

No. 18-1060

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL A. WEISS Individually and as EXECUTOR OF
ESTATE OF JANE L. MARSH,
Petitioners,

vs.

STEPHEN D. MARSH and DAMON MARSH, Co-Executors
Estate of Monroe F. Marsh
Respondents.

ON PETITION FOR REHEARING (SUPPLEMENTED) WRIT OF
CERTIORARI TO THE COURT OF APPEALS DISTRICT 4 DIV 3,
STATE OF CALIFORNIA

PETITION FOR REHEARING (SUPPLEMENTED) WRIT OF
CERTIORARI APPENDIX

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DATE: 06/04/2019

REHEAR EX 1

COMMISSIONER: Edward Hall CLERK: Isabel Molina
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
MINUTE ORDER

TIME: 09:00:00 AM DEPT: C07

REPORTER/ERM: (ACRPT) Kendra Davis-Montgomery
CSR# 8881 BAILIFF/COURT ATTENDANT: Gurrola, Martina
CASE NO: 30-2009-00331535-PR-PW-CJC CASE !INIT.DATE:
12/24/2009 CASE TITLE: Marsh-Probate

CASE CATEGORY: Probate CASE TYPE: Probate of Will -
Letters Testamentary EVENT ID/DOCUMENT ID: 72923089

EVENT TYPE: (P) Petition for Final Distribution

MOVING PARTY: STEPHEN D MARSH, DAMON MARSH

CAUSAL DOCUMENT/DATE FILED: Petition for Final
Distribution, 10/30/2018 APPEARANCES

Attorneys for Damon Marsh - Stephen Magro and
Andrew C. Kemper. Attorney for the Estate of Jane L.
Marsh - Michael Weiss

Posted Notice in the Courtroom notifies all litigants
that the case is being heard by a Commissioner and that
failure to object will be deemed acceptance of the
Commissioner as a temporary judge.

Discussions held on the record regarding the
Objection filed by attorney Michael Weiss on 5/28/2019.

Attorney Stephen M. Magro argues and objects to it
being filed as there is a Cross Petition within the

objection.

Attorney Michael Weiss represents to the Court he
was advised by Department C1 permission was not
required due to filing being an objection. Court
reviewed Order Declaring Michael A. Weiss a Vexatious
Litigant filed on 09/05/2017 and recites paragraph five of
said order on the record.

The Court also reviewed the appellate decision
finding Michael Weiss has no interest in the estate.
Court determines Michael Weiss has no standing and did
not obtain permission from the Presiding Judge.

Petition for Final Distribution filed by Stephen D. Marsh
and Damon Marsh is approved as supplemented.

DATE: 06/04/2019 DEPT: C07

MINUTE ORDER Page 1
Calendar No. 1

MICHAEL WEISS REHEAR EX 2
LAW OFFICE MICHAEL A WEISS

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SBN: 114219

Attorney for Estate of Jane L. Marsh
and Michael Weiss Superior Court of the State of
California County of Orange, Central Justice Center

ESTATE OF MONROE F. MARSH

Stephen D. Marsh Individually and as
Special Administrator of Estate of Monroe
F. Marsh; Damon Marsh Individually and as
Special Administrator of Estate of Monroe
F. Marsh, Plaintiffs

vs.

Estate of Jane L. Marsh, Michael Weiss,
Defendants

CONSOLIDATED ACTION with 30-2010-
00384291 and consolidated with 30-2010-
00426209

Jane L. Marsh

vs.

Stephen Marsh, Damon Marsh, Monroe F.
Marsh, Defendants

30-2009-00331535PR-PW-LJC
Objection to the Petition for Final
Distribution on Waiver of Account, Report
of Co-executors, and Petition for
Allowance of Ordinary Executors
Compensation, Ordinary Attorney
Compensation and Extraordinary Attorney
Compensation; Cross Petition
Date: 6-4-19

Time: 9:00 am
Dept: C7

COME NOW Objector Michael Weiss, as Executor of
Estate of Jane L. Marsh, to file Objection to the Petition
for Final Distribution on Waiver of Account, Report of
Co-executors, and Petition for Allowance of Ordinary
Executors Compensation, Ordinary Attorney
Compensation and Extraordinary Attorney
Compensation by Stephen and Damon Marsh and as
supplemented by their attorneys Magro and Kemper
and a cross petition.

1. Objector deny in general and specifically all factual
and legal contentions therein, except as otherwise
indicated. The specific denials are as follows:

Paragraph 2: Deny that Monroe F. Marsh died testate
because Monroe's last Will did not effectively dispose of
any of his community property since he was only
disposing of his separate property. Admit that Stephen

and Damon Marsh were appointed special administrators "as a result of settlement negotiations"; however, this establishes the invalidity of such appointment because the judicial appointments could not be approved merely by stipulation of persons to the probate proceedings. Hence all of the acts and proceedings of the co-executors until 5-23-12 are invalid.

2. Paragraph 3: Deny as no notice was given of the application for the 7 orders extending special administrator status; and, there were gaps and lapses of time in between these extensions thus destroying any continuity that may otherwise exist.

3. Paragraph 15(a): Deny dismissal due to existence of two consolidation orders; and, the fact that no single consolidation order of dismissal has yet been filed. Deny that Court of Appeals affirmed the dismissal because it had no subject matter jurisdiction. Deny paragraph 15 (B) & (D) that no action was taken on Michael Weiss

creditor claim as he has continually pursued his claims by way of probate proceedings along and in conjunction with Jane L. Marsh pleadings herein. Paragraph 9: Deny that partial inventory number 3 of \$835,000 property belongs to Monroe F. Marsh estate because it belongs to Jane L. Marsh. Deny that the list is complete because it does not include the \$550,000 received by the Stephen and Damon Marsh for the sale of the Honolulu condo, Monroe's coin or stamp collection, and a whole lot of other items including furniture that belonged to Michael Weiss inside the Honolulu condo and his bicycle etc. The co-executors have knowledge and possession of a lot more than herein described and in particular the money they received from Monroe F. Marsh during marriage to Jane L. Marsh some \$821,000 which they should have inventoried as debts that Stephen and Damon Marsh and members of their families owed to the estate of Monroe F. Marsh. There was also a \$25,000 promissory

note by a gas station friend of Monroe which could have been collected had it been pursued but was not.

4. Paragraph 11: Deny because Stephen Marsh requested Jane L. Marsh to sign an amended federal joint income tax return but were never given any notice that the refund had been allowed, or even acted upon.

5. Paragraph 13 Deny that Notice of Proper Action was given as required by statute; and, in particular there was no such notice of intent to sell the Irvine condo or the Honolulu condo given to Jane L. Marsh.

6. Paragraph 14: Deny that waiver of accounting is valid because Michael Weiss filed no waiver on behalf of Estate of Jane L. Marsh nor in his individual capacity as creditor. The purpose of submitting an account "for reference only" purposes makes the material inside irrelevant, immaterial, and unauthenticated hearsay.

Deny that any of the persons listed are entitled to distribution. Deny that Stephen Marsh is decedent's only

child because the invoices to him charge him for conversation regarding his adoption "as an adult". Deny that Stephen Marsh is a child because Monroe had a vasectomy making it impossible for him to have a child let alone 7 grandchildren. Deny that property held at the beginning of account was \$1,320,176.14 because that is property inclusive of Jane L. Marsh's. Paragraph is ambiguous and therefore denied because it says "see hereinbelow" when there was none. Unclear about what \$506,120.10 represents and had hence denied and objector request disclosure and proof and until then denies it is all of Monroe's property because Jane L. Marsh had a Moore-Marsden interest in the Honolulu condo. Allegation about receipts are ambiguous and hence are denied until disclosure and proof be made regarding the \$430,659.32 as to what and why.

Distributions of \$690,000 denied due to invalidity of distributions under void orders. Property on hand is

unclear when it says at the close was \$723,378.02 as to what it represents and therefore demand disclosure and proof and until then deny. Deny distributions under first and 2nd preliminary distribution orders because they exceeded 50% of the net value of the estate furthermore deny that the appellate process is finished because Michael Weiss and Estate of Jane L. Marsh petition for certiorari are still open see the United States Supreme Court docket in case number 18-1060.

7. Paragraph 15: Deny entire estate is separate property of Monroe. This is because it includes property of Jane L. Marsh and Michael Weiss as well as community accumulations of Jane L. Marsh.

8. Paragraph 16: Denied as ambiguous and therefore request disclosure and proof of fact.

9. Paragraph 19: Deny as to entitlement to ordinary compensation because fee base is falsely comprised of property including Jane L. Marsh's and Michael Weiss's

separate property and community accumulations of Jane L. Marsh. Deny that \$570 has been paid for summary account because there is no accounting due to waiver of accounting and the purpose was only for reference and not the validity or truth or accuracy of any of its content. Deny \$25,376.75 for ordinary attorney's fees because the base amount is not accurate any more than it was for the fee base regarding the executor's compensation. Deny that giving Attorney Stack 20% of the total compensation is reasonable for his 4 months service from 11-23-09 until 3-10-10. Why Attorney Stack was not paid before is unclear therefore disclosure and proof is requested. Without a declaration from Attorney Stack it is nothing but unauthorized hearsay and it accordingly denied and objected to. Attorney Magro attached his invoices and made them a part therein; but, not for Mr. Stack's invoices nor was there any declaration of Stack attesting to his invoices.

Deny \$58,521 for attorney Magro because the fee base is wrong as it included property of Estate of Jane L. Marsh and Michael Weiss.

10. Paragraph 20: Admit that attorney Magro joins in the petition, as he did in the preliminary distribution proceedings as a party and seeks compensation going back to the day when he first became such attorney.

Deny that \$131,908.50 is reasonable. Deny that \$519,396.59 is reasonable total amount payable.

Undisclosed is any executor compensation and attorney fees received from the proceedings from the Hawaii court. Deny that payment is available from the proceeds of the Monroe estate because that estate includes property of Estate of Jane L. Marsh and Michael Weiss.

11. Paragraph 21: Deny the co-executors have performed all duties required of them. They never filed any accounting in this case. They should never have included separate property belonging to Jane L. Marsh

and property accumulations of Jane L. Marsh and separate property of Michael Weiss as assets belonging to the estate of Monroe. They failed to collect \$25,000 from gas station attendant friend and they demanded gross imposition from Judge Belz knowing that it had no time to hear either the petitions to confirm sale of property or the petitions for preliminary distribution and hence committed a fraud upon the court's jurisdiction.

Judge Belz told the co-executors the day before he had no time for it; and, their attorney said "I know you have no time for it" and therefore there was a gross imposition upon the court's time warranting recall due to such imposition. Deny that administration is completed due to the need for a full and fair accounting of performance by the co-executors not only in California but also in Hawaii. The co-executors grant deed to the Yi's contained no clause stating that it was ordered by the court as required by Probate Code statute. The

co-executors filed ex parte applications which were never authorized by the probate court to carry out the sale notwithstanding appeal. Deny that all debts of the decedent have been paid; deny that all debts of his estate have been paid. They sold the Irvine condo but never cleared its debt and there are dozens of other defalcations in regards to their fiduciary performance duties which they knew very well of.

12. Paragraph 24: Deny that there are no estate liabilities. The estate must refund \$982,000 to the purchasers of the Irvine condo because the sale was void because there was no evidence of any kind introduced at the time of hearing just as there was no introduced evidence at the time of the primary distribution hearing as the RT's reveal. Without evidence the resulting orders were void. And it is void for other reasons, including lack of a full and fair trial and failure to recognize Weiss as executor of Estate of Jane L. Marsh as an indispensable party, and in his own

right.

13. Paragraph 25: Deny that the list of devisees or devisees because their interests adeemed because the intent of Monroe was that Jane L. Marsh could exercise her rights under the law if she choose to acquire the Irvine condo which she did. Deny that Monroe F. Marsh intended to give them anything that did not belong to him including his one half community accumulations. Deny that Stephen is the son of Monroe because invoices charged to him regarding his adoption as adult waive a red flag about the adoption in the first place because there is no pleading, proof, nor discussion of any legal barriers preventing adoption as a minor. There are no adoption papers anywhere to be found in the entire file herein or any papers whatsoever showing a blood relationship between Monroe and Stephen let alone any 7 grandchildren. Deny that the 7 devisees are grandchildren due to vasectomy of Monroe.

14. Paragraph 26: Deny that the will beneficiaries are entitled to distribution. Deny that Stephen is the son of Monroe and that he had 7 grandchildren. They are not entitled to distribution of the separate property of either Jane L. Marsh nor Michael Weiss nor Estate of Jane L. Marsh nor any of the community accumulations of Estate of Jane L. Marsh. Deny that Stephen Marsh and Damon Marsh are entitled to any distribution because they themselves violated the no contest clause of Monroe's last will by filing legal papers challenging the right of Jane L. Marsh to exercise her rights under the law to acquire the Irvine condo or any of her other legal rights. Deny that the court determined a petition to determine distribution (entitlement) because Probate Code 10705 required the court to identify the persons entitled and the percentages or share of entitlement which the order did not do on its face. Because Jane L. Marsh filed papers in the court along with countless other

papers in the Appeals Court giving notice to the co-executors and the courts that she elected to take her rights under the law and not under his will. The 11705 order was completely unnecessary because it, and the co-executors underlying petition, failed to so disclose, making unnecessary the 11700 proceedings to be had in the first place. Jane L. Marsh appeared by way of court call yet she was not permitted to testify at the 11700 proceedings nor could Weiss and the court refused to let the clerk of the court file a stamp on his request for filing of his statement of interest despite the code section which allows pleadings to be filed on the day of hearing. Judge Schulte put a sticky note on it saying not timely filed. Denied: page 23:23 through 24:9 as it attempts to lead the reader to to believe things that Judge Schulte never adjudicated at the hearing. Additionally never once did Judge Schulte interpret any specific clause of Monroe's last will save and except for the no contest

clause. Nor was any court, trial or appeal, asked to interpret the other clauses of Monroe's last will and the assumption that the court did is rebutted by the reporter's transcript of the proceedings therein which reveal no interpretation. Likewise the pleadings of the co-executors reveal that they never ever asked the court to interpret any clause of Monroe's last will.

Therefore the pleadings themselves failed to give specific and particular notice that construction of specific clauses in the last will of Monroe was at issue.

Without proper pleadings asking the Court to construe the last will there is no subject matter jurisdiction per In the Matter of the Estate of Jenanyan (1982) 31 Cal.3d 703 [183 Cal.Rptr. 525] which make such orders void.

15. Paragraph 27: Deny that \$690,000 was distributed under the first and 2nd preliminary distribution orders because those orders were void due to zero evidence and lack of full and fair trial, and lack of indispensable

party namely Weiss as Executor of Estate of Jane L. Marsh. Deny that the \$690,000 that was distributed was property belonging to Monroe because Judge Belz cut off Weiss before he even finished his oral presentation and then denied him standing to complain. It was physically impossible for Judge Belz to even read the 2 petitions for preliminary distribution because that time was 18 hours if you clock it. Judge Belz had only between 1:30 in the afternoon and 9:00 AM the next morning in which he issued his order. This was exactly the same type of gross imposition on Judge Didier regarding their 850 summary judgment proceedings; and, that was the same amount of time that he had to make his adjudication which made it likewise void.

