

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.

APPENDIX A

APPENDIX A

APPENDIX A - United States Court of Appeals for the Ninth Circuit - NO. 20-16136

App. A-1	Docket for case 20-16136.....	3
App. A-2	Referral Notice	3
App. A-3	Objection to Referral	3
App. A-4	Order - Molly C. Dwyer, Clerk	4
App. A-5	Motion for Relief of Stay	4
App. A-6	Declaration	4
App. A-7	Clerk's Duties	4

APPENDIX A-1 Docket for case 20-16136

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 20-16136
Nature of Suit: 3440 Other Civil Rights

Docketed: 06/10/2020

Astarte Davis v. Joseph Wilson, et al

Appeal From: U.S. District Court for Northern California, San Francisco

Fee Status: IFP

Case Type Information:

- 1) civil
- 2) private
- 3) null

Originating Court Information:

District: 0971-3 : 3:20-cv-02657-RS

Trial Judge: Richard Seeborg, District Judge

Date Filed: 04/13/2020

Date Order/Judgment:
05/29/2020

Date Order/Judgment EOD:
05/29/2020

Date NOA Filed:
06/08/2020

Date Rec'd COA:
06/09/2020

Prior Cases:

None

Current Cases:

None

ASTARTE DAVIS

Plaintiff - Appellant,

Astarte Davis

[NTC Pro Se]

P.O. Box 306

Gualala, CA 95445

v.

JOSEPH WILSON, individually and in his official capacity as a
Judge in the Marin County Superior Court of the State of California
Defendant - Appellee,

STEPHEN P. FRECCERO, individually and in his official capacity
as a Judge in the Marin County Superior Court of the State of
California

Defendant - Appellee,

MARK B. SIMONS, individually and in his official capacity as a
Justice and Acting P.J. in the Court of Appeal of the State of
California

Defendant - Appellee,

ASTARTE DAVIS,

Plaintiff - Appellant,

v.

JOSEPH WILSON, individually and in his official capacity as a Judge in the Marin County Superior Court of the State of California; STEPHEN P. FRECCERO, individually and in his official capacity as a Judge in the Marin County Superior Court of the State of California; MARK B. SIMONS, individually and in his official capacity as a Justice and Acting P.J. in the Court of Appeal of the State of California,

Defendants - Appellees.

06/10/2020	<input type="checkbox"/> <u>1</u> 60 pg, 946.49 KB	DOCKETED CAUSE AND ENTERED APPEARANCE OF PRO SE APPELLANT AND NO APPEARANCE FOR APPELLEES. SEND MQ: No. The schedule is set as follows: Appellant Astarte Davis opening brief due 08/12/2020. [11716875] (RT) [Entered: 06/10/2020 07:49 AM]
06/12/2020	<input type="checkbox"/> <u>2</u> 2 pg, 126.64 KB	Filed referral notice (Deputy Clerk:CKP): Referring to the district court for determination whether in forma pauperis status should continue for this appeal. [11719907] (CKP) [Entered: 06/12/2020 10:16 AM]
06/19/2020	<input type="checkbox"/> <u>3</u> 2 pg, 16.28 KB	Filed Appellant Astarte Davis objection to referral. [11729249] (JFF) [Entered: 06/22/2020 01:01 PM]
06/22/2020	<input type="checkbox"/> <u>4</u> 2 pg, 22.31 KB	Copy of letter received from Appellant Astarte Davis. Case history [11730391] (JFF) [Entered: 06/23/2020 10:21 AM]
06/22/2020	<input type="checkbox"/> <u>5</u> 2 pg, 30.71 KB	Received copy of District Court order filed on 06/15/2020. IPP status is hereby REVOKED[11730395] (JFF) [Entered: 06/23/2020 10:23 AM]
06/24/2020	<input type="checkbox"/> <u>6</u> 14 pg, 284.57 KB	Filed clerk order (Deputy Clerk: CO): A 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 and has revoked appellant's in forma pauperis status. See 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. See 28 U.S.C. § 1915(e)(2). Within 35 days after the date of this order, appellant must: (1) file a motion to dismiss this appeal, see Fed. R. App. P. 42(b), or (2) file a statement explaining why the appeal is not frivolous and should go forward. If appellant files a statement that the appeal should go forward, appellant also must: (1) file in this court a motion to proceed in forma pauperis, OR (2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid. If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. See 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42 (b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. The briefing schedule for this appeal is stayed. The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis. [11732169] (CKP) [Entered: 06/24/2020 12:09 PM]
07/01/2020	<input type="checkbox"/> <u>7</u> 7 pg, 146.62 KB	Filed Appellant Astarte Davis motion to proceed In Forma Pauperis. Deficiencies: None. Served on 06/29/2020. [11740882] (JFF) [Entered: 07/02/2020 11:30 AM]
07/01/2020	<input type="checkbox"/> <u>8</u> 14 pg, 173.54 KB	Filed Appellant Astarte Davis letter dated re: statement. Paper filing deficiency: None. [11740889] (JFF) [Entered: 07/02/2020 11:32 AM]
07/28/2020	<input type="checkbox"/> <u>9</u> 2 pg, 13.55 KB	Filed Appellant Astarte Davis letter dated re: Notice and request. Paper filing deficiency: None. [11769576] (JFF) [Entered: 07/28/2020 02:40 PM]
08/26/2020	<input type="checkbox"/> <u>10</u> 1 pg, 29.96 KB	Streamlined request by Appellant Astarte Davis 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 06/24/2020. [11803680] (BG) [Entered: 08/26/2020 01:33 PM]
09/01/2020	<input type="checkbox"/> <u>11</u> 18 pg, 207.29 KB	Filed Appellant Astarte Davis statement that the appeal should go forward [11809936] (JFF) [Entered: 09/01/2020 03:56 PM]
09/09/2020	<input type="checkbox"/> <u>12</u> 8 pg, 77.39 KB	Filed Appellant Astarte Davis motion Declaration on the manipulation of the docket and support of stay appeal. Deficiencies: None. [11817857] (JFF) [Entered: 09/09/2020 02:38 PM]

APPENDIX A-2 Referral Notice

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ASTARTE DAVIS,

Plaintiff - Appellant,

v.

JOSEPH WILSON, individually and in
his official capacity as a Judge in the
Marin County Superior Court of the
State of California; et al.,

Defendants - Appellees.

No. 20-16136

D.C. No. 3:20-cv-02657-RS
U.S. District Court for Northern
California, San Francisco

REFERRAL NOTICE

This matter is referred to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also* *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

If the district court elects to revoke in forma pauperis status, the district court is requested to notify this court and the parties of such determination within 21 days of the date of this referral. If the district court does not revoke in forma pauperis status, such status will continue automatically for this appeal pursuant to Fed. R. App. P. 24(a).

This referral shall not affect the briefing schedule previously established by this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Cyntharee K. Powells
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX A-3 Objection to Referral

ASTARTE DAVIS, in Pro Se
PO Box 306
Gualala, CA 95445
707-785-2972

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUN 19 2020

FILED
DOCKETED

DATE

INITIAL

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ASTARTE DAVIS,

No. 20-16136

Plaintiff - Appellant,

D.C. NO. 3:20-CV-cv-02657-RS
U.S. District Court
for Northern California
San Francisco

v.

JOSEPH WILSON; et al.,

OBJECTION TO REFERRAL
NOTICE THIS CASE IS NOT
FRIVOLOUS and NEVER WAS
NOR WAS IT TAKEN IN BAD
FAITH

Astarte Davis's appeal is not frivolous, District Court in its Order did not say the case was frivolous, when the case was closed. Believe NO court, no matter how bad the wrong is, they will deny Astarte JUSTICE. How would any one of you feel if you just had "your" 30-Million dollars of real property taken away from you by a judge that would not hear a wrong of another judge. Denial of protected constitutional right are not covered under any statute of limitation. This case has undisputed material facts relevant to the case showing denial of Astarte's due process. This case has NEVER been heard on its merits. Judges do not have absolute judicial immunity for their non-judicial acts under the supreme law of the land; which is a direct denial of her U.S. Constitution rights of due process under the Fifth Amendment, and California Constitution under the Fourteen Amendment. Why would the Court of Appeals for the Ninth Circuit write a referral notice to the District Court to revoke Astarte Forma Pauperis status, it was for one reason; so the Court of Appeal had an out to not hear Astarte case?

How can any one say that is not a total INJUSTICE of these judges and these courts?

PROOF OF SERVICE

Astarte Davis mailed U.S.P.S. priority mail to:

The HONORABLE Richard Seeborg
United States District Court
450 Golden Gate Ave.
San Francisco, CA 9 4102

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals
PO Box 193939
San Francisco, CA 94119

APPENDIX A-4 Order - Molly C. Dwyer, Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 24 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ASTARTE DAVIS,

Plaintiff-Appellant,

v.

JOSEPH WILSON, individually and in his official capacity as a Judge in the Marin County Superior Court of the State of California; et al.,

Defendants-Appellees.

