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7 Superior Court of California

8 County of Orange

9
10 Case No.: 30-2015-00805807

11 The Spartan Associates, Inc.

12
13 NOTICE OF MOTION AND MOTION:
14 TO VACATE VOID JUDGMENT

15 v

16 DEPT: C16
17 Hon. James Di Cesare

18 Karen and Gary Humphreys

19 DATE: March 15, 2019
20 TIME: 9:30AM
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1 on file with the Court and in the record of this case). In the event the Court will not provide
2 the reporters services and the transcript of the proceedings free of charge, Mr. Bereki will
3 request the Court allow him to make his own digital audio recording pursuant to the
4 California Rules of Court, Rule 1.150(d), and that the recording be allowed as part of the
5 record. If approved, a digital, un-transcribed copy will be provided to the other parties at
6 no cost via cloud sharing known as Dropbox upon their request.

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9 Date:

2/19/19



adam bereki

In Propria Persona

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3
4 MEMORANDUM OF POINTS AND AUTHORITIES
5

6
7 On January 31, 2019, Defendants/Cross-Complainants, "the Humphreys" filed a
8 Memorandum of Costs on Appeal pursuant to a Remittitur issued by the Fourth District
9 Court of Appeal, Division Three in case G055075, on January 31, 2019. The appellate
10 Court affirmed the judgment of the trial Court and further awarded costs to the
11 Humphreys. See Exhibit [A], a true and correct copy of the Remittitur and Opinion.

12 The problem here is this Court does not have jurisdiction to enter this cost award because
13 both this Court and the appellate Court are without jurisdiction to render or affirm
14 judgement which violates the Constitution for the United States.
15

16 The judgment in this case is monetary punishment against Mr. Bereki for approx.
17 \$930,000. It is grossly excessive, fundamentally unfair, and violates every element of the
18 test pertaining to the 14th Amendment's due process protections of excessive punitive
19 damage awards. Both the trial and appellate Courts denied these protections. The result
20 is the judgment against Mr. Bereki arbitrarily deprives him of his property and punishes
21 him without a judicial hearing. *Windsor v McVeigh*, 93 US 274 (1876); Article 1, §10
22 *Cummings v. Missouri*, 71 U.S. 4 Wall. 277 277 (1867).
23

24 *A Court of California does not have jurisdiction to render judgment which violates the*
25 *California Constitution or the Constitution for the United States". County of Ventura v*
26 *Tillet*, 133 Cal. App. 3d 105, 110 (1982), "*Tillet*"; Constitution, Art. 6, §2.
27
28
29

1 The factual dispute in this case involved whether Mr. Bereki, or his company, The Spartan
2 Associates, Inc., "Spartan", was the contractor on the Humphreys vacation home
3 remodel project. Spartan was a licensed contractor, Mr. Bereki was not.

4
5 The trial Court determined Mr. Bereki acted as an unlicensed contractor and subsequently
6 ordered two penalties against him for contracting without a license. The first was the
7 "disgorgement" of "all compensation paid", pursuant to §7031(b) of the Business and
8 Professions Code, "B&P", amounting to \$848,000 in "damages" (Exhibit [B]). The second,
9 was the denial of Spartan's claim for approx. \$83,000 in labor and material charges
10 pursuant to §7031(a) B&P. The total penalties ordered against Mr. Bereki as the
11 unlicensed contractor were therefore approx. \$930,000.

12
13 In 2017, the United States Supreme Court decided the case of *Kokesh v SEC*, 581 US
14 ____, "*Kokesh*", which dealt with whether SEC disgorgement in relation to a five year
15 statute of limitations was penal in nature. In *Kokesh*, the Court examined more than a
16 century of its jurisprudence pertaining to penal actions and held that because SEC
17 disgorgement orders go beyond compensation, are intended to punish and label
18 defendants wrongdoers as a consequence for violating public laws, they represent a
19 penalty.

20
21 Applying the same principles the US Supreme Court used to determine SEC
22 disgorgement's penal nature in *Kokesh* readily shows the "disgorgement" awarded in this
23 case pursuant to §7031 is penal in nature. §7031 "disgorgement" (I) goes beyond
24 compensation and (II) is intended to punish and label defendants wrongdoers as a
25 consequence for violating public laws.

26 27 I. §7031 "Disgorgement" Goes Beyond Compensation

28
29 California Courts erroneously refer to the penal forfeitures pursuant to §7031 as a "non-
punitive equitable remedy" or "disgorgement" (See Exhibits [A]- Appellate Opinion p.8:

1 *"Disgorgement is a civil consequence— "an equitable remedy", and [C]- trial Court Minute*
2 *Order p.2: "The Court finds judgment for the Cross Complainants, Gary and Karen*
3 *Humphreys (First Cause of Action for Disgorgement of Funds Paid) and against cross-*
4 *defendant, Adam Bereki." (emphasis added)*

5
6 Forfeiture pursuant to §7031, no matter what it is labeled is punitive in nature. "[A]
7 *forfeiture proceeding is quasi-criminal in character. Its object, like a criminal proceeding, is*
8 *to penalize for the commission of an offense against the law."* *One 1958 Plymouth Sedan*
9 *v. Pennsylvania, 380 U.S. 693, 700 (1965). "A proceeding to forfeit a person's goods for*
10 *an offence against the laws, though civil in form, and whether in rem or in personam, is a*
11 *"criminal case" within the meaning of that part of the Fifth Amendment..." Boyd v. United*
12 *States, 116 U.S. 616 (1886)*

13 Technically speaking, actual disgorgement (as differentiated from the "disgorgement" in
14 this case) meets both the qualifications of a penalty and a forfeiture but is specifically
15 targeted at the giving up of "ill gotten gains" or "profits" resulting from wrongdoing which
16 are not considered in §7031 actions. *"Disgorgement wrests the ill-gotten gains from the*
17 *hands of a wrongdoer."* *SEC v Huffman, 996 F.2d 800, 802 (1993); See Opinion, Exhibit*
18 *[A]– p.8. "[D]isgorgement is a form of "[r]estitution measured by the defendant's wrongful*
19 *gain."* *Kokesh, supra* citing Restatement (Third) of Restitution and Unjust Enrichment §51,
20 Comment a, p. 204 (2010).

21
22 IN THIS CASE NO DETERMINATION WAS MADE BY THE TRIAL COURT AS TO WHAT
23 MR. BEREKI RECEIVED AS A PROFIT OR GAIN.
24

25 *"As a general rule, the defendant is entitled to a deduction for all marginal costs incurred*
26 *in producing the revenues that are subject to disgorgement. Denial of an otherwise*
27 *appropriate deduction, by making the defendant liable in excess of net gains, results in a*
28 *punitive sanction that the law of restitution normally attempts to avoid". Kokesh, supra*
29

1 citing App. to Pet. for Cert. 43a, Restatement (Third) §51, Comment *h*, at 216. (*emphasis*
2 added).

3
4 In §7031 cases, California Courts have determined an unlicensed contractor's profits or
5 gains irrelevant as §7031(b) requires the return (forfeiture) of "all compensation paid" and
6 §7031(a) is a complete forfeiture of any claim for compensation. No determination is
7 made as to what a defendant received as profit or gains. Even the materials incorporated
8 into a project – which can in no way be considered profit or gains – are not allowed to be
9 offset. The same goes for payments to other licensed subcontractors who lawfully
10 performed work. Even their compensation must be forfeited by the defendant:

11
12 *"We conclude the authorization of recovery of 'all compensation paid to the unlicensed*
13 *contractor for performance of any act or contract' means that unlicensed contractors*
14 *are required to return all compensation received without reductions or offsets for the*
15 *value of material or services provided."* *White v. Cridlebaugh*, 178 Cal.App.4th 506 pp.
16 520–521 (2009).

