

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ASTARTE DAVIS

Petitioner

vs.

MOLLY C. DWYER, Clerk UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

RICHARD SEEBORG, Judge UNITED STATES DISTRICT COURT FOR THE
NINTH CIRCUIT
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
at issue is
UNITED STATES DISTRICT COURT FOR THE NINTH CIRCUIT
[42 U.S.C. § 1983 COMPLANT]

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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QUESTIONS PRESENTED

1. Is non-judicial conduct/actions by judges in their official capacity as judge, and in their individual capacity for non-judicial actions subject to 5th and 14th Amendments Due Process protection in a case?
2. Can a court deny to hear a Petition/Motion/Complaint that address the violations of the 5th and 14th Amendments Due Process protection, which voids a case?
3. Can a court deny to hear a Petition \ Motion / Complaint on an judgment/order/decision issued outside Jurisdiction in a manner that violates the 5th and 14th Amendments of Due Process protection?
4. Did not each judge have a duty under due process to invalidate a grant deed created by fraud and breach of fiduciary duty to obtain personal benefits at the expense of the principal and return the properties to the rightful owner?
5. Did the courts/judges error in unenforceable cases below when they failed their duties to annul/void the judgments / orders / decisions in those cases.
6. Can a Clerk of the appellate court order a stay on appeal; thereby denying a Petition/Motion/Complaint/Appeal to set aside/vacate/annul void cases in violation of the 5th and 14th Amendments Due Process protection under U.S. Code 42 USC §1983?
7. Can a court deny to hear a petition/motion/complaint/appeal to set aside/ vacate/annul void cases that were granted in violation of the 5th and 14th Amendments Due Process protection under FRAP 60(b)(4) which has no statute of limitations on filing a complaint based upon fraud or fraud upon the court; and all that follows?
8. Can an Appeal Court Support a void case or a grant deed created by fraud in breach of fiduciary duties , that would continues the causation to Astarte?
9. Is not a judgment/orders/decisions void on its face under denial of protected fundamental constitutional due process rights and fraud upon the court?
10. Is not void judgments / orders / decisions unenforceable under law from the date and time of its filings; and all the follows?
11. Did the court error when it ignored, suppressed, and excluded uncontradicted relevant evidence from the trial/hearings in a manner that violated the 5th and 14th Amendments of Due Process protection?
12. Did the court error when it used known untrue statements of fact in its judgment that violated the 5th and 14th Amendments of Due Process protection?
13. Is not the causes before this Court on petition for certiorari to review the judgments/orders/decisions of the courts below, on the grounds that they are in direct conflict with a decisions of other courts for non-judicial acts and void cases?

LIST OF PARTIES

Petitioner is Astarte Davis.

Respondent: U.S. Court of Appeals for the Ninth Circuit, Molly C. Dwyer, Clerk U.S. Court of Appeals for the Ninth Circuit in her official capacity as Clerk of Court, and in her individual capacity for her non-judicial acts in Case 20-16136.

Respondent: Richard Seeborg, Judge, U.S. District Court for the Ninth Circuit in his official capacity as Judge, and in his individual capacity for his non-judicial acts in Case 3:20-cv-02657-RS; which is a 42 U.S.C. § 1983 (1982) protects every citizen from any violation of all rights, privileges, and immunities secured by the Constitution. *See id.* A judge's secret agreement to rule against a party, prior to any judicial proceeding, violates the right to a fair and impartial tribunal guaranteed by the due process clause of the Fourteenth Amendment. *See* U.S. Const. amend. XIV.

RELATED CASES

The Original Marin Case 53979; District Court Case 3:18-cv-00094-RS; Marin Case CIV 1802890; Court of Appeal of the State of California Case A157795.

Not one of the above courts or the current United States Court of Appeals Case 20-16136 ; or the U.S. Court Case 3:20-cv-02657-RS before this Court would make a decision on void Case 53979 and the denial of Astarte's constitutional rights by those court/judges; and all which followed was void. There were statements concerning Petitioner being a vexatious litigate, Petitioner is not on the California Judicial List for being a vexatious litigates and never has been. It is required by law if you are a vexatious litigate to be on their list.

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT**

Petitioner respectfully prays that a writ of certiorari issue to review the U.S. Court Of Appeals Ninth Circuit before judgment; and the U.S. District Court Ninth Circuit after Order Adopting the Magistrate Judge's Recommendation on a U.S. Code 42 USC §1983 Complaint thereby terminating Astarte's case with prejudice; this Court has jurisdiction to consider this Case.

OPINIONS BELOW

United States Court of Appeals Case No. 20-16136 has yet to make a decision; appears in Appendix A - Pg 2 to this petition.

United States District Court Case No. 3:20-cv-02657-RS; appears in Appendix B - Pg 3 to this petition.

By petition for certiorari before judgment, which permits this Court to expedite a case pending before a United States court of appeals by accepting the case for review before the appellate court has decided it. However, Supreme Court Rule 11 provides that a case may be taken by the Court before judgment in a lower court "only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court."

Landmark Supreme Court Case: In *United States v. Windsor*, 570 US 744 (2013) [No. 12-307] both sides filed petitions for certiorari before judgment, but it was only granted after judgment by the Second Circuit. This Court has jurisdiction to consider the merits of this case.

Well-known cases in which the Supreme Court has granted certiorari before judgment and heard the case on an expedited basis have included *Ex parte Quirin*, 317 US 1 (1942), *United States v. United Mine Workers*, 330 US 258 (1947), *Youngstown Sheet & Tube Co. v. Sawyer*, 343 US 579 (1952), *United States v. Nixon*, 418 US 683 (1974), *Dames & Moore v. Regan*, 453 US 654 (1981), *Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 US 50 (1982), *United States v. Booker*, 543 US 20 (2005), *Department of Commerce v. New York*, 588 US 139 S. Ct. 2551 (2019).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Code § 2101 (e).

An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Astarte took her case to the district court pursuant to 42 U.S.C. § 1983 for deprivation of rights under the U.S. Constitution, Fifth, and Fourteenth Amendment.

[The Fourteenth Amendment states: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amend. V and California Constitution Amend. XIV].

Also California Primary Rights, and Supreme Law of the Land. Pursuant to California and federal constitutional rights there is NO statute of limitation for denial of due process. Judgment is a void judgment if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process; and a void grant deed created by fraud, in breach of fiduciary duties. FRCP Rule 60(b)(4), 28 U.S. Const. Amend. 5; and California Constitution Amend 14. "It is clear and well established law that a void case or cases can be challenged in any court." *Old Wayne Mut L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907).

The PLENARY POWER DOCTRINE: In United States constitutional law, plenary power is a power that has been granted to a body or person in absolute terms, with no review of or limitations upon the exercise of that power.

