

19-377  
No. 19-

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In the Supreme Court of the United States

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KRAIG RUDINGER KAST ET AL.,

*Petitioners,*

v.

ERICKSON PRODUCTIONS INC.,  
& JIM ERICKSON,

*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

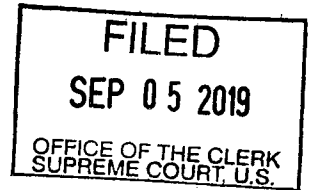
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## QUESTIONS PRESENTED

1. Whether the district and appellate courts claiming jurisdiction under ERISA over a private inter vivos trust creates conflict between Article VI of the Constitution and the Tenth Amendment and State probate codes. Whether the district and appellate courts have jurisdiction over a person if the person lacks capacity to be sued under FRCP 17(b). Whether the district court claiming jurisdiction based on comity deprives the parties of due process before a court of competent jurisdiction. Whether the Ninth Circuit decision conflicts with IRS codes and jurisdiction.

2. Whether under the Fifth Amendment's property due process clause, a district and appellate court must provide the beneficiary of a valid irrevocable inter vivos trust, testamentary trust or will with due process before taking the beneficiary's property.

3. Whether the Tenth Amendment confers to the States the ability to establish their own probate laws to determine what makes a Trust Valid. Whether behavior of a licensee passes through personal liability to the trustee of an irrevocable inter vivos trust.

4. Whether the Tenth Amendment confers to the States the exclusive right, because there is no federal licensing of attorneys, accountants, doctors, fiduciaries and others who provide services to trustees, to legislate and enforce their own laws regarding the qualifications and behavior of persons who are licensed by the State. Whether State probate law allows licensees to perform the tasks of a trustee of a inter vivos or testamentary trust, without the licensees personal liability passing to the trust, trustee or beneficiary, provided

the licensee is not named as the trustee in the trust instrument.

5. Whether the Tenth Amendment gives a State the exclusive right to legislate and enforce its own governmental laws regarding what types of documents can be recorded by a County Recorder and whether the State has the constitutional right to consider those recorded documents to lack legal sufficiency or correctness when used as evidence in a legal proceeding.

6. Whether the Tenth Amendment prohibits a district court from invalidating the settlor's transfer of property into a private trust, when that transfer is valid under a State's probate law.

7. Whether under the Ninth Circuit's *In re Levander* decision conflicts with FRCP 60(b) amended 1946, FRCP59(e) and FRCP 6(b) for establishing the Statute of Limitations.

## LIST OF PROCEEDINGS BELOW

1. Southern District of New York case no. 1:12-civ-1693. *Erickson Productions Inc. & Jim Erickson v Atherton Trust*. March 12, 2012. Dismissed for personal jurisdiction.
2. California Central District case no. 2:13-cv-07160. *Erickson Productions Inc. & Jim Erickson v Kraig Rudinger Kast*. Filed September 27, 2013, transferred November 22, 2013 to CAND.
3. California Northern District, San Jose case no. 5:13-cv-05472. *Erickson Productions Inc. & Jim Erickson v. Kraig Rudinger Kast*. Trial with Judgment. April 15, 2015. Judgment Entered August 18, 2015.
4. Court of Appeals for the Ninth Circuit case no. 15-16801. *Erickson Productions Inc. & Jim Erickson v. Kraig Rudinger Kast* Appeal. September 10, 2015.
5. Court of Appeals for the Ninth Circuit Case No. 17-17157. *Erickson Productions Inc. v. Kraig Rudinger Kast et al.* Appeal of 5:13-cv-05472 Motion to Amend. October 17, 2017.
6. California Northern District, San Jose case no. 5:13-cv-05472. Order Denying Motion to Assign. November 9, 2018 .
7. Court of Appeals for the Ninth Circuit. case no. 15-16801. *Erickson Productions Inc. & Jim Erickson v. Kraig Rudinger Kast* vacate and remand to USDC-CAND Oakland case no. 4:13-cv-05472. April 16, 2019.

8. Court of Appeals for the Ninth Circuit. Case no. 17-17157. *Erickson Productions Inc. & Jim Erickson v. Kraig Rudinger Kast*. District court order regarding motion to amend affirmed. May 1, 2019.
9. Court of Appeals for the Ninth Circuit case no. 17-17157. *Erickson Productions Inc. & Jim Erickson v. Kraig Rudinger Kast*. Kast En Banc petition. May 15, 2019.
10. Court of Appeals for the Ninth Circuit. Case no. 17-17157 *Erickson Productions Inc. & Jim Erickson v. Kraig Rudinger Kast*. Kast En Banc denial. June 7, 2019.

#### LIST OF PARTIES, RULE 29.6 STATEMENT

The parties to the proceeding in the United States Court of Appeals for the Ninth Circuit are the same as the parties to this proceeding in the Supreme Court of the United States: Kraig R. Kast Petitioner, Defendant (Kast) and settlor of the California Irrevocable Inter Vivos Trust named the Black Oak Trust dated 3-11-95, interested party Mariellen Baker (Baker) trustee and beneficiary of the irrevocable Black Oak Trust dated 3-11-95 and Plaintiff & Respondent Jim Erickson & Erickson Productions Inc. (Erickson). The inter vivos trust at issue is a private trust and is not owned by a corporation or other business entity.

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## PETITION FOR A WRIT OF CERTIORARI

Kraig R. Kast et al, Defendants, respectfully petitions this court issue a writ of certiorari to reverse and remand the decisions of the United States Court of Appeals for the Ninth Circuit below.



## OPINIONS BELOW

The decisions of the Court of Appeals for the Ninth Circuit are available at *Erickson Productions, Inc. v. Kraig Kast*, No. 17-17157 (9th Cir. 2019) Memorandum of Opinion of the Ninth Circuit (May 1, 2019) (Docket 348) reprinted at App.1a; Order Denying Plaintiffs' Motion to Assign Rental Income or Force Sale, and Staying Case Pending Appeals (November 9, 2018) (Docket 341) reprinted at App.5a; Order Granting in Part Erickson's Motion to Amend the Judgment (October 5, 2017) (Docket 243) reprinted at App.13a; Order of the Ninth Circuit Denying Petition for Rehearing En Banc (July 7, 2019) (Docket 48) reprinted at App.40a; Appellant's Informal Opening Brief (April 23, 2018) (Docket 19) reprinted at App.41a; Appellant Informal Reply Brief (June 6, 2018) (Docket 28) reprinted at App.98a; Appellant Informal Petition for Rehearing En Banc (May 15, 2019) (Docket 47) reprinted at App.128a; California Probate Code, Statutes and Definitions reprinted at App.150a.



## JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its opinion on May 1, 2019, and denied Petitioner's timely petition for rehearing and rehearing En Banc on June 7, 2019. The Ninth Circuit had original jurisdiction pursuant to 28 U.S.C. § 1291. The Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).



## CONSTITUTIONAL AND STATUTORY PROVISIONS

- U.S. Const., Art. VI  
... the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.
- U.S. Const. amend. V  
It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property"
- U.S. Const. amend. X  
The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.



For the text of the below statutes please see the appendices.

- Federal Rules of Civil Procedure 6(b)(2), 12(b)(1), 12(b)(6), 59(e), 60(b) amended 1946, 69(a)(2)
- California Probate Codes 82(a)(1), 82(b)(13), 83, 681, 810, 15200, 15201, 15202, 15203, 15205, 15206, 15208, 15300, 15301, 15400, 16002, 16004, 16009(b), 16014, 16102, 16012(b), 16222, 16225(1), 16225(2)(b), 16228, 16231, 16241, 16243, 16247, 16352(a), 16352(c)(4), 18200, 19001 (App.41a)
- Uniform Trust Code Section 504(b)
- California Revenue Code 480, 11911
- California Business & Professions Code 6500, 17900(a)(1), 17900(b)(1)
- California Civil Code 2934, 1624(b)(1)(B), 1624(I)(D), 493.010(b)
- Internal Revenue Service Code 671-678 (App.56a)



## STATEMENT OF THE CASE

### A. Introduction

The Ninth Circuit's decision created multiple Constitutional conflicts. Their decision created conflict between the Constitution's Article VI and the Tenth Amendment regarding jurisdiction. The Ninth Circuit also created conflict with the Fifth Amendment citizens right to property due process when it took the property of the beneficiary, who was not a party to the litigation.

The Ninth Circuit created conflict with the Tenth Amendment because there is no federal probate code. The Ninth Circuit created conflict between the Tenth Amendment and California's probate, civil, business & professions and governmental laws. The Ninth Circuit's decision eliminated over 100 years of irrevocable trust law in all fifty states. The Ninth Circuit also failed to consider the district court order (Docket 341) that superseded and overrode the magistrate's order (Docket 243) that prompted the appeal. The superseding order was a dispositive decision that should have ended the appeal. Kast addressed all of the district court and Ninth Circuit's decisions point-by-point in his opening, reply and En Banc briefs. To summarize, no title company, lender, mortgage broker, real estate broker or CPA would put their license or money at risk if the irrevocable Black Oak Trust instrument, financing process or tax filing was not legal under California and Federal law. For the foregoing reasons Kast has submitted this Writ of Certiorari.

In appeal case no. 17-17157, Kast asked the Ninth Circuit to use the following standards of review: De Novo, Abuse of Judicial Discretion and Insufficient Evidence. Kast has standing because he is the defendant and appellant in the copyright case, the appellant and defendant in the motion to amend and the settlor of the private irrevocable inter vivos and revocable inter vivos trusts.

The Ninth Circuit's memorandum made five affirmative decisions: The Black Oak Trust is revocable, recorded documents support the trust is revocable, Kast behaved like the trustee therefore he is the

trustee, the district court had jurisdiction and the motion to amend was timely. Kast will prove that the Ninth Circuit failed to properly apply the Fifth and Tenth Amendments and California's Probate, Business & Professions, Civil and Governmental laws in this case. If the court had correctly applied the law, the only conclusion the Ninth Circuit could have made is the inter vivos trust is irrevocable, the recorded documents lack legal sufficiency, California law does not support that the behavior of a licensee hired by the trustee imputes any legal liability to a trustee, the district court and the Ninth Circuit didn't have jurisdiction using the basis they claimed and the statute of limitations negates the respondents motion to amend. For the foregoing reasons Kast objected to the Ninth Circuit's memorandum.

#### **B. Statement of the Facts**

Kraig Kast, as settlor/grantor/trustor, executed the revocable inter vivos Kraig Kast Living Trust on March 11, 1995 with a California situs. Kast funded the revocable trust with three residential income properties all located in San Mateo County, California on the same day. Kast was never the beneficiary of the revocable trust. In 2005 Kast started an investment advisory business, Atherton Trust Company, with a goal of providing ethical services to disabled senior citizens. The company grew rapidly. Kast and Atherton were featured in the Wall Street Journal, Inc. and other publications worldwide. To sustain Atherton's growth Kast borrowed \$470,000 of his fiancé Baker's retirement savings. Kast agreed to repay Baker, with interest, from Atherton's profits. When the financial crisis of 2008-2009 began to

materialize in late 2007, Kast recommend that his clients convert their investments in securities to cash and certificates of deposit to safeguard their investments. This meant Atherton had no clients and no income. Baker was concerned that the looming financial crisis would jeopardize Atherton's ability to repay her retirement savings, so Baker asked Kast to assign the three properties Kast held in his revocable trust to her in an irrevocable trust to satisfy his and Atherton's debt to her because Atherton was effectively insolvent.

