

No.

22-6701

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
SEP 30 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE ASTARTE DAVIS
Petitioner
Real Party In Interest and Successor in Fact CCP § 377.30

v.

THE SUPREME COURT OF CALIFORNIA
CASE S273684 - AT ISSUE MARIN COUNTY VOID CASE 53979
ON REVIEW CASE WAS DESIGNATED AS S274906

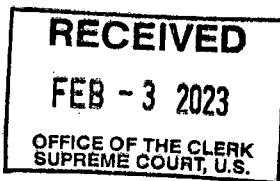
Presiding: Justice Leondra R. Kruger, Justice Goodwin H. Liu,
Justice Mariano-Florentino Cuéllar, Justice Joshua P. Groban,
Justice Ming W. Chin, Chief Justice, Tani G. Cantil-Sakauye,
Justice Carol A. Corrigan
Respondents

LOYAL DAVIS [Astarte's husband] party in interest [deceased 12/24/2017]

**PETITION FOR WRIT OF MANDAMUS and PROHIBITION
28 U.S.C. 1651**

For Extraordinary Circumstances with Entitled Matters

For factors not normally incident to or foreseeable during judicial proceedings. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for and that has irreparably harmed Astarte Davis; also the criminal actions by LOYAL DAVIS in case 53979 [Astarte's husband] party in interest [deceased 12/24/2017]



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I. QUESTIONS PRESENTED

1. Whether the Respondents decisions in Astarte's case is non-judicial conduct under color of law and constitution, failed in their judicial ethics, and is ABUSE of their discretion; only this Court has the power to hold them accountable, that is of great public importance?
2. Whether the Respondents did deny Astarte her state, and federal constitutional rights, statutory rights, and civil rights, under TITLE 1A, unconstitutional Title 3A Vexatious Litigants CCP § 391 et Esq. The Judicial system of America has a mandatory sworn duty to uphold the Constitutions and the supreme law of the land in the peoples court?
3. Whether this high Court will use its power to protects the peoples civil rights and liberties by striking down laws that violate the state and U.S. Constitutions. Such as California CCP § 391 et Esq.?
4. Whether the Respondents did in their non-judicial conduct violate 18 U.S. Code § 242 when they did take away under color of law all Astarte's rights to be heard in any California court without a hearing of facts in the matter. Thereby blacklisting, and treating her like a criminal?
5. Whether the Respondents did rule finding Astarte's case S273684/S274906 had "entitled matters" then with out notice to Astarte, the Supreme Court of California based on an unsigned notice by Justice Humes from the lower court 1st-DCA DIV-5 sent stating: "Astarte was at that time determined to be a vexatious litigants" without factual evidence or hearing under law, and that her case had NO merit. Thereby case dismissed?
6. Whether this high Court will find: "A judgment may not, cannot be rendered in violation of constitutional protection (*Earle v. McVeigh and Hanson v. Denckla*). Such as herein VOID Marin Case **53979** with undisputed real evidence at issue in case S273684 / S274906 [now before this Court] thereby returning all that was taken by extrinsic fiduciary fraud?
7. Whether the Respondents made decisions that is conflicting trial court interpretations of the law are in need of resolution that is clearly erroneous conduct with sufficiency for uncontradicted real trial court minutes of real evidence and is prejudicial to Astarte?
8. Whether Astarte, in Pro Se. now listed as a vexatious litigate could obtain the sought relief by a later appeal under the Unconstitutional CCP 391 et Esq. ?
9. Whether the continuing irreparable harm/injury to Astarte, should this case continue without being heard, would be considered under the Constitution a Manifest Injustice?
10. Whether the position the California courts [The peoples court] are taking when a judge/justice under color of law by ignoring their code of ethics, state and federal Constitutions, and does not follow the law. **This case has widespread importance to the American people?**

INJUSTICE FOR ONE- IS INJUSTICE FOR ALL

II. PARTIES

1. All parties appear in the caption of the case on the cover page.

LOYAL DAVIS [Astarte's husband] party in interest [deceased 12/24/2017] CA family Code §721 states that "a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other." By virtue of this "confidential relationship", a "duty of the highest good faith and fair dealing" is imposed on each .

III. RELATED CASES

THAT HAS CONTINUED THE IRREPARABLE HARM TO Astarte ANY REASONABLE PERSON WOULD ASK WHY?

Marin County Superior Court case CIV 21- 03212 at issue void case 53979

Judge Glade F. Roper presiding

2. Judge Roper intentionally ignored and suppressed real evidence, and failed his duties under law and his code of ethics concerning Astarte's uncontradicted Marin void case **53979** at issue, there were no hearings, ignoring and suppressing all evidence; her constitutional due process rights to set aside the judgment and invalidate the breach of fiduciary duty for the fraudulent grant deed to Loyal's mother. The Docket stated on 2/23/2022 "It is Ordered: Notice of entry of filed February 12, 2022 and "JUDGMENT of DISSMISSAL" after sustaining demurrer without leave to amend file February 23, 2022 mailed to the parties with proof of service. Case 53979 at issue went on 1-DCA A164839 then to the California Supreme Court of Appeal as case S273684; thereby continuing the irreparable harm to Astarte. Under color of law. 18 U.S. Code § 242

California First District Court of Appeal Div. Five CASE A164839

3. Supreme Court of California on 3/29/2022 "Transferred" to CA 1-Appellate District Court of Appeal their case S273684 Writ of Mandate [herein case] with "entitled matters." 1st-DCA case A164839 for option/decision The case before the Supreme Court of California is Marin case **53979** with unenforceable judgment, a case that lack subject matter jurisdiction due to fiduciary fraud that became extrinsic fraud; with denial of state and federal constitutional rights to be heard. A void case that can keep returning to court until the case is closed and the return of Astarte's legally owned real properties taken, a uncontradicted case with real evidence that can be challenged in any court at any time." Old Wayne Mut L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct.. Case S273684 was returned to "The Supreme Court of California for Review," and was THEN designated as S274906. 1st-DCA then closed case A164839 and dismissed under the unconstitutional CCP §391 et Esq. Under color of law. 18 U.S. Code § 242

4. THE ABOVE COURTS DID FAIL ITS DUTIES BY SUPPRESION OF EVIDENCE UNDER COLOR OF LAW; AND THEIR CODE OF ETHICS, AS OFFICERS OF THE COURT, and AS A JUDICIAL BRANCH OF THE CALIFORNIA COURTS. THE JUSTICES UNDER COLOR OF LAW DENIED ASTARTE HER PROTECETED STATE AND FEDERAL CONSTITUTIONAL RIGHTS of due process; and BY THE USE OF THE UNCONSTITUTIONAL CCP §391 et Esq.; AND PUT HER NAME ON THE VEXTATIOUS LITIGANT LIST; TAKING AWAYS ALL HER CONSTITUTIONAL RIGHTS WITHOUT MANDATORY HEARING AND EVIDENCE, and closed case. ASTARTE NO LONGER HAD THE RIGHT TO RETURN TO THE COURT FOR JUSTICE. 18 U.S. Code § 242

5. Astarte was Denied her opportunity to Be Heard in the above "Related Cases." A judgment, order, decision of a court without hearing the party or giving 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 as to the above cases.

TABLE OF CONTENTS

I	QUESTIONS PRESENTED	2
II	PARTIES	3
III	RELATED CASE	3
	TABLE OF CONTINES.....	4,8
IV	JURISDICTION.....	8
V	REASONS FOR GRANTING THE PETITION	8
VI	CONSTITUTIONAL PROVISIONS INVOLVED.....	10
VII	CALIFORNIA PRIMARY RIGHTS DENIED.....	12
VIII	STATUTORY PROVISIONS INVOLVED.....	13
IX	SOME FACTS IN REVIEW - CASE S273684/S214906.....	22
X	STATEMENT OF THE CASE - S273684/274906.....	24
XI	REQUEST FOR RELIEF TO BE GRANTED CCP § 391 et Esq.....	35
XII	REQUEST FOR EQUITABLE RELIEF TO BE GRANTED.....	37
XIII	FUTHUR REQUEST -CONCLUSION.....	40
	DECLARATION	42

APPENDIX A - EXHIBITS

TABLE OF AUTHORITIES

<i>Adams v. Dept. of Motor Vehicles</i> , 11 Cal. 3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974).....	39
<i>Anderson v. Ott</i> (1932) 127 Cal.App. 122.....	20
<i>Bartholomew v. Bartholomew</i> (1942) 56 Cal.App.2d 216,224.....	15
<i>Boddie v. Connecticut</i> , (1969) at 389) U.S. Supreme Court	18
<i>Boddie</i> , <i>supra</i> at 389.....	20
<i>Board of Regents v. Roth</i> (1971) 408 U.S.564,573).	20
<i>Bentley v. Hurlburt</i> , 153 Cal. 796, 803 [96 P. 890].....	28
<i>Bradley v. Sch. Bd. of Richmond</i> , 416 U.S. 696, 711 (1974).....	36
<i>Brown v. Blanchard</i> , 39 Mich 790.....	11
<i>Bridges v. California</i> (1941) 314 U.S. 252.....	15
<i>Brown v. Gibson</i> (1983) 571 F.Supp.1075.....	17
<i>Burns v. Ohio</i> (1959) 360 U.S. 252).....	21
<i>Blair v. Pitchess</i> , 5 Cal. 3d 258, 283, 486 P.2d 1242, 1259, 96 Cal. Rptr. 42, 59 (1971).....	39
<i>California Logistics, Inc. v. State of California</i> , (2008) 161 Cal.App. 4th 242, 247.....	28
<i>California State Employees' Assn. v. Flounoy</i> (1973) 32 Cal.App.3d 219,224.....	19
<i>California Transport v. Trucking Unlimited</i> (1972) 404 U.S. 508, 510.....	17,18
<i>California Motor Trans.</i> , <i>supra</i>	16
<i>Carey v. Brown</i> (1980) 447 U.S. 455, 461-2.....	18
<i>Carroll v. Princess Anne</i> (1968) 393 U.S. 175,182-3.....	14
<i>Chambers v. Baltimore & O.R. Co.</i> (1907) 207 U.S. 142, 148.....	19