17
18 The monetary penalties pursuant §7031 are not "disgorgement" as defined in *Kokesh* by
19 the US Supreme Court that simply restore the status quo. §7031 penalties go beyond an
20 unlicensed contractors gains or profits resulting in a punitive sanction.

21
22 **II. §7031 "Disgorgement" Is Intended To Punish and Label Defendants Wrongdoers**
23 **As a Consequence For Violating Public Laws**
24

25 California Courts have repeatedly affirmed §7031's *deterrent* nature which is inherently
26 punitive:

27 *"Section 7031 represents a legislative determination that the importance of detering*
28 *unlicensed persons from engaging in the contracting business outweighs any*
29 *harshness between the parties, and that such deterrence can best be realized by*

1 denying violators the right to maintain any action for compensation in the courts of this
2 state. [Citation] ...” *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.,*
3 *Inc.*, 36 Cal. 4th 412, 423 (2005). (emphasis added)

4
5 In *Bell v Wolfish*, 441 US 520, 539 (1979), the US Supreme Court held:

6 “sanctions imposed for the purpose of deterring infractions of public laws are
7 inherently punitive because “deterrence [is] not [a] legitimate non-punitive
8 governmental objectiv[e].” (Also reaffirmed in *Kokesh*, *supra*.)

9 And in *Huntington v. Attrill*, 146 US 657, 668 (1892):

10 “A pecuniary sanction operates as a penalty if it is sought “for the purpose of
11 punishment, and to deter others from offending in like manner” rather than to
12 compensate victims.” (Also reaffirmed in *Kokesh*, *supra*.)(emphasis added)

13
14 The California Supreme Court – albeit in dicta – has also declared:

15
16 “[T]he statutory language [of §7031] demonstrates the Legislature’s “intent [to] impose
17 a stiff all-or-nothing penalty for unlicensed work”. *White v. Criddlebaugh*, 178 Cal.App.
18 4th 506, (2009) p. 519, citing *MW Erectors, Inc. v. Niederhauser Ornamental & Metal*
19 *Works Co., Inc.*, 36 Cal. 4th 412 (2005). (emphasis added)

20
21 §7031(a) and (b) also meet the definition of a penalty found in unrelated cases:

22
23 “Any provision by which money or property is to be forfeited without regard to the
24 actual damage suffered calls for a penalty...” *Grand Prospect Partners, L.P. v. Ross*
25 *Dress for Less, Inc.*, 232 Cal. App. 4th 1332, 1357.

26
27 “Under California law, the characteristic feature of a penalty is the lack of a
28 proportional relationship between the forfeiture compelled and the damages or harm
29 that might actually flow from the failure to perform a covenant or satisfy a condition”.
Id. at p1538.

1 In §7031 actions, the compensation denied by §7031(a) and/or required to be returned
2 by §7031(b) is ordered by Courts without evidence of any injury, damage, or nexus to a
3 defendant's (mis)conduct. The compensation does not provide the 'victim' equal value for
4 a non-existent loss and does not make them whole for injuries they never evidenced or
5 incurred. It is therefore neither remedial nor compensatory.

6
7 As previously stated, the appellate Court erroneously held "disgorgement" to be a "non-
8 punitive" "equitable remedy." (Exhibit [A] p.8). This is erroneous because §7031 is clearly
9 punitive and the Court later states on p.11 "[t]he disgorgement consequence is not
10 remedial in nature." It also claims "offsets or reductions for labor and materials are not
11 permitted." The denial of equitable remedies such as set off and unjust enrichment clearly
12 evidence §7031 is not in equity. Therefore, if §7031 "disgorgement" is neither in equity
13 nor remedial it can't possibly be an "equitable remedy". (See also *Lewis & Queen v. N.*
14 *M. Ball Sons* (Cal. 1957), 48 Cal. 2d 141, "courts may not resort to equitable
15 considerations, such as unjust enrichment, in defiance of §7031.")

16
17 "Both liberty and property are specifically protected by the Fourteenth Amendment
18 against any state deprivation which does not meet the standards of due process, and **this**
19 **protection is not to be avoided by the simple label a State chooses to fasten upon**
20 **its conduct or its statute.**" *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 42, 47 (1991).
21 (emphasis added)

22
23 **FORFEITURE PURSUANT TO §7031 VIOLATES THE 14th AMENDMENT'S**
24 **PROTECTIONS OF EXCESSIVE PUNITIVE DAMAGE AWARDS AND IS THEREFORE**
25 **UNCONSTITUTIONAL**

26
27 "Despite the broad discretion that States possess with respect to the imposition of
28 criminal penalties and punitive damages, the Due Process Clause of the Fourteenth
29 Amendment to the Federal Constitution imposes substantive limits on that discretion"
Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424, 533 (2001).

1 In *State Farm Mutual Auto Insurance Co. v Campbell*, 538 US 408 (2003), "*Campbell*",
2 the U.S. Supreme Court reaffirmed a three part test for evaluating the validity of punitive
3 damages in civil cases. The elements of the test include:

4 I. the reprehensibility of the conduct being punished;

5 II. the reasonableness of the relationship between the harm and the award; and

6 III. the difference between the award and the civil penalties authorized in
7 comparable cases.

8
9 Under this test, use of §7031 to take anything more than nominal damages from Mr.
10 Bereki and give them to the Humphreys fails every element of the test and constitutes an
11 arbitrary deprivation of property for the following reasons:

12
13 I. REASONABLENESS

14
15 First, the relationship between the "harm" and forfeiture of \$930,000 is grossly
16 disproportionate. At "trial", the Humphreys presented no evidence of any damages
17 proximately cause by Mr. Bereki's alleged failure to be licensed.

18
19 California Courts have also held punitive damage awards exceeding compensatory
20 damages are not consistent with due process. See e.g. *Jet Source Charter, Inc. v*
21 *Doherty*, 148 Cal. App. 4th (2007).

22
23 In the instant case, forfeiture of anything would be an infinite multiple of the non-existent
24 damages.

25
26 II. COMPARABLE CASE AWARDS

27
28 Second, the difference between the \$930k forfeiture and both the criminal and civil
29 penalties authorized in comparable cases is astronomic.

1 The maximum criminal penalty is \$5,000 plus restitution of actual economic loss. The
2 Humphreys presented no witnesses or evidence of any actual loss whatsoever.

3
4 The maximum civil penalty that could be assessed by the Contractors State License
5 Board is also \$5,000.

6
7 Thus, a forfeiture of \$930,000 would be 186 TIMES the comparable criminal or civil
8 penalty. It is more than ninety times the monetary penalty for an act of treason against our
9 country, and more than twenty-six times Petitioner's net worth. If affirmed it will force
10 Petitioner into insolvency as a bankrupt arbitrarily divesting him of all money and property
11 within his qualifying life estate.

12
13 *"The purpose of punitive damages is not served by financially destroying a defendant. The*
14 *purpose is to deter, not destroy."* *Rufo v Simpson*, 86 Cal. App. 4th 573, 620 (2001)

15
16 Punitive damages in excess of \$5,000 therefore do not pass Constitutional muster.