16. Paragraph 28: Deny that the estates assets consist of \$723,370.02. There is no disclosure where that cash came from and disclosure and proof is requested. Deny that a \$50,000 reserve for closing costs and expenses is

reasonable because if the petition is granted a writ or appeal by objector is most likely to follow. An appeal to the U.S. Supreme Court is still ongoing even with regards to the Preliminary distribution proceedings. Deny that the proposed distribution in the amounts indicated because it cannot be distributed if any part of it includes the property of Jane L. Marsh or Michael Weiss or the estate of Jane L. Marsh. Monroe never intended his last will to dispose of property belonging to Jane L. Marsh or Michael Weiss. The co-executors have violated his last will and violated their oath of office by committing a fraud upon this court in stating that property did belong to Monroe because they had knowledge to the contrary.

17. Paragraph 29: Deny as ambiguous the statement regarding the bond. The inference that distribution can safely be made without a bond is unwarranted because the co-executors allegedly live in Utah and the

distributees out of California. Co-executors were statutorily required to file a statement of permanent address with the court but they never did the failure to file such a statement was ground to remove them. Their attorneys supplemental petition characterizing the final distribution proceedings as a "mere formality" is conduct worthy of striking them as attorneys. That characterization was in a pleading drafted and signed only by the attorney as there was no verification from Damon Marsh. And the representation that Stephen Marsh directed them to file motion to carry out the distribution orders notwithstanding appeal is hearsay and challenged as unworthy of belief. Based on information and belief it was Attorney Magro who was calling the shots from beginning to present. Bonding of the executors is therefore requested. Furthermore a continuance may make settlement a possibility as it was never was while Stephen Marsh was alive. The need to fill

the vacancy in office of co-executor and/or his attorney is necessary to any such settlement as well as for purposes of foreseeable writ or appeal proceedings hereafter.

18. Paragraph 30: Deny notice of the hearing was properly given because no publication of notice was alleged. Furthermore Weiss as Executor of Estate of Jane L. Marsh and himself individually were indispensable a "party" to the probate matter and because neither he nor Estate of Jane L. Marsh were served as parties there was no proper service upon them as required by statute. Failure to render proper service make insufficient the attempt to confer jurisdiction on the court just because they allege notice was given because of a request for special notice.

19. Deny: Prayer of petition. Deny in particular prayer part 3 that says that all acts and proceedings of the co-executors be confirmed and approved because of

their defalcation, delay, imposition upon the court, unclean hands, violation of their oath of office, violation of the United States Constitution equal protection clause and more. Their conduct is as blameworthy as in Rosenthal v. State Bar (1987) 43 Cal.3d 612 [238 Cal.Rptr. 377] and Pierce v. Lyman (1991) 1 Cal.App.4th 1093 [3 Cal.Rptr.2d 236] because Judge Belz placed trust and confidence in them which was betrayed by their fraud upon the courts subject matter jurisdiction when stating for the first time in their proposed formal order that distribution could be made without injury to any creditor or other person interested in the estate. Parts 4 and 5 of the prayer are unclear as indicating attorney Magro get paid here and now but not the devisees because of the words "after the closing expenses have been paid." Deny paragraph of the prayer regarding "after discovered property" because of their existing defalcation with regards to property belonging in the estate of Monroe

which they knew belonged to Jane L. Marsh and
Michael Weiss.

AFFIRMATIVE DEFENSE

I. WEISS AS EXECUTOR OF ESTATE OF JANE L. MARSH AND
INDIVIDUALLY WERE INDISPENSABLE PARTIES MAKING
PRIOR ORDERS VOID

20. Jane L. Marsh was a party to contracts containing joint and several obligations and rights, namely her marriage contract with Monroe and under his trust deed. It was the terms of which her civil cause and subsequent petitions in probate were trying to enforce. Because equity regards as done that which ought to have been done, her "several" rights can be adjudicated by annulling orders made without her presence as indispensable party which will confirm her acquisition of the Irvine condo and Weiss' acquisition of same as her only heir. Code of Civ.Proc 389 is equivalent to the equity doctrine of indispensable parties and it was not honored

in out case.

II. CONSTRUCTION OF ACCOUNTING STATUTES AS REMEDIAL IN PROVIDING NEW AND ADDITIONAL MEANS OF ENFORCING RIGHTS OF Objector.

21. Objector request an interpretation in this case similar to that made in Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505], namely that the accounting statutes including Probate Code 11003 relating to an account and also relating to a report of administration are applicable in this case even though there is a waiver of accounting. This is because all of those accounting statutes are remedial in nature and that remedial statutes provide a new and additional means of enforcing the substantive rights to recover property never validly a part of Monroe's estate as his separate property. Under Probate Code 10950 court is requested to order an account at this time. Under Probate Code 10951 the personal representative shall file a final

account when estate is in a condition to be closed.

Probate Code 10900(b) and (c) provides an account shall indicate as to creditors claims whether the creditor has brought an action on the claim; and, if it involves any real property or separate property that is security for a claim, whether it be by way of mortgage, trust deed, lien, or other encumbrance; and, that was not done.

Probate Code 11602 says opposition to distribution petitions may be filed by every interested person.

Probate Code 11624 provided that costs on Preliminary distributions proceedings shall be paid by the devisees or the estate; but, not by Weiss who paid some \$6600 and accordingly seeks a refund from the co-executors's.

Probate Code 11640(c) provides that if debts remain unpaid or for other reasons the estate is not in a condition to be closed, the administration may continue subject to Probate Code 12200. Probate Code 12200 provided that the time for closing administration is within

one year if no federal estate tax is required or 18 months if the federal estate tax is required to be paid; or, give notice of and file a status report. None of that has occurred in our case by Monroe's executors. Under Probate Code 12205 court may reduce compensation of a personal representative or his attorney for delay in closing the estate. Likewise remedial are the final distribution statutes because the Preliminary distribution proceeding distributed more than 50% of the net worth of the Monroe's estate making that excess recoverable per Leader v. Cords (2010) 182 Cal.App.4th 1588 [107 Cal.Rptr.3d 505].

II. SURCHARGE & REDUCTION OF COMPENSATION

22. Paragraphs 1-21 are herein incorporated by reference. Based on the totality of the facts the co-executors have committed conduct and omissions requiring surcharge and reduction in compensation in an amount according to proof or denied altogether. Ex 3

attached hereto and made a part hereof contains no "by order of court" clause. The compensation requests are unwarranted due to delays and unnecessary work and fiduciary breaches considering the totality of facts and circumstances attending the nine-year probate history herein makes the compensation claimed by the executors and his attorneys is unreasonable and unconscionable per In the Matter of the Estate of Gilkison (1998) 65 Cal.App.4th 1443 [77 Cal.Rptr.2d 463]. Because Jane L. Marsh filed notice with the co-executors and the court at the very beginning of this case stating that she would take her rights under the law and not under the will of Monroe her civil cause of action should never have been consolidated on motion of co-executors and the res she gave custody of to Judge Banks Dept C28 should never have been seized from his court. A total denial of compensation is warranted because the amounts are so clearly out of proportion to

the value of the services provided as to be shocking to the conscience of the court and necessary to otherwise prevent total failure to justice to objector.

III. CO-EXECUTORS VIOLATION OF NO CONTEST CLAUSE

23. Because the co-executors filed numerous legal papers challenging Jane L. Marsh's rights to pursue her rights under law, and because the last will of Monroe F. Marsh had a non contest clause prohibiting that, they must be deemed disinherited and not entitled to distribution just like the order they secured from Judge Schulte against Jane L. Marsh, since Equal Protection Clause requires the same.

III. UNCLEAN HANDS

24. Paragraphs 1-21 are herein incorporated by reference. Based on the totality of the facts the co-executors have committed conduct and omissions amounting to unclean hands.

IV. STATUTE OF LIMITATIONS

25. The following statutes bar final distribution: Code of Civ.Proc. 366.2, 366.3, 343, and/or 337. WHEREFORE Objector pray the court sustain their objections and vacate all orders shown to be void by examination of the judgment rolls, and for such other relief the court deems necessary and proper such as requiring a full and complete accounting, or a decree similar to that in Chapman v. Board of County Com'rs of Douglass County (1883) 107 U.S. 348, 360-361 [2 S.Ct. 62, 27 L.Ed. 378], Sweiger supra., or Wells Fargo & Co. v. Taylor (1920) 254 U.S. 175, 189 [41 S.Ct. 93, 65 L.Ed. 205].

Respectfully Submitted LAW OFFICE MICHAEL WEISS

By: _____/s/_____

Michael Weiss. Attorney for
Estate of Jane L. Marsh

CROSS PETITION TO ANNUL VOID ORDERS

Come now Michael Weiss, as executor of Estate of Jane L. Marsh to cross-petition against petitioners

Stephen and Damon Marsh and Stephen Magro as follows. Paragraphs 21 through 25 of the Objections above are incorporated herein by this reference.

I. PRIOR VOID ORDERS AFFECT FINAL DISTRIBUTION AND DISCHARGE

1. Jurisdiction is hereby invoked under the California Constitution Article 6 section 1, the courts inherent equity jurisdiction; and, 42 U.S.C. 1983 to vacate void orders because they affect final distribution and discharge.

There has been no single final order disposing of the consolidated cases.

2. Monroe's distribution plan was irrevocably expressed in his trust deed stating that if either his executors, assigns, heirs or administrators would pay back his underlying debt then such person was entitled to the reconveyance deed pursuant to paragraph 10 and 16 therein. In our case Jane L. Marsh as heir accepted the repayment obligation and accomplished the intent of

the trustor and no stronger proof could exist than complete performance of the trust deed terms. In our case Jane L. Marsh cleared the debt by repaying the lender yet the co-executors in effect kept her money by selling the condo and distributing the proceeds to themselves. The co-executors today cannot be permitted to invoke a waiver of accounting because it would be used to achieve a miscarriage of justice. In our cases trustor Monroe made express clauses providing what would happen if he did not repay. The trust deed was valid and that the executors were incorrect in including the property as an asset in the estate in their inventory. That makes the co's executors liable because the interests of Monroe's devisees were adeemed or abated. There is therefore nothing for them to receive on petition for final distribution rather the personal representatives must be held accountable for wrongful distribution of Jane L. Marsh separate property and the

effect of void orders will be to restore the Irvine condo the Monroe's estate and then to Jane's estate.

3. The remedy provided in *Estate of Taylor (1967) 66 Cal.2d 855 [59 Cal.Rptr. 437]* is appropriate, for how could Jane L. Marsh have a equitable claim to money she already owned? How could Monroe receive a reconveyance deed without repaying his debt?

4. In final distribution proceedings the entire world is called before the court and it acquires jurisdiction over all persons (not just interested parties) in determining their right or interest to any portion of the decedent's estate and that due regard for all persons concerned is contemplated when the statute uses the word persons and not parties that no real party in interest check is required nor authorized since the intent of the Legislature was to eliminate such a background inquiry and instead to preserve that inquiry for a determination on the merits pursuant to an evidential trial determination.

5. "It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity. In order to make a judgment void collaterally a defect must appear either 1. In the legal organization of the tribunal; or 2. Jurisdiction over the subject matter; or 3. Jurisdiction over the person must be wanting; or 4. One or more of these matters must have been lost after it once existed.

When either of these defects can be shown, the judgment and all rights and titles founded thereon are void, even in the hands of a bona fide purchaser. When a judgment is lacking in any of the foregoing particulars, it matters not whether it was rendered by the highest or the lowest court in the land--it is equally worthless. No one is bound to obey it. The oath of all officers, executive, legislative, or judicial compels them to disregard it." Pioneer Land Co. v. Maddux (1895) 109 Cal. 633 [42 P. 295] Objector can prove up existence of void judgments from the trial and appeals court by mere

inspection of judgment rolls although only this courts void orders are sought to be cancelled.

6. In our case Objector today incorporate by reference all prior judgment rolls. And because the the judgment roll is not silent and the facts show an absence of jurisdiction numerous orders are void. Furthermore even when the judgment roll is silent there is no presumption that jurisdiction existed, because where a proceeding is wholly statutory and unknown to the common law the court even though of general jurisdiction is a court of special jurisdiction for that particular proceeding; and, if the jurisdictional facts do not appear of record in such proceeding there is no presumption of regularity. Final distribution proceedings and proceedings to confirm sale of real property are such probate proceedings wholly statutory and unknown to the common law. If the presumption is not applicable, failure of the record in the proceeding to recite a jurisdictional fact does not make

the judgment void because extrinsic evidence is available except however when some statute makes the record the exclusive mode of proof. The following statutes and cases, and others, show that the probate record is the exclusive source: Probate Code 11621 (a) at the hearing it appears that distribution may be made without loss to creditors or to any interested person.

People v. Kopatz (2015) 61 Cal.4th 62, 85 [186 Cal.Rptr.3d 797] and Barry v. Edmunds (1886) 116 U.S. 550, 599 [6 S.Ct. 501, 29 L.Ed. 729]. Klapprott v. U.S. (1949) 335 U.S. 601, 609-610 [69 S.Ct. 384, 93 L.Ed. 266] held that a judgment is void if the hearing of evidence is a prerequisite to rendition of a valid judgment in a denaturalization proceeding, and no evidence is offered at the trial. Probate Code 10621(a) [Probate Code 10310(a) not applicable because will of Monroe was never offered into evidence] Probate Code 10310(b) no inquiry was made but was required by the statute. When

the court order says neither Weiss nor Jane L. Marsh own interest in the Irvine property or other property, without spelling out the facts which existed it to support it at the time of the hearing that order is void if any part of the judgment roll shows otherwise that they do in fact own property that never belongs in Monroe's estate. In our case the reporter's transcripts of 1-11-17 (Prelim. Distribution hearing) and the RT of 6-30-15 (proceeding to confirm sale of real property) reveal the total absence of any evidence that was presented at the time of the hearing as required by the Kopatz and Barry cases supra and hence there was actually no evidence which the court could exercise discretion upon. Probate statutes delimited and circumscribed the general jurisdiction of the court under Cal Const. by providing that "upon the hearing" the court must examine into specified facts; and that if it appear to the court after hearing and exam that the facts exist and it shall make the order.

7. 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 orders founded upon it are legally worthless. It neither binds nor bars anyone. 3rd parties who are necessarily affected by the void judgment may be protected from its application." That is the reason why Objector have standing to raise the issue of void judgments in the opposition to the petition for final distribution because their property was never Monroe's property and the court sitting in probate simply had no subject matter jurisdiction of their separate property interest nor can it distribute Estate of Jane L. Marsh's community property interests to Monroe's devisees.

