

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MOLLY C. DWYER, Clerk UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT No. Case 20-16139

APPENDIX A

APPENDIX A

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

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APPENDIX A - EX 1
Docket for Case 20-16136

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, 35.71 KB	Received copy of District Court order filed on 06/15/2020. IFP 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]
09/18/2020	<input type="checkbox"/> <u>13</u> 5 pg, 20.68 MB	Filed letter dated 09/11/2020 re: asking for help. Paper filing deficiency: None. [11829393] (JFF) [Entered: 09/18/2020 01:55 PM]
10/07/2020	<input type="checkbox"/> <u>14</u> 1 pg, 55.86 KB	Supreme Court Case Info Case number: 20-5919 Filed on: 09/28/2020 Cert Petition Action 1: Pending [11851098] (RL) [Entered: 10/07/2020 02:18 PM]
10/14/2020	<input type="checkbox"/> <u>15</u> 4 pg, 48.35 KB	Filed Appellant Astarte Davis letter re: notice of petition for a writ of certiorari. Paper filing deficiency: None. [11859485] (JFF) [Entered: 10/15/2020 09:12 AM]
10/23/2020	<input type="checkbox"/> <u>16</u> 1 pg, 12.13 KB	Filed Appellant Astarte Davis letter dated 10/26/2020 re: courtesy copy of ntc of deadline responses in the USSC. NAN. Paper filing deficiency: None. [11871147] (CW) [Entered: 10/26/2020 09:24 AM]
12/11/2020	<input type="checkbox"/> <u>17</u> 1 pg, 62.44 KB	Supreme Court Case Info Case number: 20-5919 Filed on: 09/28/2020 Cert Petition Action 1: Denied, 12/07/2020 [11923681] (RR) [Entered: 12/11/2020 02:12 AM]
12/11/2020	<input type="checkbox"/> <u>18</u> 22 pg, 421.73 KB	Filed Appellant Astarte Davis motion to continue appeal, notice of USSC decision. Deficiencies: None. Served on 12/10/2020. [11925200] (CV) [Entered: 12/11/2020 05:42 PM]

01/05/2021	<input type="checkbox"/> <u>19</u> 19 pg, 315.03 KB	Filed Appellant Astarte Davis motion request Judicial Council for review. Deficiencies: None. Served on. [11954095] (JFF) [Entered: 01/06/2021 10:38 AM]
01/21/2021	<input type="checkbox"/> <u>20</u> 1 pg, 14.42 KB	Filed Appellant Astarte Davis letter dated re: proof of service. Paper filing deficiency: None. [11974804] (JFF) [Entered: 01/21/2021 11:37 AM]
02/23/2021	<input type="checkbox"/> <u>21</u> 2 pg, 146.42 KB	Filed order (FERNAND F. FERNANDEZ, JAY S. BYBEE and BRIDGET S. BADE) The district court certified that this appeal is frivolous and is not taken in good faith and revoked appellant's in forma pauperis status. See 28 U.S.C. § 1915(a). On June 24, 2020, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and the response to the court's June 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. [7]) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2). All other pending motions are denied as moot. DISMISSED. [12013452] (WL) [Entered: 02/23/2021 11:07 AM]
03/17/2021	<input type="checkbox"/> <u>22</u> 1 pg, 91.9 KB	MANDATE ISSUED. (FFF, JSB and BSB) [12043861] (JFF) [Entered: 03/17/2021 08:50 AM]

APPENDIX A - EX 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 - EX 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.,

Defendants - Appellees.

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 94102

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

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

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 24 2020

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

ASTARTE DAVIS,

No. 20-16136

Plaintiff-Appellant,

v.

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

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

ORDER

Defendants-Appellees.

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

APPENDIX A - EX 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*, 91 US 503, 23 L Ed 398. See also *Restatements, Judgments* '4(b).

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

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

court, and an opportunity to be heard. *Renaud v. Abbott*, 116 US 277, 29 L Ed 629, 6 S Ct 1194; *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 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.

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.

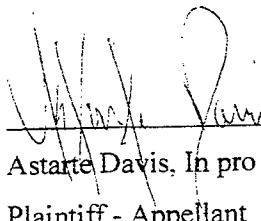
Astarte asserts The *MANIFEST INJUSTICE DOCTRINE* is appropriate and should be applied to *HEREIN ISSUES.. Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974); *In re Clark, Supreme Court of California* 5022475 (1992).

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 - EX 6
Declaration

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

SEP 09 2020

No: C.A. No. 20-16136

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

**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
PO Box 306
Gualala, CA 95445
Telephone No. 707-785-3580 [new]
e-mail: astartedavis@hotmail.com

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 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.

