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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

LEONARD G. HOROWITZ, an individual; and SHERRI KANE, an individual Plaintiffs, vs. PAUL J. SULLA, JR. an individual; 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, an individual; STEWART TITLE GUARANTY COMPANY; and DOES 1 through 50, Inclusive Defendants	Bankruptcy Case No: 16-00239 Adversarial Proc. No: 16-90015 (Chapter 13) **MEMORANDUM IN REPLY TO DEFENDANTS' MOTION FOR RELIEF FROM STAY [FRBP Rule 362(d)(4)(A) and (g); FOURTEENETH AMENDMENT] and; AFFIDAVIT OF LEONARD G. HOROWITZ; APPENDIX I; EXHIBITS "1" THRU "30."** JUDGE: HONORABLE ROBERT J. FARIS BK TRUSTEE: HONORABLE HOWARD M.S. HU

MEMORANDUM IN REPLY TO DEFENDANTS' MOTION FOR RELIEF FROM STAY

NOW COMES Plaintiff Pro se "Debtor," and Adversary Proceeding "Creditors" LEONARD GEORGE HOROWITZ ("Horowitz") and SHERRI KANE ("Kane")(together "HK"), filing this Opposition to Motion for Relief from Stay by Movants PAUL J. SULLA, JR. ("Sulla"), JASON HESTER ("Hester"), and STEPHEN D. WHITTAKER ("Whittaker) (collectively referred to as

"Movants"). Movants' seek relief from the stay pursuant to 11 U.S.C. § 362 (d)(2)(A) and (B): "(A) the erroneous claim that Debtor Horowitz does not have an equity in such property" held under the stay; and "(B) such property is [allegedly] not necessary to an effective reorganization." Debtor Horowitz and Kane strongly disagree for the following reasons.

BACKGROUND: Underlying this bankruptcy proceeding are two cases that have generated ***conflicting*** **circuit court judgments:** Civ. No. 05-1-0196 (hereafter "Civ. 0196"; **Exhibit 1**) and Civ. No. 14-1-0304, (hereafter "Civ. 0304"; **Exhibit 2**).

Civ. 0196 is a judicial foreclosure case in which Horowitz prevailed and foreclosure was denied**.** Civ. 0196, originally filed in 2005, now features *six* (6) "final judgments." The Fifth Amended Final Judgment was entered on March 4, 2016, as the result of the Fourth Amended Final Judgment, not having been in compliance with *Jenkins v. Cades Schutte Fleming & Wright,* 76 Hawai`i 115, 118, 869 P.2d 1334, 1337 (1994). The case is now under appeal *not with regard to the foreclosure in favor of Horowitz*, but with regard to a vacated jury and fees and costs , as I.C.A .CAAP 16-0000162.[1] In Civ 196, in addition to prevailing on the issue of foreclosure, Defendant Horowitz also prevailed on his counterclaim for misrepresentation and fraud and was awarded damages in the amount of $200,000. Thereafter, Defendant paid the full remainder due on the mortgage less the credit for the award of damages. However in a post judgment motion filed months after Defendant paid the final balloon payment, the Court vacated the award of damages. Vacation of the damages award was based on a Motion for Judgment as Matter of Law asserting that Horowitz did not plead the fraud claim with sufficient particularity – even though that Motion for Judgment as a Matter of Law did not comply with the Hawaii Rules of Civil Procedure Rule 58 prerequisite of the motion having first been made prior to the case being referred to the jury.

Civ. 0304 is a quiet title case filed in 2014 to enforce a non-judicial foreclosure ("NJF") dealing with the same property and same mortgage, the same series of transactions, and the same parties or their privies, despite the contrary lower court decision in Civ. 196 that is now under appeal. The Plaintiff in

[1] A copy of the Notice of Appeal in Civ. 0304 is attached as Exhibit 2 (excluding Exhibits) and the related Statement of Points of Error is attached as Exhibit 3.

Civ. 0304, Jason Hester, is asserting claimed rights of the original mortgagee (now deceased), Cecil Loran Lee, even though he represented his familial status as Lee's nephew, which was later determined to be *false*, and argued the legality of the transfer of Lee's interest based on incorporation documents later found to have been *altered*. Civ. 0304 is now also under appeal, I.C.A. CAAP 16-0000163. Therefore unless the Appellate Court determines that the non-judicial foreclosure/quiet title action trumps the first filed judicial foreclosure, the subject property belongs to Horowitz. Hence *Defendants clearly have an equitable interest in the subject property, their current home*.

