

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFF** JASON HESTER  
**COUNTERCLAIMANTS** LEONARD G. HOROWITZ and SHERRI KANE

**(b)** County of Residence of First Listed Plaintiff unknown  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Plaintiff: PAUL J. SULLA, JR., P.O. Box 5268, Hilo, HI. 96720  
 Counterclaimants: Margaret (Dunham) Wille #8522  
 65-1316 Lihipali Road • Kamuela, Hawaii 96743

**DEFENDANTS** PAUL J. SULLA, JR. et. al., HALAI HEIGHTS, LLC  
 PATRICK SNIFFEN, STEPHEN D. WHITTAKER, BRADLEY M. TAMM,  
 HOWARD M.S. HU, GARY VICTOR DUBIN & JOHN S. CARROLL

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

Mixed

Mixed

**IV. NATURE OF SUIT** (Place an "X" in One Box Only) [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. §§ 1343(a)(1-4), 1450 and 1443; 42 U.S.C. §§ 1981, 1983, 1985 and 1988; and 18 USC § 1964**

Brief description of cause:  
 Deprivation of Civil Rights, Due Process and Real Properties by Conspiracy/RICO under color of law.

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** \_\_\_\_\_ CHECK YES only if demanded in complaint: **JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** CV 15 00186 JMS/BMK BK 16-00239 and Ad. Proc. 16-90015 CV-00666-LEK-KJM  
 (See instructions): **JUDGE WITH CONFLICTS PLEASE RECUSE** DOCKET NUMBER \_\_\_\_\_

DATE 5-30-19 SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

LEONARD G. HOROWITZ  
and SHERRI KANE, pro se  
5348 Vegas Drive, Suite 353  
Las Vegas, NV 89108  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAY 31 2019  
at 2 o'clock and 40 min. P M  
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584

JASON HESTER  
Plaintiff/Counterclaim Defendant

vs.

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Defendants/Counterclaimants

and

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Counterclaimants

vs.

PAUL J. SULLA, JR., and  
PAUL J. SULLA, JR., ATTORNEY AT LAW,  
A LAW CORPORATION;  
HALAI HEIGHTS, LLC; PATRICK SNIFFEN;  
BRADLEY R. TAMM; HOWARD M.S. HU;  
GARY VICTOR DUBIN; STEPHEN D.  
WHITTAKER; and JOHN S. CARROLL  
Third Party Counterclaim Defendants

) Civ. No. CV 19 00275 JAO RT

)  
) NOTICE TO ADVERSE PARTIES  
) OF REMOVAL TO FEDERAL  
) COURT OF THIRD CIRCUIT  
) COURT PROCEEDINGS, AND  
) "MOTION TO SHOW CAUSE"  
) [FRCP Rule 5];  
) CERTIFICATE OF SERVICE

NOTICE TO ADVERSE PARTIES OF REMOVAL TO FEDERAL  
COURT OF THIRD CIRCUIT COURT PROCEEDINGS, AND  
"MOTION TO SHOW CAUSE"  
[FRCP Rule 5]

**NOTICE OF REMOVAL TO FEDERAL COURT OF THIRD CIRCUIT  
COURT PROCEEDINGS, AND “MOTION TO SHOW CAUSE”**

COMES NOW Defendants/Counterclaimants Leonard G. Horowitz and Sherri Kane, pro se (collectively, “Defendants” or “DCs”), hereby provide Notice or Remove this civil action seeking injunctive relief to prevent further irreparable harm and damage caused by deprivation of rights and real property conversion by conspiracy under color of law; and “Motion to Show Cause Why ‘Writ of Ejectment’ Should Not Issue for Horowitz et. al.’s Repossession of the Wrongly Foreclosed Subject Property Within 30 Days of Hearing on the Motion, or Sooner.”

This action involves State agents and officers of the courts in three State-consolidated cases Civ. No. 05-1-0196; 14-1-0304; and 3CC17-1000407, remanded by the Intermediate Court of Appeals (ICA) in Honolulu on May 12, 2019, triggering new claims under 28 U.S.C. §§ 1343(a)(1-4), 1443 and 1450; 42 U.S.C. §§ 1981, 1983, 1985 and 1988; and 18 USC 1964, justifying this Removal “to secure the just, speedy, and inexpensive determination” of proceedings pursuant to Rule 1 of the Federal Rules of Civil Procedure.

Please note that the attached filing of “NOTICE OF REMOVAL” was filed with the captioned federal Court on May 30, 2019. Said Notice attaches Exhibits 1 and 2 that provides an “initial pleading” received by the DCs from the Intermediate Court of Appeals (ICA) for the State of Hawaii on May 12, 2019, establishing the ICA’s determinations in the aforementioned State cases, raising new claims, against new parties, co-conspirators or joint actors for whom this Notice is served in accordance with FRCP Rule 5.

RESPECTFULLY SUBMITTED,

DATED: Honolulu, HI, May 31, 2019

---

LEONARD G. HOROWITZ, pro se

---

SHERRI KANE, pro se

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and SHERRI KANE, pro se  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII**

JASON HESTER  
Plaintiff/Counterclaim Defendant  
vs.  
LEONARD G. HOROWITZ  
and SHERRI KANE,  
Defendants/Counterclaimants

and

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Counterclaimants

vs.

PAUL J. SULLA, JR., and  
PAUL J. SULLA, JR., ATTORNEY AT LAW,  
A LAW CORPORATION;  
HALAI HEIGHTS, LLC; PATRICK SNIFFEN;  
BRADLEY R. TAMM; HOWARD M.S. HU;  
GARY VICTOR DUBIN; STEPHEN D.  
WHITTAKER; and JOHN S. CARROLL  
Third Party Counterclaim Defendants

Civ. No. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on this 31<sup>h</sup> day of May, 2019, we served a true and correct copy of the foregoing **“NOTICE TO ADVERSE PARTIES OF REMOVAL TO FEDERAL COURT OF THIRD CIRCUIT COURT PROCEEDINGS, AND “MOTION TO SHOW CAUSE” [FRCP Rule 5]; CERTIFICATE OF SERVICE”** by the method described below to:

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Delivery by:  
 U.S. Mail

Hand

THE CLERK OF THE U.S. DISTRICT COURT  
HONORABLE JUDGE (To be assigned)  
IN THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF HAWAII  
300 Ala Moana Blvd. #C338  
Honolulu, HI 96850  
808-541-1300

U.S. Mail  
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THE HONORABLE JUDGE  
J. MICHAEL SEABRIGHT  
c/o Clerk of the District Court  
THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF HAWAII  
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JUDGE HENRY T. NAKAMOTO  
Third Circuit Court  
777 Kilauea Ave,  
Hilo, HI 96720  
(808) 961-7464

U.S. Mail

  
LEONARD G. HOROWITZ and/or SHERRI KANE, in Propria Persona

**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII**

**(Civil Rights, RICO)**

Case No. \_\_\_\_\_

---

**NOTICE OF REMOVAL AND COMPLAINT  
PURSUANT TO THREE STATE CONSOLIDATED CASES RIPE  
FOR INJUNCTIVE RELIEF TO ENJOIN MALICIOUS PROSECUTION  
AND DEPRIVATION OF RIGHTS IN REAL PROPERTY CONVERSION**

---

**JASON HESTER v. LEONARD G. HOROWITZ, et. al.**

and

**LEONARD G. HOROWITZ**

**and SHERRI KANE,**

Counterclaimants

vs.

