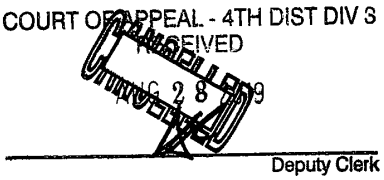
Judicial Notice Exhibit 29

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

State of California, Court of Appeal (revised 4-30-14)
Fourth Appellate District, Division Three
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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