Astarte's 42 U.S.C. § 1983 Complaint is under constitutional rights violations and void cases; it is not frivolous. If it should be called frivolous on a void judgment under FRAP Rule 60(b)(4), 28 U.S.C.A. Const. Amend. 5. *Klugh v. U.S.*, 620 F. Supp. 892 (D.S.C. 1985). 12 U.S. Code ... FRCP Rule 60(b) provides that the court may relieve a party from a void judgments / orders / decisions. Also the appellate court may declare void any orders and judgments of the trial court after it lost plenary power [jurisdiction] because as a void judgment is a nullity from the beginning, and is unenforceable. Also 4.4.2 Section 1983; 42 U.S.C. sec. 1981; 42 U.S.C. sec. 1985(3). 28USC 1331; 28 USC2101(e).

The herein cases before this Court are simply void for denial of due process, and form no bar to a recovery sought. *Elliott v. Lessee of Piersol* 26 US 328 (1828). Relief is not a discretionary matter, but mandatory, when the actions are in a manner inconsistent with due process and Civil Rights.

To an American it is fundamental that any law in contravention of the Constitution is null and void. This doctrine, enunciated in the case of *Marbury v. Madison*, 5 U.S. 137; 1 Cranch 137; 2 L. Ed. 60; (1803) U.S. LEXIS 352

This case with all of its twists and turns has never been heard on the merits of the case; dismissing on a technicality, or statute of limitation; as the judges ignored the denial of due process; which is truly an injustice.

STATEMENT OF THE CASES
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT CASE NO. 20-16136
and
U.S. DISTRICT COURT CASE NO. 3:20-cv-02657-RS

COURT OF APPEALS NINTH CIRCUIT- CASE NO. 20-16136:

Molly Dwyer, Clerk and sub-clerks by their intentional and knowing wrongdoing to the extent of manipulation of the Court's Docket and putting a stay on appeal; even when there is a right of appeal under law.

Astarte has stated her right of appeal for denial of United States Constitution, California Constitution, Civil Rights, California Primary Rights in her 42 U.S.C. § 1983 Complaint; and void cases. The United States District Court, Judge Richard Seeborg did ignore Astarte's Complaint with uncontradicted void cases and adopted the Magistrate Judge's Report and Recommendation; which is/was contrary to law for violation of her protected constitutional rights of due process. Thereby Astarte appealed to this Court. Now Astarte is being denied by the Clerk of the Court Molly Dwyer her right of appeal, under her stay of appeal. As shown on the court's Docket [App A-1].

Molly Dwyer, Clerk of the Court under FRAP Rule 45, it would be inappropriate for her to send a **Referral Notice** [App A-2], dated 6/12/2020 to Judge Seeborg Case 3:20-cv-02657-RS for any reason at all; much less questing the Judge about his Order on Astarte's case, and not within the FRAP Rules for the Clerk to do; as the **District Court Case was closed on 5/29/2020**. The following happen after case was closed.

Astarte's **Objections to Referral [App A-3]** filed 6/19/2020.

Molly Dwyer, Clerk of the Court filed an **Order [App A-4]** seeking to dismiss Astarte case on 6/24/2020. This action, is not within the FRAP Rules for the Clerk to do.

On 6/24/2020 Molly Dwyer did act in the capacity of her office and in a personal capacity to collect information from Astarte's file in case number 3:20-cv-02657-RS. Clerk's Order states: "...on review of the District Court's Docket Reflects that the District Court has Certified that this Appeal is not taken in good faith and is Frivolous." This action by Molly Dwyer was not within the scope of FRAP Rules.

Astarte Davis' "**Motion For Relief of Stay On Appeal To Go Forward**" **[App A-5]** filed 9/1/2020. Astarte's "Motion" was docketed as "*Astarte Davis statement that the appeal should go forward.*" Totally misleading, and is not within the FRAP rules for the Clerk to manipulate the Docket.

Astarte Davis' "**Declaration on The Manipulation of the Docket and more In Support of Her Motion for Relief from Stay on Appeal**" **[App A-6]** filed 9/9/2020. Astarte's "Declaration" was docketed as "*Astarte Davis motion Declaration on the manipulation of the docket and support of stay appeal.*" Totally misleading, and is not within the FRAP rules for the Clerk to manipulate the Docket. None of Astarte's pleadings have properly address in case 20-16136.

FRAP 45 - CLERK'S DUTIES [App A-7]

Molly Dwyer, Clerk of Court, 9th Circuit Court of Appeals Clerk of Court, Molly Dwyer did violate her "*Oath Of Office;*" neither the clerk nor any deputy clerk may act as an attorney while in office. Would not the following conduct be considered overreach in the capacity as Clerk of the Court to keep Astarte from Appeal?

DOCKET: [App A - 1]

On 6/10/2020 Docket 1 states: Docketed Cause and entered appearance of pro se Appellant. Which was Astarte's "Notice of Appeal."

On 6/12/2020 Docket 2 states: Clerk filed Referral Notice to Judge Seeborg, District Court Case 3:20-cv-02657-RS for determination whether in forma pauperis status should continue for this appeal. **Note:** On 5/29/2020 Case 3:20-cv-02657-RS had been closed/terminated with prejudice.

On 6/19/2020 Docket 3 states: Astarte filed her Objection to Referral Case 3:20-cv-02657 is not frivolous or taken in bad faith. *Judge Seeborg did not call Astarte case frivolous or taken in bad faith in his Order dated 5/29/2020.*

On 6/22/2020 Docket 4 states: Astarte filed a "Letter of Case History." The *Letter* was filed stamped as Received by Molly Dwyer, Clerk on 6/24/2020.

On 6/22/2020 Docket 5 states: Received copy of District Court Order filed 6/15/2020 IFP status is hereby Revoked. **Note:** After case is closed/terminated with no mention of "*Frivolous or Bad Faith*" by Judge Seeborg before termination of case.

On 6/24/2020 Docket 6 states: Clerk's Order on review of the "District Court's Docket reflects that the District Court has certified that this appeal is not taken in good and is frivolous." **Note:** This is after the case was closed.

On 7/1/2020 Docket 7 states: filed Astarte's in Forma Pauperis.

On 7/1/2020 Docket 8 states: filed Astarte's statement. **Note:** On 7/1/2020 Astarte did file a statement entitled "*Statement by Astarte Davis of The Truth of the Matter in Issue*"; which went on to state uncontradicted material evidence relevant to the case 3:20-cv-02657 at issue. Evidence that was *Ignored* by the court/judge as well as the *Void Cases* when the judge adopted the report and recommendation of the Magistrate Judge.

On 7/28/2020 Docket 9 states: Astarte's letter re: Notice and request.

On 7/26/2020 Docket 10 states: Streamlined request by Astarte to extend time to file the brief is not approved because it is unnecessary. The briefing schedule for this appeal is stayed see court order dated 6/24/2020.

On 9/1/2020 Docket 11 states: Filed Appellant Astarte Davis statement that the appeal should go forward. **Note:** Astarte did not file a "statement." Astarte did file a motion entitled; "*Motion For Relief Of Stay on Appeal to go Forward.*"

On 9/9/2020 Docket 12 states: Astarte Davis motion Declaration on the Manipulation of the docket and "support of stay appeal". **Note:** This document was titled; "*Astarte Davis' Declaration on The Manipulation of the Docket and more In Support of Her Motion for Relief from Stay on Appeal.*" **The quote above** "support of stay appeal" which is totally misleading.