In this Motion, Sulla recklessly omits any mention of the Court's decision in 0196 and its precedent status;[2] even though Sulla **was the attorney of record in 0196! [3]** In addition, Mr. Sulla conceals his real party in interest as Mr. Hester's "Grantor" on a "loan" Sulla secured by the subject Property (**Exhibit 11**). The Movants actually lack standing to gain relief of stay since neither Sulla or Hester are holders on the Note. Moreover, the Movants' "Exhibit 'A'," addressed below, is void at best, since it derives from a series of fraudulent transfers.

I. CONTRARY TO MOVANTS' ASSERTIONS, HOROWITZ AND KANE DO HAVE EQUITY IN THE SUBJECT PROPERTY (hereafter, the "Property.")

Movants' Position: That Horowitz has no equitable interest in the Property; Horowitz and his Royal Bloodline of David Ministry (hereafter "RBOD") lost whatever interest they may have had on April 20, 2010 during a non-judicial foreclosure.

Debtor's Response: The Movants conceal the Final Judgment in 0196 filed just three weeks ago ruling just the opposite—that Horowitz made all the necessary payments, established substantial equity, Hester's predecessor committed fraud, foreclosure is denied, Sulla violated HRS § 667-5 in any case making the non-judicial foreclosure void.

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[2] In the event of concurrent cases, based on applicable case law, it is the first filed case, here Civ. 196, that controls *Pacesetter Sys., Inc. v. Medtronic, Inc*., 678 F.2d 93, 94-95 (9th Cir.1982)

[3] Paul Sulla is however not the attorney of record in Civ. 304, having been disqualified from doing so by Intermediate Court Judge Honorable Richard L. Puglisi on January 5, 2015, in *Hester v. Horowitz*, Civ. No. 14-00413, in "Order Granting in Part and Denying in Part Defendants Leonard G. Horowitz and Sherri Kane's Motion to Disqualify Paul J. Sulla, Jr. and Phillip Carey from Representing Sham Plaintiff Jason Hester." Exhibit 15.

1. **Exhibit 4** shows Horowitz's Promissory Note containing Horowitz "Individual" signature evidencing his personal equity interest in the Subject Property as a *co*-signer and guarantor. Exhibit 5 is a copy of the Warranty Deed that was falsely warranted by the claim that the Property was sold without any encumbrances or liens. It was absolutely encumbered.

2. Alternatively, to prove H/K have no equity interest in the Property, the Movants present Exhibit "A" as evidence that Horowitz and RBOD lost their interest to Hester. Exhibit "A" however is one among only nine (9) records the Honorable Court can assess to recognize the scheme of fraudulently conveying Horowitz's Mortgage and Note through a sham trust and Hester to conceal Sulla's real party in interest and steal the Property for Sulla. This chain of records include: (**Exhibits 3-5**) the original Mortgage, Note, and Warranty Deed dated January 15, 2005; (**Exhibits 6-7**) the specious Assignments of Mortgage and Note dated May 15, 2009; (**Exhibit 8**) an expert opinion on the sham and untimely creation of the trust called "THE OFFICE OF OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS" (hereafter, "GOB"), containing *altered and forged Articles of Incorporation*; (**Exhibit 9**) a quitclaim deed transfer from GOB to GOB dated May 3, 2010, following the wrongful non-judicial foreclosure ("NJF") conducted in contempt of due process, res judicata, and <u>*denied foreclosure*</u> in 0196. And Hester was *not a bonafide purchaser for value*;[4] (**Exhibit 10**)

3. In addition, "Exhibit 'A'"—Sulla's quitclaim deed issued to Hester and filed by Sulla on June 14, 2011, *failed to include the <u>complete</u> filings* including, **Exhibit 11**—SULLA's securitization of his own conflicting interest in the Property— *synchronously filed with the specious quitclaim deed*. Sulla's concealment is a mortgage "loan" to Hester secured by the Property.

4. By this conversion scheme, Horowitz's Mortgage and Note, vested originally in the Seller and lender, Cecil Loran Lee, was conveyed without Debtor's knowledge or consent by Attorney Sulla's

[4] HESTER was not a bona fide purchaser because he purchased the property at auction as the only bidder: (1) for a false "credit bid" lacking real value, (2) in bad faith, and (3) without actual or constructive notice of HOROWITZ's rights or compliance with HRS § 667-5 requirements. *See Oakdale Village Group v. Fong,* 43 Cal.App.4th 539, 547, 50 Cal.Rptr.2d 810, 815 (Ct.App.1996)

two (2) judgment-proof "clients"—"substitute plaintiffs" GOB and Hester.

