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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 **JASON HESTER'S REPLY IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION OF COUNSEL; EXHIBIT "1" – "4"; CERTIFICATE OF SERVICE** **Hearing Date: April 12, 2016** **Hearing Time: 9:30 a.m.** **Honorable Judge Robert J. Faris**

JASON HESTER'S REPLY IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW, Jason Hester ("Movant"), by and through attorney Paul J. Sulla Jr., and submits this, his **REPLY IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY.** Debtor's Memorandum in Opposition to Movant's Motion for

Relief from Automatic Stay filed herein on March 28, 2016[1] admits and shows conclusively the exact facts that Movant alleged in his Motion:

1. That Debtor Leonard G. Horowitz is not the current record title holder of the subject property[2] but, in fact, record title has been quieted in the name of Movant by the Circuit Court of Hawaii pursuant to a Final Judgment dated December 30, 2015 (attached to the Opposition as Exhibit 2),
2. That Debtor is asking this Court to violate the Rooker-Feldman doctrine and act as an appeals court and overturn the state court ruling which led to the writ of possession being issued,
3. That Debtor holds no equity in the Subject Property and was not the borrower for the mortgage that was foreclosed (see mortgage attached to the Opposition as Exhibit 3),
4. That Debtor never held any equity in the Subject Property since the 2012 deed that he claims gave him title was procured after the property had already been foreclosed in 2010 from the "seller", Royal Bloodline of David, thus leaving Royal Bloodline of David with no title to convey,
5. That Royal Bloodline of David, the entity that did hold record title and the mortgage at the time of foreclosure has been involuntarily dissolved by the State of Washington; no longer exists; and has not been in existence for almost four years,
6. That debtor has been found by the Hawaii Circuit Court for the Third Circuit to have no standing to challenge the foreclosure, and
7. That debtor has been refusing to vacate the Property for over ***six years*** since foreclosure in 2010.

The Opposition is yet another voluminous and abusive filing in a sea of such filings in all courts where Debtor has tried to claim relief: the Hawaii Circuit Court for the Third Circuit, the U.S. District Court, the Intermediate Court of Appeals for the State of Hawaii, and the Hawaii District Court for the Third Circuit. The U.S. Bankruptcy Court is the last

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[1] CM/ECF Doc. No. 16 titled "Memorandum In Reply to Defendants' Motion for Relief from Stay [FRBP Rule 362(d)(4)(A) and (g); Fourteenth Amendment] and; Affidavit of Leonard G. Horowitz; Appendix I; Exhibits '1' Thru '30.'" (hereinafter "Opposition").

[2] Subject Property: 13-1775 Pahoa Kalapana Road, Pahoa, Hawaii 96778-7924, TMK Nos. (3) 1-3-001:049 & 043 ("Property").

in a long line of cases as Debtor's Opposition admits, and Debtor is asking the Court to second guess the determinations of numerous other judges and courts that have come before, none of which have found Debtor's description of events plausible or that his various claims have any merit at all.[3]

Thinking that this Court will not look to any of his other filings, findings, or arguments from other cases before other courts, Debtor proceeds to repeat a string of documented untruths to the Court in a desperate attempt to avoid the loss of property that he never owned in the first place.

For example:

I. The Mortgage Balloon Payment was never paid by Royal or by Debtor

Debtor keeps claiming that he paid the prior property owner --Royal Bloodline of David--'s mortgage in full and therefore he should have rights to the Property. However, despite years to do so he has never provided any proof of payment. Instead Debtor always points to a vacated jury award that he claims offsets the amounts due and ignores the fact that on September 9, 2008 he filed a "Motion to Make Payment... Based on Jury Verdict..." requesting that the jury award be used for Royal's mortgage payment, but that motion was denied on October 15, 2008. See **Exhibit "1"**, Sulla decl., attached.

As **Exhibit 1**, attached, shows, Debtor asked Judge Ibarra of the Hawaii Circuit Court for permission to use the now vacated jury-award to pay the mortgage back in 2008. The Court said "no" and denied the Motion and thus foreclosure occurred in 2010 by non-judicial foreclosure after the term of the note expired and the note fell into default for nonpayment. And yet somehow debtor continues to argue that he used a vacated jury award to pay the mortgage in full and has been wrongfully foreclosed on. This ridiculous self-serving argument made by the Debtor is of no legal effect. The state court was already involved and the Rooker-Feldman doctrine applies. Movant should be allowed to execute his writ of ejectment.

---

[3] The number of cases between Debtor and Movant is significant. Hawaii State Court Case Nos. 3SP04-1-000006; 3CC05-1-000196; 3SS10-1-000206; 3RC11-1-000662;3SS11-1-000196; 3RC14-1-000466;3CC14-1-000304 and U.S. District Court for the District of Hawaii Case Nos 1:2013-cv-00500, 1:2014-cv-00413, and 1:2015-cv-00186 all include claims between Debtor and Movant in relation to the Subject Property!

Just because Debtor wishes that he and/or Royal Bloodline paid the mortgage, the mortgage remained unpaid and foreclosure occurred in due course against the property owner, Royal Bloodline of David, a Washington not-for profit entity that is now dissolved. No matter how the facts are viewed, the interest that Debtor is claiming to own is not his interest, nor is it any interest that can be claimed by his bankruptcy estate. Debtor is a tenant at sufferance as was found by the state court and debtor cannot use bankruptcy to prevent ejectment on the basis of wishful thinking.

According to *In re Tiburcio*, Case No. 13-00996 (Bankr.Hawaii, 2013):

> The Rooker-Feldman Doctrine which is derived from two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed. 206 (1983) does not allow a collateral attack on a State Court foreclosure action. The statutory origin of the doctrine is from 28 U.S.C.A. § 1257 which gave the Supreme Court subject matter jurisdiction over appeals from final judgments. By implication, interpretation, and case law, the Rooker-Feldman Doctrine prevents a bankruptcy court from entertaining any attack directed at a state court judgment.

Debtor's Opposition does nothing but make a collateral attack on the state court's judgment. Movant urges this Court to follow *In re Tiburcio* and grant his Motion for Relief from Stay.

II. There is not two conflicting state court judgments.

Debtor claims that there exists two conflicting state court judgments but this is not the case. The 2005 case is not related to the 2014 lawsuit at all but for the fact that Debtor is trying to link them via a vacated jury award in the 2005 case that he wishes Royal Bloodline had been able to use to pay off its mortgage. This is an attenuated and implausible argument and is not enough to rise to the label of "conflicting judgment". One case in 2005 was about lack of insurance while the note was being paid timely by the entity holding title and the court denied a foreclosure that was based on lack of insurance only. The other case, filed in 2014, is not a foreclosure case at all but a quiet title and ejectment action only. There is no claim of foreclosure. The title was quieted because Debtor kept clouding Movant's title. This is not the same as two conflicting state court judgments and Debtor is actively attempting to mislead the court.

According to *In re Caisson Labs., Inc.*, Case No. 14-31344, pp. 7-8 (Bankr.Utah, 2015):

> Rooker-Feldman prevents lower federal courts from reviewing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[4]

Debtor is using this Court and bankruptcy law to further his own scheme to use the property owned by Movant rent-free, which he has done for years using numerous tactics including an all-out cyber defamation campaign against Movant and his counsel in addition to voluminous, inaccurate, and frivolous pleadings in multiple courts simultaneously. Debtor is a professional conspiracy theorist and obstructionist who intentionally creates chaos and confusion via numerous mistruths. Judge Seabright did not respond kindly to Debtor's imaginative tactics during the quiet title and ejectment action that led to the issuance of the writ of ejectment which Movant is seeking leave to execute herein. **Exhibit 2**, Sulla Decl, attached is a Minute Order by Judge J. Michael Seabright calling Debtor's theories "fanciful, frivolous and delusional" and instructing the clerk to accept no further filings and then remanding back to state Court. **Exhibit 3**, Sulla Decl., attached, is Judge Seabright's Order Remanding Action to the Third Circuit" where, notably, he states on p.2 that "Defendant Horowitz... asserted complete diversity of citizenship, claiming domicile in California". It is with this backdrop that we urge the Court to look skeptically on Debtor's pleadings and question everything, including Debtor's alleged possessory interest which Movant cannot confirm even exists since Debtor admits the property is actually being occupied by vacation renters instead.

