No._____

IN THE SUPREME COURT OF THE UNITED STATES

ESTATE OF JANE L. MARSH, and MICHAEL WEISS

Petitioners.

vs.

STEPHEN D. MARSH and DAMON MARSH,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO CALIFORNIA COURT OF APPEALS, DISTRICT 4, DIV 3

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. On the merits and as applied to the facts and evidence in this case did specified principles of fundamental justice, including unclean hands, constitutionally prohibit the court from affirming distribution of property not belonging in the estate of Monroe F. Marsh.

2. As a question of law could the court constitutionally deny or ignore principles of fundamental justice by confirming lack of standing under prior opinions without considering proffered material changes in law and facts occurring since the time of opinions.

3. Was the U.S. Constitution Fourth Amendment infringed upon by the pre-trial seizure of petitioners property due to lack of probable cause or mode of execution.

LIST OF PARTIES:

Stephen Marsh and Damon Marsh, Individually and as Co-Executors of Estate of Monroe F. Marsh; and, Michael Weiss, Individually and as Executor of Estate of Jane L. Marsh.

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CITATION OF OPINIONS ENTERED IN THE CASE

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

1 JURISDICTIONAL BASIS

This petition is filed under U.S. Const. Art 3 Sec 2, 28 U.S.C. 1257 and Rule 12(4), 13(3), [and 24(a)(1)], re infringement of U.S. Constitutional rights, privileges and immunities. The date of opinions sought to be reviewed is 4-11-18 in G054796 & G054553. Probate Code 11605 [App 11] provides that the distribution orders are conclusive on rights of all interested persons. See also Richardson v. Ramirez (1974) 418 U.S. 24, 35 [94 S.Ct. 2655, 41 L.Ed.2d 551] [right to defend property and other rights incapable of repetition]; ASARCO Inc. v. Kadish (1989) 490 U.S. 605, 618, 619 [109 S.Ct. 2037, 104 L.Ed.2d 696]; Cox Broadcasting Corp. v. Cohn (1975) 420 U.S. 469, 479 [95 S.Ct. 1029, 43 L.Ed.2d 328]. If the court determines the opinions are final disposition of the entire case and controversy then review is sought of all the opinions listed in G054796. A petition for rehearing was denied on 4-26-18 and a petition for equity relief was denied on 5-11-18. A

petition for review was denied by California supreme Court n 7-11-18.

CONSTITUTIONAL PROVISIONS AND STATUTES

See App 11.

STATEMENT OF THE CASE

1. For review are the opinions in G054796 & G054553 dated 4-11-18 and they concern, among other things, two petitions in probate for distribution. 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; 537 P.2d 1250], 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 wit 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 [App 11]; 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 (see App 3, 5, & 7) 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 (no hard copies provided except App 4, 6 & 8) 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]. That is why G054796 and G054553 might be deemed a final judgment. Code of Civ.Proc. 577 [App 11] 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 [App 11]; but, may determine same is not an independent and adequate ground of decision and instead apply those fundamental principles of justice necessary to prevent and/or correct miscarriage of justice. G054796 and G054553 are specified as grounded on law of the case doctrine; but, if they have the effect of a permanent procedural or substantive bar then Urie v.

Thompson (1949) 337 U.S. 163, 172-173 & FN 12 [69 S.Ct. 1018, 93 L.Ed. 1282] which held law of the case doctrine was not applicable and hence reached all federal questions determined by the court of appeals even those from prior appeals; and Martin v. Hunter's Lessee (1816) 14 U.S. 304, 358-359 [4 L.Ed. 97] which held that review in the U.S. Supreme Court included the whole final case and everything including two prior writs of error because the lower court did not comply with remittitur directions, will permit discretionary resolution of all the federal questions raised and decided by the court of appeals. 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.

2. On February 04, 2010 petitioner Weiss purchased a cashiers check which he loaned to his mother Jane L. Marsh (hereafter JLM) 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 (hereafter ROA) which incorporated by reference all prior ROA's in all prior appeals. And see hereto App 13A, App 12A, and App 12C. 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 Surving 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 construction and effect of that cashiers check, as with other written instruments, was a question of law. The respondents 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 Respondents 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]. Respondents 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, see App 12B; 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 (see App 11); but, were nonetheless consolidated for all purposes.

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

G052208 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.