5. Hester and Sulla's Motion portrays a false picture of Horowitz/Kane having no equitable interest in the subject property…. as if Movants have a "final" final judgment in Civ. 0304, and are on the verge of executing that judgment in a writ of ejectment – when that is not the case. There is no finality in Civ. 0304, because it is now under appeal as ICA CAAP 16 – 0000163, and stands in direct conflict with the prior filed Civ. 0196, which is also under appeal.

6. As mentioned, Horowitz's equity interest in the Property is certified by **Exhibit 1,** filed by Judge Ibarra in 0196 only a few weeks ago. Its footnote 2, states:

> "Foreclosure was requested on the basis that [Horowitz et. al.] committed waste on the property, failed to keep insurance on the property, conspiracy, trespass to chattels, and for fraud/misrepresentation, not default on the promissory note and mortgage. **The equities involved with the timely payment, property improvements, balloon payment, and misleading statements by plaintiff [Lee, Hester's predecessor in interest], 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."*** (Emphasis added.)

7. Accordingly, the Movants falsely alleged that: (1) Horowitz/RBOD defaulted on the Note, justifying GOB's NJF; and (2) Horowitz/RBOD lost all equity interest in the Property. In fact, Sulla falsely *Declared* "under penalty of perjury" (on pg. 2 ¶ 8 of Declaration) that **"Debtor continually claims to have an interest in the Property despite repeated Findings, Orders and Judgments in prior State actions that he has none."** (Emphasis added.) Reconciling this obvious disparity between what the Court ruled and what Sulla verifies is left to **Section III**.

8. Compounding evidence of H/K's equity interest in the Property is the Quitclaim Deed filed on July 11, 2012, with the State of Hawaii Bureau of Conveyances, Doc. No. A-4570676, transferring all of RBOD's rights and interest in the Property from RBOD to Horowitz and Kane as Individuals. This was administered more than three months before Horowitz officially dissolved RBOD due to insolvency caused most proximally by Sulla et. al.'s eight (8) years of vexatious litigations by 2012.

9. Defendants argue that Horowitz "has no actual legal, equitable or possessory interest" in the

Property "that could possibly be an asset of the bankruptcy estate." (Page 5. 1st paragraph). To the contrary, Horowitz prevailed in the only judicial foreclosure action wherefrom *res judicata* doctrine issues (i.e., 0196). The trial jury and court awarded Horowitz $200,907.54 that he is still trying to collect through Appeal No. ICA No. CAAP-16-0000162. Now he has more damages, and *several new claims* in the Adversary Proceeding.

II. CONTRARY TO MOVANTS OPPOSITION, THE SUBJECT PROPERTY IS KEY TO THE RE-ORGANIZATION

MOVANTS OPPOSITION: The Subject Property is not necessary to an effective re-organization.

HOROWITZ/KANE'S POSITION: The subject Property is the key to H's re-organization, because Horowitz purchased, and resides in, what was alleged to be a commercial Property. Beyond paying timely and completely on the Note, Horowitz personally invested approximately $600,000 in improvements over a decade to secure prospective economic advantage that Horowitz depends on to pay his creditors.

1. The purpose of a stay in this, as in other bankruptcy cases, is to allow the Debtor the opportunity to reorganize so as to be able to be mitigate the outstanding debts. If this key asset is released from the Stay, the Debtor's ability to re-organize would be undone.

2. Lifting the stay will cause injustice, irreparable harm, and devastating financial losses given the fact that the Property is not only Horowitz's home, and ejectment would cost him tens of thousands of dollars in losses in personal property and fixtures Horowitz would not have time to sell or remove, including aqua-cultural and agricultural properties, plus more money to have to pay for alternative housing; but also the Property is Horowitz's way out of debt. Currently, the Property has the capacity to generate approximately $70,000 per year in contributions from overnight guest and day spa users. This projection is based on on a nearby Bed & Breakfast, Absolute Paradise B&B, that generates approximately $70,000.00 per year, and does not have the health spa facilities featured on the Property.

3. H/K have not widely advertised the Property's commercial capability for three reasons: (1) lacking money that has been tied up paying lawyers for more than ten years, and the stay and victory in the

Adversary Proceeding would enable Horowitz to launch a large advertising campaign as was initially planned; (2) The Movants have caused the title to be slandered, thus jeopardizing ownership of the Property, and free use and enjoyment of the Property. The stay, and victory in the Adversary Proceeding would enable H/K to develop the Property and its commercial success with partners and steady managers and caretakers. So far, under the strain of lawsuits, and fear of losing the Property, steady development and staff have been impossible to maintain; and (3) as the Movants demonstrate by their filing of their Exhibit "B"—old advertisements, some of which were published by Sulla's "client" Lee and pre-date Horowitz's purchase of the Property—precluding any more advertisements that may be used as evidence against H/K by the Movants.