<u>Connally v. General Construction Co.</u> (1926) 269 U.S. 385, 391.....	16
<u>County of Los Angeles v. Patrick</u> (1992) 11 Cal.App.4th 1246.....	17
<u>Crain v. City of Mountain Home, Ark.</u> (1979) 611 F.2d 726.....	19
<u>Cummings v. State of Missouri</u> (1866) 71 U.S. 277,320.....	20
<u>Civil Rights Cases, 109 U. S. 3, 11, 17 (1883)</u>	25
<u>Davidson v. City of New Orleans</u> , 96 U.S. 97, 102 (1878).....	11
<u>Dioguardi v. Durning</u> (1944) 139 F.2d 774.....	16
<u>Dobyns v. Cheshire</u> , 9 Cal. App. 2d 77 [48 P.2d 743].....	28
<u>Doe v. Roman Catholic Bishop of Sacramento</u> , (2010) 189 Cal.App.4th 1423, 1430 [117 al.Rptr.3d 597].....	35
De Long v. Hennessey (1990) 912 F.2d 4.....	15
Douglas v. California (1963) 372 U.S. 353.....	20
<u>Earle v. McVeigh</u> , 91 US 503, 23 L Ed 398.....	2,13,25
<u>Elmore v. McCammon</u> (1986) 640 F. Supp. 905,911).....	17
<u>Ex parte Wall</u> , 107 U.S. 265, 289 (1883).....	11
<u>Freedman v. Maryland</u> (1964) 380 U.S. 31,58	14
<u>FRITTS v. KRUGH, SUPREME COURT OF MICHIGAN</u> , 92 N.W.2d 604, 354 Mich. 97.....	11
<u>GOLDSMITH, "Frivolity is in the Eye of the Beholder"</u> , 139 N.J.L.J. 435 (1-30-95, p.23).....	16
<u>Gould v. Grubb</u> (1975) 14 Cal.3d 661.....	17
<u>Griffin v. Illinois</u> (1956) 351 U.S. 12.....	21
<u>Hague v. C.I.O.</u> (1939) 307 U.S. 496, 512-513	19
<u>Haines v. Kerner</u> (1972) 404 U.S. 519, 520.....	16
<u>Hanson v Denckla</u> , 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.....	2,24
<u>Handy v. Shiells</u> (1987) 190 al.App.3d 512.....	27
<u>Haro v. Southern Pac.R.Co.</u> (1936) 17 Cal.App.2d 594.....	20
<u>Hitch v. Superior Court</u> 2 Cal. App. 2d 406 [38 P.2d 190].....	28
<u>Hurtado v. California</u> , 110 U.S. 516, 528-29 (1884). 24 Id. at 531-32, 535, 537.....	10,12
<u>In Re Cass</u> , 476 B.R. 602, 614 (Bankr. S.D. Cal. 2012), aff'd 606 Fed. Appx. 318 (9th Cir. 2015).....	26
<u>In re Clark, Supreme Court of California</u> 5022475 (1992).....	36
<u>Irvine v. Gibson</u> , 19 Cal.2d 14 [118 P.2d 812].....	28
<u>James v. Oakland Traction Co.</u> (1909) 10 Cal.App. 785.....	20
<u>Jenkins v. McKeithen</u> (1969) 395 U.S. 411.....	17
<u>Joint Anti-Fascist Refugee Comm v. McGrath</u> , 341 U.S. 123, 163 (1951).....	17
<u>Joint Anti-Fascist Refugee Comm v. McGrath</u> , (1951) 341 U.S. 123, 143-144.....	20
<u>Jordon v. Gilligan</u> , 500 F.2d 701, 710 (6th Cir. 1974).....	24
<u>Kalb v. Feuerstein</u> (1940) 308 US 433, 60 S Ct 343, 84 L ed 370.....	24
<u>Klugh v. U.S.</u> , 620 F.Supp. 892 (D.S.C. 1985),.....	10
<u>Lake Shore & Michigan Southern Railway Co. v. Hunt</u> , 39 Mich 469.].....	11
<u>Linn v. Roberts</u> , 15 Mich 443; <u>Lynch v. People</u> , 16 Mich 472.....	11
<u>Lubben v. Selective Service System Local Bd. No. 27</u> , 453 F.2d 645 (1st Cir. 1972).....	24
<u>McDonald v. Mabee</u> (1917) 243 US 90, 37 Sct 343, 61 L ed 608.....	24,31
<u>Merrill v. Navegar, Inc.</u> (2001) 26 Cal. 4th 465, 477.....	28
<u>Milliken v. Meyer</u> , 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940).....	10

<u>Marbury v. Madison</u> , 5 U.S. 137; 1 Cranch 137; 2 L. Ed. 60; (1803) U.S. LEXIS 352	11,21,24,35,37
<u>Morelli v. Superior Court of Los Angeles County</u> 1 Cal.3d 328,333.....	19
<u>Murray's Lessee v. Hoboken Land & Improvement Co.</u> , 59 U.S. (18 How.) 272 (1856).....	11
(N.A.A.C.P. v. Button (1963) 371,512-513, 430).....	17,19
<u>Near v. Minnesota</u> (1930) 283 U.S. 697, 712.....	15
<u>Near</u> at 713.....	15
<u>Niemotko v. Maryland</u> (1981) 340 U.S. 268, 271.....	14
<u>Ng Fung Ho v. White</u> , 259 U.S. 276 (1922).....	11
<u>Old Wayne Mut L. Assoc. v. McDonough</u> , 204 U.S. 8, 27 S.Ct	3,12
<u>Opp Cotton Mills v. Administrator</u> , 312 U.S. 126, 152, 153 (1941). 30 321 U.S. 503, 521 1944).....	11
<u>Palko v. Connecticut</u> , 302 U.S. 319 (1937).....	11
<u>People v. Mattson</u> (1959) 51 Cal.2d 777,793.....	14
<u>Pennoyer v. Neff</u> (1877) 95 US 714, 24 L ed 565.....	24,31
<u>Perry Education Assn. v. Perry Local Educators' Assn</u> (1983) 460 U.S. 37,55).....	18
<u>Prather v. Loyd</u> , 86 Idaho 45, 382 P2d 910.....	24
<u>Powell v. Alabama</u> , 287 U.S. 45 (1932).....	11
<u>Public Clearing House v. Coyne</u> , 194 U.S. 497, 508 (1904).....	11
<u>Renaud v. Abbott</u> , 116 US 277, 29 L Ed 629, 6 S Ct 1194.	25
<u>Robinson v. California</u> (1961) 370 U.S. 660.....	15
(<u>Robinson</u> , supra at 667).....	15
<u>Rose v. Himely</u> (1808) 4 Cranch 241, 2 L ed 608.....	24,31
<u>Sabariego v. Maverick</u> , 124 US 261, 31 L Ed 430, 8 S Ct 461.....	3,28
<u>Small v. Fritz</u> (2003) 30 Cal.4th 167, 173.....	27
<u>Snyder v. Massachusetts</u> , 291 U.S. 97, 105 (1934).....	11,14
<u>Solem v. Helm</u> (1983) 463U.S. 277.....	15
<u>Seaboard Acc.Corp. v. Shay</u> (1931) 214 Cal.361.....	16
<u>Stevens v. Frick</u> (1966) 259 F.Supp.654, 657.....	15
<u>Swinford v. Rodgers</u> , 23 Cal. 233, 235-236 (1893).....	27
<u>Sniadach v. Family Finance Corp.</u> , 395 U.S. 337, 339 (1969).....	39
<u>Thompson v. Whitman</u> (1873) 18 Wall 457, 21 1 ED 897.....	24,31
<u>Twining v. New Jersey</u> , 211 U.S. 78 (1908).....	11
<u>United States v. Brown</u> (1965) 381 U.S. 437,441-449.....	19
<u>United States v. Brown</u> at p. 445.& at 447.....	19
<u>U.S. v. Holtzman</u> , 762 F.2d 720 (9th Cir. 1985).....	24
<u>United States v. Lovett</u> (1945) 328 U.S. 303,315.....	19
<u>United States v. Lovett</u> (1945) 328 U.S. 303,316.....	19
<u>United States v. Beggerly</u> , 524 U.S. 38, 46-47 (1998).....	36,39
<u>United States v. Brown</u> (1965) 381 U.S. 437,441-449.....	19
<u>United States v. Brown</u> at 445, 447.....	19
<u>U.S. v. Morgan</u> (1994) 845 F.Supp. 934,939-940.....	20
<u>United States v. District Court</u> , 333 U.S. 841, <i>Reversed</i> , 334 U.S. 265.....	40
<u>Virginia v. American Booksellers Assn.</u> (1987) 484 U.S. 383,392-393.....	19
<u>Weeks v. Roberts</u> (1968) 68 Cal.2d 802.....	17
<u>Wieman v. Updegraff</u> (1952) 344 U.S. 183,191.....	17

<i>Windsor v. McVeigh</i> (1876) 93 US 274, 23 L ed 914.....	24,31
<i>Wolfgram</i> (at 50-55).....	18
<i>Wolfgram</i> at 52).....	19
<i>Wolf v. Superior Court</i> (2003) 107 Cal.App.4th 25, 29	27,34
<i>Wotton v. Bush</i> (1953) 41 Cal.2d 460,464.....	16
<i>Zeller v. Rankin</i> , 101 S. Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326 (1980).....	31

Table of CC Procedure; RULE; CODE; LAW and OTHER

Vexatious Litigant Legislation 52 CAL.L.REV. 204 (1964) at 205-206.....	21
92 C.J.S., s.v. "Vexatious".....	17
Title 3 CCP § 391-391.8.....	14
CCP § 377.30.....	33,38,39,37
CCP §§ 391.7 & (b)(4).....	15,16,17,18,19
CCP § 391.7 & 7(a).....	12,13,14,15,16,17,18,19,20
CCP § 391(b)	13,15
CCP § 391 et seq	2,3,8,9,10,11,12, 13,14,15,16,18,19,20,,21,32,36,38,40,38
CCP § 391(b)(1) - (b)(3).....	15,16,17
CCP § 473 (d).....	8,,11,24,25,38,40
CCP § 1085(a)	38
CCP § 1085(f).....	39
CCP § 1086.....	28,38
CCP § 1094.....	41
Title 18 USC § 242	20,21,36
28 U.S.C. § 1331	39
28 USC 1651(a).....	8
<i>(1 Am Jur 2d §43, s.v. "Novelty of action")</i>	14
California Evidence Code 1101.....	32
Federal Civil Procedure Rule 60(b)	11,39
Doctrine, Judicial Review.....	21
The Judiciary Act of 1789	10
Magna Charta 40).....	14
Manifest Injustice Doctrine.....	36,37
Restatements, Judgments ' 4(b).....	25
Replevin Laws and CCP SEC 2716 (1) (1)	37
THE FIRST AMENDMENT	14,17,18,19
The Supreme Law of the Land	2,12,,30,31,37,38
The Supreme Court Rule 20,21.....	8,
(American Bar Association, Canons of Judicial Ethics §2).....	14
16D CJS, s.v., Constitutional Law, § 1433.....	14
<i>(1 Am Jur 2d §43, s.v. "Novelty of action")</i>	14
U.S. Const. Amend. 5.....	10,12
30A Am Jur Judgments " 44, 45	25
Federal Rules of Civil Procedure Rule 12.....	24
CIVIL RIGHTS OF PERSONS.....	10,12
California Constitution Amend 14 ARTICLE 1 SECTION1.....	10,11,12,13
California Primary Rights.....	11
California Constitution Article I,	13
California Penal Code §158..pg 21 - 484(a)...pg26 - 532(a)....pg26 - 115, 132, &134....pg30	
California Civil Procedure Code §128.5 (superseded by §128.7).....	21

California Family Code §721.....	27
California Civil Procedure Code §907;.....	21
California Family Code §721.....	3,27
California's Vexatious Litigant Legislation 52 CALL.REV. 204 (1964) at 205-206... 21	
Eighth Amendment to the U.S. Constitution.....	15
Fifth and Fourteen Amendments of the state and federal constitution. ..26,27	
Bill of ATTAINER.....	.19
WRIT of POSSESSION & WRIT OF EXECUJTION.....	41.
Article § 10, US Constitution.....	19.
Eighth and Fourteenth Amendments.& due process.....	13,16
STRICT SCRUTINY" STANDARD.....	13
Title 1A Vexatious Litigants.....	2
Title 3A Vexatious Litigants.....	2
U.S. Constitutional Rights	8
Doctrine of JUDICIAL REVIEW.....	22

IV. JURISDICTION

6. The jurisdiction of this Court is invoked under 28 U.S. Code § 1651. The All Writs Act, 28 U.S.C. § 1651, that provides: "The U.S. Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This Court has jurisdiction to act pursuant to Rule 21, 20 of this Court's Rules, on grounds that the California supreme Court has abused its judicial discretion and has so far departed from the accepted and usual course of judicial proceedings, by refusing to prohibit the enforcement of a void judgment CCP Sec 473(d), as to call for an exercise of this Court's supervisory powers, for refusing to prevent the enforcement of a judgment that lack jurisdiction that was entered in the Marin County Superior Court case **53979** in the absence of jurisdiction and declaring Astarte under the unconstitutional CCP Sec. 391 et Esq. to be a vexatious litigant without a show cause hearing as required by law, that has no evidentiary support under color of law . This Court may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law with Judicial Review and the power to act- for deprivation of Astarte's constitutional rights under color of law. 18 U.S. Code § 242

V. REASONS FOR GRANTING THIS PETITION UNDER THE ALL WRITS ACT,

7. This Honorable High Court should grant Astarte's Writ Petition based upon, the questions presented and the issues that are based on facts of the Supreme Court of California

case S273684/S274906 at issue Marin County Superior Court void case **53979** [with lack of jurisdiction to issue judgement] now before this Court with uncontradicted real evidence of trial minutes that the previous courts and judges, justics have intentionally suppressed and ignored. The U.S. Supreme Court's precedent for void cases; as well as the California precedent under color of law to invalidate Loyal Davis' breach of fiduciary duty to Astarte, and created the fraudulent grant deed to Betty Davis [Loyal's mother] and return all that was taken.