PAUL J. SULLA, JR., and

PAUL J. SULLA, JR., ATTORNEY AT LAW, A LAW CORPORATION;

HALAI HEIGHTS, LLC; PATRICK SNIFFEN; BRADLEY R. TAMM;

HOWARD M.S. HU; GARY VICTOR DUBIN; STEPHEN D.

WHITTAKER; and JOHN S. CARROLL

Third Party Counterclaim Defendants

LEONARD G. HOROWITZ, pro se

SHERRI KANE, pro se

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## TABLE OF CONTENTS

**(for NOTICE OF REMOVAL AND COMPLAINT PURSUANT TO THREE STATE  
CONSOLIDATED CASES RIPE FOR INJUNCTIVE RELIEF TO ENJOIN  
MALICIOUS PROSECUTION AND DEPRIVATION OF RIGHTS  
IN REAL PROPERTY CONVERSION)**

Table of Contents.....	i-v
NOTICE OF REMOVAL .....	vi-viii
<b>I. NOTICE OF REMOVAL &amp; COMPLAINT .....</b>	<b>1</b>
<b>I. NOTICE OF REMOVAL.....</b>	<b>1-22</b>
<b>A. FACTS JUSTIFYING REMOVAL AND COMPLAINT.....</b>	<b>2-11</b>
<b>B. GROUNDS FOR REMOVAL.....</b>	<b>11</b>
<b>1. ‘Colorado River’ Analysis Encourages Federal Adjudication.....</b>	<b>13</b>
<b>2. Removal is Required to Redress the DCs’ Deprivation of Federal Rights by Malicious Prosecutions in the State Courts.....</b>	<b>17</b>
<b>C. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED.....</b>	<b>21</b>
<b>II. COMPLAINT FOR DEPRIVATION OF RIGHTS &amp; INJUNCTIVE RELIEF.....</b>	<b>23</b>
<b>I. JURISDICTION AND VENUE.....</b>	<b>24</b>
<b>II. PARTIES.....</b>	<b>24</b>
<b>III. FACTS (See facts section above.) .....</b>	<b>27</b>
<b>IV. CIVIL CLAIMS.....</b>	<b>28</b>
<b><u>COUNT I</u> - VIOLATION OF 42 U.S.C. § 1983: Deprivation of civil rights.....</b>	<b>28</b>
<b><u>COUNT II</u> - VIOLATION OF 42 U.S.C. § 1981(a)(b)(c):     Equal Rights Under the Law.....</b>	<b>30</b>
<b><u>COUNT III</u> - VIOLATION OF 15 U.S.C. §§ 1692 et. seq.: False and misleading     representations in debt collection, and unfair practices.....</b>	<b>33</b>
<b><u>COUNT IV</u> - VIOLATION OF HRS §§ 480-2 and 480-8: UDAP.....</b>	<b>34</b>
<b><u>COUNT V</u> - LEGAL MALPRACTICE [Haw. Rev. Stat. § 657(1) .....</b>	<b>35</b>
<b><u>COUNT VI</u> - Claim to Set Aside Fraudulent Transfer of Property Title     HRS §651C Uniform Fraudulent Transfer Act] .....</b>	<b>38</b>
<b><u>COUNT VII</u>: Conversion of Real Property .....</b>	<b>39</b>
<b><u>COUNT VIII</u>: Neglect to Prevent [42 U.S. Code § 1986. Actn neglect to prevent....</b>	<b>42</b>

**COUNT IX - Trespass to Chattels [Restatement (Second) of Torts § 256] .....44**  
**COUNT X - Defamation and/or Commercial Disparagement [Lanham Act] .....45**  
**COUNT XI - IIED [[Haw. Rev. Stat. § 663-1 (2015)] .....46**  
**COUNT XII – Wrongful Foreclosure [[Haw. Rev. Stat. § 657-1 (2015)] .....47**  
**COUNT XIII – RICO [[18 U.S.C. § 1964] .....50**

**V. THE COURT’S POWER TO GRANT RELIEF.....51**

**DECLARATION OF LEONARD G. HOROWITZ and SHERRI KANE  
APPENDIX “A”**

**[Eleven ‘Operative Facts’ Showing Due Process Deprivations in the State’s MO]**

**APPENDIX “B” Federal and State Laws & Rules**

**EXHIBITS 1 THRU 5;**

**EX PARTE MOTION TO SHOW CAUSE**

**PROPOSED INJUNCTIVE RELIEF BY WRIT OF EJECTMENT**

**NOTICE OF SERVICE OF NOTICE OF REMOVAL;**

**SUMMONS**

**TABLE OF AUTHORITIES**

**CASES**

*Attwood v. Mendocino Coast Dist. Hosp.*,.....14  
*Bank of Am. Nat. Trust & Sav. Ass’n v. Reidy*,  
15 Cal. 2d 243, 248 (Cal. 1940).....48  
*Benoist v. U.S. Bank Nat’l Ass’n, as Trustee for JPM ALT 2006-A6, et al.*,  
Civ. No. 10-00350JMS-KSC 886 F.2d 241, 243 (9th Cir. 1989).....16  
Blair, 96 Hawai’i at 332, 31 P.3d at 189.....49  
*Buckner*, 179 F.3d at 837.....41  
*Cabrera v. City of Huntington Park*,  
159 F.3d 374, 380 (9th Cir.1998).....41  
*Cunha v. Ward Foods, Inc.*,  
501 F.Supp. 830, 837 (D.Haw.1980).....48  
*Damico v. California*,  
389 U. S. 416 (1967).....19  
*Dennis v. Sparks*,  
449 U.S. 24, 27 (1980))..... 19  
*McNeese v. Board of Education*,  
373 U. S. 668 (1963).....19  
*Fries*, 355 N.Y.S.2d at 744.....42  
*King v. Smith*,  
392 US 309 - 1968).....19  
*Kondaaur Capital Corp. v. Matsuyoshi*,  
136 Hawai’I 227, 240, 361 P. 3d 454, 467 (2015).....17