No. 20-16136

D.C. No. 3:20-cv-02657-RS
Northern District of California,
San Francisco

ORDER

A 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 and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go

forward.

If appellant files a statement that the appeal should go forward, appellant also must:

(1) file in this court a motion to proceed in forma pauperis, OR
(2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Corina Orozco
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

9th Cir. Case No. _____

Appellant(s),

v.

Appellee(s).

MOTION TO VOLUNTARILY DISMISS APPEAL

Pursuant to Federal Rule of Appellate Procedure 42(b), appellant(s)

hereby move(s)

the court for an order dismissing appeal No. _____.

Dated: _____

Print Name(s)

Signature(s)

Appellant(s) in Pro Se

APPENDIX A-5 Motion for Relief of Stay

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No: C.A. No. 20-16136

SEP 01 2020

FILED _____
DOCKETED _____
DATE _____
INITIAL _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ASTARTE DAVIS,

Plaintiff - Appellant,

v.

JOSEPH WILSON; STEPHEN FRECCERO; MARK SIMONS

Defendants - Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 3:20-cv-02657-RS
Honorable Richard Seeborg

MOTION FOR RELIEF OF STAY ON APPEAL TO GO FORWARD

ASTARTE DAVIS, in Pro Se
PO Box 306
Gualala, CA 95445
Telephone No. 707-785-2972
e-mail: astartedavis@hotmail.com

I. INTRODUCTION

Astarte is on appeal from the decision of the District Court Case No. 3:20-cv-02657-RS pursuant to 42 U.S.C. 1983. A denial of protected fundamental constitutional rights of due process to be heard and offer evidence in support of her position at trial. That which took away multiple pieces of real property; rental income thereof; her home and lifestyle.

All of which the federal court/judge chose to ignore the uncontradicted relevant evidence of the case; and the denial of constitutional rights before him. Thereby the federal court/judge did further deny Astarte her constitutional rights, and continued the void judgments and harm to her, thereby his case is now void.

II. JURISDICTION

On 5/15/2020 Magistrate Judge filed the Report and Recommendation to Dismiss Complaint. Mostly for the reason that judges have absolute immunity.

Astarte filed her timely Objection's to magistrate judge's recommendation to dismiss her 42 U.S.A. 1983 complaint on 5/26/2020; for reasons which was/are contrary to law.

On 5/29/2020 in case No. 20-cv-02657 the court/judge filed its Order Adopting Report and Recommendation of the magistrate judge; thereby terminating the case with prejudice. A court/judge's decision which was/is contrary to law; further failing to do a required de novo review and his duty to read Astarte's pro se complaint under law. If the court/judge had reviewed de novo her action under 42 U.S.A. 1983 it would have found denial of protected fundamental constitutional rights of due process to be heard at trial/hearing which are non-judicial acts by the defendants.

On 6/10/2020 an Appeal, a right under law was filed in the Court of Appeals case No. 20-16136. For the reasons stated herein it would be impracticable to move first in the district court.

III. STATEMENT OF ISSUES FOR RELIEF

On 6/12/2020 [Docket 3] the Clerk of the U.S. Court of Appeals filed a Referral Notice to the district court/judge asking whether the in forma pauperis status should continue for this appeal; and if the district court had determined the case was frivolous.

The Clerk's Referral was days after the termination of the case; and after Astarte's Appeal had been filed 6/10/2020 [Docket 1]; and her request for the district court to forward Record on Appeal. The district court/judge did file his Order on 5/29/2020 and terminated the case with prejudice; nothing in his Order about the case being frivolous.

On 6/19/2020 Astarte timely filed her Objection to Clerk of the Appellate Court's Referral.

On 6/22/2020 [Docket 5] this Court received an Order from the district court/judge based on the Clerk's Referral revoking Astarte IFP. Astarte believes that is inappropriate as it was done after the case. 20-cv-02657 was terminated/closed. Nothing was said at the hearing or in his order; or after the appeal was filed about being frivolous.

The district court/judge claims the defendants acts were judicial. Under law judges do not have absolute when they deny constitutional rights; the Magistrate and the Judge claim a denial of due process under the Fourteen Amendment was/is a judicial act. Astarte claims is for non-judicial acts of denial of protected constitutional rights under 42 U.S.A. 1983. Astarte can prove her claims by undisputed material evidence of trial documents relevant to the case, which is not conclusions, which gives Astarte grounds for relief.

On 6/24/2020 [Docket 6] the Clerk U.S. Court of Appeals did file a motion to dismiss Astarte's 42 U.S.A. 1983 action in appeal as frivolous, when it is not. Astarte did file a timely statement on 7/1/2020 [Docket 7 & 8] why her appeal should go forward; and her motion to proceed in Forma Pauperis.

The district court/judge did not send the record of the case nor did they serve the defendants in the case.

Astarte will continual to suffer substantial harm by the stay of appeal to continue. Furthermore, defendants continue to violate Astarte's rights under void cases. The continuing violations would result from a stay or dismissal establish irreparable harm per the constitutional nature of Astarte's claims. "An alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Court of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). "The balance of the equities favors preventing the violation of a party's constitutional rights." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). Where the court/judge decisions is "arbitrary,

capricious," "not in accordance with the law," or "in excess of statutory jurisdiction." 5 U.S.C. § 706(2). Astarte will likely succeed on the merits of her case.

The district court/judge did commit clear error in exercising his discretionary decisions in case No. 20-cv-02657 an action pursuant to 42 U.S.C. 1983; as did the Clerk U.S. Court of Appeals in the dismissal.

IV. STATEMENT OF THE FACTS OF CASE ON APPEAL OF UNCONTESTED MATERIAL EVIDANCE

A. *Ignored* undisputed material evidence relevant to the case by the Superior, Federal and Appeal Courts/Judges/Justices and others. A *fraudulent Grant Deed* concerning the real properties [and rental income thereof] at issue in the case was entered into evidence by defendants on the *Second Day of Trial*. The first time the grant deed appeared in case and is extrinsic/collateral fraud with deceit which is criminal conversion grant thief. The Trial Minutes shows the clear, concise statements by the Courts and Judges, and others which denied Appellant's due process rights to be heard in all property matters at trial. The undisputed *fraudulent Grant Deed* before the Marin Superior Court and known by the Superior Court/Judge to be fraudulent; which took Astarte Davis's properties and lifestyle; created and filed against a *Restraining Order* in full force and effect; which was criminal conversion grant thief CPC§ 487; and further denial/violation of protected constitutional Fourteenth Amendment of due process rights at trial that further denied Astarte her *California Primary Rights* of her properties.

Ignored undisputed material evidence relevant to the case by the Superior, Federal and Appeal Courts/Judges/Justices and others. The *taking and keeping of the rental income from the real property* taken by fraud is an "injury in fact" which is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Constitutional Law [Loss of funds] ARTICLE 111. "A dollar of economic harm is still an injury-in-fact for standing purposes."); *Carter v. Health Port Techs., LLC*, 822 F.3d 47, 55 (2d Cir. 2016) ("Any monetary loss suffered by the plaintiff satisfies the injury in fact element; 'even a small financial loss' suffices." (quoting *Nat. Res. Def. Council, Inc. v. U.S. Food & Drug Admin.*, 710 F.3d 71, 85 (2d Cir. 2013). *cf.*

In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig., 928 F.3d 42, 66 (D.C. Cir. 2019) (per curiam) (addressing damages rather than standing) “The delay in those Plaintiffs’ receipt of their refunds, and the forgone time value of that money, is an actual, tangible pecuniary injury.” Which Astarte Davis has shown.

Ignored undisputed material evidence relevant to the case by the Superior, Federal and Appeal Courts/Judges/Justices and others. *Annulment/divorce proceeding*; outline of the complain was created and manipulated by defendant with others in a quasi-criminal conspiracy and filed by Astarte Davis under extreme duress. Four months later the court took the divorce case off calendar; before any decision on issues, and without notice or hearing, which is shown by the court's own documentation. Which is contrary to law. Superior Court/Judge then granted a partial *Order* for dissolution of marriage without notice and without a hearing, in favor of the defendant. This is denial/violation of protected constitutional Fourteenth Amendment of due process rights to be heard and offer evidence concerning the "other man" that Loyal claim she was married to.

The "other man;" Loyal was referring to is/was Louis Allabaugh of Tiburon, CA. Who was 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 Lauretta Krumenacker in New Jersey on August 6, 1944. Louis Allabaugh died on February 21, 1974 still married to Emma Lauretta. 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.

Ignored undisputed material evidence relevant to the case by the Superior, Federal and Appeal Courts/Judges/Justices and others. At the Trial of the properties matter the statement by the Superior Court/Judge was "concise" in its meaning in the *TRIAL MINUTES*. The *Third Day of Trial* [property matters] the Superior Court/Judge stated: "This matter coming on regular continuance, parties present, defendants moves to **exclude** any further testimony on real property, **court shall grant to exclude further evidence, which includes property' that involves Astarte Davis, as of this date.**" The court's record show no moving documents filed and none was offered to Astarte. This is denial/violation of protected constitutional Fourteenth Amendment of due process rights to be heard and offer evidence in support of Astarte's case.