8. The Supreme Court of California, Petition for Writ of Mandate case S273684 who determined Astarte's void case **53979** at issue had "entitled matters" when they transferred the case to 1st-DCA-5th Div. case A164839, where they intentionally ignored and suppressed case S273684. Without viewing the case, the 1st-DCA dismissed citing unconstitutional CCP § 391 et Seq and putting Astarte's name on the Vexatious Litigants List without due process to defend her case. In the process, 1st-DCA advised the Supreme Court of California and they dismissed "in a possible conspiracy," without notice; that brings Astarte to this Court. Whereby the U.S. Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Exceptional circumstances warrant the exercise of this Court's discretionary powers ; and that adequate relief cannot be obtained in any other form or from any other court. Because the judicial branch of the California courts took away her constitutional protected rights by "blacklisting her" to any further court actions in California, under color of law and by their unconstitutional CCP §391 et Esq. Deprivation of Rights 18 U.S. Code § 242; The Respondents did violate Section 242 by depriving Astarte of her state and federal constitutional rights, privileges, or immunities secured or protected by either the laws of the United State or the US Constitution.

9. Astarte believes she has shown in her petition that the writ will be in aid of this Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of this Court's discretionary powers of "judicial review" in a decision that will help the PRO SE LITIGANTS OF CALIFORNIA; and Astarte. That adequate relief cannot be obtained in any other form or from any other court; due to conducts and acts under color of law denying Fifth Amendment rights of civil legal proceedings under the unconstitutional CCP §391 et Esq.

10. That the decisions of these courts is non-judicial conduct under color of law (18 U.S. Code § 242) that are erroneous and conflicting with opinions previously held by other courts,

and appellants courts. As shown below. That the decisions rendered by ignoring the case that has substantial uncontradicted real evidence by these Respondents, is abuse of discretion, with suppression of evidence. That if allowed to stand, may have a severely adverse effect on the perception of the courts independence, integrity and impartiality, its function in the checks and balance of power structure that is one of the foundational stones of the republic, and will negatively effect the public's confidence in the judiciary, as it is the court's mandatory duty and responsibility to hold accountable, not protect, all those who serve in any capacity or position within the governments of the United States, their agencies, departments and subdivision to the sovereign, that being the people and in the American Republic perception is by and far reality for the many.

11. This high court has the power to protect civil rights and liberties by striking down laws that violate the Constitution. Finally, it sets appropriate limits on democratic government by ensuring that popular majorities cannot pass laws that harm and/or take undue advantage of unpopular minorities. In essence, it serves to ensure that the changing views of a majority do not undermine the fundamental rights, and values common to all Americans, i.e., freedom of speech, freedom of religion, and due process of law. Believe any reasonable person would consider the California CCP Sec 391 et Esq. is unsettled between the State of California and the U.S. Constitution; and believe it to be of **PUBLIC IMPORTANCE**.

VI. CONSTITUTIONAL PROVISIONS INVOLVED BASED ON REAL FACTS

12. IMPACT - The decisions of the U.S. Supreme Court has an important impact on society at large, not just on lawyers and judges; All controversies between the United States and a State. The Judiciary Act of 1789 gave the Supreme Court original jurisdiction to issue writs of mandamus (legal orders compelling government officials to act in accordance with the law).

13. First and foremost is the 14 AMENDMENT, CALIFORNIA CONSTITUTION and Fifth Amendment to the U.S. CONSTITUTION and CIVIL RIGHTS OF PERSONS for due process; and rights to be heard and offer evidence; with justice in the courts of America.

Hurtado v. California, 110 U.S. 516, 528–29 (1884). 24 Id. at 531–32, 535, 537. In this case Astarte was denied her rights by the application of the California unconstitutional CCP §391 et Esq.; and case S273684 "at issue void case 53979 with entitled matters" was intentionally suppressed, ignored and dismissed by the court and justices and Astarte's name added to the

Vexatious Litigant List.

[Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process shall be vacated CCP Sec 473(d), Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 - Klugh v. U.S., 620 F.Supp. 892 (D.S.C. 1985), Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940). A "void judgment" as we all know, grounds no rights, forms no defense to actions taken there under, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been. 10/13/58 FRITTS v. KRUGH. SUPREME COURT OF MICHIGAN, 92 N.W.2d 604, 354 Mich. 97. On certiorari this Court may not review questions of fact. Brown v. Blanchard, 39 Mich 790. It is not at liberty to determine disputed facts (Hyde v. Nelson, 11 Mich 353), nor to review the weight of the evidence. Linn v. Roberts, 15 Mich 443; Lynch v. People, 16 Mich 472. Certiorari is an appropriate remedy to get rid of a void judgment CCP Sec 473(d), one which there is no evidence to sustain. Lake Shore & Michigan Southern Railway Co. v. Hunt, 39 Mich 469.]

14. This flexible approach has been the one followed by the Courts. E.g., Twining v. New Jersey, 211 U.S. 78 (1908); Powell v. Alabama, 287 U.S. 45 (1932); Palko v. Connecticut, 302 U.S. 319 (1937); Snyder v. Massachusetts, 291 U.S. 97 (1934). Davidson v. City of New Orleans, 96 U.S. 97, 102 (1878); Public Clearing House v. Coyne, 194 U.S. 497, 508 (1904). Ex parte Wall, 107 U.S. 265, 289 (1883). Compare Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272 (1856), with Ng Fung Ho v. White, 259 U.S. 276 (1922). Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 163 (1951) (Justice Frankfurter concurring). Opp Cotton Mills v. Administrator, 312 U.S. 126, 152, 153 (1941). 30 321 U.S. 503, 521 (1944). of progress or improvement.

15. The Fourteenth Amendment of the California Constitution called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. The Fourteenth Amendment guarantees that no citizen can be deprived of property without due process of law. See U.S. Const. amend. XIV.

16. The best-known power of the Supreme Court is **Judicial Review**, the ability to interpret the Constitution of the Court and authority to declare a Legislative or Executive act in violation of the Constitution, is not found within the text of the Constitution itself. The Court established this doctrine in the case of Marbury v. Madison (1803). When the court rules that

laws or government actions violate the spirit of the Constitution, "they profoundly shape public policy."

17. For review of the denial of relief from a **void** judgment/orders/decisions; to the denial of protected constitutional due process rights. The Respondents and the justices did fail their mandatory duty under their Code of Judicial Ethics, under color of law with denial of "Protected Constitutional Rights" to set aside the unenforceable judgment in void case **53979** at issue in Supreme Court of California case S273684 and return Astarte's legally owned real properties. INSTED the court did arbitrarily suppress and dismissed her case and called her a "Vexatious Litigant," and added her to the California List without any hearing or supporting evidence or a right to be heard [suppression of evidence], under the "**Unconstitutional CCP §391 et Esq.**" Astarte to that point was never on the "LIST."

VII. CALIFORNIA PRIMARY RIGHTS DENIED

18. [California Primary Rights, and Supreme Law of the Land. Pursuant to California and U.S. CONSTITUTION Due Process and Equal Protection rights there is NO statute of limitation for denial of constitutional rights, with loss of subject matter jurisdiction. Any Judgment is a void judgment, if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process; and a fraudulent grant deed created in breach of fiduciary duties as in Case **53979** a void case at issue S273684. Thereby no court can come down with an order, judgment or decision against a unenforceable judgment. 28 U.S. Const. Amend. 5; and California Constitution Amend 14. "It is clear and well established law that a void case for loss of jurisdiction are cases that can be challenged in any court at any time." *Old Wayne Mut L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. The Justices in Astarte's cases failed to follow the law, the Constitutions, and their sworn code of ethics. This Poe se petitioner follow the rules of the court and the law to do the best she could do, to be granted justice in her case. Any reasonable person would ask, why do the justices think, we the people should follow the law, that they do not? Question for this Court.

19. Fifth Amendment of the U.S. Constitutional states: **RIGHTS OF PERSONS** 23 *Hurtado v. California*, 110 U.S. 516, 528-29 (1884). 24 Id. at 531-32, 535, 537. the right to a fair trial, and protection against the taking of property by the government" The due process clause prescribed "the limits of those fundamental principles of liberty and justice that lie at the base of all our civil and political institutions. . . . It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law."

20. California Constitution Amend 14 states: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws, that the California courts ignored

21. It will show below that CCP § 391 et seq is unconstitutional; and has destroyed many American lives.

VIII. STATUTORY PROVISIONS INVOLVED BASED ON REAL FACTS

**FACTS OF LAW: the UNCONSTITUTIONALITY of
California Code of Civil Procedures §391 et Seq.; and the harm it has caused Astarte. and
WE the People in Violation of our Constitutional Rights**

**THEREBY ASTARTE ASK THIS COURT FOR JUDICIAL REVIEW OF CALIFORNIA
Unconstitutional CCP § 391 et Seq. THAT TOOK HER CONSTITUTIONAL rights to
fairness and justice in and to the COURTS and FROM THE PEOPLE of California.**

Gavin Christopher Newsom, Governor of California and the Judicial Branch; under color of law. WHO MADE ILLEGAL CONSTITUTIONAL CHANGES AND CREATED A CLASS OF POE SE LITIGANTS UNDER THE UNCONSTITUTIONAL CCP §391 et Esq.

**NOTE: That adequate relief for Astarte cannot be obtained in any other form or from
any other California court as shown herein**

22. California Constitution Section 1 states : All people are by nature free and independent and have inalienable rights. Among these are enjoying and to defend life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. California Governor has failed his duty to the American people of California.

23. California Constitution Article I **assigns the responsibility for making laws to the Legislative Branch (Congress).** Congress is divided into two parts, or “Houses,” the House of Representatives and the Senate. - California government has violated th California Constitution in Article in CCP §391 et Esq.; as shown below.

THE “STRICT SCRUTINY” STANDARD OF REVIEW for JUSTICE IS APPLICABLE BECAUSE:

- A) THE FUNDAMENTAL RIGHT OF ACCESS TO THE COURTS IS AFFECTED;
- B) THE DISCRIMINATION AGAINST PRO SE LITIGANTS IS “INVIDIOUS”;
- C) THE PRO SE CLASSIFICATION IS ITSELF A PROTECTED CLASS UNDER LAW;
- D) SPEECH IS BEING REGULATED IN A PUBLIC FORUM; AND,
- E) §391 ET SEQ DISCRIMINATES AGAINST A SUSPECT CLASSIFICATION FOR THOSE TOO POOR TO AFFORD ATTORNEYS’ FEES.

24. Astarte's understanding CCP § 391 et Esq. was created by the California government, the Association of Business Trial Lawyers in Southern California, and the Judicial Branch of the California Courts to force pro se litigants to hire an attorney to benefit the attorneys and courts. Through the years they have added new sections to Title 3A Vexatious Litigants CCP § 391 - 391.8; to call all pro se litigants vexatious litigants and blacklist them under 391.7,

thereby they are prohibited to file a case in court for the rest of their life because they are too poor to hire an attorney. Any reasonable person would believe that would be total injustice by the government and the Judicial branch of the courts?

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

26. **CCP § 391.7 VIOLATES DUE PROCESS BY OFFENDING THE GUARANTEE OF THE MAGNA CHARTA THAT JUSTICE IS NOT FOR SALE — LITIGANTS CANNOT BE REQUIRED TO PAY TRIBUTE TO OFFICERS OF THE COURT IN ORDER TO BE HEARD**

27. Due process is violated if a practice or rule “offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. Snyder v. Massachusetts (1934) 291 U.S. 97, 105. The guarantee of the Magna Charta that justice is not for sale is just such a principle.

28. “To none will we sell, to none deny or delay, right or justice.” (Magna Charta 40). . The guaranty of free justice is derived from the Magna Charta. “It is intended to prohibit gratuities or exactions given or demanded for the direct purposes of influencing the course of legal proceedings and to prevent the selling of justice by the sovereign . . . the guaranty is aimed not merely against bribery and corruption, but against the imposition of unreasonable charges for the use of the courts.” (16D CJS, s.v., Constitutional Law, § 1433 — emphasis added).

29. Under California law, an attorney at law is regarded as an officer of the court, of any court in which he appears. *People v. Mattson* (1959) 51 Cal.2d 777,793. Every litigant must hire a lawyer in order to be avoid the snares of CCP §391 et seq. A litigant blacklisted under §391.7 must hire a lawyer just to be heard initially. Therefore, §391.7 offends the guarantee of the Magna Charta that justice is not for sale. The courts of California belong to the public — not to one particular industry. “Courts exist to promote justice, and thus to serve the public interest.” (American Bar Association, Canons of Judicial Ethics §2).

