

## Judicial Notice Exhibit 26

In the Appellate Division of the Superior Court of California  
for the County of Orange

Consolidated Case Nos.:  
30-2025-1482941 (Lead Case) and 30-2025-01487778

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Adam Bereki,  
Appellant.

v.

Canjian Hou,  
Respondent.

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**APPELLANT'S *VERIFIED* OPENING BRIEF**  
Appeal from a Judgment in the Superior Court of California,  
Case No. 30-2025-01459684 (UD proceeding)

**INCLUDING CHALLENGES TO THE CONSTITUTIONALITY OF  
THE DOCTRINES/STANDARDS OF  
ABUSE OF DISCRETION & EXCESS JURISDICTION  
& CCP §632 STATEMENT OF DECISION**

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In the Fourth District Court of Appeal of California

Case No. \_\_\_\_\_

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Adam Bereki,  
Appellant.

v.

Canjian Hou,  
Respondent.

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**APPELLANT'S *VERIFIED* OPENING BRIEF**

Appeal from a Judgment in the Superior Court of California,  
Case No. 30-2025-01459684 (UD proceeding), transferred pursuant to  
CCP § 396(b) as the amount in controversy exceeds \$35,000 and the  
Court lacks subject matter jurisdiction over title disputes CCP § 580(b)(3)  
(Appellate Div. of Superior Court Consolidated Case No.'s  
30-2025-1482941 (Lead Case) and 30-2025-01487778)

**INCLUDING CHALLENGES TO THE CONSTITUTIONALITY OF  
THE DOCTRINES/STANDARDS OF  
ABUSE OF DISCRETION & EXCESS JURISDICTION  
& CCP §632 STATEMENT OF DECISION**

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Jurisdiction is the right to hear and determine, not determine without hearing.

—*Windsor v. McVeigh*, 93 U.S. 277, 283-4 (1876)



## OVERVIEW

This appeal challenges the denial of Appellant Adam Bereki's fundamental right to be heard, resulting in the unlawful deprivation of his property at 818 Spirit, Costa Mesa, CA, through a void unlawful detainer judgment. A void 2015 case judgment, imposing a ~\$930,000 penalty and summarily suspending Appellant's professional license, caused financial ruin, forced bankruptcy, and led to a wrongful foreclosure and subsequent UD action. The Superior Court's limited civil jurisdiction lacked authority to adjudicate a complex title dispute involving these issues and damages exceeding \$35,000. Respondent Canjian Hou, attorney Henry Paloci, judicial officers, and Sheriff personnel violated Constitutional and statutory duties and committed fraud, depriving Appellant of the right to a full, fair and impartial hearing and property rights, rendering the judgment void, as "jurisdiction is the power to hear and determine, not to determine without hearing" (*Windsor v. McVeigh*, 93 U.S. 274, 283–284 (1876)). This brief seeks to vacate the judgment, reassign the case to a neutral judge, restore possession, order restitution and damages of all rights and property lost, and transfer the case to unlimited civil jurisdiction to resolve the title dispute and uphold judicial integrity.

## **CERTIFICATE OF INTERESTED PARTIES**

Pursuant to California Rules of Court, rule 8.208, Appellant hereby certifies that the following listed persons and entities have an interest in the outcome of this appeal. This certificate includes: (1) all parties to the appeal; (2) all real parties in interest; (3) all judges and commissioners who issued orders or judgments challenged in this appeal; (4) all attorneys of record; (5) all persons or entities whose interests may be affected by the outcome of the appeal; (6) any unnamed or unknown court clerks, deputy clerks, or supervisory clerks involved in the proceedings below; and (7) any law enforcement officers, including sergeants and deputies, whose actions are challenged as aiding Constitutional violations (e.g., Sergeant Lopez and Deputy Murillo of the Orange County Sheriff's Department Civil Enforcement Division). The appellate panel justices (Justices Motoike, Delaney, and Scott, of the Fourth District Court of Appeal, Division Three) are included due to potential pecuniary interest arising from their involvement in similar § 7031 cases (*Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024)), subjecting them to disqualification under CCP § 170.1(a)(6)(ii) for bias or pecuniary interest in upholding prior rulings.

### **Parties to the Appeal:**

- Adam Bereki, Appellant
- Canjian Hou

**Real Parties in Interest:**

- Henry Paloci (Respondent's attorney)
- Orange County Superior Court (Judicial entity overseeing UD case No. 30-2025-01459684 and related 2015 case No. 30-2015-00805807)
- Fourth District Court of Appeal (Judicial entity overseeing case No. G055075)
- Orange County Sheriff's Department (Civil Enforcement Division; involved in writ execution and eviction)
- Citizens Bank NA (Foreclosing entity; interest in validity of foreclosure sale)
- Trustee Corps (Foreclosure trustee; interest in validity of trustee's deed)
- Citibank N.A. as Trustee (Senior lienholder; disputed in rem lien on property)
- Shellpoint Mortgage Servicing (Servicer for Citibank; ongoing payments on disputed lien)

**Judges and Commissioners Challenged in the Appeal:**

- Judge David Hesseltine (Orange County Superior Court; handled Ex Parte Application for Stay and Motion to Vacate in 2015 case, RJN Ex. 15.1, 15.3; denied vacatur of 2015 judgment; potential bias under CCP § 170.1(a)(6))
- Commissioner Carmen D. Snuggs-Spraggins (Orange County Superior Court; denied Motion to Vacate UD judgment and Ex Parte Application, CT 134–135, 145; unauthorized ruling without stipulation, Cal. Const., Art. VI, § 21)

**Appellate Justices with Alleged Pecuniary Interest**

- Justice Joanne Motoike (Associate Justice Fourth District Court of Appeal, Division Three; involved in *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024); potential pecuniary interest)
- Justice Thomas Delaney (Associate Justice, Fourth District Court of Appeal, Division Three; involved in *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024); potential pecuniary interest)
- Justice Nathan Scott (Associate Justice, Fourth District Court of Appeal, Division Three; involved in *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024); potential pecuniary interest)

**Attorneys of Record:**

- Henry Paloci (Attorney for Respondent Canjian Hou)

**Persons or Entities Whose Interests May Be Affected:**

- Unknown/Deputy Clerks and Supervisory Clerks (Orange County Superior Court; obstructed Answers on March 14 and 19, 2025, CT 55–60; prematurely entered default, CT 20–24; potential liability for ministerial breaches, *Baske v. Burke*, 125 Cal.App.3d 38 (1981))
- Sergeant Lopez (Orange County Sheriff's Department, Civil Enforcement Division; refused to investigate complaints on March 24, 2025, Ex. 2, pp. E189–E210; potential liability for aiding unconstitutional taking)
- Deputy Murillo (Orange County Sheriff's Department, Civil Enforcement Division; potential liability for aiding unconstitutional taking)

- California State License Board (CSLB) (Involved in 2015 license suspension under B&P § 7071.17; interest in validity of § 7031 enforcement)
- U.S. Bankruptcy Court, Central District of California (Judge Scott Clarkson; handled Case No. 8:22-BK-12076-SC; interest in discharge injunction and stay relief order validity, 11 U.S.C. § 524(a))
- David Chaffee (Superior Court Judge; issued 2015 case judgment)
- James Di Cesare (Superior Court Judge; affirmed 2015 case judgment)
- Kathleen O'Leary (Associate Justice Fourth District Court of Appeal, Division Three; Affirmed 2015 case judgment on appeal)
- Thomas Goethals (Associate Justice Fourth District Court of Appeal, Division Three; Affirmed 2015 case judgment on appeal)
- Richard Aronson (Associate Justice Fourth District Court of Appeal, Division Three; Affirmed 2015 case judgment on appeal)
- Karen Humphreys (Plaintiff in 2015 case judgment)
- Gary Humphreys (Plaintiff in 2015 case judgment)
- William Bissell (Attorney for Plaintiff in 2015 case judgment)

**Declaration of Appellant:**

I, Adam Bereki, declare under penalty of perjury under the laws of the State of California that the foregoing is a true and complete list of all persons and entities known to me to have an interest in the outcome of this appeal, including those whose interests may be affected by the relief requested (vacatur of the UD judgment, orders, and writ; reassignment to a neutral judge; restoration of possession; restitution; and transfer to

unlimited jurisdiction). This certificate is based on my personal knowledge and a reasonable inquiry.

Signed on November 9, 2025, at Las Vegas, Nevada.

Adam Bereki

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## **TABLE OF AUTHORITIES**

Appellant was unable to prepare a table of authorities in time for the submission of this opening brief.

## **VERIFICATION**

I, Adam Bereki, declare under penalty of perjury of the laws of California that I have personal knowledge of the following statements of fact, that they are true and correct, and that all exhibits or documents filed in support of this appeal are true and correct copies of the documents they purport to be, with exception of any non-substantive bates or other markings I or someone else may have made thereon.

Signed on November 9, 2025, in Las Vegas, Nevada.

Adam Bereki

## CHALLENGES TO JURISDICTION

Appellant reasserts his challenges to jurisdiction as previously filed in this court and in the Fourth District Court of Appeal, case no. G066117, that this court lacks subject matter jurisdiction to hear and determine this appeal for all the reasons stated therein. He further requests this court take judicial notice of his unopposed first amended petition for writ of mandate attached hereto as Exhibit 1 (Exhibits omitted).

Assuming arguendo this court has subject matter jurisdiction, Appellant challenges its subject matter and/or procedural jurisdiction to deny his Opening Brief on Appeal based upon California Rules of Court, Rule 8.883(b), requiring that limited civil appeals have a word count of 6,800 words or less. Due to the number and complexity of issues regarding and/or related to this appeal and the necessity to brief them fully on the merits, Appellant is unable to meet Rule 8.883(b), which he further contends does not apply to unlimited civil appeals. Refusing to accept this brief based on a rule of court would result in denying his fundamental right to full, fair, and impartial hearing/appeal depriving the court of subject matter and/or procedural jurisdiction, (*Windsor v. McVeigh*, 93 U.S. 274, 283-4 (1876) (jurisdiction is the right to hear and determine not determine without hearing). Additionally, rules of court, even if lawfully enacted cannot be used to overrule rights secured by the Constitution (*Miranda v. Arizona*, 384 U.S. 436, 491 (1936)), which in this case involves the right to a full, fair, and impartial judicial determination of rights (Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art I, § 10). All documents filed in this court in this case are done under duress.

## STATEMENT OF JURISDICTION

This appeal challenges the following Judgment and post-judgment Orders in an unlawful detainer (limited civil) case and intermediate and post-judgment Order in the related 2015 unlimited civil case, No. 30-2015-00805807, made appealable pursuant to the cited authorities below.

1. **UD Case:** The Default Judgment entered on March 18, 2025 (CT 23-24), pursuant to CCP § 904.1(a)(1).
2. **UD Case:** The May 21, 2025, Minute Order denying Appellant's Ex parte Application and Motion to Vacate (CT 134-5), pursuant to CCP § 904.1(a)(2), *County of Ventura v. Tillet*, 133 Cal.App.3d 105, 109-111 (1982) (special order made after entry of judgment giving effect to void judgment is also void and subject to attack).
3. **UD Case:** The May 23, 2025, Minute Order denying reconsideration (CT 145); *Id.*
4. **Related 2015 Case:** The March 18, 2025 Minute Order denying Appellant's Ex parte Application for Stay, Motion to Vacate, and UD Answer (RJN 15.1); See Review of Intermediate Order below; *Id.*
5. **Related 2015 Case:** The May 22, 2025 Minute Order denying Reconsideration of Appellant's Ex parte Application for Stay of UD and Motion to Vacate (RJN 15.3); pursuant to CCP § 904.1(a)(2), *County of Ventura v. Tillet*, 133 Cal.App.3d 105, 109-111 (1982) (special order made after entry of judgment giving effect to void judgment is also void and subject to attack); See Review of Post-Judgement Order below.

### ***Review of Intermediate and Post-Judgment Orders Not Directly Appealed From***

Please see the concurrently filed Notice of Related Cases and Request for Judicial Notice.

The following Court records from the related 2015 case are subject to judicial notice under California Evidence Code §§ 452(d), 453, and 459 for their existence, content, and procedural history:

- **Intermediate Records and Order:** (1) Verified Ex Parte Application for Stay and Answer, filed March 14, 2025 (RJN Ex. 15); (2) Minute Order denying the stay, dated March 18, 2025 (RJN Ex. 15.1).
- **Post-Judgment Records and Order:** (3) Ex Parte Application for Reconsideration and to Vacate, filed May 20, 2025 (RJN Ex. 15.2); (4) Minute Order denying reconsideration, dated May 22, 2025 (RJN Ex. 15.3).

Judicial notice is limited to the Orders' existence and legal effect, not the truth of disputed factual matters (*Sosinsky v. Grant*, 6 Cal.App.4th 1548, 1564–65 (1992)).

These intermediate and post-judgment records and Orders are reviewable under Code of Civil Procedure § 906, which permits this Court to review “any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from.” The March 18, 2025, stay denial (RJN Ex. 15.1) and the May 22, 2025, reconsideration denial (RJN Ex. 15.3) directly affect the validity and enforceability of the appealed UD judgment by perpetuating jurisdictional defects, including due process violations, extrinsic fraud, and the UD court’s lack of subject matter

jurisdiction over the underlying title dispute (*Windsor v. McVeigh*, 93 U.S. 274, 277–78 (1876)). The stay denial undermined procedural jurisdiction by nullifying the UD complaint’s notice (*Id.*), while the reconsideration denial affirmed the void judgment despite unopposed evidence of fraud, clerk and attorney misconduct, and ongoing harm, including eviction and ~\$1.2 million in equity loss (*County of Ventura v. Tillet*, 133 Cal.App.3d 105, 112–14 (1982)).

These Orders are not independently appealable, as stay denials in UD cases are interlocutory (*Mehr v. Superior Court*, 139 Cal.App.3d 1044, 1049 (1983); *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146 (1980) (writ granted to stay UD pending title resolution), and reconsideration denials are non-appealable under CCP § 1008(g). However, they fall within CCP § 906’s scope, as they involve the merits and perpetuate jurisdictional defects, rendering the UD judgment void and subject to attack (*Tillet*, at p. 110; *Craft v. Craft*, 49 Cal.2d 189, 192 (1957)). This Court may review these Orders to assess their impact on the UD judgment’s validity.

## **NOTICE OF RELATED BANKRUPTCY AND OTHER CASES**

Please see the concurrently filed Notice of Related Cases and Request for Judicial Notice.

This appeal of Judgments and Orders in the UD Case and 2015 case involve matters related to Appellant's reopened bankruptcy case (No. 8:22-BK-12076-SC, U.S. Bankruptcy Court, Central District of California). The claims were abandoned to Appellant allowing this to Court to exercise jurisdiction. The UD and unlimited civil proceedings, which violated 11 U.S.C. § 524(a)(discharge injunction) by enabling enforcement of a void discharged judgment in the 2015 case (affirmed in Fourth District Court of Appeal Case No. G055075) lead to a wrongful foreclosure and eviction. The UD default judgment and related Orders are void ab initio due to due process violations, extrinsic fraud, violations of the California Penal Code, and jurisdictional defects.

## INTRODUCTION

This appeal seeks justice for the unlawful taking of Appellant Adam Bereki's home at 818 Spirit, Costa Mesa, CA, and ~\$1.2 million in equity through a void unlawful detainer (UD) judgment. In 2015, the Superior Court, lacking subject matter jurisdiction, imposed a \$930,000 punitive penalty for alleged unlicensed contracting, devastating Appellant's finances. Unable to pay this excessive fine, his contractor's license was summarily suspended, triggering financial ruin, bankruptcy, and a wrongful foreclosure that sold his ~\$1.5 million home for \$371,688 in November 2024, stripping his equity. In February 2025, Respondent Canjian Hou, claiming title through this tainted foreclosure, exploited the Superior Court's limited civil division's lack of authority over complex title disputes and, with attorney Henry Paloci, pursued a limited civil UD action. Through improper filings, an unnotified default request, obstructed Answers, and unauthorized rulings, they secured a default judgment on March 18, 2025 and Writ of Possession. Enforced by the Orange County Sheriff's Department under threat of force, this judgment evicted Appellant by April 2, 2025, finalizing an unconstitutional taking without due process or just compensation. The trial Court's refusal to address the title dispute or transfer to unlimited jurisdiction perpetuated extrinsic fraud and violated fundamental rights, denying Appellant's right to be heard. This appeal seeks vacatur of the default judgment, related orders, and writ; restoration of possession; restitution and damages flowing from the fraud and void UD related judgments; and transfer to a neutral judge in unlimited jurisdiction to resolve the title dispute and restore judicial integrity.



## **TIMELINE**

### **I. Background: Origins of the Underlying Title Dispute (2015–2024)**

- 2015: Void Judgment and License Suspension
- 2018–2022: Denial of Judicial Remedy
- 2022–2023: Forced Bankruptcy and Void Stay Relief
- November 18, 2024: Wrongful Foreclosure

### **II. Unlawful Detainer Proceedings and Fraudulent Actions (February–March 2025)**

- February 3–9, 2025: Notices to Quit and Appellant's Response
- February 11, 2025: False UD Complaint
- March 1, 2025: Service of UD Complaint
- March 14, 2025: Obstruction of Appellant's Answer
- March 17, 2025: Stealth Default Request
- March 18, 2025: Denial of Stay and Default Judgment
- March 19, 2025: Second Answer Rejection
- March 20, 2025: Fraudulent Application for Writ of Possession
- March 22, 2025: Issuance of Writ
- March 24, 2025: Sheriff's Refusal to Investigate
- March 27, 2025: Notice to Vacate

### **III. Eviction Under Duress (April 2025)**

- April 1–2, 2025: Eviction Under Threat of Force

### **IV. Post-Judgment Attempts to Vacate and Reconsider (May–June 2025)**

- May 8, 2025: Petition for Redress with Deputy Clerk of Court
- May 19, 2025: Independent Action in 2015 Case
- May 20–21, 2025: Motion to Vacate UD Judgment
- May 22, 2025: Denial of Reconsideration in 2015 Case
- May 23, 2025: Denial of Reconsideration in UD Case
- June 19, 2025: Return on Writ

## STATEMENT OF THE CASE

### I. 2015–2023: Origins of the Underlying Title Dispute

This section outlines the foundational issues of the title dispute that divested the limited civil division of the Superior Court of jurisdiction to adjudicate the UD proceedings, resulting in significant jurisdictional defects. The timeline includes:

- **2017:** A void judgment and license suspension initiated financial hardship.
- **2018–2022:** Systemic denial of judicial remedies prevented relief.
- **2022–2023:** Forced bankruptcy and a void stay relief order exacerbated harm.
- **November 18, 2024:** Wrongful foreclosure transferred Appellant’s home equity.

The UD court lacked subject matter jurisdiction due to a complex underlying title dispute and damages exceeding the \$35,000 jurisdictional threshold (CCP § 85(a)), rendering the default judgment void ab initio (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)). Respondent’s improper invocation of the limited civil division, despite knowledge of these jurisdictional limitations (RJN Ex. 15, pp. 611–612), aggravated the Court’s lack of authority, contributing to due process violations and extrinsic fraud, which denied Appellant a full, fair, and impartial judicial determination of his rights (*Windsor, Asuncion v. Superior Court*, 108 Cal.App.3d 141, 147 (1980)).

#### A. Void 2015 Judgment and License Suspension

In 2015, Appellant, the qualifying individual for a licensed general contractor (Lic. #927244) under his company, The Spartan Associates, Inc., was improperly prosecuted in a civil case for allegedly performing construction work without a license, despite being

a licensee (B & P § 7096) and forming an inseparable part of the license (a license cannot exist without a qualifier who meets experience and exam requirements, B & P § 7068.1). The Court imposed a ~\$930,000 penalty, characterized as equitable “disgorgement” (RJN Ex. 1, p. 6 ¶1) and “damages” (RJN Ex. 1, p. 9 ¶8c), without evidence of harm, profits, or guilt, denying Appellant fundamental criminal procedural protections, including the presumption of innocence, assistance of counsel, and a jury trial, and violating the excessive fines clause (RJN Ex. 15, 15.4—Certified Clerk’s Transcript of Trial, pp. 975–1192; RJN Ex 15.4A—First Am. Decl. Bereki, pp. 1211–1247). This judgment, affirmed by this Court (Case No. G055075) as an “equitable remedy” (RJN Ex. 2, pp. 0039–40 ¶2-3) and denied review or challenge to jurisdiction by the California and U.S. Supreme Courts (RJN Ex’s. 4, 5), was also dismissed in a federal independent action in equity under Rooker-Feldman (RJN Ex. 6), resulting in the denial of any forum for Appellant to obtain lawful judicial relief.

The denial of appellate or original relief in a United States Court deprived Appellant of the right secured by U.S. Const. Art. III, § 2 to invoke the judicial power of the United States as a check and balance on unlawful state action (U.S. Const. Art. I, § 10 (bill of pains and penalties); The Federalist Papers, No. 28, affirm the “General government will at all times stand ready to check usurpations of the state governments” and U.S. Const. Art. III, § 2 declares that the judicial power of the United States shall (not may) extend to all cases arising under the Constitution, contravening the principle that no one, including a State, should act as a judge in their own cause.

Appellant asserts the judgment is void because Cal. Business and Professions Code sections 7031(a) and 7031(b), as applied, impose a penalty or forfeiture, not the equitable remedy of disgorgement. Neither § 7031 nor its legislative history references “disgorgement”—a term undefined in 7031 actions—or an equitable remedy. The Supreme Court of California held, prior to Appellant’s trial and appeal, that equitable considerations are not permitted (*Lewis & Queen v. N.M. Ball Sons*, 48 Cal.2d 141, 152 (1957)) and that § 7031 imposes a stiff all-or-nothing penalty (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*, 36 Cal.4th 412, 426 (2005)). The trial judge, Judge David Chaffee, was aware of *MW Erectors*, having served as the trial judge in that case. The former Presiding Justice of this Court, Justice O’Leary, who affirmed the ruling in the appeal, was also involved in the *MW Erectors* appeal.

Subsequent to the judgment, the U.S. Supreme Court in *Liu v. SEC*, 591 U.S. 71, 79 (2020), clarified that equitable disgorgement is limited to net profits from illegal activity, requiring offsets for the value of materials and labor conferred. No evidence of profits was presented in Appellant’s case, and offsets for materials and labor provided (~\$930k) were denied at trial (RJN Ex. 15, 15.4—Certified Clerk’s Transcript, pp. 975–1192; RJN Ex 15.4A—First Am. Decl. Bereki, pp. 1211–1247; p. 1214, ¶¶12,13) and on appeal (G055075, 2018 WL 5639287—p. 2: arguing offsets, p. 3: denying offsets). Section 7031(b) requires only the return of compensation paid once, satisfied by returning materials and labor of equivalent value to the homeowner. See especially *Town of Gilbert Prosecutors Office v. Downie*, 219 Ariz. 466 (2008) and cases cited therein regarding value conferred and principles of restitution. California Courts, however, have not recognized this return of value and, as in this case, order compensation returned twice,

which § 7031(b) does not authorize. Additionally, the maximum fine for a first-time offense under § 7028 (the criminal statute for unlicensed contracting) is \$5,000, raising questions about how Appellant could be fined ~\$930,000 (146 times the maximum) in a “civil case.” See especially *People v. Estes*, 218 Cal. App. 4th Supp. 14 (2013)(public welfare offenses require excessive fines analysis).

Two California Courts of Appeal have recently held that § 7031 imposes a penalty: *Eisenberg Village v. Suffolk Construction Company, Inc.*, 53 Cal.App.5th 1201, 1203 (2020) and *San Francisco CDC LLC v. Webcor Construction L.P.*, 62 Cal.App.5th 266, 280 (2021). See also *People v. Cowan*, 47 Cal.App.5th 32, 44 (2020) (excessive fines clause applies to civil penalties); *Ex parte Clark*, 24 Cal.App.389, 394 (1914) (defining penal actions, requiring prosecution by the government). For a comprehensive brief on these issues, including the Court’s lack of subject matter jurisdiction to render any judgment in the 2015 case due to the absence of a criminal complaint and denial of heightened criminal protections, refer to RJN Ex. 15.4—Motion to Vacate/Independent Action in Equity pp. 944–973 and supporting exhibits annexed thereto; RJN Ex. 15.4A—First Am. Decl. Bereki, pp. 1211–1247. Courts have a duty to vacate void judgments (Cal. Const. Art. I, § 26; *County of Ventura v. Tillet*, 133 Cal.App.3d 105, 112 (1982); *County of San Diego v. Gorham*, 186 Cal.App.4th 1215, 1229 (2010); *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876) (judges must act judicially and cannot transcend law by making or affirming void judgments)).

This Court has continued to uphold § 7031 penalties on public policy grounds, declining to apply penal (e.g., *Hale v. Morgan*, 22 Cal.3d 388, 398–401 (1978)) or

excessive fines clause analysis (*People v. Cowan*, 47 Cal.App.5th 32, 44 (2020)), thereby acting as a legislative administrative tribunal rather than a judicial court. This approach breaches the separation of powers duties as an independent check on Legislative and Executive actions, as seen in Appellant's case (G055075, 2018 WL 5639287–p. 3, 6) and *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954, 965 (2024). Public policy does not override Constitutional protections (e.g. *Gantt v. Sentry Ins.*, 1 Cal. 4th 1083, 1095, (1992) (“courts ... may not declare public policy without a basis in ... the constitution”); *Marbury v. Madison*, 5 U.S. 137, 177–178 (1803) (an act of the legislature repugnant to the Constitution is void; judiciary must declare it so)). This practice violates the doctrines of separation of powers and checks and balances, denying § 7031 defendants, including those in this Division of the Fourth District Court of Appeal, a judicial determination of their rights as required by Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art. I, § 10.