Ignored undisputed material evidence relevant to the case by the Superior, Federal and Appeal Courts/Judges/Justices and others; *TRIAL MINUTES* the Marin Superior Court/Judge's statement was "concise" in its meaning on the *Sixth Day of Trial* [property matters] after Astarte Davis was denied her protected rights pursuant to the U. S. Constitution, Fifth Amendment and California Fourteenth Amendment *TO BE HEARD OR PRESENT EVINCE* at trial, concerning all real, and personal properties. Thereby the Superior Court/Judge intentionally took Astarte Davis's ability to challenge any deeds/any documents as to their authenticity at trial, or otherwise. Astarte Davis's constitutionally protected due process rights to be heard at trial was intentionally taken away by fraud, by the Superior Court/Judge acting under color of law, and in his capacity as a judge, and as a private individual in a quasi-criminal conspiracy with the defendants under color of law. A judge is not immune for tortious acts committed in a purely administrative, non-judicial capacity; as he did when he stated: The *court finds Astarte Davis has no property claim against defendant. Orders Judgment for defendant.* This is denial/violation of protected constitutional Fourteenth Amendment of due process rights to be heard and offer evidence.

The above is only samples of wrongdoings that did harm Astarte Davis as shown in her 42 U.S.A. 1983 before this Court.

B. LEGITIMATE CLAIM OF ENTITLEMENT TO PROPERTIES TAKEN AWAY BY DENIAL OF DUE PROCESS BY STATE COURTS/JUDGES JUSTICE - THE FEDERAL COURT/JUDGE CONTINUED THE HARM

1] **460 Cascade** Drive, Mill Valley; Corporation Grant Deed from Kimberly Development Co., to Loyal D. Davis and Astarte Davis, his wife - Recorded 5/27/1959, Book1282 Page 357; **Paid off 5/20/1965** - Deed of Reconveyance Book 1942 Page 238,239; and

2] **316 Miller** Avenue, 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

3] 7 Homestead Boulevard, 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

4] 4079 Paradise Drive, 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. **The Davis' home since 1962**; and

5] 1024 Redwood Boulevard, 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

6] 80 Lincoln Avenue, 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. 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; fraudulent Grant Deed was created on 6/24/1969.

Astarte Davis' claims there is evidence of participation and interest in the commission of the continuing offense by the defendants. An inference must flow logically from other evidence established in the action. *Kidron v. Movie Acquisition Corp.* (1995) 40 Cal.App.4th at p.1583 [47 Cal.Rptr.2d 752].

The Davis' Agreement was a misrepresentation of fact by Loyal Davis to Astarte 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 she 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 misrepresentation, she would not, in all reasonable probability, have entered into the Agreement or any other transaction. *Okun v. Morton* (1988) 203 Cal.App.3d 805, 828 [250 Cal.Rptr. 220].

Astarte justifiable reliance upon her husband did cause harm and tangible damages in the loss of her properties and lifestyle. The Property listed above has an estimated value between \$25-30 Million dollars; which was earned during our marriage.

Concealed Properties: 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 **7] 228 Marion Ave, Mill Valley, Median value \$1,398,471; 8] Tam Valley Lots (7) , A,B,C and D, Subdivision One, Tamalpais Valley, Median value each lot \$1,111,698; 9] Hazel Ave. Lot, Mill Valley, APN 28-121-07, Median value \$869,735; 10] 150 Hazel Ave., Mill Valley, APN 28-121-08, Median value \$1,087,334; 11] 357 Pine Hill, 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 [now deceased]. Joan Maher [aka Dawn Joan Davis] is personally now in control of the above known stolen properties; as well as the concealed property; also the rental income thereof for her own personal gain not earned. Joan Maher [aka Dawn Joan Davis; a livein companion to Loyal Davis]. She is also in control of real property owned by Loyal Davis at Lake Tahoe, and she now lives at 4079 Paradise Dr., Tiburon, and has the enjoyment of the Davis family home [owned since 1962].

Marin County Superior Court Case No. 53979 is *VOID* and unenforceable; as all that followed. A reasonable person would think that enforcing a void judgment or orders is and will cause continuing damages to Astarte. Which it did and continues to do under judgments and orders of void cases.

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.

Did the Federal District Court/Judge fail its duty to read Astarte Davis' pro se 42 U.S.C. § 1983 Complaint with Demand for Jury Trial; asking to annual the void cases and all that followed under law; thereby returning Astarte Davis' properties; ALL which was intentionally stolen; and being kept from her; which is a continuing denial of due process and is a continuing manifest injustice.

Did the Federal District Court/Judge in case 20-cv-02657-RS abuse its discretion in deciding to adopt the magistrate judge's report and recommendation? Astarte believes he did.

Astarte Davis states: There are only two essential elements in a § 1983 action: (1) the plaintiff must show that some person deprived it of a federal constitutional or statutory right; and (2) that person must have been acting under color of state law. That which Astarte has shown herein. *Parrett v. Taylor*, 451 U.S. 527, 535, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981); *American Legion Post 32 v. Walla Walla*, 116 Wn.2d 1, 12, 802 P.2d 784 (1991); *Jordan v. Oakville*, 106 Wn.2d 122, 134, 720 P.2d 824 (1986). A local government is a "person" for purposes of § 1983. *Monell v. Department of Social Servs.*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978); *Turngren v. King Cy.*, 104 Wn.2d 293, 311, 705 P.2d 258 (1985).

C. PROCEDURAL HISTORY OF THE CASE

Astarte Davis began her research in early 2016. On 3/11/2016 Astarte Davis did engage Attorney David Chapman to file a case, base on her finding in Marin County Superior Court Case 53979 [Judge Joseph Wilson]; he had to quit for personal reasons on 9/20/2016. On 10/25/2016 Attorney Neil Bloomfield was engaged, where he did file Marin County Court Case No. 1701626 against Loyal Davis and Joan Maher [aka Dawn Joan Davis], et al on 7/14/2017 [before the death of Loyal Davis 12/24/2017]. Attorney Bloomfield ask for an entry of dismissal; without prejudice which was filed on July 17, 2017 and granted; before Defendants answered; he quit as Astarte Davis could no longer pay his fees.

On 1/4/2018 Astarte Davis in pro se continued her case in United States District Court, Case No. 3:18-cv-00094-RS [Judge Richard Seaborg]; which continued the action against the Respondents. On 7/27/2018 the Order denying Astarte Davis' Motion to Amend and Granting Defendants' Motion to Dismiss, as the court lack subject matter jurisdiction to hear the case. Because Astarte Davis could not give the court a violation of her constitutional rights; only that there were acts under the color of law.

The federal court in case No. 3:18-cv-00094; Judge Richard Seeborg in his Order dated 7/27/2018 for dismissal wrote on the last page. "The core of Astarte Davis' complaint. To the extent her now forty-year-old claims can or should be adjudicated anywhere, the most appropriate forum for doing so is the state court of original jurisdiction targeted by defendants' alleged deception. Cf. *Weisman v. Charles E. Smith Mgmt., Inc.* 829 F.2d 511(4th Cir. 1987). The Conclusion; dismiss and closed the case."

Astarte Davis filed her case in the Marin County Superior Court of original jurisdiction; Marin Superior Court Case CIV 1802890 [Judge Stephen Freccero] on 8/15/2018, continuing the case. All the uncontested material evidence above was ignored granting in favor of the defendants who were the known wrongdoers; and in possession by fraud and grand thief of all Astarte Davis' properties; failing his duty under law to annual case No. 53979 and all that followed; due to intentional denial of protected constitutional due process rights by courts/judges.

On 7/17/2019 Astarte Davis in pro se filed California Court of Appeal Ninth Circuit Case A157795 [Justice Mark Simon], Case CIV1802890 at issue. Court of

Appeal dismiss on defendants Motion to Dismiss before opening brief was filed; thereby the evidence of the case was unknown to the court.

On 10/16/2019 Astarte Davis in pro se filed in California Supreme Court Case S258605 Case A157795 at issue; and on 12/11/2019 Petition for Review was denied.

D. 42 U.S.C. § 1983 Complaint

On 4/13/2020 Astarte Davis in pro se filed in U.S. District Court Case 3:20-cv-02657-RS a Complaint with demand for jury trial under 42 United States Code § 1983 for the deprivation of her Civil Right, California Primary Rights, Due Process and Equal Protection under the law secured by the Federal law and guaranteed by the Fourteenth Amendment to the Constitution of the United States; California Constitution; the Supreme Law of the Land; and as successor in interest and personal representative of her late husband Loyal Davis CCP 337. All of which did continue to deprive Astarte of her properties and the due course of justice in violation of 42 U.S. Code §§ 1983,1981, 1985.

