

20-<sup>No.</sup> 7848

IN THE  
SUPREME COURT OF THE UNITED STATES

ASTARTE DAVIS, In Pro Se

Petitioner

vs.

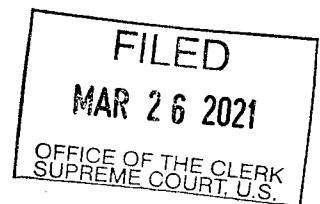
MOLLY C. DWYER, Clerk of the Court

RICHARD SEEBORG, Judge

LAUREL BEELER, MAGISTRATE JUDGE

Respondents.

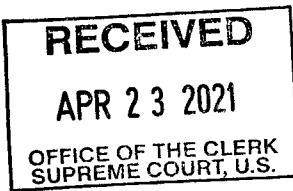
ORIGINAL



**PETITION FOR WRIT OF CERTIORARI**

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CASE NO. 20-16136  
AT ISSUE  
UNITED STATES DISTRICT COURT FOR THE NINTH CIRCUIT  
CASE NO. 3:20-cv- 02657

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## **QUESTIONS PRESENTED**

1. Is non-judicial conduct/actions/decisions by judges and clerk in their official capacity under color of law, and in their individual capacity for non-judicial conduct/actions/decisions subject to 5th and 14th Amendments of the Constitution for denial of Due Process protection?
2. Can a court/judge/clerk deny to hear a Petition/Motion/Complaint that address' the violations of the 5th and 14th Amendments Due Process rights; which voids a case?
3. Can a court/judge deny or fails its duty to address or hear a Petition/Motion/Complaint on a judgment/order/decision issued outside Jurisdiction in a manner that violates the 5th and 14th Amendments of Due Process protection?
4. Did not each judge have a duty under due process to invalidate a grant deed created by extrinsic fraud under color of law and breach of fiduciary duty; to obtain personal benefits at the expense of the principal and return the properties to the rightful owner?
5. Did the courts/judges error in unenforceable cases shown below when they failed their duties to annul/void the judgments/orders/decisions in those cases?
6. Can a Clerk of the appellate court order a stay on appeal; thereby denying a Petition/Motion/Complaint/Appeal to set aside/vacate/annul void cases in violation of the 5th and 14th Amendments Due Process protection under U.S. Code 42 USC §1983 under FRAP Rule 4 Right of Appeal, and Rule 4(B) United States officer or employee which are being sued in their official capacity?
7. Can a court/judge deny to hear a petition/motion/complaint/appeal to set aside/ vacate/annul void cases that were granted in violation of the 5th and 14th Amendments of the state and federal constitutions due process protection under FRAP 60(b)(4) which has no statute of limitations on filing a complaint based upon extrinsic fraud or fraud upon the court in a criminal conspiracy; and all that follows?
8. Can a Appeal Court continue to support a void case or a grant deed created by extrinsic fraud in breach of fiduciary duties, that which would continues the harm/causation to Astarte; the Ninth Circuit Court of Appeals did by dismissing the case without appeal?
9. Is not a judgment/orders/decisions void on its face under denial of protected fundamental constitutional due process rights to be heard at trial with extrinsic fraud upon the court?
10. Is not void judgments/orders/decisions unenforceable under law from the date and time of its filings; and all the follows?

11. Did the court/judges error when they ignored, suppressed, and excluded uncontradicted direct evidence from the trial minutes in a manner that violated the 5th and 14th Amendments of Due Process protection under color of law?

12. Did the court/judges/clerk error when it used known untrue statements contrary to law or direct facts of the case in its judgments/orders that violated the 5th and 14th Amendments of Due Process protection?

13. Whether this magistrate judge had jurisdiction is reviewed *de novo*; is not the causes before this Court on petition for certiorari to review the judgments /orders and decisions of the courts below, on the grounds that they are in direct conflict with a decisions of other courts for non-judicial acts and void cases?

14. Is not an Order/Judgment unenforceable on its face when the document is unsigned?

15. Did not the courts/judges /clerk deny itself jurisdiction by not strictly adhering to the statutes, state and federal constitutional rights, thereby implicating conspiracy; and legalized thief by extrinsic fraud; denial of due process; and more. Why did not these officials just do their jobs under the law? Which can be reversed by this Court?

## **LIST OF PARTIES**

Petitioner is Astarte Davis.

Respondents are: Molly C. Dwyer, Clerk of the Court, U.S. Court of Appeals for the Ninth Circuit; Richard Seeborg, Judge, U.S. District Court for the Ninth Circuit; and Laurel Beeler, Magistrate Judge, U.S. District Court for the Ninth Circuit.

In their official capacities as Judges and Clerks, and in their individual capacity for their non-judicial acts within Civil Rights Complaints and on Appeal which protects every citizen from any violation of all rights, privileges, and immunities secured by the Constitution. A clerk and judge's secret agreement to rule against a party, prior to any judicial proceeding, violates the right to a fair and impartial tribunal guaranteed by the due process clause of the Fourteenth Amendment. *See U.S. Const. amend. XIV.*

### **California Code of Civil Procedures Section 377**

This Code states: "Decedent's LOYAL D. DAVIS successor in interest" means the beneficiary of the decedent's estate. Pursuant to CCP 377.11 in this case ASTARTE DAVIS, wife to Loyal Davis now deceased [12/24/2017], is his personal representative and his successor in interest. Thereby as Loyal's "successor in interest means she is the

beneficiary of his/our estate and or succeeds to a cause of action for relief] or to a claim of properties that are subject of this action." California Code of Procedure 337.32. It is undisputed that: "No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding." CCP 377.32(6).

Loyal Davis died on 12/24/2017 during this ongoing case. Under Sec. 377.20, "Survival Action: cause of action for or against a person is not lost by reason of the person's death [Loyal Davis], but survives.

Astarte is informed, believe, and thereon allege that the Defendants were acting under color of law within the course and scope of their agency, employment of the United States District Courts Ninth Circuit; The Court of Appeal for the Ninth Circuit; and the State of California Superior Court and the Court of Appeal and/or concert of action, and are vicariously liable, individual , and in the jointly and severally, for the actions, inactions, and/or omissions of themselves, which did proximately resulted in emotional and future damages to Astarte as herein alleged.

