY MANAGER FORM OF GOVERNMENT FOR SAID CITY AND DEFINING THE AUTHORITY, POWER AND DUTIES OF THE CITY MANAGER.

The City Council of the City of Costa Mesa does ordain as follows:

Section 1.

OFFICE OF CITY MANAGER CREATED

The Office of the City Manager of the City of Costa Mesa is hereby created and established. The City Manager shall be appointed by the City Council solely on the basis of his executive and administrative qualifications and ability and shall hold office at and during the pleasure of the City Council.

Section 2.

ELIGIBILITY

Residence in the City of Costa Mesa at the time of appointment shall not be required as a condition of appointment.

No person elected to membership on the City Council shall, subsequent to such election, be eligible for appointment as City Manager of the City of Costa Mesa until one year has elapsed after he has ceased to be a member of the City Council.

Section 3.

BOND

The City Manager shall furnish a corporate surety bond to be approved by the City Council, in such sum as may be determined by the City Council and shall be conditioned on the faithful performance of the duties imposed on the City Manager as herein prescribed.

Section 4.

ABSENCE

In case of the absence or disability of the City Manager, the City Council may designate some duly qualified person to perform the duties of the City Manager during the period of absence or disability of said City Manager, subject, however, to said person furnishing a corporate surety bond and conditioned on faithful performance of the duties required to be performed, as set forth in Section 3 herein.

EXHIBIT [D] p.5149

Section 5.

COMPENSATION

The City Manager of the City of Costa Mesa shall receive such compensation as the City Council shall from time to time determine and fix, and said compensation shall be a proper charge against ~~such~~ funds of the City and the City Council shall designate such funds.

Said City Manager shall be reimbursed for all sums necessarily incurred or paid by him in the performance of his duties, or incurred when traveling on business pertaining to said City under direction of the City Council; reimbursement shall only be made, however, when a verified itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented to the City Council, and by said City Council duly approved and allowed.

Section 6.

POWERS AND DUTIES

The City Manager shall be the administrative head of the City Government under the direction and control of the City Council, except as otherwise provided in this ordinance. He shall be responsible for the efficient administration of all the affairs of the City which are under his control. In addition to his general powers as administrative head, and not as a limitation thereon, it shall be his duty and he shall have the power:

1. To see that the laws of the State of California pertaining to the City and all laws and ordinances of the City are duly enforced, and that all franchises, permits, and privileges granted by the City are faithfully observed.

2. To control, order and give directions to all heads of departments, subordinate officers and employees of the City, except the City Clerk, the City Attorney and the City Treasurer; and to transfer employees from one department to another; and to consolidate or combine offices, positions, departments or units under his direction.

3. To appoint, promote, discipline, demote and remove any officers and employees of the City, except the City Clerk, City Attorney and the City Treasurer.

4. To exercise control over and to supervise in general all departments

and divisions of the City Government and all appointive officers and employees thereof except the City Clerk, the City Attorney, and the City Treasurer.

5. To attend all meetings of the City Council and its committees unless excused therefrom by the City Council, except when his removal is under consideration by the City Council.

6. To recommend to the City Council for adoption such measures and ordinances as he deems necessary or expedient.

7. To keep the City Council at all times fully advised as to the financial conditions and needs of the City.

8. To prepare and submit to the City Council the annual budget and to administer it after adoption.

9. To purchase or cause to be purchased all supplies for all of the departments or divisions of the City

10. To make investigations into the affairs of the City and any department or division thereof, and any contract or the proper performance of any obligation running to the City.

11. To investigate all complaints in relation to matters concerning the administration of the government of the City and in regard to the service maintained by public utilities in the City, and to see that all franchises, permits, and privileges granted by the City are faithfully observed.

12. To exercise general supervision over all public buildings, public parks, streets, and other public property which are under the control and jurisdiction of the City Council, and not specifically delegated to a particular board or officer.

13. To devote his entire time to the duties and interest of the City.

14. To make reports and recommendations as may be desirable or as requested by the City Council.

15. To serve in any appointed office or head of department within the City government to which he may be qualified when appointed thereto by the City Council and to hold and perform the duties thereof at the pleasure of the City Council.

16. To provide leadership for civic movements designed to benefit the

residents of the City when so authorized by the City Council

17. To perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution of the City Council.

Section 7.

EX-OFFICIO MEMBER OF BOARDS AND COMMISSIONS

The City Manager shall be an ex-officio member of all boards and commissions appointed by the Mayor or the City Council pursuant to law, with a right to participate in all deliberations or actions by his voice but without vote.

Section 8.

DUTY OF OTHER OFFICERS

It shall be the duty of all subordinate officers, including the City Clerk, the City Treasurer, and the City Attorney, to cooperate with and assist the City Manager in administering the affairs of the City most efficiently, economically, and harmoniously so far as may be consistent with their duties as prescribed by law and the ordinances of the City of Costa Mesa.

Section 9.

ORDERS AND DIRECTIONS

The City Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any members thereof shall give orders to any subordinates of the City Manager.

Section 10.

REMOVAL

The removal of the City Manager shall be only on a majority vote of the whole Council. (Subject, however, to the provisions of the next succeeding section.) In case of his intended removal by the Council, the City Manager shall be furnished with a written notice stating the Council's intention to remove him and the reasons therefor at least thirty days before the effective date of his removal.

Within seven days after delivery to the City Manager of such notice, he

may by written notification to the City Clerk request a public hearing before the Council. Thereafter, the Council shall fix a time for the public hearing, which shall be held at its usual meeting place, but before the expiration of the thirty day period, and at which time the City Manager shall appear and be heard.

After furnishing the City Manager with written notice of intended removal, the City Council may suspend him from duty, but his compensation shall continue until his removal by resolution of the Council passed subsequent to the aforesaid public hearing.

In removing the City Manager, the City Council shall use its uncontrolled discretion, and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing, the purpose of which is to allow the City Manager to publicly present to the City Council his grounds of opposition to removal prior to its action.

Section 11.

REMOVAL AFTER MUNICIPAL ELECTION

Notwithstanding the provisions of the ordinance hereinbefore enumerated, the City Manager shall not be removed from office during or within a period of ninety (90) days next succeeding any general municipal election held in said City at which said election a member of the City Council is elected. The purpose of this provision is to allow any newly elected member to the City Council or a reorganized City Council to observe the actions and ability of the City Manager in the performance of the powers and duties of his office. After the expiration of said ninety (90) day period aforementioned, the provisions of the preceding section as to the removal of the said City Manager shall apply and be effective.

Section 12.

CONSTITUTIONALITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each

EXHIBIT [D] p.5153

section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentence, clauses, or phrases be declared invalid.

Section 13.

DECLARATION OF URGENCY

This ordinance is an ordinance for the immediate preservation of the public peace, health or safety, and the following is a declaration of the facts constituting the urgency:

The City of Costa Mesa, a municipal corporation, became duly incorporated on the 29th day of June, 1953. It was the decision of the great majority of the voters at the election for the incorporation of the City of Costa Mesa on the 16th day of June, 1953, that the City of Costa Mesa operate under the City Manager form of government. In order to comply with the mandate of the voters, it is necessary that the City Council adopt this ordinance in order that the City Manager form of government shall take effect immediately and that the City Council may appoint the City Manager of the City of Costa Mesa immediately in order to preserve the public peace, health or safety.

Section 14.

EFFECTIVE DATE OF ORDINANCE

This ordinance shall take effect immediately.

Section 15.

CERTIFICATION

The City Clerk of the City of Costa Mesa shall attest to the passage of this ordinance and, pursuant to section 36933 of the Government Code, shall cause it to be posted in at least three public places in the City within fifteen (15) days after its passage.

Passed and adopted this 10th day of August, 1953.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA:
COUNTY OF ORANGE : ss
CITY OF COSTA MESA :

I, A. C. SWARTZ, City Clerk of the City of Costa Mesa, do hereby certify that at a regular meeting of the City Council of the City of Costa Mesa, held on the 10th day of August, 1953, the foregoing Ordinance, containing 15 sections, was considered section by section, and that the said Ordinance was then passed and adopted as a whole by the following vote:

AYES: 5 COUNCILMEN: MARTIN, MILLER, NELSON, SMITH and TOWNLEY

NOES: 0 COUNCILMEN: NONE

ABSENT: 0 COUNCILMEN: NONE

I further certify that said Ordinance was thereupon signed by the Mayor of the City of Costa Mesa.

ATTEST:

A. C. Swartz

City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA:
COUNTY OF ORANGE : ss
CITY OF COSTA MESA :

I, A. C. SWARTZ, City Clerk of the City of Costa Mesa, do hereby certify that on the 18th day of August, 1953, I posted the foregoing true and correct copy of the foregoing Ordinance in the following public places in the City:

Justice Court
567 West Eighteenth Street
Costa Mesa, California

Costa Mesa Branch Library
526 Center Street
Costa Mesa, California

Costa Mesa Fire Hall
111 Rochester Street
Costa Mesa, California

WITNESS my hand and seal this 17th day of August 1953.

A. C. Swartz

City Clerk of the City of Costa Mesa

RESOLUTION NO. 17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA PRESCRIBING THE DUTIES, QUALIFICATIONS AND REQUIREMENTS OF THE POLICE CHIEF AND FISCAL OFFICER FOR THE CITY OF COSTA MESA.

WHEREAS, the City Council of the City of Costa Mesa determines it to be for the best interests of the City of Costa Mesa that the duties, qualifications and requirements of the Chief of Police and Fiscal Officer of the City of Costa Mesa be established;

NOW THEREFORE, the City Council of the City of Costa Mesa does hereby resolve, determine and order as follows:

Section 1 - Chief of Police

A. Duties: Under the direction of the City Manager, to have charge of, and be responsible for, the activities of the Police Department, including the preservation of law and order, the prevention and detection of crime, the enforcement of laws and ordinances and the carrying out of the rules and regulations of the Police Department of the City of Costa Mesa, to direct and coordinate all activities of the Police Department; to review the daily reports of all officers; to lay out, assign and supervise the work of officers; to maintain proper discipline and efficiency and check the work of officers when necessary; to answer correspondence relating to the work of the department; to interview; inform and advise citizens and officials of the laws, ordinances, rules, regulations, activities and policies of the department; to make investigations of any complaints and charges of laxity or misconduct in the performance of duties by the members of the force; to analyze crime conditions and plan preventive measures; to keep police department records and to make reports thereof; and to perform such other related duties as may be required.

B. Requirements: Age: 30 to 45 years at date of examination. Sex: Male. Education and experience: Full high school course or equivalent education and special training in police work and methods, plus 7 years police work experience as a sergeant or above. One additional year of experience as

described above may be substituted for each year of high school lacking.

C. General Qualifications: Applicants must be strong, active, alert men who are physically sound; be of good appearance, character and habits; be thoroughly familiar with police methods and administration, including modern scientific technique in crime detection, criminal identification and radio communication; have a thorough knowledge of the California State Laws and Costa Mesa Ordinances to be enforced by the Police Department; be able to solve successfully organization, personnel and operating problems, have executive and administrative ability, integrity and resourcefulness; be able to supervise and direct the work of others engaged in police activity and to carry out effective disciplinary measures; have the ability to make accurate and clear reports and talks related to police activities; be able to arrive at and enforce decisions in departmental and city policies affecting the functions of the Police Department; and be able to carry out cooperative and harmonious relations with other city departments, other governmental agencies and the public.

Section 2. Fiscal Officer

A. Job Definition: Under administrative direction of the City Manager, to supervise the preparation and maintenance of the budgetary, financial record keeping, auditing, inventory, and disbursing systems of the City; to prepare monthly and annual statements of the financial condition of the City; to collect taxes, assessments and other revenues; and to do other related work as required.

B. Job Characteristics: The duties of this position will involve responsibility for the fiscal and financial affairs of the City under the direction of the City Manager. Normally, policy decisions will be limited to determination of procedural matters, except that as requested by the City Manager, the incumbent in this position may advise the City Manager as to possible methods for financing plans and programs undertaken or to be undertaken by the City.

C. Minimum Qualifications. Experience: At least four years of increasingly responsible experience in governmental, commercial, or public accounting work performing one or a combination of the following types:

(1) Construction and installation of accounting systems.

(2) Preparation or assisting in preparation of budgets with some responsibility for budgetary control.

(3) Assisting in the supervision of the accounting and budgetary work of a governmental or a private agency.

(4) Examining financial records involving audits of business concerns or government agencies.

Education: Equivalent to completion of a Junior College or Business College course in Accounting, including the completion of a course in the principles of double entry bookkeeping, preparation and analysis of financial statements and reports, cost accounting and municipal accounting.

D. Knowledges and Abilities: Thorough knowledge of the modern principles and practices of accounting systems and financial record keeping as applied to municipal government; thorough knowledge of and the ability to prepare financial and budgetary statements and reports; familiarity with governmental budgeting principles and procedures; familiarity with public financing; familiarity with modern office practices and procedures; ability to devise and improve upon accounting records and procedures; ability to establish and maintain cooperative relations with City officials and the public; ability to train and supervise subordinate employees; good health and freedom from disabling defects.

Adopted, signed and approved this 28th day of September, 1953.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Costa Mesa at a regular meeting thereof held the 28th day of September, 1953.

City Clerk, City of Costa Mesa

EXHIBIT [D] p.5158

IPD - "MOVING AWAY" OATHS
NO RECORD OF POLICY

Gmail

New Request for Public Records Form Submitted: Adam Bereki

Kailene Loza <KLoza@cityofirvine.org> Sat, Jul 23, 2022 at 1:52 PM
To: Adam Bereki <abereki@gmail.com>

Dear Mr. Bereki,

This email responds to your request under the California Public Records Act (Government Code § 6250 et seq.)

Attached are records responsive to your PRA request. Over the last couple of years the police department moved away from signing "oath of offices" which is the reason you will only see one attachment for Lt. Crawford.

First name if Lt. Crawford is Sean-Paul.

We are continuing to search for additional responsive records, and as such, will be producing those records on a rolling basis, with an estimated completion date of August 5, 2022.

If you have any questions, please feel free to contact me.

Thank you,

Kailene Loza | Lead Record Specialist
City of Irvine I Police Department

1 Civic Center Plaza

City of Irvine, CA 92606

P. 949.724.7492 | F. 949.724-7077

kloza@cityofirvine.org

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=== REQUESTOR INFORMATION ===

Name: Adam Bereki
Company:
Address: 818 Spirit
City: Costa Mesa
State: California
Zip: 92626
Phone: 9492416693
Fax:
Email: abereki@gmail.com

=== REQUEST ===

Please provide all documents in your custody and control pertaining to the following requests:

The oaths of office for each and every position held within the Irvine police department for Lt. Crawford and Chief Michael Kent.
The first name of Lt. Crawford.
The date of appointment to each position held within the Irvine Police Department for each of the aforementioned officials.
The names of all officials of the Irvine Police Department with policy making authority.
The city of Irvine policies and/or municipal codes pertaining to oaths of office.
A copy of the Irvine Police Department policy that the department will refuse to investigate complaints for deprivation of constitutionally protected rights and/or complaints against public officials for deprivation of constitutionally protected rights.
A copy of the Irvine Police Department policy that the department will refuse to intervene in the unlawful taking and/or seizure or constitutionally protected rights, liberty, and property by state officials upon complain by a citizen.

Send Response By: EMAIL

5 attachments

Oath of Office Chief Kent.pdf
43K

Oath of Office Kent.pdf
2498K

Oath of Office Crawford.pdf
428K

Oath_of_Office Policy.pdf
7K

EXHIBIT [D] p.5160

Kent Letterhead - State Oath Of Office[18].docx
914K

Adam <abereki@gmail.com> Sat, Jul 23, 2022 at 2:18 PM
To: Kailene Loza <KLoza@cityofirvine.org>

Hi Kailene,

Thank you for your response. Can you please include, as part of my request, any documents evidencing the policy to "move away" from signing oaths of office?

Sincerely,

Adam Bereki

Kailene Loza <KLoza@cityofirvine.org> Fri, Jul 29, 2022 at 7:42 PM
To: Adam <abereki@gmail.com>

Dear Mr. Bereki,

This email responds to your request under the California Public Records Act (Government Code § 6250 et seq.)

No such record exists for your request.

If you have any questions, please feel free to contact me.

Thank you,

Kailene Loza | Lead Record Specialist
City of Irvine I Police Department

1 Civic Center Plaza

City of Irvine, CA 92606

P. 949.724.7492 | F. 949.724-7077

kloza@cityofirvine.org

EXHIBIT [D] p.5161

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From: Adam <abereki@gmail.com>
Sent: Saturday, July 23, 2022 2:19 PM
To: Kailene Loza <KLoza@cityofirvine.org>
Subject: Re: New Request for Public Records Form Submitted: Adam Bereki

CAUTION: EXTERNAL EMAIL

IPD PHONE CALL CRAWFORD

cityofirvine.org

The online police report request form can be found here.

To request non-Public Safety records, please click here.

NAME

Adam Bereki

COMPANY

ADDRESS*

818 Spirit

CITY	STATE	ZIP
Costa Mesa	California	92626

PHONE*	FAX*
9492416693	

EMAIL*

abereki@gmail.com

REQUEST

On Wednesday, June 15, 2022, at about 2020 hours, I spoke on the phone with Watch Commander Lt. Crawford. Please provide a copy of the digital recording of the call.

SEND RESPONSE BY

(•) EMAIL ( ) FAX ( ) MAIL

The City of Irvine takes your privacy seriously. This form asks you to provide the City with certain personal information. Such information is being requested and will be utilized by the City for the specific and limited purpose of future City correspondence regarding the subject-matter of this form. Pursuant to Measure S, an initiative ordinance passed by City voters in 2008, the personal information noted by an asterisk (*) on this form will be kept confidential. Unless you expressly indicate to us otherwise or unless compelled by a court order, it will not be shared with other agencies, businesses or individuals.

Math question

6 + 12 =

18

Solve this simple math problem and enter the result. E.g. for 1+3, enter 4.

SUBMIT

Gmail

New Request for Public Records Form Submitted: Adam Bereki

Kailene Loza <KLoza@cityofirvine.org> Thu, Jun 30, 2022 at 4:19 PM
To: "abereki@gmail.com" <abereki@gmail.com>

Dear Mr. Bereki,

In reference to your request under the California Public Records Act (Government Code Section 6250 et seq.), additional time is required for consultation, which shall be conducted with all practicable speed. Under the California Public Records Act (Government Code Section 6253(c) et seq.), an extension of an additional 14 days is appropriate under these circumstances.

Based on the initial 10 day response period and the additional 14 day extension period, our office will contact you on or before July 15, 2022 regarding a response of the requested records.

Thank you,

Kailene Loza | Lead Record Specialist
City of Irvine I Police Department

1 Civic Center Plaza

City of Irvine, CA 92606

P. 949.724.7492 | F. 949.724-7077

kloza@cityofirvine.org

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From: City of Irvine via City of Irvine <info@cityofirvine.org>
Sent: Tuesday, June 21, 2022 7:42 AM
To: PS_Public Records Submittal <PS_PublicRecordsSubmittal@cityofirvine.org>
Subject: New Request for Public Records Form Submitted: Adam Bereki

A new request for Public Records has been submitted.

Date submitted: Tuesday, June 21, 2022 - 7:41am
Submitted by: Anonymous

=== REQUESTOR INFORMATION ===

Name: Adam Bereki
Company:
Address: 818 Spirit
City: Costa Mesa
State: California
Zip: 92626
Phone: 9492416693
Fax:
Email: abereki@gmail.com

=== REQUEST ===

On Wednesday, June 15, 2022, at about 2020 hours, I spoke on the phone with Watch Commander Lt. Crawford. Please provide a copy of the digital recording of the call.

Send Response By: EMAIL

Police Records
Policy & Training
Press Releases
Property & Evidence
Proposition 64
Reporting Hate Crimes and Hate Incidents
Report Internet Crime
Request for Public Safety Records
Be Well Irvine

COMPANY

ADDRESS*

818 Spirit

CITY	STATE	ZIP
Costa Mesa	California	92626

PHONE*	FAX*
9492416693	

EMAIL*

abereki@gmail.com

REQUEST

Please provide all records in your custody and control evidencing all agreements the City of Irvine has with the City of Santa and County of Orange whereby polices officers of the City of Irvine can perform police officers functions in the City of Santa Ana and/or County of Orange pursuant to Cal. Penal Code. 830.1

Please provide your response at the email address above.

Thank you .

SEND RESPONSE BY

(•) EMAIL ( ) FAX ( ) MAIL

The City of Irvine takes your privacy seriously. This form asks you to provide the City with certain personal information. Such information is being requested and will be utilized by the City for the specific and limited purpose of future City correspondence regarding the subject-matter of this form. Pursuant to Measure S, an initiative ordinance passed by City voters in 2008, the personal information noted by an asterisk (*) on this form will be kept confidential. Unless you expressly indicate to us otherwise or unless compelled by a court order, it will not be shared with other agencies, businesses or individuals.

Math question

10 + 2 =

12

Solve this simple math problem and enter the result. E.g. for 1+3, enter 4.

SUBMIT

Gmail

Adam Bereki <abereki@gmail.com>

New Request for Public Records Form Submitted: Adam Bereki

1 message

Kailene Loza <KLoza@cityofirvine.org> Wed, Jun 22, 2022 at 5:20 PM
To: "abereki@gmail.com" <abereki@gmail.com>

Dear Mr. Bereki,

This email responds to your request under the California Public Records Act (Government Code § 6250 et seq.)

Attached are the records that are in response to your request.

If you have any questions, please feel free to contact me.

Thank you,

Kailene Loza | Lead Record Specialist
City of Irvine | Police Department

1 Civic Center Plaza

City of Irvine, CA 92606

P. 949.724.7492 | F. 949.724-7077

kloza@cityofirvine.org

This transmission is intended for the use of the individuals or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee responsible for delivering the message to the recipient, you are hereby notified that any dissemination, distribution or copying of this communication is PROHIBITED. If you receive this communication in error, please call (949) 724-7062 immediately.

=== REQUESTOR INFORMATION ===

Name: Adam Bereki
Company:
Address: 818 Spirit
City: Costa Mesa
State: California
Zip: 92626
Phone: 9492416693
Fax:
Email: abereki@gmail.com

=== REQUEST ===

Please provide all records in your custody and control evidencing all agreements the City of Irvine has with the City of Santa and County of Orange whereby polices officers of the City of Irvine can perform police officers functions in the City of Santa Ana and/or County of Orange pursuant to Cal. Penal Code. 830.1

Please provide your response at the email address above.

Thank you .

Send Response By: EMAIL

---

3 attachments

OCSD.pdf
60K

Santa Ana.pdf
442K

Protocol 101.pdf
1359K

EXHIBIT [D] p.5168

ORANGE COUNTY
SHERIFF'S DEPARTMENT

OFFICE OF THE SHERIFF

550 N. FLOWER STREET
SANTA ANA, CA 92703
(714) 647-7000
WWW.OCSD.ORG

SHERIFF-CORONER
SANDRA HUTCHENS

May 26, 2016

Orange County Chiefs' & Sheriff's Association

Re: Jurisdictional Authority of Orange County Peace Officer, Notice of Consent Operational & Procedural Protocol, Number 101

As the Sheriff for the County of Orange, it is my intention to provide all Orange County peace officers the maximum powers consistent with Section 830.1 of the California Penal Code.

It is agreed that when officers of their respective agencies are engaged in police activity in the cities of Aliso Viejo, Dana Point, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Mission Viejo, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Stanton, Villa Park, Yorba Linda, and unincorporated county areas, these officers will notify, whenever practicable, the Orange County Sheriff's Department of their activities. The practicability of such prior notification shall be solely at the discretion of the individual officer(s).

Section 830.1(a)(2) of the California Penal Code provides that the authority of any California Peace Officer extends to any place in the State, "Where the peace officer has the prior consent of the Chief of Police, or person authorized by him or her to give such consent, if the place is within a city, or the Sheriff, or person authorized by him to give such consent, if the place is within the County".

Any member of the Orange County law enforcement agencies, who is a peace officer as defined under Section 830.1 and 830.2 of the California Penal Code, shall have the full authority of a peace officer at all times within the jurisdiction for which I am authorized to give consent, and that this consent is not conditioned upon that peace officer's communicating in any way with me or my department. Further, that my consent shall remain in effect until the filing of a Notice of Consent document superseding this document, or until filing of a termination of consent.

Sandra Hutchens
Sheriff-Coroner

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Vicente Sarmiento
COUNCILMEMBERS
Angelica Amezcua
P. David Benavides
Michele Martinez
Roman Reyna
Sal Tinajero

CITY MANAGER
David Cavazos
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Maria D. Huizar

CITY OF SANTA ANA

POLICE DEPARTMENT
60 Civic Center Plaza • P.O. Box 1981
Santa Ana, California 92702
www.santa-ana.org

5/24/2016

Orange County Chiefs' & Sheriff's Association

Re: Jurisdictional Authority of Orange County Peace Officer, Notice of Consent Operational & Procedural Protocol, Number 101

As the Police Chief for the City of Santa Ana it is my intention to provide all Orange County peace officers the maximum powers consistent with Section 830.1 of the California Penal Code.

It is agreed that when officers of their respective agencies are engaged in police activity in the City of Santa Ana, these officers will notify, whenever practicable, the Santa Ana Police Department of their activities. The practicability of such prior notification shall be solely at the discretion of the individual officer(s).

Section 830.1(a)(2) of the California Penal Code provides that the authority of any California Peace Officer extends to any place in the State, "Where the peace officer has the prior consent of the Chief of Police, or person authorized by him or her to give such consent, if the place is within a city, or the Sheriff, or person authorized by him to give such consent, if the place is within the County".

Any member of the Orange County law enforcement agencies, who is a peace officer as defined under Section 830.1 and 830.2 of the California Penal Code, shall have the full authority of a peace officer at all times within the jurisdiction for which I am authorized to give consent, and that this consent is not conditioned upon that peace officer's communicating in any way with me or my department. Further, that my consent shall remain in effect until the filing of a Notice of Consent document superseding this document, or until filing of a termination of consent.

Chief Carlos Rojas

SANTA ANA CITY COUNCIL

Miguel A. Pulido Mayor MPulido@santa-ana.org	Vicente Sarmiento Mayor Pro Tem, Ward 1 VSarmiento@santa-ana.org	Michele Martinez Ward 2 MMartinez@santa-ana.org	Angelica Amezcua Ward 3 AAmezcua@santa-ana.org	P. David Benavides Ward 4 DBenavides@santa-ana.org	Roman Reyna Ward 5 RReyna@santa-ana.org	Sal Tinajero Ward 6 STinajero@santa-ana.org

Orange County Chiefs' of Police
and Sheriff's Association

Operational & Procedural
Protocol

Subject:	Jurisdictional Authority of Orange County Peace Officer; Notice of Consent	**Number**: 101 **Effective Date**: June 1, 1994 **Revised**: March 3, 2021

1. **PURPOSE**

To extend the authority of any Orange County peace officer to any place within the County.

2. **AUTHORITY**

The NOTICE OF CONSENT is established by authority of Section 830.1 of the California Penal Code.

3. **APPLICATION**

The NOTICE OF CONSENT established herein is applicable to any member of the Orange County law enforcement agencies listed below, who is a peace officer as defined under Section 830.1 of the California Penal Code.

4. **NOTICE OF CONSENT**

4.1 **WHEREAS** Section 830.1(a)(2) of the California Penal Code provides that the authority of any California Peace Officer extends to any place in the State, "Where the peace officer has the prior consent of the Chief of Police, or person authorized by him or her to give such consent, if the place is within a city, or the Sheriff, or person authorized by him to give such consent, if the place is within the County."

4.2 **WHEREAS** it is the intention of the undersigned, the Sheriff and Chiefs' of Police of all cities of Orange County, that Orange County peace officers be given the maximum powers consistent with Section 830.1 of the California Penal Code;

4.3 **WHEREAS** it is agreed among the undersigned that when officers of their respective agencies are engaged in police activity in an Orange County jurisdiction other than their own, these officers will notify, whenever practicable, the department whose jurisdiction they are entering, of their activities in said jurisdiction; but that the practicability of such prior notification shall be solely at the discretion of the individual officer(s);

4.4 **NOW, THEREFORE, LET IT BE KNOWN THAT** any member of the Orange County law enforcement agencies listed below, who is a peace officer as defined under Section 830.1 and 830.2 of the California Penal Code, shall have the full authority of a peace officer at all times within the jurisdiction for which I am authorized to give consent, and that this consent is not conditioned upon that peace officer's communicating in any way with me or my department. Further, that my consent shall remain in effect until the filing of a Notice of Consent document superseding this document, or until filing of a termination of consent by any one or more of the signatories to this document, whichever comes first.

Signatures of:

Chief Paul Walters — Bureau of Investigations, DA's Office

Chief Jorge Cisneros — Police Department, City of Anaheim

Acting Chief Adam Hawley — Police Department, City of Brea

Chief Corey Sianez — Police Department, City of Buena Park

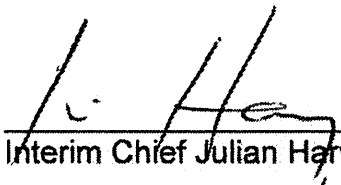
Chief Bryan Glass — Police Department, City of Costa Mesa

Chief Mark Lauderback — Police Department, City of Cypress

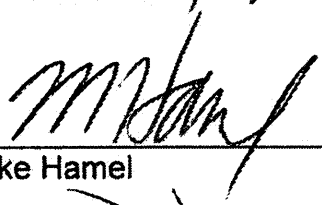
Chief Matthew Sheppard — Police Department, City of Fountain Valley

Chief Bob Dunn — Police Department, City of Fullerton

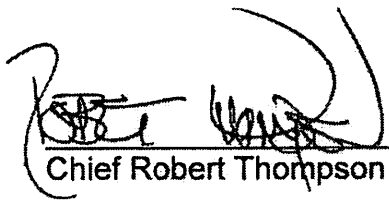
Chief Thomas DaRe — Police Department, City of Garden Grove



Interim Chief Julian Harvey — Police Department, City of Huntington Beach

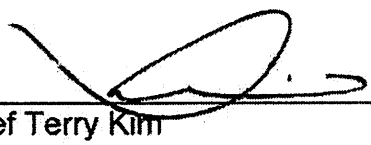


Chief Mike Hamel — Police Department, City of Irvine

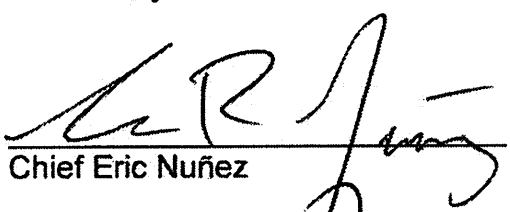


Chief Robert Thompson — Police Department, City of Laguna Beach

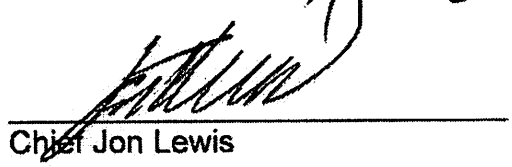
Chief Jerry Price — Police Department, City of La Habra



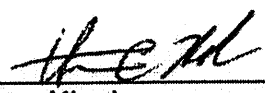
Chief Terry Kim — Police Department, City of La Palma



Chief Eric Nuñez — Police Department, City of Los Alamitos



Chief Jon Lewis — Police Department, City of Newport Beach



Chief Tom Kisela — Police Department, City of Orange

Probation Officer Steven Sentman — Probation Department, County of Orange

Chief Probation Officer

Sheriff-Coroner
Don Barnes — Sheriff's Department, County of Orange

Representing the following cities:
Aliso Viejo
Dana Point
Laguna Hills
Laguna Niguel
Laguna Woods
Lake Forest
Mission Viejo
Rancho Santa Margarita
San Clemente
San Juan Capistrano
Stanton
Villa Park
Yorba Linda

Chief Darin Lenyi — Police Department, City of Placentia

Chief David Valentin — Police Department, City of Santa Ana

Chief Phil Gonshak — Police Department, City of Seal Beach

Chief Stu Greenberg — Police Department, City of Tustin

Acting Chief Darin Upstill — Police Department, City of Westminster

Chief Elizabeth Griffin — Police Department, U.C. Irvine

Chief Ray Aguirre — Police Department, Cal State Fullerton

I, Todd Spitzer, hereby certify, under penalty of perjury, that the above signatures represent true signatures of the Chiefs of Police and Sheriff of the represented agencies in Orange County.

Executed at Santa Ana, California, this 8th day of April, 2020.

Todd Spitzer
District Attorney, County of Orange

Law Enforcement Authority

100.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Irvine Police Department to perform their functions based on established legal authority.

100.2 POLICY

It is the policy of the Irvine Police Department to limit its members to only exercise the authority granted to them by law.

While this department recognizes the power of peace officers to make arrests and take other enforcement action, officers are encouraged to use sound discretion in the enforcement of the law. This department does not tolerate the abuse of law enforcement authority.

100.3 PEACE OFFICER POWERS

Sworn members of this department are authorized to exercise peace officer powers pursuant to applicable state law (Penal Code § 830.1 et seq.).

100.3.1 ARREST AUTHORITY INSIDE THE JURISDICTION OF THE IRVINE POLICE DEPARTMENT

The arrest authority within the jurisdiction of the Irvine Police Department includes (Penal Code § 830.1; Penal Code § 836):

(a) When the officer has probable cause to believe the person has committed a felony, whether or not committed in the presence of the officer.

(b) When the officer has probable cause to believe the person has committed a misdemeanor in this jurisdiction and in the presence of the officer.

(c) When the officer has probable cause to believe the person has committed a public offense outside this jurisdiction, in the presence of the officer and the officer reasonably believes there is an immediate danger to person or property, or of escape.

(d) When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized or required by statute even though the offense has not been committed in the presence of the officer such as certain domestic violence offenses.

(e) In compliance with an arrest warrant.

ONLY APPLY TO ARREST NOT INVESTIGA-

100.3.2 ARREST AUTHORITY OUTSIDE THE JURISDICTION OF THE IRVINE POLICE DEPARTMENT

The arrest authority outside the jurisdiction of the Irvine Police Department includes (Penal Code § 830.1; Penal Code § 836):

(a) When the officer has probable cause to believe the person committed a felony.

NOTHING TO DO W/ CONSTITUTION

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(b) When the officer has probable cause to believe the person has committed a misdemeanor in the presence of the officer and the officer reasonably believes there is immediate danger to person or property or of escape.

(c) When the officer has probable cause to believe the person has committed a misdemeanor for which an arrest is authorized even if not committed in the presence of the officer such as certain domestic violence offenses and there is immediate danger to person or property or of escape or the arrest is mandated by statute.

(d) When authorized by a cross jurisdictional agreement with the jurisdiction in which the arrest is made.

(e) In compliance with an arrest warrant.

On-duty arrests will not generally be made outside the jurisdiction of this department except in cases of hot or fresh pursuit, while following up on crimes committed with the City or while assisting another agency.

On-duty officers who discover criminal activity outside the jurisdiction of the City should when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

100.3.3 DELIVERY TO NEAREST MAGISTRATE

When an officer makes an arrest pursuant to a warrant with bail set, and the warrant was issued in a county other than where the person was arrested, the officer shall inform the person in writing of the right to be taken before a magistrate in the county where the arrest occurred (Penal Code § 821; Penal Code § 822).

100.3.4 TIME OF MISDEMEANOR ARRESTS

Officers shall not arrest a person for a misdemeanor between the hours of 10:00 p.m. of any day and 6:00 a.m. of the next day unless (Penal Code § 840):

(a) The arrest is made without a warrant pursuant to Penal Code § 836 which includes:

1. A misdemeanor committed in the presence of the officer.
2. Misdemeanor domestic violence offenses (See the Domestic Violence Policy).

(b) The arrest is made in a public place.

(c) The arrest is made with the person in custody pursuant to another lawful arrest.

(d) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

100.3.5 OREGON AUTHORITY

Sworn members of this department who enter the state of Oregon in order to provide or attempt to provide law enforcement assistance have Oregon peace officer authority within 50 miles from the California-Oregon border (ORS 133.405). Such authority shall only apply when officers are acting:

(a) In response to a request for law enforcement assistance initiated by an Oregon sheriff, constable, marshal, municipal police officer or member of the Oregon State Police.

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(b) In response to a reasonable belief that emergency law enforcement assistance is necessary to preserve life, and circumstances make it impractical for Oregon law enforcement officials to formally request assistance.

(c) For the purpose of assisting Oregon law enforcement officials with emergency assistance in response to criminal activity, traffic accidents, emergency incidents or other similar public safety situations, regardless of whether an Oregon law enforcement official is present at the scene of the incident.

Irvine Police Department officers have no authority to enforce Oregon traffic or motor vehicle laws.

Whenever practicable, officers should seek permission from a department supervisor before entering Oregon to provide law enforcement services. As soon as practicable, officers exercising law enforcement authority in Oregon shall submit any appropriate written reports concerning the incident to the Oregon agency having primary jurisdiction over the area in which the incident occurred.

100.4 INTERSTATE PEACE OFFICER POWERS

Peace officer powers may be extended to other states:

(a) As applicable under interstate compacts, memorandums of understanding or mutual aid agreements in compliance with the laws of each state.

(b) When an officer enters an adjoining state in close or fresh pursuit of a person believed to have committed a felony (ARS § 13-3832; NRS 171.158; ORS 133.430).

The person arrested out of state must be taken without unnecessary delay before a magistrate of the county in which the arrest was made (ARS § 13-3833; NRS 171.158; ORS 133.440).

100.5 CONSTITUTIONAL REQUIREMENTS

All members shall observe and comply with every person's clearly established rights under the United States and California Constitutions.

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Standards of Conduct

106.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Irvine Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisor.

106.2 POLICY

The continued employment or appointment of every member of the Irvine Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

106.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

106.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

106.3.2 SUPERVISOR RESPONSIBILITIES
Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

(a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.

(b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.

(c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.

(d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

106.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

106.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

106.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

(b) Disobedience of any legal directive or order issued by any department member of a higher rank.

(c) Violation of federal, state, local or administrative laws, rules or regulations.

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106.5.2 ETHICS

(a) Using or disclosing one's status as a member of the Irvine Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.

(b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.

(c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).

(d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.

(e) Offer or acceptance of a bribe or gratuity.

(f) Misappropriation or misuse of public funds, property, personnel or services.

(g) Any other failure to abide by the standards of ethical conduct.

106.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Unless required by law or policy, discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

106.5.4 RELATIONSHIPS

(a) Unwelcome solicitation of a personal or sexual relationship while on--duty or through the use of one's official capacity.

(b) Engaging in on--duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.

(c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.

(d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.

(e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

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106.5.5 ATTENDANCE

(a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.

(b) Unexcused or unauthorized absence or tardiness.

(c) Excessive absenteeism or abuse of leave privileges.

(d) Failure to report to work or to the place of assignment at the time specified and fully prepared to perform duties without reasonable excuse.

106.5.6 UNAUTHORIZED ACCESS, DISCLOSURE, OR USE

(a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms, or reports obtained as a result of the member's position with this department.

    (a) Members of this department shall not disclose the name, address, or image of any victim of human trafficking except as authorized by law (Penal Code § 293).

(b) Disclosing to any unauthorized person any active investigation information.

(c) The use of any information, photograph, video, or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.

(d) Loaning, selling, allowing unauthorized use, giving away, or appropriating any department property for personal use, personal gain, or any other improper or unauthorized use or purpose.

(e) Using department resources in association with any portion of an independent civil action. These resources include but are not limited to personnel, vehicles, equipment, and non-subpoenaed records.

106.5.7 EFFICIENCY

(a) Neglect of duty.

(b) Unsatisfactory work performance including but not limited to failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.

(c) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.

(d) Unauthorized sleeping during on-duty time or assignments.

(e) Failure to notify the Department within 24 hours of any change in residence address or contact numbers.

(f) Failure to notify the Human Resources Department of changes in relevant personal information (e.g., information associated with benefits determination) in a timely fashion.

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106.5.8 PERFORMANCE

(a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.

(b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.

(c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department-related business.

(d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.

(e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.

(f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:

  (a) While on department premises.

  (b) At any work site, while on--duty or while in uniform, or while using any department equipment or system.

  (c) Gambling activity undertaken as part of an officer's official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.

(g) Improper political activity including:

  (a) Unauthorized attendance while on--duty at official legislative or political sessions.

  (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on--duty or, on department property except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

(h) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the memorandum of understanding, or the Chief of Police.

(i) Any act on- or off--duty that brings discredit to this department.

(j) Careless workmanship resulting in spoilage or waste of materials or work of an unacceptable nature.

106.5.9 CONDUCT

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(a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.

(b) Unreasonable and unwarranted force to a person encountered or a person under arrest.

(c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.

(d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.

(e) Engaging in horseplay that reasonably could result in injury or property damage.

(f) Discourteous or disrespectful treatment of any member of the public or any member of this department or the City.

(g) Discriminatory treatment of any member of the public or any member of this department or the City, not enumerated in policy section 106.5.3.

(h) Use of obscene, indecent, profane or derogatory language while on--duty or in uniform.

(i) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.

(j) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.

(k) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.

(l) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.

(m) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

(n) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

(o) Violating any misdemeanor or felony statue, on or off-duty.

(p) Department personnel shall not commit any act which conflicts with the department's values of Integrity, Quality Service, Accountability, and Respect.

106.5.10 SAFETY

(a) Failure to observe or violating department safety standards or safe working practices.

(b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).

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(c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.

(d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.

(e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.

(f) Unsafe or improper driving habits or actions in the course of employment or appointment.

(g) Any personal action contributing to a preventable traffic collision.

(h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable, but within 24 hours.

106.5.11 INTOXICANTS

(a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.

(b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.

(c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

106.6 CLASSIFICATION OF DISCIPLINARY MEASURES

The classification and explanation of Department disciplinary measures are as follows:

DISCIPLINARY MEASURE	WHO MAY ADMINISTER
Paid Suspension Pending Investigation	Any Supervisor, with prior Command Staff notification
Written Reprimand / Letter of Reprimand	Any Supervisor, upon the approval of the respective Division Commander
Deduction from Pay	Police Chief
Suspension	
Demotion in Rank	
Suspension with Recommendation for Termination	

106.7 ADMINISTERING A WRITTEN REPRIMAND / LETTER OF REPRIMAND

A supervisor administering a written reprimand must follow the preliminary steps below:

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a. Once the misconduct has been observed, investigated if necessary, documented and a decision has been made to issue a written reprimand, the supervisor must obtain review of the disciplinary action by his/her respective Division Commander.

b. Once Commander review is completed, the written reprimand will be provided to the concerned employee by the issuing supervisor.

c. The affected employee will be asked to sign the reprimand. If the employee refuses to sign the reprimand, the supervisor will note the refusal on the document.

d. The supervisor will give a copy of the signed reprimand to the concerned employee. An additional copy will be placed and retained in the employee's working file until his/her next review period.

e. The original written reprimand shall be placed in the employee's personnel file where it will be retained for one year from the date of issuance. The reprimand will then be automatically purged from the personnel file and placed in the officer's Internal Affairs file where it will be retained for a period of seven years.

f. Pursuant to Government Code section 3304(b), personnel may appeal their written reprimand. Under the Memorandum of Understanding between the Irvine Police Officers Association and the City of Irvine, personnel wishing to appeal their written reprimand must notify the Chief of Police in writing via email within ten (10) calendar days of being notified of the written reprimand. The written notice of appeal must specify the action being appealed and the grounds for the appeal. Personnel failing to timely serve written notification of appeal will waive his/her right to appeal.

g. Pursuant to Government Code section 3305, this written reprimand is an adverse comment. Therefore, under Government Code section 3306, personnel have the right to submit a written response to it within 30 days. The written response will be kept in the employee's personnel file with the written reprimand.

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New Request for Public Records Form Submitted: Adam Bereki

1 message

Kailene Loza <KLoza@cityofirvine.org> Sat, Jun 18, 2022 at 3:49 PM
To: "abereki@gmail.com" <abereki@gmail.com>

Dear Mr. Bereki,

This email responds to your request under the California Public Records Act (Government Code § 6250 et seq.)

In accordance with SB 978, the polices and procedures of the Irvine Police Department can be located on our website. Below is a link to the Policy and Procedures.

Department Policy 2021 | City of Irvine

If you have any questions, please feel free to contact me.

Thank you,

Kailene Loza | Lead Record Specialist
City of Irvine | Police Department

1 Civic Center Plaza

City of Irvine, CA 92606

P. 949.724.7492 | F. 949.724-7077

kloza@cityofirvine.org

This transmission is intended for the use of the individuals or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee responsible for delivering the message to the recipient, you are hereby notified that any dissemination, distribution or copying of this communication is PROHIBITED. If you receive

this communication in error, please call (949) 724-7062 immediately.

=== REQUESTOR INFORMATION ===

Name: Adam Bereki
Company:
Address: 818 Spirit
City: Costa Mesa
State: California
Zip: 92626
Phone: 9492416693
Fax:
Email: abereki@gmail.com

=== REQUEST ===

Please provide all records in your custody and control evidencing the following:

A copy of the Irvine police department policy pertaining to the specific geographical bounds upon which officers of the Irvine PD are permitted to enforce the Constitution and laws of California and the United States. I am also looking for all documents that evidence that the Irvine PD's jurisdiction to enforce the laws and Constitution of California ONLY extends within the geographical bounds of the City of Irvine.

A copy of the Irvine Police Department Policy In Digital Form.
A separate copy of all policies and standard operating procedures for investigation citizen complaints for deprivation of constitutionally protected rights.
A separate copy of all policies and procedures that the Irvine PD will not investigate crimes committed by public officials.
A separate copy of all policies and procedures that the officers of the Irvine PD will not enforce the Constitution and laws of California outside the geographical bounds of the City of Irvine.
All department training manuals pertaining to the investigation of complaints for deprivation of constitutionally protected rights.

Please provide the answer to these requests by email at the above address.

Thank you.

Send Response By: EMAIL

EXHIBIT [D] p.5188

830.1

California LEGISLATIVE INFORMATION

Home | Bill Information | California Law | Publications | Other Resources | My Subscriptions | My Favorites

Code: Select Code | Section: 1 or 2 or 100 | Search

Up^ << Previous Next >> cross-reference chaptered bills PDF | Add To My Favorites

Search Phrase: Highlight

PENAL CODE - PEN

PART 2. OF CRIMINAL PROCEDURE [681 - 1620] *(Part 2 enacted 1872.)*

TITLE 3. ADDITIONAL PROVISIONS REGARDING CRIMINAL PROCEDURE [777 - 883] *(Heading of Title 3 amended by Stats. 1951, Ch. 1674.)*

CHAPTER 4.5. Peace Officers [830 - 832.19] *(Chapter 4.5 added by Stats. 1968, Ch. 1222.)*

830.1. (a) A sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, a chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, a police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, a chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, a marshal or deputy marshal of a superior court or county, a port warden or port police officer of the Harbor Department of the City of Los Angeles, or an inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to a public offense committed or for which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves.

(2) If the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within a county.

(3) As to a public offense committed or for which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) A deputy sheriff of the County of Los Angeles, and a deputy sheriff of the Counties of Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Mono, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of the officer's respective employment and for the purpose of carrying out the primary function of employment relating to the officer's custodial assignments, or when performing other law enforcement duties directed by the officer's employing agency during a local state of

emergency.

(Amended by Stats. 2021, Ch. 588, Sec. 1. (AB 779) Effective January 1, 2022.)

Gmail

New Request for Public Records Form Submitted: Adam Bereki

Kailene Loza <KLoza@cityofirvine.org> Sat, Jul 23, 2022 at 1:52 PM
To: Adam Bereki <abereki@gmail.com>

Dear Mr. Bereki,

This email responds to your request under the California Public Records Act (Government Code § 6250 et seq.)

Attached are records responsive to your PRA request. Over the last couple of years the police department moved away from signing "oath of offices" which is the reason you will only see one attachment for Lt. Crawford.

First name if Lt. Crawford is Sean-Paul.

We are continuing to search for additional responsive records, and as such, will be producing those records on a rolling basis, with an estimated completion date of August 5, 2022.

If you have any questions, please feel free to contact me.

Thank you,

Kailene Loza | Lead Record Specialist
City of Irvine | Police Department

1 Civic Center Plaza

City of Irvine, CA 92606

P. 949.724.7492 | F. 949.724-7077

kloza@cityofirvine.org

This transmission is intended for the use of the individuals or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee responsible for delivering the message to the recipient, you are hereby notified that any dissemination, distribution or copying of this communication is PROHIBITED. If you receive this communication in error, please call (949) 724-7062 immediately.

=== REQUESTOR INFORMATION ===

Name: Adam Bereki
Company:
Address: 818 Spirit
City: Costa Mesa
State: California
Zip: 92626
Phone: 9492416693
Fax:
Email: abereki@gmail.com

=== REQUEST ===

Please provide all documents in your custody and control pertaining to the following requests:

The oaths of office for each and every position held within the Irvine police department for Lt. Crawford and Chief Michael Kent.
The first name of Lt. Crawford.
The date of appointment to each position held within the Irvine Police Department for each of the aforementioned officials.
The names of all officials of the Irvine Police Department with policy making authority.
The city of Irvine policies and/or municipal codes pertaining to oaths of office.
A copy of the Irvine Police Department policy that the department will refuse to investigate complaints for deprivation of constitutionally protected rights and/or complaints against public officials for deprivation of constitutionally protected rights.
A copy of the Irvine Police Department policy that the department will refuse to intervene in the unlawful taking and/or seizure or constitutionally protected rights, liberty, and property by state officials upon complain by a citizen.

Send Response By: EMAIL

---

5 attachments

Oath of Office Chief Kent.pdf
43K

Oath of Office Kent.pdf
2498K

Oath of Office Crawford.pdf
428K

Oath_of_Office Policy.pdf
7K

Kent Letterhead - State Oath Of Office[18].docx
914K

EXHIBIT [D] p.5193

IRVINE POLICE
DEPARTMENT
1 Civic Center Plaza • Irvine, California 92606 • 949-724-7000 • irvinepd.org
MICHAEL KENT - CHIEF OF POLICE

STATE OATH OF OFFICE

I, STATE YOUR NAME

do solemnly swear

that I will support and defend the Constitution of the United States

and the Constitution of the State of California

against all enemies, foreign and domestic,

that I will bear true faith and allegiance

to the Constitution of the United States

and the Constitution of the State of California;

that I take this obligation freely

and without any mental reservation

or purpose of evasion;

and that I will well and faithfully discharge

the duties upon which I am about to enter.

OATH OF ALLEGIANCE
FOR PUBLIC OFFICERS AND EMPLOYEES

(required by Article 20, Section 3, California Constitution and Chapter 8, Division 4, Title I of Government Code)

I, Michael Kent, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic, that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Signature of Person Taking Oath

Public Safety
Department

Director of Public Safety/Chief of Police
Position Title

SUBSCRIBED AND SWORN TO BEFORE ME THIS 12th DAY OF OCTOBER, 2021.

City Clerk

FORM 10-48

DAVID L. MAGGARD, JR.
CHIEF OF POLICE

Irvine Police Department
State Oath of Office

POLICE LIEUTENANT

I, ***MICHAEL KENT***, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic, that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely and without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Additionally, while working in Partnership with the Community I will preserve the peace, uphold the law with fairness and provide quality service.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th DAY OF SEPTEMBER, 2014.

David L. Maggard, Jr.
CHIEF OF POLICE

MICHAEL KENT
POLICE LIEUTENANT

Working in Partnership with the community, we will preserve the peace, uphold the law with fairness and provide quality service

Integrity • Quality Service • Accountability • Respect

DAVID L. MAGGARD, JR.
CHIEF OF POLICE

Irvine Police Department
State Oath of Office

POLICE SERGEANT

I, ***MICHAEL KENT***, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic, that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely and without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Additionally, while working in Partnership with the Community I will preserve the peace, uphold the law with fairness and provide quality service.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 24th DAY OF JANUARY, 2011.

David L. Maggard, Jr.
CHIEF OF POLICE

MICHAEL KENT
POLICE SERGEANT

Working in Partnership with the community, we will preserve the peace, uphold the law with fairness and provide quality service

Integrity • Quality Service • Accountability • Respect

MICHAEL BERKOW
CHIEF OF POLICE

Irvine Police Department
Oath of Office

FOR THE OFFICE OF POLICE OFFICER

I, ***Walid Abdel-Samad***, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic, that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely and without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Additionally, while working in Partnership with the Community I will preserve the peace, uphold the law with fairness and provide quality service.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 25th DAY OF February 2003.

MICHAEL BERKOW
CHIEF OF POLICE

SIGNATURE OF PERSON TAKING OATH

WITNESS

MICHAEL BERKOW
CHIEF OF POLICE

Irvine Police Department
Oath of Office

FOR THE OFFICE OF POLICE RECRUIT

I, *Walid Abdelsamad*, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic, that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely and without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 3rd DAY OF October, 2002 .

DEPUTY CITY CLERK

SIGNATURE OF PERSON TAKING OATH

WITNESS

"In Partnership with the Community"

DAVID L. MAGGARD, JR.
CHIEF OF POLICE

Irvine Police Department
Oath of Office

POLICE OFFICER

I, ***Sean Paul Crawford,*** will aspire to work to make the Irvine Police Department a world-class leader in policing, a model for character, innovation, and service. I will strive to protect our diverse and dynamic community with fairness, integrity, and respect for the rights of the individual. I will resolve to be a part of a creative, forward-thinking workforce, dedicated to raising our level of excellence to meet the challenges of tomorrow.

While working in partnership with the community, I will preserve the peace, uphold the law with fairness and provide quality service.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1st DAY OF June, 2004.

David L. Maggard, Jr.
CHIEF OF POLICE

SIGNATURE OF PERSON TAKING OATH

WITNESS

Oath of Office

102.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that oaths, when appropriate, are administered to department members.

102.2 POLICY

It is the policy of the Irvine Police Department that, when appropriate, department members affirm the oath of their office as an expression of commitment to the constitutional rights of those served by the Department and the dedication of its members to their duties.

102.3 OATH OF OFFICE

All department members, when appropriate, shall take and subscribe to the oaths or affirmations applicable to their positions. All sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer (Cal. Const. Art. 20, § 3; Government Code § 3102).

102.4 MAINTENANCE OF RECORDS

The oath of office shall be filed as prescribed by law (Government Code § 3105).

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cityofirvine.org

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st for Public Safety
ll Irvine

DO NOT USE THIS FORM TO REQUEST COPIES OF POLICE REPORTS.

The online police report request form can be found here.

To request non-Public Safety records, please click here.

NAME
Adam Bereki

COMPANY

ADDRESS*
818 Spirit

CITY	STATE	ZIP
Costa Mesa	California	92626

PHONE*	FAX*
9492416693	

EMAIL*
abereki@gmail.com

REQUEST
A copy of the Irvine Police Department Policy In Digital Form.
A separate copy of all policies and standard operating procedures for investigation citizen complaints for deprivation of constitutionally protected rights.
A separate copy of all policies and procedures that the Irvine PD will not investigate crimes committed by public officials.
A separate copy of all policies and procedures that the officers of the Irvine PD will not enforce the Constitution and laws of California outside the geographical bounds of the City of Irvine.
All department training manuals pertaining to the investigation of complaints for deprivation of constitutionally protected rights.

SEND RESPONSE BY
(•) EMAIL ( ) FAX ( ) MAIL

The City of Irvine takes your privacy seriously. This form asks you to provide the City with certain personal information. Such information is being requested and will be utilized by the City for the specific and limited purpose of future City correspondence regarding the subject-matter of this form. Pursuant to Measure S, an initiative ordinance passed by City voters in 2008, the personal information noted by an asterisk (*) on this form will be kept confidential. Unless you expressly indicate to us otherwise or unless compelled by a court order, it will not be shared with other agencies, businesses or individuals.

Math question
2 + 13 =
15
Solve this simple math problem and enter the result. E.g. for 1+3, enter 4.

SUBMIT

EXHIBIT [D] p.5202

2:53 PM Sat Jun 18 anaheim.net 49%

REQUESTER INFORMATION

Full Name:*	Adam Bereki
Date:*	6/18/22
Company Name:*	
Mailing Address:*	818 Spirit
City/State/Zip Code:*	Costa Mesa Ca 92626
Phone No. (xxx-xxx-xxxx):*	949-241-6693
Email Address:*	Abereki@gmail.com
Preferred method of contact in the event of questions: *	Phone

DESCRIPTION OF REQUESTED RECORD(S):

(Describe the specific public record(s) e.g., date, type, time period covering documents requested etc) *

Please provide all records in your custody and control evidencing all agreements with the City of Santa and the the County of Orange whereby officers of the City of Anaheim Police department have authority to perform any of police officer functions outside the city of Anaheim pursuant to Cal. Penal. Code §830.1

Thank you

I understand that I will be contacted once documents have been identified. If production of records is requested, an estimated cost will be provided to me and I agree that I will be required to submit payment for duplication costs (and mailing) prior to the production of the requested documents. *

I wish to inspect City records Will Pick Up Records Please Mail

Please note that information contained in any PRA request is a public record and may be subject to public inspection pursuant to the CA Public Records Act.

By submitting this form, this serves as my online signature: Submit

Select Language

Gmail Adam Bereki <abereki@gmail.com>

PRA REQUEST 061722

1 message

Adam <abereki@gmail.com> Fri, Jun 17, 2022 at 3:12 PM
To: ocdaprasubmissions@da.ocgov.com

Good day,

Please provide all records in your custody and control for all standard operating procedures and policies involving the investigation and/or prosecution of the deprivation of constitutionally protected rights by public officials and the investigation of criminal misconduct by public officials.

Sincerely,

Adam Bereki
9492416693

EXHIBIT [D] p.5204

Gmail Adam Bereki <abereki@gmail.com>

OCDA FORMAL RESPONSE TO ADAM BEREKI PRA REQUEST

1 message

OCDAPRASubmissions <OCDAPRASubmissions@da.ocgov.com> Fri, Jun 17, 2022 at 11:55 AM
To: "abereki@gmail.com" <abereki@gmail.com>

Good Morning Mr. Bereki,

Please find attached our formal response to your Public Records Act request dated June 4, 2022, that was received on June 7, 2022.

Thank you,
OCDA PRA Submissions

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

OCDA FORMAL RESPONSE ADAM BEREKI PRA.pdf
105K

EXHIBIT [D] p.5205

OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

Via Email Transmission: abereki@gmail.com

June 17, 2022

Adam Bereki
abereki@gmail.com

Dear Mr. Bereki,

In compliance with Government Code § 6253, this letter addresses your California Public Records Act (Gov. Code § 6250 et seq) request dated June 4, 2022 that we received on June 7, 2022. This letter constitutes our formal response, which is made within that statutorily required time, to your public record demand.

Please find below your requests and our responses to those requests:

Request No. 1: "[Y]our investigation into the complaints I, Adam Bereki, made with your office via mail on or about February 17, 2022."

Response: We are unable to conduct a search for records based on the information you have provided. We ask that you clarify your request and provide us with further information so that we can conduct a search for responsive records.

Request No. 2: "[T]he investigation and/or meetings between OCDA's Bill Feccia and Clyde Von Der Ahe and Newport Beach Police Sergeant Darrin Joe on or about December 2021. This should include any notes, recordings, phone call records, emails, reports and any other case documents shared or discussed during the meeting."

Response: We do not have records responsive to this request.

In conclusion, the OCDA claims for its records, such as might exist, all applicable exemptions from the California Public Records Act disclosure. In maintaining the lawful confidentiality of these records, the OCDA claims, enforces, and applies all applicable exemptions, privileges, and proscriptions against public disclosure or records, including but not limited to, those listed in Article 2 of Government Code, Title 1, Division 7, Chapter 3.5, the California Evidence and Penal Codes, and the Federal Rules of Evidence.

While we have set forth our reasons for our denials, we reserve the right to present additional theories, and authority for non-disclosure in the future.

Sincerely,

Johanna Kim

Johanna Kim
Sr. Deputy District Attorney
Special Prosecutions Unit

Gmail Adam Bereki <abereki@gmail.com>

OCDA FORMAL RESPONSE TO ADAM BEREKI PRA REQUEST

Adam <abereki@gmail.com> Sun, Jun 19, 2022 at 11:33 AM
To: OCDAPRASubmissions <OCDAPRASubmissions@da.ocgov.com>

Good day,

In response to your request that I provide further information about my complaint, please see the attached complaint I mailed to your office on or about 2/17/22. In addition to the information contained in the complaint, I would like to add that I believe I am unlawfully being held in constructive custody as a result of the illegal "judgment" for all of the reasons stated in the complaint and all other stated herein including my license to work as a contractor has been suspended/revoked by operation of law (Business & Professions Code §7071.17) as a result of the illegal judgment mentioned in the complaint.This suspension/revocation occurred without any hearing at all and was further egregious and highly unlawful punishment. As a result, I have been unable to work in my profession as a general contractor for more than four years and am facing being forced into bankruptcy. As a direct and proximate result of the illegal actions being taken by State and National officials and the other mentioned in the complaint, I am unable to pay the mortgage and property taxes on the property to which I/my estate is the legal title holder and have also suffered and continue to suffer emotional, psychological, and physical injuries.I have attempted to make numerous complaints to law enforcement officials who have all refused to fully, fairly, and impartially investigate my complaints and to intervene to stop the harm and damages created by the State that are being perpetrated upon me and my estate. For further details, visit www.thespiritoflaw.com for a much more comprehensive brief on these complaints and additional evidence.Please ensure that the additional aspects of my complaint are delivered to the proper officials for investigation and notify me that you have done so.