8. In our case no probate decree can make valid that which statute has made void. In our case family code 1100(a) prohibits absolute testamentary disposition by Monroe and under subsection (b) prohibited Monroe's

giving away of \$821,000 to Steven Marsh and members of his family without Jane L. Marsh's prior written consent. Probate Code 100 (a) prohibits distribution of Jane L. Marsh's community property interests. Probate Code 6400 and 6401 (a) prohibits distribution of Jane L. Marsh's intestate share of her husband's community property which he never effectively disposed of in his last will. These and like statutes prescribed conditions of ownership established by statute.

9. Probate distribution decrees do not create new estates in fee; because they simply ministerially distribute what the decedent owned as of the date of his death. Hence the preliminary distribution of Jane L. Marsh \$640,000 and her community property interests continue today to be burdened while in the hands of others with her ownership interests. Likewise Mr. and Mrs. Yi the purchasers of the Irvine condo having knowledge of Jane L. Marsh's property interests remain burdened with

such interests. Void orders do not create res adjudicata nor any preclusion under the law of the case doctrine. Therefore it is best to clear out void orders here and now.

Estate of Jane L. Marsh demands the Irvine condo back which means a return of the \$980,000 purchase price.

10. Because Jane L. Marsh \$640,000 separate property was used to acquire the trust deed interest of Monroe, that she was the owner of it and therefore Monroe's co-executors were just constructive trustees for her.

11. Objector have standing once they allege a concrete injury fairly traceable to Monroe's co-executors unlawful conduct which is likely to be redressed by the requested relief sought. The injury to the Estate of Jane L. Marsh was a cloud cast upon her property interests as a direct result of the order confirming sale and the distribution order distributing her money interests could be remedied by an order vacating such orders. Michael Weiss as sole devisee and heir of Jane L. Marsh has standing to object

to the cloud on the title he succeeded from his mother as well as the fact that he loaned the \$640,000 to Jane L. Marsh.

12. A judgment is not res adjudicata, nor law the case, as to issues that were not, and could not, be litigated. The trial and appeal court rulings that Michael Weiss individually or as executor for Estate of Jane L. Marsh lacked standing precluded the Objector from objecting to any evidence, trying any issues, and making this principle of law appropriate today.

13. When a court sees a void order it has a duty to set aside. Courts do not have discretion to decline to vacate void judgments.

14. Objector who was compelled by the appeals opinion in G044938 to resort to the probate court and hence had every right to expect it will have sufficient resources available to process matters in a timely fashion and in the event the system fails the Taylor remedy is

appropriate (Estate of Taylor (1967) 66 Cal.2d 855 [59 Cal.Rptr. 437]) to prevent forfeitures, and to uphold the intent to the testator that swift distribution be made and the public policy of California which is the same per Estate of Justesen (1999) 77 Cal.App.4th 352, 355-356 [91 Cal.Rptr.2d 574]. The jurisdiction of a court can never depend upon its decision on the merits of the case but rather upon the right and authority to hear and decide it at all which is one challenge herein.

15. In our case all enforcement proceedings based upon a void order or judgment are likewise void and without authority. Enforcement was by way of application of law of the case or res adjudicata or by writ of possession etc.

16. The orders of preliminary distribution are void because nowhere in the two (not just one) petitions for preliminary distribution was there any factual allegation that distribution can be made without injury to the rights of creditors or other interested persons, namely Jane L.

Marsh's \$640,000 separate property interest or her other property interests, nor of Michael Weiss subrogation rights and interests. The exact same objection applies to their petition to confirm sale of the property because never once did the co-executors advise the court that it was Jane L. Marsh's \$640,000 which eliminated the trust deed upon it. Nowhere in any of the co-executors petitions have they factually negated Jane L. Marsh's Moore-Marsden claims or other rights under the law she invoked.

17. In our case judge Schulte's 11702 order did not grant possession of the Irvine condo to Monroe's co-executors; rather it determined that Jane L. Marsh had no right to present possession but left open for another day her rights under the law she was invoking. Judge Didier's 850 summary judgment minute order determined Jane L. Marsh had never claimed transmutation and therefore could make no claim to the Irvine condo. Those 2

judgments where the grounds that Monroe's co-executor attorney went to the sheriff's office to demand execution of a writ of possession. The 11702 order was void because the statute required such order to identify the names of the persons entitled and the percentages each was to receive but it did not and therefore failed to comply with statutory requirements. The 850 summary judgment was void because there was no full and fair hearing. Judge Didier had no time to read all the material between 2:30 pm on one day and 9:00 am the next. Furthermore in chambers he ruled on evidential objections although the Code of Civ.Proc. statute required that objections be made and ruled upon in open court; and furthermore the formal summary judgment order contained numerous adjudications about service of process never adjudicated by Judge Didier in his minute order. Once inside the Irvine condo Stephen Marsh took 2 brand-new wallets of Michael

Weiss, his Loyola-Marymount College ring, his Jade ring, and Jane L. Marsh's copies of tax returns, Jane L. Marsh's heirloom watch that she received from her mother, a painting by Ann Whitaker who was her and Monroe's friend and a lot of other separate property of both Jane L. Marsh and Michael Weiss that they never accounted for. All of the separate property of Michael Weiss and Jane L Marsh inside the Honolulu condo was also taken by Stephen Marsh and not accounted for. All the checks made payable to Monroe which Weiss gave attorney for Co-executors was never accounted for.

18. Objector only seek to void out orders; and, not rehash the merits of any determination. Some facts are alluded to show the state of mind of the co-executors for purposes of surcharge, not re-determinations.

19. The Probate Code scope of judgment roll is quite broad and included Jane L. Marsh's pleadings which showed clearly who purchased the \$640,000 cashier's

check what it was used for who cashed it and hence shows that the court sitting in probate had no jurisdiction over it to distribute it as it did in the Preliminary distribution order. Statutes giving permission to file motions to vacate are merely express recognition of the court's inherent equitable constitutional authority to vacate void orders. Void judgments include those which violate constitutional clauses all of which objector can and will prove up. .

20. Under Probate Code 10954 personal representative is not required to file an account if each person entitled to a distribution from the estate executed and filed waiver of account or acknowledgment that the person's interest has been satisfied. If the person entitled is an estate the personal representative must file the acknowledgment and Weiss never filed such an acknowledgment on behalf of Estate of Jane L. Marsh. Therefore the waivers are account are insufficient and account in full is

requested. This because under Probate Code 100 Jane L. Marsh has a community property interest and under Probate Code 6400 she has intestacy interest.

21. There can be no final and effective settlement or distribution of a decedent's estate if the executor sold property belonging to the decedent not in accord with the requisites of state statute, which in our case refers to the deed given to Mr. and Mrs. Yi because that deed never stated that it was executed pursuant to court order.

22. In rem jurisdiction acquired by seizure of property is not an absolute jurisdiction to pass upon the question of title; but, rather conditional jurisdiction to pass upon the question of title after notice and opportunity to be heard is given not only to the owner but all interested persons. Whenever a person is assailed in his person or property he must be given the right to defend himself and that is a principle of fundamental justice to be recognized

under U.S. Constitution article 4 section 2 interstate
privileges and 14th Amendment Due Process clause. In
our case the co-executors petition alleges that no such
action was ever filed by Jane nor Weiss and that is a
false assaignment giving standing to Estate of Jane L.
Marsh and Weiss to defend against. In our case
proceedings without such adherence to fundamental
principles are merely edicts of a sovereign that are
arbitrary and have no preclusive effect whatsoever.

23. Code of Civ.Proc. 430.10 requires that material facts
necessary to court determination must be specified with
particularity specificity and precision because that
assures the court will not render a mere advisory opinion;
hence because the Preliminary distribution petition was
sought without such specificity particularity and precision
it fails to state a viable pleading. No such precision was
found in the co-executors to petitions for preliminary
distribution etc. nor in their petition for final distribution.

There is no particular specific or precise fact alleged
which made Jane L. Marsh \$640,000 separate property
cashier's check property of Monroe.

24. A change in the form of separate property affects
neither the character of the property nor the respective
rights therein. In our case Jane L. Marsh \$640,000 was her
separate property but it was unlawfully made a part of
Monroe's estate. It never changed its character as
separate property nor her rights to it. The scope and
purpose of the Jane L. Marsh's civil and subsequent
probate petitions was not the recovery of a debt against
Monroe's estate, but to enforce her right to acquire the
Irvine condo and only alternatively for money
reimbursement both of which had found their way into
the hands of monroe's co-executors. She was
compelled, from the complex nature of the case, and
the kind of relief sought, to go into a Court with Equity
jurisdiction. The Irvine condo and its proceeds

constituted no part of the assets of Monroe's estate. Because Monroe's co-executors did a wrongful act, then they, by their act, consents that they may be treated as a debtor or trespasser, at the election of the fiduciary beneficiary. Either party, by consent, express or implied, may place it in the power of the other to change the fiduciary relation. From the just and legitimate application of these principles, it follows that Monroe's co-executors should never be permitted to defeat the rights of Estate of Jane L. Marsh, so long as it is possible for a Court of Equity to enforce them. "If one man," says Lord Eldon, (15 Ves., Jr., 442,) "mixes his corn or flour with that of another, and they were of equal value, the latter must have the given quantity; but if articles of different value are mixed, producing a third value, the aggregate of both, and through the fault of the person mixing them, the other party can not tell what was the value of his property, he must have the whole." Gunter v. Janes

(1858) 9 Cal. 643, 660. This third value or "new value" principle has also been recognized in Alvarez v. Smith (2009) 558 U.S. 87, 95 [130 S.Ct. 576, 175 L.Ed.2d 447]. \$980,000 is the new or third added value of Jane's \$640,000 since the latter produced the former. The alternative 10% legal rate of interest on the \$640,000 would likewise be Estate of Jane L. Marsh's separate property since it alternatively is just a part of its fruits and profits. This case involves but a single matter, and that is the true condition of the estate of Monroe F. Marsh, which, when ascertained, will determine the rights of the interested persons. In this investigation all the interested persons are jointly interested. It is true the cross-petition seeks to open the orders of the Probate Court as fraudulent, and to cancel the receipts from the devisees and the deed transfer to the Yi's, because obtained by void orders and false representations; but the determination of these questions is necessary to arrive at

the proper value of the estate.

25. The questions presented include the following: On the merits and as applied to the facts and evidence in this case do specified principles of fundamental justice under the U.S. Constitution Equal Protection Clause, prohibit this court from granting final distribution of property not belonging in the Estate of Monroe F. Marsh to the injury of Objector. As a question of law could this court under the U.S. Constitution Equal Protection Clause deny or ignore principles of lack of standing without considering proffered material changes in law and facts occurring since the time of prior orders; and, without prior but currently operative, incurable facts/law.

26. For review include, but are not limited to, the following orders of this court: the orders granting preliminary distribution, the orders confirming sale of real property, and the order dismissing Jane L. Marsh's 1st amended civil complaint. Complaint is limited to the

invalidity of such orders, not their status as erroneous or correct, save for purpose of showing invalidity as a matter of judgment roll examination.

27. Weiss complained as follows about being unable to recover separate property that never belonged in Monroe's estate,

RT OF 6-30-2015 [TO CONFIRM SALE OF REAL PROPERTY] [Pages 5:10-12; 6:19-23; 8:19-22; 19:26 thru 20:1; 21:10-13; and 24:14-20 and 23-25:4] THE COURT: YOU DON'T HAVE STANDING. WHAT'S THE BASIS FOR STANDING? MR. WEISS: THAT'S MY \$640, 000. MR. WEISS: BECAUSE JANE BORROWED 640, 000 FROM ME TO PAY THE REVERSE MORTGAGE ON THIS LAND. SHE WAS GIVEN A DEED, A RECONVEYANCE DEED. I CURRENTLY HOLD THE ORIGINAL OF THAT RECONVEYANCE DEED. THAT DEED IS PART OF THE CHAIN OF TITLE. THEY DIDN'T EVEN OFFER TO PAY ME THAT 640, 000 THAT I WORKED 30 YEARS AS AN ATTORNEY TO GET. THAT'S MY MONEY. THAT HAS NOT BEEN PAID BACK. I HAVE SUBROGATION RIGHTS UNDER JANE, MY MOTHER. MR. MAGRO: BUT -- FURTHERMORE... FURTHERMORE, WE WOULDN'T TAKE IT UNDER ANY CIRCUMSTANCES. MR. WEISS: SHE LEFT EVERYTHING TO ME INCLUDING THIS \$640, 000 MATTER. MR. WEISS: I DO HAVE THE COURT OF APPEAL OPINION. AND I GAVE IT TO YOU IN THE FORM OF THE OBJECTIONS. AND THIS IS THE COURT OF APPEAL OPINION AT 938, "WE EXPRESS NO OPINION AS TO THE SUBJECT OR STATUS OF ANY CLAIM BY JANE FOR REIMBURSEMENT FROM THE ESTATE FOR THE \$633, 061 ALLEGED TO HAVE BEEN USED BY JANE TO PAY OFF THE

REVERSE MORTGAGE." AFTER THIS OPINION CAME OUT, THERE WAS A MOTION TO REOPEN THE HEARINGS AND TO MAKE THE CLAIM FOR REIMBURSEMENT. THERE WAS A CREDITOR'S CLAIM FILED AT THE BEGINNING THAT CLAIMED IN THE ALTERNATIVE, EITHER GIVE ME THE \$640,000 OR GIVE ME THE TITLE. YES, THERE CERTAINLY HAS BEEN DEMANDS FOR REIMBURSEMENT. THEY HAVE NEVER TENDERED THE 640 BACK, LET ALONE GIVE ME THE 640 BACK.

REPORTER'S TRANSCRIPT OF PROCEEDINGS TUESDAY, JANUARY 11, 2017 [PRELIMINARY DISTRIBUTION]

[Page 6:11-13 and 7:1-4]

MR. WEISS: NUMBER 2, JANE HAS HER OWN CREDITOR'S CLAIM AS WELL AS A CLAIM TO TITLE. IT WAS JANE WHO PAID THE \$640,000 MORTGAGE. I WAS THE ONE WHO LOANED JANE \$640,000. THEY NEVER REPAYED THAT 640,000 YET THEY WENT AHEAD AND SOLD THE PROPERTY AND NOW THEY WANT TO GIVE IT (the proceeds) TO THEMSELVES AND THEIR ATTORNEYS.

28. See also Exhibit "1" attached hereto and made a part hereof, which contain the \$640,000 cashier check as parts of the judgment roll, referred to as the Irvine condo acquisition documents.

29. Objector challenge the dismissal of Jane L. Marsh civil cause assigned to Judge Banks for all purposes because the Court sitting in probate had no subject matter jurisdiction over its res to begin with, because (1) Calif.

Constitution Art 1 Sec 26 in conjunction with Calif.

Constitution Art 6 section 4 prohibited it since the res of Jane L. Marsh civil claim was already in Judge Bank's Dept C28 and (2) the Law Revision comments behind Probate Code 7050 and 17001 required trial probate court jurisdiction to arise under a properly filed petition in probate and hence no statute authorized its dismissal by the court sitting in probate. Cal. Rules of Court 3.300(h)(1)(D) did not authorize dismissal as that rule was violated because Presiding Judge of Orange County Superior Court did not rule on co-executors Notice of Related Case. If the court sitting in probate had no original jurisdiction then neither did the appeals court which affirmed the dismissal; and even then the G044938 opinion expressly left unresolved the \$640,000 reimbursement issue.