## RELATED CASES

The Original Marin Case 53979; Court of District Court Case 3:18-cv-00094-RS which lack subject matter jurisdiction and told Astarte to take the case back to the court of original jurisdiction, which she did ; Marin Case CIV 1802890; Appeal of the State of California Case A157795; U.S. District Court for the Ninth Circuit case 3:20-cv-02657-RS.

On September 28, 2020 Astarte filed in the Supreme Court of the United States a Petition for **Writ of Certiorari before Judgment** concerning United States Court of appeals for the Ninth Circuit Case No. 20-16136 and United States District Court for the Ninth Circuit Case No. 3:20-cv- 02657.

It was denied on December 4, 2020 and the following is what transpired within the cases. Not one of the above courts made a decision Thereby failing to do it duty to void the original Case 53979 which was the case at issue; and to the denial of Astarte's protected, fundamental constitutional rights as shown below; thereby those

courts/judges/justices/clerks and all judgments/orders/decisions which followed was/are/is void whereas they issued decisions/orders/judgments against an unenforceable case.

## **PARTIES TO THE CASES**

**Case 53979** - Loyal D. Davis.  
**Case 3:18-cv-00094-RS** - Loyal Davis; Dawn Davis aka Joan Maher; Homes by Loyal, Inc.; Stephen H. Kaufmann; Betty Davis.  
**Case 1802890** - Loyal Davis; Dawn Davis aka Joan Maher; Homes by Loyal, Inc.; Stephen . Kaufmann; Betty Davis  
**Case A157795** - Loyal Davis; Dawn Davis aka Joan Maher; Homes by Loyal Davis, Inc.; Stephen H. Kaufmann  
**Case CV 20-02657-RS**- Joseph Wilson; Stephen Freccero; Mark Simons  
**Case A 20-16136** - Richard Seeborg; Joseph Wilson; Stephen Freccero; Mark Simons

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a Writ of Certiorari will issue to review the U.S. Court Of Appeals Ninth Circuit Case 20-16136; at issue is the U.S. District Court, Ninth Circuit Case CV 20-2657; and all related cases shown below which are at issue herein. The judge did turn a blind eye, by ignoring the denial of due process in Astarte's Complaint; thereby failing in his duties to review Astarte complaint; whereby he just piggyback off Case 1802890; and all that followed as shown below.

**JURISDICTION**

1. The jurisdiction of this Court is invoked under 28 U.S.C. Code § 2101; and 28 U.S.C. Code § 1291; for review of the denial of relief from void judgments/orders/decisions under Supreme Court Rule 12.4. The Clerk, Molly Dwyer did turn a blind eye in COURT OF APPEALS CASE NO. 20-16136 to the denial of constitutional due process rights at issue in UNITED STATES DISTRICT COURT, Judge Seeborg case No. 3:20-cv- 02657. Astarte's Complaint filed pursuant to 42 U.S.C. § 1983 and FRCP Rule 60(b). Judge Seeborg did not do his duty to annul the void case; with denial of protected constitutional rights to be heard at trial; and invalidating the uncontradicted extrinsic fraudulent grant deed; which was before him; considered abuse of discretion. *Phelps I v. Alameida*, 569 F.3d at 1131 (9th Cir 2009)).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

2. Astarte took her case to the district courts pursuant to 42 U.S.C. § 1983 and FRCP Rule 60, for deprivation of protected rights under the State of California Constitution and the U.S. Constitution, Fifth, and Fourteenth Amendments; also see further Law and Opinions in **Appendix C**; and

3. The Fourteenth Amendment states: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Constitution, Amend. V and California Constitution Amend. XIV; and

4. Astarte FRCP Rule 60 for relief from judgments, which are void judgments and orders under extrinsic fraud; with fraud upon the court in a criminal conspiracy. Here, the Marin County Court; District Courts for the Ninth Circuit and the Court of Appeals for the Ninth Circuit abused its discretion because it failed to conduct the required intensive balancing based on the facts of the case. Because the facts relevant to the merits of the Rule 60 motion are in the record to exercise their discretion and decide the merits of the case, which they did not; and

5. This Court under its judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States . . . .” U.S. CONST. art. III § 2, cl.1. Rule 60(b)(3) codifies an “historic power of equity to set aside fraudulently begotten judgments” which is necessary to uphold the integrity of the courts; 60(b)(4) and 60(b)(5) permit relief from judgment when the judgment is void or when “it is no longer equitable to impose the judgment. Parties bring their disputes to court to receive justice. If courts cannot provide justice under the law, then the system will fail. Therefore, these Rules maintain the integrity of the court so that the institution will guarantee verdicts that reflect a court’s intention; and

6. While many of the *Phelps* factors are relevant to the FRCP Rule 60(b)(6) it is emphasize that courts must consider all of the relevant circumstances surrounding the specific motion before the court in order to ensure that justice be done in light of all the facts. *Phelps v. Alameida*, 569 F.3d 1120 at 1133 (9th Cir. 2009). Rule 60(b)(6) is a grand reservoir of equitable power that allows courts to grant relief from a final judgment for “any” reason that “justifies relief.” and

7. Rule 60(b) also allows this Court to bypass the appellate process by relieving parties from its judgments; in District Court Case 3:20-cv- 02657-RS at issue Case 53979 ; because the Ninth Circuit United States Court of Appeals is herein a Defendant. The Federal Rules of Civil Procedure allow cases to be re-opened in particular circumstances. Specifically, Federal Rule of Civil Procedure 60(b). (Rule 60(b)) offers a party relief from a judgment on motion when it is “inequitable to permit a judgment to stand; and