Leslie v. Estate of Tavares, 93 Hawai'i 1, 5, 994 P.2d 1047, 1051 (2000).....	49
<i>Lona v. Citibank, N.A.</i> , 202 Cal. App. 4th 89, 104 (Cal. Ct. App. 2011).....	48
<i>FREDDY NOBRIGA ENTERPRISES v. STATE, DHHL</i> , 295 P. 3d 993 – Haw: Intermediate Court of Appeals 2013.....	39
<i>Harris v. Bankers Life and Cas. Co.</i> , 425 F. 3d 689 - Court of Appeals, 9th Circuit 2005.....	21
<i>Kahala Royal Corporation v. Goodsill, Anderson, Quinn &amp; Stifel, et. al.</i> Supreme Court of Hawaii, Appeal No. 26669 & 26670, Jan. 11, 2007.....	36
<i>Lovern v. General Motors Corp.</i> , 121 F.3d 160, 162 (4th Cir.1997).....	21
<i>Leyson v. Steuermann</i> . 705 P.2d 37, 1985.....	36
<i>McNeese v. Board of Education</i> , 373 U. S. 668 (1963) .....	21
<i>Monroe v. Pape</i> , 365 U. S. 167, 180-183 (1961) .....	19
Montanore Minerals, 867 F.3d at 1166.....	14
<i>Nakamoto v. Hartley</i> , 758 F. Supp. 1357 (D. Haw. 1991) .....	48
<i>Nunez v. City of Los Angeles</i> , 147 F. 3d 867 – Court of Appeals, 9th Circuit 1998.....	20
<i>Rendell-Baker v. Kohn</i> , 457 U.S. 830, 838 (1982).....	19
<i>R.R. St. &amp; Co. v. Transp. Ins. Co.</i> , 656 F.3d 966,] 978-79 [(9th Cir. 2011)] .....	14
<i>Sedima, S.P.R.L. v. Imrex Co.</i> , 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) .....	50
<i>Spotted Eagle v Blackfeet Tribe of Blackfeet Indian Res., City of Browning</i> , 301 F. Supp. 85 - Dist. Court, D. Montana 1969) .....	19
<i>Sutton v. Providence St. Joseph Med. Ctr.</i> , 192 F.3d 826, 835 (9th Cir. 1999) .....	19
<i>Tsuru v. Bayer</i> , 25 Haw. 693, 696 (1920) .....	40
<u><i>United Mine Workers v. Gibbs</i></u> , 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966) .....	19
<i>United States v. Acosta de Evans</i> , 531 F. 2d 428 - Court of Appeals, 9th Circuit 1976.....	20
<i>United States v. Chadwick</i> , 433 U.S. 1, 8, 97 S.Ct. 2476, 2481, 53 L.Ed.2d 538 (1977) .....	40
<i>UNITED STATES FIRE INSURANCE COMPANY v.</i> <i>HAWAIIAN CANOE RACING ASSOCIATIONS</i> , Dist. Court, D. Hawaii 2019.....	13-15
144 Hawai'i 60 434 P.3d 1255 (2019).....	3,17,20

## **FEDERAL RULES AND LAWS**

11 U.S. Code §§ 448-550.....	8
15 U.S.C. § 1125(a) .....	45
15 U.S.C. §§ 1692.....	33
18 U.S.C. § 1961.....	50
18 USC 1964.....	24, 50
28 §§ U.S.C. 1343(a)(1-4) .....	11-13, 18 24
28 U.S.C. § 1391(b).....	24
28 U.S.C. § 1446(a) .....	22
28 § 1450.....	11-13, 18
42 U.S.C. § 1981.....	24 30-32
42 U.S.C. § 1983.....	24, 28-30
42 U.S.C. § 1985.....	24
42 U.S.C. § 1986.....	24, 42
42 U.S.C. § 1988.....	24, 53
Restatement (Second) of Torts § 256.....	44

## **HAWAII RULES AND LAWS**

### **HAWAII RULES OF CIVIL PROCEDURE (HRCP)**

Rule 1.....	5
Rule 19(a).....	5, 20
Rule 50(a).....	5-7,10-12, 20

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and SHERRI KANE, pro se  
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Las Vegas, NV 89108  
Tel: 310-877-3002;  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584**

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Plaintiff/Counterclaim  
Defendant

vs.

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and SHERRI KANE,  
Defendants

and

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Counterclaimants

vs.

PAUL J. SULLA, JR., and  
PAUL J. SULLA, JR., ATTORNEY  
AT LAW, A LAW  
CORPORATION;  
HALAI HEIGHTS, LLC;  
PATRICK SNIFFEN; BRADLEY  
R. TAMM; HOWARD M.S. HU;  
GARY VICTOR DUBIN;  
STEPHEN D. WHITTAKER; and  
JOHN S. CARROLL  
Third Party Counterclaim  
Defendants

) Civ. No.

)

) **NOTICE OF REMOVAL AND  
COMPLAINT PURSUANT TO  
THREE STATE-CONSOLIDATED  
CASES RIPE FOR INJUNCTIVE  
RELIEF TO ENJOIN MALICIOUS  
PROSECUTION AND DEPRIVATION OF  
RIGHTS IN REAL PROPERTY  
CONVERSION [28 U.S.C. §§ 1343(a)(1-4);  
1443 and 1450; 42 U.S.C. §§ 1981, 1983,  
1985, 1986, and 1988; and 18 USC 1964];  
COMPLAINT; DECLARATION OF  
LEONARD G. HOROWITZ AND  
SHERRI KANE; APPENDICES “A” and  
“B”; EXHIBITS 1 THRU 5; EX PARTE  
MOTION TO SHOW CAUSE;  
PROPOSED INJUNCTIVE RELIEF  
BY WRIT OF EJECTMENT;  
NOTICE OF SERVICE OF NOTICE OF  
REMOVAL; SUMMONS; CERTIFICATE  
OF SERVICE**  
) [Filed concurrently  
) with Civil Cover Sheet]  
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**NOTICE OF REMOVAL AND COMPLAINT PURSUANT TO THREE STATE  
CONSOLIDATED CASES RIPE FOR INJUNCTIVE RELIEF TO ENJOIN MALICIOUS  
PROSECUTION AND DEPRIVATION OF RIGHTS  
IN REAL PROPERTY CONVERSION**

TO THE CLERK OF THE ABOVE-ENTITLED COURT: PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1343(a)(1-4), 1443 and 1450; 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988; and 18 USC 1964, Defendants/Counterclaimants Leonard G. Horowitz and Sherri Kane, (collectively, “Defendants” or “DCs”), hereby remove this civil action seeking injunctive relief to prevent further irreparable harm and damage caused by deprivation of rights and real property conversion by conspiracy under color of law; involving State actors in three State-consolidated cases Civ. No. 05-1-0196; 14-1-0304; and 3CC17-1000407, remanded by the Intermediate Court of Appeals (ICA) in Honolulu on May 12, 2019, triggering new claims under the aforementioned statutes, justifying this removal “to secure the just, speedy, and inexpensive determination” of proceedings pursuant to Rule 1 of the Federal Rules of Civil Procedure.<sup>1</sup>

## **A. FACTS JUSTIFYING REMOVAL AND COMPLAINT**

1. This case involves an “inn” and health spa property (the “Property”; containing two parcels, TMKs (3) 1-3-001:049 and 043) that the retired oral surgeon Dr. Leonard Horowitz bought in 2004 for \$550,000 and proceeded to invest several hundred thousand dollars more, the bulk of his life-savings, in making improvements to the Property.

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<sup>1</sup> **Exhibits 1 and 2** show the ICA’s Memorandum Opinion (“MO”) and denial of Horowitz’s Motion for Reconsideration (“MfR”). Contrary to the MO’s conflicting statements found on p. 5 versus footnote 11, the “non-monetary breaches to the mortgage agreement” statement conflicts with the statement--“deprive Lee of his receipt of mortgage payments.” The ICA erroneously defied *res judicata* doctrine by falsely stating that Lee’s claims for judicial foreclosure were strictly ‘*non-monetary*. In fact, the MO ftnt. 11, controverts this. Lee contested not receiving mortgage payments paid to a previous judgment creditor by Garnishment Order of the Nakamura Court. Lee’s 2005 foreclosure was largely filed to retaliate and maliciously prosecute Horowitz for complying with the Nakamura court Garnishment Order diverting the mortgage payments.