RIGHTS TO EQUALITY AND NON-DISCRIMINATION

Molly Dwyer Clerk the U.S. Court of Appeals is to maintain a docket and has the duty to record all papers filed by a pro se, which the Docket does not reflect Astarte's pleading by their Title; as they should have. This right specifies that an individual should not be treated differently by the law, which did violate Astarte's rights to equality which is the fundamental right to equality before the law. Astarte has the same right as an Attorney to have her pleading filed properly on the Docket. By not doing so her pleading

can be treated in any manner as they have been; unjustly; an unconstitutionally. These are fundamental rights because they guarantee that all the other rights in the Constitution will be applied to everyone universally and equally.

Molly Dwyer and her staff has denied Astarte her fundamental protected right of due process of law by knowingly obstructing justice and blocking her appeal to be heard.

U.S. DISTRICT COURT CASE - NO. 3:20-cv-02657-RS at issue in Appeal

Docket: [App B-1]

Astarte filed her 42 U.S.C. § 1983 Complaint on 4/13/2020; In Forma Pauperis was granted on 4/20/2020.

On 5/15/2020 Magistrate Judge Laurel Beeler's Report and Recommendations was for dismissal of Astarte Complaint. By Judge Beeler's Order it was reassigned to Judge Richard Seeborg. **[App B-2]**

On 5/18/2020 Astarte request to have defendants served, they were never served.

On 5/26/2020 Astarte filed her Objections to Report and Recommendations. **[App B-3]**.

On 5/29/2020 Order adopting Report and Recommendation **[App B-4]**.

On 6/8/2020 Astarte filed her Notice of Appeal.

On 6/10/2020 Astarte filed her Notice to forward record on Appeal. **Note:** The court did not send the record.

On 6/12/2020 Judge Seeborg received US Court of Appeals' Referral Notice; the Court of Appeals was Notice - CASE CLOSED ON 5/29/2020; the Notice was filed anyway. This means to Astarte "Rights have been violated." By Molly Dwyer Clerk of the Court of Appeals and Judge Seeborg. **[App B-5]**

On 6/15/2020 Judge Seeborg did file an Order Revoking Astarte's Forma Pauperis Status. An Order sign after the CASE CLOSED on 5/29/2020. "Rights have been violated" By Molly Dwyer Clerk of the Court of Appeals and Judge Seeborg. **[App B-6]**

[App B-7].

Case 53979 History at issue in Case No. 3:20-cv-02657- RS

A U.S. Code 42 USC §1983 Complaint

All evidence presented herein from case 53979 at issue is uncontradicted material evidence relevant to this case.

Pursuant to #4.4.2 Section 1983 – Action under Color of State and federal Law.

Marin County Superior Court Case 53979 at issue in case 3:20-cv-02657-RS a **Complaint for Annulment [App B-8]**; with loss of the family home since 1962; and multi pieces of real and commercial properties and rental income thereof in Marin County CA. Judge Joseph Wilson, presiding; case 53979 the judgment void on it face continues to do harm and damages to Astarte.

Everything concerning the filing of Case 53979 was induced by fraud, duress, and coercion to keep and control the Loyal Davis and Astarte's assets; Loyal Davis with deliberate indifference was never going to honor his duty as the fiduciary of their agreement [as discovered in research 2016]. Thereby the annulment/divorce Case 5979 was filed with ulterior motives under color of law, to misused the legal systems, which was done in the name of the court under its authority by Attorney Kaufmann, Loyal Davis and Betty Davis who together in a conspiracy perpetrating an injustice by known fraud with malice; with Judge Wilson who did in his capacity as Judge did entertained ulterior motives in using the judicial system; thereby committed wilful non-judicial acts in a wrongful manner" *Coleman v. Gulf Insurance Group* (1986) 41 Cal.3d 782, 792 [226 Cal.Rptr. 90, 718 P.2d 77].

The court records in case 53979 shows no evidence concerning the other man that Astarte was supposedly married to; nor was any given concerning "the other man," by Loyal Davis, who was making the claims for relief.

The "other man;" Loyal was referring to is/was **Louis Allabaugh [App B-9]** of Tiburon, CA. Is the "other man," Astarte had been living with during 1956; they parted company, and she move to Mill Valley. Louis Allabaugh was married to Emma Laurretta Krumenacker in New Jersey on August 6, 1944. Louis Allabaugh died on February 21, 1974 still married to Emma Laurretta. Louis Allabaugh was not free, never was, nor would he ever be, to have married Astarte. That is why Astarte moved to Mill Valley; where she met and married Loyal Davis.

Four months later the court took the **Case Off Calendar [App B-10]**; before any decision on issues, and without notice or hearing on October 14, 1969 [Court Pg 235 ?]. Which is contrary to law; where Astarte was not allowed to plead Loyal Davis' collusion in the divorce case to avoid the effect of the decree.

Judge Wilson, in his capacity as judge, Superior Court, Marin County, State of California and in a non-judicial act in a conspiracy with Defendants Loyal Davis and Attorney Kaufmann acting under color of law in granted a parcel order for summary

judgment with out copy or notice to Astarte and none in the file of the case; thereby giving a **Order Declaring Respondent's Claim Partially Established [App B-11]:** Without notice and without a hearing, in favor of the Respondent. Denial/violation of Fourteenth Amendment of due process on February 27, 1970 [Court Pgs 235-236-237 ?]. Thereby granting nullity of our marriage and denial of Astarte's Due Process to be heard and offer evidence in support of her claims. That Louis Allabaugh was already married and the only man she was married to was Loyal Davis.

As this Court will see from the court page numbers above there was no entries for a hearing to be heard in opposition; no file documents; no notice to Astarte; or otherwise. Astarte did not even receive a copy of the Order [found in her 2016 research].

A notice of hearing and the meaningful opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Judge Wilson in his official capacity in a non-judicial act with the Defendants who together in a quasi-criminal conspiracy perpetrating an injustice with malice, with deliberate indifference did intentionally ignore the denial of Astarte protected federal constitutional Fourteenth Amendment due process rights to be heard in the divorce matter before the court. Judge Wilson did in his capacity as Judge and in a non-judicial act did entertain ulterior motives as well as the Defendants in using the process and committed wilful acts in a wrongful manner." *Coleman v. Gulf Insurance Group* (1986) 41 Cal.3d 782, 792 [226 Cal.Rptr. 90, 718 P.2d 77]. To get what they wanted; to get Astarte out of the picture to go forward on the property matters only.

Thereby Judge Wilson did lack jurisdiction when he granted the above Order, he was acting as a trespasser of the law. When a judge does not follow the law, the judge loses subject matter jurisdiction and the judge's orders are not voidable, but void, and of no legal force or effect. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974). As well as all that followed.