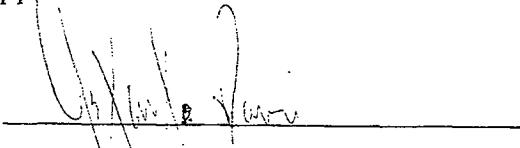
Molly Dwyer’s Office Refused (multiple times) to carry out routine procedural functions like Docketing the Appeal Case Title under the District Court Case Title of Joanelice Shields v. Insight Enterprises, Inc. et al, District Court Case No. 2:11-CV-02058-SRB as required by Federal Rules of Appellate 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 - EX 7
ORDER by FERNANDEZ, BYBEE, and BADE Cir. Judges

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 23 2021

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

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

The district court certified that this appeal is frivolous and is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On June 24, 2020, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's June 24, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

///

All other pending motions are denied as moot.

DISMISSED.

APPENDIX A - EX 8
MANDATE

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

MAR 17 2021

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**MANDATE**

The judgment of this Court, entered February 23, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURTBy: Jessica Flores
Deputy Clerk
Ninth Circuit Rule 27-7

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

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

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
Void Judge Stephen Freccero - Case No. CIV 1802890
Void case at issue in Judge Seeborg's case No: 3:20-cv-02657-RS.
Void Justice Mark Simons - Appeal Case No. A157798
Void case at issue in Judge Seeborg's case No: 3:20-cv-02657-RS.

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APPENDIX B-1 Docket for Case

ADRMOP,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 <u>20-16136</u> 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)
10/08/2020	<u>20</u>	

		US Supreme Court Notice that a petition for a writ of certiorari was filed on September 28,2020 and placed on the docket October 6, 2020 as No. 20-5919 . (gbaS, COURT STAFF) (Filed on 10/8/2020) (Entered: 10/08/2020)
10/15/2020	<u>21</u>	NOTICE by Astarte Davis (Attachments: # <u>1</u> Envelope) (gbaS, COURT STAFF) (Filed on 10/15/2020) (Entered: 10/20/2020)
12/15/2020	<u>22</u>	US Supreme Court Notice that the petition for a writ of certiorari before judgment is denied. (gbaS, COURT STAFF) (Filed on 12/15/2020) (Entered: 12/15/2020)
01/21/2021	<u>23</u>	Letter from Astarte Davis. (gbaS, COURT STAFF) (Filed on 1/21/2021) (Additional attachment(s) added on 1/25/2021: # <u>1</u> Envelope) (gbaS, COURT STAFF). (Entered: 01/25/2021)
02/23/2021	<u>24</u>	ORDER of USCA as to <u>15</u> Notice of Appeal to the Ninth Circuit, filed by Astarte Davis. (gbaS, COURT STAFF) (Filed on 2/23/2021) (Entered: 02/23/2021)
03/17/2021	<u>25</u>	MANDATE of USCA as to <u>15</u> Notice of Appeal to the Ninth Circuit No. 20-16136 . <i>The judgment of this Court, entered February 23, 2021, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.</i> (wsnS, COURT STAFF) (Filed on 3/17/2021) (Entered: 03/17/2021)

PACER Service Center			
Transaction Receipt			
03/20/2021 07:58:10			
PACER Login:	astartedavis:5450995:0	Client Code:	5450995
Description:	Docket Report	Search Criteria:	3:20-cv-02657-RS
Billable Pages:	3	Cost:	0.30

APPENDIX B-2 Report and Recommendations

Received
5/29/20

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9

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

10 San Francisco Division

11 ASTARTE DAVIS,

Case No. 20-cv-02657-LB

12 Plaintiff,

13 v.

14 JOSEPH WILSON, et al.,

15 Defendants.

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

16
17 Re: ECF No. 1

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. §

24

25

26

27 ¹ Compl. – ECF No. 1; Order – ECF No. 5. Citations refer to material in the Electronic Case File
28 (“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

22

23

24

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
19

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

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

23 ⁷ Compl. – ECF No. 1 at 7 (¶ 22).

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

25 ⁹ Compl. – ECF No. 1 at 7 (¶ 24).

26 ¹⁰ *Id.* at 8 (¶¶ 25–26).

27 ¹¹ Marin Case No. 1802890 Register of Actions, Ex. 24 to RJD – 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 RJD – 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.

8

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).

25

26

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.*
15 Co., 80 F.3d 336, 337–38 (9th Cir. 1996). The court cannot assume, however, that “the [plaintiff]
16 can prove facts that [he or she] has not alleged.” *Assoc. Gen. Contractors of Cal., Inc. v. Cal. State*
17 *Council of Carpenters*, 459 U.S. 519, 526 (1983). “Nor is the court required to accept as true
18 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
19 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

23

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APPENDIX B-3 Objections to Report and Recommendations

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ORIGINAL FILED

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MAY 26 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

FOR THE

NORTHER DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASTARTE DAVIS,

Plaintiff,

v.