On December 11, 2007 Kast created the second amendment and restatement to the revocable trust which changed the name of the revocable Kraig Kast Living Trust dated 3-11-95 to the revocable Black Oak Trust. Kast intentionally did not fund the second amendment. Later the same day, Kast executed the third amendment to the revocable trust that amended and restated the revocable trust to become an irrevocable trust named the Black Oak Trust in compliance with California probate Code (CPC) sections 15200-15211, 21102(a). Kast the settlor named Baker as the sole lifetime beneficiary of the irrevocable trust and successor trustee. Kast has never been the beneficiary of the revocable or irrevocable trust. Kast notarized the irrevocable trust instrument, although notarization is not required under California law. Kast as the settlor funded the irrevocable Black Oak Trust with four California residential income properties listed on the trust instrument's Addendum/Schedule A on December 30, 2007 in compliance with CPC 15206. CPC15206 reads "that a trust in real property is not valid "unless evidenced . . . (a) by a written instrument signed by the trustee or (b) by a written instrument

conveying the trust property signed by the settlor.” Kast chose to use (b). The irrevocable Black Oak Trust Section 1.04 (App. 165a-167a) references and includes Addendum/Schedule A in the irrevocable trust and lists the properties by address and is signed and dated by Kast as the settlor as required by law. Therefore, the properties were legally transferred and assigned to Baker in trust in compliance with the California law 15202, 15206 and CCP 493.010(b) (assignment to creditors) respectfully. His property assignment settled Kast’s debt to Baker (the fourth property was acquired in trust using funds from the refinance of one of the properties Kast assigned to Baker in the irrevocable trust).

Because Kast is a California licensed Professional Fiduciary (#558), Real Estate Broker (# 01426063) and Insurance broker (# 0G91440), Baker the beneficiary, hired Kast to be the trustee of the irrevocable trust and to manage the properties in her best interest as required by California Probate Code 16002(a) which states “ The trustee has a duty to administer the trust solely in the interest of the beneficiaries”, forty-nine other states have similar language in their probate codes. The irrevocable Black Oak Trust instrument has been determined to be valid by the State of California, County of San Mateo, California, First American Title Insurance Company a national title insurer, two national banks, several lenders, third party service providers and the tenants who reside in the trust owned properties.

The financial crisis was more severe than Kast or Baker anticipated. Millions of people lost their properties to foreclosure. Kast functioning as the

trustee, had a moral, ethical and fiduciary duty to save Baker's properties. The rental income was significantly less than the debt payments. Financing real estate was difficult, but Kast was able to refinance three of the four properties over several years, while the economy recovered. Kast anticipated that when loans were more accessible than the properties, having increased in value from the low of 2008-2009, would be easier to finance. Kast's efforts succeeded and Baker was able to save her retirement savings.

### C. Procedural History

#### 1. Trial Court Proceedings

Separately, Kast decided in December 2010 to restart Atherton Trust Co. as the economy was recovering from the great recession. He hired a professional website development company named Only Websites in Utah to build Atherton a new website. Unbeknownst to Kast, Only Websites copied three small stock photos to the Atherton development website to use as temporary placeholders until the final photos and text were inserted. Only Websites didn't pay the photographer, Erickson, a license fee. Seven months later in July 2011, Kast received a cease & desist from the Erickson's attorney. Kast immediately asked Only Websites to delete the photos from the development website, Only Websites deleted the photos within 24 hours. In March 2012 Erickson sued Kast and Only Websites in SDNY for copyright infringement seeking \$450,000 damages each. Kast did nothing wrong, so he fought Erickson's malicious lawsuit. In March 2013 SDNY dismissed Kast and Atherton due to personal jurisdiction. In December 2013 Erickson sued

Kast in CAND as an individual only and was assigned case no. 5:13-cv-05472. Only Websites defaulted, in March 2016 the SDNY found Only Websites to be the direct infringer and fined them \$11,250.

During Kast's trial in April 2015 in CAND, Erickson's attorney alleged Kast was the direct infringer, the vicarious infringer and the contributory infringer. Kast was poorly represented. The jury found Kast not to be the direct infringer, but he was judged to be both a willful vicarious infringer and a contributory infringer. The jury awarded Erickson \$450,000 plus attorney fees of over \$200,000 for photos that licensed for \$300.

## 2. Appellate Court Proceedings

Kast appealed pro se and was assigned case no. 15-16801. Baker, the beneficiary, who had nothing to do with the copyright litigation asked Kast to resign as trustee of the irrevocable trust due to the ongoing litigation. Kast resigned at the end of the trust's accounting year on December 31, 2015. Baker is named in the trust instrument as the successor trustee of the irrevocable Black Oak Trust dated 3-11-95, so she became the trustee on December 31, 2016 after Kast's resigned. Because of Kast's experience and his California Fiduciary, Real Estate broker and Insurance broker licenses, Baker hired Kast to manage the trust properties, to advise her about how to be the trustee and to consult with experts such as mortgage brokers and lenders on her behalf, as permitted by California Probate Code 26247.

During the copyright appeal Erickson confirmed that Kast had no money, no clients and that Atherton

was inactive due to his lawsuit. Realizing Kast had no money, Erickson's attorney filed a motion to amend the copyright judgment on November 23, 2016 to add Kast as trustee, the irrevocable Black Oak Trust and Baker as its trustee and beneficiary as judgment debtors. In December Baker hired an attorney to preserve her retirement savings and incurred nearly \$300,000 in legal bills before she declined magistrate jurisdiction which led to her being dismissed. In October 2017, the district court magistrate issued his order (Dkt 243 App.13a) voiding Kast's transfer of the properties from his revocable trust to the irrevocable trust ten years before. The magistrate's order intentionally exposed Baker's retirement savings to seizure by Erickson to pay Kast's debt, for no other reason than she is Kast's fiancé. On November 15, 2017 Kast appealed pro se and was assigned case no. 17-17157. *See* Kast Opening Brief App.41a and Reply Brief Appendix 98a that succulently state the facts and law that the Courts should have applied.

In May 2018 the Ninth Circuit ordered Kast be appointed pro bono counsel (15-16801-Docket 54) to argue technical legal issues that Kast raised in his copyright appeal. While both the appeal of the copyright case and motion to amend were pending, the article three district court judge, who inherited the motion to amend case after the magistrate retired, heard arguments on Erickson new motion to assign or sell. The district court concluded that the irrevocable Black Oak Trust is valid, that Kast resigned as trustee nearly a year before Erickson's motion to amend was filed and that Baker as trustee and beneficiary didn't have capacity to be sued under FRCP 17(b). The district court judge noted that Erickson admitted in his briefs



that Baker is the trustee (not Kast) App.5a. The district court denied Erickson's motion to seize Baker's retirement savings/properties and the income they produced. (Docket 341 App.5a) Erickson didn't appeal the denial. The Ninth Circuit was advised of the district court judge's dispositive order issued November 9, 2018, via a motion to augment and judicial notice on November 20, 2018 (Docket 338).