FRAUDULENT TRANSFER OF ALL PAID FOR COMMUNITIES PROPERTIES

The **Accommodation Grant Deed to Betty Davis[App B-12** [Loyal's mother] is fraud, thereby void; created by the Loyal Davis in breach of his fiduciary duty to Astarte in a quasi-criminal conspiracy and executed on 6/24/1969 and recorded 6/27/1969 in direct violation of a **Restraining Order[App B-13]** of the Marin Superior Court filed 6/17/1969

The confidential and fiduciary relationship between Astarte and Loyal Davis as husband and wife, is carefully discussed in *Vai v. Bank of America*, 56 Cal. 2d 329, 337-338 [15 Cal. Rptr. 71, 364 P.2d 247], where it is pointed out the fact of the husband's management and control of the community property.

If the signature on a legal document is simply a forgery, that document is void from the outset, as though it never existed. Similarly if the signer executed it thinking it was something other than what it actually was (the instance of fraud in the factum), then the document that was so executed is also void. There can be no rights derived from void documents.

Pursuant to Astarte and Loyal's marriage and agreement, that which did places Loyal in the position of trustee for his wife as to her community interest, which trust continues even after separation, such as herein case. Even the pendency of a divorce action does not of itself change this situation and it is a part of the husband's duty as possessory trustee to account to her in negotiations for property settlement. Thus, even though the confidential relationship has ceased [Loyal Davis deceased 12/24/2017; after herein case was filed], the fiduciary relationship continues for the time that the husband retains control. "The key factor in the existence of a fiduciary relationship lies in control by a person over the property of another." *Flores v. Arroyo*, 56 Cal. 2d 492, 494-495 [1] [15 Cal. Rptr. 87, 364 P.2d 263].

Loyal Davis and Astarte Davis' fiduciary relationship is/has been from 11/23/1958 through 12/24/2017 and continued "on in an going trust," Anderson Aragonne Hill Trust and Anderson Arragone Hill Trust.

This fraudulent grant deed did convey all jointly owned properties belonging to Loyal and Astarte Davis; and some unknown properties. The unknown property was later found to be the concealed properties listed herein. Astarte never saw the deed to examine until 2016. Judge Wilson in a non-judicial act knowingly ignored Attorney Kaufmann's filing of the fraudulent Betty Davis grant deed into evidence at Trial in Case 53979.

A void real estate transaction is one where the law deems that no transfer actually occurred. Accordingly, if the deed is void, it does not pass title and cannot be enforced even if title is later acquired by a bona fide purchaser. Similarly, a lender who takes a mortgage to a property subject to a void deed does not have anything to mortgage, so the lender's mortgage is invalid as well.

Astarte was not a party to the above conduct/actions or otherwise. It is

extrinsic/collateral fraud in Case 53979. Any reasonable person would know that deeding all the paid for real property would not have been in the best interest of Astarte or her sons only days after the Restraining Order was sign.

Astarte did not give Loyal any authorization to deed any property to Betty Davis, his mother for any reason there is no known signed document or any evidence that states otherwise. The grant deed to Betty Davis [Loyal Davis' mother], is a fraud, and is void from the outset, as though it never existed.

Restraining Order of the Marin Court which was signed by the Judge and filed 6/17/1969 which said in part: Defendant Loyal Davis under (3) b., YOU are restrained from conveying, disposing of or encumbering any of the community or your separate real or personal property . . . or withdrawing any community or your separate funds, on deposit in any bank of elsewhere.

Astarte and her sons had gone off to Carmel on 6/11/1969, she went to work, and they did not return to Marin, Astarte believes, until later in the year for a hearing.

SUCCESSOR IN INTEREST

Beginning on November 23, 1959 and continuing through the present, Loyal Davis [deceased 12/24/2017] and Astarte Davis had/has a fiduciary relationship. As Loyal's wife she is his successor in interest CCP § 377.30]; and his personal representative.

In this case Astarte Davis, wife to Loyal Davis now deceased is his successor in interest and personal representative. Thereby as Loyal's successor in interest means she is the beneficiary of his/our estate and or succeeds to a cause of action [claim for relief] or to a claim properties that are subject of a cause of action. California Code of Procedure 337.

In an action for damages for conversion by fraud, it is the rule that Astarte now owns 100 percent under rights of surveyorship interest in all property; successor in interest as against a stranger who has no ownership therein, and recover the full value of the property converted. *Camp v. Ortega* (1962) 209 Cal.App.2d 275, 286 [25 Cal.Rptr. 873].

SEPARATE PRIMARY RIGHTS - DENIED

Astarte's primary rights recognized in California include the right to be secure in one's person, (*Holmes v. David Bricker*, 70 Cal. 2d at 788-89, 452 P.2d at 649, 76 Cal. Rptr. at 433 (1969)) the right to be secure in one's property, (*Holmes v. David Bricker*, 70 Cal. 2d

at 788-89, 452 P.2d at 649, 76 Cal. Rptr. at 433 (1969)) the right to recover real property, (*McNulty v. Copp*, 125 Cal. App. 2d at 708-09, 271 P.2d at 97 (1954)), the right to recover personal property (*McNulty v. Copp*, 125 Cal. App. 2d at 708-09, 271 P.2d at 97 (1954)).

Recovery of real property and recovery of personal property: California also recognizes that the primary right to recover real property is distinct from the primary right to recover personal property (*McNulty v. Copp*, 125 Cal. App. 2d at 707-08, 271 P.2d at 97 (1954)). Thus, an original suit grounded in wrongful possession of real property will not preclude a second suit alleging wrongful possession of personal property even though: (1) the personal property is located on the real property that was the subject of the first suit; and (2) the wrongful detention of the real and the personal property arises out of the same event (*McNulty v. Copp*, 125 Cal. App. 2d at 707-08, 271 P.2d at 97 (1954)).

LEGITIMATE CLAIM OF ENTITLEMENT TO PROPERTIES MARIN COUNTY, CA

460 Cascade Drive [2-units] [**App B-14**], Mill Valley; Corporation Grant Deed from Kimberly Development Co., to Loyal D. Davis and Astarte Davis, his wife - Recorded 5/27/1959, Book 1282 Page 357; **Paid off 5/20/1965** - Deed of Reconveyance Book 1942 Page 238,239; and

316 Miller Avenue [9-units] [**App B-15**], Mill Valley; Joint Tenancy Deed from Rose Adams to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 4/1/1960, Book 1357 Page 7; Joint Tenancy Deed from Kenneth A. Hulme and Edna O. Hulme, his wife to Loyal D. Davis and Astarte Davis, his wife, in joint tenancy, with full right of survivorship, - Recorded 9/26/1961, Book 1500 Page 464; **Paid off 2/15/1961** - Deeds of Reconveyance Book 1436 Page 240 and Book 1435 Page 58; and