JOSEPH WILSON, ET AL.,

Defendants

Civil Case No.: 20-cv-02657-RS

**PLAINTIFF'S OBJECTIONS TO
MAGISTRATE JUDGE LAUREL
BEELER'S REPORT AND
RECOMMENDATION TO DISMISS
COMPLAINT - due 5/29/2020**

INTRODUCTION

Plaintiff's OBJECTIONS made pursuant to 28 U.S.C. § 636(b)(1) in support of her case; to Magistrate Judge Laurel Beeler's report of her recommendation to dismiss Plaintiff's Complaint.

Plaintiff's herein gives this Court reasons why her case should not be dismissed, the Complaint is about void cases due to denial of due process rights and a continuing injustice;

1 pursuant to the U.S. Constitution, California Constitution, and the Supreme Law of the Land.
2 This new material evidence which is relevant to this case and these defendants were not
3 presented to this Court in case 18-cv-00094-RS.

4 Plaintiff does not find in the U.S. Magistrate Judge Beeler's report where she was ordered
5 by the Court pursuant to 28 U.S. Code § 636 to made any recommendations concerning
6 Plaintiff's Complaint.

7 A party who objects to this report is entitled to a *de novo* determination by the United States
8 District Judge of the proposed findings and recommendations to which a specific objection is timely
9 made. 28 U.S.C. § 636(b)(1)(c); FED R. CIV. P. 72(b)(3).

10 JUDGE BEELER'S REPORT STATEMENT

11 Magistrate Judge Beeler states in her Report that case 18-cv-00094-RS was dismissed
12 "with prejudice" on the grounds that the claims were barred by the statute of limitations.

13 Plaintiff on referring back to the Order Granting Motion to Dismiss Case No. 18-cv-
14 00094-RV Plaintiff will quote from the Order of the Court filed 7/27/2018. "Dismissal is
15 appropriate under Federal Rule of Civil Procedure 12(b)(1) when the district court lacks subject
16 matter jurisdiction over the claim." The court went on to say; this case should be taken back to
17 the court of original jurisdiction; which Plaintiff did.

18 The Order does not state "with prejudice" as stated in Judge Beeler Report. A court
19 cannot state "with prejudice" if it lacks jurisdiction to hear the case.

20 This Court now has "subject matter jurisdiction," as Plaintiff now has new material
21 evidence relevant to the case as to denial of federal constitutional rights by the Defendants in this
22 Complaint; which will require this matter to go foreword to trial.

23 Any reasonable person reading the herein case would consider a conspiracy between
24 private parties and the judge; and that is what Plaintiff give to the court in case 18-cv-00094-RS.

25 Plaintiff's herein Complaint is against new defendants; and the claims arise in a "new
26 context." Defendants, Judge Joseph Wilson [now deceased; survives pursuant to Survival Action
27 CCP §377.30]; Judge Stephen Freccero and Justice Mark Simons. This is the ORIGINAL and only
case with these defendants; with new material evidence relevant to the case of denial of federal
constitutional rights pursuant to 42 U.S. § 1983.

1
2 **REASONS WHY PLAINTIFF'S COMPLAINT SHOULD NOT BE DISMISSED WITH**
3 **PREJUDICE**

4 **The Complainant is multifaceted with three void cases; with denial of the right to be heard at**
5 **trial/hearing and offer evidence in support of Plaintiff's case**

6 **JUDGE WILSON - CASE 5-35979 - HISTORY OF and FOR THE CASE**

7 New material evidence relevant to case 35979 are the Marin Superior Court pages of the trial
8 minutes showing denial of due process by Judge Wilson, thereby Plaintiff's loss her properties.

9 Four months after filing case 53979 the court took the divorce case off calendar; before
10 any decision on issues, and without notice or hearing on October 14, 1969 [Court Pg 235]
11 [EXHIBIT 13 in the Complaint]. Which is contrary to law.

12 Judge Wilson, personally and in his capacity as Judge, Superior Court, Marin County,
13 State of California; under color of law then granted a parcel Order for dissolution of marriage
14 without notice and without a hearing to Astarte, in favor of the Respondent. On February 27,
15 1970 [Court Pg 236-237 EXHIBIT 14 in the Complaint]. Thereby denial of Astarte's Due
16 Process.

17 The records show that no evidence concerning the other man that Astarte was supposedly
18 married to; nor was any given concerning "the other man," by Loyal Davis, who was making the
19 claim. The "other man;" Loyal was referring to is/was "Louis Allabaugh" [EXHIBIT 12 in the
20 Complaint] of Tiburon, CA. Who was the "other man," Astarte had been living with during
21 1956; they parted company, and she move to Mill Valley. Louis Allabaugh was married to
22 Emma Lauretta Krumenacker in New Jersey on August 6, 1944. Louis Allabaugh died on
23 February 21, 1974 still married to Emma Lauretta. Louis Allabaugh was not free, never was, nor
24 would he ever be, to have married Astarte. That is why Astarte moved to Mill Valley; where she
25 met and married Loyal Davis.

