Paul J. Sulla, Jr. (SBN 5398)
PO Box 5258
Hilo, HI 96720
Telephone: 808/933-3600
Fax: 808/933-3601
E-mail: psulla@aloha.net

*Defendant Pro Se* and as Attorney for Defendant
Paul J. Sulla Jr., Attorney At Law
A Law Corporation

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

| | |
|---|---|
| LEONARD G. HOROWITZ, an Individual; SHERRI KANE, an Individual<br><br>Plaintiffs,<br><br>vs.<br><br>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 THE OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS; ALMA C. OTT, an individual; MOTHER EARTH MINERALS, a Utah online health products company, d.b.a., MEMINERALS.com; and DOES 1 through 50, inclusive,<br><br>Defendants. | CIVIL NO.: CV15-00186 JMS-BMK<br><br>**DEFENDANTS PAUL J. SULLA, JR. and PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION'S MOTION TO DISMISS "VERIFIED COMPLAINT FOR DEPRIVATION OF RIGHTS AND INJUNCTIVE RELIEF" FILED MAY 19, 2015 [CM/ECF Doc. No. 1]**<br><br>**Judge: Hon. J. Michael Seabright**<br><br>**Trial Date Not Set** |

**DEFENDANTS PAUL J. SULLA, JR. and PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION'S MOTION TO DISMISS "VERIFIED COMPLAINT FOR DEPRIVATION OF RIGHTS AND INJUNCTIVE RELIEF" FILED MAY 19, 2015**

COMES NOW, the Defendant PAUL J. SULLA, JR. appearing pro se, and as attorney for Defendant PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION, respectfully moves this court for an order dismissing Plaintiffs LEONARD G. HOROWITZ and SHERRI KANE's Complaint filed on May 19, 2015 for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

Plaintiffs have filed this action in a vexatious attempt to harm and harass Defendants as punishment against Defendant Jason Hester and his counsel for successfully pursuing an order to quiet title on Plaintiffs' current residence. Because this suit is meritless and brought for an improper purpose, Defendants not only request that the Complaint be dismissed but that the Court find Plaintiffs to be vexatious litigants. Plaintiffs have filed the present Complaint in an attempt to somehow cause a reversal of a non-judicial foreclosure of a mortgage loan and a reversal of the Hawaii Circuit Court's ruling quieting title in favor of --and granting possession of Plaintiffs' current residence to-- Defendant Sulla's client, Co-Defendant Jason Hester. See *Hester v. Horowitz et al.*, Hawaii Circuit Court for the Third Circuit, Case No. 3CC14-1-000304.[1]

In a shotgun approach, Plaintiffs' Complaint asserts twenty causes of action. On their face, all of the claims fail as a matter of law and most are state law claims that have already been rejected and dismissed in state court. No viable federal claims exist in the complaint and thus it appears that this Complaint is in federal court purely based on alleged diversity jurisdiction. However, as the Memorandum in Support of this Motion (attached) shows, there is no diversity in this case and as such, this court lacks subject matter jurisdiction.

Even if the Court finds that it has jurisdiction in this case, Plaintiffs' claims do not state a cognizable claim for relief or are pled in such a vague, conclusory, and/or convoluted

[1] Much of the very same claims and arguments in Plaintiffs' Complaint were presented as counterclaims in Hester v. Horowitz and those counterclaims were evaluated and dismissed without leave to amend by the Hawaii Circuit Court for the Third Circuit.

fashion that they are impossible to decipher. Furthermore, all of Plaintiffs' allegations sounding in fraud fall far short of satisfying the heightened pleading requirements of FRCP Rule 9(b). Thus, dismissal is appropriate. Because of Plaintiffs' vexatious record as pro se Plaintiffs and Counterclaim Plaintiffs in prior cases in this and other courts, the Moving Defendant ask that the Complaint be dismissed with prejudice. Defendants further seek a attorneys' fees and costs against Plaintiffs as a sanction for their frivolous and vexatious Complaint.

This motion is brought pursuant to FRCP Rules 9(b), 12(b)(1), and 12(b)(6) and is supported by the attached memorandum, and any evidence or arguments as may be presented at the hearing on this matter.

DATED: Hilo, Hawaii June 9, 2015.

/s/ Paul J. Sulla, Jr.

_____

Paul J. Sulla, Jr., Pro Se Defendant and as
Attorney for Defendant
Paul J. Sulla Jr., Attorney at Law
A Law Corporation

Paul J. Sulla, Jr. (SBN 5398)
PO Box 5258
Hilo, HI 96720
Telephone: 808/933-3600
Fax: 808/933-3601
E-mail: psulla@aloha.net

*Pro Se Defendant* and as Attorney for Defendant
Paul J. Sulla Jr., Attorney At Law
A Law Corporation

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| LEONARD G. HOROWITZ, an Individual; SHERRI KANE, an Individual<br><br>Plaintiffs,<br><br>vs.<br><br>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 THE OVERSEER, A CORPORATE SOLE AND ITS SUCCESSOR, OVER AND FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS; ALMA C. OTT, an individual; MOTHER EARTH MINERALS, a Utah online health products company, d.b.a., MEMINERALS.com; and DOES 1 through 50, inclusive,<br><br>Defendants. | CIVIL NO.: CV15-00186 JMS-BMK<br><br>**CERTIFICATE OF SERVICE** |

**CERTIFICATE OF SERVICE**

I hereby certify that, on the dates and by the methods of service noted below, a true and correct copy of the foregoing:

**DEFENDANTS PAUL J. SULLA, JR. and PAUL J. SULLA JR., ATTORNEY AT LAW A LAW CORPORATION'S MOTION TO DISMISS "VERIFIED COMPLAINT FOR DEPRIVATION OF RIGHTS AND INJUNCTIVE RELIEF" FILED MAY 19, 2015 [CM/ECF Doc. No. 1]**

**MEMORANDUM IN SUPPORT OF MOTION**

was served via the Court's CM/ECF electronic filing system to:

Leonard G. Horowitz
editor@medicalveritas.org
*Pro se Plaintiff*

Sherri Kane
SherriKane@gmail.com
*Pro se Plaintiff*

DATED: Hilo, Hawaii June 15, 2015.