17 18 III. REPREHENSIBLE

19
20 *"[T]he most important indicium of the reasonableness of a punitive damages award is the*
21 *degree of reprehensibility of the defendant's conduct."* *BMW of North America v Gore*,
22 517 US 559, 575 (1996).

23
24 The conduct here is not reprehensible. Not only was there no evidence of any damages
25 whatsoever, had there been, they would have been purely economic. No one was hurt or
26 injured. There was no evidence of fraud, oppression, or malice.

27
28 Under California law punitive damages cannot be awarded at all in this case because they
29 do not conform to the mandatory requirements as declared by the Judicial Council in
CACI §3940:

1 *If you decide that [name of defendant]'s conduct caused [name of plaintiff] harm, you*
2 *must decide whether that conduct justifies an award of punitive damages. The*
3 *purposes of punitive damages are to punish a wrongdoer for the conduct that harmed*
4 *the plaintiff and to discourage similar conduct in the future.*

5 *You may award punitive damages only if [name of plaintiff] proves by clear and*
6 *convincing evidence that [name of defendant] engaged in that conduct with malice,*
7 *oppression, or fraud. (emphasis added)*

8
9 There is absolutely no evidence on the record of this case of any harm, fraud, oppression,
10 or malice by Mr. Bereki.

11
12 In *Adams v Murakami*, 54 Cal. 3d 105, 117-118 (1991), the California Supreme Court
13 also held as a matter of state law, that evidence of a defendant's financial condition is also
14 prerequisite to an award of punitive damages. The Court reasoned that evidence of
15 financial condition is critical to whether a punitive damages award serves the purpose of
16 punishment and deterrence without destroying the defendant financially. (Ibid.) Such a
17 rule, said the Court, "reflected sound consideration of fairness and a concern for
18 rationality in the award of punitive damages." Id. p.116.

19
20 There is no evidence on the record of this case evidencing Mr. Bereki's financial condition.

21
22 SUMMARY

23
24 "Th[e] legislation in question is nothing less than a bold assertion of absolute power by the
25 State to control at its discretion the property and business of the citizen, and fix the
26 compensation he shall receive. The will of the legislature is made the condition upon
27 which the owner shall receive the fruits of his property and the just reward of his labor,
28 industry, and enterprise. "That government", as declared by Justice Story, "can scarcely
29 be deemed to be free when the rights of property are left solely dependent upon the will

1 of a legislative body without restraint. The fundamental maxims of a free government
2 seem to require that the rights of personal liberty and private property should be held
3 sacred. The people ought not to be presumed to part with rights so vital to their security
4 and wellbeing without very strong and direct expressions of such an intention." *Munn v.*
5 *Illinois*, 94 U.S. 113, 148 (1876) citing *Wilkinson v. Leland*, 27 U.S. 2 Pet. 627 627 (1829).

6
7 There is no evidence on the record of this case of Mr. Bereki make a knowing, voluntary,
8 or intelligent waiver of his Rights. *Johnson v Zerbst*, 304 US 458 (1938).

9
10 The punishment imposed by the trial Court and affirmed by the Court of Appeal is grossly
11 excessive and violates every element of the test established by the United States
12 Supreme Court for excessive punitive damages under the due process clause of the 14th
13 Amendment. Violation of due process is a crime and a crime cannot be committed to
14 procure jurisdiction.

15
16 Mr. Bereki was punished and denied a judicial hearing by the trial and appellate Courts in
17 this case. "For jurisdiction is the right to hear and determine, not to determine without
18 hearing. And where, as in th[is] case, no [judicial hearing which recognized Mr. Bereki's
19 constitutionally protected Rights happened] there could be no hearing or opportunity of
20 being heard, and therefore could be no exercise of jurisdiction." *Windsor v McVeigh*, 93
21 US 274, 284 (1876).

22
23 Every legislative, executive, and judicial officer of that certain government established by
24 the Constitution must have constitutional authority for every official act he undertakes:

25 "As regards all courts of the United States inferior to this tribunal, two things are
26 necessary to create jurisdiction, whether original or appellate. The Constitution must
27 have given to the court the capacity to take it, and an act of Congress must have
28 supplied it. Their concurrence is necessary to vest it. . . . It can be brought into activity
29 in no other way. . . ." *The Mayor v. Cooper*, 73 U.S. 247, 252 (1867).

1 There being no provision of the Constitution that gives officers of a Court the capacity to
2 violate the Constitution, no act of the California legislature can supply anything that
3 creates it. See also Article 6, §2.

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

8
9 *"[P]unitive damages are quasi-criminal punishment". Haslip p.54, supra. "A proceeding to*
10 *forfeit a person's goods for an offence against the laws, though civil in form, and*
11 *whether in rem or in personam, is a "criminal case" within the meaning of that part of the*
12 *Fifth Amendment..." Boyd v. United States*, 116 U.S. 616 (1886).

13
14 Because Mr. Bereki was punished without being afforded a judicial hearing, the judgments
15 against him are bills of pains and penalties in violation of Art. 1, §10 of the Constitution.;
16 *Cummings v. Missouri*, 71 U.S. 4 Wall. 277 277 (1867).

17
18 As a result of the foregoing, this Court does not have jurisdiction to enter the costs
19 awarded to the Humphreys on appeal. Rather, this Court being deprived of subject matter
20 jurisdiction, has a non-discretionary, ministerial duty to dismiss the void judgments in this
21 case.

22
23 *"A court may set aside a void order at any time. An appeal will not prevent the court from*
24 *at any time lopping off what has been termed a dead limb on the judicial tree— a void*
25 *order". MacMillan Petroleum Corp. v Griffin*, 99 Cal. App. 2d 523, 533. *"Judgments void*
26 *on their face may be set aside at any time." In re Dahnke's Estate & Guardianship*, 64 CA
27 555, 560-561 (1923). See also Code of Civil Procedure §1916: *"Any judicial record may*
28 *be impeached by evidence of a want of jurisdiction in the Court or judicial officer, of*
29 *collusion between the parties, or of fraud in the party offering the record, in respect to the*
proceedings".

1 Because §7031 is unconstitutional and the rulings of California Courts in these cases are
2 in direct contradiction to holdings of the US Supreme Court and violate due process, the
3 Humphreys also have no standing. Each of the judgments rendered in this case including
4 and subsequent to the Humphreys Motion to Amend their Cross-Complaint to include a
5 cause of action against Mr. Bereki for violation of §7031 are void. A judgment is said to be
6 void on its face when its invalidity is apparent upon inspection of the judgment roll. *In re*
7 *Dahnke's Estate & Guardianship*, 64 CA 555, 560-561 (1923). The void judgments in this
8 case include but are not limited to:

9
10 1) The judgement for damages and costs awarded to the Humphreys against Mr. Bereki
11 as rendered by David R. Chaffee acting, coram non judice on April 20, 2017, (Exhibit [B]).
12

13 2) The judgment for sanctions awarded to the Humphreys against Mr. Bereki for
14 exercising his Right to challenge the jurisdiction of the trial Court as rendered by David R.
15 Chaffee, acting coram non judice on September 29, 2017, (Exhibit [E]). "A void judgment
16 is, in effect, no judgment. By it no rights are divested; from it no rights can be obtained.
17 Being worthless itself, all proceedings founded upon it [Exhibit [A]] are equally worthless. It
18 neither bars nor binds anyone." *Bennett v Wilson*, 133 Cal. 379, 383 (1901)
19

20 3) The judgment of the Fourth District Court of Appeal affirming the judgment of David R.
21 Chaffee and awarding costs to the Humphreys as rendered on 10/31/2018 by Justice
22 Aronson and concurred by, Presiding Justice O'Leary, and Justice Goethals, all acting
23 coram non judice,(Exhibit [A]).

