Judicial Notice Exhibit 13

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

GARY HUNPHREYS et al.,
Plaintiffs and Respondents,

vs.

ADAM BEREKI
Defendant and Appellant

Court of Appeal No. G065695
Orange County Superior Court No. 30-2015-00805807)

MOTION TO DISMISS APPEAL

Appeal from a Judgment of the
Orange County Superior Court
Honorable David J. Hasseltine, Judge

WILLIAM G. BISSELL
State Bar #93527
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949) 287-4503
Attorney for Defendants/ Respondents
GARY HUMPHREYS and
KAREN HUMPHREYS

Respondents Gary Humphreys and Karen Humphreys move this Court for an order dismissing the appeal herein and for sanctions.

The motion is made on the following grounds:

1. Appellant is barred from bringing this appeal under the doctrines of Res Judicata, Collateral Estoppel and Law of the Case in that the issues raised by Appellant and the ultimate relief sought by him through this appeal, the reversal of the trial courts judgment, were the subject of the prior appeal filed by Appellant with this Court in Court of Appeal Case No. GO55057 and in which this Court affirmed the trial court's judgment.

2. The questions presented in this appeal have become moot in that the the obligation to pay the judgment rendered in favor of the Respondents in the trial court and which judgment Appellant seeks to have overturned, was discharged in Appellant's bankruptcy proceedings without any portion of the judgment having been satisfied prior to the discharge.

The motion is based on the attached declaration of William Bissell, and the attached memorandum of points and authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case, judgment in which has been final for nearly a decade, arose out of a home remodel project which began in April of 2012 in Newport Beach, California. The Respondents Gary Humphreys and Karen Humphreys (the Humphreys) were the husband and wife owners of the property to be remodeled and the Appellant Adam Bereki (Mr. Bereki) was the contractor, albeit unlicensed, with whom the Humphreys contracted to perform the work.

A dispute arose between the Humphreys and Mr. Bereki over the quality of the work performed by Mr. Bereki and other disturbing aspects of Mr. Bereki's activities and performance on the project resulting in Mr. Bereki being terminated from the project. After the termination, Mr. Bereki's corporation sued the Humphreys and a cross complaint was filed by the Humphreys. On motion of the Humphreys, which was unopposed, the first cause of action of their first amended cross-complaint for disgorgement under California Business & Professions Code

Section 7031(b), was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading.

The trial on the severed first cause of action of the amended cross-complaint commenced on March 27, 2017 before Judge David Chaffee in Department C-20 of the Orange County Superior Court and concluded on March 28, 2017. At the conclusion of the presentation of evidence, the Trial Court found in favor of the Humphreys on both the complaint and the first cause of action of the first amended cross-complaint and entered judgment accordingly.

Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. As with this latest appeal, Mr. Bereki in his initial appeal argued that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution as Business & Professions Code §7031 (b) was a penal statute and was unconstitutional.

Oral argument was heard in the matter on October 16, 2018, before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court in its unpublished opinion dated October 31, 2018, awarding Respondent's their costs on appeal.

The affirmation of the judgment by this Court was, however, merely the starting point in a long and continuing crusade waged by Mr. Bereki in virtually every available and unavailable jurisdiction against both the judgment and the participants in the system which allowed it.

The actions taken by Mr. Bereki include:

- Filing a petition for rehearing with this Court which was denied on May 20, 2018;
- Bringing a motion to vacate the judgment in the Orange County Superior Court which was denied on March 15, 2019;
- Filing a petition for review with the California Supreme Court which was denied on January 30, 2019;
- Filing a petition for certiorari with the U.S. Supreme Court which was denied on October 7, 2019;
- On October 28, 2019, Mr. Bereki filed a complaint in the United States District Court Central District of California seeking to have the judgment entered against him in the Superior Court action declared void. This action was dismissed on motion brought by the Humphreys.
- Mr. Bereki appealed the dismissal of his Federal Court action to the United States Court of Appeals for the Ninth Circuit which on November 12, 2020

dismissed the appeal as frivolous and denied Mr. Bereki's status to proceed in forma pauperis.

- In September 2021 Mr. Bereki filed a petition for writ of habeas corpus with the United States Supreme Court which was returned to Mr. Bereki by the Court without action taken.
- On May 28, 2025 Mr. Bereki apparently believing it was appropriate to start the whole process over again filed with the Orange County Superior Court his second motion to vacate the judgment entered in this matter. The motion was brought on what are essentially the same grounds as the motion filed in 2019, was opposed by the Humphreys, was heard in Department 23 of the Orange County Superior court on June 26, 2025, and was properly denied.