III. There is another motion to stay pending appeal hearing set already in the state court matter; this court should follow the state court and not interfere with the state court proceeding.

Movant is facing a particularly litigious debtor. The U.S. District Court for the District of Hawaii is well aware of Debtor's propensities and has refused to entertain Debtor's arguments which either have already been resolved or are currently being litigated in state court. Movant urges the U.S. Bankruptcy Court for the District of Hawaii to do the

[4] Citing: *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

same and not reward Debtor for his abusive tactics which only serve to create chaos and burden for the courts. In finding that the state court and federal court proceedings included parallel claims, Judge Seabright dismissed and stayed Debtors claims for relief against Movant in his Court in relation to the Subject Property. See **Exhibit 4**, Sulla Decl., attached. On April 28, 2016 the Hawaii Circuit Court for the Third Circuit will be hearing a Motion for a Stay Pending Appeal based on much of the same arguments that the Debtor is asserting herein. Because the Circuit Court stay motion has built into it a safeguard of requiring the applicant for the stay to post a bond to cover the cost of use and occupancy of the subject property during any stay pending appeal, it makes much more sense for this Court to allow the state Court matter to proceed.

VIII. Conclusion

THEREFORE, Movant requests this Court enter an Order either declaring no stay in effect in relation to the Subject Property or 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 lack of any valid possessory interest in the Debtor, 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 29th of March, 2016.

/s/ Paul J. Sulla, Jr.

Paul J. Sulla, Jr. (SBN #5398)
Attorney for Movant Jason Hester

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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, 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.[1]

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"**.

[1] 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.[2] This bankruptcy filing is yet another attempt by Debtor to delay the inevitable. It is in fact his 10th request for stay.

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[2] 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 [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.]

Exhibit "1"

FILED

cc:
John Carroll, Esq.
Mr. Cecil Loran Lee
Mr. Philip Maise

2008 OCT 15 PM 2:51

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

L. KITAOKA, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

STATE OF HAWAII

CECIL LORAN LEE Plaintiff and Counterclaim-Defendant, 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 CORPORATIONS 1-10, DOE ENTITIES, DOE GOVERNMENTAL UNITS, Defendants and Counterclaimants.	CIVIL NO. 05-1-196 (Foreclosure) ORDER DENYING DEFENDANT'S AND COUNTERCLAIMANT'S MOTION TO MAKE PAYMENT TO PLAINTIFF LEE BASED ON JURY VERDICT, ATTORNEY'S FEES AND COSTS AS AWARDED BY THE COURT, SANCTIONS AND FEES AND MONIES DUE TO PHILIP MAISE, INTERVENOR, AND TRANSFER OF TITLE TO STEAM INN, AND FINALZATION OF ALL MATTERS BEFORE THE COURT NON-HEARING MOTION FILED: September 9, 2008 JUDGE RONALD IBARRA

ORDER DENYING DEFENDANT'S AND COUNTERCLAIMANT'S MOTION TO MAKE PAYMENT TO PLAINTIFF LEE BASED ON JURY VERDICT, ATTORNEY'S FEES AND COSTS AS AWARDED BY THE COURT, SANCTIONS AND FEES AND MONIES DUE TO PHILIP MAISE, INTERVENOR, AND TRANSFER OF TITLE TO STEAM INN, AND FINALZATION OF ALL MATTERS BEFORE THE COURT

This matter, having come before the Honorable Ronald Ibarra, pursuant Defendant's and Counterclaimant's Motion to Make Payment to Plaintiff Lee Based on Jury Verdict, Attorney's Fees and Costs as Awarded by the Court, Sanctions and Fees and Monies Due to Philip Maise, Intervenor, and Transfer of Title to Steam Inn, and Finalization of All

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

Exhibit "1"

Matters Before the Court, filed on September 9, 2008; and the Court having reviewed the Declaration of John S. Carroll and Exhibits "A"-'C" attached to the motion; Memorandum in Opposition to Defendant's and Counterclaimant's Motion to Make Payment to Plaintiff Lee Based on Jury Verdict, Attorney's Fees and Costs as Awarded by the Court, Sanctions and Fees and Monies Due to Philip Maise, Intervenor, and Transfer of Title to Steam Inn, and Finalization of All Matters Before the Court filed September 10, 2008; and Motion to Strike and Sanctions for Failure to Serve Plaintiff and Fraud on the Court, Opposition to "Defendant's and Counterclaimant's Motion to Make Payment to Plaintiff Lee Based on Jury Verdict, Attorney's Fees and Costs as Awarded by the Court, Sanctions and Fees and Monies Due to Philip Maise, Intervenor, and Transfer of Title to Steam Inn, and Finalization of All Matters Before the Court" Declaration of Cecil Loran Lee and Exhibits A, B filed on September 25, 2008; as well as the record and file of the case,

IT IS HEREBY ORDERED, Defendant's and Counterclaimant's Motion to Make Payment to Plaintiff Lee Based on Jury Verdict, Attorney's Fees and Costs as Awarded by the Court, Sanctions and Fees and Monies Due to Philip Maise, Intervenor, and Transfer of Title to Steam Inn, and Finalization of All Matters Before the Court, filed on September 9, 2008 is DENIED WITHOUT PREJUDICE. Defendants shall submit an accounting of total payments made to date no later than November 13, 2008.

DATED: Kealakekua, Hawaii 10/14/

JUDGE OF THE ABOVE-ENTITLED COURT

Exhibit "2"

MINUTES

CASE NUMBER: CV 14-00413 JMS-RLP

CASE NAME: Hester v. Horowitz, et al.

JUDGE: J. Michael Seabright REPORTER:

DATE: 12/16/2014 TIME:

COURT ACTION: EO: On December 15, 2014, Defendants/Counterclaimants filed a document entitled "ExParte Communication Pursuant to New Discovery, Death Threats, and Sealed Video Evidence [ABA Rule 2.9]," along with several exhibits. Doc. No. [41]. Although not clear, among other matters, Defendants/Counterclaimants assert that certain non-parties Ott, Studer, Nuccitelli, and/or Hampton are involved in an unlawful libel and defamation campaign with a "high probability of NSA involvement," in a conspiracy involving organized crime and "is based partly on Edward Snowden's leaked NSA intelligence." *Id.* at 2, 9. They contend that

> . . . Bracker, Nuccitelli, Jones, and Hampton are confirmed complicit parties in the 'online covert action' diverting and obfuscating public information about the Loughner shootings, spinning intelligence on the Judge Roll et. al. murders; and proving the existence and intelligence operations of the Ott-directed West Coast 'cell' clearly working with Sulla (who maintains several definitive additional links to CIA agents and agendas), apparently working under-cover for the NSA/CIA/FBI and Google X Project.

Id. at 13.

This document is fanciful, frivolous and delusional. It bears no relation to the underlying Complaint in this action, which is a Complaint to Quiet Title and for Summary Possession and Ejectment. Doc. No. 1-7.

Accordingly, the court STRIKES the latest filing, Doc. No. [41], by Defendants/Counterclaimants. *See, e.g.*, *Neitzke v. Williams*, 490 U.S. 319, 327 (1989) (a claim is factually frivolous if it is "clearly baseless"); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (explaining that "a finding of factual

 Exhibit "2"

frivolousness is appropriate when the facts alleged rise to the level of the irrational or wholly incredible."); *Edwards v. Snyder*, 478 F.3d 827, 829-30 (7th Cir. 2007) (indicating that a claim is factually frivolous if its allegations are bizarre, irrational, or incredible).