2. Unknown to Horowitz, the Seller, was a convicted drug trafficker, Cecil Loran Lee, (“Lee”) with resources in the underworld.

3. Soon after the sale, Lee threatened foreclosure for monetary and non-monetary default; then judicially foreclosed in 2005. Horowitz prevailed in a jury trial in 2008.<sup>2</sup> Lee was denied foreclosure.

4. But just before Lee’s death in 2009, his successor-in-interest, Paul J. Sulla, Jr., (hereafter, “Sulla”) appeared to challenge Horowitz’s \$200,000 jury-awarded judgment credit, months after Horowitz paid off the Mortgage and Note (the full \$550,000) using that credit in the final “balloon payment” paid on February 27, 2009.

5. While Lee was dying of cancer in Arizona, Lee and Sulla et. al., evaded Notices to release the Mortgage, and on May 15, 2009, shortly before Lee’s death, Sulla schemed and acted to regain the Property for Sulla’s alter-ego, a corporate fiction

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<sup>2</sup> Horowitz et. al. prevailed in 2008 after a jury trial in which Horowitz was awarded \$200,000 in damages, a small percentage of his actual losses over four years of deprived prospective business advantage while paying timely his Mortgage payments.

In 2009, after Horowitz made his final “balloon payment” (on February 27, 2009) then repeatedly noticed Lee et. al. to issue his Mortgage Release to no avail, Sulla suddenly appeared to contest the jury award. Lee, Sulla, et. al., argued that attorney John S. Carroll had not pled fraud with adequate ‘particularity,’ which the courts later affirmed to allegedly extend malicious prosecution against Horowitz, et. al.

But worried that the Ibarra court had repeatedly denied a post-verdict untimely Rule 50a Motion for Judgment as a Matter of Law (“MJML”), and had also issued two ‘Final Judgments’ affirming the jury award, Sulla contemporaneously administered an Assignment of Mortgage and Assignment of Note on May 15, 2009 into the not-yet-legally-existing “church” (that the MO references as “Revitalize”). The DCs allege this was a fraudulent transfer in violation of HRS § 651-C-4.

(“Revitalize”), installing Sulla’s strawman (claimed to be Lee’s “church,” directed by “nephew” Jason Hester) seeking to foreclose again by non-judicial foreclosure (“NJF”) while the case was under appeal for deficiency judgment, fees and costs.

6. On May 12, 2019, the final appellate disposition was issued raising new claims of malicious prosecution, against new parties, deprivation of civil rights, and conversion of the DCs’ properties.

7. On May 15, 2009, Sulla administered Assignments of Horowitz’s Mortgage and Note to the not-yet-legally-existing “Revitalize” paper “church.” Two weeks later, on May 26 and 28, 2009, Sulla faxed Revitalize’s Articles of Incorporation into the Hawaii Department of Commerce and Consumer Affairs (DCCA). This paperwork, on its face, showed “altered” dates, altered page numbers, a wrong signature on the General Certification page, and at least one, perhaps two, photocopied signatures of Lee. Subsequently, following Lee’s death on June 27, 2009, Sulla substituted Revitalize for Lee in the foreclosure case (i.e., “0196”); and while that case was under appeal Sulla claimed the jury award was an outstanding debt on the Mortgage, justifying non-judicial foreclosure (NJF) by Revitalize.

8. On-or-about March 19, 2010, Sulla mailed a deceptive and defective HRS 667-5 “Notice of Mortgagee’s Non-Judicial Foreclosure Under Power of Sale” to the DCs attorney, John S. Carroll, and within a couple of days Carroll pledged to work

with attorney Gary Victor Dubin to stop Sulla's foreclosure by filing for injunctive relief.

9. On March 31, 2010, the DCs paid Dubin \$6,000 to prepare and file in court for an injunction, which he never did.

10. On April 20, 2010, Sulla committed a 'mock auction' purportedly selling the "inn" and "health spa" property to 'insider' Hester (the highest-bidder) for a 'credit bid' of \$175,000. Sulla exclusively executed and verified the sale by filing an "Affidavit of Foreclosing Mortgagees Power of Sale." (See **Exhibit 1**, MO, pp. 7 and 13)

11. On June 14, 2011, Sulla secured a personal interest in the Property at the same time he conveyed the Property from Revitalize to Hester by quit claim deed. Sulla caused Hester to sign a mortgage loan for \$50,000 in favor of Sulla, secured by the Property; and on June 21, 2011, Sulla filed an ejectment action in the wrong court lacking jurisdiction over title disputes. 3RC-11-1-662 was dismissed on Feb. 13, 2012.

12. On April 25, 2014, Sulla filed the same case in the same wrong court, resulting in dismissal on Aug. 11, 2014 of 3RC 14-1-466, and sanctions warning from Judge Harry P. Freitas of the State District Court.

13. On July 20, 2012, Sulla filed a SLAPP lawsuit to enjoin the DCs from publishing truth about Sulla's actions as journalists/victims and whistleblowers in Civ. No. 12-1-0417. Horowitz and Kane prevailed on August 28, 2014.

14. On August 11, 2014, Sulla filed a quiet title and ejectment action (Civ. No. 14-1-0304) removed by the Defendants to Federal Court (Civ. No. 14 00413 JMS/RLP).

15. On January 5, 2015 Magistrate Richard L. Puglisi Disqualified Sulla from representing 'sham Plaintiff' Hester as a necessary witness at trial in the quiet title action.

16. On January 8, 2015, Judge J. Michael Seabright remanded the removed case (Civ. No. 14 00413 JMS/RLP) following review and selection of seemingly conflicting statements pursuant to Horowitz's California versus 2004 Hawaii domicile neglecting Horowitz's family's return to the mainland before 2009, followed by Horowitz's "after residence" litigation-related relocation to Hawaii from California in 2011.

17. On January 11, 2015, high-priced lawyer Stephen D. Whittaker appeared to represent the homeless pauper and drifter, Jason Hester, in lieu of Sulla's Disqualification.

18. On May 19, 2015, Horowitz and Kane filed a Verified Complaint against Sulla et. al. for “Deprivation of Rights and Injunctive Relief” (CV 15 00186 JMS/BMK), claiming RICO. The DCs pled that Sulla (denied joinder by the Third Circuit Courts in each of the consolidated cases) corrupted court officers and conspired to deprive Horowitz of his due process rights, and property rights, as aided-and-abetted by willful blindness to prima facie evidence of false filings with the State and theft by illegal foreclosure and malicious prosecution.

19. On May 27, 2015, without addressing any of the substantive issues, the “0304” Court granted “Hester” summary judgment in favor of Sulla’s theft scheme.

20. On “9/11” 2015, Judge Seabright administratively “stayed” the “0186” case based on “Colorado River Doctrine;” concluding “The case may be reopened upon notification by the parties that the pending state action has reached final conclusion.”

21. On February 1, 2016, Sulla incorporated Halai Heights, LLC, an alleged corporate-fiction formed to transfer ownership of the Property to Sulla individually.

22. On March 1, 2016, the “0304” court issued a Writ of Ejectment in favor of Sulla’s dispossession of the Defendants.

23. On March 9, 2016, Horowitz was forced into Chapter 13 bankruptcy, not only due to insolvency and inability to pay his lawyer, Margaret Wille, but trusting the

federal trustee would ‘avoid’ Sulla’s illegal conversion of the Property under HRS § 651-C-4 and 11 U.S. Code §§ 448-550. (See: BK 16-00239; and Adv. Proc. 16-90015).