26 This action caused loss of jurisdiction of the case by Judge Wilson. Thus, the required
27 elements of due process are those that "minimize substantively unfair or mistaken deprivations"
28 by enabling persons to contest the basis upon which a state proposes to deprive them of protected
29 interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

JUDGE FRECCERO - CASE CIV-1802890

All the above new material evidence relevant to the case was in Plaintiff's opposition to a demurrer before Judge Freccero, in case CIV-1802890. At the demurrer hearing of June 25, 2019 Plaintiff did CONTEST the ruling of the court; based on the fact Judge Freccero did intentionally turn a blind eye in not addressing her opposition. Thereby did fail to do his duty under law. The opposition did have the attach exhibits of the TRIAL MINUTES in which Plaintiff was denied her rights to be heard; and to present evidence at trial in the real property matters in Case 53979 at issue in Case 1802890.

Court Reporters Transcript of 5/25/2019 [Exhibit 26 to the Complaint] states: Ms. Davis: "I'm just here today, your honor, to contest the decision. . . ." And "I notice that, in your decision, your Honor, you didn't address my opposition as to the due process violation by Judge . . ." At that time Judge Freccero did cut Plaintiff off in mid sentence and refusing to address OR listen to her questions. One of his many comments was "how do I know what happen then." Judge Freccero had many things to say that might be of interest to this Court. Judge Wilson's in the trial minutes was very concise in his meaning, there was no misunderstand of what was said and done at trial in case 53979.

Plaintiff was disturbed as she thought that was why she was in court; for answers

Judge Freccero dismiss Plaintiff's case; thereby denial of due process to be heard on new evidence. Causing loss of jurisdiction; thereby VOID case.

The filed June 27, 2019 Judgments of Case CIV-1802890 is void due to denial/violation of Plaintiff's federal constitutional protected Fourteenth Amendment due process rights to be heard at trial by Judge Wilson. Judge Freccero's court did not have jurisdiction over a void case 53979; which is unenforceable under law. Judge Freccero only had a duty to annul the case, and return Plaintiff's stolen property, which he intentionally ignored.

JUSTICE SIMONS - CASE A157795

New material evidence relevant to the case as to Justice Simons, case A157795. The records will show Justice Simons did fail to do his duty under law, when he did not address the denial of Plaintiff's due process rights in case CIV-1802890, nor did he address the facts that

1 Judge Freccero's judgment was void as it was based on void case 53979; thereby Judge Simons
2 ordered dismissal of Plaintiff's appeal as frivolous, was abuse of discretion and contrary to law,
3 and denial of due process; thereby loss of jurisdiction.

4 Before Plaintiff's opening brief was file on appeal; the defendants in that case
5 filed a motion for dismissal; an opposition [EXHIBIT 31 in the Complaint] was file. Justice
6 Simons had a duty under law to read Plaintiff's pro se opposition to defendants motion to
7 dismiss; and to address the denial of due process in Plaintiff's opposition; a duty he failed to do.
8 Justice Simons states in his order of dismissal "... even if the vexatious litigant statutes does not
9 apply, this court would exercise its inherent power to dismiss the instant appeal as frivolous."

10 Plaintiff is not a vexatious litigant she is not on the California vexatious litigant list and
11 never has been; which is mandatory to be called a vexatious litigant by the rules of the Judicial
12 Council of California.

13 Justice Simons said Plaintiff's case was frivolous in his order, did not know a denial of
14 due process, a constitutional right would or could be called frivolous.

15 Plaintiff did file a request/application to file new litigation in Justice Simons case, which
16 he chose to ignore; even though it was not required.

17 Plaintiff has NEVER filed a case for the purposes of harassment or delay.

18 Plaintiff believes that Judge Freccero and Justice Simons would not challenge a fellow
19 judge; no matter who they harm or for what reason. In Plaintiff thinking they joined the wrongs
20 that Judge Wilson did for what ever his reason.

21 Justice Simons actions are not based upon consideration of relevant factors in the case
22 before him; it is arbitrary and capricious; an abuse of discretion; exclusion/suppression of
23 Judicially Notice material evidence relevant to the case which speaks for itself; causing
24 denial/violation of due process. Thereby irreparable harm to Plaintiff. In view of the facts that
25 Judge Freccero's actions did change the outcome of the case; and continued the injustice of case
26 53979; and Justice Simons knowingly and willfully failed his duty to rule under law for those
27 wrongful actions/conduct; and at issue in Judge Simons case A157795.