This latest document from Defendants/Counterclaimants follows other similar filings, including (1) "Motion to Disqualify Co-Counsel Paul J. Sulla, Jr. and Phillip L. Carey from Representing Sham Plaintiff Jason Hester," Doc. No. [33] (filed on November 24, 2014); (2) "Motion for Injunctive Relief from Commercial Defamation by Organized Crime," Doc. No. [35] (filed on December 4, 2014); (3) "Motion to Seal Public Disclosure of Private Fact Videos "A" Thru "C" and Defamatory DVD "E," Doc. No. [38] (filed on December 8, 2014); and (4) "Motion for Entry of Default and Default Judgment against sham plaintiff, Jason Hester, and Concealed Real Party of Interest, Paul J. Sulla, Jr., Doc. No. [40] (filed on December 9, 2014), all of which also appear to bear no relation to the underlying Complaint. Also pending before the court is Plaintiff/Counterclaim Defendant Jason Hester's Motion to Dismiss Counterclaims, Doc. No. [30].

These other Motions currently have briefing deadlines pending under the court's Local Rules, and will be addressed in due course after reviewing the scheduled filings. Meanwhile, until those Motions are resolved, **the Clerk of Court is directed to accept no other filings from Defendants/ Counterclaimants** other than filings pursuant to scheduled briefing deadlines under the court's prior orders or the court's Local Rules as to these previously-filed Motions.

Submitted by: Shelli Mizukami, Courtroom Manager

Exhibit "3"

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JASON HESTER, Plaintiff, vs. LEONARD G. HOROWITZ, ET AL., Defendants.	CIVIL NO. 14-00413 JMS-RLP ORDER REMANDING ACTION TO THE THIRD CIRCUIT COURT OF THE STATE OF HAWAII

ORDER REMANDING ACTION TO THE THIRD CIRCUIT COURT OF THE STATE OF HAWAII

Based on the following, this action is REMANDED forthwith to the Third Circuit Court of the State of Hawaii (the "State Court").

I. INTRODUCTION

The Complaint in this action alleges no federal causes of action, and after it was removed from the State Court, the court questioned whether it otherwise has federal subject matter jurisdiction over the action. *See* Doc. No. 6 (Order to Show Cause Why Action Should Not be Remanded to the Third Circuit Court of the State of Hawaii). In a prior Order to Show Cause ("OSC"), the court gave Defendants the opportunity to meet their burden to demonstrate a basis for

federal jurisdiction. *See id.*; *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (holding that a defendant who has removed a case bears the burden of proving the propriety of removal, including federal jurisdiction). The court allowed the action to proceed only after Defendants Horowitz and Kane asserted complete diversity of citizenship, claiming domicile in California (with Plaintiff being a citizen of Hawaii).[1] *See* Doc. Nos. 15, 16.

Nevertheless, the court has a "*continuing* obligation to assess its own subject-matter jurisdiction, even if the issues is neglected by the parties[.]" *United States v. Ceja-Prado*, 333 F.3d 1046, 1049 (9th Cir. 2003) (emphasis added). It is an "obligation to investigate and ensure [its] own jurisdiction[.]" *Id. See also, e.g.*, *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999) (reiterating that a federal court has an independent obligation to address *sua sponte* whether it has subject matter jurisdiction). Given this continuing obligation, and based on information not previously known to the court, the court now confirms that it lacks subject matter jurisdiction and that the action must be remanded to State Court forthwith.

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[1] For a natural person to be a citizen of a state under 28 U.S.C. § 1332(a)(1), that person must be a United States citizen and "domiciled" in that state. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) ("[A] natural person's state citizenship is . . . determined by [his or] her state of domicile[.]").

II. DISCUSSION

Reviewing various court records in this and related actions, it is obvious that this case is simply a continuation of a long-running dispute that is and has been the subject of several prior and pending actions in federal and state court.[2] *See, e.g.*, *Hester v. Horowitz*, No. 3RC14-1-000466 (Haw. Cir. Ct. 2014), (available at hoohiki2.courts.state.hi.us/jud/Hoohiki/main.htm); *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK (D. Haw. 2013).[3] (Indeed, it appears that this action is a duplicative action, raising similar if not identical questions that are or were at issue in other actions.) In particular, the court has reviewed certain filings in *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK, which was dismissed on March 14, 2014 by U.S. District Judge Helen Gillmor for (in part) lack of diversity of citizenship. In that action, Judge Gillmor found that "Plaintiff Horowitz is domiciled in Pahoa, Hawaii." *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK, Doc. No. 64, Order Granting Motions to Dismiss for Lack of Subject Matter

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[2] The court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

[3] The actions in federal court have consisted of voluminous confusing pleadings, with scattered allegations regarding the Central Intelligence Agency, the National Security Agency, organized crime, copyright infringement, and antitrust violations. *See, e.g.*, Doc. No. 42 (striking filing that was fanciful, bearing no relation to the original complaint for quiet title, summary possession, and ejectment).

Jurisdiction, at 10. This conclusion was based on Horowitz' October 1, 2013 Verified Complaint in that action, submitted under penalty of perjury, that Horowitz "has lived at 13-3775 Kalapana Highway, Pahoa, HI, 96778, as his primary residence since 2004." *Id.*, Doc. No. 1-2, Compl. at 10. He asserted that he contracted to purchase the property in June 2003 for his ministry, the Royal Bloodline of David. *Id.* at 5. Horowitz also affirmed to be "residing and working in the State of Hawaii at 13-3775 Kalapana Highway, Pahoa, HI, 96788," in a different suit. *See Horowitz v. Softlayer Techs., Inc.*, Civ. No. 12-00205 HG-BMK, Doc. No. 19-2, Pls.' Reply at 2.

In the present action, Horowitz claimed (citing to a divorce record) that his "primary domicile [is] in California, at 880 Cliff Drive, Laguna Beach, where he lived with KANE and his children as late as June, 2011." *Hester v. Horowitz*, Civ. No. 14-00413 JMS-RLP, Doc. No. 13, Reply to OSC at 3. Horowitz claimed that "it is Defendants' intention to return home to California as soon as possible, pending resolution of this legal dispute[.]" *Id.* at 5 (emphasis omitted). Horowitz also claimed that he "maintained a second domicile in Idaho, and was compelled by 'precipitating events' to move to Hawaii (thereby establishing a temporary residence in Hawaii) between 2009 and 2010 to defend his ministerial calling, Property investments, and right of Mortgage Release

(following payment in full on the original Note in February, 2009)." *Id.* (emphases omitted).

These representations in the present case plainly conflict with Horowitz' prior statements upon which Judge Gillmor relied in *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK -- statements indicating a permanent residence in Hawaii. They are also inconsistent with positions taken by Horowitz in that and other cases. In an Order to Show Cause in *Horowitz v. Sulla*, Judge Gillmor informed the parties that "[d]iversity [of citizenship] is not present in this case based on the allegations in the Complaint. At a minimum, Plaintiff Horowitz and Defendants Sulla, Hester, Herbert Ritke, Ronn Ritke, and Carey are all citizens of Hawaii." *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK, Doc. No. 18, at 2. Horowitz did not respond in November 2013 to this statement by asserting that his domicile was actually California (which could have established diversity of citizenship under 28 U.S.C. § 1332) -- instead he focused on arguing that he is a "public minister," and that federal question jurisdiction existed under 28 U.S.C. § 1331. *See id.*, Doc. No. 24.

Similarly, in another case, *Sulla v. Horowitz*, Civ. No. 12-00449 SOM-KSC, Chief Judge Susan Oki Mollway remanded an action removed by Horowitz, indicating that "[n]othing in the complaint suggests that there is

diversity of citizenship." *Id.*, Doc. No. 30. Judge Mollway's October 4, 2012 Order remanding that action reasoned in part that "[t]he responses to the order to show cause did not challenge the lack of diversity jurisdiction, but instead asserted federal question jurisdiction." *Id.*, Doc. No. 37 at 3. That is, Horowitz again did not claim his domicile was California when responding to an OSC.[4]

"Although residence alone is not the equivalent of citizenship, 'the place of residence is *prima facie* the domicile.'" *Martin v. Ampco Sys. Parking*, 2013 WL 5781311, at *6 (D. Haw. Oct. 24, 2013) (quoting *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)). *See also Mondragon*, 736 F.3d at 886 (recognizing that "numerous courts treat a person's residence as prima facie evidence of the person's domicile") (citing *Anderson v. Watts*, 138 U.S. 694, 706 (1891) ("The place where a person lives is taken to be his domicile until facts adduced establish the contrary[.]") (other citations omitted)). Here, the record establishes that Horowitz' residence has been in Hawaii since 2004, and, in reliance on that representation by Horowitz, Judge Gillmor indicated in 2014 that his domicile is Hawaii.