24. These bankruptcy actions terminated on-or-about March 9, 2016 by reason of Trustee Howard M.S. Hu, and his counsel Bradley R. Tamm, opposing every reorganization option justice permitted and required. They granted Sulla virtually everything he claimed was due “Hester” following the non-judicial foreclosure.

25. On March 9, 2016, Judge Robert Faris’s “Memorandum of Decision Regarding Plan Confirmation” denied Horowitz all relief requested, in favor of Sulla and his co-conspirators.

26. On March 13, 2016, the Defendants appealed the 0304 summary judgment and writ of ejectment, along with other alleged improper court rulings.

27. On-or-about July 6, 2016, Sulla is alleged to have bribed State Sheriff Patrick Sniffen to fly from Kauai to Hilo to execute the conversion, wrongly justified by the invalid writ of ejectment. In fact, local sheriffs were unwilling to engage Sulla’s Property conversion scheme, having the same knowledge Sniffen was given. Nonetheless, Sniffen then ejected the DCs and their Property caretakers, seizing the DCs’ real and personal properties by threat of lethal force.

28. By September, 2016 Sulla transferred possession of the Property to U.S. Drug Enforcement Agency (DEA) enjoined drug trafficker, Mark Shackman, who claimed his ownership by way of Sulla's sale to him, replacing Hester as the purported "owner." (Shackman, not Hester, lives on the Property at the time of this filing.)

29. On September 6, 2016, Sulla presumably directed Hester to "sell" the Property to Halai Heights, LLC ("HLLC") exclusively owned by SULLA, and not Mark Shackman, for \$450,000; issuing a warranty deed with that transfer.

30. On April 26, 2017, Sulla filed a "Mortgage" with the State of Hawaii Bureau of Conveyances recording Sulla's \$150,000 "loan" to HLLC secured by the Property described in Exhibit "A" attached to that warranty deed dated Sept. 6, 2016.

31. On December 21, 2016, Horowitz et. al, filed CV-00666-LEK-KJM for damages compounding from Stewart Title Guaranty Company et. al.'s alleged bad faith refusal to finance title defenses against Sulla as contracted.

32. But just as Hu, Tamm, and the bankruptcy court had done, Stewart et. al. relied on Sulla's non-judicial foreclosure. They claimed Horowitz lost his interest in the Property and contract following Sulla's foreclosure. Judges Kenneth J. Mansfield

and Leslie E. Kobayashi administered the dismissal for “Failure to State a Claim” on April 26, 2017, despite Horowitz’s vigorous opposition.

33. On January 28, 2017, Defendants’ attorney filed Motion to Join Paul J. Sulla, Jr. and Halai Heights, LLC in the Intermediate Court of Appeals of the State of Hawaii (“ICA”) “0304”/”163” quiet title action as required by HRCF Rule 19, but this motion was denied on March 3, 2017.

34. On January 6, 2017, the DCs attorney in the State cases, Margaret Wille, filed “Appellants’ Motion for Judicial Notice’ exhibiting Public Records proving Sulla’s creation of HHLLC and warranty deed and sale of September 6, 2016 of the Property to Sulla’s entity, proving indisputably Sulla’s real party interest.

35. On February 10, 2018, the County of Hawaii Tax Department discovered that Sulla’s warranty deed from Hester to HHLLC falsely included a neighboring lot description (of “Remnant A”) in place of the “043” foreclosed parcel; and on February 13, 2018, the County notified Sulla about the discrepancy. That action, in effect, voided Sulla’s warranty deed and illegal transfer.

36. On July 26, 2018, the ICA consolidated the State cases (05-1-0196/”162”; 14-1-0304/”163”; and on December 18, 2018, the ICA added CAAP 18-0000584 to the consolidated cases.

37. On January 3, 2019, the ICA denied for the third time joining Sulla as a ‘proper party’ in “Order Denying Motion for Reconsideration Filed December 26, 2018 (in the “0407”/”584” consolidated case).

38. On May 2, 2019, the ICA issued its Memorandum Opinion (MO), stating that Sulla’s non-judicial foreclosure did not comport with “Kondaur.” Sulla’s quiet title summary judgment was vacated, raising new claims against new parties.

39. On May 12, 2019, the ICA denied Horowitz’s Motion for Reconsideration that urged the ICA to amend the MO to prevent further malicious prosecution in State, abuse of processes, damage to the DCs, and compounding irreparable harm.

## **B. GROUNDS FOR REMOVAL**

This Court has original jurisdiction over this action under 28 §§ U.S.C. 1343(a)(1-4) and 1450 on the grounds that *the DCs seek to “recover damages for injury to their persons and properties” caused by Hawaii State and federal actors who allegedly deprived the DCs’ rights to due process and aided-and-abetted by willful blindness Sulla’s conversion of the DCs’ Property “in furtherance of [a] conspiracy [as] mentioned in section 1985 of Title 42”* (28 U.S.C. § 1343(a)(1)).

In the case at bar, the deprivation of the DCs’ civil rights and Property rights are fairly attributable to the government actors and court officers who recklessly neglected to do what the ICA did so easily—conclude that “Hester’s” NJF and quiet title was void, since Sulla’s NJF was clearly defective. Highlighting what was obviously improper, “Hester” presumably paid \$175,000 in a “credit bid” as an “insider” to convert Horowitz’s \$1 million spa property, by Sulla’s direction. Only a

legal incompetent or complicit agent would not realize, and act to prevent or remedy, that inequity and presumption of guilt those facts presume.

The State agents that aided and abetted “Hester” and Sulla by such willful blindness and negligence includes Sherriff Patrick Sniffen and ODC Director, Bradley M. Tamm.<sup>3</sup>

Further, Tamm (as U.S. Trustee’s Howard Hu’s attorney), and Sniffen too, had ample opportunity to *prevent the wrongs* Sulla committed in furtherance of the conspiracy to steal the subject Property, but all three men failed to do so despite having knowledge of Sulla’s illegal actions, in violation of 28 U.S.C. §§ 1343(a)(2).

As explained more fully below, this Court has subject matter jurisdiction under 28 U.S. Codes §§ 1343(a)(1-4), and 1450, and 42 U.S.C. § 1983 for damaging acts done to or “[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof.’ ‘28 U.S.C. § 1343 is invoked with 42 U.S.C. § 1983 because § 1983, a civil rights statute, provides a cause of action and § 1343 gives the federal courts jurisdiction

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<sup>3</sup> Sniffen, Tamm, Hu and Dubin committed overt acts to further Sulla’s conspiratorial objective to seize possession of the DCs Property under color of law, and by Sulla’s, Hu’s and Tamm’s false filings with the State and the courts. HRS §705-520 defines “Criminal conspiracy” as “A person is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime: (1) He agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense [which is real Property theft by fraud in this case]; and (2) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy. [L 1972, c 9, pt of §1].”