30. Jane L. Marsh and Weiss sought to recover back their separate property and wanted nothing to do with

property legitimately belonging only to Monroe; but, it was Monroe's co-executor Stephen Marsh that included property to the extent of \$1.3 million that never belonged to Monroe or in his estate. Jane L. Marsh filed with the co-executors and the trial court a notice of election to take her rights under the law and not under Monroe's will which made Monroe's will completely irrelevant to her claims.

31. Weiss challenged jurisdiction in the probate proceedings for preliminary distribution and to confirm sale of real property because the remittitur's had not been issued before the trial court made the orders. If the sale of the real property was invalid then distribution of its proceeds is invalid. The remittitur is the device whereby jurisdiction is restored to the court; and, even if the sale was valid the distribution was invalid because it distributed Jane L. Marsh's \$640,000 separate property used to terminate the trust deed on the property and her

interests in other community accumulations. Under Probate Code 695(a) Jane L. Marsh "irrevocably" elected to take her rights under the law and not under her husband's last will and hence she could never lose the license to occupy the Irvine condo given by her husband in his last will. Jane could not lose that which she disclaimed any more than she could lose \$640,000 of her separate property acquired after the death of Monroe which the court and the co-executors knew was used to acquire acquisition of the Irvine condo. The appeals court affirmed the lack of standing issue which was not on the current merit facts per Estate of Nicholas (1986) 177 Cal.App.3d 1071 [223 Cal.Rptr. 410].

32. The very first demurrer to her civil complaint did not, as contended by Monroe's co-executors, establish what Monroe owned during the marriage and consequently that as of the date of the confirmation of the sale Weiss lacked any interest in Monroe's estate. That contention is

so far removed from the law of demurrer as established under Keidatz v. Albany (1952) 39 Cal.2d 826 [249 P.2d 264] and Goddard v. Security Title Insurance & Guarantee Co. (1939) 14 Cal.2d 47 [92 P.2d 804] as to show intentional infringement of the equal protection clause because demurrs establish only that a pleading did not presently state a viable cause and nothing at all established as a matter of fact on the merits because there was no evidentiary hearing to begin with. To conclude by way of a ruling on a first demurrer that because Monroe kept his property separate during the marriage it stayed that way forever omits to acknowledge what he lost after his death by his default by not repaying his trust deed before his death. And to say that Monroe kept everything separate during his marriage did not dis establish the California Moore-Marsden law that Jane acquired after his death.

33. Monroe's co-executors got Judge Hubbard to grant

their motion to declare Weiss a vexatious litigant but the Court failed to acknowledge this was their 2nd motion to have Weiss declared a vexatious litigant and the court had knowledge of lack of subject matter jurisdiction because Code of Civ. Proc 1008(b) & (e) jurisdictionally barred consideration of any 2nd prefiling motion without a declaration from the co-executors as to which judge heard and adjudicated their first motion for a prefiling order. Judge Johnston's separate pre filing order was void because it was issued by him without ever hearing the motion in the first place and likewise he could have no jurisdiction under Code of Civ. Proc (b) & (e). Judge Hubbards 22 page pre filing order version was void because it was not on a CRC form and because she as before stated had no jurisdiction due to Code of Civ. Proc 1008(b) & (e). Judge Hubbards minute order version was void for the same reason. Only Judge Johnston's order was on a proper CRC form. They are all void orders

that must be annulled.

34. The preliminary distribution order finds that Weiss lacked standing; but, not Weiss, as Executor of Estate of Jane L Marsh his client, and so that opinion adjudicates nothing against the Estate of Jane L Marsh.

35. It was undisputed that Jane with Michael's help paid off the reverse mortgage which belies this courts conclusion that neither she nor Weiss ever had standing to recover same from unlawful inclusion in the co-executors distribution scheme.

36. The 850 summary judgment holding that Monroe's estate held title to the Irvine residence is impossible as a matter of law because estates are not legally organized entities and are incapable of holding anything and secondly because Probate Code 7000 already vested whatever ownership Monroe had in his devisees and heirs "subject to" the rights of others such as those seeking to recover property not legally belonging in the

decedents estate namely the Irvine Cond and other community accumulations. Probate Code 13540 was applicable to Jane L. Marsh because it does apply to separate property interests as revealed by the Law Revision Commission comment behind that section which says that affidavits are used to fill gaps left open in the chain of title. Those included a Moore-Marsden interests (*In re Marriage of Moore* (1980) 28 Cal.3d 366 [168 Cal.Rptr. 662], *In re Marriage of Marsden* (1982) 130 Cal.App.3d 426 [181 Cal.Rptr. 910]; and, title interests due to ownership transmutations under *Estate of MacDonald* (1990) 51 Cal.3d 262 [272 Cal.Rptr. 153]. In our case the undisputed judgment roll evidence shows that Jane L. Marsh acquired her 7.5% Moore-Marsden interest and the rest by virtue of Monroe's trust deed paragraph 10 and 16 which were sufficient as a McDonald, *supra* ownership transmutation of interest.

37. There was never any fact or law that was fatal to

pursuit of Jane L. Marsh's claims under the law and equity she was invoking.

38. The distribution scheme was the first time the co-executors sought to keep Weiss and Jane's money and other property interests for themselves. No accounting theretofore revealed what debts remained for payment which might have required resort to Jane's community interests. No reasonable likelihood of remedy would be justifiable if there was a fatal fact or law; but, not because of a demurrer sustained on the very first challenge to Jane's failure to state a claim procedurally or substantively. Standing does not go to the existence of a cause of action; but, rather to the reasonable likelihood of pursuing a cause of action or defense whether the one stated; or, one possible of amendment. Code of Civ.Proc. 367 says that every action must be prosecuted in the name of a real party in interest except as otherwise provided by statute. Probate Code 48 is a

statute that otherwise provides because that statute says nothing about "parties" but rather "persons". In our case there is a real injury regarding distribution of \$1.3 million of Jane's separate property that never belonged in her husband's estate. The facts and law have changed in our case and should be reconsidered because they presently cause miscarriage of justice. It is always the facts and in particular any new facts or new law and not just whether the same trial case number is involved. The US Equal Protection Cl, and the California Constitution Art 6 sec 1, requires this court to make its own separate independent inquiry about void orders in order to prevent miscarriage of justice. The law of the case applies to demurrers as well as motions but there must be a fatal fact or law that has been adjudicated upon sufficient evidence by a court with competent jurisdiction after a full and fair hearing which never happened in our case.

39. A point decided is the principle of law decided; and, that if a decision can be made on one principle of law its preclusive effect is so limited and even then only if evidenced by facts supporting that principle of law coming from a court with competent jurisdiction after a full and faire trial and with power to render the particular order, none of which occurred in our case. When as in our case Monroe's trust deed can be ground of decision, it is irrelevant that the court adjudicates instead upon MERS reconveyance deed and opines that Monroe continued to hold a fee title. However when a reconveyance stems from trust deed terms it does require the court to interpret its terms and conditions. In our case never once have paragraphs 10 and 16 of Monroe's trust deed been construed; rather only "general" adjudications and questions of title adverse to Jane L. Marsh and Michael Weiss have been made. But even if the principle of law was upon a rule of property, it

must be overturned if to perpetuate the principle would result in miscarriage of justice because every California court has inherent equity jurisdiction power to retain and recall its prior void orders. Never have the words "subject to" in Probate 7000 been interpreted as applied to Jane L. Marsh. Nor have Jane's claims of injustice been settled; nor, whether the court is consciously perpetuating error resulting in continued miscarriage of justice. When exercising such equity jurisdiction a court does not overturn its prior decision nor the Court of Appeals decision. Rather under a new set of facts or law it determines that to apply the old principle of law or law of the case, would result in a miscarriage of justice due to void orders.

40. In our case the point decided in each and every one of the prior probate orders was the right of Monroe F. Marsh co-executors to possess a general mass of property for the purpose of probate administration

except their past and present petitions for distribution which unconstitutionally distributed and seek further distribution of that mass of property.

41. The equal protection of the laws, which, by the fourteenth amendment, no state can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public. The equal protection of the laws--the spirit of common justice--forbids that one class should, by law, be compelled to suffer loss that others may make gain. The rights are basically the same whether considered under the US Privileges and & Immunity article or the 14th Amend. The Equal Protection Cl is applied to the Judiciary in our case as well as to Monroe's co- executors under Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565] and it was so violated.

42. Court orders which place a penalty, for failure to make good a claim or defense, the burden of which is so great as to intimidate Weiss from asserting that which he believes in to be his and Estate of Jane L. Marsh's rights, when no such equal penalty is imposed on others, infringes on their Equal Protection clause rights. Jane L. Marsh's Accounting Appendix attached to nearly all her petitions in probate clearly showed that about \$821,000 of community accumulations were distributed to Monroe F. Marsh's co-executors Stephen Marsh and members of his family by Monroe while alive without her prior written consent; and that her \$640,000 separate money, was acquired after Monroe's death. All of her community interests have been distributed or are currently requested to be distributed to Stephen Marsh and his family. The only money Jane received from Stephen Marsh was the \$70 he took out of Monroe's wallet on the day after he died. In our case those and other judgment

roll facts show attempted financial destruction of Jane L. Marsh, her estate, and Weiss. There is more to this case than simple money or property at stake due to court enforcement of 3 prefiling orders issued without subject matter jurisdiction. Weiss has been stigmatized, and remains subject to criminal contempt if he attempts to pursue claims in violation of those void prefiling orders.

43. Equal protection clause challenge could not have been made before due to absence of a clear showing of disparate intent. Now the disparate impact is sufficient to show such intent. Also fear of retaliation by the judiciary and Monroe's co-executors precluded such a challenge. What may have been only prior mistakes had turned into intentional discrimination by the time of preliminary distribution. That is why this petition is filed to raise grounds not previously presented such the Equal Protection Clause.

44. The title VII principle that once an employer offers an

explanation for racial discrimination the plaintiff need only prove the explanation is pretextual because the first inquiry of McDonnell Douglas Corp. v. Green (1973) 411 U.S. 792 [93 S.Ct. 1817, 36 L.Ed.2d 668] has been bypassed by the defendant himself, has been applied to the Batson v. Kentucky (1986) 476 U.S. 79 [106 S.Ct. 1712, 90 L.Ed.2d 69] context of discrimination in selecting jurors. If that principle is applied to our case once the Court and/or Monroe's co-executors relied up upon its prior decisions as permanently barring any standing by Weiss all he has to do is to prove that those prior orders were used as a pretext to cover up infringement of the equal protection clause. And Objector herein has done so for two reasons: (1) the equal protection clause of the United States Constitution itself does not permit standing determinations to be based upon rigid, inflexible, *per se*, categorical facts or law which are not fatal in and by themselves and (2) there is no adequate and

independent state ground of decision because California's law in the probate context defines each proceeding in probate as a separate distinct and independent hearing and that the Res at issue in one proceeding is not necessarily the Res in the next proceeding and that use of stale information from one proceeding to the next is no good either. The jurisdiction of court sitting in probate depends upon the Res that is currently before the court brought to it under an appropriate petition specifically and particularly identifying same. The property res may decrease or terminate from petition to petition; or, from property status to a persons legal status. The preliminary and final distribution petitions involve money never inventoried, nor accounted for in Monroe's estate as Monroe's devisees all filed waivers of accounting. The request for attorney fees relates to facts occurring from inception of attorney relationship making the rebuttal evidence and

cross-petition available to those prior years. Unaccounted for are the proceeds of the sale of the Honolulu condo, see Ex 2 herein, and Objectors personal property therein and Jane's Moore-Marsden interest therein.
45. The res before this court thus unlawfully included Jane's \$640,000 and her estate had standing to challenge the distribution of her separate property because it never belonged to Monroe and it never belonged to his devisees by gift from Monroe. In the probate context once a "party" always a party and hence always entitled to notice as a party in subsequent proceedings. Party status could have been terminated by dismissal of Jane L. Marsh or her estate, and of Michael Weiss out of the probate matter altogether as contrasted to just orders denying standing in various proceedings along the numerous stages of probate administration; but, in our case there was no such

dismissal by any trial court of any party from the probate matter rather just orders that they have no standing in various stages of the single probate matter.

46. It must be remembered that Jane's \$640,000 was the res that she brought herself to the custody of Judge Banks' department C28 in her civil case as well as bringing the Res of all other of her other separate property to department C28 as well as all of her interests in the community accumulations. It is beyond cavil that one court should never seize the Res in the custody of another court and if comity is not respected, and if the mandatory and prohibitory clauses of California Constitution Art 1 Section 26 and Art 6 Section 4 are not respected, an annulment order must issue due to absence of any adequate remedy at law. Such is requested today. Such intentional seizure and distribution of said res from Dept C28 is probative of a violation of the equal protection clause of the United

States Constitution. Probate Code 17002 specifies that if Jane was not permitted to participate in the proceeding that her interests are not affected indicating that she retained her interests and status as a party although she could not participate because her pleadings were demurred to or stricken and that Weiss' was tardy.

47. Objector had no occasion to rebut stale information in this probate matter in California per Estate of Nicholas (1986) 177 Cal.App.3d 1071 [223 Cal.Rptr. 410] because the probate inquiry depends on information current as of the date of a hearing; and, such error could not be harmless because there could be no comparative analysis of current information by which to measure the consequence of the error. Just as knowledge is the opposite of mistake, so is intent to withhold current information and instead use stale and currently incorrect information. The question as to how the co-executors of estate of Monroe F. Marsh came to acquire the \$982,000

proceeds from the sale of the Irvine condo without having to repay Jane L. Marsh \$640,000 used to eliminate the trust deed upon it, was a matter of "substantial consequence" as those words are used in evidence code 455, as well as in equal protection clause analysis as well, just as was the matter of the state of mind of those distributing the same and preventing standing to hear any complaint concerning it. Monroe F. Marsh never owned the \$640,000 and his executors never inventoried the \$640,000 as belonging to Monroe either. The jurisdiction and power of a court sitting in probate extends only to property belonging to a decedent. It is a violation of the United States Constitution due process clause for a court sitting in probate to distribute the property of a living person. There was zero evidence to refute the evidence showing who purchased the \$640,000 cashier's check; who cashed the cashier's check and why. A judgment contrary to the only

evidence of record in the judgment roll shows an absence of the court's jurisdiction as a matter of law. That evidence is found in Exhibit "1" herein and in the RT's of 1-11-7 and 6-30-15 quoted herein. Judge Belz admitted at both the proceedings for preliminary distribution and to confirm sale of real property that he was not familiar with any prior appellate opinions which might affect his ruling on their proceedings.

Corroborative evidence of intent by the Judges of the Probate Department to deny equal protection of the laws was shown by the additional following judgment roll facts: The co-executors won every time during the last 8 years save for one motion.