[4] Horowitz has not asserted that his domicile has changed from Hawaii to California. And there is a "presumption of continuing domicile, which provides that, once established, a person's state of domicile continues unless rebutted with sufficient evidence of change." *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 885 (9th Cir. 2013).

Although Horowitz now declares that his domicile is California, this statement is treated with skepticism when federal jurisdiction is at issue. *See* 13E Charles Alan Wright, et al., *Federal Practice & Procedure* § 3612 at 549 (2009) ("*Federal Practice & Procedure*") ("A party's own declarations concerning the identity of his domicile, particularly with regard to an intent to retain or establish one, as is true of any self-serving statement, are subject to judicial skepticism."); *Lew*, 792 F.2d at 750 ("[S]tatements of intent [as to domicile] are entitled to little weight when in conflict with facts.") (citations omitted); *Washington v. Hovensa LLC*, 652 F.3d 340, 346 (3d Cir. 2011) (reiterating that "[o]ne's testimony as to his intention to establish a domicile, while entitled to full and fair consideration, is subject to the infirmity of any self-serving declaration, and it cannot prevail to establish domicile when it is *contradicted or negatived* by an inconsistent course of conduct") (quoting *Korn v. Korn*, 398 F.2d 689, 691 (3d Cir. 1968)). "A related principle estops a party from pleading domicile differently in subsequent actions on unchanged facts." 13E *Federal Practice & Procedure* § 3612 at 551-52 (citing cases). And as for Horowitz' assertion that his "primary" domicile is California and that he had a "second" domicile in Idaho, "[n]umerous judicial opinions, at all levels of the federal courts . . . establish that a person has only one domicile for diversity purposes at a particular time." *Id.* at 528 (noting numerous cases).

When a case is removed to federal court, there is a strong presumption against removal. *See Gaus*, 980 F.2d at 566. A defendant who has removed a case bears the burden of proving the propriety of removal, including jurisdiction. *See id.* "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

Thus, given the evidence in this case and prior records and orders in related cases, and taking into account Horowitz' inconsistent statements regarding his domicile, it is obvious that Defendants have simply failed to meet their burden of proving the propriety of their removal of this action. *Gaus*, 980 F.2d at 566. Given this failure, diversity of citizenship is lacking (and there is no other basis of federal jurisdiction). Defendants have had an opportunity to demonstrate jurisdiction and it is still "[apparent] that the district court lacks subject matter jurisdiction [such that] the case shall be remanded." 28 U.S.C. § 1447(c). And because this Order remanding for lack of subject matter jurisdiction "is not reviewable on appeal or otherwise," 28 U.S.C. § 1447(d), it is not subject to reconsideration. *See Seedman v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 837 F.2d 413, 414 (9th Cir. 1988) (concluding that once a district court certifies a remand order based on § 1447(c), it is divested of jurisdiction and can take no further

action).

III. CONCLUSION

Accordingly, the Clerk of Court shall remand the action forthwith to the Third Circuit Court of the State of Hawaii. All pending Motions in this case are deemed MOOT in this court.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 7, 2015.

/s/ J. Michael Seabright
J. Michael Seabright
United States District Judge

Hester v. Horowitz et al., Civ. No. 14-00413 JMS-RLP, Order Remanding Action to the Third Circuit Court of the State of Hawaii

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
OFFICE OF THE CLERK
300 ALA MOANA BLVD., RM C-338
HONOLULU, HAWAII 96850

SUE BEITIA
CLERK

TEL (808) 541-1300
FAX (808) 541-1303

January 8, 2015

Court Administrator
Circuit Court of the Third Circuit
State of Hawaii (Puna Division)
Hale Kaulike
777 Kilauea Avenue
Hilo, Hawaii 96720-4212

Re: USDC Hawaii: CV 14-00413-JMS-RLP
Circuit Court of the Third Circuit, State of Hawaii Case No. 14-1-0304
Jason Hester vs. Leonard G. Horowitz; Sherri Kane, *et al.*

Dear Sir or Madam:

Please be advised that on January 8, 2015, U.S. District Judge J. Michael Seabright issued an order directing the remand of the above-referenced civil case to the Circuit Court of the Third Circuit, State of Hawaii. Accordingly, please find enclosed a certified copy of : (1) the Case Docket Sheet, and (2) the Court's Order: The "ORDER REMANDING ACTION TO THE THIRD CIRCUIT COURT OF THE STATE OF HAWAII."

Electronic Access to images of court documents is available through PACER [**P**ublic Access to **C**ourt **E**lectronic **R**ecords]. Information regarding PACER is available at website address www.pacer.uscourts.gov.

Sincerely yours,

SUE BEITIA, CLERK

by: /s/ *Anna F. Chang*
Deputy Clerk

cc: all counsel and/or parties of record

To the Office of the Clerk of the Third Circuit Court:

Please acknowledge receipt on the copy of this letter and return in the enclosed envelope.

Date: _____ By: _____

Exhibit "4"

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

LEONARD G. HOROWITZ, an Individual; and SHERRI KANE, an Individual, Plaintiffs, vs. PAUL J. SULLA, JR., an Individual; ET AL., Defendants.	CIVIL NO. 15-00186 JMS-BMK ORDER (1) DISMISSING COUNTS I, V, VI, VII, VIII, IX, AND XIX; (2) STAYING ACTION UNDER *COLORADO RIVER WATER CONSERVATION DISTRICT v. UNITED STATES*, 424 U.S. 800 (1976); AND (3) DENYING PLAINTIFFS' COUNTER-MOTION FOR SANCTIONS, DOC. NO. 23

ORDER (1) DISMISSING COUNTS I, V, VI, VII, VIII, IX, AND XIX; (2) STAYING ACTION UNDER *COLORADO RIVER WATER CONSERVATION DISTRICT v. UNITED STATES*, 424 U.S. 800 (1976); AND (3) DENYING PLAINTIFFS' COUNTER-MOTION FOR SANCTIONS, DOC. NO. 23

I. INTRODUCTION

This action by *pro se* Plaintiffs Leonard G. Horowitz ("Horowitz") and Sherri Kane ("Kane") (collectively "Plaintiffs") is another attempt by Plaintiffs to have this federal court intervene in an ongoing and long-running dispute between Plaintiffs and Defendant Paul J. Sulla, both individually and in a corporate capacity as a Law Corporation ("Sulla"), among others.[1] The dispute

[1] Besides Sulla, Plaintiffs have named the following as Defendants: "The Eclectic (continued...)

Exhibit "4"

arises out of a foreclosure on a property located in Pahoa, Hawaii, and has been the subject of several past and pending state and federal court actions.[2] *See, e.g.*, *Hester v. Horowitz*, Civ. No. 14-00413 JMS-RLP (D. Haw. 2014) (remanded to the Third Circuit Court of the State of Hawaii on January 7, 2015); *Horowitz v. Sulla*, Civ. No. 13-00500 HG-BMK (D. Haw. 2013) (dismissed for lack of subject matter jurisdiction on March 14, 2014); *Hester v. Horowitz*, No. 3RC14-1-000466 (Haw. 3rd Cir. Ct. 2014); *Hester v. Horowitz*, No. 3CC14-1-000304 (Haw. 3rd Cir. Ct. 2014) (pending);[3] *Horowitz v. Sulla*, No. CAAP-15-0000094 (appeal pending in the Hawaii Intermediate Court of Appeals); and *Hester v. Horowitz*, CAAP-15-0000658 (appeal pending in the Hawaii Intermediate Court of Appeals).[4]

---

[1](...continued)
Center of Universal Flowing Light -- Paulo Roberto Silva E. Souza, a 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;" "Alma C. Ott, an individual;" and "Mother Earth Minerals, a Utah online health products company, d.b.a., Meminerals.com." Doc. No. 1, Compl. at 1.