On April 16, 2019 the Ninth Circuit vacated the vicarious and \$450,000 willfulness copyright judgments against Kast, but found him to be a contributory infringer, without stating why he was a contributory infringer. The Ninth Circuit remanded the question of whether Kast was willful or not and his contributory damages to the district court, where a different magistrate judge is currently hearing arguments on these issues. On May 1, 2019 the Ninth Circuit affirmed the district court's order (Docket 348) in case no. 17-17157 App.1a. Kast petitioned for En Banc rehearing App.128a, which was denied on June 7, 2019 App.40a. The Ninth Circuit denial is the basis for this writ of certiorari. Kast has been briefing the remand pro se, while also preparing this petition pro se.



## REASONS FOR GRANTING THE PETITION

### I. THE DISTRICT AND APPELLATE COURT'S ERRED IN THE OPINIONS BELOW.

#### A. The Ninth Circuit and District Court's Jurisdiction Claim Conflicts With the Constitution's Article VI Clause 2, the Tenth Amendment and State Probate Laws.

In its memorandum the Ninth Circuit claimed jurisdiction in one sentence "The district court's addition of judgment debtors was supported by proper jurisdiction and complied with California trust law". This reasoning is incorrect. To establish ancillary subject matter jurisdiction, the district court cited three cases *Peacock v. Thomas*, 516 U.S. 349, 354 (1996) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 379-380, 114 S.Ct. 1673, 1676, 128 L.Ed.2d 391 (1994)) and *Thomas, Head, & Greisen Employees Trust v. Buster*, 95 F.3d 1449 (9th Cir. 1996). *Peacock* and *Thomas* are both ERISA cases, not private inter vivos or testamentary trusts. *Hoffman v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1276 (9th Cir. 1976), is a NLRB suit about a boycott, it says "The general rule is that an appeal to the circuit court deprives a district court of jurisdiction as to any matters involved in the appeal." *J. Moore*, Federal Practice P 203.11, at 734 (2d ed. 1975)."

An ERISA employee benefit trust is created under federal law and enforced by the Department of Labor, which means ERISA trusts fall under Article VI clause 2 of the Constitution. The Tenth Amendment limits the States to those laws that are not federal laws. There is no federal probate law therefore, probate

laws fall under the Tenth Amendment. California probate code 82(b) App.163a and the probate laws of the other forty-nine states, say ERISA trusts are not considered to be private trusts like inter vivos or testamentary trusts. These State statutes were intentionally created to avoid any conflict between the States' probate laws under the Tenth Amendment and federal ERISA laws under the Constitution's Article VI clause 2 supremacy clause. By using ERISA law to impose jurisdiction over State probate law, the district court and Ninth Circuit wrongly imposed federal law over the State of California, violating the Tenth Amendment that separates federal and state powers and laws. Kast also cited FRCP 12(b)(1) for the magistrate not having subject matter jurisdiction. For these reasons the petition should be granted.

**B. The District Court Erred When It Asserted Jurisdiction Over the Beneficiary.**

Following the magistrate's order taking Baker's property, Erickson filed a motion to seize the income from the trust properties (Dkt307) to try to force the properties into foreclosure, so he could seize the \$450,000 judgment prior to a decision on the copyright appeal. The article three district court judge, who inherited the case from the retired magistrate determined, after reading all of the case records, that Baker lacked the capacity to be sued under FRCP 17(b) (Docket 341) (App.5a). Therefore, the district court lacked jurisdiction over Baker and the irrevocable Black Oak Trust. In its order the district court confirmed Kast was not the trustee of the irrevocable trust at the time Erickson filed the motion to amend therefore, Erickson had no claim against Baker, the

irrevocable trust's successor trustee and beneficiary. The district court judge denied Erickson's motion to seize the trust's income and dismissed Baker based on her lack of capacity. The district court judge's dispositive decision should have ended Erickson's claim to Baker's property held in the irrevocable trust, but the appeal went forward even after the Ninth Circuit received notice of the district court judge's dispositive decision six months before it issued its memorandum. The Ninth Circuit affirmed the magistrate's order on May 1, 2019. The Ninth Circuit never acknowledged the district court judge's superseding order (Docket 341, App.5a) excluding Baker as a defendant and validating the irrevocable trust, before or after its decision nor in Kast's En Banc petition.

There is no diversity of citizenship to provide the Ninth Circuit or the district court with jurisdiction over Baker and the irrevocable trust. Kast the settlor, and Baker the successor trustee and beneficiary are both California residents as is Erickson.

**C. The District Court Abused Its Discretion When It Used Comity to Claim Jurisdiction.**

Did the district court using comity to retain jurisdiction deprive the parties of their Fifth Amendment right to due process in a State court of competent jurisdiction? Kast believes so. Kast asked the district court to transfer the case to the California Superior Court for San Mateo County. Kast's request to change the venue was denied based on the district court's claim that it should keep the case due to comity. The district court didn't cite one case in federal court that gave it jurisdiction over a private inter vivos trust that didn't have constitutional, tax,

bankruptcy or other federal issues, which would justify a hearing in district court. The court's claim of Comity was not supported by case law.

Black's defines Judicial Comity as "The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. *Franzen v. Zimmer*, 35 N.Y.S. 612, 90 Hun 103; *Stowp v. Bank, C.C.Me.*, 92 F. 96; *Strawn Mercantile Co. v. First Nat. Bank*, Tex. Civ. App., 279 S.W. 473, 474; *Bobala v. Bobala*, 68 Ohio App. 63, 33 N.E.2d 845, 849."

#### **D. The Ninth Circuit's Decision Conflicts With the Internal Revenue Service's Tax Treatment of Trusts.**

The Ninth Circuit's decision is contrary to IRS codes 671-678 (App.169a) government on how grantors and trusts are taxed. The IRS says the owner of trust property is the grantor, the Ninth Circuit says it is the trustee. It is also contrary to the IRS' position that supports private inter vivos and testamentary trusts fall under the States jurisdiction not the federal government.