48. The probate department singled out Weiss as a class of one based upon his legal status as a permanently barred stranger to the probate matter due to its prior orders regarding lack of standing affirmed by the appeals court. This is because they were individual status

determinations divorced from the present facts and law. No other case in California prejudgets lack of standing under circumstances similar to our case; prejudgetment is a structural defect, and prevents a full and fair hearing. The circumstances being that (1) no fatal fact or law has been determined to exist (2) because new facts and law were proffered and (3) because \$1.3 million miscarriage of justice was shown.

49. It was obvious that the drawing of lines for purposes lack of standing and prefiling orders, were to fence Weiss out any kind of participation in these and future probate proceedings. The supplemental final distribution petitions emphasize this point due to connection to the characterization of final distribution proceedings as a "mere formality". Previously in our case Jane L. Marsh's petition to compel Monroe's co-executors to properly perform their official duties was immediately dismissed by Judge Hubbard who opined Jane had no standing to

make such complaint which is probative of her state of mind. In our case Monroe F. Marsh co- executors continually classified Jane L. Marsh's election to take her rights under the law and not under Monroe's will as bizarre. This Court continually classified nearly all of Objector pleadings and motions as frivolous and sanctionable and made other disparaging remarks against Weiss as an individual.

50. Because this courts decisions were based on grounds irrelevant, Objector was denied equal protection of the laws whether the equal protection clause test is the compelling state interest test or the rational relationship test; and, both standards are alternatively invoked herein. In our case Probate Code 48 on interested persons standing specified its requirements in terms of a person having a property interest or a money interest in the decedent's estate that "may" (not must) be adversely affected; but, even such grounds are

irrelevant to standards under the United States Constitution Equal Protection Clause. In our case this clause standing requirements are focused on a court, or other State Actor, namely intentional refusal to provide equal protection to persons before it. It's a dignitary infringement not a money or property infringement. Objector has made out a *prima facie* case of discrimination by showing that the impact disparity originated, at least in part, in a selection process against Weiss where subjective judgment rather than objective criteria was the basis of decision. In our case the Court has displayed its intent to deny Michael Weiss and Estate of Jane L. Marsh equal protection of the laws because it did not want to know the objective current facts and closed its eyes, ears, and mouth to such facts. Intentional conscious disregard of objective current facts displayed intent to deprive Objector of the equal protection of the law. When a statute requires a court to be satisfied that

a matter exists, mere assumption by the judge that the matter exists is not sufficient because the word "satisfied" means the fact must "appear in the record." That record is insufficient in our case.

51. The equal protection which the constitution secures is the reign of just and equal laws, not the reign of men; and, this is because the law is the definition and limitation of power of government and not the men elected to administer it.

52. Based on the nine-year history of this Court granting and affirming everything Monroe F. Marsh co-executors have done and condemning everything Weiss has done shows disparate impact, intent; and, that no level playing field exists in the Probate Department of this court for Weiss or Estate of Jane L. Marsh.

53. Because discrimination is barred by the United States Constitution, no state may induce, encourage or promote private persons to accomplish what is

forbidden to it thereunder; but, in our case it did. Any State which supports discrimination through any arrangement, is forbidden. Any form of a court order that is used to facilitate, reinforce and support private discrimination is forbidden under the equal protection clause. The existence of a permissible purpose cannot alone sustain an action which also has a severe impact of discrimination because it was pretextual as shown herein.

54. In our case there was significant State Actor assistance to an equal protection clause violation in numerous forms, including but not limited to money sanctions and the benefit of rulings on petitions made without sufficient time to read them. See Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565]. United States citizens as well as "persons within a state" must be able to defend themselves; and, in our case Weiss is such a

person individually and as executor of Estate of Jane L. Marsh. It was Monroe F. Marsh's co-executors who were the plaintiffs bringing their two petitions for preliminary distribution etc as well as bringing their petitions to confirm sale of real property. Objector herein was thus functioning as defendant. Continued finance by this court, by way of compensation and attorney fees, of co-executors Equal Protection Cl infringements, is a threat to not only the government of California but the United States of America.

55. A property owner is never a property claimant of her own property. In our case the judgment roll shows that the court had knowledge that the \$640,000 was loaned to Jane L. Marsh as did the reporter's transcript hereinbefore quoted. It was a intentional refusal to consider what the current judgment roll showed, as well as the prior judgment rolls showed. Those prior judgment rolls showed that the very first words out of Monroe F.

Marsh's co-executor Stephen Marsh's mouth to Weiss was that Monroe F. Marsh had no equity in the Irvine condo. Likewise they showed that Monroe F. Marsh gave away \$821,000 of community accumulations from the \$5.1 million trading of stocks which he did during the marriage to Stephen Marsh and members of his family.

56. Objector herein have standing to complain because the facts show a real and not a hypothetical controversy involving adverse parties and legally protected interest. The protected interest is that under the United States Constitution equal protection clause.

57. This courts orders have made plain and obvious that the only contest was between the Court and Weiss. The Court violated the equal protection clause by restructuring the probate process in a way that adversely affected Weiss individually and as executor of Estate of Jane L. Marsh, as a person and concerning his and Jane's property. It also eliminated a fully informed basis

to adjudicate any future contests. It preempted itself from exercising currently informed discretion. That results in not only structural defect; but, in a self perpetuating arbitrary, capricious and discriminatory, probate process.

58. In our case the totality of circumstances show that one order permanently affects all others in a per se, inflexible, and categorical, manner without any fatal facts/law. The 3 void prefiling orders were likewise connected and enforced to make concrete the destruction of Weiss after taking all of Weiss' money and leaving none to hire new attorneys. Within the last month Weiss attempted to hire a half dozen attorneys to carry on but they all wanted much money.

59. This Courts attempt to thoroughly discredit Weiss and his legal theories is another fact probative of the Courts intent to deprive Objector of the equal protection of the law and deny access to court to defend himself and his client.

60. The United States Constitution 14th amendment required conformity with inherent principles of justice and forbid that one man's right to property shall be taken for the benefit of another without compensation. Property to be recognized under the Constitution must be legally acquired as between living persons by contract or otherwise. The rights and privileges of acquiring, holding, and selling property also include the right to make contracts concerning that property. As applied to our case this refers to the Monroe F. Marsh trust deed and Jane L. Marsh's right to acquire whatever title her husband had when he executed it. The Court never pretended to interpret the terms and conditions of that trust deed but opined Monroe continued ownership without regard to his default and the other terms of his trust deed and Civil Code 2941(b)(1)(B)(I). One cannot separate a reconveyance deed from the terms of the trust deed; and to do so, is an equal protection clause

violation because protection must be given to all the instruments that make up one transaction, not because it was Weiss who was making that objection.

61. Because the RT's in the proceedings for preliminary distribution and to confirm sale of real property, shows as a matter of fact, that the trial order was grounded on zero evidence produced at the time of hearing, then only the "validity or invalidity" of those orders remains to be resolved itself as a matter of law today.

62. To assume the existence of validity, like assumptions regarding substantial evidential support, remain just that: an assumption, and assumptions are not evidence and could never support any subsequent preclusion.

Assumptions are the stuff advisory opinions and equal protection clause violations are made of.

WHEREFORE Objector pray the court sustain their objections and cross-petition and

1. Vacate all orders shown to be void by examination of

the judgment rolls.

2. For a Taylor, *supra* remedy according to proof.
3. For a Lyman, *supra* remedy according to proof.
4. For interest, costs and attorney fees according to proof.
5. And for such other relief the court deems necessary and proper such as requiring a full and complete accounting, or a decree similar to that in *Chapman v. Board of County Com'rs of Douglass County* (1883) 107 U.S. 348, 360-361 [2 S.Ct. 62, 27 L.Ed. 378], *Sweiger* *supra*., or *Wells Fargo & Co. v. Taylor* (1920) 254 U.S. 175, 189 [41 S.Ct. 93, 65 L.Ed. 205].

Respectfully Submitted LAW OFFICE MICHAEL WEISS

By: _____/s/_____

Michael Weiss, Attorney for
Estate of Jane L. Marsh

Ex 1 (Partial) Recording Requested by:
Financial Freedom Senior Funding Corporation,
a Subsidiary of Lehman Brothers Bank, FSB
When recorded mail to:

Financial Freedom Senior Funding Corporation, a
Subsidiary of Lehman Brothers Bank, FSB 353 Sacramento
Street, Suite 420 San Francisco, California 94111
LOAN NO: CS11402898
Recorded in Official Records, County of Orange Tom
Daly, Clerk-Recorder 2003001315135 08:00am 10/27/03
117 92 011 14
0.00 0.00 0.00 0.00 26.00 0.00 0.00 0.00
-----[Space Above This Line for Recording Data] -----
DEED OF TRUST

THIS DEED OF TRUST SECURES A REVERSE MORTGAGE
LOAN. THIS DEED OF TRUST SECURES AN OPEN-END
(REVOLVING) LINE OF CREDIT WHICH PROVIDES FOR
PAYMENTS, FUTURE ADVANCES AND A VARIABLE RATE OF
INTEREST AS SET FORTH IN A CASH ACCOUNT ADJUSTABLE
RATE REVERSE MORTGAGE LOAN ACCOUNT DISCLOSURE
STATEMENT AND AGREEMENT DATED THE SAME DATE AS
THIS DEED OF TRUST ("AGREEMENT"). THE PROVISIONS OF
THE AGREEMENT ARE INCORPORATED HEREIN BY THIS
REFERENCE.

THIS DEED OF TRUST ("Security Instrument") is made on
OCTOBER 20, 2003. The trustor is MONROE F. MARSH, A

WIDOWER, ("Borrower") (unless the context indicates otherwise, the terms "Borrower", "I", "we", "us", "me", "my", "mine" and "our" refer collectively to all trustors under this Security Instrument)...

10. Successors and Assigns Bound; Joint and Several Liability. The warranties and agreements of this Security Instrument and the Agreement shall bind and benefit you and your successors and assigns, and me and my executors, administrators, heirs, successors and assigns. Borrower's warranties and agreements are and will be joint and several. Anyone who co-signs this Security Instrument as a Borrower but does not execute the Agreement (i) is co-signing this Security Instrument only to mortgage, grant, warrant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (ii) is not personally obligated to pay the amounts secured by this Security Instrument; and (iii) agrees that Lender and any other Borrower may agree,

subject to applicable law, to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Agreement without that Borrower's consent. ...

16 Reconveyance. Upon payment of all amounts secured by this Security Instrument, you will request the Trustee to reconvey the Property and will surrender this Security Instrument and any notes evidencing debt secured by this Security Instrument to the Trustee; provided, however, that if my Account balance is \$00.00 at any time prior to the occurrence of a Maturity Event or your demand for early repayment, you shall not request the Trustee to reconvey this Security Instrument unless I specifically instruct you in writing to terminate my Account under the Agreement, and then only if there are no unpaid finance charges, attorneys' fees or any other sum owing to you under the Agreement. The Trustee will reconvey the Property without warranty, at

the charge agreed to in the Agreement, to the person or persons legally entitled to it. That person or persons will pay any recordation costs....

FINANCIAL FREEDOM PO Box 85400
The Reverse Mortgage Specialist
Austin, TX 78708
Telephone: 800-441-4428
Fax (866) 923-9006

December 28, 2009

Estate of the Monroe Marsh
51 Lakefront
Irvine, CA 92604
RE: Marsh, Monroe F
51 Lakefront
Irvine, CA 92604
Loan number: CS11402898
Cash Account Reverse Mortgage Repayment Notice

Dear Marsh,

We are saddened to have recently learned of the passing of Monroe F Marsh and wish to convey our deepest sympathy to you and all family and friends.

As you may be aware, Monroe F Marsh obtained a reverse mortgage secured by the above referenced property and serviced by financial freedom. Unlike

traditional forward mortgages, reverse mortgages permit seniors to tap the equity they have built up over the years in their home without requiring monthly mortgage payments to satisfy the loan obligation. Upon the occurrence of a maturity event, of which the borrowers passing is one, the loan becomes due and payable. As we notify you now that the above referenced loan is due and payable, we are hopeful that our services have been true to our mission and have enhanced the financial security and independence of Monroe F Marsh.

It is our objective to make the repayment process as simple as possible. The first step that we ask a view is to please provide us with the details of your plans for paying off the loan by filling out the enclosed repayment questionnaire form and returning it to us immediately. Once we have this information, we will contact you to schedule repayment of the loan.

There are other factors we feel are important to bring

to your attention. Until the loan is repaid, interest, mortgage insurance and monthly servicing fees will continue to accrue and be added to the principal balance of the loan. This simply means the loan balance will continue to grow until the loan is paid off. In addition, until the loan is paid off, property taxes must continue to be paid and hazard insurance must be kept in force.

Please refer to the enclosed repayment notice for additional information on matters that should be taken into consideration in arranging repayment of the loan.

We regret having to direct your attention to these matters during this difficult time and want to assure you we are available to help you through the process.

Sincerely, Lisa Harkness

800-441-4428 ext 2897

FINANCIAL FREEDOM (Partial)
The Reverse Mortgage Specialist
Financial Freedom Acquisition LLC
PO Box 85400
Austin Texas 78708

tell 1-800-441-4428
Fax: 1-866-914-8560
Cash Account Statement

Account Number CS11402898
Statement Period 12/01/2009 - 12/31/2009
Monroe F Marsh current advance limit \$433,085.54

51 Lakefront current advance balance \$(420,688.78)

Irvine CA 92604-4682 repair set aside 0.00

Amount available for advance \$12,396.76

Account summary Rate Information

previous balance

\$630,018.55 daily periodic rate 0.015428% (+)

MICHAEL WEISS
ATTORNEY AT LAW
2030 MAIN ST. #1300
IRVINE, CA 92614
TELEPHONE (949) 260-9103
FAX (949) 260-9105
E-MAIL: MICHAEL-WEISS @MSN.COM
To: Lisa Harkness 3-11-10
Where is my reconveyance on Monroe Marsh payoff?

Why did you not record a reconveyance? As you requested I sent by FedEx a cashier's check weeks ago. Enclosed is affidavit of surviving spouse for your records.