Sincerely,

Adam Bereki
949.241.6693
[Quoted text hidden]

COMPLAINT OCDA 021722.pdf
244K

EXHIBIT [D] p.5208

Gmail Adam Bereki <abereki@gmail.com>

Public Records Act Request

1 message

Adam <abereki@gmail.com> Sun, May 29, 2022 at 7:17 AM
To: "RecCert@CSLB" <reccert1@cslb.ca.gov>

Good day,

Please provide all of the following documents in your custody and control:

1) All documents evidencing the number of mandatory arbitration proceedings completed for year 2021 and 2022 as of 5/29/22.

2) the name of the registrar of contractors in office on 11/21/14.

3) the name of the registrar of contractors who ordered the mandatory arbitration in case as2014-087 if different than the person in 2).

Sincerely,

Adam Bereki

EXHIBIT [D] p.5209

Gmail Adam Bereki <abereki@gmail.com>

Records Request

1 message

Adam <abereki@gmail.com> Tue, Jun 28, 2022 at 7:08 AM
To: "RecCert@CSLB" <reccert1@cslb.ca.gov>

Good day,

Please provide the name of the Registrar who ordered the mandatory arbitration proceeding in case AS-2014-87.

Sincerely,

Adam Bereki
9492416693

EXHIBIT [D] p.5210

CONTRACTORS STATE LICENSE BOARD
9821 Business Park Drive, Sacramento, CA 95827
Mailing Address: P.O. Box 26000, Sacramento, CA 95826
800.321.CSLB (2752) | www.cslb.ca.gov | CheckTheLicenseFirst.com

STATE OF CALIFORNIA
Governor Gavin Newsom

June 10, 2022

Adam Bereki
E-Mail: abereki@gmail.com

RE: Public Records Act Request for mandatory arbitration proceedings from 2021 and 2022

Date of Unit Receipt: May 29, 2022

Dear Mr. Bereki:

The Contractors State License Board (Board) has conducted a review of its records in response to your requests. Whenever a determination has been made not to disclose a record or parts of a record, that exemption determination was based upon express provisions of law as described below (see Government Code §§ 6253(b), 6254 and 6255).

For your convenience in reviewing this information, I have restated your request for records and then provided the Board's response.

Request No. 1: All documents evidencing the number of mandatory arbitration proceedings completed for year 2021 and 2022.

Response: The Board has performed a search and has found responsive information regarding "all documents evidence the number of mandatory arbitration proceedings completed for the year 2021 and 2022 as of 5/29/2022."

Every year the Board reports documentation to the legislature that includes the number of complaints closed to mandatory arbitration. These documents are available by Fiscal Year between 2017 and 2021 under the "CSLB Enforcement Reports to the Legislature" tab at the following Link on the CSLB website: https://www.cslb.ca.gov/About_Us/Library/Reports.aspx (under the "Complaints Closed After Referral for Field Investigation" section of each document).

The Board does not have documents that ask for the specific mandatory arbitration numbers you request by calendar year, however, our computer systems can be searched for this information, and we can provide you generally the following data:

- In the calendar year 2021, CSLB referred 373 complaints to mandatory arbitration
- In the calendar year of 2022 (up to 5/1/2022, we do not have information up to 5/29/2022 at this time), CSLB referred 140 complaints to mandatory arbitration.

Request No. 2: The name of the registrar of contractors in office on 11/21/2014.

Response: The name of the registrar in office in 2014 was Steve Sands.

Adam Bereki
June 10, 2022

Request No. 3: The name of the registrar who ordered the mandatory arbitration in case AS-2014-087 if different than the person in 2.

Response: The name of the registrar is the same as requested in No. 2.

If you have any questions or need further assistance, please contact me at the address above or via telephone at (916) 255-2509.

Sincerely,

Amanda McDonald

Amanda McDonald
Staff Services Analyst
Record Certification Unit

Gmail Adam Bereki <abereki@gmail.com>

Basic Police Academy Training– Constitutional Rights Violations

Adam <abereki@gmail.com> Thu, Jun 16, 2022 at 7:37 AM
To: Kirk.Bunch@post.ca.gov, Ashley.Matteoni@post.ca.gov

Good morning,

My name is Adam Bereki. I'm writing to ask for your help in finding some information about police basic training regarding reports to officers for deprivation of constitutionally protected rights. I've been the victim of egregious criminal rights deprivations by numerous judges and have been calling local police departments where the incidents occurred to not only make a crime report, but also to make a deprivation of rights complaint. In almost every case, the officers have refused to make any report whatsoever, let alone perform an investigation or intervene to stop the irreparable harm being perpetrated upon me. The officers seem to believe that they have no power to stop another public official like a judge, who is clearly violating the law and the Constitution from doing so, or to even investigate the situation. Even more troubling, one supervisor has shared that he doesn't know how to investigate a deprivation of rights complaint and has never received any training in doing so. When a complaint was made to his city for proper training, the city attorney said the officer, in refusing to fully investigate the complaint, had done the right thing. In other cases, officers believe they cannot investigate a claim for deprivation of rights if it didn't happen within their city or "jurisdiction" despite the fact that the limitations of the Constitution have no geographical bounds in California.

I would specifically like to know if POST has any specific training on these issues and if so, for you to provide me with a copy under the public records act. Please also include any information in the District Attorney Investigator Courses. If there isn't any training on this subject matter, this is absolutely at the core of law enforcement functioning that must be addressed. Any light you could shine on these issues would be greatly appreciated. Also, if you'd like to call and more fully discuss these issues, please feel free. I've included my number below.

Sincerely,

Adam Bereki
949 241 6693

Matteoni, Ashley@POST <Ashley.Matteoni@post.ca.gov> Thu, Jun 16, 2022 at 8:26 AM
To: Adam <abereki@gmail.com>
Cc: "Bunch, Kirk@POST" <Kirk.Bunch@post.ca.gov>

Good morning Adam,

I was advised by Bureau Chief Hollar to provide you with the following information. You need to request a PRA request (Public Records Act). Here is the link to submit your request: California Public Records Act FAQs.

Thank you,

Ashley Matteoni

Bureau Secretary | Basic Training Bureau

(916) 227-4256 | desk

CA Commission on Peace Officer Standards and Training (POST)

860 Stillwater Road, Suite 100, West Sacramento, CA 95605

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From: Adam <abereki@gmail.com>
Sent: Thursday, June 16, 2022 7:37 AM
To: Bunch, Kirk@POST <Kirk.Bunch@post.ca.gov>; Matteoni, Ashley@POST <Ashley.Matteoni@post.ca.gov>
Subject: Basic Police Academy Training– Constitutional Rights Violations

CAUTION: This email originated from outside of POST. Please do not click links or open attachments unless you

recognize the sender. Report SPAM to the Helpdesk.

Adam <abereki@gmail.com> Thu, Jun 16, 2022 at 8:30 AM
To: POST CPRA Requests <cpra@post.ca.gov>

---------- Forwarded message ---------
From: **Adam** <abereki@gmail.com>
Date: Thu, Jun 16, 2022 at 7:37 AM
Subject: Basic Police Academy Training– Constitutional Rights Violations
To: <Kirk.Bunch@post.ca.gov>, <Ashley.Matteoni@post.ca.gov>
[Quoted text hidden]

Adam <abereki@gmail.com> Thu, Jun 16, 2022 at 8:31 AM
To: "Matteoni, Ashley@POST" <Ashley.Matteoni@post.ca.gov>

Hi Ashley,

Thanks for your help. In addition to the PRA request, which I just made, I was also looking to speak with someone about this issue. Could you please have someone call me.

Sincerely,

Adam
949.241.6693
[Quoted text hidden]

Matteoni, Ashley@POST <Ashley.Matteoni@post.ca.gov> Thu, Jun 16, 2022 at 8:44 AM
To: Adam <abereki@gmail.com>
Cc: "Bunch, Kirk@POST" <Kirk.Bunch@post.ca.gov>

Hi Adam,

Unfortunately, you will need to follow the official process. In the request, you can ask them to call you and the person handling the PRA request will get back to you.

[Quoted text hidden]

EXHIBIT [D] p.5215

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

PUBLIC INQUIRY UNIT
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

January 28, 2019

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your correspondence to the Office of the Attorney General. Often, it is only through letters from concerned and responsible citizens, like you, that we become aware of matters of public concern.

From the information you provided, it appears that you have already contacted the Contractors State License Board (CSLB), which is the agency that can best assist you. This agency has primary jurisdiction over your area of concern.

We acknowledge your complaint about how the CSLB has handled your complaint, however we are unable to assist or comment on this matter. The Attorney General's Office is required by law to provide legal representation to state agencies in disputes rising out of their actions. This duty precludes the Attorney General from representing individual citizens in their disagreements with state agencies or providing advice to any individual regarding the disputed activity. While the Attorney General represents state departments in legal matters, he does not seek to impose his own policy judgments or control the administration of the business of his client agencies.

If you wish to pursue this matter and require further assistance, you may also wish to consult with a private attorney. An attorney would directly represent your interests and is the one whose advice would be most helpful to you.

Again, thank you for bringing this matter to our attention.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For XAVIER BECERRA
Attorney General

HUGH NGUYEN
CLERK-RECORDER

BIRTH AND DEATH RECORDS
FICTITIOUS BUSINESS NAMES
MARRIAGE LICENSES/RECORDS
NOTARY REGISTRATION
ORANGE COUNTY ARCHIVES
PASSPORTS
PROPERTY RECORDS

NOTICE

RE: AB 1466 - Real property: discriminatory restrictions

In 2021, the California Legislature amended Section 12956.1 of the Government Code, related to the removal of discriminatory restrictions which may be contained in real property documents.

A county recorder, title company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person is required to place a cover page or stamp on the first page of the previously recorded document or documents stating the following:

"If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

The Orange County Clerk-Recorder is committed to assisting the public in the removal of unlawful discriminatory restrictions from property records. Please contact our office for assistance in completing a Restrictive Covenant Modification form.

NORTH COUNTY BRANCH OFFICE
WELLS FARGO BUILDING
222 S. HARBOR BLVD., STE 110
ANAHEIM, CALIFORNIA 92805

ORANGE COUNTY
COUNTY ADMINISTRATION SOUTH
601 N. ROSS STREET
SANTA ANA, CALIFORNIA 92701

OLD ORANGE COUNTY
COURTHOUSE
211 W. SANTA ANA BLVD. ROOM 201
SANTA ANA, CALIFORNIA 92701

SOUTH COUNTY BRANCH OFFICE
LAGUNA HILLS CIVIC CENTER
24031 EL TORO ROAD, SUITE 150
LAGUNA HILLS, CALIFORNIA 92653

(714) 834-2500 ◆ FAX (714) 834-2675 ◆ WWW.OCRECORDER.COM ◆ WWW.OCARCHIVES.COM

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

85.00

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2022000184626 8:12 am 05/18/22

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Recording Requested By:
NATIONSTAR MORTGAGE DBA MR. COOPER

When Recorded Return To:

DOCUMENT ADMINISTRATION
NATIONSTAR MORTGAGE DBA MR. COOPER
8950 CYPRESS WATERS BLVD
COPPELL, TX 75019

CORPORATE ASSIGNMENT OF DEED OF TRUST

Orange, California
SELLER'S SERVICING #:****8921 "BEREKI"**

Prepared By: Tuyet Vo, NATIONSTAR MORTGAGE DBA MR. COOPER 8950 CYPRESS WATERS BLVD, COPPELL, TX 75019
1-888-480-2432

For Value Received, NATIONSTAR MORTGAGE, LLC hereby grants, assigns and transfers to CITIBANK, NA, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS OWNER TRUSTEE FOR NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-2 at 425 WALNUT STREET, CINCINNATI, OH 45202 all its interest under that certain Deed of Trust dated 07/01/2005 , in the amount of $595,000.00, executed by ADAM BEREKI, A SINGLE MAN to FIRST HORIZON HOME LOAN CORPORATION, A KANSAS CORPORATION. and Recorded: 07/07/2005 as Instrument No.: 2005000525690 in the County of Orange, State of California.

In witness whereof this instrument is executed.

NATIONSTAR MORTGAGE, LLC
On May 17th, 2022

TSEDALE ALEMU, Vice-President

STATE OF Texas
COUNTY OF Denton

On May 17th, 2022, before me, SYLVIA RAMIREZ, a Notary Public in and for Denton in the State of Texas, personally appeared TSEDALE ALEMU, Vice-President, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

SYLVIA RAMIREZ
Notary Expires: 03/07/2023 #131921660

SYLVIA RAMIREZ
Notary Public, State of Texas
Comm. Expires 03-07-2023
Notary ID 131921660

(This area for notarial seal)

*HVA*HVANATT*05/17/2022 08:25:41 AM* NATT01NATTA0000000000000004437578* CAORANG* ******8921 CASTATE_TRUST_ASSIGN_ASSN **TV0*ATT*

EXHIBIT [D] p.5218

Certified Copy of document number 20220018462

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE: 07/14/2022

CERTIFICATION FEE: 2.00

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

HUGH NGUYEN
CLERK-RECORDER

BIRTH AND DEATH RECORDS
FICTITIOUS BUSINESS NAMES
MARRIAGE LICENSES/RECORDS
NOTARY REGISTRATION
ORANGE COUNTY ARCHIVES
PASSPORTS
PROPERTY RECORDS

NOTICE

RE: AB 1466 - Real property: discriminatory restrictions

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"If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

The Orange County Clerk-Recorder is committed to assisting the public in the removal of unlawful discriminatory restrictions from property records. Please contact our office for assistance in completing a Restrictive Covenant Modification form.

NORTH COUNTY BRANCH OFFICE
WELLS FARGO BUILDING
222 S. HARBOR BLVD., STE 110
ANAHEIM, CALIFORNIA 92805

ORANGE COUNTY
COUNTY ADMINISTRATION SOUTH
601 N. ROSS STREET
SANTA ANA, CALIFORNIA 92701

OLD ORANGE COUNTY
COURTHOUSE
211 W. SANTA ANA BLVD. ROOM 201
SANTA ANA, CALIFORNIA 92701

SOUTH COUNTY BRANCH OFFICE
LAGUNA HILLS CIVIC CENTER
24031 EL TORO ROAD, SUITE 150
LAGUNA HILLS, CALIFORNIA 92653

(714) 834-2500 ◆ FAX (714) 834-2675 ◆ WWW.OCRECORDER.COM ◆ WWW.OCARCHIVES.COM

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

88.00

* $ R 0 0 1 3 8 3 4 2 3 4 $ *

2022000239217 11:00 am 07/07/22

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Recording Requested By:
Old Republic Servicing Solutions
When Recorded, Mail To:
Prestige Default Services
1920 Old Tustin Ave.
Santa Ana, California 92705
Phone: 949-427-2010

SPACE ABOVE THIS LINE FOR RECORDERS USE

SUBSTITUTION OF TRUSTEE

EXHIBIT [D] p. 522

RECORDING REQUESTED BY:
Old Republic Servicing Solutions
AND WHEN RECORDED MAIL TO:
Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, California 92705
Phone: 949-427-2010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No.: **22-7030** Loan No.: ******1091
APN: **141-513-55**

SUBSTITUTION OF TRUSTEE

WHEREAS, ADAM BEREKI, A SINGLE MAN was the original Trustor, **NONE SHOWN** was the original Trustee, and **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST HORIZON HOME LOAN CORPORATION, A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS** was the original Beneficiary under that certain Deed of Trust dated **7/1/2005** and recorded on **7/7/2005, as Instrument No. 2005000525690,** of Official Records of **Orange** County, California, and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and

WHEREAS, the undersigned substitutes a new Trustee under said Deed of Trust in place and instead of said original Trustee, or Successor Trustee, thereunder, in the manner provided for in said Deed of Trust,

NOW, THEREFORE, the undersigned hereby substitutes **PRESTIGE DEFAULT SERVICES, LLC, 1920 Old Tustin Ave., Santa Ana, California 92705** as Trustee under said Deed of Trust.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated: June 28th, 2022

NewRez LLC, F/K/A New Penn Financial, LLC, D/B/A Shellpoint Mortgage Servicing as servicer for Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2

By: Christina Milosz
Print Name: Christina Milosz
Its: Document Verification Specialist

State of South Carolina
County of Greenville

Before me, Mariah Royce, on this day personally appeared Christina Milosz, known to me (or proved to me on the oath of ID Card or through (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 28 day of June, 2022.

(Seal)

MARIAH ROYCE
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 12/16/2030

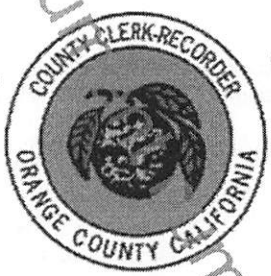
Mariah Royce
Notary Public's Signature

Certified Copy of document number 20220023921

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE: 07/14/2022

CERTIFICATION FEE: 3.00



COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

HUGH NGUYEN
CLERK-RECORDER

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FICTITIOUS BUSINESS NAMES
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NOTARY REGISTRATION
ORANGE COUNTY ARCHIVES
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COUNTY ADMINISTRATION SOUTH
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SANTA ANA, CALIFORNIA 92701

OLD ORANGE COUNTY
COURTHOUSE
211 W. SANTA ANA BLVD. ROOM 201
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SOUTH COUNTY BRANCH OFFICE
LAGUNA HILLS CIVIC CENTER
24031 EL TORO ROAD, SUITE 150
LAGUNA HILLS, CALIFORNIA 92653

(714) 834-2500 ◆ FAX (714) 834-2675 ◆ WWW.OCRECORDER.COM ◆ WWW.OCARCHIVES.COM

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

97.00

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202200239218 11:00 am 07/07/22

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RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:
Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, California 92705
Phone: 949-427-2010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No.: **22-7030** Loan No.: ********1091** APN: **141-513-55**

IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED
注：本文件包含一个信息摘要
참고사항: 본 첨부 문서에 정보 요약서가 있습니다
NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

[PURSUANT TO CIVIL CODE § 2923.3(a), THE SUMMARY OF INFORMATION REFERRED TO BELOW IS NOT ATTACHED TO THE RECORDED COPY OF THIS DOCUMENT BUT ONLY TO THE COPIES PROVIDED TO THE TRUSTOR]

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **$37,958.42** as of **7/6/2022,** and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition of reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than three months

EXHIBIT [D] pg 5225

after this notice of default is recorded) to, among other things. (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2
c/o Shellpoint Mortgage Servicing
55 Beattie Place, Suite 100
Greenville, South Carolina 29601-2743
Telephone: 800-365-7107

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale provided the sale is concluded prior to the conclusion of the foreclosure.

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN: That **Prestige Default Services, LLC** is either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary under a Deed of Trust dated **7/1/2005**, executed by **ADAM BEREKI, A SINGLE MAN**, as Trustor, to secure certain obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST HORIZON HOME LOAN CORPORATION, A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS** , as beneficiary, recorded **7/7/2005**, as Instrument No. **2005000525690**, of Official Records in the Office of the Recorder of **Orange** County, California describing land therein as:

AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST

Said obligations include **1 NOTE(S) FOR THE ORIGINAL** sum of **$595,000.00**, that the beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by **Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2**, the Beneficiary; that a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:
The installment of principal and interest and escrow amounts, if applicable, which became due on 10/1/2021, and all subsequent installments of principal and interest and escrow amounts through the date of this Notice, plus amounts that are due for late charges, delinquent property taxes, insurance premium, advances made on senior liens, taxes and/or insurance, trustee's fees, and any attorney fees and court costs arising from or associated with the beneficiaries efforts to protect the preserve its security, all of which must be paid as a condition of reinstatement including all sums that shall accrue through reinstatement or payoff.

TS No.: 22-7030 Loan No.: ******1091

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

Nothing in this Notice of Default should be construed as a waiver of any fees or other amounts owing to the Beneficiary pursuant to the terms of the loan documents.

That by reason thereof, the present beneficiary under such deed of trust, has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee, such deed of trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Pursuant to the attached Declaration, the mortgage servicer declares that it has contacted the borrower, tried with due diligence to contact the borrower as required by California Civil Code § 2923.55 or § 2923.5, or is otherwise exempt from the requirements of § 2923.55 and § 2923.5.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property.

Dated: 7/6/2022

Prestige Default Services, LLC

BY: _____

Briana Young, Trustee Sale Officer

Prestige Default Services, LLC MAY BE CONSIDERED A DEBT COLLECTOR AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

BENEFICIARY DECLARATION OF COMPLIANCE WITH (OR EXCEPTION FROM) CIVIL CODE

SECTION 2923.55 AND AUTHORIZATION OF AGENT (FOR NOTICE OF DEFAULT)

Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, California 92705

- Borrower: ADAM BEREKI, A SINGLE MAN
- Beneficiary: Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2
- Property: 818 SPIRIT
  COSTA MESA California 92626
- Loan No: ******1091
- TS No: 22-7030

The undersigned beneficiary, or authorized agent for the beneficiary, hereby represents and declares:

[X] The beneficiary or beneficiary's authorized agent has contacted the borrower pursuant to, and has complied with, Civil Code Section 2923.55(a) (contact provision to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure"). State the date "contact" with the borrower(s) was accomplished pursuant to Civil Code Section 2923.55(a)(2): 3/7, 2022.

[ ] The beneficiary or beneficiary's authorized agent has exercised due diligence to contact the borrower as required by California Civil Code Section 2923.55(f) and, after waiting two (2) weeks after the telephone call requirements of Civil Code 2923.55(f)(2) were satisfied, the beneficiary or the beneficiary's authorized agent sent to the borrower(s), by certified mail, return receipt requested, the letter required by Civil Code Section 2923.55(f)(3), which was mailed on _____, 20____. (Date of mailing)

[ ] Pursuant to Civil Code Section 2920.5(c)(2)(A), the borrower has surrendered the secured property as evidenced by either a letter confirming the surrender or by delivery of the keys to the secured property to the beneficiary, the beneficiary's authorized agent or to the trustee. The surrender letter was received on _____(date); the keys were received on _____. (date).

[ ] Pursuant to Civil Code Section 2920.5(c)(2)(B), the beneficiary or beneficiary's authorized agent has evidence in its file, and reasonably believes, that the borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and to avoid their contractual obligations to beneficiaries.

[ ] Pursuant to Civil Code Section 2920.5(c)(2)(C), the beneficiary or beneficiary's authorized agent has verified information that on or before the date of this declaration, the borrower(s) has filed for bankruptcy and the proceedings have not been finalized. "Finalized" is not defined

by 2920.5(c)(2)(C). For purposes of this Code section, trustee, foreclosure agent and/or their authorized agent define the term as either (1) an order entered on the court's docket closing the file by the court; or (2) an order entered on the court's docket dismissing the bankruptcy case. If the beneficiary or the beneficiary's agent interprets "finalized" in another manner, please state the basis upon which the beneficiary believes that the bankruptcy has not been "finalized":_____.

[ ] The requirements of California Civil Code §2923.55 do not apply because the loan is not occupied by a tenant that meets the conditions described in California Civil Code §2924.15 et seq.

[ ] Pursuant to California Civil Code §3273.10 the mortgage servicer declares it has denied a forbearance request, during the effective time period of 9-1-2020 and 4-1-2021. A copy of the written denial notice(s) is attached. A forbearance [ ] was [ ] was not subsequently provided.

[ ] The provisions of Civil Code 2923.55 do not apply, because [ ] the property is NOT THE BORROWER'S PRINCIPAL RESIDENCE; or [ ] the property is COMMERCIAL PROPERTY.

The undersigned authorized the trustee, foreclosure agent and/or their authorized agent to sign, on behalf of the beneficiary/authorized agent, the notice of default containing the declaration required pursuant to Civil Code Section 2923.55(c).

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

Dated: 6/29/2022

NewRez LLC, F/K/A New Penn Financial, LLC, D/B/A Shellpoint Mortgage Servicing as servicer for Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2

By: Gary Cowherd

Print Name: Gary Cowherd

Its: Loss Mitigation Specialist

Certified Copy of document number 20220023921 8

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE: 07/14/2022

CERTIFICATION FEE: 6.00

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Electronically Filed by Superior Court of California, County of Orange, 07/25/2022 12:44:03 PM.
30-2022-01271693-CL-CL-CJC - ROA # 5 - DAVID H. YAMASAKI, Clerk of the Court By M. Luna, Deputy Clerk.

SUM-100

SUMMONS
(CITACION JUDICIAL)

F 8/9/22

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT(S):
(AVISO AL DEMANDADO):
ADAM BEREKI, an individual;
and DOES 1 to 5, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
FIRST NATIONAL BANK OF OMAHA, a National Banking Association

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. as the person sued under the fictitious name of *(specify)*:

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
700 CIVIC CENTER WEST
SAME
SANTA ANA CA 92701

CASE NUMBER:
(Número del Caso): 30-2022-01271693-CL-CL-CJC

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
THE DUNNING LAW FIRM APC
Donald T. Dunning (144665) James MacLeod (249145)
9619 Chesapeake Drive, Suite 210, San Diego, CA 92123
Telephone No. (858) 974-7600

DATE: *(Fecha)* 07/25/2022 DAVID H. YAMASAKI, Clerk of the Court
Clerk, by *(Secretario)* M. Luna, Deputy *(Adjunto)*
M. Luna

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served
1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465

Electronically Filed by Superior Court of California, County of Orange, 07/25/2022 12:44:03 PM.
30-2022-01271693-CL-CL-CJC - ROA # 3 - DAVID H. YAMASAKI, Clerk of the Court By M. Luna, Deputy Clerk.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
THE DUNNING LAW FIRM APC
Donald T. Dunning (144665)
James MacLeod (249145)
9619 Chesapeake Drive, Suite 210
San Diego, CA 92123
TELEPHONE NO.: 858-974-7600 FAX NO.: 858-974-7601
ATTORNEY FOR *(Name)*: PLAINTIFF FIRST NATIONAL BANK OF OMAHA

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 CIVIC CENTER WEST
MAILING ADDRESS: SAME
CITY AND ZIP CODE: SANTA ANA CA 92701
BRANCH NAME: CENTRAL JUSTICE CENTER

CASE NAME: FIRST NATIONAL BANK OF OMAHA vs. ADAM BEREKI, an individual;

CIVIL CASE COVER SHEET
☐ **Unlimited** (Amount demanded exceeds $25,000)
☒ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 30-2022-01271693-CL-CL-CJC
JUDGE:
DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☐ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☒ Rule 3.740 collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☐ Substantial post-judgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☒ monetary b. ☐ non-monetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: ONE
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: 7/18/22

James MacLeod (249145)
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740;
Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

EXHIBIT [B] p. 5232

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case.. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collection Cases. A "collection case' Under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as rule 3.740 collections case on this form means that it will be exempt form the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(non medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quite title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quite Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief from Late Claim
  - Other Civil Petition

Electronically Filed by Superior Court of California, County of Orange, 07/25/2022 12:44:03 PM.
30-2022-01271693-CL-CL-CJC - ROA # 4 - DAVID H. YAMASAKI, Clerk of the Court By M. Luna, Deputy Clerk.

THE DUNNING LAW FIRM
A Professional Corporation
Donald T. Dunning (144665)
James MacLeod (249145)
9619 Chesapeake Dr., Suite 210
San Diego, CA 92123
Tele: (858) 974-7600
Fax: (858) 974-7601

Attorneys for Plaintiff
FIRST NATIONAL BANK OF OMAHA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

FIRST NATIONAL BANK OF OMAHA, a National Banking Association Plaintiff, v. ADAM BEREKI, an individual; DOES 1 to 5, inclusive Defendant(s).	Case No. 30-2022-01271693-CL-CL-CJC DECLARATION RE: VENUE

I, James MacLeod, declare:

1. I am an attorney licensed to practice before the Courts in the State of California. I am an attorney with The Dunning Law Firm, attorneys for Plaintiff, FIRST NATIONAL BANK OF OMAHA ("Plaintiff"). I have personal knowledge of the facts set forth in this declaration and, if called, could and would competently testify thereto.

2. I certify that this matter should be tried or heard in the above referenced Court and that this is the proper Judicial District because at least one Defendant resides in this Judicial District. The Defendant(s) named above reside(s) in the zip code of 92626.

3. This Action is subject to California Civil Code section 1812.10.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 7/19/22, San Diego, California.

James MacLeod

Electronically Filed by Superior Court of California, County of Orange, 07/25/2022 12:44:03 PM.
30-2022-01271693-CL-CL-CJC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By M. Luna, Deputy Clerk.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*

THE DUNNING LAW FIRM APC
Donald T. Dunning, Esq. (144665)
James MacLeod, Esq. (249145)
9619 Chesapeake Drive, Suite 210
San Diego, CA 92123
TELEPHONE NO.: (858)974-7600 FAX NO. *(Optional)*: (858) 974-7601
E-MAIL ADDRESS *(Optional)*: JMacleod@DunningLaw.com
ATTORNEY FOR *(Name)*: PLAINTIFF FIRST NATIONAL BANK OF OMAHA, a National Banking Association

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

STREET ADDRESS: 700 CIVIC CENTER WEST
MAILING ADDRESS: SAME
CITY STATE AND ZIP CODE: SANTA ANA CA 92701
BRANCH NAME: CENTRAL JUSTICE CENTER

PLAINTIFF: FIRST NATIONAL BANK OF OMAHA, a National Banking Association

DEFENDANT(S): ADAM BEREKI, an individual;

☒ and DOES 1 to 5, inclusive

CONTRACT

☒ **COMPLAINT** ☐ **AMENDED COMPLAINT *(Number):***

☐ **CROSS-COMPLAINT** ☐ **AMENDED CROSS-COMPLAINT *(Number)***

Jurisdiction *(check all that apply):*

☒ **ACTION IS A LIMITED CIVIL CASE**
Amount demanded ☐ **does not exceed $10,000**
☒ **exceeds $10,000 but does not exceed $25,000**

☐ **ACTION IS AN UNLIMITED CIVIL CASE (exceeds $25,000)**

☐ **ACTION IS RECLASSIFIED by this amended complaint or cross-complaint**
☐ **from limited to unlimited**
☐ **from unlimited to limited**

CASE NUMBER:

30-2022-01271693-CL-CL-CJC

1. **Plaintiff*** (name or names): FIRST NATIONAL BANK OF OMAHA, a National Banking Association alleges causes of action against **defendant(s)*** *(name or names):* ADAM BEREKI, an individual; and DOES 1 to 5, inclusive

2. This pleading, including attachments and exhibits, consists of the following number of pages: 3

3. a. Each plaintiff named above is a competent adult
☒ **except** plaintiff *(name):* FIRST NATIONAL BANK OF OMAHA
(1) ☐ a corporation qualified to do business in California
(2) ☐ an unincorporated entity *(describe):*
(3) ☒ other *(specify):* a National Banking Association organized and existing under and by virtue of the law of the United States of America.

b. ☐ Plaintiff *(name):*
a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name *(specify):*
b. ☐ has complied with all licensing requirements as a licensed *(specify):*

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant(s) named above is a natural person
☐ **except** defendant *(name):*
(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe):*
(4) ☐ a public entity *(describe):*
(5) ☐ other *(specify):*

☐ **except** defendant *(name):*
(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe):*
(4) ☐ a public entity *(describe):*
(5) ☐ other *(specify):*

*If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Code of Civil Procedure, § 425.12

Form Approved for Optional Use
Judicial Council of California
PLD-C-001(20) [Rev. January 1, 2007]

COMPLAINT—Contract

SHORT TITLE: FIRST NATIONAL BANK OF OMAHA vs. ADAM BEREKI, an individual;	CASE NUMBER:

4. *(Continued)*

b. The true names of defendant(s) sued as Does are unknown to plaintiff.

(1) ☒ Doe defendant(s) *(specify Doe numbers):* 1 – 2 were the agents or employees of the named defendant(s) and acted within the scope of that agency or employment.

(2) ☒ Doe defendant(s) *(specify Doe numbers):* 3 – 5 are persons whose capacities are unknown to plaintiff.

c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.

d. ☐ Defendant(s) who are joined under Code of Civil Procedure section 382 are *(names):*

5. ☐ Plaintiff is required to comply with a claims statute, **and**

a. ☐ has complied with applicable claims statutes, *or*

b. ☐ is excused from complying because *(specify):*

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

a. ☐ a defendant(s) entered into the contract here.

b. ☐ a defendant(s) lived here when the contract was entered into.

c. ☒ a defendant(s) lives here now.

d. ☐ the contract was to be performed here.

e. ☐ a defendant(s) is a corporation or unincorporated association and its principal place of business is here.

f. ☐ real property that is the subject of this action is located here.

g. ☐ other *(specify):*

8. The following causes of action are attached and the statements above apply to each *(each complaint must have one or more causes of action attached):*

☐ Breach of Contract

☒ Common Counts

☐ Other *(specify):*

9. ☐ Other allegations:

10. **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

a. ☒ damages of:$ 13052.87

b. ☐ interest on the damages

(1) ☐ according to proof

(2) ☐ at the rate of *(specify):* percent per year from *(date):*

c. ☐ attorney's fees

(1) ☐

(2) ☐ according to proof.

d. ☐ other *(specify):*

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows *(specify paragraph numbers):*

Date: 7/18/22

James MacLeod (249145) ▶

(TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE: FIRST NATIONAL BANK OF OMAHA vs. ADAM BEREKI, an individual;	CASE NUMBER:

FIRST _____ (number) **CAUSE OF ACTION—Common Counts**

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff *(name)*: FIRST NATIONAL BANK OF OMAHA, a National Banking Association
alleges that Defendant(s) *(name)*: ADAM BEREKI, an individual; and
Does 1 to 5.
became indebted to ☒ plaintiff ☐ other *(name)*:

a. ☒ within the last four years
   (1) ☒ on an open book account for money due.
   (2) ☒ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

b. ☒ within the last ☒ two years ☒ four years
   (1) ☐ for money had and received by defendant for the use and benefit of plaintiff.
   (2) ☐ for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff
      ☐ the sum of $
      ☐ the reasonable value.
   (3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff
      ☐ the sum of $
      ☐ the reasonable value.
   (4) ☒ for money lent by plaintiff to defendant at defendant's request.
   (5) ☒ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.
   (6) ☐ *other (specify)*:

CC-2. $13052.87 , which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest ☐ according to proof ☐ at the rate of _____percent per year from *(date)*:

CC-3. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute
☐
☐ according to proof.

CC-4. ☐ Other:

Center for Health Statistics and Informatics, Vital Records
M.S. 5103
P.O. Box. 997410
Sacramento, CA 95899-7410
(916) 445-2684
Internet Address: www.cdph.ca.gov

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626

Requester:	ADAM BEREKI
RTN No:	20180000077894A0
Registrant:	ADAM BEREKI
Number of Copies:	8
Event Type:	Birth
Date Received:	5/25/2018
Amount Received:	$200.00
Banknote No.:	004589899 004589900 004589901 004589902 004589903 004589904 004589905 004589906

This is Not a Bill
Requests for Different Certificates are Mailed Separately

Please Read
Enclosed is a Certified Copy of the Official Record
Currently on File in Vital Records

If you requested an amended record or court order name change, the official record is now a 2 (or more) page document (the law does not allow us to alter the original record). All pages of this document must be presented together to serve as an official copy of the record.

EXHIBIT [D] p.5239

STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORD

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

104- 79-167907
STATE BIRTH CERTIFICATE NUMBER

CERTIFICATE OF LIVE BIRTH
STATE OF CALIFORNIA

3000 12927
LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER

THIS CHILD	1A. NAME OF CHILD—FIRST [redacted]	1B. MIDDLE [redacted]	1C. LAST [redacted]			
	2. SEX: Male	3A. THIS BIRTH, SINGLE, TWIN, ETC.: Single	3B. IF MULTIPLE, THIS CHILD 1ST, 2ND, ETC.: -	[redacted] GRAMS	[redacted]	5B. HOUR: 2140
PLACE OF BIRTH	6A. PLACE OF BIRTH—NAME OF HOSPITAL: Huntington Intercommunity Hospital		6B. STREET ADDRESS (STREET, NUMBER, OR LOCATION): 17772 Beach Boulevard			
	6C. CITY OR TOWN: Huntington Beach		6D. COUNTY: Orange			
MOTHER OF CHILD	7A. BIRTH NAME OF MOTHER—FIRST [redacted]	7B. MIDDLE [redacted]	7C. LAST [redacted]	8. STATE OF BIRTH [redacted]	AGE OF MOTHER [redacted]	
FATHER OF [redacted]	10A. NAME OF FATHER—FIRST [redacted]	10B. MI [redacted]	10C. LAST [redacted]	[redacted]	OF FATHER [redacted]	
CERTIFICATION	[redacted] ED INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE	PARENT OR OTHER INFORMANT—SIGNATURE ► Steve [redacted]		13B. RELATIONSHIP TO CHILD: Father	13C. DATE REVIEWED AND SIGNED: 6-20-79	
ATTENDANT'S CERTIFICATION	I CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR, DATE AND PLACE STATED.	14A. PHYSICIAN (OR OTHER PERSON WHO ATTENDED THIS BIRTH)—DEGREE OR TITLE AND TYPED NAME SIGNATURE ► Gerald Nolan, M.D.			14B. DATE SIGNED: 6/20/79	
		14C. ADDRESS ► 17822 Beach Boulevard, Huntington Beach			14D. ATTENDANT'S LICENSE NUMBER: C-20693	
LOCAL REGISTRAR	15. DEATH—ENTER DATE OF DEATH	16. LOCAL REGISTRAR—SIGNATURE [redacted]			17. DATE [redacted] JUL 18 1979	

This is to certify that this document is a true copy of the official record filed with Vital Records.

DATE ISSUED

JUN 14 2018

JAMES GREENE, MD, MS
STATE REGISTRAR OF VITAL RECORDS

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the State Registrar.

CACDPH--01

004589899

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

EXHIBIT [D] p.5240

TIPS Individual Transaction Record

GENERAL

Transaction Owner		Skillset:	b6 b7
Transaction Number		Caller ID:	b7
Open Time:	1/31/2020 4:35 PM	Foreign Language:	
Status:	Closed	UCID:	

ENTITIES

Complainant:	BEREKI, ADAM	**DOB:**	6/18/1979
Phone Number(s):	(Home) 9492416693		
Address(es):			
Email/Social Media:			

Linked Transactions

b7

Complaint Synopsis

CALLER REPORTS THAT IN 2017 HE WAS FINED BY ORANGE COUNTY CALIFORNIA FOR DOING CONSTRUCTION WORK WITHOUT A LICENSE. THE CALLER WAS FINED $900,000. CALLER APPEALED THE RULING, BUT ULTIMATELY LOST BOTH AT LOCAL AND IN STATE COURT. THE CALLER BELIEVES THAT BEIN FINED SUCH A HIGH AMOUNT OF MONEY IS A DEPRIVATION OF RIGHTS AGAINST HIS PERSON. TIE INFORMED THE CALLER THAT WHAT HE WAS REPORTING IS A CIVIL MATTER AND THAT HE WOULD NEED TO SPEAK WITH HIS ATTORNEY ON THE MATTER. CALLER DISAGREED AND PROCEEDED TO INQUIRE FROM THE TIE EVERYTHING THE FBI DOES INVESTIGATE. TIE INFORMED THE CALLER (MULTIPLE TIMES) THAT HE WAS NOT REPORTING A MATTER THE FBI WOULD BE ABLE TO ASSIST HIM WITH, BUT THAT BEING FINED $900,000 WAS NOT A DEPRIVATION OF HIS RIGHTS. WHEN IT BECAME CLEAR THAT THE CALLER WAS NOT WILLING TO TAKE THE TIE'S ADVISE/REFERRAL, THE TIE INFORMED THE CALLER THAT HE WAS GOING TO END THE CALL.

Violation: Default Call Violation

TIPS Individual Transaction Record

Question	Answer
Where did the crime/incident occur? (Please provide the specific location/address if possible)	see call details
When did the crime/incident occur? (Please provide an approximate date and time)	see call details
What was the exact crime that occurred?	see call details

Database Searches

Database	*Searched*	*Positive*	*Notes*

b7

Priority

Non-Actionable

Field Office

Los Angeles Field Office (LA)

TIPS Individual Transaction Record

Disposition

DA

Disposition Remarks

CALLER WAS REFERRED TO SPEAK WITH HIS ATTORNEY AS HE WAS NOT REPORTING A FEDERAL VIOLATION.

Domain Awareness Caveat

b7

PVL Checklist

Question	Positive

b7

ADMIN NOTES

HISTORY

Status	*User*	*Timestamp*	*Notes*

b6
b7
b7

TIPS Individual Transaction Record

b6
b7
b7

9/10/2020 10:24:39 AM

EXHIBIT [D] p.5244

shellpoint
A DIVISION OF newrez

DO NOT SEND MAIL OR PAYMENTS TO THIS ADDRESS
P.O. Box 619063 • Dallas, TX 75261-9063

7-811-21338-0043141-005-1-000-010-000-000

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

MORTGAGE STATEMENT

Statement Date: 07/18/2022

Account Number	**0675931091**
Next Due Date	**08/01/2022**
Reinstatement Amount	**$41,029.30**

Phone: 800-365-7107
Website: www.shellpointmtg.com

Explanation of Amount Due

Accelerated Amount $480,134.87

The loan is in default for failure to pay amounts due, and the sums evidenced by the Note and security instruments are now due and payable in full. As of this date of this letter, this is the amount that is now due in full. Please note that this is not a payoff statement and the amounts due may change due to outstanding or unrealized costs or fees. Contact Shellpoint Mortgage Servicing for a payoff or reinstatement amount.

Reinstatement Amount $41,029.30

As of the date of this letter, Shellpoint Mortgage Servicing is willing to accept this amount to reinstate your loan. Please note that the amounts due may change due to outstanding or unrealized costs or fees. Contact Shellpoint Mortgage Servicing for an accurate reinstatement amount.

Account Information

Outstanding Principal		$395,193.03
Deferred Balance*		$62,500.68
Interest Rate		5.7500%
Prepayment Penalty		None
Property Address:	818 SPIRIT COSTA MESA CA 92626	
Contractual Due Date:		October 1, 2021
Current Escrow Balance:		$0.00

Past Payments Breakdown

	Paid Last Month	Paid Year to Date
Principal	$0.00	$0.00
Interest	$0.00	$0.00
Escrow	$0.00	$0.00
Fees/Late Charges	$0.00	$15.00
Total	**$0.00**	**$15.00**

Transaction Activity (06/17/2022 - 07/17/2022)

Date	Description	Charges	Payments
06/22/2022	Attorney Cost Disbursement	$540.00	$0.00
06/23/2022	FC Costs Disbursement	$630.00	$0.00
07/05/2022	FC Costs Disbursement	$700.00	$0.00
07/08/2022	Property Inspection Disbursement	$15.00	$0.00
07/12/2022	FC Costs Disbursement	$180.00	$0.00

Important Messages

***Partial Payments:** Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply those funds to your mortgage.

Additional Messages

Affected by COVID-19? Assistance may be available. We offer relief options, such as a forbearance - a temporary suspension of payments, and payment deferment. Visit our website www.shellpointmtg.com or call us at 866-825-2174 to see if you qualify.

For questions regarding the servicing of your loan, please contact us at 800-365-7107 Monday-Friday 8:00AM-9:00PM, and Saturday 10:00AM-2:00PM.

Federal law requires us to tell you how we collect, share, and protect your personal information. Our Privacy Policy has not changed. You can review our policy and practices with respect to your personal information at www.shellpointmtg.com or request a copy to be mailed to you by calling us at 800-365-7107.

Delinquency Notice

You are late on your loan payments and the foreclosure process has been initiated. Failure to bring your loan current may result in fees and foreclosure – the loss of your home. As of 07/18/2022, you are 290 days delinquent on your loan.

Recent Account History

- o Payment due 02/01/22: unpaid balance of $20,022.13
- o Payment due 03/01/22: unpaid balance of $3,472.26
- o Payment due 04/01/22: unpaid balance of $3,472.26
- o Payment due 05/01/22: unpaid balance of $3,645.87
- o Payment due 06/01/22: unpaid balance of $3,472.26
- o Payment due 07/01/22: unpaid balance of $3,472.26
- o Payment due 08/01/22: current payment due

o **Total: $41,029.30 due. You must pay this amount to bring your loan current.**

If You Are Experiencing Financial Difficulty: See back for information about mortgage counseling or assistance.

EXHIBIT [D] p.5245

For information about your payments, total amount due, and

Important Notice: Newrez LLC dba Shellpoint Mortgage Servicing is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Newrez LLC dba Shellpoint Mortgage Servicing's NMLS ID is 3013.

Amount Due on Accounts in Foreclosure or Bankruptcy: If your account is in foreclosure or bankruptcy the amount listed as the Amount Due may not be the full amount necessary to bring your account current. To obtain up-to-date amount due information, please contact us at the number listed on the statement.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt: please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy.

Notice of Error or Information Request Address
You have certain rights under Federal law related to resolving errors in the servicing of your loan and requesting information about your loan. If you want to request information about your loan or if you believe an error has occurred in the servicing of your loan and would like to submit an Error Resolution or Informational Request, please write to us at the following address:

Shellpoint Mortgage Servicing
P.O. Box 10826
Greenville, SC 29603

Housing Counselor Information: If you would like counseling or assistance, you can contact the following:
U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

Amounts paid in excess of your payment amount will first be used to satisfy any delinquency. If there are no past due amounts then excess funds paid will be posted to your principal balance. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

Shellpoint Mortgage Servicing may assess a returned check fee consistent with the laws for your state and your loan documents on all checks returned by your financial institution. Additionally, Shellpoint Mortgage Servicing may charge a fee for processing payoff requests.

¿Hablas español? Esta carta contiene información importante sobre su préstamo hipotecario. Si usted no entiende el contenido de esta carta, por favor contacte a uno de nuestros representantes que hablan español al número **800-365-7107**.

If you prefer to receive communication in a language other than English, please contact us at 800-365-7107 to speak with a translator in your preferred language about the servicing of your loan or a document you received.

A successor in interest is someone who acquires an ownership interest in a property secured by a mortgage loan by transfer upon the death of a relative, as a result of a divorce or legal separation, through certain trusts, between spouses, from a parent to a child, or when a borrower who is a joint tenant or tenant by the entirety dies. If you [illegible] successor in interest or think you might be, please contact by phone, mail or email to start the confirmation process.

EXHIBIT [D] p.5246

Please be advised that Shellpoint Mortgage Servicing utilizes third-party providers in connection with the servicing of your loan, but Shellpoint

Citizens™

Customer Service 1-800-234-6002
Monday - Friday 8 am to 7 pm ET
citizensbank.com

Home Equity Line of Credit Statement

Account Number	**8000123235**
Statement Date	July 26, 2022
Payment Due Date	August 23, 2022
Credit Limit	$110,798.00
Credit Available	$0.00
Annual Percentage Rate (APR)	3.45000%
Average Daily Balance	$34,631.22
New Balance	$35,731.81
Minimum Payment Due	$377.82
Past Due Amount	$3,726.54
Total Amount Due	**$4,104.36**
Please Pay After September 7, 2022	$4,127.03

0000191 01 SP 0.570 **SNGLP T1 3 6521 92626-308918 -C01-P00191-I 2

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

Property Address: 818 SPIRIT
COSTA MESA CA 92626

IMPORTANT MESSAGES

IF YOU ARE SUBJECT TO A PENDING BANKRUPTCY PROCEEDING, OR IF YOU HAVE RECEIVED A DISCHARGE, THIS STATEMENT IS FOR INFORMATION PURPOSES ONLY. IT IS TO ADVISE YOU OF THE STATUS OF THE LOAN AND IS NOT AN ATTEMPT TO COLLECT A DEBT.

Previous Balance	(-)Payments	(+)Advances/Other Charges	(+)Adjustments	(+)Finance Charges	(=)New Balance	Days in Cycle
$35.627.06	$0.00	$0.00	$0.00	$104.75	$35,731.81	32

ACTIVITY SINCE YOUR LAST PAYMENT

Date	Description	Check#	Principal	Interest	Escrow/Fees/Other	Total
07/22/22	PROPERTY PRESERVATION DISBURSEMENT		$0.00	$0.00	$20.00	$20.00

INTEREST CHARGES

Days	Daily Balance	Adjustment Amount	Daily Rate	APR	Adjustments From	Adjustments To	Interest Charge
32	$34,631.22		0.0094521%	3.45000%			$104.75

EXHIBIT [D] p.5247

Please return bottom portion with your payment. (Allow sufficient time for postal delivery.) Change of Address? Fill out form on back side.

BILLING RIGHTS SUMMARY

The following is important information about your rights and our responsibilities under the Fair Credit Billing Act for line of credit accounts.

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us on a separate sheet at the address listed below as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, include the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question. If you have authorized us to pay your bill automatically from your savings or checking account, you can stop payment on any amount you think is wrong. To stop payment, your letter must reach us three (3) business days before the automatic payment is scheduled to occur.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

How We Calculate Your Finance Charges

We calculate the finance charge on your account each day by multiplying the daily periodic rate times the daily principal balance. Then we add up the finance charge for each day to get the interest portion of the finance charge for the entire billing cycle. To get the daily principal balance, we take the beginning balance of your account each day, add any new advances, and subtract any payments and credits. The daily principal balance does not include finance charges other than closing costs that are finance charges and that are financed in connection with the establishment of your account.

OTHER IMPORTANT INFORMATION

BANKRUPTCY INFORMATION

If you are subject to a pending bankruptcy proceeding, or if you have received a discharge, this statement is for information purposes only. It is to advise you of the status of the loan and is not an attempt to collect a debt.

NOTICE TO SERVICEMEMBER AND THEIR DEPENDENTS

If you are a servicemember who is, or recently was, on "active duty" or "active service," or a dependent of such a servicemember, you may be entitled to certain legal rights and protections, including protection from foreclosure or eviction, pursuant to the Servicemembers Civil Relief Act, as amended (the SCRA) and possibly, certain similar state statutes. If you believe you may be entitled to rights and protections under SCRA, contact us at:

Office of the Chairman
Military Assistance Team
One Citizens Bank Way
JCA150
Johnston, RI 02919
Phone: 1-800-234-6002

This communication is from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

We may report information about your account to the credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

NEED ADDITIONAL ASSISTANCE

To contact us or file a complaint, write to us at:

Citizens
Attn: Customer Service
P.O. Box 6260
Glen Allen, VA 23058-6260

If you have questions, give us a call at 800-234-6002.

PAYMENT PROBLEMS

If you're having trouble making your loan payments, contact us right away for help at citizensbank.com/mortgageassistance. You can also call us at 800-456-8855, Monday through Friday from 8 a.m. to 8 p.m. ET to discuss your options.

The Department of Housing and Urban Development (HUD) offers homeownership counseling at no charge. To find counseling agencies or programs in your area, call 800-569-4287, TYY 800-877-8339 or visit HUD.gov/findacounselor or consumerfinance.gov/find-a-housing-counselor/.

FOR NEW YORK LOANS ONLY

You may file complaints and obtain further information about the servicer by contacting the New York State Department of Financial Services Consumer Assistance Unit at 1-800-342-3736 or by visiting www.dfs.ny.gov. This servicer is not registered with the New York Superintendent of Financial Services. Citizens Bank uses third party providers in connection with the servicing of your loan and remains responsible for all actions taken by such providers.

Recording Requested By:
The Jasper Companies, Inc.

When Recorded Mail To:
William Bissell
14 Corporate Plaza Drive
Suite 120
Newport Beach, CA 92660

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

18.00

2017000170718 2:20 pm 04/27/17
62 417 A03 F13 4
0.00 0.00 0.00 0.00 9.00 0.00 0.00 0.00

Space above this line reserved for Recorder's use only

ABSTRACT OF JUDGMENT

EXHIBIT [D] p.5249

EJ-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
According, return to:
William G. Bissell SBN 93527
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660

TEL NO.: (949) 719-1159 FAX NO. (optional): (949) 719-1158
E-MAIL ADDRESS (Optional): wbissell@wgb-la
[X] ATTORNEY FOR [X] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS:
CITY AND ZIP CODE: Santa Ana, CA 92701
BRANCH NAME: Central Justice Center

FOR RECORDER'S USE ONLY

PLAINTIFF: The Spartan Associates, Inc.
DEFENDANT: Gary Humphreys etc. et al

CASE NUMBER:
30-2015-00805807

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS

[ ] Amended

FOR COURT USE ONLY

Pursuant to California Government Code § 68150(f), the Clerk of the Court hereby certifies this document accurately reflects the official court record. The electronic signature and seal on this document have the same validity and legal force and effect as an original clerk's signature and court seal. California Government Code § 68150(g).

1. The [X] judgment creditor [ ] assignee of record applies for an abstract of judgment and represents the following:
   a. Judgment debtor's
      Name and last known address
      Adam Bereki
      818 Spirit
      Costa Mesa, CA 92626
   b. Driver's license no. [last 4 digits] and state: 0543 CA [ ] Unknown
   c. Social security no. [last 4 digits]: 4758 [ ] Unknown
   d. Summons or notice of entry of sister-state judgment was personally served or mailed to *(name and address)*:
      Adam Bereki 818 Spirit Costa Mesa, CA 92626

2. [ ] Information on additional judgment debtors is shown on page 2.
3. Judgment creditor *(name and address)*:
   Gary Humphreys
   505 Augusta Drive
   Moraga, CA 94556
4. [X] Information on additional judgment creditors is shown on page 2.
5. [ ] Original abstract recorded in this county:
   a. Date:
   b. Instrument No.:

Date: April 25, 2017
William G. Bissell
(TYPE OR PRINT NAME)

William Bissell
(SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed: $848,000.00
7. All judgment creditors and debtors are listed on this abstract.
8. a. Judgment entered on *(date)*: April 20, 2017
   b. Renewal entered on *(date)*:n/a
9. [ ] This judgment is an installment judgment.
10. [ ] An [ ] execution lien [ ] attachment lien is endorsed on the judgment as follows:
    a. Amount: $
    b. In favor of *(name and address)*:
11. A stay of enforcement has
    a. [X] not been ordered by the court.
    b. [ ] been ordered by the court effective until *(date)*:
12. a. [X] I certify that this is a true and correct abstract of the judgment entered in this action.
    b. [ ] A certified copy of the judgment is attached.

[SEAL]

This abstract issued on *(date)*:
4/26/17
David H. Yamasaki, Clerk of the Court

Clerk, by A. DANG, Deputy

...NTIFF: The Spartan Associates, Inc. ...FENDANT: Gary Humphreys etc. et al	COURT CASE NO.: 30-2015-00805807

NAMES AND ADDRESSES OF ADDITIONAL JUDGMENT CREDITORS:

13. Judgment creditor *(name and address):*
Karen Humphreys
505 Augusta Drive
Moraga, CA 94556

14. Judgment creditor *(name and address):*

15. ☐ Continued on Attachment 15.

INFORMATION ON ADDITIONAL JUDGMENT DEBTORS:

16. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

17. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

18. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

19. Name and last known address

Driver's license no. [last 4 digits] and state: ☐ Unknown

Social security no. [last 4 digits]: ☐ Unknown

Summons was personally served at or mailed to *(address):*

20. ☐ Continued on Attachment 20.

PROOF OF SERVICE

I am employed in the County of Orange, State of California.

I am over the age of 18 and not a party to the within action; my business address is 14 Corporate Plaza Drive Suite 120, Newport Beach, CA 92660.

April 26, 2017, I served the within:

Abstract of Judgment

in said action by placing a true copy thereof, enclosed in a sealed envelope with postage, certified, return receipt requested thereon fully prepaid, in the United States mail at Newport Beach, California addressed as follows:

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

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

Executed on April 26, 2017, at Newport Beach, California.

William Bissell

Certified Copy of document number 20170000170718

7/3/2018
5.00

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE:_____

CERTIFICATION FEE:_____

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Gmail Adam Bereki <abereki@gmail.com>

Fwd: RR-04-19-05682

Adam <abereki@gmail.com> Sat, May 25, 2019 at 8:44 AM
To: researchincoming@mrcooper.com

RE: Loan No 596848921

Hello,

This email continues my efforts to verify that I lawfully owe you any money. Please provide the necessary documentation as requested below.

I received your communication as forwarded with this message. Thank you for your help. I have some additional questions and/or requests:

1) Could you please provide me with a certified copy UNDER OATH of both the FRONT AND BACK of ALL PAGES of the promissory note (this is my fourth request for something that should be very easy to produce). Your letter claims that the note has not been altered in any way but I would like to verify this for myself. Thus far, you have only sent the front page and have refused to certify those pages as true and correct copies under oath. Along with the BACK pages, I again request that you certify BOTH the FRONT and back pages as certified copies under oath.

2) Please inform me of the location of the ORIGINAL promissory note, NOT A COPY, so that I may inspect it.

3) Your communication has repeatedly referred to this transaction as a "loan" (ie Loan Number: 596848921). Please provide ALL of the legal and other relevant documentation that evidences Citibank, First Horizon, Mr. Cooper, Nationstar, or any other entity involved in this transaction in any way has in fact "loaned" me any money that I am required to pay. More specifically, I am requesting the ledger of all debits and credits associated with this transaction since inception detailing, dollar for dollar, exactly how any of the foregoing entities (or any others) "loaned" me anything upon which I am required to repay. Please also evidence what the word "loan" means.
Also include any income derived from this "loan".

You have never disclosed any of this information to me.

4) I received a copy of the front pages of the purported promissory note for this loan. It appears to have a stamped statement of certification claiming the documents are "certified copies of the original". There is also a squiggly line, apparently someone's signature making this certification. Please tell me who the person is (along with providing their contact information) that made this verification and signed their name.

5) Please inform me who the trustee is on the deed of trust.

6) Please provide documentation evidencing the COMPLETE chain of custody of both the deed of trust and original promissory note.

7) Provide the contact employer information for "Alan Baker Vice President of Loan Documentation" who has signed multiple assignments of deed of trust pertaining to this transaction.

8) You stated this loan is not securitized. Has it ever been? Please provideTHE COMPLETE HISTORY of any relevant documentation pertaining to this "loan", including any securitization, assignments, transfers, sales, etc. This included any Pooling and Services agreements. (Please review the chain of title that evidence this Mortgage was in fact securitized... and still may be.)

9) Provide a sworn statement and any necessary evidence under oath that I owe you or any entity associated in this transaction any money.

10) Provide evidence of whether the promissory note was converted into a security instrument or check.

Thank you for your help. I'll expect your prompt reply with ALL of the information I have requested to verify that I lawfully owe you any money. I have requested the foregoing information more than three times to no avail. In the event you cannot substantiate that I am lawfully required to pay you by producing the evidence I have requested, I will stop paying you.

Sincerely,

Adam Bereki
[Quoted text hidden]

---

2 attachments

image001.jpg
8K

8921_BEREKI_RR-04-19-05682.pdf
482K

EXHIBIT [D] p.5255

Gmail Adam Bereki <abereki@gmail.com>

Adam Bereki | Loan 596848921

Adam <abereki@gmail.com> Thu, Mar 28, 2019 at 10:43 AM
To: researchincoming@mrcooper.com

Greetings,

I was given your contact information through a recent call to Mr. Cooper and told I could contact you with any further requests.

Im writing pursuant to the Truth In Lending Laws to determine who is the holder or holder in due course of an original unaltered promissory note for this "loan". On August 2, 2018, I received a letter from you (see attached) with a purported copy of the note. This did not answer my question as to who the holder or holder in due course is of the original unaltered note and where it is located. I am also interested to know if anything such as an alonge has been attached to the promissory note or if it has been altered in any other way (See the UCC definition of alteration below)

Please also indicate if this promissory note was converted into a security instrument or check.

I am also curious if the mortgage associated with the above "loan" has been securitized. If so, please provide all available information about this process, how it was done, and any agreements made by mr. cooper, first horizon, or nationstar involved in that process.

"Alteration" means under UCC § 3-407(i) an unauthorized change in an instrument or promissory note that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument, security instrument, or promissory note relating to the obligation of a party.

Sincerely,
Adam Bereki
818 Spirit
Costa Mesa, CA 92626
949 241 6693

Adam Bereki Loan 596848921.pdf
2069K

Gmail Adam Bereki <abereki@gmail.com>

"Loan" 596848921

1 message

Adam <abereki@gmail.com> Fri, Nov 12, 2021 at 9:56 AM
To: researchincoming@mrcooper.com

Please see the attached correspondence.

Mr. Cooper Reply 11:12:21.pdf
33K

EXHIBIT [D] p.5257

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Mr. Cooper
Customer Service Department
Lake Vista 4
800 State Highway 121 Bypass
Lewisville, TX 75067
Via U.S. Mail and email to:
Research incoming@mrcooper.com

NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT.

RE: "Loan" Number 0596848921 and your letters Dated 11/2/21 and 11/9/21.

Good day,

It is not now, nor has it ever been my intention to avoid paying a debt that I lawfully owe.

According to your above referenced correspondence, you claim that my "loan" is in delinquent status and that you welcome the opportunity to discuss possible alternatives if I am having trouble making mortgage payments.

In order that I may verify that I lawfully owe you money, please provide ALL of the following:

1. The amount the debt;
2. The name of the creditor whom the debit is owed;
3. Your communication has referred to the above referenced transaction as a "loan" (ie Loan Number: 596848921). Please provide ALL of the legal and other relevant documentation that evidences Citibank, First Horizon, Mr. Cooper, Nationstar, or any other entity involved in this/these transaction(s) and/or debt collection that in any way evidences that I have been "loaned" any money. More specifically, I am requesting the ledger of all debits and credits associated with this/these transaction(s) since inception detailing, dollar for dollar, exactly how any of the foregoing entities (or any others) "loaned" me anything upon which I am required to repay. Please also define what the words "loan", "money", "dollar", and "US Currency" mean pursuant to our purported "agreement(s)". Also include any income you have derived from this "loan". You have never lawfully disclosed any of this information to me.
4. A **certified** copy(ies) of the alleged "Deed(s) of Trust" and/or "Mortgage(s)" associated with this/these transaction(s).
5. Who the trustee is on the alleged "Deed(s) of Trust" and/or "Mortgages" and how to contact this person/entity.
6. The name and contact information of the person/entity who holds legal title to the alleged "Deed(s) of Trust" and/or "Mortgage(s)".