In addition to the above Mr. Bereki has leveled an assortment of misguided and incendiary collateral attacks, allegations and charges with various governmental and law enforcement agencies and departments against the judges who have declined to rule in his favor.

II.
THE DOCTRINE OF
"*THE LAW OF THE CASE*"
PRECLUDES CONSIDERATION OF THIS APPEAL

"The doctrine of 'the law of the case' requires that both trial and reviewing courts follow principals laid down upon a former appeal in the same case, whether those earlier pronouncements are right or wrong" Lindsey v. Meyer 125 Cal. App. 3rd 536, 541 (1981). The validity of the judgment of the trial court entered in this matter was affirmed by this Court on appeal as set forth in the Court's unpublished opinion filed on October 31, 2018. In its opinion this Court rejected Mr. Bereki's argument that §7031 (b) of the Business and Professions Code was unconstitutional or penal in nature by stating in part at pages 8 & 9:

" *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.)

While there are a few narrow exceptions to the Law of the Case doctrine, none apply here. Those recognized exceptions are:

(1) Substantially different evidence is presented in subsequent proceedings such that the prior determination involved materially different facts. Nelson v.Tucker 48 Cal App. 5th 827, 837 (2020). There is no new evidence here. All "evidence" in Mr. Bereki's possession now was in his possession or available to him at the time of trial

(2) Intervening change in controlling law. Ryan v. Mike-Ron Corp. 259 Cal.App.2d 91, 96 (1968.) The law on which the judgment was based, Business & Professions Code §7031 (b), remains good law unchanged from the time of the trial.

(3) A clearly erroneous decision resulting in manifest injustice. Moore v. Kaufman, 189 Cal. App. 4th 604, 617 (2010) "*Under the doctrine of the law of the case, we ordinarily will not revisit an issue of law that was actually presented and determined in a prior appellate proceeding if the issue was necessary to the decision in the prior case. [citations omitted] (unless) there has been a manifest misapplication of existing principles resulting in substantial injustice…"*

This Court's own reasoned opinion reached in this matter in October of 2018 discusses in detail the legal basis by which it found the trial court's decision to be legally sound. There is no legal basis supporting the claim that this Court's analysis was erroneous and as a consequence resulted in manifest injustice. Accordingly, for purposes of this case, the question of both the constitutionality and civil nature of the disgorgement remedy provided by §7031 (b) of the Business and Professions Code is settled and not subject to further review or appeal.

III.
THE DOCTRINE OF
RES JUDICATA
PRECLUDES CONSIDERATION OF THIS APPEAL

"*It is established that the doctrine of res judicata precludes parties or their privities from relitigating a cause of action that has been finally determined by a court of competent jurisdiction…*" Acuna v. Regents of University of California, 56 Cal. App. 4th 639, 648 (1997).

"…that the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal, are factors supporting the conclusion that the decision is final for the purpose of preclusion." Sandoval v. Superior Court, 140 Cal. App. 3d 932, 936 (1983).

Mr. Bereki has been fully heard and reheard on the issues he continues to raise and raises yet again here in this appeal. Although this Court has rendered a reasoned opinion explaining why Mr. Bereki's position with respect to Business & Professions Code §7031 (b) is without merit, because Mr. Bereki happens to disagree with that opinion he somehow believes he can obstinately continue to relitigate this matter until he gets the result he wants. He cannot.

IV.
THE DOCTRINE OF *COLLATERAL ESTOPPEL* PRECLUDES CONSIDERATION OF THIS APPEAL

Much like res judicata, the doctrine of collateral estoppel precludes relitigating issues argued and decided. The difference between these two doctrines was explained by the California Supreme Court in Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 896, (2002) in which the Court stated *"Res judicata" describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit*

between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings."

The elements for finding collateral estoppel were discussed in Lucido v. Superior Court, 51 Cal. 3d 335, 340 (1990) in which the Court stated: "*Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.*" Each of these requirements are met here.

1. Issues are the same in both proceedings. The core issues raised in both the appeal of the trial court's judgment in 2017, and this appeal is the constitutionality of Business & Professions Code §7031 (b) and whether a judgment based on it is criminal or civil in nature.

2. Both of these issues were argued in the appeal of the trial court's judgment and were addressed in this Court's October 31, 2018 unpublished opinion.
3. The issues of both the constitutionality of Business & Professions Code §7031 (b) and the civil nature of an action brought under that section were addressed in this Court's October 31, 2018, opinion.
4. The decision of the trial court is final and, on the merits, having been affirmed on appeal and further review denied.
5. The parties to this appeal are the same as those in the appeal decided by this Court in October 2018.