When Appellant was unable to pay the fine, which exceeded forty times his qualifying net worth, his vested right as the qualifying individual of a general contractor license (including Spartan's license) was summarily suspended without a hearing pursuant to § 7071.17 (RJN Ex. 15.4–First Am. Decl. Bereki, pp. 1212–1213, ¶¶4, 5), imposing additional legislative punishment without judicial process. Appellant sought remedy in every California and United States court with subject matter jurisdiction and continues to be denied relief (RJN Exs. 1–15.8D). The license suspension and denial of judicial relief created a state-imposed hardship, causing financial devastation for over six years and millions in lost income, which persists (RJN Ex. 15.4–First Am. Decl. Bereki, pp. 1212–1213, ¶¶4, 5). Consequently, Appellant's private contracts and obligations were

impaired (U.S. Const. Art. I, § 10), as he was unable to pay a first mortgage and home equity line of credit, leading to forced bankruptcy and the foreclosure at issue. For complete verified statements of fact and arguments, incorporated as if fully set forth herein, see RJN Ex. 15, 15.4, 15.4A, and 15.6.

Appellant asserts that the 2015 judgment, its affirmance on appeal, the license suspension, and the denials of review by the California and U.S. Supreme Courts, U.S. District Court, and U.S. Court of Appeals for the Ninth Circuit each constitute bills of pains and penalties, violating Cal. Const. Art. I, §§ 7, 9 and U.S. Const. Art. I, §§ 9 and/or 10, as they impose or affirm punishment or deny judicial relief without a judicial determination of his rights.

**Case Status:** On May 19, 2025, Appellant filed an Independent Action in Equity in the 2015 case to vacate the void judgment based on new evidence (*Eisenberg; Liu*), extrinsic fraud, fraud on the court, and due process violations (RJN Ex. 15.4, 15.4A,B, 15.6). The jurisdictional challenge was unopposed except for a “res judicata” argument (RJN Ex. 15.5). Judge Hesseltine declined to recognize Appellant’s right to invoke equity jurisdiction and failed to provide a full, fair, and impartial hearing by not addressing each claim or granting mandatory relief, instead affirming the judgment on “res judicata” grounds (RJN Ex. 15.7–Minute Order).

Res judicata does not apply to a void judgment, as a judgment lacking “fundamental jurisdiction” (*Kabran v. Sharp Memorial Hospital*, 2 Cal.5th 330, 369 (2017) (entire absence of power to hear and determine the case)) “neither binds nor bars anyone” (*Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898)) and “form[s] no bar to a remedy sought

in opposition ... even prior to a reversal” (*Elliot v. Piersol*, 26 U.S. 328, 340 (1828)). A court lacking fundamental jurisdiction cannot render or affirm a final judgment subject to preclusion. Moreover, judicially created doctrines cannot override Constitutional protections: “[W]here rights secured by the Constitution are involved there can be no rulemaking or legislation which would abrogate them” (*Miranda v. Arizona*, 384 U.S. 436, 491 (1938)).

Judge Hesseltine had a mandatory duty to vacate the void judgment (Cal. Const. Art. I, §§ 7, 9, 26; U.S. Const. Art. I, § 10, Art. VI, §2; *County of Ventura v. Tillet*, 133 Cal.App.3d 105, 112 (1982); *County of San Diego v. Gorham*, 186 Cal.App.4th 1215, 1229 (2010); *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876) (judges must act judicially and cannot transcend law by making or affirming void judgments); *Thompson v. Cook*, 20 Cal.2d 564, 569 (1942) (court has mandatory duty to vacate judgment when evidence of invalidity is presented and uncontested)). By failing to do so, Judge Hesseltine further violated due process, affirmed the void judgment, and denied restitution, effectively enforcing a void, discharged judgment in violation of the bankruptcy discharge (11 U.S.C. § 524(a); *Taggart v. Lorenzen*, 587 U.S. 554 (2019)). The Order also failed to address new case law, claims of extrinsic fraud, the unlawful license suspension (a separate judgment and un-litigated claim), and previously raised but unaddressed evidence.

Appellant appealed Judge Hesseltine’s Order denying relief (Case No. G065695). The appeal was dismissed on October 30, 2025 as “frivolous”. Appellant intends to appeal that judgment to the California Supreme Court, challenging jurisdiction on the grounds



that the Appellate Court's dismissal was arbitrary and avoid in that it continues enforcement of a void judgment. The

Appellant requests this court take judicial notice of his Opposition to Motion to dismiss, attached hereto as Exhibit 2, evidencing the arguments made therein that were completely avoided in the Fourth District's opinion that demonstrate the judgement is void (ie rights secured by the excessive fines clause continue to not to be recognized and denied; there was a structural failure in the trial mechanism in that Appellant was not afforded counsel and/or any of the heightened protections required in criminal proceedings (e.g. *Arizona v. Fulmanente*, 499 U.S. 279, 309-10 (1991), *Johnson v. Zerbst*, 304 U.S. 458, 467-8 (1938) and the court lacked fundamental subject matter jurisdiction to hear and determine a criminal case as no complaint was filed on behalf of the people of California and defendants and their counsel lack executive capacity.

Immediately following the Order in the Independent Action, Appellant timely filed a Verified Statement to disqualify Judge Hesseltine for due process violations and pecuniary interest (RJN Ex. 15.8A), based on evidence that Hesseltine participated in enforcing the § 7031 penalty, for which he could be civilly liable, acting without subject matter jurisdiction. Hesseltine ordered the statement stricken, refusing to address the allegations (RJN Ex. 15.8B). A Petition for Writ of Mandate was filed in this Court in Case No. G065772, incorporated as if fully set forth herein. The Petition was summarily denied by Justices Motoike, Delaney, and Scott, whom Appellant asserts have a pecuniary interest in this matter (and this case—see Certificate of Interested Parties) due to their involvement in a similar § 7031 case, *Am. Bldg. Innovation LP v. Balfour Beatty Constr.*,

LLC, 104 Cal.App.5th 954 (2024) (“ABI”) (Motoike and Delaney affirming; Scott, trial judge). In *ABI*, these justices allegedly acted without subject matter jurisdiction to render or affirm judgment and violated due process (Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art. I, § 10), subjecting them to potential civil damages liability, disqualifying them from rendering judgment in the Mandate proceeding and this case due to pecuniary interest (*Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006)).

Appellant does not directly challenge the 2015 judgment in this appeal but asserts that if his allegations are correct, they would result in a cascade of jurisdictional failures in every action relying on it, including the foreclosure sale, as “[a] void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one” (*Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898)), and all persons executing such judgments are trespassers (*Elliot v. Piersol*, 26 U.S. 328, 340 (1828)).

## **B. Forced Financial Ruin and Void Bankruptcy Proceedings**

The void 2015 judgment and license suspension, resulting in ~\$3 million in lost earnings over six years (RJN Ex. 15, 15.4A—First Am. Decl. Bereki, p.1212-13, ¶4), coupled with the systemic denial of judicial remedy across California and federal courts (RJN Ex. 1-11), directly and proximately impaired Appellant’s obligations and private contracts, including his ability to pay a first mortgage and home equity line of credit purportedly secured by his 818 Spirit home. This financial strain led to bankruptcy under significant pressure, when one purported mortgagor, Citibank N.A. as Trustee, through its servicer Newrez, LLC, initiated non-judicial foreclosure, pursuing foreclosure based on

Appellant's financial distress (U.S. Bankruptcy Court, Central District of California, Case No. 8:22-BK-12076-SC, filed Dec. 8, 2022; RJN Ex. 15, pp.0336–0337; RJN Ex. 15.4–First Am. Decl. Bereki, pp.1212-1213, ¶¶4,5; p.1214, ¶14, lines 14-17). Appellant challenges Citibank's claim, as it failed to substantiate its status as "person entitled to enforce" under *Cal. Com. Code* §§ 3301, 3501(b)(2)/3308(b) (failure to provide instrument proving obligation owed and right to enforce), undermining its authority to declare default or foreclose per 3501(b)(3) ('borrower' not required to comply with demand for payment) (*Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 929 (2016); U.S. Bankruptcy Court C.D. CA Case No.: 8-23-1075).

On February 3, 2023, Citizens Bank NA ("Citizens"), a purported second mortgage creditor, filed a Motion for Relief from the protections of the automatic stay to commence non-judicial foreclosure (RJN Ex. 19, pp.2269-2279–Motion). Citizens relied on the disputed, non-consensual 2015 judgment lien, valued at \$848,000, to claim no equity existed in Appellant's property under 11 U.S.C. § 362(d)(2)(A) (RJN Ex.19, p.2276, ¶11e calculation). Appellant's declaration, attached to Schedules on filing, challenged this judgment lien as disputed and void, rebutting its presumptive validity (RJN Ex.24–Bereki Decl.).

Appellant filed an Opposition to the Stay request arguing the lien's invalidity, its exclusion from equity calculations due to its disputed nature and the discharge of the underlying judgment, and the need for a judicial determination of its validity (RJN Ex. 19–Objections). Assuming the invalidity of the 2015 void/discharged judgment (discharge: March 27, 2023–RJN Ex. 12, p. 0225), there was approximately \$647,909.53 in equity,

calculated as the property's value at bankruptcy filing (\$1,142,000) minus purported consensual liens: Citibank's first mortgage (\$457,693.72, disputed) and Citizens' second mortgage (\$36,396.75). California's automatic homestead exemption further protected \$600,000 of this equity, which should have been subtracted from the equity calculation to reflect Appellant's protected interest (Cal. Code Civ. Proc. § 704.730).

On April 11, 2023, Appellant filed a Declared Statement of Intent to Commence Adversary Proceedings (RJN Ex. 20, pp.2304–2309), stating in relevant parts: “Adam Bereki, (“Declarant”), hereby provides the following Statement of Intent to file two adversary proceedings challenging the validity of two purported “liens” [Citibank and the 2015 case Judgment] listed on the First-Amended Schedules in th[is] case[.] Declarant believes he and the estate will be prejudiced and continue to be irreparably harmed and damaged if the Court ultimately grants the relief allowing the party to commence foreclosure proceedings for reasons already alleged on the record and the fact that the stay relief is based upon the validity and extent of certain purported “liens” that he reasonably believes to be void or unsecured. Declarant believes any relief granted on the stay would be premature and highly prejudicial because he has not had the opportunity to challenge the validity of the “liens” upon which the equity calculations for stay relief and the Court's tentative ruling are based.”

On April 12, 2023—one day after this statement—Bankruptcy Judge Scott Clarkson granted Citizens relief from the stay to commence non-judicial foreclosure. Judge Clarkson declined to determine the 2015 judgment lien's validity, including it in the equity calculations under 11 U.S.C. § 362(d)(2), and failing to account for the \$600,000

homestead exemption (RJN Ex. 21, pp.2311-2314—Order). This premature grant prejudiced Appellant’s rights to challenge the lien’s validity (continuing to deny his right to a judicial determination of rights, RJN Ex’s. 1-11), impairing his ability to protect his estate and post-bankruptcy property, causing irreparable harm through the foreclosure sale on November 18, 2024, which, after the SB 1079 sale, yielded only \$371,688—\$228,312 below the \$600,000 exemption—resulting in a ~\$1.2 million equity loss (adjusted property value of ~\$1.5 million minus sale price). (See RJN Ex. 15, pp. 270–272, Argument III; pp. 347–370—Citizens Bank Exploited Fraud and State Misconduct to Plunder [Appellant’s] Home); p. 370—[Appellant] Denied Redemption).

The 2015 judgment lien was avoided on June 22, 2023, under 11 U.S.C. § 522(f) for impairing the homestead exemption (RJN Ex. 22, pp.2316-2330), and the estate abandoned property claims to Appellant in December 2024 (RJN Ex. 15.8A, pp.1480-1492). Judge Clarkson’s actions violated due process, the discharge injunction, California’s homestead protections, and constituted extrinsic fraud, rendering the Order void.

**Due Process Violation—Failure to Resolve Lien Validity:** The Fifth Amendment and fundamental fairness require courts to resolve disputes over property rights before enabling actions like foreclosure that cause irreparable harm. The Humphreys’ \$848,000 lien was indisputably invalid, as evidenced by my declaration attached to the schedules (RJN Ex. 24), which rebutted its presumptive validity, and its subsequent avoidance on June 22, 2023 (RJN Ex. 22, pp.2316–2330). California law holds that a lien requires an enforceable underlying obligation, and an invalid judgment cannot support one (*In re*

*Thomas*, 102 B.R. 199, 201 (E.D. Cal. 1989)). The April 12, 2023, stay relief order (RJN Ex. 21, pp.2311–2314) erroneously relied on this invalid 2015 judgment lien (\$848,000) to find no equity under 11 U.S.C. § 362(d)(2)(A), as shown in Citizens’ motion (RJN Ex. 19, p.2276, ¶11e). Without this invalid lien, the property’s \$1,142,000 value minus consensual liens (\$457,693.72 (disputed) + \$36,396.75 = \$494,090.47) yielded \$647,909.53 in equity, protected by California’s \$600,000 homestead exemption (Cal. Code Civ. Proc. § 704.730). The Court’s inclusion of the invalid lien, despite my opposition (RJN Ex. 19) and stated intent to challenge it via adversary proceedings (RJN Ex. 20, pp.2304–2309), violated due process by denying a hearing to resolve its invalidity (*In re Hoopai*, 581 F.3d 1090, 1096 (9th Cir. 2009)). This was critical, as only valid liens can be considered in § 362(d)(2) equity calculations, and an invalid judgment produces no rights (*Bennett v. Wilson*, 122 Cal. 509, 513–14 (1898)). Judge Clarkson’s June 22, 2023, lien avoidance order (RJN Ex. 22, p.2318, lines 13-15) noted that determining the lien’s validity required an adversary proceeding under Fed. R. Bankr. P. 7001 (e.g. *In re Ahn*, 804 Fed. Appx. 541 (9th Cir. 2020); *In re Watts*, 298 F.3d 1077 (9th Cir. 2002)), underscoring the prematurity of the stay relief order, which mooted my stated intent to challenge the lien (RJN Ex. 20, pp.2304–2309). This enabled Citizens’ November 18, 2024, foreclosure, which yielded only \$371,688—\$228,312 below the exemption—causing a \$1.2 million equity loss (adjusted property value of ~\$1.5 million minus sale price; RJN Ex. 15, pp.270–272). While Citizens and Citibank held deeds of trust, the stay relief motion and order turned on the invalid lien’s inclusion, not solely the consensual liens, as the equity calculation would not have justified stay relief without it. Summary proceedings cannot override constitutional rights (*Miranda v. Arizona*, 384 U.S. 436, 491

(1966)). This failure rendered the order void for lack of a full, fair, and impartial hearing (*Windsor v. McVeigh*, 93 U.S. 274, 283–84 (1876)).

**Discharge Injunction Violation—Indirect Enforcement of Discharged Debt:**

Assuming its validity for argument's sake, the March 27, 2023, Chapter 7 discharge Order eliminated Appellant's personal liability for the 2015 case judgment, prohibiting any act to collect it as a personal obligation (11 U.S.C. § 524(a)(2); RJN Ex. 12—Discharge Order). The 2015 judgment, a non-consensual lien disputed as void and discharged, lacked an enforceable basis, as a lien requires a valid obligation (*In re Thomas*, 102 B.R. at 201). Enforcing it via foreclosure, even in rem, indirectly authorized enforcement by depleting Appellant's protected homestead equity, undermining the discharge's purpose of ensuring a fresh start and prohibiting any act to collect the debt (11 U.S.C § 524(a)(1) and (2)). On April 12, 2023, Judge Clarkson included this disputed/discharged lien in the §362(d)(2) equity calculation, treating it as valid despite Appellant's declaration rebutting its validity, and failed to subtract the \$600,000 automatic homestead exemption (Cal. Code Civ. Proc. § 704.730; RJN Ex. 21—Order Granting Stay Relief ¶3b). This enabled a foreclosure sale yielding \$371,688—\$228,312 below the exemption—stripping protected equity and effectively enforcing a discharged debt (despite the proceeds being transferred to Respondent). This result contravened 11 U.S.C § 524(a)(1) and (2). The lien's avoidance on June 22, 2023, confirmed it impaired the exemption (RJN Ex. 22, p. 2319, ¶4, lines 12-13). Judge Clarkson's premature inclusion enabled a coercive sale that undermined the fresh start, violating the discharge injunction (*Taggart v. Lorenzen*, 587 U.S. 554 (2019)). The estate's abandonment of property claims in December 2024 (RJN

Ex.15.8A, pp.1480-1494) did not mitigate the harm, as Citizens failed to ensure a sale that protected the equity.

**Homestead Exemption Impairment—Loss of Protected Equity:** California's automatic homestead exemption guaranteed Appellant \$600,000 in home equity, shielding it from enforcement of non-consensual liens like the Humphreys' judgment lien (Cal. Code Civ. Proc. § 704.730). In a forced sale, proceeds must cover the exemption before lienholders collect (Cal. Code Civ. Proc. § 704.850(a)). The homestead exemption is fixed at the petition date (*In re Elliott*, 523 B.R. 188, 193 (9th. B.A.P. Cal. 2014)). Judge Clarkson's April 12, 2023, equity calculation failed to subtract this \$600,000 exemption, inflating the lien's impact and wrongly justifying stay relief (RJN Ex. 21 pp.2311 (no calculations are provided on the form to evidence the Judge's actual calculations. However, the only apparent way a finding of no equity could be made is if the 2015 case judgment was treated as valid and no home equity exemption was recognized)). The resulting foreclosure sale yielded only \$371,688—\$228,312 below the exemption—causing a ~\$1.2 million loss (based on 2025 adjusted property value), stripping protected equity. The lien's avoidance on June 22, 2023, confirmed it fully impaired the \$600,000 exemption (RJN Ex. 22, pp. 2316–2320) as shown below:

- Property Value (as scheduled in 2022): \$1,142,000
- Consensual Liens: Citibank 1st Mortgage (\$457,693.72, disputed) + Citizen's 2nd Mortgage (\$36,396.75) = \$494,090.47
- Homestead Exemption: \$600,000
- Judicial Lien (disputed): \$848,000 + \$643,000 interest = \$1,491,000



- Total: \$1,491,000 (judicial lien) + \$494,090.47 (mortgages) + \$600,000 (homestead) = \$2,585,090.47
- Impairment: \$2,585,090.47 > \$1,142,000 by \$1,443,090.47

Under 11 U.S.C. § 522(f)(2)(A), the \$1,491,000 judicial lien was entirely avoidable (to the extent it had any validity, which it arguably never did). By including it before determining its validity and/or avoidance and ignoring the exemption, Judge Clarkson nullified California's homestead protections, enabling a sale that violated Appellant's rights.

**Extrinsic Fraud and Ultra Vires Order:** The stay relief Order was ultra vires and void due to extrinsic fraud. Citizens' use of a disputed lien, despite Appellant's notice (RJN Ex. 15, pp. 0353 ¶3 – 0364) and declaration rebutting its validity (RJN Ex. 24, 20), prevented a fair hearing, constituting fraud on the court and Appellant. Judge Clarkson's failure to resolve the lien's validity, despite notice, denied due process and imposed an unlawful penalty through property loss, violating *U.S. Const.* Art. I, § 9. The Order's reliance on a disputed void and discharged judgment rendered it and the foreclosure sale void (*Bennett v. Wilson*, 122 Cal. 509, 513–14).

**Violation of Bankruptcy Protections:** By enforcing the effects of the void/discharged judgment, Judge Clarkson violated the bankruptcy discharge, automatic stay, and fresh start protections. As one court explained: "A discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act to collect, recover, or offset ... as a personal liability of the debtor any debt discharged under section 727. 11 U.S.C. § 524(a)(2). ... The United States Supreme

Court recently described the protection which a debtor derives from the entry of a discharge order as one of the critical features of every bankruptcy proceeding. As one court addressing the violation of a discharge injunction has stated, the basic purpose of the bankruptcy system is to provide the debtor with a fresh start. Discharge is the legal embodiment of the fresh start. It is the barrier that prevents creditors from reaching the wages, property, and other assets of debtors in bankruptcy. In other words, discharge establishes a legal right not to pay a debt and safeguards against harassment by the creditor. In fact, the automatic stay and discharge injunction are cornerstones of bankruptcy law. They are, respectively, a fundamental debtor protection and a fundamental debtor objective. The automatic stay assists debtors in regaining their financial footing by allowing them to do so free from collection efforts. And, having successfully completed the bankruptcy process, discharge provides debtors with a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt. But the automatic stay and discharge injunction must be enforced to provide any meaningful protection or incentive. Indeed, when a discharge injunction is violated, a debtor is denied one of the primary benefits offered by the present bankruptcy system (*In re Mooney*, 340 B.R. 351, 357–58 (Bankr. E.D. Tex. 2006) (Internal quotations and citations removed)). Judge Clarkson’s inclusion of the disputed void lien tied to a discharged judgment enabled a foreclosure that placed Appellant back in financial distress, facing non-judicial foreclosure without remedy (RJN 1-11). The discharge injunction and homestead exemption were intended to protect a debtor’s property and future, but Judge Clarkson’s Order allowed their erosion, denying Appellant the protections of the automatic stay and fresh start promised by bankruptcy.

**Non-Compliance with Non-Bankruptcy Law:** To the extent it has any validity, the stay relief Order required Citizens to comply with California foreclosure laws, prohibiting deficiency claims against Appellant (RJN Ex. 21, p. 2312 ¶5). By pursuing a sale based on a disputed, non-consensual void/discharged lien that failed to cover the \$600,000 exemption, Citizens violated California's homestead protections (Cal. Code Civ. Proc. § 704.850(a)), compounding the Order's invalidity.

### **C. Wrongful Foreclosure and Title Dispute**

The foreclosure sale by Citizens, resulting from the void stay relief Order, occurred on November 18, 2024, followed by a secondary bid opportunity pursuant to Senate Bill 1079 (Civ. Code § 2924m), selling Appellant's home at 818 Spirit, Costa Mesa, CA, for \$371,688—approximately \$1.2 million below its ~\$1.5 million market value—transferring his home equity to Respondent without legal basis (*Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 935 (2016); RJN Ex. 15, p. 0385–6). Appellant asserts the foreclosure was wrongful because Citizens relied upon disputed actions and state misconduct, including the 2015 void judgment, license suspension, and systemic denial of judicial relief, which created significant financial hardship (economic duress) and amounted to a state-created danger (*DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989)). Citizens' declaration of default was unconscionable, as Appellant never agreed that "default" (an undefined technical term in the loan agreement) included payment failure due to such disputed actions/state created danger and economic duress, breaching *Civil Code* § 1708's duty to abstain from injuring his property or rights and the implied covenant of good faith and fair dealing (*Comunale v. Traders & Gen. Ins.*

Co., 50 Cal.2d 654, 658 (1958)). This misuse of the contract, a unilateral adhesion agreement, lacked authority, voiding the sale (*Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 935 (2016); *Orcilla v. Big Sur, Inc.*, 244 Cal.App.4th 982, 996–997 (2016); RJN Ex. 15, pp. 0347–0388). Moreover, Citizens violated the bankruptcy Court’s Order by proceeding with a foreclosure that contravened applicable non-bankruptcy law, as the sale relied on a disputed default, homestead protection violations and inalienable property rights in home equity, disregarding due process and equitable protections required under California law (*Bisno v. Sax*, 175 Cal.App.2d 714, 727 (1959); Cal. Const. Art. I, § 1; Civil Code § 2924).

The non-judicial foreclosure sale underlying Respondent’s title claim constitutes state action under Civil Code § 2924, enabling an unconstitutional taking of Appellant’s home equity without just compensation, in violation of the Takings Clause of the California Constitution (Art. I, § 19), Cal. Penal Code § 487 (grand theft), and the prohibition on bills of pains and penalties—the punishment (taking of rights/property) without judicial process (Cal. Const. Art I, § 9; U.S. Const. Art. I, § 10). As established in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), when private conduct is facilitated by state statutes that delegate coercive power—here, the power of sale without judicial oversight and enforcement of a void judgment—it triggers Constitutional scrutiny as state action. In Appellant’s case, the property at 818 Spirit, Costa Mesa, valued at approximately \$1.5 million, was sold for \$371,688, resulting in a ~\$1.2 million equity loss transferred to Respondent without compensation, akin to the surplus retention struck down as an excessive seizure in *Tyler v. Hennepin County*, 598 U.S. 631 (2023). This outcome, rooted in the void 2015 case judgment, systemic denial of judicial remedy, and state-

sanctioned denial of home equity property through non-judicial foreclosure statutes, renders the sale invalid, as such foreclosures fail to protect borrowers' equity interests while guaranteeing lenders' rights in adhesion contracts, violating inalienable rights to property, due process and the prohibition against bills of pains and penalties (Cal. Const. Art. I, §§ 1, 7, 9; U.S. Const. Art. I, § 10). The Superior Court's (Hesseltine's) subsequent failure to recognize this Constitutional defect and grant a stay under *Asuncion*, 108 Cal.App.3d 141, perpetuated the invalid title, divesting the UD court of jurisdiction to enter the default judgment (*Windsor v. McVeigh*, 93 U.S. 274 (1876)).

Citizens' and Trustee Corps' failure to disclose the disputed title defects to bidders, despite actual knowledge from bankruptcy filings and communications (RJN Ex. 15, pp. 0353 ¶3 – 0364), constituted actual fraud under Civil Code § 1572 by suppressing material facts (*Lingsch v. Savage*, 213 Cal.App.2d 729, 735–736 (1963)). This facilitated the sale, contributing to violations of Appellant's rights under 42 U.S.C. § 1983 and U.S. Const. Art. I, § 10 (bills of pains and penalties) (*Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982); RJN Ex. 15, pp. 0347–0370). The sale's ~\$1.2 million equity loss was a disproportionate penalty, violating the excessive fines clause (*People v. Cowan*, 47 Cal.App.5th 32, 44 (2020)), and Appellant was denied redemption (reinstatement) under Civil Code § 2924c due to his financially distressed circumstances (RJN Ex. 15, p. 0370 ¶19).

Appellant notified Trustee Corps and attended the initial sale to warn bidders but was denied SB 1079 bidder information, preventing further warnings (RJN Ex. 15, p. 361 lines 13-18). Respondent, apparently failing to conduct adequate due diligence (RJN Ex.