1 Justice Simon without reading Plaintiff opposition would not have known Judge Freccero
2 case was VOID; as it was based on case 53979 a VOID case; thereby Justice Simons order of
3 dismissal is VOID.

4 None of the above new material evidence of denial of due process by judges; who are
5 now the defendants herein was presented in case 18-cv-00094-RS as the above cases [CIV-
6 1802890 and CASE A157795] was decided after that case; and now is before this Court.

7 **FAILED DUTY TO PERFORM**

8 Judge Freccero and Justice Simons should not dismiss a complaint drafted by a self-
9 represented litigant unless it appears beyond doubt that the plaintiff cannot prove any set of facts
10 that will support a claim that would entitle the plaintiff to relief. *Hughes v. Rowe*, 449 U.S. 9-
11 10 (1980); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Plaintiff had/has sufficiency of claims
12 in her filed briefs and documents should any further information be needed; it is call Relation-
13 back Doctrine; that would entitle her to relief; which they intentionally ignored.

14 The **duty** of Judge Freccero and Justice Simons is to read and liberally construe a self-
15 represented litigant's pleadings includes a duty to consider allegations found in other documents
16 filed by the litigant, which also means the defendants' wrongdoings. *Estelle v. Gamble*, 429 U.S.
17 97, 106 (1976); *Howard v. King*, 707 F.2d 215, 220 (5th Circuit 1983); *Moore v. Florida*, 703
18 F.2d 516, 521 (11th Circuit 1983); *Woodall v. Foti*, 648 F.2d 268, 272 (5th Circuit 1981);
19 *Wright v. El Paso County Jail*, 642 F.2d 134, 135 (5th Circuit 1981); *Matzker v. Herr*, 748 F.2d
20 1142, 1148 n.5 (7th Circuit 1984). Judge Freccero did not address any wrongdoing from case
21 53979; Justice Simons did not address any wrongdoing from case CIV-1802890. Therefore,
22 Orders/Judgments because of that failure, of that duty are contrary to law, and void. Thereby all
three cases should be annul and Plaintiff's properties returned.

23 **ABSOLUTE IMMUNITY**

24 Pursuant to **4.7.2 Section 1983 Conduct Not Covered by Absolute Immunity**. Plaintiff
25 alleges that the Defendants describe behavior/actions is not covered by absolute immunity.
26

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).

For qualified immunity purposes, "clearly established" means that "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Justice Simons with deliberate indifference did knowingly deny Plaintiff's constitutional rights to a fair hearing on her appeal.

Judge Freccero and Justice Simons with intentional acts of malice and oppression which did cause harm to Plaintiff by the continuing of the injustice of Judge Wilson's Marin case No. 53979; which lack subject matter jurisdiction by denying rights under the protected U.S. Constitution and Fifth and Fourteenth Amendments, and the Supreme Law of land; thereby a void case. It is fundamental that any law contrary to the U.S. Constitution is null and void; thereby all orders and judgments are void, and all that followed Marin case No. 53979 are void; such as Marin case CIV-1802890 and Court of Appeal case A157795. Thereby this Court needs to annul all orders and judgment for all three cases, and return all that belongs to Plaintiff; that would be sufficient for Plaintiff in this case.

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). Thereby holding Judge Wilson, Judge Freccero and Justice Simons accountable for their wrongful actions to continue the harm and tangible damage to Plaintiff.

Orders, Judgments Exceeding Jurisdiction in all three courts

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.

Plaintiff was denied her Right to Be Heard in the above three courts

A judgment of a court without hearing the party or giving her an opportunity to be heard is not a judicial determination of her 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 or judgment is forever void and unenforceable. *Ornelas v. United States*, 517 U.S. 690 (1996).

While Judge Wilson, Judge Freccero and Justice Simons was performing judicial function they may enjoy immunity. However denial of Plaintiff's protected federal constitutional Fifth and Fourteenth Amendment rights of due process; and her Civil Rights; or her California Primary Rights, are absolutely not a judicial function and conflicts with definition of a judicial function.

Judge Wilson, Judge Freccero and Justice Simons actions were acts contrary to law and in excess of judicial authority constitutes abuse of discretion, particularly where a judge deliberately disregards the requirements of fairness, due process; and their duty. They intentionally ignored those duties to address Plaintiff's pleadings with willful blindness as an Officers of the Court. *Cannon v. Commission on Judicial Qualifications*, (1975) 14 Cal. 3d 678, 694; *Gonzalez v. Commission on Judicial Performance*, (1983) 33 Cal. 3d 359, 371, 374; *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Phillips v. Girdich*, 408 F.3d 124, 129-30 (2nd Circuit 2005).