Sniffen ejected the DCs from their Property and seized the Property by threat of lethal force, and Bradley Tamm, subsequent to Horowitz’s bankruptcy, became ODC Director. Tamm then aided-and-abetted the conspiracy to steal the DCs’ Property again; as well as conceal Dubin’s culpability at the same time. As ODC Director, Tamm neglected to recuse himself for conflicting interests. He speciously dismissed Kane’s complaint requested by ODC investigators against Sulla and Sulla’s allegedly bribed co-counsel Whittaker, pursuant to the ODC’s efforts to further investigate and disbar Dubin, who recklessly neglected to stop Sulla’s pending non-judicial foreclosure.

to hear cases arising under the civil rights statutes.” *Dahl v. City of Palo Alto*, 372 F. Supp. 647 - Dist. Court, ND California 1974.

As Judge Seabright published in his “9/11” 2015 administrative “stay,” relying on ‘Colorado River Doctrine:’ “Th[is] case may be reopened upon notification by the parties that the pending state action has reached final conclusion.” That ‘final conclusion’ after fourteen-years of litigation was reached on May 2 - 12, 2019 by the ICA’s issuance of their Memorandum Opinion (“MO”; **Exhibits 1 and 2**) that substantially evidences malicious prosecution, deprivation of rights, and the unlawful seizure of the Horowitz’s Property by the State courts and agents—precisely the reasons these Defendants sought federal protection in the Seabright Court in 2015 (and other federal courts previously and subsequently).

In other words, this Court’s application of Colorado River Doctrine, suitable or not, substantially contributed to the deprivations, distress, and irreparable harms suffered by the Defendants in State during the past four years, justifying this new pleading for removal and injunctive relief against the alleged public corruption therein, and conspiracy to deprive the Defendants of their rights and properties.

Assuming, nonetheless, this Court chooses to further rely on Colorado River Doctrine, the recent analysis in *UNITED STATES FIRE INSURANCE COMPANY v. HAWAIIAN CANOE RACING ASSOCIATIONS*, Dist. Court, D. Hawaii 2019, might be helpful in proceeding with the new claims, new parties, and/or lifting the stay that has damagingly delayed federal actions on claims already granted by Judge Seabright in the “0185” case. Severing some claims at this point does not comport with FRCP Rule 1 for efficiency, economy, or justice.

### **1. ‘Colorado River’ Analysis Encourages Federal Adjudication on the Claims**

Favoring Removal and federal adjudication of the Claims, “[t]his Court has considered the following factors, . . . :” (*Id.*)

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

[*R.R. St. & Co. v. Transp. Ins. Co.*, 656 F.3d 966,] 978-79 [(9th Cir. 2011)]. Some factors may not apply in some cases, and “[a]ny doubt as to whether a factor exists should be resolved against a stay” or dismissal. *Seneca Ins. Co. [v. Strange Land, Inc.]*, 862 F.3d [835,] 842 [(9th Cir. 2017)] (quoting *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369 (9th Cir. 1990)).

When it is appropriate for a court to decline to exercise jurisdiction pursuant to the Colorado River doctrine, we generally require a stay rather than a dismissal. *Attwood v. Mendocino Coast Dist. Hosp.*, 886 F.2d 241, 243 (9th Cir. 1989). A stay “ensures that the federal forum will remain open if for some unexpected reason the state forum. . . . turn[s] out to be inadequate.” *Id.* (internal quotation marks omitted).

*Montanore Minerals*, 867 F.3d at 1166 (some alterations in *Montanore Minerals*). (*Id.*)

In the three consolidated-cases justifiably removed here pursuant to 28 §§ U.S.C. 1343(a)(1-4) and 1450, with the DCs alleging and evidencing public corruption and racketeering in organized crime, the State forum “turn[s] out to be [grossly] inadequate.” (*Id.*)

The State proceedings have not only failed to “adequately protect the rights of the federal litigants;” but have blatantly deprived those rights as detailed in the attached Appendix “A.” Eleven violations of Horowitz et. al.’s rights to substantive and procedural due process are detailed.

One example raises the question of “whether federal law or state law provides the rule of decision on the merits.” The MO caused to be “waived” such important review of the lower court’s failure to rule ‘on the merits’ of the decision to vacate Horowitz’s \$200,000 jury award. In effect, the State court effectively seized Horowitz’s \$200,000 jury award without due process on the merits.

To do this ‘unconscionable’ malice, in fact, the ICA blatantly misrepresented HRAP Rule 10, and defied their own Judge Foley’s ruling. Judge Foley ruled not to impose needless costly transcripts void of substantive evidence to examine the merits of the lower court’s decision to vacate that jury award. This, after Judge Ibarra himself memorialized in the subject hearing minutes, “A JURY’S VERDICT SHALL NOT BE IMPEACHED, . . .” Any competent lawyer could see that no timely Rule 50a MJML motion was made prior to the jury retiring. That rule violation alone, plainly visible in the Record on Appeal, would preclude the “waiving” of this error, opposite to what the ICA recklessly or maliciously administered. For what purpose? Only to extend Horowitz’s malicious prosecution in that 0196 case and court.

This is just one of eleven actions evidencing the State courts’ malicious prosecution and abuse of process depriving the DCs’ Constitutional rights against seizure of protected rights and properties.

The first factor of Colorado River encourages the stay, were it not for the fact that the Property was illegally converted by alleged criminal complicity of the State court officials who harbored Sulla, concealed his crimes, and covered-up for each other.

“The second factor weighs against a stay because there has been no showing that this district court is an inconvenient forum for any of the parties that would be affected by a stay.” Op. cit. *UNITED STATES FIRE INSURANCE COMPANY*. In fact, the Seabright Court record proves that sham Plaintiff Hester is not able to be served. His whereabouts have been concealed by Sulla who won’t accept service for Hester. And Sulla remains the un-joined real “proper” party in interest, who is

no stranger to this Court. Nor are the other newly named local Honolulu defendants.<sup>4</sup> Accordingly, the second factor favors the Honolulu federal venue.

“The third and fourth factors — the desire to avoid piecemeal litigation and the order in which each forum obtained jurisdiction — weigh” (*Id.*) heavily against further stay. The 2015 stay caused ‘piecemeal litigation’ including Sulla’s filing of the 0584 expungement case, Horowitz’s bankruptcy, and Horowitz et. al.’s need to file the Stewart Title case. Now, the ICA’s MO directs two re-litigations (“0304” and “0584”)—both as though they never happened. The “order in which each forum obtained jurisdiction” is equipoise.

The fifth factor weighs heavy in favor of this Removal because the instant case(s) raise federal law claims, intertwined with Hawai’i law claims evaded. For instance, the State courts evaded the statute invalidating fraudulent transfers, HRS § 651C-4. Since “this Court is fully capable of applying the relevant Hawai’i authority,” (*Id.*) federal court jurisdiction in Honolulu is most proper.

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<sup>4</sup> On November 15, 2012, Judge Seabright concluded that Sulla committed misrepresentations in *Benoist v. U.S. Bank Nat’l Ass’n, as Trustee for JPM ALT 2006-A6, et al.*, Civ. No. 10-00350JMS-KSC. The Hilo lawyer apparently strung his clients--the Benoists--along through abusive processes, causing them to lose money and their property, much like in Horowitz’s case, through a foreclosure that Sulla could have prevented. "Sulla simply got the [foreclosure] dates wrong," Judge Seabright found. "In other words," Seabright concluded, "Sulla was aware that the foreclosure could very well go forward." Sulla appears to have defrauded the Benoists into believing he had done everything to stop the foreclosure, when actually he acted to permit it.