8. Astarte's 42 U.S.C. § 1983 Complaint is under constitutional rights violations at issue is Case 53979 with; void case; extrinsic fraud; criminal conspiracy under color of law; it is not frivolous. If it should be called frivolous on a void judgment under FRAP Rule 60(b)(4), 28 U.S.C.A. Const. Amend. 5. *Klugh v. U.S.*, 620 F. Supp. 892 (D.S.C. 1985). 12 U.S. Code ... Rule 60(b) provides that the court may relieve a party from a void judgments / orders / decisions. Also the appellate court may declare void any orders and judgments of the trial court after it lost plenary power [jurisdiction] because as a void judgment is a nullity from the beginning, and is unenforceable. Judge Seeborg failed his duty by turning a blind eye, and ignored the denial of Astarte's constitutional rights in her Complaint. Also see 4.4.2 Section 1983; 42 U.S.C. sec. 1981; 42 U.S.C. sec. 1985(3). 28USC 1331; 28 USC2101(e); and

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

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

11. California Primary Rights, and Supreme Law of the Land. Pursuant to California and federal constitutional rights there is NO statute of limitation for denial of due process. Any Judgment is a void judgment, if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process; and a void grant deed created by fraud, in breach of fiduciary duties as in Case 53979 a void case. Thereby no court can come down with a judgment on a void case. FRCP Rule 60(b)(4), 28 U.S. Const. Amend. 5; and California Constitution Amend 14. "It is clear and well established law that a void case or cases can be challenged in any court." *Old Wayne Mut L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907).

#### **STATEMENT OF THE CASE**

**U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT CASE NO. 20-16136  
and at issue  
U.S. DISTRICT COURT CASE NO. 20-cv-02657-RS**

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**CASE STATEMENT FOR  
COURT OF APPEALS NINTH CIRCUIT- CASE NO. 20-16136:  
At issue is U.S District Court Case No. 3:20-cv-02657-RS.**

12. Molly Dwyer, Clerk and sub-clerks by their intentional and knowing wrongdoing to the extent of manipulation Astarte's filings to suite the courts own needs and putting a stay on appeal; even when there is a right of appeal under law. 28 U.S.C. Rule 4(B).

13. Astarte did state her right of appeal for denial of United States Constitution, California Constitution, Civil Rights, California Primary Rights in her 42

U.S.C. § 1983 and Rule 60 Complaint; for void cases with extrinsic fraud and fraud upon the court in a criminal conspiracy; this case has never been heard on its merits.

14. The United States District Court case 3:20-cv-02657-RS, Judge Seeborg did fail to do his duty to review her complaint under law by turning a blind eye and ignoring Astarte's Complaint; with uncontradicted direct evidence to the cases; thereby loss of jurisdiction; thereby void case. Judge Seeborg did adopt the Magistrate Judge's Report and Recommendation; which is/was contrary to law. Now Astarte is being denied by the Clerk of the Court Molly Dwyer her right of appeal, by the stay of appeal as shown on the court's **Docket [App A- See EX 1 ]**.

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

16. Astarte's **Objections to Referral [App A- See EX 3 ]** filed 6/19/2020; and Molly Dwyer, Clerk of the Court filed an **Order [App A-See EX 4 ]** seeking to dismiss Astarte case on 6/24/2020.

17. Under FRAP an appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

18. As this Court will see from the court's Docket that Astarte did file objections to every thing the Clerk filed; Molly Dwyer did dismiss Astarte's Appeal; a denial of due process.

19. On 6/24/2020 Molly Dwyer did act in the capacity of her office and in a personal capacity to collect information from Astarte's file in case number 3:20-cv-02657-RS. Clerk's Order states: "...on review of the District Court's Docket Reflects that the District Court has Certified that this Appeal is not taken in good faith and is frivolous." When did a violation of protected constitutional rights of due process become frivolous? This action by Molly Dwyer was not within the scope of FRAP Rules. Her information came from the Magistrate Judge's Report and Recommendation who lack jurisdiction to write and which was contrary to law[more information is shown under Judge Seeborg's "Statement of the Case 20-cv-02657"].

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

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

22. Astarte was not allowed to file her opening brief. Nor did the District Court send her case file on request or serve her defendants. The appellate court had no case evidence on file to review.

23. On February 23, 2021, the Clerk of the US Court Appeals Molly C. Dwyer, San Francisco herein Defendant did file an **unsigned Order** by; **JUDGES FERNANDEZ; BYBEE and BADE** as a final **Order** and Dismiss Astarte's case **[App A - See EX 7]**

24. This **Order** is unenforceable for the following reasons:

- A. The Order states the matter went before Judge Ferdinand Fernandez, his chamber is in the US Court of Appeals, 125 S. Grand Ave, Pasadena, CA.; and
- B. The Order states the matter went before Judge Jay Bybee, his chamber is in the US Court of Appeals, 300 S. Los Vegas, NV.; and
- C. The Order states the matter went before Judge Bridget Bade, her chamber is in Phoenix, 230 N. 1st Street, AR.; and
- D. The text of the above Court's Order is a short version of Molly Dwyer's Order taken from the Court's DOCKET dated 6/24/2020; that is not a review of the case for dismissal; and
- E. It is Astarte's understanding the three judges as shown on the above Order would have written their own review of the case; not just duplicating/rewriting an Order of dismissal from the U.S. Court of Appeals' docket; written by Clerk Molly Dwyer; and
- F. It is Astarte's understanding that any contract, agreement, judgment or **Order** as in this case by **JUDGES FERNANDEZ; BYBEE and BADE** filed on 2/23/2021 as shown above. Would not one of the judges have signed **THEIR ORDER**? They did not. Therefore the Order of dismissal is unenforceable under law; and which is also filed against a void case; and is maybe a fraud;? A question for this Court; and
- G. Would it not have been more appropriate for Judges Fernandez; Bade, and Bybee to review Case 20-02657; and if they found what the uncontradicted direct evidence shown in the case was what the brief said it was; it seems the judges would have Reverse and Remand for further procedures concerning void judgment, extrinsic fraud, fraud upon the court in a criminal conspiracy and more in the District Court in case 3:20-cv-02657-RS a 42 U.S.C. 1983 - Rule 60 case; and
- H. On 3/17/2021 Molly C. Dwyer filed a **MANDATE** for the court **[App A - See EX 8 ]** pursuant to FRAP Rule 41(a) stating: "The judgment of this Court entered

February 23, 2021 [see F. above], takes effect this date." Astarte did receive a copy of the Mandate **without** a certified signed copy of the judgment/order as required under FRAP Rule 41(a). Astarte went to the court's docket printing a copy of the order which had/has NO signature. Even a signed order is not valid until it is received for filing and entered by the Clerk into the court record. Molly Dwyer, Clerk of the Court of Appeals did knowingly file the Order without signatures. Order received is itemed 21 on the Docket is invalid; thereby the Mandate is invalid and was filed against a known invalid Order?