/s/ Paul J. Sulla, Jr.

_____
Paul J. Sulla, Jr.

Paul J. Sulla, Jr. (SBN 5398)
PO Box 5258
Hilo, HI 96720
Telephone: 808/933-3600
Fax: 808/933-3601

Pro Se and Attorney for
Paul J. Sulla Jr., Attorney At Law
A Law Corporation

IN THE UNITED STATES DISTRICT COURT

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**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

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## INTRODUCTION

The Complaint filed herein on May 19, 2015 (the "Complaint") by Plaintiffs Leonard G. Horowitz ("Horowitz") and Sherri Kane ("Kane") (collectively, "Plaintiffs") employs a shot-gun approach to pleading for twenty claims against Defendants Attorney Paul Sulla, Paul Sulla's law firm (the "Moving Defendants"), Jason Hester, a religious organization led by Mr. Hester named "Revitalize, a Gospel of Believers", and other Defendants that Plaintiffs appear to blame for unrelated wrongs. Plaintiffs' claims stem from a nonjudicial foreclosure of property that Plaintiffs reside on but never owned. Plaintiffs not only lack standing to assert their claims, the claims are also time-barred, precluded by the Rooker-Feldman Doctrine, insufficiently pled, and most have been previously dismissed at least once by this or the Hawaii Circuit Court as set forth more fully below.

Plaintiffs fail to properly allege any federal causes of action and fail to show that there is diversity jurisdiction in this case. Plaintiffs' naked assertions, particularly those sounding in fraud, do not satisfy the pleading requirements of Federal Rules of Civil Procedure ("FRCP") Rule 9. Because Plaintiffs have failed to state claims against Defendants, the Complaint should be dismissed as a matter of law under FRCP 12(b)(6). Because Plaintiffs lack standing to assert their claims, the Complaint is also subject to dismissal under FRCP Rule 12(b)(1). Plaintiffs Complaint is a work of fiction and fantasy that is internally inconsistent to the point of absurdity and which misrepresents provable and known public facts, including a recent state court rulings quieting title to the Subject Property in favor of Defendant Jason Hester. For reasons stated above and below Plaintiffs Complaint should not only be dismissed, it should be dismissed with prejudice and Plaintiffs should be sanctioned.

## RELEVANT BACKGROUND FACTS

Plaintiffs are professional conspiracy theorists who currently reside without permission on property owned by Defendant Jason Hester.[1] Plaintiffs were sued for quiet title, summary possession, and trespass by Paul J. Sulla, Jr. for Co-Defendant Jason Hester in the State of Hawaii Third Circuit Court Case *Hester v. Horowitz et al.*, Case No. 14-1-

[1] See, e.g. http://www.sherrikane.com , http://drlenhorowitz.com/, http://www.waronwethepeople.com/sherri-kane/ , http://www.waronwethepeople.com/ , and http://www.waronwethepeople.com/dr-leonard-horowitz/ .

0304, where an Order granting Summary Judgment on the Quiet Title and Tenancy by Sufferance claims against the present Plaintiffs was granted and a writ of possession is currently pending service to evict Plaintiffs from their current residence.[2] The present Complaint herein appears to be an attempt by Plaintiffs to have the U.S. District Court supplant its judgement for that of the Hawaii Circuit Court for the Third Circuit, which is disallowed under the Rooker-Feldman Doctrine[3] as discussed more fully below.

Plaintiffs believe that somehow the relatively simple underlying state court eviction and foreclosure matter *Hester v. Horowitz et al.*, Case No. 14-1-0304 ties into their many colorful conspiracy theories against the government and pharmaceutical companies and therefore their federal claims are appropriate. However, Plaintiffs are tragically mistaken. There has been no finding of fraud or illegality in the foreclosure and subsequent quiet title and eviction actions by the state court and thus Plaintiffs' Complaint, which relies on its conclusory allegation of fraud and illegality in the foreclosure sale of the Subject Property, is fundamentally and incurably flawed. To the extent that Plaintiffs allege unrelated illegality by the Moving Defendants, Plaintiffs are likewise mistaken as to both the facts and the law .[4]

There exist numerous state and federal cases where Plaintiff Horowitz, most often appearing pro se, files meritless claims or counterclaims which are ultimately dismissed.

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[2] The current status of *Hester v. Horowitz et al.*, Case No. 14-1-0304 is not in dispute. Plaintiffs admit on page 5, paragraph 6 and Ex. "E" of their Memorandum in Support of Request for Leave to Serve by Publication [ECF Doc. #4-1] filed on June 1, 2015 herein the current status and claims of the parallel State Court action.

[3] See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413(1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The Rooker-Feldman Doctrine holds that lower United States federal courts—i.e., federal courts other than the Supreme Court—should not sit in direct review of state court decisions unless Congress has specifically authorized such relief. In short, federal courts below the Supreme Court must not become a court of appeals for state court decisions. The state court plaintiff has to find a state court remedy, or obtain relief from the U.S. Supreme Court.

[4] E.g. While not at all relevant to the case, Plaintiffs allege unlawful church activities by the Moving Defendants, referring to a religion that the U.S. Supreme Court has already evaluated and found to be protected under the U.S. Constitution in *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d 1210 (D. Ore. 2009), "guided by the unanimous decision of the United States Supreme Court in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006)(holding that the federal government could not ban the Daime tea when used for religious purposes).

Plaintiffs have attempted to litigate the same legal issues over and over again.[5] Although it is unclear from the Complaint, it appears that Plaintiffs' twenty causes of action are related to: 1) the foreclosure of the Property that Plaintiff Horowitz currently resides on and, 2) Defendants' subsequent efforts to evict Plaintiffs from the Property, which was never owned by Plaintiffs but was owned by the "Royal Bloodline of David" and is now owned by co-defendant Jason Hester. Plaintiffs' Complaint does not distinguish which Plaintiffs are asserting which claim, which claims are as to which Defendant, and when the actions complained of allegedly occurred.