7 Homestead Boulevard [3-units] [**App B-16**], Mill Valley; Grant Deed from Annie A. Gordon, widow, to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 2/2/1961, Book 1433 Page 195; [the following deeds were for easements and more]; Grant Deed from Meda D. Childers and Edna M. Schumacher to Loyal D. Davis and Astarte Davis, his wife in joint tenancy - Recorded 6/16/1964, Book 1826 Page 189,190; Joint Tenancy Deed from Edna M. Schumacher and Meda D. Childers to Loyal D. Davis and Astarte Davis, his wife in

joint tenancy, with full right of survivorship - Recorded 1/18/1965, Book 1903 Page 111; Joint Tenancy Deed from Edna M. Schumacher and Meda D. Childers to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship, Book 1903 Page 112 - Recorded 1/18/1965; Corporation Grand Deed from Pacific Coast Title Company of Marin, a Corporation to Loyal D. Davis and Astarte Davis, his wife as Joint Tenants - Recorded 10/11/1965, Book 1988, Page 457; **Paid off 4/28/1964**, Deeds of Reconveyance Book 2456 Page 216 and Citicorp Savings #84036525; and **4079 Paradise Drive [App B-17]**, Tiburon; Corporation Grant Deed to Loyal D. Davis and Astarte Davis, his wife as Joint Tenants - Recorded 10/1/1962, Book 1616 Page 301,301; **Paid off 10/2/1964** - Deed of Reconveyance Book 1866 Page 632. **Davis' home since 1962**; and

1024 Redwood Boulevard [8-units] [App B-18], Mill Valley Joint Tenancy Deed from K. H. Powell and Wanda T. Powell, his wife, as Joint Tenants to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 9/30/1963, Book 1731 Page 196,197; **Paid off 12/19/1983** loan still in Plaintiff's name - Deed of Full Reconveyance, #83063473; and

80 Lincoln Avenue [15-unit] [App B-19], Sausalito; Joint Tenancy Deed from Ralph P. Gomez, a married man, as his sole and separate property to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 2/23/1968, Book 2192 Page 606; **Paid off 9/11/1970** - Deeds of Reconveyance Book 2403 Page 20 and Book 2597 Page 236; **Paid off 8/8/1972**, loan still in Astarte's name.

At no time did Astarte give Loyal Davis, her husband any authority to sell, refinance, or otherwise concerning the above real property after 6/11/1969. Under our agreement as husband and wife any transactions would have been invalid/void, and in breach of Loyal's fiduciary duties to Astarte.

As shown above most of the real property was paid off and un-encumbered as of 6/11/1969.

The Fiduciary Agreement between husband & wife was a misrepresentation of fact by Loyal Davis as found in 2016; which is relevant if it induced Astarte to alter her position to her detriment. Stated in terms of justifiable reliance, materiality means that without the misrepresentation, Astarte would not have acted as he did. Astarte did actually relied upon the knowingly and willfully misrepresentation, which is shown

herein that the representation was “an immediate cause of her conduct which alters her legal relations, and that without such representation, she would not, in all reasonable probability, have entered into the contract or other transaction. *Okun v. Morton* (1988) 203 Cal.App.3d 805, 828 [250 Cal.Rptr. 220]. Loyal had a duty to Astarte.

Astarte justifiable reliance upon her husband did cause harm and tangible damages in the loss of her properties and lifestyle.

Concealed Properties: 5-commercial properties all located Marin County. Loyal Davis sole owner of the following concealed, and undeclared real property that was paid for out of Loyal & Astarte's joint funds located at 1] **[228 Marion Ave App B-20]** , Mill Valley, Median value \$1,398,471; 2] **Tam Valley Lots (4) [App B-21]** A,B,C and D, Subdivision One, Tamalpais Valley, Median value each lot \$1,111,698; 3] **Hazel Ave. Lot [App B-22]**, Mill Valley, APN 28-121-07, Median value \$869,735; 4] **150 Hazel Ave. [App B-23]**, Mill Valley, APN 28-121-08, Median value \$1,087,334; 5] **357 Pine Hill [App B-24]**, Mill Valley, Median value \$1,108,842. Other real properties unknown as this time - for discovery; and

These properties never left the control of Loyal Davis.

Astarte claims the defendants did knowingly and willfully suppressed the facts, they had the intent to defraud her. Astarte claims she had no reason to suspect fraud or any wrongdoing, until 2016. *Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Ca l.App.4th 1423, 1430 [117 Cal.Rptr.3d 597].

PROPERTY TRIAL Case 53979

Property Trial Minutes Judge Joseph Wilson Presiding : **First Day Trial [App B-25]** 4/2/1975 [Trial Minutes Court Pg 123] Astarte's attorney Madeline McLaughlin put into evidence Astarte and Loyal's **Marriage Certificate**, admitted at 1:42 pm, and their **Agreement** concerning Loyal and Astarte's assets of their marriage, admitted at 3:02 pm.

The Betty Davis void Grant Deed concerning the real properties at issue was entered into evidence by Attorney Kaufmann on the **Second Day of Trial [App B-26]** on 4/3/1975 [Trial Minutes, Court Pg 124-125]; first time the grant deed appeared in Case 53979, and is extrinsic/collateral fraud with deceit which is criminal conversion grant thief.

In the Trial of the properties matter Case 53979 Judge Wilson statement in a non-judicial act was "concise" in its meaning on the **Third Day of Trial [App B-27]**

4/4/1975. [Trial Minutes, Court Pg 126] stated: "This matter coming on regular continuance, parties present, respondent moves to exclude any further testimony on real property, court shall grant MOTION to **exclude** further evidence, which includes property' that involves Betty Davis, as of this date".

Four Day of Trial [App B-28] Miscellaneous matters. [Trial Minutes, Court Pg 127,128]. The above MOTION was not offered before or at trial or found in the case file. Attorney Kaufmann did present the fraudulent 1969 Grant Deed on 4/3/1969 with a list of properties in evidence, NONE of which was presented to Astarte Davis for examination nor was she cross or direct examined concerning these documents or any documents concerning Loyal and Astarte's real property or otherwise at trial; as the trial minutes shows.

Thereby the court intentionally took Astarte's ability to challenge any deeds/any documents as to their authenticity at trial, or otherwise. Astarte's constitutionally protected due process rights to be heard at trial was intentionally taken away by Judge Wilson acting under color of law, and in his capacity as a judge; and in a non-judicial act and as a private individual in a quasi-criminal conspiracy with the Defendants under color of law, while in their capacity as private individuals.

Judge Wilson statement was "concise" in its meaning on the **Sixth Day of Trial [App B-29]** 4/8/1975 [Trial Minutes, Court Pg 128], after Astarte was denied her protected rights pursuant to the U. S. Constitution and Fourteenth Amendment to be heard or present evidence at trial, on 4/3/1975 [shown above] concerning all real, and personal properties; which was a non-judicial act by Judge Wilson.

Court finds Astarte has no property claim against Loyal Davis. Orders Judgment for defendants.

There is no "Fifth Day of Trial" see Courts Page numbers.