#### **ORDER/JUDGMENT VOID ON ITS FACE**

25. Is not an Order/Judgment void on its face when the courts/judges above (see Paragraph F.) did not address, and just ignored the constitutional violations in Case 20-02657 before them with Case 53979 at issue. A void case which lack jurisdiction; as well as all cases that followed at issue. No court/judges can bring down an order/judgment against a void case under law. Thereby U.S. The Court of Appeals lost jurisdiction in their case in making that order.

26. The decisions/orders/judgments by parties above were absolutely not a judicial functions; done with malice. Further harm to Astarte; would consider Case 20-16136 a void case.

#### **FRAP 45 - CLERK'S DUTIES**

27. Molly Dwyer, Clerk of Court, 9th Circuit Court of Appeals Clerk of Court, Molly Dwyer did violate her "*Oath Of Office.*" Would not the following conduct/actions be considered overreach in the capacity as Clerk of the Court to keep Astarte from Appeal?

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28. **DOCKET: [App A- See EX 1] Case 20-16136**

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

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

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

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

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

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

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

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

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

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

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

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

On 2/23/2021 Docket 21 states: Filed order of FERDINAND f. FERNANDEZ; JAY S. BYBEE, and BRIDGET S. BADE.

On 3/17/2021 Docket 22 states: MANDATE issued.

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### **RIGHTS TO EQUALITY AND NON-DISCRIMINATION**

29. Molly Dwyer Clerk the U.S. Court of Appeals is to maintain a docket and has the duty to record all papers filed by a pro se, which the Docket does not reflect Astarte's pleading by their Title; as they should have. This right specifies that an individual should not be treated differently by the law, which did 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 unconstitutional. These are fundamental rights because they guarantee that all the other rights in the Constitution will be applied to everyone universally and equally.

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

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### **31. DOCKET: [App B- See EX 1] - Case 20-02657-RS**

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

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

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

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

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

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

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

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

**NOTE:** On 6/15/2020 Judge Seeborg did file an **Order Revoking** Astarte's Forma Pauperis Status [App B-See EX 6]. An Order sign after the **Case Closed** on 5/29/2020 [App B-See EX 7]. "Rights have been violated" By Molly Dwyer Clerk of the Court of Appeals and Judge Seeborg.

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**CASE STATEMENT FOR  
U.S. DISTRICT COURT OF NINTH CIRCUIT CASE NO. 3:20-cv-02657- RS**

**Case 53979 at issue  
A Rule 60 and U.S. Code 42 USC §1983 Complaint**

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

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

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

34. Astarte found in her research [2016] everything concerning the filing of Case 53979 was induced by fraud, duress, and coercion to keep and control the Loyal and Astarte Davis' assets. Loyal Davis with deliberate indifference was never going to honor his duty as the fiduciary of their agreement [as discovered in research 2016]. Thereby the annulment/divorce Case 5979 was filed with ulterior motives under color of law, to misused the legal systems, which was done in the name of the court under its authority by Attorney Kaufmann, Loyal Davis and Betty Davis, who together in a criminal conspiracy perpetrating an injustice by known extrinsic fraud with malice; with Judge

Wilson who did in his capacity as judge did entertained ulterior motives in using the judicial system; thereby committed wilful non-judicial acts in a wrongful manner"

*Coleman v. Gulf Insurance Group* (1986) 41 Cal.3d 782, 792 [226 Cal.Rptr. 90, 718 P.2d 77].

35. Fraud upon the court is extended to officers of the court, and when an attorney [Kaufmann case 53979] exerts improper influence on the court "the integrity of the court and its ability to function impartially is directly impinged." *R.C. by Ala. Disabilities Advocacy Program*, 969 F. Supp. at 691 (citing *Broyhill Furniture Indus., Inc. v. Craftmaster Furniture Corp.*, 12 F.3d 1080, 1085-86 (Fed. Cir. 1993)).

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

37. The "other man;" Loyal was referring to is/was **Louis Allabaugh [App B- See EX 9]** of Tiburon, CA., 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. Loyal Davis did know all about Emma and Louis Allabaugh.

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

39. Judge Wilson, in his capacity as judge, Superior Court, Marin County, State of California and in absolutely a non-judicial act in a conspiracy with Defendants Loyal Davis and Attorney Kaufmann acting under color of law in granted a parcel order for summary judgment with out copy or notice to Astarte and none in the file of the case; thereby giving a **Order Declaring Respondent's Claim Partially Established [App B- See EX 11]**. Astarte was without notice and without a hearing to be heard as the court's records will show. The Order in favor of the Respondent Loyal Davis was/is a denial/violation of Fourteenth Amendment of due process on February 27, 1970 [Court Pgs 235-236-237 ]. Thereby granting nullity of our marriage and denial of Astarte's Due Process to be heard and offer evidence in support of her claims. That Louis Allabaugh was already married and the only man she was married to was Loyal Davis. 40.

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

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

42. Judge Wilson in his official capacity in a non-judicial act with the Defendants who together in a quasi-criminal conspiracy perpetrating an injustice with malice, with deliberate indifference did intentionally ignore the denial of Astarte protected federal and state constitutional Fourteenth Amendment due process rights to be heard in the divorce matter before the court. Judge Wilson did in his capacity as Judge and in a non-judicial act did entertain ulterior motives as well as the Defendants in using

the process and committed wilful acts in a wrongful manner." *Coleman v. Gulf Insurance Group* (1986) 41 Cal.3d 782, 792 [226 Cal.Rptr. 90, 718 P.2d 77]. To get what they wanted; to get Astarte out of the picture to go forward in the case on the property matters only.