24 CONCLUSION

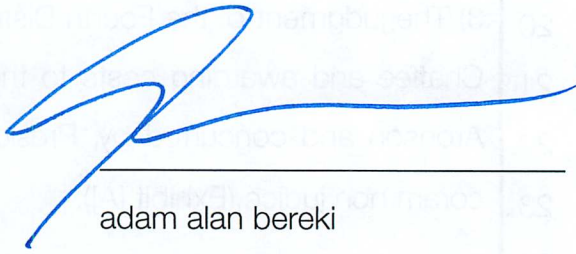
25
26 For the reasons set forth above, Mr. Bereki moves this Court to: (I) vacate the
27 aforementioned void judgments in this case for want of jurisdiction; (II) dismiss each of the
28 Humphreys' remaining causes of action in this case with prejudice for multiple violations
29 due process and fraud on the court as evidenced herein; (III) order the Humphreys to
remove the lien they placed on the real property located at 818 Spirit Costa Mesa,

1 California pertaining to the judgment(s) in this case; and, (IV) order the Humphreys to pay
2 restitution to Mr. Bereki for the harm they have caused him. (Exhibit [F]). This will be
3 pursuant to a Motion supported by evidence and testimony and a hearing on this issue.
4 The Motion pursuant to Code of Civil Procedure §908 to be filed within twenty five days,
5 the reasonable time for Mr. Bereki to prepare the Motion and obtain supporting evidence
6 from third parties:

7
8 *"When the judgment or order is reversed or modified, the reviewing court may direct*
9 *that the parties be returned so far as possible to the positions they occupied before*
10 *the enforcement of or execution on the judgment or order. In doing so, the reviewing*
11 *court may order restitution on reasonable terms and conditions of all property and*
12 *rights lost by the erroneous judgment or order, so far as such restitution is consistent*
13 *with rights of third parties and may direct the entry of a money judgment sufficient to*
14 *compensate for property or rights not restored. The reviewing court may take*
15 *evidence and make findings concerning such matters or may, by order, refer such*
16 *matters to the trial court for determination."*

17 *"The trial court has inherent power independently of any statute to order restitution."* Bank
18 *of America Nat'l Trust & Sav. Asso. v. McLaughlin* 37 Cal. App. 2d 415, 99.

19
20
21 Date: 2/19/19

22 
23 _____
24 adam alan bereki

25 In Propria Persona
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EXHIBIT [A]

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

Office of the County Clerk
Orange County Superior Court - Central
700 Civic Center Drive West
Santa Ana, CA 92702

GARY HUMPHREYS et al.,
Cross-complainants and Respondents,
v.
ADAM BEREKI.,
Cross-defendant and Appellant.

G055075
Orange County Super. Ct. No. 30-2015-00805807

*** * REMITTITUR * ***

I, Kevin J. Lane, Clerk/Administrator of the Court of Appeal of the State of California, for the Fourth Appellate District, Division III, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on October 31, 2018 and that this opinion has now become final.

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

Witness my hand and the Seal of the Court affixed at my office this January 31, 2019.



Kevin J. Lane
Clerk/Executive Officer

By: Sandra Mendez, Deputy Clerk

cc: All Parties (Copy of remittitur only. Cal. Rules of Court, rule 8.272(d).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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

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

GARY HUMPHREYS et al.,

Cross-complainants and Respondents.

v.

ADAM BEREKI,

Cross-defendant and Appellant,

G055075

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

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David R.
Chaffee, Judge. Affirmed.

Adam Bereki, in pro. per., for Plaintiff and Appellant.

William G. Bissell for Defendants and Respondents.

*

*

*

This case involves the purported general contractor for a condominium remodel project, Adam Bereki, on one side, and the condominium owners, Gary and Karen Humphreys (the Humphreys), on the other. After the Humphreys terminated Bereki's involvement, a now defunct corporation formerly owned by Bereki, Spartan Associates, Inc. (Spartan Associates), sued Humphreys, claiming they still owed approximately \$83,000 for work on the project. The Humphreys denied the allegations and cross-complained against Bereki and Spartan Associates. Among the remedies they sought was disgorgement of all payments made for the project, pursuant to Business and Professions Code section 7031, subdivision (b)¹, due to Bereki's alleged failure to possess a required contractor's license.

Following a bifurcated bench trial on the disgorgement cause of action, the trial court found in favor of the Humphreys and ordered Bereki to repay them all monies received in relation to the remodel work — \$848,000. Its ruling and a stipulation by the parties disposed of the remainder of the case and Bereki appealed. He challenges the disgorgement on a variety of constitutional, legal, and factual grounds. We find no merit in his contentions and, therefore affirm the judgment.

I

FACTS

The Humphreys own a condominium on Lido Isle in the City of Newport Beach. It was originally two separate units. The couple hired Bereki to do some remodeling which would, among other things, turn the two units into a single unit. After an on-site walkthrough, the Humphreys exchanged e-mails with Bereki to confirm the scope of the project. In one of his e-mails, Bereki stated he and his partner would perform the work for a specified rate.

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

The Humphreys agreed to the proposed scope and rates, and also inquired whether a written contract was necessary. Bereki responded that it was not; their “words/commitment [was] enough.” To start the project, Bereki asked the Humphreys for a \$15,000 check deposit payable to him, personally.

Several months into the remodel the Humphreys, at Bereki’s request, started making their progress payments to Spartan Associates instead of paying Bereki directly as an individual. Bereki never gave them an explanation for the change or what, if any, involvement Spartan Associates had in the project, but the accountings he sent included the name “Spartan Associates.”

After approximately a year and a half, the Humphreys terminated Bereki’s involvement and later hired a different general contractor to complete the project.

Believing the Humphreys still owed approximately \$82,800 for materials used in the remodel and labor performed, Spartan Associates sued to recover that amount. The Humphreys generally denied the allegations in the complaint, and filed a cross-complaint against Bereki, Spartan Associates, and a surety company. Among the allegations were causes of action for negligence, intentional misrepresentation, and negligent misrepresentation. The trial court later granted them leave to amend the cross-complaint to include a cause of action for disgorgement of funds paid to an unlicensed contractor, pursuant to section 7031, subdivision (b).

At the Humphreys’ request, the trial court bifurcated the disgorgement claim from the remainder of the claims in the cross-complaint, and it held a trial on that issue first. During the course of the two-day bench trial on the disgorgement cause of action, the court heard testimony from the Humphreys and Bereki.

Karen Humphreys testified it was her understanding, based on the initial e-mails exchanged with Bereki, that she and her husband were contracting with Bereki and his partner to do the work. They wanted a licensed contractor to do the work and obtain all the necessary permits, and she “took [Bereki] at his word that he had a license.”

She also testified there was no mention of Spartan Associates until months after the project began and insisted they never entered into a contract with Spartan Associates.