7. Define "Deed of Trust" and "Mortgage" under California statute and whether or not our purported agreement(s) are in fact and law a Deed of Trust or a Mortgage. (You have used both terms in your correspondence).
8. Documentation evidencing the COMPLETE chain of custody the alleged "Deed(s) of Trust" and "Mortgage(s)" and any original promissory note(s).
9. The contact information for "Alan Baker Vice President of Loan Documentation" who has signed multiple assignments of deed of trust pertaining to this/these transaction(s).
10. Has this/these loan(s) been securitized? Has it/they ever been? Please provide THE COMPLETE HISTORY of any relevant documentation pertaining to this/these "loan(s)", including any securitization, assignments, transfers, sales, etc. This includes ALL Pooling and Services agreements.
11. A sworn statement and any other relevant admissible evidence under penalty of perjury that I owe you or any entity associated in this/these transaction(s) any money.
12. Evidence of whether the promissory note(s) was/were converted into a security instrument or check or other form of commercial paper.
13. The identification of all application statutes, rules, and regulations which govern these alleged transaction(s) as they are not listed anywhere in our purported agreement(s) to which I have received.

This correspondence should be considered as an attempt to confirm/validate that I lawfully owe you money, and, therefore, as a dispute to your allegations that I am indebted to you pursuant to 15 U.S.C. §1692g.

Thank you for your help. I'll expect your prompt reply with **ALL** of the information I have requested to verify that I lawfully owe you any money.

Sincerely,

/s/ Adam Bereki and as
Trustee of the The Adam Bereki Living Trust
November 12, 2021

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Mr. Cooper
Customer Service Department
Lake Vista 4
800 State Highway 121 Bypass
Lewisville, TX 75067
Via U.S. Mail and email to:
Research incoming@mrcooper.com

NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT.

RE: "Loan" Number 0596848921 and your letters Dated 11/2/21 and 11/9/21.

Good day,

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2. The name of the creditor whom the debit is owed;
3. Your communication has referred to the above referenced transaction as a "loan" (ie Loan Number: 596848921). Please provide ALL of the legal and other relevant documentation that evidences Citibank, First Horizon, Mr. Cooper, Nationstar, or any other entity involved in this/these transaction(s) and/or debt collection that in any way evidences that I have been "loaned" any money. More specifically, I am requesting the ledger of all debits and credits associated with this/these transaction(s) since inception detailing, dollar for dollar, exactly how any of the foregoing entities (or any others) "loaned" me anything upon which I am required to repay. Please also define what the words "loan", "money", "dollar", and "US Currency" mean pursuant to our purported "agreement(s)". Also include any income you have derived from this "loan". You have never lawfully disclosed any of this information to me.
4. A **certified** copy(ies) of the alleged "Deed(s) of Trust" and/or "Mortgage(s)" associated with this/these transaction(s).
5. Who the trustee is on the alleged "Deed(s) of Trust" and/or "Mortgages" and how to contact this person/entity.
6. The name and contact information of the person/entity who holds legal title to the alleged "Deed(s) of Trust" and/or "Mortgage(s)".

7. Define "Deed of Trust" and "Mortgage" under California statute and whether or not our purported agreement(s) are in fact and law a Deed of Trust or a Mortgage. (You have used both terms in your correspondence).
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9. The contact information for "Alan Baker Vice President of Loan Documentation" who has signed multiple assignments of deed of trust pertaining to this/these transaction(s).
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11. A sworn statement and any other relevant admissible evidence under penalty of perjury that I owe you or any entity associated in this/these transaction(s) any money.
12. Evidence of whether the promissory note(s) was/were converted into a security instrument or check or other form of commercial paper.
13. The identification of all application statutes, rules, and regulations which govern these alleged transaction(s) as they are not listed anywhere in our purported agreement(s) to which I have received.

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Thank you for your help. I'll expect your prompt reply with **ALL** of the information I have requested to verify that I lawfully owe you any money.

Sincerely,

/s/ Adam Bereki and as
Trustee of the The Adam Bereki Living Trust
November 12, 2021

need reindeer to
etters to Santa.
The Snowy Day
GLOBAL
RETURN RECEIPT
REQUESTED
818 Splat
92626
7021 0950 0000 9109 8847
1000
75067
U.S. POSTAGE PAID
FCM LETTER
SANTA ANA, CA
92799
DEC 01 21
AMOUNT
$7.38
R2305E12460-43
M2. Coffee
Customer Svc. Dept.
Lake Vista
920 State Highway 121 Bypass
Lewisville, TX 75067

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee $3.75
Extra Services & Fees (check box, add fee as appropriate)
- Return Receipt (hardcopy) $0.00
- Return Receipt (electronic) $0.00
- Certified Mail Restricted Delivery $0.00
- Adult Signature Required $0.00
- Adult Signature Restricted Delivery $

Postage $0.58
Total Postage and Fees $7.38

DEC 1 2021 Postmark Here

12/01/2021

Sent To
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7021 0950 0000 9109 8847

UNITED STATES POSTAL SERVICE.

SANTA ANA WINDOW SVCS
3101 W SUNFLOWER AVE
SANTA ANA, CA 92799-0100
(800)275-8777

12/01/2021 11:01 AM

Product	Qty	Unit Price	Price
Priority Mail® 1-Day 1			$9.20
Flat Rate Box			
Anaheim, CA 92805			
Flat Rate			
Expected Delivery Date			
Thu 12/02/2021			
Tracking #:			
9505 5150 6990 1335 0123 39			
Insurance			$0.00
Up to $50.00 included			
Total			$9.20
Priority Mail® 2-Day 1			$16.25
Flat Rate Box			
Las Vegas, NV 89129			
Flat Rate			
Expected Delivery Date			
Sat 12/04/2021			
Tracking #:			
9505 5150 6990 1335 0123 46			
Insurance			$0.00
Up to $50.00 included			
Total			$16.25
First-Class Mail® Letter	1		$0.58
Lewisville, TX 75067			
Weight: 0 lb 0.50 oz			
Estimated Delivery Date			
Mon 12/06/2021			
Certified Mail®			$3.75
Tracking #:			
70210950000091098847			
Return Receipt			$3.05
Tracking #:			
9590 9402 2856 7069 2501 58			
Total			$7.38
Grand Total:			$32.83
Credit Card Remitted			$32.83
Card Name: VISA			
Account #: XXXXXXXXXXXX8829			
Approval #: 03560D			
Transaction #: 606			
AID: A0000000031010		Chip	
AL: VISA CREDIT			
PIN: Not Required		CHASE VISA	

Gmail Adam Bereki <abereki@gmail.com>

Resolution Letter

Chelsea Hernandez <chelsea.Morales@mrcooper.com> Mon, Dec 13, 2021 at 9:57 AM
To: "abereki@gmail.com" <abereki@gmail.com>

Please see attachments.

Thank you.

This e-mail communication and any attachments may contain confidential, copyrighted, and legally privileged information for use solely by the designated recipients to which this e-mail is addressed. If you are not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, disclosure, dissemination, distribution, or copying of this message or its contents is prohibited and may be subject to governing laws protecting its disclosure. If you have received this communication in error, please notify Mr. Cooper immediately by e-mail at postmaster@mrcooper.com and destroy all copies of this communication and any attachments.

2 attachments

berekifinal.pdf
119K

enclosuresX7.pdf
5522K

mr. cooper
CHANGING THE FACE OF HOME LOANS
P.O. Box 619098
Dallas, TX 75261-9741

OUR INFO
ONLINE
www.mrcooper.com

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

December 13, 2021

ACCOUNT INFO
LOAN NUMBER: 0596848921
CASE NUMBER: LB-11-21-00940
PROPERTY ADDRESS:
818 Spirit
Costa Mesa, CA 92626
MORTGAGOR:
Adam Bereki

Dear Adam Bereki:

Thank you for reaching out to us.

Why am I receiving this letter?

We received your letter on November 12, 2021, and have put together this reply with information that we hope will alleviate your concerns. After an investigation we're sharing with you what we found:

Some information you have requested does not pertain directly to the servicing of the loan, does not identify any specific servicing errors, and/or is considered proprietary and confidential. Therefore, this information is considered outside the scope of information that must be provided. However, the information below and enclosed documents should address any of your relevant questions and requests. Enclosed, you will find the following documents:

- Note and Security Instrument
    - The Note and Security Instrument will validate the above mentioned loan. These documents will explain our rights to:
        - Collect any remaining debt owed under the Note and Security Instrument
        - Assess fees and costs to the loan as necessary, including late fees if a payment is received after the specified grace period and legal fees if a loan is in default
        - Inspect the property and charge applicable fees

Mr. Cooper is a brand name for Nationstar Mortgage LLC. Nationstar Mortgage LLC is doing business as Nationstar Mortgage LLC d/b/a Mr. Cooper. Mr. Cooper is a registered service mark of Nationstar Mortgage LLC. All rights reserved.

If you are a successor in interest (received the property from a relative through death, devise, or divorce, and you are not a borrower on the loan) that has not assumed, or otherwise become obligated on the debt, this communication is for informational purposes only and is not an attempt to collect a debt from you personally.

EQUAL HOUSING OPPORTUNITY

mr. cooper
CHANGING THE FACE OF HOME LOANS

- Purchase lender placed insurance
- Pay taxes on the mortgagor's behalf

- Transaction History
  - The transaction history reflects a complete history for the period we have serviced the loan. Late fees are assessed any time the contractual payment is received after the grace period, as indicated in the Note. Please note, late fees are not considered interest and are not reported to the IRS-on-IRS form 1098. If a payment was applied to the suspense account, it will be indicated in the code description column. Payments can be applied to the suspense account if the funds received do not represent the full monthly mortgage payment due or if we are not informed of where the payment is to be applied. Furthermore, this payment history reflects:
    - When payments were received
    - How the payments were applied to the loan
    - Any disbursements made from the loan, including, but not limited to, disbursements for taxes, insurance, property inspections, brokers price opinions (BPOs), and legal fees
    - A description for each transaction, with running balances of the unpaid principal and escrow accounts
    - The date fees and charges were assessed, if any
    - Any amounts paid towards fees
    - Any waivers/reversals of fees

- Assignments (2)

- Most Recent Billing Statement
  - The billing statement will reflect the current amount due on the loan and will also provide a breakdown of any fees assessed, including any lender paid expenses or corporate advance fees.

- Notice of Servicing Transfer, also known as Welcome Letter
  - The Servicing Transfer Notice will detail the date and terms of the service transfer from the prior servicer to Mr. Cooper. This document evidences our rights to service the loan.

Upon receipt of this correspondence, the above-mentioned loan and related documents were reviewed and found to comply with all state and federal guidelines that regulate them. As such, the above-mentioned loan account will continue to be serviced appropriate to its status.

mr. cooper
CHANGING THE FACE OF HOME LOANS

RESPA RESPONSE TO NOTICE OF ERROR
Under applicable federal law, we are required to inform you that after completing a reasonable investigation into the issues described above, it has been determined that no error occurred. You have the right to access the documents we used in this investigation and are listed above.

If you have any questions, your Dedicated Loan Specialist is Irma Sanchez and can be reached at 469.851.3425 or via mail at the address listed above. Our hours of operation are Monday through Thursday from 7 a.m. to 8 p.m. (CT), Friday from 7 a.m. to 7 p.m. (CT) and Saturday from 8 a.m. to 12 p.m. Visit us on the web at www.mrcooper.com for more information.

Sincerely,

Mr. Cooper
Customer Relations Specialist
PO Box 619098
Dallas, TX 75261-9741

Enclosures 7
By U.S. Standard Mail and E-mail abereki@gmail.com

Are you experiencing a financial hardship? Our local non-profit partners can help with financial counseling and other services. Please visit these websites for assistance:

- Hud.gov
- Neighborworks.org

mr. cooper™

CHANGING THE FACE OF HOME LOANS

mr. cooper
CHANGING THE FACE OF HOME LOANS

PO Box 619098
Dallas, TX 75261-9741

12/23/2021

OUR INFO
ONLINE
www.mrcooper.com

YOUR INFO
LOAN NUMBER
0596848921

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626

MORTGAGOR NAME:
Adam Bereki

PROPERTY ADDRESS
818 SPIRIT
COSTA MESA, CA 92626

COOPER REFERENCE NUMBER:
0003296658

Dear Adam Bereki:

We received your correspondence on December 22, 2021, regarding the above-referenced loan. We thank you for bringing this matter to our attention. We take all matters seriously and are in the process of reviewing your concerns.

A response will be provided no later than February 4, 2022.

Please note that during the investigation and resolution of your inquiry, written correspondence, such as billing statements and mandatory State pre-foreclosure notices, may continue.

If you have any questions, please contact us via one of the following methods.

Mr. Cooper
Customer Relations
PO Box 619098
Dallas, TX 75261-9741
Phone: 877-783-7480
Fax: 972-315-8637
email: customerrelationsofficer@mrcooper.com

Our hours of operation are Monday through Friday from 8 a.m. to 5 p.m. (CT). Visit us on the web at www.mrcooper.com for more information.

Sincerely,

Mr. Cooper

Mr. Cooper is a brand name for Nationstar Mortgage LLC. Nationstar Mortgage LLC is doing business as Nationstar Mortgage LLC d/b/a Mr. Cooper. Mr. Cooper is a registered service mark of Nationstar Mortgage LLC. All rights reserved.

EQUAL HOUSING OPPORTUNITY

Gmail Adam Bereki <abereki@gmail.com>

Qualified Written Request; Notice of Error, Response to Resolution Letter

3 messages

Adam <abereki@gmail.com> Wed, Dec 22, 2021 at 9:43 AM
To: chelsea.Morales@mrcooper.com, researchincoming@mrcooper.com

Good day,

Please see the attached letter.

Mr. Cooper Reply 122221.pdf
35K

Chelsea Hernandez <chelsea.Morales@mrcooper.com> Wed, Dec 22, 2021 at 10:16 AM
To: Adam <abereki@gmail.com>

I have forwarded your email to our Customer Relations officer so a

case can be created to address your concerns. An acknowledgement will

be sent to you which will include the case number.

Thank you.

From: Adam <abereki@gmail.com>
Sent: Wednesday, December 22, 2021 11:44 AM
To: Chelsea Hernandez <chelsea.Morales@mrcooper.com>; Research Incoming <ResearchIncoming@mrcooper.com>
Subject: Qualified Written Request; Notice of Error, Response to Resolution Letter

This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good day,

Please see the attached letter.

This e-mail communication and any attachments may contain confidential, copyrighted, and legally privileged

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Gmail Adam Bereki <abereki@gmail.com>

Qualified Written Request; Notice of Error, Response to Resolution Letter

Adam <abereki@gmail.com> Wed, Dec 22, 2021 at 9:43 AM
To: chelsea.Morales@mrcooper.com, researchincoming@mrcooper.com

Good day,

Please see the attached letter.

Mr. Cooper Reply 122221.pdf
35K

EXHIBIT [D] p.5272

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Nationstar Mortgage LLC
Attention Research Department
350 Highland Drive
Lewisville, Texas 75067
Via U.S. Mail and email to:
Researchincoming@mrcooper.com

NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT.

RE: "Loan" Number 0596848921 and your response letter dated 12/10/21 and email correspondence of 12/13/21; Notice of Error; Qualified Written Request

Good day,

It is not now, nor has it ever been my intention to avoid paying a debt that I lawfully owe.

According to your above referenced correspondence, you claim that my "loan" is in default and that you welcome the opportunity to discuss possible alternatives if I am having trouble making mortgage payments. You also stated that you "received [my] letter on November 12, 2021" disputing that I owe you a debt and requesting that you document, validate, and verify certain information I requested that would lawfully demonstrate I in fact owe you a debt.

In response, rather than provide ALL of the requested materials, you stated "[s]ome information you have requested does not pertain directly to the servicing of the loan, does not identify any specific servicing errors, and/or is considered proprietary and confidential. Therefore, this information is considered outside the scope of information that must be provided." While this may or may not be true, if you are in fact the agent of the owner of the note, then you have a duty to either notify the owner/holder of my request(s) and/or provide them on its behalf if you are so authorized as Notice to agent is notice to principal.

You then stated that "the information below and enclosed documents should address any of your relevant questions and requests." This information does not validate that I in fact owe you a debt. In order that I may verify that I lawfully owe you money, please provide ALL of the following:

1. In order that I may determine if you are the lawful servicer of this alleged loan, please provide the Pooling and Servicing Agreement in its entirety.
2. A certified copy accompanied by an affidavit sworn under penalty of perjury authenticating the alleged "Deed(s) of Trust" and/or "Mortgage(s)" associated with this alleged "loan" transaction. ***INCLUDE THE **FRONT AND BACK** OF ALL PAGES OF THESE DOCUMENTS***.

3. The name of the creditor whom the debit is owed;
4. Your communication has referred to the above referenced transaction as a "loan" (ie Loan Number: 596848921). Please provide ALL of the legal and other relevant documentation that evidences Citibank, First Horizon, Mr. Cooper, Nationstar, or any other entity involved in this/these transaction(s) and/or debt collection that in any way evidences that I have been "loaned" any money. More specifically, I am requesting the ledger of all debits and credits associated with this/these transaction(s) since inception detailing, dollar for dollar, exactly how any of the foregoing entities (or any others) "loaned" me anything upon which I am required to repay. Please also define what the words "loan", "money", "dollar", and "US Currency" mean pursuant to our purported "agreement(s)". Also include any income you have derived from this "loan". You have never lawfully disclosed any of this information to me;
5. Who the trustee is on the alleged "Deed(s) of Trust" and/or "Mortgages" and how to contact this person/entity;
6. The name(s) and contact information of each of the person(s)/entity(ies) who hold legal title to the alleged "Deed(s) of Trust" and/or "Mortgage(s)";
7. Identify the owner and holder or holder in due course of the alleged promissory note(s);
8. An affidavit sworn under penalty of perjury authenticating the COMPLETE chain of custody of the alleged "Deed(s) of Trust" and "Mortgage(s)" and any original promissory note(s);
9. Has this/these loan(s) been securitized? Has it/they ever been? Please provide an affidavit sworn under penalty of perjury authenticating THE COMPLETE HISTORY of any relevant documentation pertaining to this/these "loan(s)", including any securitization, assignments, transfers, sales, etc. This includes ALL Pooling and Services agreements associated;
10. A sworn statement and any other relevant admissible evidence under penalty of perjury that I owe you or any entity associated in this/these transaction(s) any money;
11. Evidence of whether the promissory note(s) was/were converted into a security instrument or check or other form of commercial paper;
12. The identification of all applicable statutes, rules, and regulations which govern these alleged transaction(s) as they are not listed anywhere in our purported agreement(s) to which I have received;
13. Any documents evidencing a knowing, voluntary, or intelligent waiver of my rights to judicial proceedings according to the course of the common law; or to be subject to the provisions of the uniform commercial code.

This correspondence should be considered as an attempt to confirm/validate that I lawfully owe you money, and, therefore, as a dispute to your allegations that I am indebted to you pursuant to 15 U.S.C. §1692g.

Thank you for your help. I'll expect your prompt reply with **ALL** of the information I have requested to verify that I lawfully owe you any money or am in default.

Sincerely,

/s/ Adam Bereki and as
Trustee of the The Adam Bereki Living Trust
December 22, 2021

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

CERT. 7017 0660 0000 0984 5546

Shell point
PO Box 10826
Greenville, SC ~~26903~~-0826
29603

NOTICE TO AGENT IS NOTICE TO PRINCIPAL. NOTICE TO PRINCIPAL IS NOTICE TO AGENT.

RE: "Loan" Number 0675931091

Good day,

It is not now, nor has it ever been my intention to avoid paying a debt that I lawfully owe.

According to your recent correspondence dated 01/25/22 and 1/27/22 you claim that I am "behind on [my] mortgage payment(s)" and that you are "trying to collect a debt."

In order that I may verify that I lawfully owe you money, please provide ALL of the following:

1. The total amount of the alleged debt due;
2. The name of the creditor whom the debt is owed;
3. ALL of the legal and other relevant documentation that evidences Citibank, N.A, First Horizon, Mr. Cooper, Nationstar, Shellpoint, the New Residential Mortgage Loan Trust 2018-2, or any other entity involved in this/these transaction(s) and/or debt collection that in any way evidences that I have been "loaned" any money and/or am indebted to you. More specifically, I am requesting the ledger of all debits and credits associated with each and every transaction throughout the entire history of these transaction(s) since inception detailing, dollar for dollar, exactly how any of the foregoing entities (or any others) "loaned" me anything upon which I am required to repay or currently owe a debt to. Please also define what the words "loan", "money", "dollar", and "US Currency" mean pursuant to our purported "agreement(s)". Also include any income you and ALL of the involved entities since inception have derived from this purported "loan".
4. **Certified** copy(ies) of the front and back of each and every page of the alleged "Deed(s) of Trust" and "Mortgage(s)" associated with this/these transaction(s).
5. The name of the trustee for the New Residential Mortgage Loan trust 2018-2 and how to contact this person/entity.
6. The address, telephone number, and email contact information for the New Residential Mortgage Loan trust 2018-2.
7. The name of the trustee for the First Horizon Mortgage Pass-Through Trust 2005-5 Mortgage Pass Through Certificate Series 2005-5.
8. The address, telephone number, and email contact information for the First Horizon Mortgage Pass-Through Trust 2005-5 Mortgage Pass Through Certificate Series 2005-5.

ORIGINAL

9. Documentation evidencing the COMPLETE chain of custody the alleged "Deed(s) of Trust", "Mortgage(s)", securities, and any original promissory note(s).
10. The name, address, telephone number, and email for each and every holder in due course of the purported promissory note and securty(ies).
11. The contact information for "Alan Baker, Vice President of Loan Documentation" and Nadine Homan, Vide President of Loan Documentation" who have signed multiple alleged assignments of deed of trust pertaining to some of the alleged transaction(s).
12. Has this/these "loan(s)" been securitized? Has it/they ever been? Please provide THE COMPLETE HISTORY of any relevant documentation pertaining to this/these "loan(s)", including any securitization, assignments, transfers, sales, etc. This includes ALL Pooling and Services agreements and the names of each and every entity or person who holds or has ever held the security instruments.
13. Our contractual agreement(s) that allows you to convert a negotiable instrument in the form of a mortgage into a security.
14. A sworn statement and any other relevant admissible evidence under penalty of perjury that I owe you or any entity associated in this/these transaction(s) any money or am indebted to any or all of you.
15. All documents in any way relating to whether the purported promissory note(s) was/were converted into a security instrument or check or other form of commercial paper.
16. All documents evidencing that I have made a knowing, voluntary, and intelligent waiver or rights to be subject to summary non-judicial process(es) for the adjudication of any disputes involving these alleged transaction(s).
17. All documents evidencing that each of the terms and conditions of the alleged agreement(s) were fully defined and explained to me and that I agreed to each of the terms and conditions.

This correspondence should be considered as an attempt to confirm/validate that I lawfully owe you money, and, therefore, as a dispute to your allegations that I am indebted to you pursuant to 15 U.S.C. §1692g.

Thank you for your help. I'll expect your prompt reply with **ALL** of the information I have requested to verify that I lawfully owe you any money.

Note: My correspondence with you is not in any way to be interpreted as an agreement or acceptance of your offer to act as a servicer in this alleged loan or transaction. I have not ever signed a contract with you or agreed to any terms and conditions of an agreement with you, including to pay any undisclosed fees to you either directly or indirectly in connection with any servicing or loan agreement. I have also never made any knowing, voluntary, or intelligent waiver of any rights or consented to be subject to summary non-judicial process(es) for the adjudication of any disputes involving these alleged transaction(s). My communication with you is only to be interpreted as a response to your purported claims that I owe you a debt.

Sincerely,

/s/ Adam Bereki and as
Trustee of the The Adam Bereki Living Trust
February 9, 2021

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Greenville SC 29603

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- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage $0.58

Total Postage and Fees $4.33

Sent To SHELL POINT
Street and Apt. No., or PO Box No. PO BOX 10826 29603
City, State, ZIP+4® GREENVILLE, SC 29603-0826

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Your item was picked up at a postal facility at 7:10 am on February 15, 2022 in GREENVILLE, SC 29602.

USPS Tracking Plus® Available ⌄

Delivered, Individual Picked Up at Postal Facility

February 15, 2022 at 7:10 am
GREENVILLE, SC 29602

Get Updates ⌄

Text & Email Updates ⌄

Tracking History ⌃

February 15, 2022, 7:10 am
Delivered, Individual Picked Up at Postal Facility
GREENVILLE, SC 29602
Your item was picked up at a postal facility at 7:10 am on February 15, 2022 in GREENVILLE, SC 29602.

February 15, 2022, 5:28 am
Arrived at Post Office
GREENVILLE, SC 29602

February 14, 2022
In Transit to Next Facility

February 12, 2022, 9:13 pm
Departed USPS Regional Destination Facility
GREENVILLE SC DISTRIBUTION CENTER

February 12, 2022, 8:59 am
Arrived at USPS Regional Destination Facility
GREENVILLE SC DISTRIBUTION CENTER

February 10, 2022, 11:41 pm
Departed USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 10, 2022, 8:53 pm
Arrived at USPS Regional Origin Facility
SANTA ANA CA DISTRIBUTION CENTER

February 10, 2022, 9:15 am
USPS in possession of item
SANTA ANA, CA 92799

USPS Tracking Plus®

Product Information

See Less

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mr. cooper
CHANGING THE FACE OF HOME LOANS
P.O. Box 619098
Dallas, TX 75261-9741

OUR INFO
ONLINE
www.mrcooper.com

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

December 13, 2021

ACCOUNT INFO
LOAN NUMBER: 0596848921
CASE NUMBER: LB-11-21-00940
PROPERTY ADDRESS:
818 Spirit
Costa Mesa, CA 92626
MORTGAGOR:
Adam Bereki

Dear Adam Bereki:

Thank you for reaching out to us.

Why am I receiving this letter?

We received your letter on November 12, 2021, and have put together this reply with information that we hope will alleviate your concerns. After an investigation we're sharing with you what we found:

Some information you have requested does not pertain directly to the servicing of the loan, does not identify any specific servicing errors, and/or is considered proprietary and confidential. Therefore, this information is considered outside the scope of information that must be provided. However, the information below and enclosed documents should address any of your relevant questions and requests. Enclosed, you will find the following documents:

- Note and Security Instrument
    - The Note and Security Instrument will validate the above mentioned loan. These documents will explain our rights to:
        - Collect any remaining debt owed under the Note and Security Instrument
        - Assess fees and costs to the loan as necessary, including late fees if a payment is received after the specified grace period and legal fees if a loan is in default
        - Inspect the property and charge applicable fees

Mr. Cooper is a brand name for Nationstar Mortgage LLC. Nationstar Mortgage LLC is doing business as Nationstar Mortgage LLC d/b/a Mr. Cooper. Mr. Cooper is a registered service mark of Nationstar Mortgage LLC. All rights reserved.

If you are a successor in interest (received the property from a relative through death, devise, or divorce, and you are not a borrower on the loan) that has not assumed, or otherwise become obligated on the debt, this communication is for informational purposes only and is not an attempt to collect a debt from you personally.

EQUAL HOUSING OPPORTUNITY

144028.1-1.2

mr. cooper
CHANGING THE FACE OF HOME LOANS

- Purchase lender placed insurance
- Pay taxes on the mortgagor's behalf

- Transaction History
  - The transaction history reflects a complete history for the period we have serviced the loan. Late fees are assessed any time the contractual payment is received after the grace period, as indicated in the Note. Please note, late fees are not considered interest and are not reported to the IRS-on-IRS form 1098. If a payment was applied to the suspense account, it will be indicated in the code description column. Payments can be applied to the suspense account if the funds received do not represent the full monthly mortgage payment due or if we are not informed of where the payment is to be applied. Furthermore, this payment history reflects:
    - When payments were received
    - How the payments were applied to the loan
    - Any disbursements made from the loan, including, but not limited to, disbursements for taxes, insurance, property inspections, brokers price opinions (BPOs), and legal fees
    - A description for each transaction, with running balances of the unpaid principal and escrow accounts
    - The date fees and charges were assessed, if any
    - Any amounts paid towards fees
    - Any waivers/reversals of fees
- Assignments (2)
- Most Recent Billing Statement
  - The billing statement will reflect the current amount due on the loan and will also provide a breakdown of any fees assessed, including any lender paid expenses or corporate advance fees.
- Notice of Servicing Transfer, also known as Welcome Letter
  - The Servicing Transfer Notice will detail the date and terms of the service transfer from the prior servicer to Mr. Cooper. This document evidences our rights to service the loan.

Upon receipt of this correspondence, the above-mentioned loan and related documents were reviewed and found to comply with all state and federal guidelines that regulate them. As such, the above-mentioned loan account will continue to be serviced appropriate to its status.

144028.1-1.3

mr. cooper
CHANGING THE FACE OF HOME LOANS

RESPA RESPONSE TO NOTICE OF ERROR
Under applicable federal law, we are required to inform you that after completing a reasonable investigation into the issues described above, it has been determined that no error occurred. You have the right to access the documents we used in this investigation and are listed above.

If you have any questions, your Dedicated Loan Specialist is Irma Sanchez and can be reached at 469.851.3425 or via mail at the address listed above. Our hours of operation are Monday through Thursday from 7 a.m. to 8 p.m. (CT), Friday from 7 a.m. to 7 p.m. (CT) and Saturday from 8 a.m. to 12 p.m. Visit us on the web at www.mrcooper.com for more information.

Sincerely,

Mr. Cooper
Customer Relations Specialist
PO Box 619098
Dallas, TX 75261-9741

Enclosures 7
By U.S. Standard Mail and E-mail abereki@gmail.com

Are you experiencing a financial hardship? Our local non-profit partners can help with financial counseling and other services. Please visit these websites for assistance:

- Hud.gov
- Neighborworks.org

144028.1-1.4

mr. cooper

CHANGING THE FACE OF HOME LOANS

144028.1-1.5

[RECORDING REQUESTED BY]
NATIONWIDE TITLE CLEARING, INC.

[AND WHEN RECORDED MAIL TO]
Nationstar Mortgage LLC
C/O Nationwide Title Clearing, Inc.
2100 Alt. 19 North
Palm Harbor, FL 34683

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned,**THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR FIRST HORIZON MORTGAGE PASS-THROUGH TRUST 2005-5 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-5, WHOSE ADDRESS IS C/O NATIONSTAR MORTGAGE LLC, 8950 CYPRESS WATERS BLVD, COPPELL, TX 75019, (ASSIGNOR),** by these presents does convey, grant, assign, transfer and set over the described Deed of Trust, representation or warranty, together with all rights, title and interest secured thereby, all liens, and any rights due or to become due thereon to **NATIONSTAR MORTGAGE LLC, WHOSE ADDRESS IS NATIONSTAR MORTGAGE LLC, 8950 CYPRESS WATERS BLVD., COPPELL, TX 75019 (469)549-2000, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).**

Said Deed of Trust made by **ADAM BEREKI** and recorded on 07/07/2005 as **Instrument # 2005000525690** in the office of the **ORANGE** County Recorder, **CA**.

Dated on 9/11/**2018 (MM/DD/YYYY)**
THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR FIRST HORIZON MORTGAGE PASS-THROUGH TRUST 2005-5 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-5, by NATIONSTAR MORTGAGE LLC, its Attorney-in-Fact

By: A Baker

Alan Baker
Vice President of Loan Documentation

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

NSBTA 404377561 TC NRMLT 2018-2 DOCR T061809-02:08:17 [C-2] FRMCA1

D0032633939

144028.1-1.6

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on 9/11/2018 (MM/DD/YYYY), by Alan Baker as Vice President of Loan Documentation of NATIONSTAR MORTGAGE LLC as Attorney-in-Fact for THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR FIRST HORIZON MORTGAGE PASS-THROUGH TRUST 2005-5 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-5, who, as such Vice President of Loan Documentation being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Ashley Morrell GG212021
Notary Public - State of FLORIDA
Commission expires: 04/29/2022

ASHLEY MORRELL
Notary Public - State of Florida
Commission # GG 212021
My Comm. Expires: Apr 29, 2022
Bonded Through National Notary Assn.

Document Prepared By: Dave LaRose/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
NSBTA 404377561 TC NRMLT 2018-2 DOCR T061809-02:08:17 [C-2] FRMCA1

D0032633939

144028.1-1.7

[redacted]

NSBTA 404444852 TC NRMLT 2018-2 DOCR T061809-02:08:14 [C-1] FRMCA1

144028.1-1.8

ue and Certified Copy of what was sent to
cording.

[RECORDING REQUESTED BY]
NATIONWIDE TITLE CLEARING, INC.
[AND WHEN RECORDED MAIL TO]
Nationstar Mortgage LLC
C/O Nationwide Title Clearing, Inc.
2100 Alt. 19 North
Palm Harbor, FL 34683

Nationstar Loan # 0596848921

CORPORATE ASSIGNMENT OF DEED OF TRUST

CONTACT NATIONSTAR MORTGAGE, LLC FOR THIS INSTRUMENT 350 HIGHLAND DRIVE, LEWISVILLE, TX, 75067, TELEPHONE # 469-549-2000, WHICH IS RESPONSIBLE FOR RECEIVING PAYMENTS.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned,**FIRST TENNESSEE BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO FIRST HORIZON HOME LOAN CORPORATION, WHOSE ADDRESS IS 350 Highland Dr., Lewisville, TX, 75067, (ASSIGNOR),** by these presents does convey, grant, assign, transfer and set over the described Deed of Trust, without recourse, representation or warranty, together with all rights, title and interest secured thereby, all liens, and any rights due or to become due thereon to **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE HOLDERS OF THE CERTIFICATES, FIRST HORIZON MORTGAGE PASS-THROUGH CERTIFICATES SERIES FHASI 2005-5, WHOSE ADDRESS IS 101 BARCLAY STREET FLOOR 4 W., NEW YORK, NY 10286, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).**

Said Deed of Trust made by **ADAM BEREKI** and recorded on 07/07/2005 as Instrument # 2005000525690, in Book , Page in the office of the ORANGE County Recorder, CA.

IN WITNESS WHEREOF, this Assignment is executed **this 29th day of May in the year 2014**
FIRST TENNESSEE BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO FIRST HORIZON HOME LOAN CORPORATION, by NATIONSTAR MORTGAGE LLC, its Attorney-in-Fact

NADINE HOMAN
Vice President of Loan Documentation

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

ACKNOWLEDGEMENT

144028.1-1.9

STATE OF FLORIDA
COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on this 29th day of May in the year 2014, by Nadine Homan as Vice President of Loan Documentation of NATIONSTAR MORTGAGE LLC as Attorney-in-Fact for FIRST TENNESSEE BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO FIRST HORIZON HOME LOAN CORPORATION, who, as such Vice President of Loan Documentation being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

NICOLE BALDWIN - NOTARY PUBLIC
COMM EXPIRES: 08/05/2016

Nicole Baldwin
Notary Public State of Florida
My Commission # EE 222285
Expires August 5, 2016

Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
NSBTA 23436770 -- FTBONY DOCR T2914051711 [C-1] EFRMCA1

D0006297066

144028.1-1.10

After Recording Return To:
FIRST HORIZON HOME LOAN CORPORATION
POST CLOSING MAIL ROOM #6708
1555 W. WALNUT HILL LANE, #200

IRVING, TX 75038-
Loan No 0054126230

[Space Above This Line For Recording Data]

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "**Security Instrument**" means this document, which is dated JULY 01, 2005 together with all Riders to this document.
(B) "**Borrower**" is
ADAM BEREKI, A SINGLE MAN

Borrower is the trustor under this Security Instrument.
(C) "**Lender**" is FIRST HORIZON HOME LOAN CORPORATION, A KANSAS CORPORATION

Lender is CORPORATION organized and existing under the laws of THE STATE OF KANSAS. Lender's address is 4000 HORIZON WAY, IRVING, TX 75063

Lender is the beneficiary under this Security Instrument.
(D) "**Trustee**" is

(E) "**Note**" means the promissory note signed by Borrower and dated JULY 01, 2005. The Note states that Borrower owes Lender FIVE HUNDRED NINETY-FIVE THOUSAND AND 00/100 Dollars (U.S.$ 595,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 01, 2035.
(F) "**Property**" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "**Loan**" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "**Riders**" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- ☐ Adjustable Rate Rider
- ☐ Balloon Rider
- ☐ 1-4 Family Rider
- ☐ Condominium Rider
- ☑ Planned Unit Development Rider
- ☐ Biweekly Payment Rider
- ☐ Second Home Rider
- ☐ Other(s) [specify]

Borrower's Initials: _____

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF TRANS-NATIONAL ESCROW CORPORATION

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions

(J) "Community Association Dues, Fees and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers

(L) "Escrow Items" mean those items that are described in Section 3

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument

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TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of ORANGE
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

Parcel Number: 141-513-55.0200

which currently has the address of
818 SPIRIT
COSTA MESA, CA 92626
[Property Address]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

Borrower's Initials _____

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2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds

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held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of

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the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding.

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Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a nonrefundable loss reserve in lieu of Mortgage Insurance Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until the Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums)

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

Borrower's Initials _____ _____

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11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees

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that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is

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the transfer of title by Borrower at a future date to a purchaser

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity, or (d) Electronic Funds Transfer Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred However, this right to reinstate shall not apply in the case of acceleration under Section 18

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, (c)

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"Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows.

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under

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Applicable Law If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

ADAM BEREKI

TIMOTHY M. FAHL
Comm. # 1436506
NOTARY PUBLIC-CALIFORNIA
Orange County
My Comm. Expires August 23, 2007

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF
PACIFIC NATIONAL ESCROW CORPORATION

[Space Below This Line for Acknowledgment]

STATE OF CALIFORNIA,
COUNTY OF Orange

On July 1ST, 2005 before me, Timothy M. Fahl
(Notary Name and Title),

personally appeared, Adam Bereki

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Signature

TIMOTHY M. FAHL
Comm. # 1436506
NOTARY PUBLIC-CALIFORNIA
Orange County
My Comm. Expires August 23, 2007
(Notarial Seal)

144028.1-1.22

Order No. O-SA-1890742 (02)

EXHIBIT "A"

(Legal Description)

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF
TRANS-NATIONAL ESCROW CORPORATION

D

144028.1-1.23

Loan No: 0054126230

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 1ST day of JULY, 2005 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to FIRST HORIZON HOME LOAN CORPORATION, A KANSAS CORPORATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
818 SPIRIT , COSTA MESA, CA 92626
[Property Address]
The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in
CONDITIONS, COVENANTS AND RESTRICTIONS

(the "Declaration"). The Property is a part of a planned unit development known as
LIFE STYLES

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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PUD COVENANTS. In addition to the covenant and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association, and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

144028.1-1.24

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association, or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

ADAM BEREKI

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF
TRANS-NATIONAL ESCROW CORPORATION

LEGAL DESCRIPTION

Real property in the City of Costa Mesa, County of Orange, State of California, described as follows:

LOT 55 OF TRACT NO 15211, AS SHOWN ON A MAP RECORDED IN BOOK 733, PAGES 33 TO 37 INCLUSIVE OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM ONE-HALF OF ALL OIL AND MINERALS, BUT WITHOUT THE RIGHT OF ENTRY, AS RESERVED BY ETTA C. DAVIES, A WIDOW, IN DEED RECORDED JUNE 1, 1959 IN BOOK 4737, PAGE 511 OF OFFICIAL RECORDS.

APN: 141-513-55

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF
TRANS-NATIONAL ESCROW CORPORATION

mr. cooper
CHANGING THE FACE OF HOME LOANS

Copy

Customer: ADAM BEREKI
Loan Number: 596848921
Property Address: 818 SPIRIT, , COSTA MESA, CA 92626

Transaction Activity: 08/19/2011 thru 11/24/2021 Type: ALL Run Date: 12/13/2021

Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
273	11/24/2021	LNDR PAID EXP DISB	-15.00	0.00	0.00	0.00	-15.00	0.00	395,193.03	0.00
	11/24/2021	Next Due: 10/01/2021								
272	11/16/2021	ZZZZF-Late Charges	173.61	0.00	0.00	0.00	0.00	0.00	395,193.03	0.00
	11/17/2021	Next Due: 10/01/2021								
271	10/21/2021	FEE WAIVER	-173.61	0.00	0.00	0.00	0.00	0.00	395,193.03	0.00
	10/18/2021	Next Due: 10/01/2021								
270	10/18/2021	ZZZZF-Late Charges	173.61	0.00	0.00	0.00	0.00	0.00	395,193.03	0.00
	10/19/2021	Next Due: 10/01/2021								
269	09/30/2021	PAYMENT	3,472.26	1,571.10	1,901.16	0.00	-3,472.26	0.00	395,193.03	0.00
	09/30/2021	Next Due: 10/01/2021								
268	09/30/2021	PAYMENT	3,472.26	1,563.61	1,908.65	0.00	-3,472.26	0.00	396,764.13	0.00
	09/30/2021	Next Due: 09/01/2021								
267	09/30/2021	PARTIAL PAYMENT	6,944.52	0.00	0.00	0.00	6,944.52	0.00	398,327.74	0.00
	09/30/2021	Next Due: 08/01/2021								
266	09/30/2021	LENDER PAID EXPENSE ADJUSTMENT	-6,944.52	0.00	0.00	0.00	-6,944.52	0.00	398,327.74	0.00
	09/30/2021	Next Due: 08/01/2021								
265	09/30/2021	PRINCIPAL ADJUSTMENT	6,944.52	6,944.52	0.00	0.00	0.00	0.00	398,327.74	0.00
	09/30/2021	Next Due: 08/01/2021								
264	09/30/2021	PRINCIPAL ADJ	-6,944.52	-6,944.52	0.00	0.00	0.00	0.00	405,272.26	0.00
	09/30/2021	Next Due: 08/01/2021								
263	09/22/2021	LENDER PAID EXPENSE ADJUSTMENT	15.00	0.00	0.00	0.00	15.00	0.00	398,327.74	0.00
	09/22/2021	Next Due: 08/01/2021								
262	09/21/2021	LNDR PAID EXP DISB	-15.00	0.00	0.00	0.00	-15.00	0.00	398,327.74	0.00
	09/21/2021	Next Due: 08/01/2021								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
261	07/31/2021	PAYMENT	3,472.26	1,556.15	1,916.11	0.00	-3,472.26	0.00	398,327.74	0.00
	07/31/2021	Next Due: 08/01/2021								
260	07/31/2021	PAYMENT	3,472.26	1,548.73	1,923.53	0.00	-3,472.26	0.00	399,883.89	0.00
	07/31/2021	Next Due: 07/01/2021								
259	07/31/2021	PAYMENT	3,472.26	1,541.34	1,930.92	0.00	-3,472.26	0.00	401,432.62	0.00
	07/31/2021	Next Due: 06/01/2021								
258	07/31/2021	PARTIAL PAYMENT	10,416.78	0.00	0.00	0.00	10,416.78	0.00	402,973.96	0.00
	07/31/2021	Next Due: 05/01/2021								
257	07/31/2021	LENDER PAID EXPENSE ADJUSTMENT	-10,416.78	0.00	0.00	0.00	-10,416.78	0.00	402,973.96	0.00
	07/31/2021	Next Due: 05/01/2021								
256	07/31/2021	PRINCIPAL ADJUSTMENT	10,416.78	10,416.78	0.00	0.00	0.00	0.00	402,973.96	0.00
	07/31/2021	Next Due: 05/01/2021								
255	07/31/2021	PRINCIPAL ADJ	-10,416.78	-10,416.78	0.00	0.00	0.00	0.00	413,390.74	0.00
	07/31/2021	Next Due: 05/01/2021								
254	07/28/2021	LENDER PAID EXPENSE ADJUSTMENT	15.00	0.00	0.00	0.00	15.00	0.00	402,973.96	0.00
	07/28/2021	Next Due: 05/01/2021								
253	07/27/2021	LNDR PAID EXP DISB	-15.00	0.00	0.00	0.00	-15.00	0.00	402,973.96	0.00
	07/27/2021	Next Due: 05/01/2021								
252	04/30/2021	PAYMENT	3,472.26	1,533.99	1,938.27	0.00	-3,472.26	0.00	402,973.96	0.00
	04/30/2021	Next Due: 05/01/2021								
251	04/30/2021	PAYMENT	3,472.26	1,526.68	1,945.58	0.00	-3,472.26	0.00	404,507.95	0.00
	04/30/2021	Next Due: 04/01/2021								
250	04/30/2021	PAYMENT	3,472.26	1,519.40	1,952.86	0.00	-3,472.26	0.00	406,034.63	0.00
	04/30/2021	Next Due: 03/01/2021								
249	04/30/2021	PARTIAL PAYMENT	10,416.78	0.00	0.00	0.00	10,416.78	0.00	407,554.03	0.00
	04/30/2021	Next Due: 02/01/2021								
248	04/30/2021	LENDER PAID EXPENSE ADJUSTMENT	-10,416.78	0.00	0.00	0.00	-10,416.78	0.00	407,554.03	0.00