30. **THE BLACKLISTING SCHEME OF CCP SEC. 391.7 CONSTITUTES CALIFORNIA GOVERNMENT CENSORSHIP BY AN UNLAWFUL PRIOR RESTRAINT ON THE RIGHT TO PETITION — IMPERMISSIBLE UNDER THE FIRST AMENDMENT**

31. That congestion in the courts is not a ground for denying access to the courts. See Weeks v. Roberts (1968) 68 Cal.2d 802. “It is the task of the law to remedy wrongs which merit redress even at the expense of incurring a torrent of litigation.” (*I Am Jur 2d* §43, s.v. “*Novelty of action*”). Pro se litigants are not the cause of overcrowded courts. The honest straightforward pro se litigant who makes mistakes out of ignorance is far less a threat to the judicial system than the conniving lawyer who turns a simple dispute into years and years of fee-generating (and court-congesting) litigation. Abuse of judicial process is properly the subject of case-by-case judicial determinations.

32. A licensing scheme “avoids constitutional infirmity only if it takes place under

procedural safeguards designed to obviate the dangers of a censorship system. "Freedman v. Maryland (1964) 380 U.S. 31,58. None of the procedural requirements are met by CCP §391.7. For example, there must be an opportunity for an adversary hearing. Carroll v. Princess Anne (1968) 393 U.S. 175,182-3. The Supreme Court has "condemned statutes . . . which required that permits be obtained from local officials as a prerequisite to the use of public places, on the grounds that a license requirement constituted a prior restraint . . . , and, in the absence of narrowly drawn, reasonable and definite standards for the officials to follow, must be invalid. (Niemotko v. Maryland (1981) 340 U.S. 268, 271) Under CCP §391.7 no such standards exist. CCP Sec. 391.7(b) requires only that the litigation to "have merit". However, the merit of litigation is determined by the litigation itself not by a pre-judgment."

33. **Note:** Incidentally, the right to file litigation is not limited to "meritorious litigation". "[A] man with a poor case is as much entitled to have it judicially determined by usual legal process as the man with a good case" (Bartholomew v. Bartholomew (1942) 56 Cal.App.2d 216,224). "Our courts, both state and federal, have always been open to litigation of complaints irrespective of how baseless they eventually prove to be." (Stevens v. Frick (1966) 259 F.Supp.654, 657).]

34. **Note:** A pre-filing restrictive order must be narrowly tailored to closely fit the specific vice encountered (De Long v. Hennessey (1990) 912 F.2d 1144; Bridges v. California (1941) 314 U.S. 252). This is not the case under §391.7.

35. CCP Sec. 391.7 constitutes government censorship. So-called "vexatious litigants" are suppressed and censored just as were the newspapers found to be "malicious, scandalous and defamatory" in Near v. Minnesota (1930) 283 U.S. 697, 712. Where the Minnesota courts were empowered to enjoin the dissemination of future issues of a publication because its past issues had been found offensive — "This is the essence of censorship.". Near at 713.

36. Likewise, under CCP §391.7, constitutionally protected meritorious litigation is suppressed; and dismissed under CCP § 391 et. Esq. SUCH AS Astarte herein case.

37. **LIFETIME LOSS OF A FUNDAMENTAL CONSTITUTIONAL RIGHT IS PUNISHMENT UNCONSTITUTIONALLY DISPROPORTIONATE TO THE "OFFENSE" OF LOSING FIVE LITIGATIONS IN A SEVEN-YEAR PERIOD, under an arbitrary decision by a court judge or justice.**

38. The Eighth Amendment to the U.S. Constitution prohibits "all punishments which by their excessive length or severity are greatly disproportionate to the offenses charged." As Astarte's herein case.

39. The gravity of the offense and the harshness of the penalty are two of the criteria used for determining whether a punishment is unconstitutionally disproportionate. Solem v. Helm (1983) 463U.S. 277.

39. A California statute making it a crime merely to be addicted to the use of narcotics without any further blameworthy conduct, was held unconstitutional under the Eighth and Fourteenth Amendments. Robinson v. California (1961) 370 U.S. 660. ". . . imprisonment for ninety days is not, in the abstract, a punishment which is cruel or unusual. But the question

cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the “crime” of having a common cold.” (*Robinson*, *supra* at 667).

40. In other words, any significant punishment for conduct that is not at all blameworthy is unconstitutional. The CCP §391 et Esq. punishments are significant. However, the “offense” is no more blameworthy than having a common cold. The gravity of the “offense” is zero [Losing five lawsuits in a seven year period (CCP §391(b)(1))], or near- [A single “tactic” deemed to be “frivolous” (CCP §391(b)(3))]. Therefore the punishment is disproportionate.

41. Another criteria used for determining constitutionality is comparison with the punishments imposed on other offenders in the same jurisdiction. Sole. In California, lawyer-represented litigants receive no punishment whatsoever for having lost five litigations in the previous seven year period.

42. CCP SECTION 391(b)(3) DENIES THE LAYMAN PRO SE LITIGANT DUE PROCESS OF LAW BY HOLDING HIS FILINGS TO THE STANDARD OF AN ATTORNEY.

43. Contrary to *Haines v. Kerner* (1972) 404 U.S. 519, 520 (“allegations of the pro se litigant” are held “to less stringent standards than formal pleadings drafted by lawyers”) (in *Dioguardi v. Durning* (1944) 139 F.2d 774, a recent immigrant layman with limited English language ability achieved an appellate reversal in pro se.

44. Moreover CCP §391(b)(3) gives any judge discretion to strip a layman pro se litigant of fundamental constitutional rights based solely on that particular judge's subjective interpretation of the term “tactics that are frivolous”. The phrase “tactics that are frivolous” -- especially when applied to filings of a layman pro se litigant -- is too indefinite a term to be the basis of enforcement. The term “frivolous” is inherently vague and subjective. Frivolousness is in the eye of the beholder. A civil statute which is too indefinite to enforce is invalid. See *Seaboard Acc.Corp. v. Shay* (1931) 214 Cal.361.

45. **Note:** "Webster's defines the term 'frivolous' to mean 'of little or no weight or importance.' Webster's does not say 'of little or no weight or importance' to whom. *GOLDSMITH, "Frivolity is in the Eye of the Beholder"*, 139 N.J.L.J. 435 (1-30-95, p.23).

46. A statute that “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application” is invalid under the due process clauses of both the Fifth and Fourteenth Amendments to the United States Constitution. *Connally v. General Construction Co.* (1926) 269 U.S. 385, 391; *Wotton v. Bush* (1953) 41 Cal.2d 460,464.

47. California Civil Procedure Code §391(b)(4) denies the pro se litigant due process of law thereby UNCONSTITUTIONAL. **Note::** By applying a mere finding made in one action as res judicata for all future actions. The “vexatious litigant” finding is just that, a finding. It is not an order or a judgment. A finding is not a judgment. Sec.391(b)(4) denies due process of law to all so-called “vexatious litigants” because, under §391(b)(4), the finding that a pro se litigant is a “vexatious litigant” is given the res judicata force of a judgment and made applicable to all

future actions without benefit of a hearing.

48. SECTION §391.7 DENIES DUE PROCESS BY REQUIRING AN ACTION TO BE TAKEN WITHOUT SPECIFYING THE PROCEDURE FOR ACCOMPLISHING THAT ACTION.

49. A person called "vexatious" under §391.7 is required to obtain "leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of such an order by a vexatious litigant may be punished as a contempt of court." (§391.7(a)). However, nowhere does the statute specify what procedure the vexatious litigant should follow to obtain that leave. Contrast this with *Brown v. Gibson* (1983) 571 F.Supp.1075, where the court set out in detail a procedure for that single litigant to follow in filing a "Motion for Leave to File Civil Action".

50. It is procedure that spells much of the difference between rule by law and rule by whim or caprice. *Joint Anti-Fascist Refugee Committee v. McGrath* (1951) 341 U.S. 123,179.

51. At the threshold of any equal protection analysis, the court must determine the level of scrutiny or standard of review which is appropriate to the case at hand. *Gould v. Grubb* (1975) 14 Cal.3d 661. If legislation involves a fundamental right or affects a suspect classification, the statute is closely scrutinized and will be upheld only if it is necessary for furtherance of a compelling state interest. *County of Los Angeles v. Patrick* (1992) 11 Cal.App.4th 1246.

52. Fundamental Right. The right to defend one's properties in court (and to be free of government stigmatization) is a fundamental First Amendment right. *California Motor Transport Co. v. Trucking Unlimited*, 404 US 508 (1972).

53. **In Pro Se. The right to do so in pro se is a further protected right. "... the right to file a lawsuit pro se is one of the most important rights under the constitution and laws."** (*Elmore v. McCammon* (1986) 640 F. Supp. 905,911).

54. Invidious Discrimination. Section 391 et seq invidiously discriminates against so-called "vexatious litigants". The label "vexatious litigant" is clearly a mark of discredit — a stigma. The word "vexatious" has been said to mean the same thing as "malicious". See 92 C.J.S., s.v. "Vexatious". The public branding of an individual implicates interests cognizable as either "liberty" or "property". *Jenkins v. McKeithen* (1969) 395 U.S. 411. Where the State attaches "a badge of infamy" to the citizen, due process comes into play. See *Wieman v. Updegraff* (1952) 344 U.S. 183,191.

55. Note: The actions for which a "vexatious" label may be affixed need not be malicious or truly "vexatious" in any way. "A State cannot foreclose the exercise of constitutional rights by mere labels." (*NAACP v. Button* 371 U.S. 415,429).. Such as Astarte's herein case?

56. Under California CCP §§ 391.7 and 391(b)(4) the name of any litigant who fails to hire a lawyer may be put on an official "blacklist" distributed by Judicial Council for the purpose of being barred — for life (see §391(b)(4)) — from filing any litigation (except small claims court) and to be stigmatized as a "vexatious litigant". Such as Astarte's herein case.

57. This can result from conduct which is not at all blameworthy — something as inconsequential as having filed one or two motion papers in a single litigation which a judge deems to be unmeritorious (see §391(b)(3)) or having been unsuccessful in five litigations in a seven year period (see §391(b)(1)) regardless of the merit of those litigations. Of course, simply losing a lawsuit says nothing about the merit of the lawsuit.

58. **THE PAINS AND PENALTIES OF SECTION 391 ET SEQ APPLY ONLY TO LITIGANTS WHO FAIL TO HIRE A LAWYER (ATTORNEY-REPRESENTED LITIGANTS ARE EXEMPT) THEREFORE IT DENIES EQUAL PROTECTION UNDER THE 14TH AMENDMENT TO ALL OTHER CALIFORNIA PRO SE LITIGANTS**

59. Public Forum. The courts are a public forum. “When government regulation discriminates among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized.” (*Carey v. Brown* (1980) 447 U.S. 455, 461-2). “In a public forum, by definition, all parties have a constitutional right of access and the State must demonstrate compelling reasons for restricting access . . .” (*Perry Education Assn. v. Perry Local Educators' Assn* (1983) 460 U.S. 37,55).

60.. **CCP SECTION 391 ET SEQ MAY BE CHALLENGED AS AN UNCONSTITUTIONALLY OVERBROAD STATUTE.**

61. The threat of being blacklisted chills the right to petition for all California pro se litigants. In addition, regarding those already blacklisted, the prefilings order sets up a lifetime threat of punishment for exercising their First Amendment right to file a lawsuit: “. . . Disobedience of such an order by a vexatious litigant may be punished as a contempt of court.” (§391.7(a)).

62. ” Likewise here, §391 et seq operates to cut off entirely access to the courts. Section 391 et seq, far from being narrowly-tailored, applies to all types of litigation rather than to one unique type.

63. The concurring opinion of Mr. Justice Douglas uses equal protection analysis (invidious discrimination based on poverty) to arrive at the same result. [Note: Taliaferro sidesteps the equal protection issue by viewing only the lawyer side (as litigator) rather than the client side (as litigant): “The restriction . . . to persons proceeding in propria persona is not arbitrary or unreasonable. Attorneys are governed by prescribed rules of ethics and professional conduct, . . . not applicable to litigants in propria persona.”.

64. The concurring opinion (in part) of Mr. Justice Brennan holds that the courts cannot be closed to an indigent in any kind of litigation.