Gary Humphreys concurred with his wife's testimony about the remodel details, the series of events that transpired between them and Bereki, and the agreement he believed they entered into with Bereki. In addition, he confirmed Bereki told him he was a licensed contractor and stated he would not have hired him if he knew it was otherwise.

In contrast, Bereki testified the contract for the couple's remodel project was between the Humphreys and Spartan Associates. He nevertheless acknowledged his initial e-mail communications to the Humphreys made no mention of Spartan Associates, including the one which set forth the proposed scope of work and hourly rates. When asked about contractor's licenses, he admitted he never possessed one as an individual or as a joint venture with his partner. Spartan Associates, however, did have a contractor's license at the time of the project.

As for the work done for the Humphreys, Bereki testified he believed Spartan Associates performed all of it. He testified that the three city permits for the project were all obtained by, and issued to, Spartan Associates. Additionally, he produced contracts with subcontractors who performed aspects of the remodel work. The majority of these contracts were between the given subcontractor and Spartan Associates.²

The trial court found in favor of the Humphreys on the disgorgement cause of action based on its determination that Bereki, not Spartan Associates, was the

² Bereki filed an unopposed motion to augment the record on appeal with certain exhibits admitted in the trial court. We deny the request because the exhibits already are "deemed part of the record" by Court Rule. (Cal. Rule of Court, rule 8.122(a)(3).) We have considered the copies of the exhibits he provided in conjunction with our review of this appeal.

contractor who performed all the remodel work. As a result, the court also found in favor of the Humphreys on Spartan Associates's complaint. The remainder of the cross-complaint was dismissed without prejudice at the Humphreys' request.

II

DISCUSSION

Bereki challenges the portion of the judgment disgorging all compensation paid to him for his work on the Humphreys' remodel project.³ Though articulated in various ways, his arguments boil down to the following: (1) disgorgement under section 7031, subdivision (b), is unconstitutional or, alternatively, criminal in nature; (2) the trial court erred in ordering disgorgement because Spartan Associates, not Bereki, performed the work and Spartan Associates held a contractor's license; (3) even assuming Bereki performed the work, the state's contractor licensing requirement does not apply to him as a "natural person"; (4) there was insufficient evidence to support disgorgement, including no evidence of injury due to Bereki's failure to be individually licensed; (5) the court should have offset the disgorgement amount by the value the Humphreys received through the remodel work; (6) it was improper to order full disgorgement because certain payments were not made from the Humphreys' personal accounts; and (7) the court

³ Bereki appears to also challenge a postjudgment sanctions order the trial court issued based on Bereki's motion to compel a response to a demand for a bill of particulars filed after entry of judgment. The sanctions order is not encompassed by his earlier appeal from the judgment. And although such a postjudgment order is separately appealable (Code Civ. Proc., § 904.1, subds. (a)(2) & (b)), Bereki did not file another appeal. Accordingly, the issue is not before us. (*Silver v. Pacific American Fish Co., Inc.* (2010) 190 Cal.App.4th 688, 693 [court without jurisdiction to review postjudgment order from which no appeal is taken].)

erroneously failed to provide a written statement of decision.⁴ We find no merit to any of these contentions.

A. Disgorgement Remedy Under Section 7031

Relying heavily on *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 517 (*White*), the decision in *Alatrisme v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 664-666 (*Alatrisme*) aptly summarizes the nature, purpose and scope of the litigation prohibition and the disgorgement remedy provided in section 7031, subdivisions (a) and (b).

“Section 7031[, subdivision] (b) is part of the Contractors' State License Law (§ 7000 et seq.), which ‘is a comprehensive legislative scheme governing the construction business in California. [This statutory scheme] provides that contractors performing construction work must be licensed unless exempt. [Citation.] ‘The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]’”

⁴ After briefing was complete, Bereki filed a motion asking that we take judicial notice of a plethora of items, among which are the federal Constitution and other foundational documents for this country, federal and state statutes, and a variety of case law. To begin, “[r]equests for judicial notice should not be used to ‘circumvent []’ appellate rules and procedures, including the normal briefing process.” (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1064, overruled on another point as stated in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257.) Further, “[a] request for judicial notice of published material is unnecessary. Citation to the material is sufficient.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9.) We therefore deny Bereki’s request as unnecessary to the extent it included such materials. As for the remaining items, we likewise deny the request because we find them not properly the subject of a request for judicial notice and/or irrelevant to resolution of the matters before us. (Evid. Code, §§ 451, 452; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089, fn. 4 [appellate court will not take judicial notice of irrelevant material].)

[Citation.] The [laws] are designed to protect the public from incompetent or dishonest providers of building and construction services. [Citation.] [Citation.]

“This statutory scheme encourages licensure by subjecting unlicensed contractors to criminal penalties and civil remedies. [Citation.] The civil remedies ‘affect the unlicensed contractor’s right to receive or retain compensation for unlicensed work.’ (*Ibid.*) The hiring party is entitled to enforce these remedies through a defensive ‘shield’ or an affirmative ‘sword.’ [Citation.]

“The *shield*, contained in section 7031[, subdivision] (a), was enacted more than 70 years ago, and provides that a party has a complete defense to claims for compensation made by a contractor who performed work without a license, unless the contractor meets the requirements of the statutory substantial compliance doctrine. [Citation.] Section 7031[, subdivision] (e), the substantial compliance exception, provides relief only in very narrow specified circumstances, and ‘*shall not apply . . . where the [unlicensed contractor] has never been a duly licensed contractor in this state.*’ [Citation.]

“The California Supreme Court has long given a broad, literal interpretation to section 7031[, subdivision] (a)’s shield provision. [Citation.] The court has held that [it] applies even when the person for whom the work was performed *knew* the contractor was unlicensed. [Citation.] . . . [It] explained that “‘Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .’” [Citation.] “‘Because of the strength and clarity of this policy [citation],” the bar of section 7031 [, subdivision] (a) applies “[r]egardless of the equities.” [Citations.]

“In 2001, the Legislature amended section 7031 to add a *sword* remedy to the hiring party’s litigation arsenal. This sword remedy, contained in section

7031[,subdivision] (b), currently reads: ‘Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.’ [¶] By adding this remedy, the Legislature sought to further section 7031[,subdivision] (a)’s policy of deterring violations of licensing requirements by ‘allow[ing] persons who utilize unlicensed contractors to recover compensation paid to the contractor for performing unlicensed work. [Citation.]’ [Citation.]” (*Alatraste, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

Based on the statutory language and legislative history, both *Alatraste* and *White* “concluded that the Legislature intended that courts interpret sections 7031[, subdivision] (a) and 7031[, subdivision] (b) in a consistent manner, resulting in the same remedy regardless of whether the unlicensed contractor is the plaintiff or the defendant.” (*Alatraste, supra*, 183 Cal.App.4th at p. 666, citing *White, supra*, 178 Cal.App.4th at pp. 519-520.) These principles are well-settled under the law.

Bereki contends the disgorgement remedy is penal in nature and, therefore, a contractor defending against such a claim must be afforded all criminal rights and protections. Not so. Disgorgement is a civil consequence — “an equitable remedy” — for performing work without a required contractor’s license. (*S.E.C. v. Huffman* (5th Cir. 1993) 996 F.2d 800, 802 (*S.E.C.*); see *Walker v. Appellate Division of Superior Court* (2017) 14 Cal.App.5th 651, 657 [§ 7031 contemplates civil proceedings].) The Legislature created a separate criminal penalty. Specifically, section 7028 provides that acting or operating in the capacity of a contractor without a required license is a criminal misdemeanor subject to jail time, or fines, and restitution. (§ 7028, subds. (a)-(c), (h).)