Astarte Davis claims: Civil Rights – Deprivation – Sufficiency of Complaint. A complaint is sufficient to state a cause of action under 42 U.S.C. § 1983 if it alleges that the defendants acted under color of state law, which they did; and that the defendant's conduct deprived the plaintiff of a right protected by the federal constitution or a federal statute, which it did; and denial of due process which caused the loss of jurisdiction thereby VOID cases, whereby the judgments and orders are unenforceable and all that follows. The courts/judges/justices ignore the claims and failed to annual the cases, orders and judgments thereof; and return all properties taken.

Astarte Davis claims Civil Rights – Deprivation – "Person" – Local Government – In General. A local government constitutes a "person" for purposes of 42 U.S.C. § 1983, which creates a cause of action when a person deprives another of a federal civil right.

Astarte Davis is proceeding *pro se*; therefore, the federal court/judge should have construes her 1983 Complaint with all possible deference. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). Astarte has subject matter jurisdiction herein, Rule12(b)(1). Her claims are undisputed, judicial notice exhibits of uncontradicted relevant evidence to the case.

Astarte Davis' Appeal of Complaint in issue should not be dismissed unless it appears from the pleadings that she can prove no set of facts in support of her claims which would entitle her to relief. *Conley v. Gibson*, 355 U.S. 41 (1957). Due to egregious error in the denial of Astarte's protected federal constitutional Fifth and Fourteenth Amendments rights, and her California Primary Rights by the defendants and the judges under color of law. She seeks redress through §1983 and assert the violation of her federal rights. Astarte further asserts her claims are cognizability as being real and personal properties. *Vi. Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 772-73 (2000). Astarte's has justiciability as U.S. Const. Art. III, Sec 2 is satisfied. *Tutun v. United States*, 270 U.S. 568, 577 (1926). Astarte standing is further based on the infringement of her Fourteenth Amendment rights. *Pierce v. Society of Sisters*, 268 U.S. 510, 535-36 (1925).

Under *Monroe v. Pape*, 365 U.S. 167 (1971) Astarte is not required to exhaust any available state court remedies before invoking section 1983, because the purpose of this statute is to open federal courts to claims that federal rights were violated. *McNeese v. Board of Education*, 373 U.S. 668 (1963).

If a state, federal or local official or agency deprives a person of state/federal constitutional or local statutory rights, under § 1983 it allows Astarte the right to sue that official under federal law regardless of whether a state remedy is available. *AKHIL REED AMAR, THE BILL OF RIGHTS* 163-180 (1998).

Astarte Davis BROUGHT her case back TO THE FEDERAL COURT in case No. 3:20-cv-02657-RS PURSUANT TO U.S.CODE 42 USC §1983, for DEPRIVATION OF HER RIGHTS PURSUANT TO THE U.S. CONSTITUTION, FIFTH and FOURTEENTH AMENDMENT, CALIFORNIA CONSTITUTION, CALIFORNIA PRIMARY RIGHTS, and SUPREME LAW OF THE LAND. With all her uncontradicted, judicial notice material evidence relevant to the case that was missing in Judge Seaborg's case No. 3:18-cv-00094.

Example shown above: would be the concise TRIAL MINUTES showing denial of Astarte Davis' protected constitutional due process rights to be heard and give evidence at trial, which did take away all her real property, and rental income thereof, her personal property, fixtures, her home and lifestyle.

All of which the federal court/judge chose to ignore. On 5/29/2020 in case No. 20-cv-02657 the federal court/judge filed its Order Adopting Report and Recommendation of the magistrate judge; thereby terminating the case with prejudice. That which was/is contrary to law; further failing his duty to read Astarte Davis's pro se complaint under law. Astarte Davis filed her timely Objection's to magistrate judge's recommendation to dismiss her complaint on 5/26/2020. Thereby Astarte Davis did file an appeal on 6/10/2020, case No. 20-16136.

On 6/12/2020 Clerk of Court filed a *REFERRAL NOTICE* to Judge Seeborg wanting to know if Astarte Davis' appeal is frivolous or taken in bad faith; and if so revocation of forma pauperis status is appropriate. The Order by Judge Seeborg which terminating the case said nothing about frivolous or bad faith on 5/29/2020. On 6/15/2020 after the case was terminated he filed an Order Revoking Astarte Davis' *IN FORMA PAUPERIS STATUS*, he knew that she lives on Social Security and considered an elder; therefore would be a hardship. Astarte Davis did file on 6/19/2020 her timely *OBJECTION TO REFERRAL*. Astarte Davis has a *CONSTITUTIONAL* right to sue and be heard when her constitutional rights have been denied/violated; that which the Clerk of Court is *NOW* denying her.

E. IMMUNITY - ABSOLUTE IMMUNITY

Public employees are shielded from liability for civil damages for their performance of discretionary functions; conduct must be objectively legally reasonable.

However, qualified immunity has been found to exist. Government officials performing discretionary functions are shielded from all liability for civil damages if their "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982); *Front Royal*, 708 F. Supp. at 1480. *The issue of immunity is a question of law.* *Mitchell v. Forsyth*, 472 U.S. 511, 528, 86 L. Ed. 2d 411, 105 S. Ct. 2806 (1985).

Astarte states government – torts – immunity – discretionary acts – are Question of Law or Fact. Whether a public employee is entitled to qualified immunity for performing discretionary functions is a question of law, which never been determine by the case being heard on its merits.

Astarte states constitutionally and in fact of law and judicial rulings, state-federal, magistrates-judges or any government actors, clerk of court; state or federal, may now be held liable, if they violate any Citizen's protected constitutional rights, privileges, or immunities, or guarantees; including statutory civil rights. A judge is not immune for tortious acts committed in a purely administrative, non-judicial capacity. *Forrester v. White*, 484 U.S. at 227-229, 108 S. Ct. at 544-545 (1987); *Westfall v. Erwin*, 108 S. Ct. 580 (1987); *United States v. Lanier*, 520 U.S. 259 (1997). UNDER LAW there is no ABSOLUTE IMMUNITY for acts done in a knowing non-judicial capacity.

Pursuant to #4.1 Section 1983: Astarte Davis is suing under Section 1983, a civil rights law passed by Congress that provides a remedy to persons who have been deprived of their federal, and state constitutional and statutory rights. *Livadas v. Bradshaw*, 512 U.S. 107,132 (1994); *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 617 (explaining that 42 U.S.C. Sec. 1983 was enacted to create a private cause of action for violations of the United States Constitution.)

Astarte states 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 court judge/justice as shown herein 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. Piphus*, 435 U.S. 247,253 (1978)

Astarte states 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, suit in equity, or other proper proceeding for redress under law.

Astarte states a complaint is sufficient to state a cause of action under 42 U.S.C. § 1983 if it alleges that the defendant acted under color of state law and that the defendant's conduct deprived the plaintiff of a right protected by the federal constitution or a federal statute.

Astarte states in general. A local government constitutes a "person" for purposes of 42 U.S.C. § 1983, which creates a cause of action when a person deprives another of a federal civil right.

F. VOID CASES, ORDERS, JUDGMENTS LAW CONCERNING THIS CASE

Void cases are unenforceable - Marin Superior Court No. 53979, and all that followed: Marin Superior Court Case No. 1802890; California Court of Appeal Case No. A157795 and United States District Court Case No. 3:20-cv-02657-RS for the reasons stated herein; and based on the following *LAW OF VOID JUDGMENT, ORDERS and 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*, 91US 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; *Earle v McVeigh*, 91 US 503, 23 L Ed 398.

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." (1 *Freeman on Judgments*, 120c.) An illegal order is forever void.

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.

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.

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 1 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.

For this case to continue without remedy is a grave miscarriage of justice, a continuing denial of Astarte Davis' protected federal constitutional rights under 28 USC 1331; *United States v. Beggerly*, 524 U.S. 38, 46-47 (1998).

G. GOOD FAITH STANDARD

The standard set forth in Harlow supplants the good faith standard previously applied. Cf. *Wood v. Strickland*, 420 U.S. 308, 322, 43 L. Ed. 2d 214, 95 S. Ct. 992 (1975); *Harper v. State*, 110 Wn.2d 873, 884, 759 P.2d 358 (1988); *Washington v. Harper*, 494 U.S. 210, 110 S. Ct. 1028, 108 L. Ed. 2d 178 (1990). Qualified immunity is not available unless the government official can show that his or her conduct was objectively legally reasonable. *Anderson v. Creighton*, 483 U.S. 635, 641, 97 L. Ed. 2d 523, 107 S. Ct. 3034 (1987). Thus, a subjective, good faith belief that the conduct complained of was not unconstitutional will not suffice to prove immunity; the defendant must show that his or her conduct was objectively reasonable. Astarte Davis' case under 42 U.S.C. § 1983 is for the factfinder.

Any reasonable person would think a **42 U.S.C. § 1983** case for Astarte Davis' denial of protected constitutional rights of due process would not be STAYED and ignored. It should be allowed to move forward for the justice that has been refused at every turn of the case.