G054796 REPORTER'S TRANSCRIPT OF PROCEEDINGS TUESDAY, JANUARY 11, 2017 [PRELIMINARY DISTRIBUTION]

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

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 REPAID 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.

4. When Respondents 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 and the appeals court had a Probate Code 10313(a)(3) [App 11] and U.S. Constitutional obligation to conduct an immediate inquiry into unfairness just as they did when Weiss told Judge Belz he loaned the $640,000 of Jane L. Marsh which respondents were distributing; but, they 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. 6-30-15 RT 15:13 through 16:2 and 26:16-17. And Respondents deed to the purchasers never complied with Probate Code 10314 [App 11].

5. Probate Code 11621(a) [App 11] required respondents 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 in G054796 & G054553 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 appeal opinions are 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]; and 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].

6. The respondent briefs 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]. Respondents therein opined in advisory fashion that alternative pleading was

not permitted and the Statute of Limitations ran.

7. The U.S. Constitution was violated because of plain error when the court affirmed distribution of $640,000 of Jane L. Marsh's separate money and more to her deceased husbands last will devisees. The appeal opinions rest upon that courts erroneous interpretation of fundamental principles of law, see ASARCO Inc. v. Kadish (1989) 490 U.S. 605, 617 [109 S.Ct. 2037, 104 L.Ed.2d 696] and Nashville, C. & St. L. Ry. v. Wallace (1933) 288 U.S. 249, 264 [53 S.Ct. 345, 77 L.Ed. 730] 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.

8. 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. See App 12D.

9. Petitioners, on numerous times, to the point of futility have complained of unfairness which were summarily denied. See App 12E.

10. Petitioners on numerous times, to the point of futility have argued infringement of those fundamental principles which were summarily denied . See App 12F.

11. Petitioners on numerous times, to the point of futility have complained of false recitals in proposed orders which were summarily denied. See App 12G.

ARGUMENT AMPLIFYING RULE 10 (b) and (c)

REASONS FOR CERTIORARI

12. 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 respondents, when they produce a miscarriage of justice. Because the respondents 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. Standing in state courts is a non federal

question see Creswill v. Grand Lodge Knights of Pythias of Georgia (1912) 225 U.S. 246, 259 [32 S.Ct. 822, 56 L.Ed. 1074]; but, under ASARCO Inc. v. Kadish (1989) 490 U.S. 605, 623 [109 S.Ct. 2037, 104 L.Ed.2d 696] the federal issues raised by a defendant in a state court are those he shows standing to continue pursuit of in the federal court.

13. Under fundamental fairness principles in the U.S. Constitution due process clause and California Probate Code 39 [App 11] which provided in part: ”Fiduciary: “Fiduciary” means personal representative” respondents were fiduciaries to all the interested persons such as those defined in probate code 48 [App 11] as a body or class of persons. Probate commissions for personal representatives and their attorneys 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. Respondents by knowingly concealing Jane L. Marsh’s $640,000 and other interests, overvalued Monroe’s estate in order to knowingly receive

overvalued commissions as well as the $640,000 and all her other property interests. As stranger to her husband she has no legal rights either under his will or otherwise. **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].**

14. The reason this court may look to the reporters transcript (hereafter RT) 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.

15. 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.'**

16. The respondents had previously filed a petition to sell the Irvine condo and petitioners were not permitted to file their objections then either as trial judge Belz likewise ruled on 6-30-15 that petitioners had no standing to

complain as shown in the 6-30-15 RT in G052082, incorporated by reference in the records on appeal in G054796 and G054553 as well as showing that no evidence was admitted to support the petition for confirmation of sale as required by Probate Code 10310(b) [App 11]. 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 this courts 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 [App 11], was applied by Judge Belz, nor later by the appeals court; rather past tense stale adjudications. Also see Objections to Preliminary Distribution Petitions in G054796 at its AAO 14 & G054553 at its AAO 9, which

included general denial and affirmative defenses including attack on jurisdiction at paragraphs 1 and 7. 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) respondents 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) [App 11] & 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 (c) and per Probate Code 9603 (App 12). The new facts consisted of the fraudulent, mistaken, unconscionable, or otherwise unfair representations made in the petitions for distribution and proposed orders by respondent that distribution could be made without injury to the interests of any interested persons or creditors. Respondents 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 $510,000 on 10-13-15 with all of Jane L. Marsh's Moore-Marsden interests (In re Marriage of Marsden (1982) 130 Cal.App.3d 426 [181 Cal.Rptr. 910] In re Marriage of Moore (1980) 28 Cal.3d 366 [168 Cal.Rptr. 662, 618 P.2d 208]), and all of petitioners personal property inside; nor inventoried the debts Respondents owed Monroe's estate by virtue of that part of the $821,000