For similar reasons, Bereki’s attempt to characterize disgorgement as an award of unconstitutional punitive damages is unavailing. As an equitable remedy, disgorgement is not punishment and, therefore, it does not implicate the excessive fines

clause of the Eighth Amendment to the United States Constitution. (*S.E.C., supra*, 996 F.2d at p. 802; see *U.S. v. Philip Morris USA* (D.C. 2004) 310 F.Supp.2d 58, 62-63.)

B. Contractor Licensing Requirement

Before turning to application of section 7031, subdivision (b), we address Bereki's claim that he, in his individual capacity, did not need a contractor's license. His argument is twofold, one part legal and the other part factual. We reject both.

As for the legal argument, Bereki asserts that licensing requirements only apply to "fictitious" persons, not "natural" persons such as himself. He cites no authority for his unique interpretation of the relevant statutes. And, the statutes provide otherwise. Contractors who are required to obtain a license include "[a]ny person . . . who . . . undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any . . . home improvement project, or part thereof." (§ 7026.1, subd. (a)(2).) In turn, "[p]erson" is defined to include "an individual[.]" as well as a variety of types of business entities and associations. (§ 7025, subd. (b).) "In ordinary usage[,] the word 'individual' denotes a natural person not a group, association or other artificial entity. (See Webster's Third New Internat. Dict. (2002 ed.) p. 1152 [giving a primary definition of 'individual' as 'a single human being as contrasted with a social group or institution'].)" (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 623, disapproved of on other grounds in *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 416.) There is nothing in the statutes that indicates a different, specialized meaning. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 ["In examining the language, the courts should give to the words of the statute their ordinary, everyday meaning [citations] unless, of course, the statute itself specifically defines those words to give them a special meaning"].)

Bereki's factual attack concerns the trial court's conclusion that he, not Spartan Associates, was the contractor who performed the remodel work for the Humphreys. Though he implores us to engage in de novo review of this issue, it is a factual determination which we review for substantial evidence. (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514.) There is ample evidence in the record supporting the court's conclusion.⁵

Both of the Humphreys testified that on the first day they met Bereki for a walkthrough of the site, he informed them that he and his partner would act as the general contractor for the project. Bereki followed up with a written proposal and estimate, which he sent to the couple from his personal e-mail address. When they inquired whether he had a contractor's license, he assured them he did, and when they asked him to whom they should make out their payment checks, he told them to put them in his name.

At no time during this series of events did Bereki ever mention Spartan Associates. Notably, Bereki did not apply to the State Board of Equalization to register Spartan as an employer until roughly three months after the remodel work began. Then, about four months into the project, he introduced the corporation into the mix by asking the Humphreys, without any explanation, to make future payments to Spartan Associates.

⁵ Bereki filed a motion asking us to consider additional evidence not presented in the trial court, among which are two declarations, an e-mail correspondence and a letter. He believes the documents are relevant to establishing the identity of the contracting parties. We deny the motion as "[i]t has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, *upon a record of matters which were before the trial court for its consideration.*'" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405, italics added.) Circumstances warranting an exception to this rule are very rare and we do not find them extant here, particularly in light of the conflicting evidence weighed by the trial court. (See *Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1213 ["The power to take evidence in the Court of Appeal is never used where there is conflicting evidence in the record and substantial evidence supports the trial court's findings."].)

Based on what transpired, the couple believed they contracted with Bereki, in his individual capacity, to complete the remodel work.

While Bereki claims the Humphreys lied when they testified at trial because some of their factual statements purportedly contradicted those they made at the summary judgment stage, our role is not to resolve factual disputes or to judge the credibility of witnesses. (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) The trial court bore that responsibility in this case, and our review of the record reveals substantial evidence to support its conclusion that Bereki, not Spartan Associates, was the contractor for the job.

C. Disgorgement Remedy Under Section 7031

Separate from his general attacks on section 7031, subdivision (b), Bereki challenges its application under the specific facts of this case. He first asserts disgorgement is an improper remedy because it gives the Humphreys a double benefit — the remodel improvements and the money they otherwise would have paid for them. In the context of the statute at issue, however, courts have uniformly rejected such an argument and required disgorgement, even though this remedy often produces harsh results. (See, e.g., *Alatriste, supra*, 183 Cal.App.4th at pp. 672-673; *White, supra*, 178 Cal.App.4th at pp. 520-521; see also *Jeff Tracy, Inc. v. City of Pico Rivera* (2015) 240 Cal.App.4th 510, 521.) Full disgorgement is required; offsets and reductions for labor and materials received are not permitted.

Equally meritless is Bereki's contention that there was no justiciable claim under the statute because there was no evidence the Humphreys were injured by his lack of a contractor's license. Bereki cites no authority for that novel proposition. Injury is not an element of a cause of action under the statute. The disgorgement consequence is not remedial in nature. Similar to the licensing requirement, it is a proactive measure

intended to decrease the likelihood of harm due to “incompetent or dishonest providers of building and construction services.” (*White, supra*, 178 Cal.App.4th at pp. 517.)

We also are not persuaded by Bereki’s objection to the amount the court ordered him to repay to the Humphreys. He highlights evidence showing that some of the payment checks came from Gary Humphreys’ corporation, and he argues the Humphreys are not entitled to those amounts given they did not pay them in the first instance. While we do not necessarily see eye-to-eye with Bereki’s legal reasoning, we need not reach the legal aspect of his argument due to the trial court’s factual findings.

The trial court, relying on Gary Humphreys’ uncontradicted testimony, found that the contested payments ultimately were attributable to Gary Humphrey himself. Substantial evidence supports this conclusion. The Humphreys testified that the business is an S corporation, and at the relevant time Gary Humphreys was the sole shareholder and an employee. Gary Humphreys explained he was traveling often for business during the remodel, including at times when Bereki insisted on needing money ““right away.”” To facilitate the payments, Gary Humphreys had persons in his corporation with signing authority write checks from the corporate account. The amounts paid on the Humphreys behalf were then accounted for through a reduction in the regular income Gary Humphreys received from the corporation. He paid income taxes on those amounts because they were included in the figures listed on his annual W-2 form.

Under these circumstances, we find ample evidence to support the trial court’s factual finding that although certain payments to Bereki were made from the Humphreys’ business account, they ultimately were accounted for in a way that ensured they were personal payments from the Humphreys, as individuals. Accordingly, the Humphreys were entitled to “all compensation paid.” (§ 7031, subd. (b).)

We recognize that the provisions of section 7031, including the disgorgement remedy, are harsh and may be perceived as unfair. As courts have explained, however, they stem from policy decisions made by the Legislature.

(*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 423; *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995; *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 151; see *Judicial Council of California v. Jacobs Facilities, Inc.* (2015) 239 Cal.App.4th 882, 896; *Alatriste, supra*, 183 Cal.App.4th at p. 672.) “[T]he choice among competing policy considerations in enacting laws is a legislative function” (*Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal.App.4th 1183, 1203), and absent a constitutional prohibition, we may not interfere or question the wisdom of the policies embodied in the statute. (*Marine Forests Society v. California Coastal Com.* (2005) 36 Cal.4th 1, 25; *Alatriste, supra*, 183 Cal.App.4th at p. 672.)