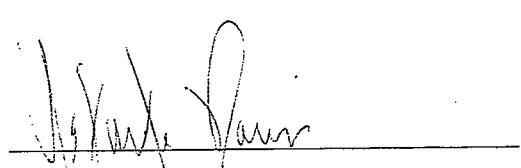
Astarte asserts The *MANIFEST INJUSTICE DOCTRINE* is appropriate and should be applied to *HEREIN ISSUES.. Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974); *In re Clark*, Supreme Court of California 5022475 (1992).

CONCLUSION

For the above reasons Astarte Davis respectfully ask this Court to dismiss the Stay; to allow her to move forward on Appeal and file her Opening Brief.

Dated 8/28/2020

Respectfully submitted,


Astarte Davis, In pro se
Plaintiff - Appellant

NOTE: DISTRICT COURT did not serve any defendants in the case as was appropriate under granted fee waiver; thereby there is no Certificate of Service attached.

APPENDIX A-6 Declaration

FILED

No: C.A. No. 20-16136

SEP 09 2020

Molly C. Dwyer, Clerk U.S. Court Of Appeals

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ASTARTE DAVIS,

Plaintiff - Appellant,

v.

JOSEPH WILSON; STEPHEN FRECCERO; MARK SIMONS

Defendants - Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 3:20-cv-02657-RS
Honorable Richard Seeborg

**ASTARTE DAVIS' DECLARATION on THE MANIPULATION OF
THE DOCKET and more IN SUPPORT OF HER
MOTION FOR RELIEF FROM STAY ON APPEAL**

ASTARTE DAVIS, in Pro Se
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Gualala, CA 95445
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INTRODUCTION

This United States Court of Appeals through Molly Dwyer, Clerk U.S. Court of Appeals Ninth Circuit, and her sub-clerks are doing everything they can to keep this *Pro Se Litigates* from coming to this Court for justice; in Appeals Case No. 20-16136 as shown below.

UNDISPITED MATERIAL EVIDENCE RELEVANT TO THE FACTS OF CASE AT ISSUE

Molly Dwyer, Clerk and sub-clerks by their intentional and knowing wrongdoing to the extent of manipulation of the Court's Docket; 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. Sec. 1983 Complaint. The United States District Court, Judge Richard Seeborg did ignore Astarte's Complaint and adopted the Magistrate Judge's Report and Recommendation which was contrary to law for violation of protected constitutional rights. 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.

UNITED STATES COURT OF APPEALS' DOCKET

On 6/10/2020 Docket 1 states: Docketed Cause and entered appearance of pro se Appellant. Which was Astarte's *NOTICE OF APPEAL*.

On 6/10/2020 Astarte received a Time Schedule Order which *IS NOT SHOWN ON THE DOCKET*.

On 6/12/2020 Docket 2 states: Clerk filed its 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.

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.

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 FAITH AND IS FRIVOLOUS

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

On 7/1/2020 Docket 8 states: filed Astarte's statement.

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 at issue. Evidence that was *IGNORED* by the courts/judges as well as *VOID CASES*; which was denial of protected fundament constitutional Fifth and Fourteenth

Amendment of due process rights at trial to be heard. As shown in the concise trial minutes of the court. That which did take from Astarte considerable real property; rental income therefrom; her home and lifestyle.

There was further concealed real property; and a written Agreement between husband and wife concerning fiduciary duties of the Davis Estate which was fraud by her husband, who was never going to honor the Agreement. A fraudulent grant deed filed against a Restraining Order of the court. This and more is written with full description in Astarte 42 U.S.C. Sec. 1983 Complaint with Judicial Notice exhibit before Judge Richard Seeborg. Which is on APPEAL in this Court. It is Abuse of Discretion by this Court, Clerk Molly Dwyer, and sub-clerks for not letting this appeal go forward

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

On 7/28/2020 Docket 10 states: Astarte did file a Request for Extension of time and to be given a new schedule date for filing her Opening Brief. The Court then said "this appeal is stayed."

On 9/1/2020 Docket 11 states: Filed Appellant Astarte Davis statement that the appeal should go forward.

Astarte did not file a "statement." Astarte has of yet to receive her filed copy of her document entitled; *MOTION FOR RELIEF OF STAY ON APPEAL TO GO FORWARD*.

FRAP 45 - CLERK'S DUTIES

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?

On 6/24/2020 Molly Dwyer did act in the capacity of her office and as an attorney to collect information from Astarte's file in case number 3:20-cv-02657-RS as to the her remarks on 7/1/2020: 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 . . .

To Astarte knowledge and information there was no such certification placed on the district courts docket or otherwise. Molly Dwyer statement is untrue and done with *MALICE, OPPRESSION AND FRAUD TO HARM ASTARTE BY NOT LETTING HER APPEAL MOVE FORWARD AS SHE HAS A RIGHT UNDER LAW FOR DENIAL OF HER FUNDAMENTAL CONSTITUTION RIGHTS AS AN AMERICAN.*

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 name; as they would have if she had been an attorney. This right specifies that an individual should not be treated differently by the law. Not doing what is right violates Astarte 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.

MOLLY DWYER, CLERK OF COURT, 9TH CIRCUIT COURT OF APPEALS - December 13, 2015 Letter to the Department of Justice
By Joanenice Shields, Attorney

Molly Dwyer, the Clerk of Court for the 9th Circuit Court of Appeals was responsible for and controlled the Court of Appeals Scheduling, Court Calendar, Docketing of Appeals Cases, Assignment of Merit Panel Judges, and was responsible for Procedural Motions and the procedural functions of the 9th Circuit Court of Appeals as the Clerk of Court in her official capacity. It has been documented 11 different Circuit Judges agreed to commit federal criminal crimes against the Constitution, Federal Laws, Federal Rights, and against their Oaths of Office. Molly Dwyer and Governmental Staff within the Clerk's Office committed the criminal activity and ascribed the unlawful obstruction of justice activities to the 11 different Circuit Court Judges' names respectively with the 11 Judges' knowledge. Perhaps the Clerk of Court Molly Dwyer controlled the entire fraud on behalf of the Corporate Defendants in a Civil Rights lawsuit under the RICO ACT; with the help of her Court Staff. Any requests being made to the Court of Appeals had to be sent through the Clerk of Court's Office and Molly Dwyer had control over all procedural functions of the Court of Appeals. The obstruction of justice activity is ascribed to each individual Circuit Judges Name respectively, but each unlawful action began with the Clerk of Court's Office actions first. Each of the 11 Circuit Judges' Names were assigned to specific Appeal Case No.'s, and then their respective names were affixed to Fraudulent Court Orders that went against Federal Laws, Federal Statutes and that went against Federal Rules of Appellate Procedures. Each Federal Circuit Court Judge was brought into the Criminal Activity, providing aid and abetting support to the criminal obstruction of

justice activity based on the Case Assignments made to them respectively by the Clerk of Court and by the fraudulent Court Orders being made using their names respectively. The Fraudulent Orders were a series of either “One Sentence” “Bare Order Denials” without cause or reasons, or just fraudulent Orders that had absolutely no basis in actual facts. The fraudulent orders contradicted the District Court Records, ignored evidence of fraud by the Defendant-Appellees, ignored outright mendacities made within the Appellees Answering Briefs, went against Federal Rules of Civil and Appellate Procedures and went against Federal Statutes and Federal Laws that each Judge swore by Oath to uphold.

The Obstruction of Justice activity was more than likely carried out at the directive of the Clerk of Court, Molly Dwyer. Molly Dwyer used unlawful procedural functions and tricks to delay, defer and just outright block the Appeals process and the lawful administration of justice in each Appeal Case that I brought before the Court of Appeals against the Defendant-Appellees and against the District Court Judges.

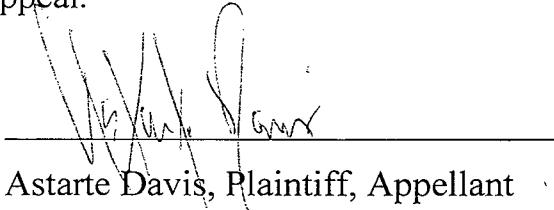
Molly Dwyer’s Office Refused (multiple times) to carry out routine procedural functions like Docketing the Appeal Case Title under the District Court Case Title of Joanelice Shields v. Insight Enterprises, Inc. et al, District Court Case No. 2:11-CV-02058-SRB as required by Federal Rules of Appellate Procedures (FRAP) Rule 12 (a) Docketing the Appeal, which states “Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d) the circuit clerk must docket the appeal under the title of the district-court action”. Molly Dwyer’s Office, obstructed justice and blocked an Appeal against Insight Enterprises, Inc. et al for my RICO Lawsuit.

CONCLUSION

This is what Astarte, in Pro Se is up against to simply have her case heard on appeal and have a just and fair hearing in her favor.

Astarte respectfully submits this Declaration to her *MOTION FOR RELIEF FROM STAY ON APPEAL* asking this Court for the right to file her Opening Brief and move forward on appeal.

Dated September 5, 2020


Astarte Davis, Plaintiff, Appellant
In Pro Se

APPENDIX A-7 Clerk's Duties



Rule 45. Clerk's Duties

(a) GENERAL PROVISIONS.

(1) *Qualifications.* The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) *When Court Is Open.* The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) RECORDS.