4. The Property has been tied up in litigations since 2005. Initially Horowitz invested nearly $10,000 in Internet advertising to develop an extensive website that required blocking during litigation. Currently, the only advertisement, as the Movants' correctly report, for "vacation renters" that rarely come, and have only contributed approximately $300 per month for the past several years. That money goes very quickly to pay for maintenance fees (e.g., repairing or replacing farm equipment, or gasoline.)

5. Given these matters of fact and contingencies, coupled with the Exhibits presented that evidence the Movants "bad faith" in false Declarations, as listed in Appendix I hereto attached, and "unclean hands" demonstrated by Sulla's complete omission of the 0196 Final Judgment, the best decision the Honorable Court can make to help the Debtor succeed in his re-organization plan is to sua sponte provide Declaratory relief by extending the stay, and better yet, clearing the title in favor of H/K, enabling them to get started immediately with commercializing the Property.

6. Once the Debtor is able to advertise the Property, and open doors that have remained substantially closed to prospective guests, contributions will exceed expenses by $2,000 to $3,000 per month, according to the Chapter 13 plan. That would make it MUCH easier to pay our main creditors, attorney Margaret Wille, and the CHASE credit card company.

III. ATTORNEY SULLA HAS A HISTORY OF INVOLVEMENT IN SWINDLING PARTIES OUT OF THEIR PROPERTY INCLUDING IN THIS CASE.

1. According to **Exhibits 12 thru 15**, Attorney SULLA has demonstrated a pattern of arguing frivolously and recklessly to justify fraud and unfair and deceptive trade. Sulla was Publicly Censured by the Supreme Court of Hawaii for such pleading to defraud the US Tax Court in *Takaba*;[5] (**Exhibit 12)** was disqualified as a necessary witness for filing at least one fraudulent tax return with defendant *Travis*[6]**;** (**Exhibit 13)**; *indicted* for complicity in money laundering using another sham "religious" trust scheme in *United States vs. Arthur Lee Ong*, Cr. No. 09-00398 DAE;[7] (**Exhibit 14**) and disqualified again as a necessary witness at trial in *Hester v. Horowitz et. al*., Civ. No. 14-00413 JMS-RLP, wherein the disqualification of Sulla justified the trial, (**Exhibit 15**) but the remand resulted in no trial due to the manners in which Sulla and Whittaker defrauded the Court in 0304 to gain their Writ of Ejectment.

2. In addition, Sulla similarly conceals his real party in interest in this case, as he did in both State cases, in two ways: (1) as Hester's financier (and mortgagee); and (2) as Horowitz's commercial competitor, having incorporated a competing health spa neighboring the Subject Property in 2008, when Lee lost the Property to Horowitz.[8]

3. **Exhibit 16** evidences Sulla's Articles of Incorporation for Hawaiian Sanctuary, Inc., filed on December 11, 2008 with DCCA for a non-profit religious commercial property descriptively identical to Horowitz's vision for the Subject Property published in 2004.

IV. THE MOVANTS CANNOT MEET THE BURDEN FOR RELIEF OF STAY BECAUSE THEY CONCEAL SULLA AS THE REAL PARTY IN INTEREST AND LACK STANDING.

1. In bankruptcy courts, "[t]wo . . . procedures stand in the way of granting the motion for relief from

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[5] *Takaba v. Comm'r,* 119 T.C. 285, 295, 2002 WL 31818000.

[6] *United States vs. Bruce Robert Travis*, U.S. Court of Appeals, Ninth Circuit. No. 10-15518.

[7] *United States vs. Arthur Lee Ong*, Cr. No. 09-00398 DAE, in which SULLA was named as a co-conspirator in the "Superseding Indictment" (issued July 28, 2010).