65. “Where money determines not merely ‘the kind of trial a man gets,’ . . . but whether he gets into court at all, the great principle of equal protection becomes a mockery; under CCP §391 et seq. A State may not make its judicial processes available to some but deny them to others simply because they cannot pay a fee.” (*Boddie v. Connecticut* (1969) at 389) U.S Supreme Court.

66. Likewise, a state cannot make its judicial processes available to those who hire a lawyer but deny them to others simply because they cannot afford to hire a lawyer.

67. THAT EVEN A TEMPORARY DEPRIVATION OF A PROTECTED RIGHT (THE RIGHT TO FILE A LITIGATION) IS CONSTITUTIONALLY PROHIBITED AS IN FUENTES V. SHEVIN. *Wolfgram* (at 50-55) acknowledges that the right to sue is part of the right to petition under the First Amendment to the United States Constitution.

68. The right to petition encompasses the right to sue. (*California Transport v. Trucking Unlimited* (1972) 404 U.S. 508, 510 . . . 'The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government.' (*Chambers v. Baltimore & O.R. Co.* (1907) 207 U.S. 142, 148 . . . 'Litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.' (N.A.A.C.P. v. Button (1963) 371,512-513, 430 . . .)" (*Wolfgram* at 52-53).

69. **TAKE NOTE:** "The First Amendment, including specifically the right to petition, is 'incorporated' against the states by virtue of the Fourteenth Amendment. (*Hague v. C.I.O.* (1939) 307 U.S. 496, 512-513 . . ." (*Wolfgram* at 52). The word "punished" makes it clear that the sanction is punitive and not merely regulative. Criminal rather than civil sanctions are intended by CCP §391.7. Where the object of the proceedings is to vindicate the dignity or authority of the court, contempt proceedings are regarded as criminal in character, even though they arise from or are ancillary to a civil action. *Morelli v. Superior Court of Los Angeles County* 1 Cal.3d 328,333. Under §391.7, to exercise a fundamental First Amendment right, a blacklisted person "will have to take significant and costly compliance measures or risk criminal prosecution". See *Virginia v. American Booksellers Assn.* (1987) 484 U.S. 383,392-393..

70. **SECTION 391 ET SEQ CONSTITUTES A BILL OF ATTAINER** that is PROHIBITED BY ARTICLE I, §10, UNITED STATES CONSTITUTION A bill of attainder is "an act of a legislature declaring a person, or a group of people, guilty of some crime, a legislative act which inflicts punishment without a judicial trial.". *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219,224.

71. **TAKE NOTE:** "No State shall pass any bill of attainder" (U.S. Constitution, Art. I, §10). This clause was intended as an implementation of the separation of powers doctrine, as a general safeguard against legislative exercise of the judicial function." See *United States v. Brown* (1965) 381 U.S. 437,441-449. **CALIFORNIA Government controls CCP Section 391 et Esq.**

72. **TAKE NOTE:** Section CCP §391 et seq. inflicts punishment on members of a particular class of persons without a judicial trial to determine whether each is individually blameworthy.

"Legislative acts, no matter what their form, that apply . . . to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." *United States v. Lovett* (1945) 328 U.S. 303,315. The

vice of attainder is just that. The Legislature decides for itself that certain persons or classes of persons are blameworthy and deserving of sanction. United States v. Brown at p. 445.

73. **TAKE NOTE:** Section CCP §391 et seq inflicts punishment — rather than imposing a mere regulatory burden. Legislation which inflicts a deprivation on a named or described person or group constitutes a bill of attainder whether its aim is retributive, punishing past acts, or preventative, discouraging future conduct. Crain v. City of Mountain Home, Ark. (1979) 611 F.2d 726. The prohibited punishment may be of any form or severity. United States v. Brown at 447. The punishment of a bill of attainder may be of a civil rather than criminal nature. See United States v. Lovett (1945) 328 U.S. 303,316. A civil sanction constitutes "punishment" when the sanction, as applied in an individual case, serves purposes of retribution and deterrence, the twin goals of punishment. U.S. v. Morgan (1994) 845 F.Supp. 934,939-940. The deprivation of any civil right for past conduct is punishment for such conduct. Disqualification from the privilege of appearing in the courts has been imposed as punishment. Cummings v. State of Missouri (1866) 71 U.S. 277,320.

74. **TAKE NOTE:** The blacklisting under §391.7 constitutes a government "taking" of property rights which are causes of action. A cause of action is property. Haro v. Southern Pac.R.Co. (1936) 17 Cal.App.2d 594. See James v. Oakland Traction Co. (1909) 10 Cal.App. 785; Anderson v. Ott (1932) 127 Cal.App. 122. The existence of Judicial Council's blacklist is further confirmation that §391.7 is a bill of attainder:

"Officially prepared and proclaimed governmental blacklists possess almost every quality of bills of attainder." (Joint Anti-Anti-Fascist Refugee Committee v. McGrath (1951) 341 U.S. 123, 143-144).

75. **TAKE NOTE:** Being blacklisted constitutes a permanent and lifelong (see CCP §391(b)(4)) government defamation. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. . . . The purpose of such notice and hearing is to provide the person an opportunity to clear his name." **That the California Courts do not do?** Board of Regents v. Roth (1971) 408 U.S. 564,573). The victims of CCP §391 et seq, however, cannot clear their names . . . that is why Astarte has come to the U.S. SUPREME COURT . . . SHE IS NOT A VEXTATIOUS LITGANT and is only in court with uncontradicted real trial evidence; for the return of her real properties; rental income therefrom; and her home; all taken by extrinsic fiduciary fraud; and the California Court keeps taking it from her without any reason. "At this time there is over 2000 poor people on that VEXTAIOUS LIST."

76. **DEPRIVATION OF ASTARTE'S RIGHTS UNDER COLOR OF LAW** Section 242 of Title 18 makes it a crime for that person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States or a State for one minute or their entire life.

77. For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of

law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, justices, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim. The offense is punishable by a range of imprisonment up to a life term.

78. Suspect Classification. CCP Sec. §391 et seq. discriminates against poor people who cannot afford attorneys' fees to litigate civil or probate matters. "The Supreme Court has overturned laws because of their impact on the poor." See *Douglas v. California* (1963) 372 U.S. 353. See also *Boddie*, *supra* at 389. Wealth is a suspect classification deserving of special scrutiny.

79. The Supreme Court has ruled against wealth discrimination when fundamental rights would be conditioned on making payments beyond a person's means. Note: "The discriminatory aspects of the vexatious litigant provisions would be most apparent in a situation involving ASTARTE who had been forced to proceed in *propria persona* because she lacked the funds to hire an attorney, BECAUSE the courts intentionally ignored her case thereby denying her constitutional rights of due process on her case with merits. Thereby the taking and keeping of her legally owned real properties as shown above and she was then forced to come to the U.S. Supreme Court as she is now considered a vexatious litigant under CCP Sec. §391 et seq and will get no further consideration in any California Court.

80. It might be argued with considerable force that while a state may apply a wide range of criteria in classifying persons or groups, financial capacity is not a permissible standard for conditioning access to the judicial system." (Note: California's Vexatious Litigant Legislation 52 CAL.L.REV. 204 (1964) at 205-206 — later citing *Griffin v. Illinois* (1956) 351 U.S. 12 and *Burns v. Ohio* (1959) 360 U.S. 252).

81. CCP Sec 391 et seq is not necessary for the furtherance of a compelling state interest. The same legislative purpose is accomplished by the following: California Penal Code §158 ;California Civil Procedure Code §128.5; (superseded by §128.7); California Civil Procedure Code §907; Motions for summary judgment; Actions for malicious prosecution; and, The rule of res judicata — all of which achieve the same purpose but without discrimination against the pro se litigant.

82. **TITLE 18 SEC. 242** of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege .

83. The "DOCTRINE OF "Judicial Review" holds that the courts are vested with the

authority to determine the legitimacy of the acts of the executive and the legislative branches of government. The State as well as Federal courts are bound to render decisions according to the principles of the Federal Constitution

84. **TAKE NOTE:** In *Marbury v. Madison*, 5 U.S. 137; 1 Cranch 137; 2 L. Ed. 60; (1803) U.S. LEXIS 352; In this decision, the Chief Justice asserted that the "Supreme Court's responsibility to overturn unconstitutional legislation was a necessary consequence of its sworn duty to uphold the Constitution."

85. **A Constitution rests on seven basic principles. They are popular sovereignty, limited government, separation of powers, federalism, checks and balances, republicanism, and individual rights.** As shown herein "The California Constitution is no longer for the people; it now belongs to the California government."

IX SOME FACTS IN REVIEW - for case S273684 / S214906 from case 1st-DCA Div-5 case A164839

86. **Background Information:** The First District Court of Appeal DIV 5 did state in case A164839 that Astarte was declared a vexatious litigant in 1989, in Probate case P8900547 "Clements v. The Rice Estate." Astarte was an interested party in the case. See: Vexatious Litigant List dated 5/1/2022 [APP A EX 1] whereby, if indeed she had been declared a vexatious litigant she would have been on the LIST all this time. However the First District Court of Appeal DIV 5 has now arbitrarily determined Astarte to be a vexatious litigant under the unconstitutional CCP Sec 391 et seq., and that her transferred case **S273684 has NO merit.** That this Court will find below is not true. The court did in its disposition also state: "Other involuntary dismissal" of Astarte's case after they arbitrarily put her on the vexatious litigant list 6/1/2022 posted to the court's Docket on 6/6/2022 without notice or any rights to a real evidence hearing under law.

87. **The Supreme Court of California, San Francisco CASE S273684** filed 3/21/2022; Docket [APP A EX 2] at issue Marin County Superior Court **CIV 53979**] that was a transfer case from the above **Supreme Court of California case S273684 [APP A EX 3]** with **entitled matters** for decision/option by the **First District Court of Appeal** and assigned to Division Five as case **A164839**; who intentionally ignored and suppressed the case; and all filed pleadings by Astarte; as the court's Docket will show.

88. Due to the transferred case S273684 to A164839 being suppressed and ignored in case A164839; Astarte filed for a REVIEW of the case; it was returned to the **California**

Supreme Court and designated as Case S274906 [APP A EX 4]. Docketed as DAVIS v. CA 1.5 (DAVIS). [original case Davis v. Superior Court Marin case 53979 at issue in S279684. Loyal D. Davis, Real Party in Interest; his Attorney Stephen Kaufmann].

89. Case S273684/ S274906 was dismissed by The Supreme Court of California who claimed "entitled matters" without knowing or finding the facts; that claimed Astarte was a vexatious litigant under unconstitutional California Code of Civil Procedures Sec. 391 et. seq, and she was added to the California Vexatious Litigant List without evidence or a hearing or notice; not even a copy of the dismissal of her case with merit. Based only on the **unsigned unenforceable** decision by Justice Humes of Court of Appeal Division One; that was sent to The Supreme Court of California by First District Court of Appeal from case A 164839.

90. The unsigned decision of Justice Humes that said "Ms Davis has failed to show a reasonable possibility that her writ petition would have merit." The Supreme Court of California transferred case S273684 with **entitled matters** to first district court of appeal case A164839. The courts docket will show case S273684 was docketed timely on 3/29/2022 with **entitled matters**, "called merits." Then it was intentionally deleted from the court's docket.

91. However the first district court of appeal removed the facts they had received from case S273684 with entitled matters for decision from the court's Docket. The court then suppress and ignored the case. Thereby stated; Astarte Davis had filed a petition for writ and that she was a vexatious litigant and STAYED THE MATTER.; " The only writ filed in case A164839 was the transferred Supreme Court of California case S275684 with entitled matters; that means the case has merits?

92. Justice Humes offered his unsigned an unfiled and thereby unenforceable "order/decision" [APP A EX 5] that stated in part: "**Ms. Davis has failed to show a reasonable possibility that her writ petition would have merit.**" California transfer case S273684 with entitled matters. **Is that not merits?** That was the only case at issue in case A164839. Justice Jim Humes decision/order was not filed on the court's Docket [APP A EX 6] only his words were cited 7/18/2022.

93. Astarte at no time filed an additional writ in A164839. The case was than docketed as "involuntary dismissal;" due to intentional false information to harm Astarte by Division five. Justice Humes state, enforcement of the Vexatious Litigant status under CCP391 et. seq; that is an unconstitutional illegal rule that failed to follow the law. That has now taken

all of Astarte's RIGHTS from her in California courts.