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
	04/30/2021	Next Due: 02/01/2021								
247	04/30/2021	PRINCIPAL ADJUSTMENT	10,416.78	10,416.78	0.00	0.00	0.00	0.00	407,554.03	0.00
	04/30/2021	Next Due: 02/01/2021								
246	04/30/2021	PRINCIPAL ADJ	-10,416.78	-10,416.78	0.00	0.00	0.00	0.00	417,970.81	0.00
	04/30/2021	Next Due: 02/01/2021								
245	01/31/2021	PAYMENT	3,472.26	1,512.15	1,960.11	0.00	-3,472.26	0.00	407,554.03	0.00
	01/30/2021	Next Due: 02/01/2021								
244	01/31/2021	PAYMENT	3,472.26	1,504.94	1,967.32	0.00	-3,472.26	0.00	409,066.18	0.00
	01/30/2021	Next Due: 01/01/2021								
243	01/31/2021	PAYMENT	3,472.26	1,497.76	1,974.50	0.00	-3,472.26	0.00	410,571.12	0.00
	01/30/2021	Next Due: 12/01/2020								
242	01/31/2021	PARTIAL PAYMENT	10,416.78	0.00	0.00	0.00	10,416.78	0.00	412,068.88	0.00
	01/30/2021	Next Due: 11/01/2020								
241	01/31/2021	LENDER PAID EXPENSE ADJUSTMENT	-10,416.78	0.00	0.00	0.00	-10,416.78	0.00	412,068.88	0.00
	01/30/2021	Next Due: 11/01/2020								
240	01/31/2021	PRINCIPAL ADJUSTMENT	10,416.78	10,416.78	0.00	0.00	0.00	0.00	412,068.88	0.00
	01/30/2021	Next Due: 11/01/2020								
239	01/31/2021	PRINCIPAL ADJ	-10,416.78	-10,416.78	0.00	0.00	0.00	0.00	422,485.66	0.00
	01/30/2021	Next Due: 11/01/2020								
238	10/31/2020	PAYMENT	3,472.26	1,490.62	1,981.64	0.00	-3,472.26	0.00	412,068.88	0.00
	10/31/2020	Next Due: 11/01/2020								
237	10/31/2020	PAYMENT	3,472.26	1,483.51	1,988.75	0.00	-3,472.26	0.00	413,559.50	0.00
	10/31/2020	Next Due: 10/01/2020								
236	10/31/2020	PARTIAL PAYMENT	6,944.52	0.00	0.00	0.00	6,944.52	0.00	415,043.01	0.00
	10/31/2020	Next Due: 09/01/2020								
235	10/31/2020	LENDER PAID EXPENSE ADJUSTMENT	-6,944.52	0.00	0.00	0.00	-6,944.52	0.00	415,043.01	0.00
	10/31/2020	Next Due: 09/01/2020								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
234	10/31/2020	PRINCIPAL ADJUSTMENT	6,944.52	6,944.52	0.00	0.00	0.00	0.00	415,043.01	0.00
	10/31/2020	Next Due: 09/01/2020								
233	10/31/2020	PRINCIPAL ADJ	-6,944.52	-6,944.52	0.00	0.00	0.00	0.00	421,987.53	0.00
	10/31/2020	Next Due: 09/01/2020								
232	08/27/2020	PAYMENT	3,472.26	1,476.44	1,995.82	0.00	-3,472.26	0.00	415,043.01	0.00
	08/27/2020	Next Due: 09/01/2020								
231	08/27/2020	PAYMENT	3,472.26	1,469.40	2,002.86	0.00	-3,472.26	0.00	416,519.45	0.00
	08/27/2020	Next Due: 08/01/2020								
230	08/27/2020	PAYMENT	3,472.26	1,462.39	2,009.87	0.00	-3,472.26	0.00	417,988.85	0.00
	08/27/2020	Next Due: 07/01/2020								
229	08/27/2020	PAYMENT	3,472.26	1,455.42	2,016.84	0.00	-3,472.26	0.00	419,451.24	0.00
	08/27/2020	Next Due: 06/01/2020								
228	08/27/2020	PAYMENT	3,472.26	1,448.47	2,023.79	0.00	-3,472.26	0.00	420,906.66	0.00
	08/27/2020	Next Due: 05/01/2020								
227	08/27/2020	PARTIAL PAYMENT	17,361.30	0.00	0.00	0.00	17,361.30	0.00	422,355.13	0.00
	08/27/2020	Next Due: 04/01/2020								
226	08/27/2020	LENDER PAID EXPENSE ADJUSTMENT	-17,361.30	0.00	0.00	0.00	-17,361.30	0.00	422,355.13	0.00
	08/27/2020	Next Due: 04/01/2020								
225	08/27/2020	PRINCIPAL ADJUSTMENT	17,361.30	17,361.30	0.00	0.00	0.00	0.00	422,355.13	0.00
	08/27/2020	Next Due: 04/01/2020								
224	08/27/2020	PRINCIPAL ADJ	-17,361.30	-17,361.30	0.00	0.00	0.00	0.00	439,716.43	0.00
	08/27/2020	Next Due: 04/01/2020								
223	03/16/2020	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	422,355.13	0.00
	03/15/2020	Next Due: 04/01/2020								
222	03/16/2020	PAYMENT	3,472.26	1,441.55	2,030.71	0.00	0.00	0.00	422,357.87	0.00
	03/15/2020	Next Due: 04/01/2020								
221	02/17/2020	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	423,799.42	0.00
	02/17/2020	Next Due: 03/01/2020								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
220	02/17/2020	PAYMENT	3,472.26	1,434.55	2,037.71	0.00	0.00	0.00	423,827.16	0.00
	02/17/2020	Next Due: 03/01/2020								
219	12/30/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	425,261.71	0.00
	12/28/2019	Next Due: 02/01/2020								
218	12/30/2019	PAYMENT	3,472.26	1,427.69	2,044.57	0.00	0.00	0.00	425,264.45	0.00
	12/28/2019	Next Due: 02/01/2020								
217	11/30/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	426,692.14	0.00
	11/30/2019	Next Due: 01/01/2020								
216	11/30/2019	PAYMENT	3,472.26	1,420.87	2,051.39	0.00	0.00	0.00	426,694.88	0.00
	11/30/2019	Next Due: 01/01/2020								
215	11/14/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	428,115.75	0.00
	11/14/2019	Next Due: 12/01/2019								
214	11/14/2019	PAYMENT	3,472.26	1,414.08	2,058.18	0.00	0.00	0.00	428,118.49	0.00
	11/14/2019	Next Due: 12/01/2019								
213	10/14/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	429,532.57	0.00
	10/13/2019	Next Due: 11/01/2019								
212	10/14/2019	PAYMENT	3,472.26	1,407.33	2,064.93	0.00	0.00	0.00	429,535.31	0.00
	10/13/2019	Next Due: 11/01/2019								
211	09/12/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	430,942.64	0.00
	09/12/2019	Next Due: 10/01/2019								
210	09/12/2019	PAYMENT	3,472.26	1,400.60	2,071.66	0.00	0.00	0.00	430,945.38	0.00
	09/12/2019	Next Due: 10/01/2019								
209	08/05/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	432,345.98	0.00
	08/04/2019	Next Due: 09/01/2019								
208	08/05/2019	PAYMENT	3,472.26	1,393.91	2,078.35	0.00	0.00	0.00	432,348.72	0.00
	08/04/2019	Next Due: 09/01/2019								
207	06/30/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	433,742.63	0.00
	06/30/2019	Next Due: 08/01/2019								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
206	06/30/2019	PAYMENT	3,472.26	1,387.25	2,085.01	0.00	0.00	0.00	433,745.37	0.00
	06/30/2019	Next Due: 08/01/2019								
205	06/07/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	435,132.62	0.00
	06/07/2019	Next Due: 07/01/2019								
204	06/07/2019	PAYMENT	3,472.26	1,380.62	2,091.64	0.00	0.00	0.00	435,135.36	0.00
	06/07/2019	Next Due: 07/01/2019								
203	05/07/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	436,515.98	0.00
	05/07/2019	Next Due: 06/01/2019								
202	05/07/2019	PAYMENT	3,472.26	1,374.02	2,098.24	0.00	0.00	0.00	436,518.72	0.00
	05/07/2019	Next Due: 06/01/2019								
201	04/08/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	437,892.74	0.00
	04/08/2019	Next Due: 05/01/2019								
200	04/08/2019	PAYMENT	3,472.26	1,367.46	2,104.80	0.00	0.00	0.00	437,895.48	0.00
	04/08/2019	Next Due: 05/01/2019								
199	03/11/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	439,262.94	0.00
	03/09/2019	Next Due: 04/01/2019								
198	03/11/2019	PAYMENT	3,472.26	1,360.92	2,111.34	0.00	0.00	0.00	439,265.68	0.00
	03/09/2019	Next Due: 04/01/2019								
197	02/04/2019	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	440,626.60	0.00
	02/04/2019	Next Due: 03/01/2019								
196	02/04/2019	PAYMENT	3,472.26	1,354.42	2,117.84	0.00	0.00	0.00	440,629.34	0.00
	02/04/2019	Next Due: 03/01/2019								
195	12/28/2018	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	441,983.76	0.00
	12/28/2018	Next Due: 02/01/2019								
194	12/28/2018	PAYMENT	3,472.26	1,347.95	2,124.31	0.00	0.00	0.00	441,986.50	0.00
	12/28/2018	Next Due: 02/01/2019								
193	12/07/2018	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	443,334.45	0.00
	12/07/2018	Next Due: 01/01/2019								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
192	12/07/2018	PAYMENT	3,472.26	1,341.51	2,130.75	0.00	0.00	0.00	443,337.19	0.00
	12/07/2018	Next Due: 01/01/2019								
191	10/31/2018	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	444,678.70	0.00
	10/31/2018	Next Due: 12/01/2018								
190	10/31/2018	PAYMENT	3,472.26	1,335.10	2,137.16	0.00	0.00	0.00	444,681.44	0.00
	10/31/2018	Next Due: 12/01/2018								
189	09/30/2018	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	446,016.54	0.00
	09/29/2018	Next Due: 11/01/2018								
188	09/30/2018	PAYMENT	3,472.26	1,328.72	2,143.54	0.00	0.00	0.00	446,019.28	0.00
	09/29/2018	Next Due: 11/01/2018								
187	09/04/2018	PRINCIPAL PAYMENT	0.74	0.74	0.00	0.00	0.00	0.00	447,348.00	0.00
	09/03/2018	Next Due: 10/01/2018								
186	09/04/2018	PAYMENT	3,472.26	1,322.38	2,149.88	0.00	0.00	0.00	447,348.74	0.00
	09/03/2018	Next Due: 10/01/2018								
185	08/03/2018	PRINCIPAL PAYMENT	0.74	0.74	0.00	0.00	0.00	0.00	448,671.12	0.00
	08/03/2018	Next Due: 09/01/2018								
184	08/03/2018	PAYMENT	3,472.26	1,316.07	2,156.19	0.00	0.00	0.00	448,671.86	0.00
	08/03/2018	Next Due: 09/01/2018								
183	06/30/2018	PRINCIPAL PAYMENT	0.74	0.74	0.00	0.00	0.00	0.00	449,987.93	0.00
	06/29/2018	Next Due: 08/01/2018								
182	06/30/2018	PAYMENT	3,472.26	1,309.79	2,162.47	0.00	0.00	0.00	449,988.67	0.00
	06/29/2018	Next Due: 08/01/2018								
181	06/30/2018	NEW INVESTOR NX4/0000001	-451,298.46	-451,298.46	0.00	0.00	0.00	0.00	451,298.46	0.00
	06/30/2018	Next Due: 07/01/2018								
180	06/30/2018	OLD INVESTOR NSW/0000001	451,298.46	451,298.46	0.00	0.00	0.00	0.00	0.00	0.00
	06/30/2018	Next Due: 07/01/2018								
179	06/30/2018	REVERSAL (PRIOR DAY)	-3,472.26	-1,309.79	-2,162.47	0.00	0.00	0.00	451,298.46	0.00
	06/29/2018	Next Due: 07/01/2018								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
178	06/30/2018	REVERSAL (PRIOR DAY)	-0.74	-0.74	0.00	0.00	0.00	0.00	449,988.67	0.00
	06/29/2018	Next Due: 08/01/2018								
177	06/29/2018	PRINCIPAL PAYMENT	0.74	0.74	0.00	0.00	0.00	0.00	449,987.93	0.00
	06/29/2018	Next Due: 08/01/2018								
176	06/29/2018	PAYMENT	3,472.26	1,309.79	2,162.47	0.00	0.00	0.00	449,988.67	0.00
	06/29/2018	Next Due: 08/01/2018								
175	06/21/2018	NEW INVESTOR NSW/0000001	-451,298.46	-451,298.46	0.00	0.00	0.00	0.00	451,298.46	0.00
	06/21/2018	Next Due: 07/01/2018								
174	06/21/2018	OLD INVESTOR NX4/0000001	451,298.46	451,298.46	0.00	0.00	0.00	0.00	0.00	0.00
	06/21/2018	Next Due: 07/01/2018								
173	06/11/2018	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	451,298.46	0.00
	06/09/2018	Next Due: 07/01/2018								
172	06/11/2018	PAYMENT	3,472.26	1,303.53	2,168.73	0.00	0.00	0.00	451,301.20	0.00
	06/09/2018	Next Due: 07/01/2018								
171	05/03/2018	PAYMENT	3,472.26	1,297.31	2,174.95	0.00	0.00	0.00	452,604.73	0.00
	05/03/2018	Next Due: 06/01/2018								
170	03/30/2018	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	453,902.04	0.00
	03/30/2018	Next Due: 05/01/2018								
169	03/30/2018	PAYMENT	3,472.26	1,290.99	2,181.27	0.00	0.00	0.00	453,929.78	0.00
	03/30/2018	Next Due: 05/01/2018								
168	03/30/2018	NEW INVESTOR NX4/0000001	-455,220.77	-455,220.77	0.00	0.00	0.00	0.00	455,220.77	0.00
	03/30/2018	Next Due: 04/01/2018								
167	03/30/2018	OLD INVESTOR FGM/0000001	455,220.77	455,220.77	0.00	0.00	0.00	0.00	0.00	0.00
	03/30/2018	Next Due: 04/01/2018								
166	03/30/2018	REVERSAL (PRIOR DAY)	-3,472.26	-1,290.99	-2,181.27	0.00	0.00	0.00	455,220.77	0.00
	03/30/2018	Next Due: 04/01/2018								
165	03/30/2018	REVERSAL (PRIOR DAY)	-27.74	-27.74	0.00	0.00	0.00	0.00	453,929.78	0.00
	03/30/2018	Next Due: 05/01/2018								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
164	03/30/2018	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	453,902.04	0.00
	03/30/2018	Next Due: 05/01/2018								
163	03/30/2018	PAYMENT	3,472.26	1,290.99	2,181.27	0.00	0.00	0.00	453,929.78	0.00
	03/30/2018	Next Due: 05/01/2018								
162	03/01/2018	PAYMENT	3,472.26	1,284.84	2,187.42	0.00	0.00	0.00	455,220.77	0.00
	03/01/2018	Next Due: 04/01/2018								
161	02/09/2018	PAYMENT	3,472.26	1,278.71	2,193.55	0.00	0.00	0.00	456,505.61	0.00
	02/09/2018	Next Due: 03/01/2018								
160	12/29/2017	PAYMENT	3,472.26	1,272.61	2,199.65	0.00	0.00	0.00	457,784.32	0.00
	12/29/2017	Next Due: 02/01/2018								
159	12/04/2017	PAYMENT	3,472.26	1,266.54	2,205.72	0.00	0.00	0.00	459,056.93	0.00
	12/04/2017	Next Due: 01/01/2018								
158	11/01/2017	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	460,323.47	0.00
	11/01/2017	Next Due: 12/01/2017								
157	11/01/2017	PAYMENT	3,472.26	1,260.49	2,211.77	0.00	0.00	0.00	460,326.21	0.00
	11/01/2017	Next Due: 12/01/2017								
156	09/29/2017	PAYMENT	3,472.26	1,254.48	2,217.78	0.00	0.00	0.00	461,586.70	0.00
	09/29/2017	Next Due: 11/01/2017								
155	09/11/2017	PAYMENT	3,472.26	1,248.50	2,223.76	0.00	0.00	0.00	462,841.18	0.00
	09/11/2017	Next Due: 10/01/2017								
154	08/08/2017	PAYMENT	3,472.26	1,242.54	2,229.72	0.00	0.00	0.00	464,089.68	0.00
	08/08/2017	Next Due: 09/01/2017								
153	07/10/2017	PAYMENT	3,472.26	1,236.62	2,235.64	0.00	0.00	0.00	465,332.22	0.00
	07/08/2017	Next Due: 08/01/2017								
152	06/05/2017	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	466,568.84	0.00
	06/05/2017	Next Due: 07/01/2017								
151	06/05/2017	PAYMENT	3,472.26	1,230.71	2,241.55	0.00	0.00	0.00	466,571.58	0.00
	06/05/2017	Next Due: 07/01/2017								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
150	05/01/2017	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	467,802.29	0.00
	05/01/2017	Next Due: 06/01/2017								
149	05/01/2017	PAYMENT	3,472.26	1,224.71	2,247.55	0.00	0.00	0.00	467,830.03	0.00
	05/01/2017	Next Due: 06/01/2017								
148	04/03/2017	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	469,054.74	0.00
	04/03/2017	Next Due: 05/01/2017								
147	04/03/2017	PAYMENT	3,472.26	1,218.73	2,253.53	0.00	0.00	0.00	469,082.48	0.00
	04/03/2017	Next Due: 05/01/2017								
146	03/13/2017	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	470,301.21	0.00
	03/11/2017	Next Due: 04/01/2017								
145	03/13/2017	PAYMENT	3,472.26	1,212.79	2,259.47	0.00	0.00	0.00	470,328.95	0.00
	03/11/2017	Next Due: 04/01/2017								
144	02/06/2017	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	471,541.74	0.00
	02/04/2017	Next Due: 03/01/2017								
143	02/06/2017	PAYMENT	3,472.26	1,206.87	2,265.39	0.00	0.00	0.00	471,569.48	0.00
	02/04/2017	Next Due: 03/01/2017								
142	01/09/2017	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	472,776.35	0.00
	01/07/2017	Next Due: 02/01/2017								
141	01/09/2017	PAYMENT	3,472.26	1,200.99	2,271.27	0.00	0.00	0.00	472,804.09	0.00
	01/07/2017	Next Due: 02/01/2017								
140	12/05/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	474,005.08	0.00
	12/04/2016	Next Due: 01/01/2017								
139	12/05/2016	PAYMENT	3,472.26	1,195.13	2,277.13	0.00	0.00	0.00	474,032.82	0.00
	12/04/2016	Next Due: 01/01/2017								
138	11/07/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	475,227.95	0.00
	11/04/2016	Next Due: 12/01/2016								
137	11/07/2016	PAYMENT	3,472.26	1,189.29	2,282.97	0.00	0.00	0.00	475,255.69	0.00
	11/04/2016	Next Due: 12/01/2016								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
136	10/03/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	476,444.98	0.00
	10/03/2016	Next Due: 11/01/2016								
135	10/03/2016	PAYMENT	3,472.26	1,183.49	2,288.77	0.00	0.00	0.00	476,472.72	0.00
	10/03/2016	Next Due: 11/01/2016								
134	09/09/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	477,656.21	0.00
	09/09/2016	Next Due: 10/01/2016								
133	09/09/2016	PAYMENT	3,472.26	1,177.71	2,294.55	0.00	0.00	0.00	477,683.95	0.00
	09/09/2016	Next Due: 10/01/2016								
132	08/05/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	478,861.66	0.00
	08/05/2016	Next Due: 09/01/2016								
131	08/05/2016	PAYMENT	3,472.26	1,171.97	2,300.29	0.00	0.00	0.00	478,889.40	0.00
	08/05/2016	Next Due: 09/01/2016								
130	07/07/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	480,061.37	0.00
	07/07/2016	Next Due: 08/01/2016								
129	07/07/2016	PAYMENT	3,472.26	1,166.24	2,306.02	0.00	0.00	0.00	480,089.11	0.00
	07/07/2016	Next Due: 08/01/2016								
128	06/07/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	481,255.35	0.00
	06/07/2016	Next Due: 07/01/2016								
127	06/07/2016	PAYMENT	3,472.26	1,160.55	2,311.71	0.00	0.00	0.00	481,283.09	0.00
	06/07/2016	Next Due: 07/01/2016								
126	05/04/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	482,443.64	0.00
	05/04/2016	Next Due: 06/01/2016								
125	05/04/2016	PAYMENT	3,472.26	1,154.88	2,317.38	0.00	0.00	0.00	482,471.38	0.00
	05/04/2016	Next Due: 06/01/2016								
124	04/04/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	483,626.26	0.00
	04/03/2016	Next Due: 05/01/2016								
123	04/04/2016	PAYMENT	3,472.26	1,149.24	2,323.02	0.00	0.00	0.00	483,654.00	0.00
	04/03/2016	Next Due: 05/01/2016								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
122	03/09/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	484,803.24	0.00
	03/08/2016	Next Due: 04/01/2016								
121	03/09/2016	PAYMENT	3,472.26	1,143.63	2,328.63	0.00	0.00	0.00	484,830.98	0.00
	03/08/2016	Next Due: 04/01/2016								
120	02/03/2016	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	485,974.61	0.00
	02/03/2016	Next Due: 03/01/2016								
119	02/03/2016	PAYMENT	3,472.26	1,138.05	2,334.21	0.00	0.00	0.00	486,002.35	0.00
	02/03/2016	Next Due: 03/01/2016								
118	12/31/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	487,140.40	0.00
	12/31/2015	Next Due: 02/01/2016								
117	12/31/2015	PAYMENT	3,472.26	1,132.49	2,339.77	0.00	0.00	0.00	487,168.14	0.00
	12/31/2015	Next Due: 02/01/2016								
116	12/04/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	488,300.63	0.00
	12/03/2015	Next Due: 01/01/2016								
115	12/04/2015	PAYMENT	3,472.26	1,126.95	2,345.31	0.00	0.00	0.00	488,328.37	0.00
	12/03/2015	Next Due: 01/01/2016								
114	11/05/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	489,455.32	0.00
	11/05/2015	Next Due: 12/01/2015								
113	11/05/2015	PAYMENT	3,472.26	1,121.45	2,350.81	0.00	0.00	0.00	489,483.06	0.00
	11/05/2015	Next Due: 12/01/2015								
112	10/06/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	490,604.51	0.00
	10/06/2015	Next Due: 11/01/2015								
111	10/06/2015	PAYMENT	3,472.26	1,115.97	2,356.29	0.00	0.00	0.00	490,632.25	0.00
	10/06/2015	Next Due: 11/01/2015								
110	09/04/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	491,748.22	0.00
	09/04/2015	Next Due: 10/01/2015								
109	09/04/2015	PAYMENT	3,472.26	1,110.51	2,361.75	0.00	0.00	0.00	491,775.96	0.00
	09/04/2015	Next Due: 10/01/2015								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
108	08/04/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	492,886.47	0.00
	08/04/2015	Next Due: 09/01/2015								
107	08/04/2015	PAYMENT	3,472.26	1,105.08	2,367.18	0.00	0.00	0.00	492,914.21	0.00
	08/04/2015	Next Due: 09/01/2015								
106	07/07/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	494,019.29	0.00
	07/07/2015	Next Due: 08/01/2015								
105	07/07/2015	PAYMENT	3,472.26	1,099.68	2,372.58	0.00	0.00	0.00	494,047.03	0.00
	07/07/2015	Next Due: 08/01/2015								
104	06/03/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	495,146.71	0.00
	06/03/2015	Next Due: 07/01/2015								
103	06/03/2015	PAYMENT	3,472.26	1,094.31	2,377.95	0.00	0.00	0.00	495,174.45	0.00
	06/03/2015	Next Due: 07/01/2015								
102	05/06/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	496,268.76	0.00
	05/06/2015	Next Due: 06/01/2015								
101	05/06/2015	PAYMENT	3,472.26	1,088.95	2,383.31	0.00	0.00	0.00	496,296.50	0.00
	05/06/2015	Next Due: 06/01/2015								
100	04/06/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	497,385.45	0.00
	04/05/2015	Next Due: 05/01/2015								
99	04/06/2015	PAYMENT	3,472.26	1,083.63	2,388.63	0.00	0.00	0.00	497,413.19	0.00
	04/05/2015	Next Due: 05/01/2015								
98	03/06/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	498,496.82	0.00
	03/05/2015	Next Due: 04/01/2015								
97	03/06/2015	PAYMENT	3,472.26	1,078.33	2,393.93	0.00	0.00	0.00	498,524.56	0.00
	03/05/2015	Next Due: 04/01/2015								
96	02/05/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	499,602.89	0.00
	02/04/2015	Next Due: 03/01/2015								
95	02/05/2015	PAYMENT	3,472.26	1,073.05	2,399.21	0.00	0.00	0.00	499,630.63	0.00
	02/04/2015	Next Due: 03/01/2015								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
94	01/05/2015	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	500,703.68	0.00
	12/31/2014	Next Due: 02/01/2015								
93	01/05/2015	PAYMENT	3,472.26	1,067.81	2,404.45	0.00	0.00	0.00	500,731.42	0.00
	12/31/2014	Next Due: 02/01/2015								
92	11/30/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	501,799.23	0.00
	11/30/2014	Next Due: 01/01/2015								
91	11/30/2014	PAYMENT	3,472.26	1,062.58	2,409.68	0.00	0.00	0.00	501,826.97	0.00
	11/30/2014	Next Due: 01/01/2015								
90	11/04/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	502,889.55	0.00
	11/02/2014	Next Due: 12/01/2014								
89	11/04/2014	PAYMENT	3,472.26	1,057.38	2,414.88	0.00	0.00	0.00	502,917.29	0.00
	11/02/2014	Next Due: 12/01/2014								
88	10/02/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	503,974.67	0.00
	10/01/2014	Next Due: 11/01/2014								
87	10/02/2014	PAYMENT	3,472.26	1,052.21	2,420.05	0.00	0.00	0.00	504,002.41	0.00
	10/01/2014	Next Due: 11/01/2014								
86	09/04/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	505,054.62	0.00
	09/03/2014	Next Due: 10/01/2014								
85	09/04/2014	PAYMENT	3,472.26	1,047.06	2,425.20	0.00	0.00	0.00	505,082.36	0.00
	09/03/2014	Next Due: 10/01/2014								
84	08/07/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	506,129.42	0.00
	08/05/2014	Next Due: 09/01/2014								
83	08/07/2014	PAYMENT	3,472.26	1,041.93	2,430.33	0.00	0.00	0.00	506,157.16	0.00
	08/05/2014	Next Due: 09/01/2014								
82	07/02/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	507,199.09	0.00
	07/01/2014	Next Due: 08/01/2014								
81	07/02/2014	PAYMENT	3,472.26	1,036.83	2,435.43	0.00	0.00	0.00	507,226.83	0.00
	07/01/2014	Next Due: 08/01/2014								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
80	06/06/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	508,263.66	0.00
	06/04/2014	Next Due: 07/01/2014								
79	06/06/2014	PAYMENT	3,472.26	1,031.75	2,440.51	0.00	0.00	0.00	508,291.40	0.00
	06/04/2014	Next Due: 07/01/2014								
78	05/07/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	509,323.15	0.00
	05/05/2014	Next Due: 06/01/2014								
77	05/07/2014	PAYMENT	3,472.26	1,026.70	2,445.56	0.00	0.00	0.00	509,350.89	0.00
	05/05/2014	Next Due: 06/01/2014								
76	04/04/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	510,377.59	0.00
	04/03/2014	Next Due: 05/01/2014								
75	04/04/2014	PAYMENT	3,472.26	1,021.67	2,450.59	0.00	0.00	0.00	510,405.33	0.00
	04/03/2014	Next Due: 05/01/2014								
74	03/06/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	511,427.00	0.00
	03/05/2014	Next Due: 04/01/2014								
73	03/06/2014	PAYMENT	3,472.26	1,016.67	2,455.59	0.00	0.00	0.00	511,454.74	0.00
	03/05/2014	Next Due: 04/01/2014								
72	02/07/2014	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	512,471.41	0.00
	02/06/2014	Next Due: 03/01/2014								
71	02/07/2014	PAYMENT	3,472.26	1,011.69	2,460.57	0.00	0.00	0.00	512,499.15	0.00
	02/06/2014	Next Due: 03/01/2014								
70	01/16/2014	NEW INVESTOR FGM/0000001	-513,510.84	-513,510.84	0.00	0.00	0.00	0.00	513,510.84	0.00
	01/16/2014	Next Due: 02/01/2014								
69	01/16/2014	OLD INVESTOR 812/0000001	513,510.84	513,510.84	0.00	0.00	0.00	0.00	0.00	0.00
	01/16/2014	Next Due: 02/01/2014								
68	12/30/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	513,510.84	0.00
	12/28/2013	Next Due: 02/01/2014								
67	12/30/2013	PAYMENT	3,472.26	1,006.73	2,465.53	0.00	0.00	0.00	513,538.58	0.00
	12/28/2013	Next Due: 02/01/2014								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
66	11/30/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	514,545.31	0.00
	11/30/2013	Next Due: 01/01/2014								
65	11/30/2013	PAYMENT	3,472.26	1,001.80	2,470.46	0.00	0.00	0.00	514,573.05	0.00
	11/30/2013	Next Due: 01/01/2014								
64	11/06/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	515,574.85	0.00
	11/05/2013	Next Due: 12/01/2013								
63	11/06/2013	PAYMENT	3,472.26	996.89	2,475.37	0.00	0.00	0.00	515,602.59	0.00
	11/05/2013	Next Due: 12/01/2013								
62	10/03/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	516,599.48	0.00
	10/03/2013	Next Due: 11/01/2013								
61	10/03/2013	PAYMENT	3,472.26	992.00	2,480.26	0.00	0.00	0.00	516,627.22	0.00
	10/03/2013	Next Due: 11/01/2013								
60	09/04/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	517,619.22	0.00
	09/03/2013	Next Due: 10/01/2013								
59	09/04/2013	PAYMENT	3,472.26	987.14	2,485.12	0.00	0.00	0.00	517,646.96	0.00
	09/03/2013	Next Due: 10/01/2013								
58	08/02/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	518,634.10	0.00
	08/02/2013	Next Due: 09/01/2013								
57	08/02/2013	PAYMENT	3,472.26	982.30	2,489.96	0.00	0.00	0.00	518,661.84	0.00
	08/02/2013	Next Due: 09/01/2013								
56	07/11/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	519,644.14	0.00
	07/11/2013	Next Due: 08/01/2013								
55	07/11/2013	PAYMENT	3,472.26	977.48	2,494.78	0.00	0.00	0.00	519,671.88	0.00
	07/11/2013	Next Due: 08/01/2013								
54	06/04/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	520,649.36	0.00
	06/04/2013	Next Due: 07/01/2013								
53	06/04/2013	PAYMENT	3,472.26	972.69	2,499.57	0.00	0.00	0.00	520,677.10	0.00
	06/04/2013	Next Due: 07/01/2013								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
52	05/06/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	521,649.79	0.00
	05/06/2013	Next Due: 06/01/2013								
51	05/06/2013	PAYMENT	3,472.26	967.92	2,504.34	0.00	0.00	0.00	521,677.53	0.00
	05/06/2013	Next Due: 06/01/2013								
50	04/11/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	522,645.45	0.00
	04/11/2013	Next Due: 05/01/2013								
49	04/11/2013	PAYMENT	3,472.26	963.17	2,509.09	0.00	0.00	0.00	522,673.19	0.00
	04/11/2013	Next Due: 05/01/2013								
48	03/12/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	523,636.36	0.00
	03/11/2013	Next Due: 04/01/2013								
47	03/12/2013	PAYMENT	3,472.26	958.44	2,513.82	0.00	0.00	0.00	523,664.10	0.00
	03/11/2013	Next Due: 04/01/2013								
46	02/08/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	524,622.54	0.00
	02/08/2013	Next Due: 03/01/2013								
45	02/08/2013	PAYMENT	3,472.26	953.74	2,518.52	0.00	0.00	0.00	524,650.28	0.00
	02/08/2013	Next Due: 03/01/2013								
44	01/08/2013	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	525,604.02	0.00
	01/07/2013	Next Due: 02/01/2013								
43	01/08/2013	PAYMENT	3,472.26	949.06	2,523.20	0.00	0.00	0.00	525,631.76	0.00
	01/07/2013	Next Due: 02/01/2013								
42	12/12/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	526,580.82	0.00
	12/11/2012	Next Due: 01/01/2013								
41	12/12/2012	PAYMENT	3,472.26	944.40	2,527.86	0.00	0.00	0.00	526,608.56	0.00
	12/11/2012	Next Due: 01/01/2013								
40	11/06/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	527,552.96	0.00
	11/05/2012	Next Due: 12/01/2012								
39	11/06/2012	PAYMENT	3,472.26	939.77	2,532.49	0.00	0.00	0.00	527,580.70	0.00
	11/05/2012	Next Due: 12/01/2012								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
38	10/04/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	528,520.47	0.00
	10/04/2012	Next Due: 11/01/2012								
37	10/04/2012	PAYMENT	3,472.26	935.15	2,537.11	0.00	0.00	0.00	528,548.21	0.00
	10/04/2012	Next Due: 11/01/2012								
36	09/10/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	529,483.36	0.00
	09/10/2012	Next Due: 10/01/2012								
35	09/10/2012	PAYMENT	3,472.26	930.56	2,541.70	0.00	0.00	0.00	529,511.10	0.00
	09/10/2012	Next Due: 10/01/2012								
34	08/13/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	530,441.66	0.00
	08/11/2012	Next Due: 09/01/2012								
33	08/13/2012	PAYMENT	3,472.26	925.99	2,546.27	0.00	0.00	0.00	530,469.40	0.00
	08/11/2012	Next Due: 09/01/2012								
32	07/06/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	531,395.39	0.00
	07/06/2012	Next Due: 08/01/2012								
31	07/06/2012	PAYMENT	3,472.26	921.44	2,550.82	0.00	0.00	0.00	531,423.13	0.00
	07/06/2012	Next Due: 08/01/2012								
30	06/08/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	532,344.57	0.00
	06/08/2012	Next Due: 07/01/2012								
29	06/08/2012	PAYMENT	3,472.26	916.92	2,555.34	0.00	0.00	0.00	532,372.31	0.00
	06/08/2012	Next Due: 07/01/2012								
28	05/09/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	533,289.23	0.00
	05/08/2012	Next Due: 06/01/2012								
27	05/09/2012	PAYMENT	3,472.26	912.41	2,559.85	0.00	0.00	0.00	533,316.97	0.00
	05/08/2012	Next Due: 06/01/2012								
26	04/09/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	534,229.38	0.00
	04/06/2012	Next Due: 05/01/2012								
25	04/09/2012	PAYMENT	3,472.26	907.93	2,564.33	0.00	0.00	0.00	534,257.12	0.00
	04/06/2012	Next Due: 05/01/2012								

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Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
24	03/12/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	535,165.05	0.00
	03/12/2012	Next Due: 04/01/2012								
23	03/12/2012	PAYMENT	3,472.26	903.47	2,568.79	0.00	0.00	0.00	535,192.79	0.00
	03/12/2012	Next Due: 04/01/2012								
22	02/06/2012	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	536,096.26	0.00
	02/06/2012	Next Due: 03/01/2012								
21	02/06/2012	PAYMENT	3,472.26	899.02	2,573.24	0.00	0.00	0.00	536,124.00	0.00
	02/06/2012	Next Due: 03/01/2012								
20	12/31/2011	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	537,023.02	0.00
	12/31/2011	Next Due: 02/01/2012								
19	12/31/2011	PAYMENT	3,472.26	894.60	2,577.66	0.00	0.00	0.00	537,050.76	0.00
	12/31/2011	Next Due: 02/01/2012								
18	12/08/2011	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	537,945.36	0.00
	12/08/2011	Next Due: 01/01/2012								
17	12/08/2011	PAYMENT	3,472.26	890.21	2,582.05	0.00	0.00	0.00	537,973.10	0.00
	12/08/2011	Next Due: 01/01/2012								
16	11/10/2011	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	538,863.31	0.00
	11/10/2011	Next Due: 12/01/2011								
15	11/10/2011	PAYMENT	3,472.26	885.83	2,586.43	0.00	0.00	0.00	538,891.05	0.00
	11/10/2011	Next Due: 12/01/2011								
14	10/07/2011	PRINCIPAL PAYMENT	2.74	2.74	0.00	0.00	0.00	0.00	539,776.88	0.00
	10/07/2011	Next Due: 11/01/2011								
13	10/07/2011	PAYMENT	3,472.26	881.59	2,590.67	0.00	0.00	0.00	539,779.62	0.00
	10/07/2011	Next Due: 11/01/2011								
12	09/15/2011	PRINCIPAL PAYMENT	27.74	27.74	0.00	0.00	0.00	0.00	540,661.21	0.00
	09/13/2011	Next Due: 10/01/2011								
11	09/15/2011	PAYMENT	3,472.26	877.26	2,595.00	0.00	0.00	0.00	540,688.95	0.00
	09/13/2011	Next Due: 10/01/2011								

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Copy

Trans	Posted/ Effective	Type	Total Amt	Principal	Interest	Escrow	Partial Pmt Unapplied	Other	Principal Bal	Escrow Bal
10	08/19/2011	NEW LOAN NOCASH	-541,566.21	-541,566.21	0.00	0.00	0.00	0.00	541,566.21	0.00
	09/01/2010	Next Due: 09/01/2011								

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mr. cooper
CHANGING THE FACE OF HOME LOANS

RETURN SERVICE ONLY
PLEASE DO NOT SEND MAIL TO THIS ADDRESS
PO Box 818060
5801 Postal Road
Cleveland, OH 44181

MORTGAGE LOAN STATEMENT

STATEMENT DATE
11/18/2021

PAYMENT DUE DATE
12/01/2021

LOAN NUMBER
0596848921

PROPERTY ADDRESS
818 SPIRIT
COSTA MESA, CA 92626

AMOUNT DUE
$10,590.39
If payment is received on or after 12/17/2021, a $173.61 late fee will be charged.

QUESTIONS? WE'RE HERE TO HELP.

CUSTOMER SERVICE: **888-480-2432**
Mon-Thu 7 a.m. to 8 p.m. (CT)
Fri 7 a.m. to 7 p.m. (CT)
Sat 8 a.m. to 12 p.m. (CT)
www.mrcooper.com

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626

ACCOUNT OVERVIEW

INTEREST BEARING PRINCIPAL BALANCE
$395,193.03

INTEREST RATE
5.750%

NON-INTEREST BEARING PRINCIPAL BALANCE***
$62,500.68

ESCROW BALANCE
$0.00

****The Non-Interest Bearing Principal Balance includes all deferred amounts related to a mortgage assistance program.*

The Principal Balance does not represent the payoff amount of your account and is not to be used for payoff purposes.

PAST PAYMENTS BREAKDOWN

CATEGORY	PAID SINCE 10/20/2021	PAID YEAR TO DATE
PRINCIPAL	$0.00	$16,875.85
INTEREST	$0.00	$21,319.01
ESCROW (TAXES & INSURANCE)	$0.00	$0.00
OPTIONAL INSURANCE	$0.00	$0.00
FEES & CHARGES	$0.00	$0.00
LENDER PAID EXPENSES	$0.00	$0.00
PARTIAL PAYMENT (UNAPPLIED)	$0.00	$0.00
TOTAL	**$0.00**	**$38,194.86**

EXPLANATION OF AMOUNT DUE

REGULAR MONTHLY PAYMENT	$3,472.26
TOTAL FEES & CHARGES	$173.61
OVERDUE PAYMENT(S)	$6,944.52
PARTIAL PAYMENT (UNAPPLIED)	$0.00
TOTAL AMOUNT DUE	**$10,590.39**
TRIAL/WORKOUT PAYMENT AMOUNT	$0.00

Please call Mr. Cooper to request the full amount owed on your account as the amount due may be different than stated here due to interest and other charges or credits.

HERE'S SOME HELPFUL INFORMATION

If the COVID-19 Pandemic has impacted your ability to make your mortgage payment, visit our COVID-19 Resource Center at mrcooper.com/forbearance. There's a fast and easy online application if you decide this program is right for you. Please note that foreclosure proceedings are temporarily on hold (exceptions may apply) due to investor and state foreclosure moratoriums. For delinquent loans, once the moratoriums end, foreclosure proceedings may continue, unless there is a pending workout solution in place.

"Total Fees & Charges" include, but are not limited to, phone pay fees, insufficient fund fees, or convenience fees. These fees & charges appear in the "Other" category of the Transaction Detail, if applied since the last billing cycle.

Want to make payments even easier? You can pay online at www.mrcooper.com, on the go with the Mr. Cooper app, or by **setting up AutoPay** in your online account or app settings.

Please note the overnight payment address has changed. Please see the back of the statement for the updated address.

TRANSACTION ACTIVITY (10/20/2021 to 11/18/2021)

DATE	DESCRIPTION	TOTAL	PRINCIPAL	INTEREST	ESCROW	OTHER
11/17/2021	Late Charge Assessed	$173.61				$173.61
10/18/2021	Fee Waived	-$173.61				-$173.61

Mr. Cooper is a brand name for Nationstar Mortgage LLC. Nationstar Mortgage LLC is doing business as Nationstar Mortgage LLC d/b/a Mr. Cooper. Mr. Cooper is a registered service mark of Nationstar Mortgage LLC. All rights reserved.

If you are a successor in interest (received the property from a relative through death, devise, or divorce, and you are not a borrower on the loan) that has not assumed, or otherwise become obligated on the debt, this communication is for informational purposes only and is not an attempt to collect a debt from you personally.

144028.1-1.46

DETACH HERE AND RETURN WITH YOUR PAYMENT. PLEASE ALLOW A MINIMUM OF 7 TO 10 DAYS FOR POSTAL DELIVERY.

mr. cooper
CHANGING THE FACE OF HOME LOANS **www.mrcooper.com**

☐ PLEASE CHECK BOX IF MAILING ADDRESS OR PHONE NUMBER HAS CHANGED. ENTER CHANGES ON BACK OF COUPON

ADAM BEREKI

MR. COOPER
PO BOX 60516
CITY OF INDUSTRY, CA 91716-0516

ACCOUNT NUMBER	TOTAL AMOUNT DUE*
0596848921	12/01/2021 $10,590.39

WRITE YOUR LOAN NUMBER ON YOUR CHECK OR MONEY ORDER AND MAKE PAYABLE TO MR. COOPER*

PAYMENT DUE IF RECEIVED ON OR AFTER
12/17/2021 **$10,764.00**

ADDITIONAL ESCROW $_____
**ADDITIONAL PRINCIPAL $_____
FEES $_____
LENDER PAID EXPENSES $_____
TOTAL AMOUNT OF YOUR CHECK
DO NOT SEND CASH [ ]

**All amounts must be paid in full before additional principal can be made.

91 0596848921A 001059039 001076400

IMPORTANT PAYMENT INFORMATION

- It is important to use the remittance stub and envelope provided since both contain computer encoding that will help ensure prompt and accurate posting of payments. Always include your loan number on your check or money order. However, should you not receive your statement, DO NOT DELAY PAYMENT. Simply write your loan number on your check or money order and mail to the payment address as provided in the **Contact Information** section below.
- Do not send cash or correspondence as this could delay processing. Correspondence should be sent to the address provided in the **Contact Information** section below.
- Please be advised that if your account is delinquent or if there are fees and charges due, your account may not be paid ahead nor may principal reduction payments be applied. When Mr. Cooper receives a remittance that is in excess of a payment amount, that excess is applied to your account in accordance with a predetermined sequence: 1) Principal and Interest due; 2) Applicable Escrow amounts; 3) Fees and other charges assessed to your account. Once this sequence has been satisfied, you may give specific instructions as to how you would like excess amounts to be applied to your account by noting your preference on the face of your remittance stub.
- Any lump sum received that is not accompanied by a payoff quote will be applied according to our standard payment application rules. This will not result in satisfaction and reconveyance/release unless amount tendered satisfies all amounts due and owing on the account.
- A Schedule of Fee for Select Services may be found on our website at www.mrcooper.com.

SERVICEMEMBERS CIVIL RELIEF ACT
The Servicemembers Civil Relief Act (SCRA) may offer protection or relief to members who have been called to active duty. If you are a member of the military who has been c duty or received a Permanent Change of Station order and you have not already made u forward a copy of your orders to us at:
Mr. Cooper, Attn: Military Families, P.O. Box 619098, Dallas, TX 75261-9741, fax 855-856-0427 or email MilitaryFamilies@mrcooper.com. Be sure to include your loan number with the copy of the orders. Please visit our website at www.mrcooper.com for complete details regarding Legal Rights and Protections Under the SCRA.

LATE CHARGES AND OVERDRAFT FEES
Payments received and posted after a grace period will be assessed a late charge. The late charge rate and number of grace days are shown on your Note. Please allow adequate time for postal delays as the receipt and posting date will govern the assessment of a late charge. Partial payments cannot be applied. If a payment is credited to your account and subsequently dishonored by your bank, Mr. Cooper will reverse that payment and assess your loan account an insufficient funds fee of up to $50.00, as permitted by applicable law. (This fee may vary by state.)

HOMEOWNER COUNSELING NOTICE
If your loan is delinquent, you are entitled to receive homeownership counseling from an agency approved by the United States Department of Housing and Urban Development (HUD). A list of the HUD-approved, nonprofit homeownership counseling agencies may be downloaded from the Internet at: https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or by calling the HUD toll free number 1-800-569-4287 (toll free TDD number 1-800-877-8339) to obtain a list of approved nonprofit agencies serving your residential area.

NEW YORK STATE RESIDENTS
For those customers who reside in the state of New York, a borrower may file complaints about the Servicer with the New York State Department of Financial Services or may obtain further information by calling the Department's Consumer Help Unit at 1-800-342-3736 or by visiting the Department's website at www.dfs.ny.gov. Mr. Cooper is registered with the New York Superintendent of Financial Services.

You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

PAYMENT OPTIONS

AUTOPAY Allows you to have your payment automatically debited, each month, from the checking or savings account of your choice. Mr. Cooper does not charge a fee to activate this service. Call 888-480-2432 for more information or visit our website at www.mrcooper.com.

ONLINE PAYMENT Allows you to sign in to your account anytime to make a payment. There is no charge for this service. Sign in to www.mrcooper.com.

AUTOMATED PHONE PAYMENT Is a pay-by-phone service provided through our automated phone system. There may be a fee of up to $14 for this service. Call 888-480-2432.

AGENT ASSISTED PAYMENT Is a pay by phone service provided by a customer service agent. Call 888-480-2432 and speak with an agent. There may be a fee of up to $19 for this service.

PAY BY MAIL Detach the coupon provided with this statement and mail it with your check or money order in the envelope provided. Please write your loan number on your payment and **allow adequate time for postal delays as the receipt and posting date will govern the assessment of late charges.** Send payment via express or overnight mail to Mr. Cooper, Attn: Payment Processing - 650783, 3000 Kellway Drive, Suite 120, Carrollton, TX 75006.

WIRE Allows you to send payoff/reinstatement funds via wire transfer. Visit our website www.mrcooper.com or refer to your payoff statement for wiring instructions.

MONEYGRAM EXPRESSPAYMENT Ensures same-day delivery of your payment to Mr. Cooper. Visit your local MoneyGram Agent. Call 1-800-926-9400 to locate the one nearest you. Complete the ExpressPayment form, providing your name and Mr. Cooper loan number. The MoneyGram Receive Code is ***1678***. All ExpressPayment transactions require cash. The agent will charge a fee for this service.

WESTERN UNION QUICKCOLLECT® Ensures same-day delivery of your payment to Mr. Cooper. Visit your local Western Union Agent. Call 1-800-325-6000 to locate the one nearest you. Complete the QuickCollect form with your name and Mr. Cooper loan number, indicating:

Pay to: Mr. Cooper Code City: MRCOOPER State: TX

All QuickCollect transactions require cash. Western Union will charge a fee for this service.

NOTICE TO CUSTOMERS MAKING PAYMENTS BY CHECK

Authorization to Convert Your Check: If you send us a check to make your payment, your check may be converted into an electronic fund transfer. An electronic fund transfer is the process in which your financial institution transfers funds electronically from your account to our account. By sending your completed signed check to us, you authorize us to copy your check and use the information from your check to make an electronic funds transfer from your account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, you authorize us to process the copy of your check.

Insufficient Funds: The electronic fund transfer from your account will usually occur within 24 hours of our receipt of your check. If the electronic fund transfer cannot be completed because of insufficient funds, you may be assessed an NSF fee in connection with the attempted transaction.

Transaction Information: The electronic fund transfer from your account will be on the account statement you receive from your financial institution. You will not receive your original check back from your financial institution. For security reasons, your original check will be destroyed, but we will keep a secured copy of the check for record keeping purposes.

Your Rights: You should contact your financial institution immediately if you believe that the electronic fund transfer reported on your statement was not properly authorized or is otherwise incorrect. Consumers have protections under the Electronic Fund Transfer Act for any unauthorized or incorrect electronic fund transfer.

CONTACT INFORMATION

CUSTOMER SERVICE: 888-480-2432, Monday through Thursday 7 a.m. to 8 p.m. (CT), Friday 7 a.m. to 7 p.m. (CT), and Saturday 8 a.m. to 12 p.m. (CT)
[Calls may be monitored and/or recorded for quality assurance purposes].

24-HOUR AUTOMATED ACCOUNT INFORMATION: Sign in to www.mrcooper.com OR call **888-480-2432.**

MAILING ADDRESSES: For Mr. Cooper are listed below. Please carefully select the address suited to your needs and remember, sending payments to any address other than the one specifically identified for payments will result in delays and may result in additional fees being assessed to your account.

PAYMENTS:	NOTICE OF ERROR/ INFORMATION REQUEST/QWR*:	OVERNIGHT DELIVERY CORRESPONDENCE:	INSURANCE RENEWALS/ BILLS:	TAX NOTICES/ BILLS:	BANKRUPTCY NOTICES/ PAYMENTS:
PO Box 60516 City of Industry, CA 91716-0516	PO Box 619098 Dallas, TX 75261-9741	Lake Vista 4 800 State Highway 121 Bypass Lewisville, TX 75067	PO Box 7729 Springfield, OH 45501-7729 Fax (800) 687-4729	PO Box 9225 Coppell, TX 75019 Fax (817) 826-1861	PO Box 619094 Dallas, TX 75261-9741

***PURSUANT TO RESPA, A "QUALIFIED WRITTEN REQUEST" (QWR) REGARDING THE SERVICING OF YOUR LOAN, A NOTICE ASSERTING THAT AN ERROR OCCURRED WITH RESPECT TO YOUR LOAN OR A NOTICE REQUESTING INFORMATION WITH RESPECT TO YOUR LOAN MUST BE SENT TO THIS ADDRESS:** Mr. Cooper PO Box 619098, Dallas, TX 75261-9741, Attn: Customer Relations Officer. A "qualified written request" must comply with the requirements of RESPA, as follows: Qualified written request; defined. A qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower. A QWR, notice of error or request for information is not timely if it is delivered to a servicer more than 1-year after either the date of transfer of servicing or the date that the mortgage loan is discharged, whichever date is applicable.

EQUAL HOUSING OPPORTUNITY

Mr. Cooper, its affiliates, successors or its assigns or their officers, directors, agents, or employees, are neither liable nor responsible for, or make any representation regarding the products or services offered on any enclosed inserts.

144028.1-1.47

CHANGE OF ADDRESS OR TELEPHONE NUMBER

CHECK THE APPROPRIATE BOX: ☐ MAILING ADDRESS ☐ TELEPHONE NUMBER LOAN #: _____

Borrower's Name: _____ Co-Borrower's Name: _____

Borrower's New Address: _____ Co-Borrower's New Address: _____

_____ _____

Authorized Borrower's Number(s):
Home: (____) _____ Mobile: Yes No
Work: (____) _____ Ext: ____ Mobile: Yes No
Other: (____) _____ Mobile: Yes No

Authorized Co-Borrower's Number(s):
Home: (____) _____ Mobile: Yes No
Work: (____) _____ Ext: ____ Mobile: Yes No
Other: (____) _____ Mobile: Yes No

Signature Required: _____ Signature Required: _____

I consent to being contacted by Mr. Cooper at any telephone number I have provided. This includes, but is not limited to, calls from your dialing system to my cellular or mobile telephone.

mr. cooper®
CHANGING THE FACE OF HOME LOANS

RETURN SERVICE ONLY
PLEASE DO NOT SEND MAIL TO THIS ADDRESS
PO Box 818060
5801 Postal Road
Cleveland, OH 44181

11/18/2021

OUR INFO
CUSTOMER SERVICE
888-480-2432
Mon-Thu 7 a.m to 8 p.m. (CT)
Fri 7 a.m. to 7 p.m. (CT)
Sat 8 a.m. to 12 p.m. (CT)

ONLINE
www.mrcooper.com

ADAM BEREKI
818 SPIRIT
COSTA MESA, CA 92626

YOUR INFO
LOAN NUMBER
0596848921

PROPERTY ADDRESS
818 SPIRIT
COSTA MESA, CA 92626

Dear Adam Bereki,

At Mr. Cooper, we're committed to helping homeowners find solutions that could help them stay in their home and continue enjoying all the benefits of homeownership. Even in times of difficulties.

Why am I receiving this letter?
As of 11/18/2021, you are 49 days delinquent on your mortgage loan. Your mortgage payment is currently past due for 10/01/2021 and your last full contractual payment was received on 09/30/2021. Here is a recent payment history, and the reason for our concern:

RECENT ACCOUNT HISTORY

PAYMENT DUE 06/01/2021 Fully paid on 07/31/2021
PAYMENT DUE 07/01/2021 Fully paid on 07/31/2021
PAYMENT DUE 08/01/2021 Fully paid on 09/30/2021
PAYMENT DUE 09/01/2021 Fully paid on 09/30/2021
PAYMENT DUE 10/01/2021 Unpaid balance of $3,472.26
PAYMENT DUE 11/01/2021 Unpaid balance of $3,472.26

CURRENT CONTRACTUAL PAYMENT DUE 12/01/2021: $3,472.26
AS OF 11/18/2021 THE TOTAL AMOUNT DUE IS $10,590.39. *You must pay this amount to bring your loan current.*

Please call us to request the full amount owed on your account as the amount due may be different than stated here due to interest and other charges or credits.

What do I need to know?
Failure to bring your loan current may result in fees, possibly even foreclosure and the loss of your home. We are here to help. You do have options. *Here are some of the solutions that may be available, depending on your situation:

- Modifying the terms of your current loan.
- Receiving a payment forbearance that temporarily gives you more time to pay your monthly payment.
- If you simply can't pay your mortgage, an alternative to foreclosure may be selling your home and using the proceeds to pay off your current loan. A short payoff may be acceptable, or a deed in lieu of foreclosure may be an option.

Additional resources are also available. For extra help, you can reach out to housing counselors who'll work as your advocate while exploring solutions that could help you keep your home.

- The Consumer Financial Protection Bureau: http://www.consumerfinance.gov/mortgagehelp
- The Department of Housing and Urban Development (HUD): https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm
- HUD Housing Counseling Agency Locator: (800) 569-4287
- The Homeowners HOPE™ Hotline Number: (888) 995-HOPE

What do I need to do?
The sooner we hear from you, the sooner we can help get your homeownership back on track.
If you've already reached out for help, don't worry, that process is still proceeding and no further action is required.

If you have any questions, please contact our Customer Service Department at (888)480-2432 or via mail at Lake Vista 4, 800 State Highway 121 Bypass, Lewisville, TX 75067. Our hours of operation are Monday through Thursday 7 am to 8 pm (CT), Friday 7 am to 7 pm (CT) and Saturday 8 am to 12 pm (CT). Visit us on the web at www.mrcooper.com for more information.

144028.1-1.48

Sincerely,
The Loss Mitigation Department at Mr. Cooper

*Borrower must meet certain requirements to qualify for any of the options/products referenced. Terms are subject to change.

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If you are a successor in interest (received the property from a relative through death, devise, or divorce, and you are not a borrower on the loan) that has not assumed, or otherwise become obligated on the debt, this communication is for informational purposes only and is not an attempt to collect a debt from you personally.
EQUAL HOUSING OPPORTUNITY

Legal Rights and Protections Under the SCRA

Servicemembers on "active duty" or "active service," or a spouse or dependent of such a servicemember may be entitled to certain legal protections and debt relief pursuant to the Servicemembers Civil Relief Act (50 USC §§ 3901-4043) (SCRA).

Who May Be Entitled to Legal Protections Under the SCRA?

- Regular members of the U.S. Armed Forces (Army, Navy, Air Force Marine Corps and Coast Guard).
- Reserve and National Guard personnel who have been activated and are on Federal active duty
- National Guard personnel under a call or order to active duty for more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds
- Active service members of the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.
- Certain United States citizens serving with the armed forces of a nation with which the United States is allied in the prosecution of a war or military action.

What Legal Protections Are Servicemembers Entitled To Under the SCRA?

- The SCRA states that a debt incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service shall not bear interest at a rate above 6 % during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, or during the period of military service in the case of any other obligation or liability.
- The SCRA states that in a legal action to enforce a debt against real estate that is filed during, or within one year after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt. In addition, the sale, foreclosure, or seizure of real estate shall not be valid if it occurs during or within one year after the servicemember's military service unless the creditor has obtained a valid court order approving the sale, foreclosure, or seizure of the real estate.
- The SCRA contains many other protections besides those applicable to home loans.

How Does A Servicemember or Dependent Request Relief Under the SCRA?

- In order to request relief under the SCRA from loans with interest rates above 6% a servicemember or spouse must provide a written request to the lender, together with a copy of the servicemember's military orders.
  Mr. Cooper, Attn: Military Families, PO Box 619098, Dallas, TX 75261-9741
- There is no requirement under the SCRA; however, for a servicemember to provide a written notice or a copy of a servicemember's military orders to the lender in connection with a foreclosure or other debt enforcement action against real estate. Under these circumstances, lenders should inquire about the military status of a person by searching the Department of Defense's Defense Manpower Data Center's website, contacting the servicemember, and examining their files for indicia of military service. Although there is no requirement for servicemembers to alert the lender of their military status in these situations, it still is a good idea for the servicemember to do so.

How Does a Servicemember or Dependent Obtain Information About the SCRA?

- Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. A military legal assistance office locator for all branches of the Armed Forces is available at http://legalassistance.law.af.mil/content/locator.php
- "Military OneSource" is the U. S. Department of Defense's information resource. If you are listed as entitled to legal protections under the SCRA (see above), please go to www.militaryonesource.mil/legal or call 1-800-342-9647 (toll free from the United States) to find out more information. Dialing instructions for areas outside the United States are provided on the website.

Nationstar MORTGAGE
PO BOX 650783
DALLAS, TX 75265
www.MyNationstarMtg.com

FIRST HORIZON

August 25, 2011

The servicing of your mortgage has been transferred to Nationstar

55095 0015833 004
ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

Re: New Nationstar Loan Number 0596848921
Principal Balance $541,566.21
Escrow Balance $0.00

Dear Adam Bereki,

Welcome to Nationstar Mortgage! Effective 08/15/11 the servicing of your loan will be transferred from Metlife as subservicer, First Horizon Home Loans, a division of First Tennessee Bank National Association, to Nationstar Mortgage as subservicer, First Horizon Home Loans, a division of First Tennessee Bank National Association. We're excited about the opportunity to serve you. You can count on Nationstar Mortgage to meet your needs whether you're looking to make a payment or have a question regarding your account. We offer many exciting features including 24-hour account access through our internet website at www.MyNationstarMtg.com, various payment options, and a toll free customer service line at (1-888-811-5279) with automated account information. You will be receiving a "Welcome Call" sometime over the next few weeks to welcome you to our company and to answer any immediate questions you may have.

Every month you will receive a billing statement detailing your loan information, payment amount, and important messages. In addition, the back of your billing statement includes helpful hints and important information. Each billing statement will include a remittance coupon. Expect to receive your billing statement approximately 7-10 days prior to each scheduled payment due date. Important payment information and other notices are included on the reverse of this letter for your reference.

To ensure accuracy, please verify the following loan information:

Name:	ADAM BEREKI	Home Phone Number:	949-241-6693
Property Address:	818 SPIRIT COSTA MESA CA 92626	Work Phone Number:	714-960-8843
Mailing Address:	818 SPIRIT COSTA MESA CA 92626-3089		

692-4014-0807F

If you find any of the information listed above to be incorrect, please contact us immediately at 1-888-811-5279.
As a reminder, your first monthly payment amount of $3,472.26 is due on 09/01/2011. For your convenience your September payment coupon is attached below. Keep in mind that you are responsible for remitting tax payments directly to your taxing authorities and maintaining continuous Home Owners Insurance coverage. This, along with timely remittance of your monthly payments will protect your home and credit. In the event that you do not receive your billing statement as scheduled, please do not delay making your payment. Be sure to indicate your loan number, as referenced above, on your payment and allow adequate mailing time. Simply mail your payment to:

Nationstar Mortgage
P.O. Box 650783
Dallas, Texas 75265-0783

IF YOU CURRENTLY HAVE AUTOMATIC DRAFT/DEBIT (ACH) SET-UP WITH YOUR PRIOR SERVICER AND YOUR BANK - Due to the timing of your loan information being loaded into Nationstar's systems, your automatic draft may be delayed in August. If your automatic draft (ACH) usually takes place during the first few days of the month, you will notice a change. We expect ACH payments to take place on or around the second week of August. Please plan accordingly. This one time delay will not cause your account to be assessed a late charge, nor will it be reported as late to the credit bureaus. Your automatic draft will return to the normally scheduled day of the month in September 2011.

If you would like to enroll in our automatic payment program, please complete the form available on our website at www.MyNationstarMtg.com under Payment Options.

At Nationstar Mortgage, your business and total satisfaction are important to us. Any time you have questions regarding your account, do not hesitate to contact our Customer Service Department at 1-888-811-5279, 8:00 a.m. to 8:00 p.m. CST Mon - Thurs and 8:00 a.m. to 5:00 p.m. CST on Friday. We look forward to a long and lasting relationship with you.

Sincerely, Nationstar Mortgage

144028.1-1.50

DETACH HERE AND RETURN WITH YOUR PAYMENT. PLEASE ALLOW A MINIMUM OF 7 TO 10 DAYS FOR POSTAL DELIVERY.

Nationstar MORTGAGE www.MyNationstarMtg.com

☐ PLEASE CHECK BOX IF MAILING ADDRESS OR PHONE NUMBER HAS CHANGED. ENTER CHANGES ON BACK OF COUPON

LOAN NUMBER	TOTAL CURRENT AMOUNT DUE
0596848921	$3,472.26 09/01/2011
WRITE YOUR LOAN NUMBER ON YOUR CHECK OR MONEY ORDER AND MAKE PAYABLE TO NATIONSTAR MORTGAGE.	LATE PAYMENT IF RECEIVED ON OR AFTER
	$3,645.87 09/17/2011

NATIONSTAR MORTGAGE
PO BOX 650783
DALLAS TX 75265-0783

ADDITIONAL ESCROW _____

TOTAL AMOUNT OF YOUR CHECK *DO NOT SEND CASH* $

** CHECK FOR ADDITIONAL FUNDS TO BE APPLIED TO FUTURE PAYMENTS ☐

** Additional principal reduction can be made when all amounts due are paid in full.

REPRESENTATION OF PRINTED DOCUMENT

Nationstar MORTGAGE
PO BOX 650783
DALLAS, TX 75265
www.MyNationstarMtg.com

FIRST HORIZON

August 25, 2011

55095 0015833

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

New Nationstar Loan Number: 0596848921

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Dear Adam Bereki:

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from FIRST HORIZON HOME LOANS to Nationstar Mortgage LLC, effective 08/15/11.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires Nationstar Mortgage send you this notice no later than 15 days after the effective date of the transfer.

Your new servicer is Nationstar Mortgage LLC.

Nationstar Mortgage's business address is:

Nationstar Mortgage LLC
350 Highland Drive
Lewisville, Texas 75067
www.MyNationstarMTG.com

Nationstar Mortgage's toll free number is 1-888-811-5279. If you have any questions relating to the transfer of servicing to Nationstar Mortgage, call 1-888-811-5279 between 8 a.m. and 8 p.m. on the following days Monday - Thursday, 8 a.m. and 5 p.m. on Friday, or visit us anytime at www.MyNationstarMTG.com.

The date that Nationstar Mortgage will start accepting from you is 08/15/11. You can pay online via the Nationstar Mortgage website at www.MyNationstarMTG.com., or you can send all payments due on or after that date to:

Nationstar Mortgage LLC
PO Box 650783
Dallas, Texas 75265

Your mortgage life insurance, disability insurance and/or other optional products will continue.

Enclosed is your Welcome Letter which includes a payment coupon with detailed loan information.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgement within 5 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

Nationstar Mortgage LLC
Attention Research Department
350 Highland Drive
Lewisville, Texas 75067
www.MyNationstarMTG.com

Not later than 30 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

Important Loan Transfer "Home Affordable Modification Program" Information

Home Affordable Modification Program: If you are currently participating in (or being considered for) a loan modification program, we will be transferring all your documentation to the new servicer. Until the transfer date, you should continue to make your payments (e.g., trial payments if attempting to qualify for a modification under the Home Affordable Modification Program) to First Horizon Home Loans. After transfer, you should make all payments to Nationstar until such time that you are provided additional direction. Decisions regarding qualification will be made by Nationstar. All information regarding other loss mitigation activities (forbearance agreements, short sales, refinances and deed-in-lieu of foreclosure) will be forwarded to Nationstar for processing. Please be advised that this transfer may extend the time needed for a final decision.

Sincerely,
Nationstar Mortgage LLC

144028.1-1.51

INTERNET REPRINT

Loan No: 0054126230

NOTE

JULY 01, 2005 NEWPORT BEACH, CALIFORNIA
[City] [State]

818 SPIRIT , COSTA MESA, CA 92626
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U S $ 595,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is FIRST HORIZON HOME LOAN CORPORATION, A KANSAS CORPORATION

I will make all payments under this Note in the form of cash, check or money order

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder "

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid I will pay interest at a yearly rate of 5.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on SEPTEMBER 1 , 2005 I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal If, on AUGUST 01, 2035 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date "

I will make my monthly payments at 4000 HORIZON WAY, IRVING, TX 75063
or at a different place if required by the Note Holder

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U S $ 3,472.26

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due A payment of Principal only is known as a "Prepayment " When I make a Prepayment, I will tell the Note Holder in writing that I am doing so I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF
TRANS-NATIONAL ESCROW CORPORATION

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 6.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

THEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF TRANS NATIONAL ESCROW CORPORATION

Borrower's Initials _____

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

_____ (Seal)
ADAM BEREKI

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

_____ (Seal)

[Sign Original Only]

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL THEREOF
TRANS-NATIONAL ESCROW CORPORATION

OCCUPANCY AFFIDAVIT AND FINANCIAL STATUS

FIRST HORIZON HOME LOAN CORPORATION

TO: Federal Housing Administration
Federal National Mortgage Association
Federal Home Loan Mortgage Corporation
Department of Veterans Affairs

PROPERTY ADDRESS

818 SPIRIT
COSTA MESA, CA 92626

FHA/VA/FNMA/FHLMC CASE NO:

We the undersigned purchaser(s) of the above captioned property understand that one of the conditions of our loan is that we occupy the subject property and we do hereby certify as follows

( ) We will occupy the subject property upon close of escrow, if unable to occupy by close of escrow, we will occupy by the following date

(√) We now occupy the subject property. Unit #

We the undersigned purchaser(s) also hereby certify that there have been no significant changes in our financial status i e , employer, income, available cash, etc , and that our loan application to FHA/VA reflects our current financial position

We are aware of and understand that if we fail to move into the property by the specified time that we are subject to prosecution under Section 1010, Title 18, United States Code, Federal Housing Administration Transactions, and that we are liable to be fined not more than $5,000.00, or imprisoned not more than two years, or both. We are aware of and understand that other Federal Statutes provide severe penalties for any fraud or misrepresentation made for the purpose of influencing the issuance of any guaranty or insurance or the making of any loan by the Department of Veterans Affairs

ADAM BEREKI

TIMOTHY M. FAHL
Comm. # 1435505
NOTARY PUBLIC - CALIFORNIA
Orange County
My Comm. Expires August 21, 2007

State of California, County of Orange } SS
On July 1st 2005 before me, the undersigned, a Notary Public in and for said State, personally appeared Adam Bereki

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

Witness my hand and official Seal
(Reserved for official seal)

Signature

Timothy M. Fahl
Name (typed or printed)

My commission expires August 21, 2007

TIMOTHY M. FAHL
Comm. # 1435505
NOTARY PUBLIC - CALIFORNIA
Orange County
My Comm. Expires August 21, 2007

144028.1-1.55*

FOIA TO CITIBANK

Gmail Adam Bereki <abereki@gmail.com>

LOAN #0675931091 2nd Request and FOIA 04/24/2022

2 messages

Adam <abereki@gmail.com> Wed, Apr 27, 2022 at 9:25 AM
To: loanservicing@shellpointmtg.com

Good day,

On March 2, 2022, I sent sent Citibank, N.A. as owner trustee a request to verify the alleged loan/debt debt along with a freedom of information act request. On March 22, 2022, I received a letter from Shellpoint saying that "[you] were working to gather the requested information and will forward it... as soon as possible." (See attached for all referenced documents). I have not received a response from you as required by law. Please provide your written response immediately.

Sincerely,

Adam Bereki

LOAN 0675931091 2nd REQUEST AND FOIA.pdf
1558K

Adam <abereki@gmail.com> Fri, Jul 15, 2022 at 11:31 AM
To: loanservicing@shellpointmtg.com

PLEASE SEE BELOW, THIRD REQUEST FOR DEBT VERIFICATION AND FOIA REQUEST

[Quoted text hidden]

LOAN 0675931091 2nd REQUEST AND FOIA.pdf
1558K

Gmail Adam Bereki <abereki@gmail.com>

Thank you for contacting Shellpoint Mortgage Servicing

Loan Servicing <loanservicing@shellpointmtg.com> Fri, Jul 15, 2022 at 11:31 AM
To: Adam <abereki@gmail.com>

Please do NOT reply to this email.

We are working to gather the requested information and will respond as soon as possible. You may be able to find the assistance you need by browsing our FAQ's page online.

Please visit us at http://shellpointmortgageservicing.com/ to create an online account and once you log in, go to Help and FAQ's.

If you need immediate assistance, please call our Customer Service department at 1-800-365-7107, Monday through Friday 8:00AM-10:00PM EST and Saturday 8:00AM-3:00PM EST.

Thank you,
Customer Service

Shellpoint Mortgage Servicing

DISCLAIMER: This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender by replying to this message and then delete it from your system. Use, dissemination or copying of this message by unintended recipients is not authorized and may be unlawful. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Finally, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Citibank, N.A.
Owner Trustee
New Residential Mortgage Loan Trust 2018-2
388 Greenwich St., 14th Fl.
New York, NY 10013
Via Certified Mail: 7021 0950 0000 9107 8603

March 2, 2022

NOTICE TO AGENT IS NOTICE TO PRINCIPAL.
NOTICE TO PRINCIPAL IS NOTICE TO AGENT.

RE: (1) "Loan" Number 0675931091 (Shell Point Mortgage Servicing) Pertaining to the Real Property Located at 818 Spirit Costa Mesa, California.

(2) Freedom of Information Act Request

Good day,

It is not now, nor has it ever been my intention to avoid paying a debt that I lawfully owe.

According to recent correspondence with Shell Point Mortgage Servicing, the purported servicer of the above loan, you are the Owner Trustee for New Residential Mortgage Loan Trust 2018-2, that apparently owns the alleged Security and/or Promissory Note. Shell Point has alleged that I am behind on my mortgage payment(s) and that it is attempting to collect a debt on your behalf.

In order that I may verify that I lawfully owe you money, please provide ALL of the following. (I have asked that certain documents be certified as true and correct below under penalty of perjury so that I can be assured they are in fact authentic, and, if necessary, be admissible in a Court of Law):

1. The total amount of the alleged debt due;
2. The total amount of the alleged money loaned;
3. The names, addresses, telephone numbers, and email addresses, of each and every one of the creditor(s) to whom the alleged debt is owed;
4. A certified copy of each of the following: the front and back of each and every page of the alleged "Deed(s) of Trust", "Promissory Notes", and security instrument(s) associated with this/these transaction(s)/ loan(s);
5. A certified copy of the trust documents establishing the New Residential Mortgage Loan Trust 2018-2. This should include all documents evidencing the manner in which any and all promissory notes and/or security instrument(s) pertaining to this "loan" is/are held and by whom;

ORIGINAL

6. A certified copy of all contractual agreement(s) between you and I that allows you to convert the alleged promissory note(s) or mortgage(s) allegedly involved in this(ese) transaction(s) into a security instrument;
7. A certified copy of the front and back of each and every security instrument and/or security certificate that secures any interest whatsoever in this/these transaction(s) and/or "loans".
8. The name, address, and telephone number of the security issuer;
9. A certified copy of the Articles of Incorporation for the New Residential Mortgage Loan Trust 2018-2;
10. All documents evidencing the Article(s) of the Uniform Commercial Code that govern the security(ies) involved in this(ese) transaction(s) and/or "loans";
11. Certified copies of all documentation that evidences Citibank, N.A, First Horizon, Mr. Cooper, Nationstar, Shell Point, the New Residential Mortgage Loan Trust 2018-2, or any other entity involved in this/these transaction(s) that in any way evidences that I have been "loaned" any money and/or am indebted to you. More specifically, I am requesting the ledger of all debits and credits associated with each and every transaction throughout the entire history of these transaction(s)/loan(s) since inception detailing, dollar for dollar, exactly how any of the foregoing entities (or any others) "loaned" me anything upon which I am required to repay or currently am indebted to. Please also define what the words "loan", "money", "dollar", and "US Currency" mean pursuant to our purported "agreement(s)". Also include all itemized statements detailing each and every transaction evidencing the income you have derived since inception from this purported "loan";
12. Certified copies of all documents evidencing the complete chain of custody the alleged "Deed(s) of Trust", "Mortgage(s)", securities, and any original promissory note(s);
13. The address, telephone number, and email address for "Alan Baker, Vice President of Loan Documentation" and "Nadine Homan, Vice President of Loan Documentation" who have signed multiple alleged assignments of deed of trust pertaining to some of these alleged transaction(s);
14. A certified copy of all related Pooling and Servicing agreements;
15. A sworn statement under penalty of perjury stating that I owe you or any entity associated in this/these transaction(s) money or am indebted to any or all of you and for what amount;
16. Certified copies of documents in any way relating to how the purported promissory note(s) was/were converted into a security instrument(s);
17. All documents evidencing that I have made a knowing, voluntary, and intelligent waiver of rights to be subject to summary non-judicial process(es) for the adjudication of any disputes involving these alleged transaction(s), or any other rights whatsoever.

This correspondence should be considered as an attempt to confirm/validate that I lawfully owe you money, and, therefore, as a dispute to your allegations that I am indebted to you pursuant to 15 U.S.C. §1692g. Each and every one of these document requests are also being made pursuant to the Freedom of Information Act, to the extent that it applies.

Thank you for your help. I'll expect your prompt reply with **ALL** of the information I have requested to verify that I lawfully owe you any money.

Sincerely,

Adam Bereki and as
Trustee of the The Adam Bereki Living Trust

USPS Tracking®

FAQs >

Track Another Package +

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com®.
OFFICIAL USE
Certified Mail Fee
$
Extra Services & Fees (check box, add fee as appropriate)
Return Receipt (hardcopy) $
Return Receipt (electronic) $
Certified Mail Restricted Delivery $
Adult Signature Required $
Adult Signature Restricted Delivery $
Postage
$
Total Postage and Fees
$
Postmark Here
7021 0950 0000 9107 8603
CITIBANK, N.A
388 GREENWICH ST 14TH FL
NEW YORK, NY 10013
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Get auto

app=U· psTools&re

n/xsell?
pages/intro/st

Remove ×

Tracking Number: 70210950000091078603

Your item was delivered to an individual at the address at 9:11 am on March 5, 2022 in NEW YORK, NY 10013.

USPS Tracking Plus® Available ⌄

Delivered, Left with Individual

March 5, 2022 at 9:11 am
NEW YORK, NY 10013

Get Updates ⌄

Text & Email Updates ⌄

Tracking History ⌃

March 5, 2022, 9:11 am
Delivered, Left with Individual
NEW YORK, NY 10013
Your item was delivered to an individual at the address at 9:11 am on March 5, 2022 in NEW YORK, NY 10013.

March 5, 2022, 5:44 am
Arrived at Post Office
NEW YORK, NY 10013

EXHIBIT [D] p.5338

March 4, 2022, 4:02 pm
Departed USPS Regional Facility
NEW YORK NY DISTRIBUTION CENTER

March 4, 2022, 8:40 am
Arrived at USPS Regional Facility
NEW YORK NY DISTRIBUTION CENTER

March 3, 2022, 12:35 am
Departed USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

March 2, 2022, 8:11 pm
Arrived at USPS Regional Facility
SANTA ANA CA DISTRIBUTION CENTER

USPS Tracking Plus®

Product Information

See Less

Feedback

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

03/22/22

shellpoint
A DIVISION OF INVESTEZ

P.O. BOX 51850
LIVONIA MI 48151-5850
RETURN SERVICE REQUESTED

S-SFRECS20 L-150 R-101
PFOHPD00300748 - 696025618 I01496
ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

CONTACT INFORMATION	
Correspondence:	P.O. Box 10826 Greenville, SC 29603-0826
Business Hours:	**Mon - Fri:** 8:00AM-10:00PM **Sat:** 8:00AM-3:00PM
Phone Number:	800-365-7107
Fax:	866-467-1137
Website:	www.shellpointmtg.com

03/09/2022

Dear Homeowner,

This letter is in response to your recent inquiry regarding the above referenced account serviced by Shellpoint Mortgage Servicing on behalf of Citibank, N.A., not in its individual capacity but solely as Owner Trustee for New Residential Mortgage Loan Trust 2018-2, the owner of your loan. Their address is:

388 Greenwich St., 14th Fl.
New York NY 10013

We are working to gather the requested information and will forward it to you as soon as possible.