#### **E. The District Court Erred When it Claimed Jurisdiction During the Appeal.**

The United States Supreme Court has held that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). However, "[a]bsent a stay or supersedeas, the trial court . . . retains juris-

diction to implement the judgment or order, but may not alter or expand upon the judgment.” *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000). This is because district courts “may not finally adjudicate substantial rights directly involved in the appeal.” *McClatchy Newspapers v. Central Valley Typographical Union No. 46, Int’l Typographical Union*, 686 F.2d 731, 734-35 (9th Cir. 1982). See App.9a-12a for the discussion.

## II. THIS ISSUE IS OF LEGAL AND NATIONAL SIGNIFICANCE — THE NINTH CIRCUIT’S DECISION DEPRIVED THE BENEFICIARY OF HER FIFTH AMENDMENT PROPERTY DUE PROCESS.

Baker was not under any court’s jurisdiction and lacked capacity to be sued when the magistrate took her property. When the district court denied Kast and Baker’s request to transfer the case to California Superior Court for San Mateo County, the district court’s denial was a violation of Baker’s Fifth Amendment right to due process of law.

The magistrate’s sole motivation in granting Erickson’s motion to amend was to expose Baker’s property to claims by Erickson to settle Kast’s judgment. The district court judge clearly explained why taking Baker’s property was wrong. Because the district court didn’t have jurisdiction over Baker the only place she could have obtained due process is in California Superior Court, but the district court denied her that opportunity when it refused to transfer the case.

The Ninth Circuit also violated Baker’s Fifth Amendment right to due process of law when it

affirmed the magistrate decision without hearing from Baker. For over 100 years Courts have referenced *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915) which said "Any course of procedure having for its object the taking of property to satisfy an alleged legal obligation without according any hearing to a respectful protest invoking the supreme law of the land cannot be regarded as due process of law."

Specialty probate courts exist because both the plaintiff and defendant have an expectation that the judge(s) hearing their case will have sufficient knowledge of the State's probate laws to make an informed decision. This expectation raises the question as to whether a U.S. District Court has the requisite knowledge to hear complex probate legal issues that are normally adjudicated in specialty State probate courts, so that a plaintiff and defendant can have their right to due process under the Fifth Amendment.

The hearing record, proves the magistrate didn't have a sufficient knowledge of California probate trust law to make an informed decision, which raises the question as to whether the parties received due process under the Fifth Amendment. For these reasons this petition should be granted.

III. THIS ISSUE IS OF LEGAL AND NATIONAL SIGNIFICANCE — THE TENTH AMENDMENT CONFERS TO THE STATE'S THE ABILITY TO ESTABLISH PROBATE LAWS TO DETERMINE WHAT MAKES A TRUST VALID.

A. The Ninth Circuit's De Novo Review Fails.

Kast asked the Ninth Circuit to review his appeal De Novo. The Ninth Circuit affirmed that the trust was revocable based on the district court saying it was revocable. Had the Ninth Circuit reviewed the trust instrument, California's probate code referenced in Kast's opening and reply briefs, the evidence and case discussion in Docket 213 1-3 and the district court order wherein the district court judge noted that Erickson admitted in his briefs that Baker is the trustee (not Kast) App.5a then applied California Probate law, it could only have concluded the Black Oak Trust is irrevocable.

For the Ninth Circuit to justify this pre-determination, it cited CPC 18200 App.155a and *Zanelli v McGrath*. The panel's reliance on CPC 18200 and Zanelli is wrong for the following reasons. CPC 21102(a) says "The intention of the transferor (Kast) as expressed in the instrument controls the legal effect of the dispositions made in the instrument" App.156a. CPC 15400 says "Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor". The Black Oak Trust instrument states twice on page 1 that the intent of the settlor is that the trust is irrevocable App.165a-167a. CPC 18200 is inapplicable because the statute states "If the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of



creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor.” App.152a. In section 1.03 on page 2 of the trust instrument App. 167a it states “This Trust is irrevocable, and I (Kast) cannot alter, amend, revoke, or terminate it in any way”. The courts were provided with the full trust document and supporting case law and statutes as exhibits in Docket 213-1-3.

*Zanelli* states that creditors can reach property held in a revocable trust. The irrevocable Black Oak Trust instrument CPC 15400 and CPC 21102(a) neuter the court’s reference to CPC18200 and *Zanelli* in this case. The Ninth Circuit and the district court were both wrong, California’s probate code doesn’t support their decision that the Black Oak Trust is revocable. For these reason the petition should be granted.

**B. This Issue Is of legal and National Significance  
— The Tenth Amendment Enables California’s  
Probate Code to Determine a Trust’s Validity.**

The Tenth Amendment confers on the States the right to create and enforce their own probate laws. In all fifty states a private inter vivos trust is valid the instant the trust is executed and funded. A private testamentary trust is valid the instant a settlor dies. California Probate Code (CPC) definitions are included in the Appendices. CPC 82 (b)(13) defines a “private” trust as not an employee benefit (ERISA) trust. CPC 21102(a) says the trust instrument controls the legal effect of what happens after the trust is created. For a California trust to be valid here needs to be a conveyance of property (CPC 15202, 15206); intent (CPC 15201); promise (CPC 15200(e); purpose (CPC 15203); a beneficiary (CPC 15205) and capacity (CPC

810). CPC 15208 says no consideration is required to create a trust. CPC 15400 "Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the settlor". The Black Oak Trust instrument's first page and section 1.03 states it is irrevocable. App.165a-167a. Therefore, the trust is irrevocable under CPC 15400.

When Kast executed and funded the irrevocable trust in December 2007 he clearly stated on the first page of the trust instrument, his intent to make the trust irrevocable. Under California probate law, and the probate laws of forty-nine other states, the trust instrument controls the trust therefore, the Black Oak Trust is irrevocable. Further, under California law and the laws of forty-nine other states the trust, whether it was made irrevocable by amendment to a revocable trust or as a new separate trust, it is irrevocable the instant it is executed and funded. As it was the last document executed, it supersedes the revocable trust. The California irrevocable inter vivos Black Oak Trust dated 3-11-95 has all of the legal requisites for a valid irrevocable trust. For these reasons the petition should be granted.