_____s_____

Michael Weiss

00983 11-24 CASHIER'S CHECK SERIAL #: 0098303959
ACCOUNT # 4861-505303 Office AU# 1210 (8)
Purchaser: LAW OFFICES OF MICHAEL WEISS
Purchaser Account: 0436611842
Operator ID: cu 020308 cu 003816 February 04, 2010
PAY TO THE ORDER OF ***FINANCIAL FREEDOM
ACQUISITION LLC*** **\$638,963.86**
***Six hundred thirty-eight thousand nine hundred sixty
three dollars and 86 cents*** Wells Fargo Bank, N. A.
Void if over US \$638,963.86
4850 Barranca Pkwy. Non-negotiable
Irvine, CA 92604
For inquiries call (480) 394-3122
PURCHASER COPY

Please complete this information
recording requested by
and when recorded mail to:
Michael Weiss
51 Lakefront
Irvine, CA 92604 This space for recorders use only

Title of document:

AFFIDAVIT OF SURVIVING SPOUSE

Succeeding to Community Property (California Probate
Code section 13540) This document provided by
Commonwealth Land Title Company STATE OF
CALIFORNIA)
COUNTY OF Orange)

Jane Lucille Marsh of legal age, being first duly sworn,
deposes and says:

1. Monroe F Marsh, the decedent mentioned in the attached certified copy of certificate of death, was married to Affiant at the time of decedent's death.
2. Affiant and decedent at all times considered the following real property situated in the County of Orange, State of California to be community property:
Unit 31 of Lot 6 of tract number 12223, as more particularly described in Exhibit A. Assessor's parcel number 934-67-046.
3. More than forty (40) days have passed since decedent's death. There has not been nor will there be an election filed pursuant to Probate Code section 13502

concerning this property. I have full power to sell, lease, encumber and otherwise deal with such property pursuant to Probate Code 13540 based upon the following facts: Monroe Franklin Marsh (hereinafter Monroe) married me on 2-6-2003 in the Beverly Hills, California courthouse; and we took up our family residence at 51 Lakefront, Irvine, California. It was not until after his death that I discovered the false details of a reverse mortgage he took out on it 10-20-2003 as "a widower". During our seven-year marriage about \$186,000 of community funds were paid on the reverse mortgage to reduce its principal. I paid off the approximate \$633,061 balance just after his death by way of exhaustion of my separate funds and the loan from my son. Monroe took over sole and exclusive control of the community property; yet, never made any meaningful disclosure to me of our community assets, liabilities, and transactions, nor about his separate assets,

liabilities and transactions. Monroe did however constantly refer to the property at 51 Lakefront as our home; and was using our income to pay off the reverse mortgage. I have now discovered that he acted as if he were a single man in taking out the reverse mortgage and opening bank and stock trading accounts. Throughout our marriage Monroe commingled our community funds with his separate funds to such an extent it is now impossible to trace. During our 7 years of marriage I was never paid any monies from the income Monroe earned by his labors. I therefore claim full ownership of the 51 Lakefront, Irvine property, am recording a homestead declaration on it; and, then dispose of it by conveyance to my son while reserving a life estate in it for myself. March 3, 2010

Signature: ____/s/____

Jane Lucille Marsh

[RECORDING REQUESTED BY]
NATIONWIDE TITLE CLEARING [AND WHEN RECORDED
MAIL TO]
Financial Freedom --
C/0 NTC 2100 Alt. 19 North
Palm Harbor, FL 34683
Loan #: 0001402898
Effective Date: 05/01/2009
CORPORATE ASSIGNMENT OF DEED OF TRUST
FOR GOOD AND VALUABLE CONSIDERATION, the
sufficiency of which is hereby acknowledged, the
undersigned, FINANCIAL FREEDOM SENIOR FUNDING
CORPORATION A SUBSIDIARY OF LEHMAN BROTHERS
BANK FSB, WHOSE ADDRESS IS 190 TECHNOLOGY
PARKWAY SUITE 100, NORCROSS, GA 30092 by these
presents does convey, grant, sell, assign, transfer and set
over the described Deed of Trust together with the
certain note(s) described therein, without recourse,
representation or warranty, together with all right, title
and interest secured thereby, all liens, and any rights due
or to become due thereon to MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. ("MERS"), A DELAWARE

CORPORATION, ITS SUCCESSORS OR ASSIGNS, AS
NOMINEE FOR FINANCIAL FREEDOM ACQUISITION LLC,
P.O. BOX 2026, FLINT, MI 48501-2026, (ASSIGNEE) Said
Deed made by MONROE F MARSH and recorded on
7/2003 as Inst# 2003001315135 in Book, Page in the office
of the ORANGE County Recorder, California. Property
more commonly known as: 51 LAKEFRONT, IRVINE, CA
92604

THE FOREGOING ASSIGNMENT IS MADE WITHOUT
RE COURSE, REPRESENTATION OR WARRANTY, EXPRESS OR
IMPLIED, BY FINANCIAL FREEDOM SENIOR FUNDING
CORPORATION.

Dated: 09/24/2009

FINANCIAL FREEDOM SENIOR FUNDING CORPORATION A
SUBSIDIARY OF LEHMAN BROTHERS BANK FSB

/s/_____

VILMA CASTRO VICE PRESIDENT

Notary seal omitted

Requested by Nationwide Title Clearing
when recorded mail to
Monroe F Marsh
51 Lakefront
Irvine, CA 92604
(Trustor) Recorded in Official Records, Orange Co.
Tom Daly, clerk-recorder 2010000126498 12:13 p.m.
3/17/10 276418S15401 1 0.000.000.000.000.000.
000.000.00
Loan: 140-2898 SUBSTITUTION OF TRUSTEE and FULL
RECONVEYANCE
Whereas Monroe F Marsh was the original trustor
under that certain deed of trust recorded on 10/27/2003
in the office of the County recorder of Orange County,
California, as instrument number 2003001315135 in book,
page Whereas, the undersigned, as the present
Beneficiary(s) under said deed of trust desires to
substitute a new trustee under said deed of trust in place
and stead of original trustee, now therefore, the
undersigned hereby substitutes himself (themselves) as
trustee under said deed of trust and does hereby
reconvey without warranty to the persons legally entitled

thereto all estate now held by it under said deed of trust.

Date: 02/23/2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

(MERS) AS NOMINEE FOR FINANCIAL FREEDOM

ACQUISITION LLC

by: _____/s/_____

Karen Compton Asst. Secretary

(Notary seal omitted)

Ex 2 TRANSACTION HISTORY

1807 Waiola LLC
1777 Ala Moana Blvd Unit 935, Honolulu, HI 96815

Mortgage Release
APN: 1-2-6-010-007-0160
Honolulu County Recording Date: 05/02/2016
Document #: T-9618163 Loan Amount: N/A Document
Type: Release Of Mortgage Original Lender: NOT
PROVIDED Origination Doc #: T-9416142 Borrowers
Name: DARKO IJACIC AND JOVANKA IJACIC HUSBAND
AND WIFE ANA MIRIC, SINGLE
Origination Recording Date: Effective Date: 04/20/2016
Current Lender: FIRST HAWAIIAN BANK, A HAWAII
CORPORATION

Prior Transfer

Recording Date: 04/06/2016 Document #: T-9592107
Price: \$685,000 Document Type: Deed First TD: N/A
Type of Sale: Verified Sale Price Mortgage Doc #:
Interest Rate: Lender Name: Buyer Name: 1807
WAIOLA LLC Buyer Vesting: Tenants In Severalty
Seller Name: IJACIC, DARKO; IJACIC, JOVANKA; MIRIC,
ANA Legal description: Lot: 1-A-1 Abbreviated
Description: 0160 City/Muni/Twp: HONOLULU

Mortgage Record

Recording Date: 10/13/2015 Document #: T-9416142
Loan Amount: \$357,000 Loan Type: Conventional TD
Due Date: 11/01/2045 Type of Financing: Interest Rate:
Lender Name: FIRST HAWAIIAN BANK Lender Type:
Bank Borrowers Name: IJACIC, DARKO; IJACIC,
JOVANKA Vesting: Tenants In Common

Prior Transfer

Recording Date: 10/13/2015 Document #: T-9416141
Price: \$510,000 Document Type: Personal
Representatives Deed First TD: \$357,000 Type of Sale:
Verified Sale Price Mortgage Doc #: T-9416142 Interest
Rate: Lender Name: FIRST HAWAIIAN BANK
Buyer Name: IJACIC, DARKO; IJACIC, JOVANKA;
MIRIC, ANA Buyer Vesting: Tenants In Common
Seller Name: MARSH, STEPHEN D; MARSH, DAMON;
ESTATE OF MONROE F MARSH; MARSH, MONROE
FRANKLIN
Legal description: Lot: 1-A-1
Abbreviated Description: 0160 City/Muni/Twp:
HONOLULU

Ex 3 Stewart Title of California, Inc.
Santa Ana

RECORDING REQUESTED BY

Mission Country Escrow, Inc
Order No.01180-163140
Escrow No. 52329-DM
Parcel No. 934-670-46
Mail Tax Statement to:
PEGGY PEI-YI LIN
20 WHISPERING WIND
IRVINE, CA 92614 Recorded In Official Records, Orange
County 1111111111 201500420598 8:00am 08/12/15
232.407 G02 7 26 540.10 540.10 0.00 18.00 0.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARES THAT

DOCUMENTARY TRANSFER TAX IS \$1,080.20

[X] computed on full value of property conveyed, or

computed on full value less liens or encumbrances

remaining at the time of sale, unincorporated area: x

Irvine, and

FOR A VALUABLE CONSIDERATION, receipt of which is

hereby acknowledged Stephen D. Marsh, and Damon

Marsh, Co-Executors of the Estate of Monroe F. Marsh,

also known as Monroe Franklin Marsh, deceased

hereby GRANT(S) to Peggy Pei-Yi Lin and Yi-Ming Su, Wife

and Husband as Community Property with Right of Survivorship the following described real property in the County of Orange, State of California: SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF, More commonly known as: 51 Lakefront, Unit 31, Irvine, CA 92604

Date May 6, 2015

Stephen D. Marsh and Damon Marsh,
Co-Executors of the Estate of Monroe F. Marsh,
also known as Monroe Franklin Marsh, deceased

____/s/_____

By: Stephen D. Marsh. Co-Executor
(Notary Seal Omitted)

EXHIBIT "A" LEGAL DESCRIPTION (Omitted)

(Exhibits end)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE
I have read the foregoing Objection to the Petition for Final Distribution on Waiver of Account, Report of

Co-executors, and Petition for Allowance of Ordinary Executors Compensation, Ordinary Attorney Compensation and Extraordinary Attorney Compensation; Cross Petition and know its contents. I am a party to this action and am executor for Estate of Jane L. Marsh. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief; and as to those matters I believe them to be true.

Executed on 5-28-2019 at Irvine, California.

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

____/s/_____
Michael Weiss

PROOF OF SERVICE

Mail E-Notification

Case Name: Estate of Monroe Marsh, et al.
Superior Court # 30-2009-00331535PR-PW-LJC
consolidated with 30-2010-00384291 and consolidated
with 30-2010-00426209

1. At the time of service I was at least 18 years of age and am a party to this legal action. 2. My address is 63 Lakefront, Irvine, CA 92604.
3. I caused this service to be served by an e-filing service, One Legal Co. 1400 N. McDowell Blvd #300, Petaloma, CA. 94954 as below stated. I am employed in the County of Orange, State of California. I am over the age of 18 and a party to the within action; my address is 63 Lakefront, Irvine, CA 92604. On 5-28-19, I served notice of the foregoing document described by its exact title as: Objection to the Petition for Final Distribution on Waiver of Account, Report of Co-executors, and Petition for Allowance of Ordinary Executors Compensation, Ordinary Attorney Compensation and Extraordinary

Attorney Compensation; Cross Petition on the following persons
[x] by electronic service upon Stephen M Margo,
Esquire smagro@smagrolaw.com
[x] and upon Stephen & Damon Marsh c/o Stephen M. Magro smagro@smagrolaw.com;
[x] Notice of Filing Objections by 1st class mail upon Aleen Marsh Voyles
4750 West 1500 North
Plain City, UT 84404
Amy Marsh Dover
324 Creekside Dr
Murphy, Texas 75094
Bryan Marsh
14437 SE Hillgrove Ct.
Milwaukie, Oregon 97267
Emily Marsh Alatriste
2694 W. 5250 S
Roy, Utah 84067
Joseph Marsh
2-15-7 Osawa, Mitaka-shi
Tokyo, Japan 181-0015
Ruth Marsh Palmer
8703 Track St
Frederick, Colorado 80504 Executed on 5-28-19, at Irvine, California.
[X] I declare under penalty of perjury that the above is true and correct. ____/s/_____
Michael Weiss

MICHAEL WEISS
LAW OFFICE MICHAEL A WEISS

REHEAR EX 3

105

63 LAKEFRONT
IRVINE, CA 92604
949-654-9919
SBN: 114219
Attorney for Estate of Jane L. Marsh
and Michael Weiss
Superior Court of the State of California County of
Orange, Central Justice Center
ESTATE OF MONROE F. MARSH
Stephen D. Marsh Individually and as
Special Administrator of Estate of Monroe
F. Marsh; Damon Marsh Individually and as
Special Administrator of Estate of Monroe
F. Marsh, Plaintiffs
vs.
Estate of Jane L. Marsh, Michael Weiss,
Defendants

CONSOLIDATED ACTION with 30-2010-
00384291 and 30-2010-00426209
Jane L. Marsh
vs.
Stephen Marsh, Damon Marsh, Monroe F.
Marsh, Defendants

30-2009-00331535PR-PW-LJC
Memo of Points & Authorities re Objections to Petition for
Final Distribution Etc.
Date: 6-4-19
Time: 9:00 am
Dept: C7

TABLE OF AUTHORITIES (Omitted)
MEMO OF POINTS AND AUTHORITIES

COME NOW objector, Michael Weiss as Executor of

106

Estate of Jane L. Marsh otherwise referred to as petitioner herein, to present a memo of points and authorities to support consideration of her pleadings and requests therein.

I. CITATION OF APPELLATE OPINIONS ENTERED IN THE CASE are as follows: 2012 WL 385441; 2012 WL 384625; 2012 WL 606-3534; 2014 WL 266-7709; 2016 WL 658- 1173; 2016 WL 657-6490; 2016 WL 667-0443; 2018 WL 173-7161; 2018 WL 173-7177

2. The initial appeal decision in G044938 and all subsequent opinions (except appeal over granting probate of Monroe's last will) concerned only questions of law concerning petitioners rights, privileges and immunities, per City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199, 230 [123 Cal.Rptr. 1], Natural Soda Products Co. v. City of L. A. (1952) 109 Cal.App.2d 440, 446 [240 P.2d 993] and U.S. v. Stone & Downer Co. (1927) 274 U.S. 225, 231 & 235, 47 S.Ct. 616,

71 L.Ed. 1013. G044938 concerned whether the sustained first demurrer to Jane L. Marsh's civil cause was proper or not and expressly acknowledged consolidation with the probate matter, refused to determine the \$640,000 reimbursement allegation; and directed Jane L. Marsh to file any new pleadings in the court sitting in probate according to probate practice. Rejected was petitioners Petition for Rehearing contention that the appeals court had no subject matter jurisdiction in G044938 due to violation of Calif. Const. Art 6 Sec 1 and Art 1 Sec 26; so, Jane L. Marsh immediately filed 11 probate petitions, 9 of which the trial court held barred by res judicata and dismissed the other 2 as punishment because Weiss violated the res judicata doctrine. Yet on subsequent appeals regarding them the new 11 probate petitions of Jane L. Marsh were never read by Justice O'Leary as revealed by her opinion in G052082 p.6 that Jane L. Marsh apparently never made a claim for

reimbursement of the \$640,000. And even when paragraph 14 of Jane L. Marsh's Four Combined Petitions which did make such claim was expressly pointed out to her in a motion to recall remittitur in G052082 she failed to acknowledge the inaccuracy of her previous error in that regard or correct any other plain miscarriage of justice by denying the motions to recall remittitur calling them all frivolous as shown in the courts G054796 opinion.