[2] The court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

[3] Dockets for the two *Hester v. Horowitz* state trial-level cases are available at hoohiki2.courts.state.hi.us/jud/Hoohiki/main.htm.

[4] The appellate court dockets and filings are available at www.courts.state.hi.us/legal_references/records/jims_system_availability.html.

Before the court is (1) Sulla's "Motion to Dismiss 'Verified Complaint for Deprivation of Rights and Injunctive Relief' filed May 19, 2015," Doc. No. 15; (2) Defendant "The Eclectic Center of Universal Flowing Light-Paulo Roberto Silva E. Souza's" Substantive Joinder, Doc. No. 16; and (3) Plaintiffs' "Counter-Motion for Sanctions in Reply to Defendant Paul J. Sulla, Jr.'s Motion to Dismiss." Doc. No. 23. Based on the following, the court GRANTS the Motion to Dismiss, and Substantive Joinder, in PART. The court DISMISSES Counts I, V, VI, VII, VIII, IX, and XIX. The court STAYS the remainder of the action under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976) ("*Colorado River*"). Finally, the court DENIES Plaintiffs' Counter-Motion for Sanctions.

II. BACKGROUND

Plaintiffs' seventy-two page Verified Complaint (along with a Declaration of Horowitz and Kane, an Affidavit of Horowitz, and Exhibits A to S attached to the Verified Complaint) alleges the following twenty counts:

Count I	Deprivation of Civil Rights (42 U.S.C. § 1983)
Count II	Violation of 42 U.S.C. § 1981(a)(b)(c) (Equal Rights Under the Law)
Count III	Violation of 15 U.S.C. §§ 1692(e)(2)(A) *et seq.* (False and Misleading Representations in Debt Collection)

Count IV	Violation of Hawaii Revised Statutes ("HRS") §§ 480-2 and 480-8 (Unfair and Deceptive Trade Practices)
Count V	Violation of 18 U.S.C. § 241 (Conspiracy Against Rights)
Count VI	Violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law)
Count VII	Violation of 18 U.S.C. § 1341 (Mail Fraud)
Count VIII	Violation of 18 U.S.C. § 1343 (Wire Fraud)
Count IX	Violation of 18 U.S.C. § 1342 (Fictitious name)
Count X	Malpractice
Count XI	Fraudulent Transfer of Property (HRS § 651C)
Count XII	Conversion of Real Property
Count XIII	Trespass to Chattels
Count XIV	Defamation and/or Commercial Disparagement
Count XV	Intentional Infliction of Emotional Distress
Count XVI	Wrongful Foreclosure
Count XVII	Civil RICO (18 U.S.C. § 1964)
Count XVIII	Fraud and/or Misrepresentation
Count XIX	Violation of 18 U.S.C. § 514(a) (Fictitious obligations)
Count XX	Slander of Title

These claims arise from the same set of circumstances described in

other cases from this court regarding a judicial and non-judicial foreclosure by Defendant Jason Hester (represented by Sulla) on real property located at 13-3775 Pahoa-Kalapana Road (the "property") in Pahoa, Hawaii. *See generally Horowitz v. Sulla*, 2014 WL 1048798, at *2-3 (D. Haw. Mar. 14, 2014) (Civ. No. 13-00500 HG-BMK) (describing the same background); Doc. No. 46 (*Hester v. Horowitz*, Civ. No. 14-00413 JMS-RLP), Order at 2-7 (similar description).

Without explaining all of the alleged details, the instant Complaint (as well as the other complaints or counterclaims) alleges that Horowitz and/or the "Royal Bloodline of David," with Horowitz as its "Overseer," obtained the property in 2004 from Cecil Loran Lee. Unbenownst to Horowitz, Lee was a felon, and the property was subject to certain liens. The property was subsequently the subject of a judicial foreclosure action in 2005, and (among other proceedings) non-judicial foreclosure, and quiet title/summary possession actions by Hester in 2010, 2011, and 2014. The Complaint alleges that Sulla, Hester, and other persons and entities were involved in a complicated scheme to defraud Plaintiffs and to obtain the property from Horowitz and/or the Royal Bloodline of David. It also alleges (as before) potentially-related libelous or defamatory statements by related parties, including Defendant Alma Ott. More specifically, Hester (represented by Sulla) allegedly wrongfully obtained title to the property

through a 2010 non-judicial foreclosure, leading to quiet title/summary possession proceedings that are now pending against Horowitz in the Third Circuit Court of the State of Hawaii in *Hester v. Horowitz*, No. 3CC14-1-000304 (Haw. 3rd Cir. Ct. 2014) (the "pending state court action").

The pending state court action is the *same* proceeding that Hester filed in state court in August 2014, but which Horowitz and Kane removed to this court in September 2014. *See Hester v. Horowitz*, Civ. No. 14-00413 JMS-RLP (D. Haw. Sept. 12, 2014). This court remanded it to state court on January 8, 2015 for lack of subject matter jurisdiction. *See Hester v. Horowitz*, 2015 WL 127890, at *1 (D. Haw. Jan. 8, 2015). Most important for present purposes, Horowitz and Kane filed a lengthy First Amended Counterclaim against Hester (impleading Sulla and others) in that action while it was pending in this court, amending their counterclaim previously filed in state court. *See* Doc. No. 10 (Civ. No. 14-00413 JMS-RLP). That First Amended Counterclaim alleged over twenty counts (including many of the same counts, such as a civil RICO claim and defamation-related claims, that are alleged against Sulla and/or Defendant Alma Ott in this action) based on the premise that Sulla, Hester, and others schemed to deprive Horowitz and/or the Royal Bloodline of David of the property. And as a result of this court's January 8, 2015 remand, that First Amended Counterclaim was also

remanded to state court as part of that same action.

Essentially, then, the Complaint in this action duplicates the First Amended Counterclaim that is part of the pending state court action. (At minimum, the claims in the Complaint arise out of the same transactions, or series of transactions, at issue in the pending state court action -- and thus could have been asserted as part of that First Amended Counterclaim). *See Kauhane v. Acutron Co.*, 71 Haw. 458, 464, 795 P.2d 276, 279 (1990) (reasoning, for purposes of res judicata, that "[t]o determine whether a litigant is asserting the same claim in a second action, the court must look to whether the 'claim' asserted in the second action arises out of the same transaction, or series of connected transactions, as the 'claim' asserted in the first action") (citing Restatement (Second) of Judgments § 24 (1982)).

Moreover, the state court subsequently dismissed the duplicative First Amended Counterclaim on March 27, 2015. *See* Doc. No. 49 (No. 3CC14-1-000304 (3rd Cir. Ct. Haw.) (*available at* hoohiki1.courts.state.hi.us/jud/Hoohiki/main.htm?spawn=1). In dismissing, the state court adopted "in total the arguments submitted on behalf of Mr. Hester," and "specifically reject[ed] the argument of [Horowitz and Kane] as to any type of tolling of their causes of action." *See id.* (*also available at* www.courts.state.hi.us/legal_references/

records/jims_system_availability.html (*Hester v. Horowitz*, CAAP-15-0000327), Notice of Appeal, Ex. B).[5] Horowitz and Kane attempted to appeal that dismissal to Hawaii's appellate courts, but the appeal was dismissed for lack of appellate jurisdiction because final judgment has not entered. *See Hester v. Horowitz*, 2015 WL 3936947, at *2 (Haw. Ct. App. June 25, 2015). After the state court dismissed the First Amended Counterclaim, Plaintiffs filed this duplicative action on May 19, 2015. Doc. No. 1.