**C. This Issue Is of Legal and National Significance  
— A Licensee's Behavior Does Not Create Pass  
Through Liability to a Trust, the Trustee or  
the Trust's Beneficiary.**

In its order the Ninth Circuit conflated trust terminology by saying the trustee, trust and the beneficiary are the same, they are not. Most basically, a trust is a right in property, which is held in a fiduciary relationship by one party for the benefit of another. The trustee is the one who holds title to the

trust property, and the beneficiary is the person who receives the benefits of the trust property. CPC 16002 clearly states "The trustee has a duty to administer the trust solely in the interest of the beneficiaries" App.152a. The Ninth Circuit improperly cited *Padilla, Gaynor* and *In re Allustiarte* to claim behavior imputes liability to the trustee which enables the court to take the property's benefit from Baker the beneficiary. *see* Docket 341. The ramifications of this decision are far reaching and impact all fifty states probate laws.

When the irrevocable trust became valid, the settlor Kast, gave up all claims to and ownership of the property he transferred into the trust for the benefit of Baker the beneficiary. Nothing the settlor (Kast) does or says enables the Kast the settlor/trustor to take back the property. The landmark California irrevocable trust case is. *Laycock v. Hammer*, 44 Cal. Rptr. 3d 921, 925-26 (Ct. App. 2006) which states "There are no cases which permit the settlor of a trust to make an irrevocable trust revocable by way of conduct after the trust has been established". *Also see Walton v. Bank of California*, 218 Cal.App.2d 527 (1963) "trustor may not rescind irrevocable trust". Both of these cases amongst others were cited in Docket 213-1-3. Per California probate law and Laycock, *nothing* Kast did or said after he executed and funded the irrevocable inter vivos Black Oak Trust dated 3-11-95 would cause the irrevocable trust to become revocable. Therefore, the Ninth Circuit passing liability from Kast as an individual to Kast as the trustee of an irrevocable trust does not permit the court to take the beneficiary, Baker's, property.

For the courts to say Kast's behavior as a licensee, who was hired by the trustee, makes him the trustee is contrary to CPC 16247, California's vicarious liability laws and the probate law in forty-nine other states. The district court abused its discretion when it passed through Kast's personal liability to the trust and Baker the beneficiary just because Kast was hired to provide services permitted by CPC 16247, which says "The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisers, appraisers (including probate referees appointed pursuant to Section 400), or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties." The Ninth Circuit abused its discretion when it took Baker's property out of a valid California irrevocable trust by voiding a valid transfer ten years earlier, based on Kast's behavior, so that Erickson can seize her properties. For these reasons the petition should be granted.

**D. The Ninth Circuit and District Court's Erred  
— Their Decision Creates Confusion and  
Conflict.**

Erickson's attorney confused the magistrate to create uncertainty and doubt about the trust and its amendments. However the State of California, County of San Mateo, California, First American Title Insurance Company, banks and lenders who deal with these trust instruments on a daily basis are not confused, they have no doubt the Black Oak Trust is irrevocable. First American Title Insurance Company put nearly a million dollars at risk to insure the title on two trust owned properties because they know that

the trust is irrevocable under California law, that the properties were properly conveyed into the irrevocable trust and that Baker is the valid successor trustee and beneficiary. If First American had any doubt about the validity of the irrevocable trust under California law they wouldn't have insured the titles. Four lenders lent the irrevocable trust over one million dollars, they would not have done that if the irrevocable trust was not valid. It is extremely unlikely that Erickson's attorney would have been able to confuse a California probate court about the validity of the irrevocable trust.

The Ninth Circuit decision created more confusion. Taking Baker's property out of the irrevocable trust and giving it back to Kast in the revocable trust created two trusts. Where the revocable trust had previously disappeared when it was amended and restated in 2007, the district court's order reinstated it in 2017. Neither the district nor appellate court said the irrevocable trust was not valid. As a result, the court's created a revocable trust and an irrevocable trust that exist side by side. The revocable trust has the properties, the irrevocable trust is the borrower of record and the receiver of the property income and pays the mortgages, etc. The problem the district court and the Ninth Circuit created is the lenders want their loans secured by property that is in the irrevocable trust. The Ninth Circuit's decision removed the property from the irrevocable trust, so now the loans don't have any collateral. On the other side, the revocable trust has properties, but it doesn't have any income to pay the lenders because the income is in the irrevocable trust. Kast advised the courts in advance of the significant negative ramifications if

they were to issue this type of order. What is clear, Baker was severely harmed by the district court and the Ninth Circuit because she has lost her retirement savings through no fault of her own. For these reasons the petition should be granted.

The Ninth Circuit's decision is unpublished, but was being referenced in legal writings within one week. Sixth Circuit Chief Judge Boyce Martin recently listed six criticisms of the use of unpublished dispositions: "loss of precedent, sloppy decisions, lack of uniformity, a lesser likelihood of review by the Supreme Court, unfairness to litigants, less judicial accountability, and less predictability. Consolidating matters somewhat, we can say that the principal criticisms are that unpublished dispositions create four types of harms: (1) they create inconsistency in case outcomes, (2) they create the potential for "stealth jurisprudence," (3) they may contain sloppy analysis, and (4) people are unsure about their validity." The one thing Chief Justice Martin didn't mention is the harm the Court's unpublished decisions do to innocent people like Baker who are not a party to any litigation.

**E. This Issue Is of legal and National Significance  
— The Tenth Amendment Enables the  
Trust's Spendthrift and Special Powers of  
Appointment Clauses to Prevent Taking  
Baker's Property.**

The courts have validated Spendthrift provisions in trusts for over 100 years. Even if the district court had found Baker as the beneficiary was liable, which it could not and did not, the spendthrift clause in the irrevocable trust prevented the court from taking

Baker the beneficiary's property prior to distribution CPC 15301, 15307.