The Complaint contains no colorable federal cause of action and, as such, the Court lacks subject matter jurisdiction to hear this case. Further, where the remaining state law claims cause the Complaint to be based diversity jurisdiction, the Court has already noted in a prior ruling that Plaintiffs are Hawaii residents.[6] Plaintiffs both allege domicile in Hawaii in their Complaint. Because some of the Defendants are also Hawaii residents, including the moving defendant herein, diversity in this case has been destroyed and this case should also be dismissed for lack of diversity jurisdiction.

## LEGAL STANDARDS

### A. Rule 12(b)(1) Standard

Federal Rule of Civil Procedure 12(b)(1) authorizes the Court to dismiss an action for "lack of subject-matter jurisdiction." Plaintiffs have the burden of establishing that the court has subject-matter jurisdiction. See *Robinson v. U.S.*, 586 F.3d 683, 685 (9th Cir. 2009) ("[T]he party asserting subject matter jurisdiction has the burden of proving its existence."). A FRCP 12(b)(1) motion may (1) attack the allegations of a pleading as insufficient to confer subject matter jurisdiction on the court ("facial attack") or (2) "attack the existence of subject matter jurisdiction in fact" ("factual attack"). *Malama Makua v. Rumsfeld*, 136 F. Supp. 2d 1155, 1159 (D. Haw. 2001). In this case, subject matter

[5] See, e.g. http://www.waronwethepeople.com/nsa-trained-domestic-terrorists-caught-covert-action/ wherein Plaintiffs discuss their most recent encounter with Judge Seabright in relation to the Sulla/Hester claims and their public response to Judge Seabright's ruling wherein he labelled Plaintiff's arguments "delusional".

[6] See Judge Seabright's Remand Order in *Hester v. Horowitz et al.*, Case 1:14-cv-00413-JMS-RLP, Document ECF #47, Filed 01/08/15 (remanding based on lack of diversity and citing "Horowitz' inconsistent statements regarding his domicile").

jurisdiction is not properly pled, nor can it be pled based on the facts alleged. Plaintiffs do not have standing and there exists no diversity jurisdiction in this case.

**B. Rule 12(b)(6) Standard**

Under FRCP Rule 12(b)(6), dismissal is appropriate where the complaint fails to state a claim upon which relief can be granted. A Rule 12(b)(6) dismissal is proper where there is either a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a Rule 12(b)(6) motion, the "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action'" is insufficient. *Id*. (quoting *Twombly*, 550 U.S. at 555). Likewise, a pleading containing "'naked assertions' devoid of 'further factual enhancement'" does not satisfy the pleading requirements of FRCP Rule 9 and cannot withstand a motion to dismiss for failure to state a claim. *Id*. (quoting Twombly, 550 U.S. at 557).

**C. Rule 9(b) Standard**

Under FRCP Rule 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Rule 9(b) demands that the circumstances constituting the alleged fraud be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong . . . . Averments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged . . . . A party alleging fraud must set forth more than the neutral facts necessary to identify the transaction. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (internal citations and quotation marks omitted) (emphasis added). In situations where fraud allegations do not satisfy the Rule 9(b) requirements, "a district court should 'disregard' those averments, or 'strip' them from the claim. The court should then examine the allegations that remain to determine whether they state a claim." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003).

## ARGUMENT

### A. Lack of Subject Matter Jurisdiction

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of the Complaint because the Court lacks subject-matter jurisdiction. In their Complaint, Plaintiffs have not met their burden of establishing that the court has subject-matter jurisdiction or that they have standing. See *Robinson v. U.S.*, 586 F.3d 683, 685 (9th Cir. 2009) ("[T]he party asserting subject matter jurisdiction has the burden of proving its existence."). As discussed more fully below, Plaintiffs' claims fail as a matter of law. Because no viable federal claims exist in the Complaint this case could only remain in federal court based on alleged diversity jurisdiction. However, on pages 5-6 of the Complaint Plaintiffs claim diversity for reasons that have already been expressly denied by the Court.[7]

### B. Plaintiffs Complaint is precluded by the Rooker-Feldman Doctrine and Fails to State a Claim; Plaintiffs also Lack of Standing and the Claims are Time-Barred and thus must be dismissed with Prejudice.

#### 1) Count I: Violation of 43 U.S.C. § 1983: Deprivation of civil rights

To sustain an action under 43 U.S.C. § 1983, a plaintiff must show: "(1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a federal constitutional or statutory right.'" *Hydrick v. Hunter*, 500 F.3d 978, 987 (9th Cir. 2007) (citation omitted), vacated and remanded on other grounds, 556 U.S. 1256 (2009); see also *West v. Atkins*, 487 U.S. 42, 48 (1988); 42 U.S.C. § 1983. See also *Kobayashi v. Paderes*, CIV. NO. 14-00325 DKW-KSC (D. Haw., 2014) p. 7. In their Complaint Plaintiffs make several conclusory allegations that their constitutional rights were violated by Defendants. As paragraph 88 of Plaintiff's Complaint admits, this claim is based on alleged "unlawful quitclaim deeds". However, this conclusory allegation that the deed are unlawful ignores the fact that the Hawaii Circuit Court for the Third Circuit has already found said deeds lawful, granting summary judgment and quieting

[7] *Hester v. Horowitz, et al.* , Case No. 14-00413 JMS-RLP (D. Haw, 1/08/15 Order Remanding Action to Third Circuit Court of the State of Hawaii)("[T]he 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".)

title in favor of Jason Hester (Co-Defendant herein). Plaintiffs assume fraud and forgery in paragraphs 89, 90, and 91 of their Complaint but in doing so they are committing a sanctionable misrepresentation of the State Court's ruling in this matter.

Even if Plaintiffs stated an adequate § 1983 claim against Defendants, their claim is time-barred under Hawaii's two-year personal injury statute of limitation. See Haw. Rev. Stats. § 657-7; *Pele Defense Fund v. Paty*, 73 Haw. 578, 595, 837 P .2d 1247, 1259 (1992). "For actions under 42 U.S.C. § 1983, courts apply the forum state's statute of limitations for personal injury actions, along with the forum state's law regarding tolling, including equitable tolling, except to the extent any of these laws is inconsistent with federal law." *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004); *Canatella v. Van De Kamp*, 486 F.3d 1128, 1133 (9th Cir. 2007) (applying forum state's statute of limitations and tolling provisions). In Hawaii, a two-year statute of limitations applies. See Hawaii Revised Statute ("HRS") § 657-7; see also *Pele Defense Fund v. William Paty*, 73 Haw. 578, 597-98, 837 P.2d 1247, 1260 (1992).

