

**IN THE UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE NINTH CIRCUIT**

**Case No. HI-16-1110**

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IN RE: LEONARD G. HOROWITZ  
*Debtor*,  
Chapter 13 Bankruptcy Case Number 1:16:-b-00239

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LEONARD G. HOROWITZ,  
Appellant  
vs.  
JASON HESTER and PAUL J. SULLA, JR.  
Appellees

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APPEAL FROM ORDER OF THE UNITED STATES BANKRUPTCY COURT  
Lifting Automatic Stay

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APPELLANT's REPLY TO APPELLEE'S ANSWERING BRIEF

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**APPELLANT's REPLY TO APPELLEE'S ANSWERING BRIEF**

This is an Appeal of the bankruptcy Court's *presumptively correct action* in Order Granting Relief From Stay filed April 15, 2016, favoring purported creditor, JASON HESTER (hereafter, "Hester") for "comity," pursuant to State court action Civ. No. 14-1-0304 (hereafter, "0304"), overlooking however: (1) the same State Court's

conflicting final judgment in the “first filed,” “last decided,” and “controlling” case, Civ. No. 05-0196 (hereafter, “0196”; **Exhibit 1**); (2) the Court’s challenged jurisdiction pursuant to the movant’s challenged standing; (3) a federal Order (**Exhibit 15**) disqualifying the movant’s attorney PAUL J. SULLA, JR. (hereafter, “Sulla”) from representing Hester in 0304 matters intertwined with the main bankruptcy estate Property central the Debtor’s reorganization plan; and (4) stay violations by Sulla committed to execute a Writ of Ejectment issued by the 0304 court that Sulla improperly and untimely served in violation of both his disqualification and the automatic Stay. (ROA Dkt #16, p. 12 of 17, ¶¶ 4-5) The Appellant argues but for Sulla’s malpractices, torts, crimes, and fraud upon the Court, the abstention would not have been erroneously granted, and the Debtor would not have been financially damaged, irreparably harmed, and eligible for compensation for actual damages, fees and costs, and punitive damages for contempt by FRCP Rule 42 and/or 28 U.S.C. § 636(e).

Accordingly, the Appellant seeks a reversal, the return of the Debtor’s Property into the estate and Trustee’s account that Sulla unlawfully converted, that is, recoverable under bankruptcy statutes 11 U.S.C. §§ 541, 549, 550, and 558, in keeping with crime victims’ rights law 18 U.S. Code § 3771. The Appellant also requests disciplinary measures against Sulla for civil and/or criminal contempt pursuant to FRCP Rule 42 and/or 28 U.S.C. § 636(e).

"[T]he burden is on appellant to convince the appellate body that the presumptively correct action of the circuit court is incorrect" (citation omitted). [Costa, 5 Haw.App. at 430, 697 P.2d at 50.](#)

## I. BACKGROUND

### A. Relevant Facts

The Debtor's victimization by Sulla's predecessor-in-interest, Cecil Loran Lee (hereafter, "Lee"), began in 2003 when Appellant Horowitz and his RBOD ministry contracted in good faith to purchase, unbeknownst to Horowitz, Lee's encumbered and fraudulently transferred Property. Lee, Horowitz later learned, was a predicate felon and convicted large volume marijuana trafficker. Sulla's purported "client" Lee sold Horowitz the "commercial" Property—a "bed & breakfast" and "health spa"—that Lee and Sulla made sure could not be used commercially by Horowitz. A year after trial, Sulla's treachery became a quest to repossess the one-of-a-kind geothermal spa Property after Horowitz/RBOD paid all the money due on the Mortgage Contract, and prevailed against Lee's 0196 judicial foreclosure action in 2008. (ROA Dkt # 16, pp. 7-8 of 17, ¶¶ 3-6; ROA Dkt # 16-1, p. 2 of 6, ¶ 5)

The Property is a highly coveted tourist attraction and health retreat on the Big Island of Hawaii. Evidencing unfair competition and deceptive trade, and attorney Sulla's malpractices, contemporaneous with Horowitz prevailing in 0196 against Lee's judicial foreclosure, *Sulla incorporated a competing health spa and retreat center in 2008 only 2.5 miles from the Debtor's estate to complement Sulla's other health-related businesses (Exhibit 16)* (ROA Dkt # 16, pp. 8 of 17, ¶¶ 3-6; and 9 of 17 ¶¶ 2-3) Since then, and Lee's death in 2009, Sulla is alleged to have acted to acquire the Appellants' Property by forgery, fraud, malicious prosecutions, and conspiracy with Hester. In 2015, these alleged co-conspirators

were joined by attorney Stephen D. Whittaker, replacing Sulla who was *disqualified* (**Exhibit 15**) as a necessary witness at trial in 0304 by the Honorable Magistrate Judge Richard L. Puglisi. (ROA Dkt # 16, pp. 8 of 17, ¶¶ 1-2.) That trial never happened and both State cases are under appeals at this time.

Horowitz prevailed in the 0196 case wherein foreclosure was DENIED and the Property rights were granted Horowitz and his sole corporation—The Royal Bloodline of David (“RBOD”). (**Exhibit 1**) But in August, 2014, Sulla filed in the same State court to Quiet Title to certify a non-judicial foreclosure (“NJF”) Sulla committed in defying the 0196 court Final Judgment(s) and *res judicata* doctrine, while the 0196 monetary award to Horowitz was in appeal (**Exhibit 2**). After Horowitz removed the 0304 case to federal court, on January 5, 2015, Sulla was disqualified by Judge Puglisi, and thereafter precluded from representing Sulla’s alleged strawman, Hester. (**Exhibit 15**)

Following remand to the 0304 court, Horowitz was deprived of his right to due process,<sup>1</sup> and on December 30, 2015, the same *corrupted State court* issued a final judgment in 0304, (**Exhibit 2**) grossly conflicting with its 0196 final judgment(s). “Hester” was granted Horowitz’s Property by Quiet Title and Writ of Ejectment after Horowitz’s standing was unlawfully denied. (**Exhibit 2**)

Horowitz filed for bankruptcy protection on March 9, 2016, before “Hester’s” (really Sulla’s) Writ was noticed or served. While the automatic Stay was in effect on March 12, 2016, and again during the week of March 22, 2016, after Sulla received

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<sup>1</sup> The 0304 court has yet to issue Findings of Fact and Conclusions of law after the Appellant repeatedly petitioned the 0304 court to file them. The Appellant alleges the court’s inadvertence conceals facts evidencing bad faith and civil rights violations.



timely Notice of the Stay, *Sulla violated the Stay and his Disqualification* by serving “Hester’s” March 1, 2016 stamped Writ of Ejectment from 0304, on March 12, 2016. *Sulla’s service was willfully and maliciously delayed twelve (12) days to preclude the Debtor-Appellant from filing an appeal within the ten-day period permitted for appeals in State.* (ROA Dkt 16, p. 12 of 17, ¶¶ 2-7)

Sulla’s actions damaged the Debtor significantly more than \$3,900 in emergency attorneys fees. The violation caused the Debtor’s loss of thousands more in personal properties, agricultural products, aqua-cultural produce, water fixtures, farm equipment, and more. Sulla’s violations caused the Appellant irreparable harm, severe emotional distress, and ultimately the Debtor’s dispossession from his home—all proximal to the Honorable Court having granted “Hester” relief of Stay. (ROA Dkt 16, p. 12 of 17, ¶¶ 4-5)

At hearing on “Hester’s Motion” filed and argued exclusively by Sulla, on April 12, 2016, Hester did not appear, never testified, and did not file an affidavit or declaration as the purported “moving party.” Yet, with no facts legally before the Court, “Hester’s” Motion was granted for “comity” exclusively on Sulla’s testimony and Declaration. Neither Sulla or the Court controverted or mentioned the 0196 pro-Horowitz decision, or the alleged 0304 violations of Horowitz’s rights. The Court similarly withheld comment and judgment on Sulla’s certain violations of Judge Puglisi’s Disqualification Order. The Court also withheld judgment on Sulla’s evidenced conflicting interests, and alleged Stay violations. The Court justified its relief of Stay, thusly:

**“[T]he State Court has decided that the Debtor doesn't own this property anymore. That the foreclosure occurred, and was valid, and the title is no longer in the Debtor.... So**

my inclination is to grant the motion and send you all back to State Court and let the State Appellate Courts sort out where we stand.” [Emphasis added.]

## **B. Supplemental Facts Precluding Abstention**

Abstention is appropriate in service to justice, but not injustice through extreme tolerance of Sulla’s malpractices, torts and crimes. Sulla’s history includes a Public Censure for arguing repeatedly like a “reckless man.” (**Exhibit 12**) Sulla was disqualified for preparing at least one fraudulent tax return in 2007 in CR NO. 07-00354 (**Exhibits 13**). Sulla’s defiance of his disqualification in this instant matter “related to” the 0304 case and property conversion that has a direct bearing on the Appellant’s bankruptcy estate and reorganization plan. (**Exhibit 15**) Sulla acted under color of law to possess the Appellants’ Property by forgery, fraud, and bad faith claim that the Debtor defaulted on mortgage payments to Hester, a claim controverted by the Fifth Amended Final Judgment in the “first filed,” “last decided” “controlling” 0196 case (**Exhibit 1**).

The Debtor evidences and alleges Hester is being financed exclusively by Sulla (**Exhibit 11**). Given Sulla’s \$50,000 “loan” to Hester secured by the Debtor’s Property, it is unreasonable to presume Hester is anything other than Sulla’s judgment-proof strawman. Prima facie evidence of this fact is shown in **Exhibits 10 and 11**—on June 14, 2011, at the precise time Hester became indebted to Sulla, Sulla transferred the colored title to Hester by a Quitclaim Deed. (**Exhibit 10**) That deed was preceded and voided by Sulla’s forgery of the Foreclosing Mortgagee’s Articles of Incorporation. (**Exhibit 8**)

Clear and convincing evidence that Sulla acts unfairly and competitively against the Debtor is shown not only in **Exhibit 16**—the 2008 incorporation of a competing health and agricultural facility in close proximity to the subject

Property. Sulla began this instant illegality on May 15, 2009, by stepping into the deceased Property Seller Lee's shoes to evade probate.<sup>2</sup> Sulla acted between March and June that year to evade Horowitz's Notices to Release the fully-paid Mortgage; and then ***Sulla photocopied Lee's signature(s) on a set of Articles of Incorporation to manufacture a sham "religious" entity into which Sulla could fraudulently transfer Horowitz's Mortgage and Note. (Exhibit 8)*** In Sulla's haste, he Assigned Horowitz's fully paid Mortgage and Promissory Note on May 15, 2009, into the not-yet-legally-existing corporation titled THE OFFICE OF OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS (hereafter "GOB"). (**Exhibits 6 and 7**) Sulla manufactured, altered, and forged Lee's photocopied signatures to manufacture GOB and Hester, as verified by expert analysis. (**Exhibit 8**) Then Sulla fraudulently claimed the dying Lee had left Horowitz's account payable to GOB. Sulla then extorted Horowitz to pay \$350,000 in "false debt," or otherwise face a second foreclosure action, even though Horowitz had already defeated the first 0196 foreclosure action, and had paid in full the Mortgage that was legally voided anyway by the trial court condemning Lee's fraud in the sale.<sup>3</sup> (See: **Exhibit 1**, page 5, footnote 1.) (ROA

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<sup>2</sup> Lee died June 27, 2009 in Arizona with his exclusive heirs, his sisters and son.

<sup>3</sup> Extortion is one of the "predicate acts" susceptible to a civil RICO claim, which the Appellants bring. *Shearson/American Express Inc. v. McMahon*, 482 US 220, 240 – Supreme Court 1987 "[T]he makings of a 'pattern of racketeering' are not yet clear, but the fact remains that a 'pattern' for civil purposes is a 'pattern' for criminal purposes", quoted from: *Page v. Moseley, Hallgarten, Estabrook & Weeden, Inc.*, 806 F. 2d 291, 299, n. 13 (CA1 1986) Yet § 1964(c) is no different in this respect from the federal antitrust laws. . . . [T]his Court observed: "[T]he fact that conduct can result in both criminal liability and treble damages does not mean that there is not a bona fide civil action. The familiar provisions for both criminal liability and treble damages under the antitrust laws indicate as much." *Ibid.* . . . We similarly find that the criminal

Dkt # 16, p. 3 of 17, Background.; Dkt # 16, pp. 11 of 17, ¶¶ 1-4.)

Summarily, after: (1) “Hester” and Sulla’s predecessor-in-interest, Cecil Loran Lee (hereafter, “Lee”) *lost foreclosure case* 0196 to Horowitz in 2008; (2) and Horowitz paid the full amount due on the Mortgage and Note; (3) Horowitz demanded a Release of Mortgage; and (4) Lee/Sulla/Hester evaded those Notices to Release the Mortgage. Sulla quickly and haphazardly then transferred the *void* Mortgage and Note to steal Horowitz’s money or repossess the Property. On-or-about May 15, 2009, Sulla forged Lee’s photocopied signatures on the set of fraudulent transfer instruments: (a) the Articles of Incorporation that were forged and altered by Sulla; (**Exhibit 8**) (b) a fraudulent Assignment of Mortgage (**Exhibit 6**); and (c) a fraudulent Assignment of Promissory Note. (**Exhibit 7**)(ROA Dkt # 16, p. 5 of 17, ¶ 2.) On May 15, 2009, however, Sulla’s fraudulent conveyances were untimely, as GOB was not legally established until nearly two weeks later—May 29, 2009. (**Exhibit 8**) Thus, Sulla administered the Mortgage and Note Assignments into a not-yet-legally-existing sham “church” purportedly administered by “Hester” (but really by Sulla). Then, while the 0196 case was under appeal for monetary award deficiencies depriving Horowitz’s estate, and after Horowitz was granted free and clear ownership of the Property pursuant to his Warranty Deed, (**Exhibit 5**) timely payments, (**Exhibits 1 and 26**) substantial equity, and personal co-signature on the Note, (**Exhibit 4**) Sulla conducted his NJF in violation of HRS 667-5 strict requirements. (ROA Dkt # 16, p. 13 of 17, ¶ 3.) Sulla feigned the entire “default” and contrived the alleged amount due by failing to credit Horowitz for any of his payments. (ROA Dkt # 16, p. 13 of 17, ¶¶ 1-5.) Thereafter, Sulla and his co-counsel unlawfully succeeded in moving the same Third Circuit Court that denied judicial

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provisions of RICO do not preclude arbitration of bona fide civil actions brought under § 1964(c).”

foreclosure to certify Sulla's non-judicial foreclosure despite all the aforementioned defects. *The court simply denied Horowitz's standing, precluded his defenses, neglected res judicata and collateral estoppel doctrines, refused to vacate an erroneous excusable default of the dissolved RBOD (even after an attorney timely appeared to represent the sole corporation), and then granted "Hester" summary judgment and Quiet Title to Horowitz's Property.* (ROA Dkt # 16, p. 5 of 17, ¶¶ 1-5.)

The bankruptcy Court lifted the Stay discounting the aforementioned history and avoided mention of the 0196 "controlling" case without express reason. The Court also overlooked Sulla's disqualification from representing Hester, and the Debtor's evidence of Sulla's conflicting interests. None of this was addressed by the Court that erroneously *presumed* the validity of the 0304 final judgment exclusively, and Sulla's false claims decisively, while finding the Appellants' pleadings for mercy and injunctive relief impotent.

The lifting of stay then condemned Horowitz to suffer Sulla's two criminal trespasses, the first on June 10, 2009, rebuked by Hilo Police resulting in criminal case C16016027, and the second on July 6, 2016, resulting in Property conversion.<sup>4</sup>

### **C. Relevant Laws Broken or Rights Violated**

"[N]othing in this section" of 28 U.S.C. § 1334(c) licenses injustice,

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<sup>4</sup> The first episode of breaking and entering is recorded in the Adversarial Proceeding record. That Sulla assault was stayed by Hilo police, resulting in criminal case C16016027. The second assault on the Appellants' Property and 14<sup>th</sup> Amendment rights was a "joint action" administered by Sulla and Maui Sheriff Patrick Sniffen. That trespass resulted in the illegal conversion of the Property after Big Island Sheriffs declined Sulla's commission. The joint action did not include Hester whatsoever! These facts supplement Sulla's violations of the Automatic Stay and violations of the Disqualifying Order of January 5, 2015, as pled by Horowitz. (ROA Dkt # 16, p. 12 of 17, ¶¶ 1-5.)

unreasonable and biased presumptions, citizen-damaging abstention, disregard for the State court's final judgment(s) in the "controlling" 0196 case, and disrespect for State and federal laws, including laws protecting victims of crime (e.g., 18 U.S. Code § 3771) and other laws protecting the Appellant's civil rights and property rights including 42 U.S.C. § 1981(a), § 1982, § 1983, § 1986, § 1988(a)(b)(c), § 1989, and § 1995.

In addition, under the exceptional circumstances in this case, the Court's April 15, 2016, abstention precluded just, equitable, and dutiful enforcement of bankruptcy codes: 11 U.S.C. §§ 541, 549, 550, 558, including avoiding Sulla's fraudulent transfers of the Appellant's real property, along with theft under color of law by complicit "joint actors" in State.<sup>4</sup>

#### **D. The Court's Jurisdiction**

This is an interlocutory appeal that is ripe under the Forgay Doctrine; (*Forgay v. Conrad*, 47 U.S. 201, 6 How. 201, 12 L.Ed. 404 (1848)). This case "arises under title 11," and "arises in" this bankruptcy case, albeit it is also "related to" claims brought but never adjudicated on the merits in either State or federal cases that are pending. "The district court for this district has referred all such matters ["arising under" or "arising in" bankruptcy] to the bankruptcy court."<sup>5</sup> (**Exhibit 31**)

## **II. ARGUMENT AND AUTHORITIES**

### **A. REBUTTING SULLA'S BAD FAITH PLEADINGS**

Sulla recklessly pleads in his introductory paragraph as he was Publically

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<sup>5</sup> Quoting Judge Faris, Memorandum of Decision on Motion to Dismiss, Adversary Proceeding No. 16-90015, Dkt #104, filed 07/08/16, p. 6 of 19, last sentence.

Censured for doing in *United States Tax Court v. Brian G. Takaba* 119 T.C. No. 18, Doc. No. 5454-99 (Dec. 16, 2002) “Petitioner has wandered far afield from the track established by the petition . . .” [pg. 18] and “multiplied the proceedings in any case unreasonably and vexatiously”[p. 19] “In the view of the Court of Appeals for the Ninth Circuit ‘bad faith’ is present when an attorney knowingly or recklessly raises a frivolous argument. *In re Keegan Mgmt. Co., Sec. Litig.* , supra; *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9<sup>th</sup> Cir. 1986) . . . We find that Mr. Sulla was reckless . . . that only a reckless man would have made that argument” [p. 26, ¶ 1]).

In the instant case’s opening paragraph, Sulla recklessly argues that Horowitz “is not the borrower on the mortgage or note which was foreclosed on, nor 2) a title holder of the Subject Property, nor 3) an occupant of the Subject Property.”

These statements within Sulla’s Declaration by counsel are willful, malicious and fraudulently concealing. Horowitz was “not the borrower on the mortgage or note which was foreclosed on” because Sulla fraudulently transferred the original Mortgage and Note by Assignments into his sham GOB entity creating two new contracts by fraud on which Horowitz was not a signatory! (ROA Dkt # 16, p. 5 of 17, ¶ 2.)(**Exhibits 6 and 7**)

More proof of Sulla’s “bad faith” is found in the Fifth Amended Final Judgment attached hereto as **Exhibit 1**. The 0196 court granted Horowitz monetary compensation and **affirmed Horowitz**: (1) owes Lee nothing (See page 5, footnote 1); (2) holds free and clear title by Warranty Deed (**Exhibit 5**); (3) was the “borrower on the mortgage” and also the “Individual” co-signer on the Note (**Exhibit 4**), and personal guarantor on the Note. Thus, Horowitz was obviously the borrower on the Mortgage and Note in a dual capacity—representing himself as

“Individual” co-signer, as well as the “body corporate” for the Mortgagee.<sup>6</sup> (The original Note makes no mention of Hester or Sulla.) Thus, Horowitz, and not Hester, had/has standing as a real party in interest in 0304, prejudicially and inexplicably precluded by the 0304 court; and (4) Horowitz possessed the Property until Sulla and his agents unlawfully trespassed on June 10, 2016, and again on July 6, 2016, to wrestle control of the Property from Horowitz, his estate caretakers, and fellow residents.<sup>7</sup> This refutes Sulla’s omissions and misrepresentation on June 27, 2016, that Horowitz was not “an occupant of the Subject Property.”

On page 8 of Sulla’s Reply Brief, he states that “Debtor holds no record title interest.” This is also patently false since not only is Horowitz identified on the Warranty Deed (**Exhibit 5**) as the title holder with RBOD, but also the County of Hawaii Tax Office records still show Horowitz as the owner of the Property, despite Sulla’s title transfer scheme on which Hester’s “ownership” rides. (**Exhibit 27**)

Sulla’s claim that any interest “RBOD held was extinguished by virtue of a foreclosure sale [by GOB]. . . “ (once again) is patently false, given Sulla’s forgery and alterations of GOB’s Articles of Incorporation. (**Exhibit 8**) The “Foreclosing Mortgagee” was *void* ab initio, as was Sulla’s NJF (as is Hester’s title, interest, and standing.)

Sulla compounds his fraud upon the court with *scienter*, by making no mention

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<sup>6</sup> The special property rights afforded the sole corporation *persona ecclesiae* by U.S. Supreme Court’s holdings are detailed in *TERRETT & OTHERS v. Taylor & others*, 13 US 43, 1815 (“[P]ersona ecclesiae [are] “capable, as a sole corporation of transmitting that inheritance to his successors;”<sup>6</sup> In other words, RBOD/Horowitz’s Warranty Deed interests in the Property were properly conveyed from RBOD to Plaintiffs as *persona ecclesiae* on July 11, 2012 in accordance with their rights, duties, equity interest, and the laws, including HRS 651C, that make Sulla’s fraudulent transfers of the Mortgage and Notes and subsequent NJF *void*.

<sup>7</sup> On July 6, 2016, Hilo Police Sargent Essentian informed Horowitz that he had closed the case. He claimed the forgery, fraudulent manufacture and transfer of securities, false filings with the State, including Sulla’s wire fraud, and Property theft (in the first degree), all evidenced by exhibits from State filings and court records, was exclusively “a civil matter.”



of the 0196 case, or Horowitz prevailing therein. And Sulla *tacitly admits the aforementioned torts and crimes by reason of FRCP Rule 8(b)(2) and (6), for failure to responsively plead to the substance of the allegations.*

On page 11 of Sulla's Reply Brief he states, "Debtor alleges he would have used [the \$200,000 jury award] to pay off the mortgage on the Subject Property." This gross misrepresentation is also based on substantive omissions. Sulla knows very well by **Exhibits 1 and 26**, that Horowitz *did use that jury award* to pay off the Note in full by February 27, 2009, in accordance with the 0196 court's post jury trial Order (**Exhibit 17**, FOF/COL, last paragraph) and the terms of the Mortgage Contract. Appellee "Hester" knows that final balloon payment was made in accordance with **Exhibit 3**; paragraph 16, directing "setting off" Horowitz's judgment credit at that time of the court-ordered final balloon payment that Horowitz made *many months before* the jury award was erroneously vacated by an untimely filed Motion for Judgment As a Matter of Law (still under appeal in State).

Sulla adds that Horowitz is "just crying foul . . . because he lost, the state courts must all be corrupt . . ." Countering, Horowitz in fact won the 0196 case, two additional State district court cases brought by Sulla, and prevailed also against Sulla's SLAPP lawsuit, Civ. No. 12-1-0417. The only *outrageously* "foul" court decision is the 0304 one granting Hester quiet title but for Sulla's fraud upon the court that precluded Horowitz's standing and summarily violated Horowitz's due process rights.


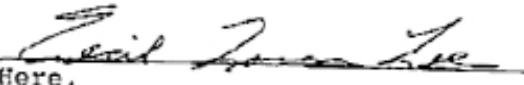
On page 13, Sulla ironically raises the "res judicata or claim preclusion effect" as a defense, hypocritically omitting the 0304 court's neglect of those doctrines in granting the 0304 voidable and legally *void* conflicting Final Judgment.

On page 14, Sulla claims "Debtor holds no equity in the subject Property."

That is a readily proven lie. The March 4, 2016, Fifth Amended Final Judgment in 0196 clearly states (on page 5, footnote 1, **Exhibit 1**): “The equities involved with the timely payments, property improvements, balloon payment, and misleading statements by plaintiff, make foreclosure unjust.”

## **B. SULLA’S FORGERY(IES) PRECLUDE(S) HESTER’S ENTITLEMENT TO ENFORCE AN ILLEGAL NOTE.**

(1) The Court’s abstention was based on the presumption of Hester’s standing certified exclusively by Sulla, whose moral turpitude and criminal “condition of mind” to commit forgery and fraud upon the courts is central to this appeal of the relief granted “Hester.” In this context, Sulla’s two photocopied signatures of Lee are material. They are re-published side by side below, for comparison and prompt recognition by the BAP witnessing Sulla’s illegal incorporation of Sulla’s “Foreclosing Mortgagee’s” Articles of Incorporation. (**Exhibit 8**)

a corporation sole, has hereunto this, the <u>5</u> day of May in the Year of our Lord, the Redeemer, two thousand	a corporation sole, has hereunto this, the <u>28</u> day of May in the Year of our Lord, the Redeemer, two thousand
	
Here. Cecil Loran Lee, the Overseer	Here. Cecil Loran Lee, the Overseer

These two identical Lee signatures in the Sulla-certified incorporation Articles for GOB prove Sulla was no stranger to either forgery or ecclesiastical sole corporations.<sup>8</sup> Sulla tacitly admits having committed this forgery and fraudulent concealment(s) by diverting from this explicit evidence and neglecting express

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<sup>8</sup> Sulla is actually a self-proclaimed expert in religious entity incorporations who has willfully and maliciously argued falsely that “neither Debtor nor Kane owned prior to the foreclosure sale.” This statement misrepresents Sulla’s knowledge that ownership of the Property vested in the RBOD corporation sole AND its sole member (i.e., “body corporate” and Note co-signer as “Individual”), Overseer Horowitz.

denials. Under FRCP Rule 8(b)(6) the forgery charge stands admitted.

“A thorough understanding of the concept of a ‘person entitled to enforce’ [a note in the instant case, is certainly not a beneficiary of forgery as Sulla argues, but] is key to sorting out the relative rights and obligations of the various parties to a mortgage transaction. In particular, the person obligated on the note — a ‘maker’ in the argot of Article 3— must pay the obligation represented by the note to the ‘person entitled to enforce’ it. UCC § 3-412. Further, if a maker pays a ‘person entitled to enforce’ the note, the maker's obligations are discharged to the extent of the amount paid. UCC § 3-602(a). Put another way, if a maker makes a payment to a ‘person entitled to enforce,’ the obligation is satisfied on a dollar for dollar basis, and the maker never has to pay that amount again. *Id. See also* UCC § 3-602(c).” Quoted from *In re Veal*, 450 BR 897 – Bankr. Appellate Panel (9th Cir. 2011) at 911.

In the case at bar, Horowitz/RBOD *paid the total debt on the Note timely* on February 27, 2016, to Mortgagee Lee, terminating the Contract.<sup>9</sup> (**Exhibit 13**) By right and law, Horowitz “never has to pay that amount again.”

Even falsely presuming Horowitz had not paid the Note to Lee, when Lee died without leaving a will, Sulla appointed himself as personal representative of Lee’s estate, and Sulla’s aforementioned forgeries and fraud followed. Under these circumstances it was unconscionable for Horowitz to have paid Sulla’s extortion on his fraudulently assigned mortgage and note; nor Sulla or even Hester claimed unpaid debt owed Lee or his legitimate heir(s).

“If, however, the maker pays someone other than a ‘person entitled to enforce’ — even if that person physically possesses the note the maker signed — the payment

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<sup>9</sup> judgment creditor, Philip Maise, as directed by the Nakamura Court in Civ. No.

generally has no effect on the obligations under the note. . . . *See* UCC § 3-418(b).” *Id.*

In the instant case, “Debt Collector” Sulla demanded Horowitz pay money he did not owe, or alternatively be victimized a second time by Sulla’s second foreclosure action. By holding in *In re Veal* Horowitz caving to Sulla’s demands would have had “no effect on the obligations under the note.”<sup>10</sup>

## **B. ABSTENTION HERE DEFIED THE COURT’S DUTY, AND SULLA ABUSED THE OPPORTUNITY**

The U.S. Congress empowered bankruptcy courts with direction for “discretionary abstention” under 28 U.S.C. § 1334(c) and (d) for efficiency, economy, and integrity within the judiciary. There are exceptions to 28 U.S.C. § 1334(c) applications, however, expressly in cases wherein abstention is *ethically precluded* by petitions evidencing crime, fraud, or Constitutional violations all present here.

On page 14 of his Reply, Sulla presents a classic example of erroneous abstention backfiring on a court and its victim(s). Sulla states: “For the above reasons which were set forth in HESTER’s pleadings, the court allowed HESTER to continue with its State law ejectment rights.” The Court, in fact, **expressly denial “Hester” *in rem* relief** when lifting the Stay. Even still, Sulla leveraged the Court’s grace with State agent(s) to break State laws along with the automatic Stay when serving notice of the Writ of Ejectment as well as administering that Debtor’s undeserved ejectment.

The erroneous lifting of Stay served Sulla, who had already violated the Stay

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<sup>10</sup> Also, the Mortgage and Note were voidable and voided by Lee’s fraud in the sale of the property (**Exhibit 2**) The fraudulent Assignments into GOB also voided Hester’s standing.

by serving one of at least three hand-altered versions of the Writ, all stamped March 1, 2016, albeit hand-altered days apart. Sulla's first Writ was served by Sulla on Saturday evening March 12, 2016 (a holiday weekend), after receiving that morning the Notice of the Stay confirmed by USPS records.

Sulla argued he could not have known about the Stay until Monday, March 14, 2016. But that excuse is mooted by Sulla's admissions that he agented the ejectment action despite his disqualification, and that he conducted that business on Saturday night, approximately nine-hours after receiving the notice of the bankruptcy. Then, Sulla committed more violations two weeks later, between March 22-24, 2016 when Sulla solicited Hilo sheriffs to execute the Writ in while the Stay was still in force (**Exhibit 15**). Sulla's repeated violations compelling costly interventions by the Appellant's attorney, Wille. (**Exhibits 29**)

**(a) The Court had opportunity and jurisdiction to discipline Sulla, secure the bankruptcy estate, and protect the crime victim, but instead, abstention was clearly erroneous as it rewarded the criminal and further damaged the Debtor.**

BK Court's jurisdiction is conferred by the district court that "has referred all such matters [pursuant to jurisdictiona and abstention under 28 U.S. Code § 1334(c)(1)(2) and (e) to the bankruptcy court."<sup>11</sup> Accordingly, the BK Court is authorized to serve as a district court surrogate; and is, therefore, duty-bound by § 1334 and other laws, not by false presumptions.

"Contempt committed in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge." *In re Crowe*, 243 BR 43 - Bankr. Appellate Panel, 9th Circuit 1999. Under the instant circumstances, "there is statutory authority for the court's jurisdiction," (*Id.* at 49) including violations of

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<sup>11</sup> Judge Faris's July 8, 2016, Memorandum of Decision on Motion to Dismiss, references LR1070(a) for its jurisdictional grant.

42 USC §§ 1981 and 1982, and fraudulent transfer law HRS § 651C, amenable to Trustee remedy under 11 U.S. Code § 548. By defrauding the Honorable Court in the presence of the Court, Sulla compounded the aforementioned crimes by violations of 31 U.S. Code § 3729(a)(1)(G). Sulla “knowingly ma[de] . . . a false record . . . material to an obligation to . . . transmit . . . property to the Government, or knowingly conceal[ed] or knowingly and improperly avoid[ed] or decreas[ed] an obligation to . . . transmit . . . property to the Government, [for which Sulla] is liable . . .”<sup>12</sup>

Moreover, the government had a duty to the Debtor to preclude Sulla from diminishing the Debtor’s estate or the BK Court’s power to administer payments to legitimate creditors. But instead, Sulla’s fraud and false claims caused the Court to abstain, to the detriment of the Appellant, his estate, the Court, and society.<sup>13</sup>

**(b) Hester’s Standing and the Court’s Abstention for Hester Raises a Question of Jurisdiction that is Reviewed De Novo.**

Ironically, Sulla completed his Reply by raising a crucial point, referencing *Britton v. Co-Op Banking Grp.*, 4 F.3d 742, 744 (9<sup>th</sup> Cir. 1993) “holding that a person who is not a party to a contract does not have standing to enforce it.” Sulla adds, “Hence all of Horowitz’s arguments in his opening brief concerning

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<sup>12</sup> Sulla is also liable for violating 18 U.S. Code § 1343 – “Fraud by wire” committed on May 26 and May 28, 2009, as aforementioned and evidenced by the forgeries certified by expert analysis. **(Exhibit 8)**

<sup>13</sup> § 1334(d) contains subsection (c), that states “this subsection shall not be construed to limit the applicability of the stay provided for by [section 362 of title 11](#), United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.” This certainly applies here to extend the “applicability of the stay” beyond bad faith pleadings and invalid presumptions.

HESTER's foreclosure should be completely disregarded as that matter is not at issue in this appeal." Abstention persuaded by Sulla's bad faith pleadings and contested 0304 decisions under appeal in State is "at issue in this appeal."

Standing is a question of jurisdiction that is reviewed *de novo*. See e.g. *Mottl v. Miyahira*, 95 Haw. 381, 388, 23 P.3d 716, 723 (2001) ("Thus, the issue of standing is reviewed *de novo* on appeal.") Jurisdiction can be raised any time, even during this appeal. See e.g. *Mortgage Electronic Registration Systems, Inc. v Wise* 130 Haw 11, 17, 304 P.3d 1192, 1198 (2013) ("A lack of standing could have been raised at any time.") "[Standing] is the doctrine that a plaintiff must assert its own legal rights and may not assert the legal rights of others." *In re Veal*, 450 BR 897 – Bankr. Appellate Panel (9th Cir. 2011). Standing is a requirement of the plaintiff, and not of a defendant defending against the claims raised by the plaintiff. In a foreclosure case the plaintiff must have sufficient interest in the mortgage to have suffered an injury from the default, and must prove the right to assert another's property interest. *Deutsche Bank v. Williams* 2112 WL1081174 (Civil No. 11-00632 (D. Haw. March 29, 2012) (not reported in F. Supp. 2d). In the instant case, Hester was not the Mortgagee, and not a signatory on the Note. Thus, every fact finder must ask and evidence how Sulla passed title from Horowitz/RBOD as Warranty Deed holder(s) to Hester—a homeless drifter not the legal heir of the deceased Mortgagee Seller Lee—and this chain-of-records requires consideration of Sulla's altered and forged Articles of Incorporation to incorporate "Hester's" sham foreclosing entity, GOB.

**(c) Even assuming the Court had jurisdiction over Hester, the abstention did not comport with “comity,” the Court’s duty, the Appellant’s rights by law, reasonable consideration of the State court proceedings, or “timely” administration of justice by State court reliance.**

When abstention for “comity”: (i) overlooks entirely the State court’s (0196) controlling case; (ii) prejudicially presumes as controlling the same court’s inexplicably conflicting (0304) final judgment obtained by fraud, violation of the Constitution, and neglect of res judicata doctrine; and (iii) also neglects Sulla’s disqualification by a fellow federal judge; any reasonable citizen would adjudge such “abstention” as an abomination, clearly erroneous, or otherwise *outrageous*.

Unless and until the “elephant under the carpet” in this proceeding is caged, the machinery in every court damaged by Sulla’s fraud and crimes will continue to multiply and delay matters and drive up costs.

28 U.S.C. § 1334 (c) and (d) hold the Court accountable for criminal contempt unraveling before it. Sulla’s violation of the disqualification Order (Exhibit 15), bad faith pleadings refuted as aforementioned, and tacit admissions of forgery and fraud, give the Court ample cause to stay these proceedings until the “elephant” is uncloaked.

Furthermore, under these exceptional circumstances of Sulla et. al., having maliciously prosecuted the Appellant for twelve years and gaining in recent days possession of the estate Property, that a reasonable person would expect “timely” determination of the Appellant’s federal claims to warrant abstention.

Accordingly, by this filing, the Honorable BAP shares a social duty with the Debtor and BK Court pursuant to FRCP Rule 42; 18 U.S. Code § 3771; 42 U.S.C., and § 1981(c); inter alia, to schedule a hearing for Sulla to show cause for his contempt in accordance with FRCP Rule 42, *et seq*; or otherwise direct process/prosecution to Magistrate Judge Puglisi, per 28 U.S.C. § 636(e).



**(d) The Court erroneously made abstention the rule, not the exception, contrary to *Colorado River Water Cons. Dist. v. US*, 424 US 800, 814, 816 - Supreme Court 1976, and *Christiansen v. Tucson Estates, Inc.* (In re Tucson Estates, Inc.) 912 F 2d 1162, 1167, (9<sup>th</sup> Cir. 1990) that strongly disfavor abstention.**

The Court cannot reasonably defer to the judicial standards for abstaining according to *Colorado River* (Op. cit.) or *Chritiansen*, (Id.) in light of the 0196 neglected determinations and also Sulla's bad faith, extrinsic fraud, and disqualification violations. In *Colorado River* the Supreme Court instructed, "abstention is appropriate where, absent bad faith, . . . federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings."<sup>14</sup> The State proceedings are civil, and Sulla's filings with the State and courts are steeped in bad faith.

These facts controvert the Court's justification for abstention in the related Adversary Proceeding too. On July 8, 2016, Judge Faris filed MEMORANDUM ON DECISION ON MOTION TO DISMISS the case (HI-16-90015) beginning his analysis with "Factor 1-Effect on Administration of the Estate" pursuant to *Chritiansen*. Quoting the Honorable Court:

"If anything, abstention would have a beneficial effect on the administration

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<sup>14</sup> The state proceedings are civil, not criminal, and Sulla is not a party in either 0196 or 0304. Quoting the Supreme Court in *Colorado River* (@ 813), "Abstention from the exercise of federal jurisdiction is the exception, not the rule. "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the State court would clearly serve an important countervailing interest." [\*County of Allegheny v. Frank Mashuda Co.\*, 360 U. S. 185, 188-189 \(1959\)](#). "[I]t was 814\*814 never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it." [\*Alabama Pub. Serv. Comm'n v. Southern R. Co.\*, 341 U. S. 341, 361 \(1951\)](#) (Frankfurter, J., concurring in result).

of the estate. The state court has decided all, or virtually all, of the claims asserted in this adversary proceeding. Even assuming that Dr. Horowitz and Ms. Kane are entitled to relitigate those issues, doing so would delay this case and drive up its costs. Thus, this factor weighs in favor of abstention.”

This Factor 1 analysis is biased and prejudicial. The abstention effectively waived the Debtor’s Property rights. The abstention has made it impossible to administer the estate made up mostly by the Property ceded by the BK-Court’s abstention. The Judge and Trustee are not in bankruptcy. The Debtor is. Abstention has occurred at the cost of justice. Abstention is economical and efficient for the federal officers to administer this litigation, not the estate per se that it has given away. The Appellant’s costs have not diminished.

The Court’s aforementioned analysis is a red herring. The Congress did not compel the Court to mold or even consider *Christiansen* to accommodate the Court’s schedule or bias. 28 U.S.C. § 1334 directs duty most clearly “in the interest of justice” and “comity,” exclusively for State law claims and State law causes of action, NOT federal questions including the Debtor’s § 1981 claim, inter alia. There are gross differences between the claims and parties between State and federal actions. The fraud upon the State courts has disabled the “machinery” so severely Sulla’s joinder as a real party in interest was denied. No adjudication on the merits in the 0304 has occurred and many of the claims pending in federal actions are not justiciable in the corrupt State court. Clearly, “the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.” This accommodation directed by § 1334(c)(2) is certainly inapplicable in this case at bar.

“It is axiomatic, however, that ‘[a]bstention from the exercise of federal

jurisdiction is the exception, not the rule,” the Supreme Court (*Id.*) quoted [\*Colorado River Water Conservation Dist. v. United States\*, 424 U. S. 800, 813 \(1976\)](#).

“Abstention rarely should be invoked, because the federal courts have a ‘virtually unflagging obligation . . . to exercise the jurisdiction given them.’” *Id.*, at 817.

In *Ankenbrandt v. Richards* (504 US 689, 705), the Supreme Court (1992), explained that discretionary abstention is a doctrine designed to promote federal state comity required when rendering “a decision would disrupt the establishment of a coherent state policy.” In the instant case, there is no “coherent state policy” there is only an “incoherent” set of conflicting final judgments that are both under appeal—due processes that could and should proceed independently of federal cases involving different parties, different claims, and different causes of action.

**(e) Sulla and the BK Trustee Filed in Favor of Rooker-Feldman Abstention, that the Court, In Effect, Granted—According to Case Law this Ruling Was Erroneous.**

Sulla’s predecessor-in-interest, Lee, began damaging the Debtor in 2003, as was known to, and neglected by, the Debtor’s title insurer, STEWART. This fact, and STEWART’s agents alleged complicity with Lee and his “drug mob” precludes Rooker-Feldman doctrine application in this case. The Debtor’s damages “predates the state litigation and caused injury independently of it, the *Rooker-Feldman* doctrine does not block this suit. It must be reinstated,” *Iqbal v. Patel*, 780 F. 3d 728 - Court of Appeals, 7th Circuit 2015.

“*Exxon Mobil* shows that the *Rooker-Feldman* doctrine asks what injury the plaintiff asks the federal court to redress, not whether the injury is “intertwined” with something else. See 544 U.S. at 291, 125 S.Ct. 1517; see also *Richardson v.*

*Koch Law Firm, P.C.*, 768 F.3d 732, 734 (7<sup>th</sup> Cir.2014) (deprecating any inquiry into what is intertwined with what). . . .”

As in the instant case, the 0304 Sulla-defrauded State court precluded due process. There was no trial on the merits. *Brown v. Bowman*, 668 F.3d 437, 442 (7<sup>th</sup> Cir. 2012) precluded *Rooker-Feldman* for “the unlawful conduct that misled the [state] court into issuing the judgment. . . The determination of whether a federal claim is ‘inextricably intertwined’ hinges on whether it alleges that the supposed injury was caused by the state court judgment, or, alternatively, whether the federal claim alleges an independent prior injury that the state court failed to remedy.” See *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 555 (7<sup>th</sup> Cir. 1999); “An alleged injury is ‘independent’ if the state court was acting in a non-judicial capacity when it affected the plaintiff. . .” Without Hester having standing, or having filed an affidavit,<sup>15</sup> the 0304 court did not have any jurisdiction to rule. Thus, the 0304 court proceeded in a “non-judicial capacity” when it vicariously certified Sulla’s NJF. (ROA Dkt # 16, p. 9 of 17, ¶¶ 1-5.)

The final judgment in “0304” (ROA Dkt # 16, Exhibit 2) was induced, as Judge Faris was likewise hoodwinked by Sulla, by presumptions of Hester’s

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<sup>15</sup> “[A]n affidavit must set forth specific facts in order to have any probative value.” ([Hayes v. Douglas Dynamics, Inc.](#), 8 F.3d 88, 92 (1st Cir.1993)); “Because the opposing attorney is not allowed to testify on the facts of the case, his *MOTION TO REMAND* or to dismiss from this court, has not been argued by the real party in interest. The Defendant, by the personal appearance of the party, on the other hand, has offered original jurisdiction by simply filing to this court for “removal” and the filing of the answer to the Plaintiff’s **VALIDATION OF DEBT PURSUANT TO 15 U.S.C. 1692G** creates a federal question. . . . Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination.” *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. And in *Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F. 2d 1280 – Court of Appeals, 9th Circuit 1977 (at 1285): “Except in those rare cases where the facts alleged in an affidavit are inherently incredible, and can be so characterized solely by a reading of the affidavit, the district judge has no basis for a determination of credibility.”

interest and standing. That 0304 record shows the Debtor was precluded from adjudicating his counterclaims and affirmative defenses; that is, his due process rights. (**Exhibit 2**)

The 0304 court record also shows the Appellant was precluded from lawful application of HRS § 419-8(4), inter alia. (ROA Dkt # 16, p. 5 of 17, ¶ 2.) The 7th Circuit (2002) wrote in *Brokaw v. Weaver*, 305 F. 3d 660 – Court of Appeals (at 668): “While the Rooker-Feldman doctrine bars federal subject matter jurisdiction over issues raised in state court, and those inextricably intertwined with such issues, ‘an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings’.” (*Id.* at 558)

Relatedly, in *Loubser v. Thacker*, 440 F.3d 439, 441-42 (7th Cir. 2006) (citing *Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995), pursuant to Horowitz’s 42 U.S.C. § 1981 claim, “so far [as Sulla] succeeded in corrupting the state judicial process as to obtain a favorable judgment” this is not barred by the *Rooker-Feldman* doctrine. “Otherwise there would be no federal remedy other than an appeal to the U.S. Supreme Court, and that remedy would be ineffectual because the plaintiff could not present evidence showing that the judicial proceeding had been a farce, cf. *Moore v. Dempsey*, 261 U.S. 86, 91, 43 S.Ct. 265, 67 L.Ed. 543 (1923) (Holmes, J.);” and,

Similar to this instant case, *Anderson v. Anderson*, 2014 U.S. App. LEXIS 2777 (7th Cir. Feb. 14, 2014) showed when the plaintiff sought damages under § 1983 for defendants' fraud “the doctrine divests district courts of jurisdiction only in cases where ‘the losing party in state court filed suit in federal court *after* the

state proceedings ended . . . .” whereas in the case at bar, the Debtor *prevailed* in the 0196 “first-filed” case, is owed a large amount of monetary damages, and is likely to prevail on his State court appeal against “Hester’s” “0304” void victory.

#### IV. CONCLUSION

The Appellant has carried his burden pursuant to *Costa*, Op. cit. The BK Court’s presumptively correct action abused discretion and/or was “arbitrary, capricious, an abuse of discretion, or contrary to law.” *Harman v. Apfel*, 211 F. 3d 1172, 1176 - Court of Appeals, 9th Circuit 2000. The abstention was contrary to the clear language of §1334, and Hester lacked standing to move the court. Sulla too had no standing to plead for relief, because neither Sulla or Hester: (a) were on title; (b) on the Note; or (c) on the Mortgage; and (d) Hester filed no affidavit, never testified, and never put any facts before the Court to established either subject matter or personal/prudential jurisdiction. Moreover, (e) Sulla had been disqualified from representing Hester in these matters intertwined with the two State cases.

The Court, nonetheless, erroneously concluded: “the State Court has decided that the Debtor doesn't own this property anymore. That the foreclosure occurred, and was valid, and the title is no longer in the Debtor.”