The Defendants' actions with others was the substantial factor in causing Plaintiff serious harm by the misuse of the power of the court. "It was known abuse and misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice.' [Citation.]' " (*S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 41 [176 Cal.Rptr.3d 567]; *Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 530 [3 Cal.Rptr.2d 49]. And it did.

1 Plaintiff has establish sufficiency in her claims for relief; for abuse of process, void
2 cases, and more; for this Court to hear her Complaint. *Coleman v. Gulf Insurance Group* (1986)
3 41 Cal.3d 782, 792 [226 Cal.Rptr. 90, 718 P.2d 77], *Trear v. Sills* (1999) 69 Cal.App.4th 1341,
4 1359 [82 Cal.Rptr.2d 281].

5 Dawn Joan Davis [aka Joan Maher] [unrelated to herein Davis family] is now knowingly
6 in sole procession of all the stolen and concealed real properties, personal properties, fixtures;
7 and all the rental income thereof belonging to Plaintiff and her sons/heirs; due to the void cases;
8 orders and judgments; and all that followed each and every case #53979, #CIV-1802890 and
#A157795.

9 Properties at issue due to unresolved void cases: (1) **460 Cascade Drive, 3-units, Mill**
10 **Valley; (2) 316 Miller Avenue [and house behind], 10-units, Mill Valley; (3) 7**
11 **Homestead Boulevard, 3-units, Mill Valley; (4) 4079 Paradise Drive, 2-units, Tiburon**
12 **[the Davis home since 1962]; (5) 1024 Redwood Boulevard, 8-units, Mill Valley; (6) 80**
13 **Lincoln Avenue, condo complex, Sausalito; and rental income thereof.**

14 Concealed property known as: 7] **228 Marion Ave, Mill Valley; 8] Tam Valley Lots**
A,B,C and D, Subdivision One, Tamalpais Valley 9] **Hazel Ave. Lot, Mill Valley; 10] 150**
15 **Hazel Ave., Mill Valley; 357 Pine Hill, Mill Valley; 11]; and rental income thereof.**

17 **DENIAL OF DUE PROCESS** 18 **Excepts From the Complaint**

19 145. Fraudulent **Grant Deed to Betty Davis** [Loyal's mother] was created by the
defendants and executed on 6/24/1969 and recorded 6/27/1969 [EXHIBIT 15]; in known direct
20 violation of a **Restraining Order** of the Marin Superior Court filed 6/17/1969 [EXHIBIT 16].

21 153. **Property Trial Minutes** - Judge Joseph Wilson Presiding **[EXHIBIT 17]** - Court
22 pages #123, 124, 125, 126, 127, 128, 129]: **First Day Trial** 4/2/1975 [Trial Minutes Court Pg
23 123] Astarte's attorney Madeline McLaughlin put into evidence Astarte and Loyal's Marriage
24 Certificate, admitted at 1:42 pm, and their Agreement concerning Loyal and Astarte's assets of
25 their marriage, admitted at 3:02 pm.

26 154. The Betty Davis Grant Deed concerning the real properties at issue was entered
27 into evidence by Attorney Kaufmann on the **Second Day of Trial** on 4/3/1975 [Trial Minutes,

1 Court Pg 124-125]; first time the grant deed appeared in Case 53979, and is extrinsic/collateral
2 fraud with deceit which is criminal conversion grant thief.

3 155. In the Trial of the properties matter Case 53979 Judge Wilson statement was
4 "concise" in its meaning on the Third Day of Trial [property] 4/4/1975. Trial Minutes, Court
5 Pg 126 stated: "This matter coming on regular continuance, parties present, respondent moves to
6 exclude any further testimony on real property, court shall grant MOTION to exclude further
7 evidence, which includes property' that involves Betty Davis, as of this date".

8 156. The above MOTION was not offered or found in the case file. Attorney
9 Kaufmann did present the 1969 Grant Deed on 4/3/1969 with a list of properties in evidence.

10 NONE of which was presented to Astarte Davis for examination nor was she cross or
11 direct examined concerning these documents or any documents concerning Loyal and Astarte's
12 real property or otherwise at trial; as the trial minutes shows.

13 157. Thereby the court intentionally took Astarte's ability to challenge any deeds/any
14 documents as to their authenticity at trial, or otherwise. Astarte's constitutionally protected due
15 process rights to be heard at trial was intentionally taken away by fraud, by Judge Wilson acting
16 under color of law, and in his capacity as a judge in the Marin County Superior Court, and as a
17 private individual in a quasi-criminal conspiracy with the Defendants under color of law, while
18 in their capacity as private individuals.

19 158. Judge Wilson statement was "concise" in its meaning on the Sixth Day of Trial
20 [property] 4/8/1975 [Trial Minutes, Court Pg 128], after Astarte was DENIED her protected
21 rights pursuant to the U. S. Constitution and Fourteenth Amendment TO BE HEARD OR
22 PRESENT EVINDECE at trial, on 4/3/1975 [shown above] concerning all real, and personal
23 properties.