15, pp. 370 ¶¶h –381; RJN Ex. 16– Abstract of \$848k judgment/ lien on file at OC Clerk-Recorders Office), purchased the property under SB 1079’s secondary auction. The foreclosure’s invalidity, rooted in disputed actions, crimes, and Constitutional violations, renders Citizens and Trustee Corps trespassers (*Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340 (1828)) and negates Respondent’s title, justifying vacatur of the UD judgment and restoration of possession (*Asuncion*, 108 Cal.App.3d 141).

On or about August 22, 2025, Appellant received a letter and escrow refund check from Shellpoint, the purported servicer of the Citibank first mortgage (Ex. 1 pp. E176–181), which, though purportedly discharged of personal liability in bankruptcy, remains in Appellant’s name with a disputed in rem lien encumbering the property (Cal. Comm. Code § 3501(b)(3)/3308(b)). Respondent, claiming ownership via a junior lien foreclosure, is making unauthorized payments on this lien, as confirmed by Paloci (Ex. 1 pp. E174–Email Aug. 27, 2025, ¶¶ 1, 3). This creates a title dispute because: (1) the senior lien’s unresolved status in Appellant’s name post-discharge indicates an irregular foreclosure that failed to convey a duly perfected title, as required for UD standing (CCP § 1161a(b)(3); *Dr. Leevil, LLC v. Westlake Health Care Ctr.*, 6 Cal.5th 474, 482-3 (2018)); (2) Respondent’s payments without Appellant’s consent interfere with his financial interests, violating Cal. Civ. Code § 1708; and (3) Citibank/Shellpoint’s failure to update the account suggests potential negligence, further tainting the sale’s validity (*Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 935 (2016)). Even without personal liability, the account in Appellant’s name affects his financial interests, and Respondent’s payments without consent constitute tortious interference (*Pacific Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1126 (1990)). These defects, compounded by the sale’s

reliance on the void 2015 judgment and bankruptcy protection violations, along with Citizens' violation of the bankruptcy Court's discharge and stay Order requiring lawful foreclosure, render Respondent's title invalid, precluding UD jurisdiction (*Asuncion*, 108 Cal.App.3d 141).

#### **D. Mandatory Duty to Stay UD Proceedings**

The title dispute, stemming from a void 2015 judgment, license suspension, wrongful foreclosure, and bankruptcy protection violations, necessitated a stay of the UD proceedings to ensure due process. *Asuncion*, 108 Cal.App.3d 141 at 147, establishes that "homeowners cannot be evicted, consistent with due process guaranties, without being permitted to raise the affirmative defenses which if proved would maintain their possession and ownership." The Superior Court's failure to grant a stay, despite Appellant's unopposed evidence of these issues (RJN Ex. 15), breached its mandatory duty, divesting the UD court of jurisdiction to proceed (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)). This failure led to an unauthorized entry of default, default judgment, and eviction under threat of force by the County Sheriff, resulting in the deprivation of Appellant's home without just compensation (Cal. Const. Art. I, § 13; Cal. Penal Code § 487).

#### **Conclusion**

The unlawful detainer court lacked subject matter jurisdiction due to a complex title dispute and damages exceeding the \$35,000 jurisdictional threshold, which were improperly omitted by Respondent and Paloci in invoking the limited civil division. Their

nondisclosure of material facts regarding the title dispute violated statutory and ethical duties (*Gillespie v. Ormsby*, 126 Cal.App.2d 513, 527–528 (1954); *In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980); *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198, 214 (2022)), rendering the default judgment void for lack of jurisdiction (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)). The void 2015 judgment and license suspension initiated a chain of financial hardship, leading to bankruptcy proceedings marred by due process and homestead protection violations, culminating in a wrongful foreclosure that transferred Appellant's home equity to Respondent. The Superior Court's failure to stay the UD proceedings and transfer the case to the unlimited civil division, as required by *Asuncion* and CCP § 396(b), compounded these errors, allowing an invalid judgment to proceed. Appellant respectfully requests that this Court vacate the default judgment (CT 23–24) as void and order the case transferred to the unlimited civil division to properly adjudicate the title dispute and related claims.

## **II. February 2025: Initiation of Unlawful Detainer and Fraudulent Filings**

### **A. Respondent's Improper Invocation of Limited Civil Jurisdiction**

#### ***1. Omission of Title Dispute and Jurisdictional Defects***

On or about February 3, 2025, Respondent, through his attorney Paloci, served 3/90 Notices to Quit on Appellant, the legal owner and occupant of 818 Spirit, Costa Mesa, CA. Appellant promptly notified Paloci by phone and email of the foreclosure's invalidity, jurisdictional defects, denial of judicial remedy, and bankruptcy protection violations,



providing verified pleadings to substantiate these claims (RJN Ex. 15: Ex Parte App. Stay and Answer: p. 586–Email Feb. 3, 2025; pp. 593–594–Email Feb. 5, 2025 (bottom of page)). Appellant offered to equitably resolve the disputed sale by returning surplus funds and mitigating damages where possible (RJN Ex. 15; p. 601–Email Feb. 9, 2025; see also p. 586 last ¶– “I am willing to work with you and your client to ensure no further harm occurs to either of [u]s and lawful justice is served. Please reach out any time.”). Paloci responded, “No. There is no way that is ever going to happen. The foreclosure sale is final and that isn’t going to change.” (RJN Ex. 15–Email Feb. 17, 2025, p. 601, ¶1).

Despite Appellant’s repeated notifications of intent to challenge title and the void 2015 case judgment, which required unlimited civil proceedings (pre-service of complaint: RJN Ex. 15, p. 586, pp. 591–602; Ex. 1 pp. E001-E010; post-service of complaint: RJN Ex. 15; Ex. 1, pp. E010–E185), Respondent and Paloci filed a verified UD complaint under CCP § 1161a on February 11, 2025 (CT 8 ROA 2; RJN Ex. 15, pp. 609–620), personally served on March 1, 2025 (CT 18 ¶5a), invoking the Superior Court’s limited civil division misrepresenting that the action was a “limited civil action” with duly perfected title (RJN Ex. 15: Complaint–p. 611, ¶¶ 1, 6; see also Ex. 1, p. E185, Aug. 27, 2025 Email, Paloci admitting “a UD court may only do a cursory review of title”). The limited civil division lacks jurisdiction over complex title disputes (*Asuncion*, 108 Cal.App.3d 141; CCP § 580(b)(3) (title may not be determined in limited civil case)) and claims where the amount in dispute exceeds \$35,000 (CCP § 85(a)). For additional notice of title and disputed amount exceeding \$35,000 post-filing of the UD complaint, see RJN Ex. 15: p. 386, Lines 9–10 alleging ~1.2 million in home equity loss; Lines 10–11, \$200,000 loss of tax base value;

Lines 13–14 alleging ~\$1.38 million total damages. Per CCP § 85(b), the “amount in dispute” includes the property’s value, ~\$1.5 million.

While CCP § 1161a permits incidental title inquiries under Civil Code § 2924, Appellant’s complex unlimited civil claims—stemming from the void 2015 case judgment, license suspension, extrinsic fraud, due process violations causing financial ruin, bankruptcy discharge, stay, and fresh start violations, and wrongful foreclosure involving Civil Code § 1708 violations—are beyond the limited civil court’s authority. *Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474, 480 (2018) (“relief not statutorily authorized [in unlawful detainer proceedings] may not be given due to the summary nature of the proceedings.”) (Citation omitted).

Respondent and Paloci omitted material facts in the UD complaint, representing the action as a “limited civil action” with court jurisdiction and duly perfected title (RJN Ex. 15, pp. 611–612–UD Complaint, ¶¶ 1, 7, 11), despite knowing the limited civil division lacked jurisdiction over the complex title dispute (CCP § 580(b)(1); see Ex. 1, p. E185, Aug. 27, 2025 Email, Paloci admitting “a UD court may only do a cursory review of title”) and that title could not have been perfected due to underlying disputed actions, including the void 2015 judgment, bankruptcy protection violations, and wrongful foreclosure (RJN Ex. 15, p. 377). Further evidencing their intent to mislead, Respondent and Paloci explicitly denied the title dispute’s connection to the 2015 case in off-record communications, stating, “Your position that the foreclosure is connected to your construction litigation lawsuit [2015 case] is simply without merit” (Ex. 1, p. E119), “the chain of causation you argue is absurd and not supported by the law in any way” (Ex. 1,

p. E125), and “there isn’t an underlying title dispute” (Ex. 1, p. E183). Paloci later admitted that the 2015 case judgment was “ignored” because he believed it had no nexus to the UD case or foreclosure, stating, “your construction litigation [case] is 100% not part of the UD case or foreclosure. ... That’s why your [2015 case] litigation was ‘ignored’ with respect to the foreclosure and UD. The entirety of your litigation as it relates to my client is frivolous” (Ex. 7, p. 297, p. 299). Paloci also dismissed Appellant’s repeated notifications as “delusional” and driven by “brainrot” and “conspiracy theory media,” stating, [y]ou have built an entire structure built on false premises that lead you to delusional conclusions. It’s sad” (Ex. 1, p. E174, Email Aug. 27, 2025). These denials, despite Appellant’s repeated notifications of the void 2015 case judgment and related disputes (RJN Ex. 15, pp. 586, 591–601), confirm their intentional nondisclosure of material facts, violating their duty to disclose under *Gillespie v. Ormsby*, 126 Cal.App.2d 513, 527–528 (1954) (“one who speaks is not only obligated to tell the truth but he is equally bound not to suppress or conceal any facts within his knowledge which materially qualify those stated. [Citations]. If he speaks at all, he must make a full and fair disclosure. [Citations]”) and *In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980) (affirming duty to disclose facts that might result in postponement of adjudication and finding fraud for breach)). This nondisclosure, intended to shield critical information from the court to obtain possession, constituted extrinsic fraud on Appellant and the court (Civ. Code § 1710(1)–(3)), violated due process (Cal. Const. Art. I § 7), breached the statutory duty to cooperate under CCP § 583.130 (*Lasalle*, 36 Cal.App.5th at 137; *Shapell*, 85 Cal.App.5th at 214 and violated Paloci’s professional duties as an officer of the court, which extend beyond client representation (B & P § 6068(a), (b), (c), (d), (g), (h))). Whether the 2015

case judgment and related issues constituted an underlying title dispute that voided the foreclosure sale and required a stay of the UD proceedings is a matter for judicial determination and inextricable part of the controversy.

Appellant asserts that Respondent and Paloci sought to invoke the limited civil division to obtain summary possession, knowing the Court lacked subject matter jurisdiction to address the 2015 case judgment, license suspension (RJN Exs. 1-11—denial of judicial remedy), wrongful foreclosure, and bankruptcy protection violations. Their actions prevented Appellant from obtaining a meaningful hearing consistent with due process protections in unlimited civil proceedings before possession was determined (Cal. Const. Art. I, §§ 7, 9; *U.S. Const.* Art. I, § 10). Their knowledge of the jurisdictional defects and subsequent possession (CT 26–28) after notice of due process violations supports this assertion.

Respondent and Paloci also invoked the jurisdiction of a Superior Court they knew had previously acted without authority to cause Appellant harm while denying him protection of the laws (RJN Exs. 1, 3; *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“right of every individual to claim the protection of the laws whenever he receives an injury [and] first dut[y] of government is to afford that protection”); Cal. Const. Art. 1, § 3 (right to petition for redress of grievance)), violating the principle that the law cannot serve as both a sword and a shield. The Superior Court lacked jurisdiction over the UD action and title dispute until it fully and impartially adjudicated the underlying causes of the foreclosure, including actions by the Superior Court, Fourth District Court of Appeal, and CSLB (RJN Exs. 1-11).




### **III. March 2025: Procedural Irregularities and Denial of Due Process**

#### **A. Obstruction of Appellant's Answer and Denial of Right to Be Heard**

##### ***1. Refusal to File March 14, 2025 Answer***

On March 14, 2025, Appellant attempted to file a Verified Answer challenging jurisdiction in the UD case, under duress to defend in a Court lacking authority and facing ongoing deprivation of rights and property (RJN Exs. 1, 3; RJN Ex. 15, pp. 256–758; CT 51 ¶¶6–Decl. Bereki; CT 44 ¶¶B.3; CT 47 ¶¶3). The Deputy Clerk and her Supervisor refused to accept the Answer because it was combined with a verified Ex Parte Application to Stay the UD proceedings and a Verified Motion to Vacate a void judgment from the related 2015 case that contributed to the foreclosure. The Deputy Clerk instructed Appellant that the document would not be filed in either case unless he crossed out information pertaining to the other case (CT 51 ¶¶6–Decl. Bereki; CT 44 ¶¶B.3; CT 47 ¶¶3).

Without waiving his rights, and following the Deputy Clerk's instructions to ensure a hearing, Appellant crossed out the UD-related case and Answer information on the title page only, leaving the substance of the document intact, as shown in the record (RJN Ex. 15, p. 256):

5	<b>SUPERIOR COURT OF THE STATE OF CALIFORNIA</b>		
6	<b>FOR THE COUNTY OF ORANGE— CENTRAL JUSTICE CENTER</b>		
7			
8	Adam Bereki	Main Case No.: 30-2015-00805807	
9	Defendant, Cross-Complainant, Plaintiff	<b>Related Case No.: 30-2025-01459684</b> (Unlawful Detainer)	
10	vs.		
11	Karen Humphreys and Gary Humphreys,	<b>VERIFIED EX PARTE APPLICATION FOR EMERGENCY STAY OF UNLAWFUL DETAINER ACTION</b>	
12		03/18/25	
13	Plaintiffs/ Cross-Complainants, Cross-Defendants	<b>DATE:</b>  <b>Mon. March 17, 2025</b>	
14	vs.	<b>TIME:</b>  <b>8:30 AM - 9:00 AM</b>	
15		<b>DEPT:</b> Dept. C23	
16	Canjian Hou; MTC Financial, Inc., d/b/a Prestige Default Services, LLC; Fourth District Court of Appeal of California (Interested Party); Superior Court of California for the County of Orange	<b>JUDGE:</b> D. Hesseltnie	
17		<b>WITH INCORPORATED:</b>	
18		<b>ANSWER TO COMPLAINT (2025-01459684)</b>	

The verified pleading, including the Answer and challenge to jurisdiction with supporting exhibits, was filed in its entirety in the 2015 case (RJN Ex. 15). The pleading raised the following uncontested issues:

- Respondent lacked standing to pursue UD because his title derived from a Trustee's Deed issued following an unauthorized and void non-judicial foreclosure sale (RJN Ex. 15, pp. 270–272; pp. 353–354, ¶¶e–The Unlawfulness of the Sale; pp. 376–378, iii–Arguing Standing to Challenge Wrongful Foreclosure).
- The foreclosure relied upon a void judgment, causing default; the sale price (~\$371,000 vs. ~\$1.5M fair market value) resulted in a ~\$1.2M equity loss (RJN Ex. 15, pp. 270–272, Argument III; pp. 347–370–Citizens Bank Exploited Fraud and State Misconduct to Plunder [Appellant's] Home; p. 370–[Appellant] Denied Redemption).

- The Trustee's Deed slanders title; Respondent's claim is invalid due to the unlawful sale (RJN Ex. 15, p. 269, PROPERTY–Ownership; pp. 376–377–ii.[Respondent] Lacks Standing to Seek Relief Under His Unlawful Detainer Suit Due to the Illegal Foreclosure Sale).
- Respondent is not a bona fide purchaser due to inquiry/constructive notice via Google search and judicial lien clouding revealing litigation and disputed actions (RJN Ex. 15, pp. 370–373; pp. 378–380, iv; RJN Ex. 16).
- The UD court lacks subject matter jurisdiction over the UD action due to a disputed title invalidated by underlying jurisdictional defects in the 2015 case judgment (RJN Ex. 15, pp. 270–271, Argument I–III; pp. 275–277–III. Structural Jurisdictional Errors Necessitating Automatic Reversal; pp. 286–287–a. The Judgment Is Void Due to Lack of Jurisdiction and Extrinsic Fraud).
- The 2015 case defendants' actions (unauthorized prosecution, excessive fine) violated Cal. Const. Art. V §1 (executive power), Art. I §§7, 9 (due process), §17 (excessive fines), divesting the Superior Court of jurisdiction (RJN Ex. 15, pp. 270–271, Argument I; pp. 286–287–a. The Judgment Is Void Due to Lack of Jurisdiction and Extrinsic Fraud; pp. 301–302–i. Additional Issues at "Trial" Depriving th[e] [Superior] Court of Subject Matter Jurisdiction–Failure to Address Defendant's Affirmative Defenses).
- Private parties in the 2015 case lacked executive authority to prosecute a penal §7031(b) claim, rendering the 2015 case void (RJN Ex. 15, pp. 300–01 h. Argument I; pp. 286–287, a–The Judgment Is Void Due to Lack of Jurisdiction and Extrinsic

Fraud; pp. 324–326–B. Extrinsic Fraud, C. Fraud on the Court, D. Structural Jurisdictional Errors).

- Appellate affirmance perpetuated defects, without jurisdiction to affirm (RJN Ex. 15, pp. 319–322; pp. 322–325–Fraud).
- Irreparable Harm: Imminent eviction from a 20-year home and ongoing distress (RJN Ex. 15, pp. 270–271, Argument III; p. 271-2, III. Harms Suffered).
- Judicial Efficiency: The UD case is linked to a void judgment; a stay avoids inconsistency (RJN Ex. 15, p. 272, Argument IV; p. 272).
- Excuse from Tender: A void sale excuses tender; equity demands set-aside (RJN Ex. 15, p. 384, 3. The Third Element...; p. 385, The Principles of Equity Require This Sale Must Be Set Aside).

The Deputy Clerk lacked authority to determine the sufficiency of the pleading's form or substance, refusing to file it as an Answer and challenge to jurisdiction in the UD case, breaching her ministerial duty to file the document (*Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981); *Stevens v. Torregano*, 192 Cal.App.2d 105, 112–113 (1961); see also e.g. Fed. R. Civ. P. 5: “The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice”). The Ex Parte hearing for a stay was scheduled for March 18, 2025, at 9:00 AM, with Respondent properly noticed (RJN Ex. 15, p. 160) and provided a copy of the Answer and Application for Stay (Ex. 1, pp. E098–E104).

## ***2. Stealth Default Request of and Unlawful Entry of Default***



On March 17, 2025, despite possessing Appellant's Answer and notice of the Application for Stay, Respondent and Paloci filed a request for entry of default and default judgment ("Request") in the UD case without notifying Appellant, violating ethical and statutory duties as articulated in *Shapell* and *Lasalle*. The *Lasalle* Court endorsed the Rutter Group Practice Guide's directive: "If representing a plaintiff and having had contact with defendant's counsel, do not request a default without first giving written notice of intent to seek default and a reasonable time for defendant to file a pleading" (36 Cal.App.5th at 135). At the time of filing the Request on March 17, 2025, Respondent and Paloci:

1. Possessed Appellant's Answer challenging UD jurisdiction (RJN Ex. 15—filed March 14, 2025; Ex. 1, pp. E098–E105—multiple emails giving notice and providing a copy).
2. Knew the Deputy Clerk and Supervisor obstructed Appellant from filing the March 14, 2025 Answer (Ex. 1, p. E100, p. E103 ¶3).
3. Knew Appellant appeared and answered via the Ex Parte Application (RJN Ex. 15) with a hearing scheduled for March 18, 2025, to stay the UD case (RJN Ex. 15, p. 260—Notice of Ex Parte filing and hearing; Ex. 1, pp. E098–E105—multiple emails giving notice and providing a copy).
4. Knew Appellant disputed title (RJN Ex. 15 generally and p. 586, pp. 599-601) and that the UD court lacked jurisdiction to adjudicate the title dispute and an amount in controversy exceeding \$35,000 (Ex. 1, p. E185, Aug. 27, 2025 Email, Paloci admitting "a UD court may only do a cursory review of title").

Respondent and Paloci omitted these material facts in their Request, in addition to their earlier nondisclosure of the title dispute in the UD Complaint (RJN Ex. 15, pp. 609–620), breaching their duty to disclose facts that materially affect the basis for relief, as established in *Gillespie v. Ormsby*, 126 Cal.App.2d 513, 527–528 (1954), and *In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980) (affirming duty to disclose facts that might delay adjudication and finding fraud for breach). These omissions constituted extrinsic fraud on Appellant and the court, violated due process (Cal. Const. Art. I § 7), and breached Paloci’s statutory duties per Cal. Bus. & Prof. Code § 6068(a)–(d).

On March 14, 2025, after returning from the court, Appellant emailed Respondent and Paloci, notifying them that the Supervising Deputy Clerk obstructed his filing of the Answer in the UD case (RJN Ex. 15), stating he would address the issue at the Ex Parte hearing on March 18, further evidencing his intent to answer (Ex. 1, pp. E100, E103 ¶¶3).

On March 1, 2025, the Deputy Clerk entered default (CT 20–“FOR COURT USE ONLY”). This violated due process as recognized in *Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981), which prohibits a Deputy Clerk from entering a default when in possession of a responsive pleading (RJN Ex. 15). The entry of default also disregarded the five-day extension for mailed service under CCP § 1013(a). The Request was mailed March 17, 2025 (CT 21 ¶¶6b), extending the time to enter default and judgment until at least March 26. The fifth calendar day from the date of mailing was Saturday, March 22, 2025, a legal holiday, along with Sunday, extending the time to receive notice until at least Monday, March 24, 2025, at 5:00 PM, including two days for a reasonable response time (CCP §§ 12, 12a, 12b; e.g. *Montgomery v. Norman*, 120 Cal.App.2d 855, 857 (1953)).

This premature entry of default (and/or default judgment) deviates from cases like *Shapell* where the Deputy Clerk apparently entered default and default judgment eleven days after the request was filed (*Shapell*, 85 Cal.App.5th at 205). Permitting the Deputy Clerk to enter default pursuant to CCP § 587 (see CT 21–Form CIV-400 ¶6) without confirming notice to opposing counsel of the intent to enter default as recognized by *Lasalle* and *Shapell*, undermines the statutory notice and affidavit of service requirements of CCP §§ 1013 and 587. Due process requires notice reasonably calculated to reach the object of the notice (*Lasalle* 36 Cal.App.5th at 138 (Citation omitted)). The five-day extension of CCP § 1013 operates with the ethical and statutory duties recognized in *Lasalle* and *Shapell* to ensure due process safeguards in the event of counsel’s breach of notice duty per CCP § 583.130.

Pursuant to CCP § 1169, the Deputy Clerk had no authority to enter default absent Respondent’s Request under penalty of perjury (CT 20–22). This evidences the magnitude of the breach of Respondent’s ethical and legal duties to provide notice under CCP § 583.130 and to not mislead/defraud the Court. CCP § 1169 only permits entry of default and default judgment when the defendant “does not appear and defend.” Appellant appeared and defended by filing pleadings in the 2015 case in the division of the Court with subject matter jurisdiction to address the title dispute with authority to issue a stay, and through repeated attempts to file Answers in the UD case to challenge jurisdiction (RJN Ex. 15; CT 55–60–March 19, 2025 Rejected Answer; CT 51–Decl. Bereki ¶¶ 8–10). CCP § 1140 confirms that “[a] defendant appears in an action when the defendant answers ... [or] gives the plaintiff written notice of appearance.”

The Deputy Clerk's improper entry of default in the UD case renders the entry of default and later the default judgment void.

### ***3. Judge Hesseltine's Ministerial Breaches and Judicial Misconduct (Ex parte Hearing)***

On March 18, 2025, Appellant appeared at the Ex Parte hearing at 9:00 AM before Supervising Judge Hesseltine, seeking a stay of the UD proceedings, unaware of Respondent's Request for Entry of Default and Default Judgment filed prior to the hearing (CT 20–22). Judge Hesseltine denied the Application with a one-word ruling, "denied," without addressing the substantive issues raised in the verified pleading (RJN Ex. 15.1, Minute Order, p. 0760; Ex. 15.8A, Certified Reporter's Transcript, pp. 1495–1506). These issues included: (1) the void 2015 judgment and resulting irreparable harm, including the continued denial of relief and lack of a fair forum; and (2) the wrongful foreclosure and imminent eviction causing irreparable injury and emotional distress, perpetuating the denial of a judicial determination of Appellant's rights (RJN Ex. 15, pp. 256–758). The verified pleading made a factual showing of irreparable harm and immediate danger, constituting an Answer under Code of Civil Procedure §§ 431.30 and 1161 by challenging the UD Court's jurisdiction and Respondent's standing due to a title dispute stemming from the void 2015 judgment, bankruptcy protection violations, and wrongful foreclosure (Id.).

Hesseltine's denial cited procedural issues, noting the UD Answer was combined with other filings, prioritizing form over substantive justice. When Appellant questioned why the filing was not recognized as an Answer or why the substantive claims of the void 2015 judgment, extrinsic fraud, due process violations, and necessity of the stay were not

addressed, Hesseltine stated the denial was based on both procedural defects and an insufficient showing on the merits, without specifying which claims were deficient (RJN Ex. 15.8A, Transcript, p. 1506, lines 6–22). This dismissal relied on the law of the case doctrine, citing prior appellate rulings (*Id.*, p. 1499, lines 15–19; p. 1505, lines 4–7), and overlooked new evidence from *Eisenberg Village v. Suffolk Construction Co.*, 53 Cal.App.5th 1201 (2020) and *Liu v. SEC*, 591 U.S. 71 (2020), supporting the 2015 judgment’s penal nature and voidness (RJN Ex. 15, p. 0271, 0285; Ex. 15.8A, p. 1503, lines 15–25; p. 1504, lines 7–23). His refusal to treat the filing as a UD Answer, despite its intent to challenge jurisdiction and title (*Id.*, p. 1498, lines 3–13), violated *Buxbom v. Smith*, 23 Cal.2d 535, 542–543 (1944), which mandates liberal construction of pleadings for substantial justice: “While orderly procedure demands a reasonable enforcement of the rules of pleading, the basic principle of the code system in this state is that the administration of justice shall not be embarrassed by technicalities, strict rules of construction, or useless forms. ... [I]t has been generally recognized that in the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties. No error or defect in a pleading is to be regarded unless it affects substantial rights. (Code Civ. Proc., § 475.) ... The subject matter of an action and the issues involved are determinable from the facts alleged rather than from the title of the pleading or the character of damage recovery suggested in connection with the prayer for relief.”