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

#### **FRAUDULENT TRANSFER OF ALL PAID FOR COMMUNITIES PROPERTIES**

44. The **Accommodation Grant Deed to Betty Davis**[App B- See EX 12] [Loyal's mother] is extrinsic fraud in case 53979, thereby invalid; created by the Loyal Davis in breach of his fiduciary duty to Astarte in a quasi-criminal conspiracy; under color of law; and executed on 6/24/1969 and recorded 6/27/1969 in direct violation of a **Restraining Order**[App B- See EX 13] of the Marin Superior Court filed 6/17/1969

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

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

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

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

49. This fraudulent grant deed did convey all jointly owned properties belonging to Loyal and Astarte Davis; and some undisclosed properties also listed herein. Astarte never saw the deed to examine until 2016. Judge Wilson in a non-judicial act knowingly ignored by turning a blind eye to Attorney Kaufmann's filing of the extrinsic fraudulent accommodation grant deed to Betty Davis into evidence at Trial in Case 53979.

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

51. Astarte was not a party to the above conduct/actions or otherwise. It is extrinsic/collateral fraud in Case 53979. Any reasonable person would know that deeding all paid for community properties would not have been in the best interest of Astarte or her sons only days after the Restraining Order was signed.

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

53. Restraining Order of the Marin County Court, which was signed by the judge and filed 6/17/1969 which said in part: Defendant Loyal Davis under (3) b., YOU are restrained from conveying, disposing of or encumbering any of the community or your separate real or personal property . . . or withdrawing any community or your separate funds, on deposit in any bank or elsewhere. As to community funds; Loyal took Astarte's name off of all accounts the day after he received the Order on 2/27/1970; Astarte learned in 2016.

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

#### **SUCCESSOR IN INTEREST**

55. Beginning on November 23, 1958 and continuing through the present, Loyal Davis [deceased 12/24/2017] and Astarte Davis had/has a fiduciary relationship. As Loyal's wife she is his successor in interest CCP § 377.30]; and his personal representative.

56. In this case Astarte Davis, wife to Loyal Davis now deceased is his successor in interest and personal representative. Thereby as Loyal's successor in interest

means she is the beneficiary of his/our estate and or succeeds to a cause of action [claim for relief] or to a claim properties that are subject of a cause of action. California Code of Procedure 337.

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

#### **SEPARATE CALIFORNIA PRIMARY RIGHTS - DENIED**

58. Astarte's primary rights recognized in California include the right to be secure in one's person, (*Holmes v. David Bricker*, 70 Cal. 2d at 788-89, 452 P.2d at 649, 76 Cal. Rptr. at 433 (1969)) the right to be secure in one's property, (*Holmes v. David Bricker*, 70 Cal. 2d at 788-89, 452 P.2d at 649, 76 Cal. Rptr. at 433 (1969)) the right to recover real property, (*McNulty v. Copp*, 125 Cal. App. 2d at 708-09, 271 P.2d at 97 (1954)), the right to recover personal property (*McNulty v. Copp*, 125 Cal. App. 2d at 708-09, 271 P.2d at 97 (1954)).

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

**LEGITIMATE CLAIM OF ENTITLEMENT TO PROPERTIES  
MARIN COUNTY, CA**

60. **460 Cascade Drive [2-units] [App B- See EX 14]**, 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

61. **316 Miller Avenue [9-units] [App B- See EX 15]**, Mill Valley; Joint Tenancy Deed from Rose Adams to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 4/1/1960, Book 1357 Page 7; Joint Tenancy Deed from Kenneth A. Hulme and Edna O. Hulme, his wife to Loyal D. Davis and Astarte Davis, his wife, in joint tenancy, with full right of survivorship, - Recorded 9/26/1961, Book 1500 Page 464; **Paid off 2/15/1961** - Deeds of Reconveyance Book 1436 Page 240 and Book 1435 Page 58; and

61. **7 Homestead Boulevard [3-units] [App B- See EX 16]**, Mill Valley; Grant Deed from Annie A. Gordon, widow, to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 2/2/1961, Book 1433 Page 195; [the following deeds were for easements and more]; Grant Deed from Meda D. Childers and Edna M. Schumacher to Loyal D. Davis and Astarte Davis, his wife in joint tenancy - Recorded 6/16/1964, Book 1826 Page 189,190; Joint Tenancy Deed from Edna M. Schumacher and Meda D. Childers to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 1/18/1965, Book 1903 Page 111; Joint Tenancy Deed from Edna M. Schumacher and Meda D. Childers to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship, Book 1903 Page 112 - Recorded 1/18/1965; Corporation Grand Deed from Pacific Coast Title Company of Marin, a Corporation to Loyal D. Davis and Astarte Davis, his wife as Joint Tenants - Recorded 10/11/1965, Book 1988, Page 457; **Paid off 4/28/1964**, Deeds of Reconveyance Book2456 Page 216 and Citicorp Savings #84036525; and

62. **4079 Paradise Drive [App B-See EX 17]**, Tiburon; Corporation Grant Deed to Loyal D. Davis and Astarte Davis, his wife as Joint Tenants - Recorded 10/1/1962, Book 1616 Page 301,301; **Paid off 10/2/1964** - Deed of Reconveyance Book 1866 Page 632. **Davis' home since 1962**; and

63. **1024 Redwood Boulevard [8-units] [App B-See EX 18]**, Mill Valley Joint Tenancy Deed from K. H. Powell and Wanda T. Powell, his wife, as Joint Tenants to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 9/30/1963, Book 1731 Page 196,197; **Paid off 12/19/1983** loan still in Astarte's name - Deed of Full Reconveyance, #**83063473**; and

64. **80 Lincoln Avenue [15-unit] [App B- See EX 19]**, Sausalito; Joint Tenancy Deed from Ralph P. Gomez, a married man, as his sole and separate property to Loyal D. Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 2/23/1968, Book 2192 Page 606; **Paid off 9/11/1970** - Deeds of Reconveyance Book 2403 Page 20 and Book 2597 Page 236; **Paid off 8/8/1972**, loan still in Astarte's name.