Accepting that the actions Plaintiffs complain of occurred in 2009 and 2010, Plaintiffs should have initiated any § 1983 claim no later than 2012. See *Abramson v. Univ. of Haw*., 594 F.2d 202, 209 (9th Cir. 1979) ("The proper focus is upon the time of the discriminatory acts, not upon the time at which the consequences of the acts became most painful."). Instead, Plaintiffs commenced this action in 2015, three years after the statute of limitation had expired.

Plaintiffs' lack of knowledge of the applicable statute of limitations and their pro se status are insufficient to invoke equitable tolling. See *Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006) ("a pro se petitioner's lack of legal sophistication is not, by itself, an extraordinary circumstance warranting equitable tolling"); *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000) ("ignorance of the law, even for an incarcerated pro se petitioner, generally does not excuse prompt filing[ ]").

In short, Plaintiffs' Count I should not only be dismissed because it is insuficient, it should be dismissed with prejudice because it is time-barred.

**2) Count II: Violation of 42 U.S.C. § 1981(a)(b)(c): Equal Rights Under the Law**

According to *Kaulia v. Cnty. of Maui*, Civ. No. CIV 05-00290 JMS/LEK, 2006 WL 4660130, at *5 (D. Hawai`i May 24, 2006), a two-year limitations period also applies to the Plaintiffs' 42 U.S.C. § 1981 claim in Count II (*citing Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660 (1987). Further, it is arguable that Plaintiffs are not in a protected class. While they claim to be minorities of Jewish heritage, plaintiff Horowitz refers to himself online as a "Messianic Jew"[8] which is both Christian and Jewish. Assuming, arguendo, that Plaintiffs fall into a recognized protected class for the purposes of § 1981, Count II relies exclusively on alleged illegal acts by Defendants that the State Court has already evaluated and declined to find illegal. As such, Plaintiffs' are precluded from re-litigating the same alleged wrongs herein. Paragraph 98 of Plaintiffs' Complaint admits that Count II is a de facto appeal of the Hawaii Circuit Court's Order finding no illegality in the nonjudicial foreclosure of the subject property and subsequent deed transfers by defendants.

The Hawaii Third Circuit judges Ibarra and Strance both found that the Plaintiffs herein had no standing to assert any claims on behalf of their corporation title holder at foreclosure, "Royal Bloodline of David", and that the statute of limitations had run on the counterclaims asserted some of which are almost identical to the claims herein. The federal court is not an appeals court for state court rulings that a party disagrees with. Plaintiffs are making a state court ruling that they disagree with the basis for their Count II. This is improper under the Rooker-Feldman Doctrine. Because: 1) Plaintiffs fail to state a viable claim under section 1981, 2) Plaintiffs' lack standing, and 3) because the claim is time-barred, Count II should be dismissed with prejudice.

**3) Count III: Violation of 15 U.S.C. §§ 1692(e)(2)(A)(4)(6)(A)(7)(8)(9)(10)(14) and 1692f(1): False and misleading representation in debt collection, and unfair practices.**

15 U.S.C. §§ 1692 claims have a one year statute of limitations. 15 U.S.C. § 1692k(d). All of the acts referred to in Plaintiff's Complaint occurred over one year ago. For this reason, Count III is time-barred and this claim must be dismissed with prejudice. Further, even if the claim were not time-barred, the claim insufficiently pled.

[8] http://www.drleonardhorowitz.com/choosing.htm

Further, Plaintiffs' FDCPA claim is so vaguely asserted that Defendants cannot discern the basis of this claim. To the extent this claim is based on the foreclosure of the subject property, "several courts have held that activities undertaken in connection with a nonjudicial foreclosure do not constitute debt collection under the FDCPA." *Long v. Deutsche Bank Nat'l Tr. Co.*, 2011 WL 5079586, at *14 (D. Haw. Oct. 24, 2011) (citing *Gillespie v. Countrywide Bank FSB*, 2011 WL 3652603, at *2 (D. Nev. Aug. 19, 2011); *McFadden v. Deutsche Bank Nat'l Tr. Co.*, 2011 WL 3606797, at *10 (E.D. Cal. Aug. 16, 2011) (collecting cases)). Further, page 40, paragraph 103(b) of Plaintiffs' Complaint again alleges illegality in the foreclosure sale when the Hawaii Third Circuit court has already found otherwise. Plaintiffs also lack standing to sue as they were never party to the subject mortgage contract. For the foregoing reasons Count III should be dismissed with prejudice.

**4) Count IV: Violation of HRS §§ 480-2 and 480-8: Unfair and deceptive trade**

Count IV is incomprehensible, exceeds the applicable statute of limitations, and must be dismissed. Under the statutes cited there exists a statute of limitations of four years. HRS § 480-24. The dates which Plaintiffs' mention where they claim acts occurred that give rise to their cause of action under this claim are all over four years ago. As such, Count IV fails because the statute of limitations for a claim under HRS 480 et seq. has expired.

Even assuming, arguendo, that the statute of limitations has not yet run, the claim is incomprehensible as is and fails to put Defendants fairly on notice as to what action they are being sued for and what law the claim is actually being brought under. A careful review of the a muddled list of accusations and conclusory allegations leaves Defendants guessing as to what actions and parties are the actual subject of Count IV. When a UDAP claim is based on allegedly fraudulent conduct, the claim is subject to the particularity requirements of Rule 9(b). See *Smallwood v. NCsoft Corp.,* 730 F. Supp. 2d 1213, 1233 (D. Haw. 2010) (applying HRS § 480-2 and holding that, pursuant to Rule 9(b), "Plaintiff is required to plead his UDAP claim with specificity"); *Kearns*, 567 F.3d at 1125-27 (holding that plaintiffs' claims under California's similar law prohibiting unfair methods of competition and unfair and deceptive acts or practices were required to be pled with particularity).