Again, this position upon with abstention was decided was “arbitrary” and “contrary to law.” *Id.*

In *Mauna Kea Anaina Hou el al vs BLNR*, SCAP 14-0000873, December 2, 2015, the Hawaii Supreme Court made clear that while a matter is pending on appeal, the governing is not at liberty to allow the currently prevailing party to act as if the decision being appealed were final. The court explained, “Such a procedure lacked both the reality and the appearance of justice.”

Similarly in this case, abstention, notwithstanding the need for, and capacity to honor, concurrent State appellate court proceedings, was clearly erroneous. The remedies requested by the Appellant must be granted in favor of judicial integrity.

RESPECTFULLY SUBMITTED under the pains and penalties of perjury,

DATED, Honolulu, HI: July 11, 2016

/s/Leonard G. Horowitz/

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**IN THE UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

	)	<b>BAP NO. HI-16-1110</b>
	)	
	)	Bankruptcy Case No: 16-00239
	)	(Chapter 13)
<i>In Re: Leonard G. Horowitz</i>	)	
	)	
Debtor.	)	<b>CERTIFICATE OF COMPLIANCE [FRBP</b>
	)	<b>Rule 8015(a)(7)(B)(ii).]; EXHIBITS “1”</b>
<u>LEONARD G. HOROWITZ</u>	)	<b>THRU “31;” DECLARATION AND</b>
	)	<b>CERTIFICATE OF COMPLIANCE OF</b>
	)	<b>LEONARD GEORGE HOROWITZ;</b>
	)	<b>NOTICE OF BRIEF; CERTIFICATE OF</b>
	)	<b>SERVICE.</b>

**DECLARATION AND CERTIFICATE OF COMPLIANCE  
OF LEONARD GEORGE HOROWITZ**

I certify under the pains and penalties of perjury that there are 6,800 words (with the maximum allowed being 7,000) in this APPELLANT’S REPLY TO APPELLEE’S ANSWERING BRIEF, according to my “Word Count” text tool; and that this count complies with the requirements of **FRBP Rule 8015(a)(7)(B)(ii)**.

I also declare under pains and penalties of perjury that the foregoing Reply Brief contains true and correct information to the best of my knowledge, and that I would be willing and competent to testify during a hearing on these matters.



I also declare under pains and penalties of perjury that the attached Exhibits (1-31) include the same Exhibits 1-30 that I filed on 3/28/16 with my Opening Brief. I have simply added one more Exhibit, No. 31, to this filing, and I verify that this, as are the others, a true and correct copy of the official document.

DATED, Honolulu, HI: July 11, 2016

/s/Leonard G. Horowitz/

LEONARD G. HOROWITZ, pro se

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FILED

cc: Margaret Wille, Esq.  
Steven Whittaker, Esq.

2016 MAR -4 PM 2: 07

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

L. MOCK CHEW, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

JASON HESTER, OVERSEER THE  
OFFICE OF OVERSEER, A CORPORATE  
SOLE AND HIS SUCCESSORS,  
OVER/FOR THE POPULAR ASSEMBLY  
OF REVITALIZE, A GOSPEL OF  
BELIEVERS,

Plaintiff,

vs.

LEONARD GEORGE HOROWITZ,  
JACQUELINE LINDENBACH HOROWITZ,  
AND THE ROYAL BLOODLINE OF DAVID,  
JOHN DOES 1-10, JANE DOES 1-10, DOE  
PARTNERSHIPS 1-10, DOE ENTITIES,  
DOE GOVERNMENTAL UNITS,

Defendants,

and

PHILIP MAISE

Intervenor.

LEONARD GEORGE HOROWITZ,  
JACQUELINE LINDENBACH HOROWITZ,  
AND THE ROYAL BLOODLINE OF DAVID,

Counterclaimants,

vs.

JASON HESTER, OVERSEER THE  
OFFICE OF OVERSEER, A CORPORATE  
SOLE AND HIS SUCCESSORS,  
OVER/FOR THE POPULAR ASSEMBLY

Civil No. 05-1-196

FIFTH AMENDED FINAL  
JUDGMENT

Jury Trial: February 12-14, 2008  
February 20-21, 2008

JUDGE RONALD IBARRA

I hereby certify that this is a full, true and correct  
copy of the original on file in this office:

*L. Mock Chew*  
Clerk, Third Circuit Court, State of Hawaii

**Exhibit 1**

Exhibits pg. 1  
Exhibits Pg. 1

OF REVITALIZE, A GOSPEL OF )  
BELIEVERS, )  
 )  
Counterclaim Defendant. )  
\_\_\_\_\_ )

### **FIFTH AMENDED FINAL JUDGMENT**

This matter comes before the above-referenced Court pursuant to the Order Dismissing Appeal for Lack of Appellate Jurisdiction, E-filed into CAAP-15-0000658 on January 20, 2016 by the Intermediate Court of Appeals ("ICA"). The ICA in its January 20, 2016 Order, decided the Fourth Amended Final Judgment does not satisfy the requirements for an appealable judgment under HRS § 641-1(a), HRCP Rule 58, or the holding in Jenkins v. Cades Schutte Fleming & Wright, Hawai'i 115, 119, 869 P.2d 1334, 1338 (1994).

On October 24, 2007, the *Order Granting Intervenor's Motion To Strike and/or Dismiss, With Prejudice Counterclaim/Cross Claim Against Intervenor Philip Maise Filed July 25, 2007, Filed On August 24, 2007*, was filed. On February 12, 2008 a jury trial in this matter commenced, finishing February 21, 2008. Pursuant to the *Order Awarding Attorney's Fees and Costs* filed March 25, 2008; the *Findings of Facts, Conclusions of Law, and Order Denying Decree of Foreclosure against all Defendants*, filed April 2, 2008; the *Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the Issue of Defendant's July 6, 2006 Counterclaim for Fraud and Misrepresentation*, filed October 15, 2008; The *Second Amended Final Judgment* filed December 11, 2009; The *Third Amended Final Judgment* filed September 12, 2013 and The *Fourth Amended Final Judgment* Filed June 19, 2015;

This Court Having fully reviewed the record and files herein, and for good cause shown;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

I. That Final Judgment on the Complaint for foreclosure filed June 15, 2005 is hereby entered pursuant to HRCP Rule 58 as follows:

a. As to the waste claims for unlicensed business activities and additions to the home or construction of buildings on the property, judgment is entered in favor of Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

b. As to the claim for breach of contract/covenant for failure to keep property insurance, judgment is entered in favor of the Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David; Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David are required to obtain property insurance.

c. As to the claims for conspiracy by Defendant Horowitz, Defendant Royal Bloodline of David and co-conspirator Intervenor Phillip Maise, to deprive Plaintiff of receipt of mortgage payments and defrauding plaintiff, judgment is entered in favor of the Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz, Defendant The Royal Bloodline of David, and Intervenor Phillip Maise and against Plaintiff, Jason

Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

d. As to the claim for trespass to chattels based on destruction of Plaintiff [Lee's] trailer, judgment is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David, and Judgment for damages of \$400.00 is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendant Leonard Horowitz and the Royal Bloodline of David.

e. As to the claim for fraud and misrepresentation against Defendant Leonard Horowitz and the Royal Bloodline of David for changing the DROA (deposit receipt offer and acceptance), judgment is entered in favor of Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David.

f. As to the claim for foreclosure, judgment is entered in favor of Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of

Revitalize, A Gospel of Believers, but equitable relief was granted requiring Defendants to carry insurance.<sup>1</sup>

II. IT IS FURTHERED ORDERED that Final Judgment on the Defendants' Counterclaims filed July 6, 2006 is hereby entered pursuant to HRCP Rule 58 as follows:

a. As to Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David, Counterclaims filed July 6, 2006, Claim A, for Misrepresentation and Fraud; Judgment is entered in favor of Plaintiff/Counterclaim Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants/Counterclaimants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David as Defendants/Counterclaimants. The Jury's award to the Defendants in the amount of \$200,000 is VACATED.<sup>2</sup>

b. As to the Defendants Counterclaim filed July 6, 2006, Claim B, for Abuse

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<sup>1</sup> Foreclosure was requested on the basis that Defendants committed waste on the property, failed to keep insurance on the property, conspiracy, trespass to chattels, and for fraud/misrepresentation, not because of default on the promissory note and mortgage. The equities involved with the timely payment, property improvements, balloon payment, and misleading statements by plaintiff, make foreclosure unjust. Foreclosure having been denied the request for a joint and several deficiency judgment was not necessary nor the appointment of a commissioner.

<sup>2</sup> Pursuant to the Jury's verdict on February 21, 2008, the count for fraud and misrepresentation, judgment was entered in favor of the Defendants and against Plaintiff, but this relief was vacated by the Order Granting Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on the issue of Defendants' July 6, 2006 Counterclaim for fraud and Misrepresentation filed October 15, 2008, the Third Amended Final Judgment filed September 12, 2013, and The Fourth Amended Final Judgment Filed June 19, 2015, as a result, the \$200,000.00 award to Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David was VACATED.

of Process and Malicious Prosecution; Judgment is entered in favor of Plaintiff/Counterclaim Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers and against Defendants/Counterclaimants Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David.

**III. IT IS FURTHERED ORDERED** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Pursuant to the *Order Awarding Attorney's Fees and Costs*, filed on March 25, 2008, judgment is entered in the sum of nine hundred and seven dollars and ninety-eight cents (\$907.98) for attorney fees and costs in favor of Defendants, Leonard George Horowitz, Jacqueline Lindenbach Horowitz and The Royal Bloodline of David and against Plaintiff, Jason Hester, Overseer the Office of Office of Overseer, A Corporate Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers.

**IV. IT IS FURTHER ORDERED:** that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Pursuant to *Order Granting Intervenor's Motion To Strike And/Or Dismiss, With Prejudice Counterclaim/Cross Claim Against Intervenor Philip Maise Filed July 25, 2007, Filed On August 24, 2007 Filed October 24, 2007*; The Counterclaim/Crossclaim filed by Defendant Jason Hester, Overseer the Office of Office of Overseer, A Corporate



Sole and his Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers Against Intervenor Philip Maise filed July 25, 2007 is DISMISSED.

V. IT IS FURTHER ORDERED: that Final Judgment is hereby entered pursuant to HRCP Rule 58 as follows:

a. Philip Maise's Complaint In Intervention filed October 27, 2005 is DISMISSED.<sup>3</sup>

VI. All other claims, counterclaims, and cross-claims are dismissed.

DATED: Kealahou, Hawai'i; MAR - 3 2016

/s/ Ronald Ibarra (seal)  
The Honorable Ronald Ibarra

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<sup>3</sup> Foreclosure having been denied, Intervenor Maise's complaint in intervention, filed October 27, 2005 is moot.

FILED

cc: S. Whittaker, Esq. S. Kane  
M. Wille, Esq. L. Horowitz

2015 DEC 30 PM 4: 26

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

L. KITACKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

JASON HESTER, ) Civil NO. 14-1-304  
)  
Plaintiff, ) FINAL JUDGMENT  
)  
vs. ) Judge Ronald Ibarra, Division 4  
)  
LEONARD G. HOROWITZ, ET AL., )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

FINAL JUDGMENT

Pursuant to the (1) *Entry of Default Against Defendants Medical Veritas International, Inc. and the Royal Bloodline of David* filed on September 17, 2014; (2) *Order Granting Plaintiff's Motion to Dismiss Counterclaims*, filed March 27, 2015, and (3) *Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment*, filed August 28, 2015, final judgment pursuant to Rule 58, Hawai'i Rules of Civil Procedure is hereby entered as follows:

1) On Plaintiff Jason Hester's Complaint filed August 11, 2014

- a. As to Count I, Quiet Title, judgment is entered in favor of Plaintiff Jason Hester pursuant to H.R.S. Section 669-1, et seq. and against the Defendants Medical Veritas International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz; and Sherri Kane;
- b. As to Count II, Tenants at Sufferance, judgment is entered in favor of Plaintiff Jason Hester and against Defendants Medical Veritas

**Exhibit 2**

I hereby certify that this is a full, true and correct  
copy of the original on file in this office.  
**Exhibits pg. 8**  
Clerk, Third Circuit Court, State of Hawaii

International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz;  
and Sherri Kane;

- c. As to Count III, Trespass, pursuant to Rule 41, Hawai'i Rules of Civil Procedure and the Order Granting Plaintiff Jason Hester's Motion for Voluntary Dismissal of Trespass Claim, filed August 28, 2015, this claim is dismissed;
- d. As to Plaintiff's request that Judgment for Possession be entered giving Plaintiff exclusive possession of the Property, judgment is entered in favor of Plaintiff Jason Hester and a Writ of Ejectment shall issue against Defendants Medical Veritas International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz; and Sherri Kane pursuant to H.R.S. Section 667-33(b)(4);

2) On Defendants Leonard Horowitz and Sherri Kane's Counterclaim filed August 21, 2014 as to all claims including:

Count I, Slander of Title;

Count II, Quiet Title;

Count III, Unfair and Deceptive Acts and Practices;

Count IV, Malicious Prosecution in Criminal Contempt;

Count V, Abuse of Process Tort;

Count VI, Tort of Conversion/Theft in Conspiracy to Deprive Citizens' Rights and Properties;

Count VII, Tortious Interference with Consortium;

Count VIII, Tortious Interference with Prospective Business (Economic) Advantage;  
Count IX, Breaches of Two Contracts;  
Count X, Breach of Duty to Protect/Negligence/"Duty-Public Duty Doctrine" and/or  
"Failure to Enforce" Laws Including HRS §480-2 HRS §480D-3(2)(3)(6)(8)(11) and HRS  
§480D-4(a)(b);  
Count XI, Breach of Standard of Care/Malpractice;  
Count XII, Trespass to Chattels;  
Count XIII, Defamation;  
Count XIV, Criminal Negligence;  
Count XV, Gross Negligence;  
Count XVI, Intentional Infliction of Emotional Distress;  
Count XVII, Negligent Infliction of Emotional Distress;  
Count XVIII, Fraud and/or Misrepresentation;  
Count XIX, Comparative Negligence, Secondary Liability and/or Vicarious Liability; and  
Count XX, Civil RICO,

these claims are dismissed pursuant to the Order Granting Plaintiff's Motion to Dismiss  
Counterclaims, filed on March 27, 2015.

Any remaining claims or counterclaims not specifically addressed herein are dismissed  
with prejudice. This Final Judgment resolves all claims as to all parties in this action.

DATED: Kcalakekua, Hawaii, DEC 29 2015

**RONALD IBARRA (SEAL)**

JUDGE OF THE ABOVE-ENTITLED COURT

FILED

cc: S. Whittaker, Esq. S. Kane  
M. Wille, Esq. L. Horowitz

2015 DEC 30 PM 4: 27

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

L. KITAHOKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

JASON HESTER,

Plaintiff,

vs.

LEONARD G. HOROWITZ, ET AL.,

Defendants.

) Civil NO. 14-1-304  
)  
) NOTICE OF ENTRY OF JUDGMENT  
)  
) Judge Ronald Ibarra, Division 4  
)  
)  
)  
)  
)  
)

NOTICE OF ENTRY OF JUDGMENT

In accordance with the Hawai'i Rules of Civil Procedure, Rule 77(d), please note that the FINAL JUDGMENT has been entered in this case.

DATED: Kealahou, Hawaii, DEC 30 2015.

FRANCINE VICTOR (SEAL)

CLERK OF THE ABOVE-ENTITLED COURT

Exhibits pg. 11

2

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

*Michael A. Thompson*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii



R-592 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JAN 23, 2004 08:01 AM  
Doc No(s) 2004-014441



20 4/4 Z2

/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

4

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: MAIL (X) PICKUP ( ) TO:

**ITC**

Loran Lee  
13-3775 Kalapana Highway  
Pahoa, Hawaii 96778

ESCROW NO.: 302-00225945-BJI  
Brenda Ioane

THIS DOCUMENT CONTAINS 16 PAGES

TITLE OF DOCUMENT:

**MORTGAGE**

PARTIES TO DOCUMENT:

**LENDER:**

LORAN LEE, also known as C. Loran Lee, single, whose mailing  
address is 13-3775 Kalapana Highway, Pahoa, Hawaii 96778

**BORROWER:**

THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit  
corporation, whose mailing address is P. O. Box 1739, Newport,  
Washington 99156

TAX MAP KEY (3) 1-3-001:049 and :043

PKK/ITC2003.MTG/11-6-03

**EXHIBIT 3**

Exhibits pg. 12

## MORTGAGE

### WORDS USED OFTEN IN THIS DOCUMENT AND PARTIES AND THEIR ADDRESSES

(A) "Mortgage." This document, which is dated JANUARY 15, 200~~3~~<sup>2004</sup>, will be called the "Mortgage." *2004, 05 m*

(B) "Borrower." **THE ROYAL BLOODLINE OF DAVID**, a Washington nonprofit corporation, whose mailing address is P. O. Box 1739, Newport, Washington 99156, will sometimes be called "Borrower" and sometimes simply "I" or "me."

(C) "Lender." **LORAN LEE**, also known as C. Loran Lee, single, whose mailing address is 13-3775 Kalapana Highway, Pahoa, Hawaii 96778, will sometimes be called "Lender" or sometimes simply "you" or "your."

(D) "Note." The Promissory Note, signed by Borrower and dated JANUARY 15, 200~~3~~<sup>2004</sup>, will be called the "Note." Under the Note, Lender agrees to loan Borrower the principal sum of **THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00)**. *m*

(E) "Property." The property that is described below in the section titled "Description of the Property," will be called the "Property."

### BORROWER'S MORTGAGE AND TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY

I mortgage, grant a security interest in and convey the Property to you subject to the terms of this Mortgage. This means that, by signing this Mortgage, I am giving you those rights that are stated in this Mortgage and also those rights that the law gives to lenders who hold mortgages on real property and security interests in personal property. I am giving you these rights to protect you from possible losses that might result if I fail to:

- (A) Pay all the amounts that I owe you as stated in the Note;
- (B) Pay, with interest, any amounts that you spend under this Mortgage, to protect the value of the Property and your rights in the Property;
- (C) Keep all of my other promises and agreements under the Note or this Mortgage.

## DESCRIPTION OF THE PROPERTY

I give Lender rights in the Property described in (A) through (J) below:

- (A) The property is described in Exhibit A which is attached at the end of this Mortgage;
- (B) All buildings and other improvements that are located on the property described in Paragraph (A) of this section;
- (C) All rights in other property that I have as owner of the property described in Paragraph (A) of this section. These rights are known as "easements, rights and appurtenances attached to the property;"
- (D) All rents or royalties from the property described in Paragraph (A) of this section;
- (E) All mineral, oil and gas rights and profits, water, water rights and water stock that are part of the property described in Paragraph (A) of this section;
- (F) All rights that I have in the land which lies in the streets or roads in front of, or next to, the property described in Paragraph (A) of this section;
- (G) All fixtures that are now or in the future will be on the property described in Paragraphs (A) and (B) of this section, and all replacements of and additions to those fixtures. Usually, fixtures are items that are physically attached to buildings, such as hot water heaters;
- (H) All of the rights and property described in Paragraphs (B) through (F) of this section that I acquire in the future;
- (I) All replacements of or additions to the property described in Paragraphs (B) through (F) and Paragraph (H) of this section;
- (J) Any voting rights I have as owner of the Property.

## BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY

I promise that: (A) I lawfully own the Property; (B) I have the right to mortgage, grant and convey the Property to Lender; (C) there are no outstanding claims or charges against the Property except for the claims and charges against the Property listed in Exhibit A attached to the end of this Mortgage; and (D) any lease included in the Property is in good standing.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which you suffer because someone other than myself has some of the rights in the



Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of those rights.

## PROMISES

I promise and I agree with you as follows:

1. BORROWER'S PROMISE TO PAY PRINCIPAL AND INTEREST UNDER THE NOTE AND TO FULFILL OTHER PAYMENT OBLIGATIONS. I will promptly pay you or anyone you name, principal, interest and any late charges as stated in the Note.

2. BORROWER'S OBLIGATION TO PAY CHARGES AND ASSESSMENTS AND TO SATISFY CLAIMS AGAINST THE PROPERTY. I will pay when they are due all taxes, assessments, and any other charges and fines that may be imposed on the Property. I will also make payments due under my lease if I am a tenant on the Property and I will pay lease rents (if any) due on the Property. I will do this by making the payments directly to the persons entitled to them. (In this Mortgage, the word "person" means any person, organization, governmental authority, or other party.) If I make direct payments and the Lender requests, then promptly after making any of those payments I will give Lender a receipt which shows that I have done so.

Any claim, demand or charge that is made against property because an obligation has not been fulfilled is known as a "lien." I will promptly pay or satisfy all liens against the Property.

Condominium and PUD Assessments. If the Property includes an apartment unit in a Condominium Project or in a PUD, I will promptly pay, when they are due, all assessments imposed by the owners' association or other organization that governs the Condominium Project or PUD. That association or organization will be called the "Owners' Association."

3. BORROWER'S OBLIGATION TO OBTAIN AND TO KEEP INSURANCE ON THE PROPERTY.

(A) Generally. I will obtain insurance to cover all buildings and other improvements that now are or in the future will be located on the Property as follows:

- ☐ Fire and extended peril coverage (with inflation guard) in an amount at least equal to the full replacement costs of the insurable improvements on the Property;
- ☐ Comprehensive public liability insurance as customarily provided for similar property in Hawaii for homeowner's insurance;

- ☒ Hurricane Property Insurance Policy;
- ☐ Flood insurance, if the Property is within the Flood zone eligible for federally subsidized flood insurance;

and other hazards for which Lender requires coverage, except as may be otherwise expressly provided in the lease if the property is a leasehold.

I understand that Lender may not make the granting of the Note contingent on my obtaining any insurance required under the terms of this Mortgage from an insurance company designated by Lender. However, to the extent permitted by law, Lender reserves the right to refuse an insurer which I choose for cause or reasonable excuse. All of the insurance policies and renewals of those policies must include what is known as a "standard mortgagee clause" to protect Lender. The form of all policies and the form of all renewals must be acceptable to Lender. Lender will have the right to hold the policies and renewals.

I will pay the premiums on the insurance policies by paying the insurance company directly when the premium payments are due. If Lender requires, I will promptly give Lender all receipts of paid premiums and all renewal notices that I receive.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to the insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company is called "proceeds." If the Property is used as a "residence" (for example, it is my home), then I have the right to decide whether the proceeds will be used to repair, restore or rebuild a residence on the Property or whether the proceeds will be used to reduce the amount that I owe you under the Note. In all other cases, Lender will have the right to determine whether the proceeds are to be used to repair, restore or rebuild the Property or to reduce the amount I owe under the Note.

If any of the proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

If I abandon the Property, or if I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim for insurance benefits, then Lender has the authority to collect the proceeds. Lender may then use the proceeds to repair or restore the Property or to reduce the amount that I owe to Lender under the Note and under this Mortgage. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered.

If any proceeds are used to reduce the amount which I owe to Lender under the Note, that use will not delay the due date or change the amount of any of my monthly payments under the Note

or this Mortgage.

If Lender acquires the Property pursuant to this Mortgage, all of my rights in the insurance policies will belong to Lender. Also, all of my rights in any proceeds which are paid because of damage that occurred before the Property is acquired by Lender or sold will belong to Lender. However, Lender's rights in those proceeds will not be greater than the amount that I owe to Lender under the Note and under this Mortgage immediately before the Property is acquired by Lender or sold.

**(B) Agreements that Apply to Condominiums and PUD's.**

(i) If the Property includes an apartment unit in a Condominium Project, the Owners' Association may maintain a hazard insurance policy which covers the entire Condominium Project. That policy will be called the "master policy." If the master policy insures my apartment unit as well as the common elements of the Condominium Project, so long as the master policy remains in effect and meets the requirements stated in this Paragraph: (a) my obligation to obtain and to keep hazard insurance on the Property is satisfied; (b) I will not be required to include an amount for hazard insurance premiums in my monthly payment of Funds to Lender; and (c) if there is a conflict, concerning the use of proceeds, between (1) the terms of this Paragraph, and (2) the law or the terms of the declaration, bylaws, regulations or other documents creating or governing the Condominium Project, then that law or the terms of those documents will govern the use of proceeds. I will promptly give Lender notice if the master policy is interrupted or terminated. During any time that the master policy is not in effect the terms of (a), (b) and (c) of this subparagraph (B)(i) will not apply.

(ii) If the Property includes a unit in a Condominium Project, it is possible that proceeds will be paid to me instead of being used to repair or to restore the Property. I give Lender my rights to those proceeds. If the Property includes a unit in a PUD, it is possible that proceeds will be paid to me instead of being used to repair or to restore the common areas or facilities of the PUD. I give Lender my rights to those proceeds. All of the proceeds described in this subparagraph (B)(ii) will be paid to Lender and will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. If any of those proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

**4. BORROWER'S OBLIGATION TO MAINTAIN THE PROPERTY AND TO FULFILL OBLIGATIONS IN LEASES AND MORTGAGES AND AGREEMENTS ABOUT LEASES, CONDOMINIUMS AND PUD'S.**

(A) Agreements about Maintaining the Property. I will keep the Property in good repair. I will not destroy, damage or change the Property, and I will not allow the Property to deteriorate. I will not make additions or major improvements to the Property without Lender's written consent. Lender also will have the right to inspect plans and specifications and may condition Lender's consent on my obtaining required building permit, consents of Condominium Owner's Association,

lenders, or lessors, if any, plus evidence of my adequate financing and/or bonding to pay for the improvements.

(B) Agreements About Keeping Promises in Leases and Mortgages. I will fulfill my obligations under any lease which is part of the Property. I will not change or agree to any change in any Lease which is a part of the Property. I will fulfill my obligations in any Mortgage on the Property listed on Exhibit A at the end of this Mortgage. I will not change or agree to any change in any such Mortgage.

(C) Agreements that Apply to Leases and Preventing Rejection or Termination of Leases in Bankruptcy Cases If (i) the Property includes, or is under, covered, or affected by any leases (the "Property Leases"), (ii) I, or anyone else with rights to and/or obligations under any Property Leases, including, but not limited to, lessors, lessees, sublessors, and sublessees, become a debtor in a voluntary or involuntary bankruptcy case, and (iii) an order for relief is issued pursuant to the bankruptcy laws, then I will take the actions necessary to prevent the Property Leases (a) from being rejected by me, any bankruptcy trustee or any other person pursuant to the bankruptcy laws, or (b) from being terminated in any manner. I will take such actions within five (5) days from the date of filing of the order for relief. The bankruptcy laws include, but are not limited to, Section 365 of Title 11 of the provisions of the United States Code, which is often referred to as Bankruptcy Code Section 365, as it may be amended from time to time.

I now appoint you as my attorney-in-fact to do whatever you, as Lender, believe is necessary to protect your interests in the Property and to prevent the rejection or termination of the Property Leases under the bankruptcy laws. This means that I now give you the right, in my place and name, or in your own name, to do whatever you believe is necessary to protect your interests in the Property. You have no obligation or responsibility to look out for or take care of my interests. You may, but you do not have to, take any actions to prevent the Property Leases from being rejected or terminated pursuant to the bankruptcy laws. Those actions include, but are not limited to, the following:

(i) The filing of any instruments, documents and pleadings with the court to assume and/or assign the Property Leases; and

(ii) The filing of a notice of election to remain in possession of leased real property if my lessor becomes a debtor in a bankruptcy case and rejects my lease.

Your having the right to take such actions will not prevent me, on my own, from taking any actions to protect my interests and the Property Leases.

(D) Agreements that Apply to Condominiums and PUD's. If the Property is a unit in a Condominium Project or in a PUD, I will fulfill all of my obligations under the declaration, bylaws, regulations and other documents that create or govern the Condominium Project or PUD. Also, I

will not divide the Property into smaller parts that may be owned separately (known as "partition or subdivision"). I will not consent to certain actions unless I have first given Lender notice and obtained Lender's consent in writing. Those actions are:

(1) The abandonment or termination of the Condominium Project or PUD, unless, in the case of a condominium, the abandonment or termination is required by law;

(2) Any change to the declaration, bylaws or regulations of the Owners' Association, trust agreement, articles of incorporation, or other documents that create or govern the Condominium Project or PUD, including, for example, a change in the percentage of ownership rights, held by unit owners, in the Condominium Project or in the common areas or facilities of the PUD;

(3) A decision by the Owners' Association to terminate professional management and to begin self-management of the Condominium Project or PUD; and

(4) The transfer, release, creation of liens, partition or subdivision of all or part of the common areas and facilities of the PUD. (However, this provision does not apply to the transfer by the Owners' Association of rights to use those common areas and facilities for utilities and other similar or related purposes.)

5. LENDER'S RIGHT TO TAKE ACTION TO PROTECT THE PROPERTY. If: (a) I do not keep my promises and agreements made in this Mortgage, or (b) someone, including me, begins a legal proceeding that may affect Lender's rights in the Property (such as, for example, a legal proceeding in bankruptcy, in probate, for condemnation, or to enforce laws or regulations), then Lender may do and pay for whatever Lender believes is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions under this Paragraph may include, for example, appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs. Lender need not give me notice before taking any of these actions.

I will pay to Lender any amounts which Lender spends under this Paragraph. This Mortgage will protect Lender in case I do not keep this promise to pay those amounts with interest.

I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will also pay interest on those amounts at the same rate stated in the Note. However, if payment of interest at that rate would violate the law, I will pay interest on the amounts spent by Lender under this Paragraph at the highest rate that the law allows. Interest on each amount will begin on the date that the amount is spent by Lender. However, Lender and I may agree in writing to terms of payment that are different from those in this paragraph.

Although Lender may take action under this Paragraph, Lender does not have to do so.

6. LENDER'S RIGHT TO INSPECT THE PROPERTY. Lender, and others authorized by Lender, may enter on and inspect the Property. They must do so in a reasonable



manner and at reasonable times.

7. AGREEMENTS ABOUT CONDEMNATION OF THE PROPERTY. A taking of property by any governmental authority by eminent domain is known as "condemnation." I give to Lender my right: (a) to proceeds of all awards or claims for damages resulting from condemnation or other governmental taking of the Property; and (b) to proceeds from a sale of the Property that is made to avoid condemnation. All of those proceeds will be paid to Lender and will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. If any of the proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

If I abandon the Property, or if I do not answer, within 30 days, a notice from Lender stating that a governmental authority has offered to make a payment or to settle a claim for damages, then Lender has the authority to collect the proceeds. Lender may then use the proceeds to repair or restore the Property or to reduce the amount that I owe to Lender under the Note and under this Mortgage. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered.

If any proceeds are used to reduce the amount of principal which I owe to Lender under the Note, that use will not delay the due date or change the amount of any of my monthly payments under the Note and this Mortgage. However, Lender and I may agree in writing to those delays or changes.

Condemnation of Common Areas of PUD. If the Property includes a unit in a PUD, the promises and agreements in this Paragraph will apply to a condemnation, or sale to avoid condemnation, of the PUD's common areas and facilities as well as of the Property.

8. CONTINUATION OF LENDER'S RIGHTS. Even if Lender does not exercise or enforce any right of Lender under this Mortgage or under the law, Lender will still have all of those rights and may exercise and enforce them in the future.

9. LENDER'S ABILITY TO ENFORCE MORE THAN ONE OF LENDER'S RIGHTS. Each of Lender's rights under this Mortgage is separate. Lender may exercise and enforce one or more of those rights, as well as any of Lender's other rights under the law, one at a time or all at once.

10. OBLIGATIONS OF BORROWER. If more than one person signs this Mortgage as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Mortgage. Lender may enforce Lender's rights under this Mortgage against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under the Note and under this Mortgage. However, if one of us does not sign the Note, then: (a) that person is signing this Mortgage only to give that person's rights in the Property to Lender under the terms of this Mortgage; and (b) that person is not personally obligated

to make payments or to act under the Note.

11. CAPTIONS. The captions and titles of this Mortgage are for convenience only. They may not be used to interpret or to define the terms of this Mortgage.

12. AGREEMENTS ABOUT GIVING NOTICES REQUIRED UNDER THIS MORTGAGE. Unless the law requires otherwise, any notice that must be given to me under this Mortgage will be given by delivering it or by mailing it addressed to me at the address stated in Paragraph (B) of the section above titled "Words Used Often In This Document and Parties and their Addresses." A notice will be delivered or mailed to me at a different address if I give Lender a notice of my different address. Any notice that must be given to Lender under this Mortgage will be given by mailing it to Lender's address stated in Paragraph (C) of the section above titled "Words Used Often In This Document and Parties and Their Addresses." A notice will be mailed to Lender at a different address if Lender gives me a notice of the different address. A notice required by this Mortgage is given when it is mailed or when it is delivered according to the requirements of this Paragraph.

13. LAW THAT GOVERNS THIS MORTGAGE. The law of the State of Hawaii will govern this Mortgage. If any term of this Mortgage or of the Note conflicts with that law, all other terms of this Mortgage and of the Note will still remain in effect if they can be given effect without the conflicting term. This means that any terms of this Mortgage and of the Note which conflict with the law can be separated from the remaining terms, and the remaining terms will still be enforced.

14. CONVEYANCE OR ASSIGNMENT. I will not convey, assign or transfer (whether by way of Deed, Mortgage, Assignment of Lease, Agreement of Sale or other conveyance) any of my interest in the Property. Any attempt to do so will not be effective unless I first obtain the written consent of Lender. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent including without limitation by way of a conveyance, mortgage, agreement of sale, or otherwise, Lender may, at Lender's option, require immediate payment in full of all sums secured by this Mortgage. Lender shall not exercise such option if Lender is prohibited by federal law from doing so. If Lender exercises this option to accelerate, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

15. DEFAULT. I will be in default under this Mortgage if:

- (1) I fail to make any monthly payment due under the Note or am otherwise in default under the Note.
- (2) I fail to keep any promise or agreement made in this Mortgage and do not correct

the failure within thirty (30) days after Lender gives me notice requesting correction.

(3) I convey, assign or transfer any of my interest in the Property without first obtaining Lender's written consent.

16. LENDER'S RIGHTS IF BORROWER IS IN DEFAULT.

(A) "Immediate Payment in Full". If there is a default under this Mortgage, then without prior notice to me you can demand that I pay immediately the entire amount then remaining unpaid under the Note and under this Mortgage. You may do this without making any further demand for payment. This demand will be called "Immediate Payment in Full".

(B) "Foreclosure and Sale". If I default under this Mortgage, you can also start a "Foreclosure and Sale" of the Property, without giving me prior notice.

A "Foreclosure and Sale" of the Property will take away, forever, all of my rights in the Property. You can do this without having to give a bond to a court. The Property can be sold in "whole" (as one property) or in "part" (as several pieces of property) at a private sale or public auction. The buyer, who may be you or another person, will acquire the Property free and clear of any of my claims to the Property. The buyer would then own the Property. If I have not moved out before then, the buyer can remove me (and other persons, including my family, allowed by me to be on the Property) from the Property. This is known as "Foreclosure and Sale".

If the Property is a leasehold, the buyer will then own the leasehold interest for the rest of the lease term, plus any extensions and renewals of the lease term.

For your benefit in case I default under this Mortgage, I now "irrevocably" (permanently until you release this Mortgage or otherwise release me in writing) appoint you as my "attorney-in-fact" (authorized representative) to do all that is necessary to transfer my rights in the Property by a Foreclosure and Sale. This includes your being able to transfer the Property to a buyer at the sale, and, without giving notice to me, your being able to make any arrangements that you desire concerning this Mortgage and that buyer to protect your rights in this Mortgage and the Property.

A law of the State of Hawaii, now known as "Section 667-5 of the Hawaii Revised Statutes," provides for a Foreclosure and Sale of property under a "Power of Sale". This "Power of Sale" will let you foreclose the Mortgage and sell the Property without having to start a lawsuit, if I should default under the Mortgage. I give you that "Power of Sale" under Section 667-5 and under any successor statute, as such law may be amended.

If you exercise your right to get a Foreclosure and Sale of the Property, you will follow the procedures that are required of you by the laws of the State of Hawaii.

The proceeds from the sale of the Property by Foreclosure and Sale will be applied to pay



for any liens on the Property which are superior to this Mortgage, all amounts I owe you under the Note and this Mortgage including "Future Advances" as well as all of your costs and expenses including "Commissioner's" (auctioneer's) fees and attorneys' fees, in bringing a Foreclosure and Sale, plus interest, as allowed by this Mortgage and law. If the proceeds are not sufficient to pay all of the amounts that I owe you, then you will have the right to get a "personal judgment" (a court order) against me for the difference, or you can get any other remedy available to you under the law and this Mortgage. If there are any "surplus" (remaining) proceeds after you pay for all of the above, then those surplus proceeds will belong to me.

In any lawsuit for foreclosure and sale, Lender will have the right to collect all costs allowed by law, including reasonable attorneys' fees.

Lender shall also have an immediate right to a receivership without any requirement for prior notice to me or a hearing. The receiver shall serve without a bond.

In addition to having a foreclosure and sale, Lender may take any other actions allowed by law. This includes, for example, setting off (deducting) amounts that I owe Lender from any funds that Lender may owe to me. For example, if I have money on deposit in an account with Lender, Lender may take the money in that account to pay what I owe under the Note and this Mortgage.

**17. LENDER'S RIGHTS TO RENTAL PAYMENTS FROM THE PROPERTY AND TO TAKE POSSESSION OF THE PROPERTY.** As additional protection for Lender, I give to Lender all of my rights to any rental payments from the Property. However, until I am in default, I have the right to collect and keep those rental payments as they become due. I have not given any of my rights to rental payments from the Property to anyone else, and I will not do so without Lender's consent in writing.

If I am in default, then Lender, persons authorized by Lender, or a receiver appointed by a court at Lender's request may: (A) collect the rental payments, including overdue rental payments, directly from the tenants; (B) enter on and take possession of the Property; (C) manage the Property; and (D) sign, cancel and change leases. I agree that if Lender notifies the tenants that Lender has the right to collect rental payments directly from them under this Paragraph, the tenants may make those rental payments to Lender without having to ask whether I have failed to keep my promises and agreements under this Mortgage.

If there is a judgment for Lender in a lawsuit for foreclosure and sale, I will pay to Lender reasonable rent from the date the judgment is entered for as long as I occupy the Property. However, this does not give me the right to occupy the Property.

All rental payments collected by Lender or by a receiver, other than the rent paid by me under this Paragraph, will be used first to pay the costs of collecting rental payments and managing the Property. If any part of the rental payments remains after those costs have been paid in full, the remaining part will be used to reduce the amount that I owe to Lender under the Note and under this

Mortgage. The costs of managing the Property may include the receiver's fees and reasonable attorneys' fees. Lender and the receiver will be obligated to account only for those rental payments that they actually receive.

18. LENDER'S OBLIGATION TO DISCHARGE THIS MORTGAGE WHEN THE NOTE AND THIS MORTGAGE ARE PAID IN FULL. When Borrower has paid all amounts due under the Note and this Mortgage, Lender will discharge this Mortgage by delivering a certificate stating that this Mortgage has been satisfied. I will pay all costs of recording the discharge in the proper official records.

19. CHANGING THIS MORTGAGE. This Mortgage can be changed only if Lender and I sign a writing agreeing to the change.

20. BORROWER'S FREEDOM TO CHOOSE INSURANCE COMPANY. I understand that I can get any insurance required by this Mortgage from any insurance company licensed to sell that insurance in Hawaii, subject to Lender's right to refuse an insurer for cause or reasonable excuse.

21. FINANCING STATEMENT. This Mortgage also serves as a financing statement to perfect the Lender's security interest in the Property.

By signing this Mortgage I agree to all of the above.

THE ROYAL BLOODLINE OF DAVID,  
a Washington nonprofit corporation

By 

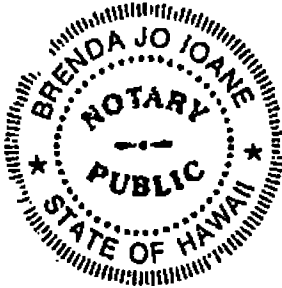
LEONARD GEORGE HOROWITZ  
Its Overseer

APPROVED AS TO FORM  
PETER K. KUBOTA  
ATTORNEY AT LAW

BY \_\_\_\_\_  
11-7-03

STATE OF WASHINGTON Hawaii )  
COUNTY OF Hawaii ) ss.

On this 15 day of January, 2004, before me personally appeared **LEONARD GEORGE HOROWITZ**, Individually and the Overseer of **THE ROYAL BLOODLINE OF DAVID**, a Washington nonprofit corporation, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.



Brenda Jo Joane  
Name: Brenda Jo Joane  
Notary Public, State of ~~Washington~~ Hawaii

My commission expires: 11/17/04

EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. B. Elderts

Kamaili Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa - Kalapana Road (Emergency Relief Project No. BR 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHERIAHULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. BR 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. B. Elderts to a pipe;

Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:

4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01/11/06, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01/11/06

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. B. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamaili Homesteads, being more particularly described as follows:

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 feet radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-11, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-0111

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT A

Exhibits pg. 27

PROMISSORY NOTE

\$350,000.00

1/15, 2003 <sup>2004</sup> <sub>2005</sub>

FOR VALUE RECEIVED, the undersigned promises to pay to LORAN LEE, also known as C. Loran Lee, single, whose mailing address is 13-3775 Kalapana Highway, Pahoa, Hawaii 96778, or order, the sum of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00), with interest thereon from the 15th day of JANUARY, 2003 <sup>2004</sup> <sub>2005</sub> until fully paid at eight percent (8%) per annum, principal and interest payable in lawful money of the United States as follows:

Interest only shall be payable monthly, commencing on the 15th day of JANUARY, <sup>FEBRUARY</sup> ~~JANUARY~~, and on the 15th day of each month thereafter, which amount on the original balance shall be TWO THOUSAND THREE HUNDRED THIRTY-THREE AND 33/100 DOLLARS (\$2,333.33), said payments to continue until the 15th day of JANUARY, 2009 <sup>2008</sup> <sub>2009</sub>, at which date there shall be due a final payment to include all principal and interest then owing.

There shall be no premium charged to the Maker hereof for prepayment at any time of up to ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) of the original balance of this Promissory Note. However, if any further prepayment is made, there shall be a premium of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00) charged to the Maker hereof.

If any installment be not paid when the same becomes due, then, or at any time during such default, the entire principal and interest owing hereon shall become due and payable at the election of the holder hereof, and notice of such election is hereby waived.

The undersigned shall pay to the Note holder a late charge of five percent (5%) of any monthly installment not received by the Note holder within fourteen (14) days after the installment is due.

If this Note is placed in the hands of an attorney for collection, or if suit is brought hereon, the undersigned promises to pay the costs of collection, including reasonable attorneys' fees.

The makers, endorsers and guarantors hereof, each jointly and severally, waive diligence, presentment, demand of payment, notice of non-payment, protest and notice of protest.


**EXHIBIT 4**

No. P-4  
Rec'd & Marked \_\_\_\_\_  
Exhibit \_\_\_\_\_ for identification  
in evidence  
Date \_\_\_\_\_

**Exhibits pg. 28**

This Promissory Note is secured by a Mortgage of even date herewith.

THE ROYAL BLOODLINE OF DAVID,  
a Washington nonprofit corporation

By   
LEONARD GEORGE HOROWITZ  
Individually and as its Overseer

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

*Nicole Ann Thompson*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii



R-591 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JAN 23, 2004 08:01 AM  
Doc No(s) 2004-014440



1st CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$550.00

20 3/4 Z2

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: MAIL (X) PICKUP ( ) TO:

*The Royal Bloodline of David*

*P.O. Box 1739*

*Newport, Washington 99156*

**ITC**

ESCROW NO.: 302-00225945-BJI  
Brenda Ioane

THIS DOCUMENT CONTAINS 7 PAGES

TITLE OF DOCUMENT:

**WARRANTY DEED**

PARTIES TO DOCUMENT:

**GRANTOR:** LORAN LEE, also known as C. Loran Lee, single, whose mailing address  
is 13-3775 Kalapana Highway, Pahoa, Hawaii 96778

**GRANTEE:** THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit  
corporation, whose mailing address is P. O. Box 1739, Newport,  
Washington 99156

TAX MAP KEY (3) 1-3-001:049 and :043

PKK/ITC2003.DED/11-6-03

**EXHIBIT 5**

**Exhibits pg. 30**



## WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That LORAN LEE, also known as C. Loran Lee, single, whose mailing address is 13-3775 Kalapana Highway, Pahoa, Hawaii 96778, hereinafter called the "Grantor", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation, whose mailing address is P. O. Box 1739, Newport, Washington 99156, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee all of that certain real property designated on the tax maps of the Third Taxation Division, State of Hawaii, as Tax Map Key 1-3-001:049 and :043, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, hereditaments, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, and the Grantee's successors and assigns, in fee simple forever.

AND THE SAID GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seised in fee simple of said granted premises and that the said premises are free and clear of all encumbrances except as aforesaid, and except for assessments for real property taxes not yet due. And the said Grantor further covenants and agrees that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

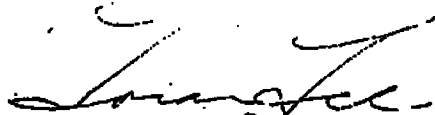
AND in consideration of the premises, the Grantee hereby acknowledges that the Grantee is aware, understands and agrees that all of the premises herein conveyed, including, but not limited to, all improvements located thereon, are being conveyed by the Grantor to the Grantee "AS IS" without warranty or representation, express or implied, as to condition or fitness for any purpose whatsoever, the Grantee hereby agreeing, acknowledging and affirming to the Grantor that the Grantee has had full opportunity to inspect the premises and accept the same "AS IS", as provided

for in the sales contract and any and all addenda thereto. The terms of said "AS IS" provisions are incorporated herein by reference and shall survive closing.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

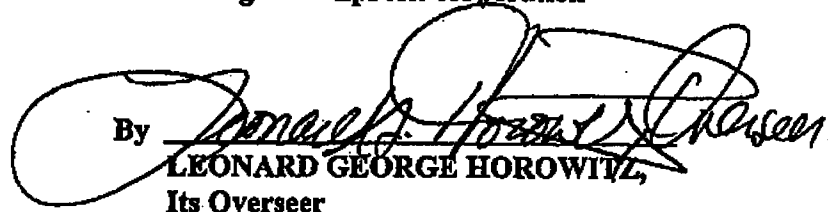
The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, this instrument has been executed by the undersigned on this 15th day of JANUARY, 2004. 4024105222 bnp

  
LORAN LEE A.K.A C. LORAN LEE

THE ROYAL BLOODLINE OF DAVID,  
a Washington nonprofit corporation

APPROVED AS TO FORM  
PETER K. KUBOTA  
ATTORNEY AT LAW

By   
LEONARD GEORGE HOROWITZ,  
Its Overseer

BY \_\_\_\_\_  
11-7-03

EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. E. Elderts

Kamaili Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa - Kalapana Road (Emergency Relief Project No. ER 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HRIHRIAHULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. E. Elderts to a pipe;
- Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:
4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to Loran Lee, single, by Deed dated November 3, 2000, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2001-189329.

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamaili Homesteads, being more particularly described as follows:

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEHEBIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 feet radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to Loran Lea, by Deed dated November 23, 1999, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-030528.