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

66. As shown above most of the real property was paid off and unencumbered as of 6/11/1969. The property loans that were not paid off by that date remained in Astarte's name until they were; as the records will show. If this Court should need the value of the above properties, she will provide on request.

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

representation, she would not, in all reasonable probability, have entered into the contract or other transaction. *Okun v. Morton* (1988) 203 Cal.App.3d 805, 828 [250 Cal.Rptr. 220]. Astarte did rely on her husband and sons father, Loyal Davis concerning his duty to her. Astarte had no reason to disbelieve him until 2016.

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

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

70. These properties never left the control of Loyal Davis.

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

#### **PROPERTY TRIAL Case 53979 AT ISSUE HEREIN**

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

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

74. In the Trial of the properties matter Case 53979 Judge Wilson statement in a non-judicial act was "concise" in its meaning on the **Third Day of Trial [App B- See EX 27]** 4/4/1975. [Trial Minutes, Court Pg 126] stated: "This matter coming on regular continuance, parties present, respondent moves to exclude any further testimony on real property, court shall grant MOTION to **exclude** further evidence, which includes property' that involves Betty Davis, as of this date".

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

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

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

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

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

#### **FINDING OF FACTS AND CONCLUSIONS OF LAW**

80. The following Judgment of case 53979 was based on the document known as "**Findings of Facts and Conclusions of Law**," [App B-See EX 30] filed in the case by defendant Attorney Kaufmann. Which the defendants knew was a false misrepresentations to the court, known and excepted by the judge and is considered extrinsic fraud created by Attorney Kaufmann, Judge Wilson [absolutely non-judicial act], Loyal Davis, and Betty Davis under color of law while in a quasi-criminal conspiracy, that denied Astarte Davis' her federal constitutionally protected due process rights to be heard in "*All Property Matters*" as shown above in the trial minutes of Case 53979.

81. Attorney Kaufmann's "Findings of Facts and Conclusions of Law" filed in case 53979, on 5/20/1975 Judge Wilson did except it as the truth of the matter when he signed it; which it was/is not. More than half of the statements in the Findings are not the truth. This signed document by court/Judge Wilson whereby it denied itself jurisdiction and implicated conspiracy.

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

83. **FACT** - Restraining Order filed **6/17/1969**; Grant Deed created by fraud in breach of fiduciary duties by Loyal Davis to Betty Davis recorded **6/27/1969**; has property listed as 80 Lincoln Dr., Sausalito. On **8/27/1970** Betty Davis caused a **Grant Deed for property known as 80 Lincoln Dr., Sausalito [App B-See EX 31]** [listed on the Betty Davis 6/27/1969 fraudulent Grant Deed [See App B-12] to "Homes by Loyal," which is Loyal Davis. False information by Attorney Kaufmann in his "Findings," and excepted by Judge Wilson as the truth of the matter; and used as the basis of his Judgment of the case, in an absolutely non-judicial act.

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

85. Judgment of case 53979 is based on the intentional false information of the Finding of Fact and conclusions of law as created by defendant Attorney Kaufmann

and defendants, and signed by Judge Wilson knowingly in a quasi-criminal conspiracy under color of law; in a absolutely non-judicial act.

86. After Astarte's denial of due process to be heard on the Betty Davis 1969 Deed, and all property matters at trial, as shown above. The **Judgment [ App B-See EX 32]** dated 5/21/1975 in case 53979 is contrary to law and void on its face. The Judgment is named In Re the Marriage of Astarte Davis and Loyal Davis; Judge Wilson and Defendants Loyal Davis and Attorney Stephen Kaufmann knew without a doubt Loyal & Astarte were married; what an injustice; and it has been allowed to stand all this time.

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

88. On 5/29/2020 Judge Seeborg filed his Order Adopting Magistrate Judge's Report and Recommendation without resolving Astarte's Objections or reviewing her Complaint. Judges do not have immunity for their absolutely non-judicial acts; as shown herein. Both Judge Seeborg and the Magistrate Judge Beeler knew she lack jurisdiction to write the Report and Recommendation as Astarte's filings shows, not the Docket. Thereby denial of due process in case No. 20-cv-02657 and by not resolving the due

process violations as stated in Astarte's Objections; that which is required by law. Abuse of Discretion. Whether a magistrate judge has jurisdiction is reviewed de novo? See *Irwin v. Mascott*, 370 F.3d 924, 929 (9th Cir. 2004); *Anderson v. Woodcreek Venture, Ltd. Ltd.*, 351 F.3d 911, 915 (9th Cir. 2003) (remanded because fact issues remained as to whether consent to magistrate was voluntary). At no time did Astarte consent to a magistrate judge.

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

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#### **FAILED DUTY TO PERFORM**

90. Judge Seeborg had a duty to read and liberally construe a self-represented litigant's pleadings includes a duty to consider allegations found in other documents filed by the litigant. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Howard v. King*, 707 F.2d 215, 220 (5th Circuit 1983); *Moore v. Florida*, 703 F.2d 516, 521 (11th Circuit 1983); *Woodall v. Foti*, 648 F.2d 268, 272 (5th Circuit 1981); *Wright v. El Paso County Jail*, 642 F.2d 134, 135 (5th Circuit 1981); *Matzker v. Herr*, 748 F.2d 1142, 1148 n.5 (7th Circuit 1984). Judge Seeborg as an Officer of the court, acting in and for the U.S. Court had a duty to perform, he again failed that duty by adopting the report and recommendation of the magistrate judge who lack jurisdiction. Judge Seeborg's order/decisions/judgment is contrary to law, and void. Also, Judge Seeborg failed under law to do; which was to annual the void cases and invalidate the extrinsic fraudulent grant deed; but instead made a conscious decision to continue the void case with unenforceable orders and judgment by Judge Wilson in case 53979 in violation of the

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

**Judge Stephen Freccero - Case No. CIV 1802890**  
**is also at issue in Judge Seeborg's herein case No: 3:20-cv-02657-RS**

91. Any decision that involves the judge using his or her discretion (such as whether to admit certain evidence in the trial or at hearings) comes under exclusion/suppression of evidence and abuse of discretion standard which did occur when Judge Freccero made a ruling that is/was arbitrary or absurd; when he had the trial courts minutes in the voice of Judge Wilson stating the facts in a concise manner; showing the denial/violations of protected due process rights to be heard at trial in Case 53979; which was relevant direct evidence in case 1802890. *Pickford v. Talbot*, 225 U.S. 651, 56 L.Ed. 1240, 32 S.Ct. 687 (1912). Judge Freccero under FRCP Rule 60 had a duty which he failed; to annual the void case and invalidate the extrinsic fraudulent grant deed; which is absolutely a non-judicial act; but instead made a conscious decision to continue the harm to Astarte.