FINDING OF FACTS AND CONCLUSIONS OF LAW

The following Judgment of case 53979 was based on the document known as "**Findings of Facts and Conclusions of Law**," [App B-30] filed in the case by defendant Attorney Kaufmann. Which the defendants knew was a false misrepresentations to the court, known and excepted by the judge and is considered extrinsic fraud created by Attorney Kaufmann, Judge Wilson [in a non-judicial act], Loyal Davis, and Betty Davis under color of law while in a quasi-criminal conspiracy,

that denied Astarte Davis' her federal constitutionally protected due process rights to be heard in "*All Property Matters*" as shown above in the trial minutes of Case 53979.

Attorney Kaufmann's "Findings of Facts and Conclusions of Law" filed in case 53979, on 5/20/1975 Judge Wilson did except it as the truth of the matter; which it is not; more than half of the statements in the Findings are not the truth. This document was/is unconscionable.

FACT - An "intentional false statement, stated as fact and truth" on 5/20/1975 in Kaufmann's "Findings 21, Pg 6" "Betty Davis was not nor is she now holding any part of all of the property described in the Deed dated June 24, 1969 from Petitioner Astarte Davis and Respondent Loyal Davis for the benefit of Respondent Loyal Davis."

FACT - Restraining Order filed 6/17/1969; Grant Deed created by fraud in breach of fiduciary duties by Loyal Davis to Betty Davis recorded 6/27/1969; has property listed as 80 Lincoln Dr., Sausalito. On 8/27/1970 Betty Davis caused a **Grant Deed for property known as 80 Lincoln Dr., Sausalito [App B-30]** [listed on the Betty Davis 6/27/1969 fraudulent Grant Deed [See App B-12] to "Homes by Loyal," which is Loyal Davis. False information by Attorney Kaufmann in his "Findings," and excepted by Judge Wilson as the truth of the matter; and used as the basis of his Judgment of the case, in a non-judicial act.

FACT - Another "knowingly and willfully false statement, stated as fact and truth" in Kaufmann's "Findings 26, Page 7" which states: "Neither Petitioner Astarte Davis nor Respondent Loyal Davis has any interest in certain real property referred to as 'Tamalpais Valley Lots.'" Grant Deed from Margaret Wright to Loyal Davis], a married man Book 1259 Page 411 Recorded March 3, 1959, for LOTS A,B,C,D, of Subdivision No.1, Tamalpais Valley [See App B-21]. False information by Attorney Kaufmann in his "Findings." Excepted by Judge Wilson and used as the basis of his Judgment, in a non-judicial act.

Judgment of case 53979 is based on the intentional false information of the Finding of Fact and conclusions of law as created by Attorney Kaufmann and defendants, and signed by Judge Wilson in a quasi-criminal conspiracy under color of law; in a non-judicial act.

After Astarte's denial of due process to be heard on the Betty Davis 1969 Deed, and all property matters at trial, as shown above. The **Judgment [App B-31]** dated 5/21/1975 in case 53979 is contrary to law and void on its face. The Judgment is named

In Re the Marriage of Astarte Davis and Loyal Davis; Judge Wilson and Defendants Loyal Davis and Attorney Stephen Kaufmann knew without a doubt Loyal & Astarte were married; what an injustice; and it has been allowed to stand all this time.

That which denied Astarte rights to her home; her real and commercial properties; her rental income; her personal property/fixtures; and her lifestyle; which she did work very hard for in the years of her marriage and bringing up their sons; The defendants did not have any concerns or care about the extreme causation to Astarte or her sons. Case 53979 is a void case with unenforceable orders and a judgments that still stands, and continues the harm to her without justice being done. Loss of jurisdiction, is when they acted in the face of clearly valid U.S. Constitutional Due Process Rights which expressly depriving the court/judge of jurisdiction, judicial immunity is lost. *Zeller v. Rankin*, 101 S. Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326 (1980).

On 5/29/2020 Judge Seeborg filed his Order Adopting Magistrate Judge's Report and Recommendation without resolving Astarte's Objections. Judges do not have immunity for their non-judicial acts; as shown herein. Thereby denial of due process in case No. 3:20-cv-02657- RS by not resolving the due process violations as stated in Astarte's Objections that which are stated above.

CIV. R. 72(b)(3) *Resolving Objections*. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Judge Seeborg made a conscious decision to continue the void case with unenforceable orders and judgment by Judge Wilson in case 53979 in violation of the Astarte's rights to due process and equal protection under the law secured by the United States Constitution and guaranteed by the Fourteenth Amendments; and the due course of justice in violation of 42 U.S.C. sec. 1981, 42 U.S.C. sec. 1985 (3) and 42 U.S.C. § 1983. Judge Seeborg on 5/29/2020 dismissed Astarte case with prejudice. Since the court's dismissal "with prejudice" was void; it may be attacked by direct appeal. Judges do not have absolute immunity for denial of due process, it is absolutely a non-judicial act.

OPINIONS - VOID CASES/ORDER/JUDGMENT/DECISIONS

Supreme Court Decisions on Void Orders

A judgment may not be rendered in violation of constitutional protections. The

validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398. See also *Restatements, Judgments* ' 4(b).

The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. *Hanson v. Denckla*, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A *Am Jur Judgments* " 44, 45. It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. *Renaud v. Abbott*, 116 US 277, 29 L Ed 629, 6 S Ct 1194.

Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398.

Void Orders and Judgments

"If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1 *Freeman on Judgments*, 120c.) "A void judgment is no judgment at all and is without legal effect." (*Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974) "a court must vacate any judgment entered in excess of its jurisdiction." (*Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972).

A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370. Federal judges issued orders permanently barring Stich from filing any papers in federal courts. After Judges Robert Jones and Edward Jellen corruptly seized and started to liquidate Stich's assets, Judge Jones issued an unconstitutional order barring Stich from filing any objection to the seizure and liquidation.

When an Officer of the Court fails to follow the law, he loses subject matter jurisdiction and his orders and judgments are not voidable, but VOID, and of no legal force or effect. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974). As well as

all that followed. While an officer of the court performing judicial functions may enjoy immunity, denial of protected rights under the Supreme Law of The Land are absolutely not a judicial function and conflicts with any definition of a judicial function.

OPINION - No Opportunity to Be Heard

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. *Sabariego v. Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461, and is not entitled to respect in any other tribunal. "A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L.Ed. 861: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists." *People v. Greene*, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448]. "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (*Freeman on Judgments*, 120c.) An illegal order is forever void.

OPINION - Orders Exceeding Jurisdiction

An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See *Rose v. Himely* (1808) 4 Cranch 241, 2 L ed 608; *Pennoyer v. Neff* (1877) 95 US 714, 24 L ed 565; *Thompson v. Whitman* (1873) 18 Wall 457, 21 L Ed 897; *Windsor v. McVeigh* (1876) 93 US 274, 23 L ed 914; *McDonald v. Mabee* (1917) 243 US 90, 37 Sct 343, 61 L ed 608.