94. The one FACT, that all these courts failed to recognized or consider was the case at issue, and in all cases, is the void Marin case 53979 that was unenforceable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue.. *McDonald v. Mabee* (1917) 243 US 90, 37 Sct 343, 61 L ed 608. Thereby, cannot be added together as the required five cases under CCP391 et. seq. Astarte has "never" filed against the same party five times, in seven years as required.

X. STATEMENT OF THE CASE - S273684 / S274906 AT ISSUE VOID CASE 53979 (known as S274906)

In Supreme Court of California WRIT case S273684 at issue the uncontradicted trial minutes of Marin case 53979, and evidence, that had entitled matters; is a void case / that lack subject matter jurisdiction / unenforceable judgement with denial of Astarte's due process rights.

That Can Be Attacked At Any Time in any court.

95. An order/judgment that exceeds the jurisdiction of the court such as Marin case 53979, is void, and can be attacked in any proceeding in any **court where the validity of the judgment comes into issue.** *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, 211 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) "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. The court in case S273684 could/should have under law set aside the void judgment CCP Sec 473(d), entered in excess of its jurisdiction and returned what was taken; instead the court transferred the case with entitled matters to First Court of Appeal case A164839?

United States Supreme Court Decisions on Void Case

96. A judgment may not be rendered in violation of constitutional protections. The validity of a void judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. In *Marbury v. Madison*, 5 U.S. 137; 1 Cranch 137; 2 L. Ed. 60; (1803); Void Judgment Is Also Void as a Matter of Supreme law, **Civil Rights Cases, 109 U. S. 3, 11, 17 (1883)**, and Federal Rules of Civil Procedure Rule 12 *Earle*

v. McVeigh, 91 US 503, 23 L Ed 398. See also *Restatements, Judgments' 4(b)*. Prather v. Loyd, 86 Idaho 45, 382 P2d 910. 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.

97. 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. CCP Sec 473(d),

98. 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.

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

MARIN COUNTY SUPERIOR COURT- CIVIL VOID CASE 53979 - NEW EVIDENCE WITH LACK OF SUBJECT MATTER JURISDICON - WITH UNENFORCEABLE JUDGMENT, DO TO LOYAL DAVIS' BREACH OF FIDUCARY DUTY CREATING A FRAUDULENT GRANT DEED TO BETTY DAVIS [LOYAL'S MOTHER] THAT BECAME EXTRINSIC FRUD IN THE CASE at issue in S273684 / S274906 WITH UNDISPUTED REAL EVIDENCE

VOID MARIN COUNTY SUPERIOR COURT CASE 53979 AT ISSUE

REAL FACTS

that was intentionally ignored with suppression of uncontradicted real evidence that has done irreparable harm to Astarte, as ALSO shown in the above cases.

100. **FACT:** Marin Case 53979 Property Trial Minutes Judge Joseph Wilson Presiding : **First Day Trial [APP A EX 7]** 4/2/1975 [Trial Minutes Court Pg 123] Astarte's attorney Madeline McLaughlin put into evidence Astarte and Loyal's **Marriage Certificate**, admitted at 1:42 pm, and their **Agreement** concerning Loyal and Astarte's assets of their marriage, admitted at 3:02 pm.

101. **FACT:** Loyal's fiduciary fraudulent Betty Davis Grant Deed concerning the real properties at issue was entered into evidence by Attorney Kaufmann on the **Second Day of Trial [APP A EX 8]** on 4/3/1975 [Trial Minutes, Court Pg 124-125]; without copy to Astarte, first time the grant deed appeared in Case 53979, six years after the fact; and the first time Astarte saw it to read was in her 2016 research.

102. **FACT:** At the Trial part of the properties matter Case 53979 Judge Wilson's statement was "concise" in its meaning on the **Third Day of Trial**

[APP A EX 9] 4/4/1975. [Trial Minutes, Court Pg 126] stated: "This matter coming on regular continuance, parties present, "DEFENDANT Loyal Davis moves to EXCLUDE any FURTHER TESTIMONY on REAL PROPERTY, court shall grant **MOTION to EXCLUDE** further evidence, which includes property that involves Betty Davis, as of this date; a total violations of Astarte's due process rights to be heard by the wrongdoers."

103. **That is breach of Loyal's fiduciary duty by Astarte's husband with malice who did create the fraudulent Betty Davis [Loyal's mother]. That was an Accommodation Grant Deed, that was filed and entered as evidence in the case at trial, that became extrinsic fraud against Astarte, that deprived her of her rights in the case to be heard concerning her real properties by the above Motion to Exclude.** California Penal Code § 484(a), The Betty Davis Grant Deed and is now uncontradicted as criminal conduct.

104. **FACT:** Astarte was denied her protected constitutional rights of due process to be heard at trial [Fifth and Fourteen Amendments of the state and federal constitution]. The Betty Davis fiduciary fraudulent accommodation grant deed was/is extrinsic/collateral fraud in the case, created with deceit and malice by Loyal Davis and his Attorney Kaufmann; that is also criminal conversion grant thief. That did keep Astarte from being heard at trial by order of Judge Wilson in support of her marital position on real properties at issue in the case; or any documents concerning Loyal and Astarte's real property or otherwise at trial. Astarte was seriously financially, and personally harmed by the taking of her legally owned real properties, the rental income there from; along with her home since 1962, her personal property therein; with Astarte's and sons lost of their lifestyle; a planed action by known false and fraudulent information for personal gain. Penal Code 532 (a) "Every person who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor, or property; such as herein."

105. **FACT:** The above **MOTION to EXCLUDE** was not offered to Astarte before or at trial or found in the case file. Attorney Kaufmann did file the **"Betty Davis Accommodation 1969 Grant Deed"** [APP A EX 30] The deed was induced with intentional misrepresentation, by Loyal's attorney Stephen Kaufmann that became extrinsic fraud and continues to do irreparable harm to Astarte and sons; into evidence in case 53979 on 4/3/1975,"

that was intentionally not presented to Astarte Davis for examination nor was she given a copy; she was not cross or direct examined concerning this document. The Parties kept that document intentionally from her, as Astarte did not sign the GRANT DEED before the Notary on 6/24/1969, and they knew she would ask to have the Notary [long standing business friend of Loyal and worked at Pacific Coast Title, San Rafael] with his notary book come before the court; and the fact Astarte was not in Marin County at that time; she and her three sons were in Carmel. The Grant Deed did further violate the court's RESTRANDING ORDER filed 6/17/1969 [APP A EX 10] in full force and effect]. *In Re Cass*, 476 B.R. 602, 614 (*Bankr. S.D. Cal. 2012*), aff'd 606 Fed. Appx. 318 (9th Cir. 2015), citing Swinford v. Rodgers, 23 Cal. 233, 235-236 (1893) The law is well settled, that a conveyance made with intent to defraud is void...a "criminal act;" that is now uncontradicted, and the deed is considered void. Handy v. Shiells (1987) 190 Cal.App.3d 512.

106. **Fourth Day of Trial [APP A EX 11]** Miscellaneous court matters. [Trial Minutes, Court Pg 127,128]. There is no "Fifth Day of Trial" see Courts Page numbers.

107. FACT: Judge Wilson statement was "concise" in its meaning on the Sixth Day of Trial **[APP A EX 12]** 4/8/1975 [Trial Minutes, Court Pg 129], after Astarte is denied by known extrinsic fraud her protected rights pursuant to the Fifth and Fourteenth Amendments to the state and federal constitution to be heard or present evidence at trial, on 4/3/1975 [shown above] concerning all real properties, income therefrom; her home, and personal properties in her home; that is CONTRARY TO LAW. Court finds Astarte has no property claim against Loyal Davis. Orders JUDGMENT [APP A EX 13] filed dated 5/21/1975 for Defendant Loyal Davis; A Judgment that took Astarte legally owned real properties and more by extrinsic fraud upon the court and her; as she was intentionally not allowed to be heard in support of her case, by her husband's premeditated actions with malice, in violation/breach of his mandatory fiduciary duty to his wife. CA family Code §721. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed. Loyal Davis did voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent. *Wolf v. Superior Court* (2003), 107 Cal.App 4th 25, 29. Loyal Davis did intentionally with negligent misrepresentation, that includes concealment or nondisclosure; with knowledge of the falsity of the misrepresentation, is scienter. Justifiable

reliance and resulting damages; with intent to induce reliance on his misrepresentation. Small v. Fritz (2003) 30 Cal.4th 167, 173.

108. The Judgment is contrary to law and unenforceable thereby the court had no authority to make; therefore it should be set aside. That is deceit and criminal conversion grand thief by Astarte's husband Loyal Davis. The law accord to every person who has a legal interest in a proceeding; the right to be heard according to law.

109. **FACT: The ORDER of annulment was "Pendente Lite" which is a temporary order until "Judgment." The Judgment did not issue any further orders concerning the Order of Nullity; thereby it is no longer valid under law.**

110. In Case 53979, Petitioner Astarte Davis did perfect a timely request for a "new trial" dated from the ruling of the court in Case 53979, with hearing of 7/10/1975. On 6/15/1975 Judge Wilson did file his **ORDER DENYING MOTION FOR NEW TRIAL [APP A EX 14]**. The writ of mandate issues only "where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." CCP sec. 1086; *Irvine v. Gibson*, 19 Cal.2d 14 [118 P.2d 812]; *Dobyns v. Cheshire*, 9 Cal. App. 2d 77 [48 P.2d 743]; *Hitch Superior Court* 2 Cal. App. 2d 406 [38 P.2d 190]. Since mandamus is available as an alternative remedy where an appeal would be inadequate, the failure to appeal cannot render the trial court's determination res judicata, therefore an appeal in this case is inadequate; as a writ of mandamus and prohibition is proper remedy under the "facts before this Court."

111. The Court "assumes the truth of the allegations in the pleading, but does assume the truth of contentions, deductions, or conclusions of law." California Logistics, Inc. v. State of California (2008) 161 Cal.App. 4th 242, 247. The existence and scope of duty are legal question for the court." Merrill v. Navegar, Inc. (2001) 26 Cal. 4th 465, 477.

112. Astarte is Denied Opportunity to Be Heard. A judgment, order, decision of a court without hearing the party or giving 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.

"FINDING OF FACTS AND CONCLUSIONS OF LAW" BY ATTORNEY KAUFMANN [LOYAL DAVIS ATTORNEY] that are intentional false statements, stated as fact and excepted as the truth by the court, and knowingly signed by the judge [case 53979].

113. **FACT:** The "Judgment" in Case 53979 was further based on this document known as "Findings of Facts and Conclusions of Law," [APP A EX 15] written and filed by Attorney Kaufmann on 5/20/1975; who did not "offer for signature approval or consent of form" to Astarte, or her attorney "as required" before filing; "thereby void". *Bentley v. Hurlburt*, 153 Cal. 796, 803 [96 P. 890]. That both Loyal Davis and Attorney Kaufmann knew it was intentional "false representations to the court."

114. **FACT:** Attorney Kaufmann's "Findings of Facts and Conclusions of Law" filed in Case 53979; on 5/20/1975 Judge Wilson did except it as the truth of the matter when he signed it. It was known intentional false information with fraud and deceit. More than half of the statements in the "Findings" are not the truth; Judge Wilson did sign the document whereby it denied the court authority and implicated their conspiracy.

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

116. **FACT:** Restraining Order filed 6/17/1969 [see app A ex 10] was breached/violated by the Accommodation Grant Deed to Betty Davis, created by fraud in breach of Loyal Davis' fiduciary duties to his wife Astarte. that was recorded 6/27/1969 is now void. [see app A ex 30] Is property listed as **80 Lincoln Dr., Sausalito.** On 8/27/1970 Betty Davis caused a **Grant Deed** for property known as **80 Lincoln Dr., Sausalito** [APP A EX 16] **was granted** to "Homes by Loyal, Inc.," that is Loyal Davis; [listed on the Betty Davis 6/27/1969 fraudulent Accommodation Grant Deed also listed on Astarte's claims" of real properties. False information by Attorney Kaufmann in his "Findings," and excepted by Judge Wilson as the truth of the matter; and used as the basis of his Judgment of the case, in an absolutely non-judicial act under the authority of his office, under color of law, is abuse of discretion and ethics "Thereby did further compromise the judgment of the court, and case 53979."