At minimum, Judge Hesseltine had a ministerial duty to order the Deputy Clerk to file the Answer in the UD case to ensure due process and to transfer the UD case to unlimited jurisdiction, as the complex title dispute and damages exceeding \$35,000

divested the limited civil division of jurisdiction (*Asuncion*, 108 Cal.App.3d at 146–147; Code Civ. Proc., § 86(b)(1)). Due process and the unified Superior Court structure (*Wozniak v. Lucutz*, 102 Cal.App.4th 1031, 1041 (2002); *Ytuarte v. Superior Court*, 129 Cal.App.4th 266, 274 (2005)) obligated Hesseltine to recognize the Answer and transfer the case under Code of Civil Procedure § 396(b) to address the title dispute and damages exceeding \$35,000. Despite knowing the UD court lacked jurisdiction and that default was entered on March 17, 2025 (CT 20), Hesseltine instructed Appellant to “file the Answer in the proper case” (RJN Ex. 15.1). Following this instruction, Appellant returned on March 19, 2025, with a different Answer (CT 55–60), which was rejected due to the default judgment entered minutes after the hearing on March 18, 2025, at 9:44 AM (CT 9–10, ROA 18–19; RJN Ex. 18). Hesseltine’s failure to vacate the default or transfer the case, combined with Respondent’s default request, constituted extrinsic fraud and fraud on the court (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *In re Marriage of Modnick*, 33 Cal.3d 897, 905 (1983); *Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)), violating Code of Civil Procedure § 583.130 and case law requiring fair proceedings (*Lasalle*, 36 Cal.App.5th 127; *Shapell*, 85 Cal.App.5th 198).

No party, including Respondent, appeared at the hearing or filed written opposition despite proper notice (RJN Ex. 15, p. 260; Ex. 15.8A, p. 1496, lines 1–11; Ex. 1, Docket: ROA 306, p. 0026 to ROA 322, p. 0027). Hesseltine’s failure to accept the unopposed evidence as proof of a title dispute and jurisdictional defects breached the ministerial duty to grant relief when uncontradicted evidence demonstrated invalidity (*Joseph v. Drew*, 36 Cal.2d 575, 579 (1950); *Thompson v. Cook*, 20 Cal.2d 564, 569 (1942)).

The Minute Order stated it 'fully considered the arguments of all parties, both written and oral, as well as the evidence presented' (RJN Ex. 15.1, p. 0760), misrepresenting the record, as only Appellant presented arguments and evidence. This misrepresentation, coupled with the lack of a reasoned explanation for the denial despite unopposed evidence, violated the judicial duty under due process to provide transparent rulings—requiring courts to articulate evaluative processes, weigh evidence, and bridge facts to conclusions to prevent arbitrary deprivations and ensure meaningful appellate review (Cal. Const., art. I, § 7; *Nakamura v. Parker*, 156 Cal.App.4th 327, 334-335 (2007) (summary denial of facially adequate ex parte application without hearing or explanation is abuse of discretion and due process violation); *People v. Kelly*, 40 Cal.4th 106, 110 (2006) (decisions must be in writing with reasons stated for meaningful review); *C.S. v. Superior Court*, 29 Cal.App.5th 1009, 1023 (2018) (Court must articulate evaluative process and show evidence weighing for due process); *In re Harris*, 16 Cal.5th 292 (2024) (due process mandates reasoned findings on evidence reliability in liberty-deprivation decisions); *Rochin v. California*, 342 U.S. 165, 171-172 (1952) (due process requires balanced, reasoned evaluation of facts and claims)). The unopposed evidence established a substantive title dispute and defense, proving the UD court lacked jurisdiction (Code Civ. Proc., § 583.130) and entitling Appellant to stay relief (*Asuncion*; *Windsor*, 93 U.S. at 277–278).

Appellant's requests for guidance on where to seek relief, given the exhaustion of remedies (e.g. RJN Ex's. 1-11), were met with Hesseltine's refusal to provide direction, stating he could not offer legal advice (RJN Ex. 15.8A, p. 1500, lines 15–25; p. 1503, lines 1–14; p. 10, lines 12–17). This response continued a pattern of denying a fair forum,

violating *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (recognizing the fundamental duty to afford protection of laws), and Cal. Const., Art. I, §§ 7, 9 (requiring judicial determination of rights and the right to petition for redress of grievances). Hesseltine's refusal to provide a Court Reporter, despite Appellant's indigent status and request (RJN Ex. 15, p. 262), violated due process and *Jameson v. Desta*, 5 Cal.5th 594, 608–609 (2018). Appellant recorded the proceeding to preserve the issue for appeal (RJN Ex. 15.8A, pp. 1495–1506). The stay denial was a jurisdictional error, allowing the UD court to proceed despite lacking authority to resolve title, disputed actions, or equitable defenses, making it reviewable as an intermediate order (Code Civ. Proc., § 906).

#### ***4. Unlawful Entry of Default Judgement***

On March 18, 2025, minutes after the Ex Parte hearing, the Deputy Clerk unlawfully entered default judgment against Appellant (CT 10, ROA 19–20; CT 24–Signed Default Judgment; RJN Ex. 18, Deputy Clerk noting default judgment entered at 9:44 AM on March 18, 2025). Appellant asserts the default judgment is void for all the previously alleged reasons the entry of default is void (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876); *Stearns v. Aguirre*, 7 Cal. 443, 449 (1857) (“If a judgment is ... entered by a ... ministerial officer, without authority of law, it is wholly void”)), constituting a bill of pains and penalties (Cal. Const. Art. I, § 9; U.S. Const. Art. I, § 10).

The entry of default and default judgment were also improper and void because:



1. Judge Hesseltine violated due process, denying Appellant a full, fair, and impartial hearing for stay of the UD proceedings, negating due process notice requirements (*Windsor v. McVeigh*, 93 U.S. 274 (1876)).
2. The limited civil division lacked subject matter jurisdiction due to the underlying title dispute (CCP § 580(b)(3)) and an amount in dispute exceeding \$35,000 (CCP § 85(a)).

#### **5. Deputy Clerk Refusal to File March 19, 2025 Answer**

On March 18, 2025, after the Ex Parte hearing, unaware of the Request and entry of default Appellant emailed Respondent/Paloci stating, “I will be filing an answer to the UD complaint by tomorrow,” and noting, “As you’ve been made aware I am under extreme duress given the improper acts that continue to be perpetrated against me” (Ex. 1, p. E105; referring to RJN Ex. 1–12). Neither Respondent nor Paloci responded.

On March 19, 2025, Appellant returned to the Court with a separate Answer to file in the UD case, challenging jurisdiction and standing due to disputed actions and jurisdictional defects (CT 55–60). The Deputy Clerk rejected the Answer citing the default judgment entered on March 18, 2025. The Deputy Clerk lacked authority to reject the Answer, as: (1) jurisdiction can be challenged at any time, including post-default (*Rochin v. Pat Johnson Mfg. Co.*, 67 Cal.App.4th 1239 (1998)); (2) clerks lack authority to determine the form or sufficiency of a pleading (*Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981); *Stevens v. Torregano*, 192 Cal.App.2d 105, 112–113 (1961); e.g. Fed. R. Civ. P. 5: “The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice”); and (3) the Clerk possessed Appellant’s

Answer, filed in the 2015 case (RJN Ex. 15; *Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981) (Deputy Clerk in possession of responsive pleading has no authority to enter the default)).

Appellant's March 19, 2025, Answer would have prevented the issuance of the subsequent Writ of Possession, which resulted from this sequence of irregularities.

### ***6. Unlawful Application for Writ of Possession***

On March 20, 2025, Respondent/ Paloci, aware of the absence of a lawful right to relief due to the title dispute, the UD Court's lack of jurisdiction, and the denial of Appellant's right to be heard, continued to commit fraud on the Court by filing a false and fraudulent Application for Writ of Possession under penalty of perjury (signed by Paloci) (CT 25). The Application applies for the Writ under CCP sections 712.010 and 715.010. Section 712.010 requires there to be a valid entry of judgment for possession. Section 715.010 allows enforcement of the Writ issued pursuant to 712.010. Based on Respondent/ Paloci's false statements, the Writ of Possession was issued by the Deputy Clerk on March 22, 2025 (CT 26–28). These actions violated due process (Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art. I, § 10) and California Penal Code sections 115 (filing false documents, CT 20–22, 25–28), 182 (conspiracy), and 487 (grand theft).

## **IV. The Unlawful Theft/ Taking of Appellant's Home**

### **A. Invalid Execution of Writ and Constitutional Violations**

#### ***1. Fraudulent Statements to Obtain Writ of Possession***

On or about March 24, 2025 Respondent /Paloci contacted the Orange County Sheriff's Department to invoke executive authority to compel Appellant's removal from his home (Ex. 5, pp. E247 – E285). Public Records Act documents show they made misleading statements, including: "the property is owned by Mr. Hou via foreclosure[;]" "Plaintiff w/ judgment for possession" (Ex. 5, p. E254 ¶1); "Mr. Bereki borrowed money and defaulted. A bank foreclosed and Mr. Hou bought" (Ex. 5, p. E254 ¶2); writ was issued "3/23/2022" (Ex. 5, p. E255 ¶3); judgment was issued "3/18/25" (Id. ¶3c); "possession only against Adam Bereki" (Id.); "plaintiffs have unlawful detainer judgment for possession" (Ex. 5, p. E256 ¶5, p. E257); and apparently provided documents including a copy of the fraudulent Writ of Possession (Ex. 5, p. E251 ¶6a, p. E255 ¶3b; CT 26–28). They filed the application and paid the \$180 fee (Ex. 5, p. E257) to compel Appellant to vacate, despite knowing Respondent had no lawful right to possession due to the void 2015 judgment, wrongful foreclosure, bankruptcy violations and jurisdictional defects (RJN Ex. 15), and the invalidity of the UD judgment, which lacked jurisdiction, rendering the Writ void as actions taken under a void judgment confer no rights and make enforcers trespassers (*Lovejoy v. Murray*, 70 U.S. 1, 18 (1865); *Windsor*, 93 U.S. at 277–278. These actions violated Cal. Penal Code § 115(a) (filing false documents), § 182(a) (conspiracy), and § 487(a) (grand theft).

## **2. Sheriff's Department's Refusal to Investigate**

### ***a. Sergeant Lopez's Refusal to Investigate***

On March 24, 2025, Appellant contacted Sergeant Lopez of the Orange County Sheriff's Department Civil Enforcement Division to report Constitutional and criminal law

violations related to the anticipated eviction (Ex. 2, pp. E189–E210: Certified Transcript). Appellant, a former police officer with over twenty years of experience in fraud and public corruption investigations, reported the void 2015 case judgment, ~\$930,000 fine, license suspension, forced bankruptcy, wrongful foreclosure, and lack of judicial remedy (Ex. 2, pp. E190–E194), requesting a “fair investigation that nobody else has done so far, and to look into this matter and to stop it” (Ex. 2, p. E193, lines 19–21 – E194, line 7).

Lopez stated he “can’t conduct an investigation because... [he’s] ... a sergeant with the Civil Bureau” (Ex. 2, p. E194, lines 21–23), claiming, “[o]nce it get to [me] ... it’s already a done deal” (Ex. 2, p. E195, lines 1–3), “we can’t use any of our resources to conduct any investigations” (Id., lines 11–12) “upon these civil issues” (Ex. 2, p. E207, lines 18–20), and “I cannot take a report for this, um, because this is a Costa Mesa property and this is a civil matter” (Ex. 2, p. E208, lines 20–22). These statements were misleading, as Lopez, an executive officer under Cal. Const. Art. V, § 1 and Art. XX, § 3, had a duty to investigate alleged crimes and Constitutional violations (Cal. Const. Art. I, § 26– Constitutional provisions mandatory/prohibitory; Art. XX, § 3– Oath of Office to faithfully support and defend Constitutions; Art. I, § 3– right to petition for redress; Gov. Code § 26600 et seq.; *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“where there is a legal right, there is also a legal remedy”; “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection”). His claim of lacking jurisdiction was incorrect, as Orange County sheriffs have countywide authority (Ex. 6, p. E290–E291).

### ***b. Deputy Murillo's Refusal to Investigate***

On March 27, 2025, Deputy Murillo served a Notice to Vacate with the Writ of Possession at Appellant's home (CT 127; CT 129–131; Ex. 3, pp. E216–E229–Certified Body Camera Transcript). Appellant requested Murillo investigate criminal and Constitutional law violations related to the eviction process (Ex. 3, p. E217, lines 2–3; p. E218, line 24–p. E219, lines 1–6; p. E220, lines 3–5; p. E222, lines 18–19). Murillo claimed he lacked jurisdiction, referring Appellant to Costa Mesa Police (Ex. 3, p. E217, lines 4–5), stating he “go[es] off of whatever the court documents say” (Id., lines 7–8) and “it’s called law enforcement, not law writing” (Id., lines 7–10, 12–14, 16–18). When Appellant countered that Murillo’s job was to “enforce what the law is, not invalid orders” (Id., lines 19–20), Murillo responded, “I think you’re just not getting the answer that you wanna hear” (Ex. 3, p. E221, lines 18–19). Murillo refused to take a crime report, stating, “This is a civil matter. There’s nothing to in- -- investigate” (Ex. 3, p. E224, lines 12–14).

The Notice to Vacate stated: “Should you fail to vacate the premises within the allotted time, I will immediately enforce the writ by removing you from the premises” (CT 127, ¶1). Fearing forcible removal by April 2, 2025, and believing Murillo might use physical force, Appellant vacated under duress (Ex. 3, p. E225, line 7).

### ***c. Constitutional and Statutory Violations***

Lopez and Murillo’s refusals to investigate and/or intervene despite notice of disputed actions and Constitutional violations (e.g. Ex. 2, pp. E190–E194; Ex. 3, p. E220, lines 3–8), violated their duty to faithfully execute the law (Cal. Const. Art. V, §§ 1, 3, 7;

Art. XX, § 3). Their actions facilitated the deprivation of Appellant's inalienable rights (home, ~\$1.2 million in equity, privacy) through the enforcement of an invalid Writ (Cal. Penal Code §§ 487, 211; e.g. *People v. Kozlowski*, 96 Cal.App.4th 853, 865–867 (2002)(home equity=money). They acted as aiders and abettors under Cal. Penal Code § 31, liable for violations including grand theft (§ 487), robbery (§ 211) conspiracy (§ 182), and burglary (§ 459). These actions also violated Cal. Const. Art. I, § 3 (right to petition for redress), Art. I, § 13 (unreasonable seizures) and § 7 (due process), supporting a 42 U.S.C. § 1983 claim.

#### ***d. Eviction Under Duress and Constitutional Taking***

Assuming hypothetically Respondent and Paloci had no notice of the underlying issues at the sale (void 2015 judgment, license suspension etc), they were given notice immediately thereafter when their identity became known. At that point they had a duty to investigate Appellant's claims to determine how to proceed (ie whether to accept his equitable offer for a refund from the surplus proceeds and walk away, or to rely on the underlying criminal and Constitutional law violations to obtain possession; Cal. Civil Code § 1708). When Respondent refused to do equity and sought possession with Paloci, they became aiders and abettors of the underlying violations constituting state action, relying on these unlawful and void acts to take Appellant's money, and property and deprive him of liberty and privacy without authority of law (*Windsor*, 93 U.S. 274; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982)).

By unlawfully invoking the Sheriff's Department to enforce the invalid writ, Respondent and Paloci facilitated an unconstitutional taking of Appellant's home and home equity property without just compensation, violating Cal. Const. Art. I, § 19.

The Return on Writ of Possession (Ex. 5, p. E281), executed June 19, 2025, stated: "Notice to Vacate was personally served on 3/27/25." Murillo noted, "Plaintiffs agent signed for and was given possession paperwork. Eviction completed" (Ex. 5, p. E285—dated 4/3/25, purportedly signed by Henry Paloci).

***e. Request for Adjudication of Sheriff's Executive Duty to Investigate Bona Fide Complaints Before Enforcement***

This Court is requested to adjudicate whether the Orange County Sheriff's Department, through Sergeant Lopez and Deputy Murillo, acting as Executive officers under Cal. Const. Art. V, § 1 and Gov. Code § 26600 (distinct from their roles as levying officers), had a mandatory, non-discretionary ministerial duty to investigate Appellant's bona fide complaints of Constitutional and criminal law violations prior to enforcing the void Writ of Possession (CT 26–28). Additionally, the Court should determine whether, upon finding unlawful interference with Appellant's rights, these officers also had a duty to intervene to halt such violations.

Appellant directly reported to Lopez and Murillo the void 2015 judgment, wrongful foreclosure, and related Constitutional and criminal violations (Ex. 2, pp. E190–E194; Ex. 3, p. E217, lines 2–5; p. E218, line 24–p. E219, lines 1–6). Both officers refused to investigate, dismissing the claims as a "civil matter" (Ex. 2, p. E194, lines 21–23; Ex. 3, p. E224, lines 12–14) and asserting no jurisdiction (Ex. 3, p. E217, lines 4–5). Lopez

stated, “I can’t conduct an investigation” (Ex. 2, p. E194, lines 21–23), and Murillo claimed, “There’s nothing to investigate” (Ex. 3, p. E224, lines 12–14). These refusals facilitated enforcement of an invalid Writ, leading to Appellant’s eviction under duress (CT 127; Ex. 3, p. E225, line 7).

Appellant contends that Lopez and Murillo, as executive officers bound by Cal. Const. Art. XX, § 3 (oath to faithfully support the Constitution), Gov. Code § 26600 et seq., and all violations of Appellant’s Constitutionally protected rights as alleged herein, had a mandatory duty to investigate credible claims of Constitutional violations and crimes, including violations of Cal. Penal Code §§ 115(a), 182(a), 211, and/or 487(a) . This duty stems from their obligation to preserve peace, faithfully execute the law, and ensure protection of legal rights, as articulated in *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (“where there is a legal right, there is also a legal remedy; the very essence of civil liberty consists in the right of every individual to claim the protection of the laws”; Cal. Gov’t Code §270 “[e]very person while within the State is subject to its jurisdiction and entitled to its protection”). The special relationship created by the state’s prior unlawful acts (e.g., void 2015 judgment, license suspension, and denial of remedy) heightened this duty (Cal. Const. Art. I, §§ 3, 7, 13, 26).

By refusing to investigate and/or intervene, Lopez and Murillo breached their executive duties, violated separation of powers and checks and balances, and deprived Appellant of a republican form of government (U.S. Const. Art. IV, § 4). Enforcement of a void judgment renders enforcers trespassers (*Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340 (1828)), and their actions facilitated an unconstitutional taking of Appellant’s home



and equity (~\$1.2 million) without due process or just compensation (Cal. Const. Art. I, §§ 7, 19).

No emergency justified their failure to investigate during the period between the Notice to Vacate (March 27, 2025) and the eviction deadline (April 2, 2025). Appellant seeks no liability but requests a determination that such a duty existed, as it affects the judgment's enforceability (Code Civ. Proc. § 906). Appellant further requests an order declaring the enforcement unlawful, vacating the Writ, and restoring possession.

For further clarity, Appellant does not contend that Deputies acting in the capacity of a levying officer serving facially valid Court orders must perform a forensic investigation of each order prior to service. Rather, the duty to investigate beyond facial validity arises when a person makes a bona fide complaint of deprivations of Constitutionally rights surrounding the Order and its enforcement.

Appellant is aware of CCP § 262.1 which states that “[a] sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.” However, executive authority cannot knowingly be used to enforce a void order (*Bennett v. Wilson*, 122 Cal. 509, 513–514 (1898); *Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340 (1828)) and qualified immunity does not apply to mandatory, non-discretionary duties that cannot be ignored such as those guaranteeing Constitutionally protected rights (Cal. Const. Art. I, §26; e.g. *Walt Rankin & Associates, Inc. v. City of Mirrieta*, (80 Cal. App. 4<sup>th</sup> 1255 (2000)); “It is well settled that the

police power cannot be made a cloak under which to overthrow or disregard constitutional rights” *People v. Holder*, 53 Cal. App. 45, 53 (1921)).

This brief and its supporting evidence (e.g., Ex. 1–6; RJN Ex. 1–24; CT 1–145) constitute the following formal complaints to the Orange County Sheriff-Coroner Department against all individuals and officials named herein, as their actions contributed to the unlawful deprivation of Appellant’s property and rights:

1. **Criminal Complaint:** Appellant alleges that Respondent Canjian Hou, attorney Henry Paloci, Judge David Hesseltine, Commissioner Carmen Snuggs-Spraggins (*infra*), the Deputy Clerks and their Supervisors, Sergeant Lopez, and Deputy Murillo violated and/or aided and abetted the violation of California Penal Code sections, including § 115(a) (filing false documents), § 182(a) (conspiracy), § 487(a) (grand theft), § 470(d) (obtaining property by fraud), § 518(a) (extortion), and § 532(a) (theft by false pretense). These actions, detailed in Sections II–V, include filing an improper UD complaint, an unnotified default request, a fraudulent writ application, obstructing Appellant’s Answers, and enforcing a void judgment, resulting in the unconstitutional taking of Appellant’s home and ~\$1.2 million in equity (Cal. Penal Code § 487; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982)).
2. **Deprivation of Constitutional Rights Complaint:** The actions of the named parties violated Appellant’s due process rights (Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art I, § 10), right to petition for redress (Cal. Const. Art. I, § 3), and protection against unreasonable seizures and takings (Cal. Const. Art. I, §§ 13, 19). These violations, detailed in Sections III–V, include the Superior Court’s failure to stay the

UD proceedings and obstruction of Appellant's Answers, premature default entry, and enforcement of an invalid writ, denying a full, fair and impartial hearing and judicial determination of rights.

3. **Professional Standards Complaint Against Sheriff's Officers:** Appellant submits a professional standards complaint against Sergeant Lopez and Deputy Murillo for breaching their executive duties under Cal. Const. Art. V, § 1, Art. XX, § 3, and Gov. Code § 26600 et seq. and aiding and abetting crimes and deprivations of Constitutional rights. Appellant does not allege that Lopez or Murillo acted with intent to harm prior to receiving his complaints. However, upon notice of the void 2015 judgment, wrongful foreclosure, and related violations, they had a mandatory duty to investigate credible allegations of crimes and Constitutional violations. Their refusals to investigate or intervene facilitated enforcement of a the void and/or discharged judgments and writ enabling the unconstitutional taking of Appellant's property under threat of force. This breached their obligation to preserve peace and protect legal rights, (and in the case of Lopez, also failing to supervise) rendering them aiders and abettors to the violations.

Appellant incorporates by reference Part 1 of an additional complaint and evidence titled "The Failure of the Executive" available at: <https://www.youtube.com/watch?v=kqN3tt9-Hiw&t=5s> evidencing the failure of the Executive Branches of California and the United States to investigate his claims pertaining to the 2015 case judgment, license suspension and denial of judicial remedy, which significantly contributed to this unlawful taking/theft of his property by officials

refusing to abide their executive duties, including as checks and balances on unlawful judicial action, allowing the unlawful sale and taking/theft to occur.

## **B. Impact of Fraud on the Judicial Process**

### ***1. Extrinsic Fraud Preventing a Fair Hearing***

Respondent's actions constituted extrinsic fraud, voiding the UD judgment. Extrinsic fraud occurs when a party is improperly prevented from presenting a defense, such as through misrepresentations or obstruction (*Kulchar v. Kulchar*, 1 Cal.3d 467, 471 (1969)). Respondent filed an improper UD complaint in a limited civil court (RJN Ex. 15, pp. 609–620), knowing it lacked jurisdiction over title disputes, and an improper default and default judgment requests (Ex. 1, p. E185), despite Appellant's intent to defend (RJN Ex. 15, p. 586, pp. 591). Respondent also filed an improper application for a writ of possession (CT 25–28), later invoking executive power to evict Appellant under threat of force (see IV, *infra*), despite knowing the sale was void and the UD Court lacked subject matter and procedural jurisdiction (RJN Ex. 15; RJN Ex. 1-11). These actions, combined with the Court's ministerial breaches—rejecting Appellant's Answer (RJN Ex. 15, 15.1–Minute Order Rejecting Answer; CT 43 lines 6-7, CT 55–60 March 19, 2025 Answer; CT 134-35–Minute Order: “[Appellant] failed to respond to the Complaint”; CT 145 Affirming CT 134-5), premature default entry (CT 20–22), and denial of a hearing (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876))—prevented a fair adversary hearing (*In re Marriage of Modnick*, 33 Cal.3d 897, 905 (1983)). This extrinsic fraud renders the judgment void.

Respondent and Paloci, fully aware of the disputed title, could have followed due process procedures to allow fair resolution of all issues, protecting both parties' rights. Instead, their actions breached due process, ethical, and statutory duties, leveraging the Court's ministerial violations to prevent Appellant from being heard, resulting in the improper acquisition of property to which Respondent had no lawful right.

## ***2. Fraud on the Court***

Respondent and Paloci's improper filings and nondisclosures undermined the judicial process, constituting fraud on the court. By omitting material facts about the title dispute and Appellant's intent to defend (RJN Ex. 15, pp. 586, 591–601), they impaired the Court's truth-seeking function (*In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980)), rendering the UD judgment void (*Windsor v. McVeigh*, 93 U.S. 274, 283–284 (1876); *Bennett v. Wilson*, 122 Cal. 509, 513–514 (1898); *Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340 (1828)).