V.
THE APPEAL SHOULD BE DISMISSED AS THE MATTER IN CONTROVERSEY HAS BECOME MOOT

An appeal may be dismissed on grounds that the matter in controversy has become moot. As stated by the U. S. Supreme Court in Mills v. Green 159 U.S. 651, 653 (1895) *"the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a*

lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal…"

On December 8, 2022, Mr. Bereki filed a Chapter 7 voluntary petition with the U.S. Bankruptcy Court for the Central District of California. In his petition Mr. Bereki listed the Superior Court judgment, which is the subject of the present appeal as a liability. On March 3, 2023, by order of the Bankruptcy Court the obligation to pay created by the judgment was discharged rendering the judgment uncollectable by the Humphreys. A case is moot when the decision of the reviewing court can have no practical impact or provide the parties effectual relief. Highland Springs Conference and Training Center v. City of Banning 42 Cal. App. 5th 416, 430-431 (2019). Through this appeal, Mr. Bereki seeks to have the judgment for disgorgement entered by the trial court in 2017 set aside. However, despite the judgment, no disgorgement has occurred. No portion of the judgment has been satisfied by Mr. Bereki and with the order of discharge in his bankruptcy proceedings, he will never have to pay any portion of the judgment. In light of these circumstances, any decision by this Court as it pertains to the trial court judgment can have no practical impact or provide any effectual relief to any party and the appeal should be dismissed as moot.

VI.
SANCTIONS ARE WARRANTED AGAINST APPELLANT FOR BRINGING A FRIVOLOUS APPEAL

"*When it appears to the reviewing court that the appeal was frivolous …it may add to the costs on appeal such damages as may be just."* California Code of Civil Procedure §907. "*On motion of a party or on its own motion, a Court of Appeal may impose sanctions including the award or denial of costs under Rule 8.278 on a party or attorney for: (1) Taking a frivolous appeal…"*

The test for determining whether an appeal is frivolous is an objective one which holds that an appeal is frivolous when any reasonable attorney would agree that the point is totally and completely without merit. In re Marriage of Flaherty 31 Cal 3d 637, 649 (1982). A consideration relevant to determining whether an appeal is frivolous under the objective standard is whether any statute, rule, or published case directly considers the question. Doran v. Magan 76 Cal. App. 4th 1287, 1296 (1999). As discussed above, there is no lack of published case authority for the proposition that a final judgment is just that, final and is no longer subject to appeal. Although Mr. Bereki has been advised repeatedly that this is the law and while he may not agree with the trial court's judgement or the Appellate Court's ruling on that judgment, the ruling stands. Despite this, Mr. Bereki over the last

several years has continued to bring utterly meritless and frivolous challenges to the judgment, wasting judicial resources and causing the Humphrey's considerable expense in having to continually respond to his frivolous and meritless antics.

It is apparent to the Humphrey's and the evidence is inescapable at this juncture, that Mr. Bereki will not cease in his misguided crusade so long as doing so comes at no cost to him. It is therefore high time and appropriate to send a clear message to Mr. Bereki that continuing in this folly will be at his peril and expense by awarding Humphreys their costs on appeal and their attorney fees incurred in this matter.

For the reasons set forth above, Respondent's respectfully request that the Appeal in this matter be dismissed and that Appellant be ordered to pay Respondents sanctions in the amount set forth in the accompanying declaration.

Respectfully Submitted

Date: September 9, 2025

william bissell

William Bissell, Attorney for Respondents Gary Humphreys and Karen Humphreys

Certificate of Compliance

The undersigned certifies that the above Motion and supporting Memorandum of Points and Authorities contain 2,683 words which is in compliance with CRC 8.204 (c) (1).

Date: September 9, 2025

william bissell

William Bissell

PROOF OF SERVICE

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

GARY HUNPHREYS et al.,
Plaintiffs and Respondents,

vs.

ADAM BEREKI
Defendant and Appellant

Court of Appeal No. G065695
Orange County Superior Court No. 30-2015-00805807)

I am employed in the County of Orange, California. I am over the age of eighteen (18) years and not a party to the case. My business address is 23 Corporate Plaza Drive, Suite 150 Newport Beach CA 92660.

On September 10, 2025, I served by depositing in the United States Mail, postage prepaid, the MOTION TO DISMISS APPEAL in this matter upon the following party:

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129

Appellant in Pro Per

Executed on September 10, 2025, at Newport Beach, California

william bissell

William Bissell

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

GARY HUNPHREYS et al.,
Plaintiffs and Respondents,

vs.