III. DISCUSSION

A. Counts I, V, VI, VII, VIII, IX, and XIX are Dismissed

The court begins by examining its subject matter jurisdiction. Plaintiffs claim federal question jurisdiction, invoking "28 U.S.C. §§ 1331, 1337(a), 1345 and 1355(a); 42 U.S.C. § 1988; and Article III, Section 2, of the Constitution." Doc. No. 1, Compl. ¶ 5.[6] In this regard, the Complaint asserts

[5] Hester had filed a motion to dismiss the First Amended Counterclaim while it was pending in this court, but the motion had not been ruled on when the action was remanded. *See* Doc. No. 17 (Civ. No. 14-00413 JMS-RLP). The state court granted Hester's motion to dismiss seeking the same relief that Hester had sought in his motion to dismiss filed in this court. Essentially, the state court ruled on the motion that was pending in this court when the action was remanded to state court.

[6] Title 28 U.S.C. § 1345 does not apply as it provides federal jurisdiction if the United States is a plaintiff.

several federal causes of action that plainly fail.[7]

Count I is brought under 42 U.S.C. § 1983 for deprivation of civil rights under "color of state law." *See, e.g., West v. Atkins*, 487 U.S. 42, 48 (1988). But none of the Defendants is a state actor, and nothing is alleged that could possibly be construed as joint action with state or county government, or fairly attributed to the government. *See, e.g., Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) ("While generally not applicable to private parties, a § 1983 action can lie against a private party when 'he is a willful participant in joint action with the State or its agents.'") (quoting *Dennis v. Sparks*, 449 U.S. 24, 27 (1980)); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999) ("The ultimate issue in determining whether a person is subject to suit under § 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of federal rights fairly attributable to the [government]?") (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)). Count I is DISMISSED with prejudice.

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[7] The Complaint does not invoke jurisdiction based on diversity of citizenship, 28 U.S.C. § 1332. In any event, complete diversity of citizenship is lacking -- the court previously concluded that Plaintiffs were domiciled in Hawaii, *see Hester v. Horowitz*, 2015 WL 127890, at *2 (D. Haw. Jan. 8, 2015), and several Defendants are alleged to be domiciled in Hawaii. Doc. No. 1, Compl. ¶ 11. Although Plaintiffs now allege they are domiciled in California, *id.* ¶¶ 9-10, the Complaint also alleges that Defendant Hester is a resident of California and "is not a Hawaii domiciled citizen." *Id.* ¶ 12. On its face, the Complaint does not establish complete diversity of citizenship.

Similarly, Counts V, VI, VII, VIII, IX, and XIX all plainly fail to state claims because they are based on criminal statutes that do not provide a civil remedy to a private plaintiff. *See, e.g., See Wilcox v. First Interstate Bank of Oregon, N.A.*, 815 F.2d 522, 533 n.1 (9th Cir. 1987) ("[F]ederal appellate courts hold that there is no private right of action for mail fraud under 18 U.S.C. § 1341."); *Hofelich v. Hawaii*, 2007 WL 4372805, at *8 (D. Haw. Dec. 13, 2007) ("As with § 1341, there is no private right of action for violations of § 1342.") (citation omitted); *Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (affirming the dismissal of a plaintiff's claims under 18 U.S.C. §§ 241 and 242 because they "are criminal statutes that do not give rise to civil liability"); *Horowitz v. Sulla*, 2014 WL 1048798, at *6 (D. Haw. Mar. 14, 2014) ("Plaintiffs, as private citizens, lack standing to bring claims under criminal statutes.") (citation omitted). Accordingly, Counts V, VI, VII, VIII, IX, and XIX are DISMISSED with prejudice.

And Sulla's Motion argues that the other three federal claims (Counts II, III, and XVII) -- to the extent they are otherwise valid -- are barred by statutes of limitation. Count II, alleging a violation of 42 U.S.C. § 1981, is governed by a four-year statute of limitation (*see, e.g., Johnson v. Lucent Techs., Inc.*, 653 F.3d 1000, 1005-06 (9th Cir. 2011), and such claims appear to have accrued in 2009.

Similarly, Count III, alleging violations of the Fair Debt Collection Practices Act, is governed by a one-year limitation period (*see* 15 U.S.C. § 1692k(d)), and such claims appear to be based on the 2010 non-judicial foreclosure, or a demand for payment made in 2012 -- well before the May 19, 2015 filing of this action. Finally, Count XVII (civil RICO) is governed by a four-year limitation period, *see Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987), and it is unclear whether any predicate acts occurred with four years of the filing of the Complaint. *See Living Designs, Inc. v. E.I. Dupont de Nemours and Co.*, 431 F.3d 353, 365 (9th Cir. 2005) ("The limitations period for civil RICO actions begins to run when a plaintiff knows or should know of the injury which is the basis for the action.").

The court, however, does not address those statute of limitations questions here, where it is obvious that this action is an improper, duplicative action that this court should stay in favor of the pending state court proceeding as a matter of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River*, 424 U.S. at 817 (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952)). Indeed, resolving whether those claims are barred by respective statutes of limitation could improperly involve this court in the pending state court action.

B. The Court Stays the Action under *Colorado River*

1. The *Colorado River* Doctrine

Generally, "federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress. This duty is not, however, absolute." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (internal citations omitted). One narrow exception is the *Colorado River* doctrine, where "considerations of 'wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation,' may justify a decision by the district court to stay federal proceedings pending the resolution of concurrent state court proceedings involving the same matter." *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002) (quoting *Colorado River*, 424 U.S. at 817 (other citation omitted)). The *Colorado River* doctrine is "carefully limited," and "courts may refrain from deciding an action . . . only in 'exceptional cases,' and [where] 'the clearest of justifications' support dismissal." *R.R. Street & Co. v. Transport Ins. Co.*, 656 F.3d 966, 978 (9th Cir. 2011).

"To decide whether a particular case presents the exceptional circumstances that warrant a *Colorado River* stay or dismissal, the district court must carefully consider 'both the obligation to exercise jurisdiction and the combination of factors counseling against that exercise.'" *Id.* (quoting *Colorado*

River, 424 U.S. at 818).[8] The Ninth Circuit has identified at least eight factors that a district court should consider in determining whether to stay under the *Colorado River* doctrine:

> (1) which court first assumed jurisdiction over any property at stake;
>
> (2) the inconvenience of the federal forum;
>
> (3) the desire to avoid piecemeal litigation;
>
> (4) the order in which the forums obtained jurisdiction;
>
> (5) whether federal law or state law provides the rule of decision on the merits;
>
> (6) whether the state court proceedings can adequately protect the rights of the federal litigants;
>
> (7) the desire to avoid forum shopping; and
>
> (8) whether the state court proceedings will resolve all issues before the federal court.

Id. at 978-79 (citing *Holder*, 305 F.3d at 870). These factors "are to be applied in

[8] "[D]istrict courts must stay, rather than dismiss, an action when they determine that they should defer to the state court proceedings under *Colorado River*." *Coopers & Lybrand v. Sun-Diamond Growers of CA*, 912 F.2d 1135, 1138 (9th Cir. 1990) (citing *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989)). Nevertheless, "the choice of a stay rather than a dismissal will have no practical effect if all issues are in fact resolved by the state proceeding." *Attwood*, 886 F.2d at 244. "[A] stay is as much a refusal to exercise federal jurisdiction as a dismissal . . . . Thus, the decision to invoke *Colorado River* necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case[.]" *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 28 (1983).

a pragmatic and flexible way, as part of a balancing process rather than as a 'mechanical checklist,'" *Am. Int'l Underwriters, (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1257 (9th Cir. 1988) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)), and "with the balance heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone*, 460 U.S. at 16. The list is not exclusive and "[t]he weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case." *Id.*

2. Application of Standards

a. Whether Either Court Has Assumed Jurisdiction over Any Property

This factor refers to the principle that "the court first assuming jurisdiction over property may exercise that jurisdiction to the exclusion of other courts." *Colorado River*, 424 U.S. at 818 (citations omitted). "Where concurrent proceedings in state and federal court are both suits in rem or quasi in rem, the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other." *Knaefler v. Mack*, 680 F.2d 671, 675 (9th Cir. 1982). Indeed, this is a rule of exclusive jurisdiction: "where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's

jurisdiction." *State Eng'r v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians of Nev.*, 339 F.3d 804, 810 (9th Cir. 2003) (quoting *Kline v. Burke Const. Co.*, 260 U.S. 226, 229 (1922) (emphasis omitted)).