## **V. May–June 2025: Post-Judgment Efforts and Continued Denials of Fundamental Due Process**

### **A. Deputy Clerk's Ministerial Breaches (Continued)**

#### ***1. Response to Petition for Redress***

On May 8, 2025, Appellant submitted a petition for redress via the Court's online form, alleging improper default entry due to lack of notice and refusal to accept Answer (CT 66–73). The Deputy Clerk stated that Appellant had “10 days to respond to the

complaint; you had until 3/14 to respond and because no response was submitted in the allotted time frame, the plaintiff was well within their rights to submit a Request for Clerk Default Judgment on 3/17/25 (CT 69), disregarding *Shapell*, 85 Cal.App.5th at 212 (cited at CT 72), and CCP §§ 583.130, 587. Appellant further alleged “I had no notice of the request for entry of default before the Court entered default (CT 72 ¶3). The Deputy Clerk refused to further investigate or to vacate the void judgment stating “[we]’re not going to vacate the default judgment; the attorney did their due diligence and the clerk processed everything correctly. If you want to argue against the judgment you may do so with the judge”, closing the chat to further discussion (CT 72 ¶ 4), breaching her non-discretionary ministerial duty to address procedural and jurisdictional errors.

## **B. Commissioner Snuggs-Spraggins’s Unauthorized Rulings and Errors**

### ***1. Filing of Motion to Vacate and Ex Parte Application***

Under significant pressure, including concern for personal safety following the denial of judicial relief and the Sheriff’s enforcement of the writ, Appellant vacated his residence on or about April 1, 2025. Due to ongoing financial hardship from the 2015 case and related proceedings, he relocated to Las Vegas, Nevada, where his parent, a property owner, assisted with subsidizing rent and storage.

On May 20, 2025, Appellant filed an unopposed Motion to Vacate the default judgment in the UD case with a supporting declaration, alongside an Ex Parte Application for a Temporary Restraining Order, stay of execution, and restoration of possession (CT 32–40–Ex Parte Application; CT 41–131–Motion to Vacate). The Court filed these on May

21, 2025 (CT 32, 41). The Motion and Application raised defenses, including the default judgment's voidness due to the Deputy Clerk's premature entry in violation of CCP § 1013 (CT 44, line 28–CT 45, line 4; CT 51, ¶ 9–Bereki Decl.), the Deputy Clerk's obstruction of Appellant's attempts to file answers on March 14 and 19, 2025 (CT 44, ¶ 3; CT 51, ¶¶ 6, 8, 10; CT 55–60; 2015 Case: RJN Ex. 1: ROA 302–344, RJN Ex. 15), and the title dispute stemming from a contested foreclosure, bankruptcy protection violations, and void 2015 judgment (CT 43, lines 4–17; CT 44, ¶ B1; CT 51, ¶ 8; incorporating RJN Ex. 14–Ex Parte Application and Answer filed in 2015 case).

**2. Lack of Notice and Stipulation for Commissioner's Authority; Commissioners Unauthorized Affirmation of Void Default Judgment**

The Superior Court had a mandatory, non-discretionary duty to vacate the void default judgment (CT 23–24) due to procedural and jurisdictional defects, including the Deputy Clerk's premature entry of default in violation of CCP § 1013's five-day extension for mailed service (CT 20–22; CT 44, line 28–CT 45, line 4; CT 51, ¶ 9–Bereki Decl.) and interference with Appellant's filing attempts on March 14 and 19, 2025 (CT 44, ¶ 3; CT 51, ¶¶ 6, 8, 10; CT 55–60; 2015 Case: RJN Ex. 1–ROA 302–344). *Frank Co. v. Leopold & Ferron Co.*, 13 Cal.App. 59, 61 (1910), *Thompson v. Cook*, 20 Cal.2d 564, 569 (1942), and *Joseph v. Drew*, 36 Cal.2d 575, 579 (1950), affirm that Courts have inherent power to vacate void judgments independent of statutory provisions when unopposed evidence demonstrates their invalidity. However, CSS lacked authority to rule on the Motion to Vacate (CT 41–131) without Appellant's stipulation, as required for substantive matters under Cal. Const., Art. VI, § 21 and CCP § 259(d). *Reisman v. Shahverdian*, 153 Cal.App.3d 1074, 1096–1097 (1984), holds that a commissioner cannot hear a motion to

vacate a judgment under CCP § 473 without party consent, as the moving party is a “party litigant” with the right to refuse, rendering such rulings void. *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351, 360, 367–368 (1973), confirms that commissioners require party stipulation to act as temporary judges for default-related judgments, as these are not subordinate judicial duties under CCP § 259a, subd. 6, unless specifically ordered by the Court, a condition not met here, as no such order appears in the record (CT 134–135).

Appellant received no notice, as required by California Rules of Court rule 2.816(c), that CSS would rule on the Motion to Vacate. CRC rule 2.816(c) mandates notice of a commissioner’s assignment as a temporary judge by a conspicuous sign in or outside the courtroom with oral or recorded notification on the hearing day or by written notice to each party. The Superior Court website states that ex parte applications are “ruled on in chambers” (occourts.org), and Appellant’s appearance was not permitted for the May 21, 2025, Ex Parte Application (CT 32–40), precluding courtroom notification. No written notice of CSS’s assignment was provided, depriving Appellant of the opportunity to consent or object. Appellant made no knowing, voluntary, or intelligent waiver of his right to have the motion determined by a duly empowered judicial officer. CSS’s ruling, declining to vacate the void judgment despite unopposed evidence of its voidness (e.g., Deputy Clerk’s procedural errors, CT 44, ¶ 3; CT 51, ¶¶ 6, 8), violated due process and is a nullity (Cal. Const., Art. I, § 7; *Windsor*, 93 U.S. at 277–278. Thus, while the Superior Court had a duty to vacate the void judgment, CSS’s unauthorized denial (CT 134–135), which upheld the void judgment and constituted a jurisdictional error, failed to fulfill this obligation, necessitating reversal and reassignment to a duly empowered judicial officer.



### **3. Inaccurate and Unsupported Findings**

CSS's denial included inaccurate findings constituting extrinsic fraud:

- Inaccurate Claim of Failure to Answer: CSS stated Appellant “failed to respond” and “chose not to act” (CT 134, last ¶; CT 135, ¶ 3), disregarding evidence of obstructed answers (CT 44, ¶ 3; CT 51, ¶¶ 6, 8, 10; CT 55–60).
- Ignoring Voidness Arguments: CSS disregarded arguments of premature default entry and title disputes (CT 44 ¶¶ 1, 4–CT 45 ¶¶ 6, 8; CT 46–50; CT 51-2, ¶¶ 1-12).
- Failure to Address Errors: CSS overlooked Paloci’s failure to notify of the default request, violating Canon 3D(2) (CT 44, ¶ 4; CT 46 ¶ 1, CT 51–Decl. ¶ 7; *Shapell*, 85 Cal.App.5th at 216,=.
- Misapplication of Law: CSS deemed *Lasalle*, 36 Cal.App.5th 127 and *Shapell*, 85 Cal.App.5th 198 “inapplicable” (CT 135, ¶ 1; CT 145, ¶ 4), apparently assuming CCP § 583.130 applied only to attorneys.
- Inaccurate Claim of Voluntary Move-Out: CSS stated Appellant “voluntarily” moved out (CT 135, ¶¶ 4–5), disregarding sworn testimony of Sheriff action (CT 51, ¶ 11; CT 127, ¶ 1).
- Erroneous Notice Claim: CSS inaccurately stated non-compliance with CRC rule 3.1204 (CT 135, ¶ 2), despite evidence of compliance (CT 35, lines 20–22; CT 40, ¶ 14).
- Denial of Restitution Authority: CSS overlooked the Court’s inherent authority to order restitution (*Shapell*, 85 Cal.App.5th at 211).

#### **4. Denial of Reconsideration**

On May 22, 2025, CSS denied Appellant's Ex Parte Application for Reconsideration (CT 136–144), inaccurately claiming no new facts or law under CCP § 1008(a) (CT 145), despite evidence of ongoing harm (~\$50,000 property damage, ~\$10,000 lost property; CT 144, ¶¶ 10, 12–Bereki Decl.) and failure to fully, fairly and impartially adjudicate the merits in the prior Application. CSS reiterated unsupported findings, overlooking unopposed evidence of premature default, Paloci's errors, and title disputes (CT 140–141, ¶¶ 1–5; CT 143–144, ¶¶ 4–9). This unauthorized denial, absent stipulation, was void (*Reisman v. Shahverdian*, 153 Cal.App.3d at 1096–1097).

#### **5. Breach of Ministerial Duties**

CSS breached her ministerial duty to grant a stay and transfer the case to unlimited jurisdiction due to the title dispute and damages exceeding \$35,000 (CT 43, lines 4–17; CT 51, ¶ 8; CCP § 396(b); *Asuncion*, 108 Cal.App.3d at 146. Her misapplication of CCP § 473(b), which Appellant did not invoke (CT 41–131), and failure to vacate the void judgment violated legal mandates (*Thompson v. Cook*, 20 Cal.2d 564, 569 (1942); *Joseph v. Drew*, 36 Cal.2d 575, 579 (1950)).

### **C. Judge Hesseltine's Ministerial Breaches and Judicial Errors (Continued)**

#### **1. May 22, 2025, Denial of Ex Parte Application to Vacate**

On May 22, 2025, Appellant filed an Ex Parte Application to Vacate the March 18, 2025, void default judgment, stay the UD action, and restore possession in the 2015 case (RJN Ex. 15.2, pp. 763–777), presenting critical UD issues to Judge Hesseltine, seeking

reconsideration of the March 18, 2025, denial (RJN Ex. 15.1, p. 0760–Minute Order; RJN Ex. 15.8A–Ex Parte hearing Transcript: pp. 1508–1517). The unopposed issues included:

1. Paloci’s failure to notify Appellant of the March 17, 2025, default request violated *Shapell*, 85 Cal.App.5th at 216, *Lasalle*, 36 Cal.App.5th at 135–136, and CCP § 583.130, with the UD court entering default the next day despite CCP § 1013(a)’s five-day notice requirement (RJN Ex. 15.2–Bereki Decl. ¶ 6, p. 0775; RJN Ex. 15.8A, p. 1513, line 15–p. 1514, line 20; RJN Ex. 15.2, p. 0768 ¶ 4; CT 20–22: Request).
2. On March 19, 2025, the Deputy Clerk rejected Appellant’s corrected Answer challenging jurisdiction, citing the premature default (RJN Ex. 15.8A, p. 1513, line 23–p. 1514, line 5; RJN Ex. 15.2–Bereki Decl., p. 0775, ¶ 7, 8; CT 55–60), violating *Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981).
3. Commissioner Snuggs-Spraggins’s denial of Appellant’s Request for Stay, TRO (CT 32-40), and Motion to Vacate the UD default judgment (CT 41-151) on May 21, 2025 (CT 134-5), overlooked voidness due to Deputy Clerk errors and title disputes (RJN Ex. 15.8A, p. 1514, lines 5–11).
4. Systemic obstruction of Appellant’s right to be heard violated *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876) and *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (RJN Ex. 15.8A, p. 1514, lines 12–20).
5. Neither hearing addressed the eviction, loss of ~\$1.2 million in property, and emotional distress (RJN Ex. 15.8A, p. 1513, lines 4–8; p. 1515, lines 5–18; RJN Ex. 15.2, p. 077-071; CT 43, 51).

6. Hesseltine denied recording the May 22 hearing, despite Appellant's indigent status, violating *Jameson v. Desta*, 5 Cal.5th 594, 608–609 (2018) (RJN Ex. 15.8A, p. 1509, lines 1–15).

Hesseltine's responses at the hearing and in his Minute Order (RJN Ex. 15.3, p. 0941-2) failed to address these issues, breaching ministerial duties:

- He declined to address UD issues, stating they were assigned to another judge (RJN Ex. 15.8A, p. 1514, lines 23–p. 1515, line 3), despite his duty to act on jurisdictional defects (*Joseph v. Drew*, 36 Cal.2d 575, 579 (1950); *Thompson v. Cook*, 20 Cal.2d 564, 569 (1942)).
- He deferred to a June 26, 2025, hearing without addressing harm or clerk errors (RJN Ex. 15.8A, p. 1512, lines 16–20; p. 1514, lines 4–6; 19–20).
- He cited multiple factors without specifying deficiencies (RJN Ex. 15.8A, p. 1515, lines 13–18; p. 1516, lines 11–15).
- He overlooked Paloci's failure to notify and Deputy Clerk errors, violating Canon 3D(2) (*Shapell*, 85 Cal.App.5th at 216; RJN Ex. 15.8A, p. 1513, line 15–p. 1514, line 20; RJN Ex. 15.2, p. 0768 ¶ 4).
- He disputed the one-word "denied" claim but failed to specify what was addressed (RJN Ex. 15.8A, p. 1512, line 20–p. 1515, line 20).
- He failed to address reported judicial and attorney errors under Canon 3D(1) (*Chodosh v. Commission on Judicial Performance*, 81 Cal.App.5th 248, 265 (2022)).

Hesseltine's actions constitute extrinsic fraud and fraud on the court (*In re Marriage of Modnick*, 33 Cal.3d 897, 905 (1983); *In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980)) and raise concerns about impartiality, suggesting bias under CCP § 170.1(a)(6),

## **VI. August 2025: Ongoing Title Dispute**

### **A. Continued Title Dispute- Additional Evidence Post Judgment**

On or about August 22, 2025, Appellant received a letter and escrow refund check from Shellpoint, the purported servicer of the Citibank first mortgage (Ex. 1 pp. E176–181), which, though discharged of personal liability in bankruptcy, remains in Appellant's name with a disputed in rem lien encumbering the property (Cal. Comm. Code § 3501(b)(3)/3308(b)). Respondent, claiming ownership via a junior lien foreclosure, is making unauthorized payments on this lien, as confirmed by Paloci (Ex. 1 pp. E174–Email Aug. 27, 2025, ¶¶ 1, 3). This situation further evidences ongoing title dispute because: (1) the senior disputed lien's unresolved status in Appellant's name post-discharge indicates an irregular foreclosure that failed to convey a duly perfected title, as required for UD standing (CCP § 1161a(b)(3); *Dr. Leevil, LLC v. Westlake Health Care Ctr.*, 6 Cal.5th 474, 483 (2018)); (2) Respondent's payments without Appellant's consent interfere with his financial interests, violating Cal. Civ. Code § 1708; and (3) Citibank/Shellpoint's failure to update the account suggests potential negligence, further tainting the sale's validity (*Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 935 (2016)). Even without personal liability, the account in Appellant's name affects his financial interests, and Respondent's payments without consent constitute tortious interference (*Pacific Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1126

(1990)). These defects, compounded by the sale's reliance on the void 2015 judgment and bankruptcy protection violations, along with Citizens' violation of the bankruptcy court's discharge and stay order requiring lawful foreclosure, render Respondent's title invalid, precluding UD jurisdiction.

## **VII. Issues/Questions on Appeal**

Appellant respectfully requests that this Court adjudicate all issues presented to ensure judicial economy, accountability, and guidance for future proceedings, while addressing systemic violations that deprived Appellant of his home and approximately \$1.2 million in equity. The issues involve ministerial, non-discretionary duties or Constitutional violations, warranting de novo review as matters of law.

The breaches of duty by Respondent Canjian Hou, attorney Henry Paloci, Judge David Hesseltine, Commissioner Carmen Snuggs-Spraggins, Deputy Clerks and their Supervisors, Sergeant Lopez, and Deputy Murillo negated subject matter jurisdiction, constituted extrinsic fraud, and rendered the UD judgment, orders, writ, and return on writ void *ab initio*. These breaches involved mandatory, non-discretionary ministerial duties, precluding analysis under the abuse of discretion standard.

The abuse of discretion standard, as articulated in *Cahill v. San Diego Gas & Electric Co.*, 194 Cal.App.4th 939, 957 (2011), applies only to discretionary judicial acts within a permissible range of options set by applicable legal criteria. It is inapplicable to the actions of the Deputy Clerks, their Supervisors, Judge Hesseltine, Commissioner Snuggs-Spraggins, Sergeant Lopez, and Deputy Murillo, as their duties were mandatory

and governed by absolute legal mandates under California and federal Constitutional provisions.

Furthermore, the Constitutional violations—including due process deprivations, takings without just compensation, and bills of pains and penalties—require de novo review, as they negate the Court’s fundamental jurisdiction. The abuse of discretion standard, which presumes a range of permissible choices does not apply to non-discretionary obligations where only one lawful course of action exists. The officials’ failures were breaches of absolute duties, not discretionary errors, rendering the abuse of discretion standard inapplicable. Appellant reserves the right to challenge the Constitutionality of the Abuse of Discretion standard if the Court intends to use apply it in this case.

#### **A. Questions on Appeal**

1. **Right to a Superior Court Judge:** **a.** Do parties in a UD proceeding have a right to a Superior Court Judge, not a commissioner, under Cal. Const., Art. I, §§ 7, 9; U.S. Const. Art. I, § 10 absent a knowing, voluntary, and intelligent stipulation? (*Reisman*, 153 Cal.App.3d at 1096–1097; CCP § 259(d); see also e.g. *Wellness International Network, Ltd. v. Sharif*, 576 U.S. 624 (2015)). **b.** Did the Superior Court’s failure to provide notice of Commissioner Snuggs-Spraggins’s assignment for the May 21 and 23, 2025, rulings (CT 134–135, 145) and obtain Appellant’s stipulation violate due process, rendering her orders void?
2. **Clerk’s Duty to File Answer (March 14, 2025):** **a.** Did the Deputy Clerk have a non-discretionary duty under *Windsor*, 93 U.S. at 274, *Baske*, 125 Cal.App.3d at

45, Cal. Const., Art. I, §§ 7, 9, and U.S. Const., Art. I, § 10 to file Appellant's March 14, 2025, Answer (RJN Ex. 15, Case No. 30-2015-00805807, ROA 302–344)?

b. Did the Clerk's rejection of the answer for combining pleadings breach this ministerial duty, negating notice and rendering the UD judgment void? (*Windsor*, 93 U.S. at 277; *Baske*, 125 Cal.App.3d at 45).

3. **Judge Hesseltine's Actions (March 18, 2025):** a. Did Judge Hesseltine have a mandatory duty to accept and order the filing of Appellant's March 14, 2025, answer (RJN Ex. 15, ROA 302–344, Case No. 30-2015-00805807), given its clear intent to challenge UD jurisdiction, and transfer the case to unlimited jurisdiction due to the title dispute and damages exceeding \$35,000? (CCP § 396(b); *Asuncion*, 108 Cal.App.3d at 146–147; *Buxbom*, 23 Cal.2d at 542–543). b. Did Hesseltine's one-word "DENIED" ruling (RJN Ex. 15.1, p. 760) on the stay and motion to vacate, without addressing unopposed evidence of title defects and fraud, violate due process and negate jurisdiction? (*Windsor*, 93 U.S. at 277–278; *Nakamura v. Parker*, 156 Cal.App.4th 327, 334–335 (2007)). c. Did these actions deprive the UD court of subject matter jurisdiction, rendering the judgment void as a bill of pains and penalties? (*Elliott v. Lessee of Peirsol*, 26 U.S. 328, 340 (1828); Cal. Const., Art. I, § 9).

4. **Respondent's Default Request (March 17, 2025):** a. Was Respondent required to notify Appellant of the March 17, 2025, default request (CT 20–22) under CCP § 585.5(a) and *Lasalle* and *Shapell*? b. Did Respondent's filing of the default request, knowing Appellant's intent to defend and using USPS mail to delay notice, constitute extrinsic fraud, fraud on the court, or a due process violation? (*Windsor*,



93 U.S. at 277; *In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980)).

c. Did Respondent’s filing of the writ of possession application (CT 25) for court authorization, knowing it was based on a void judgment obtained by fraud, constitute extrinsic fraud, fraud on the court, a due process violation, or violations of Cal. Penal Code §§ 115(a) (filing false documents), 182(a)(2) (maintaining a suit knowing the court lacked jurisdiction), and 182(a)(4) (defrauding by false pretense)? (*Windsor*, 93 U.S. at 277; *Gillespie*, 126 Cal.App.2d at 527–528).

5. **Paloci’s Ethical Duties:** a. Did attorney Paloci breach ministerial ethical duties under Cal. Bus. & Prof. Code § 6068(a)–(d) by filing the default request (CT 20–22) despite knowledge of Appellant’s intent to defend (RJN Ex. 15, pp. 586, 591–601) and failing to notify Appellant, constituting extrinsic fraud or fraud on the court? (*Lasalle*, 36 Cal.App.5th at 135–136; *In re Marriage of Park*, 27 Cal.3d at 342–343).
6. **Clerk’s Premature Default Entry (March 18, 2025):** a. Did the Deputy Clerk breach a ministerial duty under CCP § 1013(a) and Cal. Const., Art. I, §§ 7, 9 by entering default (CT 20) one day after the mailed default request (CT 21), denying Appellant the five-day response period? (*Mullane*, 339 U.S. at 314).  
b. Did the Clerk’s possession of Appellant’s March 14, 2025, answer (RJN Ex. 15, Case No. 30-2015-00805807, ROA 302–344) preclude default entry, rendering the judgment void? (*Baske*, 125 Cal.App.3d at 45; *Windsor*, 93 U.S. at 277).
7. **Clerk’s Default Entry Negating Notice:** Did the Deputy Clerk’s premature default entry violate due process and negate the UD complaint’s notice, rendering the

judgment void as a bill of pains and penalties? (*Windsor*, 93 U.S. at 277; Cal. Const., Art. I, §§ 7, 9).

8. **Clerk's Rejection of March 19, 2025, Answer:** **a.** Did the Deputy Clerk have a ministerial duty to file Appellant's March 19, 2025, answer (CT 55–60), challenging jurisdiction, under *Windsor* and *Baske*? **b.** Did this rejection violate due process and negate the complaint's notice, rendering the UD judgment void? (*Windsor*, 93 U.S. at 277; *Baske*, 125 Cal.App.3d at 45).
9. **Commissioner Snuggs-Spraggins's Orders (May 21 and 23, 2025):** **a.** Did the May 21, 2025, order (CT 134–135, ROA 51) violate due process by misapplying CCP § 473(b), ignoring unopposed evidence of voidness (e.g., clerk misconduct, title disputes), and lacking authority absent stipulation? **b.** Did the May 21, 2025, order lack jurisdiction due to the UD action's voidness ab initio, rendering it a bill of pains and penalties? (*Windsor*, 93 U.S. at 277–278; *Elliott*, 26 U.S. at 340). **c.** Did the May 23, 2025, order (CT 145, ROA 60) violate due process by finding no new facts or law under CCP § 1008(a), despite evidence of ongoing harm (~\$50,000 property damage, ~\$10,000 lost property, CT 144, ¶¶ 10, 12), and lack authority, rendering it void as a bill of pains and penalties? (*Windsor*, 93 U.S. at 277–278; *Elliott*, 26 U.S. at 340).
10. **Stay of UD Action:** **a.** Did the Court's denial of a stay (RJN Ex. 15.1) pending resolution of the 2015 judgment challenge (Case No. 30-2015-00805807) and bankruptcy adversary proceeding (No. 8:22-BK-12076-SC), given their impact on Respondent's title, violate due process by denying Appellant's right to litigate title disputes, lack jurisdiction, and render the UD judgment void as a bill of pains and

penalties? (*Asuncion*, 108 Cal.App.3d at 146; *Windsor*, 93 U.S. at 277–278; *Elliott*, 26 U.S. at 340).

**11. Jurisdiction Post-Lockout:** **a.** Did the Court’s finding of no jurisdiction post-lockout (CT 134–135) violate due process by failing to exercise equitable restoration powers for a void judgment, perpetuating the deprivation of Appellant’s property rights (~\$1.2 million equity) (*Windsor*, 93 U.S. at 277–278)?

**12. Respondent’s Conduct and Foreclosure:** **a.** Did Respondent’s pursuit of UD, despite notice of the wrongful foreclosure and bankruptcy discharge (RJN Ex. 15), constitute extrinsic fraud or a due process violation? **b.** Did the foreclosure violate 11 U.S.C. § 524(a) by enforcing a discharged 2015 judgment, rendering Respondent’s title invalid and the UD judgment void? (*Taggart v. Lorenzen*, 587 U.S. 554 (2019); *Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 935 (2016)).

**13. Unconscionability of the Foreclosure Default:** **a.** Did the Court’s failure to provide a full, fair, and impartial hearing to consider whether the foreclosure, underlying the UD action, was void due to Citizens Bank’s unconscionable declaration of default—knowing it stemmed from state-imposed financial hardship and extrinsic fraud—violate due process, lack jurisdiction, and render the UD judgment void as a bill of pains and penalties? (*Windsor*, 93 U.S. at 277–278; *Elliott*, 26 U.S. at 340; *Orcilla v. Big Sur, Inc.*, 244 Cal.App.4th 982, 996–997 (2016); *Bisno v. Sax*, 175 Cal.App.2d 714, 727 (1959)).

**14. Hou’s Lack of Standing Due to Illegal Foreclosure:** **a.** Did the Court’s failure to provide a hearing to adjudicate Respondent’s standing under CCP § 1161a(b)(3),

given his title derived from an illegal foreclosure tainted by fraud and Penal Code violations (§§ 115(a), 182(a), 487(a)), violate due process, negate jurisdiction after the Clerk's improper actions, and render the UD judgment void as a bill of pains and penalties? (*Windsor*, 93 U.S. at 277–278; *Elliott*, 26 U.S. at 340; *Asuncion*, 108 Cal.App.3d at 146; *Yvanova*, 62 Cal.4th at 935).

**15. Commissioner Snuggs-Spraggins's Lack of Jurisdiction:** a. Did Commissioner Snuggs-Spraggins lack subject matter jurisdiction to sanction the void UD default judgment, rendering her May 21 and 23, 2025, orders (CT 134–135, 145) void ab initio as bills of pains and penalties due to the absence of stipulation and the UD action's fundamental jurisdictional defects? (*Windsor*, 93 U.S. at 277–278; *Elliott*, 26 U.S. at 340; *Reisman*, 153 Cal.App.3d at 1096–1097).