92. Does not matter whether a violation of a constitutional due process right to be heard is one year old or one hundred years old; if clear and convincing evidence is forth coming in the matter; which it was. Judge Freccero knew with oppression he intentionally misrepresented, concealed uncontradicted relevant evidence to the case and did so, by his denial with malice so intending to cause further harm to Astarte; which he did by continuing the void orders/judgment from case 53979.

93. Judge Freccero dismissed the case stated in part: " . . . on something that is so clearly time-barred, and/or failure to do so, the court can only conclude that there is no basis that would excuse the fact that the claims are - - - [Judge Freccero interrupted himself so he did not say what the claims are [?] and continued on' - - that the statute of limitations should be tolled." See **Reporter's Transcript [App B- See EX 33]** of 6/25/2019 Thereby granting to the wrongdoers.

94. Judge Freccero did not allow Astarte to CONTEST his ruling at the hearing in the case for his judgment. Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). Citing from *Duncan v. Missouri*, 152 U.S. 377, 382 (1894); which states: "Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." Judge Freccero clearly failed his duty to annual the void case and void the extrinsic fraudulent grant deed. Which would have closed Case 53979.

95. If the judgment/orders in the original Case 53979 is void on its face, for denial of protected state and federal constitutional due process rights; then there is nothing that happened after the void judgment was issued to give legitimacy to any and all that followed. *Armstrong v. Manzo*, 380 U. S. 545 (1965). Thereby this Court pursuant to its powers under the Supreme Law of the Land can do what Judge Freccero failed to do; thereby annulling Case 53979 and voiding the grand deed to Betty Davis; returning all properties herein to Astarte.

96. Courts/judges seem to be camouflaging the issues of void judgments by skipping them or in the case at bar, making a gesturing remark rather than going by their own purported mandatory rule. When lower courts don't address the issues in a logical and pragmatic way, it causes confusion for subsequent courts relying on that case as a precedent.

97. The State courts legalized theft by their failure to follow State law and Constitutional law. All subsequent judgments and orders by district courts were based off of case 1802890. They were nothing more than piggyback judgments.

98. Thereby Judge Freccero did lack jurisdiction when he granted the judgment to the defendants, he was acting as a trespasser of the law. When a judge does not follow the law, the judge loses subject matter jurisdiction and the judge's orders are not voidable, but VOID, and of no legal force or effect. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974). As well as all that followed. This process has continued on; Astarte's hopes it stops here; or all will be lost.

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

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**Justice Mark Simons - Appeal Case No. A157798  
is also at issue in Judge Seeborg's herein case No: 3:20-cv-02657-RS;**

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

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

101. Justice Simons did fail to do his duty under law, when he did not address the denial of Astarte's constitutional rights at hearing in Case 20-02657; nor did he address the facts that Judge Freccero's and Judge Wilson's judgments was void; thereby Judge Simons Ordered Dismissal of Astarte's appeal as frivolous, was abuse of discretion, and denial of due process; thereby loss of jurisdiction.

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

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

104. Justice Simons stated in part in his **Order [App B- See EX 34]** Stated: Respondents' motion to dismiss the appeal is granted, without a hearing.

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

106. Justice Simons and Judge Freccero each had a duty under law to address

the denial of Astarte's due process rights to be heard; and the void cases, their Orders/Judgments because of that failure, of that duty are contrary to law, and void.

107. Astarte offer the case below to this Court in support of her husband, Loyal Davis' state of mind. Loyal Davis was not a good person which she recovered in 2016.

**Case No. 123736 Loyal Davis v. Robert Nicco: [App B- See EX 35]**

". . . Thus, by his own admission the plaintiff deliberately concealed the property right he now claims in order to perpetrate a fraud upon the lender . . . [T]he plaintiff's early capacity for untruthfulness and deception, as well as his disposition to assert or conceal his alleged property right, as it suited him, is revealed thereby.

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

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

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

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

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

#### SCIENTER - WAS LOYAL DAVIS' STATE OF MIND

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

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#### REASONS FOR GRANTING THE PETITION

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##### **Supreme Court's Judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution**

As the final arbiter of the law, the U.S. Supreme Court is charged with ensuring the American people the promise of equal justice under law.

The unique position of the Supreme Court stems, in large part, from the deep commitment of the American people to the Rule of Law and to constitutional government. The United States has demonstrated an unprecedented determination to preserve and protect its written Constitution.

The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court's considered judgment, conflict with the Constitution. This power of "judicial review" has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a "living Constitution" whose broad provisions are continually applied to complicated new situations.

The Constitution we are expounding . . . "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs."

The complex role of the Supreme Court in this system derives from its authority to invalidate legislation or executive actions which, in the Court's considered judgment, conflict with the Constitution.

This power of "judicial review" has given the Court a crucial responsibility in assuring individual rights. Yet sufficiently limited and just to protect the guaranteed rights of citizens in their dividable rights.

The Court is charged with ensuring the American people the promise of equal justice under law as the guardian of the Constitution.

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Astarte is in this Court for what is promise;  
fairness and justice under the United States Constitution.

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

111. **First:** Defendants did agree in some manner with Judge Joseph Wilson under color of law in his judicial capacity as a state Judge; and in the quasi- criminal conspiracy to do an act that deprived Astarte of her federal constitutional and statutory Fourteenth Amendment due process right to be heard at trial in Case 53979 as shown in the above trial minutes. Further depriving Astarte of her commercial properties and income therefrom; undeclared properties and income therefrom; her home and personal properties since 1962; and her lifestyle she worked hard for.