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT A

Exhibits pg. 34

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS  
STATE OF HAWAII

BUREAU OF CONVEYANCE

TIME  
Dec 2009-136886  
SEP 08, 2009 08:02 AM

After Recordation, Return by Mail (X) Pickup ( ) To:

Paul J. Sulla, Jr.  
P.O. Box 5258  
Hilo, HI 96720

TMK Nos. (3) 1-3-001:049 and 043

#### ASSIGNMENT OF MORTGAGE

THIS ASSIGNMENT OF MORTGAGE (herein referenced to as the "Assignment") is made as of this 5<sup>th</sup> day of May, 2009 by LORAN LEE, a/k/a C. LORAN LEE, an unmarried individual, whose address is 13-811 Malama Street, Pahoa, HI 96778, (hereinafter referred to as the "Assignor") for the benefit of CECIL LORAN LEE, OVERSEER OF THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, whose address is 13-811 Malama Street, Pahoa, HI 96778, (hereafter referred to as the "Assignee").

#### WITNESSETH

WHEREAS, Assignor is the holder of that certain Mortgage together with the debt and Note secured hereby, in the original principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) given by THE ROYAL BLOODLINE OF DAVID, a Hawaiian non-profit corporation whose address is P.O. Box 1739, Newport, WA 99156, (hereinafter referred to as "Mortgagor").

1

EXHIBIT 6

Exhibits pg. 35

WHEREAS, the said Mortgage is dated January 15, 2004 and recorded in the Bureau of Conveyances of the State of Hawaii, Document No. 2004-014441, and it encumbers and is a lien upon that certain real property consisting of 17.87 acres more or less located in Kalapana, in the County and State of Hawaii, described in Exhibit "A", attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises"); and,

WHEREAS, Assignor is desirous of assigning said Mortgage, together with the Note and debt therein described to Assignee; and

WHEREAS, Assignee is desirous of receiving and holding said Mortgage, together with the Note and the debt therein described, from Assignor.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) paid by Assignee, and other goods and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Assignor, Assignor does hereby make the following assignment:

1. Assignment. Assignor has granted, bargained, sold, assigned, conveyed and transferred, and by these presents does grant, bargain, sell, assign, convey and transfer unto Assignee, its heirs, successors and assigns, forever all of its right, title and interest in, to and under said Mortgage described above, together with the debt and Note secured thereby; together with any and all rights, interests and appurtenances thereto belonging; subject only to any right and equity of redemption of said Mortgage, its successors or assigns in the same.

2. Warranties and Representations. Assignor hereby warrants and represents that it is the present holder of the above described Mortgage and that there are no other holders of said Mortgage or any interest therein nor has the Assignor declared that that is any default by Mortgagor therein or in the Note and debt secured thereby.

3. Governing Law. This Assignment shall be governed, construed and interpreted by, through and under the laws of the State of Hawaii.

4. Headings. Paragraph headings contained herein are for the convenience of reference only and are not to be used in the construction or interpretation hereof.

IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment to Assignee on the date hereof.

LORAN LEE a/k/a C. LORAN LEE



Assignor

STATE OF HAWAII                    )  
  ) ss.  
COUNTY OF HAWAII                )

On this 15 day of May, 2009, before me personally appeared LORAN LEE a/k/a C. LORAN LEE and ~~CECIL LORAN LEE~~ to me known (or who has proven to me on the basis of RP satisfactory evidence) to be the persons described in and who executed the foregoing ASSIGNMENT OF MORTGAGE, dated May 15, 2009 and consisting of 3 pages total, who, being duly sworn, acknowledged that he executed said instrument as his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.



(Notary signature)

Collins Tomei

(Print notary name)

Notary Public

Third Judicial Circuit

State of Hawai'i

(Stamp or Seal)

My commission expires: 02-20-2010

## Assignment of Promissory Note

**THIS ASSIGNMENT** dated May 15, 2009

**BETWEEN:**

**LORAN LEE a/k/a C. LORAN LEE**

(the "Assignor")

-and-

**THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSORS,  
OVER/FOR THE POPULAR ASSEMBLY OF  
REVITALIZE A GOSPEL OF BELIEVERS**

(the "Assignee")

**WHEREAS:**

- (A) **THE ROYAL BLOODLINE OF DAVID**, a Washington nonprofit corporation (the "Debtor") is indebted to the Assignor in the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) (the "Debt"), see copies attached as Exhibit "A";
- (B) The Debt is secured by a Mortgage recorded with the Bureau of Conveyances for the State of Hawaii, Document No. 2004-014441 ("Mortgage"), concerning certain premises consisting of 17.87 acres more or less located at TMK (3) 1-3-001:049 and 043, Kalapana, County and State of Hawaii; and
- (C) The Assignor wishes to assign to the Assignee, and the Assignee wishes to receive an assignment of the Debt;

**NOW THEREFORE** in consideration of the recitals, the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

- 1. The Assignor hereby assigns, transfers and sets over unto the Assignee the Debt together with the Mortgage and all advantage and benefit to be derived therefrom.
- 2. As consideration for the assignment, the Assignee agrees to pay to the Assignor, concurrently with the execution of this Agreement, the sum of \$10.00 and other valuable consideration.
- 3. The Assignor hereby acknowledges, covenants and agrees that the Debt is justly and truly owing by the Debtor to the Assignor.

!

**EXHIBIT 7**

**Exhibits pg. 38**




4. The Assignor covenants and agrees with the Assignee that the Assignor shall assign to the Assignee all its or his right, title and interest in the Mortgage security in respect of the Debt assigned by this Assignment, and the same shall be deemed security granted by the Assignor to the Assignee.
5. The Assignor acknowledges and agrees that all his rights in respect of the Debt have been assigned to the Assignee but that the acceptance by the Assignee of this Assignment shall impose upon the Assignee the obligation to take any steps to effect the collection of same or to ensure that the Debt does not become statute barred by the operation of any law relating to limitation of actions, or otherwise.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
LORAN LEE A/K/A/ C. LORAN LEE

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
CECIL LORAN LEE, OVERSEER

THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS  
SUCCESSORS OVER/FOR THE  
POPULAR ASSEMBLY OF  
REVITALIZE A GOSPEL OF  
BELIEVERS

EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. B. Elderts

Kaunali Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa - Kalapana Road (Emergency Relief Project No. HR 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEHEHIAHULLU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 35' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. HR 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. B. Elderts to a pipe;

Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:

4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2011.10.14 recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2011.10.14

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. B. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kaunali Homesteads, being more particularly described as follows:

Description: Honolulu, HI Regular System-Year. DocID 2004.14441 Page: 15 of 16  
Order: 16-00000232359 Comments:

---

**LEVELS OF OPINION-BASED ON ASTM GUIDELINES FOR EXPRESSING CONCLUSIONS**

Since the observations made by the examiner relate to the product of the human behavior there are a large number of variables that could contribute to limiting the examiner's ability to express an opinion confidently. These factors include the amount, degree of variability, complexity and contemporaneity of the questioned and/or specimen writings. To allow for these limitations a scale is used which has four levels on either side of an inconclusive result. These levels are:

- **Identification / Elimination**

May be expressed as 'The writer of the known documents wrote / did not write the questioned writing.' This opinion is used when the examiner denotes no doubt in their opinion; this is the highest degree of confidence expressed by a document examiner.

- **Strong Probability**

May be expressed as 'There is a strong probability the writer of the known documents wrote / did not write the questioned writing.' This opinion is used when the evidence is very persuasive, yet some critical feature or quality is missing; however, the examiner is virtually certain in their opinion.

- **Probable**

May be expressed as 'It is probable the writer of the known documents wrote / did not write the questioned writing.' This opinion is used when the evidence points strongly toward / against the known writer; however, the evidence falls short of the virtually certain degree of confidence.

- **Evidence to Suggest**

May be expressed as 'there is evidence to suggest the writer of the known documents wrote / did not write the questioned writing.' This opinion is used when there is an identifiable limitation on the comparison process. The evidence may have few features which are of significance for handwriting comparisons purposes, but those features are in agreement with another body of writing.

- **Inconclusive**

May be expressed as 'no conclusion could be reached as to whether the writer of the known documents wrote / did not write the questioned writing.' This is the zero point of the confidence scale. It is used when there are significantly limiting factors, such as disguise in the questioned and/or known writing or a lack of comparable writing and the examiner does not have even a leaning one way or another.

## DECLARATION OF BETH CHRISMAN

I, BETH CHRISMAN, hereby declare as follows:

1. I am an Expert Document Examiner and court qualified expert witness in the field of questioned documents in the State of California. I am over the age of eighteen years, am of sound mind, having never been convicted of a felony or crime of moral turpitude; I am competent in all respects to make this Declaration. I have personal knowledge of the matters declared herein, and if called to testify, I could and would competently testify thereto.

2. I have studied, was trained and hold a certification in the examination, comparison, analysis and identification of handwriting, discrimination and identification of writing, altered numbers and altered documents, handwriting analysis, trait analysis, including the discipline of examining signatures. I have served as an expert within pending litigation matters and I have lectured and taught handwriting related classes. A true and correct copy of my current Curriculum Vitae ("C.V.") is attached as "Exhibit A".

3. **Request:** I was asked to analyze a certified copy of the ARTICLES OF INCORPORATION, CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES for the Corporation Sole of THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS filed with the State of Hawaii Department of Commerce and Consumer Affairs. I have attached this document as EXHIBIT B, Pages 1 through 8.

4. **Basis of Opinion:** The basis for handwriting identification is that writing habits are not instinctive or hereditary but are complex processes that are developed gradually through habit and that handwriting is unique to each individual. Further, the basic axiom is that no one person writes exactly the same way twice and no two people write exactly the same. Thus writing habits or individual characteristics distinguish one person's handwriting from another.

1 Transferred or transposed signatures will lack any evidence of pressure of a writing  
2 instrument. Additionally, due to modern technology in the form of copiers, scanners, and computer  
3 software that can capture documents as well as edit documents and photos it has become quite easy  
4 to transfer a signature from one document to another. However, there will always be a source  
5 document and in many cases the signature will remain unchanged. The fact that there is more than  
6 one signature that is exactly the same is in direct opposition to one of the basic principles in  
7 handwriting identification.

8  
9 A process of analysis, comparison and evaluation is conducted between the document(s).  
10 Based on the conclusions of the expert, an opinion will be expressed. The opinions are derived  
11 from the ASTM Standard Terminology for Expressing Conclusions for Forensic Document  
12 Examiners.

13 **5. Observations and Opinions:**

14 **PAGE NUMBERING:**

- 15  
16 a. This is an 8 page document with the first six pages having a fax footer dated May 26, 2009  
17 and the last 2 pages having a fax footer of May 28, 2009.
- 18 b. Further, the first four pages are numbered as such, the fifth page has no original number  
19 designation, the sixth page has the numeral 2, and the last two pages are labeled 1 and 2.
- 20 c. There is not one consistent page numbering system or text identification within the  
21 document pages that indicates all pages are part of one document.

22 **DOCUMENT PAGES:**

- 23  
24 d. Page 6 and Page 8 are both General Certification pages and contain the same text, exact  
25 same signature and exact same handwritten '8' for the day. Since no one person signs their name  
26 exactly the same way twice, one of these documents does not contain an authentic signature.

1 Additionally, no one person writes exactly the same way twice thus the numeral '8' is also not  
2 authentic on one of the documents.

3 e. It is inconclusive if one of the documents is the source or if neither is the source document.

4 f. There is no way to know if the signature of Cecil Loran Lee was an original prior to faxing  
5 or if it was a copy of a copy or the generation of the copy if a copy was used to fax the form.

6 **PAGES 5 AND 6**

7 g. Page 6 is a General Certification appearing to be attached to the previous page, however,  
8 Page 5 of this set of documents references a Gwen Hillman and Gwen Hillman clearly is not the  
9 signature on the Certification. Additionally, there is no Page number on the Certificate of Evidence  
10 of Appointment that actually links it to the next page, the General Certification of a Cecil Loran  
11 Lee.  
12

13 h. Further, the fax footer shows that Page 5 is Page 13 of the fax, where page 4 is Faxed page  
14 5 and page 6 is fax page 7; so there is inconsistency in the overall document regarding the first six  
15 pages.  
16

17 i. There is no way to know based on the fax copy and limited handwriting if the same person  
18 wrote the '8' on pages 5 and 6. There's no real evidence these pages go together outside the order  
19 they were stapled together in the Certified Copy.

20 **PAGE 8.**

21 j. Page 8 does have an additional numeral '2' added to the original numeral 8 to make '28.'

22 a. The Please see EXHIBIT 3 for levels of expressing opinions.

23  
24 6. **Opinion:** EXHIBIT B, The ARTICLES OF INCORPORATION, CORPORATION SOLE  
25 FOR ECCLESIASTICAL PURPOSES for the Corporation Sole of THE OFFICE OF THE  
26 OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR  
27 ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS filed with the State of Hawaii  
28

1 Department of Commerce and Consumer Affairs contains page(s) that are not authentic in nature  
2 but have been duplicated, transferred and altered. Further, the lack of proper page numbering and  
3 consistency within the page number makes the document suspicious.

4 **7. Declaration:**

5 I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct and that this declaration was executed on the 12th day of June, 2015,  
7 in Sherman Oaks, California.  
8

9   
10 BETH CHRISMAN  
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1 ACKNOWLEDGMENT

2 A notary public or other officer completing this certificate verifies only the identity of the  
3 individual who signed the document to which this certificate is attached, and not the truthfulness,  
4 accuracy, or validity of that document.

5  
6 State of California

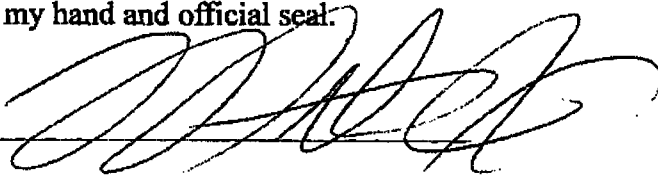
7 County of Los Angeles

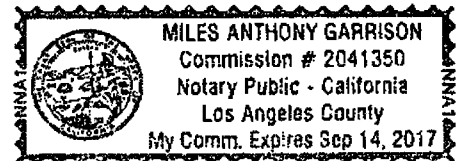
8  
9 On June 30, 2015 before me, Miles Anthony Garrison, Notary Public personally appeared Beth Chrisman,  
10 who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed  
11 to the within instrument and acknowledged to me that she executed the same in her authorized  
12 capacity, and that by her signature on the instrument the person, or the entity upon behalf of which  
13 the person acted, executed the instrument.  
14

15 I certify under PENALTY OF PERJURY under the laws of the State of California that the  
16 foregoing paragraph is true and correct.  
17

18  
19 WITNESS my hand and official seal.

20  
21 Signature







STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
1010 Richard Street  
PO Box 40, Honolulu, HI 96810

ARTICLES OF INCORPORATION  
CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES  
(Section 419, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned desires to form a Corporation Sole for Ecclesiastical purposes under the laws of the State of Hawaii and does certify as follows:

Article I

The name of the Corporation Sole is:

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**

Article II

Cecil Loran Lee of 13-811 Malama Street, Pahoa, HI 96778, duly authorized by the rules and regulations of the church **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, hereby forms **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and is the initial holder the office of Overseer hereunder.

Article III

The principal office of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** is 13-811 Malama Street Pahoa, HI 96778. The Island of Hawaii is the boundary of the district subject to the ecclesiastical jurisdiction of the Overseer.

Article IV

The period of duration of the corporate sole is perpetual.

1

05/29/200920052

## Article V

The manner in which any vacancy occurring in the incumbency of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, is required by the discipline of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, to be filled, through an appointment of Jason Hester of Paho, Hawaii as designated successor, and if said designated successor is unable or unwilling to serve, then through an appointment by the support and blessings by a formal "Popular Assembly" of clerical staff and the general membership of **REVITALIZE, A GOSPEL OF BELIEVERS**, as to the named designated successor. The corporate sole shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, have the same capacity to receive and take gifts, bequests, devise or conveyance of property as though there were no vacancy.

## Article VI

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** shall have all the powers set forth in HRS c. 419-3 and 414D-52 including the power to contract in the same manner and to the same extent as any man, male or female, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatsoever, and shall have the authority to appoint attorneys in fact. It has in any venue and jurisdiction authority to borrow money, give promissory notes therefore, to deal in every way in prime notes, noble metals, planchets, commercial liens, stamps, mortgages, all manner of banking, and to secure the payment of same by mortgage or other lien upon property, real and personal, enter into insurance and assurance agreements, own life insurance policies, and purchase and sell contracts and other commercial instruments. It shall have the authority to buy, sell, lease, and mortgage and in every way deal in real, personal and mixed property in the same manner as a "natural person" or covenant child of God. It may appoint legal counsel, licenses and/or unlicensed, but any professional or nonprofessional account services, legal or other counsel employed shall be utilized in a capacity never greater than subordinate co-counsel in any and all litigious matters whether private, corporate, local, national or international, in order to protect the right of the corporation sole to address all courts, hearings, assemblies, etc., as superior co-counsel.

05/29/200920052

**Article VII**

The presiding Overseer of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** can be removed by a 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, duly called for that purpose, provided that a successor Overseer is selected at that meeting.

The presiding Overseer may not amend or alter this Article VII without the 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS** duly called for that purpose.

**Article VIII**

The presiding Overseer, after prayers and counsel from The Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, may at any time amend these Articles, change the name, the term of existence, the boundaries of the district subject to its jurisdiction, its place of office, the manner of filling vacancies, its powers, or any provision of the Articles for regulation and affairs of the corporation and may by Amendment to these Articles, make provision for any act authorized for a corporate sole under HRS c. 419. Such Amendment shall be effective upon recordation with the State of Hawaii.

**Article IX**

The purpose of this corporation sole is to do those things which serve to promote Celestial values, the principles of Love, Harmony, Truth and Justice, the love of our brothers and sisters as ourselves, the comfort, happiness and improvement of Man and Woman, with special emphasis upon home church studies, research and education of those rights secured by God for all mankind and of the laws and principles of God for the benefit of the Members of the Assembly and the Community at large. This corporate sole is not organized for profit.

**Article X**

All property held by the above named corporation sole as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS**, shall be held for the use, purpose, and benefit of **REVITLIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia.

I certify upon the penalties of perjury pursuant to Section 419 of the Hawaii Revised Statutes that I have read the above statements and that the same are true and correct.

Witness my hand this 8 day of May, 2009.

CECIL LORAN LEE

Cecil Loran Lee

05/29/2009

# CERTIFICATE OF EVIDENCE OF APPOINTMENT

## Asseveration

State of Hawaii )

County of Hawaii )

Signed and Sealed

FILED 05/28/2009 05:41 PM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii

Gwen Hillman, Scribe, on the 8<sup>th</sup> day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine having first stated by prayer and conscience, avers, deposes and says:

Cecil Loran Lee is the duly appointed, qualified OVERSEER of THE OFFICE OF OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, by virtue of Spiritually and Divinely inspired appointment and he is, and has been, sustained as such by the general membership of said "body of believers" of REVITALIZE, A GOSPEL OF BELIEVERS a Hawaiian incorporated Church assembly, in the nature of Ecclesia, and THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, in a special Popular Assembly meeting on the 8 day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine as evidenced by an official recording of such appointment signed by Gwen Hillman, Scribe of THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

RECEIVED MAY-26-2009 11:27

FROM-

TO-DCCA BREG

PAGE 013

Exhibits pg. 51

05/29/200920052

**General Certification**

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 8 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.



Affix Seal

Here..

Cecil Loran Lee, the Overseer  
 The Office of the Overseer  
 a corporation sole and his successors,  
 over/for The Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS** an incorporated Church assembly,  
 in the nature of Ecclesia

## STATEMENT OF INCUMBENCY

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS  
SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS.**

BE IT KNOWN BY THESE PRESENTS that Cecil Loran Lee of 13-811 Malama Street Pahoa, HI 96778 is the current incumbent OVERSEER for the corporation sole known as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**. This Statement of Incumbency is provided pursuant to Hawaii Revised Statutes c.419-5.

Pursuant to Cecil Loran Lee's right to worship Almighty God, in accordance with the dictates of his own conscience, and having, humbly, taken possession of The Office of OVERSEER on the 28 day of May in the year two thousand nine, the OVERSEER does hereby certify, and adopt this "Statement of Incumbency".


In accordance with the disciplines of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation, in the nature of Ecclesia located in Pahoa, County and State of Hawaii having established said corporation sole **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and by this Statement of Incumbency hereby notifies the State of Hawaii that Cecil Loran Lee is the duly appointed incumbent OVERSEER.

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, does hereby establish that Cecil Loran Lee is the duly appointed incumbent OVERSEER of this corporate sole created for the purposes of administering and managing the affairs, property, and temporalities of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation in the nature of Ecclesia.

# General Certification

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 28 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.

 Affix Seal Here.

Cecil Loran Lee, the Overseer  
The Office of the Overseer  
a corporation sole and his successors,  
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF  
BELIEVERS an incorporated Church assembly,  
in the nature of ecclesia



30  
C

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

Nicki Ann Thompson  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii



R-758  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAY 11, 2010 12:00 PM  
Doc No(s) 2010-084623



20 1/2 Z12

/s/ NICKI ANN THOMPSON  
REGISTRAR  
CONVEYANCE TAX: \$175.00

After Recordation, Return by Mail (X) Pickup ( ) To:

Paul J. Sulla, Jr.  
P. O. Box 5250  
Hilo, HI 96720

Tax Map Key (3) 1-3-001:049 & 043

TOTAL PAGES 7

QUITCLAIM DEED

THIS INDENTURE, made this 3rd day of May,  
2010, by and between THE OFFICE OF OVERSEER, A CORPORATE SOLE  
AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole, as foreclosing  
mortgagee, whose address is 13-811 Malama Street, Pahoa, HI  
96778, (hereafter referred to as the "Grantor") and THE OFFICE  
OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE  
POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a  
Hawaiian Corporation Sole, whose address is 13-811 Malama  
Street, Pahoa, HI 96778, (hereafter referred to as the  
"Grantee").

W I T N E S S E T H

THAT WHEREAS, THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation by Leonard George Horowitz individually and as Overseer (hereinafter referred to as the "Borrower/Mortgagor") executed a certain Promissory Note and Mortgage dated January 15, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-014441, with LORAN LEE a/k/a C. LORAN LEE, as the original Mortgagee; and

WHEREAS, LORAN LEE a/k/a C. LORAN LEE assigned that certain Mortgage to THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole by ASSIGNMENT OF MORTGAGE dated May 15, 2009 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-136885 with LORAN LEE a/k/a C. LORAN LEE, as the original OVERSEER;

WHEREAS, LORAN LEE a/k/a CECIL LORAN LEE died on June 29, 2009 and JASON HESTOR of Pahoa, HI 96778 became the succeeding incumbent OVERSEER of THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole;

WHEREAS, the term of the Promissory Note currently held by Grantor, as foreclosing mortgagee expired on January 15, 2009; the entire remaining unpaid principal balance became due and

payable; and the Borrower/Mortgagor has defaulted on the repayment of the Promissory Note and Mortgage; and

WHEREAS, pursuant to Grantor's foreclosure rights under power of sale as provided in Sections 667-5 through 667-10, Hawaii Revised Statutes, and that aforesaid Mortgage dated January 15, 2004, and in accordance with the terms of the MORTGAGEE'S AFFIDAVIT OF FORECLOSURE UNDER POWER OF SALE, the Grantor herein duly held a sale by public auction on April 20, 2010 and the property hereinafter described was offered for sale, and wherein THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS was the purchaser of said property for the sum of \$175,000.00. Said auction being evidenced by MORTGAGEE'S AFFIDAVIT OF FORECLOSURE UNDER POWER OF SALE recorded herewith.

NOW, THEREFORE, Grantor, as foreclosing mortgagee under power of sale, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, does hereby release, remise, quitclaim, transfer and convey all of that certain real property described in Exhibit "A" attached hereto and made a part hereof, unto Grantee, as TENANT IN SEVERALTY; And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, in FEE SIMPLE, forever.


The Grantor makes no warranties or covenants with respect to this conveyance. The property is sold strictly "AS IS" and "WHERE IS" without covenant or warranty, express or implied, as to title, possession or encumbrances.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents  
on the day and year first above written.

THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSOR  
OVER/FOR THE POPULAR ASSEMBLY OF  
REVITALIZE, A GOSPEL OF BELIEVERS

By

  
Jason Hester  
its: Overseer

"Grantor"


STATE OF HAWAII )  
COUNTY OF HAWAII )

SS.

On this 3 day of May, 2010, before me appeared Jason Hester, to me personally known, who, being by me duly sworn, did say that he is the OVERSEER of THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii Corporation Sole and that said QUITCLAIM DEED dated May 3 2010 consisting of 7 pages was signed in the Third Circuit of Hawaii on behalf of said corporation by authority of its OVERSEER, and he acknowledges said instrument to be the free act and deed of said Corporation Sole.

Doc. Date: 5/3/2010 # Pages: 7  
Notary Name: Carol L. Silva Third Circuit  
Doc. Description: Quitclaim Deed  
Office of Overseer 7/24/13/1/4/43  
Carol L. Silva 5/3/2010  
Notary Signature Date

NOTARY CERTIFICATION

  
Notary Public, State of Hawaii  
Print Name: Carol L. Silva

My commission expires: 10/12/2012



EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. E. Elderts

Kamali Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa - Kalapana Road (Emergency Relief Project No. ER 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HHHRIAHTULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. E. Elderts to a pipe;

Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:

4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-11, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01441.

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamali Homesteads, being more particularly described as follows:

Description: Honolulu, HI Regular System-Tax, DocID 2004.14441 Page: 15 of 16  
Order: 19-00000232359 Comments:

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHIHIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 foot radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01444, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01444

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT X

Description: Honolulu, HI Regular System-Year.DocID 2004.14441 Page: 16 of 16  
Order: 19-00000232359 Comment:

Exhibits pg. 61

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

*Nicki Ann Thompson*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii



R-883

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUN 14, 2011 11:00 AM  
Doc No(s) 2011-083772



20 1/2 21

/s/ NICKI ANN THOMPSON  
REGISTRAR  
CONVEYANCE TAX: \$220.00

*kl*  
After Recordation, Return by Mail (X) Pickup ( ) To:

Paul J. Sulla, Jr.  
P. O. Box 5250  
Hilo, HI 96720

Tax Map Key (3) 1-3-001:049 & 043

TOTAL PAGES 5

QUITCLAIM DEED

THIS INDENTURE, made this 9<sup>th</sup> day of June,  
2011, by and between THE OFFICE OF OVERSEER, A CORPORATE SOLE  
AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole, whose address  
is 13-811 Malama Street, Pahoa, HI 96778, (hereafter referred  
to as the "Grantor"), for and in consideration of the sum of TEN  
DOLLARS (\$10.00) and other valuable consideration paid to  
Grantor by JASON HESTER, an individual whose address is PO Box  
758 Pahoa, HI 96778 (hereafter referred to as the "Grantee"),  
the receipt of which is hereby acknowledged, does hereby

EXH **EXHIBIT 10**

Exhibits pg. 62



release, remise, quitclaim, transfer and convey all of that certain real property described on the tax maps of the Third Taxation Division, State of Hawaii, as Tax Map Key (3) 1-3-001-043 & 1-2-001-049 in the interests noted above, more particularly described in Exhibit "A" attached hereto and made a part hereof, subject to the encumbrances noted therein

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, in FEE SIMPLE, forever.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents  
on the day and year first above written.

THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSOR  
OVER/FOR THE POPULAR ASSEMBLY OF  
REVITALIZE, A GOSPEL OF BELIEVERS

By

Jason Hester  
Jason Hester  
its: Overseer

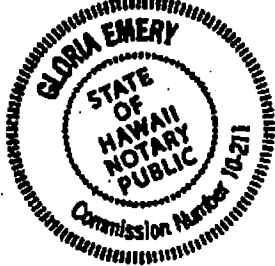
"Grantor"

STATE OF HAWAII )

SS.

COUNTY OF HAWAII )

On this 9<sup>th</sup> day of June, 2011, before me appeared Jason  
Hester, to me personally known, who, being by me duly sworn, did  
say that he is the OVERSEER of THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY  
OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii Corporation Sole  
and that on behalf of said corporation by authority of its  
OVERSEER, he acknowledges said instrument to be the free act and  
deed of said Corporation Sole.



Gloria Emery  
Notary Public, State of Hawaii  
Print Name: Gloria Emery

My commission expires: July 18, 2014

Doc. Date: 6/9/11 3rd Circuit  
# Pages: 5  
Doc. Description: Quitclaim Deed  
x Gloria Emery 6/9/11  
GLORIA EMERY, Notary Public Date

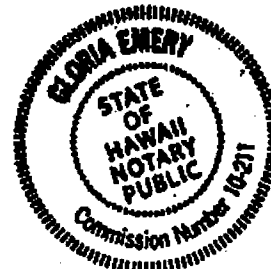


EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. B. Elderts

Kamali Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHEIAHULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. B. Elderts to a pipe;

Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:

4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-14, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01461

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. B. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamali Homesteads, being more particularly described as follows:

EXHIBIT "A"

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHEIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 feet radius curve to the left, the chord-azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01444 recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01444

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT X



R-884

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUN 14, 2011 11:00 AM

Doc No(s) 2011-083773

/s/ NICKI ANN THOMPSON  
REGISTRAR

20 212 21

Land Court System

Regular System

After Recordation, Return by Mail ( X ) Pickup ( ) To:

Jason Hester  
PO Box 758  
Pahoa, HI 96778

2095

TAX MAP KEY: Hawaii (3) 1-3-001:043 &amp; 043

MORTGAGE

WORDS USED OFTEN IN THIS DOCUMENT AND PARTIES AND THEIR ADDRESSES:

June 9th (A) "Mortgage." This document, which is dated June 9th, 2011, will be called the "Mortgage."

(B) "Borrower." Jason Hester, an individual, whose address is P. O. Box 758, Pahoa, Hawaii 96778, County of Hawaii will sometimes be called "Borrower" and sometimes simply "I" or "me."

(C) "Lender." PAUL J. SULLA JR. AAL, A LAW CORPORATION, a Hawaii corporation, whose address is PO BOX 5258, Hilo, Hawaii 96720, will sometimes be called "Lender" or sometimes simply "you" or "your."

(D) "Note." The Mortgage Loan Note, signed by Borrower and dated June 9, 2011 will be called the "Note." The

Note shows that I owe Lender **FIFTY THOUSAND DOLLARS (\$50,000.00)** plus interest, which I have promised to repay according to the terms set out in the Note.

(E) "Property." The property that is described below in the section titled "Description of the Property," will be called the "Property."

#### **BORROWER'S MORTGAGE AND TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY**

I mortgage, grant a security interest in and convey the Property to you subject to the terms of this Mortgage. This means that, by signing this Mortgage, I am giving you those rights that are stated in this Mortgage and also those rights that the law gives to lenders who hold mortgages on real property and security interests in personal property. I am giving you these rights to protect you from possible losses that might result if I fail to:

(A) Pay all the amounts that I owe you as stated in the Note;

(B) Pay, with interest, any amounts that you spend under this Mortgage, to protect the value of the Property and your rights in the Property;

(C) Keep all of my other promises and agreements under the Note or this Mortgage.

#### **DESCRIPTION OF THE PROPERTY**

Lender's rights apply to the following Property:

(A) The property is located at 13-3775 Pahoa-Kalapana Road, Kalapana, Hawaii TMK (3) 1-3-001-049 & (3) 1-3-001-043. The full legal description of this property is contained in Exhibit "A" which is attached at the end of this Mortgage;

(B) All buildings and other improvements that are located on the property described in Paragraph (A) of this section;

(C) All rights in other property that I have as owner of the property described in Paragraph (A) of this section. These

rights are known as "easements, rights and appurtenances attached to the property;"

(D) All rents or royalties from the property described in Paragraph (A) of this section;

(J) All of the amounts that I pay to Lender under Paragraph 2 below; and

(K) Any voting rights I have as owner of the Property.

**BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY**

I promise that:

(A) I lawfully own the Property;

(B) I have the right to mortgage, grant and convey the Property to Lender;

(C) there are no outstanding claims or charges against the Property except for the claims and charges against the Property listed in Exhibit "A" attached to the end of this Mortgage.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which you suffer because someone other than myself has some of the rights in the Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of those rights.

**BORROWER'S PROMISES AND AGREEMENT**

I promise and I agree with you as follows:

**1. BORROWER'S PROMISE TO PAY PRINCIPAL AND INTEREST UNDER THE NOTE AND TO FULFILL OTHER PAYMENT OBLIGATION.**

I will promptly pay you or anyone you name principal, interest and any late charges as stated in the Note.

## **2. LENDER'S APPLICATION OF BORROWER'S PAYMENTS**

Unless the law requires otherwise, Lender will apply each of my payments under the Note in the following order and for the following purposes:

- (A) First, to pay interest then due under the Note;
- (B) Next, to pay principal then due under the Note; and
- (C) Next, to pay interest and amounts paid by Lender under paragraph 6 below.

## **3. BORROWER'S OBLIGATION TO PAY CHARGES AND ASSESSMENTS AND TO SATISFY CLAIMS AGAINST THE PROPERTY.**

I will pay when they are due all taxes, assessments, and any other charges and fines that may be imposed on the Property. I will also make payments due under my lease if I am a tenant on the Property and I will pay lease rents (if any) due on the Property. I will do this either by making the payments to Lender that are described in Paragraph 2 above or, if I am not required to make payments under Paragraph 2, by making payments, when they are due, directly to the persons entitled to them. (In this Mortgage, the word "person" means any person, organization, governmental authority, or other party.) If I make direct payments, then promptly after making any of those payments I will give Lender a receipt which shows that I have done so.

Any claim, demand or charge that is made against property because an obligation has not been fulfilled is known as a "lien." I will promptly pay or satisfy all liens against the Property.

### ***Condominium and PUD Assessments.***

If the Property includes an apartment unit in a Condominium Project or in a PUD, I will promptly pay, when they are due, all assessments imposed by the owners' association or other organization that governs the Condominium Project or PUD. The association or organization will be called the "Owners' Association."



4. BORROWER'S OBLIGATION TO OBTAIN AND TO KEEP HAZARD INSURANCE ON THE PROPERTY.

(A) Generally.

I will obtain hazard insurance, if possible, to cover all buildings and other improvements that now are or in the future will be located on the Property. If possible, the insurance must cover loss or damage caused by fire, hazards normally covered by "extended coverage" hazard insurance policies, and other hazards for which Lender requires coverage. The insurance must be in the amounts and for the periods of time required by Lender. It is possible that the insurance policy will have provisions that may limit the insurance company's obligation to pay claims if the amount of coverage is too low. Those provisions are known as "co-insurance requirements." Lender may not require me to obtain an amount of coverage, if possible that is more than the larger of the following two amounts: either (i) the amount that I owe to Lender under the Note and under this Mortgage; or (ii) the amount necessary to satisfy the co-insurance requirements.

If I can get a policy, I will pay the premiums on the insurance policies by paying the insurance company directly when the premium payments are due.

If I get a policy, I will pay the premiums on the insurance policies either by making payments to Lender, as described in Paragraph 2 above, or by paying the insurance company directly when the premium payments are due. If Lender requires, I will promptly give Lender all receipts of paid premiums and all renewal notices that I receive.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to the insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company is called "proceeds." If the Property is used as a "residence" (for example, it is my home), then I have the right to decide whether the proceeds will be used to repair, restore or rebuild a residence on the Property or whether the proceeds will be used to reduce the amount that I owe you under the Note. In all other cases, Lender

will have the right to determine whether the proceeds are to be used to repair, restore or rebuild the Property or to reduce the amount I owe under the Note.

If any of the proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

If I abandon the Property, or if I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim for insurance benefits, then Lender has the authority to collect the proceeds. Lender may then use the proceeds to repair or restore the Property or to reduce the amount that I owe to Lender under the Note and under this Mortgage. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered.

If any proceeds are used to reduce the amount which I owe to Lender under the Note, that use will not delay the due date but shall change the amount of any of my monthly payments under the Note and under Paragraphs 1 and 2 above.

If Lender acquires the Property under Paragraph 17 below, all of my rights in the insurance policies will belong to Lender. Also, all of my rights in any proceeds which are paid because of damage that occurred before the Property is acquired by Lender or sold will belong to Lender. However, Lender's rights in those proceeds will not be greater than the amount that I owe to Lender under the Note and under this Mortgage immediately before the Property is acquired by Lender or sold.

(B) Agreements that Apply to Condominiums and PUD's.

(i) If the Property includes an apartment unit in a Condominium Project, the Owners' Association may maintain a hazard insurance policy which covers the entire Condominium Project. That policy will be called the "master policy." If the master policy insures my apartment unit as well as the common elements of the Condominium Project, so long as the master policy remains in effect and meets the requirements stated in this Paragraph 4: (a) my obligation to obtain and to keep hazard insurance on the Property is satisfied; (b) I will not be required to include an amount for hazard insurance premiums in my monthly payment of Funds to Lender

under Paragraph 2 above; and (c) if there is a conflict, concerning the use of proceeds, between (1) the terms of this Paragraph 4, and (2) the law or the terms of the declaration, bylaws, regulations or other documents creating or governing the Condominium Project, then that law or the terms of those documents will govern the use of proceeds. I will promptly give Lender notice if the master policy is interrupted or terminated. During any time that the master policy is not in effect the terms of (a), (b) and (c) of this subparagraph 4(B)(i) will not apply.

(ii) If the Property includes a unit in a Condominium Project, it is possible that proceeds will be paid to me instead of being used to repair or to restore the Property. I give Lender my rights to those proceeds. If the Property includes a unit in a PUD, it is possible that proceeds will be paid to me instead of being used to repair or to restore the common areas or facilities of the PUD. I give Lender my rights to those proceeds. All of the proceeds described in this subparagraph 4(B)(ii) will be paid to Lender and will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. If any of those proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

**5. BORROWER'S OBLIGATION TO MAINTAIN THE PROPERTY AND TO FULFILL OBLIGATIONS IN LEASES AND MORTGAGES AND AGREEMENTS ABOUT LEASES, CONDOMINIUMS AND PUD'S.**

**(A) Agreements about Maintaining the Property.**

I will keep the Property in good repair. I will not destroy damage or change the Property, and I will not allow the Property to deteriorate.

**(B) Agreements About Keeping Promises in Leases and Mortgages.**

I will fulfill my obligations under any lease which is part of the Property. I will not change or agree to any change in any Lease which is a part of the Property. I will fulfill my obligations in any Mortgage on the Property listed on Exhibit "A" at the end of this Mortgage. I will not change or agree to any change in any such Mortgage.

(C) Agreements that Apply to Leases and Preventing Rejection or Termination of Leases in Bankruptcy Cases.

If (i) the Property includes, or is under, covered, or affected by and leases (the "Property Leases"), (ii) I, or anyone else with rights to and/or obligations under any Property Leases, including, but not limited to, lessors, lessees, sublessors, and sublessees, become a debtor in a voluntary or involuntary bankruptcy case, and (iii) an order for relief is issued pursuant to the bankruptcy laws, then I will take the actions necessary to prevent the Property Leases (a) from being rejected by me, any bankruptcy trustee or any other person pursuant to the bankruptcy laws, or (b) from being terminated in any manner. I will take such actions within five (5) days from the date of filing of the order for relief. The bankruptcy laws include, but are not limited to, Section 365 of Title 11 of the provisions of the United States Code, which is often referred to as Bankruptcy Code Section 365, as it may be amended from time to time.

I now appoint you as my attorney-in-fact to do whatever you, as Lender, believe is necessary to protect your interests in the Property and to prevent the rejection or termination of the Property Leases under the bankruptcy laws. This means that I now give you the right, in my place and name, or in your own name, to do whatever you believe is necessary to protect your interests in the Property. You have no obligation or responsibility to look out for or take care of my interests. You may, but you do not have to, take any actions to prevent the Property Leases from being rejected or terminated pursuant to the bankruptcy laws. Those actions include, but are not limited to, the following:

(I) The filing of any instruments, documents and pleadings with the court to assume and/or assign the Property Leases; and

(II) The filing of a notice of election to remain in possession of leased real property if my lessor becomes a debtor in a bankruptcy case and rejects my lease.

Your having the right to take such actions will not prevent me, on my own, from taking any actions to protect my interests and the Property Leases.

(D) Agreements that Apply to Condominiums and PUD's.

If the Property is a unit in a Condominium Project or in a PUD, I will fulfill all of my obligations under the declaration, bylaws, regulations and other documents that create or govern the Condominium Project or PUD. Also, I will not divide the Property into smaller parts that may be owned separately (known as "partition or subdivision"). I will not consent to certain actions unless I have first given Lender notice and obtained Lender's consent in writing. Those actions are:

(1) The abandonment or termination of the Condominium Project or PUD, unless, in the case of a condominium, the abandonment or termination is required by law;

(2) Any change to the declaration, bylaws or regulations of the Owners' Association, trust agreement, articles of incorporation, or other documents that create or govern the Condominium Project or PUD, including, for example, a change in the percentage of ownership rights, held by unit owners, in the Condominium Project or in the common areas or facilities of the PUD;

(3) A decision by the Owners' Association to terminate professional management and to begin self-management of the Condominium Project or PUD; and

(4) The transfer, release, creation of liens, partition or subdivision of all or part of the common areas and facilities of the PUD. (However, this provision does not apply to the transfer by the Owners' Association of rights to use those common areas and facilities for utilities and other similar or related purposes.)

**6. LENDER'S RIGHT TO TAKE ACTION TO PROTECT THE PROPERTY.**

If: (A) I do not keep my promises and agreements made in this Mortgage, or (B) someone, including me, begins a legal proceeding that may affect Lender's rights in the Property (such as, for example, a legal proceeding in bankruptcy, in probate, for condemnation, or to enforce laws or regulations), then Lender may do and pay for whatever Lender believes is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions under this Paragraph 6 may include, for example,

appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs. Lender need not give me notice before taking any of these actions.

I will pay to Lender any amounts which Lender spends under this Paragraph 6. This Mortgage will protect Lender in case I do not keep this promise to pay those amounts with interest.

I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will also pay interest on those amounts at the same rate stated in the Note. However, if payment of interest at that rate would violate the law, I will pay interest on the amounts spent by Lender under this Paragraph 6 at the highest rate that the law allows. Interest on each amount will begin on the date that the amount is spent by Lender. However, Lender and I may agree in writing to terms of payment that are different from those in this paragraph.

Although Lender may take action under this Paragraph 6, Lender does not have to do so.

**7. LENDER'S RIGHT TO INSPECT THE PROPERTY.**

Lender, and others authorized by Lender may, upon reasonable notice, enter on and inspect the Property. They must do so in a reasonable manner and at reasonable times.

**8. AGREEMENTS ABOUT CONDEMNATION OF THE PROPERTY.**

A taking of property by any governmental authority by eminent domain is known as "condemnation." I give to Lender my right: (a) to proceeds of all awards or claims for damages resulting from condemnation or other governmental taking of the Property; and (b) to proceeds from a sale of the Property that is made to avoid condemnation. All of those proceeds will be paid to Lender and will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. If any of the proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

If I abandon the Property, or if I do not answer, within 30 days, a notice from Lender stating that a governmental authority has offered to make a payment or to settle a claim for damages,

then Lender has the authority to collect the proceeds. Lender may then use the proceeds to repair or restore the Property or to reduce the amount that I owe to Lender under the Note and under this Mortgage. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered.

If any proceeds are used to reduce the amount of principal which I owe to Lender under the Note, that use will not delay the due date or change the amount of any of my monthly payments under the Note and under Paragraphs 1 and 2 above. However, Lender and I may agree in writing to those delays or changes.

#### **Condemnation of Common Areas of PUD.**

If the Property includes a unit in a PUD, the promises and agreements in this Paragraph 8 will apply to a condemnation, or sale to avoid condemnation, of the PUD's common areas and facilities as well as of the Property.

#### **9. CONTINUATION OF BORROWER'S OBLIGATIONS**

Lender may allow a person who takes over my rights and obligations to delay or to change the amount of the payments of principal and interest due under this Note or under this Mortgage.

Even if Lender does this, however, that person and I will both still be fully obligated under the Note and under this Mortgage unless the conditions stated in paragraph 16 below have been met.

Lender may allow those delays or changes for a person who takes over my rights and obligations, even if Lender is requested not to do so. Lender will not be required to bring a lawsuit against such a person for not fulfilling obligation under the Note or under this Mortgage, even if Lender is requested to do so.

#### **10. CONTINUATION OF LENDER'S RIGHTS.**

Even if Lender does not exercise or enforce any right of Lender under this Mortgage or under the law, Lender will still have all of those rights and may exercise and enforce them in the future.



**11. LENDER'S ABILITY TO ENFORCE MORE THAN ONE OF LENDER'S RIGHTS.**

Each of Lender's rights under this Mortgage is separate. Lender may exercise and enforce one or more of those rights, as well as any of Lender's other rights under the law, one at a time or all at once.

**12. OBLIGATIONS OF BORROWERS AND OF PERSONS TAKING OVER BORROWER'S RIGHTS OR OBLIGATIONS.**

Subject to the terms of paragraph 16 below, any person who takes over my rights or obligations under this Mortgage will have all of my rights and will be obligated to keep all of my promises and agreements made in this Mortgage. Similarly, any person who takes over Lender's rights or obligations under this Mortgage will have all of Lender's rights and will be obligated to keep all of Lender's agreements in this Mortgage.

If more than one person signs this Mortgage as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Mortgage. Lender may enforce Lender's rights under this Mortgage against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under the Note and under this Mortgage. However, if one of us does not sign the Note, then:

(a) that person is signing this Mortgage only to give that person's rights in the Property to Lender under the terms of this Mortgage; and (b) that person is not personally obligated to make payments or to act under the Note.

**13. CAPTIONS.**

The captions and titles of this Mortgage are for convenience only. They may not be used to interpret or to define the terms of this Mortgage.

**14. AGREEMENTS ABOUT GIVING NOTICES REQUIRED UNDER THIS MORTGAGE.**

Unless the law requires otherwise, any notice that must be given to me under this Mortgage will be given by delivering it or by mailing it addressed to me at the address stated in Paragraph



(B) of the section above titled "Words Used Often In This Document and Parties and their Addresses." A notice will be delivered or mailed to me at a different address if I give Lender a notice of my different address. Any notice that must be given to Lender under this Mortgage will be given by mailing it to Lender's address stated in Paragraph (C) of the section above titled "words Used Often In This Document and Parties and Their Addresses." A notice will be mailed to Lender at a different address if Lender gives me a notice of the different address. A notice required by this Mortgage is given when it is mailed or when it is delivered according to the requirements of this Paragraph 14.

**15. LAW THAT GOVERNS THIS MORTGAGE.**

The law of the State of Hawaii will govern this Mortgage. If any term of this Mortgage or of the Note conflicts with that law, all other terms of this Mortgage and of the Note will still remain in effect if they can be given effect without the conflicting term.

This means that any terms of this Mortgage and of the Note which conflict with the law can be separated from the remaining terms, and the remaining terms will still be enforced.