Here, the pending state court suit (filed first) is primarily a quiet title and ejectment action adjudicating foreclosure rights to real property, which would appear to indicate state court jurisdiction -- a federal court ruling might "defeat or impair the state court's jurisdiction" over the property. *Id. Knaefler*, however, held that such ejectment actions and "bills to quiet title" are in personam actions (not in rem actions) under Hawaii law for purposes of applying this jurisdictional principle. 680 F.2d at 676. That is, the state court does not have "exclusive jurisdiction." Given *Knaefler*, this factor is neutral, or, at most, leans slightly in favor of a stay.

b. The Inconvenience of the Federal Forum

This factor favors a stay in favor of the state court proceeding. Both of the main parties (Horowitz and Sulla) live on the Big Island (Hawaii Island), whereas this federal District Court is located in Honolulu, on a different island. The property is located in Pahoa, on the Big Island. Litigating in the Third Circuit Court of the State of Hawaii on the Big Island would be more convenient for the parties, as exemplified by Sulla's objection to a forum in Honolulu. *See, e.g.*, Doc.

No. 30, Def.'s Reply at 3 ("Defendants being forced by Plaintiffs to fly to Honolulu to litigate . . . again and again is oppressive.").

c. Piecemeal Litigation

The avoidance of piecemeal litigation may be the most important factor in a *Colorado River* analysis. *See Moses H. Cone*, 460 U.S. at 16 ("By far the most important factor in our decision to approve the dismissal [in *Colorado River*] was the clear federal policy . . . [of] avoidance of piecemeal adjudication[.]") (quoting *Colorado River*, 424 U.S. at 819). "Piecemeal litigation occurs when different tribunals consider the same issue, thereby duplicating efforts and possibly reaching different results." *R.R. Street*, 656 F.3d at 979 (quoting *Am. Int'l Underwriters*, 843 F.2d at 1258). But "[t]he mere possibility of piecemeal litigation does not constitute an exceptional circumstance;" rather, "the case must raise a special concern about piecemeal litigation, which can be remedied by staying or dismissing the federal proceeding." *Id.* (citations and quotations omitted). One such special concern is whether there is a "'highly interdependent' relationship between the claims in the [f]ederal [a]ction and the claims in the [state action]." *R.R. Street*, 656 F.3d at 979 (quoting *Colorado River*, 424 U.S. at 819).

Here, the danger of piecemeal litigation is high. Indeed, the state

court has *already* dismissed the duplicative First Amended Counterclaim in the pending state action, although the merits of the quiet title/ejectment Complaint are still pending (*i.e.*, there is no final judgment). *See* Doc. No. 49 (No. 3CC14-1-000304 (3rd Cir. Ct. Haw. Mar. 27, 2015)). And "under Hawaii law, res judicata does not apply until there is a final judgment." *Morisada Corp. v. Beidas*, 939 F. Supp. 732, 737 n.1 (D. Haw. 1995) (noting that "[b]oth claim preclusion and issue preclusion require that a final judgment on the merits was rendered.") (citing *Santos v. Hawaii*, 64 Haw. 648, 653, 646 P.2d 962, 966 (1982)). Accordingly, if the action continues in this case, "[t]he chance of duplicative litigation, not to mention inconsistent results, is . . . quite high." *Morisada*, 939 F. Supp. at 737, 738 (applying *Colorado River* and reasoning that '[t]he real danger in this case is the likelihood that some of the questions presented will be resolved by pretrial and prejudgment orders issued well before the judgment becomes final. These preliminary decisions would not be binding . . . in the other forum [creating] a danger of inconsistent results[.]) (quoting *Darling's v. Nissan Motor Corp.*, 863 F. Supp 26, 31 (D. Me. 1994)).

For example, issues regarding statutes of limitation -- which are also at issue in this case with Counts II, III, and XVII -- led *Morisada* to stay a federal action in favor of a pending state court action. *See id.* ("[E]arly rulings concerning

the statute of limitations may also lead to inconsistent results. . . strongly counsel[ing] in favor of . . . [a] stay.") (quoting *Darling's*, 863 F. Supp. at 31). And it certainly appears that the state court based its dismissal, at least in significant part, on statutes of limitations grounds because it specifically rejected arguments as to tolling of causes of action.

Furthermore, the issues in the pending state action -- whether to quiet title to the property, and eject Horowitz -- involve whether the state foreclosure action was proper. Rulings by this court on many of the claims raised in this action against Sulla and Hester (*e.g.*, wrongful foreclosure, conversion, trespass, slander of title) might well have an impact on the merits of the pending state court action. That is, there is a "highly interdependent relationship" between the claims in this action and the state action. *R.R. Street*, 656 F.3d at 979. In short, this factor strongly favors staying the action.

d. The Order in Which the Forums Obtained Jurisdiction

The pending state action was filed first. The court, however, applies this factor "'in a pragmatic, flexible manner with a view to the realities of the case at hand.'" *R.R. Street*, 656 F.3d at 980 (quoting *Moses H. Cone*, 460 U.S. at 21). "Priority should not be measured exclusively by which complaint was filed first, but rather in terms of how much progress has been made in the two actions."

Travelers, 914 F.2d at 1370 (citing *Moses H. Cone*, 460 U.S. at 21) (brackets and internal quotation marks omitted).

Applied here, the unusual procedural posture of this action also favors staying this action. Not only was the pending state action filed first, but it was remanded to state court in January 2015, after Horowitz improperly removed it to federal court. *See Hester*, 2015 WL 127890, at *1. After remand, the state court addressed and dismissed the First Amended Counterclaim on March 27, 2015. Plaintiffs then filed this duplicative federal action on May 19, 2015. Doc. No. 1. Thus, the "state court's progress in [the pending state court action] weighs against jurisdiction [in federal court.]" *R.R. Street*, 656 F.3d at 980. Indeed, permitting this action to continue would be giving Plaintiffs an improper "second bite" at the apple, *after* their action in state court failed, but before res judicata would take effect (given that no final judgment has entered in the state court action).

e. Source of Law

"Although the presence of federal-law issues must always be a major consideration weighing against surrender of jurisdiction, the presence of state-law issues may weigh in favor of that surrender only in some rare circumstances." *R.R. Street*, 656 F.3d at 980 (internal editorial marks and citations omitted).

This factor is neutral. The court has dismissed most of the alleged federal claims, and the remaining claims may be time-barred (or have significant questions remaining as to when claims might have accrued) -- that is, state law claims predominate. But the state law issues do not appear to involve complex questions of state law. These are not "rare circumstances" that weigh in favor of a stay. *See R.R. Street*, 656 F.3d at 980-81 ("Because the cases here involve routine issue of state law, . . . this factor does not weigh against [retaining] jurisdiction.") (internal quotation marks omitted).

f. Adequacy of State Court

"A district court may not stay or dismiss the federal proceeding if the state proceeding cannot adequately protect the rights of the federal litigants. For example, if there is a possibility that the parties will not be able to raise their claims in the state proceeding, a stay or dismissal is inappropriate." *R.R. Street*, 656 F.3d at 981.

This factor weighs in favor of a stay. All of the claims, including the federal claims, are addressable (and in fact, were addressed) in state court. *See, e.g., DeHorney v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 879 F.2d 459, 463 (9th Cir. 1989) (holding that state courts have concurrent jurisdiction over claims under 42 U.S.C. § 1981); 15 U.S.C. § 1692k(d) (providing jurisdiction over a FDCPA claim

"in any appropriate United States district court without regard to the amount in controversy, or *in any other court of competent jurisdiction*") (emphasis added); *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) (holding that state courts have concurrent jurisdiction over civil RICO claims under 18 U.S.C. §§ 1961-1968).

g. Forum Shopping

The next factor to consider is the avoidance of forum shopping -- *i.e.*, "[t]he practice of choosing the most favorable jurisdiction or court in which a claim might be heard." *R.R. Street*, 656 F.3d at 981. The Ninth Circuit "ha[s] affirmed a *Colorado River* stay or dismissal when it was readily apparent that the federal plaintiff was engaged in forum shopping." *Id.* For example, "courts may consider 'the vexatious or reactive nature of either the federal or the state litigation.'" *Id.* (quoting *Moses H. Cone*, 460 U.S. at 17 n.20).