(1) *The Docket.* The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) *Calendar.* Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) *Other Records.* The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) **NOTICE OF AN ORDER OR JUDGMENT.** Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) **CUSTODY OF RECORDS AND PAPERS.** The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition

of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

NOTES

(As amended Mar. 1, 1971, eff. July 1, 1971; Mar. 10, 1986, eff. July 1, 1986; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

NOTES OF ADVISORY COMMITTEE ON RULES—1967

The duties imposed upon clerks of the courts of appeals by this rule are those imposed by rule or practice in a majority of the circuits. The second sentence of subdivision (a) authorizing the closing of the clerk's office on Saturday and non-national legal holidays follows a similar provision respecting the district court clerk's office found in FRCP 77 (c) and in FRCrP 56.

NOTES OF ADVISORY COMMITTEE ON RULES—1971 AMENDMENT

The amendment adds Columbus Day to the list of legal holidays. See the Note accompanying the amendment of Rule 26(a).

NOTES OF ADVISORY COMMITTEE ON RULES—1986 AMENDMENT

The amendment to Rule 45(b) permits the courts of appeals to maintain computerized dockets. The Committee believes that the Administrative Office of the United States Courts ought to have maximum flexibility in prescribing the format of this docket in order to ensure a smooth transition from manual to automated systems and subsequent adaptation to technological improvements.

The amendments to Rules 45(a) and (d) are technical. No substantive change is intended. The Birthday of Martin Luther King, Jr. has been added to the list of national holidays.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The language and organization of the rule are amended to make the rule more easily understood. In addition to changes made to improve the understanding, the Advisory Committee has changed language to make style and terminology consistent throughout the appellate rules. These changes are intended to be stylistic only.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

Subdivision (c). Subdivision (c) has been amended so that the clerk may use electronic means to serve notice of entry of an order or judgment upon parties who have consented to such service.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

COMMITTEE NOTES ON RULES—2005 AMENDMENT

Subdivision (a)(2). Rule 45(a)(2) has been amended to refer to the third Monday in February as "Washington's Birthday." A federal statute officially designates the holiday as "Washington's Birthday," reflecting the desire of Congress specially to honor the first president of the United States. See 5 U.S.C. §6103(a). During the 1998 restyling of the Federal Rules of Appellate Procedure, references to "Washington's Birthday" were mistakenly changed to "Presidents' Day." The amendment corrects that error.

Changes Made After Publication and Comments. No changes were made to the text of the proposed amendment or to the Committee Note.

< Rule 44. Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party up Rule 46. Attorneys >

► **When Can I Buy a Gun? Purchase a Firearm after a
Restore Your Firearm Rights.** OPEN

Federal Rules of Appellate Procedure Toolbox

- Wex: [Appellate Procedure: Overview](#)

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.

APPENDIX B

APPENDIX B

APPENDIX B - United States District Court Ninth Circuit NO. 3:20-cv-02657-RS
Void Case 53979 History at issue Case No. 3:20-cv-02657-RS
Judge Stephen Freccero - Case No. CIV 1802890
Void case at issue in Judge Seeborg's case No: 3:20-cv-02657-RS.
Justice Mark Simons - Appeal Case No. A157798
Void case at issue in Judge Seeborg's case No: 3:20-cv-02657-RS.

	Page	
App. B-1	Docket	6
App. B-2	Report and Recommendations	6
App. B-3	Objections to Report and Recommendations	6
App. B-4	Order Adopting Report and Recommendation	6
App. B-5	US Court of Appeals Referral Notice	6
App. B-6	Order Revoking Forma Pauperis	6
App. B-7	Court Notice - Case Closed 5/29/2020	6
App. B-8	Complaint for Annulment	7
App. B-9	Allabaugh Marriage	7
App. B-10	Divorce Case Off Calendar	8
App. B-11	Order Declaring Respondent's Claim Established	8
App. B-12	Betty Davis Grant Deed	9
App. B-13	Restraining Order	9
App. B-14	460 Cascade Dr., Mill Valley	11
App. B-15	316 Miller Ave., Mill Valley	11
App. B-16	7 Homestead Blvd., Mill Valley	12
App. B-17	4079 Paradise Dr., Tiburon	12
App. B-18	1024 Redwood Blvd., Mill Valley	12
App. B-19	80 Lincoln Ave., Sausalito	12
App. B-20	228 Marion Ave., Mill Valley	13
App. B-21	Tam Valley Lots, Tamalpais Valley	13
App. B-22	Hazel Ave. Lot, Mill Valley	13
App. B-23	150 Hazel Ave. Mill Valley	13
App. B-24	357 Pine Hill, Mill Valley	13

App. B-25	First Day of Trial	14
App. B-26	Second Day of Trial	14
App. B-27	Third Day of Trial	14
App. B-28	Fourth Day of Trial	14
App. B-29	Sixth Day of Trial	15
App. B-30	Grant Deed for 80 Lincoln to Homes by Loyal	15
App. B-31	Judgment Case 35979.....	16
App. B-32	Reporter's Transcript	20
App. B-33	Order Case A157798	22
App. B-34	Loyal Davis v. Robert Nicco Case 123736	22

APPENDIX B-1 Docket

ADRMOP,APPEAL,CLOSED,ProSe,RELATE

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:20-cv-02657-RS**

Davis v. Wilson et al
Assigned to: Judge Richard Seeborg
Relate Case Case: 3:18-cv-00094-RS
Case in other court: **20-16136**
Cause: 42:1983 Civil Rights Act

Date Filed: 04/13/2020
Date Terminated: 05/29/2020
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Astarte Davis

represented by **Astarte Davis**
P.O. Box 306
Gualala, CA 9545
(707) 785-2972
Email: astartedavis@hotmail.com
PRO SE

V.

Defendant

Joseph Wilson
*individually and in his official capacity
as a Judge in the Marin County
Superior Court of the State of
California*

Defendant

Stephen P. Freccero
*individually and in his official capacity
as a Judge in the Marin County
Superior Court of the State of
California*

Defendant

Mark B. Simons
*individually and in his official capacity
as a Justice and Acting P.J. in the Court
of Appeal of the State of California*

Date Filed	#	Docket Text
04/13/2020	<u>1</u>	

		COMPLAINT and Demand for Jury Trial against Stephen P. Freccero, Mark B. Simons, Joseph Wilson (Filing fee IFPP). Filed by Astarte Davis. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Envelope) (gbaS, COURT STAFF) (Filed on 4/13/2020) (Entered: 04/17/2020)
04/13/2020	<u>2</u>	Request for Judicial Notice re <u>1</u> Complaint filed by Astarte Davis. (Related document(s) <u>1</u>) (gbaS, COURT STAFF) (Filed on 4/13/2020) (Entered: 04/17/2020)
04/13/2020	<u>3</u>	MOTION for Leave to Proceed in forma pauperis filed by Astarte Davis. (gbaS, COURT STAFF) (Filed on 4/13/2020) (Entered: 04/17/2020)
04/13/2020	<u>6</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 7/9/2020. Initial Case Management Conference set for 7/16/2020 11:00 AM in San Francisco, Courtroom B, 15th Floor. (Attachments: # <u>1</u> Standing Order) (gbaS, COURT STAFF) (Filed on 4/13/2020) (Entered: 04/20/2020)
04/13/2020	<u>7</u>	Notice of Assignment of Case to Magistrate Judge. (gbaS, COURT STAFF) (Filed on 4/13/2020) (Entered: 04/20/2020)
04/20/2020	<u>4</u>	NOTICE AND ORDER: The attached notice and order notifies the plaintiff of resources available, attaches the district's handbook for litigants who do not have a lawyer, includes a flyer for contacting the court's help desk and instructs the plaintiff about serving the defendants. Signed by Judge Laurel Beeler on 04/20/2020. (Attachments: # <u>1</u> Certificate/Proof of Service, # <u>2</u> Self Help Flyer, # <u>3</u> Pro Se Handbook) (ejkS, COURT STAFF) (Filed on 4/20/2020) (Entered: 04/20/2020)
04/20/2020	<u>5</u>	Order by Magistrate Judge Laurel Beeler granting <u>3</u> Motion for Leave to Proceed in forma pauperis. (Attachments: # <u>1</u> Certificate/Proof of Service) (ejkS, COURT STAFF) (Filed on 4/20/2020) (Entered: 04/20/2020)
04/23/2020	<u>8</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Astarte Davis.. (Attachments: # <u>1</u> Envelope) (gbaS, COURT STAFF) (Filed on 4/23/2020) (Entered: 04/23/2020)
05/15/2020	<u>9</u>	REPORT AND RECOMMENDATIONS. ORDER REASSIGNING CASE. The undersigned refers this case first to Judge Seeborg for a determination about whether the case should be related to case number 18-cv-00094-RS. If Judge Seeborg determines that the cases are not related, the undersigned directs the clerk of court to reassign this case to a randomly selected district judge. In either event, the undersigned recommends that the newly assigned judge dismiss the case with prejudice. Objections due by 5/29/2020. Signed by Judge Laurel Beeler on 05/15/2020. (ejkS, COURT STAFF) (Filed on 5/15/2020)
<hr/> Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 05/15/2020)		