**16. Sheriff's Duty to Investigate:** a. Did Sergeant Lopez and Deputy Murillo have a ministerial duty under Cal. Const., Art. V, §§ 1, 3, 7, Art. XX, § 3, and Gov. Code § 26600 et seq. to investigate Appellant's bona fide complaints of Constitutional and criminal violations (Ex. 2, pp. E190–E194; Ex. 3, pp. E217–E220) before enforcing the void writ (CT 26–28)? b. Did their refusal to investigate facilitate an unconstitutional taking, rendering the writ's enforcement void? (*Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982); *Marbury v. Madison*, 5 U.S. 137, 163 (1803); Gov. Code § 270).

**17. Constitutional Challenges to CCP § 632:** a. Does the judicial practice of issuing unexplained rulings in motion hearings, enabled by CCP § 632's optional statement of decision framework, violate Cal. Const., Art. I, § 7's due process and equal protection clauses by permitting opaque denials (e.g., RJN Ex. 15.1; CT

134–135) that obstruct review and deprive parties of a reasoned basis for decisions? **b.** As applied, did this practice violate Appellant’s due process and equal protection rights in both the 2015 and UD case by enabling one-word denials that ignored unopposed evidence of fraud and jurisdictional defects?

**18. Constitutional Challenge to Excess of Jurisdiction Doctrine:** **a.** Does the doctrine of “excess of jurisdiction,” treating Constitutional violations as procedural deviations (*Abelleira v. Dist. Ct. of Appeal*, 17 Cal.2d 280, 291 (1941)), violate Cal. Const., Art. I, §§ 7, 9, 19 by failing to recognize such violations as fundamental jurisdictional defects, rendering acts like the UD judgment void? (*Katzberg*, 29 Cal.4th at 309; *Windsor*, 93 U.S. at 282).

**19. Abuse of Discretion Standard:** Is the abuse of discretion standard inapplicable to the ministerial duties breached by the Deputy Clerk, Hesseltine, Snuggs-Spraggins, Lopez, and Murillo, requiring de novo review for Constitutional violations and jurisdictional defects?

**20. Unlawful Taking of Property Through UD Proceedings:** **a.** Did the UD proceedings, including the default judgment (CT 23–24), orders (CT 134–135, 145), and Sheriff’s enforcement of a void writ (CT 26–28), constitute an unconstitutional taking without just compensation under Cal. Const., Art. I, § 19 by depriving Appellant of his home without a full fair and impartial judicial determination of his rights? **b.** Did the Superior Court’s failure to stay the UD proceedings and address the title dispute, despite unopposed evidence of jurisdictional defects and fraud (RJN Ex. 15), facilitate a state action taking via CCP § 1161a, rendering the judgment void as a bill of pains and penalties? **c.** Did

Respondent Canjian Hou and attorney Henry Paloci's pursuit of the UD judgment, despite notice of the title dispute (RJN Ex. 15; RJN Ex. 15, pp. 586, 591–601), violate Cal. Penal Code § 487(a) (grand theft) and constitute extrinsic fraud, negating their standing under CCP § 1161a(b)(3) and voiding the judgment?. e. Does the court's equitable authority require vacatur of the UD judgment, orders, and writ, with restoration of possession and restitution and damages and transfer to unlimited jurisdiction to resolve the title dispute?

- 21. Unlawful Taking Through Unlawful Detainer Proceedings:** **a.** Did the UD proceedings, including the default judgment (CT 23–24), orders (CT 134–135, 145), and Sheriff's enforcement of a void writ (CT 26–28), constitute an unconstitutional taking without just compensation under Cal. Const., Art. I, § 19, by depriving Appellant of his home and ~\$1.2 million in equity without a hearing on the title dispute tainted by the disputed 2015 judgment (Case No. 30-2015-00805807) and bankruptcy violations (11 U.S.C. § 524(a))? **b.** Did the Superior Court's failure to stay the UD proceedings and address the title dispute, despite unopposed evidence of the 2015 judgment's penal nature and extrinsic fraud (RJN Ex. 15, 15.4), bankruptcy discharge and stay relief violations (RJN Ex. 19–22), and procedural errors (e.g., clerk's obstruction of Answers, CT 44, 51, 55–60; premature default, CT 20–22), violate due process and facilitate a state action taking via CCP § 1161a, rendering the judgment void as a bill of pains and penalties? **c.** Did Respondent Canjian Hou and attorney Henry Paloci's pursuit of the limited civil UD action, despite notice of the title dispute involving the 2015 judgment and bankruptcy violations (RJN Ex. 15, pp. 586, 591–601), constitute

extrinsic fraud and violate Cal. Penal Code § 487(a) (grand theft), negating their standing under CCP § 1161a(b)(3) and rendering the UD judgment void? (*Kulchar v. Kulchar*, 1 Cal.3d 467, 471 (1969); *In re Marriage of Park*, 27 Cal.3d 337, 342–43 (1980)). **d.** Did Judge Hesseltine’s March 18 and May 22, 2025, denials (RJN Ex. 15.1, 15.3) and Commissioner Snuggs-Spraggins’s unauthorized May 21 and 23, 2025, rulings (CT 134–135, 145), despite unopposed evidence of jurisdictional defects and title issues (RJN Ex. 15; CT 43, 51), perpetuate an unlawful taking by failing to transfer to unlimited jurisdiction, violating mandatory duties? (CCP § 396(b); *Shapell*, 85 Cal.App.5th 198, 211. **f.** Does the Court’s equitable authority require vacatur of the UD judgment, orders, and writ, with restoration of possession, restitution and damages, and transfer to unlimited jurisdiction to resolve the title dispute impacted by the 2015 judgment and bankruptcy violations?

**22. Appellant requests the Court adjudicate any other issues raised herein omitted from this list or know to it.**

## **VII. Conclusion**

This appeal holds a mirror to a judicial system that has failed to uphold its Constitutional mandate, reflecting a pattern of systemic harm that silenced Appellant and countless others. As a witness to this ethical fracture, Appellant seeks not vengeance but the restoration of justice’s foundation. The UD proceedings, marred by extrinsic fraud, jurisdictional defects, and ministerial misconduct, stripped Appellant of his home at 818 Spirit, Costa Mesa, CA, and ~\$1.2 million in equity, constituting an unconstitutional taking

without due process or just compensation. Enabled by a disputed 2015 case judgment and tainted bankruptcy and foreclosure proceedings, the UD's void judgment was secured through improper filings, unnotified default requests, obstructed Answers, unauthorized rulings, and Sheriff enforcement under threat of force. The trial court's refusal to address the complex title dispute or transfer to unlimited jurisdiction entrenched these violations, eroding public trust in the judiciary.

Respondent Canjian Hou, attorney Henry Paloci, Judge David Hesseltine, Commissioner Carmen Snuggs-Spraggins, the Deputy Clerks and their Supervisors, Sergeant Lopez, and Deputy Murillo collectively participated in a conspiracy and/or aided and abetted violations of California Penal Code sections, including § 115(a) (filing false documents), § 182(a) (conspiracy), § 487(a) (grand theft), § 470(d) (obtaining property by fraud), and § 532(a) (theft by false pretense). Their actions—spanning Hou's and Paloci's fraudulent filings, the Deputy Clerk's obstruction of Answers, Hesseltine's and Snuggs-Spraggins's failure to address unopposed evidence, and Lopez's and Murillo's refusal to investigate Constitutional and criminal violations—subverted due process, facilitated an unlawful taking/theft, and rendered the UD judgment, orders, and writ void. The ongoing title dispute, evidenced by Respondent's unauthorized payments on a disputed Citibank lien, continues to harm Appellant's financial interests, demanding urgent judicial intervention.

These violations, breaching the California Constitution's due process, takings, and equal protection clauses (Art. I, §§ 7, 9, 19) and the prohibition against bills of pains and penalties (U.S. Const., Art. I, § 10), undermine the judiciary and executive's roles as



Constitutional checks. Granting relief will restore Appellant's rights and reinforce the judiciary's and executive's independent duties to protect vulnerable litigants from systemic abuses.

### **VIII. Requested Relief**

Appellant Adam Bereki respectfully requests the following relief to remedy the unconstitutional deprivation of his property rights, restore judicial integrity, and ensure a fair adjudication of the underlying title dispute:

1. **Declaration of Void Judgments and Orders:** Declare the following void ab initio due to lack of subject matter jurisdiction, extrinsic fraud, and due process violations (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876); *Kulchar v. Kulchar*, 1 Cal.3d 467, 471 (1969)):
  - The default judgment in Case No. 30-2025-01459684 (ROA 18, CT 23–24).
  - The minute orders in Case No. 30-2025-01459684 (ROA 51, 60; CT 134–135, 145).
  - The minute orders in Case No. 30-2015-00805807 (RJN Ex. 15.1, 15.3).
  - The writ of possession (ROA 23, CT 26–28).
2. **Restoration of Rights and Property:** Order the restoration of all rights and property lost, including immediate possession of the property at 818 Spirit, Costa Mesa, CA, pursuant to Code Civ. Proc. § 908 and equitable principles, to rectify the unlawful eviction under duress on or about April 2, 2025, facilitated by an invalid writ and Sheriff enforcement (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876);

*Shapell Socal Rental Props., LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198, 211 (2022)).

3. **Compensatory Damages:** Award compensatory damages for unlawful trespass (\$200/day from March 27, 2025), property damage (~\$50,000), lost personal property (~\$10,000), financial losses, and emotional distress caused by the fraudulent foreclosure, invalid UD proceedings, and unauthorized payments on the disputed Citibank lien (Ex. 1, pp. E174–E181). These damages arise from tortious conduct, including extrinsic fraud and conversion, stemming from violations of Cal. Penal Code §§ 115(a) (filing false documents), 470(d) (obtaining property by fraud), 487(a) (grand theft), and 182(a) (conspiracy) by Respondent Hou, attorney Paloci, and others.
4. **Leave to File an Accounting:** Grant leave to file an accounting post-restoration to determine the full extent of financial losses, including but not limited to equity loss, property damage, lost personal property, trespass damages, and costs incurred due to relocation and ongoing financial interference from Respondent's unauthorized payments on the disputed lien, to ensure complete restitution and damages (*Shapell*, 85 Cal.App.5th at 211; Cal. Civ. Code § 1708).
5. **Transfer to Unlimited Civil Jurisdiction:** Transfer the case to the unlimited civil division of the Superior Court to adjudicate the complex title dispute, including the validity of the foreclosure, the void 2015 judgment, and bankruptcy protection violations, which exceed the limited civil court's \$35,000 jurisdictional threshold (CCP §§ 85(a), 396(b), 580(b)(3); *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146–147 (1980)).

6. **Reassignment to a Neutral Judge:** Reassign the case to a neutral judge to ensure an impartial hearing, free from bias or pecuniary interest, given the involvement of Judge Hesseltine and other judicial officers in related § 7031 proceedings.
7. **Declaratory Relief:** Declare that the Orange County Sheriff's Department, through Sergeant Lopez and Deputy Murillo, had a mandatory duty to investigate Appellant's bona fide complaints of Constitutional and criminal violations prior to enforcing the void writ, and that their failure to do so facilitated an unconstitutional taking (Cal. Const., Art. I, §§ 7, 19; *Marbury v. Madison*, 5 U.S. 137, 163 (1803)).
8. **Injunctive Relief:** Issue a permanent injunction prohibiting Respondent Hou, attorney Paloci, and their agents from further interfering with Appellant's property rights, pending resolution of the title dispute (Cal. Civ. Code § 1708).
9. **Referral to State Bar:** Order, on the Court's own motion, that attorney Henry Paloci be reported to the California State Bar for disciplinary investigation due to his filing of false documents, concealment of the title dispute, and pursuit of an unnotified default request, constituting extrinsic fraud and violations of professional duties under Cal. Bus. & Prof. Code § 6068(a)–(d).
10. **Costs and Fees:** Award Appellant costs, and other expenses incurred in this appeal and related proceedings, as authorized under equitable principles and to remedy the fraudulent deprivation of rights (*Shapell*, 85 Cal.App.5th at 211).
11. **All other relief the Court finds reasonable and just.**

This relief is necessary to restore Appellant's property rights, remedy the unconstitutional taking of his home and equity, and ensure a fair and transparent adjudication of the title dispute in a court with proper jurisdiction.

## **IX. Constitutional Challenges**

### **A. The Judicial Practice of Issuing Unexplained Rulings in Motion Hearings, Enabled by CCP § 632's Optional Framework, is Unconstitutional Under the California Constitution's Due Process and Equal Protection Clauses Because it Permits Opaque, One-Word Rulings in Adjudications Affecting Substantive Rights, Depriving Parties of a Reasoned Basis For Review and Understanding of the Law**

The judicial practice in California of issuing unexplained, one-word rulings in motion hearings, exemplified by the optional "statement of decision" framework of California Code of Civil Procedure § 632, violates the Due Process and Equal Protection Clauses of Article I, § 7 of the California Constitution. While § 632 governs trials and certain evidentiary hearings, its permissive approach to findings reflects a broader systemic failure to mandate reasoned decisions in motion hearings, which often resolve significant property or liberty interests. This practice, as applied in Appellant's case through one-word denials by Judge Hesselstine ("DENIED," RJN Ex. 15.1, p. 760; RJN Ex. 15.3, p. 941) and Commissioner Snuggs-Spraggins (CT 134–135, 145), adjudicated a ~\$1.5 million property interest without articulating factual resolutions or legal bases, obstructing meaningful challenge and appellate review. California evaluates due process claims under the balancing test articulated in *People v. Ramirez*, 25 Cal.3d 260, 269 (1979), which weighs four factors: (1) the private interest affected, (2) the risk of erroneous deprivation and the value of additional procedural safeguards, (3) the dignitary interest in meaningful participation, and (4) the governmental interest, including administrative

burdens. The practice fails this test, and its disparate treatment of motion litigants compared to trial litigants violates equal protection by arbitrarily denying procedural safeguards to those with equivalent rights at stake (*Serrano v. Priest*, 18 Cal.3d 728, 765–66 (1976)). The statute’s requirement that litigants request a statement to obtain a reasoned decision imposes an unconstitutional burden, as due process does not require exhausting a flawed procedure (*Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 293 (1941)), and reasoned decisions, including findings of fact and conclusions of law, are requisite to valid judgments (e.g., *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). This systemic flaw, exacerbated by procedural obstructions and fraud in Appellant’s case, renders the practice unconstitutional on its face and as applied (*Ryan v. California Interscholastic Federation*, 94 Cal.App.4th 1048, 1071 (2001)).

***1. The Private Interest at Stake Demands Heightened Safeguards: Unexplained Rulings Deprive Parties of Property Rights Without Requiring a Request for a Statement***

Under the first *Ramirez* factor, the private interest affected by unexplained rulings in motion hearings is profound. Appellant’s interest in his ~\$1.5 million home, including ~\$1.2 million in equity stolen through wrongful foreclosure and eviction, is a core property right protected by California’s Due Process Clause (*Ryan*, 94 Cal.App.4th at 1071; *Ramirez*, 25 Cal.3d at 269). Yet the practice, enabled by § 632’s optional framework, permits Courts to resolve such claims with bare denials, as seen in Hesseltine’s March 18, 2025, “DENIED” order on Appellant’s ex parte stay application (RJN Ex. 15.1, p. 760), which ignored unopposed evidence of title defects, fraud, and irreparable harm (RJN Ex. 15, pp. 256–758). Similarly, Snuggs-Spraggins’s May 21, 2025, “DENIED” order on the motion to vacate (CT 134–135) dismissed Appellant’s challenges to Deputy Clerk

misconduct and jurisdictional voids without explanation, despite sworn declarations detailing the ~\$1.2 million equity loss (CT 51, ¶¶ 8–11). This opacity flouts the judiciary's duty to articulate the legal basis for decisions (e.g., *Marbury v. Madison*, 5 U.S. at 177). Pre-1981 California precedents required signed findings as the “final, deliberate expression of the court,” superseding minute orders (*De Cou v. Howell*, 190 Cal. 741, 751 (1923); *Breedlove v. Breedlove*, 161 Cal.App.2d 712, 716 (1958)). The requirement that litigants request a statement to obtain such findings is an unconstitutional burden, as due process mandates automatic transparency without forcing parties to invoke it (*Abelleira*, 17 Cal.2d at 293; *Ramirez*, 25 Cal.3d at 268). In Appellant's case, the one-word rulings enabled the Sheriff's coercive eviction (CT 127; Ex. 3, pp. E216–E245) without clarifying why evidence of extrinsic fraud, title disputes, and jurisdictional defects (e.g., RJN Ex. 15) was rejected, violating the right to a transparent judicial determination (*Ramirez*, 25 Cal.3d at 268).

## **2. The Risk of Erroneous Deprivation Is Grave, and Mandatory Findings Provide Essential Value**

Under the second *Ramirez* factor, the practice of issuing unexplained rulings in motion hearings heightens the risk of erroneous deprivation by forgoing mandatory findings, forcing parties to speculate on the Court's reasoning. Federal analogs demonstrate the necessity of findings to enable review, as inadequate ones lead to remand (e.g., *Irish v. United States*, 225 F.2d 3, 7 (9th Cir., 1955); e.g., *Welsh Co. of Cal. v. Strolee of Cal.*, 290 F.2d 509, 510 (9th Cir., 1961)). California precedents echo this: omissions on material issues are fatal, as findings must resolve controverted facts explicitly (*Pio Pico v. Cuyas*, 47 Cal. 174, 179 (1873); *Savings & Loan Soc'y v. Burnett*,

106 Cal. 514, 519 (1895). The request mechanism under § 632—requiring specification within 10 days of a “tentative decision”—is illusory in motion practice like Appellant’s, where no tentative ruling exists and requests were repeatedly ignored (CT 134–135; RJN Ex. 15.1), leaving a “black box” record (e.g., *Ramos v. Matson Navigation Co.*, 316 F.2d 128, 131 (9th Cir., 1963)). In Appellant’s case, the risk materialized: Hesselstine’s “DENIED” order (RJN Ex. 15.1) dismissed unopposed evidence of ~\$1.2 million equity theft without resolving credibility or facts. Snuggs-Spraggins’s rulings falsely claimed consideration of “all parties” despite no opposition (CT 134, ¶ 1; CT 135, ¶ 3), ignoring Deputy Clerk misconduct (CT 51, ¶¶ 6, C, 10) and title defects exceeding \$35,000 (CT 43, lines 4–17), precluding objections or new trial motions (CCP §§ 633, 657). This impairs appellate review, as Courts cannot discern if substantial evidence supports the ruling without explicit resolutions (*Breedlove*, 161 Cal.App.2d at 716; *Kinney v. Vaccari*, 27 Cal.3d 348, 357 (1980)). The absence of findings is particularly egregious when motions raise extrinsic fraud or jurisdictional defects, which demand heightened scrutiny (*Westphal v. Westphal*, 20 Cal.2d 393, 397 (1942); *People v. American Contractors Indemnity Co.*, 33 Cal.4th 653, 661 (2004)). Here, the one-word denials ignored unopposed evidence of fraud and jurisdictional voids (RJN Ex. 15; CT 51, ¶ 9), shielding potential errors from review (e.g., *Perry v. Baumann*, 122 F.2d 409, 411 (9th Cir., 1941)).

### ***3. The Dignitary Interest in Meaningful Participation Is Undermined by Unexplained Rulings***

Under the third *Ramirez* factor, the practice undermines the dignitary interest by denying parties a meaningful opportunity to participate and understand judicial decisions. Due process requires procedures that respect autonomy and the right to be heard

(*Ramirez*, 25 Cal.3d at 268). The absence of mandatory findings left Appellant without clarity on why his unopposed evidence of fraud, jurisdictional defects, and title disputes (RJN Ex. 15, pp. 256–758) was dismissed, stifling his ability to seek redress or instruct representatives to pursue legal changes (*C.S. v. Superior Court*, 29 Cal.App.5th 1009, 1023 (2018)). The one-word denials (RJN Ex. 15.1; CT 134–135) treated Appellant’s claims as inconsequential, violating the principle that judicial processes must afford respect and transparency (*Ryan*, 94 Cal.App.4th at 1071). This harm was compounded by the Court’s refusal to provide a court reporter or allow digital recording despite Appellant’s indigent status (RJN Ex. 15, p. 262; *Jameson v. Desta*, 5 Cal.5th 594, 608–09 (2018)). For indigent or self-represented litigants like Appellant, unexplained rulings create a de facto barrier to justice, as they lack the resources to navigate opaque decisions or request clarifications, exacerbating the dignitary harm and risking erroneous deprivations (*Jameson*, 5 Cal.5th at 608–09).

#### **4. Judicial Economy Cannot Justify Systemic Due Process Violations, and Failure to Request a Statement Does Not Waive the Right to Findings**

Under the fourth *Ramirez* factor, the efficiency rationale for unexplained rulings fails, as the burden of brief findings is minimal compared to the cost of reversible errors and eroded trust. Federal courts uphold findings without over-elaboration if “sufficiently comprehensive” (e.g., *Carr v. Yokohama Specie Bank, Ltd.*, 200 F.2d 251, 255 (9th Cir. 1952)), and California precedents require explicit resolutions of principal issues (*Savings & Loan Soc’y v. Burnett*, 106 Cal. at 519). However, the practice of issuing one-word or conclusory rulings, enabled by the lack of mandatory findings in ex parte hearings where § 632 statements of decision are typically inapplicable, facilitated abuses here:



Hesseltine's deferral to a future hearing without addressing irreparable harm (RJN Ex. 15.8A, p. 1515, lines 4–6), and Snuggs-Spraggins's false "voluntary move-out" claim (CT 135, ¶ 4) despite evidence of Sheriff threats (CT 51, ¶ 11). Any theoretical ability to request a statement of decision does not undermine Appellant's challenge, as due process does not require exhausting a flawed or inapplicable procedure (*Abelleira v. District Court of Appeal*, 17 Cal.2d at 293). As an indigent litigant facing deputy clerk obstruction (CT 51, ¶¶ 6, 8), no court reporter (RJN Ex. 15, p. 262), and a pattern of the court ignoring unopposed evidence (RJN Ex. 15.8A, p. 1515), any attempt to seek further clarification was futile (*Kinney v. Vaccari*, 27 Cal.3d at 357).

#### ***5. Unexplained Rulings Impair the Right to Meaningful Appellate Review, a Core Due Process Protection***

The practice of issuing unexplained rulings violates due process by rendering appellate review illusory, a core component of fair judicial proceedings. Without a reasoned explanation, as in the one-word denials by Hesseltine (RJN Ex. 15.1, p. 760) and Snuggs-Spraggins (CT 134–135), Appellant cannot ascertain whether the Court considered unopposed evidence of fraud, title defects, jurisdictional voids or irreparable injuries, precluding meaningful appeal under the abuse of discretion or substantial evidence standards. This systemic flaw undermines the California Constitution's guarantee of transparent and reviewable judicial determinations. The absence of findings is particularly detrimental in cases like Appellant's, where allegations of extrinsic fraud, protection from irreparable injury, and jurisdictional defects require explicit resolution to ensure the Court fulfilled its duty.

## **6. The Practice Violates Equal Protection by Arbitrarily Denying Motion Litigants Procedural Safeguards Afforded to Trial Litigants**

The practice of permitting unexplained rulings in motion hearings violates the Equal Protection Clause of Article I, § 7 of the California Constitution. By denying motion litigants equivalent procedural safeguards despite comparable substantive rights at stake, the practice creates an arbitrary classification without a rational basis (*Serrano v. Priest*, 18 Cal.3d at 765–66). This disparity disproportionately harms indigent and self-represented litigants like Appellant, who lack the resources to navigate opaque rulings or request clarifications, exacerbating the dignitary harm and risking erroneous deprivations (*Jameson*, 5 Cal.5th at 608–09). Motion hearings, like trials, can resolve significant property interests, as in Appellant’s case involving ~\$1.5 million (RJN Ex. 15, pp. 256–758; CT 51, ¶¶ 8–11), yet the lack of mandatory findings leaves motion litigants without the tools for meaningful review, violating equal protection (*Ryan*, 94 Cal.App.4th at 1071).

## **7. Unexplained Rulings Undermine Public Confidence in the Judiciary**

The practice erodes public trust in the judiciary by creating the appearance of arbitrary or unaccountable decision-making, violating the California Constitution’s implicit guarantee of a fair and transparent judicial system. One-word rulings, like those in Appellant’s case, suggest that significant claims are dismissed without consideration, undermining the judiciary’s duty to articulate the legal basis for decisions (e.g., *Marbury v. Madison*, 5 U.S. at 177). This diminishes the dignitary interest under the third *Ramirez* factor and erodes public confidence in the fairness of judicial proceedings (*Ryan*, 94 Cal.App.4th at 1071).

**8. As Applied Here, the Practice of Issuing Unexplained Rulings, Enabled by CCP § 632's Framework, Violated Appellant's Due Process and Equal Protection Rights Under the California Constitution by Permitting Unexplained Denials That Perpetuated Fraud and Jurisdictional Errors in A Multimillion-Dollar Property Dispute**

The practice is unconstitutional as applied under the California Constitution, as it enabled one-word denials that obstructed Appellant's defenses and affirmed a void judgment. California Courts do not extend § 632 to motions requiring factual determinations. Here, the rulings resolved disputed facts—e.g., title validity, foreclosure validity, clerk misconduct, irreparable harm—without explanation, impairing review. Hesseltine's March 18, 2025, denial (RJN Ex. 15.1) bypassed evidence of ~\$1.2 million equity theft (RJN Ex. 15, p. 386), and Snuggs-Spraggins's May 21, 2025, order (CT 134–135) ignored unopposed proof of premature default (CT 51, ¶ 9). There does not appear to be any remedy other than to file a request for consideration noting the deficiencies. But here, even this proved futile. The practice's disproportionate impact on indigent litigants like Appellant, who faced barriers like the lack of a Court reporter (RJN Ex. 15, p. 262), further violated equal protection by denying him the tools to challenge opaque rulings (*Jameson*, 5 Cal.5th at 608–09).