We're here to help. It's our privilege to be your mortgage servicer, and we're committed to providing you with the best possible service. If you have any questions or need assistance, please contact us at 800-365-7107.

¿Hablas español? Esta carta contiene información importante sobre su préstamo hipotecario. Si usted no entiende el contenido de esta carta, por favor contacte a uno de nuestros representantes que hablan español al número 800-365-7107.

Sincerely,

Customer Care Team

Shellpoint Mortgage Servicing

SEE REVERSE SIDE OR ATTACHED FOR AN IMPORTANT STATEMENT OF YOUR RIGHTS.

P I000001 A-0675931091 0101J0100

Please read the following important notices as they may affect your rights.

Newrez LLC dba Shellpoint Mortgage Servicing is a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Newrez LLC dba Shellpoint Mortgage Servicing's NMLS ID is 3013.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt: please be advised that this notice is to advise you of the status of your mortgage loan. This notice constitutes neither a demand for payment nor a notice of personal liability to any recipient hereof, who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy.

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Si prefiere recibir las comunicaciones en otro idioma que no sea el inglés, por favor, contáctenos en el 800-365-7107 para hablar con un traductor en el idioma de su preferencia sobre la gestión de su préstamo o cualquier documento que haya recibido.

如果您要使用英语以外的其他语言进行交流，请致电 800-365-7107，我们将根据您首选的语言安排相应的译员，与您就贷款服务事项或您所接收的文件进行商讨。

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California
As required by law, you are hereby notified that a negative credit bureau report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill your credit obligation.

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

California
Como es requerido por la ley usted esta siendo notificado por este medio que un reporte de crédito negativo afectando su reporte de crédito puede ser remitido a una agencia de reporte de créditos, si usted no puede satisfacer los términos de su obligación.

El acto estatal de Rosenthal Fair Debt Collection Practices, y el acto federal de Fair Debt Collection Practices requieren que, a menos de circunstancias inusuales, los cobradores no podrán contactarlo antes de las 8 a.m. o después de las 9 p.m. Ellos no lo podrán acosar usando amenazas violentas o arrestarlo o usar un lenguaje ofensivo. Los cobradores no podrán usar declaraciones falsas o engañosas o llamarlo a su trabajo si ellos saben o tienen razón para saber que usted no puede recibir llamadas personales en su trabajo. En general, cobradores no le podrán decir a otra persona, aparte de su abogado o su esposa, acerca de su deuda. Los cobradores se podrán comunicar con otras personas para poder comunicarse con usted, y para entablar un juicio. Para más información sobre las actividades de colección de deuda, usted puede contactar Federal Trade Commission al 1-877-FTC-HELP o www.ftc.gov

Gmail Adam Bereki <abereki@gmail.com>

First National Bank v Adam Bereki 30-2022-01271693

3 messages

Adam <abereki@gmail.com> Tue, Aug 16, 2022 at 7:52 AM
To: "Jmacleod@dunninglaw.com" <Jmacleod@dunninglaw.com>

Hi James,

Could you please send me a copy of the proof of service for this case.

Thank you,

Adam Bereki

James Macleod <jmacleod@dunninglaw.com> Tue, Aug 16, 2022 at 2:13 PM
To: Adam <abereki@gmail.com>

Dear Mr. Bereki,

Our office does not have a copy of the proof of service at this time. It will be filed with the Court. Please obtain your copy from there if you need. Please feel free to contact me at your convenience to discuss resolving the matter. Thank you.

Very Truly Yours,

THE DUNNING LAW FIRM A PROFESSIONAL CORPORATION

James MacLeod

The Dunning Law Firm

9619 Chesapeake Dr., Suite 210

San Diego CA 92123

Tel. 858-974-7600

Fax. 858-974-7601

EXHIBIT [D] p.5342

This firm is a Debt Collector under the Fair Debt Collections Practices Act. If you are a debtor, this can be considered a communication from a debt collector and any information may be used to collect that debt.

If you do not wish to receive emails from The Dunning Law Firm APC, please reply STOP or send an email to this email address with the subject line, "STOP".

Email is covered by the Electronics Privacy Act, 18 U.S.C. §§2510-2521, and is legally privileged. The information transmitted herewith is sensitive information intended only for use by the individual or entity to which it is addressed. It may also be protected communication under the Attorney/Client, and/or other privilege(s). If the reader of this message is not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying or other use of, or taking of any action in reliance upon this information is strictly prohibited. If you have received this communication in error, please contact the sender and delete the material from your computer.

Adam <abereki@gmail.com> Wed, Aug 17, 2022 at 7:03 AM
To: James Macleod <jmacleod@dunninglaw.com>

James,

Thanks for your reply. I am sorry but there is nothing I can do at the moment to resolve the matter. The State of California has unlawfully prosecuted and fined me and suspended my right to be a general contractor. I am unable to earn a living in my profession at this time to be able to meet all of my obligations. I shared all of this with the bank on a recorded phone line and provided them all of this information. I am attaching a complaint I filed with the Superior Court yesterday. Who knows what they will or won't do with it.

Sincerely,

Adam Bereki

Adam Bereki Complaint 081622 2.pdf
583K

PRINT ON BLUE PAPER

Superior Court of California,
County of Orange
COMPLAINT FORM

(Complaints Regarding a Judge, Commissioner, Assigned Judge, Temporary Judge or Court Referee)

Name: Adam (First) Alan (Middle) Bereki (Last)

Address: 818 Spirit (Street) Costa Mesa (City), CA (State) 92626 (Zip)

Telephone: 949 241 6693 (Daytime) ( ) (Evening)

E-mail address: abereki@gmail.com

What is your status?

- ☐ Plaintiff/Petitioner
- ☒ Defendant/Respondent
- ☐ Juror
- ☐ Attorney
- ☐ Witness (Incident)
- ☐ Witness (Court)
- ☐ Volunteer
- ☐ Other:

What type of case are you involved in?

- ☒ Civil
- ☒ Criminal
- ☐ Small Claims
- ☐ Traffic
- ☐ Family Law
- ☐ Probate
- ☐ Other:

Case # 30-2015-00805807 Judge: ~~CHAFFEE~~ (ret) Courtroom#: C20

Write a brief summary of your concern (include dates, names of officials or individuals involved).

SEE ATTACHED.

Rev. 11_2012 cr

Write a brief summary of your concern:

In March of 2017, I was the defendant in an unlicensed contractor case heard before Judge David Chaffee (ret.). I was told the case was civil, but in reality, it was a highly penal action designed to prosecute and punish me without any of the heightened protections of criminal proceedings or the excessive fines clause. Following the "trial" in which I was never told the true nature and cause of the accusation or that I had a right to counsel, I was excessively fined and cruelly and unusually punished by being ordered to pay $930,000 to the Plaintiffs, Karen and Gary Humphreys. Chaffee's Minute Order reflects an award on the Humphreys first cause of action for "disgorgement" but this was not an action for disgorgement. Disgorgement is an action in equity that requires a defendant to give up their illegal profits. There is no evidence on the record of the case that I profited even one dollar. The Judgment Order also reflects "damages" in the amount of $848,000. There was also no evidence of any damages presented at "trial".

In a true claim for disgorgement or unjust enrichment, the Humphreys would be required to evidence the amount that I profited and this would be the amount that I would be I would be required to "disgorge" or give up. Instead, Chaffee took the entire amount that the Humphreys paid me and my company ($848,000) and ordered me to give it back to them despite the fact that my company had already returned it to them in the form of labor and materials on their custom remodel project. In other words, Chaffee refused to allow offsets for the benefits that were conferred on the Humphreys and rather than determine the specific amount that I profited, awarded the Humphreys a full refund. Because this award was not equitable ("disgorgement") or compensation for any damages, it was a purely penal fine. I arrive at the amount of $930,000 (not $848,000) because of the fact that the Humphreys also received another approx. $82,000 in value that they had not paid for that Chaffee also refused to account for.

On "appeal" the Fourth District Court of Appeal affirmed Chaffee's ruling stating the order was not punishment but was instead the equitable remedy of disgorgement. I have attached the Court's Opinion.

Please refer to the case of *Liu v. SEC*, 591 U.S. ____ (2020) where the US Supreme Court defined disgorgement and that it *only* applies to profits, *not* the forfeiture of an entire transaction.

Because the action against me was purely penal and intended to fine and punish me for violating the licensing laws (see Cal. Penal Code §15), the action had to be prosecuted in the name of the People of California as the Executive power is exclusively vested in the Governor and cannot be delegated to private parties such as the Humphreys.

As a result of all of the foregoing, Chaffee lacked subject matter jurisdiction not only to proceed to "trial" but to render any punishment at all resulting in a Bill of Pains and Penalties in violation of Article I, §10. His unconscionable behavior is not an isolated incident, see also *MW Erectors v. Neiderhauser,* 36 Cal. 4th 412 (2005). This heinous abuse of authority is also occurring in "Courts" throughout the State of California and has been sanctioned by the Supreme "Court".

As a result of the illegal "Judgment", my vested right as a qualifying individual for a general contractors license was suspended without even an administrative hearing by virtue of Business and Professions Code §7071.17 because I was unable to pay the fine. (It is more than 42 times my qualifying net worth). I have thereby been unlawfully restrained from working in my profession as a general contractor for more than four years. This has resulted in my inability to meet my private financial obligations and a violation of Article I, §10 (impairing the obligations

of contracts). Foreclosure proceedings have begun on my home and creditors are suing me as I am unable to pay these obligations. See case#30-2022-01271693.

What action would you like the court to take?

It is my understanding that the Court can, and indeed has a mandatory, non-discretionary ministerial duty to, on its own motion, immediately begin a full, fair, and impartial investigation into these allegations and intervene to protect my rights, liberty, and property from being taken under color of law but without lawful authority. I request the Court take this action immediately and also: (1)that the Court issue an emergency stay in the foreclosure proceedings for the real property located at 818 Spirit, Costa Mesa, CA, and in case #30-2022-01271693 pending investigation into this complaint; (2) that the Court grant me leave to file an emergency Motion for restitution so that I may receive equitable financial relief as quickly as possible to stop the irreparable harm being perpetrated and so that I can meet my financial obligations and be compensated for some of the harm caused; (3) that the Court issue a temporary injunction barring the enforcement of actions pursuant to Cal. Business and Professions Code §7031 and §7071.17 pending its investigation and/or declare these statutes unconstitutional in effect and as applied; (4) that the Court vacate the void judgment in case#30-2015-00805807 with prejudice to all of the Humphreys remaining claims as a result of the egregious violations of due process and their conspiracy with State officials to violate due process and take my liberty and property without lawful authority; (5) that the Court grant me leave to file a complaint for damages and other claims declaratory and injunctive relief; and, (6) all other relief the Court deems reasonable and just.

What action would you like the court to take?

SEE ATTACHED

Would you like a response? ☒ Yes ☐ No

Signature: _____ Date: 8/16/22

Please return or mail to:

Office of the Presiding Judge
Superior Court, County of Orange
Central Justice Center, Dept. C1
700 Civic Center Drive, West
Santa Ana, CA 92701-4045

Rev. 11_2012 cr

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Copy Citation

Court of Appeal of California, Fourth Appellate District, Division Three

October 31, 2018. Opinion Filed

G055075

Reporter
2018 Cal. App. Unpub. LEXIS 7469 * | 2018 WL 5639287

GARY HUMPHREYS et al., Cross-complainants and Respondents. v. ADAM BEREKI, Cross-defendant and Appellant.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

Subsequent History: US Supreme Court certiorari denied by Bereki v. Humphreys, 2019 U.S. LEXIS 5324 (U.S., Oct. 7, 2019)

Prior History: [*1] Appeal from a judgment of the Superior Court of Orange County, No. 30-2015-00805807, David R. Chaffee, Judge.

Disposition: Affirmed.

Core Terms

disgorgement, Associates, contractor, remodel, subdivision, licensed, contractor's license, trial court, unlicensed contractor, licensing requirements, cause of action, perform work, unlicensed, e-mails, courts, hired

Counsel: Adam Bereki, pro per, for Plaintiff and Appellant.

William G. Bissell for Defendants and Respondents.

Judges: ARONSON, J.; O'LEARY, P. J., GOETHALS, J. concurred.

Opinion by: ARONSON, J.

Opinion

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

Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them all monies received in relation to the remodel work — $848,000. [*2] Its ruling and a stipulation by the parties disposed of the remainder of the case and Bereki appealed. He challenges the disgorgement on a variety of constitutional, legal, and factual grounds. We find no merit in his contentions and, therefore affirm the judgment.

I

FACTS

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

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

Several months into the remodel the Humphreys, at Bereki's request, started making their progress payments to Spartan Associates instead of paying Bereki directly as an individual. Bereki never [*3] gave them an explanation for the change or what, if any, involvement Spartan Associates had in the project, but the accountings he sent included the name "Spartan Associates."

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

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

At the Humphreys' request, the trial court bifurcated the disgorgement claim from the remainder of the claims in the cross-complaint, and it held a trial on that issue first. During the course of the two-day bench trial on the disgorgement cause of action, the court [*4] heard testimony from the Humphreys and Bereki.

Karen Humphreys testified it was her understanding, based on the initial e-mails exchanged with Bereki, that she and her husband were contracting with Bereki and his partner to do the work. They wanted a licensed contractor to do the work and obtain all the necessary permits, and she "took [Bereki] at his word that he had a license." She also testified there was no mention of Spartan Associates until months after the project began and insisted they never entered into a contract with Spartan Associates.

EXHIBIT [D] p.5349

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

In contrast, Bereki testified the contract for the couple's remodel project was between the Humphreys and Spartan Associates. He nevertheless acknowledged his initial e-mail communications to the Humphreys made no mention of Spartan Associates, including the one which set forth the proposed scope of work and **[*5]** hourly rates. When asked about contractor's licenses, he admitted he never possessed one as an individual or as a joint venture with his partner. Spartan Associates, however, did have a contractor's license at the time of the project.

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

The trial court found in favor of the Humphreys on the disgorgement cause of action based on its determination that Bereki, not Spartan Associates, was the contractor who performed all the remodel work. As a result, the court also found in favor of the Humphreys on Spartan Associates's complaint. The remainder of the cross-complaint was dismissed without prejudice at the Humphreys' request.

II

Discussion

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

A. Disgorgement Remedy Under Section 7031

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

"Section 7031[, subdivision] (b) is part of the **[*7]** Contractors' State License Law (§ 7000 et seq.), which 'is a comprehensive legislative scheme governing the construction business in California. [This statutory scheme] provides that contractors performing construction work must be licensed unless exempt. [Citation.] "The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]" [Citation.] The [laws] are designed to protect the public from incompetent or dishonest providers of building and construction services. [Citation.]' [Citation.]

"This statutory scheme encourages licensure by subjecting unlicensed contractors to criminal penalties and civil remedies.

EXHIBIT [D] p.5350

[Citation.] The civil remedies 'affect the unlicensed contractor's right to receive or retain compensation for unlicensed work.' (*Ibid.*) The hiring party is entitled to enforce these remedies through a defensive 'shield' or an affirmative 'sword.' [Citation.]

"The *shield*, contained in section 7031[, subdivision] (a), was enacted more than 70 years ago, and provides that a party has a complete defense to **[*8]** claims for compensation made by a contractor who performed work without a license, unless the contractor meets the requirements of the statutory substantial compliance doctrine. [Citation.] Section 7031[, subdivision] (e), the substantial compliance exception, provides relief only in very narrow specified circumstances, and '*shall not apply* . . . where the [unlicensed contractor] has never been a duly licensed contractor in this state." [Citation.]

"The California Supreme Court has long given a broad, literal interpretation to section 7031[, subdivision] (a)'s shield provision. [Citation.] The court has held that [it] applies even when the person for whom the work was performed *knew* the contractor was unlicensed. [Citation.] . . . . [It] explained that '"'Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .'" [Citation.] '"Because of the strength and clarity of this policy [citation]," the bar of section 7031 [, subdivision] (a) applies **[*9]** "[r]egardless of the equities."' [Citations.]

"In 2001, the Legislature amended section 7031 to add a *sword* remedy to the hiring party's litigation arsenal. This sword remedy, contained in section 7031[,subdivision] (b), currently reads: 'Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.' [¶] By adding this remedy, the Legislature sought to further section 7031[,subdivision] (a)'s policy of deterring violations of licensing requirements by 'allow[ing] persons who utilize unlicensed contractors to recover compensation paid to the contractor for performing unlicensed work. [Citation.]' [Citation.]" (*Alatriste, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

Based on the statutory language and legislative history, both *Alatriste* and *White* "concluded that the Legislature intended that courts interpret sections 7031[, subdivision] (a) and 7031[, subdivision] (b) in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant." (*Alatriste, supra*, 183 Cal.App.4th at p. 666, citing *White, supra*, 178 Cal.App.4th at pp. 519-520.) These principles are well-settled under the law. **[*10]**

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

For similar reasons, Bereki's attempt to characterize disgorgement as an award of unconstitutional punitive damages is unavailing. As an equitable remedy, disgorgement is not punishment and, therefore, it does not implicate the excessive fines clause of the Eighth Amendment to the United States Constitution. (*S.E.C., supra*, 996 F.2d at p. 802; see *U.S. v. Philip Morris USA* (D.C. 2004) 310 F.Supp.2d 58, 62-63.)

B. Contractor Licensing Requirement

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

As for the legal argument, Bereki asserts that licensing requirements only apply to **[*11]** "fictitious" persons, not "natural" persons such as himself. He cites no authority for his unique interpretation of the relevant statutes. And, the statutes provide otherwise. Contractors who are required to obtain a license include "[a]ny person . . . who . . . undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any . . . home improvement project, or part thereof." (§ 7026.1, subd. (a)(2).) In turn, "'[p]erson'" is defined to include "an individual[,]" as well as a variety of types of business entities and associations. (§ 7025, subd. (b).) "In ordinary usage[,] the word 'individual' denotes a natural person not a group,

association or other artificial entity. (See Webster's Third New Internat. Dict. (2002 ed.) p. 1152 [giving a primary definition of 'individual' as 'a single human being as contrasted with a social group or institution'].)" (City of Los Angeles v. Animal Defense League (2006) 135 Cal.App.4th 606, 623, disapproved of on other grounds in City of Montebello v. Vasquez (2016) 1 Cal.5th 409, 416.) There is nothing in the statutes that indicates a different, specialized meaning. (Halbert's Lumber, Inc. v. Lucky Stores, Inc. (1992) 6 Cal.App.4th 1233, 1238 ["In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them **[*12]** a special meaning"].)

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

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

At no time during this series of events did Bereki ever mention Spartan Associates. Notably, Bereki did not apply to the State Board of Equalization to register Spartan as an employer until roughly three months after **[*13]** the remodel work began. Then, about four months into the project, he introduced the corporation into the mix by asking the Humphreys, without any explanation, to make future payments to Spartan Associates. Based on what transpired, the couple believed they contracted with Bereki, in his individual capacity, to complete the remodel work.

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

C. Disgorgement Remedy Under Section 7031

Separate from his general attacks on section 7031, subdivision (b), Bereki challenges its application under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit — the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have **[*14]** uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. (See, e.g., Alatriste, supra, 183 Cal.App.4th at pp. 672-673; White, supra, 178 Cal.App.4th at pp. 520-521; see also Jeff Tracy, Inc. v. City of Pico Rivera (2015) 240 Cal.App.4th 510, 521.) Full disgorgement is required; offsets and reductions for labor and materials received are not permitted.

Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor's license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute. The disgorgement consequence is not remedial in nature. Similar to the licensing requirement, it is a proactive measure intended to decrease the likelihood of harm due to "incompetent or dishonest providers of building and construction services." (White, supra, 178 Cal.App.4th at pp. 517.)

We also are not persuaded by Bereki's objection to the amount the court ordered him to repay to the Humphreys. He highlights evidence showing that some of the payment checks came from Gary Humphreys' corporation, and he argues the Humphreys are not entitled to those amounts given they did not pay them in the first instance. While we do not necessarily see eye-to-eye with Bereki's legal reasoning, **[*15]** we need not reach the legal aspect of his argument due to the trial court's factual findings.

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

Under these circumstances, we find ample evidence to support the trial court's factual finding that although certain payments to Bereki were made from the Humphreys' business account, they ultimately were **[*16]** accounted for in a way that ensured they were personal payments from the Humphreys, as individuals. Accordingly, the Humphreys were entitled to "all compensation paid." (§ 7031, subd. (b).)

We recognize that the provisions of section 7031, including the disgorgement remedy, are harsh and may be perceived as unfair. As courts have explained, however, they stem from policy decisions made by the Legislature. (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423; *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 151; see *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896; *Alatriste, supra*, 183 Cal.App.4th at p. 672.) "[T]he choice among competing policy considerations in enacting laws is a legislative function" (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1203), and absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute. (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 25; *Alatriste, supra*, 183 Cal.App.4th at p. 672.)

D. Statement of Decision

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

III

DISPOSITION

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

ARONSON, J.

WE CONCUR: **[*17]**

O'LEARY, P. J.

GOETHALS, J.

Footnotes

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

EXHIBIT [D] p.5353

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

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

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

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

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Gmail Adam Bereki <abereki@gmail.com>

Request For Complaint Information

3 messages

Adam <abereki@gmail.com> Tue, Aug 16, 2022 at 1:34 PM
To: PIO <pio@occourts.org>

Hi Kostas,

Could you please send me any information on how to make a complaint against a specific judge for acting without authority/violating the California Constitution and US Constitution?

Thank you

Adam

PIO <PIO@occourts.org> Tue, Aug 16, 2022 at 2:11 PM
To: Adam <abereki@gmail.com>

Hi Adam,

Please find the information you request at this link under "SUGGESTIONS & COMPLAINTS" The Superior Court of California - County of Orange (occourts.org)

Thanks,

Kostas

[Quoted text hidden]

********** THIS MESSAGE IS FROM AN EXTERNAL SENDER. **********

Adam Bereki <abereki@gmail.com> Tue, Aug 16, 2022 at 3:01 PM
To: PIO <pio@occourts.org>

Thank you so kindly for your help.

On Aug 16, 2022, at 2:11 PM, PIO <pio@occourts.org> wrote:

EXHIBIT [D] p.5355

[Quoted text hidden]

FOIA/PA Mail Referral Unit
Department of Justice
MRUFOIA.Requests@usdoj.gov

October 18, 2021

Subject: Freedom of Information Act ("FOIA") Request

Good day,

This is a request under the Freedom of Information Act. I request that a copy of the following documents be provided to me, without delay:

1. Proper Presidential Commissions signed by the President of the United States of America and countersigned by the U.S. Attorney General for: (a) all nine federal employees currently seated on the U.S. Supreme Court; (b) three employees on the Ninth Circuit Court of Appeals; and, (c) one employee seated on the United States District Court, Central District of California as required by 5 U.S.C. sections 2104 and 2902;

2. Proper OPM Form 61 Appointment Affidavits signed by all of the aforementioned federal employees, as required by 5 U.S.C. sections 3331 and 2906;

3. Proper Oaths of Office for United States Judges signed by signed by all of the aforementioned federal employees, as required by 28 U.S.C. section 453; and,

4. Proper Senate Confirmations of all of the aforementioned federal employees as required by the Appointments Clause in the Constitution for the United States of America, as lawfully amended.

Below, please find an alphabetical list of the proper names of all thirteen (13) federal employees whose credentials above I am hereby requesting,

I request a waiver of all fees for this request.

Disclosure of the requested information to me is in the public interest, because it is likely to contribute *significantly* to public understanding of the operations and activities of the federal government, and is not *primarily* in my commercial interest.

If you are not the correct person to whom this FOIA request should be directed, please forward it without delay to the correct person(s).

Thank you for your timely consideration of this FOIA request.

Sincerely yours,

/s/ Adam Bereki

U.S. Mail care of:

818 Spirit
Costa Mesa, California 92626

All Rights Reserved without Prejudice

List of all federal personnel:

Samuel A. Alito, Jr.
Any Coney Barrett
Stephen G. Breyer
William Fletcher
Neil M. Gorsuch
Elena Kagan
Brett M. Kavanaugh
Consuelo Bland Marshall
John G. Roberts, Jr.
Sonia Sotomayor
Atsushi Tashima
Clarence Thomas
Sidney Thomas

U.S. Department of Justice

Washington, D.C. 20530

October 20, 2021

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

Dear Sir/Madam:

This is in response to your request for records, Tracking Number, EMRUFOIA101821-1. Your Freedom of Information Act and/or Privacy Act (FOIA/PA) request was received by this office which serves as the receipt and referral unit for FOIA/PA requests addressed to the Department of Justice (DOJ). Federal agencies are required to respond to a FOIA request within 20 business days. This period does not begin until the request is actually received by the component within the DOJ that maintains the records sought, or ten business days after the request is received in this office, whichever is earlier.

We have referred your request to the DOJ component(s) you have designated or, based on descriptive information you have provided, to the component(s) most likely to have the records. All future inquiries concerning the status of your request should be addressed to the office(s) listed below:

FOIA/PA
Office of Information Policy
Department of Justice
441 G St, NW
6th Floor
Washington, DC 20530-0001
(202) 514-FOIA

Sincerely,

MRUFOIA
Logistics Management
Facilities and Administrative Services Staff
Justice Management Division

Gmail Adam Bereki <abereki@gmail.com>

Bereki, Adam (EMRUFOIA101821-1)

2 messages

MRUFOIA Requests <MRUFOIA.Requests@usdoj.gov> Wed, Oct 20, 2021 at 11:19 AM
To: Adam <abereki@gmail.com>

Please see the attached response to your FOIA request. Please note, your request has been assigned tracking number EMRUFOIA101821-1.

From: Adam <abereki@gmail.com>
Sent: Monday, October 18, 2021 10:27 AM
To: MRUFOIA Requests <MRUFOIA.Requests@usdoj.gov>
Subject: [EXTERNAL] FOIA Request Adam Bereki 10/18/21

Good Day,

Please see the attached FOIA Request. Thank you for your help.

Sincerely,

Adam Bereki

Bereki,Adam B7 (EMRUFOIA101821-1) MRU RESPONSE.pdf
135K

Adam Bereki <abereki@gmail.com> Thu, Jan 6, 2022 at 8:11 AM
To: Adam Bereki <abereki@gmail.com>

EXHIBIT [D] p.5360

Sent from my iPad

Begin forwarded message:

From: MRUFOIA Requests <MRUFOIA.Requests@usdoj.gov>
Date: October 20, 2021 at 11:19:50 AM PDT
To: Adam <abereki@gmail.com>
Subject: Bereki, Adam (EMRUFOIA101821-1)

[illegible]

Bereki,Adam B7 (EMRUFOIA101821-1) MRU RESPONSE.pdf
135K

U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

March 1, 2022

Adam Bereki
abereki@gmail.com

Re: FOIA-2022-00140
DRH:VAV:GMG

Dear Adam Bereki:

This is an interim response to your Freedom of Information Act request dated and received in this Office on October 20, 2021, in which you requested records concerning various U.S. Supreme Court Justices and Federal Judges.

By telephone conversation on January 21, 2021, Valeree Villanueva of this Office provide some explanation regarding judge records and the Department of Justice, as well as agreed that this Office would work to provide an interim response to your request while we continue to await the pending office search. Accordingly, this Office is proceeding as agreed upon.

Please be advised that this Office previously processed documents concerning individuals named in your letter. in response to prior FOIA requests. I have determined that this material, totaling fourteen pages, is appropriate for release with excisions made pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Copies of this material are enclosed.

We are continuing to search for records responsive to your request and will contact you again once those searches are complete and our disclosure determinations are made, should responsive records be located.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552 (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

If you are not satisfied with this Office's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

for
Douglas R. Hibbard
Chief, Initial Request Staff

Enclosures

George W. Bush

President of the United States of America,

To all who shall see these Presents, Greeting:

Know Ye: That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of Samuel A. Alito, Jr., of New Jersey, I have nominated, and, by and with the advice and consent of the Senate, do appoint him an Associate Justice of the Supreme Court of the United States, and do authorize and empower him to execute and fulfil the duties of that Office according to the Constitution and Laws of the said United States, and to Have and to Hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto Him the said Samuel A. Alito, Jr. during his good behavior.

In testimony whereof, I have caused these Letters to be made patent, and the seal of the Department of Justice to be hereunto affixed.

Done at the City of Washington, this thirty-first day of January in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.

By the President:

Attorney General.

George M. Adams

President of the United States of America,

To all who shall see these Presents, Greeting:

Know Ye: That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of Neil M. Adams, of Colorado, I have nominated, and by and with the advice and consent of the Senate do appoint him United States Circuit Judge for the Tenth Circuit and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to have and to hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto him the said Neil M. Adams during his good behavior.

In testimony whereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Done at the City of Washington this 19th day of August in the year of our Lord two thousand six and of the Independence of the United States of America the two hundred and thirty-first

By the President:

Attorney General.

EXHIBIT [D] p.5365

APPOINTMENT AFFIDAVITS

United States Circuit Judge for the Tenth Circuit — August 8, 2006
(Position to which Appointed) — *(Date Appointed)*

United States Courts — _____ — _____
(Department or Agency) — *(Bureau or Division)* — *(Place of Employment)*

I, Neil M. Gorsuch, do solemnly swear (or affirm) that--

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO THE PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

Neil M. Gorsuch
(Signature of Appointee)

Subscribed and sworn (or affirmed) before me this 10 day of August, 2006

at Denver (City) Colorado (State)

David M. Ebel
(Signature of Officer)

(SEAL)

Commission expires _____
(If by a Notary Public, the date of his/her Commission should be shown)

United States Circuit Judge for the Tenth Circuit
(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.

OATH OF OFFICE FOR UNITED STATES JUDGES

(Title 28, Sec. 453 and Title 5, Sec. 3331, United States Code)

I, Neil M. Gorsuch, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as United States Circuit Judge for the Tenth Circuit under the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

Neil M. Gorsuch
(Signature of Appointee)

Subscribed and sworn to (or affirmed) before me this 10th day of August, 2006.

David M. Ebel

Actual abode: (b) (6)
Official station* Denver, Colorado
Date of birth (b) (6)
Date of Entry on Duty August 10, 2006

* Title 28, sec. 456 United States Code as amended.

Senate of the United States

IN EXECUTIVE SESSION

July 20, 2006

Resolved, That the Senate advise and consent to the following nomination:

Neil M. Gorsuch, of Colorado, to be United States Circuit Judge for the Tenth Circuit, vice David M. Ebel, retired.

Attest: Emily J. Reynolds

Secretary.

THE WHITE HOUSE
JUL 21 2006
RECEIVED

Donald J. Trump

President of the United States of America

To all who shall see these Presents, Greeting:

Know Ye: That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of Neil M. Gorsuch, of Colorado, I have nominated, and, by and with the advice and consent of the Senate, do appoint him an Associate Justice of the Supreme Court of the United States, and do authorize and empower him to execute and fulfil the duties of that Office according to the Constitution and Laws of the said United States, and to Have and to Hold the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto Him the said Neil M. Gorsuch during his good behavior.

In testimony whereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Done at the City of Washington this eighth day of April in the year of our Lord two thousand seventeen and of the Independence of the United States of America the two hundred and forty-first.

By the President:

Jefferson B. Sessions

Attorney General

Donald Trump

APPOINTMENT AFFIDAVITS

Associate Justice, Supreme Court of the United States
(Position to which Appointed)

04/07/2017
(Date Appointed)

The Supreme Court of the U.S.
(Department or Agency)

(Bureau or Division)

Washington, D.C.
(Place of Employment)

I, NEIL M. GORSUCH, do solemnly swear (or affirm) that--

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO THE PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

(Signature of Appointee)

Subscribed and sworn (or affirmed) before me this 10th day of April, 2017

at Washington
(City)

District of Columbia
(State)

(Signature of Officer)

(SEAL)

Commission expires
(If by a Notary Public, the date of his/her Commission should be shown)

Chief Justice of the United States
(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.

Supreme Court of the United States

October Term, 2016

I, NEIL M. GORSUCH, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.

So help me God.

Neil Gorsuch

Subscribed and sworn to before me
this 10th day of April, 2017

John G. Roberts, Jr.

Chief Justice of the United States

Supreme Court of the United States

October Term, 2016

I, NEIL M. GORSUCH, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as Associate Justice of the Supreme Court of the United States under the Constitution and laws of the United States.

So help me God.

Subscribed and sworn to before me
this 10th day of April, 2017

Associate Justice of the Supreme Court

Senate of the United States

IN EXECUTIVE SESSION

April 7, 2017

Resolved, That the Senate advise and consent to the following nomination:

Neil M. Gorsuch, of Colorado, to be an Associate Justice of the Supreme Court of the United States, vice Antonin Scalia, deceased.

Attest: Julie E. Adams

Secretary.

Seal of Utah

President of the United States of America,

To all who shall see these Presents, Greeting:

Know Ye: That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of John G. Roberts, Jr., of Maryland, Appointed, and by and with the advice and consent of the Senate, do appoint him United States Circuit Judge for the District of Columbia Circuit and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to have and to hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto him, the said John G. Roberts, Jr. during his good behavior.

In testimony whereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Done at the City of Washington this fourteenth day of May in the year of our Lord two thousand three and of the Independence of the United States of America the two hundred and twenty-seventh.

By the President:

Deputy Attorney General.

EXHIBIT [D] p.5374

OATH OF OFFICE FOR UNITED STATES JUDGES

(Title 28, Sec. 453 and Title 5, Sec. 3331, United States Code)

I, John G. Roberts, Jr., do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as United States Circuit Judge under the Constitution and laws of the United States: and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic: that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.

So Help Me God.

John G. Roberts, Jr.

Subscribed and sworn to (or affirmed) before me this Second day of June, 2003

William H. Rehnquist

William H. Rehnquist
Chief Justice of the United States

Actual abode (b) (6)

Official station* District of Columbia

Date of birth (b) (6)

Date of entry on duty June 2, 2003

*Title 28, sec. 456 United States Code, as amended.

STANDARD FORM 61
Revised June 1986

U.S. Office of Personnel Management
FPM Chapter 296
61-108

APPOINTMENT AFFIDAVITS

United States Circuit Judge	May 14, 2003
(Position to which appointed)	*(Date of appointment)*

U.S. Courts	D.C. Circuit	District of Columbia
(Department or agency)	*(Bureau or Division)*	*(Place of employment)*

I, John G. Roberts, Jr. , do solemnly swear (or affirm) that----

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

(Signature of appointee)

Subscribed and sworn (or affirmed) before me this Second day of June , 2003 ,

at Washington, *(City)* District of Columbia *(State)*

[SEAL]

(Signature of officer)

Commission expires N/A

Chief Justice of the United States *(Title)*

(If by a Notary Public, the date of expiration of his/her Commission should be shown)

NOTE.- *The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

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Senate of the United States

IN EXECUTIVE SESSION

May 8, 2003

Resolved, That the Senate advise and consent to the following nomination:

John G. Roberts, Jr., of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Attest: Emily Reynolds
Secretary.

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

PUBLIC INQUIRY UNIT
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 210-6276
TOLL FREE: (800) 952-5225
TTY: CA Relay Service
(800) 735-2922

February 25, 2022

PIU: 295026

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626-3089

Dear Mr. Adam Bereki:

Thank you for your correspondence to the Office of the Attorney General.

While we appreciate the time and effort it has taken to contact our office, we are unable to assist you. The role of the Attorney General is to represent the People of California, collectively, in civil and criminal matters before trial courts, appellate courts, and the supreme courts of California and the United States. However, the Attorney General is prohibited by law from representing private individuals or providing legal advice, legal research or legal analysis to private individuals under any circumstances. As a result, the Attorney General cannot represent you in your private litigation or intercede on your behalf.

Therefore, we suggest that you consult with a private attorney to determine any civil remedies that may be available to you. An attorney would directly represent your interests and is the one whose advice would be most helpful to you.

Your complaint about the judge(s) involved in this case should be directed to the Commission on Judicial Performance. The Commission has exclusive jurisdiction over complaints against judges. You may contact the Commission as follows:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
Telephone: (415) 557-1200
Fax: (415) 557-1266
Internet: http://cjp.ca.gov

Your complaint about the attorney(s) involved in this case should be directed to the State Bar. The Bar has exclusive jurisdiction over complaints against attorneys. You may contact the Bar as follows:

State Bar of California
Intake Unit
845 S. Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 765-1000 (outside of CA) or (800) 843-9053 (toll free)
Internet: http://www.calbar.ca.gov

We regret that we are unable to assist you. However, we hope the information we have provided clarifies our restrictions in regard to your request. Thank you again for writing.

Sincerely,

Casey Hallinan
Public Inquiry Unit

For ROB BONTA
Attorney General

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
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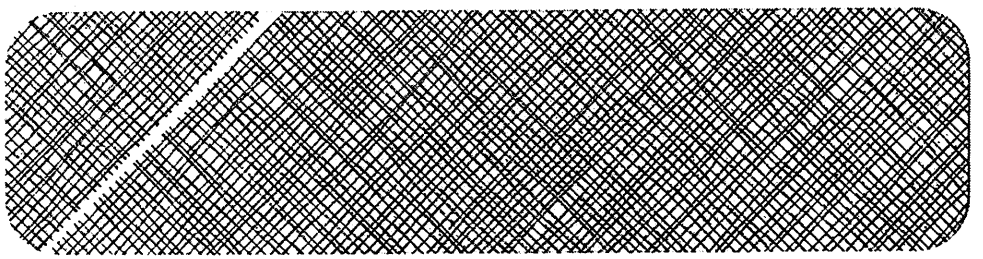

92626308 C051

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February 17, 2022

RE: Criminal Complaint and Complaint for Deprivation of Constitutional Rights Under Color of Law by Public Officials

I. "Trial"

On March 27th and 28th 2017, I was maliciously prosecuted and excessively, cruelly, and unusually punished under the fraudulent pretense of a remedial civil action in equity for "disgorgement" for allegedly performing construction work without a license. During the so-called "trial" I was also denied all of the heightened protections of criminal proceedings including the assistance of counsel. I was then excessively fined $848,000 – an amount more than forty times my qualifying and estimated net worth – after the "Court" refused to recognize any of the protections of the excessive fines clause. As a result of the *ultra vires* proceedings, I was subjected to a bill of attainder or pains and penalties in violation of Article I, §10 of the Constitution (amongst other deprivations of rights) having been punished without a judicial determination of my rights. See Superior Court of California, County of Orange, case# 30-2015-00805807, incorporated and fully set forth herein.

The statute under which I was prosecuted, California Business and Professions Code §7031(b), is a public regulatory penal statute that governs contractor licensing

ORIGINAL

under California's Contractor Licensing Laws, (Business & Professions Code, §§7000 et seq.). According to the Supreme Court of California, "the Legislature's obvious intent [of enacting §7031(b) was] to impose a stiff all-or-nothing penalty for [performing] unlicensed [construction] work by specifying that a contractor is barred from *all* recovery for such an act or contract if unlicensed *at any time* while performing it."[1] More accurately however, §7031(b) prescribes punishment in the form of a total forfeiture[2] because an unlicensed contractor is required to forfeit "all compensation paid" by a customer *without* offsets for the reasonable value of goods and services provided if they perform work without a license.[3] In other words, even if the contractor performs flawless work, the homeowner gets to keep the work *and* receives a full refund.

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

> "Under the bill, individuals may bring such an action even if the contractor has fully performed. In that case, those using the unlicensed contractor have not been harmed in any way, but are nevertheless authorized to sue to recover compensation paid. As a result, those using unlicensed contractors are arguably unjustly enriched because they are able to reap the benefits of the work done by the unlicensed

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

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

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

> contractor and are then authorized by statute to sue to recover from the contractor all compensation paid."

Another obvious indication of §7031's purely penal nature is that the same conduct is made criminal by Business and Professions Code §7028. Notably, the *maximum* fine for a first offense under §7028 is $5,000, not $848,000.

§7031(b) also falls squarely within the definition of a crime or public offense under Cal. Penal Code §15:

> "[a] crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or, 5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State."

As this the U.S. Supreme Court has declared, the inquiry of whether a statutory scheme is remedial or punitive is over "[i]f the [intent] of the legislature was to impose punishment [...]."[4]

Despite the excessive, cruel, and unusual punishment imposed upon me, the Minute Order issued by Superior Court of California, County of Orange, "Judge" David Chaffee, (Exhibit [A]), reflects a judgment for "disgorgement of funds paid". According to the U.S. Supreme Court's recent decision in the case of *Liu v. SEC*,[5] a claim for "disgorgement" is an equitable remedy designed to strip a wrongdoer of illegal profits, not the total penal forfeiture of an entire transaction without offsets for benefits conferred.

The obvious problem here is that equitable disgorgement of my profits is not what Chaffee ordered. He ordered a total penal forfeiture of "all compensation paid" as stated in §7031(b) without offsets for benefits conferred. Equally troubling,

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

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

§7031(b) mentions nothing about equitable disgorgement. Nor is an action for "disgorgement" defined anywhere by California statute. The word disgorgement is also not used anywhere in the legislative of history of §7031. And, as previously evidenced, the Legislature was perfectly aware of the possibility of the unjust enrichment that the enforcement of §7031(b) could create.

In his dissent in *Liu supra*, Justice Thomas aptly saw the writing on the wall surrounding the nationwide abuses of "disgorgement". He said "[t]he term disgorgement itself invites abuse because it is a word with no fixed meaning. [...] As long as courts continue to award "disgorgement", [Courts] will continue to have license to expand their own power."[6]

Even assuming §7031(b) called for a true claim of equitable disgorgement, I am unaware of any evidence on the trial "Court's" record that I profited even one dollar let alone the $848,000 awarded by Chaffee, or that I was unjustly enriched by purportedly performing the custom remodel work requested by the Humphreys. See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

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

Even more astounding, the fraudulent "Proposed Judgment Order" filed by the Humphreys (the Plaintiffs) and their attorney, William G. Bissell,[7] is an order for "Damages" (not "disgorgement") in the amount of $848,000. This order was later signed by Chaffee. See Exhibit [B].

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[6] *Liu v. SEC*, 140 S. Ct. 1936, 1953-54 (2020).

[7] All references to William Bissell shall also include The Law Offices of William G. Bissell.

In addition to the fact there was no apparent evidence presented by the Humphreys to substantiate a claim for equitable disgorgement, I am also unaware of any evidence on the trial "Court's" record of any "damages" even remotely commensurate with the U.S. Supreme Court's definition thereof. See for e.g. the case of *Birdsall v. Coolidge,*[8] defining damages as:

> "a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant" and "the amount awarded shall be precisely commensurate with the injury suffered, neither more nor less, whether the injury be to the person or estate of the complaining party."

According to the California Second District Court of Appeal's opinion in the case of *Eisenberg Village etc. v. Suffolk Construction Co., Inc.,*[9] "the disgorgement mandated by section 7031(b) is not designed to compensate the plaintiff for any harm, but instead is intended to punish the unlicensed contractor" and "[t]he fact that a contractor does not have a valid license does not, by itself, cause the plaintiff harm other than, perhaps some sort of psychological harm in knowing that he or she hired someone who was not in compliance with the law." In other words, the so-called "injury" from hiring an unlicensed contractor upon which the licensing laws are founded is purely hypothetical. Dating all the way back to the Magna Carta, punishment for an offense against the Crown was limited to "genuine [not hypothetical] harm".[10]

See also Justice Thomas's concurring opinion in the case of *Spokeo Inc. v. Robbins*, stating that historically, "[c]ommon-law courts, [...] have required a further showing of injury for violations of "public rights" — rights that involve duties owed to the whole community, considered as a community, in its social

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

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

[10] *Browning-Ferris Indus. v. Kelco Disposal,* 492 U.S. 257, 271 (1989).

aggregate capacity. Such rights include [...] general compliance with regulatory law."[11] And that "[e]ven in limited cases where private plaintiffs could bring a claim for the violation of public rights, they had to allege that the violation caused them some extraordinary damage, beyond the rest of the community."[12]

But not only did the Humphreys never state a claim for equitable disgorgement or damages, immediately before "trial" they specifically severed their claim for alleged damages from their First Amended First Cause of Action for "disgorgement". Their intent was that by simply having a "trial" only on their First Cause of Action for "disgorgement", they would receive a total forfeiture in addition to keeping nearly one million dollars in work and therefore have no need to evidence any damages. This intent was specifically declared in Bissell's sworn Declaration in Support of the Motion for Severance. Therein, Bissell testified that "the amount to be disgorged [forfeited] would exceed that amount of damages claimed by [the Humphreys] [and] there would be no need to put on evidence of either [my or my company's] liability or [the Humphreys] damages." As a result, no damages were evidenced at "trial".

*****

The case against me is not an anomaly, it's the standard operating procedure here in Commiefornia. Perhaps the most egregious case involving §7031 is that of *Judicial Council of California v. Jacobs Facilities, Inc.*,[13] where the so-called "Judicial" Council of California sought a $22.7 million dollar forfeiture under the

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

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

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

same fraudulent veil of equitable "disgorgement" against *Jacobs*, a company it hired to maintain the California Court buildings that had admittedly done a good job. In response to a public records request,[14] the "Judicial" Council admittedly spent over $3 million dollars of the People's tax dollars in its attempts to prosecute, punish, and likely financially destroy *Jacobs* due to a harmless and apparently unintentional licensing mix-up during *Jacobs* corporate reorganization. One has to wonder just what degree of sociopathy[15] it must take to spend more than three million dollars to try and ruin a company that provided quality service and caused no harm. This is the same "Judicial" Council, mind you, whose purported duty it is make the policies for California "Courts", "the largest Court system in the Nation" and who, acting in concert with the *ultra vires* actions of the California "Legislature" and "Governor" manufactured the bogus civil jury instructions for §7031(b).[16]

"To accord a type of relief that has never been available before and especially (as here) a type of relief that has been specifically disclaimed by longstanding judicial precedent – is to invoke a default rule, [...] not of flexibility but of omnipotence".[17] "Even when sitting as a court in equity, [no Court has] authority to craft a nuclear weapon of the law like the one advocated here."[18]

It is unknown exactly how many other similar cases have taken place as California's "Court" records management system has no means of performing even an elementary database search of cases or judgments based upon specific statutes

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[14] Exhibit [C] p. 1815. $3,307,408.78.

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

[16] Judicial Council of California Civil Jury Instructions, CACI §4560 and §4561.

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

[18] *Id.* p.333. Internal quotations omitted.

like §7031, which has been in existence since 1929. The following are just a handful of other cases[19] I was able to locate because an appeal was filed:

> *Twenty-Nine Palms v. Bardos*, 210 Cal. App. 4th 1435 (2012)– a forfeiture in the amount of $917,043.09 against Paul Bardos who was ultimately forced into bankruptcy and lost his home. See *In re Bardos*, Memorandum of the Bankruptcy Appellate Panel of the 9th Circuit, Bankr. No. 10-41455-DS.
>
> *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*, 36 Cal. 4th, 412 (Cal. Supreme Ct. 2005)– total forfeiture in the amount of $1,322,247 plus interest and Court costs awarded against *MW Erectors, Inc.* pursuant to §7031(a) upheld by the Cal. Supreme Court, awarded by... you guessed it, "Judge" Chaffee.
>
> *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035 (2005)– a forfeiture in the amount of an $212,821.80 plus interest and "Court" costs awarded against Banis pursuant to §7031(a).
>
> *Hydrotech Systems, Ltd. v. Oasis Waterpark*, 52 Cal. 3d 988 (Cal. Supreme Ct. 1991)– a forfeiture in the amount of $110,000 plus interest and "Court" costs awarded against Hydrotech pursuant to §7031(a).
>
> *White v. Cridlebraugh*, 178 Cal. App. 4th 506 (2009)– a forfeiture in the amount of $84,621.45 plus interest and "Court" costs awarded against JC Master Builders, Inc. pursuant to §7031(b).

At the Federal level, United States District Courts enforce these same public policies. See for e.g. *Davis Moreno Constr., Inc. v. Frontier Steel Bldgs. Corp.*,[20] where the "Court" awarded a forfeiture in the amount of $168,025.90 against Frontier pursuant to §7031(b) and an unknown amount pursuant to §7031(a). See also the Ninth Circuit bankruptcy case of Paul Bardos, *supra*.

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[19] The facts of these cases and the judgment figures provided are the result of a preliminary or cursory case analysis, not a forensic examination. They may require further study for accuracy.

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

In each and every case I examined, the so-called "Judges" not only refused to recognize the penal nature of the forfeiture they imposed – and consequently <u>any</u> protections guaranteed by the excessive fines clauses – they also refused to dismiss the case for lack of personal and subject matter jurisdiction on the grounds that "a private citizen lacks a judicially cognizable interest in the prosecution [...] of another."[21]

a. The Humphreys Lacked Standing to Prosecute Petitioner.

1. The history of criminal forfeiture laws.

In the case of *United States v. Seifuddin,*[22] the United States Court of Appeals for the Ninth Circuit examined the history of forfeiture laws and found that:

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

Applying this criteria to the instant case, it is plainly obvious that the action against me was an *in personam* criminal forfeiture intended to punish me for allegedly performing construction work without a license. As a result, the rules of criminal procedure were required to be followed.

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

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

It should also be noted that because the "Judgment" is more than forty times my qualifying and estimated net worth, it will force me into bankruptcy where I will be forced to forfeit all of my qualifying lands and goods. At common Law a total forfeiture of an offender's lands or goods or both was punishment for a felony or treason and was prosecuted by indictment.[23]

2. The Humphreys Intended to Prosecute Petitioner by subjecting him to an in personam criminal forfeiture.

In their First Amended Trial Brief, the Humphreys stated that they intended to (and ultimately did in fact) prosecute and punish me for violating the licensing laws by seeking an $848,000 fine/total forfeiture upon him. They claimed that:

> "Adam Bereki, both at the time the contract with the Humphreys was entered into, and at all times during his performance on the Project, was unlicensed as a contractor in violation of California Business & Professions Code §7028 [the criminal statute for unlicensed contracting]. As a consequence of Mr. Bereki's unlicensed status and under the provisions of California Business & Professions Code §7031(b), the Humphreys are entitled to recover from cross-defendant Bereki all sums paid by [them] to Mr. Bereki, which sums total $848,000."

The Humphreys lacked Constitutional standing to prosecute me for the commission of a public offense because Article V, §1 of the California Constitution vests the executive power of California *exclusively* in the Governor to see that the law is faithfully executed. The People conveyed the entirety of the executive power upon the Governor because it was believed that "a basic step in organizing a civilized society is to take that sword out of private hands and turn it over to an organized government, acting on behalf of all the people. Indeed, the . . . power a man has in the state of nature is the power to punish the crimes committed against that law. But this he gives up when he joins a . . . political society, and incorporates

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[23] *Evans v. Willis*, 1908 OK 199, p.11 (OK Supreme Ct. 1908).

into a commonwealth."[24] The State of California admits the "remedy" prescribed by §7031(b) is in fact a sword.[25] Therefore, only the executive branch of the State could prosecute me, not the Humphreys.[26] "A lack of standing is a jurisdictional defect."[27]

Despite the foregoing, no sworn information or indictment was ever filed in the name of The People of California pursuant to Cal. Gov't Code §100 to vest the Superior Court of California, County of Orange with personal and subject matter jurisdiction[28] to prosecute and punish me. As a result, "Judge" Chaffee had a mandatory, non-discretionary, ministerial duty to dismiss the Humphreys claim under §7031(b) *sua sponte* for lack of personal and subject matter jurisdiction and want of prosecution.[29] Instead, Chaffee arbitrarily chose to proceed with a faux "trial", knowing or reasonably knowing he had no lawful authority whatsoever to do so, thereby committing fraud upon me and my estate in the procurement of personal and subject matter jurisdiction and in the subsequent issuance of the fraudulent *ultra vires* "Judgment Order".

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

[25] "The hiring party is entitled to enforce these remedies [§7031] through a defensive shield [§7031(a)] or an affirmative sword [§7031(b)]." *Alatriste v. Cesar's Designs, Inc.*, 183 Cal. App 4th 656, 664 (2010).

[26] *Robertson v. Watson*, 560 U.S. 272, 273 (2010) and the concurring opinion of Justice Thomas in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) regarding public vs. private rights actions.

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

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

[29] Cal. Penal Code §1382.

II. "Appeal"- Fourth District Court of Appeals

On June 13, 2017, I timely appealed to the California Court of Appeals, Fourth Appellate District. The appeal was assigned to "Presiding Justice" Kathleen E. O'Leary and "Justices" Thomas M. Goethals, and Richard M. Aronson, (collectively "OLGA"), who arbitrarily affirmed Chaffee's "Judgment Order" finding that the fine imposed upon him was "disgorgement", a "non-punitive" "equitable remedy" and "civil consequence". See case #G055075, incorporated and fully set forth herein and OLGA's Opinion, Exhibit [C].

"Justices" OLGA first had a mandatory, non-discretionary, ministerial duty to first ensure the Fourth District Court of Appeals had personal and subject matter jurisdiction over me and the appeal.[30] Article I, §10 of the California Constitution does not vest any Court, let alone the Fourth District Court of Appeals with any known subject matter jurisdiction (ie in law and equity) to exercise the judicial Power of California on appeal. Second, because there is no power vested by the "Constitution of 1879" for the Legislature to vest Courts with any of the judicial power of California, Cal. Code of Civil Procedure §904.1(b), which purportedly makes appealable an order after final judgment, is without authority and void.[31]

Hypothetically assuming that the Court of Appeals had the requisite personal and subject matter to proceed with the appeal, "Justices" OLGA then had a mandatory, non-discretionary, ministerial duty to ensure the Superior Court of California, County of Orange had personal and subject matter jurisdiction over each issue in which the judicial power of California was exercised to deprive me of my

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[30] *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887).

[31] At the time of the "appeal" it should be noted that Petitioner believed and relied upon the fraud that the Cal. Constitution and §904.1(b) vested the Fourth District Court of Appeal with subject matter jurisdiction.

liberty and property.[32] For the reasons already evidenced, the Superior Court of California lacked both personal jurisdiction over me and subject matter jurisdiction over the case.

Instead of the performing these sworn duties, "OLGA" proceeded to commit fraud on me and his estate by treasonously exercising the judicial power of California under color of law to sustain the fraud, deceit, treason and other rights violations committed by Chaffee in conspiracy with the Humphreys and Bissell. Rather than actually reading §7031(b) – which clearly and unambiguously calls for a total penal forfeiture – and following the precedent of the Supreme Court of California finding that §7031(b) imposed both a penalty and a forfeiture, they decided to make up their own term of "disgorgement" and find that §7031(b) imposed an "equitable remedy" despite affirming Chaffee's "Order" of a total forfeiture. This, despite the fact that the Humphreys never even stated a claim for "equitable disgorgement". See for e.g. Restatement of the Law 3d, Restitution and Unjust Enrichment, §51, comment *i*:

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

I am unaware of any evidence on the trial "Court's" record that I was unjustly enriched $848,000, let alone $1. A Court of Equity "never lends its aid to enforce a forfeiture or penalty."[33]

Perhaps even more troubling is that I raised nearly all of the aforementioned issues presented here on "appeal" in my Opening Brief. OLGA's response was that

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[32] *King Bridge Co. v. Otoe County*, 120 U.S. 225, 226 (1887).

[33] *Liu v. SEC*, 140 S. Ct. 1936, 1941. Internal quotations and citation omitted.

they found "no merit" to any of them, despite all of them aligning meritoriously with State and National Constitutional law. One august authority cited in my Brief was to the case of the *Town of Gilbert Prosecutors Office v. Downie,*[34] involving "disgorgement" and the criminal prosecution of an unlicensed contractor, where the Supreme Court of Arizona found that "a rule of total disgorgement [forfeiture] regardless of any benefit conferred on the victim [...] may lead to absurd or troubling results." Discussing the issue, the high Court found that "when determining the proper amount of restitution to be paid to a victim, consideration should be made for [the] value conferred on the victim;" *Id.* p.18. and, that restitution "should not compensate victims for more than their actual loss." *Id.* p.13. Citing both the Seventh[35] and Ninth[36] Circuit Courts of Appeals, the Gilbert Court declared that they "[found] no significant difference between returning cash, one form of value, and returning other forms of value, such as permits, chattels, services, or other property [and that the concept of] loss is [...] rooted in value, not solely in the exchange of money." *Id.* p.25. Explaining the Seventh Circuit case, the Court stated that "the defendant embezzled funds from a hospital patient under the guise of making improvements to the patient's home [and that] the starting point for determining restitution was the amount embezzled from the victim. From this amount, the court [then] subtracted expenditures made on improvements to the victim's home [and] concluded that such expenditures did not differ in principle from taking the money from one of [the victim's] bank accounts and depositing it in another."[37]

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

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

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

[37] *Id.* p.17. (Citations and internal quotations omitted).

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

Despite the foregoing, OLGA's opinion fails to even mention the *Gilbert* case let alone how they specifically arrived at §7031(b) being an "equitable remedy" or "disgorgement." How is it even remotely possible for the People to receive a full, fair, and impartial appeal if the "Court" is not actually going to hear a Plaintiff's arguments and provide a competent response to each of the issues that are actually raised?

Upon receiving OLGA's opinion affirming Chaffee's fraudulent "Judgment Order" (on Halloween of all days) I filed a Petition for Rehearing. The first issue stated "Error in Law: This Court erroneously ruled disgorgement is not a "penalty" contrary to US Supreme Court Jurisprudence." The Petition was denied without any explanation.

By affirming the fraud and the deprivations of rights, liberty, and property committed by Chaffee, "Justices" OLGA exercised the judicial power of California without personal and subject matter jurisdiction to further punish me by depriving me of my right to a full, fair, and impartial *judicial* appeal, equal protection of the law, and the taking of my rights, liberty and property without just compensation, resulting in a bill of pains and penalties.

"We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."[38]

III. Conclusion

There are additional complaints I would like to make about additional Judges along with Officials of the Legislative and Executive branches. Upon receiving this complaint and notifying me of your compliance with performing your sworn duties to open a full, fair, and impartial investigation, and to intervene to stop the heinous abuses of power by protecting my rights, liberty, and property, I will gladly send you the remaining complaints, supporting evidence and other documents, and participate in an interviewOC. Thus far, two separate local law enforcement agencies have contacted officials of your office regarding this matter and your office refused to do either.

Sincerely,

Adam Bereki

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

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EXHIBIT [D] p.5398

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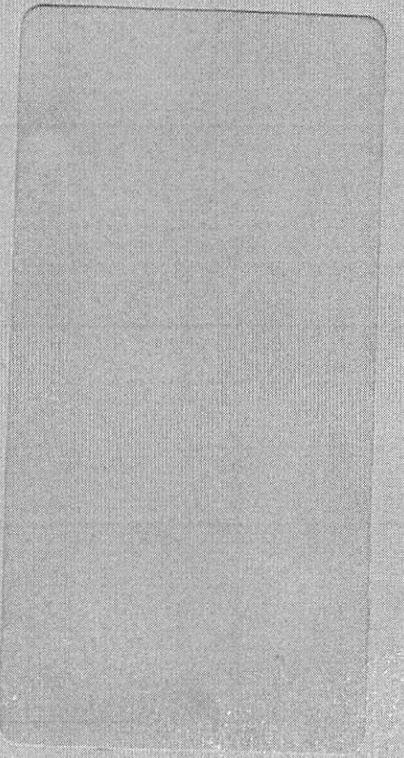

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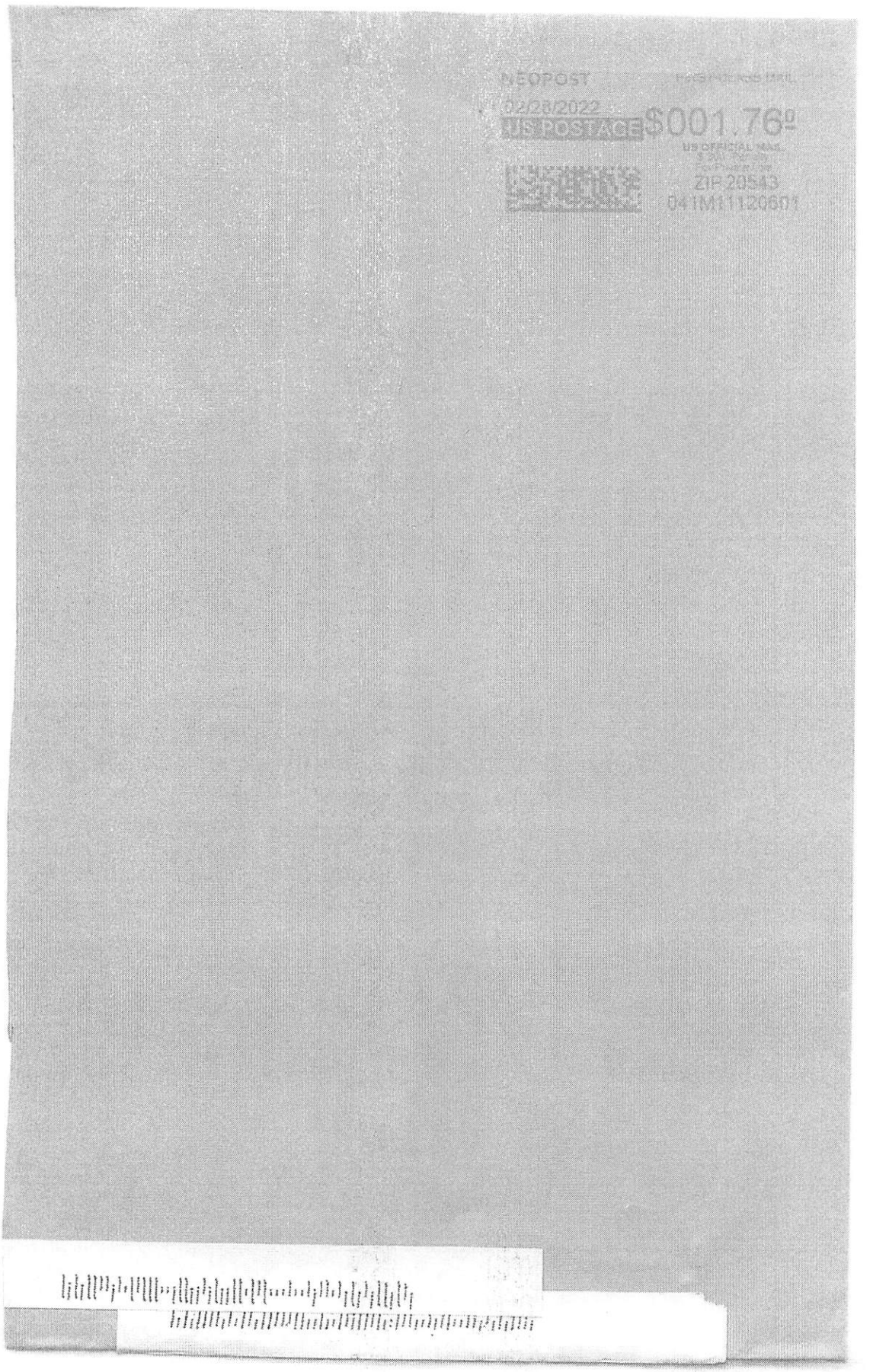

EXHIBIT [D] p.5401

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

February 25, 2022

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Petition for Redress of Grievance

Dear Mr. Bereki:

In reply to your letter or submission referred to this office by on February 15, 2022, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court.