ADAM BEREKI
Defendant and Appellant

Court of Appeal No. G065695
Orange County Superior Court No. 30-2015-00805807)

DECLARATION IN SUPPORT OF MOTION TO DISMISS APPEAL

Appeal from a Judgment of the
Orange County Superior Court
Honorable David J. Hasseltine, Judge

WILLIAM G. BISSELL
State Bar #93527
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
Telephone: (949) 287-4503
Attorney for Defendants/ Respondents
GARY HUMPHREYS and
KAREN HUMPHREYS

I, William Bissell, declare that the matters set forth in this declaration are true of my own personal knowledge except for those matters asserted on information and belief and as to which I believe to be true.

1. I am the attorney of record for Karen and Gary Humphreys, the Respondents in this appeal and have represented the Humphreys in this matter since being retained by them in August of 2013.

2. This case, judgment in which has been final for nearly a decade, arose out of a home remodel project which began in April of 2012 in Newport Beach, California. The Humphreys were the husband-and-wife owners of the property to be remodeled and the Appellant Adam Bereki (Mr. Bereki) was the contractor, albeit unlicensed, with whom the Humphreys contracted to perform the work.

3. A dispute arose between the Humphreys and Mr. Bereki over the quality of the work performed by Mr. Bereki and other disturbing aspects of Mr. Bereki's activities and performance on the project resulting in Mr. Bereki being terminated from the project. After the termination, Mr. Bereki's corporation sued the Humphreys and a cross-complaint was filed by the Humphreys.

4. On motion of the Humphreys, which was unopposed, the first cause of action of their first amended cross-complaint for disgorgement under California Business

& Professions Code Section 7031(b), was ordered severed, to be tried separate from and prior to the remaining causes set forth in that pleading.

5. The trial on the severed first cause of action of the amended cross-complaint began on March 27, 2017, before Judge David Chaffee in Department C-20 of the Orange County Superior Court and concluded on March 28, 2017.

6. At the conclusion of the presentation of evidence, the Trial Court found in favor of the Humphreys on both the complaint and the first cause of action of the first amended cross-complaint and entered judgment accordingly. A true and correct copy of the trial court judgment is attached as Exhibit "A" .

7. Mr. Bereki appealed the trial court's judgement to the Court of Appeal, Fourth District, Division Three. In his appeal Mr. Berek argued that the trial court lacked jurisdiction over both him and the subject matter of the action and that he was denied due process protections guaranteed by the U.S. Constitution as Business & Professions Code §7031 (b) was a penal statute and was unconstitutional.

8. Oral argument was heard in the matter on October 16, 2018 before a panel comprised of the Honorable Justices O'Leary, Aronson and Goethals at which Mr. Bereki again asserted the trial court's lack of jurisdiction and denial of due process. Following submission of the matter, the Appellate Court, with the concurrence of all three justices, affirmed the judgment of the trial court in its unpublished opinion dated October 31, 2018, awarding Respondent's their costs on appeal.

A true and correct copy of the Court's opinion is attached as Exhibit "B".

9. Following the Court's affirming the judgment of the trial court Mr. Bereki has waged a long and continuing crusade in virtually every available and unavailable jurisdiction against both the judgment and the participants in the system which allowed it.

The actions taken by Mr. Bereki include:

- Filing a petition for rehearing with this Court which was denied on May 20, 2018. A true and correct copy of the Court's order denying the petition is attached as Exhibit "C".
- Bringing a motion in the Orange County Superior Court to vacate the judgment. The motion was heard and denied on March 15, 2019 on the grounds that "*The arguments presented on (the) motion were already raised and rejected and the appellate decision affirming the underlying judgment on the merits is now final…".* A true and correct copy of the minute order on the motion is attached as Exhibit "D".
- Filing a petition for review with the California Supreme Court, which was denied on January 30, 2019. A true and correct copy of the California Supreme Court's denial of the petition for review is attached as Exhibit "E".