**9. Conclusion**

The judicial practice of issuing unexplained rulings in motion hearings, enabled by § 632's optional framework, is unconstitutional under the *Ramirez* factors and equal protection principles for dispensing with mandatory findings, risking arbitrary property deprivations and disparate treatment of motion litigants. As applied, it enabled

unexplained denials that perpetuated fraud and jurisdictional voids in Appellant's case, warranting reversal, vacatur of the default judgment (CT 23–24).

## **B. Constitutional Challenge to the Doctrine of “Excess Of Jurisdiction”**

California precedent, “excess of jurisdiction” includes acts exceeding a Court's defined power, whether by constitutional, statutory, or judicial limits, as defined in *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 291 (1941), rendering judgments voidable and typically correctable only on direct review, not collateral attack, absent unusual circumstances. For example, in *People v. American Contractors Indemnity Co.*, 33 Cal. 4th 653, 660-61 (2004), a premature bail forfeiture judgment was voidable due to the Court's fundamental jurisdiction over the matter.

Appellant challenges this doctrine, asserting that all acts violating mandatory non-discretionary Constitutional provisions are fundamental jurisdictional defects, not mere excesses, as they negate the Court's power entirely. Constitutional provisions impose mandatory and prohibitory duties, delimiting judicial power from its inception (Cal. Const. Art. I, § 26; U.S. Const. Art. VI. § 2). No jurisdiction (authority) exists to perform a prohibited act; thus, there is no “excess” of authority never possessed. Subject-matter jurisdiction (SMJ) is not a singular initial threshold but a continuing requirement for every issue and act within a case, ensuring compliance with Constitutional limits (e.g. *Windsor v. McVeigh*, 93 U.S. 274, 282 (1876) (“[court] must act judicially in all things, and cannot then transcend the power conferred by the law”; CCP § 410.10). The initial power to hear a case type—here, unlawful detainer under Code of Civil Procedure § 1161 *et seq.*—does not confer authority to violate Constitutional mandates. Violations render the act void ab

initio, subject to direct attack and, secondarily, collateral attack at any time (e.g. CCP §§ 1916, 410.10) The California Supreme Court in *Katzberg v. Regents of University of California*, 29 Cal. 4th 300, 307 (2002), affirmed that “[e]very constitutional provision is self-executing to this extent, that everything done in violation of it is void” (quoting *Oakland Paving Co. v. Hilton*, 69 Cal. 479, 484 (1886)), reinforcing that Constitutional breaches negate power entirely, not as excesses within valid authority. This challenge is critical to prevent Respondents from invoking cases such as *Abelleira* to shield the UD Court’s actions as mere procedural excesses, thereby avoiding acknowledgment of the fundamental lack of SMJ due to the complex title dispute and Constitutional violations.

The default judgment (CT 23-24), orders denying vacatur and reconsideration (CT 134-135, 145), and stay denials (RJN Ex. 15.1, 15.3) in this unlawful detainer action are void, not excesses, due to fundamental Constitutional violations negating SMJ per act. These defects include the Deputy Clerk’s obstruction of Appellant’s March 14 and 19, 2025 Answers (CT 44, 51, 55-60; *Baske v. Burke*, 125 Cal. App. 3d 38, 45 (1981) (clerk’s obstruction of filings negates SMJ as Appellant was not heard: jurisdiction is the right to hear and determine not determine without hearing, *Windsor*, 93 U.S. at 283-4)), Judge Hesseltine’s summary stay denial on March 18, 2025, ignoring unopposed evidence of title defects, irreparable injury, and fraud (RJN Ex. 15.1; *Buxbom v. Smith*, 23 Cal. 2d 535, 542-543 (1944) (courts must liberally construe pleadings for justice)), the premature default entry despite notice requirements (CT 20-22; *Shapell*, 85 Cal. App. 5th at 214; CCP § 1013(a)), Commissioner Snuggs-Spraggins’ unauthorized rulings without stipulation (CT 134-135, 145; *Reisman v. Shahverdian*, 153 Cal. App. 3d 1074, 1096-1097 (1984)), and the Sheriff’s coercive execution of a fraudulent writ (Ex. 3, pp. E216-

245). These acts violated due process (Cal. Const. Art. I, § 7), takings (Cal. Const. Art. I, § 19; e.g. *Tyler v. Hennepin County*, 598 U.S. 631 (2023) (equity theft unconstitutional)), and bills of pains and penalties (Cal. Const. Art. I, § 9; U.S. Const. Art. I, § 10), stemming from a fraudulent foreclosure and title dispute exceeding the limited civil court's \$35,000 threshold (Code Civ. Proc. §§ 85(a), 580(b)(3); *Asuncion*, 108 Cal. App. 3d at 146-147 (UD court lacks jurisdiction over complex title disputes)). Respondent's concealment of the title dispute (RJN Ex. 15, pp. 586, 594, 601) constituted extrinsic fraud, further voiding SMJ (*Kulchar v. Kulchar*, 1 Cal. 3d 467, 471 (1969); *In re Marriage of Park*, 27 Cal. 3d 337, 342-343 (1980)).

The Supremacy Clause binds state Courts to federal Constitutional mandates as "the supreme Law of the Land." California Constitution Article I, Section 26, declares its provisions self-executing, mandating compliance with due process (§ 7: "A person may not be... deprived of life, liberty, or property without due process of law"), takings (§ 19: "Private property may not be taken... without just compensation"), and bills of pains and penalties (§ 9) (*Katzberg*, 29 Cal. 4th at 307). These absolute mandates leave no discretion; exemptions "mark [power's] extent" (*Gibbons v. Ogden*, 22 U.S. 1, 191(1824)). SMJ, as both the right to hear and determine, requires per-act compliance with "established modes governing the class to which the case belongs" (*Windsor v. McVeigh*, 93 U.S. at 282). Initial case-type power yields to Constitutional prohibitions, voiding acts that transcend them.

The UD Court lacked SMJ due to a complex title dispute and damages exceeding \$35,000, arising from a fraudulent foreclosure selling Appellant's ~\$1.5 million home for

\$371,688, a ~\$1.2 million equity theft (*Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 935 (2016) (void foreclosure invalidates title); *Tyler*, 598 U.S. at 639). Respondent's concealment of the dispute (RJN Ex. 15, pp. 586, 594, 601) breached disclosure duties (*Gillespie v. Ormsby*, 126 Cal. App. 2d 513, 527-528 (1954); *In re Marriage of Park*, 27 Cal. 3d at 342-343), constituting extrinsic fraud (*Kulchar*, 1 Cal. 3d at 471) and fraud on the Court (Civ. Code § 1710(1)-(3)). The Deputy Clerk's answer rejections (CT 44, 51, 55-60) breached ministerial filing duties, negating notice and mirroring *Windsor's* voided forfeiture for striking an appearance (*Windsor*, 93 U.S. at 276-78 (“[a] sentence... without hearing... is not a judicial determination... and is not entitled to respect in any other tribunal.”); *Baske v. Burke*, 125 Cal. App. 3d at 45). Judge Hesseltine's one-word stay denial (RJN Ex. 15.1), ignoring unopposed evidence, violated liberal construction for justice (*Buxbom*, 23 Cal. 2d at 542-543) and transfer duties (Code Civ. Proc. § 396(b); *Copeland v. Desert Inn Hotel*, 258 Cal. App. 2d 352, 355-356 (1968)). The premature default (CT 20-22), ignoring notice requirements (*Shapell*, 85 Cal. App. 5th at 214; CCP § 1013(a)), and Commissioner Snuggs-Spraggins' unauthorized ruling without stipulation, negated SMJ. The Sheriff's execution under threat of force enabled an unconstitutional taking.

*Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 308 (1795), declares acts repugnant to Constitutional mandates “absolutely void,” as “Constitutions fix limits to the exercise of ...authority.” The UD's \$1.18 million equity seizure violates takings protections (Cal. Const. Art. I, § 19; *Tyler*, 598 U.S. at 639). *Windsor* mandates Courts “act judicially in all things,” voiding acts as “arbitrary edict[s]” (93 U.S. at 278, 282). *County of Ventura v. Tillett*, 133 Cal. App. 3d 105, 110 (1982), voids a support judgment for due process failure,

as “a court... does not have jurisdiction to render a judgment that violates the... Constitution.” *County of San Diego v. Gorham*, 185 Cal. App. 4th 1215, (2010), voids rulings for fraudulent service. *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.*, 71 Cal. App. 5th 528 (2021), voids judgments on invalid claims.

All judgments and orders—default judgment (CT 23-24), vacatur/reconsideration denials (CT 134-135, 145), and stay denials (RJN Ex. 15.1, 15.3)—are void as fundamental defects, not excesses, for violating self-executing constitutional mandates. This challenge ensures Respondents cannot dismiss these violations as procedural excesses, compelling recognition of the UD Court’s fundamental lack of SMJ. Vacatur of the default judgment (CT 23-24), orders (CT 134-135, 145), and writ (CT 26-28), transfer to unlimited jurisdiction to resolve the title dispute (Code Civ. Proc. § 396(b); *Asuncion*, 108 Cal. App. 3d at 146-147), restitution of possession and damages (*Shapell*, 85 Cal. App. 5th at 211), and reassignment to a neutral judge are compelled to remedy the jurisdictional void and restore judicial integrity.

### **C. Constitutional Challenge to Non-Judicial Foreclosure**

Appellant fully incorporates by reference his challenge the Constitutionality of Cal. Civil Code § 2924 as filed in Superior Court case no. 30-2015-00805807 in effect and as applied (RJN Ex. 15 generally and pp. 155-164 specifically). He further assert that this challenge had to be heard and determined prior to the determination of possession as an outcome in his favor would directly impact the validity of the foreclosure sale, Hou’s purported title, and standing in the UD proceedings



## **CERTIFICATE OF WORD COUNT**

I certify that, according to the representations of the word-processing program used to prepare this brief, the brief (**inclusive** of the excluded items listed in rule 8.204(c)(3)) contains 27,021 words.

Dated: November 9, 2025

Adam Bereki

## Exhibit 1

In the Fourth District Court of Appeal of California

Case No. GO66117

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Adam Bereki,  
Petitioner

v.

Appellate Division of the Superior Court of California  
for the County of Orange,  
Respondent

v.

Canjian Hou,  
Real Party in Interest

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**FIRST AMENDED PETITION FOR WRIT OF MANDATE  
TO THE APPELLATE DIVISION OF THE SUPERIOR COURT  
FOR THE COUNTY OF ORANGE  
RELATED APPEAL PENDING**

Consolidated Case Nos.:  
30-2025-1482941 (Lead Case) and 30-2025-01487778

**\*\*\*STAY REQUESTED\*\*\***

All Proceedings in the Appellate Division of the Superior Court of Orange County,  
Consolidated Case Nos. 30-2025-01482941 and 30-2025-01487778, Including Minute  
Orders Dated October 9 and 17, 2025. Stay requested for October 22, 2025 by 5:00 PM

**RELATED FOURTH DISTRICT APPEAL CASE NO: G055075**

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Las Vegas, Nevada 89129  
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Jurisdiction is the right to hear and determine, not determine without hearing.

—*Windsor v. McVeigh*, 93 U.S. 277, 283-4 (1876)

## **CERTIFICATE OF INTERESTED PARTIES**

Pursuant to California Rules of Court, rule 8.208, Petitioner hereby certifies that the following listed persons and entities have an interest in the outcome of this appeal. This certificate includes: (1) all parties to the appeal; (2) all real parties in interest; (3) all judges and commissioners who issued orders or judgments challenged in this appeal; (4) all attorneys of record; (5) all persons or entities whose interests may be affected by the outcome of the appeal; (6) any unnamed or unknown court clerks, deputy clerks, or supervisory clerks involved in the proceedings below; and (7) any law enforcement officers, including sergeants and deputies, whose actions are challenged as aiding Constitutional violations (e.g., Sergeant Lopez and Deputy Murillo of the Orange County Sheriff's Department Civil Enforcement Division). The appellate panel justices (Justices Motoike, Delaney, and Scott, of the Fourth District Court of Appeal, Division Three) are included due to potential pecuniary interest arising from their involvement in similar § 7031 cases (*Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024)), subjecting them to disqualification under CCP § 170.1(a)(6)(ii) for bias or pecuniary interest in upholding prior rulings.

### **Parties to the Appeal:**

- Adam Bereki, Appellant
- Canjian Hou

**Real Parties in Interest:**

- Henry Paloci (Respondent's attorney)
- Orange County Superior Court (Judicial entity overseeing UD case No. 30-2025-01459684 and related 2015 case No. 30-2015-00805807)
- Fourth District Court of Appeal (Judicial entity overseeing case No. G055075)
- Orange County Sheriff's Department (Civil Enforcement Division; involved in writ execution and eviction)
- Citizens Bank NA (Foreclosing entity; interest in validity of foreclosure sale)
- Trustee Corps (Foreclosure trustee; interest in validity of trustee's deed)
- Citibank N.A. as Trustee (Senior lienholder; disputed in rem lien on property)
- Shellpoint Mortgage Servicing (Servicer for Citibank; ongoing payments on disputed lien)

**Judges and Commissioners Challenged in the Appeal:**

- Judge David Hesseltine (Orange County Superior Court; handled Ex Parte Application for Stay and Motion to Vacate in 2015 case, RJN Ex. 15.1, 15.3; denied vacatur of 2015 judgment; potential bias under CCP § 170.1(a)(6))
- Commissioner Carmen D. Snuggs-Spraggins (Orange County Superior Court; denied Motion to Vacate UD judgment and Ex Parte Application, CT 134–135, 145; unauthorized ruling without stipulation, Cal. Const., Art. VI, § 21)

**Appellate Justices with Alleged Pecuniary Interest**

- Justice Joanne Motoike (Associate Justice Fourth District Court of Appeal, Division Three; involved in *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024); potential pecuniary interest)
- Justice Thomas Delaney (Associate Justice, Fourth District Court of Appeal, Division Three; involved in *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024); potential pecuniary interest)
- Justice Nathan Scott (Associate Justice, Fourth District Court of Appeal, Division Three; involved in *Am. Bldg. Innovation LP v. Balfour Beatty Constr., LLC*, 104 Cal.App.5th 954 (2024); potential pecuniary interest)

**Attorneys of Record:**

- Henry Paloci (Attorney for Respondent Canjian Hou)

**Persons or Entities Whose Interests May Be Affected:**

- Unknown/Deputy Clerks and Supervisory Clerks (Orange County Superior Court; obstructed Answers on March 14 and 19, 2025, CT 55–60; prematurely entered default, CT 20–24; potential liability for ministerial breaches, *Baske v. Burke*, 125 Cal.App.3d 38 (1981))
- Sergeant Lopez (Orange County Sheriff's Department, Civil Enforcement Division; refused to investigate complaints on March 24, 2025, Ex. 2, pp. E189–E210; potential liability for aiding unconstitutional taking)
- Deputy Murillo (Orange County Sheriff's Department, Civil Enforcement Division; potential liability for aiding unconstitutional taking)

- California State License Board (CSLB) (Involved in 2015 license suspension under B&P § 7071.17; interest in validity of § 7031 enforcement)
- U.S. Bankruptcy Court, Central District of California (Judge Scott Clarkson; handled Case No. 8:22-BK-12076-SC; interest in discharge injunction and stay relief order validity, 11 U.S.C. § 524(a))
- David Chaffee (Superior Court Judge; issued 2015 case judgment)
- James Di Cesare (Superior Court Judge; affirmed 2015 case judgment)
- Kathleen O'Leary (Associate Justice Fourth District Court of Appeal, Division Three; Affirmed 2015 case judgment on appeal)
- Thomas Goethals (Associate Justice Fourth District Court of Appeal, Division Three; Affirmed 2015 case judgment on appeal)
- Richard Aronson (Associate Justice Fourth District Court of Appeal, Division Three; Affirmed 2015 case judgment on appeal)
- Karen Humphreys (Plaintiff in 2015 case judgment)
- Gary Humphreys (Plaintiff in 2015 case judgment)
- William Bissell (Attorney for Plaintiff in 2015 case judgment)
- Kimberly Knill (Superior Court Judge, Appellate Division; see below)
- Thomas McConville (Superior Court Judge, Appellate Division; see below)
- Vibhav Mittal (Superior Court Judge, Appellate Division; see below)

**Declaration of Petitioner:**

I, Adam Bereki, declare under penalty of perjury under the laws of California that the foregoing is a true and complete list of persons and entities known to me to have an



interest in the outcome of this appeal, including those whose interests may be affected by the relief requested. This certificate is based on my personal knowledge and a reasonable inquiry.

Signed on October 27, 2025, at Las Vegas, Nevada.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a long horizontal stroke.

Adam Bereki

**TO THE JUSTICES OF THE FOURTH DISTRICT COURT OF APPEAL, DIVISION 3:**

**OVERVIEW**

California Code of Civil Procedure (“CCP”) section 396 imposes a mandatory, non-discretionary, ministerial duty on a court to transfer an action or proceeding, including an appeal, when it lacks jurisdiction. The Appellate Division of the Superior Court of California for the County of Orange, which lacks subject matter jurisdiction of an appeal, is breaching this duty by refusing to transfer a consolidated appeal in main case no. 30-2025-01482941 to this court.

The Appellate Division has exercised jurisdiction without authority, violating due process (Cal. Const. Art. I, §§ 7, 9; U.S. Const. Art. I, § 10) by: (1) denying Petitioner’s Application for Transfer; (2) denying his request to submit an Oversized Brief (despite the complexity of appealing five court orders, evidencing numerous underlying title disputes, and making two Constitutional challenges); (3) placing the appeal in default; (4) denying his Request for Reconsideration to transfer; and (5) failing to provide a reasoned explanation of its decisions, stating “no so” or “denied” in response to the transfer requests despite clear jurisdictional statutes and supporting case law divesting it of jurisdiction.

This *First Amended Verified* Petition for Writ of Mandate supersedes the prior Petition filed on October 22, 2025.

\*\*\*\*\*

Petitioner Adam Bereki respectfully petitions this Court for a writ of mandate compelling Respondent Appellate Division of the Superior Court of Orange County to vacate its Minute Orders dated October 9, 2025, and October 17, 2025, in consolidated appellate main case No. 30-2025-01482941, and to transfer the appeal to this court pursuant to CCP § 396(b). This writ is necessary because the Appellate Division lacks jurisdiction over the appeal due to a bona fide title dispute that must be adjudicated prior to the issue of possession and an amount in controversy exceeding \$35,000, rendering the underlying unlawful detainer action a general civil case, not a “limited civil case” as defined by CCP §§ 85 and 86. The Appellate Division has a clear, present, and ministerial duty to transfer the appeal, and Petitioner has no adequate remedy at law.

This petition is brought under CCP § 1085, as the Appellate Division’s refusal to transfer violates due process and perpetuates a void unlawful detainer judgment, causing irreparable harm, including the ongoing deprivation/ unlawful taking/ theft of Petitioner's home and approximately \$1.2 million in equity.

## **I. PARTIES**

1. **Petitioner Adam Bereki** is the appellant in the underlying appeal before the Appellate Division and the defendant in the unlawful detainer action (Orange County Superior Court Case No. 30-2025-01459684). Petitioner resides at 3649 Metter St., Las Vegas, Nevada 89129.
2. **Respondent Appellate Division of the Superior Court of Orange County** is the appellate body of the Orange County Superior Court that improperly asserted

jurisdiction over Petitioner's appeal in Consolidated Case Nos. 30-2025-01482941 (Lead Case) and 30-2025-01487778.

3. **Real Party in Interest Canjian Hou** is the respondent in the underlying appeal and the plaintiff in the unlawful detainer action.

## II. JURISDICTION

This Court has original jurisdiction to issue a writ of mandate under article VI, section 10 of the California Constitution and Code of Civil Procedure section 1085. Mandate is appropriate to compel the performance of a ministerial duty where there is no plain, speedy, and adequate remedy at law (CCP § 1086; *County of Sacramento v. Hickman*, 66 Cal.2d 841, 845 (1967)). Here, the Appellate Division has a mandatory duty under CCP § 396(b) to transfer the appeal to this Court, as it lacks jurisdiction. The Appellate Division's refusal to transfer (October 9 and 17, 2025, Minute Orders) necessitates immediate review by this Court to correct the jurisdictional error and determine which court has authority to hear and determine this appeal.

## III. REQUEST FOR JUDICIAL NOTICE

Petitioner resubmits his Request for Judicial Notice, previously filed in the Appellate Division of the Superior Court (attached hereto as Exhibit 7), and respectfully requests this Court take judicial notice of all exhibits therein as required by law.

#### **IV. VERIFIED STATEMENT OF FACTS AND ARGUMENT (MEMORANDUM)**

I, Adam Bereki, declare under penalty of perjury under the laws of California that the following statements of fact are true and correct, and that all exhibits referenced below and filed with this Petition, incorporated as if fully set forth herein, are true and correct copies of the documents they represent, except for any Bates numbering or other non-substantive markings made by myself or others.

Exhibit 1: Verified Opening Brief on Appeal

Exhibit 2: Applications for Transfer and to File an Oversized Brief

Exhibit 3: Minute Order- October 9, 2025

Exhibit 4: Ex parte Application for Reconsideration; Opposition; Reply to Opposition

Exhibit 5: Minute Order- October 17, 2025

Exhibit 6: Motion to Take Additional Evidence

Exhibit 7: Request for Judicial Notice (Separate filings due to file size >25mb)

Exhibit 8: Clerk's Transcript (Separate filing)

#### **A. An Underlying Title Dispute and Property Value Exceeding \$35,000 Require Resolution in an Unlimited Civil Proceeding Before Possession Can Be Determined, Divesting the Limited Civil Division and Its Appellate Division of Subject Matter Jurisdiction**

1. Each of the duties alleged to have been breached herein, whether declared by Constitution or statute, are those which are mandatory, non-discretionary,

ministerial duties to which a writ of mandate lies (*Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432 (1989))(reaffirming mandamus as the proper remedy to enforce mandatory duties; distinguishing between ministerial acts (which may be compelled) and discretionary acts (which may not be compelled by mandate); Cal. Const. Art. I, § 26 of the California Constitution “[t]he provisions of this Constitution are mandatory and prohibitory”; *Katzberg v. Regents of Univ. of California*, 29 Cal. 4th 300, 307 (2002) (“every constitutional provision is self-executing to this extent, that everything done in violation of it is void”)(Citation and brackets omitted).

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2. On February 11, 2025, Real Party in Interest (“RPI”) Canjian Hou filed an unlawful detainer complaint in the limited civil division of the Orange County Superior Court (Case No. 30-2025-01459684), seeking possession of the property at 818 Spirit, Costa Mesa, California, following a disputed foreclosure sale (UD Complaint: Ex. 7– Request for Judicial Notice (“RJN”) Ex. 15, pp. 609–620; Ex. 8– Clerk’s Transcript (“CT”) ROA 2). All allegations made herein pertaining to RPI also include his counsel, Henry Paloci III, unless otherwise stated.
3. Prior to this filing, Petitioner informed RPI of a bona fide title dispute, stemming from a 2015 case void judgment (Case No. 30-2015-00805807) that included suspension of his vested right to professional license which led to financial ruin, forced bankruptcy, and ultimately the foreclosure of his home (Ex. 1– Verified Opening Brief (“VOB”) p. 41– notice, pp. 19-26– 2015 case issues). Additionally,

the bankruptcy Court violated numerous protections including fresh start and California homestead guarantees, allowing a wrongful foreclosure on November 18, 2024 (Ex. 1–VOB pp. 27-40). The foreclosure resulted in an approximate \$1.2 million theft/ unlawful taking of Petitioners home equity, fraudulently transferred to RPI.

4. The issue of the validity of 2015 case judgment and license suspension, which directly and proximately caused Petitioner's financial duress, is currently before this court in case no.: G065695.
5. Based on the underlying title dispute, due process required unlimited civil proceedings to determine this issue before possession pursuant to *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 147 (1980), holding that "homeowners cannot be evicted, consistent with due process guaranties, without being permitted to raise the affirmative defenses which if proved would maintain their possession and ownership." See also CCP § 580(b)(3), precluding the title dispute from being adjudicated in the summary limited civil division of the Superior Court. Adjudication of the underlying dispute is critical as Petitioner contends it will evidence the foreclosure was void due to fraud (*Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919 (2016)) and due process violations negating RPI's standing under CCP § 1161a as RPI's purported title is not "duly perfected".
6. Despite the foregoing, the limited civil division awarded possession to RPI without adjudicating the title dispute after obstructing Petitioner's repeated attempts to raise it through answers and motions including challenges to UD jurisdiction (see section B, *infra*; Ex. 1–VOB pp. 41-59). This premature adjudication of possession

rendered the UD judgment void, as the court lacked subject matter jurisdiction to determine possession without first resolving the title dispute in an unlimited civil proceeding (*Asuncion*, 108 Cal.App.3d at 147; *Windsor v. McVeigh*, 93 U.S. 274, 277–78 (1876)(denial of hearing negates notice of UD proceedings, judgment void).

7. Because of the underlying title dispute, the property value is at issue and must be accounted for in the determination of the monetary jurisdictional threshold amount for limited civil cases as stated in CCP § 85:

Notwithstanding any law, including, but not limited to, a law that classified an action or special proceeding as a limited civil case, an action or special proceeding shall be treated as a limited civil case only if all of the following conditions are satisfied:

(a) The amount in controversy does not exceed thirty-five thousand dollars (\$35,000). As used in this section, “amount in controversy” means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys’ fees, interest, and costs.