Thirty-eight states have adopted the Uniform Trust Code (UTC). The UTC's spendthrift codes mirror California's CPC 15301 and 15307. For example, Utah's UTC Section 502 (Spendthrift) provisions for beneficiaries other than the settlor says "(1) A spendthrift provision for a beneficiary other than the settlor is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the beneficiary is the trustee or co-trustee of the trust. (2) A term of a trust providing that the interest of a beneficiary other than the settlor is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary." Because the irrevocable Black Oak Trust's instrument says the trust corpus is for the beneficiary's health, education, maintenance and support the court cannot take Baker's assets to pay Erickson due to the spendthrift clause. See Kast's reply brief App.98a for why the trust's spendthrift and special powers of appointment clauses prevent the court and Erickson from taking her property. *See Ammco Ornamental Iron, Inc. v. Wing* (1994) "Because the judgment debtor was not the sole beneficiary of the trust, the doctrine of merger did not apply and the trust did not fail. We therefore hold the judgment must be reversed because the judgment creditor may not execute on the judgment

debtor's interest in the trust free of the trust's restrictions on alienation." For these reasons the petition should be granted.

IV. THIS ISSUE IS OF LEGAL AND NATIONAL SIGNIFICANCE — THE TENTH AMENDMENT CONFERS TO THE STATES THE ABILITY TO CREATE AND ENFORCE THEIR OWN LICENSING LAWS.

There are no federal licensing laws for attorneys, accountants, fiduciaries, real estate brokers, insurance brokers, doctors, landscapers, caregivers and other licensees who trustees of inter vivos or testamentary trusts may hire to provide them with services to benefit beneficiary(ies). Kast is a California licensed professional fiduciary #558, Real Estate Broker #01426063 and Insurance broker #0G91440. The Tenth Amendment gives the States the exclusive right to legislate and enforce their own laws regarding the qualifications required for persons to be licensed and the behavior of those licensed persons. The State allows licensees to perform the tasks that a trustee of a inter vivos or testamentary trust might perform without the licensees being legally named the trustee. CPC 16247 says "The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisers, appraisers (including probate referees appointed pursuant to Section 400), or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties." Baker was allowed by CPC 16247 to hire Kast as an advisor, bookkeeper and property manager.

In its decision the Ninth Circuit ignored CPC 16247 and referenced Kast's behavior after he resigned



as trustee, to conclude that Kast was *behaving* like the trustee therefore, Kast was the trustee (not Baker). There is nothing in California law that says the behavior of a licensed person makes them the trustee. If that was the case, attorneys, accountants, fiduciaries, doctors, caregivers and even hair stylists could all be considered trustees because a trustee hired them to provide services the trustee could perform for themselves or the beneficiary. Further, the licensee's personal debts could be passed through to the trustee and beneficiary, which would prevent trustees from hiring anyone. The district court abused its discretion by deciding that Kast's personal liability is able to be passed through to Baker as trustee or beneficiary.

Secondly, Kast's liability to Erickson had nothing to do with the trust or Baker, it related to Only Websites' copyright infringement. Kast's debt to Erickson didn't occur while he was acting as the trustee, it was when he contracted for a website to be built for Atherton Trust Co. his completely separate investment advisory company. Atherton had nothing to do with the trust, his trustee responsibilities or Baker the beneficiary. Erickson's original suit didn't name Kast as the trustee of the irrevocable Black Oak Trust, the trust or Baker as successor trustee or beneficiary as alleged copyright infringers. Erickson sued Kast as an individual for copyright infringement and received a judgment against Kast as an individual only. It was only after First American Title confirmed to Erickson's attorney that the trust was irrevocable, that he filed the motion to amend to seize Baker's property. For that reason the Court can't pass through Kast's liability to the trust or Baker under California law or the law of forty-nine other states.

The Ninth Circuit cited *In re Allustiarte*, 786 F.2d 910,914 (9th Cir. 1986) case to support its reasoning. But, it involved bankruptcy, intent to make a fraudulent transfer, and breach of a trustee's fiduciary duty, none of which applies here. Kast's intent is stated on the first page of the trust and in Baker's loan agreement. Kast had no intent to defraud anyone when he made the transfer in 2007. The transfer was made six years before Erickson sued Kast, Kast had no significant creditors other than Baker, so this case is inapplicable. *Solomon v. N. Am. Life and Cas. Ins. Co.*, 151 F.3d 1132,1138 (9th Cir. 1998) The court said "party that did not create, operate or control the trust" or "perform any duties as trustee was not a de facto trustee" the court's excerpt was taken out of context of this case. The court actually said "there is no evidence that Allianz and Solomon had a fiduciary relationship from which a fiduciary duty would flow". The court referenced *Gaynor v. Bulen*, 228 Cal. Rptr. 3d 243,249 n.4 (Cal. Ct. App. 2018) quoting *King v Johnson*, 178 Cal.App.4th 1488 (2009) again, out of context. "An individual "who is not a trustee, but has 'undertaken to act in the capacity of a trustee' . . . maybe held liable as a trustee under certain circumstances." This case was brought by a beneficiary who alleged breach of trust and waste of trust assets by a person who was not named the trustee in the trust instrument. Kast did not breach his trust and didn't waste the trust assets, Kast actually grew the trust's asset value. The Gaynor case is irrelevant because the unlicensed person in the case was conspiring with the trustee to defraud the beneficiary. For the Gaynor case to be relevant here, it would have had to mean Kast, as a licensed fiduciary who was hired by

Baker the trustee, conspired with Baker the trustee, to defraud Baker herself as the beneficiary, which makes no sense. For these reasons the petition should be granted.

All of these cases dealt with a person who wasn't licensed by the State. Kast's performing the duties of a licensed fiduciary are governed by Business & Profession Code 6500-6592. Nothing in the code or case law enables Kast's personal debt to Erickson, which has nothing to do with his being a licensed fiduciary, to pass through his personal debt to the trustee, trust or beneficiary.

V. THIS ISSUE IS OF LEGAL AND NATIONAL SIGNIFICANCE — THE TENTH AMENDMENT CONFERS TO THE STATES THE ABILITY CREATE THEIR OWN GOVERNMENTAL LAWS.

A. Recorded Documents Lack Legal Sufficiency.

The Tenth Amendment gives California the exclusive right to legislate and enforce its own governmental laws. Two governmental laws are applicable here. California regulates what types of documents can be recorded by a County Recorder and whether those recorded documents lack legal sufficiency or correctness as evidence in any legal proceeding. App.168a. The Courts stated that the deeds Kast signed after he executed the irrevocable trust instrument in 2007, some of which may have had correctable typographic errors, were evidence that the irrevocable trust was revocable, they are not under California law.