This factor heavily favors a stay. Plaintiffs lost in state court on March 27, 2015, and are trying again in a different forum with this action filed on May 19, 2015. And they are doing so with a dispute that was previously before this very court before it was remanded. That is, Plaintiffs are attempting to assert claims that were, or could have been, part of the court's previous action -- a dispute with claims that were dismissed in the pending state court action (and in a previous action before Judge Gillmor). The current claims are "vexatious or

reactive." *Id.* In short, Plaintiffs are engaged in forum shopping.

h. Parallel Suits

"The final factor . . . is whether the state court proceeding sufficiently parallels the federal proceeding." *Id.* at 982. In general, "exact parallelism" is not required; rather, "the two actions must be 'substantially similar.'" *Id.* (quoting *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1989)). "'[T]he existence of a substantial doubt as to whether the state proceedings will resolve the federal action precludes' a *Colorado River* stay or dismissal." *Id.* (quoting *Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028, 1033 (9th Cir. 2005)). "[A] stay is inappropriate when there is a good chance that the federal court would have to decide the case eventually because the state proceeding will not resolve all of the issues in the federal case." *Id.* at 983 (citation omitted).

This factor also favors a stay. Although the First Amended Counterclaim in the pending state action is not exactly parallel with the Complaint in this action, the two actions are "substantially similar." The claims here arise out of the "same transaction[s], or series of connected transactions," *Kauhane*, 71 Haw. at 464, 795 P.2d at 279, as are at issue in the pending state action (as well as were at issue in the action before Judge Gillmor in *Horowitz v. Sulla*, Civ. No. 13-

00500 HG-BMK).[9] Although the state court rulings are not entitled to *res judicata* effect under Hawaii law (given the absence of a final judgment, and a potential appeal in state court after judgment enters), there is very little (if any) chance that this court will have to address the Complaint in this action after the pending state court action becomes final. *See R.R. Street*, 656 F.3d at 983.

i. Balancing of Factors

The court is mindful that the *Colorado River* doctrine is "carefully limited," and it may "refrain from deciding an action . . . only in 'exceptional cases,' and [where] 'the clearest of justifications' support dismissal." *R.R. Street*, 656 F.3d at 978 (quoting *Colorado River*, 424 U.S. at 818-19). And in deciding whether "exceptional circumstances" exist, the court "must carefully consider 'both the obligation to exercise jurisdiction and the combination of factors counseling against that exercise.'" *Id.* (quoting *Colorado River*, 424 U.S. at 818).

Here, after considering its obligation and balancing the relevant factors, the court STAYS the action under *Colorado River*. This is an "exceptional case." *See Scotts Co. v. Seeds, Inc.*, 688 F.3d 1154, 1159 (9th Cir.

[9] And it also appears that the same or similar claims were (or could have been) made in a 2005 state court action, *Hester v. Horowitz*, No. 05-1-196 (Haw. 3rd Cir. Ct. 2005). *See* Doc. No. 32, Pls.' Reply Ex. B (June 19, 2015 Fourth Amended Final Judgment in *Hester v. Horowitz*, No. 05-1-196).

2012 (requiring a finding of "exceptional circumstances" before invoking *Colorado River*). Weighing the *R.R. Street* factors favors staying the action, and will meet "the goal of 'comprehensive disposition of litigation.'" *R.R. Street*, 656 F.3d at 983 (quoting *Colorado River*, 424 U.S. at 817). At bottom, in this exceptional and unusual case, Plaintiffs are improperly seeking a federal forum after having lost in state court. Through numerous suits (both in state and federal court), Plaintiffs have attempted again and again to defend against the foreclosure-related claims by raising various theories of fraud against Hester, Sulla, and others. They cannot continue to do so here, especially after a decision on the merits by the state court.

C. Plaintiffs' Counter-Motion for Sanctions

Finally, Plaintiffs move for sanctions against Sulla under Federal Rule of Civil Procedure 11. Doc. No. 23. Federal Rule of Civil Procedure 11(b) requires that parties present arguments that are warranted by the law and non-frivolous:

> By presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later advocating it -- an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> [and]
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law[.]

Rule 11 applies to all pleadings, written motions and other papers presented to the court. Fed. R. Civ. P. 11(a). In determining whether a party has violated Rule 11, the court applies an objective reasonableness standard. *G.C. & K.B. Invs, Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003) ("The standard governing both the 'improper purpose' and 'frivolous' inquiries is objective."). A showing of subjective bad faith is not required. *Id.* ("The subjective intent of the movant . . . is of no moment."); *see also Smith v. Ricks*, 31 F.3d 1478, 1488 (9th Cir. 1994) (noting that sanctions cannot be avoided by the "pure heart and empty head" defense).

Plaintiffs argue that Sulla's Motion to Dismiss (1) contains legally frivolous arguments (*e.g.*, raising the *Rooker/Feldman* doctrine, where the state court action is not final, and where the doctrine requires a final judgment), (2) fails to follow certain rules regarding summary judgment, and (3) misrepresents facts in

the record. For example, they contend that "Mr. Sulla's pattern of filing defective pleadings is sanctionable, by reason of the reckless or conscious neglect . . . to perform according to legal practice standards[.]" Doc. No. 32, Pls.' Reply at 5.

Rule 11 sanctions against Sulla are not warranted. Even if Sulla made an argument that was unsuccessful, this does not justify imposition of sanctions. "The mere fact that a claim does not prevail, or that a court ultimately determines that a lawyer's view of the law is wrong, is insufficient to warrant sanctions under any aspect of Rule 11." *In re Kullgren*, 109 B.R. 949, 955 (Bankr. C.D. Cal. 1990) (internal editorial marks and citation omitted). And, in fact, the court dismissed several claims as argued in Sulla's Motion to Dismiss. *See* Doc. No. 15, Defs.' Mot. at 9-10. The Counter-Motion for Sanctions is DENIED.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS the Motion to Dismiss (and Substantive Joinder) in PART -- Counts I, V, VI, VII, VIII, IX, and XIX are DISMISSED. The court STAYS the remainder of the action under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). Finally, the court DENIES Plaintiffs' Counter-Motion for Sanctions.

The Clerk of Court is DIRECTED to close this case administratively. *See, e.g., Penn West Assocs., Inc. v. Cohen*, 371 F.3d 118, 127, 128 (3d Cir. 2004)

(explaining that administrative closings "comprise a familiar, albeit essentially ad hoc, way in which courts remove cases from their active files without making any final adjudication" and are "an administrative convenience which allows the removal of cases from the [docket] in appropriate situations[.]") (citations omitted). The case may be reopened upon notification by the parties that the pending state action has reached final conclusion.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, September 11, 2015.

/s/ J. Michael Seabright
J. Michael Seabright
United States District Judge

Horowitz et al. v. Sulla et al., Civ. No. 15-00186 JMS-BMK, Order (1) Dismissing Counts I, V, VI, VII, VIII, IX, and XIX; (2) Staying Action under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976); and (3) Denying Plaintiffs' Counter-Motion for Sanctions

Miscellaneous Documents:

16-00239 Leonard George Horowitz

Type: bk	Chapter: 13 v	Office: 1 (Honolulu)
Assets: y	Judge: rjf	Case Flag: DebtEd, DeBN, AwCNF

United States Bankruptcy Court

District of Hawaii

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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 29th day of March, 2016 a true and correct copy of the foregoing document(s):

JASON HESTER'S REPLY IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION OF COUNSEL; EXHIBIT "1" – "4"; 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 29th day of March 2016.

/s/ Paul J. Sulla, Jr.

Paul J. Sulla, Jr. (SBN #5398)
Attorney for Movant Jason Hester