Severe social damage has occurred since 2015 when Judge Seabright avoided Sulla’s self-incriminating misrepresentation of the U.S. Supreme Court’s ruling in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). Sulla falsely claimed his ‘religious’ drug trafficking enterprise was condoned by the highest court. Judge Seabright subsequently quashed evidence indicting Sulla and his lead witness, Alma C. Ott (alias, Dr. True Ott) in [CV 15-00186 JMS-BMK](#). Those actions by the Court enabled Americans nationwide to be damaged and influenced by either Sulla’s drug-trafficking enterprise, or Ott’s neo-Nazi, anti-government, anti-Semitic, White Supremacist propaganda.

Subject matter jurisdiction, therefore, heavily favors Removal.

The eighth factor weighs heavy in favor of removal, and lifting the stay on the 2015 pending claims, because only this Court can resolve all issues that have multiplied under the State's alleged conspiracy to deprive the DCs' rights and properties.

Finally, the seventh factor is inapplicable because there is substantial evidence now, that Horowitz and Kane, having sustained irreparable harm, physical illnesses, and several mental/emotional distress, and non-recoverable loss of prospective business advantages, proximal to the actions of the named State and federal court abusers. Given this history, it would shock-the-conscious to claim the DCs were 'forum shopping.'

Accordingly, it would be grossly unreasonable, unjust, and further irreparably-harming, to oppose this Removal based on any argument, including Colorado River Doctrine that favors Removal.

## **2. Removal is Required to Redress the DCs' Deprivation of Federal Rights by Malicious Prosecutions in the State Courts.**

This Removal is required to redress the deprivation of rights and properties made clear by the MO that evidences the State judiciary's willful blindness to Sulla's abuse of the courts with Hester and co-counsel Whittaker, depriving the DCs' substantive and procedural due process, aiding-and-abetting malicious prosecution and theft of the DCs' properties.

As mentioned, the MO effectively diverts from and conceals Sulla's alleged fraud, criminal actions, and related liability, by simply assigning the subject conversion of property to "Revitalize." Sulla is harbored, despite the ICA finding that Sulla's NJF did not meet the muster of *Kondaur Capital Corp. v. Matsuyoshi*, 136 Hawai'i 227, 240, 361 P. 3d 454, 467 (2015). The ICA's 'final' ruling and remand simply enables more malicious prosecution, distress, and illness, to be

imposed by the concealed instigator, Sulla, furthering the State courts' deprivation of the DCs rights.

Given the history of this case, and the eleven defects evidenced by the ICA's MO (as detailed in Appendix "A") it is most reasonable to conclude the State courts' pattern-and-practice of depriving, damaging, and distressing Horowitz et. al., to gain the DCs' attrition, submission, and Property conversion is the State agents' *modus operandi*.

This unsettling conclusion is corroborated by the wrongful conversion of the DCs' properties furthered by Hu, Tamm, and Dubin who (aside from Carroll's negligence in pleading fraud without adequate 'particularity') helped Sulla possess the DCs' Property, that was seized illegally by Sniffen as another co-conspirator.

These State actors acted wrongly under color of State law (e.g., statute HRS § 667-5), recklessly neglecting what the ICA readily recognized—Sulla's NJF did not satisfy **Kondaur**. Standard 'custom and usage' did not permit wrongfully exercising powers to neglect also HRS § 651-C-4 (fraudulent transfer preclusions), as Sniffen, Tamm, Hu, Dubin and the courts did.

The DCs seek to redress this depravity pursuant to 28 U.S.C. §§ 1343(a)(3), with redress by injunctive relief, attachment, and rescission, granted under 28 U.S.C. §§ 1343(a)(4). Given the history of these cases, 28 U.S.C. §§ 1343(a)(4) appears to be the only reasonable recourse and remedy available promptly in federal court.

The DCs file here, now, for Removal and Injunctive Relief by way of attachment of the alleged illegally-converted Property, respecting this Court's power to do so granted by 28 U.S.C. § 1450. (See Appendix "B" for Applicable Rules and Laws).

The DCs should not be made to endure another minute in the State courts that have effectively raped their good faith and savaged their trusting spirits. The

Supreme Court in *King v. Smith*, 392 US 309 - 1968 reiterated “that a plaintiff in an action brought under the Civil Rights Act, 42 U. S. C. § 1983, 28 U. S. C. § 1343, is not required to exhaust administrative remedies, where the constitutional challenge is sufficiently substantial, as here, . . . *Damico v. California*, 389 U. S. 416 (1967). See also *McNeese v. Board of Education*, 373 U. S. 668 (1963); *Monroe v. Pape*, 365 U. S. 167, 180-183 (1961).

Further, “While generally not applicable to private parties, a § 1983 action can lie against a private party when ‘he is a willful participant in joint action with the State or its agents.’” (quoting *Dennis v. Sparks*, 449 U.S. 24, 27 (1980)); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999) (“The ultimate issue in determining whether a person is subject to suit under § 1983 is the same question posed in cases arising under the Fourteenth Amendment: is the alleged infringement of federal rights fairly attributable to the [government]?”) (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982)). Here, the judicial branch of government(s) maliciously prosecuted the DCs, or permitted their malicious prosecution under Sulla’s secreted influence, to infringe upon their federal rights. The remedy must therefore be *federal*.

There is a ‘common nucleus of operative facts’ to authorize federal jurisdiction for damages under 28 U.S.C. § 1343(a)(1-4) arising under State law (including HRS § 651-C-4) and the prejudicial tainting of State and federal proceedings as detailed above. The court in *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966) “authorize[d] a pendant federal jurisdiction for damage claims arising under state law, where there is a federal claim of sufficient substance to confer subject matter jurisdiction on the courts. That jurisdiction exists if there is a ‘common nucleus of operative fact.’ There is no question but that in this case the claims for injunctive [relief]. . . and the claims for damages have a common nucleus of operative fact.” (*Spotted Eagle v.*

*BLACKFEET TRIBE OF BLACKFEET INDIAN RES., CITY OF BROWNING*, 301 F. Supp. 85 - Dist. Court, D. Montana 1969).

In the case at bar, the ‘common nucleus of operative fact’ is deprivation of civil rights to due process, both procedural and substantive, and the deprivation of property rights. “The concept of ‘substantive due process,’ . . . forbids the government from depriving a person of life, liberty, or property in such a way that ‘shocks the conscience’ or ‘interferes with rights implicit in the concept of ordered liberty.’” *Nunez v. City of Los Angeles*, 147 F. 3d 867 – Court of Appeals, 9th Circuit 1998.

This ‘interference’ that ‘shocks the conscious’ justifies Removal by reason of the aforementioned examples from the eleven (11) ‘operative facts’ (detailed in Appendix “A”). The State courts have neglected the DCs’ dispossession and ejection from their Property; and Sulla’s current possession of the Property. The State courts have remained willfully blind to Sulla’s conflicting interests, corroborated fraud, and multiple alleged crimes. Each of the lower courts, as well as the ICA, has perpetuated malicious prosecutions and deprivations of the DCs’ rights to fair play and equal justice under the law.