D. Statement of Decision

Though he admits he did not timely request a statement of decision, Bereki claims the trial court should have nevertheless provided one after he made an untimely request. To the contrary, “[n]o statement of decision is required if the parties fail to request one.” (*Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970; see also Code Civ. Proc., § 632.) The trial court’s denial was proper. (See *In re Marriage of Steinberg* (1977) 66 Cal.App.3d 815, 822 [upholding court’s refusal to make findings of fact and conclusions of law due to party’s failure to timely request them].)

III

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

GOETHALS, J.

EXHIBIT [B]

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: <u>C. Bolin</u> 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		
JUDGMENT ☐ By Clerk ☐ By Default ☒ After Court Trial ☒ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial		CASE NUMBER 2015-00805807 Judge David Chaffee

JUDGMENT

- 1 ☐ **BY DEFAULT**
- Defendant was properly served with a copy of the summons and complaint.
 - Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - Defendant's default was entered by the clerk upon plaintiff's application
 - ☐ 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
 - ☐ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
 - ☐ plaintiff's testimony and other evidence
 - ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
- Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - ☐ the signed written stipulation was filed in the case
 - ☐ 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.
- 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**
 - Appearances by:
 - ☒ Plaintiff (name each)
 - The Spartan Associates, Inc.**
 -☐ Continued on Attachment 3b
 - ☒ Defendant (name each):
 - Gary Humphreys**
 - Karen Humphreys**☒ Continued on Attachment 3b.
 - ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - ☒ A statement of decision (Code Civ. Proc., § 632) ☒ was not ☐ was requested.

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

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

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

5. **Parties.** Judgment is

a ☐ for plaintiff (name each)

and against defendant (names):

☐ Continued on Attachment 5a.

b. ☒ for defendant (name each).

Gary Humphreys & Karen Humphreys

c ☒ for cross-complainant (name each).

Gary Humphreys & Karen Humphreys
 and against cross-defendant (name each):
Adam Bereki

☐ Continued on Attachment 5c.

d ☐ for cross-defendant (name each):

6 **Amount.**

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

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

b. ☒ Plaintiff to receive nothing from defendant named in item 5b.

☒ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

c ☒ Cross-defendant named in item 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 20 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 [C]

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: Khounng Kelvin Do

BAILIFF/COURT ATTENDANT: Michelle Gallegos

CASE NO: 30-2015-00805807-CU-CO-CJC CASE INIT.DATE: 08/21/2015

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

CASE CATEGORY: Civil - Unlimited CASE TYPE: Contract - Other

EVENT ID/DOCUMENT ID: 72559889

EVENT TYPE: Jury Trial

APPEARANCES

J. Scott Russo, from Russo & Duckworth LLP, present for Cross - Defendant, Plaintiff(s).

William G. Bissell, from Law Offices of William G. Bissell, present for Defendant, Cross - Complainant(s).

KAREN HUMPHREYS, Defendant is present.

GARY HUMPHREYS, Defendant is present.

Adam Bereki, self represented Cross - Defendant, present.

2nd day of trial

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

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

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

Mr. Adam Bereki waived closing argument.

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

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

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

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

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

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

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

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

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

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

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

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

Counsels reached an agreement as set forth on the record.

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

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

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

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

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]

12/05/2016 at 01:44:00 PM
Clerk of the Superior Court
By Emma Castle, Deputy Clerk

1 WILLIAM G. BISSELL, ESQ. State Bar #93527
2 Law Offices of William G. Bissell
3 14 Corporate Plaza Drive, Suite 120
4 Newport Beach, CA 92660
5 Telephone: (949) 719-1159
6 Telefax No: (949) 719-1158

7 Attorney for Gary Humphreys,
8 Karen Humphreys

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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

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION FOR
LEAVE TO FILE AMENDED
CROSS-COMPLAINT

Unlimited Civil-
[Amount Exceeds
\$25,000.00]

Date: April 13, 2016
Time: 10:00 a.m.
Dept: C-20

Action Filed: August
21, 2015

Trial Date: Jan. 17,
2017

1 I.

2 INTRODUCTION

3 On October 13, 2015 Gary Humphreys and Karen Humphreys,
4 filed their cross-complaint in this matter seeking the recovery
5 of damages alleged to have been incurred as a result of numerous
6 acts of fraud and negligence on the part of Adam Bereki (Bereki)
7 committed in connection with Bereki's performance as building
8 contractor on a home remodel project of which the Humphreys were
9 the owners. At the time of filing the cross-complaint and until
10 recently, the Humphreys were unaware that at the time they
11 contracted with Mr. Bereki to perform the work and during the
12 entire period in which Mr. Bereki was actively performing work
13 on the project, Mr. Bereki possessed no contractor's license
14 issued to him in his name by the California Contractor's license
15 Board. The recent discovery of Mr. Bereki's unlicensed status
16 gives rise to an additional cause of action not plead in the
17 original cross-complaint. A cause of action under Business &
18 Professions Code §7031 (b) for the recovery of all sums paid by
19 the Humphreys to Mr. Bereki.

20 II.

21 THE COURT MAY UPON ANY TERMS THAT MAY BE JUST,

22 ALLOW THE AMENDMENT OF ANY PLEADING.

C.C.P. §473

23 //

24 //

1 III.

2 LIBERALITY IS THE RULE RATHER THAN THE

3 EXCEPTION IN ALLOWING THE AMENDMENT OF PLEADINGS

4 Amendments should be liberally allowed in order to secure
5 fair and speedy trials on merits, and where justice will be
6 served by permitting amendment, and rights of other parties are
7 not prejudiced, court may not arbitrarily deny motion to amend.
8 Slack v. Metropolitan Trust Co. (1935, Cal App) 9 Cal App 2d 87.

9 It is the rare case in which a court will be justified in
10 refusing a party leave to amend his or her pleadings so that he
11 or she may properly present his or her case. Morgan v. Superior
12 Court of Los Angeles County (1959, Cal App 2d Dist) 172 Cal App
13 2d 527.

14 If a motion to amend a pleading is timely made and
15 granting of the motion will not prejudice the opposing party, it
16 is error to refuse permission to amend, and where refusal also
17 results in party being deprived of right to assert meritorious
18 cause of action or meritorious defense, it is not only error but
19 is also abuse of discretion. Morgan v. Superior Court of Los
20 Angeles County Supra.

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1 IV.

2 THE PROPOSED FIRST AMENDED CROSS-COMPLAINT
3 IS NECESSARY TO ALLOW CROSS-COMPLAINANTS TO
4 ASSERT A MERITORIOUS CAUSE OF ACTION.
5

6 The First Amended cross-complaint asserts an additional
7 cause of action under Business & Professions Code §7031 for
8 disgorgement of payments received by an unlicensed contractor.
9 The cause of action is meritorious and denial of leave to file
10 the amended cross-complaint would result in Cross-complainants
11 being deprived of asserting a meritorious cause of action.