**16. AGREEMENTS ABOUT ASSUMPTION OF THIS MORTGAGE AND ABOUT LENDER'S RIGHTS IF BORROWER TRANSFERS THE PROPERTY WITHOUT MEETING CERTAIN CONDITIONS.**

If I sell or transfer all or part of the Property or any rights in the Property, any person to whom I sell or transfer the Property may take over all of my rights and obligations under this mortgage (known as an "assumption of the Mortgage") if:

- (A) I give Lender notice of the sale or transfer;
- (B) Lender agrees that the person's credit is satisfactory and consents to the assumption, which consent shall not unreasonably be withheld;
- (C) the person agrees to pay interest on the amount owed to Lender under the Note and under this Mortgage at the rate set forth in the Note; and
- (D) the person signs an assumption agreement that is acceptable to Lender and that obligates the person to

keep all of the promises and agreements made in the Note and in this Mortgage.

I understand that even if I sell or transfer the Property and each of the conditions in (A), (B), (C) and (D) of this paragraph 16 are satisfied, Lender will still hold me to all of my obligations under the Note and under this Mortgage if the person assuming does not perform.

However, if I sell or transfer the Property and the conditions in (A), (B), (C) and (D) of this paragraph 16 are not satisfied, I will still be fully obligated under the Note and under this Mortgage and Lender may require Immediate Payment In Full, as that phrase is defined in paragraph 17 below. However, Lender will not have the right to require Immediate Payment In Full as a result of any of the following:

- (i) the creation of liens or other claims against the Property that are inferior to this Mortgage and the Lender consents in writing to their creation (Lender will not withhold its consent unreasonably);
- (ii) a transfer of rights in household appliances, to a person who provides me with the money to buy those appliances, in order to protect that person against possible losses;
- (iii) a transfer of the Property to surviving co-owners, following the death of a co-owner, when the transfer is automatic according to law; or
- (iv) leasing the Property for a term of one year or less, as long as the lease does not include an option to buy.

If Lender requires Immediate Payment In Full under this paragraph 16, Lender will send me a notice, in the manner described in paragraph 14 above, which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered. If I do not make the required payment during that period, Lender may bring a lawsuit for "foreclosure and sale" under paragraph 17 below without giving me any further notice or demand for payment. (See paragraph 17 for a definition of "foreclosure and sale.")

**17. LENDER'S RIGHTS IF BORROWER FAILS TO KEEP PROMISES  
AND AGREEMENTS.**

If the conditions in subparagraph (D) or all of the conditions stated in subparagraphs (A), (B), and (C) of this paragraph 17 are satisfied, Lender may require that I pay immediately the entire amount then remaining unpaid under the Note and under this Mortgage. Lender may do this without making any further demand for payment. This requirement will be called "Immediate Payment In Full."

If Lender requires Immediate Payment In Full, Lender may, at your sole option, either: (a) exercise a Power of Sale pursuant to HRS §667-5 or Part II HRS §667-21 et. seq. and/or (b) bring a lawsuit to take away all of my remaining rights in the Property and to have the Property sold. This is known as "foreclosure and sale." The Lender may be a buyer of the property at any foreclosure sale. The monies received from the foreclosure sale will be applied, first to pay the costs and expenses of the sale and the court costs and attorney's fees paid by the Lender because of my default; second, to the reimbursement of the Lender for all payments made by the Lender because of the property or because of my failure to keep any promise or agreement contained in this Mortgage; and lastly, to the payment of the balance of the principal and required interest then remaining unpaid. Any monies left over after these payments will be paid to me. If the money received from the foreclosure sale is not enough to make all of these payments, then the Lender will be entitled to recover the deficiency directly from me out of my own money.

Lender may require Immediate Payment In Full under this paragraph 17 only if all of the following conditions are satisfied:

(A) I fail to keep any promise or agreement made in this Mortgage, including the promise to pay when due the amounts that I owe to Lender under the Note and under this Mortgage; and

(B) Subject to subparagraph (D) below, Lender sends to me, in the manner described in paragraph 14 above, a notice that states:

(i) The promise or agreement that I failed to keep;

(ii) The action that I must take to correct that failure;

(iii) A date by which I must correct the failure. That date must be at least 30 days from the date on which the notice is mailed to me, or, if it is not mailed, from the date on which it is delivered to me;

(iv) That if I do not correct the failure by the date stated in the notice, I will be in default and Lender may require Immediate Payment In Full, and Lender or another person may acquire the Property by means of foreclosure and sale;

(C) Subject to subparagraph (D) below, if I do not correct the failure stated in the notice from Lender by the date stated in that notice.

(D) The conditions in subparagraphs (B) and (C) above are subject to the condition that if I have been more than fifteen (15) days late in my installment payments and have received notices as set forth in B above more than three (3) times, then upon the fourth (4th) time I am late, the Lender may foreclose without further notice.

#### **18. TRANSFER OF LENDER'S INTEREST**

Lender retains the right to assign Lender's interest in this Mortgage at anytime subject only to preservation of the rights of the Borrower in the Mortgage.

#### **19. LENDER'S RIGHTS TO RENTAL PAYMENTS FROM THE PROPERTY AND TO TAKE POSSESSION OF THE PROPERTY.**

As additional protection for Lender, I give to Lender all of my rights to any rental payments from the Property. However, until I am in default, I have the right to collect and keep those rental payments as they become due. I have not given any of my rights to rental payments from the Property to anyone else, and I will not do so without Lender's consent in writing.

If I am in default, then Lender, persons authorized by Lender, or a receiver appointed by a court at Lender's request may:

(A) collect the rental payments, including over due rental payments, directly from the tenants; (B) enter on and take possession of the Property; (C) manage the Property; and (D) sign, cancel and change leases. I agree that if Lender notifies the

tenants that Lender has the right to collect rental payments directly from them under this Paragraph 18, the tenants may make those rental payments to Lender without having to ask whether I have failed to keep my promises and agreements under this Mortgage.

If there is a judgment for Lender in a lawsuit for foreclosure and sale, I will pay to Lender reasonable rent from the date the judgment is entered for as long as I occupy the Property. However, this does not give me the right to occupy the Property.

All rental payments collected by Lender or by a receiver, other than the rent paid by me under this Paragraph 18, will be used first to pay the costs of collecting rental payments and managing the Property. If any part of the rental payments remains after those costs have been paid in full, the remaining part will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. The costs of managing the Property may include the receiver's fees and reasonable attorneys' fees. Lender and the receiver will be obligated to account only for those rental payments that they actually receive.

**20. LENDER'S OBLIGATION TO DISCHARGE THIS MORTGAGE WHEN THE NOTE AND THIS MORTGAGE ARE PAID IN FULL.**

When Borrower has paid all amounts due under the Note and this Mortgage, Lender will discharge this Mortgage by delivering a certificate stating that this Mortgage has been satisfied. I will pay all costs of recording the discharge in the proper official records.

**21. CHANGING THIS MORTGAGE.** This Mortgage can be changed only if Lender and I sign a writing agreeing to the change.

**22. BORROWER'S FREEDOM TO CHOOSE INSURANCE COMPANY.**

I understand that I can get any insurance required by this Mortgage from any insurance company licensed to sell that insurance in Hawaii, subject to Lender's right to refuse an insurer for cause or reasonable excuse.

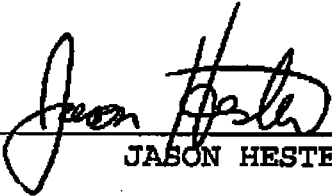
**23. FINANCING STATEMENT.**

This Mortgage also serves as a financing statement to perfect the Lender's security interest in the Property.

24. BORROWER'S COPY OF THE NOTE AND OF THIS MORTGAGE.

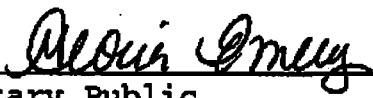
I will be given a copy of the Note and of this Mortgage. Those copies must show that the original Note and Mortgage have been signed. I will be given those copies either when I sign the Note and this Mortgage or after this Mortgage has been recorded in the proper official records.

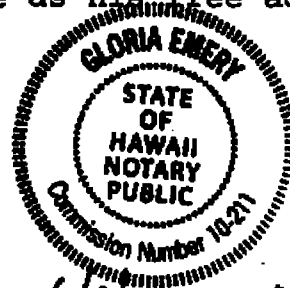
By signing this Mortgage I agree to all of the above.

  
JASON HESTER

STATE OF HAWAII       )  
                                  ) SS.  
COUNTY OF Hawaii    )

On this the 9<sup>th</sup> day of June, 2011, before me personally appeared JASON HESTER to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.

  
Notary Public  
My Commission Expires: July 18, 2014  
GLORIA EMERY



Doc. Date: 6/9/11 3rd Circuit  
# Pages: 20  
Doc. Description: MORTGAGE & EXHIBIT "A"  
x. Gloria Emery 6/9/11  
GLORIA EMERY, Notary Public Date

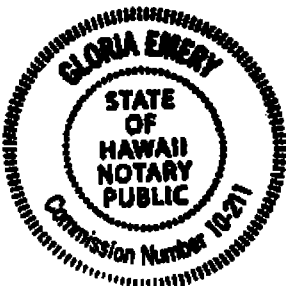


EXHIBIT A

ITEM I:

LOT 15-D  
A Portion of Lot 15  
Grant 5005 to J. E. Elderts  
Kamali Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEHUKIAHULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) to a pipe;
  2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
  3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. E. Elderts to a pipe;
- Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:
4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
  5. 40° 59' 30" 275.69 feet along same to a pipe;
  6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-11, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01-11.

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamali Homesteads, being more particularly described as follows:



Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoe-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEHUKIAHULI" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoe-Kalapana Road;

Thence along a 1056.74 feet radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to The Royal Bloodlines of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01444, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01444.

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoe-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT X



NO. 26054

## IN THE SUPREME COURT OF THE STATE OF HAWAII

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

PAUL J. SULLA, JR., Respondent.

(ODC 03-206-7806)

ORDER OF PUBLIC CENSURE

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the Office of Disciplinary Counsel's ex parte petition for issuance of reciprocal discipline notice under Rule 2.15(b) of the Rules of the Supreme Court of the State of Hawai'i ("RSCH"), the memorandum, affidavits, and exhibits thereto, Respondent Sulla's response to our September 16, 2003 notice and order, and the record, it appears: (1) that on May 30, 2003, Respondent Sulla was reprimanded by the United States Tax Court for professional misconduct in Brian G. Takaba v. Commissioner of Internal Revenue Service, (2) RSCH 2.15(c) requires this court to impose the identical discipline upon the attorney unless this court finds that upon the face of the record upon which the discipline is predicated it clearly appears (i) the Tax Court procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or (ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject, or (iii) the misconduct established warrants a substantially different discipline in this state, and (3) there is no basis in this record upon which to find a lack of due process, an infirmity of proof, or that such discipline is unwarranted in this jurisdiction. It further appears that a public censure by the supreme court is the equivalent discipline in Hawai'i. See RSCH 2.3(a). Therefore,

IT IS HEREBY ORDERED, pursuant to RSCH 2.15(c), that Respondent Paul J. Sulla, Jr. is Publicly Censured.

IT IS FURTHER ORDERED that Respondent Sulla shall pay all costs of this proceeding.

DATED: Honolulu, Hawai'i, December 16, 2003.

EXHIBIT 12
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) CR. NO. 07-00354 HG  
)  
Plaintiff, )  
)  
vs. )  
)  
BRUCE ROBERT TRAVIS, )  
)  
Defendant. )  
\_\_\_\_\_ )

**ORDER GRANTING THE GOVERNMENT'S MOTION  
TO DISQUALIFY ATTORNEY PAUL J. SULLA, JR.**

Before the Court is Plaintiff United States of America's ("the Government") Motion to Disqualify Attorney Paul J. Sulla, Jr. ("Motion"), filed August 22, 2007. Defendant Bruce Robert Travis ("Defendant") filed a memorandum in opposition to the Motion on September 4, 2007, and the Government filed its reply on September 4, 2007. This matter came on for hearing on September 6, 2007. Appearing on behalf of the Government was Clare Connors, Assistant United States Attorney, and appearing on behalf of Defendant, who was present, was Paul Sulla, Esq. After careful consideration of the Motion, supporting and opposing memoranda, and the arguments of counsel, the Government's Motion is HEREBY GRANTED for the reasons set forth below.

**BACKGROUND**

On July 26, 2007, Defendant, a real estate agent and broker, was indicted on one count of obstructing and impeding the

**EXHIBIT 13**

**Exhibits pg. 88**

administration of tax laws, in violation of 26 U.S.C. § 7212(a), and six counts of filing a false tax return, in violation of 26 U.S.C. § 7206(1). The indictment alleges, *inter alia*, that Defendant claimed deductions which he knew he was not entitled to claim in his tax returns for the years 1996, 1997, 1999, 2000, 2003, and 2004. During the course of an audit into Defendant's tax liability for the years 1996 through 2000, Defendant amended his returns to claim deductions equal to the amount of the adjusted gross income which he previously reported. He therefore claimed that he owed no income taxes for those years. The indictment also alleges that, in his 2003 and 2004 tax returns, Defendant falsely claimed charitable deductions for payments he made to the National Endowment for Financial Aid ("NEFA") and the Research Foundation, organizations affiliated with Royal Lamarr Hardy, a well known tax protestor. Defendant also allegedly tried to obstruct and impede the administration of the tax laws by obtaining a fraudulent arbitration judgment against the Internal Revenue Service ("IRS") and the IRS employee who performed his audit and by filing several civil actions against the IRS in the United States District Court for the District of Columbia. All of the complaints were subsequently dismissed.

In the instant Motion, the Government argues that the Court should disqualify Mr. Sulla from representing Defendant because Mr. Sulla is likely a necessary witness in the case. The

Government states that Defendant is one of Mr. Hardy's "clients" and that Mr. Sulla previously represented both Mr. Hardy and clients of the Research Foundation. According to the Government, Defendant consulted Mr. Hardy about how to subvert his tax obligations and Mr. Sulla facilitated, or was otherwise a part of, their relationship.

The Government alleges that Mr. Hardy worked with Defendant to obtain the fraudulent arbitration judgment and that Mr. Sulla assisted Defendant in using the fraudulent judgment in a proceeding before the Hawai'i Real Estate Commission ("the Commission"). Mr. Sulla represented Defendant when the Commission voted to deny his application for a real estate broker's license because of the IRS lien filed pursuant to the audit. In the course of this representation, Mr. Sulla sent a letter to the Commission which characterized the arbitration judgment as valid and challenged the enforceability of Title 26 of the Internal Revenue Code ("IRC"). Some of the documents that Mr. Sulla submitted as support for the letter came from Mr. Hardy's organizations and the letter's arguments are similar to those typically propounded by Mr. Hardy and his clients. The Government also argues that Mr. Sulla should have been aware that the challenge to the IRC's enforceability was frivolous because the Tax Court and the Supreme Court of Hawai'i previously reprimanded him for raising similar arguments. See Takaba v.

Comm'r of Internal Revenue, 119 T.C. 285 (2002). The Government therefore argues that Mr. Sulla will likely be a necessary witness on the issue whether Defendant wilfully violated the tax laws when he claimed he did not owe any personal income taxes for 1996 through 2000.

With regard to Defendant's 2003 and 2004 tax returns, the Government notes that Mr. Sulla transmitted them to the IRS and represented that he had convinced Defendant to comply with the tax laws. In the Government's view, based on his prior dealings with Mr. Hardy, Mr. Sulla should have known about the nature of the Research Foundation and the NEFA and should have realized that Defendant could not claim payments to those groups as deductible charitable donations. The Government states that it may call Mr. Sulla to testify on the issue whether Defendant knew that those deductions were improper. For these reasons, the Government argues that Mr. Sulla cannot represent Defendant pursuant to Rule 3.7 of the Hawai'i Rules of Professional Conduct ("HRPC").

In his memorandum in opposition, Defendant argues that Mr. Sulla only had a "sporadic relationship" with Mr. Hardy. [Mem. in Opp. at 2-3.] Mr. Sulla was not aware of Mr. Hardy's or the Research Foundation's tax programs, nor was he aware of Defendant's involvement with Mr. Hardy. Mr. Sulla denies taking part in Defendant's tax filings or in any of Defendant's

challenges to the IRS's authority, including obtaining the allegedly fraudulent arbitration judgment. In fact, Defendant claims that he has fully cooperated with the IRS since Mr. Sulla became involved in the tax collection matter. Defendant argues that Mr. Sulla's letter to the Commission did not challenge the enforceability of the IRC, but merely identified good faith questions that Defendant raised in the adjudication of his tax liability.

With regard to Takaba, Mr. Sulla did not present Takaba's tax protestor defense claims; he presented "a newly emerging § 861 Source Rule defense". [Mem. in Opp. at 6.] Mr. Sulla had not represented tax filers prior to that proceeding, nor had he been involved in any tax protestor activity. He now realizes raising that argument could have been construed as reckless at the time. Mr. Sulla asserts that Takaba has made him more aware of the consequences of challenging the IRS's tax collection authority. Defendant argues that, instead of being grounds for disqualification, Mr. Sulla's experience in Takaba makes him more competent to represent Defendant in the instant case.

Defendant argues that Mr. Sulla is not a necessary witness on any of the issues that the Government identified. The Government's claim that Mr. Sulla was involved in obtaining the arbitration judgment is merely speculative. Mr. Sulla stated in

a declaration that he was not involved in, and was not privy to, the relationship between Defendant and Mr. Hardy. Further, Defendant argues that there is no evidence that the arbitration awards were fraudulent. Defendant also asserts that Mr. Sulla's representation of him before the Commission was within the normal course of their attorney-client relationship and it should not disqualify Mr. Sulla from representing him in this case.

Mr. Sulla did not advocate tax protestor rhetoric to the Commission; the focus of his representation was to prevent the revocation of Defendant's real estate license by establishing that Defendant was contesting the amount of his tax liability in good faith. Mr. Sulla's letter to the Commission does not rise to the level of impeding tax collection or obstructing justice. Finally, although Mr. Sulla was acting as Defendant's attorney and assisted the IRS in procuring Defendant's 2003 and 2004 returns, he was not involved in their preparation.

In its reply, the Government reiterates many of the arguments it raised in the Motion. In addition, the Government argues that there is evidence that Defendant's arbitration judgments were invalid. The judgments were vacated twice by two different arbitrators before Mr. Sulla presented them to the

Commission. Further, the IRS never participated in the arbitration. The Government notes that, in the memorandum in opposition, Defendant states that Mr. Sulla formed two limited

liability companies for him in 2004. The Government will present evidence that the purpose of one of the entities, Americorp International, LLC, was to hide Defendant's income from the IRS. Mr. Sulla will therefore be a necessary witness regarding the entity's formation. The Government also refutes Defendant's claim that he has cooperated with the IRS since retaining Mr. Sulla in this matter. Since then, Defendant filed two false tax returns and filed frivolous complaints in the United States District Court for the District of Columbia. The Government asserts that Mr. Sulla assisted Defendant in at least the first of those filings and that Mr. Sulla will be a necessary witness to establish the circumstances of those filings.

#### DISCUSSION

Criminal defendants have a constitutional right to hire counsel of their choice. See U.S. Const. amend VI. That right, however, is not absolute; "it may be abridged to serve some compelling purpose. A criminal defendant's exercise of this right cannot unduly hinder the fair, efficient and orderly administration of justice." United States v. Walters, 309 F.3d 589, 592 (9th Cir. 2002) (citations and quotation marks omitted).

Attorneys who practice in this district are required to comply with the HRPC. See Local Rule LR83.3. Rule 3.7(a) states that:

A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary



witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

Haw. R. Prof. Cond. 3.7(a). Allowing an attorney to continue as counsel of record when his representation violates Rule 3.7(a) would unduly hinder the fair administration of justice. This Court must therefore disqualify Mr. Sulla from representing Defendant if the representation would violate Rule 3.7(a).

Defendant is charged with violating 26 U.S.C.

§ 7212(a), attempting to interfere with administration of internal revenue laws, and § 7206(1), filing false tax returns.

A person violates § 7212(a) when he

corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of [the IRC] . . . .

26 U.S.C. § 7212(a). In the present case, there is no allegation that Defendant used force or threats of force. In order to prove that Defendant acted "corruptly", the Government must establish that he acted with the intention of securing an unlawful benefit for himself or someone else. See United States v. Massey, 419

F.3d 1008, 1010 (9th Cir. 2005). The elements of a § 7206(1) violation are:

(1) the defendant made and subscribed a return, statement, or other document that was incorrect as to a material matter; (2) the return, statement, or other document subscribed by the defendant contained a written declaration that it was made under the penalties of perjury; (3) the defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and (4) the defendant falsely subscribed to the return, statement, or other document willfully, with the specific intent to violate the law.

United States v. Boulware, 384 F.3d 794, 810 (9th Cir. 2004) (citation omitted).

The Court acknowledges that the parties have given conflicting accounts of Mr. Sulla's knowledge of and involvement in Defendant's tax affairs. Even in light of this conflict, the Court finds that there is sufficient indication that Mr. Sulla will likely be a necessary witness at trial, particularly with regard to the issues related to Defendant's intent. These are contested issues which are not limited to the nature and value of the legal services Mr. Sulla rendered in this case. Further, Defendant has not established that Mr. Sulla's disqualification will work a substantial hardship on him. Insofar as none of the exceptions apply, this Court finds that Mr. Sulla is disqualified from representing Defendant in this case pursuant to HRPC Rule

3.7(a):

CONCLUSION

On the basis of the foregoing, the Government's Motion to Disqualify Attorney Paul J. Sulla, Jr., filed August 22, 2007, is HEREBY GRANTED. The Court ORDERS Defendant to appear with new counsel at a status conference on September 9, 2007 at 2:00 p.m. before Magistrate Judge Kevin S.C. Chang.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, September 19, 2007.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States Magistrate Judge

U.S.A. V. BRUCE ROBERT TRAVIS; CR. NO. 07-00354 HG; ORDER GRANTING THE GOVERNMENT'S MOTION TO DISQUALIFY ATTORNEY PAUL J. SULLA, JR.

<sup>1</sup> In light of this Court's ruling, the Court declines to address the Government's alternate arguments that: 1) Mr. Sulla's representation may expose him to personal liability, which would create a conflict pursuant to HRPC Rule 1.7; and 2) if Defendant argues that he relied on Mr. Hardy's advice in carrying out his allegedly criminal conduct, Mr. Sulla's prior representation of Mr. Hardy may create a conflict under HRPC Rule 1.9.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 09-00398 LEK
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ARTHUR LEE ONG,	)	
	)	
Defendant.	)	
_____	)	

**ORDER DENYING DEFENDANT ARTHUR LEE ONG'S  
MOTION FOR JUDGMENT OF ACQUITTAL**

Before the Court is Defendant Arthur Lee Ong's ("Defendant") Motion for Judgment of Acquittal ("Motion"), filed on November 15, 2011. The United States of America ("Government") filed its memorandum in opposition on November 29, 2011, and Defendant filed his reply on December 12, 2011. The Court thereafter took the matter under advisement.

On November 7, 2011, a jury found Defendant guilty of Counts 1 through 4 and 6 through 8 in the July 28, 2010 Superseding Indictment, charging Defendant with income tax evasion. Defendant moves the Court for judgment of acquittal on Count 1, conspiracy under 18 U.S.C. § 371,<sup>1</sup> arguing that there

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<sup>1</sup> Count 1 of the Superseding Indictment filed on July 29, 2010 alleges, in pertinent part, that:

From in or about 1989, the precise date being unknown to the Grand jury, and continuing thereafter up to and including the date of

(continued...)

**EXHIBIT 14**

**Exhibits pg. 98**

was insufficient evidence pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure. After careful consideration of the Motion, supporting and opposing memoranda, and applicable law, the Court HEREBY DENIES the Motion without a hearing, finding Defendant's conviction supported by the evidence.

### **DISCUSSION**

#### **I. Rule 29 Standard**

Rule 29 requires this Court to grant a motion for judgment of acquittal "if the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). Defendant's Motion is timely under Rule 29(c)(1). On a motion for judgment of acquittal under Rule 29, this Court must view the evidence in the light most favorable to the Government, deciding whether a

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<sup>1</sup>(...continued)

the return of this Superseding Indictment, in the District of Hawaii and elsewhere, the Defendant ARTHUR LEE ONG (Defendant), and R.L.H., M.K., P.S., and others not charged in this Indictment, did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to defraud the United States by deceitful and dishonest means for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service (I.R.S.) Of the Treasury Department in the ascertainment, computation, assessment, and collection of revenue; to wit, individual income taxes.

[Superseding Indictment at ¶ 2.]

rational jury could have found Defendant guilty beyond a reasonable doubt. See United States v. Hazeem, 679 F.2d 770, 772 (9th Cir. 1982) (in deciding a Rule 29 motion, the "trial court must determine whether, viewing the evidence in the light most favorable to the government, the jury could reasonably find the defendant guilty beyond a reasonable doubt"). Accord Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("when deciding a motion based on alleged insufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"); United States v. Disla, 805 F.2d 1340, 1348 (9th Cir. 1986) ("A conviction is supported by the evidence if, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences, there was relevant evidence from which the jury could reasonably have found the defendant guilty beyond a reasonable doubt.").

## **II. Sufficiency of the Evidence**

Defendant asserts that the Superseding Indictment charges that he, Royal LaMarr Hardy, Paul Sulla, Michael Kailing, and others engaged in an elaborate scheme to defraud the Government through the non-filing of Defendant's income taxes. [Mem. in Supp. of Motion at 1.] He maintains that all that the Government proved during trial was that Defendant met with

Mr. Hardy, and that meeting and discussing matters of common interest is insufficient under the law to infer guilt.

Mr. Hardy, Mr. Sulla, and Mr. Kailing were never called as witnesses. According to Defendant, the Government failed to establish that any agreement ever existed between Defendant, Mr. Hardy, Mr. Sulla, Mr. Kailing or Thomas Brennan. [Id. at 3-4.]

On the other hand, the Government submits that it was required to prove that Defendant conspired with at least one other person, and not with all of the co-conspirators alleged in the indictment, and that Defendant's own testimony at trial established that, on Mr. Hardy's referral, Defendant retained Mr. Sulla to create various trusts in order to reduce his taxes. The Government further argues Defendant met Mr. Sulla in Mr. Hardy's office, used Mr. Hardy's secretary to notarize Defendant's trust documents prepared by Mr. Sulla, and met with Mr. Hardy, along with Mr. Sulla and Mr. Brennan. As to conspiring with Mr. Kailing, the Government points out that he served as Defendant's nominee trustee and that Defendant knew Mr. Kailing was involved in tax fraud because he was called to testify at Mr. Kailing's criminal trial in 2005.

During the Government's case, it presented evidence that Defendant conspired with others to evade his own personal income taxes through the use of sham trusts set up with the

assistance of Mr. Sulla, his attorney. There was testimony that Defendant attended Mr. Hardy's seminar on voluntary tax compliance and was motivated to eliminate his tax liability. The evidence showed that Mr. Hardy referred Defendant to Mr. Sulla, who was involved with Mr. Hardy's programs. Mr. Sulla set up Defendant's trust system. In an opinion letter to Defendant on May 6, 1990, Mr. Sulla stated: "Secondary to this estate plan planning concern, was your objective to reduce your income taxes." [Gov't Exh. 24GG, at 1.] It states: "Your trusts, properly established, should be able to withstand an attack by troublesome litigants, creditors, or even taxing authorities. . . ." [*Id.* at 2.] The witness testimony and documentary evidence presented at trial support the conclusion of the sham nature of the trust system set up by Mr. Sulla, and the finding of Defendant's knowledge thereof.

The government may prove a conspiracy by circumstantial evidence that the conspirators acted together in furtherance of a common goal. United States v. Kiriki, 756 F.2d 1449, 1453 (9th Cir. 1985). The circumstantial evidence establishes that Mr. Hardy referred Defendant to Mr. Sulla to help him evade taxes, that Defendant knew the trust system established with Mr. Sulla was a sham, and that he did not rely on Mr. Sulla's advice in good faith.

Based on the above evidence, a rational jury could have



found beyond a reasonable doubt that Defendant conspired to defraud the Government. The Court finds there was sufficient evidence to support the jury's finding of guilt on Count I. The Motion for judgment of acquittal on the basis of insufficient evidence is DENIED.

**CONCLUSION**

On the basis of the foregoing, Defendant Arthur Lee Ong's Motion for Judgment of Acquittal, filed November 15, 2011 is HEREBY DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, March 6, 2012.



/s/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**USA V. ARTHUR LEE ONG; CR. NO. 09-00398 LEK; ORDER DENYING  
DEFENDANT ARTHUR LEE ONG'S MOTION FOR JUDGMENT OF ACQUITTAL**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JASON HESTER,	)	CIVIL NO. 14-00413 JMS-RLP
	)	
Plaintiff,	)	ORDER GRANTING IN PART AND
	)	DENYING IN PART DEFENDANTS
vs.	)	LEONARD G. HOROWITZ AND SHERRI
	)	KANE'S MOTION TO DISQUALIFY CO-
LEONARD G. HOROWITZ, ET AL.,	)	COUNSEL PAUL J. SULLA, JR. AND
	)	PHILLIP L. CAREY FROM
Defendants.	)	REPRESENTING SHAM PLAINTIFF JASON
	)	HESTER

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ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS  
LEONARD G. HOROWITZ AND SHERRI KANE'S MOTION TO  
DISQUALIFY CO-COUNSEL PAUL J. SULLA, JR. AND PHILLIP L.  
CAREY FROM REPRESENTING SHAM PLAINTIFF JASON HESTER

Before the Court is Defendants Leonard G. Horowitz and Sherri Kane's Motion to Disqualify Co-counsel Paul J. Sulla, Jr. and Phillip L. Carey from Representing Sham Plaintiff Jason Hester, filed on November 24, 2014 ("Motion"). See ECF No. 33. Plaintiff filed his Opposition to the Motion on December 8, 2014. ECF No. 36. Defendant Horowitz and Defendant Kane did not file a Reply. The Court found this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii. ECF No. 34. After careful consideration of the submissions of the parties and the relevant legal authority, the Court GRANTS IN PART and DENIES IN PART the Motion.

BACKGROUND

Plaintiff filed his Complaint to Quiet Title and For Summary Possession and Ejectment on August 11, 2014, in the

**EXHIBIT 15**

**Exhibits pg. 104**

Circuit Court of the Third Circuit, State of Hawaii. ECF Nos. 1-7, 25-2. Defendant Horowitz and Defendant Kane removed this action to federal court on September 12, 2014. ECF No. 1.

This action relates to certain real property located at 13-3775 Kalapana Road, Pahoa, Hawaii ("subject property"). According to Plaintiff's Complaint, Defendant The Royal Bloodline of David ("TRBD")<sup>1</sup> acquired title to the subject property from Loren Lee, a.k.a. Cecil L. Lee, in 2004, secured by a note and mortgage in the amount of \$350,000. ECF No. 25-2 ¶ 13. The note and mortgage were signed by Defendant Horowitz individually and as the "overseer" of Defendant TRBD. ECF No. 25-2 at 28, 42. Plaintiff alleges that the term of the note and mortgage expired on January 2009, with an outstanding balance still due and owing to Mr. Lee. Id. ¶ 14. In May 2009, Mr. Lee assigned his interest in the note and mortgage to himself as Overseer of the Office of the Overseer, a Corporate Sole and his Successor Over/For the Popular Assembly of Revitalize, a Hawaii corporate sole ("Overseer of Revitalize"). Id. ¶ 15. Plaintiff alleges that he succeeded Mr. Lee as Overseer of Revitalize when Mr. Lee passed away on June 27, 2009. Id. ¶ 16.

Plaintiff alleges that Defendant TRBD thereafter defaulted in the payments on the note and mortgage and Defendant Horowitz, as "guarantor," also failed to make the delinquent

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<sup>1</sup> Default was entered against Defendant TRBD on September 24, 2014. ECF No. 11.

remaining payments under the note and mortgage. Id. ¶ 17. Plaintiff alleges that Notice of Mortgagee's Non-Judicial Foreclosure Under Power of Sale was served on Defendant TRBD and Defendant Horowitz in March 2010. Id. Plaintiff alleges that the foreclosure sale occurred on April 20, 2010, at which time the Overseer of Revitalize executed a quitclaim deed to the highest bidder, also the Overseer of Revitalize. Id. ¶ 18. Plaintiff obtained ownership of the subject property through a quitclaim deed from the Overseer of Revitalize to Plaintiff in June 2011. Id. ¶ 19.

Plaintiff alleges that on June 28, 2012, Defendant TRBD transferred an alleged interest in the subject property to Defendant Horowitz and Defendant Kane through a quitclaim deed. Id. ¶ 20. Plaintiff alleges that Defendant Horowitz and Defendant Kane executed a lease to Defendant Medical Veritas International, Inc.<sup>2</sup> in 2013 purporting to grant the right to use the subject property. Id. ¶¶ 22-23. Plaintiff alleges that Defendant Horowitz, Defendant Kane, and Defendant Medical Veritas International, Inc. are still occupying the subject property without Plaintiff's consent or permission and continue to unlawfully withhold possession of the subject property against Plaintiff's rights. Id. ¶ 24. Plaintiff alleges that a process server posted written notice to vacate on the subject property,

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<sup>2</sup> Default was entered against Defendant Medical Veritas International, Inc. on September 24, 2014. ECF No. 11.

but Defendants are still in possession of the subject property. Id. ¶ 25. Plaintiff asserts claims for quiet title, tenancy by sufferance, and trespass. Id. ¶¶ 28-36.

For purposes of the present Motion, it is relevant to note that Mr. Sulla recorded the assignment of the note and mortgage from Mr. Lee to Mr. Lee as Overseer of Revitalize in 2009. ECF No. 25-2 at 47. Mr. Sulla also executed the Mortgagee's Affidavit of Foreclosure Under Power of Sale, filed with the State of Hawaii Bureau of Conveyances on May 11, 2010. See ECF No. 25-2 at 19-22. In that affidavit, Mr. Sulla states that he provided the required notices, conducted the foreclosure sale of the subject property to Plaintiff as "Overseer of The Office of Overseer for \$175,00.000," and attests to the fact that at the time of sale the default remained uncured. Id. at 20-21; see also id. at 53 (letter from Mr. Sulla to Defendant Horowitz regarding the foreclosure sale). Mr. Sulla recorded the quitclaim deed in May 2010 following the foreclosure sale between the Overseer of Revitalize to the Overseer of Revitalize. Id. at 74. Finally, Mr. Sulla recorded the quitclaim deed in June 2011 between the Overseer of Revitalize and Plaintiff. Id. at 81.

In their Answer to the Complaint, Defendant Horowitz and Defendant Kane assert several affirmative defenses including that the foreclosure sale was conducted fraudulently and that Plaintiff lacks standing to bring this action. See ECF No. 25-6 at 10-11. In their "First Amended Counter Complaint," Defendant

Horowitz and Defendant Kane assert twenty-nine counterclaims: slander of title, quiet title, unfair and deceptive acts and practices, malicious prosecution in criminal contempt, abuse of process tort, conversion in conspiracy to deprive, tortious interference with consortium, tortious interference with prospective business, breaches of two contracts, breach of duty to protect/negligence, breach of standard of care/malpractice, trespass to chattels, defamation, criminal negligence, gross negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, fraud and/or misrepresentation, comparative negligence, secondary liability and/or vicarious liability, Racketeer Influenced and Corrupt Organization Act violations, mail fraud, treason, sedition, and conspiracy to interfere with civil rights. See ECF No. 10.<sup>3</sup>

Defendant Horowitz and Defendant Kane allege that Mr. Sulla and others, including Plaintiff, unlawfully foreclosed on the subject property and unlawfully attempted to evict Defendant Horowitz and Defendant Kane. See id. at 14-20. Defendant Horowitz and Defendant Kane allege that they bought the subject

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<sup>3</sup> Plaintiff filed a motion to dismiss the counterclaims on October 21, 2014. See ECF No. 17. Defendant Horowitz and Defendant Kane filed an opposition to that motion on November 12, 2014. ECF No. 30. The motion to dismiss the counterclaims is pending before United States District Judge J. Michael Seabright, who ordered that the court would not address the motion to dismiss the counterclaims until after the present Motion to Disqualify is decided. See ECF No. 37.

property in 2003 from Mr. Lee. Id. at 16. Defendant Horowitz and Defendant Kane allege that Defendant Horowitz was involved in state court litigation with Mr. Lee from 2005 to 2008 regarding the subject property, and that Defendant Horowitz was ordered by the state court to make a final mortgage payment to Mr. Lee. Id. at 16-17. Defendant Horowitz and Defendant Kane allege that Defendant Horowitz made that final mortgage payment to Mr. Lee, but Mr. Lee and Mr. Sulla repeatedly refused to release the mortgage. Id. at 17.

Defendant Horowitz and Defendant Kane allege that Mr. Sulla "schemed" with Mr. Lee to establish a "sham church" and transferred the mortgage for the subject property, which they allege was paid off, to that church in 2009. Id. at 17. Defendant Horowitz and Defendant Kane allege that Mr. Sulla then conducted an illegal nonjudicial foreclosure sale of the subject property in 2010. Id. at 18-19. Defendant Horowitz and Defendant Kane allege that Mr. Sulla then brought two improper ejectment actions against them in state court. Id. at 30.

Defendant Horowitz and Defendant Kane allege that Mr. Sulla issued Plaintiff a \$50,000 mortgage encumbering the subject property on June 9, 2011, with "Paul J. Sulla Jr. AAL, A Law Corporation," as the lender. Id. at 20; ECF No. 10-30. Defendant Horowitz and Defendant Kane allege that Mr. Sulla was responsible for many of the documents related to the subject

property, including the assignment of Defendants' mortgage to the "sham church" and the quitclaim deeds issued and filed in 2010 and 2011. Id. at 17-19. Defendant Horowitz and Defendant Kane also allege that Mr. Sulla conspired with others, including Plaintiff, to engage in assault, extortion, defamation, trespass, forgery, and theft against Defendant Horowitz and Defendant Kane. Id. at 21-23. Defendant Horowitz and Defendant Kane state in their First Amended Counter Complaint that Mr. Sulla "will be a necessary witness at trial." ECF No. 10 at 13.

In the present Motion, Defendant Horowitz and Defendant Kane ask the Court to disqualify Mr. Sulla and Mr. Carey from representing Plaintiff in this action. ECF No. 33.

#### DISCUSSION

Motions for disqualification of counsel are subject to strict judicial scrutiny because of the potential for abuse. Optyl Eyewear Fashion Int'l Corp. v. Style Cos., 760 F.2d 1045, 1050 (9th Cir. 1985). Therefore, the party seeking disqualification "carries a heavy burden and must satisfy a high standard of proof." White v. Time Warner Cable, Civ. No. 12-00406 JMS-BMK, 2013 WL 772848, at \*1 (D. Haw. Feb. 27, 2013) (citation omitted). A motion for disqualification must be supported by substantial evidence and should not be decided on the basis of general and conclusory allegations. Id.



As an initial matter, the Court DENIES Defendant Horowitz and Defendant Kane's request to disqualify Mr. Carey from representing Plaintiff. See ECF No. 33. Mr. Carey has not entered an appearance as an attorney of record for Plaintiff in this action. To the extent Defendant Horowitz and Defendant Kane are asking the Court to prohibit Mr. Carey from entering an appearance in the future, such request is DENIED.

Regarding Mr. Sulla, Defendant Horowitz and Defendant Kane argue that Mr. Sulla should be disqualified on three bases: 1) because there is a conflict of interest; 2) because he engaged in criminal and fraudulent acts; and 3) because he is a necessary witness at trial. See ECF No. 33.

First, the Court rejects Defendant Horowitz and Defendant Kane's arguments regarding conflict of interest. Although not entirely clear from the Motion, it appears that Defendant Horowitz and Defendant Kane contend that Mr. Sulla should be prohibited from representing Plaintiff in this action because he represented Plaintiff in other state court actions related to the subject property. See ECF No. 33 at 11-12. Hawaii Rule of Professional Conduct 1.7 addresses conflicts of interest arising from representing clients with opposing interests. Haw. R. Prof. Cond. 1.7. There is no indication that Mr. Sulla is attempting to represent another client with opposing interests. To the extent Defendant Horowitz and Defendant Kane

are arguing that Mr. Sulla should be disqualified because it appears that he hold a financial interest in the subject property, see ECF No. 33-4, such a business transaction with a client is governed by Hawaii Rule of Professional Conduct 1.8(a) and is permissible so long as certain procedures were followed between Mr. Sulla and Plaintiff. See Haw. R. Prof. Cond. 1.8(a).

Second, Defendant Horowitz and Defendant Kane have failed to demonstrate that disqualification is appropriate based on Mr. Sulla's alleged criminal and fraudulent activity. Although Defendant Horowitz and Defendant Kane have made allegations regarding Mr. Sulla's conduct, such allegations are insufficient to satisfy the substantial evidence standard applicable to requests for disqualification. There has been no finding by any court that Mr. Sulla has acted inappropriately or illegally related to the foreclosure of the subject property.

Third, Defendant Horowitz and Defendant Kane argue that Mr. Sulla is a necessary witness at trial. ECF No. 33 at 7-8. Hawaii Rules of Professional Conduct Rule 3.7 provides:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

Haw. R. Prof. Cond. 3.7. Rule 3.7(a) prohibits lawyers from acting as both advocate and witness because "[i]t may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof." Haw. R. Prof. Cond. 3.7, cmt. 2. Additionally, the comments to Rule 3.7 state that "a balancing is required between the interests of the client and those of the opposing party." Haw. R. Prof. Cond. 3.7, cmt. 4. In balancing these interests, the Court may consider "the nature of the case, the importance [] of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses." Id.

Defendant Horowitz and Defendant Kane contend that Mr. Sulla will be a necessary witness regarding "a) [the] securities instruments; b) [his] administration of his 'religious' racketeering enterprise; c) his conflicting interests in acquiring the Property; d) his commission of the illegal non-judicial foreclosure; e) prima facie crime featuring fraudulent transfers of the Mortgage and Promissory Notes; f) slandering Title; g) subsequently issuing [Plaintiff] an illegal mortgage 'loan' contract [] evidencing [Mr.] Sulla's concealed surety; h) malpractices in the Third Circuit Court as a concealed collection agent for extorting [Defendant Horowitz] to pay false debt without leave of the courts; and i) his and [Plaintiff's]

malicious and extortionate prosecutions damaging the Defendants.”  
ECF No. 33 at 8.

Based on the pleadings in this case and the arguments made by the parties, the Court finds that Mr. Sulla will likely be a necessary witness in this case. In proving Plaintiff’s quiet title claim against Defendants, Plaintiff will have to demonstrate that he is the rightful owner of the subject property. Defendant Horowitz and Defendant Kane assert that they have rightful title because Defendant Horowitz satisfied the note and mortgage to Mr. Lee. As noted above, Mr. Sulla executed the Mortgagee’s Affidavit of Foreclosure Under Power of Sale, which includes Mr. Sulla attesting to the fact that at the time of foreclosure sale the default remained uncured. Mr. Sulla’s testimony is likely to conflict with the testimony of Defendants’ witnesses. As noted above, Mr. Lee passed away in 2009, so it is unlikely that there is other evidence available regarding the payment of the note. The Court rejects Plaintiff’s argument that Mr. Sulla’s testimony on these subjects falls under the exception listed in Rule 3.7(a)(2). See ECF No. 36 at 6. Testimony regarding whether Defendants’ mortgage on the subject property was in default does not relate to the “nature and value of legal services” rendered in this case. See Haw. R. Prof. Cond. 3.7(a)(2).

In addition to finding that Mr. Sulla is a necessary witness regarding Plaintiff’s quiet title claim, the Court also

finds that Mr. Sulla is a necessary witness regarding several of Defendant Horowitz and Defendant Kane's counterclaims. Plaintiff did not address the substance of the counterclaims in his Opposition. See ECF No. 36 at 3. Although the counterclaims are subject to a pending motion to dismiss, they have not been dismissed from this case to date. Defendant Horowitz and Defendant Kane's counterclaims raise several disputed material issues related to the assignment of Defendant Horowitz's mortgage from Mr. Lee to the Overseer of Revitalize and the transfer of the subject property to Plaintiff. Additionally, Defendant Horowitz and Defendant Kane allege that Plaintiff conspired with Mr. Sulla and others to engage in assault, extortion, defamation, trespass, forgery, and theft against them. Mr. Sulla would be a necessary witness to testify regarding the substance of these claims and his testimony is likely to conflict with the testimony of Defendants' witnesses on these claims.

Defendant Horowitz and Defendant Kane may be prejudiced if Mr. Sulla is permitted to remain as counsel for Plaintiff because Mr. Sulla's status as counsel and as witness may unduly complicate discovery and his dual role may create an improper inference that his testimony is more credible than that of Defendants' witnesses. Plaintiff argues that disqualification of Mr. Sulla would create substantial hardship for Plaintiff because Plaintiff would be unable to afford new counsel and would be unable to represent himself adequately if he proceeded pro se.

ECF No. 36 at 6-7. Although the Court is sympathetic to the fact that Plaintiff may have difficulty securing new counsel, the Court finds that the potential prejudice to Plaintiff does not outweigh the prejudice to Defendants. This case is in its early stages, giving Plaintiff ample time to find substitute counsel or choose to proceed pro se. Defendant Horowitz and Defendant Kane's request to disqualify Mr. Sulla is GRANTED.

CONCLUSION

In accordance with the foregoing, the Court GRANTS IN PART AND DENIES IN PART Defendants Leonard G. Horowitz and Sherri Kane's Motion to Disqualify Co-counsel Paul J. Sulla, Jr. and Phillip L. Carey from Representing Sham Plaintiff Jason Hester. Defendants' request to disqualify Phillip L. Carey is DENIED. Defendants' request to disqualify Paul J. Sulla, Jr. is GRANTED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, JANUARY 5, 2015.



  
Richard L. Puglisi  
United States Magistrate Judge

**HESTER V. HOROWITZ, ET AL.; CIVIL NO. 14-00413 JMS-RLP; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS LEONARD G. HOROWITZ AND SHERRI KANE'S MOTION TO DISQUALIFY CO-COUNSEL PAUL J. SULLA, JR. AND PHILLIP L. CAREY FROM REPRESENTING SHAM PLAINTIFF JASON HESTER**

**Orders on Motions**1:14-cv-00413-JMS-RLP Hester v. Horowitz et al**U.S. District Court****District of Hawaii****Notice of Electronic Filing**

The following transaction was entered on 1/5/2015 at 5:48 PM HST and filed on 1/5/2015

**Case Name:** Hester v. Horowitz et al

**Case Number:** 1:14-cv-00413-JMS-RLP

**Filer:**

**Document Number:** 46

**Docket Text:**

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS LEONARD G. HOROWITZ AND SHERRI KANE'S MOTION TO DISQUALIFY CO-COUNSEL PAUL J. SULLA, JR. AND PHILLIP L. CAREY FROM REPRESENTING SHAM PLAINTIFF JASON HESTER re: [33].**

**Signed by JUDGE RICHARD L. PUGLISI on 1/5/2015.**

**"Defendants' request to disqualify Phillip L. Carey is DENIED. Defendants' request to disqualify Paul J. Sulla, Jr. is GRANTED."**

**(afc)**

---

**CERTIFICATE OF SERVICE**

Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications will be served by first class mail on January 6, 2014.