OPINION - Void Orders Can Be Attacked At Any Time

An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See *Rose v. Himely* (1808) 4 Cranch 241, 2 L ed 608; *Pennoyer v. Neff* (1877) 95 US 714, 24 L ed 565; *Thompson v. Whitman* (1873) 18 Wall 457, 21 L Ed 897; *Windsor v. McVeigh* (1876) 93 US 274, 23 L ed 914; *McDonald v. Mabee* (1917) 243 US 90, 37 Sct 343, 61 L ed 608. *U.S. v. Holtzman*, 762 F.2d 720 (9th Cir. 1985) ("Portion of judgment directing defendant not to import vehicles without first obtaining approval ... was not appropriately limited in duration and, thus, district court abused its discretion by not vacating it as being prospectively inequitable." Id at 722.

OPINIONS - Absolute Immunity

Every person who, under color of any statute, ordinance, regulation, custom, of usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

There is no statute of limitations contained within the language of 42 USC §1983 for denial/violation of a state or federal constitutional rights. Under *Forrester v. White*, 484 U.S. 219 (1988). A state court judge/justice does not have absolute immunity from a damages suit under § 1983. See also *Thomas v. Collins*, 323 U.S. 516, 531 (1945). The

"act of filing suit against a governmental entity represents an exercise of the right of petition and thus invokes constitutional protection. *City of Long Beach v. Bozek*, 31 Cal.3d 527, at 533-534 (1982). The purpose is to deter public officials from using the badge of their authority to violate persons' constitutional rights and to provide compensation and other relief to victims of constitutional deprivations when that deterrence fails. *Carey v. Phipps*, 435 U.S. 247,253 (1978).

Pursuant to 42 U.S.C. § 1983: In the U.S. Constitution, We The People are guaranteed certain civil rights. In fact, if a state actor uses the legal system to deprive someone of their constitutional rights, the person may have a cause of action against them in the form of a civil rights lawsuit. More specifically, 42 U.S.C. § 1983 provides a civil cause of action against the persons responsible, as herein.

OPINIONS - Manifest Injustice Doctrine

Astarte asserts The Manifest Injustice Doctrine is appropriate and should be applied to herein case. *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974); *In re Clark, Supreme Court of California* 5022475 (1992).

For this case to continue without remedy is a grave miscarriage of justice, a continuing denial of Astarte's Constitutional rights under 28 USC 1331. This Court is authorizes to grant post-judgment remedies for "any other reason justifying relief from the operation of all orders and judgments in case 53979, 1802890, and A157795. The Supreme Court has recognized Rule 60(b) permits an action by this Court "to prevent a continuing grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38, 46-47 (1998).

Judge Stephen Freccero - Case No. CIV 1802890

This case is also part of Judge Seeborg's herein case No: 3:20-cv-02657-RS; under the U.S. Code 42 USC §1983 Complaint.

Any decision that involves the judge using his or her discretion (such as whether to admit certain evidence in the trial or at hearings) comes under exclusion/suppression of evidence and abuse of discretion standard which did occur when Judge Freccero made a ruling that is/was arbitrary or absurd; when he had the trial courts minutes in the voice of Judge Wilson stating the facts in a concise manner; showing the denial/violations of protected due process rights to be heard at trial in case 53979; which was relevant evidence in case 1802890. *Pickford v. Talbot*, 225 U.S. 651, 56 L.Ed. 1240, 32 S.Ct. 687.

Does not matter whether a violation of a constitutional due process right to be heard is one year old or one hundred years old; if clear and convincing evidence is forth coming in the matter; which it was. Judge Freccero knew with oppression he intentionally misrepresented, concealed uncontradicted relevant evidence to the case and did so, by

that denial with malice so intending to cause further harm to Astarte; which he did by continuing the void orders/judgment from case 53979.

Judge Freccero dismissed the case stated in part: " . . . on something that is so clearly time-barred, and/or failure to do so, the court can only conclude that there is no basis that would excuse the fact that the claims are - - - '[Judge Freccero interrupted himself so he did not say what the claims are [?] and continued on' - - that the statute of limitations should be tolled." See **Reporter's Transcript [App 32]** of 6/25/2019 Thereby granting to the wrongdoers.

Judge Freccero did not allow Astarte to CONTEST his ruling at the hearing in the case for his judgment. Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). Citing from *Duncan v. Missouri*, 152 U.S. 377, 382 (1894); which states: "Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

Thereby Judge Freccero did lack jurisdiction when he granted the judgment, he was acting as a trespasser of the law. When a judge does not follow the law, the judge loses subject matter jurisdiction and the judge's orders are not voidable, but VOID, and of no legal force or effect. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974). As well as all that followed.

The Supreme Court recently observed that "qualified immunity balances two important interests; the need to hold public officials accountable when they exercise power irresponsibly" *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009); *California*, 370 U.S. 660, 667 (1962).

Justice Mark Simons - Appeal Case No. A157798

This case is also part of Judge Seeborg's herein case No: 3:20-cv-02657-RS; under the U.S. Code 42 USC §1983 Complaint.

Judge Freccero's judgment in CIV 1802890 on appeal, was a judgment without resolving any of the issues at the demurrer hearing [dated 6/25/2019]; or about Astarte's denial of due process; loss of jurisdiction or anything concerning case 53979 before him. That which was knowingly and willfully planed action by Judge Freccero; and which was

intentionally ignored by Justice Simons (*Roy Brothers Drilling Co. v. Jones*, (1981) 123 Cal.App.3d 175, 180 - 181).

Justice Simons did fail to do his duty under law, when he did not address the denial of Astarte's constitutional rights, nor did he address the facts that Judge Freccero's and Judge Wilson's judgments was void; thereby Judge Simons Ordered Dismissal of Astarte's appeal as frivolous, was abuse of discretion, and denial of due process; thereby loss of jurisdiction.

On October 3, 2019, Justice Simons came down with an Order of dismissal without addressing her Opposition which was a duty under law in his position as a court justice to read. A denial of Astarte rights therein, which Justice Simons independently, under color of law called **frivolous**; a denial of due process is not frivolous; and is a decision made contrary to law. Abuse of discretion by Justice Simons.

The doctrine of qualified immunity shields governmental officials "from liability for civil damages insofar as their actions does not violate clearly established statutory or constitutional rights." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

Justice Simons stated in part in his **Order [App B-33]** Stated: Respondents' motion to dismiss the appeal is granted.

The duty of all judges is to liberally construe a self-represented litigant's pleadings includes a duty to consider allegations found in other documents filed by the litigant. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Howard v. King*, 707 F.2d 215, 220 (5th Circuit 1983); *Moore v. Florida*, 703 F.2d 516, 521 (11th Circuit 1983); *Woodall v. Foti*, 648 F.2d 268, 272 (5th Circuit 1981); *Wright v. El Paso County Jail*, 642 F.2d 134, 135 (5th Circuit 1981); *Matzker v. Herr*, 748 F.2d 1142, 1148 n.5 (7th Circuit 1984).