12 V.

13 THE GRANTING OF THE MOTION TO AMEND
14 WILL NOT PREJUDICE ANY PARTY
15

16 The additional cause of action for disgorgement of funds
17 asserted in the proposed first amended cross-complaint is based
18 on the single and simple proposition that cross-defendant Adam
19 Bereki, as the contracting party, was not licensed by the
20 California Contractor's license Board either at the time he
21 contracted with the cross-complainants (the Humphryes), or at the
22 times he performed work on the Humphreys project. While the
23 answer to the question of Mr. Bereki's license status is
24 immensely significant for purposes of this lawsuit, arriving at
25 the answer is very simple. Mr. Bereki either was licensed or he
26 was not. The determination of that issue will not require

1 reopening discovery and will involve only Mr. Bereki either
2 producing or not producing proof of his license status at the
3 trial.

4
5 VI.

6 CONCLUSION

7 For the reasons set forth above, defendant/cross-
8 complainants Gary Humphreys and Karen Humphreys respectfully
9 requests that the Court grant their motion for leave to file
10 their first amended cross-complaint in this matter.

11
12 Dated: December 5, 2015

13
14 Respectfully submitted,

15 William
16 Bissell

Digitally signed by William
Bissell
DN: cn=William Bissell, o, ou,
email=wbissell@wgb-law.com,
c=US
Date: 2016.12.05 11:47:41 -08'00'

17 William G. Bissell
18 Attorney for Gary Humphreys and
19 Karen Humphreys
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1 WILLIAM G. BISSELL, ESQ. State Bar #93527
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

THE SPARTAN ASSOCIATES, INC.)

Case No.30-2015-
00805807

)
Plaintiff,)

12 vs.)

DECLARATION IN SUPPORT
OF MOTION FOR LEAVE TO
FILE 1ST AMENDED CROSS-
COMPLAINT

13 GARY HUMPHREYS, an individual;)
14 KAREN HUMPHREYS, an individual)
15 and DOES 1 through 25 Inclusive)

Unlimited Civil-
[Amount Exceeds
\$25,000.00]

16 Defendants.)

17 And Related Cross-Action)

Assigned for all purposes
to: HON.DAVID CHAFFEE

Dept. C-20

Date: January 6, 2016
Time: 9:30 a.m.
Dept: C-20

Action Filed: August 21,
2015

Trial Date: Jan. 17,
2017

1 I, WILLIAM G. BISSELL, declare:

2 1. I am an attorney licensed to practice before all of
3 the courts of the State of California and am the attorney of
4 record for Gary Humphreys and Karen Humphreys, defendants and
5 cross-complainants in this matter. I have personal knowledge of
6 the matters set forth in this declaration and if called upon to
7 testify could and would competently testify to the following.

8 2. Attached here to as Exhibit "A" is the proposed First
9 Amended Cross-Complaint of Gary Humphreys and Karen Humphreys.
10 The amended cross-complaint is identical in all respects to the
11 cross-complaint presently on file in this matter with the single
12 exception that a cause of action for disgorgement of funds under
13 Business and Professions Code §7031 has been added as a new
14 First Cause of Action.

15 3. The new cause of action was deemed appropriate when
16 cross-complainants recently conducted investigation into the
17 license status of cross-defendant Adam Bereki disclosed that Mr.
18 Bereki possessed no contractors license at the time he acted as
19 contractor on the Humphreys project which is the subject of
20 this lawsuit.

21 4. It is my informed belief that the added cause of
22 action for disgorgement of funds is meritorious and is necessary
23 in the furtherance of justice and that denial of leave to file
24 the amended cross-complaint would result in cross-complainants
25 being deprived of asserting a meritorious cause of action.

26

27 Declaration in Support of Motion For Leave to Amend

1 5. I am further informed and believe and thereon declare
2 that the additional cause of action for disgorgement of funds
3 asserted in the proposed first amended cross-complaint is based
4 on the single and simple proposition that cross-defendant Adam
5 Bereki, as the contracting party, was not licensed by the
6 California Contractor's license Board either at the time he
7 contracted with the Humphreys, or at the times he performed work
8 on the Humphreys project. While the answer to the question of
9 Mr. Bereki's license status has immense significance for
10 purposes of this lawsuit, arriving at the answer to that
11 question is very simple. Mr. Bereki either was licensed or he
12 was not. The determination of that issue will not require
13 reopening discovery and will involve only Mr. Bereki either
14 producing or not producing proof of his license status at the
15 trial.

16 In addition to the interests of justice, the interests of
17 judicial economy would be further served by granting the pending
18 motion for leave to amend in that the determination of Mr.
19 Bereki's license status at the outset of trial has the very real
20 likely hood of reducing, by a matter of days, the time necessary
21 to try this case.

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27 Declaration in Support of Motion For Leave to Amend

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I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct.
Executed this 5th Day of December 2016, at Newport Beach,
California.

William G. Bissell,
Attorney for Defendants
Cross-Complainants Gary Humphreys and
Karen Humphreys

EXHIBIT [E]

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 Berek
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 Berek, 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.)

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.

EXHIBIT [E]

Declaration of adam bereki

I, adam bereki, declare:

I am over the age of eighteen and have personal knowledge of the matters set forth in this declaration. If called upon to testify, I could and would competently testify to the following:

1. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be – including but not limited to –: fraud, gross negligence, abuse of process, intentional infliction of emotion distress, deprivations of my Rights and violations of due process by Plaintiffs Karen and Gary Humphreys and their Counsel, William Bissell, as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017.

2. I have been harmed financially, emotionally, psychologically, and physically by what I believe to be – including but not limited to –: fraud, gross negligence, deprivations of my Rights and violations of due process by David R. Chaffee, Kathleen O'Leary, Richard. M. Aronson, and Thomas M. Goethals, acting coram non judice as evidenced in the Motion To Vacate Void Judgment filed forthwith on February 19, 2019, as well as previous motions I have filed in this case, such as the First Amended Reply To Opposition and Motion To Disqualify Judge For Cause on October 2, 2017.

3. In the First Amended Reply to Opposition and Motion To Disqualify Judge For Cause filed on October 2, 2017, I declared:

"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 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.

4. I will provide evidence further substantiating the financial, emotional, psychological and physical injuries I have incurred as a result of the behavior of the aforementioned persons for which I seek restitution.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed this 19th day of February, 2019 at Costa Mesa, California



adam bereki

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: in propria persona NAME: adam bereki FIRM NAME: STREET ADDRESS: 818 Spirit CITY: Costa Mesa STATE: Ca ZIP CODE: [92626] TELEPHONE NO.: 949.241.6693 FAX NO.: E-MAIL ADDRESS: abereki@gmail.com ATTORNEY FOR (name):		FOR COURT USE ONLY CASE NUMBER: 30-2015-00805807 JUDICIAL OFFICER: Di Cesare DEPARTMENT: C-16
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 700 W. Civic Center Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92702 BRANCH NAME: Central Justice Center		
PLAINTIFF/PETITIONER: The Spartan Associates Inc. DEFENDANT/RESPONDENT: Karen and Gary Humphreys		
PROOF OF ELECTRONIC SERVICE		

1. I am at least 18 years old.
 - a. My residence or business address is (specify):
818 Spirit Costa Mesa, California [92626]
 - b. My electronic service address is (specify):
abereki@gmail.com
2. I electronically served the following documents (exact titles):
Notice of Motion and 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 and Gary Humphreys/ The Spartan Associates Inc./ Sure Tec Insurance
 - b. Electronic service address of person served :
wbissell@wgb-law.com/srusso@russoandduckworth.com/bmorales@hausmansosa.com
 - c. On (date): 2/19/19

☐ 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: 2/19/19

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)