[8] SULLA neglects the Final Judgment in 0196 motivated by his desire for the Property—a one-of-a-kind geothermal estate. SULLA operates a competing enterprise; competing unfairly and deceptively to acquire the natural health and agri-rich real estate by hook-or-by-crook. **Exhibit 16** records Mr. SULLA's incorporation of one of his competing "non-denominational religious organization[s]" featuring a "healing arts community" and health spa, operating less than 3 miles from the subject Property that is part of SULLA's extensive racketeering enterprise.

stay. . . . The first procedural problem arises from the real party in interest rule." Op. cit., *Kang Jin Hwang*. Rule 17 of the Federal Rules of Civil Procedure provides: "An action must be prosecuted in the name of the real party in interest." The purpose of this rule is to require that an action be brought "in the name of the party who possesses the substantive right being asserted under the applicable law...." 6A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1541 (1990). But to date, Sulla has concealed his real party in interest, and conflicting interest secured by his mortgage to Hester (**Exhibit 11)**. Sulla hoodwinked the State court(s) by concealing his fraudulent transfers of the Mortgage and Notes to GOB, to railroad the Plaintiffs in contempt of the final judgment in 0196. This is how the Movant obtained his Writ of Ejectment that Sulla is biting-at-the-bit to execute.[9] Sulla was not joined as a real party in interest in the State cases; despite Plaintiffs' joinder motion.

2. Accordingly, the Movants are precluded from bringing this Motion, for lack of standing, as explained in *Kang Jin Hwang, Id*. "To qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *Davis v. Fed. Election Comm'n,* U.S., 128 S.Ct. 2759, 2768, 171 L.Ed.2d 737 (2008). But H/K have done nothing wrong or harmful to the Movants. There is nothing "concrete" about the Movants claims against H/K or the estate. Their entire case is based on hearsay, forged and altered documents, and falsehoods. The Movants cannot prove either Hester's standing nor H/K's trespass.

3. Hester's standing is precluded in the instant case—a defect that cannot be waived.[10]

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[9] Quoting the Court in *Kang Jin Hwang (Op. cit.)* "The analysis making the real party in interest rule applicable to relief from stay motions is complex. Rule 4001 provides: "A motion for relief from an automatic stay ... shall be made in accordance with Rule 9014," which provides procedural rules for contested matters. Rule 9014 provides, in turn, that many of the rules for adversary proceedings apply . . . to contested matters. Among the adversary proceedings rules incorporated by reference in Rule 9014 is Rule 7017, which provides: "Rule 17 F.R.Civ.P. applies in adversary proceedings...." We thereby arrive at IndyMac's obligation to comply with Rule 17 [real party in interest rule]." Thus, the Motion must be denied, since relief from stay requires a significant procedural violation, concealing real party in interest SULLA.

[10] Standing is a "threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin,* 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Hence, "a defect in standing cannot be waived; it must be raised, either by the parties or by the court, whenever it becomes apparent." *U.S. v. AVX Corp.,* 962 F.2d 108, 116 n. 7 (1st Cir.1992). The inquiry into

4. This case is similar to *In re Hayes,* 393 B.R. 259 (Bankr.D.Mass.2008), "where the movant seeking relief from stay failed to show that it ever had any interest in the note at issue. In *Hayes*, the court found that the movant lacked standing altogether to bring the motion because it failed to show that the note was ever transferred to it, and thus it had no rights of its own to assert." Quoted in *Kang Jin Hwang, referencing id.* at 266-68; *accord, In re Maisel,* 378 B.R. 19, 20-22 (Bankr.D.Mass.2007). In this instant case, the Mortgage should have been released following Horowitz's balloon payment on February 27, 2009, but Lee and Sulla evaded notices and services to do so. Exhibit 25 Court Minutes recorded Sulla telling the Probate Court that "LEE DOESN'T OWN ANYMORE" of the estate, and 'LEE IS CERTAINLY OUT OF IT" further evidencing Hester has no standing to claim anything.[11] Nor is the Mortgage and Note anything but *void* according to Exhibits 1 and 8. (See: paragraph below.) The Note was transferred to GOB on May 15, 2009, without Horowitz's consent, when GOB did not even legally exist. If it wasn't paid, or voided by fraud, the Note would be held in the probate estate of deceased Seller Lee, and Horowitz would owe Lee's sisters or son; but certainly not Hester, any deficiency.[11] *Thus,* ***Hester has no legal standing, no legal possession of the Note, and no legal title or entitlement.*** Hester cannot disprove that he is the "holder-in-due-course" of a void title derived from Sulla's fraudulent Assignments. That is why Sulla, for years, has evaded these proofs through the courts.