- Filing a petition for certiorari with the U.S. Supreme Court which was denied on October 7, 2019. A true and correct copy of the denial of the petition is attached as Exhibit “F”.
- On October 28, 2019 Mr. Bereki filed a complaint in the United States District Court Central District of California seeking to have the judgment entered against him in the Superior Court action declared void. This action was dismissed on motion brought by the Humphreys. A true and correct copy of the District Court’s Order dismissing Mr. Bereki’s complaint is attached as Exhibit “G”.
- Mr. Bereki appealed the dismissal of his Federal Court action to the United States Court of Appeals for the Ninth Circuit which on November 12, 2020 dismissed the appeal as frivolous and denied Mr. Bereki’s status to proceed in forma pauperis. A true and correct copy of the U.S. Court of Appeals Order dismissing the Bereki appeal as frivolous is attached as Exhibit “H”.
- In September 2021 Mr. Bereki filed a petition for writ of habeas corpus with the United States Supreme Court which was returned to Mr. Bereki by the Court without action taken. A true and correct copy of the transmittal from the Office of the Clerk of the U.S. Supreme Court returning the unaccepted petition for writ of habeas corpus is attached as Exhibit “I”.

- On May 28, 2025 Mr. Bereki apparently believing it was appropriate to start the whole process over again, filed with the Orange County Superior Court his second motion to vacate the judgment entered in this matter. The motion was brought on what are essentially the same grounds as the motion filed in 2019, was opposed by the Humphreys, heard in Department 23 of the Orange County Superior court on June 26, 2025 and was properly denied. It is on this denial that the pending appeal is based.

10. On December 8, 2022 Mr. Bereki filed a Chapter 7 voluntary petition with the U.S. Bankruptcy Court for the Central District of California listing among other debts the judgment entered against him in Orange County Superior Court Case No. 30-2015-00805807 and which judgment is the subject of this appeal. On March 27, 2023 the Bankruptcy Court issued its order granting the discharge of Mr. Bereki's listed debts including the dept created by the judgment in Superior Court case No. 30-2015-00805807. A true and correct copy of the Bankruptcy courts order of discharge is attached here to as Exhibit J. Prior to the order of discharge, no amount of the Superior Court judgment had been satisfied.

11. In addition to the above actions Mr. Bereki has leveled an assortment of collateral attacks, allegations and charges with various governmental and law enforcement agencies and departments against the judges who have declined to rule in his favor.

12. I am duly licensed to practice law in the State of California and have actively practiced law since December of 1980. In reviewing the various court records cited in support of this motion and in preparing this motion I have spent 18 hours. I anticipate spending an additional 2.5 hours appearing at the hearing on this motion for a total of 25.5 hours. My billing rate is $360.00 per hour for a total cost to the Humphreys in defending against this spurious and frivolous appeal $9,180.00.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct. Executed this 9th day of September 2025 at Newport Beach, California.

william bissell

William Bissel

EXHIBIT - A

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
04/04/2017 at 12:01:00 PM
Clerk of the Superior Court
By Elaine Wan,Deputy Clerk

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)	FOR COURT USE ONLY
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	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER APR 20 2017 DAVID H. YAMASAKI, Clerk of the Court BY: C Bolivar DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center PLAINTIFF: The Spartan Associates, Inc. DEFENDANT: Gary Humphreys, Karen Humphreys et al	CASE NUMBER 2015-00805807 Judge David Chaffee

JUDGMENT

☐ By Clerk ☑ By Court ☐ By Default ☐ On Stipulation ☑ After Court Trial ☐ Defendant Did Not Appear at Trial

JUDGMENT

1 ☐ **BY DEFAULT**
- a. Defendant was properly served with a copy of the summons and complaint.
- b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
- c. Defendant's default was entered by the clerk upon plaintiff's application.
- d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
- e. ☐ Court Judgment (Code Civ. Proc., § 585(b)). The court considered
  - (1) ☐ plaintiff's testimony and other evidence
  - (2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**
- a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
- b. ☐ the signed written stipulation was filed in the case.
- c. ☐ the stipulation was stated in open court. ☐ the stipulation was stated on the record.

3. ☑ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- a. The case was tried on *(date and time)*: March 27, 2017 at 9.00 a.m. before *(name of judicial officer)*: The Honorable David Chaffee
- b. Appearances by:

☑ Plaintiff *(name each)*
(1) The Spartan Associates, Inc.
(2)
☐ Continued on Attachment 3b

☑ Plaintiff's attorney *(name each)*:
(1) J. Scott Russo esq.
(2)

☑ Defendant *(name each)*:
(1) Gary Humphreys
(2) Karen Humphreys
☑ Continued on Attachment 3b.

☐ Defendant's attorney *(name each)*:
(1) William Bissell esq.
(2) William Bissell esq.

- c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
- d. ☑ A statement of decision (Code Civ. Proc., § 632) ☑ was not ☐ was requested.