Please be advised the Rules of this Court make no provision for the filing of a petition for redress of grievance.

Your papers are herewith returned.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Via U.S. Certified Mail (7021 0950 0000 9107 8665) addressed to:
John Roberts
Chief Justice
United States Supreme Court
1 First St., NE
Washington, DC 20543

Via U.S. First Class Mail addressed to each the following Associate Justices at the above address:

Samuel Alito
Amy Coney Barrett
Stephen Breyer
Neil Gorsuch
Brett Kavanaugh
Elena Kagan
Clarence Thomas
Sonia Sotomayor

February 7, 2022

RE: Petition for Redress of Grievance (First Amendment)

Good day,

This letter is in response to the letter I received from Clerk Harris dated December 15, 2022 denying my Petition for Redress of Grievance dated December 6, 2021. In his letter, Harris stated that "the Court is unable to assist you in [this matter]" and that "the Rules of this Court make no provision for the filing a petition for redress of grievance." Harris then returned my Petition. (See attached for a copy of the Petition I sent along with Harris' response).

The reason I filed a Petition for Redress of Grievance is because I attempted to file a complaint in the Court's original jurisdiction pursuant to Article III, §2 and

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it was returned it un-filed. Consequently, I called the Court on November 15, 2021 and spoke with Clerk Harris who told me that my complaint would not be filed because the Court's "jurisdiction is created by statute" and "28 USC §1251 is the only authorization we have to file original actions."

Clerk Harris then read 28 USC §1251 aloud on the phone and told me "you can submit something but what I'm telling you is it's not going to be accepted for filing unless it falls within one of the provisions of 28 USC §1251." Notably, 28 USC §1251 only involves one of the two classes of cases to which the Court's jurisdiction extends– those involving the parties to the case.

In response, I shared the case of *Cohens v. Virginia*, 19 U.S. 264 (1821) where the Court stated that it's jurisdiction extended to two classes of cases and that the case I was filing was according to the nature of the case, not the parties:

> "The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the Courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends "all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This clause extends the jurisdiction of the Court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.
>
> In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended "controversies between two or more States, between a State and citizens of another State," "and between a State and foreign States, citizens or subjects." If these be the parties, it is entirely ~~unimportant what~~ may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the Courts of the Union." *Id.* p.285.

Despite the foregoing, Harris reaffirmed that my complaint would not be accepted for filing. He also told me that "this is not new, right, like, we've had many people that have to tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

In Harris's response letter dated December 15, 2022, he again affirmed that "[u]nder Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court."

It is obvious that there is a major contradiction between Article III of the Constitution, this Court's proper historical interpretation thereof, *(Cohens, supra),* and the apparent unwritten policy(ies) of the Court today and/or Clerk Harris that were used to deny my complaint (and apparently many others). This Court must have subject matter jurisdiction "in all cases in Law and Equity arising under [the] Constitution" (the first class of case) otherwise Congress would control the entire judicial power of the United States (see for e.g. *Ex Parte Mc Cardle*, 74 U.S. 506), which was clearly not the intent of the framers.

While the second sentence of Article III §2 definitely distributes the jurisdiction conferred in the first sentence thereof, this distribution clearly only applies to the second class of cases involving parties. The jurisdiction conferred by the first sentence regarding the first class of cases is not limited in any way– it clearly states that the judicial power extends to "**all cases** in Law and Equity arising under this Constitution[.]" (Bolded emphasis added).

The other reasons this Court must exercise original jurisdiction are because there is no other Constitutional Court in California or the United States to bring these claims. As evidenced in the case I attempted to file, the Court's of California had no personal and subject matter jurisdiction, yet fined me nearly one million dollars for allegedly contracting without a license. Even more troubling, there is no judicial Constitutional Court in California under the purported California Constitution of 1879 that is vested with subject matter jurisdiction in cases in Law and Equity. The "California Constitution of 1879" also fails to authorize the Legislature to create lower Courts and vest them with any or all of the judicial power of California. The Clerk of the California Supreme Court has also refused to file at least one Petition for Writ of Habeas Corpus claiming "[t]he question[s] raised by the petition are beyond the jurisdiction of California Courts as they appear to raise Federal issues." (See attached).

Other astounding reasons why this Court must exercise original jurisdiction in this case are because: (1) the lower Federal Court in my case claimed it did not have subject matter jurisdiction to vacate a void State "Court" judgment in violation of the Constitution for the United States of America; and, (2) Congress has not vested the judicial power of the United States in Law or Equity in any inferior Court. See for e.g. *Sheldon v. Sill*, 49 U.S. 441 (1850) finding Congress has no duty to create lower Courts or to vest them with any or all of the judicial power of the United States.

28 USC §1331 also known as "Federal question jurisdiction" declares that: "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

According to the United States House of Representatives Committee on Revision of the Laws,[1] the "[w]ords 'all civil actions' [of 28 USC §1331] were substituted for 'all suits of a civil nature, at common law or in equity' to conform with Rule 2 of the Federal Rules of Civil Procedure, ["FRCP"]". FRCP Rule 2 states "There is one form of action—the civil action."

In further explanation of the meaning of "the civil action" the 1966 Amendment to the FRCP stated in the Notes of the Advisory Committee on Rules, declares "[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."[2]

The Constitution does not confer the judicial power of the United States in any jurisdiction known as "the civil action."[3] The only jurisdictions that arise under the Constitution and laws of the United States are Law and Equity.

The principles and distinctions between law, equity, and admiralty, upon which the judicial power of the United States is vested by Article III of the Constitution cannot be abolished or blended together in one suit known as "the civil action." This is not only because "[a] case in Admiralty does not [...] arise under the Constitution or laws of the United States,"[4] but because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures in the form of the Federal Rules of Civil Procedure "govern[ing] the procedure in all civil actions and proceedings in the United States district courts [...]"[5] have clearly not been followed.

The means of properly conferring subject matter jurisdiction on an inferior Court can be found in section 11 of the Judiciary Act of 1789, (1 Stat. 73) whereby the Circuit Courts of the United States were vested with subject matter jurisdiction of all suits of a civil nature "[...] at common law or in equity[...]" with omitted exceptions.

---

[1] Revision of Title 28, United States Code, Report from the Committee on Revision of the Laws, House of Representatives, 79th Congress, 2d Session, House Report No. 2646, p. A111.

[2] https://www.law.cornell.edu/rules/frcp/rule_1; US Code.

[3] See Federal Rules of Civil Procedure, Rule 2.

[4] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

[5] Federal Rules of Civil Procedure, Rule 1.

As declared by this Court, "[t]he Constitution of the United States [...] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity, not according to the practice of State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."[6] See also *Mc Faul v. Ramsey*,[7] holding that "[i]n those States where the courts of the United States administer the common law, [National Courts] cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either."

Finally, the Federal Rules of Civil Procedure which purport to have the force and effect of law were not given "any affirmative consideration, action, or approval of the rules by Congress or by the President"[8] and have therefore not followed the Constitutionally required means of enactment as required by Article I, §7, Cl.2.

Therefore, it seems obvious Congress not vested any inferior Court of the United States with the judicial Power of the United States in any Case in Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case."Courts created by statute can have no jurisdiction but such as the statute confers." *Sheldon, supra* at 449.

As a result of the foregoing and the other circumstances involved in my case, "[u]nless the jurisdiction of this Court [...] be exercised[,] the constitution would be violated, and [I would be] unable to bring [my] case before [any] tribunal to which the people of the United States have assigned all such cases."[9]

It appears Clerk Harris has created and executed an unwritten policy and practice (either unilaterally or at the direction of this Court) whereby he is unlawfully using his office to not only exercise the judicial power of the United States to summarily deny rights guaranteed by the Constitution (by refusing to file cases to which the Court's jurisdiction extends), but also to overrule Article III in violation of the amending procedures of Article V. As a result, I am unable to file my

---

[6] *Thompson v. R.R. Cos.*, 73 U.S. 134, 137 (1867); See also *Scott v. Neely*, 140 U.S. 106, 111 (1891). Superseded on other grounds; *Robinson v. Campbell*, 16 U.S. 212 (1818); *Fenn v. Holme*, 62 U.S. 481 (1858).

[7] *McFaul v. Ramsey*, 61 U.S. 523, 526 (1857).

[8] 374 U.S. 865-66.

[9] *Cohens v. Virginia*, 19 U.S. 264, 403-4 (1821).

case in the only apparent judicial Constitutional Court of the Nation with subject matter jurisdiction to hear and determine it.

I'm not sure how much clearer it can get than this Court's own words: "The constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided." *Cohens, supra,* p. 384.

Redress

If, as according to Clerk Harris, this Court only has appellate jurisdiction, then you will please provide the name and address for the Constitutional Court whose jurisdiction under Article III "extend[s] to all cases, in law and equity[.]"

If the Constitution has been amended, you will please provide me a current as amended copy immediately and inform me when, how, by whom, and what authority these amendment(s) have occurred.

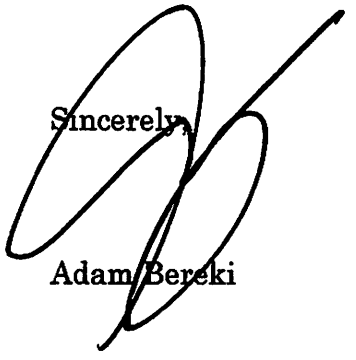
You will also please inform me: (1) by what authority the offices of the Clerk and the Chief Justice are not subject to a Petition for Redress of Grievance pursuant to the First Amendment; and, (2) by what authority the Clerk is authorized to exercise the judicial Power of the United States to summarily deny complaints and/ or other documents sent to the Court concerning rights secured by the Constitution based upon the form of the documents not complying with the Rules of Court. See for e.g. *Miranda v. Arizona,* 384 U.S. 436, 491 (1966) "[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them[,]" *Nashville, C. & St. Louis Ry. Co. v. Wallace,* 288 U.S. 249, 264 (1933) "[b]ut the Constitution does not require that the case or controversy should be presented by traditional forms of procedure, invoking only traditional remedies. The judiciary clause of the Constitution defined and limited judicial power, not the particular method by which that power might be invoked[,]" and *Marbury v. Madison,* 5 U.S. 137, 163 (1803)"[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection[.]"

Alternatively, if this is in fact the Article III Court whose jurisdiction "extend[s] to all cases, in law and equity[,]" then you will please order the Clerk to immediately cease and desist the aforementioned policy(ies) and file my case and

notify me in writing immediately so that I may send the complaint to the Court to be filed.

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

-*Cohens v. Virginia*, 19 U.S. 264, 404 (1821)



Sincerely,

Adam Bereki

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

December 15, 2021

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Letter

Dear Mr. Bereki:

In reply to your letter or submission, received December 14, 2021, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court.

Please be advised the Rules of this Court make no provision for the filing of a petition for redress of grievance.

Your papers are herewith returned.

The Rules of this Court are enclosed.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Scott S. Harris
Clerk, United States Supreme Court
1 First St., NE
Washington, DC 20543

John Roberts
Chief Justice, United States Supreme Court
1 First St., NE
Washington, DC 20543

December 6, 2021

RE: Petition for Redress of Grievance: Clerk Harris's Unwritten Policy and Practice to Exercise the Judicial Power of the United States to Deny Rights Secured by the Constitution and to Overrule Article III of the Constitution.

Good day,

I sent a lawsuit be filed in the Court under Article III of the Constitution on or about September 19, 2021. The suit was also in the form of a Petition for Redress of Grievance pursuant to the First Amendment. The suit/Petition were returned un-filed by Jacob Levitan on September 22, 2021 because they allegedly did not comply with the Court's procedural rules regarding form.

On November 15, 2021, I called the Court to speak with the Clerk's office to ensure that my complaint/petition would be amenable to the Rules and accepted upon re-presentment. At that time, Clerk Harris told me that my complaint would *not* be accepted because I was not one of the parties stated in 28 USC §1251 (ie a State, public minister, consul, etc.) under which the Court was authorized to exercise its original jurisdiction.

I explained that I was not filing my case pursuant to 28 USC §1251 because it did not apply. 28 USC §1251 *only* applies to an action involving the parties of the case. I further explained that I was filing my case under Article III, §2 of the Constitution, which vests the judicial power of the United States in "all Cases, in Law and Equity" arising under the Constitution. I also referred Harris to the case of *Cohens v. Virginia*, 19 U.S. 264 (1821), where this subject matter was directly addressed by the Court. The Court held that "a case arising under the constitution of laws of the United States, is cognizable in the Courts of the Union, whoever may be the parties to that case." *Id.* At 383.

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Harris told me that:

> "We don't have original jurisdiction for one private litigant suing another private litigant."
>
> "We would not accept a filing like that."
>
> "The statute is what allows us to exercise jurisdiction."
>
> "Our jurisdiction is created by statute."
>
> "28 USC §1251 is the only authorization we have to file original actions."
>
> "I hear you but that's not the way our jurisdiction works. We are bound by the statute."
>
> "You can submit something but it's not going to be accepted for filing unless it falls in one of the provisions of 28 USC §1251."
>
> "It's not gonna be accepted for filing. I just don't want to put you through the trouble or expense of doing it."
>
> "This is not new. We've had Many people have tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

At the conclusion of the call, Harris told me he would get back to me with some examples of similar cases the Court had denied. He has not done so.

I called and left a follow-up message to speak with Harris on November 16, 2021. He has not returned my call.

Based on the foregoing, Clerk Harris appears to have created and executed an unwritten policy and practice whereby he is unlawfully using his office to not only exercise the judicial power of the United States to deny rights guaranteed thereby (by refusing to file cases), but also to overrule Article III of the Constitution in violation of the amending procedures of Article V. As a result, I am unable to file my case in the only apparent judicial Court of the Nation with subject matter jurisdiction to hear and determine it.

Your prompt attention to and resolution of this egregiously unlawful and unconstitutional behavior is demanded.

Please also provide the rules of Court pertaining to the filing of a Petition for Redress of Grievance.

Sincerely,

Adam Berek

ORGE NAVARRETE
SSISTANT CLERK/ADMINISTRATOR

MARY JAMESON
UTOMATIC APPEALS SUPERVISOR

EARL WARREN BUILD
350 McALLISTER STR
SAN FRANCISCO, CA 9
(415) 865-7000

Supreme Court of California

FRANK A. McGUIRE
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

November 18, 2013

William Henshall
P.O. Box 281676
San Francisco, CA 94128-1676

Re: Petition

Dear Mr. Henshall:

Returned unfiled is your petition for writ of habeas corpus and letters. The question raised by the petition are beyond the jurisdiction of the California courts as they appear to raise Federal issues.

Very truly yours,

FRANK A. McGUIRE
Court Administrator and
Clerk of the Supreme Court

By: J.L. Casados,
Supervising Deputy Clerk

Enclosures

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Via U.S. Certified Mail (7021 0950 0000 9107 8665) addressed to:
John Roberts
Chief Justice
United States Supreme Court
1 First St., NE
Washington, DC 20543

Via U.S. First Class Mail addressed to each the following Associate Justices at the above address:

Samuel Alito
Amy Coney Barrett
Stephen Breyer
Neil Gorsuch
Brett Kavanaugh
Elena Kagan
Clarence Thomas
Sonia Sotomayor

February 7, 2022

RE: Petition for Redress of Grievance (First Amendment)

Good day,

This letter is in response to the letter I received from Clerk Harris dated December 15, 2022 denying my Petition for Redress of Grievance dated December 6, 2021. In his letter, Harris stated that "the Court is unable to assist you in [this matter]" and that "the Rules of this Court make no provision for the filing a petition for redress of grievance." Harris then returned my Petition. (See attached for a copy of the Petition I sent along with Harris' response).

The reason I filed a Petition for Redress of Grievance is because I wanted to file a complaint in the Court's original jurisdiction pursuant to Article III, §2 and

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SUPREME COURT, U.S.

it was returned it un-filed. Consequently, I called the Court on November 15, 2021 and spoke with Clerk Harris who told me that my complaint would not be filed because the Court's "jurisdiction is created by statute" and "28 USC §1251 is the only authorization we have to file original actions."

Clerk Harris then read 28 USC §1251 aloud on the phone and told me "you can submit something but what I'm telling you is it's not going to be accepted for filing unless it falls within one of the provisions of 28 USC §1251." Notably, 28 USC §1251 only involves one of the two classes of cases to which the Court's jurisdiction extends– those involving the parties to the case.

In response, I shared the case of *Cohens v. Virginia*, 19 U.S. 264 (1821) where the Court stated that it's jurisdiction extended to two classes of cases and that the case I was filing was according to the nature of the case, not the parties:

> "The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the Courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends "all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This clause extends the jurisdiction of the Court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.
>
> In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended "controversies between two or more States, between a State and citizens of another State," "and between a State and foreign States, citizens or subjects." If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the Courts of the Union." *Id.* p.285.

Despite the foregoing, Harris reaffirmed that my complaint would not be accepted for filing. He also told me that "this is not new, right, like, we've had many people that have to tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

In Harris's response letter dated December 15, 2022, he again affirmed that "[u]nder Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court."

It is obvious that there is a major contradiction between Article III of the Constitution, this Court's proper historical interpretation thereof, *(Cohens, supra)*, and the apparent unwritten policy(ies) of the Court today and/or Clerk Harris that were used to deny my complaint (and apparently many others). This Court must have subject matter jurisdiction "in all cases in Law and Equity arising under [the] Constitution" (the first class of case) otherwise Congress would control the entire judicial power of the United States (see for e.g. *Ex Parte Mc Cardle*, 74 U.S. 506), which was clearly not the intent of the framers.

While the second sentence of Article III §2 definitely distributes the jurisdiction conferred in the first sentence thereof, this distribution clearly only applies to the second class of cases involving parties. The jurisdiction conferred by the first sentence regarding the first class of cases is not limited in any way– it clearly states that the judicial power extends to "**all cases** in Law and Equity arising under this Constitution[.]" (Bolded emphasis added).

The other reasons this Court must exercise original jurisdiction are because there is no other Constitutional Court in California or the United States to bring these claims. As evidenced in the case I attempted to file, the Court's of California had no personal and subject matter jurisdiction, yet fined me nearly one million dollars for allegedly contracting without a license. Even more troubling, there is no judicial Constitutional Court in California under the purported California Constitution of 1879 that is vested with subject matter jurisdiction in cases in Law and Equity. The "California Constitution of 1879" also fails to authorize the Legislature to create lower Courts and vest them with any or all of the judicial power of California. The Clerk of the California Supreme Court has also refused to file at least one Petition for Writ of Habeas Corpus claiming "[t]he question[s] raised by the petition are beyond the jurisdiction of California Courts as they appear to raise Federal issues." (See attached).

Other astounding reasons why this Court must exercise original jurisdiction in this case are because: (1) the lower Federal Court in my case claimed it did not have subject matter jurisdiction to vacate a void State "Court" judgment in violation of the Constitution for the United States of America; and, (2) Congress has not vested the judicial power of the United States in Law or Equity in any inferior Court. See for e.g. *Sheldon, v. Sill*, 49 U.S. 441 (1850) finding Congress has no duty to create lower Courts or to vest them with any or all of the judicial power of the United States.

28 USC §1331 also known as "Federal question jurisdiction" declares that: "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

According to the United States House of Representatives Committee on Revision of the Laws,[1] the "[w]ords 'all civil actions' [cf 28 USC §1331] were substituted for 'all suits of a civil nature, at common law or in equity' to conform with Rule 2 of the Federal Rules of Civil Procedure, ["FRCP"]". FRCP Rule 2 states "There is one form of action—the civil action."

In further explanation of the meaning of "the civil action" the 1966 Amendment to the FRCP stated in the Notes of the Advisory Committee on Rules, declares "[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."[2]

The Constitution does not confer the judicial power of the United States in any jurisdiction known as "the civil action."[3] The only jurisdictions that arise under the Constitution and laws of the United States are Law and Equity.

The principles and distinctions between law, equity, and admiralty, upon which the judicial power of the United States is vested by Article III of the Constitution cannot be abolished or blended together in one suit known as "the civil action." This is not only because "[a] case in Admiralty does not [...] arise under the Constitution or laws of the United States,"[4] but because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures in the form of the Federal Rules of Civil Procedure "govern[ing] the procedure in all civil actions and proceedings in the United States district courts [...]"[5] have clearly not been followed.

The means of properly conferring subject matter jurisdiction on an inferior Court can be found in section 11 of the Judiciary Act of 1789, (1 Stat. 73) whereby ~~the Circuit Courts of~~ the United States were vested with subject-matter jurisdiction of all suits of a civil nature "[...] at common law or in equity[...]" with omitted exceptions.

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[1] Revision of Title 28, United States Code. Report from the Committee on Revision of the Laws, House of Representatives, 79th Congress, 2d Session, House Report No. 2646, p. A111.

[2] https://www.law.cornell.edu/rules/frcp/rule_1; US Code.

[3] See Federal Rules of Civil Procedure, Rule 2.

[4] *American Insurance v. 365 Bales of Cotton*, 26 U.S. 511, 545 (1828).

[5] Federal Rules of Civil Procedure, Rule 1.

As declared by this Court, "[t]he Constitution of the United States [...] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity, not according to the practice of State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."[6] See also *Mc Faul v. Ramsey*,[7] holding that "[i]n those States where the courts of the United States administer the common law, [National Courts] cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either."

Finally, the Federal Rules of Civil Procedure which purport to have the force and effect of law were not given "any affirmative consideration, action, or approval of the rules by Congress or by the President"[8] and have therefore not followed the Constitutionally required means of enactment as required by Article I, §7, Cl.2.

Therefore, it seems obvious Congress not vested any inferior Court of the United States with the judicial Power of the United States in any Case in Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case."Courts created by statute can have no jurisdiction but such as the statute confers." *Sheldon, supra* at 449.

As a result of the foregoing and the other circumstances involved in my case, "[u]nless the jurisdiction of this Court [...] be exercised[,] the constitution would be violated, and [I would be] unable to bring [my] case before [any] tribunal to which the people of the United States have assigned all such cases."[9]

It appears Clerk Harris has created and executed an unwritten policy and practice (either unilaterally or at the direction of this Court) whereby he is unlawfully using his office to not only exercise the judicial power of the United States to summarily deny rights guaranteed by the Constitution (by refusing to file cases to which the Court's jurisdiction extends), but also to overrule Article III in violation of the amending procedures of Article V. As a result, I am unable to file my

---

[6] *Thompson v. R R. Cos.*, 73 U.S. 134, 137 (1867); See also *Scott v. Neely*, 140 U.S. 106, 111 (1891). Superseded on other grounds; *Robinson v. Campbell*, 16 U.S. 212 (1818); *Fenn v. Holme*, 62 U.S. 481 (1858).

[7] *McFaul v. Ramsey*, 61 U.S. 523, 526 (1857).

[8] 374 U.S. 865-66.

[9] *Cohens v. Virginia*, 19 U.S. 264, 403-4 (1821).

case in the only apparent judicial Constitutional Court of the Nation with subject matter jurisdiction to hear and determine it.

I'm not sure how much clearer it can get than this Court's own words: "The constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided." *Cohens, supra,* p. 384.

Redress

If, as according to Clerk Harris, this Court only has appellate jurisdiction, then you will please provide the name and address for the Constitutional Court whose jurisdiction under Article III "extend[s] to all cases, in law and equity[.]"

If the Constitution has been amended, you will please provide me a current as amended copy immediately and inform me when, how, by whom, and what authority these amendment(s) have occurred.

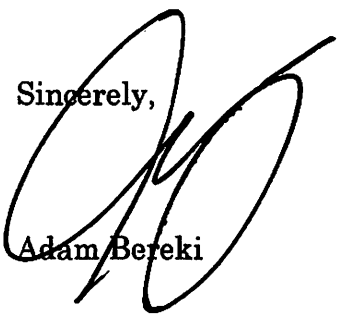
You will also please inform me: (1) by what authority the offices of the Clerk and the Chief Justice are not subject to a Petition for Redress of Grievance pursuant to the First Amendment; and, (2) by what authority the Clerk is authorized to exercise the judicial Power of the United States to summarily deny complaints and/ or other documents sent to the Court concerning rights secured by the Constitution based upon the form of the documents not complying with the Rules of Court. See for e.g. *Miranda v. Arizona,* 384 U.S. 436, 491 (1966) "[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them[,]" *Nashville, C. & St. Louis Ry. Co. v. Wallace,* 288 U.S. 249, 264 (1933) "[b]ut the Constitution does not require that the case or controversy should be presented by traditional forms of procedure, invoking only traditional remedies. The judiciary clause of the Constitution defined and limited judicial power, not the particular method by which that power might be invoked[,]" and *Marbury v. Madison,* 5 U.S. 137, 163 (1803)"[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection[.]"

Alternatively, if this is in fact the Article III Court whose jurisdiction "extend[s] to all cases, in law and equity[,]" then you will please order the Clerk to immediately cease and desist the aforementioned policy(ies) and file my case and

notify me in writing immediately so that I may send the complaint to the Court to be filed.

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

Sincerely,



Adam Bereki

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

December 15, 2021

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Letter

Dear Mr. Bereki:

In reply to your letter or submission, received December 14, 2021, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court.

Please be advised the Rules of this Court make no provision for the filing of a petition for redress of grievance.

Your papers are herewith returned.

The Rules of this Court are enclosed.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Scott S. Harris
Clerk, United States Supreme Court
1 First St., NE
Washington, DC 20543

John Roberts
Chief Justice, United States Supreme Court
1 First St., NE
Washington, DC 20543

December 6, 2021

RE: Petition for Redress of Grievance: Clerk Harris's Unwritten Policy and Practice to Exercise the Judicial Power of the United States to Deny Rights Secured by the Constitution and to Overrule Article III of the Constitution.

Good day,

I sent a lawsuit be filed in the Court under Article III of the Constitution on or about September 19, 2021. The suit was also in the form of a Petition for Redress of Grievance pursuant to the First Amendment. The suit/Petition were returned un-filed by Jacob Levitan on September 22, 2021 because they allegedly did not comply with the Court's procedural rules regarding form.

On November 15, 2021, I called the Court to speak with the Clerk's office to ensure that my complaint/petition would be amenable to the Rules and accepted upon re-presentment. At that time, Clerk Harris told me that my complaint would *not* be accepted because I was not one of the parties stated in 28 USC §1251 (ie a State, public minister, consul, etc.) under which the Court was authorized to exercise its original jurisdiction.

I explained that I was not filing my case pursuant to 28 USC §1251 because it did not apply. 28 USC §1251 *only* applies to an action involving the parties of the case. I further explained that I was filing my case under Article III, §2 of the Constitution, which vests the judicial power of the United States in "all Cases, in Law and Equity" arising under the Constitution. I also referred Harris to the case of *Cohens v. Virginia*, 19 U.S. 264 (1821), where this subject matter was directly addressed by the Court. The Court held that "a case arising under the constitution of laws of the United States, is cognizable in the Courts of the Union, whoever may be the parties to that case." *Id.* At 383.

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DEC 14 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Harris told me that:

> "We don't have original jurisdiction for one private litigant suing another private litigant."
>
> "We would not accept a filing like that."
>
> "The statute is what allows us to exercise jurisdiction."
>
> "Our jurisdiction is created by statute."
>
> "28 USC §1251 is the only authorization we have to file original actions."
>
> "I hear you but that's not the way our jurisdiction works. We are bound by the statute."
>
> "You can submit something but it's not going to be accepted for filing unless it falls in one of the provisions of 28 USC §1251."
>
> "It's not gonna be accepted for filing. I just don't want to put you through the trouble cr expense of doing it."
>
> "This is not new. We've had Many people have tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

At the conclusion of the call, Harris told me he would get back to me with some examples of similar cases the Court had denied. He has not done so.

I called and left a follow-up message to speak with Harris on November 16, 2021. He has not returned my call.

Based on the foregoing, Clerk Harris appears to have created and executed an unwritten policy and practice whereby he is unlawfully using his office to not only exercise the judicial power of the United States to deny rights guaranteed thereby (by refusing to file cases), but also to overrule Article III of the Constitution in violation of the amending procedures of Article V. As a result, I am unable to file my case in the only apparent judicial Court of the Nation with subject matter jurisdiction to hear and determine it.

Your prompt attention to and resolution of this egregiously unlawful and unconstitutional behavior is demanded.

Please also provide the rules of Court pertaining to the filing of a Petition for Redress of Grievance.

Sincerely,

Adam Berek

ORGE NAVARRETE
SSISTANT CLERK/ADMINISTRATOR

MARY JAMESON
UTOMATIC APPEALS SUPERVISOR

EARL WARREN BUILD
350 McALLISTER STR
SAN FRANCISCO, CA 9
(415) 865-7000

Supreme Court of California

FRANK A. McGUIRE
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

November 18, 2013

William Henshall
P.O. Box 281676
San Francisco, CA 94128-1676

Re: Petition

Dear Mr. Henshall:

Returned unfiled is your petition for writ of habeas corpus and letters. The question raised by the petition are beyond the jurisdiction of the California courts as they appear to raise Federal issues.

Very truly yours,

FRANK A. McGUIRE
Court Administrator and
Clerk of the Supreme Court

By: J.L. Casados,
Supervising Deputy Clerk

Enclosures

Adam Bereki
c/o 818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Via U.S. Certified Mail (7021 0950 0000 9107 8665) addressed to:
John Roberts
Chief Justice
United States Supreme Court
1 First St., NE
Washington, DC 20543

Via U.S. First Class Mail addressed to each the following Associate Justices at the above address:

Samuel Alito
Amy Coney Barrett
Stephen Breyer
Neil Gorsuch
Brett Kavanaugh
Elena Kagan
Clarence Thomas
Sonia Sotomayor

February 7, 2022

RE: Petition for Redress of Grievance (First Amendment)

Good day,

This letter is in response to the letter I received from Clerk Harris dated December 15, 2022 denying my Petition for Redress of Grievance dated December 6, 2021. In his letter, Harris stated that "the Court is unable to assist you in [this matter]" and that "the Rules of this Court make no provision for the filing a petition for redress of grievance." Harris then returned my Petition. (See attached for a copy of the Petition I sent along with Harris' response).

The reason I filed a Petition for Redress of Grievance is because I attempted to file a complaint in the Court's original jurisdiction pursuant to Article III, §2 and

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it was returned it un-filed. Consequently, I called the Court on November 15, 2021 and spoke with Clerk Harris who told me that my complaint would not be filed because the Court's "jurisdiction is created by statute" and "28 USC §1251 is the only authorization we have to file original actions."

Clerk Harris then read 28 USC §1251 aloud on the phone and told me "you can submit something but what I'm telling you is it's not going to be accepted for filing unless it falls within one of the provisions of 28 USC §1251." Notably, 28 USC §1251 only involves one of the two classes of cases to which the Court's jurisdiction extends– those involving the parties to the case.

In response, I shared the case of *Cohens v. Virginia*, 19 U.S. 264 (1821) where the Court stated that it's jurisdiction extended to two classes of cases and that the case I was filing was according to the nature of the case, not the parties:

> "The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the Courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends "all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This clause extends the jurisdiction of the Court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.
>
> In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended "controversies between two or more States, between a State and citizens of another State," "and between a State and foreign States, citizens or subjects." If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the Courts of the Union." *Id.* p.285.

Despite the foregoing, Harris reaffirmed that my complaint would not be accepted for filing. He also told me that "this is not new, right, like, we've had many people that have to tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

In Harris's response letter dated December 15, 2022, he again affirmed that "[u]nder Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court."

It is obvious that there is a major contradiction between Article III of the Constitution, this Court's proper historical interpretation thereof, *(Cohens, supra),* and the apparent unwritten policy(ies) of the Court today and/or Clerk Harris that were used to deny my complaint (and apparently many others). This Court must have subject matter jurisdiction "in all cases in Law and Equity arising under [the] Constitution" (the first class of case) otherwise Congress would control the entire judicial power of the United States (see for e.g. *Ex Parte Mc Cardle*, 74 U.S. 506), which was clearly not the intent of the framers.

While the second sentence of Article III §2 definitely distributes the jurisdiction conferred in the first sentence thereof, this distribution clearly only applies to the second class of cases involving parties. The jurisdiction conferred by the first sentence regarding the first class of cases is not limited in any way– it clearly states that the judicial power extends to "**all cases** in Law and Equity arising under this Constitution[.]" (Bolded emphasis added).

The other reasons this Court must exercise original jurisdiction are because there is no other Constitutional Court in California or the United States to bring these claims. As evidenced in the case I attempted to file, the Court's of California had no personal and subject matter jurisdiction, yet fined me nearly one million dollars for allegedly contracting without a license. Even more troubling, there is no judicial Constitutional Court in California under the purported California Constitution of 1879 that is vested with subject matter jurisdiction in cases in Law and Equity. The "California Constitution of 1879" also fails to authorize the Legislature to create lower Courts and vest them with any or all of the judicial power of California. The Clerk of the California Supreme Court has also refused to file at least one Petition for Writ of Habeas Corpus claiming "[t]he question[s] raised by the petition are beyond the jurisdiction of California Courts as they appear to raise Federal issues." (See attached).

Other astounding reasons why this Court must exercise original jurisdiction in this case are because: (1) the lower Federal Court in my case claimed it did not have subject matter jurisdiction to vacate a void State "Court" judgment in violation of the Constitution for the United States of America; and, (2) Congress has not vested the judicial power of the United States in Law or Equity in any inferior Court. See for e.g. *Sheldon v. Sill*, 49 U.S. 441 (1850) finding Congress has no duty to create lower Courts or to vest them with any or all of the judicial power of the United States.

28 USC §1331 also known as "Federal question jurisdiction" declares that: "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

According to the United States House of Representatives Committee on Revision of the Laws,[1] the "[w]ords 'all civil actions' [of 28 USC §1331] were substituted for 'all suits of a civil nature, at common law or in equity' to conform with Rule 2 of the Federal Rules of Civil Procedure, ["FRCP"]". FRCP Rule 2 states "There is one form of action—the civil action."

In further explanation of the meaning of "the civil action" the 1966 Amendment to the FRCP stated in the Notes of the Advisory Committee on Rules, declares "[t]his is the fundamental change [of the FRCP] necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty."[2]

The Constitution does not confer the judicial power of the United States in any jurisdiction known as "the civil action."[3] The only jurisdictions that arise under the Constitution and laws of the United States are Law and Equity.

The principles and distinctions between law, equity, and admiralty, upon which the judicial power of the United States is vested by Article III of the Constitution cannot be abolished or blended together in one suit known as "the civil action." This is not only because "[a] case in Admiralty does not [...] arise under the Constitution or laws of the United States,"[4] but because the Constitution specifically sets out the procedures for making amendments in Article V and these procedures in the form of the Federal Rules of Civil Procedure "govern[ing] the procedure in all civil actions and proceedings in the United States district courts [...]"[5] have clearly not been followed.

The means of properly conferring subject matter jurisdiction on an inferior Court can be found in section 11 of the Judiciary Act of 1789, (1 Stat. 73) whereby the Circuit Courts of the United States were vested with subject matter jurisdiction of all suits of a civil nature "[...] at common law or in equity[...]" with omitted exceptions.

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As declared by this Court, "[t]he Constitution of the United States [...] recognize[s] and establish[es] the distinction between law and equity. The remedies in the courts of the United States are, at common law or in equity, not according to the practice of State courts, but according to the principles of common law and equity, as distinguished and defined in that country from which we derive our knowledge of these principles."[6] See also *Mc Faul v. Ramsey*,[7] holding that "[i]n those States where the courts of the United States administer the common law, [National Courts] cannot adopt these novel inventions, which propose to amalgamate law and equity by enacting a hybrid system of pleadings unsuited to the administration of either."

Finally, the Federal Rules of Civil Procedure which purport to have the force and effect of law were not given "any affirmative consideration, action, or approval of the rules by Congress or by the President"[8] and have therefore not followed the Constitutionally required means of enactment as required by Article I, §7, Cl.2.

Therefore, it seems obvious Congress not vested any inferior Court of the United States with the judicial Power of the United States in any Case in Law or Equity recognized under the Constitution, leaving this Court the only Constitutional Court of the United States in which to present this case."Courts created by statute can have no jurisdiction but such as the statute confers." *Sheldon, supra* at 449.

As a result of the foregoing and the other circumstances involved in my case, "[u]nless the jurisdiction of this Court [...] be exercised[,] the constitution would be violated, and [I would be] unable to bring [my] case before [any] tribunal to which the people of the United States have assigned all such cases."[9]

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Redress

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You will also please inform me: (1) by what authority the offices of the Clerk and the Chief Justice are not subject to a Petition for Redress of Grievance pursuant to the First Amendment; and, (2) by what authority the Clerk is authorized to exercise the judicial Power of the United States to summarily deny complaints and/ or other documents sent to the Court concerning rights secured by the Constitution based upon the form of the documents not complying with the Rules of Court. See for e.g. *Miranda v. Arizona,* 384 U.S. 436, 491 (1966) "[w]here rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them[,]" *Nashville, C. & St. Louis Ry. Co. v. Wallace,* 288 U.S. 249, 264 (1933) "[b]ut the Constitution does not require that the case or controversy should be presented by traditional forms of procedure, invoking only traditional remedies. The judiciary clause of the Constitution defined and limited judicial power, not the particular method by which that power might be invoked[,]" and *Marbury v. Madison,* 5 U.S. 137, 163 (1803)"[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection[.]"

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Sincerely,

Adam Bereki

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

December 15, 2021

Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Letter

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Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

Adam Bereki
818 Spirit
Costa Mesa, California 92626
abereki@gmail.com | 949.241.6693

Scott S. Harris
Clerk, United States Supreme Court
1 First St., NE
Washington, DC 20543

John Roberts
Chief Justice, United States Supreme Court
1 First St., NE
Washington, DC 20543

December 6, 2021

RE: Petition for Redress of Grievance: Clerk Harris's Unwritten Policy and Practice to Exercise the Judicial Power of the United States to Deny Rights Secured by the Constitution and to Overrule Article III of the Constitution.

Good day,

I sent a lawsuit be filed in the Court under Article III of the Constitution on or about September 19, 2021. The suit was also in the form of a Petition for Redress of Grievance pursuant to the First Amendment. The suit/Petition were returned un-filed by Jacob Levitan on September 22, 2021 because they allegedly did not comply with the Court's procedural rules regarding form.

On November 15, 2021, I called the Court to speak with the Clerk's office to ensure that my complaint/petition would be amenable to the Rules and accepted upon re-presentment. At that time, Clerk Harris told me that my complaint would *not* be accepted because I was not one of the parties stated in 28 USC §1251 (ie a State, public minister, consul, etc.) under which the Court was authorized to exercise its original jurisdiction.

I explained that I was not filing my case pursuant to 28 USC §1251 because it did not apply. 28 USC §1251 *only* applies to an action involving the parties of the case. I further explained that I was filing my case under Article III, §2 of the Constitution, which vests the judicial power of the United States in "all Cases, in Law and Equity" arising under the Constitution. I also referred Harris to the case of *Cohens v. Virginia*, 19 U.S. 264 (1821), where this subject matter was directly addressed by the Court. The Court held that "a case arising under the constitution of laws of the United States, is cognizable in the Courts of the Union, whoever may be the parties to that case." *Id.* At 383.

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

Harris told me that:

> "We don't have original jurisdiction for one private litigant suing another private litigant."
>
> "We would not accept a filing like that."
>
> "The statute is what allows us to exercise jurisdiction."
>
> "Our jurisdiction is created by statute."
>
> "28 USC §1251 is the only authorization we have to file original actions."
>
> "I hear you but that's not the way our jurisdiction works. We are bound by the statute."
>
> "You can submit something but it's not going to be accepted for filing unless it falls in one of the provisions of 28 USC §1251."
>
> "It's not gonna be accepted for filing. I just don't want to put you through the trouble or expense of doing it."
>
> "This is not new. We've had Many people have tried to file original actions and we've done the same thing. You know, over and over. This is not going to be controversial here."

At the conclusion of the call, Harris told me he would get back to me with some examples of similar cases the Court had denied. He has not done so.

I called and left a follow-up message to speak with Harris on November 16, 2021. He has not returned my call.

~~Based on the foregoing, Clerk Harris appears to have a created and executed an~~ unwritten policy and practice whereby he is unlawfully using his office to not only exercise the judicial power of the United States to deny rights guaranteed thereby (by refusing to file cases), but also to overrule Article III of the Constitution in violation of the amending procedures of Article V. As a result, I am unable to file my case in the only apparent judicial Court of the Nation with subject matter jurisdiction to hear and determine it.

Your prompt attention to and resolution of this egregiously unlawful and unconstitutional behavior is demanded.

Please also provide the rules of Court pertaining to the filing of a Petition for Redress of Grievance.

Sincerely,

Adam Berek

ORGE NAVARRETE
SSISTANT CLERK/ADMINISTRATOR

MARY JAMESON
UTOMATIC APPEALS SUPERVISOR

EARL WARREN BUILD
350 McALLISTER STR
SAN FRANCISCO, CA 9
(415) 865-7000

Supreme Court of California

FRANK A. McGUIRE
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

November 18, 2013

William Henshall
P.O. Box 281676
San Francisco, CA 94128-1676

Re: Petition

Dear Mr. Henshall:

Returned unfiled is your petition for writ of habeas corpus and letters. The question raised by the petition are beyond the jurisdiction of the California courts as they appear to raise Federal issues.

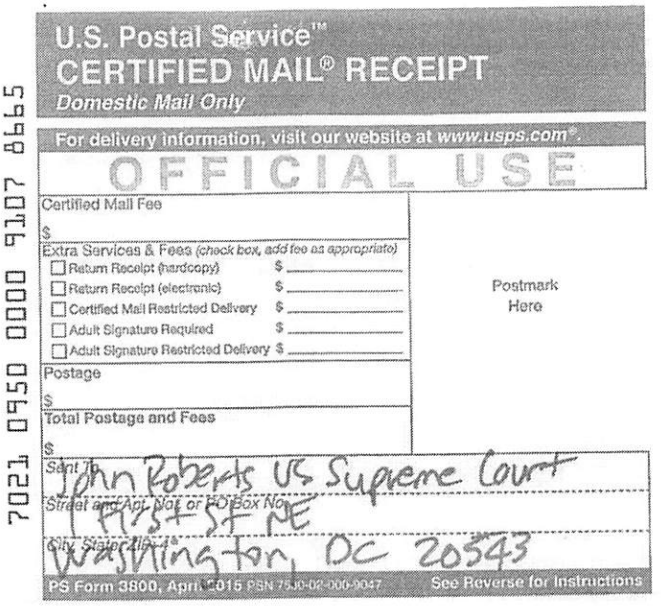
Very truly yours,

FRANK A. McGUIRE
Court Administrator and
Clerk of the Supreme Court

By: J.L. Casados,
Supervising Deputy Clerk

Enclosures

US SUPREME COURT PETITION FOR REDRESS
REFUSAL TO FILE / ARTICLE III



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WASHINGTON, DC 20515
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EXHIBIT [D] p.5437

February 13, 2022, 9:09 am
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February 12, 2022
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February 8, 2022, 10:37 pm
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February 8, 2022, 8:12 pm
Arrived at USPS Regional Facility
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FAQs

[redacted]

NOTICE OF JUDGMENT LIEN

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

A. NAME & PHONE OF FILER'S CONTACT (optional)
William Bissell

B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)

William Bissell
14 Corporate Plaza Drive, Suite 120
Newport Beach, CA 92660

17-7582830223
04/28/2017 17:00
FILED
CALIFORNIA
SECRETARY OF STATE
SOS
61057070002 UCC 1 FILING

THIS SPACE FOR FILING OFFICE USE ONLY

1. JUDGMENT DEBTOR'S EXACT LEGAL NAME –Insert only one name, either 1a or 1b. Do not abbreviate or combine names.

1a. ORGANIZATION'S NAME

1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
BEREKI	ADAM	ALAN		
1c. MAILING ADDRESS	**CITY**	**STATE**	**POSTAL CODE**	**COUNTRY**
818 SPIRIT	COSTA MESA	CA	92626	US

2. JUDGMENT CREDITOR'S NAME– Do not abbreviate or combine names.

2a . ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE		SUFFIX
HUMPHREYS	GARY			
2c.. MAILING ADDRESS	**CITY**	**STATE**	**POSTAL CODE**	**COUNTRY**
505 AUGUSTA DRIVE	MORAGA	CA	94556	US

3. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.

A. *Title of court where judgment was entered:* SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE

B. Title of the action: THE SPARTAN ASSOCIATES, INC. v. GARY HUMPHREYS etc. et al

C. Number of this action: 30-2015-00805807

D. Date judgment was entered: April 20, 2017

E. Date of subsequent renewals of judgment (if any): n/a

F. Amount required to satisfy judgment at date of this notice: $ 848,929.32

G. Date of this notice: April 24, 2017

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

William Bissell Attorney
SIGNATURE – SEE INSTRUCTION NO. 4

Dated: April 24, 2015
(If not indicated, use same as date in item 3G.)

FOR: GARY HUMPHREYS & KAREN HUMPHREYS

EXHIBIT [D] p. 5439

FILING OFFICE COPY

NOTICE OF JUDGMENT LIEN (FORM JL1) (Rev. 6/01)
Approved by the Secretary of State

JUDGMENT LIEN ADDENDUM

FOLLOW INSTRUCTIONS CAREFULLY (FRONT AND BACK OF FORM)

5. NAME OF JUDGMENT DEBTOR: (NAME OF FIRST DEBTOR ON RELATED JUDGMENT LIEN)

5a. ORGANIZATION'S NAME			
5b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

6. ADDITIONAL JUDGMENT DEBTOR – insert only one name (6a or 6b):

6a. ORGANIZATION'S NAME				
6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
6c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

7. ADDITIONAL JUDGMENT DEBTOR – insert only one name (7a or 7b):

7a. ORGANIZATION'S NAME				
7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

8. ADDITIONAL JUDGMENT DEBTOR – insert only one name (8a or 8b):

8a. ORGANIZATION'S NAME				
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
8c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

9. ADDITIONAL JUDGMENT CREDITOR – insert only one name (9a or 9b):

9a. ORGANIZATION'S NAME				
9b. INDIVIDUAL'S LAST NAME HUMPHREYS	FIRST NAME KAREN	MIDDLE NAME MOE		SUFFIX
9c. MAILING ADDRESS 505 AUGUSTA DRIVE	CITY MORAGA	STATE CA	POSTAL CODE 94556	COUNTRY US

10. ADDITIONAL JUDGMENT CREDITOR – insert only one name (10a or 10b):

10a. ORGANIZATION'S NAME				
10b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

61057070002

I, William Henshall, declare under penalty of perjury of the laws of California that the following documents annexed hereto as Exhibits [A] – [E] numbering 7 pages are true and correct copies of the documents they represent to be.

Exhibit [A] Notice of Receipt of Recent Communication, 1 Page
Exhibit [B] Order of Denial In Re William Henshall on *Habeas Corpus*, 2 Pages
Exhibit [C] Order Denying Writ of *Habeas Corpus* In Re Ramon Watkins, 1 Page
Exhibit [D] Return of Writ of *Habeas Corpus* Unfiled Linda Rovai, 1 Page
Exhibit [E] Refusal to File Henshall *Habeas* Petition in Cal. Assembly, 1 Page
Exhibit [F] Return of Writ of Habeas Corpus Unfiled Henshall, 1 Page

William Henshall — 10-24-22

William Henshall — Date

SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED 720 West 20th Street Merced CA 95340 209-725-4107 MD-Traffic	*Reserved for Clerk's File Stamp*
People of the State of California, Plaintiff(s) **vs.** **BRITTANY PICKETTROSE, Defendant(s)**	
NOTICE: RECEIPT OF RECENT COMMUNICATION	**Case No.** **17TR-13106** Cite No. 5Y7W000LS

BRITTANY PICKETTROSE
205 Ramona ST
San Mateo CA 94401

This will acknowledge receipt of your recent communication. Please note the paragraph(s) checked below:

☐ The court is returning the proof of correction submitted. There is a $25 fee per correctible violation. Please **resubmit** the proof of correction with a total amount of $_____ by _____.

☐ Proof of correction is required. Your check/money order number _____ in the amount of $_____ is being returned. Please **submit** proof of correction with the amount of $_____by _____. A copy of the citation is enclosed to get signed-off by any law enforcement agency.

☐ If you are unable to provide proof of correction, this case requires a bail amount of $ _____ due by _____.

☐ Bail in the amount of $____, must be posted prior to setting a Trial by Declaration (TXD). Upon receipt of total amount due, TXD paperwork will be sent to you by mail to be completed and returned. Please remit amount due by _____,

☐ Your payment plan has been paid in full. Your check/money order number _____ in the amount of $_____ is being returned. No further action is necessary.

☒ Your request has been denied. You may appear in court as a walk in Monday – Thursday at 7:30am. I have given you your max extension of 9/5/17. You must pay or appear by 9/5/17.

Date: 7/21/2017

Linda Romero Soles, Court Executive Officer

Susan Moorehead
Printed Name

By: Susan Moorehead
Deputy Clerk/CTSI Clerk

Note: Please return a copy this letter with your remittance to the address indicated above and include your case number on your check or money order and/or on any correspondence.

Please make check or money order payable to MERCED SUPERIOR COURT.

ENDORSED FILED
SAN MATEO COUNTY
JUL 16 2013
Clerk of the Superior Court
By Diana Calfee
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

In re:
WILLIAM HENSHALL,
On Habeas Corpus.

Case No. AD 5424

ORDER OF DENIAL

TO: PETITIONER WILLIAM HENSHALL:

The Court has received and reviewed the Petition for Writ of Habeas Corpus filed by the Petitioner, William Henshall, on June 27, 2013. The grounds alleged in the petition include questions as to whether California is a State or a territorial possession; whether the principal officers of such territory must be appointed by the President; whether such office holders are limited to free white inhabitants of the territory; whether there is any civil government in California; whether the Reconstruction Act of 1867 was lawfully enacted and whether the 14th and 15th amendments were lawfully ratified.

Based upon this Court's review of the petition and authorities cited therein, the Petition for Writ for Habeas Corpus is hereby DENIED. The questions raised by the petition are beyond the jurisdiction of the California Superior Court as they appear to raise Federal questions. Additionally, the petitioner lacks standing to file a petition for habeas corpus as he has no pending or prior criminal proceeding in San Mateo County.

The court further informs the Petitioner that it will no longer consider any invalid habeas or related writs filed by Petitioner.

IT IS HEREBY ORDERED THAT THE WRIT FOR HABEAS CORPUS BE DENIED.

Dated: 7-12-15

BARBARA MALLACH,
Presiding Judge, Criminal

19-HC-007916G-2
ORD
Order
1412599

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

In re RAMON WATKINS on petition for writ of habeas corpus.

FILED
ALAMEDA COUNTY
OCT 17 2019
CLERK OF THE SUPERIOR COURT
By _____ Deputy

Writ Nos. 19-HC-007916G-1
19-HC-007916G-2
Related Ct. no. 19-CR-007916G

ORDER DENYING PETITIONS FOR WRIT OF HABEAS CORPUS

The pro se petitions for writ of habeas corpus[1], filed with this Court on 11 September 2019 and 24 September 2019[2], are **DENIED**.

Petitioner is presently awaiting preliminary hearing in case number 19-CR-007916G. After this Court denied petitioner's *Marsden*[3] motion on 22 July 2019, the trial court granted petitioner's *Faretta*[4] waiver on 30 August 2019. The *Faretta* waiver was revoked on 27 September 2019. The Court has considered the petitions and attached documents and exhibits because of when the petitions were filed. (See *In re Barnett* (2003) 31 Cal.4th 466, 474 & fn. 3, quoting *People v. Mattson* (1959) 51 Cal.2d 777, 798 [with limited exceptions, "[a]ny . . . pro se document offered in an appeal [or habeas corpus] 'will be returned unfiled' [citation], or, if mistakenly filed, will be stricken from the docket [citation]."])

The allegations in the petitions, which are not on Judicial Counsel form HC-001 (Cal. Rules of Court, rule 4.551(a)(1)), are unintelligible. As such, the petitions fail to state a prima facie claim for habeas corpus relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.)

It is SO ORDERED.

DATED: 10/17/19

HON. MORRIS JACOBSON
JUDGE OF THE SUPERIOR COURT

[1] The filing is captioned (original spelling and capitalization) "In re united states Ex rel Ramon Watkins on Habeas". The complete title is (original content, capitalization, and curly brackets; bold and italics omitted) "Non-statutory federal [¶] Writ of Habeas [¶] invoking concurrent federal Circuit jurisdiction [¶] Article I, Section 9, Ct 2 [¶] Constitution for the united States {1787-1791}"

[2] The September 24 petition, which appears to be identical to the one filed on 11 September 2019, did not include an assortment of exhibits.

[3] *People v. Marsden* (1970) 2 Cal.3d 118

[4] *Faretta v. California* (1975) 422 U.S. 806

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

400 McAllister Street, Room 205
San Francisco, CA 94102-4512
Phone: 415-551-5737
FAX: 415-551-5701

T. MICHAEL YUEN
COURT EXECUTIVE OFFICER

July 9, 2021

Linda A. Rovai
205 Ramona Street
San Mateo, CA 94401

RE: Petition for Non-Statutory Federal Writ of Habeas Corpus

Dear Ms. Rovai:

Returned unfiled is your Petition for Non-Statutory Federal Writ of Habeas Corpus and attachments. The question raised by the Petition are beyond the jurisdiction of the California courts as they appear to raise Federal issues.

Sincerely yours,

T. Michael Yuen
Court Executive Officer

TMY: mb
Enclosures

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0022
(916) 319-2022
FAX (916) 319-2122

DISTRICT OFFICE
1528 S. EL CAMINO REAL, SUITE 302
SAN MATEO, CA 94402
(650) 349-2200
FAX (650) 341-4676

Assembly
California Legislature

KEVIN MULLIN
ASSISTANT SPEAKER PRO TEMPORE
ASSEMBLYMEMBER, TWENTY-SECOND DISTRICT

COMMITTEES
BUDGET
BUSINESS, PROFESSIONS AND CONSUMER PROTECTION
LOCAL GOVERNMENT
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SUBCOMMITTEES
BUDGET SUBCOMMITTEE #4 ON STATE ADMINISTRATION

SELECT COMMITTEES
CHAIR: BIOTECHNOLOGY
COMMUNITY COLLEGES
ASIA/CALIFORNIA TRADE AND INVESTMENT PROMOTION
WORKFORCE INVESTMENT BOARD

April 21, 2014

Mr. William Henshall
P. O. Box 281676
San Francisco, CA 94128-1676

Dear Mr. Henshall,

Thank you for visiting my office on March 19, 2014 and on April 8, 2014, and for mailing correspondence to me in between.

I read your letter dated March 19, 2014, in which you ask that I submit your Petition for Redress of Grievance on the floor of the Assembly, and the subsequent correspondence. After reviewing your request and the background documents you provided, I have concluded that I am unable to present your Petition. As was communicated by Frank A. McGuire, Court Administrator and Clerk of the Supreme Court of California, in a letter to you dated November 18, 2013, the question you raise appears to relate to Federal issues and is beyond the jurisdiction of the California Courts and California Assembly.

Sincerely,

Kevin Mullin

KEVIN MULLIN
Assemblymember, 22nd District

KM:rr

Printed on Recycled Paper

ORGE NAVARRETE
SISTANT CLERK/ADMINISTRATOR

MARY JAMESON
UTOMATIC APPEALS SUPERVISOR

EARL WARREN BUILD
350 McALLISTER STR
SAN FRANCISCO, CA 9
(415) 865-7200

Supreme Court of California

FRANK A. McGUIRE
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

November 18, 2013

William Henshall
P.O. Box 281676
San Francisco, CA 94128-1676

Re: Petition

Dear Mr. Henshall:

Returned unfiled is your petition for writ of habeas corpus and letters. The question raised by the petition are beyond the jurisdiction of the California courts as they appear to raise Federal issues.