As a whole, Plaintiffs' UDAP allegations are conclusory statements that fail to state a claim because they are not supported by sufficient "factual detail to meet the pleading standard under Rule 8." *Angel v. BAC Home Loan Servicing, LP*, Civ. No. 10-00240 HG-

LEK, 2010 WL 4386775, at *8 (D. Haw. Oct. 26, 2010) (dismissing a UDAP claim because the allegation "contain[ed] insufficient factual detail for the Court to infer that [the allegation was] plausible"); see also *Iqbal,* 129 S. Ct. at 1950 ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."). As such, this claim should be dismissed as a matter of law with prejudice.

**5) Count V: Violation of Title 18 U.S.C. § 241: Conspiracy against rights**

Plaintiffs' "Count V: Violation of Title 18 U.S.C. § 241: Conspiracy against rights" is inapplicable. It is a criminal statute but Plaintiffs are not law enforcement and have no standing to prosecute a crime under Title 18 U.S.C. § 241. Further, any claim for conspiracy necessarily relies on a finding of illegality elsewhere, and no such finding has been made in relation to Plaintiffs' claims. The claim is incomprehensible, inapplicable, vague and conclusory and must be dismissed with prejudice.

**6) Count VI: Violation of 18 U.S.C. § 242: Deprivation of Rights Under Color of Law**

Count VI asserts a claim pursuant to 18 U.S.C. § 242. This provision, however, does not provide jurisdiction or a private cause of action. 18 U.S.C. § 242 is a federal criminal statute that does not confer a private right of action. See *Allen v. Gold Country Casino,* 464 F.3d 1044, 1048 (9th Cir. 2006) (affirming dismissal of claim because 18 U.S.C. § 242 is a "criminal statute[] that do[es] not give rise to civil liability") as quoted in *Fuller v. Haw. Dep't of Land & Natural Res.*, Civ. No. 14-00097 JMS-BMK, FN2 (D. Haw., Jun 06, 2014). As such, this claim should be dismissed as a matter of law with prejudice.

**7) Count VII: Violation of Title 18 U.S.C. § 1341: Mail fraud, scheme, and swindle**

Plaintiffs' "Count VII: Violation of Title 18 U.S.C. § 1341: Mail fraud, scheme, and swindle" is mistaken and ambiguous. This claim is brought under a criminal statute that contains no private right of action and thus Plaintiffs have no standing to bring. The finding that there exists no private right of action under 18 U.S.C.S. § 1341 has been confirmed by numerous courts. See *Wisdom v. First Midwest Bank,* 167 F.3d 402 (8th Cir. 1999), *Ryan v. Ohio Edison Co.*, 611 F.2d 1170, 1178 (6th Cir.1979) (finding the scant legislative history of the mail fraud statute to indicate an intent to punish dealers of fraudulent devices for using the United States mails but not an intent to create a private right of action); *Bell v. Health-*

*Mor, Inc.*, 549 F.2d 342, 346 (5th Cir.1977) (finding no implied private remedy under mail fraud statute); *Napper v. Anderson, Henley, Shields, Bradford and Pritchard*, 500 F.2d 634, 636 (5th Cir.1974), cert. denied, 423 U.S. 837, 96 S.Ct. 65, 46 L.Ed.2d 56 (1975).

Neither the mail fraud statute nor its legislative history provides for any remedy other than criminal sanctions. Because there is no way Plaintiffs can cure this ultimate deficiency in their claim, Count VII should be dismissed with prejudice.

**8) Count VIII: Violation of Title 18 U.S.C. § 1343: Wire Fraud**

As with the above criminal law claims made by Plaintiffs, Count VIII also fails because Plaintiffs do not have a private right of action to enforce the federal criminal wire fraud laws. According to the Ninth Circuit in *Ateser v. Bopp*, Courts have consistently found that the mail and wire fraud statutes do not confer private rights of action. 29 F.3d 630 (C.A.9 (Wash.), 1994) [*citing Wilcox v. First Interstate Bank*, 815 F.2d 522, 533 n. 1 (9th Cir.1987) (Boochever, J., dissenting) and *Ryan v. Ohio Edison Co.*, 611 F.2d 1170, 1177-79 (6th Cir.1979) (paucity of legislative history or any other evidence showing intent to create private cause of action under 18 U.S.C. Sec. 1341 means other factors need not be addressed), and *Bell v. Health-Mor, Inc.*, 549 F.2d 342, 344-45 (5th Cir.1977)); *Napper v. Anderson*, 500 F.2d 634, 636 (5th Cir.1974) (like mail fraud statute, no Congressional intent to create federal cause of action for damages under 18 U.S.C. Sec. 1343 prohibiting wire fraud), cert. denied, 423 U.S. 837 (1975).] See also *Obianyo v. Tennessee*, No. 13-1341 (3rd Cir., 2013) ("criminal statutes such as 18 U.S.C. § 1343, which criminalizes wire fraud… provide no private right of action for use by a litigant… " citing *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283-84 (2002).

Because no private right of action exists and because the statute of limitations for such a claim, if it did exist, has been exceeded, Count VIII should be dismissed with prejudice.

**9) Count IX: Violation of Title 18 U.S.C. § 1342: Fictitious name and address used in commerce to defraud and swindle Plaintiffs and third parties**

This claim is difficult to understand. Because it is unclear what is being claimed against who and why, the claim should be dismissed. Further, to the extent that Count IX relies on allegedly false and illegal acts in nonjudicial foreclosure of the Subject Property which have already been litigated by the State Court, the claim is barred by the Rooker-

Feldman doctrine. The U.S. District Court cannot adjudicate the claims asserted in Count IX and elsewhere in Plaintiffs' Complaint without questioning the validity of the underlying state-court judgments and orders. A federal court has no discretion to adjudicate claims barred by the Rooker-Feldman doctrine, thus Count IX of Plaintiff's complaint is barred. *Kougasian v. Tmsl Inc*, 359 F.3d 1136, 1139 (9th Cir. 2004).