5. The aforementioned facts, verified by Affidavit and Exhibits attached, factually and legally *void* the Movants' standing to plead for relief of stay. Hester cannot "show that [he] is the holder of the Note and the Mortgage at the time the complaint was filed." *In re Kang Jin Hwang*, 396 BR 757 - Bankr. Court, CD California 2008, *In re Foreclosure Cases,* 521 F.Supp.2d 650, 653 (S.D.Ohio 2007)

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standing "involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). "In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a `case or controversy' between himself and the defendant within the meaning of Art. III," *Id.*

[11] Mr. Sulla informed the Probate Court in 3LP 09-1-000166 on December 11, 2009, that "Cecil Lee doesn't own anymore [of the estate], due to foreclosure. No judgment can be enforced and Mr. Lee is certainly out of it." Yet, Mr. Sulla continued to make claims on Horowitz on behalf of Lee's estate and the fraudulent GOB trust.

V. THE MOVANTS HAVE ALREADY VIOLATED THE STAY TWICE: SANCTIONS

1. 11 USC Chapter 13 Bankruptcy Code § 362 provides an "Automatic stay" of this action,

> stating in relevant part as follows:
>
> 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—
>
> (3) 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; . . .
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; . . .

2. The Debtor filed Chapter 13 bankruptcy on March 9, 2016. The next morning, on March 10, 2016, the Clerk of the Court mailed Notice of Bankruptcy to the Defendants. Similarly, on the Morning of Thursday, March 10, 2016, the Debtor filed his Notice Ex Officio in the State Circuit Court, and immediately mailed his Notices of the Bankruptcy to Hester's two attorneys and H/K's attorney Margaret Wille, each addressed on the Big Island, one-day mail service from Honolulu. (**Exhibit 28**)

3. Within hours of receiving said Notice, and after 5PM HST on Friday, March 11, 2016, attorney Sulla violated § 362 (6) by filed a "Request for Fees and Costs" to further indebt the Plaintiff in the State's Intermediate Court of Appeals in case No. CAAP-15-0000094; not only to collect a $7,894.60 judgment in Civ. No. 14-1-0173, but to add nearly $10,000 more in fees and costs. (**Exhibit 30**)

4. More damaging, on Saturday night, March 12, 2016, Sulla served, or caused to be served, a *Writ of Ejectment* upon the Plaintiff. (**Exhibit 3**) This Writ was taped to the front gate of the Plaintiff's Property around nightfall. This Writ was stamped by the lower court eleven (11) days earlier, on March 1, 2016; but *concealed* from the Plaintiffs and their lawyer, Margaret Wille, in efforts to: (a) delay the Plaintiffs filing of a timely Emergency Stay and appeal in Civ. No. 14-1-0304; (b) deprive the Plaintiff of his due process rights to adjudicate on the merits and defend against wrongful foreclosure bearing on fraudulent transfers of the fully-paid Mortgage and Note and related malicious prosecution in 0196; (c) circumvent final judgment(s) denying foreclosure in that eleven-year (11) old case, 0196, that is the primary cause of the Plaintiff's bankruptcy owing to the costs of litigations administered by Sulla; and (d) to steal the Plaintiff's real and personal properties "under color of law."

5. The Defendants' actions necessitated Plaintiffs' attorney Wille to file the attached Motion for

Emergency Stay and Memorandum to protect H/K's Property and mitigate further damage and severe distress to the Plaintiffs, at the cost of $3,900 dollars more in attorneys fees. (**Exhibits 29)**

6. The Movants' terrorization of H/K, and reckless disregard of laws, court rules, and malicious intent to financially damage and purposely distress H/K, is clearly and convincing evidenced by the aforementioned chain of records. (**Exhibits 28 thru 30**)

7. IN RE SOLLEY, Bankr. Court, ND California 2012, the matter of willful automatic stay violations by creditors is addressed along with the court's ruling to mitigate damages when appropriate. The Movants, having twice violated § 362, in accordance with case law (Id), are liable for sanctions pursuant to H/K's financial damages and severe distress.

VI. THE MOVANTS' ARE UNWORTHY OF RELIEF AS THEIR CLAIMED INTEREST IN THE PROPERTY DERIVES FROM VIOLATIONS OF HRS §§ 667-5; 480-2; AND 480D,

1. How can anyone foreclose without knowing the amount of any default? Ask Sulla!

2. The six (6) final judgment(s) in 0196, plus the case going under appeal for the jury award and fees and costs, make it perfectly clear that either: (a) the seller's fraud voided the debt contract (i.e., the Note); (b) the Note was paid in full anyway by the Debtor; (c) any claimed deficiency could have and should have been brought to the court, and not attempted to be collected non-judicially by NJF; and (d) that any possible remaining debt would only be known following the appellate courts' determinations.