The current appeal opinions determined petitioners never had standing since G052082 which itself relied on G044938; and, will never in the future have standing. See Public Service Commission of Utah v. Wycoff Co., Inc. (1952) 344 U.S. 237, 246-247 [73 S.Ct. 236, 97 L.Ed. 291].

Code of Civ.Proc. 577 defines final judgment as the final determination of the rights of the parties. Rights include procedural and substantive; but, the California Supreme Court In the Matter of the Estate of Smith (1893) 98 Cal. 636, 640 [33 P. 744] interpreted the term final judgment in

Code of Civ.Proc. 963 [today 904.1(a)(1)] as meaning only those judgments known at common law as final judgments and that probate "orders" [listed today in Probate Code Code of Civ.Proc. 904.1(a)(10) referring to those specified in Probate Code 1300 and 1303], were not final orders. *In re Rose's Estate* (1889) 80 Cal. 166, 169-170 [22 P. 86] similarly defined final judgment as provided in Code of Civ.Proc. 577. This Court will recognize the binding effect of state court preclusion determinations as well as their built in state law limitations due to fraud and/or lack of jurisdiction as provided in Code of Civ.Proc 1917 and Code of Civ.Proc 1916; but, may determine same is not a continuing independent and adequate ground of decision and instead apply those fundamental principles of justice necessary to prevent and/or correct miscarriage of justice. That possibility raises the question whether the unfinished business under the opinion in G044938 which expressly

left unresolved the issue(s) regarding reimbursement of Jane L. Marsh's \$640,000 (rounded for simplicity) is now finished or must await a final distribution decree and order releasing the co-executors. Alternatively this court may just exercise its discretion to review the distribution etc opinions as an exception to the final judgment rule by themselves, and then only address the issue of law question presented to it by petitioners.

3. On February 04, 2010 Weiss purchased a cashiers check which he loaned to his mother Jane L. Marsh and she used it to acquire a reconveyance deed after her husband Monroe died and defaulted under his trust deed. The February 04, 2010 \$638,963.86 Cashiers check shows it was purchased by Michael Weiss and is found in the current record on appeal which incorporated by reference all prior ROA's in all prior appeals. The \$638,963 cashiers check was always accompanied with Monroe's trust deed, the assignment of said trust deed to MERS;

MERS reconveyance deed; Jane's Affidavit of Surviving Spouse, Fed Ex bill for shipment to Financial Freedom, and Orange County Recorders office bill for Monroe's death certificate when those documents were filed as part of the ROA's. The co-executors brief in the current appeals contended the \$638,963 cashiers check was theirs free and clear and that presented a false and fictitious issue as did the appellate opinions affirming the appeals. See G054796 Co-executors Opening Brief p. 51 para c; and petitioners response in Opposition to Motion to Dismiss Appeal p. 39; See Swift & Co. v. Hocking Valley Ry. Co. (1917) 243 U.S. 281, 288, 289 [37 S.Ct. 287, 61 L.Ed. 722], and McAllister v. Kuhn (1877) 96 U.S. 87, 89 [24 L.Ed. 615]. Co-executors Motion to Dismiss Appeal in G054553 p. 10 and p. 36, and a virtually identical motion in G054796, contended that lack of standing was decided as a matter of law. See Ashcroft v. Iqbal (2009) 556 U.S. 662 [129 S.Ct. 1937, 173 L.Ed.2d 868] [ruling on demurrers

and the like represent abstract legal determinations not classified as fact bound determinations.] Jane L. Marsh has consistently from the beginning given notice that she has elected to take her rights and property interests under law including the irrevocable effect of same under federal law and not Monroe's last will; and hence petitioners civil claims, complaints and rights were diametrically different from the probate matter, see The Haytian Republic (1894) 154 U.S. 118, 129 [14 S.Ct. 992, 38 L.Ed. 930] and Code of Civ.Procedure 427.10; but, were nonetheless consolidated for all purposes.

4. Unfair taking of petitioners property was revealed by the following RT excerpts.

RT OF 6-30-2015 [TO CONFIRM SALE OF REAL PROPERTY]

[Pages 5:10-12; 6:19-23; 8:19-22; 19:26 thru 20:1; 21:10-13; and 24:14-20 and 23-25:4]
THE COURT: YOU DON'T HAVE STANDING. WHAT'S THE BASIS FOR STANDING? MR. WEISS: THAT'S MY \$640, 000. MR. WEISS: BECAUSE JANE BORROWED 640, 000 FROM ME TO PAY THE REVERSE MORTGAGE ON THIS LAND. SHE WAS GIVEN A DEED, A RECONVEYANCE DEED. I CURRENTLY

HOLD THE ORIGINAL OF THAT RECONVEYANCE DEED. THAT DEED IS PART OF THE CHAIN OF TITLE. THEY DIDN'T EVEN OFFER TO PAY ME THAT 640, 000 THAT I WORKED 30 YEARS AS AN ATTORNEY TO GET. THAT'S MY MONEY. THAT HAS NOT BEEN PAID BACK. I HAVE SUBROGATION RIGHTS UNDER JANE, MY MOTHER. MR. MAGRO: BUT -- FURTHERMORE..FURTHERMORE, WE WOULDN'T TAKE IT UNDER ANY CIRCUMSTANCES. MR. WEISS: SHE LEFT EVERYTHING TO ME INCLUDING THIS \$640, 000 MATTER. MR. WEISS: I DO HAVE THE COURT OF APPEAL OPINION. AND I GAVE IT TO YOU IN THE FORM OF THE OBJECTIONS. AND THIS IS THE COURT OF APPEAL OPINION AT 938, "WE EXPRESS NO OPINION AS TO THE SUBJECT OR STATUS OF ANY CLAIM BY JANE FOR REIMBURSEMENT FROM THE ESTATE FOR THE \$633, 061 ALLEGED TO HAVE BEEN USED BY JANE TO PAY OFF THE REVERSE MORTGAGE. " AFTER THIS OPINION CAME OUT, THERE WAS A MOTION TO REOPEN THE HEARINGS AND TO MAKE THE CLAIM FOR REIMBURSEMENT. THERE WAS A CREDITOR'S CLAIM FILED AT THE BEGINNING THAT CLAIMED IN THE ALTERNATIVE, EITHER GIVE ME THE \$640, 000 OR GIVE ME THE TITLE. YES, THERE CERTAINLY HAS BEEN DEMANDS FOR REIMBURSEMENT. THEY HAVE NEVER TENDERED THE 640 BACK, LET ALONE GIVE ME THE 640 BACK.

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[Page 6:11-13 and 7:1-4]

MR. WEISS NUMBER 2, JANE HAS HER OWN CREDITOR'S CLAIM AS WELL AS A CLAIM TO TITLE. IT WAS JANE WHO PAID THE \$640,000 MORTGAGE. I WAS THE ONE WHO LOANED JANE \$640,000. THEY NEVER REPAYED THAT 640,000 YET THEY WENT AHEAD AND SOLD THE PROPERTY AND NOW THEY WANT TO GIVE IT (the proceeds) TO THEMSELVES AND THEIR ATTORNEYS.

5. When Co-executors attorney Mr. Magro told Judge

Belz Furthermore-furthermore they would not sell the Irvine condo to petitioners for any price nor on any terms, he had a duty under Probate Code 10313(a)(3) and California and U.S. Constitutions to conduct an immediate inquiry into unfairness just as he did when Weiss told Judge Belz he loaned the \$640,000 of Jane L. Marsh which co-executors were distributing; but, he did not. Cf. *Batson v. Kentucky* (1986) 476 U.S. 79, 95 [106 S.Ct. 1712, 90 L.Ed.2d 69], *U.S. v. Shotwell Mfg. Co.* (1957) 355 U.S. 233, 242 [78 S.Ct. 245, 2 L.Ed.2d 234], *Gouled v. U.S.* (1921) 255 U.S. 298, 312 [41 S.Ct. 261, 65 L.Ed. 647] and *De Garmo v. Goldman* (1942) 19 Cal.2d 755 [123 P.2d 1]. Mr. Magro also told Judge Belz that he would get a order to carry out the sale notwithstanding appeal in order to prevent shennigans in the appeals court by Weiss so that "we'll" have a binding sale and Mr Magro altered the terms of sale at the hearing which was also unfair because prohibited by probate code statute. See

the 6-30-15 RT 15:13 through 16:2 and 26:16-17. And Co-executors deed to the purchasers never complied with Probate Code 10314.

6. Probate Code 11621(a) required co-executors to plead and later prove "at the hearing" that distribution can be made without injury to any interested person or loss to any creditor; but, the ten page 1-10-17 RT shows that no evidence was introduced, admitted or considered rather just "Petitions Approved." The U.S. Constitution due process clause was also infringed because the order was based on stale or no evidence. See *Schware v. Board of Bar Exam. of State of N.M.* (1957) 353 U.S. 232 [77 S.Ct. 752, 1 L.Ed.2d 796], *Barry v. Edmunds* (1886) 116 U.S. 550, 559 [6 S.Ct. 501, 29 L.Ed. 729], *Creswill v. Grand Lodge Knights of Pythias of Georgia* (1912) 225 U.S. 246, 261 [32 S.Ct. 822, 56 L.Ed. 1074], *Fiske v. State of Kansas* (1927) 274 U.S. 380, 385- 386 [47 S.Ct. 655, 71 L.Ed. 1108]; *Eastern Bldg. & Loan Ass'n v.*

Ebaugh (U.S.S.C. 1902) 185 U.S. 114, 121 [22 S.Ct. 566, 46 L.Ed. 830] [judicial notice is not evidential proof of fact], and Estate of Nicholas, *supra*.

7. The co-executors appellate brief said concerning the \$640,000 (hereafter RB) in G052082 and G052208 at page 12 FN.1 and RB in G054754 at page 14 FN.1 stated in part "the respondents recognize that in equity Jane Marsh would have a claim for that amount..." See *Haynes v. U.S.* (1968) 390 U.S. 85, 100-101 [88 S.Ct. 722, 19 L.Ed.2d 923] and *Williams v. State of Georgia* (1955) 349 U.S. 375, 390 [75 S.Ct. 814, 99 L.Ed. 1161]. Co-executors therein opined in advisory fashion that alternative pleading was not permitted and the Statute of Limitations ran.

8. The U.S. Constitution was violated because said constitution required all judicial branches to do justice by administering proceedings pending before it in a manner consistent with the ends of justice, meaning to apply the correct principle of law, or its implied

exception if miscarriage would otherwise result, per *Wyoming Pacific Oil Co. v. Preston* (1958) 50 Cal.2d 736, 740 [329 P.2d 489], *Wiborg v. U.S.* (1896) 163 U.S. 632 [16 S.Ct. 1127], at p. 658, *United States v. Atkinson* (1950) 56 S.Ct. 391, at p. 160 [if plain error was committed in a matter so absolutely vital to a party; or, where the plain error otherwise seriously affects the fairness, integrity, or public reputation of a judicial proceeding, such errors may be determined even though not raised in courts below]; *Chambers v. Mississippi* (1973) 410 U.S. 284 [93 S.Ct. 1038] at p. 302; *Hormel v. Helvering* (1941) 312 U.S. 552 [61 S.Ct. 719] [ordinary rules of procedure do not require sacrifice of the rules of fundamental (constitutional) justice]; *Bailey v. Taaffe* (1866) 29 Cal. 422, at p. 423 [Orders like the present rest very much in the discretion of the Court below, and will not be disturbed by this Court unless the order is so plainly erroneous as to amount to an abuse of discretion.]; *Briggs*

v. Brown (2017) 3 Cal.5th 808, 860 [221 Cal.Rptr.3d 465] [balancing act fairly included in state decision]; People v. Engram (2010) 50 Cal.4th 1131, 1146 & 1151 [116 Cal.Rptr.3d 762]; and People v. Duvall (1995) 9 Cal.4th 464 [37 Cal.Rptr.2d 259], at p. 482.

9. Petitioners on numerous times, to the point of futility, see Douglas v. State of Ala. (1965) 380 U.S. 415, 421 [85 S.Ct. 1074, 13 L.Ed.2d 934], have raised their rights, privileges and immunities under the U.S. Constitution which were summarily denied.

10. Petitioners, on numerous times, to the point of futility have complained of unfairness which were summarily denied.

11. Petitioners on numerous times, to the point of futility have argued infringement of those fundamental principles which were summarily denied.

12. Petitioners on numerous times, to the point of futility have complained of false recitals in proposed orders

which were summarily denied.

13. The fundamental constitutional law petitioners raised consists of those rules fundamental to the ends of justice and justiciable controversy. Nashville, C. & St. L. Ry. v. Wallace (1933) 288 U.S. 249, 262 [53 S.Ct. 345, 77 L.Ed. 730]. Under such fundamental law every state statute containing a rule of procedure, evidence, or even a rule of substantive law must yield to the fundamental rules if miscarriage would otherwise result. Likewise any acts, orders or judgments of the judicial branch, must yield when required by the ends of justice to prevent and/or later to correct miscarriage of justice. Arbitrary substantive or procedural decisions are unconstitutional whether coming from judge, justice, or other public fiduciary such as the co-executors, when they produce a miscarriage of justice. Because the co-executors had substantial state actor assistance by the judges and justices involved, they are deemed state actors per Tulsa

Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565] making the U.S. Constitution applicable against them.

14. Under fundamental fairness principles in the U.S. Constitution due process clause and California Probate Code 39 which provided in part: "Fiduciary: "Fiduciary" means personal representative." The co-executors were fiduciaries to all the interested persons such as those defined in probate code 48 as a body or class of persons. Probate commissions and attorney fees for personal representatives are based on a specified percentage of the estate's true value, see Payne v. Hook (1868) 74 U.S. 425 [19 L.Ed. 260] at p. 433. Co-executors by knowingly concealing Jane L. Marsh's \$640,000 and other interests, overvalued Monroe's estate in order to knowingly receive overvalued commissions and fees as well as her \$640,000 and all her other property interests. The public interest in probate distributions require

vindication by this court. *In re Broderick's Will* (1874) 88 U.S. 503 [22 L.Ed. 599].

15. The reason this court may look to the reporters transcript in the ROA's herein is because (1) although the opinions themselves appear to adjudicate perfectly legal rights; they in fact were the product of unconstitutional knowing concealment and misrepresentation or other inequitable conduct and (2) equity principles trump strictly legal rights because miscarriage of justice resulted. See *DeMarco v. U.S.* (1974) 415 U.S. 449 [94 S.Ct. 1185, 39 L.Ed.2d 501], *Webb v. Webb* (1981) 451 U.S. 493, 502 [101 S.Ct. 1889, 68 L.Ed.2d 392] concurring opinion re no evidence.