Very truly yours,

FRANK A. McGUIRE
Court Administrator and
Clerk of the Supreme Court

By: J.L. Casados,
Supervising Deputy Clerk

Enclosures

Case Summary:

Case Id:	30-2022-01271693-CL-CL-CJC
Case Title:	FIRST NATIONAL BANK OF OMAHA VS. ADAM BEREKI
Case Type:	RULE 3.740 COLLECTIONS
Filing Date:	07/25/2022
Category:	CIVIL - LIMITED

Register Of Actions:

ROA	Docket	Filing Date	Filing Party	Document	Select
1	E-FILING TRANSACTION 41363131 RECEIVED ON 07/25/2022 12:44:03 PM.	07/26/2022			
2	COMPLAINT FILED BY FIRST NATIONAL BANK OF OMAHA ON 07/25/2022	07/25/2022		3 pages	
3	CIVIL CASE COVER SHEET FILED BY FIRST NATIONAL BANK OF OMAHA ON 07/25/2022	07/25/2022		2 pages	
4	DECLARATION - OTHER (VENUE) FILED BY FIRST NATIONAL BANK OF OMAHA ON 07/25/2022	07/25/2022		2 pages	
5	SUMMONS ISSUED AND FILED FILED BY FIRST NATIONAL BANK OF OMAHA ON 07/25/2022	07/25/2022		1 pages	
6	PAYMENT RECEIVED BY LEGALCONNECT FOR 168 - COMPLAINT OR OTHER 1ST PAPER >$10K<=$25K IN THE AMOUNT OF 370.00, TRANSACTION NUMBER 13082003 AND RECEIPT NUMBER 12909992.	07/26/2022		1 pages	
7	E-FILING TRANSACTION 11029538 RECEIVED ON 08/23/2022 03:12:49 PM.	08/23/2022			
8	PROOF OF PERSONAL SERVICE FILED BY FIRST NATIONAL BANK OF OMAHA ON 08/23/2022	08/23/2022		2 pages	
9	PETITION - OTHER (FOR WRIT OF HABEAS CORPUS) FILED	09/07/2022		219 pages	
10	REQUEST TO WAIVE COURT FEES FILED	09/07/2022			
11	PROOF OF ESERVICE FILED	09/07/2022			
12	PETITION FOR WRIT SCHEDULED FOR 10/13/2022 AT 09:30:00 AM IN C03 AT CENTRAL JUSTICE CENTER.	09/07/2022			
13	E-FILING TRANSACTION 31206759 RECEIVED ON 09/14/2022 01:50:46 PM.	09/14/2022			
14	PROOF OF ESERVICE FILED BY BEREKI, ADAM ON 09/14/2022	09/14/2022		3 pages	
15	E-FILING TRANSACTION 41384907 RECEIVED ON 09/14/2022 01:50:01 PM.	09/14/2022			
16	EX PARTE APPLICATION - OTHER FILED BY BEREKI, ADAM ON 09/14/2022	09/14/2022		9 pages	
17	PROPOSED ORDER RECEIVED ON 09/14/2022.	09/14/2022		2 pages	
18	REQUEST FOR COURT REPORTER BY PARTY WITH FEE WAIVER FILED BY BEREKI, ADAM ON 09/14/2022	09/14/2022		1 pages	

EXHIBIT [D] p. 5449

20	EX PARTE REASSIGNED TO C66 AT CENTRAL JUSTICE CENTER ON 09/15/2022 AT 01:30:00 PM.	09/14/2022			
21	EX PARTE SCHEDULED FOR 09/15/2022 AT 01:30:00 PM IN C66 AT CENTRAL JUSTICE CENTER.	09/14/2022			
22	ORDER ON COURT FEE WAIVER (SUPERIOR COURT) FILED BY THE SUPERIOR COURT OF ORANGE ON 09/09/2022	09/09/2022		3 pages	
23	BEREKI, ADAM REQUEST TO WAIVE COURT FEES DENIED IN WHOLE ON 09/15/2022.	09/15/2022			
24	CLERK'S CERTIFICATE OF SERVICE BY MAIL (OUT OF PROCESS) GENERATED	09/15/2022		1 pages	
25	MINUTES FINALIZED FOR EX PARTE 09/15/2022 01:30:00 PM.	09/16/2022		1 pages	
26	E-FILING TRANSACTION 11035889 RECEIVED ON 09/08/2022 08:35:05 AM.	09/16/2022			
27	NOTICE OF HEARING FILED BY BEREKI, ADAM ON 09/08/2022	09/08/2022		4 pages	
28	E-FILING TRANSACTION 21213305 RECEIVED ON 09/23/2022 11:40:22 AM.	09/26/2022			
29	REQUEST FOR ENTRY OF DEFAULT FILED BY FIRST NATIONAL BANK OF OMAHA ON 09/26/2022	09/26/2022		2 pages	
30	E-FILING TRANSACTION 21214905 RECEIVED ON 09/28/2022 09:34:23 AM.	09/28/2022			
31	DECLARATION IN SUPPORT FILED BY FIRST NATIONAL BANK OF OMAHA ON 09/28/2022	09/28/2022		2 pages	
32	E-FILING TRANSACTION 41390522 RECEIVED ON 09/28/2022 09:34:23 AM.	09/28/2022			
33	OPPOSITION FILED BY FIRST NATIONAL BANK OF OMAHA ON 09/28/2022	09/28/2022		5 pages	
34	E-FILING TRANSACTION 11044283 RECEIVED ON 09/28/2022 09:34:18 AM.	09/28/2022			
35	PROOF OF SERVICE BY MAIL FILED BY FIRST NATIONAL BANK OF OMAHA ON 09/28/2022	09/28/2022		1 pages	
36	MINUTES FINALIZED FOR PETITION FOR WRIT 10/13/2022 09:30:00 AM.	10/13/2022		1 pages	
37	E-FILING TRANSACTION 31222584 RECEIVED ON 10/21/2022 10:53:51 AM.	10/21/2022			
38	REQUEST FOR CLERK'S DEFAULT JUDGMENT FILED BY FIRST NATIONAL BANK OF OMAHA ON 10/21/2022	10/21/2022		2 pages	
39	JUDGMENT FILED BY FIRST NATIONAL BANK OF OMAHA ON 10/21/2022	10/21/2022		2 pages	
40	DECLARATION IN SUPPORT OF DEFAULT JUDGMENT BY COURT CCP 585(D) FILED BY FIRST NATIONAL BANK OF OMAHA ON 10/21/2022	10/21/2022		13 pages	
41	REQUEST FOR DISMISSAL OF DOES FILED BY FIRST NATIONAL BANK OF OMAHA ON 10/21/2022	10/21/2022		2 pages	

42	COMPLAINT DISPOSED WITH DISPOSITION OF DEFAULT JUDGMENT BY CLERK.	10/21/2022			

Participants:

Name	Type	Assoc	Start Date	End Date
FIRST NATIONAL BANK OF OMAHA	PLAINTIFF		07/26/2022	
ADAM BEREKI	DEFENDANT		07/26/2022	
THE DUNNING LAW FIRM APC	ATTORNEY		07/26/2022	

Hearings:

Description	Date	Time	Department	Judge

Print this page

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:	FOR COURT USE ONLY
NAME: Donald T. Dunning (#144665) James MacLeod (#249145) FIRM NAME: THE DUNNING LAW FIRM APC STREET ADDRESS: 9619 Chesapeake Dr., Suite 210 CITY: San Diego, STATE: CA ZIP CODE: 92123 TELEPHONE NO.: 858-974-7600 FAX NO.: 858-974-7601 E-MAIL ADDRESS: DDunning@DunningLaw.com ATTORNEY FOR (name): PLAINTIFF FIRST NATIONAL BANK OF OMAHA	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 CIVIC CENTER WEST MAILING ADDRESS: SAME CITY AND ZIP CODE: SANTA ANA CA 92701 BRANCH NAME: CENTRAL JUSTICE CENTER	
Plaintiff/Petitioner: FIRST NATIONAL BANK OF OMAHA Defendant/Respondent: ADAM BEREKI, an individual	
REQUEST FOR (Application) ☐ Entry of Default ☒ Clerk's Judgment ☐ Court Judgment	CASE NUMBER: 30-2022-01271693-CL-CL-CJC

Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.) *(see CIV-105)*

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date):* 07/25/2022
   b. by *(name):* FIRST NATIONAL BANK OF OMAHA, a National Banking Association
   c. ☐ Enter default of defendant *(names):* ADAM BEREKI, an individual
   d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names):*

      (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
   e. ☒ Enter clerk's judgment
      (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
         ☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) ☒ under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) ☒ for default previously entered on *(date):* 09/26/2022

2. **Judgment to be entered.**

	Amount	Credits acknowledged	Balance
a. Demand of complaint	$13052.87	$0.00	$13052.87
b. Statement of damages*			
(1) Special	$0.00	$0.00	$0.00
(2) General	$0.00	$0.00	$0.00
c. Interest	$0.00	$0.00	$0.00
d. Costs *(see reverse)*	$505.11	$0.00	$505.11
e. Attorney fees	$0.00	$0.00	$0.00
f. **TOTALS**	$13557.98	$0.00	$13557.98

   g. **Daily damages** were demanded in complaint at the rate of: $ per day beginning *(date):*

(Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*

3. ☐ *(Check if filed in an unlawful detainer case.)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4).*

Date: October 20, 2022
James MacLeod (249145)
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

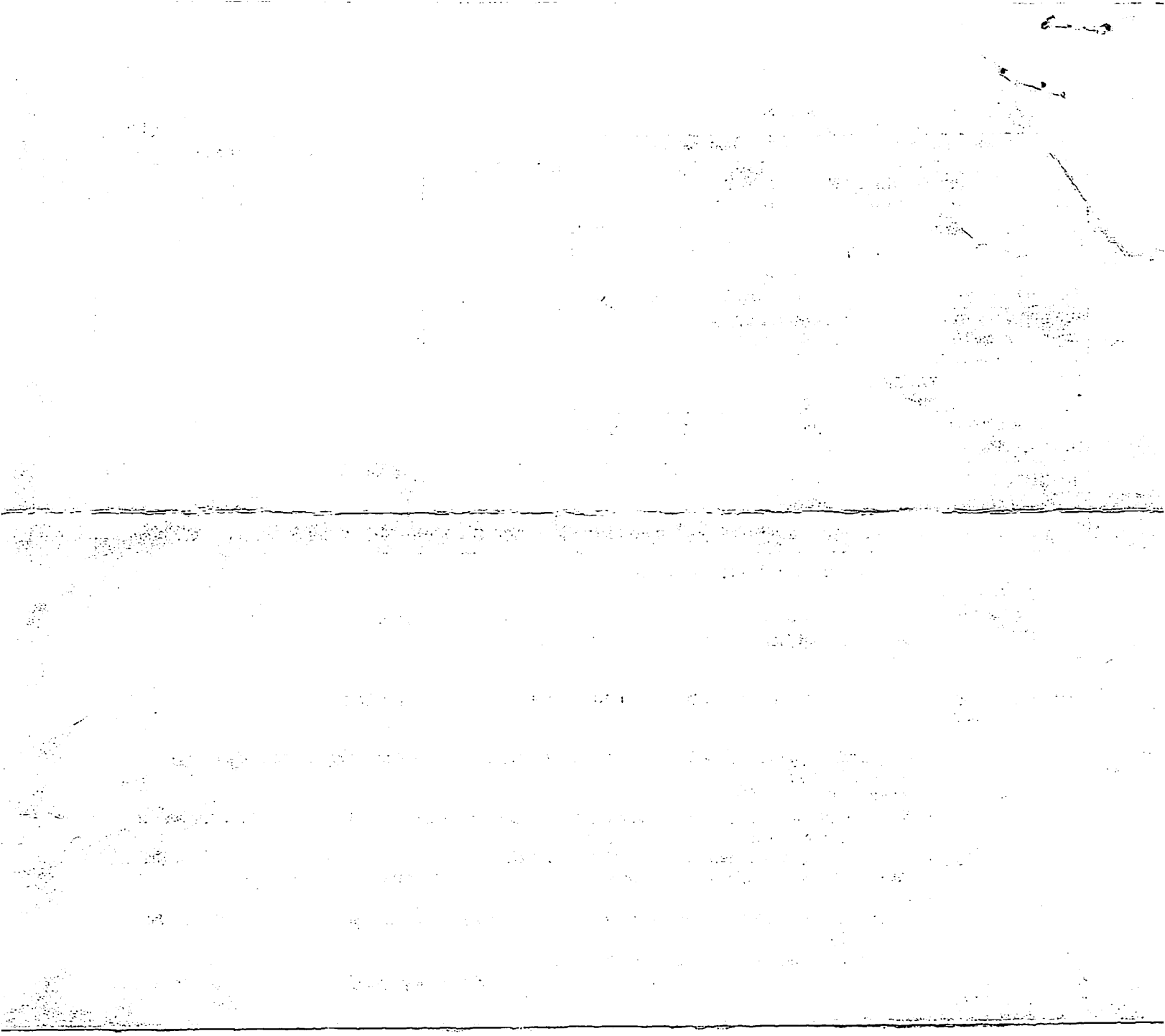
FOR COURT USE ONLY	(1) ☐ Default entered as requested on *(date):* (2) ☐ Default NOT entered as requested *(state reason):* Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California CIV-100
[Rev. January 1, 2020]

REQUEST FOR ENTRY OF DEFAULT
(Application to Enter Default)

Code of Civil Procedure, §§ 585–587, 1169
www.courts.ca.gov

EXHIBIT [D] p. 5452



Plaintiff/Petitioner: FIRST NATIONAL BANK OF OMAHA Defendant/Respondent: ADAM BEREKI, an individual	CASE NUMBER: 30-2022-01271693-CL-CL-CJC

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant [ ] did [X] did **not** or compensation give advice or assistance with this form. If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state:
   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date)*:

5. [X] **Declaration under Code Civ. Proc., § 585.5** *(for entry of default under Code Civ. Proc., § 585(a))*. This action
   a. [ ] is [x] is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
   b. [ ] is [x] is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
   c. [x] is [ ] is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
   a. [ ] **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names)*:
   b. [X] **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date)*: October 20, 2022
      (2) To *(specify names and addresses shown on the envelopes)*:
      ADAM BEREKI
      818 SPIRIT
      COSTA MESA CA 92626

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: October 20, 2022
Brooke A. Bystedt
(TYPE OR PRINT NAME)

▶ Brooke A. Bystedt
(SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested)*. Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
   a. Clerk's filing fees $370.00
   b. Process server's fees ..... $ 74.00
   c. Other *(specify)*: PROCESSING FEES FOR E-FILING DOCUMENTS $ 61.11
   d. $
   e. **TOTAL** $505.11
   f. [ ] Costs and disbursements are waived.
   g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

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

Date: October 20, 2022
James MacLeod (249145)
(TYPE OR PRINT NAME)

▶
(SIGNATURE OF DECLARANT)

8. **Declaration of nonmilitary status** *(required for a judgment)*. No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code sections 400 and 402(f).

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

Date: October 20, 2022
James MacLeod (249145)
(TYPE OR PRINT NAME)

▶
(SIGNATURE OF DECLARANT)

THE DUNNING LAW FIRM APC
9619 CHESAPEAKE DR., STE. 210
SAN DIEGO, CA 92123

FIRST-CLASS

US POSTAGE IMI PITNEY BOWES

ZIP 92123
02 7H
0001253314

$ 000.57⁰
OCT 20 2022

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626

S2626$3089 C051

CIV-100

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO:	FOR COURT USE ONLY
NAME: Donald T. Dunning (#144665) James MacLeod (#249145) FIRM NAME: THE DUNNING LAW FIRM APC STREET ADDRESS: 9619 Chesapeake Dr., Suite 210 CITY: San Diego, STATE: CA ZIP CODE: 92123 TELEPHONE NO.: 858-974-7600 FAX NO.: 858-974-7601 E-MAIL ADDRESS: DDunning@DunningLaw.com ATTORNEY FOR (name): Plaintiff FIRST NATIONAL BANK OF OMAHA	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 CIVIC CENTER WEST MAILING ADDRESS: SAME CITY AND ZIP CODE: SANTA ANA CA 92701 BRANCH NAME: CENTRAL JUSTICE CENTER	
Plaintiff/Petitioner: FIRST NATIONAL BANK OF OMAHA Defendant/Respondent: ADAM BEREKI, an individual	
REQUEST FOR (Application) [X] **Entry of Default** [ ] **Court Judgment** [ ] **Clerk's Judgment**	CASE NUMBER: 30-2022-01271693-CL-CL-CJC
Not for use in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.) *(see CIV-105)*	

1. TO THE CLERK: On the complaint or cross-complaint filed
   a. on *(date):* 07/25/2022
   b. by *(name):* FIRST NATIONAL BANK OF OMAHA, a National Banking Association
   c. [X] Enter default of defendant *(names):* ADAM BEREKI, an individual

   d. [ ] I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant *(names):*

   (Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)
   e. [ ] Enter clerk's judgment
      (1) [ ] for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
         [ ] Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The *Prejudgment Claim of Right to Possession* was served in compliance with Code of Civil Procedure section 415.46.
      (2) [ ] under Code of Civil Procedure section 585(a). *(Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)*
      (3) [ ] for default previously entered on *(date):*

2. **Judgment to be entered.**

	Amount	Credits acknowledged	Balance
a. Demand of complaint	$	$	$
b. Statement of damages*			
(1) Special	$	$	$
(2) General	$	$	$
c. Interest	$	$	$
d. Costs *(see reverse)*	$	$	$
e. Attorney fees	$	$	$
f. **TOTALS**	$	$	$

   g. **Daily damages** were demanded in complaint at the rate of: $ per day beginning *(date):*

   (Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)*

3. [ ] *(Check if filed in an unlawful detainer case.)* **Legal document assistant or unlawful detainer assistant** information is on the reverse *(complete item 4).*

Date: September 22, 2022
James MacLeod (249145)
(TYPE OR PRINT NAME)

▶ (SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY
(1) [ ] Default entered as requested on *(date):*
(2) [ ] Default NOT entered as requested *(state reason):*
Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California CIV-100
[Rev. January 1, 2020]

REQUEST FOR ENTRY OF DEFAULT
(Application to Enter Default)

Code of Civil Procedure, §§ 585–587, 1169
www.courts.ca.gov

Plaintiff/Petitioner: FIRST NATIONAL BANK OF OMAHA Defendant/Respondent: ADAM BEREKI, an individual	CASE NUMBER: 30-2022-01271693-CL-CL-CJC

4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant [ ] did [X] did not or compensation give advice or assistance with this form. If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state:
   a. Assistant's name:
   b. Street address, city, and zip code:
   c. Telephone no.:
   d. County of registration:
   e. Registration no.:
   f. Expires on *(date)*:

5. [X] **Declaration under Code Civ. Proc., § 585.5** *(for entry of default under Code Civ. Proc., § 585(a))*. This action
   a. [ ] is [X] is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
   b. [ ] is [X] is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
   c. [X] is [ ] is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
   a. [ ] **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney *(names)*:
   b. [X] **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
      (1) Mailed on *(date)*: September 22, 2022
      (2) To *(specify names and addresses shown on the envelopes)*:
      ADAM BEREKI
      818 SPIRIT
      COSTA MESA CA 92626

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
Date: September 22, 2022
Nancy Kennealy
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

7. **Memorandum of costs** *(required if money judgment requested)*. Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
   a. Clerk's filing fees ..... $
   b. Process server's fees ..... $
   c. Other *(specify)*: $
   d. $
   e. **TOTAL** ..... $
   f. [ ] Costs and disbursements are waived.
   g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

8. **Declaration of nonmilitary status** *(required for a judgment)*. No defendant named in item 1c of the application is in the military service as that term is defined by either the Servicemembers Civil Relief Act, 50 U.S.C. App. § 3911(2), or California Military and Veterans Code sections 400 and 402(f).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: September 22, 2022
James MacLeod (249145)
(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

THE DUNNING LAW FIRM
A Professional Corporation
DONALD T. DUNNING (144665)
JAMES MACLEOD (249145)
9619 Chesapeake Dr., Suite 210
San Diego, CA 92123
Tel: (858) 974-7600
Fax: (858) 974-7601

Attorneys for Plaintiff
FIRST NATIONAL BANK OF OMAHA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE DIVISION

FIRST NATIONAL BANK OF OMAHA, a Banking Association, Plaintiff, vs. ADAM BEREKI, an individual; DOES 1 to 5, inclusive, Defendants.	Case No. 30-2022-01271693 LIMITED CIVIL Complaint Filed: 7/25/22 PLAINTIFF'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS DATE: 10/13/2022 TIME: 9:30 a.m. DEPT.: C3

Plaintiff FIRST NATIONAL BANK OF OMAHA ("Plaintiff") submits the following opposition to the emergency petition for writ of habeas corpus filed by Defendant ADAM BEREKI ("Defendant").

I. INTRODUCTION

This is not a criminal case. This is a civil limited case involving Plaintiff's issuance of a credit card account to Defendant, and his subsequent failure to pay the credit card bill. (MacLeod Decl., ¶4.) Plaintiff is not a party to the case referenced by Defendant in his petition, The Spartan Associates, Inc. vs. Gary Humphreys, Orange County Superior Court case no. 30-2015-00805807-CU-CO-CJC. (Id.) Plaintiff has never "punished" Defendant pursuant to any Business and Professions Code section.

EXHIBIT [D] p. 5461

(Id.) Plaintiff is not involved with any foreclosure proceeding of Defendant's property. (Id.) Defendant is not currently in custody or subject to any known restraints restricting his freedom of movement. (Id.)

Defendant's emergency petition for writ of habeas corpus was sent to Plaintiff's counsel without notice of hearing, without any points and authorities, without validating evidence and without proof of proper service. (MacLeod Decl., ¶3.) After sending the "petition" to Plaintiff's counsel, Defendant also forced Plaintiff to appear at an ex parte hearing to consider this same application. (Id.) Even after being told there was no emergency and that the petition had no merit, Defendant has failed and refused to cancel this hearing. (Id.)

Plaintiff is a national banking association. Plaintiff's Complaint for Common Counts is made on forms provided by the Judicial Counsel and they are correctly and completely filled out, which provides all the necessary information required for Defendant to respond to the Complaint, which he failed to do in proper form. Defendant's petition should be denied and his default should be entered as he has failed to deny the allegations of the Complaint.

II. FACTS

This is a simple collection case. (MacLeod Decl., ¶3.) Plaintiff issued a credit card to Defendant. (Id.) Using Plaintiff's credit card to purchase goods and services, Defendant ran up a balance amounting to $13052.87. (Id.) Defendant failed to pay Plaintiff the entire balance, and after trying to resolve the outstanding debt without litigation without success, on July 25,

EXHIBIT [D] p. 5462

2022 Plaintiff commenced this action to collect the sums due and owing. (Id.)

Defendant filed the present emergency petition for habeas corpus instead of filing an answer or other responsive pleading to the Complaint. Plaintiff will be requesting entry of Defendant's default as he has failed to properly file a responsive pleading to the Complaint. Defendant's petition does not deny that he owes this debt to Plaintiff, but rather, appears to argue that because he lost another lawsuit and because he lost his contractor's license, his home should not be subject to foreclosure (which again, has nothing to do with Plaintiff's Complaint.) Defendant does not cite to any legal authority in support of his position. For an unknown reason, Defendant is trying to relitigate his other cases here which is entirely inappropriate.

It is impossible to fully understand what Defendant is asking of this Court. There is no possible way this Court has the authority to grant the relief he requests: 1) it cannot stay some unknown foreclosure proceeding or this proceeding; and 2) it cannot grant him "emergency equitable monetary relief to compensate him for his time and labor and damages so that he may have the financial resources necessary to fully support himself and pay his obligations."

Defendant alleges that the Court does not have jurisdiction to hear Plaintiff's case and it will address that argument, but in reality, there is nothing in this petition that Plaintiff or this Court can address.

/ / /

/ / /

EXHIBIT [D] p. 5463

III. PLAINTIFF HAS STANDING TO SUE DEFENDANT

A claim that a party lacks standing to sue must appear on the face of the complaint or from matters judicially noticeable. *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009. Defendant has not provided any evidence or authority that indicates Plaintiff lacks standing. Plaintiff's Complaint correctly states that Plaintiff is a national banking association, with all the rights and privileges thereto. Defendant alleges, without reference to any evidence or authority because the claims occurred in interstate commerce/admiralty. Plaintiff alleges common counts claims against Defendant and there is nothing on the face of the complaint related to interstate commerce or admiralty.

IV. DEFENDANT IS NOT IN CUSTODY AND THEREFORE CANNOT PETITION FOR HABEUS CORPUS

Just in case there is any question, a petition for habeas corpus pursuant to California Penal Code §§1473 et. seq. is used by petitioners who are imprisoned or had their liberties restricted by governments or government related entities (like hospitals or prisons, etc.) Its use in Civil proceedings occurs in the following instances only: 1) where a petitioner is imprisoned following being held in contempt (*In re Johnson* (1949) 92 Cal.App.2d 467, 472); 2) an incarcerated due to insanity petitions to prove his or her sanity (*In re Clary* (1906) 149 Cal.732, 738); 3) where a parent seeks custody of a child living with another (*In re Kyle* (1947) 77 Cal.App.2d 634, 638; 4) where a confined person pursuant to the Lanterman-Petris-Short Act as a gravely disabled person petitions to challenge confinement (*In re Gandolfo* (1984) 36 Cal.3d 889, 898); 5) where a minor is confined and petitions for release (*In re*

EXHIBIT [D] p. 5464

Butterfield (1967) 253 Cal.App.2d 794); 6) where an narcotic addict held for treatment petitions for release (*In re De La O* (1963) 59 Cal.2d 128, 156; or 7) where a prison petitions to have civil rights restored while being a prisoner (*In re Hop* (1981) 29 Cal.3d 82, 86.)

Never has a petition for habeas corpus been approved in a civil limited collections case to stop a foreclosure in another unknown matter or to cause anyone to pay a Defendant for any reason. Defendant has failed to identify any restriction to his person that is not just or permitted by applicable law, and certainly not caused by the Plaintiff. People must have licenses to be attorneys, to drive cars or to be contractors in the State of California and those licenses can be taken away. Plaintiff did not take Defendant's contractor's license away and none of what Defendant references in his petition has anything to do with Plaintiff's complaint to recover the credit card debt Defendant owes to Plaintiff.

IV. CONCLUSION

For the foregoing reasons, Plaintiff requests that this court deny Defendant's emergency petition for habeas corpus.

THE DUNNING LAW FIRM, APC

Dated: September 26, 2022

Donald T. Dunning
James MacLeod
Attorneys for Plaintiff

EXHIBIT [D] p. 5465

THE DUNNING LAW FIRM
A Professional Corporation
DONALD T. DUNNING (144665)
JAMES MACLEOD (249145)
9619 Chesapeake Dr., Suite 210
San Diego, CA 92123
Tel: (858) 974-7600
Fax: (858) 974-7601

Attorneys for Plaintiff
FIRST NATIONAL BANK OF OMAHA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE DIVISION

FIRST NATIONAL BANK OF OMAHA, a Banking Association, Plaintiff, vs. ADAM BEREKI, an individual; DOES 1 to 5, inclusive, Defendants.	Case No. 30-2022-01271693 LIMITED CIVIL Complaint Filed: 7/25/22 DECLARATION OF JAMES MACLEOD IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS DATE: 10/13/2022 TIME: 9:30 a.m. DEPT.: C3

I, James MacLeod, say and declare as follows:

1. I am an attorney licensed to practice before the Courts in the State of California. I am an attorney with The Dunning Law Firm, APC, attorneys for Plaintiff FIRST NATIONAL BANK OF OMAHA, a National Banking Association ("Plaintiff").

2. This declaration is offered in support of Plaintiff's opposition to Defendant ADAM BEREKI's ("Defendant") emergency petition for writ of habeas corpus. I have personal knowledge of each fact set forth herein, and if called upon to testify as a witness, I could and would competently testify thereto.

3. This is a simple collection case. Plaintiff issued a credit card to Defendant. Using Plaintiff's credit card to purchase

EXHIBIT ID p. 5466

goods and services, Defendant ran up a balance amounting to $13052.87. Defendant failed to pay Plaintiff the entire balance, and after trying to resolve the outstanding debt without litigation without success, on July 25, 2022, Plaintiff commenced this action to collect the sums due and owing. Defendant's emergency petition for writ of habeas corpus was sent to Plaintiff's counsel without notice of hearing, without any points and authorities, without validated evidence and without proof of proper service. After sending the "petition" to Plaintiff's counsel, Defendant also forced Plaintiff to appear at an ex parte hearing to consider this same application on September 15, 2022. The Court denied Defendant's ex parte application for writ of habeas corpus on the grounds that the ex parte had no merit, nor was there any emergency that called for the petition to be brought ex parte. Even after being told there was no emergency and that the petition had no merit, Defendant has failed and refused to cancel this hearing.

4. Plaintiff is not a party to the case referenced by Defendant in his petition, The Spartan Associates, Inc. vs. Gary Humphreys, Orange County Superior Court case no. 30-2015-00805807-CU-CO-CJC. Plaintiff has never "punished" Defendant pursuant to any Business and Professions Code section. Plaintiff is not involved with any foreclosure proceeding of Defendant's property. Defendant is not currently in custody or subject to any known restraints restricting his freedom of movement. Defendant's application for fee waiver was denied on September 15, 2022. Plaintiff filed its request for entry of default against Defendant on September 26, 2022

Executed on September 26, 2022, at San Diego, California.

James MacLeod

SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY 700 CIVIC CENTER WEST, SANTA ANA, CA 92701			FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) FIRST NATIONAL BANK OF OMAHA v. ADAM BEREKI, an individual			
ATTORNEY(S) NAME AND ADDRESS Donald T. Dunning (144665) James MacLeod (249145) THE DUNNING LAW FIRM APC 9619 Chesapeake Dr., Suite 210 San Diego, CA 92123			
ATTORNEY(S) FOR: PLAINTIFF FIRST NATIONAL BANK OF OMAHA	TELEPHONE: (858) 974-7600	HEARING DATE - TIME - DEPT. 10/13/2022-9:30AM-DEPT C3	CASE NUMBER 30-2022-01271693-CL-CL-CJC

DECLARATION OF SERVICE BY MAIL

I, NANCY KENNEALY, declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am

EMPLOYED (Residing/Employed) in the County of SAN DIEGO, California, in which county the within-mentioned mailing occurred. My BUSINESS (Residence/Business) address is 9619 Chesapeake Dr., Suite 210 (No., Street) SAN DIEGO, CA (City, State). I served the following document(s) PLAINTIFF'S OPPOSITION TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS; DECLARATION OF JAMES MACLEOD IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS (set forth exact title of document(s)) by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626

I then sealed each envelope and placed it for mailing in accord with our business' practice on September 26, 2022.

I am readily familiar with our business' practice for collecting, processing and mailing correspondence and pleadings. Such correspondence and pleadings are deposited on the same day with the U.S. Postal Service in the ordinary course of business.

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

Executed on September 26, 2022.

(Signature)
NANCY KENNEALY

PROOF OF SERVICE BY MAIL
(C.C.P. 1013a and 2015.5)

SD-72

CENTRAL JUSTICE CENTER CIVIL
700 CIVIC CENTER DR WEST
SANTA ANA, CA 92701
657-622-7792

CENTRAL JUSTICE CENTER CIVIL

Date: 10/27/2022 03:36:35 PM

CREDIT CARD SALE

VISA

CARD NUMBER: **********7818
ENTRY METHOD: ICC
AUTH MODE: Issuer
AMOUNT: $12.00
APPROVAL CD: 053618
RECORD #: 000
CLERK ID: mdepaul
INVOICE #: 30-2022-01271693

APPROVED
SIGNATURE VERIFIED

PLEASE RETAIN FOR YOUR RECORDS

AID: A0000000031010
TVR: 8000008000
IAD: 06011203A00000
TSI: 6800
VISA DEBIT

Customer Copy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

700 W. Civic Center Drive
Santa Ana, CA 92702

PAYMENT RECEIPT

Receipt #: 12956738

Clerk ID: mdepaul **Transaction No:** 13128673 **Transaction Date:** 10/27/2022 **Transaction Time:** 03:37:27 PM

Case Number	Fee Type	Qty	Fee Amount$	Balance Due	Amount Paid	Remaining Balance
	44 - Copy of any record (per side) (NCR)	24	$0.50	$12.00	$12.00	$0.00

Sales Tax:	$0.00	
Total:	**$12.00**	**Total Rem. Bal:**

Credit Card : 7818 - Adam ABereki

Credit Card:	$12.00
Total Amount Tendered:	$12.00
Change Due:	**$0.00**
Balance:	**$0.00**

A $45 fee may be charged for each returned check, electronic funds transfer or credit card payment.

ORIGINAL

FW-001 Request to Waive Court Fees

CONFIDENTIAL

Clerk stamps date here when form is filed.
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 07 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: J Gomez DEPUTY

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- You cannot give the court proof of your eligibility,
- Your financial situation improves during this case, or
- You settle your civil case for **$10,000** or more. The trial court that waives your fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge you any collection costs.

Fill in court name and street address:
Superior Court of California, County of
Orange
700 W. Civic Ctr Dr.
Santa Ana, CA 92701

Fill in case number and name:
Case Number: 30-2022-1271693
Case Name: ENBOV. Bereki

(1) **Your Information** *(person asking the court to waive the fees):*
Name: Adam Bereki
Street or mailing address: 810 Spirit
City: Costa Mesa State: CA Zip: 92626
Phone: 949 241 6693

(2) **Your Job,** if you have one *(job title):*
Name of employer: Disability Retired
Employer's address:

(3) **Your Lawyer,** if you have one *(name, firm or affiliation, address, phone number, and State Bar number):*
N/A

a. The lawyer has agreed to advance all or a portion of your fees or costs *(check one):* Yes ☐ No ☒ N/A
b. *(If yes, your lawyer must sign here)* Lawyer's signature:
If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

(4) **What court's fees or costs are you asking to be waived?**
☒ Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)
☐ Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

(5) **Why are you asking the court to waive your court fees?**
a. ☐ I receive *(check all that apply; see form FW-001-INFO for definitions):* ☐ Food Stamps ☐ Supp. Sec. Inc. ☐ SSP ☐ Medi-Cal ☐ County Relief/Gen. Assist. ☐ IHSS ☐ CalWORKS or Tribal TANF ☐ CAPI
b. ☐ My gross monthly household income (before deductions for taxes) is less than the amount listed below. *(If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.)*

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	*If more than 6 people at home, add $466.67 for each extra person.*
1	$1,329.17	3	$2,262.50	5	$3,195.84	
2	$1,795.84	4	$2,729.17	6	$3,662.50	

c. ☒ I do not have enough income to pay for my household's basic needs *and* the court fees. I ask the court to: *(check one and you **must** fill out page 2):*
☒ waive all court fees and costs ☐ waive some of the court fees
☐ let me make payments over time

(6) ☐ Check here if you asked the court to waive your court fees for this case in the last six months. (*If your previous request is reasonably available, please attach it to this form and check here*): ☐

I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.

Date: 9/7/22

Print your name here ▶ *Sign here*

Your name: Adam Bereki

Case Number: 20-2022-1271693

*If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only. If you checked 5c, you **must** fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.*

7 ☐ Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

8 Your Gross Monthly Income

a. List the source and amount of ***any*** income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

(1) Disability Retirement $ 4721.60
(2) $
(3) $
(4) $

b. **Your total monthly income:** $ 4721.60

9 Household Income

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

	Name	Age	Relationship	Gross Monthly Income
(1)				$
(2)				$
(3)	N/A			$
(4)				$

b. **Total monthly income of persons above:** $

Total monthly income *and* household income *(8b plus 9b):* $ 4721.60

10 Your Money and Property

a. Cash $ 20

b. All financial accounts *(list bank name and amount)*:

9/7/22
(1) Chase Bank $ 2045.86
(2) USAA Bank $ 5.30
(3) $ 2053.16

c. Cars, boats, and other vehicles

	Make / Year	Fair Market Value	How Much You Still Owe
(1)	2010 Ford F150	$ 11,600	$ 0
(2)		$	$
(3)		$	$

d. Real estate

	Address	Fair Market Value	How Much You Still Owe
(1)	See attached	$	$
(2)		$	$

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

	Describe	Fair Market Value	How Much You Still Owe
(1)	work tools, gym equip, office equip, stream, music instruments	$ 950	$ 0
(2)		$	$

11 Your Monthly Deductions and Expenses

a. List any payroll deductions and the monthly amount below:

(1) $
(2) N/A $
(3) $
(4) $

b. Rent or house payment & maintenance $ 3472
c. Food and household supplies $ 500
d. Utilities and telephone $ 400
e. Clothing $ 100
f. Laundry and cleaning $ N/A
g. Medical and dental expenses $ 350
h. Insurance (life, health, accident, etc.) $ 882
i. School, child care $ —
j. Child, spousal support (another marriage) $ —
k. Transportation, gas, auto repair and insurance $ 350
l. Installment payments *(list each below)*:

Paid to:
(1) Chase Credit Card $ 700
(2) Apple Credit Card $ 700
(3) $

m. Wages/earnings withheld by court order $ —
n. Any other monthly expenses *(list each below)*.

Paid to: How Much?
(1) Licensing $ 22
(2) $
(3) estimated $

Total monthly expenses *(add 11a –11n above)*: $ 9079

(see also attached)

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

Check here if you attach another page. ☒

***Important!* If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.**

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion	**Instructions**
I swear or affirm under penalty of perjury that, because of my financial situation, I cannot prepay the docket fees of my appeal or post a bond for them or pay for the additional expenses related to this action. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: 8/31/22

My issues on appeal are: see accompanying Emergency Application for Stay and Restraining Order and Petition for Writs of *Mandamus*, *Quo Warranto*, and non-statutory *Habeas Corpus*.

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$	$
Self-employment	$	$	$	$
Income from real property (such as rental income)	$	$ N/A	$	$
Interest and dividends	$	$	$	$
Gifts	$	$	$	$

Alimony	$	$ N/A	$	$
Child support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$4721.60	$	$4721.60	$
Unemployment payments	$	$	$	$
Public-assistance (such as welfare)	$	$ N/A	$	$
Other (specify):	$	$	$	$
Total monthly income:	**$4721.60**	**$**	**$4721.60**	**$**

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
N/A			$
			$
			$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	**Address**	**Dates of employment**	**Gross monthly pay**
N/A			$
			$
			$

4. *How much cash do you and your spouse have? $2*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	**Type of Account**	**Amount you have** **(Estimate, varies daily)**	**Amount your spouse has**
Chase Bank	Checking	$136.45	$N/A
USAA Bank	Checking	$5.30	$
		$505.30	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A (money Petitioner believes is owed him for damages pertaining to this case was excluded).	$	$
	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if under 18, initials only]	Relationship	Age
N/A		

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home) (unable to pay) Are real estate taxes included? [ ] Yes [X] No Is property insurance included? [ ] Yes [X] No	$3472	$N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$400	$
Home maintenance (repairs and upkeep)	$200	$
Food	$500	$
Clothing	$100	$
Laundry and dry-cleaning	$N/A	$
Medical and dental expenses	$550	$
Transportation (not including motor vehicle payments)	$350	$
Recreation, entertainment, newspapers, magazines, etc.	$100	$

Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	$162	$
Life:	$N/A	$
Health:	$882	$
Motor vehicle:	$140	$ N/A
Other:	$N/A	$
Taxes (not deducted from wages or included in mortgage payments) (specify): Property Taxes (unable to pay)	$701	$
Installment payments		
Motor Vehicle:	$N/A	$
Credit card (name): Chase/Amazon, Apple (Est. $14k balance).	$1500	$
Department store (name):	$N/A	$
Other:	$	$ N/A
Alimony, maintenance, and support paid to others	$N/A	$
Regular expenses for operation of business, profession, or farm Private Investigator License.	$22	$
Other (specify):	$N/A	$
Total estimated monthly expenses:	**$9079**	$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

[ ] Yes [X] No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* [X] Yes [ ] No

If yes, how much? $150,000 (rough estimate).

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

Petitioner holds legal title for the real property involved in this action but is not the true owner and therefore did not claim any equity related thereto. As a result of the issues involved in this complaint he is unable to make the mortgage and property tax payments and foreclosure proceedings have commenced. See complaint for further details.

Petitioners requests to proceed *in forma pauperis* were granted by the Superior, Appellate and Supreme Courts of California and the United States District Court. His request was denied by the Ninth Circuit on appeal.

12. *State the city and state of your legal residence.*

Costa Mesa, California

Your daytime phone number: (949) 241-6693

Your age:43 *Your years of schooling*: 15

Last four digits of your social-security number: 4758

FW-003 Order on Court Fee Waiver (Superior Court)

Clerk stamps date here when form is filed

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 09 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

(1) **Person who asked the court to waive court fees:**

Name: Adam Bereki

Street or mailing address: 818 Spirit

City: Costa Mesa State: CA Zip: 92626

(2) **Lawyer, if person in (1) has one** *(name, firm name, address, phone number, e-mail, and State Bar number).*

Fill in court name and street address

Superior Court of California, County of
Orange, Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92701

(3) A request to waive court fees was filed on *(date)*: 9/7/22

☐ The court made a previous fee waiver order in this case on *(date)*

Fill in case number and name

Case Number:
30-2022-01271693-CL-CL-CJC

Case Name:
First National Bank vs Bereki

Read this form carefully. All checked boxes ☑ are court orders.

Notice: The court may order you to answer questions about your finances and later order you to pay back the waived fees. If this happens and you do not pay, the court can make you pay the fees and also charge you collection fees. If there is a change in your financial circumstances during this case that increases your ability to pay fees and costs, you must notify the trial court within five days. (Use form FW-010.) If you win your case, the trial court may order the other side to pay the fees. If you settle your civil case for **$10,000** or more, the trial court will have a lien on the settlement in the amount of the waived fees. The trial court may not dismiss the case until the lien is paid.

(4) After reviewing your: ☒ *Request to Waive Court Fees* ☐ *Request to Waive Additional Court Fees* **the court makes the following orders:**

a. ☐ The court **grants** your request, as follows:

(1) ☐ **Fee Waiver.** The court grants your request and waives your court fees and costs listed below. *(Cal Rules of Court, rules 3.55 and 8.818.)* You do not have to pay the court fees for the following:

- Filing papers in superior court
- Making copies and certifying copies
- Sheriff's fee to give notice
- Court fee for phone hearing
- Giving notice and certificates
- Sending papers to another court department
- Reporter's fee for attendance at hearing or trial, if the court is not electronically recording the proceeding and you request that the court provide an official reporter
- Assessment for court investigations under Probate Code section 1513, 1826, or 1851
- Preparing, certifying, copying, and sending the clerk's transcript on appeal
- Holding in trust the deposit for a reporter's transcript on appeal under rule 8.130 or 8.834
- Making a transcript or copy of an official electronic recording under rule 8.835

(2) ☐ **Additional Fee Waiver.** The court grants your request and waives your additional superior court fees and costs that are checked below. *(Cal Rules of Court, rule 3.56.)* You do not have to pay for the checked items.

☐ Jury fees and expenses
☐ Fees for court-appointed experts
☐ Other *(specify)*: _____
☐ Fees for a peace officer to testify in court
☐ Court-appointed interpreter fees for a witness

b. ☑ The court **denies** your fee waiver request because:

Warning! If you miss the deadline below, the court cannot process your request for hearing or the court papers you filed with your original request. If the papers were a notice of appeal, the appeal may be dismissed.

(1) Your request is incomplete. You have **10 days** after the clerk gives notice of this Order (see date of service ☐ on next page) to:

- Pay your fees and costs, or
- File a new revised request that includes the incomplete items listed:
  ☐ Below ☐ On Attachment 4b(1)

(2) ☑ The information you provided on the request shows that you are not eligible for the fee waiver you requested for the reasons stated: ☑ Below ☐ On Attachment 4b(2)

Savings account amounts may cover fees.

The court has enclosed a blank *Request for Hearing About Court Fee Waiver Order (Superior Court)* (form FW-006). You have **10 days** after the clerk gives notice of this order (see date of service below) to:

- Pay your fees and costs in full or the amount listed in c below, or
- Ask for a hearing in order to show the court more information. *(Use form FW-006 to request hearing.)*

c. (1) ☐ The court needs more information to decide whether to grant your request. You must go to court on the date on page 3. The hearing will be about the questions regarding your eligibility that are stated:
☐ Below ☐ On Attachment 4c(1)

(2) ☐ Bring the items of proof to support your request, if reasonably available, that are listed:
☐ Below ☐ On Attachment 4c(2)

This is a Court Order.

Your name: Adam Bereki

Case Number: 30-2022-01271693-CL-CL-CJC

Name and address of court if different from above:

Hearing Date → Date: _____ Time: _____
Dept.: _____ Room: _____

Warning! If item c(1) is checked, and you do not go to court on your hearing date, the judge will deny your request to waive court fees, and you will have 10 days to pay your fees. If you miss that deadline, the court cannot process the court papers you filed with your request. If the papers were a notice of appeal, the appeal may be dismissed.

Date: 9/9/2022

Signature of (check one): ☐ Judicial Officer ☒ Clerk, Deputy

JUNE JEE AN

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Clerk's Certificate of Service

I certify that I am not involved in this case and *(check one)*

☐ I handed a copy of this Order to the party and attorney, if any, listed in (1) and (2), at the court, on the date below.

☐ This order was mailed first class, postage paid, to the party and attorney, if any, at the addresses listed in (1) and (2), from *(city)*: _____, California, on the date below.

☒ A certificate of mailing is attached.

Date: _____

Clerk, by _____, Deputy

Name: _____

This is a Court Order.

Electronically Filed by Superior Court of California, County of Orange, 10/21/2022 02:19:00 PM.
30-2022-01271693-CL-CL-CJC - ROA # 39 - DAVID H. YAMASAKI, Clerk of the Court By N. Strom, Deputy Clerk.

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
THE DUNNING LAW FIRM APC
Donald T. Dunning, Esq. (#144665)
James MacLeod, Esq. (#249145)
9619 Chesapeake Dr., Suite 210, San Diego, CA 92123
TELEPHONE NO.: 858-974-7600 FAX NO. (Optional): 858-974-7601
E-MAIL ADDRESS (Optional): Ddunning@DunningLaw.com
ATTORNEY FOR (Name): Plaintiff FIRST NATIONAL BANK OF OMAHA

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 CIVIC CENTER WEST
MAILING ADDRESS: SAME
CITY AND ZIP CODE: SANTA ANA CA 92701
BRANCH NAME: CENTRAL JUSTICE CENTER

PLAINTIFF: FIRST NATIONAL BANK OF OMAHA, a National Banking Association
DEFENDANT: ADAM BEREKI, an individual

CASE NUMBER: 30-2022-01271693-CL-CL-CJC

JUDGMENT

[X] By Clerk [X] By Default [ ] After Court Trial
[ ] By Court [ ] On Stipulation [ ] Defendant Did Not Appear at Trial

JUDGMENT

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

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

3. [ ] **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
   a. The case was tried on *(date and time)*:
      before *(name of judicial officer)*:
   b. Appearances by:
      [ ] Plaintiff *(name each)*:
      (1)
      (2)
      [ ] Continued on Attachment 3b.
      [ ] Plaintiff's attorney *(name each)*:
      (1)
      (2)
      [ ] Defendant *(name each)*:
      (1)
      (2)
      [ ] Continued on Attachment 3b.
      [ ] Defendant 's attorney *(name each)*:
      (1)
      (2)
   c. [ ] Defendant did not appear at trial. Defendant was properly served with notice of trial.
   d. [ ] A statement of decision (Code Civ. Proc., § 632) [ ] was not [ ] was requested.

Form Approved for Optional Use
Judicial Council of California
JUD-100 [New January 1, 2002]

Code of Civil Procedure, §§ 585, 664.6
American LegalNet, Inc.
www.USCourtForms.com

EXHIBIT [D] p. 5482

PLAINTIFF: FIRST NATIONAL BANK OF OMAHA, a National Banking Association DEFENDANT: ADAM BEREKI, an individual	CASE NUMBER: 30-2022-01271693-CL-CL-CJC

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

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

5. **Parties.** Judgment is

a. ☒ for plaintiff *(name each)*:
FIRST NATIONAL BANK OF OMAHA, a National Banking Association

and against defendant *(names)*:
ADAM BEREKI, an individual

☐ Continued on Attachment 5a.

b. ☐ for defendant *(name each)*:

c. ☐ for cross-complainant *(name each)*:

and against cross-defendant *(name each)*:

☐ Continued on Attachment 5c.

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

6. **Amount.**

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

(1) ☒	Damages	$13052.87
(2) ☐	Prejudgment interest at the annual rate of %	$0.00
(3) ☐	Attorney fees	$0.00
(4) ☒	Costs	$505.11
(5) ☐	Other *(specify)*:	$0.00
(6)	TOTAL	$ 13557.98

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

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

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

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

7. ☐ Other *(specify)*:

Date: ☐ _____
JUDICIAL OFFICER

Date: 10/21/22 DAVID H. YAMASAKI ☒ Clerk, by N. Strom, Deputy
N. STROM

(SEAL)

CLERK'S CERTIFICATE *(Optional)*

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

Date:

Clerk, by _____, Deputy

Electronically Filed by Superior Court of California, County of Orange, 10/21/2022 10:53:00 AM.
30-2022-01271693-CL-CL-CJC - ROA # 40 - DAVID H. YAMASAKI, Clerk of the Court By N. Strom, Deputy Clerk.

THE DUNNING LAW FIRM
A Professional Corporation
DONALD T. DUNNING (144665)
JAMES MACLEOD (249145)
9619 Chesapeake Dr., Suite 210
San Diego, CA 92123
Telephone: (858) 974-7600
Facsimile: (858) 974-7601

Attorneys for Plaintiff
FIRST NATIONAL BANK OF OMAHA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

FIRST NATIONAL BANK OF OMAHA, a National Banking Association Plaintiff, v. ADAM BEREKI, an individual; DOES 1 to 5, inclusive Defendant(s).	Case No.: 30-2022-01271693-CL-CL-CJC LIMITED CIVIL Complaint Filed: 07/25/2022 DECLARATION IN SUPPORT OF APPLICATION FOR CLERK'S JUDGMENT [CCP § 585 (d)]

I, Joseph C. Gunther, declare:

1. I am the Recovery Representative for Plaintiff FIRST NATIONAL BANK OF OMAHA ("Plaintiff"). I have personal knowledge of the facts set forth below and, if called upon to do so, could and would competently testify as to these facts.

2. As the Recovery Representative, I oversee the billing and collection done on this matter. I am personally responsible for verifying and documenting the debtor's payment history and verifying the current payment status of this account. I am also responsible for overseeing all legal activity initiated on Plaintiff's behalf concerning these accounts.

3. I have personally worked on the books, records and files for the account of Defendant ADAM BEREKI ("Defendant"), and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Plaintiff, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Plaintiff's business at or near the time of the acts, conditions or events to which they relate. Each of the records and documents referenced herein were prepared and maintained in the ordinary course of business of Plaintiff by a person who had personal knowledge of the event being recorded and had a business duty to accurately record such event.

4. As Recovery Representative, I am also the custodian of records and am responsible for the preparation and maintenance of Plaintiff's records regarding this file. As the custodian of records on this file, I have the authority to certify the copies of the records attached to this application. It is Plaintiff's regular course of business for an employee or a representative with personal knowledge of an act, event or condition recorded to transmit information or to make a record of that act, event or condition at the time it happens, with the assistance of a network of computer programs. I have always found that information to be trustworthy. The documents attached as Exhibit "A" to this Application were prepared at or about the time of the events depicted in the documents. These documents were also maintained, scanned and preserved by one or more of our employees in the ordinary course of business. The documents produced are also exact duplicates of the original records

stored in computer storage as Adobe PDF files in Plaintiff's computer servers which are housed in the Metro Omaha Nebraska area, with computer back-ups of these files located in the Midwest.

5. On July 25, 2022, Plaintiff filed this lawsuit against Defendant for defaulting in making the monthly payments on Defendant's credit card account. Defendant was served but failed to file a response. Default was entered.

Amount of Demand of Complaint

6. On or about September 7, 2021, Defendant presented a request for a credit card account. Plaintiff provided Defendant with a credit card account as VISA card number xxxx xxxx xxxx 5457 pursuant to a Cardmember Agreement. On June 2, 2022, Defendant was in default on making the minimum monthly payments under the Agreement. Attached hereto as Exhibit "A", and incorporated by reference, are true and correct copies of the Cardmember Agreement and redacted Statement dated June 2, 2022. There is now due and owing the sum of $13,052.87. This amount is listed in paragraph 2a on the Application for Clerk's Judgment accompanying this declaration.

Costs

7. Plaintiff has incurred a total of $505.11 in litigation costs. This amount is listed in paragraph 2d on the Application for Clerk's Judgment accompanying this declaration.

Declaration of Copies Only

8. Plaintiff electronically stores all documents for control and preservation. Documents provided are copies of those stored. Plaintiff requests they be accepted in lieu of the originals.

The foregoing declaration is on my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 19 of October, 2022, at Omaha, Nebraska.

Joseph C Guenther
Recovery Representative

EXHIBIT "A"

fnbo

VISA

First National Bank of Omaha
P.O. Box 2557
Omaha, NE 68103-2557

Account Number: [redacted]5457
New Balance: $13,052.87
Minimum Payment Due: $1,039.42
Payment Due Date: ..... July 1, 2022

Make checks payable to First National Bank of Omaha

Amount of Payment Enclosed

$

3253 013923

ADAM BEREKI
818 SPIRIT
COSTA MESA CA 92626-3089

Change of Address? If yes, please complete reverse side.

[redacted]5457 00000001039 42 00000013052 87

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

Signature® Visa®

Account Number:
[redacted]5457
Page 001 of 002

Account Summary

Previous Balance	$13,011.12
Payments	-$0.00
Other Credits	-$0.00
Purchases	+$0.00
Balance Transfers	+$0.00
Cash Advances	+$0.00
Fees Charged	+$41.75
Interest Charged	+$0.00
New Balance	$13,052.87
Statement Closing Date	06/02/22
Days in Billing Cycle	29
Total Credit Limit	$13,600.00
Available Credit	$0.00
Cash Limit	$2,750.00
Available Cash	$0.00

Payment Information

New Balance	$13,052.87
Minimum Payment Due	$1,039.42
Past Due Amount	$778.37
Payment Due Date	July 1, 2022

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $40.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For Example:

If you make no additional charges using this card and each month you pay ...	You will pay off the balance shown on this statement in about ...	And you will end up paying an estimated total of ...
Only the minimum payment	22 years	$26,081
$438	3 years	$15,765 (Savings $10,313)

If you would like information about credit counseling services, call 1-866-(88-6322.

Customer Service
Save Time and Stamps by Paying Online!

Call: Toll Free 1-888-530-3626
(TDD Telecommunications Device for the Deaf: 1-800-925-2833) (Balance Transfer Hotline: 1-877-359-8231)
Visit: www.fnbo.com
Remit to: First National Bank of Omaha, P.O. Box 2557, Omaha, NE 68103-2557

Smart Tips — Give your credit rating a little boost!

Paying over your minimum amount due can help reduce your account balance faster than you think - and a lower average balance can help add up to a higher credit score!

REWARDS SUMMARY

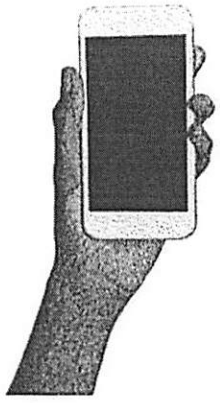
Earn rewards points everyday - you earn 1 point per $1 on Net Purchases. Review your rewards terms and conditions for complete details including limitations.

Point activity summary for the period covered by this statement:

4,029	Beginning point balance
0	Points earned on Net Purchases
0	Bonus points earned
0	Point adjustments
0	Points redeemed
0	Points expired
4,029	Current point balance

Points expiring on your next statement closing date 0
(Points expire on or after the fifth anniversary of the date they were awarded. To avoid losing points, please redeem them before they expire.)

Redeem your points for travel, gift cards, merchandise, cash back as a statement credit to your Account, an ACH deposit to any checking or savings account (ABA routing number required), or as a check sent to you by mail. You can redeem online 24/7 by accessing your Account at the web address listed above or by calling the Rewards Service Center at 888-801-7987 during hours of operation Monday through Friday, 8:00 a.m. to 11:00 p.m. Central Time, and Saturday and Sunday, 8:00 a.m. to 4:30 p.m. Central Time.



Anywhere. Anytime.

Manage your account at your desk or from your mobile device. Access when you need it, at home or on the go.

Important Information Regarding Your Account

We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

Transaction Detail

Trans Date	Post Date	Reference Number	Transaction Description	Credits (CR) and Debits
Fees				
6-01	6-02	74418402163000153062000	LATE FEE	$40.00
6-02	6-02	74418402163000153080050	MINIMUM INTEREST CHARGE	$1.75
Total Fees For This Period				**$41.75**
Interest Charged				
Interest Charge on Purchases				$0.00
Interest Charge on Cash Advances				$0.00
Interest Charge on Balances Transfers				$0.00
Total Interest For This Period				**$0.00**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account. (v) Variable Rate (f) Fixed Rate

Charge Summary	Annual Percentage Rate (APR)	Special Offer or Eligible Purchase APR Expiration Date	Balance Subject to Interest Rate	Days Rate Used	Interest Charge
Purchases	15.24% (v)	N/A	$75.67	29	$0.00
Cash Advance	25.49% (v)	N/A	$0.00	29	$0.00
Intro Bal Trans	0.00%	November 2022	$9,419.20	29	$0.00
Intro Purchases	0.00%	November 2022	$3,519.42	29	$0.00

2022 Total Year-to-Date

Total fees charged in 2022 ..... $114.25
Total interest charged in 2022 ..... $0.00

Additional Information Regarding Your Account

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

If you are an active duty member of the United States Military, you may be eligible for additional benefits on your account(s) under the Servicemembers Civil Relief Act (SCRA).

For additional information regarding SCRA benefits, please call 855-868-8446 or log in to the website listed on the front of your statement and click 'Resources' for more information.

To ensure accuracy, please print clearly using upper-case letters and numbers only.
Please do not use Red Ink, Gel pens or Pencil.

CHANGE OF ADDRESS, PHONE, OR E-MAIL

Address _____
Apt/Bldg# _____
City _____
State, ZIP _____
Home Phone _____
Work Phone _____
Cell Phone _____
E-mail Address _____

If you have a Credit Card for business purposes, and are requesting an address change, we may request additional information.

Balance Subject to Interest Rate: Each "Balance Subject to Interest Rate" shown on the front of this statement for each Balance Category is determined using the average daily balance (including new purchases) method. Each such balance is calculated separately for each period that a particular rate was in effect (referred to below as a "Rate Period"). To get each average daily balance for each Balance Category, we first compute a "Daily Balance" for each day of the Rate Period as follows: (1) we start with the beginning balance of each day, (2) we add any new transactions and fees, and (3) we subtract any applicable payments, credits, or credit adjustments. Each average daily balance that is shown on the front is computed by adding up all the Daily Balances in the Rate Period and dividing the total by the number of days in the Rate Period (which shows on the front as "Days Rate Used"). In making these computations: (a) we may treat a credit balance as a balance of zero; and (b) we may delay adding fees to your balance; and (c) each day, we multiply your Daily Balance by the applicable daily periodic rate and add that amount to your balance to determine the next day's beginning balance.

Interest Charges: We figure the interest charges on your account and for each Balance Category by applying the applicable daily periodic rate to the applicable average daily balance and multiplying that product by the number of days in the Rate Period. All of the interest charges for each Balance Category will be totaled and that will be the total interest charged.

How to Avoid Paying Interest on Purchases: If you pay your New Balance as shown on the front of this billing statement by the Payment Due Date and if we also received payment in full of your New Balance as indicated on your previous billing statement by its Payment Due Date (or if that New Balance was zero or a credit), no interest charges will be assessed on Purchases shown on your next billing statement. Unless you have been specifically notified otherwise, no period is provided to repay non-Purchase balances without incurring interest charges—in other words, there is no interest-free (grace) period for Cash Advances or Balance Transfers.

Payment Requirements: Payments must be (1) accompanied by the top portion of this billing statement; (2) received no later than 5:00 p.m. (Central Time) on the Payment Due Date at the location we have specified for receipt of your payment, (3) made only by check or money order if your payment is made by mail, (4) made in U.S. Dollars, and (5) sent to the P.O. Box specified on the top of the front of this statement. If we accept a payment that does not comply with these requirements, there may be a delay in crediting your account, which may result in additional interest and fees. If your payment is returned unpaid by your bank for insufficient funds, we may re-present your check electronically.

Credit Limits: Only the "Cash Limit" portion of your Credit Limit is available for cash advances. "Available Credit" or "Available Cash" refers to the part of your Credit Limit or Cash Limit that was available as of this billing statement's closing date and may not reflect overlimit or credit balance amounts. We may raise or lower your Credit Limit and/or Cash Limit at any time and may restrict the amount that is available for Balance Transfers. After we credit a payment to your account, there may be a delay before it operates to restore your Available Credit or Available Cash.

BILLING RIGHTS SUMMARY

What To Do If You Think You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at: First National Bank of Omaha, P.O. Box 3696 Omaha, NE 68103-0696. In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors *in writing*. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question. While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

Your Rights if You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase. To use this right, all of the following must be true: 1. The purchase must have been made in your home State or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.) 2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify. 3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at: First National Bank of Omaha, P.O. Box 3696 Omaha, NE 68103-0696. While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

Liability for Unauthorized Use: If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at P.O. Box 3696 Omaha, NE 68103-0696 or the facsimile number 402-602-6098 or call us at 1-800-668-7070. You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed $50.

Information Provided to Credit Bureaus: Information about your account is periodically provided to one or more credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. If you think any information regarding you or your account is inaccurate, write to us on a separate sheet at: P.O. Box 3412, Omaha, NE 68103-0412.

Interest Rates and Interest Charges	
Penalty APR and When It Applies	None
Paying Interest	Your due date is at least 21 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire new balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.75.
For Credit Card Tips from the Consumer Financial Protection Bureau	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at **http://www.consumerfinance.gov/learnmore.**
Fees	
Set-up and Maintenance Fees	
• **Annual Fee Amount**	None
• **Monthly Fee Amount**	None
Transaction Fees	
• **Cash Advance**	Either $15 or 5% of the amount of each cash advance, whichever is greater
• **Cash Equivalent**	Either $15 or 5% of the amount of each cash equivalent transaction, whichever is greater
• **Foreign Transaction**	3% of each transaction in U.S. dollars
• **Balance Transfer**	Either $10 or 5% of the amount of each transfer, whichever is greater
Penalty Fees	
• **Late Payment**	Up to $40
• **Returned Payment (Payment Dishonored)**	Up to $35

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)". See your Cardmember Agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your Cardmember Agreement.

This disclosure together with the Rates and Terms Schedule and accompanying Cardmember Agreement, govern your credit card account with us and are referred to collectively as the "Agreement".

CARDMEMBER AGREEMENT

FBC317-1705
C 22186

Thank you for becoming a cardmember. This document lists the terms that apply to your credit card account. When you make transactions with your account, we will lend you money by paying for these transactions and you agree to pay us back. We agree to the terms of this Agreement. When you use the account, this means you also agree to these terms.

CONTENTS

1 Definitions of terms used in this Agreement
2 Account use, duties, and limits
3 Types of transactions
4 Credit limit
5 Balance Categories
6 What you will see on your statement
7 Making payments
8 Interest rates (APRs) and how we calculate them
9 Interest charges
10 Other fees
11 Foreign currency conversion
12 Checks and other devices
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14 Closing or suspending your account
15 Changes to your account terms
16 How we will contact you about your account
17 Arbitration and class action waiver
18 Other terms
19 Billing Rights
20 Liability for unauthorized use

1 Definitions of terms used in this Agreement

"Agreement"	This means this Cardmember Agreement and the Schedule.
"we," "us," and "our"	These mean First Bankcard (a division of First National Bank of Omaha).
"you" and "your"	These mean everyone listed on the application and anyone else you allow to use the account. These include anyone who is issued a card.
"APR"	This means annual percentage rate which is the interest rate.
"Schedule"	This means the Rates and Terms Schedule that accompanies this Cardmember Agreement.
"Balance Category"	This means a category where we keep track of your transactions and charges. There are four main types of Balance Categories. Please see the "Balance Categories" section.
"New Balance"	This means the total outstanding balance on your account. It will be listed on each statement as the "New Balance".

2 Account use, duties, and limits

- You may use your account to make purchases, balance transfers, and cash advances. You may also use your account to accept special offers or promotions that we may make available at times.
- When you use your account to make transactions, you agree that you intend to and can pay us back.
- You are responsible for all transactions and charges on the account including those made by anyone you allow to use it.
- You and we agree to promptly notify each other if it is suspected that your account is being used without your consent. If unauthorized use occurs, you and we agree to work with law enforcement.
- We may decline any transaction and we will not have any liability if we do.