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 6c above must pay cross-complainant on the cross-complaint:

(1) ☑	Damages	$ 848,000.00
(2) ☐	Prejudgment interest at the annual rate of %	$
(3) ☐	Attorney fees	$
(4) ☑	Costs	$
(5) ☐	Other (specify):	$
(6)	TOTAL	$

d ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs $
☐ and attorney fees $

7 ☑ Other (specify):
Causes of action two through eight of the first amended cross-complaint are dismissed without prejudice subject to a stipulation by the parties and entered on the record.

Date: APR 2 0 2017

☐ JUDICIAL OFFICER
DAVID R. CHAFFEE

Date ☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE (Optional)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

1028

EXHIBIT - B

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GARY HUMPHREYS et al.,	
Cross-complainants and Respondents.	G055075
v.	(Super. Ct. No. 30-2015-00805807)
ADAM BEREKI,	O P I N I O N
Cross-defendant and Appellant,	

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.

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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

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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

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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 *Alatriste v. Cesar's Exterior Designs, Inc.* (2010) 183 Cal.App.4th 656, 664-666 (*Alatriste*) aptly summarizes the nature, purpose and scope of the litigation prohibition and the disgorgement remedy provided in section 7031, subdivisions (a) and (b).

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

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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.]" (*Alatriste, supra*, 183 Cal.App.4th at pp. 664-666, fns. omitted.)

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

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. Deppartment of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514.) There is ample evidence in the record supporting the court's conclusion.[5]

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

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

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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.

I, BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, do hereby certify that the annexed is a true and correct copy of [illegible] 10-31-2018 as shown by records of my office.

WITNESS my hand and the Seal of the Court this 19 day of MAY A.D. 20 25

BRANDON L. HENSON

By L. PICKRELL
Deputy Clerk

EXHIBIT - C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ADAM BEREKI, Plaintiff and Appellant, v. GARY HUMPHREYS et al., Plaintiff and Appellant.	G055075 (Super. Ct. No. 30-2015-00805807) O R D E R

The petition for rehearing is DENIED.

ARONSON, ACTING P. J.

I CONCUR:

GOETHALS, J.

I, BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, do hereby certify that the annexed is a true and correct copy of PAPER 11-20-2019 as shown by records of my office.
WITNESS my hand and the Seal of the Court this 19 day of NOV A.D. 20 25
BRANDON L. HENSON
By L. PICARD
Deputy Clerk

EXHIBIT - D

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 03/15/2019 TIME: 09:30:00 AM DEPT: C16

JUDICIAL OFFICER PRESIDING: Supervising Judge James J. Di Cesare
CLERK: Martha Diaz
REPORTER/ERM: Jamie Jennings CSR# 13434
BAILIFF/COURT ATTENDANT: Loretta Schwary

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

EVENT ID/DOCUMENT ID: 72990898

EVENT TYPE: Motion to Vacate
MOVING PARTY: Adam Bereki
CAUSAL DOCUMENT/DATE FILED: Motion to Vacate Void Judgment, 02/19/2019

APPEARANCES
Law Offices of William G. Bissell, from Law Offices of William G. Bissell, present for Cross - Complainant,Defendant,Respondent on Appeal(s).
Adam Bereki, self represented Defendant, present.

Tentative Ruling posted on the Internet and posted in the public hallway.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now makes the tentative ruling final as follows:

MOTION TO VACATE

The Motion "to Vacate Void Judgment" filed by Mr. Adam Bereki is Denied. The arguments presented on this motion were already raised and rejected, and the appellate decision affirming the underlying judgment on the merits is now final. Upon remittitur, the trial court is revested with jurisdiction of the case only to carry out the judgment as ordered by the appellate court. (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1365-1366.) Arguments on the merits of the underlying judgment cannot be entertained anew here. The Motion is therefore Denied.

Counsel for the Humphreys to give notice.

EXHIBIT - E

Court of Appeal, Fourth Appellate District, Division Three - No. G055075

S252954

IN THE SUPREME COURT OF CALIFORNIA

En Banc

GARY HUMPHREYS et al., Cross-complainants and Respondents,

v.

ADAM BEREKI, Cross-defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

EXHIBIT - F

Supreme Court of the United States

I, SCOTT S. HARRIS, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing photocopies are true copies of the: Docket sheet in the case of:

ADAM BEREKI,

Petitioner

v.

GARY HUMPHREYS, ET UX.

No. 18-1416, of the October Term 2019, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of the Supreme Court of the United States, at the City of Washington, D.C. this 10th day of June, A.D., 2025.

/s/ SCOTT S. HARRIS
Clerk of the Supreme Court
of the United States

by LWood
Laurie Wood
Deputy Clerk

Supreme Court of the United States

No. 18-1416

Adam Bereki,

Petitioner

v.