**1:14-cv-00413-JMS-RLP Notice has been electronically mailed to:**

Paul J. Sulla, Jr    psulla@aloha.net

**1:14-cv-00413-JMS-RLP Notice will not be electronically mailed to:**

Leonard G. Horowitz  
13-3775 Pahoia-Kalapana Road  
Pahoia, HI 96778

Sherri Kane  
P.O. Box 75104  
Honolulu, HI 96836

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

**Document description:**Main Document

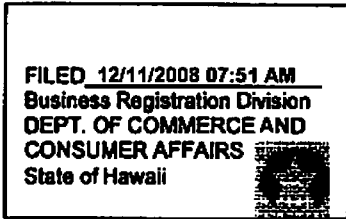
**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1095854936 [Date=1/5/2015] [FileNumber=1837798-0]  
[bf9b64ac6cda15dd2ac085036bf692cf891f56578baa42977e86f5ebc4761688e8f9  
4b5cb65a8f4094aa8fb6803c7f58fb68689bc17c0d33ca849979e67216e6]]

**Exhibits pg. 117**

Nonrefundable Filing Fee \$25.00



STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
335 Merchant Street  
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810  
Phone No. (808) 586-2727



**ARTICLES OF INCORPORATION**  
(Section 414D-32, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii, certify as follows:

I

The name of the corporation shall be:

HAWAIIAN SANCTUARY, INC.

II

The mailing address of the corporation's initial principal office is:

13-3194 Pahoa-Kalapana Road, Pahoa, Hawaii 96778

III

The corporation shall have and continuously maintain in the State of Hawaii a registered office and a registered agent. The agent may be an individual resident of Hawaii, a domestic entity or a foreign entity authorized to transact business in the State, whose business office is identical with the registered office.

- a. The name (and state or country of incorporation, formation or organization, if applicable) of the corporation's registered agent in the State of Hawaii is:

Paul J. Sulla

(Name of Registered Agent)

Hawaii

(State or Country)

- b. The street address of the corporation's initial registered office in the State of Hawaii is:

2061 Kalaniana'ole Avenue

Hilo, Hawaii 96720

**EXHIBIT 16**

Exhibits pg. 118



## IV

The name and address of each incorporator is:

NameAddressPaul J. SullaPO Box 5258 Hilo, HI 96720

## V

Please check one:

☐

The corporation has members.

☒

The corporation has no members.

## VI

The corporation is nonprofit in nature and shall not authorize or issue shares of stock. No dividends shall be paid and no part of the income or profit of the corporation shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation, and except upon liquidation of its property in case of corporate dissolution.

## VII

see attached continuation pages 3 and 4

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that the undersigned has read the above statements, that I/we are authorized to sign this Articles of Incorporation, and that the above statements are true and correct.

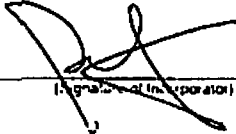
Signed this

10th

day of

December2008Paul J. Sulla

(Type/Print Name of Incorporator)



(Signature of Incorporator)

(Type/Print Name of Incorporator)

(Signature of Incorporator)

SEE INSTRUCTIONS PAGE. The articles must be signed by at least one individual (incorporator).

Articles of Incorporation --- Hawaiian Sanctuary, Inc. page 2

Exhibits pg. 119

## VII

## CORPORATION EXEMPT PURPOSES

This corporation is organized exclusively for religious, charitable, and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

**Hawaiian Sanctuary is an agrarian, spiritual & healing arts community integrating the practice of non violent communication and healthy life choices**

- 1. Our religious practice and creed is philosophically & spiritually aligned with:**
  - a. Gandhi who taught non-violent methods to change the world;
  - b. the Essenes, a spiritual community of pacifist individuals focused on health & healing;
  - c. Jesus Christ who taught love and honored women equally with men;
  - d. brotherhood, sisterhood & the expansion of love, harmony & beauty
- 2. Our non-denominational religious organization provides:**
  - a. sanctuary to guests who come seeking guidance, counseling & understanding;
  - b. classes in non-violent communication and mediation;
  - c. role modeling non-violent values and compassionate practices;
  - d. practice at being living models of the spiritual & healing consciousness taught;
- 3. We practice daily mind, body & spiritual healing practices:**
  - a. help us live in harmony with the laws of nature, inside & outside ourselves;
  - b. regain a healthy life-style including dietary choices of eating organic raw food;
  - c. eat what we grow on our farm with an emphasis on raw, uncooked foods;
  - d. maintain internal cleansing practices to promote a healthy immune system;
  - e. regular cleansing and fasting practices that promote wellness & rejuvenation;
  - f. yoga classes to promote a flexible integrated mind- body;
  - g. physical fitness exercise programs for muscle strength;
- 4. We promote hands-on agriculture classes consistent with the principles of permaculture:**
  - a. Teaching sustainable organic farming;
    - i. the use of natural fertilizer;
    - ii. toxin-free pesticide control;
  - b. ways to preserve our natural resources;
  - c. use of alternative energy sources.

## VIII

## EXEMPTION REQUIREMENTS

At all times the following shall operate as conditions restricting the operations and activities of the corporation:

1. No part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that organization shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purpose set forth in the purpose clause hereof.
2. No substantial part of the activities of the corporation shall constitute the carrying on of propaganda or otherwise attempting to influence legislation, or any initiative or referendum before the public, and the corporation shall not participate in, or intervene in (including by publication or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.
3. Notwithstanding any other provisions of this document, the organization shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or corresponding section of any future tax code, or by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future tax code.

## IX

## PERSONAL LIABILITY

No member, officer, or director of this corporation shall be personally liable for the debts or obligations of this corporation of any nature whatsoever, nor shall any of the property of the members, officers, or directors be subject to the payment of the debts or obligations of this corporation.

## X

## DURATION/DISSOLUTION

The duration of the corporate existence shall be perpetual until dissolution. Upon the dissolution of the organization, assets of the corporation shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
335 Merchants Street  
Mailing Address P.O. Box 40, Honolulu, Hawaii 96810  
(Phone No. (808) 586-7177)

FILED 12/11/2008 07:51 AM  
BUSINESS REGISTRATION DIVISION  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii

ARTICLES OF INCORPORATION

Section 4103-10, Hawaii Revised Statutes

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii, certify as follows:

The name of the corporation shall be:

HAWAIIAN SANCTUARY, INC

ii

The mailing address of the corporation's principal office is:

13-3194 Pahoa-Kalapana Road, Pahoa, Hawaii 96778

11

The corporation shall have and continuously maintain in the State of Hawaii a registered office and a registered agent. The registered agent may be an individual resident of Hawaii, a domestic entity or a foreign entity authorized to transact business in the State whose business office is identical with the registered office.

The name (and state or country of incorporation, formation or organization, if applicable) of the corporation's registered agent in the State of Hawaii is:

Paul J. Sulla

Hawaii

The street address of the corporation's initial registered office in the State of Hawaii is:

2061 Kalanianaʻole Avenue

Hilo, Hawaii 96720



Steve Lund - Owner of Hawaiian Sanctuary

Exhibits pg. 122

FILED

cc:

John Carroll, Esq.  
Dan O'Phelan, Esq.  
Mr. Philip Maise

2008 APR -2 PM 12: 03

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
JUDGE RONALD IBARRA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

CECIL LORAN LEE	)	CIVIL NO. 05-1-196
	)	(Foreclosure)
Plaintiff and	)	
Counterclaim-	)	FINDINGS OF FACT,
Defendant,	)	CONCLUSIONS OF LAW, AND
	)	ORDER DENYING DECREE OF
vs.	)	FORECLOSURE AGAINST ALL
	)	DEFENDANTS
LEONARD GEORGE HOROWITZ,	)	
JACQUELINE LINDENBACH HOROWITZ	)	<u>Trial Dates:</u>
AND THE ROYAL BLOODLINE OF DAVID,	)	
JOHN DOES 1-10, JANE DOES 1-10, DOE	)	February 12-14, 2008
PARTNERSHIPS 1-10, DOE	)	February 20-21, 2008
CORPORATIONS 1-10, DOE ENTITIES,	)	
DOE GOVERNMENTAL UNITS,	)	
	)	JUDGE RONALD IBARRA
Defendants and	)	
Counterclaimants.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING DECREE OF  
FORECLOSURE AGAINST ALL DEFENDANTS**

This matter in equity having come before the Honorable Ronald Ibarra for bench trial<sup>1</sup> commencing the week of February 12, 2008 pursuant to Plaintiff's Complaint for Foreclosure filed on June 15, 2005 and Defendants' Counterclaims filed July 6, 2006. Dan O'Phelan, Esq. appeared for Plaintiff, John Carroll, Esq. appeared for Defendants, and Philip B. Maise appeared as Intervenor. Present were Plaintiff Cecil Loran Lee, Defendants Leonard George Horowitz and Jacqueline Lindenbach

**EXHIBIT 17**

<sup>1</sup> The issue was submitted to an advisory jury with the other causes of action.

Horowitz, individually and as representatives of the Royal Bloodline of David, and Intervenor Philip Maise. No other parties appeared. Having reviewed the evidence at trial, including the Exhibits, the credibility of all witnesses, the arguments of counsel, and records and file of the case,

#### FINDINGS OF FACT

If any of these findings are deemed conclusions of law they shall be construed as such:

1. For value received, Defendant LEONARD GEORGE HOROWITZ as Overseer of ROYAL BLOODLINE OF DAVID, maker, made executed and delivered to CECIL LORAN LEE, two (2) certain Promissory Notes dated January 15, 2004. One Note was for the principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) (received into evidence as Plaintiff's Exhibit P-4 at trial), and a second promissory note was for the principal sum of Twenty-Five Thousand Dollars (\$25,000.00)(received into evidence as Plaintiff's Exhibit P-5 at trial).
2. Both Notes were secured by that certain Mortgage (received into evidence as Plaintiff's Exhibit P-3 at trial) dated January 15, 2004, executed by Defendant HOROWITZ individually and as Overseer of ROYAL BLOODLINE OF DAVID, as mortgagor, in favor of CECIL LORAN LEE as mortgagee, and on January 23, 2004, filed in the Office of Registrar of Conveyances, Bureau of Conveyances, State of Hawaii, as Document Number 2004-014441 and noted on Warranty Deed document number 2004-014440. The property, more fully described in Exhibit "A" attached to the mortgage is located at 13-3775 Kalapana Highway, Pahoa, Hawaii 96778, TMK Numbers: (3) 1-3-001:048 and (3) 1-3-001:043.

Exhibits pg. 124  
Exhibits pg. 124

3. By Assignment of Mortgage dated January 15, 2004 and recorded in the Bureau of Conveyances, State of Hawaii, as Document Number 2004-014441, and noted on Warranty Deed document number 2004-014440 and recorded in the Office of the Registrar on Conveyances, Bureau of Conveyances, State of Hawaii, Plaintiff has become the owner of the Mortgage. Plaintiff is also the owner of the Notes in the amounts of \$350,000.00 and \$25,000.00 upon closing of the sale herein authorized. Defendants have made the monthly payments in the amount of \$2,333.33 per month pursuant to the Notes and Mortgage. Defendants have paid a total of \$165,666.43 in interest and \$25,000.00 good faith release of payment, for a total payment of \$190,666.43. The balloon payment is due January 15, 2009.
4. Two versions of the Escrow Instructions were drafted. One version required the subject property to be insured, the other version did not require the subject property to be insured. The jury found the version not requiring the subject property to be insured to be fraudulent. As a result, the version requiring the subject property to be insured was found by the jury to be the true version of the Escrow Instructions.
5. At the time of purchase Plaintiff represented to Defendants that the property could be used as a bed and breakfast. This later turned out to be untrue.
6. Defendants engage in commercial use of the property for their ministerial purposes and as a consequence, their insurance on the property was terminated. Defendants were advised by Bank of Hawaii Insurance on March 31, 2004 that the dwelling fire policy would be cancelled on April 23, 2004

(received into evidence as Plaintiff's Exhibit P-7). A Notice of Policy Termination or Cancellation was sent to Defendants from Island Insurance Companies on March 19, 2004 (received into evidence as Plaintiff's Exhibit P-9). Defendants failed to obtain insurance or maintain insurance on the property since the date of April 23, 2004 and during trial provided no proof that the property was insured.

7. Defendants cannot obtain insurance on the property because it is located in a lava zone.
8. Defendants constructed a pool and other structures on the property and modified the existing structures. Defendants failed to obtain Plaintiff's written consent for the new construction and modification of the existing structure in violation of the terms and conditions of the mortgage.
9. Defendants' modifications improved the subject property by painting, landscaping, and updates to the structure.

#### CONCLUSIONS OF LAW

If any of these conclusions of law are deemed findings of fact they shall be construed as such:

1. This Court has jurisdiction over the parties and the subject matter of this case, including the mortgaged property, and venue is proper in this circuit.
2. Plaintiff's Mortgage and Notes, dated January 15, 2004, executed by Defendants Horowitz and Royal Bloodline of David, as mortgagor and filed in the office of the Registrar of Conveyances, Bureau of Conveyances, State of Hawaii as document number(s) 2004-014440 and 2004-014441 is a valid first lien upon the property located at 13-3775 Kalapana Highway, Pahoa, Hawaii 96778 is a



superior interest prior to the interest of all other parties in the mortgaged property and subordinate only to a lien for unpaid taxes.

3. Foreclosure is an equitable proceeding; therefore the principals of equity apply. Beneficial Hawaii, Inc. v. Kida, 96 Haw. 289, 312 30 P.3d 895, 918 (Haw. 2001).
4. Equity jurisprudence is not bound by strict rules of law, and a court of equity can mold its decree to do justice. Id.
5. Equity abhors forfeiture. Converse v. James, 89 Haw. 461, 473, 974 P.2d 1051, 1063 (Haw. App. 1997). Another maxim of equity is that "he who comes into equity must come with clean hands." 7's Enterprises Inc. v. Del Rosario, 111 Haw. 484, 489, 143 P.3d 23, 28 (Haw. 2006).
6. Although Defendants violated the terms and conditions of the mortgage by failing to maintain property insurance, and making improvements/modifications to the property without prior consent of Plaintiff; there is enough equity on behalf of Defendants to find foreclosure in this instant unjust.
7. Considering the equities involved with the timely payment, property improvements, balloon payment near due, and misleading statements by Plaintiff, foreclosure in this instant case would be unjust.

IT IS HEREBY ORDERED, Plaintiff's Decree of Foreclosure Against All Defendants is DENIED.

IT IS FURTHER ORDERED that the appropriate equitable remedy in this matter is that Defendants Leonard George Horowitz and Jacqueline Lindenbach Horowitz, individually and as representatives of the Royal Bloodline of David shall obtain insurance within thirty (30) days of this Order. In the event Defendants do not obtain insurance,

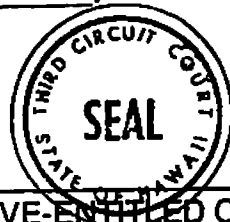
Exhibits pg. 127  
Exhibits Pg. 127

Plaintiff shall obtain a rate quote on insurance and provide Defendants with the company's name and Defendants shall pay for the insurance within thirty (30) days.

IT IS FURTHER ORDERED that further appropriate equitable remedy is that the balloon payment be accelerated to September 1, 2008 in the event that insurance is available for purchase and Defendants do not purchase said insurance.

DATED: Kealakekua, Hawaii

4/1/08



JUDGE OF THE ABOVE-ENTITLED COURT

2016 MAR 14 PM 3: 36

Margaret Wille #8522  
 Attorney at Law  
 65-1316 Lihipali Road  
 Kamuela, Hawaii 96743  
 Tel: 808-854-6931  
[margaretwille@mac.com](mailto:margaretwille@mac.com)

L. MOCK CHEW, CLERK  
 THIRD CIRCUIT COURT  
 STATE OF HAWAII

Attorney for:  
 Defendants/Counterclaimants  
 Leonard G. Horowitz and  
 the Royal Bloodline of David

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
 KONA DIVISION, STATE OF HAWAII**

JASON HESTER,  
 Plaintiff-Counter-claimant -Appellees,  
 v.

LEONARD G. HOROWITZ, an  
 individual; SHERRI KANE, an  
 individual; MEDICAL VERITAS  
 INTERNATIONAL, INC, a  
 California nonprofit corporation; THE  
 ROYAL BLOODLINE OF DAVID, a  
 Washington Corporation Sole; JOHN  
 DOES, 1-10, JANE DOES 1-10, DOE  
 ENTITIES 1-10, DOE  
 PARTNERSHIPS 1-10, DOE  
 GOVERNMENTAL UNITS 1-10.  
 Defendants-Counterclaimant-  
 Appellants

) CIV. NO. 14-1-0304  
 ) (quiet title)  
 )  
 )  
 )  
 ) NOTICE OF SUBMISSION:  
 ) OF NOTICE OF APPEAL  
 ) (CAAP 16-0000163) TO THE  
 ) INTERMEDIATE COURT OF  
 ) APPEALS, AND RELATED  
 ) DOCUMENTS: EXHIBIT A  
 ) CIVIL APPEAL DOCKETING  
 ) STATEMENT,  
 ) CERTIFICATE OF SERVICE  
 )  
 )  
 ) Judge: Hon. Melvin Fujino  
 )

**NOTICE OF SUBMISSION TO THE CIRCUIT COURT**

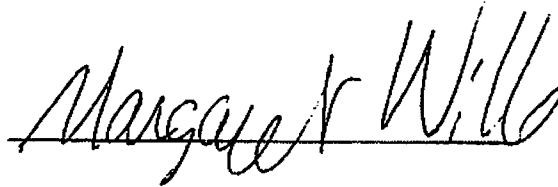
YOU ARE HEREBY NOTIFIED that Defendants Leonard Horowitz and  
 Royal Bloodline of David, and Sherri Kane have filed an appeal in the above

**EXHIBIT 18**

**Exhibits pg. 129**

referenced case (CAAP 16-0000163). A copy of the Notice of Appeal with Exhibit A, the Civil Appeal Docket Statement, and Certificate of Service is attached.

DATED: Waimea, Hawaii, 96743 MARCH 14, 2016

A handwritten signature in black ink, reading "Margaret Wille", written over a horizontal line.

Margaret Wille, Attorney for Defendants

HESTER v. HOROWITZ ET AL, Civ. CIV. NO. 14-1-0304, *Notice of Submission*

Exhibits pg. 130

**Margaret (Dunham) Wille #8522**  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawai'i 96743  
Tel: 808-854-6931  
margaretwille@mac.com

Attorney for:  
Defendants/Counterclaimants  
Leonard G. Horowitz and  
the Royal Bloodline of David

**Electronically Filed**  
**Intermediate Court of Appeals**  
**CAAP-16-0000163**  
**22-MAR-2016**  
**03:29 PM**

**INTERMEDIATE COURT OF APPEAL STATE OF HAWAII**  
**ICA NO. CAAP-16-0000163**

**JASON HESTER**  
**Plaintiff-Counterdefendant -Appellee**  
**v.**

**LEONARD G. HOROWITZ; SHERRI**  
**KANE, THE ROYAL BLOODLINE OF**  
**DAVID, et. al.,**  
**Defendants-Counterclaimants -Appellants**

)  
)  
)  
) **CIRCUIT COURT:**  
) **CIV. NO. 05-1-0304**  
) **(quiet title)**  
)  
)  
) **NOTICE OF POINTS OF ERROR**  
) **THAT APPELLANTS INTEND**  
) **TO PRESENT ON APPEAL**  
) **PURSUANT TO HRAP 10(b)(4)**

**NOTICE OF POINTS OF ERROR THAT APPELLANTS INTEND**  
**TO PRESENT ON APPEAL PURSUANT TO HRAP 10(b)(4)**

NOW COMES APPELLANTS, LEONARD G. HOROWITZ, SHERRI KANE, and  
THE ROYAL BLOODLINE OF DAVID (RBOD), by and through their attorney MARGARET  
WILLE and pursuant to Hawai'i Rules of Appellate Procedure, Rule 10(b)(4) files this Notice of  
Points of Error.

**EXHIBIT 19**

**Exhibits pg. 131**  
**Exhibits Pg. 131**

Appellants intend to present the following points of error on appeal:

1. Whether the lower court erred in refusing to stay the instant case pending the outcome in the prior filed – still pending - action, Civ. No. 05-1-0196, now under appeal as CAAP 16-1-163, despite foreclosure having been denied in that earlier filed case, and despite the same property and series of transactions, and same parties or their privies, being involved.
2. Whether the lower court erred in refusing to vacate the default judgment of corporate defendant RBOD, represented by sole member Leonard Horowitz -who was also a signatory on the related Promissory Note, even after an attorney was engaged and represented RBOD following the Court's order that only an attorney could represent the corporate entity RBOD.
3. Whether the lower court erred in refusing to grant standing to Defendants Horowitz and Kane, as successors in interest to RBOD independent of the standing of RBOD, by reason of RBOD having transferred its interest in the subject property to Horowitz and Kane prior to the dissolution of RBOD.
4. Whether the lower court erred in denying Defendants' first motion to amend its original answer, despite no responsive pleading having been filed prior to that date.
5. Whether Plaintiff Jason Hester has standing to "stand in the shoes" of the original mortgagee Cecil Loran Lee (now deceased), despite that at the time of the Motion for Substitution in the original foreclosure case, Civ. 05-1-0196, Plaintiff Hester gave the court false information concerning his relationship to Lee, relied upon altered documents relating to the transfer of the mortgage assignment from Lee to Hester, and given that Hester has never been required to testify and has never even submitted any affidavit concerning his relationship with original mortgagee Lee or concerning the altered documents upon which he relied to assert his right to pursue Lee's mortgage, or to assert his standing as "holder-in-due-course" of the claimed (arguably "colored") title.

6. Whether, in addition to the above reasons, whether the lower court erred in granting summary judgment in light of:

a) The inadequacy of the non-judicial foreclosure process including Plaintiff Hester's failure to comply with the applicable notice requirements in Hawai'i Revised Statute §667-5;

b) the lower court's failure to consider Defendants' substantial counterclaims, including for misrepresentation and fraud, and possible related violations of HRS §651C (fraudulent transfer law) and or HRS § 480-2 (prohibits deceptive acts in the conduct of any trade or business).

Dated: Waimea Hawai'i 96743: March 22, 2016

Signed: 

MARGARET (DUNHAM) WILLE

Attorney for Defendants

LEONARD G. HOROWITZ, SHERRI KANE and  
THE ROYAL BLOODLINE OF DAVID

*Hester v. Horowitz et. al., ICA No. CAAP-16-0000163, NOTICE OF POINTS OF  
ERROR THAT APPELLANTS INTEND TO PRESENT ON APPEAL PURSUANT TO  
HRAP 10(b)(4)*

**Exhibits pg. 133**  
**Exhibits Pg. 133**

Margaret (Dunham) Wille #8522  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931  
[margaretwille@mac.com](mailto:margaretwille@mac.com)

Attorney for:  
Defendants/Counterclaimants  
Leonard G. Horowitz, Sherri Kane  
and the Royal Bloodline of David

Electronically Filed  
Intermediate Court of Appeals  
CAAP-16-0000163  
18-MAR-2016  
02:39 PM

L. CHINEH

2016 MAR 18 PM 12:44

FILED  
CIRCUIT COURT OF  
THE THIRD CIRCUIT  
STATE OF HAWAII

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER  
Plaintiff-Counter-claimant -Appellee,  
v.

LEONARD G. HOROWITZ, et. al.  
Defendants-Counterclaimants -  
Appellants

)  
)  
)  
) CIRCUIT COURT:  
) CIV. NO. 14-1-0304  
) [ICA NO. CAAP-16-0000163]  
)  
)  
) REQUEST TO TRIAL JUDGE  
) FOR FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
) TO BE PREPARED [HRAP RULE 12.1],  
) EXHIBIT A,  
) CERTIFICATE OF SERVICE

**TO: CIRCUIT COURT OF THE THIRD CIRCUIT  
(KONA DIVISION)  
HONORABLE JUDGE RONALD IBARRA  
AND HONORABLE JUDGE MELVIN FUJINO**

REQUEST TO TRIAL JUDGE FOR FINDINGS OF FACT AND  
CONCLUSIONS OF LAW TO BE PREPARED [HRAP RULE 12.1]

**EXHIBIT 20**

**Exhibits pg. 134**



COMES NOW DEFENDANTS LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID (RBOD), by and through their attorney MARGARET WILLE, and pursuant to Hawaii Rule of Appellate Procedure (HRAP), Rule 10(f) "Request for Findings of Fact and Conclusions of Law" and requests an entry of findings of fact and conclusions of law in the above referenced case. HRAP Rule 10(f) provides as follows:

In all actions where the court appealed from is not required to enter findings of fact and conclusions of law prior to the entry of an order, judgment, or decree, but is required to do so once a notice of appeal is filed, the appellant shall, no later than 10 days after filing the notice of appeal, file in the court appealed from a request for entry of findings of fact and conclusions of law, naming the judge who tried the action and entered the order, judgment, or decree being appealed. The appellant shall attach a filed copy of the notice of appeal to the request. The named judge shall enter the requested findings of fact and conclusions of law within 28 days after the request has been filed. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law after the filing of the request.

Appellants therefore pursuant to the requirements of HRAP 10(f), now files this request that the Trial Judge(s) Ronald Ibarra/Melvin Fujino prepare for the appellate court "Findings of Fact and Conclusions of Law". Pursuant to HRAP 10(f) a copy of the Notice of Appeal is attached.

Dated: Waimea Hawaii: March 18, 2016

Signed: \_\_\_\_\_

MARGARET (DUNHAM) WILLE  
Attorney for Defendants  
LEONARD G. HOROWITZ and  
THE ROYAL BLOODLINE OF DAVID

Hester v. Horowitz et. al., CIV 14-1-0304 ICA No. CAAP-15-0000163, *Request to Trial Court for Finding of Fact Conclusions of Law*

Exhibits pg. 135

-FILED

cc: S. Whittaker, Esq. S. Kane  
M. Wille, Esq. L. Horowitz

2015 DEC 30 PM 4: 26

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

L. KITACKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

JASON HESTER, ) Civil NO. 14-1-304  
)  
Plaintiff, ) FINAL JUDGMENT  
)  
vs. ) Judge Ronald Ibarra, Division 4  
)  
LEONARD G. HOROWITZ, ET AL., )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

FINAL JUDGMENT

Pursuant to the (1) *Entry of Default Against Defendants Medical Veritas International, Inc. and the Royal Bloodline of David* filed on September 17, 2014; (2) *Order Granting Plaintiff's Motion to Dismiss Counterclaims*, filed March 27, 2015, and (3) *Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment*, filed August 28, 2015, final judgment pursuant to Rule 58, Hawai'i Rules of Civil Procedure is hereby entered as follows:

1) On Plaintiff Jason Hester's Complaint filed August 11, 2014

- a. As to Count I, Quiet Title, judgment is entered in favor of Plaintiff Jason Hester pursuant to H.R.S. Section 669-1, et seq. and against the Defendants Medical Veritas International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz; and Sherri Kane;
- b. As to Count II, Tenants at Sufferance, judgment is entered in favor of Plaintiff Jason Hester and against Defendants Medical Veritas

**Exhibit 21**

I hereby certify that this is a full, true and correct  
copy of the original on file in this office.  
**Exhibits pg. 136**  
Clerk, Third Circuit Court, State of Hawaii

International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz;  
and Sherri Kane;

- c. As to Count III, Trespass, pursuant to Rule 41, Hawai'i Rules of Civil Procedure and the Order Granting Plaintiff Jason Hester's Motion for Voluntary Dismissal of Trespass Claim, filed August 28, 2015, this claim is dismissed;
- d. As to Plaintiff's request that Judgment for Possession be entered giving Plaintiff exclusive possession of the Property, judgment is entered in favor of Plaintiff Jason Hester and a Writ of Ejectment shall issue against Defendants Medical Veritas International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz; and Sherri Kane pursuant to H.R.S. Section 667-33(b)(4);

2) On Defendants Leonard Horowitz and Sherri Kane's Counterclaim filed August 21, 2014 as to all claims including:

Count I, Slander of Title;

Count II, Quiet Title;

Count III, Unfair and Deceptive Acts and Practices;

Count IV, Malicious Prosecution in Criminal Contempt;

Count V, Abuse of Process Tort;

Count VI, Tort of Conversion/Theft in Conspiracy to Deprive Citizens' Rights and Properties;

Count VII, Tortious Interference with Consortium;

Count VIII, Tortious Interference with Prospective Business (Economic) Advantage;  
Count IX, Breaches of Two Contracts;  
Count X, Breach of Duty to Protect/Negligence/"Duty-Public Duty Doctrine" and/or  
"Failure to Enforce" Laws Including HRS §480-2 HRS §480D-3(2)(3)(6)(8)(11) and HRS  
§480D-4(a)(b);  
Count XI, Breach of Standard of Care/Malpractice;  
Count XII, Trespass to Chattels;  
Count XIII, Defamation;  
Count XIV, Criminal Negligence;  
Count XV, Gross Negligence;  
Count XVI, Intentional Infliction of Emotional Distress;  
Count XVII, Negligent Infliction of Emotional Distress;  
Count XVIII, Fraud and/or Misrepresentation;  
Count XIX, Comparative Negligence, Secondary Liability and/or Vicarious Liability; and  
Count XX, Civil RICO,

these claims are dismissed pursuant to the Order Granting Plaintiff's Motion to Dismiss  
Counterclaims, filed on March 27, 2015.

Any remaining claims or counterclaims not specifically addressed herein are dismissed  
with prejudice. This Final Judgment resolves all claims as to all parties in this action.

DATED: Kealahou, Hawaii, DEC 29 2015

**RONALD IBARRA (SEAL)**

JUDGE OF THE ABOVE-ENTITLED COURT

**FILED**

cc: S. Whittaker, Esq. S. Kane  
M. Wille, Esq. L. Horowitz

**2015 DEC 30 PM 4: 27**

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT**

**STATE OF HAWAII**

**L. KITAOKA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII**

JASON HESTER,	)	Civil NO. 14-1-304
	)	
Plaintiff,	)	NOTICE OF ENTRY OF JUDGMENT
	)	
vs.	)	Judge Ronald Ibarra, Division 4
	)	
LEONARD G. HOROWITZ, ET AL.,	)	
	)	
Defendants.	)	
	)	
_____	)	

**NOTICE OF ENTRY OF JUDGMENT**

In accordance with the Hawai'i Rules of Civil Procedure, Rule 77(d), please note that the  
FINAL JUDGMENT has been entered in this case.

DATED: Kealahou, Hawaii, DEC 30 2015.

**FRANCINE VICTOR (SEAL)**

**CLERK OF THE ABOVE-ENTITLED COURT**

**Exhibits pg. 139**

40017  
QUITCLAIM DEED



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

July 11, 2012 1:00 PM

Doc No(s) A-45750676



1 2 / 2  
B-32081676

CGG

/s/ NICKI ANN THOMPSON  
REGISTRAR

Conveyance Tax \$0.00

4  
FILED FOR RECORD AT REQUEST OF Leonard G. Horowitz  
WHEN RECORDED RETURN TO:  
Leonard G. Horowitz  
13-3775 Kalapana Highway  
Pahoa, HI 96778

THE GRANTOR, THE ROYAL BLOODLINE OF DAVID, a Washington State Corporation Sole (non-profit ministry), represented by the "Body Corporate," Leonard G. Horowitz, Presiding Patriarch and Overseer for THE ROYAL BLOODLINE OF DAVID; for and in consideration of One Dollar, Love and faith, conveys and Quitclaims to the GRANTEEES, Leonard G. Horowitz and Sherri Kane, residents at 13-3775 Kalapana Highway, Pahoa, HI 96778, the following described real estate, situated at 13-3775 Kalapana Highway, Pahoa, HI 96778, in the County of Hawaii, State of Hawaii, together with all after acquired title of the Grantor(s) therein (as per): Tax Parcel Numbers: 1-3-1-43 and 1-3-1-42, Island and County of Hawaii, Area Assessed 1.320 acres and 16.550 acres, respectively, more or less. (As per Warranty Deed filed 1-23-04, between LORAN LEE Grantor and THE ROYAL BLOODLINE OF DAVID, Grantee. Exhibit A.)

DATED: June 28, 2012  
THE ROYAL BLOODLINE OF DAVID  
By: Leonard G. Horowitz, Overseer

*The Royal Bloodline of David*  
*By: Leonard G. Horowitz, Overseer*  
Grantor, THE ROYAL BLOODLINE OF DAVID  
By: Leonard G. Horowitz, Overseer

DATED: June 28, 2012  
Leonard G. Horowitz and Sherri Kane

*Leonard G. Horowitz and Sherri Kane*  
Granteees, Leonard G. Horowitz and Sherri Kane

State of Hawaii }  
City and County of Honolulu } ss  
}

On this day personally appeared before me Leonard G. Horowitz, the body corporate and Presiding Patriarch of THE ROYAL BLOODLINE OF DAVID, a non-profit corporation sole, Grantor(s), and Sherri Kane, Co-Grantee with the person of Leonard G. Horowitz, to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged that s/he signed the same as higher free and voluntary act deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 9th day of July, 2012.

*Joanne M.L. Chun*  
NOTARY PUBLIC in and for the State of Hawaii  
Residing at Honolulu, Hawaii  
My commission expires 05-09-2016  
Joanne M.L. Chun

Doc. Date: 6-28-12 # Pages: 11  
Joanne M.L. Chun First Circuit  
Doc. Description: Quitclaim Deed  
Tax Parcel # 1-3-1-43  
1-3-1-42 Exhibits pg. 146  
*Joanne M.L. Chun*  
Notary Signature Date

EXHIBIT A

ITEM I:

LOT 15-D  
A Portion of Lot 15  
Grant 5005 to J. E. Elderts  
Kamaili Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa - Kalapana Road (Emergency Relief Project No. BR 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "HRIHRIAHULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. BR 4(1)) to a pipe;
2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. B. Elderts to a pipe;

Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:

4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
5. 40° 59' 30" 275.69 feet along same to a pipe;
6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated \_\_\_\_\_, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. \_\_\_\_\_.

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. B. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamaili Homesteads, being more particularly described as follows:

Exhibits pg. 141

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIHEIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 feet radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to Loran Lee, by Deed dated November 23, 1999, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-030528)

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.
2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF EXHIBIT A

Exhibits pg. 142





## Corporations and Charities Division

[Corporations Home](#)[Nonprofit Home](#)[Charities Home](#)[Awards](#)[Public Notices](#)[Contact Us](#)

### Corporation Detail

Neither the State of Washington nor any agency, officer, or employee of the State of Washington warrants the accuracy, reliability, or timeliness of any information in the Public Access System and shall not be liable for any accuracy, reliability, or timeliness of such information. While every effort is made to ensure the information is accurate, portions may be incorrect or not current. Any person or entity who relies on information obtained from the Public Access System does so at their own risk.

All documents filed with the Corporations Division are considered public record.

### THE ROYAL BLOODLINE OF DAVID

UBI Number	602158775
Category	SOL
Profit/Nonprofit	Nonprofit
Active/Inactive	Inactive
State Of Incorporation	WA
WA Filing Date	10/31/2001
Expiration Date	10/31/2012
Inactive Date	09/17/2012
Duration	Perpetual

#### Registered Agent Information

Agent Name

Address

City

State

**EXHIBIT 23.**

ZIP

Special Address Information

Address LOENARD HOROWITZ

City NEWPORT

State WA

Zip 99156

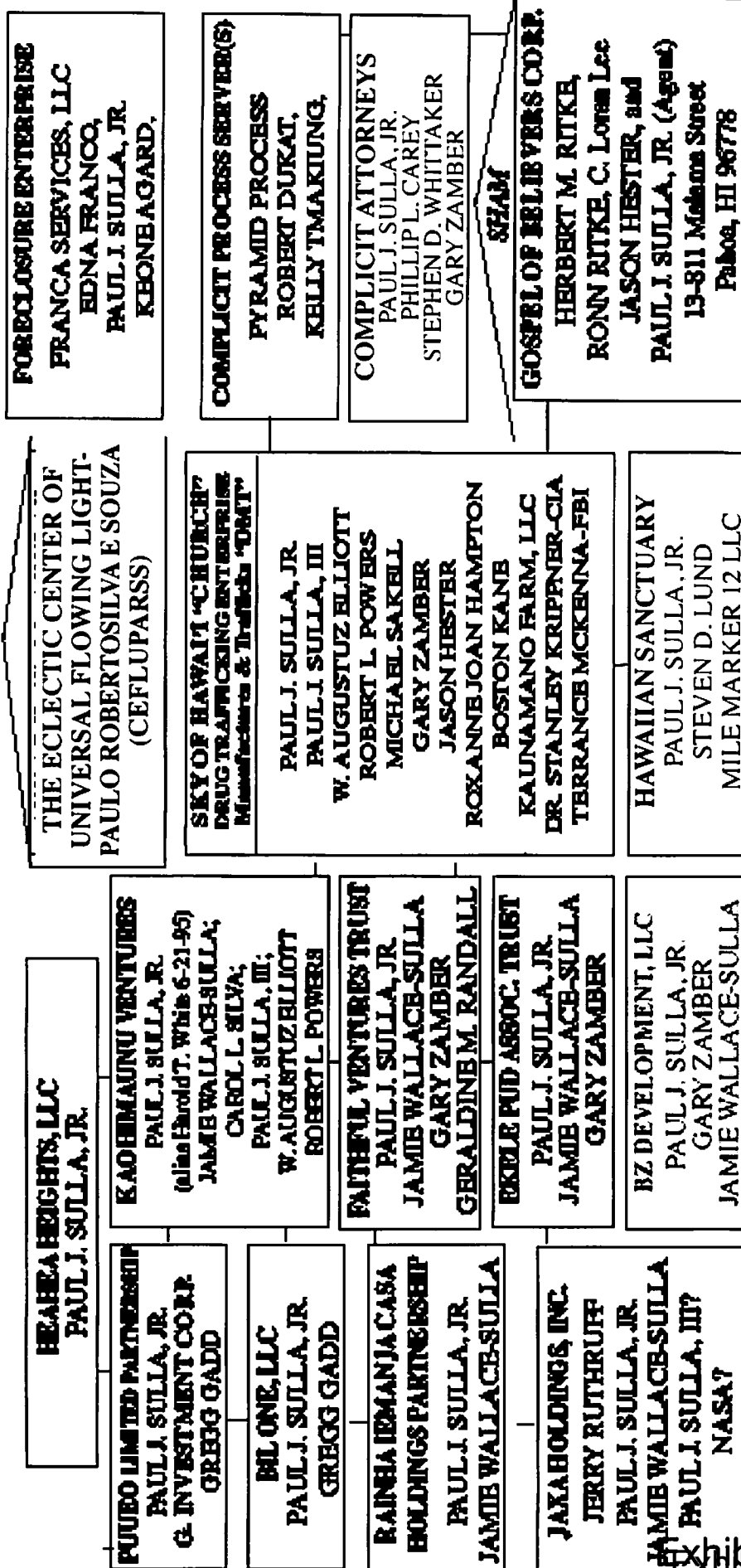
[« Return to Search List](#)

Phone Numbers | Privacy Policy | Accessibility | Mobile  
Washington Secretary of State - Corporations Division  
801 Capitol Way South  
PO Box 40234, Olympia WA 98504-0234  
(360) 725-0377

# Organizational Chart Detailing the Real Estate Enterprise of PAUL J. SULLA, JR. et. al.

ATTORNEY PAUL J. SULLA, JR.

Real Estate Fraud Enterprises for Prohibitive Tax Evasion and Money  
Laundering: Foreclosure Fraud, Securities Fraud, & Drug Trafficking



Court Minutes Text

Case Title: THE ESTATE OF CECIL LORAN LEE 3LP09-1-000166

Div.: 3CK4 CV DATE: 12-11-2009 Time: 0107P Priority: 0 Judge I.D.: JESTRANC  
Video No.: Audio No.:

Minutes:

BY SULA - STATEMENT REGARDING ASSETS KNOWN TO HIM THAT CECIL LEE DOESN'T OWN ANYMORE; DUE TO FORECLOSURE, NO JUDGMENT CAN BE ENFORCED AND MR. LEE IS CERTAINLY OUT OF IT.

\*\*BY COURT - INASMUCH AS NO PARTY APPEARED IN THIS CASE, COURT DENIES PETITION FOR SPECIAL ADMINISTRATOR AND COURT WILL ISSUE ORDER.

- More Minutes Text
- Next Court Date
- Court Minutes List
- Case Info

EXHIBIT 25.

**PAYMENTS MADE ON \$550,000.00 PURCHASE BY THE BUYERS,  
LEONARD G. HOROWITZ AND THE ROYAL BLOODLINE OF DAVID,  
TO THE SELLER, CECIL LORAN LEE (AND GARNISHER, PHILLIP  
MAISE), JANUARY 15, 2004, THROUGH FEBRUARY 27, 2009.**

EVIDENCE OF PAYMENT	PAYMENT DATE	BUYER DEBIT (\$)	BUYER CREDIT (\$)
Combined Closing Statement	1-15-04	550,000	200,000.00
Cancelled Checks # 2025	2-20-04		2333.33
# 2135	3-08-04		2333.33
# 2148	4-10-04		2333.33
# 2518	5-29-04		2333.33
# 2527	7-10-04		2333.33
# 2543	8-01-04		2333.33
# 2556	9-03-04		2333.33
# 2148	4-10-04		2333.33
# 2518	5-29-04		2333.33
# 2527	7-10-04		2333.33
# 2543	8-01-04		2333.33
Garnishment Confusion delays 4 payments to Jan. 13, 05 (see below)			
# 2596	1-13-05 (four months payment issued)		9333.32
# 2603	2-07-05		2333.33
# 2621	4-07-05		2333.33
# 2623	5-03-05		2333.33
# 2632	5-30-05 (June payment)		2333.33
# 2637	7-01-05		2333.33
# 2547	8-05-05		2333.33
# Dif. Acct.	9-06-05		2333.33
# 2654	10-12-05		2333.33
# 2658	11-02-05		2333.33
# 2667	12-05-05		2333.33
# 2670	01-03-06		2333.33
# 2685	02-15-06		2333.33
# 2691	03-10-06		2333.33
# 2699	04-20-06		2333.33
# 2711	05-03-06		2333.33
# 2720	05-29-06 (August payment)		2333.33
# 2721	07-27-06		2333.33
# 2725	08-15-06		2333.33
# 2741	09-27-06		2333.33
# 2749	11-04-06 (October payment)		2333.33
# 2755	11-21-06		2333.33
# 2767	01-04-07		2333.33
# 2901	02-02-07		2333.33
Lee's Bankruptcy Filing Puts All Payments on Hold			
# 2928	06-29-07 (Five mos. payments Mar. - July)		11,666.65
# 2947	11-03-07		9333.33
# 2885	02-07-08		6999.99
# 2806	04-10-08		2333.33
# 2796	10-20-08		13,999.99
# 5903945	02-27-09		26,204.13
# Wire transfer	02-02-09		64,000.00
# 2855	02-03-09		64,000.00

TOTAL PAYMENTS TO PLAINTIFF ON NOTE..... \$487,203.96  
CREDIT \$100,000.00 IN CONTRACTED EARLY PAYMENT PROHIBITED..... \$587,203.96  
CREDIT \$907.96 IN JUDGMENT CREDIT FROM CIV. NO. 05-1-0196..... \$588,111.94

**EXHIBIT 26.**

**Exhibits Pg. 147**

MEDICAL VERITAS INTERNATIONAL INC  
1778 ALA MOANA BLVD SUITE 4005  
HONOLULU HI 96815

1168

59-102/1213  
17

808 965 2112

4.4.13

Pay to the Order of Director of Finance \$100.00  
One hundred + xx/xx Dollars

**Bank of Hawaii**

AS **ALA MOANA BRANCH**  
GOODWILL PAYMENT TO MITIGATE  
DAMAGES FROM TAX FRAUD, EXTORTION  
AND SECURITIES FRAUD OF PAUL J. SULLA JR.  
PURSUANT TO BUREAU OF CONVEYANCES DOC NO 2011-093773  
1:1213010281: 0007 556535 1:68 PG 4 PARAGRAPH 3  
FORECLOSURE FRAUD/JASON HESTER - SLANDER OF TITLE  
To Reorder Call 1-800-355-8123

MEDICAL VERITAS INTERNATIONAL INC  
1778 ALA MOANA BLVD SUITE 4005  
HONOLULU HI 96815

1170

59-102/1213  
17

808 965 2112

4.4.13

Pay to the Order of Director of Finance \$100.00  
One hundred + xx/xx Dollars


**Bank of Hawaii**

AS **ALA MOANA BRANCH**  
GOODWILL PAYMENT TO MITIGATE DAMAGES FROM  
TAX FRAUD, EXTORTION, SECURITIES FRAUD  
OF PAUL J. SULLA JR. AND JASON HESTER  
PURSUANT TO BUREAU OF CONVEYANCES DOC NO 2011-093773  
1:1213010281: 0007 556535 1:70  
FORECLOSURE FRAUD/CLAUSE IN MTG. PAGE 4 PARAGRAPH 3  
SLANDER OF TITLE  
To Reorder Call 1-800-355-8123

EXHIBIT 27.

Exhibits pg. 148

To: County of Hawaii  
101 Pauahi Street, Suite 4  
Hilo, Hawaii 96720-4224

  
ATTN: SHELLEY  
COUNTY OF HAWAII  
REAL PROPERTY TAX DIVISION  
AUPUNI CENTER  
101 PAUAAHI ST., SUITE 4  
HILO, HI 96720-4224  
961-8401

4/8/13

Dear Shelley,

Please send tax notices for TMK# 3-1-3-001-049 and TMK# 3-1-001-043 to the addresses and parties below.

Leonard Horowitz  
13-3775 Kalapana Hwy  
Pahoa, HI 96778

And

Sherri Kane  
Po Box 75104  
Honolulu, HI 96778

Mahalo!

Sherri Kane  
808 965 2112  
[editor@medicalveritas.org](mailto:editor@medicalveritas.org)

I agree to pay 250.00 per month beginning May 2013, and will pay more IF I can in a month.