112. **Second:** Defendants Loyal Davis, Betty Davis Attorney Stephen P. Kaufmann conspirators and co-conspirator did engaged in at least one act or more in furtherance of the quasi- criminal conspiracy when they created the extrinsic fraudulent accommodation grant deed to Betty Davis [Loyal's mother]; in defiance of a Restraining Order, and in breach of fiduciary duty under law by Loyal Davis owed to Astarte. Which Judge Wilson knowingly/ignored turning a blind eye when the Defendants did file the Grant Deed in Case 53979; and denied Astarte her due process right sto be heard at trial on all property matters as shown in the trial minutes of the case above.

113. Pursuant to 42 U.S.C. 1985(3): Astarte alleges that the Defendants Loyal Davis, Betty Davis, Attorney Stephen Kaufmann in a quasi-criminal conspiracy did deprived her of her federal and state constitutional rights; those rights was deprived while

acting under color of state law with Judge Wilson, personally and in his capacity as judge in Case 53979. *Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 890 [104 Cal.Rptr.3d 352]. Courts are constitutional, and the duty of a judge is to support the Constitution; to do otherwise it is a denial of a persons constitutional rights.

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

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

116. Private parties did act under color of state law when they willfully participate in joint actions with a state officials in his official capacity as judge in case 53979, which they did to deprive Astarte of her protected constitutional rights and deprive her of her paid for properties. Private parties and judge involved in such a conspiracy IS liable under section 1983. *United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1989) 865 F.2d 1539, 1540.

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

118. Judge Wilson; Justice Simons; Judge Freccero; Judge Seeborg; Magistrate Judge Laurel Beeler; Molly Dwyer, Clerk of the Court of Appeals; did fail in their duty to

annual the void cases and to invalidate the extrinsic fraudulent grant deed and in doing so their actions/conduct were absolutely non-judicial in nature which does not entitle them to absolute judicial immunity. Their actions/conduct come under a statute that mandated that any person who under color of law subjected another to deprivation of her protected constitutional rights and her property rights; would be liable to the injured party in an action at law; was not to abolish immunities available at common law, but to insure that federal courts would have jurisdiction of constitutional claims against state officials. *Butz v. Economou*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed. 2d 895 (1978).

119. In those years of case 53979 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.

120. Astarte, when doing her research has no idea why her attorneys failed to see what went on in case 53979. Astarte was a housewife and mother she had no knowledge of law or what was going on in the court; which is what, she paid them for.

**THIS COURT HAS THE JURISDICTION AND THE POWER  
TO FO THE FOLLOWING:**

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

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

123. All courts/judges that followed case 53979 under law had a duty to annul case 53979; and void the extrinsic fraudulent grant deed; and to make Astarte whole again by returning all her stolen properties. These courts/judges failed their duties under law when each turned their heads and looked the other way and intentionally FAILED to ADDRESS by ignoring the denial of Astarte's due process under Rule 60; making their orders/judgments/decisions abuse of discretion thereby each and every court did lose jurisdiction and did piggyback on the void case before them; thereby making there case void. Causing further harm to Astarte.

124. The decisions/orders/judgments by parties above were absolutely not a judicial functions done with malice.

125. The above district court, nevertheless, had/has the power and a DUTY to grant relief from a final judgments/order/decisions whenever, under all the surrounding circumstances, such action is appropriate in the furtherance of justice" (quoting Moore's Federal Practice at 342–43 (2d ed. 1975). However, "[a] movant seeking relief under Rule 60(b)(6) must show "extraordinary circumstances." Astarte believes she has shown herein extraordinary circumstances of district court/judges ignoring/looking the other way not addressing the facts of uncontradicted evidence relevant to the case and her denial of protected constitutional rights which justifies the reopening or to annual a final judgments.'" *Jones v. Ryan*, 733 F.3d 825, 833 (9th Cir. 2013) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)). The another *Phelps* factor is Astarte's exercise of diligence in pursuing her claims found in her research 2016 wherein she has never stop searching for her rights to fairness and justice for extreme injustice..

126. Astarte is respectfully asking this Court to consider an order/judgment to annual the void cases ; and to invalidate the extrinsic fraudulent accommodation grant

deed to Betty Davis; done in breach of fiduciary duties to Astarte;" and all that followed; and that order/judgment of this Court will return her commercial properties, rental income therefrom; and the fixtures; undisclosed properties; and her home with all personal property.

127. **NOTE:** Astarte had three sons as well as working very hard with her husband Loyal Davis to accomplish what they did . . . to the extent of being seven months pregnant going to the roof of their office building three floors up; while under construction to paint the fire place chimney for the fire place in Loyal's office. Stating these facts so this Count can understand what all this means to her

128. This court may and could declare void any orders and judgments of any and all courts after it lost plenary power [jurisdiction] because a void judgment is a nullity from the beginning, and is unenforceable; and all orders/judgments that followed based on void Case 53979 are void and unenforceable 4.4.2 Section 1983; 42 U.S.C. sec. 1981; 42 U.S.C. sec. 1985(3). 28 USC 1331; 28 USC 2101(e). But lingers on to harm Astarte and her sons.

## **CONCLUSION**

Should this Court wipe the slate clean as this Court did in *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), it will send a message that fraud upon the court, denial of due process, denial of equal protection, conspiracy, and refusal to refer to the record of cases at issue will not be tolerated. If this Court were to make mandates as it did in *Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 U.S. 238 (1944), it will send a message of what can happen when courts deny constitutional rights.

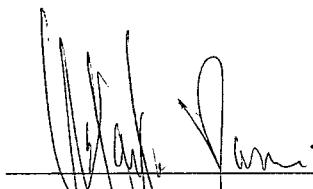
However, this case should/could be reversed or remanded back to the last district court for further proceeding; *Phelps v. Alameida*, 569 F.3d at 1134-35 (9th Cir 2009).

But, Astarte feels that would not change a thing.

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

Respectfully submitted,

Date: April 19, 2021



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