Gary Humphreys, et ux.

ON PETITION FOR A WRIT OF CERTIORARI to the Court of Appeal of California, Fourth Appellate District, Division Three, No. G055075.

ON CONSIDERATION of the petition for a writ of certiorari herein to the Court of Appeal of California, Fourth Appellate District, Division Three.

IT IS ORDERED by this Court that the said petition is denied.

October 7, 2019

A true copy SCOTT S. HARRIS
Test:
Clerk of the Supreme Court of the United States
By _____
Deputy

EXHIBIT - G

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Adam Bereket,

Plaintiff,

v.

Gary Humphreys;

Karen Humphreys,

Defendants.

Case No.: CV 19-2050-CBM-ADS(x)

ORDER RE: DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(B)(1), (6) & (7) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND REQUEST FOR JUDICIAL NOTICE [JS-6]

The matter before the Court is Defendants Gary Humphreys and Karen Humphreys' (collectively, "Defendants" or "The Humphreys'") "Motion to Dismiss the First Amended Complaint Pursuant to Rule 12(b)(1), (6), & (7) of the Federal Rules of Civil Procedure and Request for Judicial Notice." (Dkt. No. 9 (the "Motion").)[1]

I. BACKGROUND

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

[1] Following the hearing on the Motion, Plaintiff filed a document entitled "Additional Authorities and Corrected Testimony To Be Considered By the Court re: Defendants Motion to Dismiss Filed 11/19/19," which has been reviewed by the Court. (Dkt. No. 30 (hereinafter, "Additional Authorities").)

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

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

II. STATEMENT OF THE LAW

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

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

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

[3] California Business & Professions Code § 7031 provides: "[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."

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

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

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

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

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

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

> **(A)** in that person's absence, the court cannot accord complete relief among existing parties; or
>
> **(B)** that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > **(i)** as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > **(ii)** leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

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

III. DISCUSSION

A. Request for Judicial Notice

Defendants request that the Court take judicial notice of the following

1. Judgment entered against Plaintiff in Orange County Superior Court, Case No. 30-2015-00805807 (Ex. A);

2. Plaintiff's opening brief filed with the California Court of Appeals appealing the superior court judgment (Ex. B);

3. California Court of Appeals' opinion affirming superior court judgment (Ex. C);

4. Plaintiff's Petition for Review Filed with the Supreme Court of California, Case No. S252954 (Ex. D);

5. California Supreme Court's denial of Plaintiff's Petition for Review (Ex. E);

6. Plaintiff's Petition for Writ of Certiorari filed with the United States Supreme Court, Case No. 18-1416 (Ex. F); and

7. United State Supreme Court's denial of Plaintiff's Petition for Writ of Certiorari (Ex. G).[4]

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

B Rooker-Feldman Doctrine

Defendants move to dismiss the FAC for lack of subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine bars losing parties "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1005-07 (1994). "The purpose of the doctrine is to protect state judgments from collateral federal attack." *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001). For the *Rooker-Feldman* "to apply, a plaintiff must seek not only to set aside a state court judgment, he or she must also allege a legal error by the state court as the basis for that relief." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

Here, Plaintiff seeks relief from the superior court judgment pursuant to Fed. R. Civ. P. 60(d) (FAC at p.13), and an order from this Court (1) vacating the

[4] Plaintiff did not oppose Defendants' request for judicial notice.

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

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

(1) Extrinsic Fraud on the Court

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

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

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

(2) Constitutional Challenge

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

* * *

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

C. Res Judicata / Collateral Estoppel

Defendants also move to dismiss the FAC as barred by the res judicata / collateral estoppel doctrines.[3]

Issue preclusion, or collateral estoppel, bars relitigation of issues that have been adjudicated in a prior action. *DKN Holdings LLC*, 61 Cal. 4th at 824. Pursuant to the doctrine of collateral estoppel, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); *see also* 28 U.S.C. § 1738. Under California law, collateral estoppel/issue preclusion applies: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." *DKN Holdings LLC*, 61 Cal. 4th at 825.

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

Plaintiff appealed the state court judgment. In his appeal, Plaintiff argued the Superior Court committed due process violations and lacked subject matter jurisdiction, and argued Cal. Bus. & Prof. Code § 7031 was unconstitutional because it is penal in nature. (RJN, Ex. B.) The California Court of Appeals affirmed the Superior Court's judgment, and found Plaintiff's arguments on appeal had "no merit." (*Id.* Ex. C; *see also* FAC at p. 9 (alleging California Court of Appeal held the superior court judgment against Plaintiff was a "non-punitive"

[3] "Res judicata" refers to claim preclusion. *Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007). Since the claims asserted by Plaintiff in this action were not asserted in the state court action, res judicata would not apply to bar Plaintiff's claims here.