Exhibits pg. 149



Ex. A

LEONARD G. HOROWITZ, Pro se  
13-3775 Pahoehoe-Kalapana Road  
Pahoehoe, HI 96778  
Email: [editor@medicalveritas.org](mailto:editor@medicalveritas.org)  
808-965-2112

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2016 MAR 10 PM 2:37

F. OTAKE  
EX OFFICIO CLERK

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	NOTICE OF BANKRUPTCY CASE
LEONARD G. HOROWITZ, an	)	FILING; CERTIFICATE OF SERVICE
individual; SHERRI KANE, an	)	
individual; MEDICAL VERITAS	)	Judge: Honorable Melvin H. Fujino
INTERNATIONAL, INC, a	)	
California nonprofit corporation; THE	)	Hearing date: None
ROYAL BLOODLINE OF DAVID, a	)	Time of hearing: None
Washington Corporation Sole; JOHN	)	Date of Trial: None
DOES, 1-10, JANE DOES 1-10, DOE	)	
ENTITIES 1-10, DOE	)	
PARTNERSHIPS 1-10, DOE	)	
GOVERNMENTAL UNITS 1-10.	)	
Defendants	)	

NOTICE OF BANKRUPTCY CASE FILING

Defendant/Counterclaimants LEONARD G. HOROWITZ, Overseer for THE ROYAL BLOODLINE OF DAVID (RBOD), hereby notices the Court and all interested parties of United States Bankruptcy Court Filing of Chapter 13 Case No. 16-00239, and related Adversary Proceeding No. 16-90015; as evidenced by attachments "A" and "B."

An automatic stay of this case is required under 11 USC § 362(a).

Exhibit 28

Exhibits pg. 150



I attest under pains and penalties of perjury that the foregoing is true, and that my bankruptcy filing was administered in good faith.

Dated: Honolulu Hi. March 10, 2016



Leonard G. Horowitz

**Parties Noticed hereby:**

STEPHEN D. WHITTAKER (2191)  
(Attorney for JASON HESTER in Civ. No. 14-1-0304)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

JUDGE RONALD IBARRA  
THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
79-1020 Haukapila Street  
Kona, HI 96750

JUDGE MELVIN FUJINO  
THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
79-1020 Haukapila Street  
Kona, HI 96750

MARGARET (DUNHAM) WILLE (8522)  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931

PAUL J. SULLA, JR (#5398)  
Attorney at Law  
(Attorney for JASON HESTER in Civ. No. 05-1-0196)  
106 Kamehameha Avenue, Ste. 2A  
Hilo, HI 96720

Fill in this information to identify your case:

United States Bankruptcy Court for the:

District of \_\_\_\_\_  
(State)

Case number (if known):

16-00239

Chapter you are filing under:

- ☐ Chapter 7  
☐ Chapter 11  
☐ Chapter 12  
☒ Chapter 13

FILED  
U.S. BANKRUPTCY COURT  
DISTRICT OF HAWAII

2016 MAR -9 P 3:24  
Check if this is an  
amended filing

MICHAEL J. SCHLINS  
CLERK OF COURT

Official Form 101

## Voluntary Petition for Individuals Filing for Bankruptcy

12/15

The bankruptcy forms use you and Debtor 1 to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a joint case—and in joint cases, these forms use you to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses Debtor 1 and Debtor 2 to distinguish between them. In joint cases, one of the spouses must report information as Debtor 1 and the other as Debtor 2. The same person must be Debtor 1 in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

### Part 1 Identify Yourself

#### About Debtor 1:

##### 1. Your full name

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Bring your picture identification to your meeting with the trustee.

Leonard

First name

George

Middle name

Horowitz

Last name

Suffix (Sr., Jr., II, III)

##### 2. All other names you have used in the last 8 years

Include your married or maiden names.

First name

Middle name

Last name

First name

Middle name

Last name

#### About Debtor 2 (Spouse Only in a Joint Case):

First name

Middle name

Last name

Suffix (Sr., Jr., II, III)

First name

Middle name

Last name

First name

Middle name

Last name

##### 3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

XXX - XX -

OR

9 XX - XX -

XXX - XX -

OR

9 XX - XX -

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

page 1

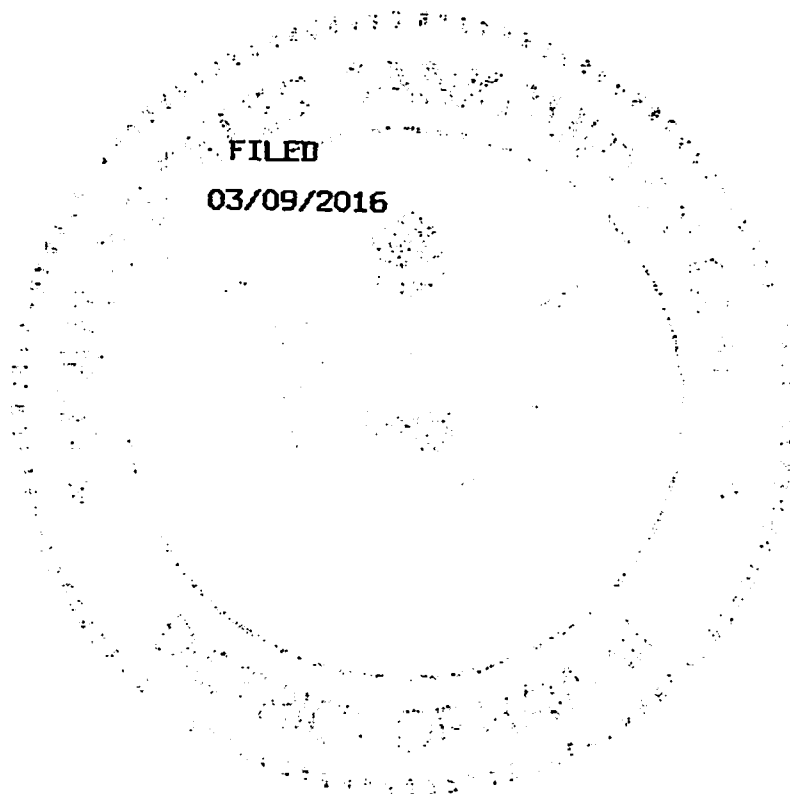
Exhibits pg. 152

United States Bankruptcy Court  
District of Hawaii

**Notice of Bankruptcy  
Case Filing**

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 03/09/2016 at 3:24 PM and filed on 03/09/2016.

**Leonard George Horowitz**  
P.O. Box 75104  
Honolulu, HI 96778  
808.946.6999  
SSN / ITIN: [REDACTED]



The bankruptcy trustee is:

**Howard M.S. Hu**  
1132 Bishop Street, Suite 301

Honolulu, HI 96813  
(808) 526-3083

The case was assigned case number 16-00239 to Judge Robert J. Faris.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.hib.uscourts.gov/> or at

<https://ecf.hib.circ9.dcn/cgi-bin/NoticeOfFiling.pl?87098>

**Exhibits pg. 153** 3/9/2016

the Clerk's Office, 1132 Bishop Street, Suite 250, Honolulu, Hawaii 96813, . .

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

**Michael B. Dowling  
Clerk, United States  
Bankruptcy Court**

## ADVERSARY PROCEEDING COVER SHEET

(Instructions on Reverse)

ADVERSARY PROCEEDING NO.

16-90015

## PLAINTIFF(S)

LEONARD GEORGE HAROWITZ and  
SHERI KANE

## DEFENDANT(S)

PAUL J. SULLA, JR., JASON HESTER,  
ET AL.

## ATTORNEY(S) (Firm Name, Address, Telephone No.)

pro se

## ATTORNEY(S) (If Known)

PAUL J. SULLA, JR.

## PARTY (Check One Box Only)

☒ Debtor    ☐ U.S. Trustee  
☐ Creditor    ☐ Trustee    ☐ Other

## PARTY (Check One Box Only)

☐ Debtor    ☐ U.S. Trustee  
☒ Creditor    ☐ Trustee    ☐ Other

## CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved.)

Theft (conversion) of Property title by fraudulent (wrongful) non-judicial foreclosure; forgery, securities fraud, fraudulent concealment(s), fraudulent transfers, trespass to chattels, unfair consumer debt collection practices, unfair competition, deceptive trade; damages

## NATURE OF SUIT

(Number up to 5 boxes with the lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

Note: Only a complaint including an objection to discharge under 11 U.S.C. § 727 will defer the clerk's entry of the debtor's discharge in bankruptcy. A complaint to determine the dischargeability of a debt under 11 U.S.C. § 523 does not affect the entry of a discharge with respect to other debts.

## FRBP 7001(1) - Recovery of Money/Property

- ☒ 11 - Recovery of money/property - § 542 turnover of property  
☐ 12 - Recovery of money/property - § 547 preference  
☒ 13 - Recovery of money/property - § 548 fraudulent transfer  
☐ 14 - Recovery of money/property - other

## FRBP 7001(2) - Validity, Priority or Extent of Lien

- ☐ 21 - Validity, priority or extent of lien or other interest in property

## FRBP 7001(3) - Approval of Sale of Property

- ☐ 31 - Approval of sale of property of estate and of a co-owner - § 363(h)

## FRBP 7001(4) - Objection/Revocation of Discharge

- ☐ 41 - Objection/revocation of discharge - § 727(c), (d), (e)

## FRBP 7001(5) - Revocation of Confirmation

- ☐ 51 - Revocation of confirmation

## FRBP 7001(6) - Dischargeability

- ☐ 66 - Dischargeability - § 523(a)(1), (14), (14A) priority tax claims  
☒ 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud  
☐ 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

☒ Check if this case involves a substantive issue of state law☒ Check if a jury trial is demanded in complaint

## FRBP 7001(6) - Dischargeability (continued)

- ☐ 61 - Dischargeability - § 523(a)(5), domestic support  
☐ 68 - Dischargeability - § 523(a)(6), willful and malicious injury  
☐ 63 - Dischargeability - § 523(a)(8), student loan  
☐ 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support)  
☒ 65 - Dischargeability - other

## FRBP 7001(7) - Injunctive Relief

- ☒ 71 - Injunctive relief - imposition of stay  
☐ 72 - Injunctive relief - other

## FRBP 7001(8) - Subordination of Claim or Interest

- ☒ 81 - Subordination of claim or interest

## FRBP 7001(9) - Declaratory Judgment

- ☐ 91 - Declaratory judgment

## FRBP 7001(10) - Determination of Removed Action

- ☐ 01 - Determination of removed claim or cause

## Other

- ☐ SS-SIPA Case - 15 U.S.C. §§ 78aaa et seq.  
☐ 02 - Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this is asserted to be a class action under FRCP 23

Demand: \$ 6 million +

Other Relief Sought: punitive and statutory damages; special damages for PIED AND NIED.

Exhibits pg. 155

FILED

Margaret (Dunham) Wille #8522  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931  
margaretwille@mac.com

2016 MAR 14 PM 3:37

L. MOCK CHEW, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

Attorney for Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	
LEONARD G. HOROWITZ, an	)	DEFENDANTS' EMERGENCY
individual; SHERRI KANE, an	)	MOTION FOR STAY OF WRIT OF
individual; MEDICAL VERITAS	)	EJECTMENT [HRCP 62(b)].
INTERNATIONAL, INC, a	)	MEMORANDUM IN SUPPORT OF
California nonprofit corporation;	)	EMERGENCY MOTION.
THE ROYAL BLOODLINE OF	)	EXHIBITS A AND B,
DAVID, a Washington Corporation	)	DECLARATION OF ATTORNEY
Sole: JOHN DOES, 1-10, JANE	)	MARGARET WILLE; NOTICE OF
DOES 1-10, DOE ENTITIES 1-10,	)	NON-HEARING MOTION;
DOE PARTNERSHIPS 1-10, DOE	)	CERTIFICATE OF SERVICE
GOVERNMENTAL UNITS 1-10.	)	
Defendants	)	Judge: Honorable Melvin H. Fujino

Non-hearing motion

**DEFENDANTS' EMERGENCY MOTION FOR  
STAY OF WRIT OF EJECTMENT [HRCP 62(b)]**

COMES NOW Defendants/Counterclaimants LEONARD G. HOROWITZ, SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID (RBOD)<sup>1</sup>, hereafter collectively referred to as Defendants, by and through their attorney MARGARET WILLE, pursuant to Hawaii Rules of Civil Procedure (HRCP) Rule 62(b) moves this Court for an emergency stay of the Writ of

<sup>1</sup> MEDICAL VERITAS INTERNATIONAL, INC. (MVI) is a California based non-profit that was RBOD's lessee of the subject property. Given its limited interest in the subject property, MVI is not pursuing this Motion for a Stay or Alternatively Dismissal or a New Trial.

**Exhibit 29**

**Exhibits pg. 156**

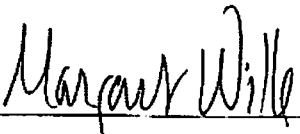
Ejectment filed on March 1, 2016, that would otherwise allow the Sheriff to eject Defendants and their belongings from their home.

Hawaii Rule of Civil Procedure 62(b) allows a stay of proceedings “when justice so requires.”

In light of Defendant Horowitz’s filing of bankruptcy on March 10, 2016 which requires an automatic stay of these proceedings, and Plaintiff’s Counsel’s failure to execute the Writ of Ejectment properly in violation of Defendants’ due process rights. Further there is scheduled on March 26, 2016, a hearing on Defendants’ HRCF Rule 62(d) motion for a stay pending an appeal in this case.

In the event this Court prefers to rule on this motion following a hearing, this matter can be taken up at the hearing now scheduled on April 21, 2016 regarding Defendants’ Motion for A Stay Pending the Appeal to the Intermediate Court of Appeals.

Respectfully submitted.

  
MARGARET WILLE,

DATED: Waimca, HI, 96743 March 14, 2016

Attorney for Defendants – Counterclaimants - Appellants

*Hester vs Horowitz* Civ. 14-1-0304, DEFENDANTS’ EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT

Exhibits pg. 157

Exhibits Pg. 157

Margaret (Dunham) Wille #8522  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931  
margaretwille@mac.com

Attorney for Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	MEMORANDUM IN SUPPORT OF
LEONARD G. HOROWITZ, an	)	DEFENDANTS' EMERGENCY
individual; SHERRI KANE, an	)	MOTION FOR STAY OF WRIT OF
individual; MEDICAL VERITAS	)	EJECTMENT [HRCP 62(b)]
INTERNATIONAL, INC, a	)	
California nonprofit corporation;	)	Judge: Honorable Melvin H. Fujino
THE ROYAL BLOODLINE OF	)	
DAVID, a Washington Corporation	)	Non-hearing motion
Sole; JOHN DOES, 1-10, JANE	)	
DOES 1-10, DOE ENTITIES 1-10,	)	
DOE PARTNERSHIPS 1-10, DOE	)	
GOVERNMENTAL UNITS 1-10.	)	
Defendants	)	

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' EMERGENCY MOTION FOR  
STAY OF WRIT OF EJECTMENT [HRCP 62(b)]**

This Memorandum is written in support of Defendants/Counterclaimants LEONARD G. HOROWITZ, SHERRI KANE, and THE ROYAL BLOODLINE OF DAVID (RBOD)<sup>1</sup>, Emergency Motion for Stay of the Writ of Ejectment filed on March 1, 2016. Hawaii Rule of Civil Procedure 62(b) allows a stay of proceedings "when justice so requires."

<sup>1</sup> MEDICAL VERITAS INTERNATIONAL, INC. (MVI) is a California based non-profit that was RBOD's lessee of the subject property. Given its limited interest in the subject property, MVI is not pursuing this Motion for a Stay.



In light of Defendant Horowitz's filing of bankruptcy on March 9, 2016, which requires an automatic stay of these proceedings, and Plaintiff's Counsel's failure to execute the Writ of Ejectment properly in violation of Defendants' due process rights, this motion is just. Further there is scheduled on March 26, 2016, a hearing on Defendants' HRCP Rule 62(d) motion for a stay pending an appeal in this case.

Specifically HRCP Rule 62(b) provides:

**(b) Stay on motion for new trial or for judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b), **or when justice so requires** in other cases until such time as the court may fix. (emphasis added)

I. EXECUTION OF THE WRIT OF EJECTMENT IS REQUIRED TO BE STAYED PENDING DISPOSITION OF DEFENDANT HOROWITZ'S BANKRUPTCY PROCEEDING, NO. 16-00239, ADVERSARIAL PROC. NO.16-90015.

The federal Bankruptcy Code Chapter 11, Section 362 imposes an automatic stay upon proceeding against a debtor, including "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate". Section 362 specifically provides:

(a) Except as provided in subsection (b) of this section<sup>2</sup>, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of - (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; (3) any act to obtain possession of property of the estate or of property from the estate or to exercise

---

<sup>2</sup> Subsection (b) concern criminal cases and civil cases related to domestic family matters, and is therefore not relevant to this action.

control over property of the estate; (4) any act to create, perfect, or enforce any lien against property of the estate; (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor. . . .

This automatic stay is truly "automatic," in that it takes effect instantly upon the filing of a bankruptcy petition and is effective against most entities, including the debtor and regardless of whether the entity is aware of the filing.<sup>3</sup>

Defendant Leonard Horowitz filed for bankruptcy on March 9, 2016, BANKRUPTCY NO. 16-00239, ADVERSARIAL PROC. NO.16-90015. On March 10, 2016, the Notice of Bankruptcy Case Filing was filed in this case. (Exhibit A)

**2. THIS CASE SHOULD ALSO BE STAYED BECAUSE THE PROCESSING OF THE MARCH 1, 2016 FILED WRIT OF EJECTMENT HAS BEEN CARRIED OUT IN A MANNER THAT VIOLATES DEFENDANTS' DUE PROCESS RIGHTS**

Section One of the Fourteenth Amendment to the United States Constitution provides:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law".

In *RE KEKAUOHA-ALISA*, Bankr. Court, D. Hawaii 2012, the Bankruptcy Court, improper service of ejectment notices was ruled to have damaged the debtors, for which [the Court] granted the defaulting parties compensation for damages along with treble damages for wrongful debt collection practices.

Plaintiff's attorney, Stephen Whittaker, has violated Defendants' due process rights by failing to follow the proper procedures for executing a writ of ejectment. A writ of ejectment is handled by the Sheriff's Department, not by the party's attorney. Once the Sheriff's Department processes the Writ, the Sheriff's then meets with those occupying the premises and arrangements are made for their removal. That did not happen in this case.

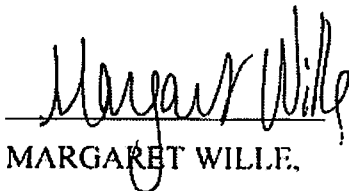
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<sup>3</sup> In re Shapiro, 124 B.R. 974, 981 (Bankr. E.D. Pa. 1991)

Furthermore it is appropriate to serve a copy of the proposed Writ on the opposing party's counsel, and once signed by the Court or Clerk, a copy of the Writ should be served upon the opposing party's counsel.

In this case Plaintiff's attorney submitted the Writ on or about February 29, 2016, and obtained the stamped signature of the Clerk on the proposed Writ of Ejectment on March 1, 2016. No copy was forwarded to the opposing party's counsel, and no copy was delivered for processing to the Sheriff for processing. Instead on or about Saturday March 12, 2016, a copy of the Writ of Ejectment was posted on the gate to the subject property. A copy of the posted Writ is attached as Exhibit 8. Only the name and address of Attorney Stephen Whittaker was on the document. This action caused Defendants severe distress, believing that perhaps the Writ was posted by the Sheriff and that they would be ejected immediately.

Respectfully submitted.



MARGARET WILLE,

DATED: Waimca, HI, 96743 March 14, 2016

Attorney for Defendants – Counterclaimants - Appellants

*Hester vs Horowitz* Civ. 14-1-0304, MEMORANDUM IN SUPPORT OF DEFENDANTS' EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT

Exhibits pg. 161

Ex. A

LEONARD G. HOROWITZ, Pro se  
13-3775 Pahoa-Kalapana Road  
Pahoa, HI 96778  
Email: [editor@medicalveritas.org](mailto:editor@medicalveritas.org)  
808-965-2112

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2016 MAR 10 PM 2:37

F. OTAKE  
EX OFFICIO CLERK

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	NOTICE OF BANKRUPTCY CASE
LEONARD G. HOROWITZ, an	)	FILING; CERTIFICATE OF SERVICE
individual; SHERRI KANE, an	)	
individual; MEDICAL VERITAS	)	Judge: Honorable Melvin H. Fujino
INTERNATIONAL, INC, a	)	
California nonprofit corporation; THE	)	Hearing date: None
ROYAL BLOODLINE OF DAVID, a	)	Time of hearing: None
Washington Corporation Sole; JOHN	)	Date of Trial: None
DOES, 1-10, JANE DOES 1-10, DOE	)	
ENTITIES 1-10, DOE	)	
PARTNERSHIPS 1-10, DOE	)	
GOVERNMENTAL UNITS 1-10.	)	
Defendants	)	

**NOTICE OF BANKRUPTCY CASE FILING**

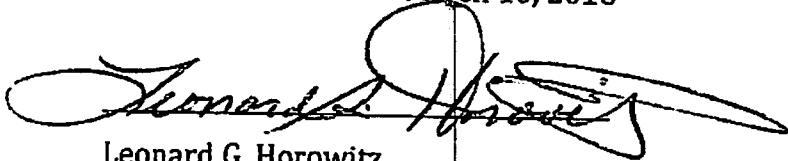
Defendant/Counterclaimants LEONARD G. HOROWITZ, Overseer for THE ROYAL BLOODLINE OF DAVID (RBOD), hereby notices the Court and all interested parties of United States Bankruptcy Court Filing of Chapter 13 Case No. 16-00239, and related Adversary Proceeding No. 16-90015; as evidenced by attachments "A" and "B."

An automatic stay of this case is required under 11 USC § 362(a).

Exhibits pg. 162

I attest under pains and penalties of perjury that the foregoing is true, and that my bankruptcy filing was administered in good faith.

Dated: Honolulu Hi. March 10, 2016



Leonard G. Horowitz

**Parties Noticed hereby:**

STEPHEN D. WHITTAKER (2191)  
(Attorney for JASON HESTER in Civ. No. 14-1-0304)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

JUDGE RONALD IBARRA  
THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
79-1020 Haukapila Street  
Kona, HI 96750

JUDGE MELVIN FUJINO  
THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
79-1020 Haukapila Street  
Kona, HI 96750

MARGARET (DUNHAM) WILLE (8522)  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931

PAUL J. SULLA, JR (#5398)  
Attorney at Law  
(Attorney for JASON HESTER in Civ. No. 05-1-0196)  
106 Kamehameha Avenue, Ste. 2A  
Hilo, HI 96720

Fill in this information to identify your case:

United States Bankruptcy Court for the:

District of \_\_\_\_\_  
(State)

Case number (if known):

16-00239

Chapter you are filing under:

- ☐ Chapter 7  
☐ Chapter 11  
☐ Chapter 12  
☒ Chapter 13

FILED  
U.S. BANKRUPTCY COURT  
DISTRICT OF HAWAII

2016 MAR -9 3:24  
Check if this is an amended filing

MICHAEL S. DOWLING  
CLERK OF COURT

Official Form 101

## Voluntary Petition for Individuals Filing for Bankruptcy

12/15

The bankruptcy forms use **you** and **Debtor 1** to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a **joint case**—and in joint cases, these forms use **you** to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be yes if either debtor owns a car. When information is needed about the spouses separately, the form uses **Debtor 1** and **Debtor 2** to distinguish between them. In joint cases, one of the spouses must report information as **Debtor 1** and the other as **Debtor 2**. The same person must be **Debtor 1** in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

### Part 1: Identify Yourself

#### About Debtor 1:

1. Your full name

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Bring your picture identification to your meeting with the trustee.

Leonard

First name

George

Middle name

Hadowitz

Last name

Suffix (Sr., Jr., II, III)

2. All other names you have used in the last 8 years

Include your married or maiden names.

First name

Middle name

Last name

First name

Middle name

Last name

#### About Debtor 2 (Spouse Only in a Joint Case):

First name

Middle name

Last name

Suffix (Sr., Jr., II, III)

First name

Middle name

Last name

First name

Middle name

Last name

3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

XXX - XX -

OR

9 XX - XX -

XXX - XX -

OR

9 XX - XX -

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

page 1

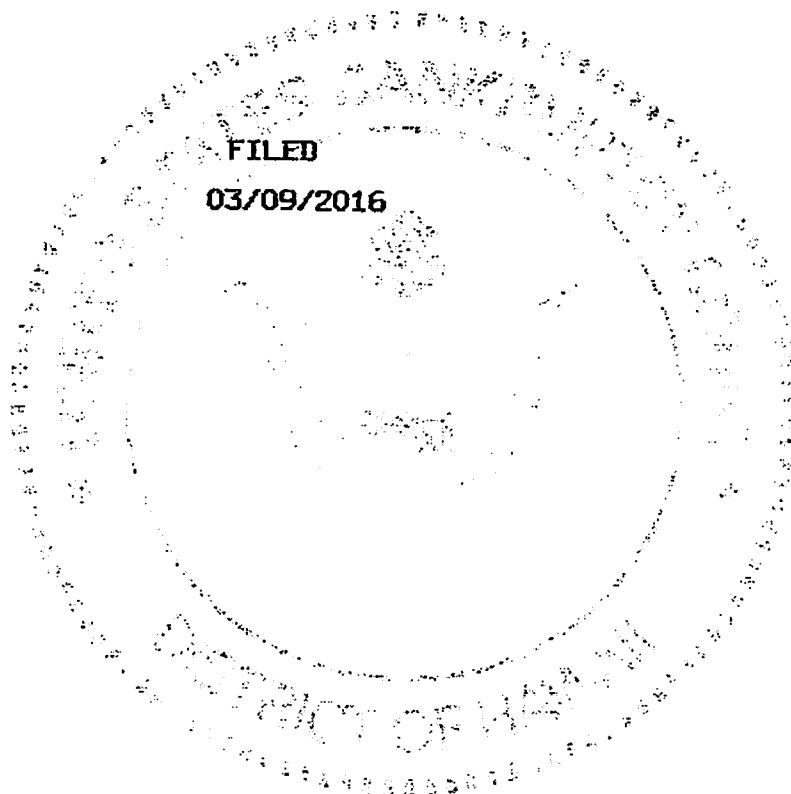
Exhibits pg. 164

United States Bankruptcy Court  
District of Hawaii

**Notice of Bankruptcy  
Case Filing**

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 03/09/2016 at 3:24 PM and filed on 03/09/2016.

**Leonard George Horowitz**  
P.O. Box 75104  
Honolulu, HI 96778  
808.946.6999  
SSN / ITIN: xx [REDACTED]



The bankruptcy trustee is:

**Howard M.S. Hu**  
1132 Bishop Street, Suite 301

Honolulu, HI 96813  
(808) 526-3083

The case was assigned case number 16-00239 to Judge Robert J. Faris.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.hib.uscourts.gov/> or at

<https://ecf.hib.circ9.dcn/cgi-bin/NoticeOfFiling.pl?87098>

**Exhibits pg: 165** 3/9/2016

the Clerk's Office, 1132 Bishop Street, Suite 250, Honolulu, Hawaii 96813, , .

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

**Michael B. Dowling  
Clerk, United States  
Bankruptcy Court**

**Exhibits pg. 166**



## ADVERSARY PROCEEDING COVER SHEET

(Instructions on Reverse)

ADVERSARY PROCEEDING NO.

16-90016

## PLAINTIFF(S)

LEONARD GEORGE HOROWITZ and  
SHERI KANE

## DEFENDANT(S)

PAUL J. SULLA, JR., JASON HESTER,  
ET AL.

## ATTORNEY(S) (Firm Name, Address, Telephone No.)

pro se

## ATTORNEY(S) (If Known)

PAUL J. SULLA, JR.

## PARTY (Check One Box Only)

☒ Debtor ☐ U.S. Trustee  
☐ Creditor ☐ Trustee ☐ Other

## PARTY (Check One Box Only)

☐ Debtor ☐ U.S. Trustee  
☒ Creditor ☐ Trustee ☐ Other

## CAUSE OF ACTION (Write a brief statement of cause of action, including all U.S. statutes involved.)

Theft (conversion) of Property title by fraudulent (wrongful) non-judicial foreclosure; forgery, securities fraud, fraudulent concealment(s), fraudulent transfers, trespass to chattels, unfair consumer debt collection practices, unfair competition, deceptive trade, damages

## NATURE OF SUIT

(Number up to 5 boxes with the lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

Note: Only a complaint including an objection to discharge under 11 U.S.C. § 727 will defer the clerk's entry of the debtor's discharge in bankruptcy. A complaint to determine the dischargeability of a debt under 11 U.S.C. § 523 does not affect the entry of a discharge with respect to other debts.

## FRBP 7001(1) - Recovery of Money/Property

- ☒ 11 - Recovery of money/property - § 542 turnover of property  
☐ 12 - Recovery of money/property - § 547 preference  
☒ 13 - Recovery of money/property - § 548 fraudulent transfer  
☐ 14 - Recovery of money/property - other

## FRBP 7001(2) - Validity, Priority or Extent of Lien

- ☐ 21 - Validity, priority or extent of lien or other interest in property

## FRBP 7001(3) - Approval of Sale of Property

- ☐ 31 - Approval of sale of property of estate and of a co-owner - § 363(h)

## FRBP 7001(4) - Objection/Revocation of Discharge

- ☐ 41 - Objection/revocation of discharge - § 727(c), (d), (e)

## FRBP 7001(5) - Revocation of Confirmation

- ☐ 51 - Revocation of confirmation

## FRBP 7001(6) - Dischargeability

- ☐ 66 - Dischargeability - § 523(a)(1), (14), (14A) priority tax claims  
☒ 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud  
☐ 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

☒ Check if this case involves a substantive issue of state law☒ Check if a jury trial is demanded in complaint

## FRBP 7001(6) - Dischargeability (continued)

- ☐ 61 - Dischargeability - § 523(a)(5), domestic support  
☐ 68 - Dischargeability - § 523(a)(6), willful and malicious injury  
☐ 63 - Dischargeability - § 523(a)(8), student loan  
☐ 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support)  
☒ 65 - Dischargeability - other

## FRBP 7001(7) - Injunctive Relief

- ☒ 71 - Injunctive relief - imposition of stay  
☐ 72 - Injunctive relief - other

## FRBP 7001(8) - Subordination of Claim or Interest

- ☒ 81 - Subordination of claim or interest

## FRBP 7001(9) - Declaratory Judgment

- ☐ 91 - Declaratory judgment

## FRBP 7001(10) - Determination of Removed Action

- ☐ 01 - Determination of removed claim or cause

## Other

- ☐ SS-SIPA Case - 15 U.S.C. §§ 78aaa et seq.  
☐ 02 - Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this is asserted to be a class action under FRCP 23

Demand: \$ 6 million +

Other Relief Sought: punitive and statutory damages; special damages for PIED AND NIED.

Exhibits pg. 167

Exhibit B

ISSUED

Stephen D. Whittaker, AAL (SBN #2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
Phone: 808-960-4536

2016 MAR -1 PM 3:05

Attorney for Plaintiff  
Jason Hester

L. MOCK CHEW, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

JASON HESTER, an individual,  
  
Plaintiff

vs.

LEONARD G. HOROWITZ, an  
individual; SHERRI KANE, an  
individual; MEDICAL VERITAS  
INTERNATIONAL, INC., a California  
nonprofit corporation; THE ROYAL  
BLOODLINE OF DAVID, a  
Washington Corporation Sole; JOHN  
DOES 1-10; JANE DOES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; DOE  
ENTITIES 1-10 and DOE  
GOVERNMENTAL UNITS 1-10,  
  
Defendants.

Civil No. 14-1-0304  
(Other Civil Action)

WRIT OF EJECTMENT;

RETURN OF SERVICE ON WRIT  
OF EJECTMENT

WRIT OF EJECTMENT; RETURN OF SERVICE ON WRIT OF EJECTMENT

THE STATE OF HAWAII

TO: THE DIRECTOR OF PUBLIC SAFETY OF THE STATE OF HAWAII,  
HIS/HER DEPUTY, THE CHIEF OF POLICE OF THE HAWAII POLICE  
DEPARTMENT, OR HIS DEPUTY, OR TO ANY POLICE OFFICER OF THE

I hereby certify that this is a full, true and correct  
copy of the original on file in this office.

*J. Mock Chew*

Clerk, Third Circuit Court, State of Hawaii

COUNTY OF HAWAII OR PERSON AUTHORIZED BY THE LAWS OF THE  
STATE OF HAWAII.

Pursuant to the Final Judgment Filed 12-30-2015  
Order Granting In Part And Denying In Part Plaintiff's Motion For  
Summary Judgment filed herein, Plaintiff JASON HESTER is entitled to the issuance of a

Writ of Ejectment against the above-named Defendants LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10 for possession of the premises located at 13-3775 Pahoia Kalapana Road, Pahoia, Hawaii 96778-7924, TMK Nos. (3) 1-3-001:049 & 043.

THEREFORE, EFFECTIVE IMMEDIATELY, FROM THE ISSUANCE DATE OF THIS WRIT, YOU ARE COMMANDED TO REMOVE the said above-named Defendants LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10 and all persons holding under or through said Defendants from the premises above-mentioned, including their personal belongings and properties, and put Plaintiff JASON HESTER, or his nominee, in full possession thereof; and make due return of this Writ with what you have done endorsed thereon.

Dated: Kealahou, Hawaii FEB 29 2016

MELVIN H. FUJINO (SEAL)

JUDGE OF THE ABOVE-ENTITLED COURT

Re: Civil No. 14-1-0304; *Jason Hester v. Leonard G. Horowitz, et al.*; Writ of Ejectment;  
Return of Service on Writ

**Margaret (Dunham) Wille #8522**  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931  
margaretwille@mac.com

Attorney for:  
Defendants/Counterclaimants  
Leonard G. Horowitz, Sherri Kane and  
the Royal Bloodline of David, et. al.

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual  
Plaintiff/Counterclaim Defendant  
v.

LEONARD G. HOROWITZ, an  
individual; SHERRI KANE, an  
individual; MEDICAL VERITAS  
INTERNATIONAL, INC. a  
California nonprofit corporation; THE  
ROYAL BLOODLINE OF DAVID, a  
Washington Corporation Sole; JOHN  
DOES, 1-10, JANE DOES 1-10, DOE  
ENTITIES 1-10, DOE  
PARTNERSHIPS 1-10, DOE  
GOVERNMENTAL UNITS 1-10.

Defendants/Counterclaimants

) CIV. NO. 14-1-0304  
) (Quiet Title)  
)  
)  
) **DECLARATION OF ATTORNEY**  
) **MARGARET D. WILLE**  
) **FOR DEFENDANTS' EMERGENCY**  
) **MOTION FOR STAY OF WRIT**  
) **OF EJECTMENT**  
) **[HRCp 62(b)]**  
)  
)  
) JUDGE: Honorable Melvin H. Fujino  
)  
) Non-hearing motion  
)  
)

**DECLARATION OF ATTORNEY MARGARET D. WILLE FOR DEFENDANTS'  
EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT [HRCp 62(b)]**

Exhibits pg. 170

Exhibits Pg. 170

I, MARGARET (DUNHAM) WILLE, under pain of perjury of law, do hereby state and declare as follows:

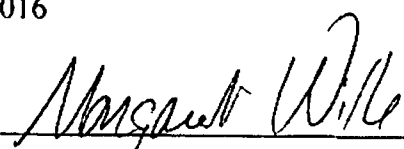
- 1) I am an individual over the age of twenty-one (21) years, a resident of the State and County of Hawai'i.
- 2) I am licensed to practice law before the Courts of Hawai'i.
- 3) As of June 29, 2015, I have been the attorney for Defendant-Appellants LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID and am representing these Defendants in the appeal of the Circuit Court's Fourth Amended Final Judgment dated June 19, 2015.
- 4) I declare that Exhibit "A" is a true and correct copy of the Notice of Bankruptcy filed in Civ. No. 14-1-0304 on March 10, 2016.
- 5) I declare that Exhibit "B" is a true and correct copy of the Writ of Ejectment posted on the subject property on or about March 12, 2016
- 6) All statements made in the accompanying Motion and Memorandum are true and correct to the best of my knowledge and belief.

FURTHER DECLARANT SAYETH NAUGHT

This Declaration is based upon my personal knowledge and I am competent to testify as to the truth of the statements contained herein.

Dated: Waimea Hawaii: March 14, 2016

Signed: \_\_\_\_\_

  
MARGARET (DUNHAM) WILLE  
Attorney for Defendants  
LEONARD G. HOROWITZ and  
THE ROYAL BLOODLINE OF DAVID.

Hester. vs. Horowitz Civ. No. 05-1-0196; Declaration of Attorney Margaret Wille For  
DEFENDANTS' EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT [HRCp  
62(b)]

Exhibits pg. 171

**Margaret Wille #8522**  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931  
margaretwille@mac.com

Attorney for:  
Defendants/Counterclaimants  
Leonard G. Horowitz, Sherri Kane, and  
the Royal Bloodline of David

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

JASON HESTER, an individual	) CIV. NO. 14-1-0304
Plaintiff/Counterclaim Defendant	) (Quiet Title)
	)
v.	)
	) <b>NOTICE OF NON-HEARING MOTION</b>
LEONARD G. HOROWITZ, an	) DEFENDANTS' MOTION DEFENDANTS'
individual; SHERRI KANE, an	) EMERGENCY MOTION FOR STAY OF WRIT
individual; MEDICAL VERITAS	) OF EJECTMENT [HRCP 62(b)] )
INTERNATIONAL, INC, a	)
California nonprofit corporation;	)
THE ROYAL BLOODLINE OF	) JUDGE: Honorable Melvin Fujino
DAVID, a Washington Corporation	)
Sole; JOHN DOES, 1-10, JANE	)
DOES 1-10, DOE ENTITIES 1-10,	)
DOE PARTNERSHIPS 1-10, DOE	)
GOVERNMENTAL UNITS 1-10.	)
Defendants/Counterclaimants	

**NOTICE OF NON-HEARING MOTION**

TO:

Exhibits pg. 172

Exhibits Pg. 172

STEPHEN D. WHITTAKER  
Attorney at Law  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

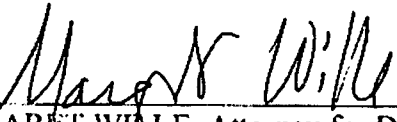
*Attorney for Jason Hester*

YOU ARE HEREBY NOTIFIED that the undersigned has filed with the above-captioned court the DEFENDANTS' EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT [HRCP 62(b)], with associated filings.

Hawaii Rules of Circuit Courts Rule 7(b) provides that

"Any opposition to a non-hearing motion shall be filed and served no later than 10 days after the service date indicated on the certificate of service accompanying the motion or no later than 12 days after the service date if the motion is served by mail".

DATED: Waimea, HI, 96743 March 14, 2016

  
\_\_\_\_\_  
MARGARET WILLE, Attorney for Defendants  
LEONARD G. HOROWITZ; SHERRI KANE;  
and THE ROYAL BLOODLINE OF DAVID, et. al.

Jason Hester, . Plaintiff v. Leonard G. Horowitz et al, Defendants; Civ. No. 14-1-0304 *NOTICE OF NON-HEARING EMERGENCY MOTION FOR STAY.*

Exhibits pg. 173

Exhibits Pg. 173

Margaret (Dunham) Wille #8522  
Attorney at Law  
65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
Tel: 808-854-6931  
margaretwille@mac.com

Attorney for Defendants

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
KONA DIVISION, STATE OF HAWAII**

JASON HESTER, an individual	)	CIV. NO. 14-1-0304
Plaintiff,	)	(Other Civil Action)
v.	)	
	)	
LEONARD G. HOROWITZ, an	)	CERTIFICATE OF SERVICE
individual; SHERRI KANE, an	)	DEFENDANTS' EMERGENCY
individual; MEDICAL VERITAS	)	MOTION FOR STAY OF WRIT OF
INTERNATIONAL, INC, a	)	EJECTMENT [HRCP 62(b)].
California nonprofit corporation; THE	)	MEMORANDUM IN SUPPORT,
ROYAL BLOODLINE OF DAVID, a	)	EXHIBITS A and B, DECLARATION
Washington Corporation Sole; JOHN	)	OF MARGARET WILLE, NOTICE OF
DOES, 1-10, JANE DOES 1-10, DOE	)	NON-HEARING MOTION
ENTITIES 1-10, DOE	)	
PARTNERSHIPS 1-10, DOE	)	
GOVERNMENTAL UNITS 1-10.	)	
Defendants	)	Judge: Honorable Melvin H. Fujino
		Non-Hearing Motion

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of March, 2016, I served a true and correct copy of the foregoing "NON-HEARING MOTION AND DECLARATION OF ATTORNEY MARGARET D. WILLE FOR DEFENDANTS' EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT [HRCP 62(b)]. Exhibits, Declaration of Attorney Margaret Wille", by the method described below to:

**Exhibits pg. 174**

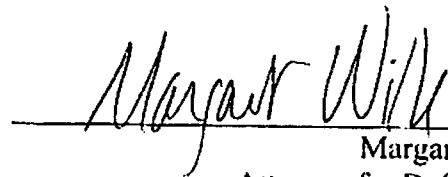


STEPHEN D. WHITTAKER (2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

☒ U.S. Mail, Postage Prepaid

HONORABLE JUDGE MELVIN H. FUJINO  
THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII  
79-1020 Haukapila Street  
Kona, HI 96750

☒ Hand Delivery

  
Margaret Wille  
Attorney for Defendants,  
Leonard G. Horowitz, Sherri Kane and  
The Royal Bloodline of David

Jason Hester vs. Leonard G. Horowitz et al. Civ. 14-1-0304: *Certificate of Service*  
DEFENDANTS' EMERGENCY MOTION FOR STAY OF WRIT OF EJECTMENT,  
MEMORANDUM IN SUPPORT OF DEFENDANTS' EMERGENCY MOTION FOR  
STAY OF WRIT OF EJECTMENT [HRCP 62(b)], EXHIBITS, NOTICE OF NON-  
HEARING MOTION, DECLARATION OF MARGARET WILLE

Exhibits pg. 175

Paul J. Sulla, Jr.  
P.O. Box 5258  
Hilo, HI 96720  
Tel. 808/933-3600

Pro Se and as Attorney for Appellee  
Paul J. Sulla, III

Electronically Filed  
Intermediate Court of Appeals  
CAAP-15-0000094  
11-MAR-2016  
05:25 PM

Appeal No. CAAP-15-0000094

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

PAUL J. SULLA, JR. and PAUL  
J. SULLA, III,

Plaintiffs and  
Appellees,

vs.

LEONARD GEORGE HOROWITZ;

Defendant and  
Appellant

(Civil Case No. 14-1-0173)  
(3<sup>rd</sup> Circuit)

REQUEST AND DECLARATION OF  
COUNSEL FOR ATTORNEYS' FEES  
AND COSTS; APPENDIX "A"-  
"C"; CERTIFICATE OF SERVICE

REQUEST AND DECLARATION OF COUNSEL FOR ATTORNEYS' FEES AND COSTS

In accordance with Hawai'i Rules of Appellate Procedure (HRAP) Rule 39(d), I, Paul J. Sulla, Jr., attorney for Appellee PAUL J. SULLA, III, request compensation for costs and attorneys' fees and, in conjunction herewith aver, as follows:

1. Appellee prevailed in this appeal.
2. I request reimbursement for necessary and authorized costs as follows:

**Exhibit 30**

**Exhibits pg. 176**

<u>Item</u>	<u>Amount</u>
Payment to Court Reporter Audrey Tanouye for Copy of Transcript	\$ <u>25.00</u>
TOTAL COSTS	\$ <u>25.00</u>

A true and correct itemized accounting of these costs, including relevant invoices and receipts, is attached as Appendix A.

3. I have expended the following hours in attorney work and, pursuant to the Hawaii Rules of Appellate Procedure Rule 39(a), am entitled to charge the following amounts for this appeal:

<u>Activity</u>	<u>Hours</u>		<u>Amount</u>
a. Correspondence, Interviews and Conferences	<u>2.6</u>	@ <u>\$275/hr</u>	\$ <u>715.00</u>
b. Obtaining & Reviewing Records	<u>5.4</u>	@ <u>\$175/hr</u>	\$ <u>945.00</u>
c. Legal Research	<u>5.6</u>	@ <u>\$175/hr</u>	\$ <u>980.00</u>
d. Drafting	<u>20.9</u>	@ <u>\$275/hr</u>	\$ <u>5747.50</u>
e. Oral Argument (In-court)	<u>0.00</u>	@ <u>\$275/hr</u>	\$ <u>0.00</u>
f. Other (Specify): Monitoring of matter status and calculating dates and deadlines	<u>4.9</u>	@ <u>\$175/hr</u>	\$ <u>857.50</u>
TOTAL FEES	<u>39.4</u>		\$ <u>9,245</u>

Attached hereto as Appendix B are hourly worksheets, prepared in accordance with HRAP Form 8 and contemporaneously

No. CAAP-13-0600094  
Sulla v. Horowitz et al.

Page 2  
REQUEST FOR REIMBURSEMENT OF COUNSEL  
IN SUPPORT OF REQUEST FOR FEES AND COSTS

with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of Appellee. Additional information including a copy of the contract authorizing attorneys' fees is attached hereto as Appendix "C".

I, Paul J. Sulla, Jr., declare under penalty of law, as provided by HRAP Rule 52, that the foregoing is true and correct.

Dated: This 9th day of March, 2016 in Hilo, Hawaii.

/s/ Paul J. Sulla, Jr.