3. Consequently, while Horowitz was repeatedly asking Sulla to provide a release of Mortgage, and Sulla countered with claiming he was withholding the release due to default; and when Horowitz then asked for the default amount, and Sulla replied he found the math "confusing," Sulla's adherence to the strict requirements of HRS § 667-5 were violated, because that law requires debt collectors foreclosing by power of sale to inform the debtor what the amount of their default is. Sulla could not have known this amount on or before April 20, 2010, when Sulla foreclosed on the contract by NJF.

4. Accordingly, the "**doctrine of impossibility**" of performance applies to this contract case where Horowitz rightfully excused his alleged nonperformance of payment on the contract (i.e., Note)

because: (1) no actual default was known, nor could have been known, because there was no default--all payments due were made time, as certified by the 0196 court in **Exhibit 1**, footnote 2; and (b) the contract had already been either voided by fraud or by the Note's payment in full. *Mission Indians v. American Management & Amusement*, 840 F. 2d 1394 - Court of Appeals, 9th Circuit 1987 at 1402.

5. Moreover, it was **unconscionable** for Sulla to have demanded Horowitz pay some unknown amount, and then, without any rhyme or legal reason, foreclose on the full amount of the original Note, neglecting to credit Horowitz for any of his 60 payments made at $2,333.33 per month, and then $154,204.13 more paid by the final balloon payments made in Feb., 2009. Peoplesoft USA, Inc. v. Softeck, Inc., 227 F. Supp. 2d 1116 - Dist. Court, ND California 2002

6. Surely Sulla's actions did not comport with HRS §§480-2, nor 480D.

7. *IN RE KEKAUOHA-ALISA*, Bankr. Court, D. Hawaii 2012, the Honorable Bankruptcy Judge Faris ruled "that the defendants ('Lenders') failed to give a proper public announcement" in "a nonjudicial mortgage foreclosure sale." The Court "held that this violated the applicable foreclosure statute and the contract between the mortgagee and the mortgagor, and that it constituted an unfair or deceptive act or practice in violation of Haw. Rev. Stat. § 480-2." (These same violations are claimed and evidenced in this Adversary Proceeding.) The Honorable Judge "invalidated the foreclosure sale, enjoined the Lenders to reconvey the property to the plaintiff mortgagor ("Debtor") subject to the mortgage, and awarded the Debtor damages of $417,761.66 plus postjudgment rental value, attorneys' fees, and costs. The damages basically consisted of the value of the Debtor's equity in the property, the fair rental value of the property while the Debtor was wrongfully deprived of it, and the attorneys' fees incurred by the Debtor in the Lender's ejectment proceeding, trebled in accordance with Haw. Rev. Stat. § 480-13." In this instant case, the Plaintiffs pray for the similar justice.

VII. CONTRARY TO MOVANTS' POSITION, THE ROOKER FELDMAN ("RF") DOCTRINE DOES NOT APPLY IN THIS CASE.

1. The RF doctrine "precludes lower federal courts 'from exercising appellate jurisdiction over final state-court judgments' because such appellate jurisdiction rests solely with the United States

Supreme Court.'" *Madera v. Ameriquest Mortgage Co*. (In re Madera), 586 F.3d 228, 232 (3d Cir. 2009) (remarking that the doctrine applies "equally to federal bankruptcy courts").

MOVANTS OPPOSITION: Neglect the 0304 appeal. The 0304 "final judgment" precludes HK's interest in the Property, and the bankruptcy court cannot go against the final judgment in State.

DEBTOR'S POSITION: The 0304 "final judgment" is not "final" since it is under appeal for several clearly erroneous decisions precluding H/K's standing, due process, right to trial on the merits; for being void, in gross conflict with the first filed case's "final judgment," and for violating State and federal statutes. In addition, the following authorities provide cause to controvert RF in this case:

1. There is obviously something very "exceptional" ongoing in this case. Both State cases 0196 and 0304 are in appeal, after six (6) "final" judgments in 0196, and a grossly conflicting "final" judgment issuing in the same Court in 0304, H/K have sought refuge in this federal bankruptcy court wherein, now, the Movants have violated the automatic stay twice within the first week, and collaterally attacked the necessity for an extended stay.