"equitable remedy").)

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

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

Thus, even if the instant action was not barred pursuant to the Rooker-Feldman doctrine, the Court finds Plaintiff is collaterally estopped from bringing this action. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 750 (9th Cir. 2006).

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IV. CONCLUSION

Accordingly, the Court **GRANTS** Defendants' Motion to Dismiss, and dismisses the action with prejudice because Plaintiff is collaterally stopped from bringing this action.[6] The Court also finds this action is barred pursuant to the Rooker-Feldman doctrine.[7]

IT IS SO ORDERED.

DATED: February 6, 2020

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

[6] Because Plaintiff's claims are barred on collateral estoppel grounds, leave to amend would be futile. *See Tait v. Asset Acceptance, LLC*, 2013 WL 3811767 (C.D. Cal. July 22, 2013).

[7] Defendants also move to dismiss the FAC on the ground Plaintiff fails to join the superior court and California Court of Appeals which are "indispensable parties." Because the Court dismisses this action pursuant to the Rooker-Feldman doctrine, and finds collateral estoppel would bar Plaintiff from bringing this action, it does not reach the issue of whether the superior court and California Court of Appeals are indispensable parties.

I hereby attest and certify on 5 APR 13
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY CLERK

JASON JIANG

1175

EXHIBIT - H

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADAM BEREKI, Plaintiff-Appellant, v. GARY HUMPHREYS; KAREN HUMPHREYS, Defendants-Appellees.	No. 20-55181 D.C. No. 8:19-cv-02050-CBM-ADS Central District of California, Santa Ana ORDER

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

The district court certified that this appeal is frivolous and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On March 24, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the responses to the court's March 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

EXHIBIT - I

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

September 22, 2021

Adam A. Bereki
695 Town Center Dr., Ste. 700
Costa Mesa, CA 92626

RE: In Re Bereki

Dear Mr. Bereki:

The above-entitled petition for an extraordinary writ of habeas corpus was received on September 22, 2021. The papers are returned for the following reason(s):

The petition does not follow the form prescribed by Rule 14 as required by Rule 20.2.

The petition exceeds the limit of 40 pages allowed. Rule 33.2(b).

No motion for leave to file a petition for an extraordinary writ of habeas corpus is required. However, a petition for an extraordinary writ of habeas corpus may not be combined with any other filing, and the Rules of the Court make no provision for the filing of a petition for a writ of error.

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

Please be advised that the Court does not appoint counsel for the purpose of preparing a petition.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:
Jacob Levitan
(202) 479-3392

Enclosures

EXHIBIT - J

Information to identify the case:

Debtor 1	Adam Alan Bereki First Name Middle Name Last Name	Social Security number or ITIN xxx-xx-4758 EIN __-_____
Debtor 2 (Spouse, if filing)	First Name Middle Name Last Name	Social Security number or ITIN ____ EIN __-_____

United States Bankruptcy Court **Central District of California**

Case number: **8:22-bk-12076-SC**

Order of Discharge – Chapter 7

12/15

IT IS ORDERED: A discharge under 11 U.S.C. § 727 is granted to:

Adam Alan Bereki

[include all names used by each debtor, including trade names, within the 8 years prior to the filing of the petition]

Debtor 1 Discharge Date: 3/27/23

Dated: 3/27/23

By the court: Scott C Clarkson
United States Bankruptcy Judge

Explanation of Bankruptcy Discharge in a Chapter 7 Case

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Creditors cannot collect discharged debts
This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

Most debts are discharged
Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

32/AUTU

For more information, see page 2 >

PROOF OF SERVICE

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

GARY HUNPHREYS et al.,
Plaintiffs and Respondents,

vs.

ADAM BEREKI
Defendant and Appellant

Court of Appeal No. G065695
Orange County Superior Court No. 30-2015-00805807)

I am employed in the County of Orange, California. I am over the age of eighteen (18) years and not a party to the case. My business address is 23 Corporate Plaza Drive, Suite 150 Newport Beach CA 92660.

On September 10, 2025, I served by depositing in the United States Mail, postage prepaid, the DECLARATION IN SUPPORT OF MOTION TO DISMISS APPEAL in this matter upon the following party:

Adam Bereki
3649 Metter St.
Las Vegas, NV 89129

Appellant in Pro Per

Executed on September 10, 2025, at Newport Beach, California

william bissell
William Bissell