---

Paul J. Sulla, Jr.  
Attorney for Appellee  
Paul J. Sulla, III

HOURLY WORKSHEET (Non-Indigent Representation)

Appellate Case Number: CAAP-15-0000094

Case Name: Sulla v. Horowitz

Date	Brief Description of Activity	Correspondence Interviews & Conferences	Obtaining & Reviewing Records	Legal Research	Drafting	Oral Argument (in-court)	Other (Specify)
2/23/2015	Conference w/ law clerk re: Notice of Appeal; review deadlines and rules of court	.2		.3			
3/2/2015	Detailed review of applicable rules of Appellate Procedure; review Notice of Appeal for legal sufficiency; note all upcoming deadlines			.9			
3/3/2015	Download request for transcript from court of appeal website; conference with paralegal re: transcript; telephone call to court reporter	.2	.2				
3/6/2015	Legal research to determine if there is a good legal basis for drafting a statement contesting jurisdiction or motion to dismiss			.3			
3/12/2015	Telephone conference with court reporter re: transcripts	.2					
4/6/2015	Review upcoming litigation tasks and calendar items						.3
4/14/2015	Review litigation calendar and deadline for filing Answering brief; determine if extensions will be necessary						.3
4/15/2015	Telephone conference with court reporter re: transcripts	.3					
4/20/2015	Locate/ print/ review pleadings filed thus far		.4				
4/23/2015	Read Hearing Transcript		.4				

5/1/2015	Review Statement of Jurisdiction; calculate deadline to contest same; review grounds for contesting same		2	2			
5/14/2015	Review matter status & upcoming dates and deadlines						.3
5/26/2015	Review matter status & upcoming dates and deadlines						.3
5/28/2015	Locate/ print/ review Opening Brief and all exhibits from JEFFS		1.3				
5/29/2015	Telephone call to court clerk; review court rules for requesting extension of time	.3					
6/5/2015	Review matter status & upcoming dates and deadlines; Draft Notice of Clerks Extension of Time				.5		.3
6/8/2015	Locate/ print/ review court notices		.3				
6/15/2015	Review matter status & upcoming dates and deadlines						.3
6/17/2015	Locate/ print/ review recent filings from JEFFS		1.0				
6/22/2015	Review matter status & upcoming dates and deadlines						.3
7/10/2015	Review matter status & upcoming dates and deadlines						.3
7/29/2015	Draft Motion for Second Extension of Time to File Answering Brief; confer w/ staff re: same				1.2		
7/30/2015	Review matter status & upcoming dates and deadlines; edit Motion for Extension of Time & file with JEFFS; research rules & law in support of same			.5	.7		.3
7/31/2015	Draft Opposition to Motion for Sanctions; confer w/ staff re: same; a-file same	.4			2.0		

8/10/2015	Obtain/Review order granting extension of time to file answering brief; confer w/ staff re: same	2	2				
8/11/2015	Review matter status & upcoming dates and deadlines						3
8/17/2015	Review matter status & upcoming dates and deadlines						3
8/18/2015	Legal Research and drafting for Answering Brief			.2	.2		
8/28/2015	Review Opening Brief for legal sufficiency; continue drafting Answering Brief		.4		2.4		
8/31/2015	Research citation format for Court of Appeals; continue drafting Answering Brief			.2	4.6		
9/1/2015	Continue drafting Answering brief				4.4		
9/4/2015	Review/Edit Answering Brief				1.7		
9/8/2015	Continue Answering Brief edits; e-file brief; confer w/ staff re: same	2			.5		.2
9/19/2015	Review matter status						.3
9/21/2015	Cont. review of matter status & any further dates & deadlines						.3
9/25/2015	Review Reply to Answering Brief and Exhibits; confer w/ staff re: same	3	.6				
11/9/2015	Review matter status						.3
11/18/2015	Set up client/matter details for integrated litigation management system						.2
11/24/2015	Review matter status; determine if any oral arguments will be scheduled						.3
2/19/2016	Obtain/Review summary order; confer w/ staff re: same; calculate time for filing request for attorney fees; research rules &		.4	2			

	law re: same						
3/3/2016	Confer w/ staff re: Draft Declaration of Fees & Costs; obtain & begin completing Form 8 worksheet	.3					
3/8/2016	Draft Declaration of Fees & Costs; obtain & begin completing Form 8 worksheet				.5		
3/9/2016	Finalize Declaration of Fees & Costs and Form 8; confer w/ Staff re: same				2.2		
	Sub-Total for this page	2.6	5.4	5.6	20.9		4.9
	<b>GRAND TOTAL</b>	<b>39.4 hours</b>					

Exhibits pg. 182



ATTORNEY AT LAW

**PAUL J. SULLA JR. A LAW CORPORATION**

2051 Kalanianaʻole Ave  
Post Office Box 5258  
Hilo, Hawaii 96720

telephone (808) 933-3600  
facsimile (808) 933-3601  
e-mail psulla@aloha.net

March 17, 2014

P. Joseph Sulla III  
PO Box 1514  
Honokaa, HI 96727

RE: Sulla v. Horowitz, commercial lien removal

**ATTORNEY-CLIENT FEE AGREEMENT**

Dear Mr. Sulla:

Thank you for contacting this office relative to the above-referenced matter. I have agreed to represent you, P. Joseph Sulla III, in a matter involving Sulla v. Horowitz, the removal of a commercial lien.

These services may include advice and counsel; correspondence; settlement negotiations; representation at court hearings, preparation of court documents and if possible, to obtain the best results attainable that are acceptable to you.

This Firm requests the sum of **\$ 1500.00** as an initial retainer as payment on account in this matter in order to provide legal services in connection with the above-referenced matter. The payments received shall be applied against actual legal services performed for the Client and for costs and expenses incurred. The total charge for legal services, costs and expenses is presently unascertainable. **Litigation expenses can substantially increase and the retainer may again need to be replenished if you wish to continue.**

You will be charged for legal services by Attorney Paul J. Sulla, Jr. at the hourly rate of **\$275.00**. You may be charged for paralegal services at the hourly rate of **\$95.00**. Services rendered by other legal assistants/associate attorneys who perform work under the supervision of the attorney will be **\$150.00** per hour or otherwise discussed with you prior to their engagement.

It is understood that the hourly charges include but are not limited to: correspondence, telephone conferences, office conferences, legal research, depositions, review of file materials and documents sent or received, preparation for trials, court appearances, drafting of pleadings or instruments, and office memoranda. The Firm reserves the right to increase its hourly rate from time to time as expenses of the office operations increase and/or in the event that interim billings have not been paid as agreed. We will give you notice of such an increase prior to its effective date.

**Exhibits pg. 183**

Interim billing may be submitted to the Client from time to time to replenish the retainer amount in the event the time charged by the Firm reduces this initial payment held on account. All interim billings shall be due and payable upon receipt unless otherwise stated. Failure to pay interim billings promptly will permit the Firm, after notice to the Client, to terminate its representation of the Client and Client agrees to cooperate with Firm to allow Firm to withdraw as counsel for Client in any court action upon request of Firm.

The Client agrees to assume and pay for all out-of-pocket disbursements incurred in connection with this matter; e.g.; filing fees, witness fees, travel, sheriff and constable fees, expenses of depositions, investigative expenses and incidental expenses. The Firm agrees to obtain the Client's prior approval before incurring any disbursement in excess of \$300.

Further, in the event the Firm has completed its services with regard to its representation of Client, you will be charged interest on the remaining unpaid balance at the rate of one (1%) percent per month which is twelve (12%) percent per year. If Client fails to make final payment to Firm after 120 days from termination of Firm's services, Client agrees to execute a Note to Firm for the unpaid balance at rate of twelve (12%) percent per year and a Mortgage secured by the subject property, upon request of Firm.

In some cases, the Court requires an adverse party to pay part of the attorney's fees and costs incurred by the Client. In that event, we will make every effort, at your expense, to enforce the provision and to assist you in the reimbursements of the fees and costs incurred by you. However, you are obligated to pay the fees and costs as set forth in this letter. We will reimburse you if we receive payment from the adverse party.

In the event that, upon either the completion of the within matter or the termination of the Firm's representation of this Client, the total charge for legal services performed by the Firm shall be less than the amount of any retainer payment on account paid by the Client, the balance of any retainer shall be refunded to the Client by the Firm.

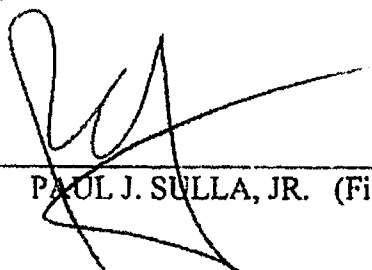
While we make no guarantee of the successful conclusion to your case, the attorneys of this Firm will use their best effort on your behalf. I will be the attorney primarily responsible for this matter. However, other members of this Firm, as well as an attorney not associated with this firm, may also work on part of your matter. It is understood that you will extend all members of this Firm your full cooperation. It is also understood that the Firm will not settle or compromise this matter without your consent.

THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, PLEASE CONSULT WITH INDEPENDENT LEGAL COUNSEL.

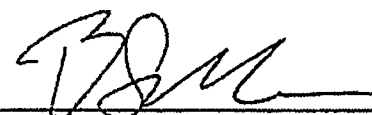
We, the Client and the Firm, have read the above Attorney/ Client Fee Agreement on the date indicated below, and understand the terms, and both have signed it as a free act and deed.

Date: 3/17/14

  
\_\_\_\_\_  
P. JOSEPH SULLA III (Client)

By:   
\_\_\_\_\_  
PAUL J. SULLA, JR. (Firm)

I hereby acknowledge receipt of a copy of the above agreement.

  
\_\_\_\_\_  
P. JOSEPH SULLA III

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of eighteen,  
not a party to the within action and that the foregoing  
document(s):

REQUEST AND DECLARATION OF COUNSEL FOR ATTORNEYS' FEES AND  
COSTS; APPENDIX "A"-"C"; CERTIFICATE OF SERVICE

was duly served upon the following by mailing a copy of  
same via the Judicial Electronic Filing System and the U.S.  
Postal Service, postage prepaid at the U.S. Post Office in  
Hilo, Hawaii on this 9th day of March, 2016, to:

Leonard G. Horowitz  
13-3775 Kalapana Hwy.  
Pahoa, HI 96778

Appellant

/s/ Paul J. Sulla, Jr.

\_\_\_\_\_  
Paul J. Sulla, Jr.

Filer's Name, Address, Phone, Fax, Email:

Stephen B. Whittaker, AAL LLC (SBN #2191)  
P.O. Box 964, Kailua-Kona, Hawaii 96745  
Tel. (808) 960-4536; Fax (808) 325-7530  
e-mail: stephen@whittakerlawkona.com

Paul J. Sulla, Jr. (SBN # 5398)  
P.O. Box 5258, Hilo, HI 96720  
ph. (808) 933-3600; fax (808) 933-3601  
e-mail: psulla@aloha.net



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII  
1132 Bishop Street, Suite 250  
Honolulu, Hawaii 96813

hib\_9073-1 (02/10)

Debtor: Leonard G. Horowitz		Case No.: 16-00239
Joint Debtor: (if any)		Chapter: 13
[If Adversary Proceeding, complete information below. Use "et al" if multiple parties.]  Plaintiff(s):  vs. Defendant(s):		Adversary Proceeding No.: (if applicable)
NOTICE OF HEARING Courtroom – 1132 Bishop Street, Honolulu, Hawaii		Hearing Date: April 12, 2016 Time: 9:30 a.m.
		Objections Due: March 29, 2016
Matter being heard:	Motion for Relief from Stay	Related Dkt No.:
Moving Party:	Creditor Jason Hester	

**NOTICE IS HEREBY GIVEN** that this matter is set for hearing at the date and time above. The relief being requested consists of the following. [Briefly describe the relief sought, including pertinent details.]

Please see attached Motion for Relief from Stay. Creditor Jason Hester has obtained Final Judgment on his quiet title action in State Court concerning the Subject Property and a Writ of Ejectment. He is standing by to enforce the writ and is seeking a determination by the bankruptcy court that either 1) no stay is in effect because Debtor has no legal, equitable, or possessory interest in the Subject Property and such it should not be a part of the bankruptcy estate because Debtor is not and never was on title to the property, or 2) the stay should be lifted immediately to allow enforcement of the writ because whatever interest in the Subject Property the Debtor may have has been extinguished and has no commercial value and is not necessary for the re-organization of the bankruptcy estate.

**Exhibit 6**

**Your rights may be affected.** You should read the motion or application and the accompanying papers carefully and discuss them with your attorney if you have one in this bankruptcy case or proceeding. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this motion, or if you want the court to consider your views on the motion, then you or your attorney must file a statement explaining your position not later than the date below.

**Date response due** [enter specific date, and how calculated using the relevant statute, federal or local rule, or order shortening time, e.g. *X days before hearing or X days after* \_\_\_\_\_ .]:

March 29, 2016

Date

How calculated: LBR 4001-1 (e)(1)(A)

Statements must be filed with the court at:

United States Bankruptcy Court  
District of Hawaii  
1132 Bishop Street, Suite 250  
Honolulu, HI 96813

If you mail your response to the court, you must mail it early enough so the court will **receive** it on or before the deadline stated above. The court may disregard any response filed untimely.

You must also mail or transmit a copy to the moving party at:

Responses to be sent to:

Attorney Paul J. Sulla, Jr.  
P.O. Box 5258  
Hilo, HI 96720

Attorney for Creditor Jason Hester

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or application and may enter an order granting that relief.

If no objection to the relief being sought is filed by the deadline stated above, the court may cancel the hearing (although certain types of motions will remain on the court's calendar). If the hearing is canceled, the court may grant the relief if the moving party promptly files a declaration and request for entry of an order [local form hib\_9021-1]. If the moving party wishes to proceed with a hearing in the absence of an objection, the moving party should file a request for the matter to remain on calendar [local form hib\_9013-1c3].

Dated: 3/18/2016

/s/ Paul J. Sulla, Jr.

for Movant

(Print name also if original signature)



Filer's Name, Address, Phone, Fax, Email:

Stephen D. Whittaker, AAL, LLC (SBN #2191)  
P.O. Box 964, Kailua-Kona, Hawaii 96745  
Telephone (808) 960-4536; Facsimile (808) 325-7530; e-mail:  
stephen@whittakerlawkona.com

Paul J. Sulla, Jr. (SBN #5398)  
P.O. Box 5258, Hilo, HI 96720  
Ph. (808) 933-3600; Fax (808) 933-3601; e-mail: psulla@aloha.net

Attorneys for Creditor Jason Hester



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII  
1132 Bishop Street, Suite 250  
Honolulu, Hawaii 96813

hib\_4001-1cs (12/09)

Debtor: Leonard George Horowitz

Case No.: 16-00239

Joint Debtor:  
(if any)

Chapter: 13

**COVER SHEET - MOTION FOR RELIEF FROM STAY**

*Instructions: Complete A. for all motions. Complete B. if seeking to enforce security interest. Complete C. if motion concerns a lease. Complete D. for other types of relief. Complete E. if seeking extraordinary relief.*

Hearing Date: April 12, 2016  
Time: 9:30 AM

A. Relief sought under ☒ 11 U.S.C. § 362(d) – Automatic Stay ☐ 11 U.S.C. § 1301(c) – Chapter 13 Codebtor Stay

Movant: Jason Hester

Role (mortgagee, lessor, agent, plaintiff, etc.): Plaintiff

☐ Debtor's principal residence

Subject Matter (real/personal property, litigation, etc.): 13-3775 Pahoa-Kalapana Road, Pahoa, HI  
(use address/TMK/vehicle ID, etc.) Tax Map Key (3) 1-3-001:049 & 043.

If pending litigation, last major prepetition event: Writ of Ejectment; Final Judgment; Notice of Appeal  
(decree of foreclosure, writ of possession, etc.)

**B. Security Interest (mortgage, lien, etc.)**

Movant's lien position (1<sup>st</sup>, 2<sup>nd</sup>, etc.):

Date of loan:

Maturity date:

Original amt: \$

Principal bal: \$

Interest, late fees, etc.: \$

Monthly pmt: \$

Prepetition arrears: \$

Postpetition arrears: \$

Debtor's valuation in schedules: \$

Movant's valuation (if different): \$

List all encumbrances:

Sr. lien:

\$

2<sup>nd</sup> lien:

\$

Total other liens:

\$

Add all liens .....

\$

**C. Lease**

Date of lease:

Payment: \$

per

Prepetition arrears: \$

Postpetition arrears: \$

**D. Other**

Describe relief sought, title of action and court of any litigation, and any applicable insurance:  
Execution of Writ of Ejectment and leave to continue litigation on appeal in two matters: Hester v. Horowitz, Hawaii Circuit Court for the Third Circuit Civ. No. 14-1-0304 ; Hawaii Intermediate Court of Appeals CAAP-16-00163 and Hester v. Horowitz, Hawaii Circuit Court for the Third Circuit Civ. No. 05-1-196; CAAP-16-0000162

**E. Extraordinary relief requested:**

☒ Retroactive relief

☒ "in rem" relief

☒ No stay of order

The above information summarizes allegations in attached motion. /s/ Paul J. Sulla

For Movant

Stephen D. Whittaker, AAL (SBN #2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
Phone: 808-960-4536

Paul J. Sulla, Jr. (SBN #5398)  
P.O. Box 5258  
Hilo, HI 96720-8258  
Phone: (808) 933-3600

Attorneys for Plaintiff  
Jason Hester

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

IN RE:  
  
LEONARD G. HOROWITZ  
  
Debtor.

Case No.: 16-00239  
CHAPTER 13

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY;  
DECLARATION IN SUPPORT OF  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY; EXHIBITS  
“A” – “D”; CERTIFICATE OF  
SERVICE**

**Hearing Date: April 12, 2016**

**Hearing Time: 9:30 a.m.**

**Honorable Judge Robert J. Faris**

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW, Jason Hester (“Movant”) and moves this court for an order terminating the automatic stay and allowing Movant to proceed with and complete any and all contractual and statutory remedies, including trespass, unlawful detainer and forcible eviction/ejectment, incident to his interest held in real property commonly described as 13-1775 Pahoia Kalapana Road, Pahoia, Hawaii 96778-7924, TMK Nos. (3) 1-3-001:049 & 043 (“Property”), as legally described as set forth in the Quitclaim Deed (“Deed”) attached as **Exhibit “A”** to Movant’s Declaration.



Movant further moves that, the provision of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration of Movant's position and the condition of the Subject Property. The Debtor pays no rent and has not paid any use and occupancy fees or other expenses of the Property during the six (6) years he has been a hold over tenant at sufferance despite the fact that the property is advertised extensively as a rental property by the Debtor. The real property taxes are presently delinquent and currently subject to a tax lien and sale by the County of Hawaii if not paid by June 30, 2016. Further, prior to debtor's petition being filed Movant had already retained a professional team including law enforcement, movers, and a process server to assist with enforcement of the Writ which required extensive coordination of schedules with approximately 15 people, all of which have already agreed to a date for enforcement of the writ of ejectment and Movant should not be required to cancel and reschedule at a much later date at his expense and great personal hardship.

## II. Parties in Interest

Debtor Leonard G. Horowitz ("Debtor") filed for protection under Chapter 13 of Title 11 of the United States Code on March 9, 2016. Debtor continually claims to have an interest in the Property despite repeated Findings, Orders and Judgments in prior State actions that he has none. He holds no record title interest, no lease, or other rental agreement. He pays no rent and *never has paid or offered to pay rent to the record title holder or tax to the County of Hawaii* since the foreclosure sale date in April 2010, over six years ago. He does not actually reside on the Property. According to the address provided by the Debtor in his initial filing before this Court and his many statements in prior State and Federal courts in related matters he actually resides in Honolulu. Further the property is extensively advertised as a rental property under the name "Steam Vent Inn". See current internet advertising a true copy of which is attached as **Exhibit "B"** to Movant's Declaration.

Debtor may claim a possessory interest in the Property by virtue of his affiliation with the prior owner, a non-profit Washington State corporation named The Royal Bloodline of David ("RBOD") but any legal, equitable or possessory interest that RBOD

held was extinguished by virtue of a foreclosure sale held on April 20, 2010 and the RBOD's dissolution on October 31, 2012 in the State of Washington.<sup>1</sup>

Extinguishment of the interest is further evidenced by the Final Judgment in the recent Quiet Title action attached as **Exhibits "C"** to Movant's Declaration. Movant's interest is based on a Quitclaim Deed recorded on June 14, 2011 ("Deed") and the Final Judgment quieting title to the Property in favor of Movant on December 30, 2015 ("Judgment"). A true and correct copy of the Deed and Judgment are attached as **Exhibits "A" and "C"**, respectively, to the Declaration in Support of Movant's Motion to Stay.

Furthermore, Movant has already obtained a Writ of Ejectment on March 1, 2016 regarding the property; entered in the Quiet Title action in the Circuit Court of the Third Circuit, State of Hawaii, in *Hester v. Horowitz et. al.*, Civil No. 14-1-0304, pre-petition to the debtor's filing in this matter. A true and correct copy of the Writ is attached as **Exhibit "D"** to the Declaration in Support.

#### **VI. Value of Property**

Since Debtor never held record title or equitable interest in the Property, the actual market value of the real property at issue herein is not relevant. The only property value at issue herein is the value of any alleged possessory interest that Debtor may claim, which is nominal due to the fact that Debtor has already been declared by the Circuit Court for the State of Hawaii in its Final Judgment (**Exhibit C**) to be a Tenant at Sufferance. His current possessory interest has no commercial value and cannot be used by him in any reorganization of his affairs.

#### **VII. Authority**

Under 11 U.S.C. § 362(d)(1), on request of a party in interest, the Court shall terminate, annul, modify or condition the stay for cause. In the case at bar, Movant lacks adequate protection from the Debtor's continued hold over occupancy, his failure to pay any use and occupancy charges to the Movant or real property taxes to the County of Hawaii. This hold over "squatter" is preventing Movant from protecting the property from loss and preserving the asset. The Debtor has no legal, equitable or possessory interest in

---

<sup>1</sup> WA Secretary of State Registration Detail for the Royal Bloodline of David shows that this Corporation Sole was declared inactive on September 17, 2012 and expired on October 31, 2012.

the real property. The entry of the Circuit Court's Final Judgment and Writ of Ejectment divests any interest of the debtor or estate. A creditor holding a duly recorded deed is the presumptive current record owner of the property that can enforce rights against the property, and has standing to move for relief from automatic stay, to evict or eject debtor(s) from the property. *Edwards v. Wells Fargo Bank, N.A.* (In re: Edwards), 454 B.R. 100 (B.A.P. 9<sup>th</sup> Cir. 2011). *In re: Hoopai*, Hawaii Bankruptcy, Case 04-02511 (January 12, 2005). Therefore, there is cause to lift the stay.

Because Movant has already obtained a Final Judgment that quiets title in his favor, declares Debtor a tenant at sufferance, and grants Movant possession; and because Movant has already obtained a Writ of Ejectment in the State Court, the parties are precluded from re-litigating issues that could or should have been raised in the State Court action, due to its *res judicata* or claim preclusion effect. See **Exhibit C and D**. A federal district or bankruptcy court has no authority to review the final determination of a State Court proceeding. Debtor has already requested a stay of the ejectment proceedings, all of which have so far been denied.<sup>2</sup> This bankruptcy filing is yet another attempt by Debtor to delay the inevitable. It is in fact his 10<sup>th</sup> request for stay.

---

<sup>2</sup> Ho'ohiki docket entries in *Hester v. Horowitz et. al.*, Civil No. 14-1-0304 show the following attempts made by the Debtor, Leonard Horowitz to try and delay his eviction:

- Entry #69: On April 13, 2015 there was something filed by Debtor that included "Appellants' Emergency **Motion for Emergency Stay** Pending Hearing..." [Denied],
- Entry #71: On April 15, 2015 there was something filed by Debtor labelled "Emergency **Motion to Stay** April 17, 2015 Hearing on Motion for Summary Judgment pending Appeal..." [Denied],
- Entry #72: On April 17, 2015 there was something filed by Debtor labelled "Motion to Strike Pretrial Statement and **Dismiss Case** for being filed with "Unclean Hands" in Bad Faith..." [Denied],
- Entry #107: On June 10, 2015 there was something filed by Debtor labelled "Emergency **Motion for** Injunctive Relief to **Stay** Process, Judgments and Orders..." [Denied],
- Entry #134: On October 5, 2015 there was something filed by Debtor labelled "Defendants' **Motion for Stay** or for Dismissal Prior to Entry of Final Judgment" [Denied],

While normally a stay is automatic, Movant does not believe that the automatic stay in this case is of any force or effect because Debtor has no actual legal, equitable or possessory interest that could possibly be an asset of his bankruptcy estate. He has never held record title to the Property. It is only out of abundance of caution and to reach a safe harbor that Movant has filed this Motion for Relief from Stay – a Stay which may or may not actually be in effect. It is Movant's position that Debtor's Chapter 13 case was filed with intent to delay execution of the Writ and nothing more. The Bankruptcy Court should not second guess the state court's consistent determinations that no stay should issue.

Under 11 U.S.C. § 362(d)(2), on request of a party in interest, the Court shall terminate, annul, modify or condition the stay if there is no equity in the property and the property is not necessary for an effective reorganization. As described above, the Debtor holds no equity in the subject property. Because the Debtor has no legal or equitable right to the property, and at best only a contested claim of possessory interest; the property cannot be a part of any reorganization. For the above reasons, the court should allow Movant to continue with its State law ejectment rights.

- 
- Entry #143: On January 11, 2016 there was something filed by Debtor labelled "Resubmitted **Motion for Stay** Pending Finality in Related Action Cov. No. 05-1-196 [HRCP Rule 62(b)]" [Denied],
  - Entry #146: On January 11, 2016 there was something filed by Debtor labelled "Defendants' **Motion for Stay [HRCP 62(b)] Pending the Disposition of Defendants' Post Judgment Motions:** (1) Defendants' Motion for Stay or for Dismissal Pending Finality in the Prior Filed Related Action [HRCP 62(b)], and of 2) Defendants' Motion for Reconsideration or Alternatively for New Trial [HRCP 59(a)]" [Denied],
  - Entry #159: On March 3, 2016 there was something filed by Debtor labelled: "Defendants' **Motion For Stay** Pending Appeal [HRCP 62(D)] And For The Setting Of Supersedeas Bond Security During The Period Of The Appeal" [Pending. Hearing set for April 21, 2016].
  - Entry #164: On March 14, 2016 there was something filed by Debtor labelled "Defendant's Emergency **Motion For Stay** of Writ of Ejectment [HRCP 62(B)]" [Pending. Improperly designated as a "non-hearing" motion; no hearing date set.]

### VIII. Conclusion

THEREFORE, Movant requests this Court enter an Order Terminating the Automatic Stay Pursuant to 11 U.S.C. § 362 and that the Movant be allowed to immediately proceed with and complete any and all contractual and statutory remedies incident to the Movant's interest in the property. Movant further requests that the Court specifically order that there shall not be a fourteen day stay from entry of the Order Terminating Stay on account of the deteriorating condition of the property, the failure of the Debtor to pay any rent or property taxes, and the hardship that would result if the Movant had to postpone further the Sheriffs and movers already contracted to move the Debtor forthwith. Because Movant has obtained a Writ of Ejectment and a Final Judgment quieting title in his favor and granting him possession, Movant requests *In Rem* relief from the automatic stay.

Respectfully submitted this 17<sup>th</sup> of March, 2016.

/s/ Paul J. Sulla, Jr.

---

Paul J. Sulla, Jr. (SBN #5398)  
Attorney for Movant Jason Hester



Stephen D. Whittaker, AAL (SBN #2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
Phone: 808-960-4536

Paul J. Sulla, Jr. (SBN #5398)  
P.O. Box 5258  
Hilo, HI 96720-8258  
Phone: (808) 933-3600

Attorneys for Plaintiff  
Jason Hester

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

IN RE:

LEONARD G. HOROWITZ

Debtor.

Case No.: 16-00239  
CHAPTER 13

**DECLARATION OF COUNSEL IN  
SUPPORT OF MOTION FOR  
RELIEF FROM AUTOMATIC  
STAY; EXHIBITS "A" – "C"**

**DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR RELIEF FROM  
AUTOMATIC STAY**

I, **Paul J. Sulla, Jr.** depose the state as follows:

1. I am the attorney for Movant in the above matter.
2. I make this Declaration based on my personal knowledge and am competent to testify about the matters contained in this Declaration.
3. Movant seeks an order terminating the automatic stay and allowing Movant to proceed with and complete any and all contractual and statutory remedies, including trespass, unlawful detainer and forcible eviction/ejectment, incident to his interest held in real property

commonly described as 13-1775 Pahoa Kalapana Road, Pahoa, Hawaii 96778-7924, TMK Nos. (3) 1-3-001:049 & 043 ("Property").

4. Attached here to as "**Exhibit "A"**" is the Quitclaim Deed held by Movant for the Subject Property recorded as Document No. 2011-093772 in the State of Hawaii Bureau of Conveyances on June 14, 2011.

5. Movant has moved that the provision of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration of Movant's position and the condition of the Subject Property. The Debtor pays no rent and has not paid any use and occupancy fees or other expenses of the Property during the six (6) years he has been a hold over tenant at sufferance despite the fact that the property is advertised extensively as a rental property by the Debtor.

6. The real property taxes are presently delinquent and currently subject to a tax lien and sale by the County of Hawaii if not paid by June 30, 2016.

7. Further, prior to debtor's petition being filed Movant had already retained a professional team including law enforcement, movers, and a process server to assist with enforcement of the Writ which required extensive coordination of schedules with approximately 15 people, all of which have already agreed to a date for enforcement of the writ of ejectment and Movant should not be required to cancel and reschedule at a much later date at his expense and great personal hardship.

8. Debtor continually claims to have an interest in the Property despite repeated Findings, Orders and Judgments in prior State actions that he has none.

9. Debtor holds no record title interest, no lease, or other rental agreement. He pays no rent and *never has paid or offered to pay rent to the record title holder or tax to the County of Hawaii* since the foreclosure sale date in April 2010, over *six years ago*.

10. Debtor does not actually reside on the Property. According to the address provided by the Debtor in his initial filing before this Court and his many statements in prior State and Federal courts in related matters he actually resides in Honolulu.

11. Further the property is extensively advertised as a rental property under the name "Steam Vent Inn". Attached hereto as **Exhibit "B"** is a true and correct copy of internet advertising of the subject Property as a vacation rental presently on numerous internet website including [www.airbnb.com](http://www.airbnb.com), all accessed on March 17, 2016.

12. Debtor may claim a possessory interest in the Property by virtue of his affiliation with the prior owner, a non-profit Washington State corporation named The Royal Bloodline of David ("RBOD") but any legal, equitable or possessory interest that RBOD held was extinguished by virtue of a foreclosure sale held on April 20, 2010 and the RBOD's dissolution on October 31, 2012 in the State of Washington.<sup>1</sup>

13. Extinguishment of the interest is further evidenced by the Final Judgment in the recent Quiet Title action. Attached hereto as **Exhibit "C"** is a true and correct copy of the Final Judgment quieting title to the Property and granting possession in favor of Movant on December 30, 2015 in *Hester v. Horowitz et. al.*, Civil No. 14-1-0304.

14. Movant has already obtained a Writ of Ejectment on March 1, 2016 regarding the property; entered in the Quiet Title action in the Circuit Court of the Third Circuit, State of Hawaii, in *Hester v. Horowitz et. al.*, Civil No. 14-1-0304, pre-petition to the debtor's filing in this matter. A true and correct copy of the Writ is attached hereto as **Exhibit "D"**.

---

<sup>1</sup> WA Secretary of State Registration Detail for the Royal Bloodline of David shows that this Corporation Sole was declared inactive on September 17, 2012 and expired on October 31, 2012.



15. Since Debtor never held record title or equitable interest in the Property, the actual market value of the real property at issue herein is not relevant. The only property value at issue herein is the value of any alleged possessory interest that Debtor may claim, which is nominal due to the fact that Debtor has already been declared by the Circuit Court for the State of Hawaii in its Final Judgment (**Exhibit C**) to be a Tenant at Sufferance. His current possessory interest has no commercial value and cannot be used by him in any reorganization of his affairs.

16. Debtor is preventing Movant from protecting the property from loss and preserving the asset.

17. Debtor has already requested a stay of the ejectment proceedings, all of which have so far been denied.<sup>2</sup> This bankruptcy filing is yet another attempt by Debtor to delay the inevitable. It is in fact his 10<sup>th</sup> request for stay.

---

<sup>2</sup> Ho'ohiki docket entries in *Hester v. Horowitz et. al.*, Civil No. 14-1-0304 show the following attempts made by the Debtor, Leonard Horowitz to try and delay his eviction:

- Entry #69: On April 13, 2015 there was something filed by Debtor that included "Appellants' Emergency **Motion for Emergency Stay** Pending Hearing..." [Denied],
- Entry #71: On April 15, 2015 there was something filed by Debtor labelled "Emergency **Motion to Stay** April 17, 2015 Hearing on Motion for Summary Judgment pending Appeal..." [Denied],
- Entry #72: On April 17, 2015 there was something filed by Debtor labelled "Motion to Strike Pretrial Statement and **Dismiss Case** for being filed with "Unclean Hands" in Bad Faith..." [Denied],
- Entry #107: On June 10, 2015 there was something filed by Debtor labelled "Emergency **Motion for Injunctive Relief to Stay** Process, Judgments and Orders..." [Denied],
- Entry #134: On October 5, 2015 there was something filed by Debtor labelled "Defendants' **Motion for Stay** or for Dismissal Prior to Entry of Final Judgment" [Denied],

18. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Hilo, Hawaii this 17th day of March 2015.

/s/ Paul J. Sulla, Jr.

---

Paul J. Sulla, Jr. (SBN #5398)  
Attorney for Movant Jason Hester

- 
- Entry #143: On January 11, 2016 there was something filed by Debtor labelled "Resubmitted **Motion for Stay** Pending Finality in Related Action Cov. No. 05-1-196 [HRCF Rule 62(b)]" [Denied],
  - Entry #146: On January 11, 2016 there was something filed by Debtor labelled "Defendants' **Motion for Stay [HRCF 62(b)] Pending the Disposition of Defendants' Post Judgment Motions:** (1) Defendants' Motion for Stay or for Dismissal Pending Finality in the Prior Filed Related Action [HRCF 62(b)], and of 2) Defendants' Motion for Reconsideration or Alternatively for New Trial [HRCF 59(a)]" [Denied],
  - Entry #159: On March 3, 2016 there was something filed by Debtor labelled: "Defendants' **Motion For Stay** Pending Appeal [HRCF 62(D)] And For The Setting Of Supersedeas Bond Security During The Period Of The Appeal" [Pending. Hearing set for April 21, 2016].
  - Entry #164: On March 14, 2016 there was something filed by Debtor labelled "Defendant's Emergency **Motion For Stay** of Writ of Ejectment [HRCF 62(B)]" [Pending. Improperly designated as a "non-hearing" motion; no hearing date set.]

# Exhibit “A”

I hereby certify that this is  
a true copy from the records  
of the Bureau of Conveyances.

*Nicki Ann Thompson*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii



R-883  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUN 14, 2011 11:00 AM  
Doc No(s) 2011-093772



20 1/2 Z1

/s/ NICKI ANN THOMPSON  
REGISTRAR  
CONVEYANCE TAX: \$220.00

*Kh*  
After Recordation, Return by Mail (X) Pickup ( ) To:

Paul J. Sulla, Jr.  
P. O. Box 5250  
Hilo, HI 96720

Tax Map Key (3) 1-3-001:049 & 043

TOTAL PAGES 5

QUITCLAIM DEED

THIS INDENTURE, made this 9th day of June,  
2011, by and between THE OFFICE OF OVERSEER, A CORPORATE SOLE  
AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole, whose address  
is 13-811 Malama Street, Pahoa, HI 96778, (hereafter referred  
to as the "Grantor"), for and in consideration of the sum of TEN  
DOLLARS (\$10.00) and other valuable consideration paid to  
Grantor by JASON HESTER, an individual whose address is PO Box  
758 Pahoa, HI 96778 (hereafter referred to as the "Grantee"),  
the receipt of which is hereby acknowledged, does hereby

EXHIBIT A

release, remise, quitclaim, transfer and convey all of that certain real property described on the tax maps of the Third Taxation Division, State of Hawaii, as **Tax Map Key (3) 1-3-001-043 & 1-2-001-049** in the interests noted above, more particularly described in **Exhibit "A"** attached hereto and made a part hereof, subject to the encumbrances noted therein

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, in FEE SIMPLE, forever.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

IN WITNESS WHEREOF, the undersigned executed these presents on the day and year first above written.

THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSOR  
OVER/FOR THE POPULAR ASSEMBLY OF  
REVITALIZE, A GOSPEL OF BELIEVERS

By

Jason Hester  
Jason Hester  
Its: Overseer

"Grantor"

STATE OF HAWAII )

COUNTY OF HAWAII )

SS.

On this 9<sup>th</sup> day of June, 2011, before me appeared Jason Hester, to me personally known, who, being by me duly sworn, did say that he is the OVERSEER of THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii Corporation Sole and that on behalf of said corporation by authority of its OVERSEER, he acknowledges said instrument to be the free act and deed of said Corporation Sole.



Doc. Date: 6/9/11 3rd Circuit  
# Pages: 5  
Doc. Description: Quitclaim Deed

x Gloria Emery 6/9/11  
GLORIA EMERY, Notary Public Date

Gloria Emery  
Notary Public, State of Hawaii  
Print Name: Gloria Emery

My commission expires: July 18, 2014





EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. R. Elderts

Kamali Homesteads, Puna, Island and County of Hawaii, State of Hawaii

BEGINNING at a pipe at the West corner of this parcel of land at the North boundary of Lot 2, Grant 4330 to C. L. Wight and on the East side of Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "BHHHIAHULU" being 6,281.64 feet North and 16,203.34 feet East and running by azimuths measured clockwise from True South:

1. 197° 55' 15" 958.02 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) to a pipe;
  2. 239° 28' 30" 326.15 feet along Lot 19, Grant 5651 to Chas. Elderts to a pipe;
  3. 304° 03' 30" 337.89 feet along Lot 19, Grant 5651 to Chas. Elderts, and Grant 5151 to J. R. Elderts to a pipe;
- Thence along a 1016.74 feet radius curve to the right the direct chord azimuth and distance being:
4. 14° 14' 56" 915.04 feet along West side of the old Pahoa-Kalapana Road;
  5. 40° 59' 30" 275.69 feet along same to a pipe;
  6. 114° 43' 30" 494.98 feet along Lot 2, Grant 4330 to C. L. Wight to the point of beginning and containing an area of 16.55 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-01, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01-01.

ITEM II:

That certain parcel of land (being portion of the land(s) described in and covered by Land Patent Grant Number 5005 to J. R. Elderts) situate, lying and being at Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-A, portion of Lot 15, of the Kamali Homesteads, being more particularly described as follows:

EXHIBIT 'A'

Beginning at the north corner of this parcel of land at the northwest corner of Lot 15-B and on the easterly side of old (abandoned) Pahoa-Kalapana Road the coordinates of said point of beginning referred to Government Survey Triangulation Station "HHIHHIAHULU" being 6,270.75 feet north and 16,889.17 feet east and running by azimuths measured clockwise from true South:

1. 307° 30' 212.10 feet along Lot 15-B;
2. 37° 30' 235.90 feet along same;
3. 114° 43' 30" 235.14 feet along Grant 4330 to C. L. Wright;
4. 220° 59' 30" 261.10 feet along easterly side of old (abandoned) Pahoa-Kalapana Road;

Thence along a 1066.74 feet radius curve to the left, the chord azimuth and distance being:

5. 220° 15' 30" 27.31 feet along same to the point of beginning and containing an area of 1.32 acres, more or less.

Being the land conveyed to The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-14 recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01441

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. AS TO ITEM I:-

As to the road remnant within the land herein described:

- a. Reservation in favor of the State of Hawaii of all minerals and metallic mines of every description, including all geothermal rights.
- b. Reservation of the rights of native tenants.
- c. The State of Hawaii's and the public's right of access through government roads, namely the "Pahoa-Kalapana Road", a government road under the jurisdiction of the County of Hawaii, shall be protected and not restricted.
- d. Reservation in favor of the State of Hawaii of all right, title, interest or claim to water having its source upon or flowing over or under the subject property.
- e. Reservation in favor of the State of Hawaii of all easements or rights in the nature of easements for the free flowage of surface water through and across any stream and/or established water course upon the subject property.

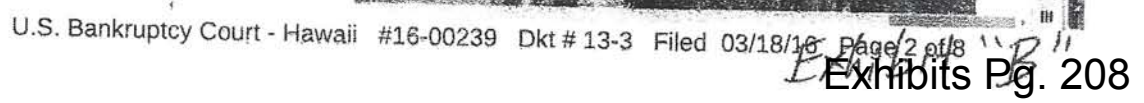
3. AS TO ITEM II:-

The property does not appear to have access of record to any public street, road or highway.

END OF KIHIBI I



# Exhibit “B”



[Online Highways Home](#) > [Hawaii](#)  
> [Pahoa](#)

Kāhā

## Steam Vent Inn

Search Pahoa Hawaii

Pāhā

Search this term or ...

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©2016  
Google

The Steam Vent Inn guesthouse lies in a tropical rainforest near Volcano National Park. The rooms lead into a private tropical patio with ocean, steam vent, and garden views. Each room or suite contains 2 queen beds with private bath. The inn features the only natural steam baths in Hawaii, natural steam ponds, tropical gardens, Jacuzzi, with panoramic ocean views. Massage and other holistic therapies are also offered.

**Location:** 13-3775 Kalapana Hwy, [Pahoa Hawaii](#)  
96778 Telephone 808-965-2112

Other Motels, Hotels, and Resort nearby:

(Hilo) [Dolphin Bay Hotel](#)

(Wailea) [Grand Champions Wailea](#)

(Hilo) [Hilo Bay Hotel](#)

(Hilo) [Hilo Hawaiian Hotel](#)

(Hilo) [Hilo OceanFront B&B](#)

(Hilo) [Hilo Seaside Retreat](#)

03/17 Coming to The Pahoa area

**[Annual Maui Steel Guitar Festival](#)** [Maui HI](#)

April 19-21 Featured performers will also conduct on-site school visits to various Maui schools to educate and inform Maui's youth about the Hawaiian steel guitar. These visits, targeted specifically for students of these schools, includes both educational sessions and entertainment by the visiting performers.

**[Maui Classical Music Festival](#)** [Maui HI](#) May 10

Over the years the Festival has received extensive coverage in national newspapers including the Los Angeles Times, USA Today, the New York Times, the Hawaii newspapers, and travel and airline magazines. Feature articles written about the Festival have appeared in important musical publications such as Musical America, Chamber Music America, and American Record Guide.

**[Merrie Monarch Festival](#)** [Hilo HI](#) June 7-9

Merrie Monarch Festival is a week-long cultural event held annually in Hilo on the island of Hawaii. Festivities start on Easter Sunday and culminate with the Hula competition events at the Edith Kanaka'ole Tennis Stadium - Miss Aloha Hula on Thursday, Hula Kahiko on Friday, and Hula 'Auana on Saturday.

**[Hawaiian Slack Key Guitar Festival](#)** [Maui HI](#)

June 23 Various artists, food, crafts, Guitar exhibitor, and more.



# Steam Vent Inn & Health Retreat

0

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- or
- [recommend](#)

Aloha and welcome to paradise! Experience our relaxing and tastefully furnished accommodations, ideal for visiting couples or small groups desiring healing retreats or extraordinary corporate meetings. Amenities include ocean views & Hawaii's only lava heated steam saunas.

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## Find a Business Near: Pahoa, HI

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Business Owner?

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Prev &lt;&lt; &gt;&gt; Next

## Steam Vent Inn & Health Retreat

Category: [Hotels & Motels](#)

Users Rating:

(808) 965-2112

13-3775 Old Kalapana Road  
Pahoa, HI 96778

Steam Vent Inn & Health Retreat is a business providing services in the field of **Hotels & Motels**. Steam Vent Inn & Health Retreat is located in **Pahoa, HI** on 13-3775 Old Kalapana Road.

Steam Vent Inn & Health Retreat telephone number is (808) 965-2112.

Telefax: No fax number available

Website: No web address available

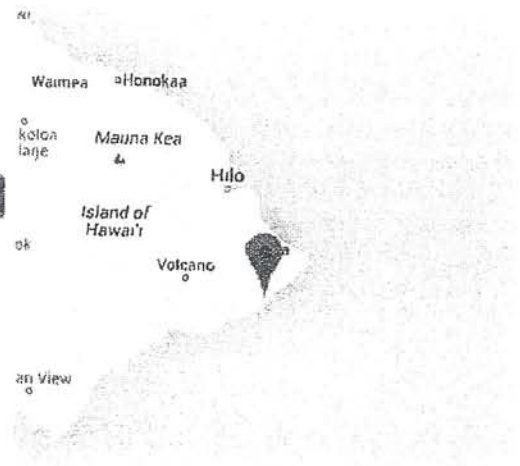
Are you the business owner? Add company

Business owner? [Moderate reviews](#) or [edit this listing](#).

Link to this Page (Permalink):

Promote this listing for your business by linking here.

<http://www.yellowpagesgoesgreen.org/Pahoa-HI/S>



Google

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Search through the entire category for [Hotels & Motels](#)

### Customer Ratings and Reviews

There are no reviews yet!

You can review this company and help others by leaving a comment. If you want to share your thoughts about Steam Vent Inn & Health Retreat, use the form below and your opinion, advice or comment will appear in this space.

Was this helpful?

Helpful

Not So Helpful



Welcome   Affordable Memory in Paradise   History of this Land   Accommodations  
 Health Programs   Permacultural Internships   Press Page



TMK(3)1-3-001; 042; 043 and 049

## Stay, Steam & Bathe at the Most Incredible Spa on Earth!

If you seek a most memorable and powerful renewing, healing, and learning experience, reserve your reasonably-priced accommodations and spa experience at the Kingdom of Heaven in Hawaii now by calling 808-965-2112, or booking your reservation online through [AIRBnB.co.uk](http://AIRBnB.co.uk).

This steamy private Jurassic Park-like wonderland in tropical paradise invites you or your group to experience nearly instant relief from aches and pains, disappearance of stresses and strains, rapid recovery, rejuvenation and natural healing, as soon as you begin to breathe the "Breath-of-the-Earth" in one of our lava-heated steam saunas, or while bathing in one of our chemical-free geothermally-warmed pools.

The Kingdom of Heaven in Hawaii is overseen by world renowned natural healing expert, Dr. Leonard G. Horowitz, whose pioneering achievements in water science, electro-genetics, and "musical mathematics" is applied here in paradise to promote natural healing, aquaculture, permaculture, GMO-free nutrition, and sustainable living.

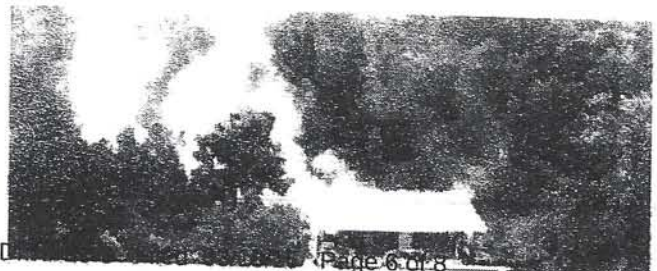
## Experience Heaven on Earth

Come learn how remarkable sustainable living and natural healing can be.

You may think our title—Kingdom of Heaven—is presumptuous, but these divine surroundings, our educational mission, and visitors' testimonies justify this

U.S. Bankruptcy Court - Hawaii #16-00239

<http://www.heavenlykingdom.net/Welcome.html>



Exhibits Pg. 212



special tribute to this sacred "aine."

If you don't believe recovery can happen for you here very quickly, even miraculously, "on earth as it is in heaven," try us for a night or two. Most people *feel* the "energy" or "spirit" of this holy place so profoundly, nearly instantly, sometimes "explosively," because anything that violates the peace, harmony, and tranquility of this sacred sanctuary is "purged" immediately, often intensely, including patterns of psychological, social, and emotional distress.

Do you have a chronic ache, pain or distressing pattern in your life? Do this exercise. Deep breathe lying on your back or stretching in one of our lava-heated steam saunas. Add a faithful prayer. People who do commonly feel their spine realign—pop, pop—and pains disappear. Others begin emotionally distressed and finish completely relaxed—like a "new person."

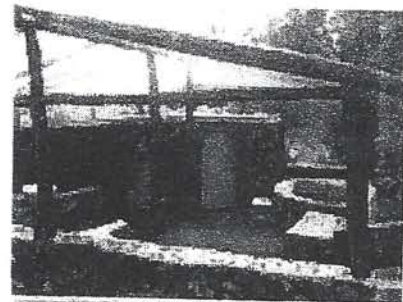
The Big Island of Hawaii is, in fact, famous for such amazing happenings, awesome explorations, and miraculous recoveries. A few miles away is the "back door" to Volcanoes National Park, where lava flows regularly into the Pacific Ocean. The local fire goddess Pele is known for her intense "purgative and restorative energy." She demonstrates this regularly, volcanically and eruptively, creating new soil by each act from which paradise grows.