In *Hofelich v. State*[9], this Court evaluated a similar pro se complaint Plaintiff alleging that Defendants violated 18 U.S.C. § 1342 and conspired to fraudulently steal Plaintiff's business by using the proceeds from a "mock auction." The *Hofelich* Complaint further stated that the same Hawaii state court judge whose ruling is at issue herein, Judge Ibarra, was negligent in his duties. However, this Court found that *Hofelich's* claims were all barred by the Rooker-Feldman doctrine and granted Defendants' motions to dismiss on that basis. As is the case herein in, not every Defendant in *Hofelich* moved to dismiss Plaintiff's Complaint on Rooker-Feldman grounds but the Court nevertheless dismissed Plaintiff's complaint in its entirety as against all Defendants. Defendant Sulla urges the Court to do the same herein, with prejudice.

**10) Counterclaim [SIC] X: Legal Malpractice [Haw. Rev. State § 657(1)]**

Plaintiffs' Claim X, incorrectly labelled as Counterclaim X, is incomprehensible, brought by the wrong party-in-interest, and time-barred. Because Plaintiffs were never clients of any Defendants, Defendants owed no duty to Plaintiffs and their claim fails as a matter of law. There exists no basis in fact or law for a malpractice claim by Plaintiffs against Defendant Sulla or any Defendants. Without having been a client of any of the Defendants, Plaintiffs have no standing to sue for malpractice.

Any breach of duty that allegedly occurred is pled using conclusory statements, speculation that laws were broken, and circular logic. This is just not enough to survive a Motion to Dismiss, nor is it enough to put Defendants fairly on notice as to what they are actually being sued for.

[9] CV No 09-00484 DAE KSC. (D. Haw., May 25, 2011)

**11) Count XI: Claim to Set Aside Fraudulent Transfer of Property Title**

Count XI also violates the Rooker-Feldman Doctrine because p. 52, paragraph 137 relies on a finding of fraud in the assignment of a mortgage and promissory note that the state court declined to find and that Plaintiffs have no standing to assert. Page 9, paragraph 36 of Plaintiffs' Complaint indicates that the transfer that they are objecting to occurred in 2009. When it granted Plaintiff Jason Hester's Motion to Dismiss Counterclaims brought by Leonard Horowitz and Sherri Kane (the current Plaintiffs herein), the state court in *Hester v. Horowitz et al.*, Hawaii Circuit Court for the Third Circuit, Case No. 3CC14-1-000304 ruled that Plaintiffs had no standing to assert claims related to the assignments of the subject mortgage and promissory note. The same court also granted summary judgment quieting title to the Subject Property in favor of Co-Defendant Jason Hester, thus precluding Count XI under the Rooker-Feldman Doctrine.

Further, Count XI is a claim pled under H.R.S. § 651C, which takes issue with a duly-recorded transfer of interest that occurred in 2009. While it is not specified in the Complaint, it appears from the facts that the claim is being made under H.R.S. § 651C-5(b). According to H.R.S. § 651C–9, "Extinguishment of cause of action" "[a] cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought… (3) Under section 651C-5(b), within ***one year*** after the transfer was made or the obligation was incurred." (emphasis added). This Court in *Schmidt v. HSC, Inc.*, 131 Hawai'i 497, 319 P.3d 416 (Hawaii, 2014) also found that there is a one year limitations period for Plaintiffs' claims in Count XI. Because the transfer at issue occurred in 2009, Count XI is time-barred and should be dismissed with prejudice.

**12) Count XII: Conversion of Real Property**

Count XII fails for several reasons. First of all, it is being brought beyond the two-year statute of limitations for a conversion claim and the elements of the claim itself are not sufficiently pled. According to *BlueEarth Biofuels, LLC v. Hawaii Electric Co., Inc.*, 235 P. 3d 310 (Haw. 2010) a claim for conversion can only be as to personal property. Plaintiffs have not alleged that any of their personal property has been converted by Defendants, only real property that was never actually owned by Plaintiffs. Further, Plaintiffs offer as proof that the tort of conversion was committed purely conclusory statements that laws were broken. Further, because this claim is as to real property and not as to personal property,

this claim is yet another violation of the Rooker-Feldman Doctrine whereby Plaintiffs are attempting to make an end-run around an adverse state court ruling that grants the Subject Property to Defendant Jason Hester and not to Plaintiffs.

The allegations in Count XII cannot survive a Motion to Dismiss. Because the limitations period has been exceeded, this claim should be dismissed with prejudice.

**13) Count XIII: Trespass to Chattels**

Plaintiffs' Count XIII: Trespass to Chattels is incomprehensible, mistaken, and must likewise be dismissed as insufficient and time-barred. There exists a two-year statute of limitations for Count XIII and that limitations period has expired. Perhaps more importantly, however, Plaintiffs' are mistaken as to the definition of chattel. According to Black's Law Dictionary, 2nd Edition, a chattel is an "article of personal property; any species of property not amounting to a freehold or fee in land… ." (emphasis added). While it is clear that the definition of chattel is personal property and not real property, Plaintiffs in their Count XIII allege no trespass to personal property at all. The entire Count XIII is about real property and not personal property.

It is unclear to Defendants what chattels are or were being trespassed on. Defendants are genuinely confused. This is just not enough to survive a Motion to Dismiss, nor is it enough to put Defendants fairly on notice as to what they are actually being sued for, thereby prejudicing Defendants ability to defend themselves. This situation is exactly what a 12(b)6) motion was created for and thus Count XIII should be dismissed.

**14) Count XIV: Defamation and/or Commercial Disparagement**

Count XIV cites both a federal and a state statute. It is unclear to Defendants which statute to apply and thus Defendants are assuming that Count XIV is really two claims combined, one under federal law and the other under state law. Plaintiffs fail to describe details of what was said when by Defendants that was false or provably false and their complaint leaves Defendants guessing as to what, specifically, they are being sued for. Defendant Sulla does not know Co-Defendant Ott who allegedly made the offending remarks and merely listed him as a potential witness to his own defamation case against Plaintiffs because he saw that Plaintiffs had launched a similar cyber-bullying campaign against Defendant Ott as they had against Defendants Sulla and Hester, establishing a

pattern of conduct and recklessness with the facts. The words of Defendant Ott cannot be attributed to Defendant Sulla and thus Plaintiffs' Count XIV must fail as to the Moving Defendants.