Justice Simons and Judge Freccero each had a duty under law to address the denial of Astarte's due process rights to be heard; and the void cases, their Orders/Judgments because of that failure, of that duty are contrary to law, and void.

Astarte offer the case below to this Court in support of her husband, Loyal Davis' state of mind. Loyal Davis was not a good person.

Case No. 123736 Loyal Davis v. Robert Nicco: [App B-34]

" . . . Thus, by his own admission the plaintiff deliberately concealed the property right he now claims in order to perpetrate a fraud upon the lender . . . [T]he plaintiff's

early capacity for untruthfulness and deception, as well as his disposition to assert or conceal his alleged property right, as it suited him, is revealed thereby.

An examination of the two versions of this "Contract and Agreement" is illuminating. The first paragraph of the two versions appear facially identical, each being 27 1/2 lines long. To an untrained and unwitting eye the paragraphs appear the same. In preparing the two versions, the plaintiff did not simply eliminate the disputed language from the version which was to be delivered to the lender. Instead, he cleverly removed so much of the text of his standard contract as was necessary to install the disputed language without destroying the symmetry of the two versions. Thus in the disputed version he omitted provisions included in the lender's version which were standard to his construction contracts."

The 1990 judgment in Loyal Davis v. Robert Nicco continues with language that directly affects Plaintiff in this case:

During those intervening years plaintiff had an additional opportunity to demonstrate his perfidy. Sometime in 1969 plaintiff's former wife, Astarte Davis, initiated divorce/annulment proceedings against the plaintiff. Plaintiff and Astarte Davis participated in a marriage ceremony in 1958 In this proceeding, plaintiff concealed from his spouse and from the Court the interest he now asserts in the Tiburon property. By concealing his alleged interest he deprived Astarte Davis of her marital interest therein.

[1] Astarte Davis states that she was never married to the so called "former spouse, he was and had been married for many years."

[2] All deeds were in the names of Loyal D. Davis and Astarte Davis his wife, from date of purchase and at the time she left 6/11/1969.

SCIENTER - LOYAL DAVIS STATE OF MIND

The Nicco case proves evidence of character and conduct herein of Loyal Davis who was the defendant in the above cases. *Evidence Code 1101.*

REASONS FOR GRANTING THE PETITION

For a judge to deprive Astarte of her federal and state constitutional rights of due process; denial of constitutional and civil rights are absolutely not a judicial function and conflicts with any definition of a judicial function. Astarte's due process could not and would not have been denied as shown in the trial minutes case 53979, without Judge Wilson joining the conspiracy, thereby, Astarte would not have been harmed.

First: Defendants agreed in some manner with Judge Joseph Wilson under color of law in his judicial capacity as a state Judge; and in the quasi- criminal conspiracy to do an act that deprived Astarte of her federal constitutional and statutory Fourteenth Amendment due process right to be heard at trial in Case 53979; and

Second: Defendants Loyal Davis, Betty Davis Attorney Stephen P. Kaufmann conspirators and co-conspirator did engaged in at least one act in furtherance of the quasi- criminal conspiracy when they created the fraudulent grant deed to Betty Davis; in defiance of a Restraining Order and in breach of fiduciary duty by Loyal Davis owed to Astarte. Which Judge Wilson knowingly did turn a blind eye when the Defendants did file the Grant Deed in Case 53979.

Pursuant to 42 U.S.C. 1985(3): Astarte alleges that the Defendants Loyal Davis, Betty Davis, Attorney Stephen Kaufmann in a quasi-criminal conspiracy did deprived her of her federal and state constitutional rights; those rights was deprived while acting under color of state law with Judge Wilson, personally and in his capacity as judge. *Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 890 [104 Cal.Rptr.3d 352]. Courts are constitutional and duty of a judge is to support the constitution; to do otherwise it is a denial of a persons constitutional rights.

Astarte has herein identified the precise constitutional violations by which she was harmed by the defendants and judge. *Weaver v. State of California* (1998) 63 Cal.App.4th 188, 203 [73 Cal.Rptr.2d 571].

An individual acts under color of state/federal law when they have exercises power possessed by virtue of state/federal law and made possible only because the wrongdoer is clothed with the authority of state/federal law. *Naffe v. Frey* (9th Cir. 2015) 789 F.3d 1030, 1036. As Astarte has shown herein.

Private parties did act under color of state law if they willfully participate in joint actions with state officials, which they did to deprive Astarte of her protected constitutional rights. Private parties involved in such a conspiracy IS liable under section

1983. *United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1989) 865 F.2d 1539, 1540.

As with other questions of state law relevant to the application of federal law, the identification of those officials whose decisions represent the official policy of the local government, is itself a legal question. *Jett v. Dallas Independent School Dist.* (1989) 491 U.S. 701, Pg 737 [109 S.Ct. 2702, 105 L.Ed.2d 598].)

Judge Wilson, Justice Simons, Judge Freccero, and now Judge Seeborg and Molly Dwyer, Clerk, their acts of a non-judicial nature does not entitle them to absolute judicial immunity as their acts come under a statute that mandated that any person who under color of law subjected another to deprivation of her protected constitutional rights would be liable to the injured party in an action at law was not to abolish immunities available at common law, but to insure that federal courts would have jurisdiction of constitutional claims against state officials. *Butz v. Economou*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed. 2d 895 (1978).

In those years the judgment of a court was a decision that people respected, and excepted as final in the matter, and went on with their life; which is what Astarte and her three sons did. That which was not the truth of the matter, as she learned in 2016.

Astarte has no idea why her attorneys failed to see what went on in case 53979. Astarte was a housewife and mother she had no knowledge of law and what was going on in the court.

This Court as the jurisdiction and the power to do the following:

Grant the PETITION to stop the substantial injustice, not just to the Astarte, but to the public reliance of these cases as they stands, as it conflicts with similarly and recurring ones of great importance.

Astarte is not asking for restitution, damages or injunctive relief against the judges of these courts for their non-judicial acts or for the causation they have caused her, that of course would be the court's decision.

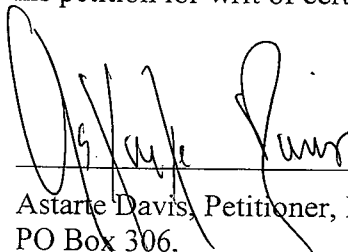
Astarte is respectfully asking this Court to: "revoke/annul the void cases;" and to: "invalidate the grant deed" to Betty Davis which was created by fraud; and in breach of fiduciary duties to Astarte, and by Order of this Court returning her real and commercial properties, rental income therefrom; and the fixtures; and personal property from her home.

Astarte is respectfully also asking this Court for possession of all the named and "concealed/undisclosed real property in the name of Loyal D. Davis/ Loyal Davis" as it was paid for by the rental income from community properties by Order of this Court.

CONCLUSION

For the reasons stated above this petition for writ of certiorari should be granted.

Respectfully submitted,



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707-684-029

Date:

9/28/2020