3 Types of transactions

Purchases	You may make purchases of goods and services with your account. You may make such purchases up to the amount of your available credit limit.
Balance transfers	• You may ask to transfer balances you owe to other credit card companies. You may ask for such balance transfers up to the amount of your credit limit available for balance transfers. • Balance transfers will be charged the balance transfer fee listed in the Schedule. This fee will be added to the Balance Category we select. • You may not transfer balances from other accounts you have with us or our related companies. • If you ask for a balance transfer and we do not approve the full amount, we may either pay only part of it or decline it. • Please consider the following when asking for a balance transfer: (a) To protect your rights, you should not transfer any amount that you dispute. (b) Continue to make all payments due on the other accounts until you receive notice from them that they have been paid in full. (c) You are still responsible for your other accounts according to their terms. (d) There is no interest-free (grace) period for balance transfers. • We may, at times, allow you to extend an outstanding Balance Transfer or Special Offer promotional period and APR on your account. Any extension will be treated as a balance transfer in the amount of the outstanding balance as of the last day of the original expiration date of the promotional period and APR. A balance transfer fee will be charged for each such extension.
Cash advances and cash equivalent transactions	You may ask for cash advances and cash equivalent transactions. You may ask for such transactions up to the amount of your credit limit available for cash advances. Cash equivalent transactions are those transactions that occur using a merchant or service provider that Visa® or Mastercard® identifies as a seller of travelers checks, foreign currency, money orders, wire transfers, lottery tickets, funds used for wagers or gambling, or similar products or services. Cash advances and cash equivalent transactions will (a) be charged the fee listed in the Schedule and will be added to the Cash Advance Balance Category; and (b) not have an interest-free (grace) period.

4 Credit limit

- We will establish an overall credit limit for your account. It will be listed in the documents given with this Agreement and on each statement.
- We may limit the amount of credit available for balance transfers and cash advances. We may also raise or lower your credit limit at any time. You agree to not let your account balance exceed your credit limit.
- If your account balance exceeds your credit limit, you agree to immediately pay the amount needed to reduce the balance to your credit limit.
- To protect you and us from fraud, risk, loss, or unauthorized charges, we may limit or delay the availability of credit on your account.

5 Balance Categories

We group transactions into one of four main Balance Categories listed below.

"Purchases"	These are from purchases of goods and services you make with your account.
"Balance Transfers"	These are from balance transfers you make with your account. Each balance transfer may be kept track of separately on your statement and may be treated as its own Balance Category.
"Cash Advances"	These are from cash advances and cash equivalent transactions you make with your account.
"Special Offers"	These are from your use of the account to take advantage of special, introductory, or promotional offers we make available to you at times. Each such transaction may be kept track of separately on your statement and may be treated as its own Balance Category.

6 What you will see on your statement

- We will send you a statement for each billing cycle where you have a balance on your account.
- Billing cycles are mainly monthly periods of time. Each billing cycle will have about the same number of days. Your first billing cycle may be shorter or longer than your other billing cycles.
- Each statement will show:
  (a) The statement closing date;
  (b) The number of days in that billing cycle;
  (c) New transactions, fees, and interest charges;
  (d) The total outstanding balance (listed as the "New Balance");
  (e) The minimum payment due; and
  (f) The payment due date.

  Your payment due date for each statement will be the same day each month (for example, the 12th of every month).
- Please review each statement and notify us of any errors right away. If we do not receive timely notice from you of any possible errors, all statement information will be deemed accurate and your obligation to pay. Please see the "Billing Rights" section.

7 Making payments

- You are responsible for paying back all the money we loan to you on the account. If this is a joint account, you are each responsible for the entire amount owed.
- You promise to pay all amounts due on your account including interest and fees.
- You may pay all or part of your account balance at any time. You must at least pay the minimum payment shown on each statement by its due date.
- The minimum payment listed on each statement will be calculated as listed in the Schedule.
- Payments must be made in U.S. dollars and through a U.S. bank. You agree to follow the payment requirements listed on each statement (for example, the time by when we need to receive payment and where your payment needs to be sent). If we accept a payment that is not in U.S. dollars or not through a U.S. bank, you agree to pay any extra fees or costs. We may accept payments that are marked "payment in full" or with similar markings without losing our right to receive payment in full. Partial payments offered in full satisfaction of a disputed amount must be sent to the address listed on your statement for notifying us of billing errors.
- Each payment you make will be generally applied to your account as follows: (a) the minimum payment amount will be applied to balances with the lowest APRs before balances with higher APRs; and (b) any amount you pay in excess of the minimum payment will be applied to balances with the highest APRs before balances with lower APRs. Until a payment clears, you may not be able to access the full amount of your credit limit.
- We will promptly apply other credits to your account. For example, such credits may include a credit for return of merchandise. These other credits will be applied to the Balance Category we select.

8 Interest rates (APRs) and how we calculate them.

Where to find them.	The APRs (and their daily periodic rates) in effect on your account are listed in the Schedule.
How we calculate variable APRs.	Each variable APR is determined by adding the margin to the Index as listed in the Schedule. An increase in the Index will increase a variable APR (and its daily periodic rate). An increase in a variable APR may increase the minimum payment due and interest charged on your account.
How we calculate daily periodic rates.	To determine the daily periodic rate for an APR, we divide the APR by 365 (366 in leap years).
Penalty rates.	We will not charge penalty rates or penalty APRs on your account. For example, if you make a late payment, your APR will not increase because you paid late.

9 Interest charges.

Interest charges.	Interest will be charged on your account based on the APRs and outstanding balances for each Balance Category. However, interest will not be charged on any outstanding balance that is subject to an interest-free (grace) period. Interest will be calculated separately for each Balance Category and will begin to accrue on the transaction date unless subject to an interest-free (grace) period.
Interest-free (grace) period.	To avoid being charged interest on new purchases, you must pay your entire statement balance (including all special offer, promotional, and introductory balances) by the due date each month. You will not be charged interest for new purchases if you (a) pay your entire outstanding balance (the "New Balance") listed on your current statement in full by its due date; and (b) paid your entire outstanding balance (the "New Balance") listed on your previous statement in full by its due date (or your previous statement had a zero or credit balance). This interest-free (grace) period applies only to purchases and does not apply to balance transfers, cash advances, or special offers.
Balance calculations and interest charges.	To determine interest charges on your account and the balances subject to interest, we use a method called "Average Daily Balance (including new purchases)". This method calculates balances for each Balance Category as listed below. A. We first calculate the outstanding ending balance for each day in a billing cycle for each Balance Category. 1. Start with the beginning balance. (This is the ending balance of the previous day plus an amount equal to the previous day's ending balance multiplied by the daily periodic rate for that Balance Category.) 2. Add new transactions and fees. 3. Subtract payments, credits, or credit adjustments. 4. Which equals the ending balance for that day. B. We next calculate the average daily balance for each Balance Category. To do that, we add all your daily ending balances for each Balance Category for a billing cycle and then divide it by the number of days in the billing cycle. C. We next multiply your average daily balance for each Balance Category by its daily periodic rate. After that, we multiply that result by the number of days in the billing cycle. This will be the interest charge for that Balance Category except for minor differences due to rounding. For purposes of these calculations, we treat credit balances as a zero balance. This Agreement results in the daily compounding of interest, finance charges, and fees.
How this information will appear on statements.	On your statement in the "Charge Summary" section, (a) the average daily balance for each Balance Category will be listed under the "Balance Subject to Interest Rate" column; and (b) the interest charges for each Balance Category will be listed under the "Interest Charge" column. All of the interest charges will be totaled on your statement and listed as the "Total Interest".
Minimum Interest Charge.	If your account is subject to interest charges in a billing cycle and those interest charges are less than the Minimum Interest Charge listed in the Schedule, you will be charged the Minimum Interest Charge. Under law, the Minimum Interest Charge is treated as a fee. If the Minimum Interest Charge is charged, all the below will apply: (a) It will appear under the "Fees" section of your statement. (b) We will add it to the Balance Category we select. (c) You will not be charged other interest charges for that statement.
Active duty military members.	IMPORTANT NOTICE REGARDING THE MILITARY LENDING ACT THAT ONLY APPLIES TO NEW ACCOUNTS OPENED AFTER OCTOBER 2, 2017. The additional disclosures in this part below apply to you if, at the time you open your account, any of the below apply (see 32 C.F.R. pt. 232): (1) You are a member of the U.S. armed forces on active duty under a call or order not specifying a period of 30 days or less; (2) You are an active Guard or Reserve; or (3) You are a spouse or dependent of a person who qualifies under (1) or (2). Federal law provides important protections to members of the armed forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the armed forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account). You may contact us at 1-855-809-8524 to listen to these disclosures and information about payments.

10 Other fees.

Annual fee	If your account has an annual fee, it is listed in the Schedule. This fee will be added to your Purchases Balance Category once per year until your account is closed and paid in full.
Monthly fee	If your account has a monthly fee, it is listed in the Schedule. This fee will be added to your Purchases Balance Category every billing cycle until your account is closed and paid in full.
Foreign transaction fee	We may charge a foreign transaction fee on any transaction you make (a) in currencies other than U.S. dollars; (b) with any merchant located in a country or territory outside of the United States (it does not matter if the transaction is charged in foreign currency or in U.S. dollars); or (c) while you are located outside the United States. The amount of this fee is listed in the Schedule. This fee will be determined after the transaction is converted to U.S. dollars.
Late fee	We may charge a late fee for every minimum payment we do not receive by its due date. The maximum amount of the late fee is listed in the Schedule. The amount of this fee depends on your account balance and how many other times a payment was late in the last 6 billing cycles.
Returned payment fee (payment dishonored fee)	We may charge a returned payment fee for every payment which is not honored, is returned unpaid, or cannot be processed. The maximum amount of the returned payment fee is listed in the Schedule. The amount of this fee depends on your account balance and how many other times a payment has not been honored, has been returned unpaid, or was not able to be processed in the last 6 billing cycles.
Stop payment fee	We may charge a stop payment fee in the amount listed in the Schedule for any (a) payment you ask us to stop or cancel on your account; or (b) check or other device that we provided to you which you ask us to stop payment on. The amount of this fee is listed in the Schedule.
Copy fee	If you ask for a copy of any document related to your account, we may charge a fee for each copy. Documents would include sales drafts and statements. The amount of this fee is listed in the Schedule.
Custom card design fee	We may charge a card design fee for every custom card design that you request. We will tell you the amount of this fee at the time you ask for a custom card design.
Expedited card fee	We may charge a fee for the expedited delivery of cards. We will tell you the amount of this fee at the time you ask for expedited delivery of cards.
Expedited payment fee	We may charge a fee if you ask for an expedited payment that involves help from a customer service representative. We will tell you the amount of this fee at the time you ask for an expedited payment.
ATM surcharge	If you use an ATM with your account, the ATM operator may charge a fee or surcharge. This third party fee or surcharge will be charged to your account.
How the fees are applied	We add the fees listed in this section to the Balance Category we select (unless we tell you differently).

11 Foreign currency conversion.

Transactions made in currencies other than U.S. dollars will be converted to U.S. dollars under the regulations of Visa®, Mastercard®, or the Visa®/Plus® ATM Network. Those regulations currently provide that the conversion rate may be either (1) a wholesale market rate; or (2) a government-mandated rate. Visa® and Mastercard® currently use the rate in effect on the date they process your transaction. The Visa®/Plus® ATM Network currently uses the rate in effect on the transaction date. The currency conversion rate in effect on the date your transaction is processed may differ from the rate in effect on the transaction date or the posting date.

12 Checks and other devices.

- We may send you checks or other devices to use with your account. You may not use these checks or other devices to make payments on this or any other account you have with us.
- Each check or device you use will be treated as a cash advance and charged the cash advance fee (unless we tell you otherwise).
- You may ask us to stop payment on any check or device you use. We must receive your request before the check or device is presented to us. Even if you ask us to stop payment, we may still not stop the payment. If you ask us to stop payment, we may charge a stop payment fee.

13 Immediate payment.

- We may require you to immediately pay all balances on your account if:
  1. You do not make a minimum payment to us when due;
  2. You exceed your credit limit;
  3. You make a payment to us that is not honored;
  4. You die or become insolvent;
  5. You give us false or misleading information;
  6. A bankruptcy, insolvency, receivership, liquidation, or similar proceeding is filed by or against you;
  7. You are not paying or have announced that you will not pay your debts as they come due;
  8. You breach any note, loan agreement, or other obligation for borrowed money to which you are a party;
  9. A material adverse change occurs in your financial or other condition;
  10. You violate this Agreement or any other agreement you make with us; or
  11. We have reason to doubt your ability to repay us.
- We may still require immediate payment of all balances even if we accept a payment from you after one of the events listed above happens.

14 Closing or suspending your account.

We may at any time and for any reason (a) terminate this Agreement; (b) close your account; or (c) suspend your ability to make new transactions on your account. If we do any of those things, each may be done without providing you notice before it happens. You must still fulfill all your duties under the Agreement (including payment of all balances on your account).

15 Changes to your account terms.

We may change the terms of your account and this Agreement if the law allows us. This may include changes to your APRs, fees, and all other terms. We will inform you of any changes and also give you an opportunity to reject them as required by law. If we make any changes, they will be effective even if you don't use the account after they are effective or you don't expressly accept them.

16 How we will contact you about your account.

Phone and email contact	We may call or email you (using live operators, automatic dialing devices, or recorded messages) at home or work and those calls or emails will not be considered unsolicited. If you provide a cell phone number to us, either on the application or to a customer service representative, or if you place a cell phone call to us, you agree that we may contact you (including for collection purposes) at that cell phone number. We may monitor or record any calls we make or receive. If you provide us with an email address, either on the application or to a customer service representative, or if you send us an email, you agree that we may contact you (including for collection purposes) at that email address.
Changes to mailing address	You agree to notify us of any change in your mailing address at least ten days before it changes.
Credit bureaus and information from third parties	We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. We may make inquiries of other persons in connection with maintaining and collecting on your account and you authorize such other persons to release information about you to us.

17 Arbitration and class action waiver.

IMPORTANT NOTICE REGARDING THE MILITARY LENDING ACT THAT ONLY APPLIES TO NEW ACCOUNTS OPENED AFTER OCTOBER 2, 2017.
This section 17 will not apply to you if, at the time you open your account, any of the below apply (see 32 C.F.R. pt. 232):
(1) You are a member of the U.S. armed forces on active duty under a call or order not specifying a period of 30 days or less;
(2) You are an active Guard or Reserve; or
(3) You are a spouse or dependent of a person who qualifies under (1) or (2).

Definitions of terms for use in this section only.

- "AAA" means the American Arbitration Association.
- "AAA Rules" means the relevant AAA arbitration rules and procedures in effect when the arbitration on the Claim is filed.
- "Administrator" means the entity that will conduct any arbitration.
- "Arbitrator" means the person(s) chosen by you and us to hear and decide any arbitration.
- "Claim" means any claim or dispute that any way relates to or affects:
  - Your account;
  - The Agreement;
  - The solicitation for your account; or
  - The actions or omissions of you, us, or Our Related Parties related to or affects your account or Agreement.

  A Claim also includes, but is not limited to, any Claim (a) based on contract, tort (including intentional tort); (b) based on constitutional, statutory, regulatory, or common law rights; (c) made in law or in equity; (d) for damages or penalties; or (e) for injunctive, declaratory, or equitable relief.
- "Class Proceedings" means any court action or arbitration where a Claim is or Claims are brought:
  - By or on behalf of a class or group;
  - In a representative capacity or otherwise on a class basis; or
  - In the form of a private attorney general action.
- "FAA" means the Federal Arbitration Act, 9 U.S.C. §§ 1 through 16, as amended.
- "Our Related Parties" mean any of the following people:
  - Our affiliated third parties such as our parent, subsidiaries, and affiliates;
  - Our unaffiliated third parties that provide any products, services, marketing, or benefits in connection with your account; and
  - The officers, directors, agents, employees, and assigns of us, our affiliated third parties, and our unaffiliated third parties.
- "Ordinary Claim" means a Claim that meets (1) or (2) or both below.
  (1) A Claim where all of the following are met:
    (a) The only remedy sought for the Claim is monetary damages;
    (b) The recovery sought for the Claim is less than $25,000 excluding interest and costs; and
    (c) The only parties to any action to resolve the Claim will be you, us and/or Our Related Parties.
  (2) Any individual Claim filed in small claims court within its jurisdiction, as long as the Claim remains in that court.
- "Rules" means the relevant arbitration rules and procedures of the Administrator in effect when the arbitration on the Claim is filed.
- "you" or "your" mean you and Your Related Parties.
- "Your Related Parties" mean any of the following people:
  - Any co-applicant, joint cardmember, authorized user, or guarantor on your account;
  - Your heirs; and
  - Your trustee in bankruptcy.

Notice of Claims.

- Prior to filing a court action or arbitration against you on a Claim, we must give you written notice of that Claim. That notice must list the amount of the Claim. If our Claim is based on your failure to pay, sending you a statement fulfills the notice requirement.
- Prior to filing a court action or arbitration against us on a Claim, you must give us written notice of that Claim. That notice must list the amount of the Claim.

Limits on Claims.

- CLASS ACTION WAIVER. You and we both agree, to the fullest extent allowed by law, to all of the following (the "Class Action Waiver"):
  - Claims will not under any circumstances be pursued in Class Proceedings;
  - We waive the right to bring or to participate in Class Proceedings against you;
  - You waive the right to bring or to participate in Class Proceedings against us;
  - If some other person initiates a Class Proceeding against you, we may not and will not join that proceeding or participate as a member of that class; and
  - If some other person initiates a Class Proceeding against us, you may not and will not join that proceeding or participate as a member of that class.

Arbitration Provision (this "provision").

- THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY.
- WITH LIMITED EXCEPTIONS, THIS ARBITRATION PROVISION ALLOWS EITHER PARTY TO REQUIRE THAT ANY "CLAIM" BE RESOLVED BY BINDING ARBITRATION.
- ARBITRATION REPLACES THE RIGHT TO GO TO COURT AND TO HAVE A CLAIM DETERMINED BY A JURY. OTHER RIGHTS YOU MAY HAVE IN COURT, SUCH AS DISCOVERY OR APPEAL RIGHTS, MAY NOT BE AVAILABLE OR MAY BE MORE LIMITED IN ARBITRATION. EXCEPT AS PROVIDED BELOW, THOSE OTHER RIGHTS ARE WAIVED.
- YOU WILL NOT BE ABLE TO DO THESE TWO THINGS (IN COURT OR IN ARBITRATION): (1) BRING A CLAIM AS A CLASS ACTION OR IN A REPRESENTATIVE CAPACITY; OR (2) PARTICIPATE IN A CLAIM AS A CLASS MEMBER.
- Except as otherwise provided in this provision, you and we agree to all of the following:
  - You may choose to have any Claim we bring against you be resolved through binding arbitration;
  - We may choose to have any Claim you bring against us be resolved through binding arbitration;
  - We may choose to have any Claim you bring against us and any of Our Related Parties be resolved through binding arbitration;
  - Our Related Parties may choose to have any Claim you bring only against them and not us be resolved through binding arbitration; and
  - If a court action is filed, the party that filed it may choose to have any counterclaim, cross-claim, or third party claim brought in that action be resolved through binding arbitration.
- If a party chooses to have a Claim be resolved by arbitration, neither you or we will have the right to do any of the following:
  - Litigate that Claim in court;
  - Have a jury trial on that Claim; or
  - Engage in pre-arbitration discovery, except as provided in the Rules or AAA Rules, as applicable.
- Ordinary Claims are not subject to this provision. Ordinary Claims may be resolved through court action.
- Arbitrations shall be conducted through an Administrator unless one is not available. The Administrator shall be a national arbitration organization with significant experience in financial and consumer disputes. If multiple exist, the Administrator will be the one you and we mutually agree upon. If none exist, the arbitration shall be conducted through an Arbitrator without an Administrator.

17 Arbitration and class action waiver (continued).

Arbitration Provision (this "provision"). (continued)

- The Arbitrator must be impartial and neutral. The Arbitrator must also be either a lawyer with at least ten years of experience or a retired judge.
- For arbitrations with an Administrator, all of the below will apply:
  - Arbitrations shall be conducted according to the Rules;
  - The Administrator will provide a listing of possible persons to hear and decide the arbitration; and
  - The person(s) you and we mutually agree upon from that listing will be the Arbitrator.
- For arbitrations without an Administrator, all of the below will apply:
  - Arbitrations shall be conducted according to the AAA Rules;
  - The Arbitrator shall take the place of AAA in the AAA Rules; and
  - The person(s) you and we mutually agree upon will be the Arbitrator.
- Arbitrations will be filed in accord with the Rules or AAA Rules, as applicable.
- You or we may choose to have an arbitration hearing. Any hearing will take place in the federal judicial district where you live when the arbitration is filed. You and we may also agree upon a different location.
- You and we may be represented by counsel in any arbitration.
- The Arbitrator shall have no authority to award punitive damages.
- The decision of the Arbitrator will be final and binding. Any final decision of the Arbitrator is subject to judicial review only as set forth by the Federal Arbitration Act. The Arbitrator shall issue a written decision. Judgment upon an award of the Arbitrator may be entered in any court with jurisdiction.
- Any dispute as to whether a claim or dispute is a Claim shall be resolved solely by the Arbitrator except:
  - As noted below for Class Proceedings; and
  - A court will decide whether a Claim is an Ordinary Claim.
- An arbitration pursuant to this provision may decide only your Claims, our Claims, or Claims of Our Related Parties. The Arbitrator shall have no authority to entertain or determine Class Proceedings. If the Arbitrator decides they have authority to entertain or determine any Claim brought in a Class Proceeding, that decision may be appealed to a court of competent jurisdiction. If, despite this Agreement, Class Proceedings are allowed, those proceedings shall be conducted only in a court of competent jurisdiction. The claims of other persons who may (or may not) have similar claims may not be consolidated with any Claim. No arbitration will be consolidated with any other arbitration proceeding without the consent of all parties. The only Claims that may be joined under this provision are (1) those brought by us and Our Related Parties against you and Your Related Parties; or (2) those brought by you and Your Related Parties against us and Our Related Parties.
- If you file a good faith individual arbitration under this provision, we will reimburse you the initial filing fee up to $350. All other fees will be divided in keeping with applicable law and either the Rules or AAA Rules, as applicable. We will also reimburse other fees if the Arbitrator determines there is good reason or we determine there is good cause to do so. Each party will bear the expense of the fees and costs of their own attorneys, experts, witnesses, documents, and other expenses, no matter who prevails.
- If the Rules or AAA Rules are inconsistent with this provision, this provision will prevail.
- If any portion of this provision is found to be not enforceable, that portion will be severed and the rest of this provision will remain in effect. However, if the Class Action Waiver is held to be invalid with respect to any Class Proceeding, the entire provision shall be null and void.
- The terms of this arbitration provision shall survive all of the below events:
  - The repayment of your account;
  - Changes to your account or Agreement (see the "Changes to your account terms section");
  - Our assignment of your account;
  - Issuance of replacement accounts or cards;
  - The closing of your account; and
  - The bankruptcy or similar action by you or us.
- This provision is made in connection with a transaction involving interstate commerce. It shall be governed by and enforceable under the FAA. The Arbitrator shall do all the following:
  - Apply applicable substantive law consistent with the FAA, National Bank Act and agency regulations;
  - Apply applicable statutes of limitations; and
  - Honor claims of privilege recognized at law.

18 Other terms

Benefits and Rewards.	Your account may have additional rewards or benefits we or a third party provide. If it does, they will be explained in separate documents which include rewards terms and conditions or benefits guides. Any benefits or rewards are subject to change or termination without notice. If there is a rewards membership fee, it will be listed in your separate rewards terms document and added to your account as a purchase. Third parties may provide or own the benefits or rewards on your account and we are not responsible for their actions.
Assignment.	You may not transfer your account or your rights or obligations under this Agreement. We may transfer all or part of your account balance and account along with our rights and obligations under this Agreement to another person or entity.
Governing Law.	The interpretation and enforcement of this Agreement and your account will be governed in accordance with federal law and, to the extent state law applies, Nebraska law, regardless of conflict of law principles.
Notices.	Any notice we mail to you (including on or with a statement) will be considered given when we put in the U.S. mail addressed to the address we have for you. Any notice we send to you in electronic form is considered given when we send it to you at the most recent electronic address we have for you.
Waiver.	If we do not exercise or we delay exercising any right under this Agreement, we can still exercise those rights later.
Actions.	We may take or not take certain actions that benefit you at times and which are not required by this Agreement or law. If we do, such actions (a) can be stopped at any time; and (b) will not add to our obligations to you under this Agreement and will not constitute a course of conduct.
Entire Agreement.	This Agreement replaces any prior communications between you and us.
Severability.	If any term of this Agreement is found to violate any applicable law, that term will be deemed changed to comply with such law. Any invalid or unenforceable term of this Agreement will not affect whether any other term is valid or enforceable.
Headings.	The section and paragraph headings and summaries are provided for convenience purposes only.

19 Billing Rights:

We want to outline your billing rights if you have an item you want to dispute on any statement or if you are dissatisfied with any purchases made with your account:

YOUR BILLING RIGHTS
KEEP THIS NOTICE FOR FUTURE USE

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on Your Statement

If you think there is an error on your statement, write to us at:

First National Bank of Omaha
P.O. Box 3696
Omaha, NE 68103-0696

In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after we send you the first statement on which the error or problem appeared.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- If we made a mistake: You will not have to pay the amount in question or any interest or other fees related to that amount.
- If we do not believe there was a mistake: You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

  If you receive our explanation but still believe your bill is wrong, you must write to us within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.
3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at:

First National Bank of Omaha
P.O. Box 3696
Omaha, NE 68103-0696

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

20 Liability for unauthorized use

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at

P.O. Box 3696
Omaha, NE 68103-0696

or call us at 1-800-668-7070. You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed $50.

Electronically Filed by Superior Court of California, County of Orange, 10/21/2022 10:53:00 AM.
30-2022-01271693-CL-CL-CJC - ROA # 41 - DAVID H. YAMASAKI, Clerk of the Court By N. Strom, Deputy Clerk.

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Donald T. Dunning (144665)
James MacLeod (249145)
THE DUNNING LAW FIRM APC
9619 Chesapeake Dr., Suite 210
San Diego, CA 92123
TELEPHONE NO.: (858) 974-7600 FAX NO. (Optional): (858) 974-7601
E-MAIL ADDRESS (Optional): JMacleod@DunningLaw.com
ATTORNEY FOR (Name): Plaintiff FIRST NATIONAL BANK OF OMAHA

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
STREET ADDRESS: 700 CIVIC CENTER WEST
MAILING ADDRESS: SAME
CITY AND ZIP CODE: SANTA ANA CA 92701
BRANCH NAME: CENTRAL JUSTICE CENTER

PLAINTIFF/PETITIONER: FIRST NATIONAL BANK OF OMAHA, a National Banking Association
DEFENDANT/RESPONDENT: ADAM BEREKI, an individual

REQUEST FOR DISMISSAL

CASE NUMBER: 30-2022-01271693-CL-CL-CJC

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please dismiss this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* DOES 1-5

2. *(Complete in all cases except family law cases.)*
   The court ☐ did ☒ did not waive court fees and costs for a party in this case. *(This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).*

Date: October 20, 2022
James MacLeod (249145)
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

THE DUNNING LAW FIRM APC
(SIGNATURE)
Attorney or party without attorney for:

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**
   Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)
(SIGNATURE)
Attorney or party without attorney for:

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

(To be completed by clerk)
4. ☒ Dismissal entered as requested on *(date)*: 10/21/2022
5. ☐ Dismissal entered on *(date)*: as to only *(name)*: 10/21/2022
6. ☐ Dismissal not entered as requested for the following reasons *(specify)*:

7. a. ☐ Attorney or party without attorney notified on *(date)*:
   b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to be conformed ☐ means to return conformed copy

Date: 10/21/2022
DAVID H. YAMASAKI, Clerk of the Court
Clerk, by N. Strom, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. Jan. 1, 2013]

REQUEST FOR DISMISSAL

Legal Solutions Plus

Code of Civil Procedure, § 581 et seq.;
Gov. Code, § 68637(c); Cal. Rules of Court, rule 3.1390

PLAINTIFF/PETITIONER: FIRST NATIONAL BANK OF OMAHA, a National Banking Association DEFENDANT/RESPONDENT: ADAM BEREKI, an individual	CASE NUMBER: 30-2022-01271693-CL-CL-CJC

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover $10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*: N/A
2. The person named in item 1 is *(check one below)*:
   a. ☐ not recovering anything of value by this action.
   b. ☐ recovering less than $10,000 in value by this action.
   c. ☐ recovering $10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. ☐ All court fees and court costs that were waived in this action have been paid to the court *(check one)*: ☐ Yes ☐ No

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

Date: _____

_____ ▶ N/A

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY MAKING DECLARATION) (SIGNATURE)

Gmail Adam Bereki <abereki@gmail.com>

Declaration in Support of Default FBNO v. Bereki

Adam <abereki@gmail.com> Mon, Oct 24, 2022 at 12:16 PM
To: James Macleod <Jmacleod@dunninglaw.com>

Hi James,

I reviewed the Court's docket today and saw you filed a Declaration in Support of Default. I have not received service of that filing. Could you please email me a copy.

Thank you,

Adam Bereki
949 241 6693

James Macleod <jmacleod@dunninglaw.com> Mon, Oct 24, 2022 at 12:21 PM
To: Adam <abereki@gmail.com>

Dear Mr. Bereki,

Everything we have sent out has been served via mail. We do not e-mail for your protection. You should have what we mailed you soon.

Very Truly Yours,

donlogo4

James MacLeod

The Dunning Law Firm

9619 Chesapeake Dr., Suite 210

San Diego CA 92123

Tel. 858-974-7600

Fax. 858-974-7601

This firm is a Debt Collector under the Fair Debt Collections Practices Act. If you are a debtor, this can be considered a communication from a debt collector and any information may be used to collect that debt.

If you do not wish to receive emails from The Dunning Law Firm APC, please reply STOP or send an email to this email address with the subject line, "STOP".

Email is covered by the Electronics Privacy Act, 18 U.S.C. §§2510-2521, and is legally privileged. The information transmitted herewith is sensitive information intended only for use by the individual or entity to which it is addressed. It may also be protected communication under the Attorney/Client, and/or other privilege(s). If the reader of this message is not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying or other use of, or taking of any action in reliance upon this information is strictly prohibited. If you have received this communication in error, please contact the sender and delete the material from your computer.

Adam Bereki <abereki@gmail.com> Thu, Oct 27, 2022 at 1:20 PM
To: James Macleod <jmacleod@dunninglaw.com>

James, I still have not received these documents. Please email them to me as requested.

Thank you.

Adam.

> On Oct 24, 2022, at 12:21 PM, James Macleod <jmacleod@dunninglaw.com> wrote:
>
> Dear Mr. Bereki,
>
> Everything we have sent out has been served via mail. We do not e-mail for your protection. You should have what we mailed you soon.
>
> Very Truly Yours,
>
> DUNNING LAW FIRM

James Macleod <jmacleod@dunninglaw.com> Thu, Oct 27, 2022 at 1:57 PM
To: Adam Bereki <abereki@gmail.com>

Dear Mr. Bereki,

I do not believe that you have not received the documents via mail. We will not be e-mailing any documents. Has your address changed? The documents mailed to you have not been returned. We need to be able to send things to you via mail. If and when the documents are returned for being undeliverable, we will send them to you again. Your default has been entered and you are not before the Court. Your fee waiver was denied. You know how the system works and you can obtain the documents from the Court if you need them sooner than when the mail delivers them to you. Thank you.

Very Truly Yours,

DUNNING
LAW FIRM

The Dunning Law Firm

9619 Chesapeake Dr., Suite 210

San Diego CA 92123

Tel. 858-974-7600

Fax. 858-974-7601

This firm is a Debt Collector under the Fair Debt Collections Practices Act. If you are a debtor, this can be considered a communication from a debt collector and any information may be used to collect that debt.

If you do not wish to receive emails from The Dunning Law Firm APC, please reply STOP or send an email to this email address with the subject line, "STOP".

Email is covered by the Electronics Privacy Act, 18 U.S.C. §§2510-2521, and is legally privileged. The information transmitted herewith is sensitive information intended only for use by the individual or entity to which it is addressed. It may also be protected communication under the Attorney/Client, and/or other privilege(s). If the reader of this message is not the intended recipient, you are hereby notified that any review, retransmission, dissemination, distribution, copying or other use of, or taking of any action in reliance upon this information is strictly prohibited. If you have received this communication in error, please contact the sender and delete the material from your computer.

Adam <abereki@gmail.com> Thu, Oct 27, 2022 at 2:32 PM
To: James Macleod <jmacleod@dunninglaw.com>

James,

I have given you no grounds to not believe me, nor have you provided any reason to doubt my statements. I have repeatedly informed you that I have not received the documents and that it is a financial hardship for me to continue to spend money for these types of expenses that are completely unnecessary. No, my address has not changed. Please kindly email them so that I do not have to incur any further expenses. I have a right to the documents by law and am telling the truth that I have not received them. I checked the mail again today and they were not there.

James Macleod <jmacleod@dunninglaw.com> Thu, Oct 27, 2022 at 2:39 PM
To: Adam <abereki@gmail.com>

Dear Mr. Bereki,

Again, your fee waiver was denied. We will only resend the documents to you if they have been returned by the Post Office. For the last time, we will not e-mail the documents to you.

Very Truly Yours,

THE DUNNING LAW FIRM A PROFESSIONAL CORPORATION

James MacLeod

The Dunning Law Firm

9619 Chesapeake Dr., Suite 210

San Diego CA 92123

Tel. 858-974-7600

Fax. 858-974-7601

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Superior Court of California
County of Orange

CHAMBERS OF
LAYNE H. MELZER
SUPERVISING JUDGE OF THE CIVIL PANEL
Department C12

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92701
PHONE: (657) 622-5212

October 31, 2022

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626

RE: Adam Alan Bereki Judicial Complaint against Judge David Chaffee, OCSC Case No. 00805807 (8/16/22)

Dear Mr. Bereki:

Your recent Complaint directed to our Presiding Judge has been forwarded to my attention as the Supervising Judge for the Civil Panel.

Your Complaint relates to a 2017 judgment against you for $848,000 in restitution that followed a bench trial before Judge David Chaffee. Your Complaint indicates this judgment has had a severe impact upon your finances. You ask that the Presiding Judge take various actions designed to inhibit the implementation of the judgment. Among other things you ask for an "emergency stay" of a pending foreclosure and issuance of an "injunction" against, or an order vacating, the judgment. I have investigated your Complaint and offer the following response.

Let me begin by saying that I appreciate the difficulties you are experiencing as a result of the underlying 2017 judgment. I also am sympathetic to the challenges someone in your position faces in dealing with the various substantive and procedural complexities involved in your case. The law is difficult to navigate even for those with legal training. It is certainly even more daunting for someone in your position, who is now representing himself.

Unfortunately, no other Superior Court judge has the authority to effect the remedies you seek by way of your Complaint.

This is not to minimize your frustration with the process. And I understand fundamentally you disagree with the rulings and decision of Judge Chaffee.

However, each judicial officer of the court exercises independent judicial authority, and no judge – even judges who exercise some degree of supervisory authority – has the authority to review, overrule, intervene in, or otherwise affect the outcome of any matter proceeding before another judicial officer. As such, neither the Presiding Judge nor I are in a position to interject ourselves in your case and reverse any decision made.

Your remedy, if you object to any particular ruling or decision, is to seek to have the involved Judge change the ruling or to take an appeal. In this case you in fact did take an appeal. Part of the frustration you express in your Complaint is that this appeal was unsuccessful. The Court of Appeal, instead of reversing the judgment, affirmed Judge Chaffee's ruling. Recognizing some of the concerns you have expressed, the Court of Appeal acknowledged the harshness of disgorgement as a remedy but nonetheless concluded it was constrained by the legislature from doing anything other than affirm the judgment:

> "***We recognize that the provisions of section 7031, including the disgorgement remedy, are harsh and may be perceived as unfair***. As courts have explained, however, they stem from policy decisions made by the Legislature. 12 (MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc. (2005) 36 Ca1.4th 412, 423; Hydrotech Systems, Ltd. v. Oasis Waterpark (1991) 52 Ca1.3d 988, 995; Lewis & Queen v. N. M Ball Sons (1957) 48 Ca1.2d 141, 151; see Judicial Council of California v. Jacobs Facilities, Inc. (2015) 239 Ca1.App.4th 882, 896; Alatriste, supra, 183 Cal.App.4th at p. 672.) "[T]he choice among competing policy considerations in enacting laws is a legislative function" (Coastside Fishing Club v. California Resources Agency (2008) 158 Cal.App.4th 1183, 1203), and absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute. (Marine Forests Society v. California Coastal Com. (2005) 36 Ca1.4th 1, 25; Alatriste, supra, 183 Cal.App.4th at p. 672.)"

After entry of the order from the Court of Appeal, you then filed a motion to vacate the judgment in this case. In that motion, similar to the request made in your current Complaint, you asked a different Superior Court judge (then Supervising Judge James Di Cesare) to likewise "vacate the void judgment" entered by Judge Chafee. In his order back in 2019, Judge Di Cesare explained that he had no jurisdiction to alter the underlying judgment in this case:

> "The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. The arguments presented on this motion were already raised and rejected, and the appellate decision affirming the underlying judgment on the merits is now final. Upon remittitur, the trial court is revested with jurisdiction of the case only to carry out the judgment as ordered by the appellate court. (People v. Dutra (2006) 145 Cal.App.4th 1359, 1365-1366.) Arguments on the merits of the underlying judgment cannot be entertained anew here. The Motion is therefore Denied"

Unfortunately, therefore, this Court is powerless to afford you the relief you have requested. The judgment has been affirmed on appeal. Your motion to vacate has been denied. The judgment is therefore final. You may have other legal remedies available to you, but it is clear that the Court cannot take the action you request, particularly in response to a judicial Complaint.

The Court remains committed to assuring that all litigants are afforded due process and have equal access to justice. Even if you disagree with this explanation, I trust you will appreciate that your concerns were heard and investigated.

Sincerely,

Layne H. Melzer
Supervising Judge

22-25/LM:pg

Chambers of the Superior Court
LAYNE H. MELZER, SUPERVISING JUDGE
700 CIVIC CENTER DRIVE WEST
P.O. BOX 1994
SANTA ANA, CA 92702-1994

SANTA ANA CA 926
1 NOV 2022 PM 4 L

Hasler FIRST-CLASS
10/31/2022
US POSTAGE $000.57⁰
ZIP 92701
011D12603745

Mr. Adam Bereki
818 Spirit
Costa Mesa, CA 92626

92626-308818

EXHIBIT [D] p. 5506

HUGH NGUYEN
CLERK-RECORDER

BIRTH AND DEATH RECORDS
FICTITIOUS BUSINESS NAMES
MARRIAGE LICENSES/RECORDS
NOTARY REGISTRATION
ORANGE COUNTY ARCHIVES
PASSPORTS
PROPERTY RECORDS

NOTICE

RE: AB 1466 - Real property: discriminatory restrictions

In 2021, the California Legislature amended Section 12956.1 of the Government Code, related to the removal of discriminatory restrictions which may be contained in real property documents.

A county recorder, title company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person is required to place a cover page or stamp on the first page of the previously recorded document or documents stating the following:

"If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

The Orange County Clerk-Recorder is committed to assisting the public in the removal of unlawful discriminatory restrictions from property records. Please contact our office for assistance in completing a Restrictive Covenant Modification form.

NORTH COUNTY BRANCH OFFICE
WELLS FARGO BUILDING
222 S. HARBOR BLVD., STE 110
ANAHEIM, CALIFORNIA 92805

ORANGE COUNTY
COUNTY ADMINISTRATION SOUTH
601 N. ROSS STREET
SANTA ANA, CALIFORNIA 92701

OLD ORANGE COUNTY
COURTHOUSE
211 W. SANTA ANA BLVD. ROOM 201
SANTA ANA, CALIFORNIA 92701

SOUTH COUNTY BRANCH OFFICE
LAGUNA HILLS CIVIC CENTER
24031 EL TORO ROAD, SUITE 150
LAGUNA HILLS, CALIFORNIA 92653

(714) 834-2500 • FAX (714) 834-2675 • WWW.OCRECORDER.COM • WWW.OCARCHIVES.COM

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

85.00

* $ R 0 0 1 4 0 3 6 9 3 6 $ *

2022000349697 8:41 am 10/31/22

9 RW9A N34 2

0.00 0.00 0.00 0.00 3.00 0.00 0.000.0075.00 0.00

RECORDING REQUESTED BY
Prestige Default Services, LLC

AND WHEN RECORDED MAIL TO:
Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, California 92705
Phone: 949-427-2010

SPACE ABOVE THIS LINE FOR RECORDER'S USE

T.S. No.: **22-7030** Loan No.: ********1091**
APN: **141-513-55**

NOTICE OF TRUSTEE'S SALE

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED
注：本文件包含一个信息摘要
참고사항: 본 첨부 문서에 정보 요약서가 있습니다
NOTA: SE ADJUNTA UN RESUMEN DE LA INFORMACIÓN DE ESTE DOCUMENTO
TALA: MAYROONG BUOD NG IMPORMASYON SA DOKUMENTONG ITO NA NAKALAKIP
LƯU Ý: KÈM THEO ĐÂY LÀ BẢN TRÌNH BÀY TÓM LƯỢC VỀ THÔNG TIN TRONG TÀI LIỆU NÀY

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 7/1/2005. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly appointed trustee as shown below, of all right, title, and interest conveyed to and now held by the trustee in the hereinafter described property under and pursuant to a Deed of Trust described below. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal sum of the note(s) secured by the Deed of Trust, with interest and late charges thereon, as provided in the note(s), advances, under the terms of the Deed of Trust, interest thereon, fees, charges and expenses of the Trustee for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

Trustor: **ADAM BEREKI, A SINGLE MAN**
Duly Appointed Trustee: **Prestige Default Services, LLC**
Recorded **7/7/2005** as Instrument No. **2005000525690** of Official Records in the office of the Recorder of **Orange** County, California,
Date of Sale: **12/12/2022** at **3:00 PM**
Place of Sale: **On the front steps to the entrance of the Orange Civic Center, 300 E. Chapman Avenue, Orange, CA 92866**
Amount of unpaid balance and other charges: **$501,512.84**
Street Address or other common designation of real property: **818 SPIRIT COSTA MESA California 92626**

A.P.N.: **141-513-55**

EXHIBIT [D] p. 5508

The undersigned Trustee disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above. If no street address or other common designation is shown, directions to the location of the property may be obtained by sending a written request to the beneficiary within 10 days of the date of first publication of this Notice of Sale.

NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder's office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property. **All checks payable to Prestige Default Services, LLC.**

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call (877) 518-5700 or visit this Internet Web site www.realtybid.com, using the file number assigned to this case 22-7030. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.

NOTICE TO TENANT: You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer," you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call (877) 518-5700, or visit this internet website www.realtybid.com, using the file number assigned to this case 22-7030 to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase.

Date: 10/26/2022

Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, California 92705
Questions: 949-427-2010
Sale Line: (877) 518-5700

Patricia Sanchez, Trustee Sale Officer

EXHIBIT [D] p. 5509

Certified Copy of document number 20220034697

THIS IS A CERTIFIED COPY OF THE RECORD IF IT BEARS THE SEAL, AND SIGNATURE OF THE ORANGE COUNTY CLERK-RECORDER.

DATE: 11/03/2022

CERTIFICATION FEE: 3.00

COUNTY CLERK-RECORDER

Hugh Nguyen

ORANGE COUNTY
STATE OF CALIFORNIA

Gmail Adam Bereki <abereki@gmail.com>

Re: [EXTERNAL] Request For Complaint Information/ Adam Bereki Complaint 081622

5 messages

Adam <abereki@gmail.com> Tue, Aug 16, 2022 at 4:45 PM
To: PIO <pio@occourts.org>

Hi Kostas,

My complaint to the Court is attached. Could you please ensure that it makes it to the appropriate officials.

Thank you so much for your help.

Sincerely,

Adam

On Tue, Aug 16, 2022 at 3:01 PM Adam Bereki <abereki@gmail.com> wrote:

> Thank you so kindly for your help.
>
> > On Aug 16, 2022, at 2:11 PM, PIO <pio@occourts.org> wrote:
> >
> > Hi Adam,
> >
> > Please find the information you request at this link under "SUGGESTIONS & COMPLAINTS" The Superior Court of California - County of Orange (occourts.org)
> >
> > Thanks,
> >
> > Kostas
> >
> > **From:** Adam <abereki@gmail.com>
> > **Sent:** Tuesday, August 16, 2022 1:35 PM
> > **To:** PIO <PIO@occourts.org>
> > **Subject:** [EXTERNAL] Request For Complaint Information

Hi Kostas,

Could you please send me any information on how to make a complaint against a specific judge for acting without authority/violating the California Constitution and US Constitution?

Thank you

Adam

********** THIS MESSAGE IS FROM AN EXTERNAL SENDER. **********

Adam Bereki Complaint 081622.pdf
583K

Adam <abereki@gmail.com> Thu, Sep 8, 2022 at 9:15 AM
To: PIO <pio@occourts.org>

Good Morning Kostas,

I never received acknowledgment that you received my complaint. Could you please confirm your receipt and that you delivered it to the proper officials?

Thank you for your help and continued commitment to be of service.

Sincerely,

Adam Bereki

Adam Bereki Complaint 081622.pdf
583K

PIO <PIO@occourts.org> Thu, Sep 8, 2022 at 9:19 AM
To: Adam <abereki@gmail.com>

Hi Adam,

Your complaint was received and it is being processed.

Adam <abereki@gmail.com> Thu, Sep 8, 2022 at 9:20 AM
To: PIO <PIO@occourts.org>

Thank you kindly. I hope you have a nice day.

Adam <abereki@gmail.com> Thu, Oct 27, 2022 at 4:40 PM
To: PIO <PIO@occourts.org>

Good day Kostas,

I submitted a complaint to the Court through your office on August 16, 2022. It's been two month and I've not received a response or disposition. Could you please tell me what the status of my complaint is? I am facing extraordinary circumstances as. result of the serious allegations of judicial misconduct involved in the complaint. Please also consider my request a public records act request for. all documents pertaining to the investigation and disposition of the complaint as allowed by law.

Sincerely,

Adam Bereki
949.241.6693

On Thu, Sep 8, 2022 at 9:19 AM PIO <PIO@occourts.org> wrote:

EXHIBIT [D] p. 5513

PRINT ON BLUE PAPER

Superior Court of California,
County of Orange
COMPLAINT FORM

(Complaints Regarding a Judge, Commissioner, Assigned Judge, Temporary Judge or Court Referee)

Name: Adam (First) Alan (Middle) Bereki (Last)

Address: 818 Spirit (Street) Costa Mesa (City) CA (State) 92626 (Zip)

Telephone: 949 241 6693 (Daytime) ( ) (Evening)

E-mail address: abereki@gmail.com

What is your status?

- ☐ Plaintiff/Petitioner
- ☒ Defendant/Respondent
- ☐ Juror
- ☐ Attorney
- ☐ Witness (Incident)
- ☐ Witness (Court)
- ☐ Volunteer
- ☐ Other:

What type of case are you involved in?

- ☒ Civil
- ☒ Criminal
- ☐ Small Claims
- ☐ Traffic
- ☐ Family Law
- ☐ Probate
- ☐ Other:

Case #30-2015-00805807 Judge: G. Haffee (ret) Courtroom#: C20

Write a brief summary of your concern (include dates, names of officials or individuals involved).

SEE ATTACHED.

Rev. 11_2012 cr

Write a brief summary of your concern:

In March of 2017, I was the defendant in an unlicensed contractor case heard before Judge David Chaffee (ret.). I was told the case was civil, but in reality, it was a highly penal action designed to prosecute and punish me without any of the heightened protections of criminal proceedings or the excessive fines clause. Following the "trial" in which I was never told the true nature and cause of the accusation or that I had a right to counsel, I was excessively fined and cruelly and unusually punished by being ordered to pay $930,000 to the Plaintiffs, Karen and Gary Humphreys. Chaffee's Minute Order reflects an award on the Humphreys first cause of action for "disgorgement" but this was not an action for disgorgement. Disgorgement is an action in equity that requires a defendant to give up their illegal profits. There is no evidence on the record of the case that I profited even one dollar. The Judgment Order also reflects "damages" in the amount of $848,000. There was also no evidence of any damages presented at "trial".

In a true claim for disgorgement or unjust enrichment, the Humphreys would be required to evidence the amount that I profited and this would be the amount that I would be I would be required to "disgorge" or give up. Instead, Chaffee took the entire amount that the Humphreys paid me and my company ($848,000) and ordered me to give it back to them despite the fact that my company had already returned it to them in the form of labor and materials on their custom remodel project. In other words, Chaffee refused to allow offsets for the benefits that were conferred on the Humphreys and rather than determine the specific amount that I profited, awarded the Humphreys a full refund. Because this award was not equitable ("disgorgement") or compensation for any damages, it was a purely penal fine. I arrive at the amount of $930,000 (not $848,000) because of the fact that the Humphreys also received another approx. $82,000 in value that they had not paid for that Chaffee also refused to account for.

On "appeal" the Fourth District Court of Appeal affirmed Chaffee's ruling stating the order was not punishment but was instead the equitable remedy of disgorgement. I have attached the Court's Opinion.

Please refer to the case of *Liu v. SEC*, 591 U.S. ____ (2020) where the US Supreme Court defined disgorgement and that it *only* applies to profits, *not* the forfeiture of an entire transaction.

Because the action against me was purely penal and intended to fine and punish me for violating the licensing laws (see Cal. Penal Code §15), the action had to be prosecuted in the name of the People of California as the Executive power is exclusively vested in the Governor and cannot be delegated to private parties such as the Humphreys.

As a result of all of the foregoing, Chaffee lacked subject matter jurisdiction not only to proceed to "trial" but to render any punishment at all resulting in a Bill of Pains and Penalties in violation of Article I, §10. His unconscionable behavior is not an isolated incident, see also *MW Erectors v. Neiderhauser,* 36 Cal. 4th 412 (2005). This heinous abuse of authority is also occurring in "Courts" throughout the State of California and has been sanctioned by the Supreme "Court".

As a result of the illegal "Judgment", my vested right as a qualifying individual for a general contractors license was suspended without even an administrative hearing by virtue of Business and Professions Code §7071.17 because I was unable to pay the fine. (It is more than 42 times my qualifying net worth). I have thereby been unlawfully restrained from working in my profession as a general contractor for more than four years. This has resulted in my inability to meet my private financial obligations and a violation of Article I, §10 (impairing the obligations

of contracts). Foreclosure proceedings have begun on my home and creditors are suing me as I am unable to pay these obligations. See case#30-2022-01271693.

What action would you like the court to take?

It is my understanding that the Court can, and indeed has a mandatory, non-discretionary ministerial duty to, on its own motion, immediately begin a full, fair, and impartial investigation into these allegations and intervene to protect my rights, liberty, and property from being taken under color of law but without lawful authority. I request the Court take this action immediately and also: (1)that the Court issue an emergency stay in the foreclosure proceedings for the real property located at 818 Spirit, Costa Mesa, CA, and in case #30-2022-01271693 pending investigation into this complaint; (2) that the Court grant me leave to file an emergency Motion for restitution so that I may receive equitable financial relief as quickly as possible to stop the irreparable harm being perpetrated and so that I can meet my financial obligations and be compensated for some of the harm caused; (3) that the Court issue a temporary injunction barring the enforcement of actions pursuant to Cal. Business and Professions Code §7031 and §7071.17 pending its investigation and/or declare these statutes unconstitutional in effect and as applied; (4) that the Court vacate the void judgment in case#30-2015-00805807 with prejudice to all of the Humphreys remaining claims as a result of the egregious violations of due process and their conspiracy with State officials to violate due process and take my liberty and property without lawful authority; (5) that the Court grant me leave to file a complaint for damages and other claims declaratory and injunctive relief; and, (6) all other relief the Court deems reasonable and just.

What action would you like the court to take?

SEE ATTACHED

Would you like a response? ☒ Yes ☐ No

Signature: _____ Date: 8/16/22

Please return or mail to:

Office of the Presiding Judge
Superior Court, County of Orange
Central Justice Center, Dept. C1
700 Civic Center Drive, West
Santa Ana, CA 92701-4045

Rev. 11_2012 cr

Lexis Humphreys v. Bereki, 2018 Cal. App. Unpub. LEXIS 746 Search: Everything Client: Linh Le Folders History Help More

Document: Humphreys v. Bereki, 2018 Cal. App. Unpub. LEXIS 7469 Actions

Go to Page Search Document

Humphreys v. Bereki, 2018 Cal. App. Unpub. LEXIS 7469

Copy Citation

Court of Appeal of California, Fourth Appellate District, Division Three

October 31, 2018, Opinion Filed

G055075

Reporter

2018 Cal. App. Unpub. LEXIS 7469 * | 2018 WL 5639287

GARY HUMPHREYS et al., Cross-complainants and Respondents. v. ADAM BEREKI, Cross-defendant and Appellant.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

Subsequent History: US Supreme Court certiorari denied by Bereki v. Humphreys, 2019 U.S. LEXIS 5324 (U.S., Oct. 7, 2019)

Prior History: [*1] Appeal from a judgment of the Superior Court of Orange County, No. 30-2015-00805807, David R. Chaffee, Judge.

Disposition: Affirmed.

Core Terms

disgorgement, Associates, contractor, remodel, subdivision, licensed, contractor's license, trial court, unlicensed contractor, licensing requirements, cause of action, perform work, unlicensed, e-mails, courts, hired

Counsel: Adam Bereki, pro per, for Plaintiff and Appellant.

William G. Bissell for Defendants and Respondents.

Judges: ARONSON, J.; O'LEARY, P. J., GOETHALS, J. concurred.

Opinion by: ARONSON, J.

Opinion

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

Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them all monies received in relation to the remodel work — $848,000. [*2] Its ruling and a stipulation by the parties disposed of the remainder of the case and Bereki appealed. He challenges the disgorgement on a variety of constitutional, legal, and factual grounds. We find no merit in his contentions and, therefore affirm the judgment.

I

FACTS

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

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

Several months into the remodel the Humphreys, at Bereki's request, started making their progress payments to Spartan Associates instead of paying Bereki directly as an individual. Bereki never [*3] gave them an explanation for the change or what, if any, involvement Spartan Associates had in the project, but the accountings he sent included the name "Spartan Associates."

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

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

At the Humphreys' request, the trial court bifurcated the disgorgement claim from the remainder of the claims in the cross-complaint, and it held a trial on that issue first. During the course of the two-day bench trial on the disgorgement cause of action, the court [*4] heard testimony from the Humphreys and Bereki.

Karen Humphreys testified it was her understanding, based on the initial e-mails exchanged with Bereki, that she and her husband were contracting with Bereki and his partner to do the work. They wanted a licensed contractor to do the work and obtain all the necessary permits, and she "took [Bereki] at his word that he had a license." She also testified there was no mention of Spartan Associates until months after the project began and insisted they never entered into a contract with Spartan Associates.

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

In contrast, Bereki testified the contract for the couple's remodel project was between the Humphreys and Spartan Associates. He nevertheless acknowledged his initial e-mail communications to the Humphreys made no mention of Spartan Associates, including the one which set forth the proposed scope of work and **[*5]** hourly rates. When asked about contractor's licenses, he admitted he never possessed one as an individual or as a joint venture with his partner. Spartan Associates, however, did have a contractor's license at the time of the project.

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

The trial court found in favor of the Humphreys on the disgorgement cause of action based on its determination that Bereki, not Spartan Associates, was the contractor who performed all the remodel work. As a result, the court also found in favor of the Humphreys on Spartan Associates's complaint. The remainder of the cross-complaint was dismissed without prejudice at the Humphreys' request.

II

DISCUSSION

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

A. Disgorgement Remedy Under Section 7031

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

"Section 7031[, subdivision] (b) is part of the **[*7]** Contractors' State License Law (§ 7000 et seq.), which 'is a comprehensive legislative scheme governing the construction business in California. [This statutory scheme] provides that contractors performing construction work must be licensed unless exempt. [Citation.] "The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]" [Citation.] The [laws] are designed to protect the public from incompetent or dishonest providers of building and construction services. [Citation.]' [Citation.]

"This statutory scheme encourages licensure by subjecting unlicensed contractors to criminal penalties and civil remedies.

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[Citation.] The civil remedies 'affect the unlicensed contractor's right to receive or retain compensation for unlicensed work.' (*Ibid.*) The hiring party is entitled to enforce these remedies through a defensive 'shield' or an affirmative 'sword.' [Citation.]

"The *shield*, contained in section 7031[, subdivision] (a), was enacted more than 70 years ago, and provides that a party has a complete defense to **[*8]** claims for compensation made by a contractor who performed work without a license, unless the contractor meets the requirements of the statutory substantial compliance doctrine. [Citation.] Section 7031[, subdivision] (e), the substantial compliance exception, provides relief only in very narrow specified circumstances, and '*shall not apply* . . . where the [unlicensed contractor] has never been a duly licensed contractor in this state." [Citation.]

"The California Supreme Court has long given a broad, literal interpretation to section 7031[, subdivision] (a)'s shield provision. [Citation.] The court has held that [it] applies even when the person for whom the work was performed *knew* the contractor was unlicensed. [Citation.] . . . . [It] explained that '"Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . ."' [Citation.] '"Because of the strength and clarity of this policy [citation]," the bar of section 7031 [, subdivision] (a) applies **[*9]** "[r]egardless of the equities."' [Citations.]

"In 2001, the Legislature amended section 7031 to add a *sword* remedy to the hiring party's litigation arsenal. This sword remedy, contained in section 7031[,subdivision] (b), currently reads: 'Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.' [¶] By adding this remedy, the Legislature sought to further section 7031[,subdivision] (a)'s policy of deterring violations of licensing requirements by 'allow[ing] persons who utilize unlicensed contractors to recover compensation paid to the contractor for performing unlicensed work. [Citation.]' [Citation.]" (*Alatriste, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

Based on the statutory language and legislative history, both *Alatriste* and *White* "concluded that the Legislature intended that courts interpret sections 7031[, subdivision] (a) and 7031[, subdivision] (b) in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant." (*Alatriste, supra*, 183 Cal.App.4th at p. 666, citing *White, supra*, 178 Cal.App.4th at pp. 519-520.) These principles are well-settled under the law. **[*10]**

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

For similar reasons, Bereki's attempt to characterize disgorgement as an award of unconstitutional punitive damages is unavailing. As an equitable remedy, disgorgement is not punishment and, therefore, it does not implicate the excessive fines clause of the Eighth Amendment to the United States Constitution. (*S.E.C., supra*, 996 F.2d at p. 802; see *U.S. v. Philip Morris USA* (D.C. 2004) 310 F.Supp.2d 58, 62-63.)

B. Contractor Licensing Requirement

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

As for the legal argument, Bereki asserts that licensing requirements only apply to **[*11]** "fictitious" persons, not "natural" persons such as himself. He cites no authority for his unique interpretation of the relevant statutes. And, the statutes provide otherwise. Contractors who are required to obtain a license include "[a]ny person . . . who . . . undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any . . . home improvement project, or part thereof." (§ 7026.1, subd. (a)(2).) In turn, "'[p]erson'" is defined to include "an individual[,]" as well as a variety of types of business entities and associations. (§ 7025, subd. (b).) "In ordinary usage[,] the word 'individual' denotes a natural person not a group,

association or other artificial entity. (See Webster's Third New Internat. Dict. (2002 ed.) p. 1152 [giving a primary definition of 'individual' as 'a single human being as contrasted with a social group or institution'].)" (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 623, disapproved of on other grounds in *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 416.) There is nothing in the statutes that indicates a different, specialized meaning. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 ["In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them **[*12]** a special meaning"].)

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

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

At no time during this series of events did Bereki ever mention Spartan Associates. Notably, Bereki did not apply to the State Board of Equalization to register Spartan as an employer until roughly three months after **[*13]** the remodel work began. Then, about four months into the project, he introduced the corporation into the mix by asking the Humphreys, without any explanation, to make future payments to Spartan Associates. Based on what transpired, the couple believed they contracted with Bereki, in his individual capacity, to complete the remodel work.

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

C. Disgorgement Remedy Under Section 7031

Separate from his general attacks on section 7031, subdivision (b), Bereki challenges its application under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit — the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have **[*14]** uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. (See, e.g., *Alatriste, supra*, 183 Cal.App.4th at pp. 672-673; *White, supra*, 178 Cal.App.4th at pp. 520-521; see also *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 521.) Full disgorgement is required; offsets and reductions for labor and materials received are not permitted.

Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor's license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute. The disgorgement consequence is not remedial in nature. Similar to the licensing requirement, it is a proactive measure intended to decrease the likelihood of harm due to "incompetent or dishonest providers of building and construction services." (*White, supra*, 178 Cal.App.4th at pp. 517.)

We also are not persuaded by Bereki's objection to the amount the court ordered him to repay to the Humphreys. He highlights evidence showing that some of the payment checks came from Gary Humphreys' corporation, and he argues the Humphreys are not entitled to those amounts given they did not pay them in the first instance. While we do not necessarily see eye-to-eye with Bereki's legal reasoning, **[*15]** we need not reach the legal aspect of his argument due to the trial court's factual findings.

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

Under these circumstances, we find ample evidence to support the trial court's factual finding that although certain payments to Bereki were made from the Humphreys' business account, they ultimately were **[*16]** accounted for in a way that ensured they were personal payments from the Humphreys, as individuals. Accordingly, the Humphreys were entitled to "all compensation paid." (§ 7031, subd. (b).)

We recognize that the provisions of section 7031, including the disgorgement remedy, are harsh and may be perceived as unfair. As courts have explained, however, they stem from policy decisions made by the Legislature. (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423; *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 151; see *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896; *Alatriste, supra*, 183 Cal.App.4th at p. 672.) "[T]he choice among competing policy considerations in enacting laws is a legislative function" (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1203), and absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute. (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 25; *Alatriste, supra*, 183 Cal.App.4th at p. 672.)

D. Statement of Decision

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

III

DISPOSITION

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

ARONSON, J.

WE CONCUR: **[*17]**

O'LEARY, P. J.

GOETHALS, J.

Footnotes

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

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

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

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

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

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