05/15/2020	<u>10</u>	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Richard Seeborg for all further proceedings. Magistrate Judge Laurel Beeler no longer assigned to case,. Signed by Clerk on 05/15/2020. (mbcS, COURT STAFF) (Filed on 5/15/2020)
		Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 05/15/2020)
05/18/2020	<u>11</u>	REQUEST for assignment and to have defendants served by Astarte Davis. (mclS, COURT STAFF) (Filed on 5/18/2020) (Entered: 05/21/2020)
05/21/2020	<u>12</u>	ORDER RELATING CASES AND REQUESTING BRIEFING. Signed by Judge Richard Seeborg on 5/21/2020. (cl, COURT STAFF) (Filed on 5/21/2020)
		Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 05/21/2020)
05/26/2020	<u>13</u>	OBJECTIONS to <u>9</u> Report and Recommendations by Astarte Davis. (gbaS, COURT STAFF) (Filed on 5/26/2020) (Entered: 05/27/2020)
05/29/2020	<u>14</u>	ORDER ADOPTING REPORT AND RECOMMENDATION. Signed by Judge Richard Seeborg on 5/29/2020. (cl, COURT STAFF) (Filed on 5/29/2020)
		Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 05/29/2020)
06/08/2020	<u>15</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Astarte Davis. Appeal of <u>14</u> Order Adopting Report and Recommendations. (wsnS, COURT STAFF) (Filed on 6/8/2020) (Additional attachment(s) added on 6/9/2020: # <u>1</u> Notice of Appeal) (gbaS, COURT STAFF). (Entered: 06/09/2020)
06/10/2020	<u>18</u>	NOTICE to Forward Record on Appeal by Astarte Davis. (gbaS, COURT STAFF) (Filed on 6/10/2020) (Entered: 06/15/2020)
06/12/2020	<u>16</u>	USCA Case Number 20-16136 for <u>15</u> Notice of Appeal, filed by Astarte Davis. (gbaS, COURT STAFF) (Filed on 6/12/2020) (Entered: 06/12/2020)
06/12/2020	<u>17</u>	USCA REFERRAL NOTICE as to <u>15</u> Notice of Appeal, filed by Astarte Davis. (gbaS, COURT STAFF) (Filed on 6/12/2020) (Entered: 06/15/2020)
06/15/2020	<u>19</u>	ORDER REVOKING IN FORMA PAUPERIS STATUS. Signed by Judge Richard Seeborg on 6/15/2020. (cl, COURT STAFF) (Filed on 6/15/2020)
		Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 06/15/2020)
06/18/2020		Copy of <u>19</u> Order Revoking in Forma Pauperis Status mailed to 9th Circuit. gbaS, COURT STAFF) (Filed on 6/18/2020) (Entered: 06/18/2020)

APPENDIX B-2 Report and Recommendations

*Delivered
5/29/20*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

11 ASTARTE DAVIS,

Case No. 20-cv-02657-LB

12 Plaintiff,

13 v.

**ORDER TO REASSIGN CASE TO A
DISTRICT JUDGE; REPORT AND
RECOMMENDATION TO DISMISS
COMPLAINT**

14 JOSEPH WILSON, et al.,

Re: ECF No. 1

15 Defendants.

16
17 **INTRODUCTION**

18 The plaintiff Astarte Davis, who represents herself in this action and who is proceeding *in*
19 *forma pauperis*, sued Marin County Superior Court judges Joseph Wilson and Stephen P. Freccero
20 and California Court of Appeal Justice Mark B. Simons, claiming that in proceedings relating to
21 her marital dissolution in 1969, they deprived her of property and denied her due process, in
22 violation of 42 U.S.C. § 1983.¹ Before directing the United States Marshal to serve the defendant
23 with the plaintiff's complaint, the court must screen it for minimal legal viability. 28 U.S.C. §

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¹ Compl. – ECF No. 1; Order – ECF No. 5. Citations refer to material in the Electronic Case File
("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of documents.
According to the complaint, Judge Wilson is no longer alive. Compl. – ECF No. 1 at 4 (¶ 6).

1 1915(e)(2)(B). The complaint is frivolous because — among other reasons — the judges have
2 absolute immunity. Ms. Davis declined magistrate jurisdiction.²

3 In an earlier lawsuit in this district, Ms. Davis raised similar claims against her former
4 husband, his business, and his wife about property taken from Ms. Davis in her 1969 annulment
5 proceeding. Judge Seeborg dismissed the case with prejudice on the grounds that the claims were
6 barred by the statute of limitations and the *Rooker-Feldman* doctrine. *Davis v. Davis*, No. 18-cv-
7 00094-RS, Order – ECF No. 78.

8 Because Ms. Davis has not consented to magistrate-judge jurisdiction, this case must be
9 reassigned. The undersigned refers this case first to Judge Seeborg for a determination about
10 whether the case should be related to case number 18-cv-00094-RS. If Judge Seeborg determines
11 that the cases are not related, the undersigned directs the clerk of court to reassign this case to a
12 randomly selected district judge. In either event, the undersigned recommends that the newly
13 assigned judge dismiss the case with prejudice.

14

15 STATEMENT

16 Ms. Davis filed a 132-page complaint and a 538-page compendium (in the form of a request
17 for judicial notice) of her state-court filings.³ Construing her complaint liberally, she alleges the
18 following.

19 Judge Wilson presided over Ms. Davis's "annulment/divorce" case filed in 1969 in Marin
20 County Superior Court in Case No. 53979.⁴ He acted "in a quasi-criminal conspiracy" with Ms.
21 Davis's ex-spouse's family and attorney "to take and keep Astarte's real and personal properties

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25 ² Declination – ECF No. 8.

26 ³ Compl. – ECF No. 1; Request for Judicial Notice ("RJN") – ECF No. 2. The court takes judicial
27 notice of the public records (but not disputed facts in them). *Lee v. City of Los Angeles*, 250 F.3d 668,
689 (9th Cir. 2001).

28 ⁴ Compl. – ECF No. 1 at 15 (¶ 69); Marin Case No. 53979 Compl., Ex. 11 to RJN – ECF No. 2 at 48.

1 by the intentional denial of her protected right of due process to be heard, which cause[d] her harm
2 and tangible damages in the further loss of her properties and lifestyle, and untold more.”⁵

3 In 2018, Ms. Davis sued her former spouse (Loyal Davis), his “companion” Dawn Joan Davis,
4 Mr. Davis’s mother Betty Davis, and Mr. Davis’s attorney Stephen Kaufmann, claiming that they
5 fraudulently concealed assets during the 1969 annulment proceedings.⁶ Judge Freccero was the
6 presiding judge.⁷ On June 27, 2019, he sustained the defendants’ demurrer without leave to amend
7 and entered judgment against Ms. Davis.⁸ “Judge Freccero failed his duty when he did
8 intentionally ignored and suppress[ed] relevant evidence of the denial of Astarte’s rights at trial
9 case 53979; thereby Judge Freccero denied Astarte Fourteenth Amendment rights.”⁹ Judge
10 Freccero acted “with malice and oppression” in sustaining the defendants’ demurrer and denied
11 her “protected U.S. Constitution Fifth and Fourteenth Amendments due process rights to be heard
12 at the hearing.”¹⁰ The state-court record shows that Ms. Davis has been declared a vexatious
13 litigant.¹¹

14 Ms. Davis appealed Judge Freccero’s decision.¹² On October 3, 2019, Justice Simons
15 dismissed Ms. Davis’s appeal on the grounds that (1) Ms. Davis was declared a vexatious litigant
16 in 2007 and violated the prefiling requirements of Cal. Code Civ. P. § 391.7, (2) the appeal lacked
17 merit and was filed “for the purposes of harassment or delay,” and (3) even if the vexatious-
18 litigant statutes did not apply, the appeal was frivolous.¹³ In her complaint, Ms. Davis claims that

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5 Compl. – ECF No. 1 at 7 (¶ 21), 12 (¶ 48), 15 (¶¶ 69, 71).

6 *Id.* at 7 (¶¶ 21–22); Marin Case No. 1802890 Register of Actions, Ex. 24 to RJN – ECF No. 2 at 154;
see also Marin Case No. 1802890 Third Am. Compl., Ex. 29 to RJN – ECF No. 2 at 211–212 (¶¶ 11–
18); Marin Case No. 1802890 Judgment, Ex. 30 to RJN – ECF No. 2 at 259–260.

7 Compl. – ECF No. 1 at 7 (¶ 22).

8 Marin Case No. 1802890 Judgment, Ex. 30 to RJN – ECF No. 2 at 256–263.

9 Compl. – ECF No. 1 at 7 (¶ 24).

10 *Id.* at 8 (¶¶ 25–26).