2. Besides a new TILA claim precluding Rooker-Feldman,[12] the doctrine does not and cannot apply since Plaintiffs: (1) now bring a RICO claim; (2) are State Court "winners" not "losers" in the "first-filed" case 0196; (3) now collaterally attack the 0304 final state court judgment on grounds that it is clearly *void* for violating the Fourteenth Amendment—the State court had no facts before it to decide the matter since HESTER provided no affidavits, never testified, and magically precluded the Plaintiffs' standing and "day in court."[13]

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[12] (in re Wright, supra. At 708; In re Porter v. Mid-Penn Consumer Discount Co., 961 F,2d 1066, 1078 (3d. Cir. 1992); Smith v. Fidelity Consumer Discount Co., Supra. At 898

[13] Additionally, the defrauded court chose not to join a known indispensible party—SULLA, thus proceeded without personal jurisdiction and subject matter jurisdiction. *Margoles v. Johns*, 660 F.2d 291, 295 (7th Cir. 1981). Despite several opportunities to reconsider, and grant a stay, the 0304 Court's remained willfully blind to new evidence of forgery and bribery of WHITTAKER by SULLA, the fraudulent Assignments of the Mortgage and Notes, and deprivation of rights to due process. The new claims, causes of actions, and parties were never a part of the State actions, including racketeering, malpractice, and 480-2, 480D and 485A violations by co-counsel SULLA and/or WHITTAKER, with neither of these Defendants joined as parties in any State court action to date. The Fifth, Sixth, Seventh, Ninth and Tenths Circuits have all held that the Rooker-Feldman doctrine does not bar an original, separate independent action that could be brought as a remedy in equity collaterally attacking a final state court judgment that is *void*. Op. cit., *Brown v. Bowman*.

3. "[A] state court judgment triggers a fraud [and] deception exception . . . only where such conduct 'deceived the Court into a wrong decree.'" The "wrong decree" of 0304—the Writ of Ejectment—obtained by extrinsic and intrinsic fraud upon the court, deprivation of Plaintiffs' due process rights, neglecting res judicata and foreclosure denied rulings in 0196 (the "first filed" and "last determined" case) is obviously a "wrong decree."[14]

4. The Plaintiffs have claimed damages from the Movants' complicity in organized crime (Civil RICO) administered chiefly by Sulla who acted with Lee as Hester's predecessor-in-interest, Lee. (**Exhibits 6 - 10**) Lee defrauded Horowitz in the purchase and sale of the Property, and concealed encumbrances in 2003, before State litigations began. Quoting Iqbal v. Patel, 780 F. 3d 728 - Court of Appeals, 7th Circuit 2015: "[T]he Plaintiff . . . contend[s] that he was injured, out of court, by being 'set up' by [Lee, aided and abetted by Sulla, Hester, and later Whittaker] . . . so that they could take over his business and reap the profits [Horowitz] anticipated. Because [Plaintiffs] seeks damages for activity that [the Debtor alleges] predates the state litigation and caused injury independently of it, **the Rooker–Feldman ["RF"] doctrine does not block this suit**." [Emphasis added.]

5. In *Anderson v. Anderson*, 2014 U.S. App. LEXIS 2777 (7th Cir. Feb. 14, 2014), a 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** . . . .' *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 291 (2005) (emphasis added). In this instant case, the Plaintiffs *prevailed* in the "first-filed" case (0196) and are highly likely to prevail in 0304 as well for points of error cited in Exhibit 19.

[14] *In re Sun Valley Foods Co*., 801 F.2d at 189); Appellants' Final Brief on Appeal at 26, Twin city Fire Ins. Co. v. Adkins, 400 F.3d 293 (6th Cir. 2005) (No. 04-3204) (quoting *Resolute Ins. Co. v. North Carolina*, 397 F.2d 586, 589 (4th Cir. 1960).

6. 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) **Exhibits 18 thru 20** evidence the Plaintiffs were *precluded* in 0304 from having due process and a trial on the merits, and precluded from bringing their counterclaims. (**Exhibits 19 and 20**) Summary Judgment was committed in gross violation of rules and statutes. This gross injustice generated The Movant's Writ of Ejectment. The Seventh Circuit found the ***Rooker-Feldman*** rule **does not bar a federal suit that seeks damages for "the unlawful conduct that misled the [state] court into issuing the judgment."** *Brown v. Bowman*, 668 F.3d 437, 442 (7th Cir. 2012). In other cases, ***Rooker-Feldman*** **did not bar claims alleging the defendants "so far succeeded in corrupting the state judicial process as to obtain a favorable judgment."**[15]

We, the Plaintiffs, declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct to the best of our knowledge.

Respectfully submitted, DATED: March 28, 2016

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LEONARD G. HOROWITZ, pro se SHERRI KANE, pro se

[15] *Loubser v. Thacker*, 440 F.3d 439, 441-42 (7th Cir. 2006) (citing *Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995)). [Emphasis added.]