community property monies (see App 13B) 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] cited in in G054796 ARB at p. 55; G052082-15 at p.3 paras 2, 3, 37 and 38; G052082-36 p. 27 para 2 and p. 29 last paragraph; G052574-17 at p. 4 and p. 49; and the new case of Sefton v. Sefton (2012) 206 Cal.App.4th 875 [142 Cal.Rptr.3d 174] was cited in G052082 Appellants Opening Brief (hereafter AOB) at p. 10; and G052574-13 at p. 50.

17. The hearing on the two distribution petitions etc. involved distribution of more than $1,000,000, which was

over the 50% net value permitted under Probate Code 11632 [App 11], yet lasted only 3 minutes. The appeal court has shown favoritism on the side of the respondents and hostility on the side of Petitioner Weiss as evidenced by defamatory remarks and the fact that every sought after motion, pleading, report ete of Respondents ever filed during the nine year history had been affirmed, see G052082 RT at page 13:9 “The co-executors have won every time.”

18. 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.'

19. 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].

20. The three admissions regarding Jane’s $640,000 claim in equity in Respondents 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 (G054796 AAO 22 at its Ex 9 p. 798) 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 (G0 54796 AAO 22 at its Ex 9 p. 798) interest in the real property itself and provided himself with other contracting parties that the reconveyance deed go to his heir or executor should she or he pay off his debt. His executors could have bought it and filed a statement of interest under the probate code statutes in the county recorders office; but, did not, and never wanted it as did, and do Petitioners today, because of happy family

associated memories therein. The statute of limitation opinion of respondents 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].

21. 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."

22. 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.

23. Petitioners contend a nine year running of impracticability and futility of further approach in the lower 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 appeal court is either unwilling or unable to entertain anything further from petitioners; or, is biased in favor of respondents and against Petitioner Weiss and desirous of imposing only more sanctions on him should he revisit them. Respondents have distributed everything in the Estate of Monroe Marsh including property never belonging therein to themselves and their family members. Respondents motion to dismiss the appeals violated their obligations to do justice and have not served the ends of justice but their own personal ends.

24. 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.

25. Respondents argument ever since the opinion in G044938 was that they hear the same thing over and over again; but, the reply of Petitioners was that it was they who prevented them from ever starting their case in the first place. See First Nat. Bank of Guthrie Center v. Anderson (1926) 269 U.S. 341, 346 [46 S.Ct. 135, 70 L.Ed. 295] and Conley v. Gibson (1957) 355 U.S. 41, 42 [78 S.Ct. 99, 2 L.Ed.2d 80] both holding it's a federal question whether pleading stated or could be amended to state viable federal question.

26. 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."

27. 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 petitioners had no property interest they 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 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 (G054796 AAO 22 at its Ex 8

p. 810), 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 respondents, courts, and the world, notice of the covenants running with the land and estopping all of them from denying it. See App 12C. Respondents 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. See Haynes v. State of Wash. (1963) 373 U.S. 503, 515-516 [83 S.Ct. 1336, 10 L.Ed.2d 513] any issues essential to federal question is reviewable, else federal law frustrated by distorted fact finding.

28. Concealment by respondents was fatal to the integrity

of the distribution proceeding upon appeal 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 to the appeals court.

29. 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" 14:11-12. The same may be said as to him on the 1-10-17 distribution proceeding see 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 4:24-26.

30. Respondents 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 respondents before receiving leters of administration swore to uphold the laws, and the laws include the U.S. Constitution.

31. 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.**

32. The respondents have on countless times unfairly argued everything was res judicata despite their knowledge

of Judge Schulte's express statement to the contrary, see G048211 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 respondents 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 in 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].

33. 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 respondents 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 respondents 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 respondents never sought any pre-seizure determination.

WHEREFORE Petitioners pray the court grant a hearing on their petition for writ of certiorari or for such other relief the court deems necessary and proper such as a GVR (Grant Certiorari, Vacate and Remand) 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_____

Michael Weiss, Attorney for

Petitioners