11 Marin Case No. 1802890 Register of Actions, Ex. 24 to RJN – ECF No. 2 at 157.

12 Compl. – ECF No. 1 at 8 (¶¶ 28–29).

13 *Id.* (¶ 29); Dismissal of Appeal, Case No. A157795, Ex. 32 to RJN – ECF No. 2 at 301.

1 this act was an abuse of discretion.¹⁴ The judges collectively “join[ed] the quasi-criminal
2 conspiracy . . . [to] deprive Astarte of her properties and her federal Constitutional Rights.”¹⁵

3 In an earlier lawsuit in this district, where Ms. Davis raised substantially similar claims against
4 her former husband, his business, and his wife Dawn Davis about property taken from her in her
5 annulment proceeding, Judge Seeborg dismissed the case with prejudice on the grounds that the
6 claims were barred by the statute of limitations and the *Rooker-Feldman* doctrine. *Davis v. Davis*,
7 No. 18-cv-00094-RS, Order – ECF No. 78.

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9

ANALYSIS

10 **1. *Sua Sponte* Screening – 28 U.S.C. § 1915(e)(2)**

11 A complaint filed by any person proceeding in forma pauperis under 28 U.S.C. § 1915(a) is
12 subject to a mandatory and *sua sponte* review and dismissal by the court to the extent that it is
13 frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary
14 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *Calhoun v.*
15 *Stahl*, 254 F.3d 845, 845 (9th Cir. 2001); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)
16 (*en banc*). Section 1915(e)(2) mandates that the court reviewing an in forma pauperis complaint
17 make and rule on its own motion to dismiss before directing the United States Marshals to serve
18 the complaint under Federal Rule of Civil Procedure 4(c)(2). *Lopez*, 203 F.3d at 1127. The Ninth
19 Circuit has noted that “[t]he language of § 1915(e)(2)(B)(ii) parallels the language of Federal Rule
20 of Civil Procedure 12(b)(6).” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). As the
21 Supreme Court has explained, “[the in forma pauperis statute] is designed largely to discourage
22 the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying
23 litigants generally do not initiate because of the costs of bringing suit.” *Neitzke v. Williams*, 490
24 U.S. 319, 327 (1989).

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27 ¹⁴ Compl. – ECF No. 1 at 8 (¶ 30).

28 ¹⁵ *Id.* at 13 (¶ 56).

1 Under Rule 12(b)(6) and 28 U.S.C. § 1915(e)(2)(B), a district court must dismiss a complaint
2 if it fails to state a claim upon which relief can be granted. Rule 8(a)(2) requires that a complaint
3 include a “short and plain statement” showing the plaintiff is entitled to relief. “To survive a
4 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a
5 claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal
6 quotation marks omitted); *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The
7 complaint need not contain “detailed factual allegations,” but the plaintiff must “provide the
8 grounds of his entitlement to relief,” which “requires more than labels and conclusions”; a mere
9 “formulaic recitation of the elements of a cause of action” is insufficient. *Twombly*, 550 U.S. at
10 555 (internal quotation marks and brackets omitted).

11 In determining whether to dismiss a complaint under Rule 12(b)(6), the court is ordinarily
12 limited to the face of the complaint. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980
13 (9th Cir. 2002). Factual allegations in the complaint must be taken as true and reasonable
14 inferences drawn from them must be construed in favor of the plaintiff. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). The court cannot assume, however, that “the [plaintiff] can prove facts that [he or she] has not alleged.” *Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). “Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

20 “A pro se complaint must be ‘liberally construed,’ since ‘a pro se complaint, however
21 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by
22 lawyers.’” *Entler v. Gregoire*, 872 F.3d 1031, 1038 (9th Cir. 2017) (quoting *Erickson v. Pardus*,
23 551 U.S. 89, 94 (2007)).

24 When dismissing a case for failure to state a claim, the Ninth Circuit has “repeatedly held that
25 a district court should grant leave to amend even if no request to amend the pleading was made,
26 unless it determines that the pleading could not possibly be cured by the allegation of other facts.”
27 *Lopez*, 203 F.3d at 1130 (internal quotations omitted).

28

1 **2. The Complaint Fails to State a Claim**

2 Ms. Davis's complaint fails because, among other reasons, it is barred by judicial immunity

3 First, the judges have absolute judicial immunity for their judicial acts. *Swift v. California*, 384

4 F.3d 1184, 1188 (9th Cir. 2004) (citing *Pierson v. Ray*, 386 U.S. 547, 553–54 (1967)).

5 Second, as the district court held in the earlier case, any claims are barred by the *Rooker–*

6 *Feldman* doctrine and (as to the property issues) by the statute of limitations. *Davis v. Davis*, No.

7 18-cv-00094-RS, Order – ECF No. 78. Cases involving domestic relations generally do not belong

8 in federal court (although the court does not reach that issue). See *Ankenbrandt v. Richards*, 504

9 U.S. 689, 693–95 (1992).

10 **CONCLUSION**

11 The case will be reassigned to a district judge. The recommendation is for dismissal of the case
12 with prejudice.

13 Any party may serve and file specific written objections to this recommendation within 14
14 days after being served with a copy. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2); N.D.
15 Cal. L.R. 72-3. Failure to file written objections within the specified time may waive the right to
16 appeal the district court's order.

17 **IT IS SO ORDERED.**

18 Dated: May 14, 2020



21 **LAUREL BEELER**
22 United States Magistrate Judge

APPENDIX B-3 Objections to Report and Recommendations

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7 ASTARTE DAVIS,

8 Plaintiff,

9 v.

10 JOSEPH WILSON, et al.,

11 Defendants.

12 Case No. 20-cv-02657-RS

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15 **ORDER ADOPTING REPORT
16 AND RECOMMENDATION**

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26 Pro se plaintiff Astarte Davis brings this action against Marin County Superior Court
judges Joseph Wilson and Stephen P. Freccero and California Court of Appeal Justice Mark B.
Simons, claiming that in proceedings relating to her marital dissolution in 1969, they deprived her
of property and denied her due process in violation of 42 U.S.C. § 1983. The magistrate judge to
whom the matter was initially assigned issued a Report and Recommendation that the matter be
dismissed with prejudice, because (1) defendants have judicial immunity and (2) Davis's claims
are barred by the *Rooker-Feldman* doctrine and (as to the property issues) by the statute of
limitations. "The district judge must determine de novo any part of the magistrate judge's
disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). The undersigned
previously found, as was recommended by the Report, that the present case is related to the prior
case *Davis v. Davis*, No. 18-cv-00094 (N.D. Cal. filed Jan. 4, 2018), and notified the parties of
their right to object to the Report within 14 days of its filing. *See* ECF No. 12.

27
28 Davis has now objected on the grounds that her action presents new evidence and alleges
new causes of action against new defendants, and thus is not barred by the prior related action

1 which the undersigned dismissed. *See Davis v. Davis*, ECF No. 78. Regardless of the prior action,
2 however, Davis has failed to state a claim because defendants have judicial immunity for their
3 judicial acts. *See Swift v. California*, 384 F.3d 1184, 1188 (9th Cir. 2004) (citing *Pierson v. Ray*,
4 386 U.S. 547, 553–54 (1967)). Davis has not alleged any non-judicial acts by defendants. Her
5 discussion of qualified immunity is inapplicable to defendants, who have *absolute* immunity for
6 their judicial acts. *Id.* The recommendation to dismiss with prejudice will thus be adopted.

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8 **IT IS SO ORDERED.**

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10 Dated: May 29, 2020

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RICHARD SEEBORG
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8

ASTARTE DAVIS,

Plaintiff,

v.

JOSEPH WILSON, et al.,

Defendants.

Case No. 20-cv-02657-RS

**ORDER REVOKING IN
FORMAPAUPERIS STATUS**

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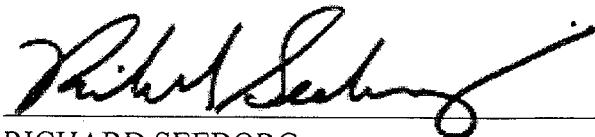
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This closed action is on appeal. The Court of Appeals has referred the matter to this Court for a determination whether plaintiff's in forma pauperis ("IFP") status should continue on appeal. This Court determines that it should not. There are no valid grounds on which an appeal can be based. Consequently, the Court certifies that any appeal taken from the order of dismissal and judgment of this action will not be taken in good faith and is therefore frivolous. Fed. R. App. P. 24(a)(3)(A); *Ellis v. United States*, 356 U.S. 674, 674-75 (1958); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). Accordingly, plaintiff's IFP status is hereby REVOKED. The Clerk shall forthwith notify plaintiff and the Court of Appeals of this order. See Rule 24(a)(4). Plaintiff may file a motion for leave to proceed IFP on appeal in the Court of Appeals within thirty days after service of notice of this order. See Rule 24(a)(5). Any such motion "must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action." *Id.*

IT IS SO ORDERED.

1 Dated: June 15, 2020
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RICHARD SEEBORG
United States District Judge

United States District Court
Northern District of California

ORDER

CASE NO. 20-cv-02657-RS

**Additional material
from this filing is
available in the
Clerk's Office.**