## Unsurpassed Natural Beauty & Healing Sanctuary



"This most profound healing and rejuvenating energy vibrates most abundantly on this sacred sanctuary," Dr. Horowitz explains. "Because you are breathing lava-heated steam more than anyone else on earth. This 'Ha,' or breath-of-life, transmits the essence of the ALOHA



energy. it is through oxygen in the air we breathe that "electrons of LOVE" vibrating at 528 frequency are transmitted. The air actually resonates most powerfully here in 528nm/hz frequencies of sound and light than anywhere on earth; due to the lava-heated steam in the air and greenish-yellow vibration of

chlorophyll in plants all around us. This combination of natural resources fills the air with the "universal healer"—pure LOVE—the "Holy Spirit of the Creator" that does all the healing and sustaining miraculously. This is abundantly evident on this sacred land, always delivering the miracles of natural healing, rejuvenation, and hastened recovery." (Click [here](#) to view a brief YouTube clip.)

Are you worthy of celebrating the Aloha Spirit in paradise....

**We look forward to serving you at our day spa, or accommodating you as our overnight guest.**

# Kingdom of Heaven

Operated by Medical Veritas International, Inc.

A 501(c)3 non-profit educational corporation, operating by your tax-deductible contributions.

13-3775 Pahoa-Kalapana Road,  
Pahoa, Hawaii 96778

**Phone:**

1-808-965-2112

**Fax (call first):**

1-808-965-2112

E-Mail: [info@heavenlykingdom.net](mailto:info@heavenlykingdom.net)

Site Design by Dr. Leonard G. Horowitz. All rights reserved.



# Exhibit “C”

FILED

cc: S. Whittaker, Esq. S. Kane  
M. Wille, Esq. L. Horowitz

2015 DEC 30 PM 4: 26

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

L. KITAHARA, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

JASON HESTER,  
Plaintiff,  
vs.  
LEONARD G. HOROWITZ, ET AL.,  
Defendants.


) Civil NO. 14-1-304  
)  
) FINAL JUDGMENT  
)  
) Judge Ronald Ibarra, Division 4  
)  
)  
)  
)  
)

FINAL JUDGMENT

Pursuant to the (1) *Entry of Default Against Defendants Medical Veritas International, Inc. and the Royal Bloodline of David* filed on September 17, 2014; (2) *Order Granting Plaintiff's Motion to Dismiss Counterclaims*, filed March 27, 2015, and (3) *Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment*, filed August 28, 2015, final judgment pursuant to Rule 58, Hawai'i Rules of Civil Procedure is hereby entered as follows:

- 1) On Plaintiff Jason Hester's Complaint filed August 11, 2014
  - a. As to Count I, Quiet Title, judgment is entered in favor of Plaintiff Jason Hester pursuant to H.R.S. Section 669-1, et seq. and against the Defendants Medical Veritas International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz; and Sherri Kane;
  - b. As to Count II, Tenants at Sufferance, judgment is entered in favor of Plaintiff Jason Hester and against Defendants Medical Veritas

I hereby certify that this is a full, true and correct  
copy of the original on file in this office.

  
Clerk, Third Circuit Court, State of Hawaii

International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz;  
and Sherri Kane;

- c. As to Count III, Trespass, pursuant to Rule 41, Hawai'i Rules of Civil Procedure and the Order Granting Plaintiff Jason Hester's Motion for Voluntary Dismissal of Trespass Claim, filed August 28, 2015, this claim is dismissed;
- d. As to Plaintiff's request that Judgment for Possession be entered giving Plaintiff exclusive possession of the Property, judgment is entered in favor of Plaintiff Jason Hester and a Writ of Ejectment shall issue against Defendants Medical Veritas International, Inc.; The Royal Bloodline of David; Leonard G. Horowitz; and Sherri Kane pursuant to H.R.S. Section 667-33(b)(4);

2) On Defendants Leonard Horowitz and Sherri Kane's Counterclaim filed August 21, 2014 as to all claims including:

- Count I, Slander of Title;
- Count II, Quiet Title;
- Count III, Unfair and Deceptive Acts and Practices;
- Count IV, Malicious Prosecution in Criminal Contempt;
- Count V, Abuse of Process Tort;
- Count VI, Tort of Conversion/Theft in Conspiracy to Deprive Citizens' Rights and Properties;
- Count VII, Tortious Interference with Consortium;

Count VIII, Tortious Interference with Prospective Business (Economic) Advantage;  
Count IX, Breaches of Two Contracts;  
Count X, Breach of Duty to Protect/Negligence/"Duty-Public Duty Doctrine" and/or  
"Failure to Enforce" Laws Including HRS §480-2 HRS §480D-3(2)(3)(6)(8)(11) and HRS  
§480D-4(a)(b);

Count XI, Breach of Standard of Care/Malpractice;

Count XII, Trespass to Chattels;

Count XIII, Defamation;

Count XIV, Criminal Negligence;

Count XV, Gross Negligence;

Count XVI, Intentional Infliction of Emotional Distress;

Count XVII, Negligent Infliction of Emotional Distress;

Count XVIII, Fraud and/or Misrepresentation;

Count XIX, Comparative Negligence, Secondary Liability and/or Vicarious Liability; and

Count XX, Civil RICO,

these claims are dismissed pursuant to the Order Granting Plaintiff's Motion to Dismiss  
Counterclaims, filed on March 27, 2015.

Any remaining claims or counterclaims not specifically addressed herein are dismissed  
with prejudice. This Final Judgment resolves all claims as to all parties in this action.

DATED: Kealahou, Hawaii, DEC 29 2015

**RONALD IBARRA (SEAL)**

JUDGE OF THE ABOVE-ENTITLED COURT

# Exhibit “D”

ISSUED

Stephen D. Whittaker, AAL (SBN #2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
Phone: 808-960-4536

2016 MAR -1 PM 3:05

Attorney for Plaintiff  
Jason Hester

L. MOCK CHEW, CLERK  
THIRD CIRCUIT COURT  
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

JASON HESTER, an individual,  
  
Plaintiff

Civil No. 14-1-0304  
(Other Civil Action)

vs.

WRIT OF EJECTMENT;

RETURN OF SERVICE ON WRIT  
OF EJECTMENT

LEONARD G. HOROWITZ, an  
individual; SHERRI KANE, an  
individual; MEDICAL VERITAS  
INTERNATIONAL, INC., a California  
nonprofit corporation; THE ROYAL  
BLOODLINE OF DAVID, a  
Washington Corporation Sole; JOHN  
DOES 1-10; JANE DOES 1-10; DOE  
PARTNERSHIPS 1-10; DOE  
CORPORATIONS 1-10; DOE  
ENTITIES 1-10 and DOE  
GOVERNMENTAL UNITS 1-10,  
  
Defendants.

WRIT OF EJECTMENT; RETURN OF SERVICE ON WRIT OF EJECTMENT

THE STATE OF HAWAII

TO: THE DIRECTOR OF PUBLIC SAFETY OF THE STATE OF HAWAII,  
HIS/HER DEPUTY, THE CHIEF OF POLICE OF THE HAWAII POLICE  
DEPARTMENT, OR HIS DEPUTY, OR TO ANY POLICE OFFICER OF THE

hereby certify that this is a full, true and correct  
copy of the original on file in this office.

*[Signature]*

U.S. Bankruptcy Court - Hawaii #16-00239 Dkt # 13-5 Filed 03/18/16 Page 2 of 3

Exhibits Pg. 220

COUNTY OF HAWAII OR PERSON AUTHORIZED BY THE LAWS OF THE  
STATE OF HAWAII.

Pursuant to the ~~Order Granting In Part And Denying In Part Plaintiff's Motion For~~ Final Judgment Filed 12-30-2015  
~~Summary Judgment filed herein~~, Plaintiff JASON HESTER is entitled to the issuance of a  
Writ of Ejectment against the above-named Defendants LEONARD G. HOROWITZ, an  
individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL,  
INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a  
Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE  
PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10 and DOE  
GOVERNMENTAL UNITS 1-10 for possession of the premises located at 13-3775 Pahoehoe  
Kalapana Road, Pahoehoe, Hawaii 96778-7924, TMK Nos. (3) 1-3-001:049 & 043.

THEREFORE, EFFECTIVE IMMEDIATELY, FROM THE ISSUANCE DATE  
OF THIS WRIT, YOU ARE COMMANDED TO REMOVE the said above-named  
Defendants LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual;  
MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE  
ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10;  
JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE  
ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10 and all persons holding  
under or through said Defendants from the premises above-mentioned, including their  
personal belongings and properties, and put Plaintiff JASON HESTER, or his nominee, in  
full possession thereof; and make due return of this Writ with what you have done endorsed  
thereon.

Dated: Kealahou, Hawaii FEB 29 2016

MELVIN H. FUJINO (SEAL)

JUDGE OF THE ABOVE-ENTITLED COURT

Re: Civil No. 14-1-0304; *Jason Hester v. Leonard G. Horowitz, et al.*; Writ of Ejectment;  
Return of Service on Writ

Stephen D. Whittaker, AAL (SBN #2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
Phone: 808-960-4536

Paul J. Sulla, Jr. (SBN #5398)  
P.O. Box 5258  
Hilo, HI 96720-8258  
Phone: (808) 933-3600

Attorneys for Plaintiff  
Jason Hester

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

IN RE:

LEONARD G. HOROWITZ

Debtor.

Case No.: 16-00239  
CHAPTER 13

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of March, 2016 a true and correct copy of the foregoing document(s):

**MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPPORT  
OF MOTION FOR RELIEF FROM AUTOMATIC STAY; EXHIBITS "A" – "D";  
CERTIFICATE OF SERVICE**

were mailed U.S. Postal mail, postage prepaid, and served upon the following:



Leonard George Horowitz  
P.O. Box 75104  
Pahoa, Hawaii 96836

Pro se Debtor

DATED: Hilo, Hawaii this 17th day of March 2015.

/s/ Paul J. Sulla, Jr.

---

Paul J. Sulla, Jr. (SBN #5398)  
Attorney for Movant Jason Hester

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

IN RE )  
 ) CASE NO. 16-00239  
LEONARD G. HOROWITZ, ) (Chapter 13)  
 )  
 )  
Debtor. ) April 12, 2016  
 ) 10:21 a.m.  
 )  
 )  
 ) U.S. Bankruptcy Court  
 ) 1132 Bishop Street  
 ) Suite 250  
 ) Honolulu, Hawaii 96813

---

TRANSCRIPT OF PRELIMINARY HEARING ON MOTION FOR RELIEF FROM THE  
AUTOMATIC STAY  
BEFORE THE HONORABLE ROBERT J. FARIS  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor: MARGARET (DUNHAM) WILLE, ESQ.  
65-1316 Lipali Road  
Kamuela, HI 96743

For Jason Hester: PAUL J. SULLA, ESQ.  
P.O. Box 5258  
Hilo, HI 96720

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

---

Maukele Transcribers LLC  
Jessica B. Cahill, CET\*\*D-708  
P.O. Box 1652  
Wailuku, Maui, Hawaii 96793  
Telephone: (808)244-0776

1 APRIL 12, 2016

10:21 A.M.

2 THE CLERK: Calling 16-00239, Leonard Horowitz. This  
3 case is called for a preliminary hearing motion for relief from  
4 the automatic stay.

5 THE COURT: Go ahead, please.

6 MR. SULLA: Good morning, Your Honor, Paul Sulla  
7 representing the movant Jason Hester, the Creditor.

8 MS. WILLE: Margaret Wille for the Debtor Leonard  
9 Horowitz.

10 THE COURT: All right. And you're Mr. Horowitz -- Dr.  
11 Horowitz, excuse me.

12 THE DEBTOR: Yes, sir.

13 THE COURT: Well, first of all, let me say that I  
14 typically -- in a Chapter 13 case, we typically don't let  
15 attorneys appear for just part of the case. Usually, you're in  
16 or you're out, but given the circumstances here, I will go ahead  
17 and let you appear for this hearing --

18 MS. WILLE: Okay.

19 THE COURT: -- and let you argue. But, of course, if  
20 there's an attorney arguing, the client doesn't get to argue. So  
21 it's one or the other.

22 MS. WILLE: Right.

23 THE COURT: And let me just tell you what I think,  
24 tentatively, based on the papers, because there have been a lot  
25 of papers filed, and I have read them carefully.

1 I mean it seems to me that although the Debtor  
2 disagrees strongly with the State Court's orders, the State Court  
3 has decided that the Debtor doesn't own this property anymore.  
4 That the foreclosure occurred, and was valid, and the title is no  
5 longer in the Debtor.

6 As a Federal Court, particularly a Bankruptcy Court, I  
7 can't sit as an Appellate Court saying to the State Court; the  
8 State Court got it wrong. If you want to attack the State  
9 Court's orders, you got to do that through the State Court  
10 system, and it seems to me that this case has no chance of  
11 success and really no reason for being, unless those orders could  
12 be set aside.

13 So my inclination is to grant the motion and send you  
14 all back to State Court and let the State Appellate Courts sort  
15 out where we stand. So that's my tentative inclination, subject  
16 to hearing from you. So, Mr. Sulla, I'll let you go first,  
17 because it's your motion.

18 MR. SULLA: Thank you, Your Honor. This motion was  
19 more brought as a safe harbor, because of all the litigation  
20 we've had, and we're concerned that we would be challenged if we  
21 move forward with our writ of ejectment, but in this case, Your  
22 Honor, there is absolutely no reason for there to be a stay.  
23 There's no record title that ever has been in the Debtor.  
24 There's no equitable title. The title has been quieted. There's  
25 no possessory interest whatsoever, and it's been found to be a

1 tenant at sufferance.

2           So -- and he does not reside in the property. He  
3 resides in Honolulu, as he states in his adversary complaint.  
4 He's advertising it and renting it. And now -- recently -- now  
5 they're proposing it as a community center in the latest filing.  
6 So, you know, basically, his only claim has been through the  
7 affiliation with the prior owner, Royal Bank -- excuse me --  
8 Royal Bloodline of David and that interest was foreclosed in  
9 2010. It was dissolved in 2012. Now, we have a final judgment  
10 quieting title against all the interests.

11           So his only claim for possessor interest is very  
12 nominal. There's no commercial value. He's a tenant in  
13 sufferance. It has been found that way. And so we, basically,  
14 lack adequate protection so that -- against his continued  
15 holdover, and in our final judgment we needed the writ of  
16 possession to go forward with it.

17           And right now we're also asking for a waiver of the  
18 Federal Rule 4001(a)(3), to avoid further deterioration of the  
19 property, because there's been no rent paid in the six years, no  
20 use in occupancy, and there's a tax lien that's pending over us  
21 right now and there's been no money on that except my client has  
22 come up with money paid in lump sum a few years back, but he  
23 can't do it again without getting back into the property.

24           And as far as the other pleadings, Your Honor, Mr.  
25 Horowitz likes to confuse things with the complaint. There was

1 one action in 2005, which was a judicial attempt by predecessor,  
2 which didn't result in much, actually, at all. And then, again,  
3 in the 2010 case where we have basically -- the 2010 foreclosure  
4 was when the term of the note was over and there's been no  
5 payments. He stopped paying.

6 So then we further went on -- there was a gap, because  
7 there was a defamation case that went on for many years here in  
8 this case. That's finally been, basically, dismissed. Further,  
9 with the quiet title action, we have that now and the only  
10 equitable title the Debtor has is basically speculation based on  
11 the outcome of the appeal.

12 And they have a hearing at the end of the month for  
13 their stay with the State Court, the writ of possession where  
14 that's where they have their chance for the stay. They filed  
15 stays already, Your Honor. I'm sure they will file a few more  
16 before then, but that's what we're looking for now.

17 THE COURT: Okay.

18 MR. SULLA: So we're looking to have the relief of  
19 the stay -- or, actually find that there is no stay and have  
20 immediate right to exercise our writ. Thank you, Your Honor.

21 THE COURT: Okay. Go ahead, please.

22 MS. WILLE: Yes. Yes, Your Honor. First, I want to  
23 say that the pending -- the quiet title case is still pending,  
24 and we do have a hearing. And so, there's no final determination  
25 on that. There was a writ of ejectment given, but, you know, in

1 my opinion it was given wrongly and the Court has now asked for a  
2 hearing on that, that it should have been issued.

3 I think just in terms of adequate protection that's  
4 being discussed in terms of removing it for cause and also for  
5 waiving the Rule 4001(a)(3), the, you know, statutory -- the hold  
6 over, basically I think the key -- or the one potentially  
7 legitimate argument I see there is that it's about to go up to a  
8 tax sale, and that's not true, and I do have letters from the Tax  
9 Office substantiating that this is not in jeopardy. This is his  
10 home. There is hundreds of thousands of dollars in improvements,  
11 and money into that.

12 The property is critical for reorganization. It's also  
13 not just in terms of whether it's used as a B&B or agritourism,  
14 but also there's an adjoining property that it could be  
15 consolidated, broken off. We would succeed in that. I think the  
16 key argument or issue that you're talking about is really sort of  
17 the Rooker-Feldman or if you get into the res judicata  
18 preclusion.

19 THE COURT: Right.

20 MS. WILLE: I disagree on that, because really, you  
21 know, the Ninth Circuit, Seventh Circuit read that whole theory  
22 or that principle more narrowly and that if you do have an  
23 independent claim, and you don't have a final decision, which we  
24 don't have a final decision in this case, the Court is at liberty  
25 to move forward -- does honor concurrent --

1 THE COURT: Well, why do you say there's no final  
2 judgment in the State Court? I thought -- Mr. Sulla said the  
3 hearing later this month is on a stay pending appeal.

4 MS. WILLE: That's what --

5 THE COURT: You're talking about the appeal; is that  
6 it?

7 MS. WILLE: -- his house had gone to -- there's no  
8 final decision in terms of appeal, it's still pending. And there  
9 are cases that --

10 THE COURT: Oh, I see. So the State Court has -- the  
11 trial court has made its final decision, but the appeal is  
12 ongoing.

13 MS. WILLE: Yeah.

14 THE COURT: Okay. Now, I understand what you're  
15 saying.

16 MS. WILLE: And the cases, I can give one example,  
17 Anderson v. Anderson, 2014 U.S. Appellate, Lexus 2777, 2014. If  
18 it's -- until it's settled and no longer on appeal, it is not  
19 considered final for purposes of that principle. I think -- and  
20 here, basically, what they're looking at is a separate issue is  
21 the whole -- I would say calling it extrinsic fraud -- the whole  
22 -- how this came about from the beginning and, basically, trying  
23 to sell it to one party before them, and then they brought an  
24 action for fraud, and then my client had to be paying garnishment  
25 to that other party, and then they sold it to them again,



1 representing no encumbrances -- more encumbrances, and all along  
2 the way, both from the original mortgagee seller to now, Hester  
3 standing in their shoes, and I could run through a number -- all  
4 of the different issues.

5 But I think the key thing is, you know, where you -- it  
6 doesn't apply where the State Court appeal is pending, and it  
7 doesn't apply when there's independent claim being brought. And  
8 some of the cases are, for example, where there's a corrupt state  
9 judicial process to obtain that favorable thing.

10 We do have a 2016, a March 5th -- 26th fifth final  
11 judgment saying foreclosure denied, it's your property. It's  
12 Horowitz's property and that there is no need for a deficiency  
13 hearing.

14 So we've got one case where the foreclosure was denied,  
15 based on the judicial foreclosure, and then the quiet title case  
16 based on a non-judicial foreclosure, which we're challenging a  
17 lot of what went on in that.

18 So -- and I agree that there's -- it's no assurance  
19 whether the property would go to Hester or whether they owe him  
20 money unless that State Court case wins, but I think then you get  
21 down to, setting aside Rooker-Feldman, does preclusion or res  
22 judicata apply and often those get sort of merged, but you need a  
23 decision on the merits. There's never been a decision on any of  
24 these issues on the merits for res judicata, or claim preclusion,  
25 or issue preclusion.

1           So, you know, I don't -- you know, I think that there  
2 is something here, and that they do have a right to that  
3 concurrent jurisdiction, and it is necessary. It's really the  
4 one asset around which they can reorganize, even with regard to  
5 that separate piece of property.

6           So, I mean, I would ask that at least -- that the stay  
7 be in place at least say four months, and then come back and look  
8 at it, and go over it.

9           THE COURT: Okay. All right. Thank you. Any reply?

10          MR. SULLA: Yeah, I just again would like to point out  
11 that it has never been the Debtor's property. He has never had  
12 title. He has never had any claim that he would -- there was --  
13 the earlier case is on appeal. The quiet title action is on  
14 appeal. The parties have a chance to stay it if they're willing  
15 to do that. There should not be any other interference here.

16          To have this Debtor, all of a sudden, claim he's got  
17 some kind of superior interest or possessory interest, or need  
18 for reorganization is pulling a rabbit out of a hat, because he  
19 didn't have it to begin with, so how would he get it and be given  
20 it through the Bankruptcy Court? That's the question here.  
21 There's never been any discussion about money.

22          And reorganization is fine, if they want to get in, but  
23 the way they've been going about it is to try to stall, and  
24 delay, and use the courts, and be as litigious as possible, so  
25 that they can keep their rights or defend as much as possible.

1 So in this case, Your Honor, there is no interest in this Estate.  
2 Thank you.

3 THE COURT: Okay. Thank you. Okay. Well, I will  
4 grant the motion primarily for the reasons I gave in my tentative  
5 ruling, which I'll adhere to. The bottom line, it seems to me,  
6 this case has been going on for a long time in the State Court.  
7 There's an appeal going in the State Court, there's a motion for  
8 a stay pending appeal in the State Court.

9 It just seems to me that the case ought to stay in the  
10 State Court for the final adjudication. And, at this point,  
11 based on the State Court's orders, which are on appeal, but based  
12 on the orders that have been entered, this Debtor doesn't have an  
13 interest in the property.

14 So for all those reasons, I will grant the motion. I  
15 will not, however, grant the requested in rem relief. I don't  
16 think that showing has been made in this case. There's only one  
17 bankruptcy file for this case. There's a long showing of  
18 litigation in the State Court, but I don't think the in rem  
19 requirements have been met.

20 And I also don't think this is the kind of  
21 extraordinary case where the waiver of the automatic stay of the  
22 order is warranted, but other than that I'll grant the motion,  
23 and I'll ask Mr. Sulla to please prepare a proposed order.

24 MS. WILLE: Let me just ask, so the -- he's going to  
25 prepare the order, and then once you sign it, then it would be 14

1 days from then. How does that --

2 THE COURT: Right. Well, the rule basically -- the  
3 rule basically spells out what happens, but the order lifting the  
4 stay goes into effect, basically, 14 days after it's entered.

5 MS. WILLE: Fourteen days after you sign that order.

6 THE COURT: The Court enters it, right. The Clerk --

7 MS. WILLE: Okay.

8 THE COURT: -- puts the electronic stamp on it.

9 MS. WILLE: Okay. Thank you.

10 THE COURT: Okay. Thank you.

11 MR. SULLA: Thank you, Your Honor.

12 (Proceedings Concluded)

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CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, certify that the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: May 27, 2016

  
\_\_\_\_\_  
Jessica B. Cahill, CETD\*\*-708

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**UNITED STATES BANKRUPTCY COURT APPELLATE PANEL  
OF THE NINTH CIRCUIT**

LEONARD GEORGE HOROWITZ,	)	BAP No: HI-16-1110
	)	BK No: 16-00239
	)	
Appellant	)	(Chapter 13)
	)	
vs.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
PAUL J. SULLA, JR. an individual;	)	Oral Hearing Date TBA
PAUL J. SULLA JR., ATTORNEY AT	)	
LAW A LAW CORPORATION, a	)	
corporation; THE ECLECTIC CENTER	)	
OF UNIVERSAL FLOWING LIGHT-	)	
PAULO ROBERTOSILVA E SOUZA,	)	
a Hawaii corporation sole; JASON	)	
HESTER, an individual; THE OFFICE	)	
OF OVERSEER, A CORPORATE	)	
SOLE AND ITS SUCCESSOR, OVER	)	
AND FOR THE POPULAR	)	
ASSEMBLY OF REVITALIZE, A	)	
GOSPEL OF BELIEVERS; STEPHEN	)	
D. WHITTAKER	)	
	)	
Appellees	)	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6<sup>th</sup> day of June, 2016, I served a true and correct copy of the foregoing **“APPELLANT’S OPENING BRIEF [FRBP RULE 8014]; CERTIFICATE OF COMPLIANCE; CERTIFICATE OF RELATED CASES; CERTIFICATE OF INTERESTED PARTIES; EXHIBITS “1” THRU “7;” CERTIFICATE OF SERVICE.**  
by the method described below to:

U.S. BANKRUPTCY COURT APPELLATE PANEL  
OF THE NINTH CIRCUIT  
125 South Grand Avenue  
Pasadena, CA 91105

☒ x ☐ ECF Filing

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Jason Hester; The Office of the Overseer,  
A Corporate Sole and its Successor, Over and  
For the Popular Assembly of Revitalize, A Gospel of Believers;  
and Stephen D. Whittaker  
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/s/ Leonard G Horowitz  
Appellant  
Dated: 6/6/2016

Date Signed:  
July 8, 2016



SO ORDERED.

  
Robert J. Faris  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII

In re

LEONARD GEORGE HOROWITZ,

Debtor.

LEONARD G. HOROWITZ and SHERRI  
KANE,

Plaintiffs,

vs.

PAUL J. SULLA, JR., et al.,

Defendants.

Case No. 16-00239  
Chapter 13

Adv. Pro. No. 16-90015

Re: Docket No. 19

**MEMORANDUM OF DECISION ON MOTION TO DISMISS**

In this adversary proceeding, the Debtor, Leonard Horowitz, and his domestic and business partner, Sherri Kane, seek monetary and injunctive relief regarding real property located at 13-3775 Pahoia-Kalapana Road, Pahoia, Hawaii 96778 (the "Property"). Defendants Paul Sulla, Jason Hester, The Office of the Overseer, A Corporate Sole and its Successor, Over and For the Popular Assembly of Revitalize, A



Gospel of Believers (“GOB”), and Stephen Whittaker (collectively “Moving Defendants”) seek dismissal of the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), for lack of subject matter jurisdiction and failure to state a claim. Alternatively, the Moving Defendants ask the court to abstain pursuant to 28 U.S.C. § 1334(c). For the following reasons, I will grant the motion.

## **I. BACKGROUND**

### **A. Relevant Facts**

In 2004, Debtor Leonard Horowitz bought the Property from Cecil Loran Lee. Dr. Horowitz made a promissory note in favor of Mr. Lee in the original principal amount of \$350,000.00. The note was secured by a mortgage on the Property.<sup>1</sup> Mr. Lee conveyed the Property to The Royal Bloodline of David (“RBOD”), a Washington nonprofit corporation, whose “Overseer” was Dr. Horowitz.<sup>2</sup>

On June 15, 2005, Mr. Lee filed a foreclosure action (“2005 state court lawsuit”)<sup>3</sup> against Dr. Horowitz, RBOD, and Jacqueline Horowitz, Dr. Horowitz’s then-wife. Defendant Paul Sulla, who is an attorney, represented Mr. Lee. Mr. Lee alleged that Dr. Horowitz defaulted under the mortgage, not by failing to make payment on the promissory note, but rather by committing waste on the Property and

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<sup>1</sup> Dkt. # 57-2 at 6-7.

<sup>2</sup> Dkt. # 57-2 at 1-5.

<sup>3</sup> *Hester v. Horowitz*, Civil No. 05-1-0196, Circuit Court of the Third Circuit, State of Hawaii.

failing to keep the Property insured. Mr. Lee also made claims for conspiracy, trespass to chattels, and fraud/misrepresentation. The defendants asserted counterclaims against Mr. Lee.

Philip Maise, who had his own judgment against Mr. Lee,<sup>4</sup> intervened in the foreclosure action to collect any funds awarded to Mr. Lee. As a result, most of the payments that Dr. Horowitz made on the note were received by Mr. Maise in partial satisfaction of his judgment against Mr. Lee.

In 2009, while the 2005 state court lawsuit was pending, Mr. Lee assigned the promissory note and mortgage to himself in his capacity as Overseer of GOB. About a month later, Mr. Lee died.<sup>5</sup> Jason Hester became the successor overseer of GOB and was substituted as the plaintiff in the 2005 foreclosure action.<sup>6</sup>

The court eventually rejected most of Mr. Hester's claims, including his prayer for foreclosure. The court apparently determined that Dr. Horowitz had failed to keep the property insured, but rather than permitting foreclosure of the mortgage, the court compelled Dr. Horowitz to obtain insurance.<sup>7</sup> A jury issued a verdict for damages of \$200,000.00 in favor of Dr. Horowitz, Jacqueline Horowitz, and RBOD based on a

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<sup>4</sup> Dkt. # 2-1 at 4-14.

<sup>5</sup> Dkt. # 2-2 at 8, 67-69.

<sup>6</sup> *Id.* at 2-4.

<sup>7</sup> Dkt. # 57-2 at 19-21.

counterclaim for fraud and misrepresentation, but the court vacated the jury verdict, and judgment was never entered on that verdict.<sup>8</sup>

Mr. Hester then claimed that Dr. Horowitz failed to make payments under the promissory note and commenced a nonjudicial foreclosure. On May 11, 2010, Mr. Sulla, as counsel for Mr. Hester, recorded a Mortgagee's Affidavit of Foreclosure Under Power of Sale, in which Mr. Sulla attested that the nonjudicial foreclosure sale occurred on April 20, 2010, and that the Property was sold to Mr. Hester, as successor overseer of GOB, for \$175,000.00.<sup>9</sup>

On June 14, 2011, Mr. Hester quitclaimed the Property from himself, as successor overseer of GOB, to himself, in his individual capacity.<sup>10</sup> That same day, Mr. Hester recorded a mortgage on the Property listing himself as the borrower and Mr. Sulla as the lender.<sup>11</sup>

Despite the 2010 nonjudicial foreclosure, RBOD quitclaimed the Property to Dr. Horowitz and Ms. Kane on July 11, 2012.<sup>12</sup>

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<sup>8</sup> Dkt. # 19-6 at 6; Dkt. # 57-2 at 21. Dr. Horowitz's appeal from the judgment in the 2005 state court lawsuit is pending before the Hawaii Intermediate Court of Appeal as Case No. CAAP 16-000162.

<sup>9</sup> Dkt. # 2-2 at 76-83; Dkt. # 2-3 at 1-13.

<sup>10</sup> Dkt. # 2-3 at 29-31.

<sup>11</sup> *Id.* at 34-51.

<sup>12</sup> Dkt. # 57-2 at 15-16.

On August 11, 2014, Mr. Hester filed an action (the “2014 state court lawsuit”) in state court against Dr. Horowitz, Ms. Kane, RBOD, and other defendants, in which Mr. Hester sought (among other relief) to quiet his title to the Property. The 2014 state court lawsuit was removed to federal court.<sup>13</sup> Mr. Sulla originally represented Mr. Hester, until the federal court disqualified him because Mr. Sulla was likely to be called as a witness.<sup>14</sup> Stephen D. Whittaker took over Mr. Hester’s representation. The federal court remanded the case to state court. The state court entered judgment in favor of Mr. Hester, quieting his title to the Property, determining that he was entitled to possession of the Property, and dismissing all of the defendants’ counterclaims. The state court also issued a writ of ejectment against the defendants.<sup>15</sup>

In the meantime, Dr. Horowitz filed a civil rights case against Mr. Sulla in the federal district court in this district (the “USDC case”).<sup>16</sup> The district court has stayed

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<sup>13</sup> The USDC case is *Hester v. Horowitz*, Civil No. 14-1-0413; the remanded state court case is Civil No. 14-1-0304, and is on appeal in the Intermediate Court of Appeal as Case No. CAAP 16-000163.

<sup>14</sup> Dkt. # 57-4 at 1-7.

<sup>15</sup> Dkt. # 57-4 at 9-11, 19-20. This court granted relief from the automatic stay to permit enforcement of the writ. Dr. Horowitz has represented that he and Ms. Kane have vacated the Property.

<sup>16</sup> *Horowitz v. Sulla*, Civil No. 15-00186.



the USDC case under the *Colorado River* doctrine.<sup>17</sup>

### **B. The Bankruptcy Case and Adversary Proceeding**

Dr. Horowitz's bankruptcy case and this adversary proceeding were both filed on March 9, 2016, before he and Ms. Kane were evicted from the Property. Dr. Horowitz and Ms. Kane allege a wide variety of misconduct on the part of Mr. Sulla, Mr. Hester, the judges who presided over the state court lawsuits, and others. In essence, they ask this court to overturn the final judgments of the state court.

## **II. DISCUSSION**

### **A. Subject Matter Jurisdiction**

The Moving Defendants argue that this court lacks subject matter jurisdiction to hear the claims asserted by the Plaintiffs. I disagree in part.

#### **1. Overview of Bankruptcy Court Jurisdiction**

The federal district courts have "original and exclusive jurisdiction" over all bankruptcy cases and original but nonexclusive jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11."<sup>18</sup> The federal district courts may refer to the bankruptcy courts some or all of the matters covered by these jurisdictional grants.<sup>19</sup> The district court for this district has referred all such

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<sup>17</sup> See *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

<sup>18</sup> 28 U.S.C. § 1334.

<sup>19</sup> 28 U.S.C. § 157(a).

matters to the bankruptcy court.<sup>20</sup>

The phrases “arising under title 11,” “arising in a case under title 11,” and “related to a case under title 11” are terms of art.<sup>21</sup> A proceeding “arises under” title 11 if it presents claims for relief created or controlled by title 11.<sup>22</sup> In contrast, the claims for relief in a proceeding “arising in” a title 11 case are not explicitly created or controlled by title 11, but such claims nonetheless would have no existence outside of a bankruptcy case.<sup>23</sup> The remaining category of bankruptcy jurisdiction, “related to” jurisdiction, is an exceptionally broad category encompassing virtually any matter either directly or indirectly related to the bankruptcy case.<sup>24</sup>

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of

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<sup>20</sup> LR1070.1(a).

<sup>21</sup> *Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard)*, 729 F.3d 1279, 1285 (9th Cir. 2013).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1287.

the bankrupt estate.<sup>25</sup>

The Moving Defendants correctly argue that none of the claims in this adversary proceeding “arise under” the Bankruptcy Code. Although the complaint does not clearly articulate its legal basis, it appears that those claims are based entirely on state law or nonbankruptcy federal law. The Moving Defendants are also correct that the claims in this case do not “arise in” the bankruptcy case because none of those claims are peculiar to the bankruptcy process; all of them could be asserted even if Dr. Horowitz had never sought bankruptcy relief (and most if not all of them were asserted before the bankruptcy filing).

But, contrary to the Moving Defendants’s argument, some of the claims asserted in this adversary proceeding fall under “related to” jurisdiction. If Dr. Horowitz is successful, his bankruptcy estate will gain money or property, and that is enough to make this proceeding a “related to” proceeding. The Moving Defendants argue that the plaintiffs cannot prevail, but that argument confuses the merits of the plaintiffs’ claims with the court’s power to decide them. Therefore, the bankruptcy court has subject matter jurisdiction of Dr. Horowitz’s claims.

Ms. Kane’s claims are in a separate category, however. Ms. Kane is not a debtor in bankruptcy. Any recovery which she makes will not affect any bankruptcy case.

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<sup>25</sup> *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984) (emphasis in original). The Ninth Circuit adopted the *Pacor* test in *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988).

Therefore, I will dismiss Ms. Kane's claims for lack of subject matter jurisdiction.

## **B. Abstention**

### **1. Mandatory Abstention**

The Moving Defendants argue that the requirements for mandatory abstention are met. I disagree.

28 U.S.C. § 1334(c)(2) states:

Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.<sup>26</sup>

Thus, the court must abstain if each of the following seven elements are met:

(1) A timely motion; (2) a purely state law question; (3) a noncore proceeding[.] § 157(c)(1); (4) a lack of independent federal jurisdiction absent the petition under Title 11; (5) that an action is commenced in a state court; (6) the state court action may be timely adjudicated; (7) a state forum of appropriate jurisdiction exists.<sup>27</sup>

In this adversary proceeding, factors 1, 3, 5, 6, and 7 may be met. The Moving Defendants timely filed their motion. For the reasons given below, this adversary

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<sup>26</sup> 28 U.S.C. § 1334(c)(2).

<sup>27</sup> *Krasnoff v. Marshack (In re Gen. Carriers Corp.)*, 258 B. R. 181, 190 (B.A.P. 9th Cir. 2001), quoting *World Solar Corp. v. Steinbaum (In re World Solar Corp.)*, 81 B. R. 603, 606 (Bankr. S. D. Cal. 1988).



proceeding is noncore. A state court action encompassing virtually all, if not all, of the claims alleged in the adversary complaint has already commenced. The state court could timely adjudicate those claims; indeed, the state court has already adjudicated them. The state court has jurisdiction to decide those claims.

But the second and fourth factors are not met. The complaint alleges federal civil rights, RICO, and FDCPA claims, not just state law claims. A federal district court could have jurisdiction over those claims by virtue of its federal question jurisdiction, and could also have supplementary jurisdiction of the state law claims.<sup>28</sup>

Because two of the seven requirements for mandatory abstention are not met, this adversary proceeding does not qualify for mandatory abstention.

## **2. Discretionary Abstention**

28 U.S.C. § 1334(c)(1) provides for discretionary abstention:

Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.<sup>29</sup>

According to the Ninth Circuit, a court should consider twelve factors in determining whether discretionary abstention is appropriate:

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<sup>28</sup> 28 U.S.C. § 1331; 28 U.S.C. § 1367(a).

<sup>29</sup> 28 U.S.C. § 1334(c)(1).

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted 'core' proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.<sup>30</sup>

The court must weigh each of these factors against the others. Unlike mandatory abstention, a court can apply discretionary abstention even if fewer than all of the factors weigh in favor of abstention.<sup>31</sup> In this case, the factors weigh heavily towards abstention.

**a. Factor 1- Effect on Administration of the Estate**

If anything, abstention would have a beneficial effect on the administration of the estate. The state court has decided all, or virtually all, of the claims asserted in this adversary proceeding. Even assuming that Dr. Horowitz and Ms. Kane are entitled to

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<sup>30</sup> *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990) (quoting *In re Republic Reader's Serv., Inc.*, 81 B. R. 422, 429 (Bankr. S. D. Tex. 1987)).

<sup>31</sup> *See, e. g., id.*

relitigate those issues, doing so would delay this case and drive up its cost. Thus, this factor weighs in favor of abstention.

**b. Factor 2- State Law Issues Predominate Over Bankruptcy Issues**

There are no issues of bankruptcy law in this adversary proceeding. This factor weighs in favor of abstention.

**c. Factor 3- Difficulty or Unsettled Nature of Applicable Law**

The applicable law is not over-complicated or novel. Thus, this factor weighs against abstention.

**d. Factor 4- Presence of a Related Proceeding in State Court**

Dr. Horowitz and Ms. Kane have asserted virtually all, if not all, of the claims in this adversary proceeding in the USDC case or the 2014 state court lawsuit. Thus, this factor weighs in favor of abstention.

**e. Factor 5- Jurisdictional Basis Other than 28 U.S.C. § 1334**

The federal district court would have “federal question” jurisdiction of the civil rights, FDCPA, and RICO claims. But the district court has already chosen to stay the USDC case, effectively declining to exercise that jurisdiction. Accordingly, this factor weighs slightly in favor of abstention.

**f. Factor 6- Degree of Relatedness or Remoteness to Bankruptcy Case**

Dr. Horowitz’s claims are related to his bankruptcy case because, if he prevails,

his estate will be augmented. But Ms. Kane's claims have nothing to do with any bankruptcy case. This factor is in equipoise.

**g. Factor 7- Substance Rather than Form of "Core" Proceeding**

This factor requires me to consider whether this proceeding is core or noncore in whole or in part.<sup>32</sup>

**i. Core versus Noncore Distinction**

The proceedings subject to bankruptcy court jurisdiction are divided into "core" bankruptcy proceedings and "noncore" proceedings.<sup>33</sup> The phrase "core proceedings" is best understood in historical context.

In 1978, Congress enacted the Bankruptcy Code, which (among many other things) dramatically increased the powers of bankruptcy judges. The Code "mandated that bankruptcy judges 'shall exercise' jurisdiction over 'all civil proceedings arising under title 11 or arising in or related to cases under title 11.'"<sup>34</sup>

In 1982, the United States Supreme Court held, in the *Marathon* case,<sup>35</sup> that Congress had granted too much power to bankruptcy judges who lack life tenure as

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<sup>32</sup> *Eastport Assoc. v. City of Los Angeles (In re Eastport Assoc.)*, 935 F.2d 1071, 1076 (9th Cir. 1991).

<sup>33</sup> *Stern v. Marshall*, 564 U.S. 462, 474-75 (2011).

<sup>34</sup> *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165, 2170-71 (2014)-(citing 28 U.S.C. § 1471(b)-(c)).

<sup>35</sup> *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U. S. 50 (1982).



required by Article III of the Constitution. In essence, the Court held that Congress may not empower a judge lacking Article III protections to enter final judgment in a case brought by the representative of a bankruptcy estate against a third party on state law claims (at least where the third party objects).

Congress amended the statutes in 1984 in an attempt to solve the constitutional problem identified in *Marathon*. Congress gave the district courts “original and exclusive jurisdiction of all cases under Title 11,”<sup>36</sup> and “original, but not exclusive, jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11[.]”<sup>37</sup> Congress staffed the bankruptcy courts with bankruptcy judges appointed to fourteen-year terms by the respective courts of appeal,<sup>38</sup> and authorized (but did not require) the district courts to refer to the bankruptcy courts matters falling under bankruptcy jurisdiction.<sup>39</sup>

Congress further divided bankruptcy court jurisdiction into “core proceedings” and so-called “noncore” proceedings. The core/noncore distinction matters for at least two purposes.

First, bankruptcy court decisions in core and noncore proceedings are subject to

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<sup>36</sup> 28 U.S.C. § 1334(a).

<sup>37</sup> *Id.* § 1334(b).

<sup>38</sup> *Id.* § 152(a).

<sup>39</sup> *Id.* § 157(a).

different standards of appellate review. In core proceedings, bankruptcy judges can render final judgments that are reviewed under the usual appellate standard (findings of fact are reviewed for clear error and conclusions of law are subject to de novo review).<sup>40</sup> In noncore proceedings, bankruptcy judges can render a final judgment only with all parties' consent.<sup>41</sup> In the absence of unanimous consent, the bankruptcy court must issue proposed findings of fact and conclusions of law for the district court's de novo review.

Second, the core/noncore distinction plays a significant role in the bankruptcy court's decision whether to grant or deny an abstention motion. Whether an action is a core or a noncore proceeding is a factor to be considered in making both mandatory and permissive abstention rulings.<sup>42</sup>

Core proceedings consist of all actions "arising under" title 11 and also those "arising in" a case under title 11.<sup>43</sup> "[A] core proceeding is one that 'invokes a substantive right provided by title 11 or . . . a proceeding that, by its nature, could

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<sup>40</sup> 28 U.S.C. § 157(b)(1).

<sup>41</sup> *Id.* § 157(c).

<sup>42</sup> See 28 U.S.C. 1334(c)(1), (2); see also *In re Eastport Assocs.*, 935 F.2d 1071 at 1075 (identifying permissive abstention factors).

<sup>43</sup> *Id.* at 1053.

arise only in the context of a bankruptcy case.”<sup>44</sup> 28 U.S.C. § 157(b)(2) contains a non-exhaustive list of core bankruptcy proceedings. Proceedings that are not core proceedings but are related to a bankruptcy case are called “noncore” proceedings.<sup>45</sup> Proceedings are “related to” a bankruptcy case and thus “noncore” if “they do not depend on the Bankruptcy Code for their existence and they could proceed in another court.”<sup>46</sup>

This history shows that Congress invented the concept of “core proceedings” to address the constitutional problem identified in *Marathon*. Therefore, in case of doubt, the statutory definition of “core proceedings” should be interpreted to exclude proceedings in which the Constitution precludes a bankruptcy judge from entering final judgment under *Marathon*, i.e., claims by representatives of the estate against non-consenting third parties to recover money or property for the estate on non-bankruptcy law grounds.

As I have noted above, Dr. Horowitz’s claims all turn on state law or nonbankruptcy federal law; thus, Dr. Horowitz’s claims are “related to,” noncore proceedings. (As is also noted above, Ms. Kane’s claims are not even “related to” any

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<sup>44</sup> *Battle Ground Plaza, LLC, v. Ray (In re Ray)*, 624 F.3d 1124, 1131 (9th Cir. 2010) (quoting *Gruntz v. Cty. of L.A. (In re Gruntz)*, 202 F.3d 1074, 1081 (9th Cir. 2000)).

<sup>45</sup> 28 U.S.C. § 157(c).

<sup>46</sup> *Dunmore v. United States*, 358 F.3d 1107, 1114 (9th Cir. 2004)).

bankruptcy case, but if they were, those claims would be noncore.) Dr. Horowitz contends that this action is a core proceeding under § 157(b)(2)(A), “matters concerning the administration of the estate;” subsection (E), “orders to turn over property of the estate;” subsection (H), “proceedings to determine, avoid, or recover fraudulent conveyances;” and subsection (O), “other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship . . . .” But these provisions must be read against the background of *Marathon*. Under *Marathon*, a bankruptcy judge cannot enter final judgment on Dr. Horowitz’s claims. The seventh factor therefore strongly favors abstention.

**h. Factor 8- Feasibility of Severing State Law Claims from Core Bankruptcy Matters**

Because none of the claims in this case are “core proceedings,” severing the state law claims would leave nothing for this court. Therefore, the eighth factor strongly favors abstention.

**i. Factor 9- Burden of Bankruptcy Court’s Docket**

The extensive record in the state court proceedings, and the number, volume, and venom of the plaintiffs’ filings, make it clear that this adversary proceeding would be burdensome. The burden is particularly unwarranted because the state court has



already decided the case against the plaintiffs. This factor weighs in favor of abstention.

**j. Factor 10- Likelihood that Commencement in Bankruptcy Court Involves Forum Shopping**

The Debtor and Ms. Kane are clearly engaged in forum shopping. The state court and the district court have ruled against them. They have more or less admitted that they came to this court hoping for a better outcome. This factor weighs heavily in favor of abstention.

**k. Factor 11- Existence of a Right to a Jury Trial**

The Plaintiffs have requested a jury trial on the claims asserted in their complaint, and appear to be entitled to one. Because the bankruptcy court in this district does not have the power to conduct jury trials, this factor weighs in favor of abstention.

**l. Factor 12- Presence of Nondebtor Parties**

The majority of the parties to this case are nondebtors. Only one of the two plaintiffs, and none of the defendants, is in bankruptcy.

Under the *Tucson Estates* analysis, the facts of this case heavily favor the exercise of discretionary abstention under 28 U.S.C. § 1334(c)(1). Therefore, discretionary abstention is appropriate.

#### **IV. CONCLUSION**

For these reasons, all claims against the Moving Defendants in this adversary proceeding are DISMISSED.

**END OF ORDER**