The Ninth Circuit didn't consider California Governmental law and the County of San Mateo Cali-

California's disclosure on its website that states the County Recorder "examines the document for "recording requirements" and not for its correctness or legal sufficiency" App.170a. As the State of California and County of San Mateo do not certify or authenticate the recorded documents for correctness or legal sufficiency, the documents are not able to be used as evidence in a legal proceeding. The district and appellate court did the opposite, they treated the recorded documents as correct and legally sufficient evidence, contrary to California law. Further, as per *Laycock v Hammer* in III(B) above, no matter what Kast's conduct was after executing and funding the irrevocable trust, nothing he did made the trust revocable. For these reasons the petition should be granted.

**B. The Ninth Circuit and the District Court Erred  
— The Legally Required Description of the  
Trust on Recorded Loan Documents Is Not a  
Fictitious Name That Proves Alter Ego.**

The district court tried to justify its order passing through Kast's personal liability to Baker the trustee by saying the irrevocable trust is an alter ego of Kast as an individual, based on Kast using a fictitious name to "confound" creditors. Kast referred the Ninth Circuit to his reply brief which cited California probate code 16222 to determine whether an inter vivos or testamentary trust is a business, which is the requirement for needing a fictitious business name. If the district court had read the California law Kast cited, it could never have made the determination that the legally required description "Kraig Kast as trustee of the Black Oak Trust dated 3-11-95" on loan documents is a fictitious name which

supports alter ego. CPC 16222 says "For the purpose of this subdivision, the lease of four or fewer residential units is not considered to be the operation of a business or other enterprise." The trust had no more than 4 residential properties before this lawsuit therefore, under CPC 16222 the Black Oak Trust was not a business.

This is important because the district court claimed that the CPC 16009(b) legally required description "Kraig Kast as trustee of the Black Oak Trust dated 3-11-95" is a fictitious business name, it is not. CPC 16009 says "The trustee has a duty to do the following: (b) To see that the trust property is designated as property of the trust", App.153a. This description is mandated by The State of California, the County of San Mateo, national lenders and national title companies. California Business & Professions code 17900(a) says "The filing of a fictitious business name certificate is designed to make available to the public the identities of persons doing business under the fictitious name" and 17900(b) "As used in this chapter, "fictitious business name" means: (1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners, as described in subdivision". CPC 16009 requires the trustee's full name be disclosed, the mandated description includes the trustee's full name, thus it is not a fictitious name under 17900(b). And, the trust is not a business under CPC 16222. Therefore, the legally required description is not a fictitious name that Kast used to "confound" creditors and it is not Kast's alter ego of Kast as a trustee. The trust is not a business so it doesn't need to file a fictitious name statement. The only reason the dis-

strict court asserted the fictitious name argument was to enable it to pass through Kast's personal liability to Baker, the trust's beneficiary. The Ninth Circuit's whole justification is contrary to both California Business & Professions Code 17900 and CPC 16009. For these reasons the petition should be granted.

VI. THIS ISSUE IS OF LEGAL AND NATIONAL SIGNIFICANCE — THE TENTH AMENDMENT AND CALIFORNIA PROBATE LAW VALIDATE THE PROPERTY WAS CORRECTLY TRANSFERRED INTO THE TRUST.

The Tenth Amendment prohibits a district court from invalidating the settlor's transfer of property into a trust, when that transfer is valid under California's probate law. In this case, the property was transferred into the irrevocable trust *six years* before Erickson sued Kast. At the time Kast assigned his properties to Baker in the irrevocable trust to satisfy his debt to her, he had no significant creditors other than Baker, was not insolvent and had no anticipation that six years in the future he would be sued for copyright infringement. At the time he assigned his properties to Baker, Kast had never been sued before and had no negative notations on any of his professional licenses then or now. For this reason the petition should be granted.

VII. THE DISTRICT AND APPELLATE COURTS ERRED — THE NINTH CIRCUIT AND DISTRICT COURT'S DECISION *IN RE LEVANDER* CONFLICTS WITH FRCP 60(B) AMENDED 1946 AND FRCP 6(B).

The District and appellate court both abused their discretion by not applying FRCP 60(b) amended 1946,

FRCP 59(e) and FRCP 6(b) properly as a statute of limitations. Both courts cited Ninth Circuit's decision *In re Levander* 180 F. 3d 114, 1121 n. 10 (9th Cir. 1999) as providing Erickson with a nebulous "reasonable" amount of time to file his motion to amend the judgment based on his claim of "newly discovered evidence". The federal rules should be superior to the Ninth Circuit's case judgment. The Ninth Circuit's *In re Levander* decision conflicts with the federal rules.

Erickson filed his motion to amend 463 days after the judgment was entered on August 18, 2015. Erickson knew his motion should be denied, which is why he filed another lawsuit in CAND case no 17-cv-02427 in compliance with FRCP 60(b) amended 1946. Kast cited in his briefs "Rule 60(b) as amended permits an application for relief to be made by motion, on the ground of newly discovered evidence, within one year after judgment".

Kast also cited FRCP 59(e) which says "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Both the district court and the Ninth Circuit denied that FRCP 59(e) applied to Erickson's motion to amend the judgment based on *In re Levander*.

In addition, Kast cited FRCP 6(b) which says "A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b)", but the district court again cited *In re Levander*.

Kast asks the Supreme Court to review the Ninth Circuit's *In re Levander* decision and resolve *In re Levander's* conflict with FRCP 60(b) amended 1946, FRCP 59(e) and FRCP 6(b) to determine whether the

Ninth Circuit and district court erred when they should have applied FRCP 59(e), FRCP 60(b) amended 1946, and FRCP 6(b)'s statute of limitations to this case. Based on the Federal Rules of Civil Procedure, the Courts should have dismissed Erickson's Motion to Amend the Judgment. For these reasons the Court should grant this petition.



### CONCLUSION

The Ninth Circuit's decision effects the U.S. Constitution, State probate and governmental laws and millions of private trusts across all fifty states. It is Kast's sincere request that the Supreme Court accept this Writ of Certiorari because it clearly raises Constitutional questions that deserve the Supreme Court's consideration.

Respectfully submitted,

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SEPTEMBER 5, 2019