117. **FACT** - Also the "knowingly and willfully false statement, stated as fact and truth" in Kaufmann's "Findings 26, Page 7" that states: "Neither Petitioner Astarte Davis nor Defendant Loyal Davis has any interest in certain real property referred to as 'Tamalpais Valley Lots.' **Grant Deed from Margaret Wright to Loyal Davis a married man** Book

1259 Page 411 Recorded March 3, 1959, for LOTS A,B,C,D, of Subdivision No.1, Tamalpais Valley [see app A ex 26]. Listed as "concealed properties [and on Loyal's fiduciary fraudulent accommodation grand deed to Betty Davis]. False information by Attorney Kaufmann in his "Findings." Excepted by Judge Wilson and used as the basis of his Judgment, in a non-judicial act under the authority of his office; that further compromised the Judgment and the court.

118. **FACT:** On 8/7/1969 less then two months after the fraudulent grant deed was notarized on 6/24/69. An **ASSIGMENT [APP A EX 17]** between **Homes by Loyal, Inc.,** [sole owner, Loyal Davis,] **and Betty Davis** that states: "That Homes by Loyal Inc., for a valuable consideration the receipt of which is hereby acknowledged does by these presents, assign, transfer and set over onto LOYAL D. DAVIS all rights, title in and to any real property now in the name of, are that may hereafter become in the name of Homes by Loyal, Inc., and all rights to moneys due, or that may hereafter become due to Homes by Loyal Inc., and the right to collect said moneys." Signed 8/7/1969. The **Grant Deed for property known as 80 Lincoln Dr., Sausalito [see app A ex 16]** to "Homes by Loyal, Inc.," that is Loyal Davis; and listed on Loyal's fiduciary **fraudulent Betty Davis Grant Deed [see app A ex 30]** of 6/27/1969. "None" of the Davis assets or rental income left the control of Loyal Davis.

119. **FACT:** Judgment in Case 53979 is based on the intentional false information taken from the known false information in the "Finding of Fact and Conclusions of Law" as created by Attorney Kaufmann and Loyal Davis and signed by Judge Wilson as the truth. Filed false evidence; If one FACT is false, then the entire document is false, under Penal Code 115, 132, 134.

120. After Astarte's intentional denial of due process to be heard by the judge at trial on the Betty Davis "extrinsic, fiduciary fraudulent 1969 Grand Deed;" and all other martial matters at issue, as shown above in the court's trial minutes. The Judgment [see app A ex 13] issued on 5/21/1975 in Case 53979 and granted without jurisdiction to Loyal Davis that is contrary to The Supreme Law of the Land; thereby "judgment" is unenforceable and should be set aside.

121. The "Judgment" is named "In Re the Marriage of Astarte Davis and Loyal Davis. The "Complaint for Annulment" [written by Loyal Davis, as he wanted out of the marriage] was the title of the case before the court. Attorney Kaufmann knew without a doubt Loyal and Astarte were married in 1958 at the chapel on the grounds of UC Berkley as he attended the

wedding.

122. The above premeditated actions is abuse of discretion by Kaufmann, and criminal actions by Loyal and Betty, that did deny Astarte and our three sons the rights to our home since 1962, her legally owned half of all real properties; the rental income therefrom; her personal property in her home; and the lifestyle of her and sons; that she did work very hard for in the years of her marriage as housewife and mother bringing up their sons; and her help in the making of their dreams come true.

123. Case 53979, on its face has unenforceable orders and judgments that still stands, and continues to do irreparable harm to Astarte and our sons without justice being done. Acts done in the name of law without jurisdiction, is when Judge Wilson acted in the face of clearly valid legal rights of Astarte; his mandatory duty to the law, and rights under the Supreme Law of the Land; the constitution and his Canons that did expressly deprive Astarte of fairness and justice. By that conduct; all was lost. *Zeller v. Rankin*, 101 S. Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326 (1980).

124. **FACT:** Astarte would not have been harmed if not for the Loyal and his Attorney Kaufmann and judge/court agreeing and participating in a criminal conspiracy to take and keep what is not legally theirs; for theirs own benefit, for what they are not entitled; that was Astarte's legally owned real properties; thereby they were acting out of self serving interests without any remorse.

125. An order or judgment that exceeds the authority of the court is void, as in Marin Case 53979 at issue; can be attacked in any proceeding in any court where the validity of the judgment or order comes into issue. (*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.

126. **FACT:** In those years of Case 53979 the judgment of a court was a decision that people respected, and excepted as final in the matter, and went on with their life; which is what Astarte and her three sons did. That was not the truth of the matter, as she learned in 2016.

The case below is shown to this Court in support of her husband, Loyal's state of mind.

127. **Marin Case No. 123736 Loyal Davis v. Robert Nicco:**

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

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

128. The 1990 judgment in Loyal Davis v. Robert Nicco continues with language that directly affects Astarte, his wife in this case: During those intervening years plaintiff had an additional opportunity to demonstrate his perfidy. Sometime in 1969 plaintiff's former wife, Astarte Davis, initiated annulment proceedings against the herein plaintiff Loyal Davis. Plaintiff and Astarte Davis participated in a marriage ceremony in 1958 . . . In this proceeding, Plaintiff concealed from his spouse and from the Court the interest he now asserts in the Tiburon property. By concealing his alleged interest he deprived Astarte Davis of her marital interest therein. Any reasonable person would ask "where was Astarte's attorney?

SCIENTER - WAS LOYAL DAVIS' STATE OF MIND IN CASE 53979

The Nicco case proves evidence of character and conduct of Loyal Davis in Case 53979. *California Evidence Code 1101. Davis v. Nicco JUDGMENT [APP A EX 18].*

THE ABOVE STATEMENT SHOWS THE TAKING AND KEEPING AT ISSUE IN CASE 53979 OF ASTARTE'S LEGALLY OWNED REAL PROPERTIES BY THE CALIFORNIA GOVERNMENT AND JUDICAL BRANCH OF THE COURTS BY THE UNCONSTITUTIONAL CCP391 et. seq.

**ASTARTE WITH SUCCESSORS RIGHTS UNDER CCP Sec. 377.30 HAS
LEGITIMATE CLAIM OF ENTITLEMENT TO "ALL"
PROPERTIES LISTED BELOW**

129. **460 Cascade Drive [2-units] [APP A EX 19]**, Mill Valley; Corporation Grant Deed from Kimberly Development Co., to Loyal D. Davis and Astarte Davis, his wife - Recorded 5/27/1959, Book 1282 Page 357; **Paid off 5/20/1965** - Deed of Reconveyance Book 1942 Page 238,239; **Value \$2,093,294.00**; and

130. **316 Miller Avenue [9-units] [APP A EX 20]**, 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; **Value \$2,700.000.00**; and

131. **7 Homestead Boulevard [3-units] [APP A EX 21]**, 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; **Value \$1,135,000.00**; and

132. **4079 Paradise Drive [home & guest house] [APP A EX 22]**, Tiburon; Corporation Grant Deed to Loyal D. Davis and Astarte Davis, his wife as Joint Tenants - Recorded 10/1/1962, Book 1616 Page 301,301; **Paid off 10/2/1964** - Deed of Reconveyance Book 1866 Page 632. **Davis' home since 1962; Value \$4,450,000.00**; and

133. **1024 Redwood Boulevard [8-units] [APP A EX 23]**, Mill Valley Joint Tenancy Deed from K. H. Powell and Wanda T. Powell, his wife, as Joint Tenants to Loyal D.

Davis and Astarte Davis, his wife in joint tenancy, with full right of survivorship - Recorded 9/30/1963, Book 1731 Page 196,197; **Paid off 12/19/1983** loan still in Astarte's name - Deed of Full Reconveyance, #83063473; 7 Apts @ \$2,750.00 = \$19,250.00 Mo = \$231,000.00, **Total Sale Value unknown;** and

134. **80 Lincoln Avenue [15-Condos] [APP A EX 24]**, 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. 15 Condo approximately \$921,117.00 each, 15 @ \$921,117.00 each = est. Value \$13,816,755.00.
NOTE: The property loans that were not paid off by that date, remained in Astarte's name until they were; as the records above show.

Astarte had Justifiable Reliance on her husband Loyal, the father of our sons; she had no reasons to believe he would harm her or our sons. Astarte learned a big lesson about human nature in her research of her case.

135. At no time did Astarte give Loyal Davis, her husband any authority to sell, refinance, or otherwise concerning the above real properties after 6/11/1969. Under our agreement as husband and wife any transactions would have been invalid/void/without authority, and in breach of Loyal's fiduciary duties to Astarte. What reasonable person with three sons to take care of, would turn and walk away with nothing; when it legally belonged to her and would be needed for the upbringing of our three sons?

136. As shown above most of the real properties was paid off and un-encumbered as of 6/11/1969; the day Astarte and sons went to Carmel, for a few weeks; and then were to return to their home in Tiburon/Belvedere. That did not happen.

137. Astarte's justifiable reliance upon her husband Loyal Davis, the "fiduciary of our assets [Wolf v. Superior Court (2003) 107 Cal.App.4th 25, 29] did cause harm and damages in the loss of her share of the legally owned rental properties, income therefrom; her home since 1962 by the taking and keeping for himself - 'fiduciary thief by fraud & deceit,' and her lifestyle, that did cause extreme emotional stress for her and their sons.

LOYAL DAVIS' CONCEALED PROPERTIES

138. **Concealed Properties:** 1-5-commercial properties all located Marin County. Loyal Davis sole owner of the following concealed, and undeclared real property that was paid for out of Loyal & Astarte's joint funds; they are also listed on the Betty Davis grant deed located at:

- 1] **[228 Marion Ave [APP A EX 25]** , Mill Valley, Median value \$1,398,471;
- 2] **Tam Valley Lots (4) [APP A EX 26]** A,B,C and D, Subdivision One, Tamalpais Valley, Median value each lot \$1,111,698 = \$4,446,792.
- 3] **Hazel Ave. Lot [APP A EX 27]**, Mill Valley, APN 28-121-07, Median value \$869,735;
- 4] **150 Hazel Ave. [APP A EX 28]**, Mill Valley, APN 28-083-08, Median value \$1,087,334;
- 5] **357 Pine Hill [APP A EX 294E]**, Mill Valley, Median value \$1,108,842.

OTHER UNKNOWN PROPERTIES FOUND IN RESEARCH

**In the name of Loyal Davis & Dawn Joan Davis
[not married Her real name is Joan Maher]**

139. "These properties were paid for by Loyal & Astarte's rental income money; therefore these properties should also belong to Astarte"

- 6] **928 Windy Lane #8**, Incline Village, NV - Paid for by Loyal & Astarte's rental income money.
- 7] **971 Little Burro Ct.**, Incline Village., NV. - Paid for by Loyal & Astarte's rental income money.
- 8] **7967 Hillside St.**, Oakland, CA - Paid for by Loyal & Astarte's rental income money.
- 9] **22566 Main St.**, Hayward CA- Paid for by Loyal & Astarte's rental income money.
- 10] **413 San Marco St.**, Fairfield, CA - Paid for by Loyal & Astarte's rental income money.

140. Astarte claims the Loyal Davis did knowingly, willfully and intentionally suppressed the facts - real evidence; as he had premeditated intent to defraud her, and did. Astarte claims she had no reason to suspect fraud or any wrongdoing, until 2016. *Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.4th 1423, 1430 [117 Cal.Rptr.3d 597]. This case has been on going since that time.

XI. REQUEST FOR RELIEF to be GRANTED IN THIS ACTION FOR ASTARTE'S CLAIM OF ENFORCEMENT FOR ASTARTE'S NAME TO BE "TAKEN OFF THE VEXTAIOUS LITIGANTS LIST;" AND TO RESTORE ASTARTE'S CIVIL RIGHTS AND CONSTITUTIONAL RIGHTS THAT WERE TAKEN AWAY IN THE INTERVENTION OF THE UNCONSTITUTIONAL CCP 391 ET ESQ.

In Marbury v. Madison, 5 U.S. 137; 1 Cranch 137; 2 L. Ed. 60; (1803) U.S. LEXIS 352; "In this decision, the Chief Justice asserted that the Supreme Court's responsibility to overturn unconstitutional legislation was a necessary consequence of its sworn duty to uphold the Constitution."