Fuirther, Count XIV is impermissibly vague as it does not say exactly where on the internet the offending statements were published, nor when. This is just not enough to survive a Motion to Dismiss, nor is it enough to put Defendants fairly on notice as to what exact actions they are actually being sued for, thereby prejudicing Defendants ability to defend themselves. This situation is exactly what a 12(b)(6) motion was created for.

**15) Count XV: Intentional Infliction of Emotional Distress (IIED)**

Count XV, "Intentional Infliction of Emotional Distress (IIED)" is vague, incomprehensible, and mistaken. It is unclear from the Complaint what actionable conduct Defendants specifically engaged in against Plaintiffs which would give rise to this Intentional Infliction of Emotional Distress (IIED) claim. The statute of limitations has expired on this claim as well. Further, this claim appears to assume illegality on p. 57, paragraph 152 where the State Court declined to find any. The claim also treats Defendants Ott and Sulla as interchangeable but there is absolutely no relationship, agency or otherwise, between Mr. Ott and Mr. Sulla. Plaintiffs attempt to impose joint liability on behalf of one for the actions of the other is absurd. Plaintiffs admit that their alleged harm was caused by actions from 2009. This was over two years ago and this claim falls under the general two year statute of limitations in Hawaii for personal injury claims.

Even if this claim were otherwise properly pled, it is unclear which Plaintiff is making the claim as to which Defendants. It is not enough for Plaintiffs to make conclusory statements and, in fact, many of the statements made in this claim by Plaintiffs are provably false and/or implausible. Because the claim is also time-barred, Count XV should be dismissed with prejudice.

**16) Count XVI: Wrongful Foreclosure**

Count XVI relies on multiple rules and statutes: HRS § 663-1, HRS § 657-1(4), Rule 10b-5 of the Rules and Regulations of the Exchange Act, and 17 C.F.R. § 240.10b-5 (1990). Which law is the claim actually being brought under? Because each law carries its own unique requirements and elements, combining several laws in one claim makes the claim too

confusing to be viable and the claim must be dismissed. The inability to discern which statute the claim is actually being brought under means that Defendants are not being put on notice as to what they are being charged with. Further, according to footnote 1 on page 58 of the Complaint the claims in Count XVI "began to toll on September 12, 2013" based on a ruling in a separate 2005 state law action, but this date that Plaintiffs offer is merely for their own convenience and makes little sense under the law.

Perhaps more than any other in Plaintiffs' Complaint, Count XVI violates the Rooker-Feldman Doctrine. As p. 61, paragraph 160 of the Complaint admits, this claim relies entirely on a finding that the subject foreclosure was wrongful. However, the subject foreclosure has already been upheld by the State of Hawaii's Circuit Court for the Third Circuit. The state court ruled that Plaintiffs have no standing to bring any wrongful foreclosure action in relation to the Subject Property because they were not the title-holders at the time of foreclosure. See *Hester v. Horowitz et al.*, Hawaii Circuit Court for the Third Circuit, Case No. 3CC14-1-000304, Order granting Plaintiff's Motion to Dismiss Counterclaims dated March 27, 2015. Count XVI is Plaintiffs' blatant attempt to circumvent the state court ruling quieting title to the Subject Property in favor of Co-Defendant Hester and thus it must be dismissed.

**17) Count XVII: Civil RICO**

Plaintiffs' "Count XVII: Civil Rico" is mistaken as a civil RICO claim requires an associated criminal wrongdoing and no such wrongdoing exists. Plaintiffs' "civil rico" claim is also time-barred. The Supreme Court has held that civil RICO claims are subject to a four-year statute of limitations. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, (U.S. 1987). From the Facts section of Plaintiffs' Complaint it appears that the wrongdoing alleged all occurred prior to 2011. As such, Plaintiffs' Civil RICO claim is time-barred.

Congress defined "racketeering" activity to include a variety of state and federal predicate crimes. 18 U.S.C.A. § 1961(1). RICO applies only to organized long-term criminal activity, it should not apply to ordinary business disputes, such as the relatively simple foreclosure-related quiet title and ejectment matter which forms the basis for Plaintiffs' Complaint. See, e.g., *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1025-1026 (7th Cir. 1992) ("RICO has not federalized every state common-law cause of action

available to remedy business deals gone sour."); *Calcasieu Marine Nat. Bank v. Grant*, 943 F.2d 1453, 1463 (5th Cir. 1991) ("although Congress wrote RICO in broad, sweeping terms, it did not intend to extend RICO to every fraudulent commercial transaction"). Courts have found it to be an abuse of the RICO statute to attempt to shoehorn an ordinary business or contractual dispute into a civil RICO claim. See, e.g., *McDonald v. Schencker*, 18 F.3d 491, 499 (7th Cir. 1994); *Midwest Grinding*, 976 F.2d at 1025 ("civil RICO plaintiffs persist in trying to fit a square peg in a round hole by squeezing garden-variety business disputes into civil RICO actions").

All that Plaintiffs provide are wholly speculative and conclusory allegations of criminal wrongdoing by Defendants that the FBI, the State of Hawaii, and County of Hawaii law enforcement have all declined to prosecute. None of the elements of a RICO claim have been sufficiently pled. Wild speculation by Plaintiffs (who are professional conspiracy theorists and thus make wild speculations for a living) is not enough to support a RICO claim. Because the RICO claim has not been sufficiently pled, and because it is untimely, this claim must also be dismissed with prejudice.

**18) Count XVIII: Fraud and/or Misrepresentation**

Plaintiffs "Count XVIII: Fraud and/or Misrepresentation" is vague, incomprehensible, untimely and not pled with sufficient particularity. The Hawai'i Supreme Court has set forth elements for a claim of misrepresentation and none of these elements have been met. Plaintiffs fail to state the day, time or place of the allegedly false representations made to him. In fact, it is not clear which Defendants the claim is actually against.