16. *Schweiger v. Superior Court* (1970) 3 Cal.3d 507 [90 Cal.Rptr. 729] stated: {Page 3 Cal.3d 514} In Abstract *Investment Co. v. Hutchinson* (1962) 204 Cal.App.2d 242 [22 Cal.Rptr. 309] the court said "Although defendant bases his defense upon constitutional propositions and

statutes seeking to insure equal protection under the law, such defense nevertheless has its foundation in equitable principles. As the court stated in McCue v. Bradbury, 149 Cal. 108, at p. 113 [84 P. 993], equity will refuse to enforce a forfeiture at the instance of one who has obtained the strictly legal right to it by fraud, deceit, or any form of oppressive practice; and, upon the other hand, will relieve the innocent when such a forfeiture so secured is sought to be enforced.'

17. The court is requested to apply Schweiger to our case.

18. The co-executors had previously filed a petition to sell the Irvine condo and petitioner was not permitted to file her objections then either as trial judge Belz likewise ruled on 6-30-15 that Weiss had no standing to complain as shown in the 6-30-15 RT as well as showing that no evidence was admitted to support the petition for confirmation of sale as required by Probate Code

10310(b). Thus at the hearing on the petition to confirm sale of real property; and, at the hearing for estate distribution no present tense application of standing, whether as defined by case law in *Gladstone Realtors v. Village of Bellwood* (1979) 441 U.S. 91, 100-101 [99 S.Ct. 1601, 60 L.Ed.2d 66] [prudential or constitutional], *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 561 [112 S.Ct. 2130, 119 L.Ed.2d 351] [burden on party invoking jurisdiction, not defending], nor under Probate Code 48, was applied by Judge Belz, nor later by the appeals court; rather past tense stale adjudications. Also see *Objections to Preliminary Distribution Petitions* which included general denial and affirmative defenses including attack on jurisdiction at paragraphs 1 and 7. The appeal over it was dismissed on lack of standing which carries no law of the case determination on its present merits due to reliance on sale information. However because (1) the facts and law had changed so

did standing (2) petitioners were existing parties to the record and there was no final judgment in the consolidated cases and (3) co-executors have never plead or proved res judicata as required by Code of Civ.Proc. 1908.5, Code of Civ.Proc. 456, Code of Civ.Proc. 430.80(a) & People v. Williams (1999) 21 Cal.4th 335, 344 [87 Cal.Rptr.2d 412], nor law of the case, petitioners constitutionally protected property and liberty interests were unconstitutionally seized and otherwise infringed upon. The RT of 1-10-17 shows Judge Belz relied on some unidentified interlocutory order he glanced at; and, admitted he knew nothing about the prior appeal opinions, other than G052082 which was not accompanied by any remittitur. The objections to the distribution petitions properly plead surcharge as permitted by the probate code per Law Revision Commission comment behind Probate Code 9650 re Subdivision (a) and per Probate Code 9603. The new

facts consisted of the fraudulent, mistaken, unconscionable, or otherwise unfair representations made in the proposed orders by co-executors that distribution could be made without injury to the interests of any interested persons or creditors. Co-executors knew they sought distribution of the \$640,000 Jane L. Marsh used to pay off Monroe's trust deed default because they sold the Irvine condo without reimbursing her; they knew they never filed any accounting in the case despite selling the Honolulu condo on for \$510,000 on 10-13-15 will all of Jane L. Marsh's Moore-Marsden interests and all of petitioners personal property inside; nor inventoried the debts Co-executors owed Monroe's estate by virtue of that part of the \$821,000 community property monies received by them from Monroe during marriage to Jane; and, instead filed waivers of accounting as part of their distribution petitions by each of their family members who received part of the

\$821,000 given away by Monroe during marriage without the prior written consent of Jane. See *McLaughlin Bros. v. Hallowell* (1913) 228 U.S. 278, 287 [33 S.Ct. 465, 57 L.Ed. 835]. Numerous new case law had evolved, including but is not limited to: *Patrick v. Alacer Corp.* (2011) 201 Cal.App.4th 1326 [136 Cal.Rptr.3d 669].

19. The hearing on the two distribution petitions etc. involved distribution of more than the 50% net value permitted under Probate Code 11632, yet lasted only 3 minutes. 20. *Walsh v. McKeen* (1888) 75 Cal. 519 [17 P. 673] stated: *PAGE 521 As to the alleged change in the nature of the action, an answer is found in the fact that we have in this state but one form of civil actions for the enforcement or protection of private rights, (Code Civil Proc. ' 307.) *PAGE 522 An action does not now, as formerly, fail because the plaintiff has made a mistake as to the form of his remedy. If the case which he states entitles him to any remedy, either legal or equitable, his

complaint is not to be dismissed because he has prayed for a judgment to which he is not entitled. 'Legal and equitable relief are administered in the same forum, and according to the same general plan. A party cannot be sent out of court merely because his facts do not entitle him to relief at law, or merely because he is not entitled to relief in equity, as the case may be. He can be sent out of court only when, upon his facts, he is entitled to no relief, either at law or in equity.'

21. To the same effect of *Walsh* just cited are *Hishon v. King & Spalding* (1984) 467 U.S. 69, 73 [104 S.Ct. 2229, 81 L.Ed.2d 59] and *N.L.R.B. v. Deena Artware, Inc.* (1960) 361 U.S. 398, 402 [80 S.Ct. 441, 4 L.Ed.2d 400] but this principle of law was not respected in our case.

22. The admissions regarding Jane's \$640,000 claim in equity in Co-executors Reply Briefs were misleading because it was not a mere claim in equity; rather, it was a known fact by them (state of mind or knowledge of

justices irrelevant) to be her separate property money which she paid pursuant to her right and duty to acquire the reconveyance deed per paragraphs 10 and 16 of the trust deed containing joint and several duty terms. The state of mind of the co-executors is not shielded by preclusion law if miscarriage of justice would otherwise result. That \$640,000 was her separate property which she acquired from Petitioner Weiss after Monroe died and was paid out after Monroe's death; and, hence never a part of Monroe's estate. Once Monroe defaulted he no longer had any contractual trust deed interest in the real property itself and its terms agreed to by himself with other contracting parties, required that the reconveyance deed go to his heir or executor should she or they pay off his debt. His executors could have acquired it in their individual or official capacities and filed a statement of interest under probate code 13540 in the county recorders office; but, did not, and

never wanted it as did petitioner, because of happy family associated memories therein. The statute of limitation opinion of co-executors was unconscionable per Bollinger v. National Fire Ins. Co. of Hartford, Conn. (1944) 25 Cal.2d 399 [154 P.2d 399] and Borer v. Chapman (1887) 119 U.S. 587, 603 [7 S.Ct. 342, 30 L.Ed. 532].
23. Wyoming Pacific Oil Co. v. Preston (1958) 50 Cal.2d 736 [329 P.2d 489] stated: *PAGE 740 Despite the apparently mandatory language of that section, this court has found many "implied exceptions" where it was "impracticable and futile" to bring the action to trial within the designated five-year period. {Page 50 Cal.2d 741} As with the exercise of the court's other inherent and statutory powers to dismiss actions the discretion permitted must be "exercised in accordance with the spirit of the law and with a view of subserving, rather than defeating, the ends of substantial justice."

24. This and the following case is cited to support the prayer in the Objection and Cross Petition.

25. Findlay v. Hinde (1828) 26 U.S. 241 [7 L.Ed. 128], stated: *PAGE 247 Under these circumstances, we think the reversal should be general, as to all of the appellants, and the whole case opened. And we are the more inclined to adopt this course, because, so numerous, and so great, have been the irregularities in conducting the cause in the Court below, from its commencement to its termination, by decree; that it seems impracticable that justice be done between the parties, without sending the cause back, as to all the parties; with directions, that the petitioners have leave, if asked by them, to amend their bill, and make the proper parties; and to proceed de novo in the cause, from filing such amended bill.

26. Petitioners contend a nine year running of impracticability and futility of further approach in the

probate department of this court to proceed further exists and hence the need to send Jane L. Marsh's civil cause back to Judge Bank's who was initially assigned to it for all purposes with the same direction as given in the Findlay case and Gardner v. Toilet Goods Ass'n (1967) 387 U.S. 167, 173 [87 S.Ct. 1526, 18 L.Ed.2d 704]. The court sitting in probate is either unwilling or unable to entertain anything further from petitioner; or, is biased in favor of co-executors and against Weiss and desirous of imposing only more sanctions on him should he revisit them. Co-executors have distributed everything in the Estate of Monroe F. Marsh and the Estate of Jane L. Marsh to themselves and their family members. Co-executors motion to dismiss the appeals regarding their preliminary distribution proceedings violated their obligations to do justice and have not served the ends of justice but their own personal ends per the following case.

27. Stockwell v. McAlvay (1937) 10 Cal.2d 368 [74 P.2d

504], stated: {Page 10 Cal.2d 372} Since appellants prevented respondent's attempt to have the present issues tried therein, appellants cannot now assert that the former action is a bar to this action.

28. Richardson v. Callahan (1931) 213 Cal. 683 [3 P.2d 927] stated: *PAGE 688 In California as early as Laffan v. Naglee, 9 Cal. 662, 675, a covenant was held to run with the land, which read in substance: "...lessee may have the liberty of buying it, in preference to any one else." In Coburn v. Goodall, 72 Cal. 498 [14 P. 190, 193], held that while assignees of a lease hold as tenants in common, they are jointly and severally liable on covenants to repair and to deliver up at the end of the term. *PAGE 689 Sacramento S. F. L. Co. v. Whaley, 50 Cal. App. 125, 130 [194 P. 1054, 1056], seems to be exactly in point, the court said: "We do not understand that that phrase or expression, as it is used in section 1462, was intended to be or is restricted in its meaning to such physical benefit

only as may directly accrue to the land from the covenant, but that it means also any covenant which affects the title to real property or any interest or estate therein of the covenant. While, under the statutory law of this state a mortgage does not vest in the mortgagee an estate or interest in the mortgaged land, yet the mortgage affects the mortgagor's title. A covenant in a mortgage providing for the removal of the lien of the mortgage from certain specified portions of the land mortgaged is a covenant for the unfettering, *pro tanto*, of the title, and is, therefore for the direct benefit of the land."

29. The Richardson case supports Jane L. Marsh's acquisition of the Irvine condo which was vested before co-executors petition for probate was ever filed. Monroe F. Marsh's trust deed contract language at paragraphs 10 and 16 created joint and several obligations to remove the lien from the property so Jane L. Marsh as

heir repaid the underlying obligation and received a reconveyance deed because of her acceptance of the obligations and her performance as obligor. If petitioner had no property interest she alternatively claimed an equitable lien on the Irvine condo which Probate Code 7000 recognized by providing that the rights of any devisees were "subject to" the rights of others under the law. No statute in the Probate Code authorized the this or the court of appeals to wrest that equitable lien or other interests in the Irvine condo or petitioners separate property or other community interests in the separate property of Monroe away, per Peck v. Jenness (1849) 48 U.S. 612, 620, 623, 625-626 [12 L.Ed. 841]. The last will of Monroe, another form of contract, contained two covenants running with the land the first acknowledging Jane L. Marsh rights under law to perform under his trust deed in the event he defaulted and the second giving Petitioner Weiss the right of first purchase. Both the trust

deed and last will were publicly filed giving the co-executors, courts, and the world, notice of the covenants running with the land and estopping all of them from denying it. Co-executors unfairly, unconscionably, or fraudulently, persuaded the court of appeals that it was Petitioner Weiss who was trying to wrest money out of Monroe's estate, instead of their unconstitutional seizure of money and other property interests belonging to Petitioners.

30. Concealment by co-executors was fatal to the integrity of the distribution proceedings and the rights of Petitioners especially due to the lack of standing ruling. Without Petitioner Weiss present to finish his oral presentation to Judge Belz they had public fiduciary fairness disclosure obligation which they did not honor.

31. The 6-30-15 RT at 12: 22-26 of the sale of the Irvine condo proceeding reveals Judge Belz admitting all I know is that we are here today for a sale of the real

property,' and Mr Magro stating "I know this court doesn't have time for it" RT at 14:11-12. The same must be said as to them on the 1-10-17 distribution proceeding see its RT 5:22-24 'The equities of this are such that it says timed out; 6:8 through 7:6 in spite of lack of remittitur there is no standing...this probate matter....its over with," despite complaint of inconsistency with ends of justice, see RT 4:24-26.

32. Co-executors had fiduciary duties to all creditors and other persons interested in Monroe's estate to distribute property to those entitled to it, not convert it unto themselves. *Maty v. Grasselli Chemical Co.* (1938) 303 U.S. 197, 201 [58 S.Ct. 507, 82 L.Ed. 745] [purpose of pleading is to do justice], Borer *supra* p. 599-600; and *Kenaday v. Sinnott* (1900) 179 U.S. 606, 615 [21 S.Ct. 233, 45 L.Ed. 339]. The co-executors before receiving letters of administration swore to uphold the laws, and the laws include the California and U.S. Constitutions and the

following case cite is to be applied today.

33. *Snyder v. Com. of Mass.* (1934) 291 U.S. 97 [54 S.Ct. 330, 78 L.Ed. 674], stated: *Page 105 Massachusetts is free to regulate the procedure of its courts in accordance with its own conceptions of fairness unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

34. The co-executors have on countless times unfairly argued everything was *res judicata* despite their knowledge of Judge Schulte's express statement to the contrary, see proceedings to determine persons entitled to distribution RT at page 48:6-17, that Jane L. Marsh rights under the law were reserved for another day because she was only deciding whether or not Jane L. Marsh violated the no contest clause in Monroe's will. The co-executors knew the opinion in G044938 expressly left open the \$640,000 reimbursement issue and that the

court of appeals never came back to that issue to express or uphold a final resolution of the G044938 appeal per *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288 [63 Cal.Rptr.2d 74], at p. 307-309 & FN 12 and *Goodfellow v. Barritt* (1933) 130 Cal.App. 548, 564, 566-568 [20 P.2d 740].

35. The show of authority for pre-trial seizure required under the U.S. Constitution Seizure Clause, as contrasted with the Due Process Clause re post trial judgments, was the Summons which accompanied the co-executors petitions, including but not limited, their Petition for Probate, as well as the opinion in G044938; all subsequent trial and appellate orders opinions based on them; or other orders and opinions. The issue was whether the seizures by co-executors were unreasonable under 4th Amendment due to lack of probable cause; or, because of mode and manner of seizure (ie use of known unlawful authority by way of summons). Although

available co-executors never sought any pre-seizure determination.

WHEREFORE Petitioners pray the court grant a evidential hearing on their objections and cross petition and for such other relief the court deems necessary and proper such as a GVT (Grant Objections or Cross Petition, Vacate void orders and transfer case to Judge Banks) or for a decree similar to that in *Chapman v. Board of County Com'rs of Douglass County* (1883) 107 U.S. 348, 360-361 [17 Otto 348, 2 S.Ct. 62, 27 L.Ed. 378], *Sweiger* supra., or *Wells Fargo & Co. v. Taylor* (1920) 254 U.S. 175, 189 [41 S.Ct. 93, 65 L.Ed. 205].

Respectfully Submitted

By _____/s/_____

Michael Weiss, Attorney for Petitioners

PROOF OF SERVICE (Omitted)

decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. For a failure to comply with this subdivision, any order made on a subsequent application may be revoked or set aside on ex parte motion. (e) This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.