24 The above is some of the IGNORED/SUPPRESSED/EXCLUDED material
25 evidence relevant to the case by Judge Freccero [from Case 53979 before him]. The Trial
26 Minutes shows the clear, concise statements by Judge Wilson [See EXHIBIT 17] which
27 denied Plaintiff's due process rights to be heard in all property matters; The Betty Davis Grant
28 Deed [See EXHIBIT 15] from Case 53979 before him: that fraudulent deed took Astarte's
property against a Restraining Order [See EXHIBIT 16] which was criminal conversion grant

1 thief. "Some form of hearing is required before an individual is finally deprived of a property
2 [or liberty] interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "Parties whose rights are to
3 be affected are entitled to be heard." *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). An
4 impartial decision maker is an essential right in civil proceedings as well *Goldberg v. Kelly*, 397
5 U.S. 254, 271 (1970). The language of the Fourteenth Amendment requires the provision of due
6 process when an interest in one's "life, liberty or property" is threatened. *Morrissey v. Brewer*,
7 408 U.S. 471, 481 (1982). Plaintiff was denied a fair hearing at trial in case 53979.

8 Judges do not possess absolute immunity with respect to claims arising from "the
9 administrative, legislative, or executive functions that judges may on occasion be assigned by
law to perform." *Forrester v. White*, 484 U.S. 219, 227 (1988).

10 "SCIENTER" which was/is the defendants' Judge Wilson; Judge Freccero, and Justice
11 Simons' state of mind and can be held accountable. Scienter denotes a level of intent on the part
12 of the Defendants. In *Ernst and Ernst v. Hochfelder*, 425 U.S. 185, 96 S.Ct. 1376, 47 L. Ed. 2d
13 668 (1976), the Supreme Court described scienter as "a mental state embracing intent to
14 deceive, manipulate, or defraud." The definition in Ernst illustrates the sort of guilty knowledge
that constitutes *scienter* as shown herein.

16 **PLAINTIFF'S CLAIMS FOR RELIEF ARE NOT FRIVOLOUS OR MALICIOUS**
17 **THEY ARE SATISFIED PURSUANT TO FRCP RULE 8(a)(2)**
18 **FORMA PAUPERIS UNDER 28 U.S.A. § 1915(a) IS SATISFIED**

19 Shown below are from Plaintiff's Complaint and followed in her claims.

20 Pursuant to #4.3 Section 1983: Elements of Claims: Astarte must prove both of the
21 following elements: First: Defendants acted under color of state law, which they undeniably and
22 knowingly and willfully did; and Second: While acting under color of state law, Defendants did
23 deprive Astarte of her federal constitutional rights and her statutory rights by depriving her of
24 her Fourteenth Amendment rights to due process of protected federal and state law, which they
undeniably and intentionally did.

25 Astarte must prove to establish the violation of her federal constitutional and statutory
26 rights. "By the plain terms of § 1983, two – and only two – allegations are required in order to
27 state a cause of action under that statute, and First: Astarte must allege that some person has

1 deprived her of a federal right; and Second: she must allege that the person who has deprived her
2 of that right acted under color of state or territorial law.” *Gomez v. Toledo*, 446 U.S. 635, 640
3 (1980); (“A *prima facie* case under § 1983 requires a plaintiff to demonstrate: (1) a person
4 deprived her of a federal right; and (2) the person who deprived her of that right acted under
5 color of state or territorial law.”). Which she has done.

6 Pursuant to #4.4 Section 1983: Action under Color of State Law. The first element of
7 Astarte's claim is that Defendants acted under color of state law and in a quasi-criminal
8 conspiracy. This means that Astarte must show that Defendants was using power that they
9 possessed by virtue of state law. Which she has done.

10 A person/judge can act under color of state law even if the act violates state law. The
11 question is whether the person/judge was clothed with the authority of the state, by which mean
12 using or misusing the authority of the state and denied due process to be heard. Yes, the
13 persons/judges/justice did have authority of the State of California, and did misuse it by denying
14 Plaintiff's protected rights of due process to be heard.

15 “Defendants' actions do satisfy the state-action requirement of the Fourteenth
16 Amendment which satisfies Section 1983's requirement of action under color of state law.”
17 *Lugar v. Edmondson Oil Co.*, 31 457 U.S. 922, 935 n.18 (1982). also *Brentwood Acad. v.*
18 *Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 n.2 (2001).

19 “Like the state-action requirement of the Fourteenth Amendment, the under-color-of-
20 state-law element of § 1983 excludes from its reach “merely private action, no matter how
21 discriminatory or wrongful.”” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50
22 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (quoting *Shelley v. Kraemer*, 334
23 U.S. 1, 13 (1948))).