Specifically, to survive a Rule 12(b)(6) motion, allegations of fraud must be pled with "more specificity including an account of the 'time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007); see also Kearns, 567 F.3d at 1124 ("Averments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged.") (citation and quotation marks omitted, emphasis added). The allegations "must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge

and not just deny that they have done anything wrong.'" *Swartz*, 476 F.3d at 764 (citation omitted).

In all of its Complaint claims Plaintiffs make similar sweeping, vague, and conclusory allegations sounding in fraud, implicating the heightened pleading requirement of FRCP Rule 9. In each instance, Plaintiffs fail to plead the circumstances of the alleged fraud with sufficient particularity, let alone each Defendants' specific role in the fraud that allegedly occurred. As such and all fraud-based claims must be dismissed for failure to satisfy the pleading requirements of FRCP Rule 9(b). Count XVIII especially fails because it is a count for Fraud, which has a heightened pleading standard under FRCP 9.

**19) Count XIX: Fictitious obligations**

As with the other criminal law claims made by Plaintiffs, Count XIX also fails because Plaintiffs do not have a private right of action to enforce federal criminal laws. According to Count XIX, it is brought under Title 18 U.S.C. § 514(a) which is a criminal statute that does not confer private rights of action.

Because no private right of action exists, and Plaintiffs have also failed to state a comprehensible claim. If a private right were to exist, the statute of limitations for such a claim has been exceeded and thus Count XIX should be dismissed with prejudice.

**20) Count XX: Slander of title to TMK (3) 1-3-001: 049 & 043**

Count XX must be dismissed because it violates the Rooker-Feldman doctrine. The Hawaii Circuit Court for the Third Circuit has already quieted title in favor of co-defendant Hester for the Subject Property in *Hester v. Horowitz et al.*, Hawaii Circuit Court for the Third Circuit, Case No. 3CC14-1-000304, Order granting Plaintiff Summary Judgment in part dated May 27, 2015 and thus Plaintiffs' claim that their title has been slandered is moot. Plaintiffs do not have title to the Subject Property nor have they ever held any valid title to the Subject Property, thus there is no title for Defendants to slander. Further, even if Count XX did not violate the Rooker-Feldman Doctrine, the statute of limitations for the claim has expired, Plaintiffs lack standing, and the claim itself if incomprehensible.

The statute of limitations of a Slander of Title claim is two years. While it is unclear from the Complaint exactly which documents Plaintiffs' allege slander title, the date referred to by Plaintiffs in their Facts section is April 20, 2010, over four years ago. Plaintiffs label

their claim as a "tort" on page 67, paragraph 178 of their Complaint. Haw. Rev. Stat. §657-7 specifically provides that there is a two year limitations period for bringing tort claims for damages or injuries to persons or property. Courts in other jurisdictions have read a "Slander of Title" claim as being controlled by the statute of limitation for any libel or slander, regardless of whether it is one's person or one's title being slandered. See, e.g. *Old Plantation Corp. v. Maule Industries*, 68 So.2d 180 (Fla, 1953).

In cases where title is allegedly slandered, the statute begins to run at the time the offensive document slandering title was recorded. *Id.* at 183 ("The wrongful and malicious filing of the notice of lien… was the tort which gave rise to the action and the date the tort was committed marked the point where the statute began to run. Appellee could have instituted suit on any day thereafter.")(citing *Walley v. Hunt*, 212 Miss. 294, 54 So.2d 393; *King v. Miller*, 35 GA. App. 427, 133 S.E. 302). In the present case, the allegedly offensive documents were recorded well over two years ago, and no other documents claiming to slander title have been alleged by the Plaintiffs. As such Count XX fails as it exceeds the applicable statute of limitations by over two years and must be dismissed with prejudice.

Further, at the time alleged neither Mr. Horowitz nor Ms. Kane had any right or title in the Subject Property. Title was held by The Royal Bloodline of David only, Mr. Horowitz was merely the guarantor of the mortgage. As such, even if the claim for Slander of Title were timely, it is a claim held by a nonparty. Any attempt by Plaintiffs to assert this claim on behalf of a nonparty is illegal as it constitutes the unauthorized practice of law and "[a] corporation cannot lawfully practice law. It is a personal right of the individual." *Seawell, Attorney General v. Motor Club*, 209 N.C. 624, 631, 184 S.E. 540, 544 (1936). As such, Claim XX must be dismissed with prejudice.

**21) As to All Counts**

The brunt of Plaintiffs' claims against Defendants are tied to Defendants Sulla and Hester's allegedly wrongful nonjudicial foreclosure of Plaintiffs' residence. However, neither plaintiff ever held valid title to that residence, title was held by a nonprofit called "Royal Bloodline of David" and the Court in *Hester v. Horowitz et al.*, Hawaii Circuit Court for the Third Circuit, Case No. 3CC14-1-000304 has recognized same. Knowing that they do not have standing to pursue a wrongful foreclosure claim as individuals, and desperate to avoid an eviction that is overdo, Plaintiffs are attempting to litigate the same and similar

issues over and over again in multiple courts and online (in the court of public opinion) hoping that, eventually, Defendant Hester, the owner of the property on which Plaintiff Horowitz resides, will just give up and give the property to Plaintiffs, *who never even owned the property in the first place*. This is a malicious use of the judicial system done purely with the intent to harass and obtain a financial windfall.

Despite filing over a thousand pages of documents with this and other courts, Plaintiffs have not once been able to provide any admissible evidence as proof of their many, many outlandish and wild claims. As such, their filings are not filed in good faith but instead are meritless, frivolous, and filed with vexatious intent.

## V. CONCLUSION

For the foregoing reasons, Defendant Paul J. Sulla, Jr. respectfully request that the Court dismiss Plaintiffs' Complaint in its entirety with prejudice and sanction Plaintiffs for their frivolous and vexatious filings by an aware of attorneys' fees and costs of this Motion.

DATED: Hilo, Hawaii, June 9, 2015.

/s/ Paul J. Sulla, Jr.

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Paul J. Sulla, Jr., (SBN 5398)
*Pro Se* and as Attorney for Defendant
Paul J. Sulla Jr., Attorney At Law
A Law Corporation