The case before this Court is a multifaceted case that has unavoidable and extraordinary circumstances that means a situation beyond the control of Astarte who invokes such a situation and the consequences of which could not have been avoided even if all reasonable measures had been taken.

The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it.

STATE OF CALIFORNIA UNCONSTITUTIONAL CCP § 391 et Esq.

Astarte prays that this Court will invoke Title 18 Sec 242 in this petition, and more; for the harm the Respondents have caused her under the unconstitutional CCP § 391 et Esq. and other, "Poe se" litigants; for the lack of fairness and justice under the color of law, ethics and denial of the state and federal constitutions.

California Supreme Court S273684 claims entitled matters for Marin Case **53979** at issue, a case with unenforceable judgment and lack of jurisdiction that has been and is being intentionally suppressed and ignored under color of law, that is "Manifestly Unjust." under the "Manifest Injustice Standard" that is an "EXTRAORDINARY CIRCUMSTANCE" - "AND GIVES A NEED FOR IMMEDIATE RELIEF," as the court has designated Astarte as a vexatious litigant under CCP § 391 et Esq. without a mandatory evidence hearing; treating her like a criminal? Astarte comes now to prevent, a continuing grave miscarriage of justice." United States v. Beggerly, 524 U.S. 38, 46-47 (1998).

Astarte comes to this Court for relief also, for what is promise fairness and justice under the SUPREME LAW OF THE LAND; as a "bill of attainder" [bill of attainder is an act of a legislature declaring a person, or a group of people, guilty of some crime] has issued against her

under the unconstitutional CCP § 391 et Esq. That is an unconstitutional act of legislature declaring a person, or a group of people, guilty of some crime, and punishing them, often without a trial under color of law. Astarte asserts "The **Manifest Injustice Doctrine**" is appropriate and should be applied to herein case. *Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 711 (1974); *In re Clark, Supreme Court of California* 5022475 (1992).

Astarte is [*"Hoping and asking for relief from this Court to/will overturn California law CCP 391 et seq. ; and the Judicial Vexatious List will no longer exist; and the Poe Se Litigants, so called CLASS by CCP 391 se seq will return to court for justice; that is all they ever wanted from the courts; nothing more."*] In *Marbury v. Madison*, 5 U.S. 137; 1 Cranch 137; 2 L. Ed. 60; (1803) U.S. LEXIS 352; "In this decision, the Chief Justice asserted that the Supreme Court's responsibility to overturn unconstitutional legislation was a necessary consequence of its sworn duty to uphold the Constitution."

XII REQUEST FOR EQUITABLE RELIEF TO BE GRANTED; THAT ASTARTE IS SEEKING THIS REMEDY; SHE MUST FIRST SATISFY THIS COURT THAT THE NORMAL REMEDY OF DAMAGES IS INADEQUATE, THE PRESUMPTION BEING THAT A TRANSFER OF IMMOVABLE REAL PROPERTIES, DAMAGES WILL NOT BE ADEQUATE

Astarte is requesting equitable relief of This High Court to set aside the void judgment of case 53979 and under **Replevin**: also known as "claim and delivery," is an action to recover REAL properties and personal property that was wrongfully taken. Unlike other forms of legal recovery, replevin seeks the return of the actual thing itself, as opposed to monetary damages. A monetary remedy doesn't quite make Astarte whole, which is the goal of any civil remedy; that all real properties listed herein must be transferred to ASTARTE, herein Petitioner in this dispute. "Replevin" is similar to specific performance and often used interchangeably in statutes. **Replevin Laws and CCP SEC 2716 (1) (1) Specific performance** may be decreed where the claims are unique or in other proper circumstances.

Astarte has stated exceptional circumstances that warrant the exercise of this Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other California court. Astarte prays that this Court will invoke her rights under the Supreme Law of the Land in this petition, and more; due to the continuing irreparable harm the Respondents have caused her for the intentional lack of fairness and justice under the color of

law and constitution in court; thereby giving fairness and justice to restore respect for our judicial system that belongs to the people..

Astarte's case is important as to fairness and justice in the courts; thereby invalidating the Loyal Davis' breach of fiduciary duty under his fraudulent grant deed and setting aside the judgement in void Case 53979 at issue in S273684/S274906. There is no other plain, speedy and adequate remedy in the ordinary course of law; for fairness and justice. As Astarte has herein shown, that in the ordinary course of law; her request must be issued upon the verification that she is the party beneficially interested. CCP §1086. Astarte will continue to suffer irreparable harm if such relief is not granted.

Any reasonable person would expect this Court to follow The Supreme Law of the Land and issue a mandate with directions under its authority to the PARTY IN INTEREST Astarte Davis, and as SUCCESSOR IN INTEREST who has been irreparably HARMED by the "taking of her legal and protected constitutional rights by the court under CCP 391 et Esq.;" and by intentionally suppressing, and ignoring Astarte's CASE like it did not exist.

Astarte prays that a writ of mandate be granted and issued by this Court to a "person," Astarte Davis who is such a person; a party in interest, and is successor in interest CCP Sec. 377.30. For this Court to compel the performance of an act to set aside the void judgment CCP Sec 473(d), and invalidate fraudulent Grand Deed to Betty Davis [shown herein void case 53979 known as S273684/S274906], thereby returning Astarte's legally owned real properties, and others listed properties in name of Loyal Davis, and others **paid for by the rental income from the Davis estate** as successor of survivorship to the Davis Estate assets as listed herein; that the law specially enjoins, as a mandatory duty resulting from the "TRUST" of Loyal Davis [Astarte's husband] who has breached his fiduciary duty to his wife under law who is entitled, and from that Astarte has been and is unlawfully precluded by that inferior tribunal [Case S273684/S274906 as to void Case 53979, and other related cases] to provide. CCP §1085(a).

In cases in which this Court is authorized by law to exercise its independent judgment, a court of equity for decision on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case. CCP Sec. 1085(f).

Astarte respectfully ask this Court to grant a "writ of mandate and issued in Astarte's favor," with notice to Marin County Recorder Office, Main County Superior Court, San Rafael,

CA to follow the law and direction issued to Astarte as successor for delivery of all documents necessary for return of her real properties and rental income therefrom in Marin County and more; and for Astarte to be relieved from the label of a blacklisted vexatious litigant under the unconstitutional CCP §391 et Esq. Any and all cases Astarte has filed were done in good faith with respect and belief in our judicial branch of the courts for justice.

For this case to continue without remedy would be a grave miscarriage of justice, a continuing denial of Astarte's Constitutional rights under 28 U.S.C. § 1331. This Court is authorizes to grant post-judgment remedies for "any other reason justifying relief from the operation of all orders and judgments in case S273684 with "entitled matter in void case 53979." The Supreme Court has also recognized Federal Civil Procedure Rule 60(b) permits an action by this Court "to prevent a continuing grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38, 46-47 (1998). If needed.

There is little doubt that the court would be required to grant relief upon an unequivocal showing of "Manifest Injustice"; to refuse to do so would constitute an abuse of discretion.

Successor in Interest: Beginning on November 23, 1958 and continuing through the present, Loyal Davis and Astarte Davis had/has a fiduciary relationship. As Loyal's wife she is his successor in interest CCP § 377.30; and his personal representative. Thereby as Loyal's successor in interest means she is the beneficiary of his/our estate and or succeeds to a cause of action [herein claims for relief] or to a claim to properties that are subject of any cause of action. In an action for damages for conversion by fiduciary fraud, it is the rule that **Astarte, Loyal's wife now owns 100 percent under rights of surveyorship interest in all properties; successor in interest as against a stranger who has no ownership therein, and recover the full value of the property converted and the rental income therefrom.**

Astarte in pro se asks this Court to GRANT the above relief to prevent further "manifestly unjust judicial conduct" under miscarriage of justice; and further relief this Court deems to be proper; including mandate instructing Marin County Records Office to work with Astarte on the transfer by grant deed on all real properties legally owned by her OR now belonging to her as SUCCESSER IN FACT of the LOYAL & ASTARTE DAVIS' ESTATE issued by this Court and to further instruct Marin County Superior Court to issue an accounting; and to return all rental income therefrom and or monetary funds obtained by any person or persons under the fiduciary fraudulent Grant Deed for real properties to Betty Davis due to the

void judgment of Marin case 53979 that lacks jurisdiction to grant. CCP Sec 473(d),

As a further requirement, it is clear that in order to comport with due process standards the statute under which Astarte seeks possession must be narrowly drawn so that it is acceptable only to those extraordinary situations in which Astarte's interest outweigh those of the Respondents. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 339 (1969); *Blair v. Pitchess*, 5 Cal. 3d 258, 283, 486 P.2d 1242, 1259, 96 Cal. Rptr. 42, 59 (1971). See also *Adams v. Dept. of Motor Vehicles*, 11 Cal. 3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974). Law which deprived individuals of their property without notice and hearing was not restricted to extraordinary circumstances. The court also reiterated the view that due process requires notice and hearing before even temporary deprivation of property or otherwise.

VIII FURTHER REQUESTS - CONCLUSION

Astarte states the truth of the matter as she understands and believes it to be in her petition under an extraordinary writs for denial of mandatory duty, failure of oath of office to give justice when in the case before them, they exceeded their jurisdiction when giving orders, decisions or judgement, causing lack of jurisdiction in their own case violating the principle of justice, that is apparent on the face of the record in the void case. They proceeded to act in violation of rule of natural justice without jurisdiction or in excess to their jurisdiction which is unconstitutional, denying Astarte's fundamental rights. This Court should consider the state appellate court should be held as the responsible party as to CCP Sec.391 et Esq. and the taking of all of Astarte Constitutional Rights.

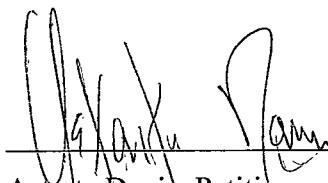
Astarte is asking for **SPECIFIC PERFORMANCE AND REPLEVIN** as the party who is beneficially interested. Who did the best she could do as a Plaintiff, with the complexities and difficulty to follow its convoluted narrative that encompasses all manner of diversions from the law; however the courts / justices had no reasons not to deal with something so simple as a void case with unenforceable judgment and to return what was taken by breach of fiduciary duty and fraud with malice. All of the above is non-judicial conduct/actions/decisions in their official capacity under color of law IN violations of their judicial ethics; is abuse of discretion.. Extraordinary writ has customarily been allowed to prohibit a lower court from exceeding its lawful jurisdiction. See, *United States v. District Court*, 333 U.S. 841, *Reversed*, 334 U.S. 265 (Enforcement of Mandate)

If no return by Respondents be made, the case may be heard on the papers of the Petitioner, as the Respondents will not be affected. CCP Sec. 1094. ALL of the above is reasons why a WRIT of POSSESSION to Astarte should be granted for all real properties listed herein; including all personal properties and all rental income therefrom accounted for and returned. with an ORDER to Marin County Recorders Office for what ever is necessary for the filing of all grant deeds transfer, and WRIT OF EXECUJTION if necessary; and any additional relief for the denial of her constitutional and legal rights this High Court would grant.

Injustice for one is Injustice for all

Respectfully submitted,

Date: September 26, 2022



Astarte Davis, Petitioner, In Pro se
Real Party In Interest and Successor in Fact CCP §377.30
PO Box 306,
Gualala, CA 95445
707-785-3580
astartedavis@hotmail.com

Please NOTE: their are FOUR AND HALF pages of TABLE OF CONTENTS

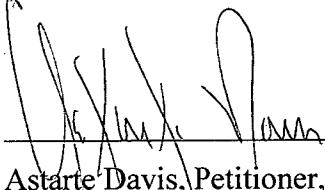
DECLARATION

"I, Astarte Davis state under penalty of perjury that the foregoing is true and correct. as I understand and believe it to be in accordance with. 28 U.S. Code § 1746.

Astarte further states that she has been given leave to proceed in forma pauperis in each court she has filed in. However in CA case A164839 she was granted leave to proceed; until the court unconstitutionally under CCP § 391.7 stated she was a vexatious litigant, which she is not and never was, as the California Vexatious Litigant List shows and case dismissed without mandatory hearing and evidence; that is at issue herein The Supreme Court of California case S273684 (did grant in forma pauperis for at issue Marin case 53979).

Respectfully submitted:

Date: November 7, 2022



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