24 Liability under Section 1983 “attaches only to those wrongdoers ‘who carry a badge of
25 authority of a State and represent it in some capacity, whether they act in accordance with their
26 authority or misuse it.’” *National Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 191
27 (1988); (quoting *Monroe v. Pape*, 365 U.S. 167, 172 (1961)); *West v. Atkins*, 487 U.S. 42, 49
28 (1988); *United 8 States v. Classic*, 313 U.S. 299, 326 (1941)). Defendants did act under color of
law with the authority of the State of California court system.

1 Plaintiff in her Complaint pursuant to FRCP Rule 8(a)(2) contains her statement of claim
2 showing that she is entitled to relief. There are detailed factual allegations with new material
3 evidence relevant to the case and considered sufficient factual matter excepted as true as they are
4 Judicially Notice [in case CIV-1802890] court case documents from case 53979. *Bell Atl. Corp.*
5 *v. Twombly*, 550 U.S. 544, at 570 (2007).

6 Plaintiff's claims do give rise to an entitlement for relief. Plaintiff requests right to
7 amend if needed.

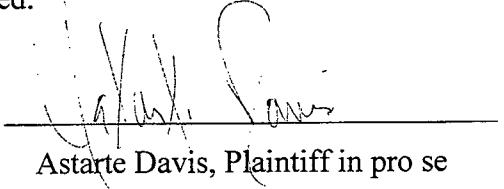
8 Plaintiff did and is suffering distress because of the denial and the continuing denial of
9 her procedural due process rights by Defendants. *Carey v. Piphus* (1978) 435 U.S. 247, 263 [98
10 S.Ct. 1042][55 L.Ed.2d 252]. She has the right to procedural due process which is "absolute;" for
11 a fair trial. When necessary to correct a clear error and to prevent manifest injustice. *Arizona v.*
12 *California*, 460 U.S. 605 at 618 (1983). As shown in this case.

13 Where "Law of the case directs a court's discretion, it does not limit the tribunal's power."
14 *Messinger v. Anderson*, 225 U.S. 436, 444 (1987). The issues of: denial of constitutional rights
15 and the fraudulent history of the matters surrounding this case have NEVER been tried in any
16 court on its merits; only dismissed on technicalities .

17 CONCLUSION

18 For the foregoing reasons, Plaintiff respectfully objects to the Magistrate Judge's Report
19 and Recommendation as it is contrary to law. The Motions to Dismiss should be denied, and
20 Plaintiff's right to a fair trial should be granted.

21 Dated: May 21, 2020

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23 Astarte Davis, Plaintiff in pro se

APPENDIX B-4 Order Adopting Report and Recommendation

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7 ASTARTE DAVIS,
8 Plaintiff,
9
10 v.
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12 JOSEPH WILSON, et al.,
13 Defendants.
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Case No. 20-cv-02657-RS

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

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

27 Davis has now objected on the grounds that her action presents new evidence and alleges
28 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

APPENDIX B-5 US Court of Appeals Referral Notice

astarte davis

From: <ECF-CAND@cand.uscourts.gov>
To: <efiling@cand.uscourts.gov>
Sent: Monday, June 15, 2020 11:40 AM
Subject: Activity in Case 3:20-cv-02657-RS Davis v. Wilson et al USCA Order

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
California Northern District

*Div't case file to
 Court of Appeals*

Notice of Electronic Filing

The following transaction was entered on 6/15/2020 at 11:40 AM and filed on 6/12/2020

Case Name: Davis v. Wilson et al

Case Number: 3:20-cv-02657-RS

Filer:

WARNING: CASE CLOSED on 05/29/2020

Document Number: 17

Docket Text:

USCA REFERRAL NOTICE as to [15] Notice of Appeal, filed by Astarte Davis. (gbaS, COURT STAFF) (Filed on 6/12/2020)

3:20-cv-02657-RS Notice has been electronically mailed to:

Astarte Davis astartedavis@hotmail.com

3:20-cv-02657-RS Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: N:\20-cv-02657-RS USCA Referral Notice.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=6/15/2020] [FileNumber=17039666-0]
 [0d44a69e70ac0c9d049bb99b522487ae8c438a41e208fc037487b131dc8d5e58e7f4
 60b400e6ec20cffed0000e649b04d28649810e26bf45b1afbec2c3fc13d0]]

APPENDIX B-6 Order Revoking *Forma Pauperis*

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10 ASTARTE DAVIS,
11 Plaintiff,
12 v.
13 JOSEPH WILSON, et al.,
14 Defendants.

10 Case No. 20-cv-02657-RS

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28 **ORDER REVOKING IN
FORMAPAUPERIS STATUS**

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.**