8. CCP 85 clearly and unambiguously states that the “amount in controversy” in a limited civil case includes “the value of property” and that the action “shall be treated as a limited civil case **only** if ... the amount in controversy does not exceed ...\$35,000”. The property’s estimated value of \$1.5 million far surpasses the \$35,000 jurisdictional threshold (Ex. 1– VOB pp. 41 ¶2 –42).
9. Affirming that the “amount in controversy” includes the value of the property, the court in *Flowers & Sons Development Corp. v. Municipal Court*, 86 Cal.App.3d 818, 823 (1978) held that “if there is present in a case any material issue involving the title of real property which property is over the value of \$5,000 [the former threshold], the superior court[’s] [unlimited civil division] has jurisdiction over the



action” (citing *Vella v. Hudgins*, 20 Cal. 3d 251, 257 (1977) and Witkin, Cal.Procedure (2d ed. 1970) Jurisdiction, s 45, p. 569). See also *Reay v. Cotter*, 29 Cal. 168, 170 (1865) (“summary UD proceedings were] not intended to apply to any case where the title to the land could be made a question”); *Kessler v. Bridge*, 161 Cal. App. 2d Supp. 837, 839 (Cal. App. Dep’t Super. Ct. 1958) (“if it is shown that the real issue is not possession, but title, then unlawful detainer is held not to lie [Citation]”); and, *Dr. Leevil, LLC v. Westlake Health Care Center*, 6 Cal.5th 474 (2018) (distinguishing *Kessler* by noting that equitable defenses [in limited civil UD cases] are permissible only to the extent they negate title perfection for possession, not for broader equitable relief (e.g., fraud-based title disputes requiring unlimited jurisdiction)).

10. The bona fide title dispute stemming from the 2015 case void judgment, license suspension, bankruptcy violations, and wrongful foreclosure, combined with the property’s value of ~\$1.5 million, categorically excludes this case from being a “limited civil case” as defined by CCP §§ 85 and 86, as supported by *Asuncion v. Superior Court* (108 Cal.App.3d 141, 147 (1980)) and *Flowers & Sons Development Corp. v. Municipal Court* (86 Cal.App.3d 818, 823 (1978)). Consequently, the limited civil division lacked subject matter jurisdiction to adjudicate the unlawful detainer action, and the Appellate Division lacks appellate jurisdiction under CCP § 904.2, which only applies to limited civil cases:

An appeal of a ruling by a superior court judge or other judicial officer in a limited civil case is to the appellate division of the superior court. An appeal of a ruling by a superior court judge or other judicial officer in a limited civil case may be taken from any of the following:

11. The Appellate Division's refusal to transfer the appeal to this court under CCP § 396(b) perpetuates a void judgment, causing irreparable harm through the continued unlawful deprivation of Petitioner's home, deprivation of the rights to liberty (right to a judicial determination of rights) privacy, and property (home equity). This court must enforce the mandatory transfer to ensure due process and proper adjudication.

**B. Extrinsic Fraud and Due Process Violations in the UD Proceedings Resulted in Damages Exceeding \$35k Jurisdictional Threshold**

12. Assuming arguendo there was no title dispute, the due process violations that occurred during the UD proceedings denied Petitioner's fundamental right to be heard, resulting in a void judgment that unlawfully awarded possession of his home to RPI causing an unlawful taking resulting in estimated damages of at least \$150,000, exceeding the \$35k threshold.

13. The due process violations resulting in the denial of Petitioner's right to be heard include:

- a. the Superior Court breaching its mandatory duty to grant a stay of the UD proceedings given undisputed evidence of the underlying title dispute;
- b. the Superior Court breaching its mandatory duty to transfer the case to the unlimited civil division;
- c. The Deputy Clerk breaching its mandatory duty to accept Petitioner's Answer twice, despite having no authority to determine the form of sufficiency of a pleading;

- d. RPI's breach of the mandatory duty to cooperate (CCP §583.130) by filing of a stealth default request even though RPI knew Petitioner had appeared and answered and was obstructed by the Deputy Clerk;
  - e. The Deputy Clerk's breach of duty by issuing a default and default judgment in violation CCP § 1013 (five day delay in notice requirements for mail);
  - f. The Deputy Clerk's breach of duty by issuing a default and default judgment when, based on all the foregoing, it had no authority to do so (*Windsor v. McVeigh*, 93 U.S. 274 (1876)).
  - g. The Superior Court's breach of duty by failing to vacate the void UD case judgment (Ex. 1– VOB pp. 70-77). Petitioner contends this breach of duty is not an "abuse of discretion" as there is no discretion for the court to exercise jurisdiction it does not possess and/or to refuse to exercise jurisdiction it does (*Cohens v. Virginia*, 19 U.S. 264, 404 (1821) ("[w]e have no more 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"))).
14. There are four cases at the heart of this Petition (and appeal) that clearly recognize the mandatory duties alleged to have been breached in the UD proceedings that denied Petitioner's fundamental right to a hearing and judicial determination of his rights:
- a. *Windsor v. McVeigh*, 93 U.S. 274 (1876) held that jurisdiction is the right to hear and determine, not determine without hearing and that a court's denial of a full, fair, and impartial hearing to a defendant negates notice, depriving the court of jurisdiction to enter judgment.


- b. *Asuncion v. Superior Court*, 108 Cal.App.3d 141, 147 (1980) held that an underlying title dispute must be heard before possession can be determined.
- c. *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198 (2022) held that: (1) counsel breached ethical and statutory duties under CCP § 583.130 by failing to notify opposing counsel of the intent to seek default and default judgment, violating professional obligations to act with dignity, courtesy, and integrity.
- d. *Baske v. Burke*, 125 Cal.App.3d 38 (1981) held that clerk's lack authority to determine the form or sufficiency of a pleading and have no authority to enter default or default judgment when in possession of a responsive pleading.

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15. Even though RPI knew about the underlying title dispute from the void 2015 case judgment, void license suspension, bankruptcy protection violations, and wrongful foreclosure (Ex. 1– VOB p. 41: notice) and the monetary jurisdictional threshold precluding summary limited civil UD proceedings, RPI violated due process and fraudulently invoked limited civil jurisdiction to obtain possession, concealing the title dispute (Ex. 1– VOB pp. 41-44). RPI then engaged in a series of other ethical, statutory, and due process violations that resulted in extrinsic fraud, contributing to the denial of Petitioner's fundamental right to be heard before obtaining

judgment in its favor (Ex. 1– VOB pp. 41-76; *Windsor v. McVeigh*, 93 U.S. 274 (1876))

16. On March 14, 2025, within the authorized time to answer the UD Complaint, Petitioner attempted to file an answer in person at the court, challenging jurisdiction (RJN Ex. 15). Petitioner's Answer was combined with an Ex parte Application to Stay the UD proceedings in the unlimited civil division 2015 case as the UD proceeding was a continued unlawful enforcement of the void 2015 case judgment. The Deputy Clerk and her supervisor refused to file the Answer in the UD case citing combined filings. The Deputy Clerk instructed Petitioner that the document would not be filed in either case unless he crossed out information pertaining to the other case (Ex. 1– VOB pp. 45-48).
17. Without waiving his rights and following the Deputy Clerk's instructions to ensure a hearing, Petitioner crossed out the UD-related case and Answer information on the title page only, leaving the substance of the document intact, as shown in the record (Ex. 7– RJN Ex. 15, p. 256):

5	<b>SUPERIOR COURT OF THE STATE OF CALIFORNIA</b>		
6	<b>FOR THE COUNTY OF ORANGE— CENTRAL JUSTICE CENTER</b>		
7			
8	Adam Bereki	Main Case No.: 30-2015-00805807	
9	Defendant, Cross-Complainant, Plaintiff	Related Case No.: 30-2025-01459684 (Unlawful Detainer)	
10	vs.		
11	Karen Humphreys and Gary Humphreys,	<b>VERIFIED EX PARTE APPLICATION FOR EMERGENCY STAY OF UNLAWFUL DETAINER ACTION</b>	
12		DATE: 03/18/25 <del>Mon. March 17, 2025</del>	
13	Plaintiffs/ Cross-Complainants, Cross-Defendants	TIME: <del>8:30 AM</del> 9:00 AM	
14	vs.	DEPT: Dept. C23	
15		JUDGE: D. Hesseltnie	
16	Canjian Hou; MTC Financial, Inc., d/b/a Prestige Default Services, LLC; Fourth District Court of Appeal of California (Interested Party); Superior Court of California for the County of Orange	<b>WITH INCORPORATED:</b>	
17		<b>ANSWER TO COMPLAINT (2025-01459684)</b>	
18			

The verified pleading, including the Answer and challenge to jurisdiction with supporting exhibits, was filed in its entirety in the 2015 case (Ex. 7– RJN Ex. 15). For a list of issues raised thereby, including the title dispute and amount in controversy effecting the jurisdictional threshold, see Ex. 1– VOB pp. 46-48. The ex parte hearing was scheduled for March 18, 2025.

18. By rejecting Petitioner’s Answer, the Deputy Clerk violated her ministerial duty and due process because clerks lack authority to determine the form or sufficiency of a pleading (*Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981); *Stevens v. Torregano*, 192 Cal.App.2d 105, 112–113 (1961); see also e.g. Fed. R. Civ. P. 5: “The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice”).

19. On March 17, 2025, despite possessing: 1) Petitioner’s Answer and knowledge that his Answer had been obstructed by the Clerk and 2) notice of Petitioner’s

Appearance and the Application for Stay, RPI filed a stealth request for entry of default and default judgment (“Request”) in the UD case without notifying Petitioner prior, violating CCP § 583.130 and the ethical and due process obligations confirmed in this Court’s rulings in *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198 (2022) and *Lasalle v. Vogel*, 36 Cal.App.5th 127 (2019) (Ex. 1– VOB pp. 49-57).

20. RPI also omitted all of the foregoing material facts (e.g. title dispute) effecting jurisdiction in their Request, breaching their duty to disclose facts that materially affect the basis for relief, as established in *Gillespie v. Ormsby*, 126 Cal.App.2d 513, 527–528 (1954), and *In re Marriage of Park*, 27 Cal.3d 337, 342–343 (1980) (affirming duty to disclose facts that might delay adjudication and finding fraud for breach). These omissions constituted extrinsic fraud on Petitioner and the court, violated due process, and breached attorney Paloci’s statutory duties per Cal. Bus. & Prof. Code § 6068(a)–(d) (Ex. 1– VOB, pp. 41-45).

21. At the Ex parte hearing on March 18, 2025, the Superior Court’s unlimited civil division (2015 case) refused to grant a stay or to transfer the case to the unlimited division despite Petitioner’s *unopposed* evidence of the title dispute and the amount in dispute exceeding the \$35k threshold (Ex. 1– VOB pp. 52-56), breaching its mandatory duties under *Ascunsion*, Cal. Const. Art. I, § 7, and CCP § 396(b). The court also refused to accept Petitioner’s Answer, refused to order the Deputy Clerk to file it in the UD case, and told Petitioner to make a separate filing (*Id.*).

22. The rejection of Petitioner's Answers, denial of the stay, and refusal to transfer to the unlimited civil division (individually or collectively) divested the limited civil division of the Superior Court of jurisdiction to proceed (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)(denial of a full, fair, and impartial hearing, negates notice, depriving court of jurisdiction to declare default or enter judgment).
23. Shortly after the Ex parte hearing on March 18, 2025, the Deputy Clerk entered default (Ex. 8– CT 20–“FOR COURT USE ONLY”; Ex. 1– VOB, pp. 56 ¶4 – 57). This violated *Windsor* and due process as further recognized in *Baske v. Burke*, 125 Cal.App.3d 38, 45 (1981), which prohibits a Deputy Clerk from entering a default when in possession of a responsive pleading (RJN Ex. 15).
24. The entry of default also violated due process by disregarding the five-day extension for mailed service under CCP § 1013(a). Due process requires notice reasonably calculated to reach the object of the notice (*Lasalle* 36 Cal.App.5th at 138 (Citation omitted)). The five-day extension of CCP § 1013 operates with the ethical and statutory duties recognized in *Lasalle* and *Shapell* to ensure due process safeguards in the event of counsel's breach of notice duty per CCP § 583.130 (Ex. 1– VOB, pp. 50-52).
25. Under CCP § 1169, the Deputy Clerk lacked authority to enter default without RPI's Request, made under penalty of perjury (Ex. 8– CT pp. 20–22, 21). RPI's request for default and default judgment, despite knowing of the court's obstruction of Petitioner's Answers and his good-faith efforts to appear and defend, constitutes fraud and a violation of due process by misleading the court, subverting the court's truth-seeking process. This also breached RPI's duty under Civil Code § 1708 to



avoid violating Petitioner's rights. RPI also violated ethical and legal duties under CCP § 583.130, as established in *Lasalle v. Vogel*, 36 Cal.App.5th 127 (2019), and *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.*, 85 Cal.App.5th 198 (2022), to cooperate and provide notice. Compliance with these duties is a prerequisite for requesting default.

26. Under CCP § 1169, default and default judgment are permitted only when the defendant "does not appear and defend." Petitioner appeared and defended by filing pleadings in the 2015 case in the unlimited civil division, which had subject matter jurisdiction to: (1) address the title dispute arising from the enforcement of the void judgment; (2) issue a stay; and, (3) remedy the obstruction of his attempt to file an Answer, challenging jurisdiction. CCP § 1140 confirms that a defendant appears in an action by answering or providing written notice of appearance (Ex. 1–VOB, pp. 50–52).

27. On March 18, 2025, after the Ex Parte hearing, unaware of RPI's Request and the court's entry of default, Petitioner emailed RPI stating, "I will be filing an answer to the UD complaint by tomorrow" as evidenced in the screenshot of the email below (Ex. 1–VOB, p. 57):

I will be filing an answer to the UD complaint by tomorrow

Adam <abereki@gmail.com>  
to Henry, AngusHou0823

Tue, Mar 18, 3:21 PM

Please take notice that it is my intent to file an answer in the UD case by tomorrow. As you've been made aware I am under extreme duress given the unlawful acts that continue to be perpetrated against me.

Sincerely,

Adam Bereki

28. RPI did not respond or give notice the Request was filed, continuing to breach its duty under CCP § 583.130 to cooperate and give notice.
29. On March 19, 2025, still unaware the Request had been filed, Petitioner returned to the court with a separate Answer to file in the UD case, challenging jurisdiction and standing due to disputed actions and jurisdictional defects (Ex. 1– VOB, pp. 57-8; Ex. 7– CT pp. 55–60). The Deputy Clerk rejected the Answer citing the default judgment entered on March 18, 2025.
30. The Deputy Clerk breached her ministerial duty to file the pleading and again violated due process, as: **(1)** jurisdiction can be challenged at any time, including post-default (*Rochin v. Pat Johnson Mfg. Co.*, 67 Cal.App.4th 1239 (1998)); and **(2)** clerks lack authority to determine the form or sufficiency of a pleading (*Baske*, 125 Cal.App.3d 38, 45; *Stevens*, 192 Cal.App.2d at 112–113). The reason court clerks lack authority to determine the form or sufficiency of a pleading is because they have not been vested with the authority to exercise the judicial power of California or the concurrent jurisdiction of the judicial power of the United States and therefore cannot summarily hear and determine rights by summarily refusing to file a pleading.
31. The Deputy Clerk’s rejection of Petitioner’s Answers on March 14 and 19, 2025, violated his due process right to be heard, negating the UD court’s jurisdiction by preventing a judicial determination of his rights (*Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)).
32. The Deputy Clerk failed to record Petitioner’s attempts to file Answers or his appearance in the UD case docket, concealing jurisdictional facts, such as the title

dispute, and further violated due process by obstructing a transparent record. Petitioner digitally recorded these interactions to preserve evidence and will file certified transcripts if there is any dispute this occurred.

33. The Deputy Clerk's rejection of Petitioner's Answers enabled RPI's extrinsic fraud by preventing a challenge to the UD court's jurisdiction, constituting fraud on the court by impairing the truth-seeking process (*In re Marriage of Modnick*, 33 Cal.3d 897, 905 (1983)).

34. RPI's concealment of the title dispute and stealth default request, combined with the Deputy Clerk's obstruction of Petitioner's Answers and the court's denial of the stay, constituted extrinsic fraud by: (1) preventing Petitioner's defense through suppressed material facts, (2) with intent to deceive, and (3) causing prejudice via the void UD judgment and eviction, divesting the limited civil division of jurisdiction (*Kulchar v. Kulchar*, 1 Cal.3d 467, 471 (1969); *Windsor v. McVeigh*, 93 U.S. 274, 277–278 (1876)).

35. On March 20, 2025, RPI, aware of the absence of a lawful right to relief due to the above issues, filed a false and fraudulent Application for Writ of Possession ("Writ") under penalty of perjury (signed by attorney Paloci) (Ex. 8– CT, p. 25; VOB, p. 58). The Writ was issued without authority on March 22, 2025 (Ex. 8– CT, pp. 26–28).

36. On March 24, 2025, RPI fraudulently invoked the executive authority of California through the Orange County Sheriff's Department to compel Peitioner's removal from his home (Ex. 1– VOB, p. 59, pp. 60–63).

37. Petitioner was evicted under threat of force by the Sheriff's Department and moved out under duress on or about April 1, 2025 (Ex. 1– VOB, pp. 60-63).
38. The extrinsic fraud and due process violations, including RPI's concealment of the title dispute, the Court's failure to grant a stay, the Deputy Clerk's obstruction of Petitioner's Answers and the executive officials refusal to investigate and intervene to stop the enforcement of the void Writ, directly caused Petitioner's eviction, resulting in an estimated \$150,000+ in damages, including moving expenses, loss of property use, and lost work time, exceeding the \$35,000 jurisdictional threshold under CCP § 85(a).
39. On October 7, 2025, Petitioner filed an Application for Transfer from the Appellate Division of the Superior Court to this Court pursuant to CCP § 396(b), along with an Application to File an Oversized Brief ("AOB") (Ex. 2) and the VOB addressed to this Court.
40. On October 9, 2025, Judges Krill, McConville, and Mittal of the Appellate Division issued a Minute Order denying the Application for Transfer, breaching their mandatory non-discretionary ministerial duty (Cal Const. Art. I, § 7 and CCP § 396(b)) (Ex. 3). The Order stated "Appellant contends the appellate division lacks jurisdiction over this case. Not so. The appellate division has jurisdiction over the unlawful detainer appeal (Code Civ. Proc. §§ 86 subd. (a)(4), 77 subd (e), 904.2.)"
41. The Order also denied the Application to File an Oversized Brief and placed the appeal in default. Petitioner contends these aspects of the Order were arbitrary and further violated due process as the Court lacked fundamental subject matter jurisdiction to make these orders.

42. The Judges' breaches of ministerial duties created a conflict that was not only evidence of bias evidenced through their arbitrary acts, but also due to a pecuniary interest in that they became civilly liable for damages to Petitioner for violating his rights (Code Civ. Proc. § 170.1(a)(3)(A), (a)(6)(A)(iii); *Christie v. City of El Centro*, 135 Cal.App.4th 767, 776 (2006); Cal. Code of Judicial Ethics, Canon 3E(1); *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)).
43. On October 14, 2025, Petitioner filed a Verified Ex parte Application for Reconsideration (Ex. 4, pp. 125–135), citing new circumstances (e.g., the premature ruling before his Request for Judicial Notice (Ex. 7) and supporting exhibits (Ex. 6) were filed) and reiterating the jurisdictional defects/ due process violations. RPI opposed (Ex. 4, pp. 137–141). RPI's Opposition failed to cite any authority that defeated Petitioner's jurisdictional arguments (Ex. 4– Reply to Opp. pp.142-147).
44. Petitioner's verified statements informed the Judges of the conflicts and requested a new panel be assigned (Ex. 4– Ex parte App., pp. 133 ¶24 – 134 ¶10).
45. On October 17, 2025, the same panel (Judges Krill, McConville, and Mittal) denied reconsideration without explanation, affirming the October 9, 2025 void Order (Ex. 5– Minute Order, October 17, 2025).
46. The Appellate Division's refusal to transfer perpetuates the Superior Court's jurisdictional errors, violations of due process, and the enforcement of a void judgment and writ by refusing to adjudicate the title dispute, and awarding possession without hearing Petitioner resulting in the unlawful taking/ theft of his home causing ongoing irreparable harm, including unauthorized alterations to the

property and deprivation of his inalienable rights (Cal Const. Art. I, § 1 liberty (judicial determination of rights), property, privacy).

*"We have no more to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution."*

*—Cohens v. Virginia, 19 U.S. 264, 404 (1821)*

**D. No Adequate Remedy at Law Exists, and Irreparable Harm Will Result Absent Mandate**

Continued proceedings in the Appellate Division violate due process through the exercise of jurisdiction without lawful authority, depriving Petitioner of a lawful forum to hear and determine his rights resulting in the continuation of irreparable harm, including the loss of his home, unauthorized renovations thereto, loss of approximately \$1.2 million in equity, and denial of the right to liberty to obtain judicial relief. A writ of mandate is the sole effective remedy to compel the Appellate Division to fulfill its mandatory duty to transfer the appeal to this court under CCP § 396(b).

**CERTIFICATE OF WORD COUNT**

I, Adam Bereki, certify that the foregoing Petition for Writ of Mandate, including all sections, headings, captions, declarations, and attached exhibits referenced therein, contains 6,985 words, as calculated by Microsoft Word. This count includes all textual content in the document.

## **V. REQUESTED RELIEF**

This Court will please order the following relief:

1. Grant Petitioner's Request for Judicial Notice (Ex. 7).
2. Issue an alternative writ of mandate directing the Appellate Division to vacate its October 9 and 17, 2025, Minute Orders and transfer the appeal to this Court or show cause why it should not do so.
3. Upon return of the alternative writ, issue a peremptory writ of mandate compelling the transfer.
4. Issue a stay of all proceedings in the Appellate Division of the Superior Court of Orange County in Consolidated Case Nos. 30-2025-01482941 (main case) and 30-2025-01487778, pending resolution of this Petition, pursuant to California Rules of Court, rule 8.486, to preserve the status quo and prevent further due process violations pending the this Court's determination of the appellate jurisdiction governing this case. The stay should be effective October 22, 2025 at 5:00pm.
5. Upon determination that this Court has jurisdiction of this Appeal, assign a case number and file all of Petitioner's documents including the Verified Opening Brief (Ex. 1), Motion to File an Oversized Brief (Ex.2), Request for Judicial Notice (Ex.7 7), Motion to Take Additional Evidence (Ex.6), and the Clerk's Transcript (Ex.8) in the new case.
6. As soon as permissible by law, on this Court's own motion, grant immediate partial relief by vacating the unlawful detainer judgment as to possession in Orange

County Superior Court Case No. 30-2025-01459684, and order the restoration of the property at 818 Spirit, Costa Mesa, California, to Petitioner to prevent further irreparable harm, including the ongoing deprivation of Petitioner's possession thereof (and unauthorized renovations) pursuant to this Court's authority under California Rules of Court, rule 8.264(b) and CCP section 43, as the judgment is void for lack of subject matter jurisdiction due to the unresolved title dispute, amount in controversy exceeding \$35,000, and due process violations.

7. Upon transfer of the appeal to this Court: (1) grant Petitioner's Request for Judicial Notice (Ex. 7) and Motion to Take Evidence (Ex. 6); (2) award Petitioner damages against Real Party in Interest Canjian Hou in the amount of \$200 per day for the unlawful occupation of Petitioner's home at 818 Spirit, Costa Mesa, California, beginning April 2, 2025, as compensation for the extrinsic fraud and due process violations resulting in the void unlawful detainer judgment, causing Petitioner's wrongful eviction and loss of use of his property. Hou was given notice of the \$200 per day charges (Ex. 6— Motion to Take Addt'l. Evid., p.277 ¶12). As of the filing of this Writ on October 22, 2025, the total days are 203, resulting in \$40,600 damages.
8. Deny RPI any compensation for alterations made to the property at his expense, as such alterations were made without Petitioner's consent by a tortious possessor under a void judgment, pursuant to *Billings v. Hall*, 7 Cal. 1 (1857), which holds that a landowner has a vested right in improvements made by a tortious possessor. RPI was told not to make any alterations and that if he did they would not be with Petitioner's consent or compensated. Grant leave to file additional evidence of



damages upon inspection of the property to assess any further harm caused by RPI's occupation and alterations.

9. Hear and determine all remaining issues on appeal, including Petitioner's Constitutional challenges and enforcement issues by the Sheriff.
10. In this writ proceeding, award Petitioner damages and costs against the Superior Court of Orange County, pursuant to CCP § 1095, for loss of work opportunity at \$300 per hour and costs, totaling \$2,430 for preparing and filing the Ex parte Application for Reconsideration, \$2,987.46 for the Reply to Opposition, and \$8,700 for this Writ, due to the Appellate Division's breach of its ministerial duty to transfer the appeal under CCP § 396(b), caused by the panel judges' void actions in the clear absence of subject matter jurisdiction due to the unresolved title dispute and amount in controversy exceeding \$35,000. This relief should only be granted as long as it does not immunize liability of the judges for void acts and aligns with due process. Petitioner reserves the right to request additional damages incurred in further proceedings pertaining to this matter.
11. Award any other relief as the Court deems just and proper.
12. In the event this Court determines the Appellate Division has jurisdiction to hear and determine this appeal either explain why this is so, or direct the Appellate Division to abide its due process duty to do so. Petitioner contends the Appellate Divisions statements of "not so" and "denied" in the Minute Orders violate due process because they do not provide a reasoned explanation of how the Appellate Division made its determination(s) of his jurisdictional challenges in light of his unopposed verified evidence and the clarity of the statutes applying to limited civil

cases. This denied Petitioner the due process right: (1) to a transparent ruling; (2) to understand the law; (3) and to make a full, meaningful, and substantive Writ of Mandate addressing the specific issues underlying the Order. See *Nakamura v. Parker*, 156 Cal.App.4th 327, 334-335 (2007) (summary denial of facially adequate ex parte application without hearing or explanation is abuse of discretion and due process violation as it prevented the parties from understanding the basis of the ruling); *People v. Kelly*, 40 Cal.4th 106, 110 (2006) (decisions must be in writing with reasons stated for meaningful review); *C.S. v. Superior Court*, 29 Cal.App.5th 1009, 1023 (2018) (Court must articulate evaluative process and show evidence weighing for due process); *In re Harris*, 16 Cal.5th 292 (2024) (due process mandates reasoned findings on evidence reliability).

Signed on October 27, 2025 in Las Vegas, Nevada.

Respectfully filed,

A handwritten signature in black ink, appearing to read 'Adam Bereki', with a stylized, cursive flourish.

Adam Bereki