This activity of the State courts across the board precisely satisfies the definition of ‘harboring’ a criminal provided in *United States v. Acosta de Evans*, 531 F. 2d 428 - Court of Appeals, 9th Circuit 1976, that states: “Standard definitions of ‘harbor’ include both concealment and simple sheltering, although the latter appears to be the primary meaning.” The lower courts and the ICA blatantly conceal Sulla’s conflicting interests and wrong doing. They repeatedly neglected Rule 19 joinder requirements; and they have all simply sheltered Sulla from being held accountable for his actions. They have all insisted instead to go along with Sulla’s ruse that “Revitalize” did all the dirty work, or that Hester is solely responsible. Despite receiving Judicial Notice of Sulla’s alter-ego HLLC

being in possession of the Property, and on County Tax Records being declared the current Property “owner.”

### **C. The Other Prerequisites for Removal are Satisfied.**

This Notice of Removal is timely filed. The relevant statute provides that “[e]ach defendant shall have 30 days after receipt . . . of the initial pleading . . . to file the notice of removal.” 28 U.S.C. § 1446(b)(2)(B). A copy of the initial pleading is attached as **Exhibits 1 and 2**, dated May 2<sup>nd</sup> and May 12<sup>th</sup>, respectively. None of the Counterclaim Defendants, Sulla, Sniffen, Tamm, Hu, Dubin, Whittaker, or Carroll have been served with a copy of the Summons or Complaint, as of the date of the filing of this Notice of Removal.

This action is properly removed to the United States District Court for the District of Hawaii, which is “the district and division embracing the place where [the] action is pending.” 28 U.S.C. § 1441(a).

Quoting 28 U.S.C. § 1446, pursuant to the MO serving as the ‘initial pleading,’ *Harris v. Bankers Life and Cas. Co.*, 425 F. 3d 689 - Court of Appeals, 9th Circuit 2005, states: “[T]he ‘thirty day time period [for removal] ... starts to run from defendant's receipt of the initial pleading only when that pleading affirmatively reveals on its face” the facts necessary for federal court jurisdiction. (*Id*) see also *Lovern v. General Motors Corp.*, 121 F.3d 160, 162 (4th Cir.1997) (“[W]e will allow the court to rely on the face of the initial pleading and on the documents exchanged in the case . . . requiring that those grounds be apparent within the four corners of the initial pleading or subsequent paper.”) (*Harris*, Op. cit.) The statements made by the ICA in the MO, and responsively in this Notice of Removal, adequately serves as grounds for the Complaint; that the Court may require the DCs to supplement or amend as needed in the interest of justice.

Title 28 U.S.C. § 1446(a) requires a copy of all process, pleadings, and orders served upon the removing defendant in the state court action (cases Civ. No. 05-1-0196; 14-1-0304; and 3CC17-1000407) to be included with this Notice of Removal. The DCs were served by JEFS online, and have attached these papers hereto as **Exhibits 1 and 2**, along with the Summons and Civil Case Cover Sheet.

In addition, the DCs attach hereto their “**Ex Parte Motion for Order to Show Cause** [Why ‘Writ of Ejectment’ Should Not Issue for Horowitz et. al.’s Repossession of the Wrongly Foreclosed Subject Property Within 30 Days of Hearing on the Motion, or Sooner.]”

In addition, Pursuant to 28 U.S.C. § 1446(d), a Notice to Adverse Parties of Removal to Federal Court, is also attached hereto, together with this Notice of Removal, will be served upon the Counterclaim Defendants or their counsel, and will be filed with the clerk of the Third Circuit Court in Hilo.

By filing this Notice of Removal, the DCs do not waive their right to seek to compel arbitration, or to object to jurisdiction over the person, or venue, and specifically reserves the right to assert any defenses and/or objections to which it may be qualified to assert.

If any question arises as to the propriety of the removal of this action, the DCs respectfully request the opportunity to submit briefing and oral argument and to conduct discovery in support of their position that subject matter jurisdiction exists.

Dated: Honolulu Hawaii: May 31, 2019

Signed: /s/Leonard G. Horowitz

LEONARD G. HOROWITZ

Signed: /s/Sherri Kane

SHERRI KANE

Hester vs Horowitz et al, ICA No. CAAP-16-0000162; CAAP-16-0000163; CAAP-17-0000584  
Notice of Removal and Complaint; Exhibits “1” thru “5”.

LEONARD G. HOROWITZ  
and SHERRI KANE, pro se  
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Las Vegas, NV 89108  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII**

**ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584**

JASON HESTER )  
Plaintiff/Counterclaim Defendant )  
vs. )  
LEONARD G. HOROWITZ )  
and SHERRI KANE, )  
Defendants )  
and )  
LEONARD G. HOROWITZ )  
and SHERRI KANE, )  
Counterclaimants )  
vs. )  
PAUL J. SULLA, JR., and )  
PAUL J. SULLA, JR., ATTORNEY AT )  
LAW, A LAW CORPORATION; )  
HALAI HEIGHTS, LLC; PATRICK )  
SNIFFEN; BRADLEY R. TAMM; )  
HOWARD M.S. HU; GARY VICTOR )  
DUBIN; STEPHEN D. WHITTAKER; and )  
JOHN S. CARROLL )  
Third Party Counterclaim Defendants )

Defendants

CIV. NO. 15 \_\_\_\_\_  
[42 U.S.C. § 1983]

**COMPLAINT FOR  
DEPRIVATION OF RIGHTS AND  
INJUNCTIVE RELIEF;  
DECLARATION OF LEONARD G.  
HOROWITZ and SHERRI KANE;  
APPENDICES “A” AND “B”;  
EXHIBITS “1” - “5”; SUMMONS;  
CERTIFICATE OF SERVICE**

**TRIAL BY JURY DEMAND**

**COMPLAINT FOR DEPRIVATION OF RIGHTS  
AND INJUNCTIVE RELIEF**

Plaintiffs LEONARD G. HOROWITZ, and SHERRI KANE (hereafter “Plaintiffs”), acting in Pro per, pursuant to claims raised during State appellate cases ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584; and pending claims “stayed” in CV 15 00186 JMS/BMK, allege that:

## **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1343(a)(1-4), 1443 and 1450; 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988; and 18 USC 1964.
2. Venue in this District is proper under 28 U.S.C. § 1391(b).

## **II. PARTIES**

3. **Plaintiff** LEONARD G. HOROWITZ (a.k.a., Dr. Leonard Horowitz) is a retired oral surgeon, internationally known natural healthcare consumer advocate, and Judeo-Christian ministry “Overseer,” who purchased the subject Property including an “inn” and “spa” (hereafter, “Property”) in 2004, located at 13-3775 Paho-Kalapana Road, Paho HI on behalf of his family, THE ROYAL BLOODLINE OF DAVID ministry, and humanity.

4. Plaintiff **SHERRI KANE** is a California domiciled investigative journalist, Dr. HOROWITZ’s fiancé, business partner, co-investor and co-owner of the Property.

5. Defendant **PAUL J. SULLA, JR.** is a lawyer, real estate entrepreneur and competing health products and services business owner, administering the law firm, “**PAUL J. SULLA, JR., ATTORNEY AT LAW A LAW CORPORATION,**” and the religious enterprise **THE ECLECTIC CENTER OF UNIVERSAL FLOWING LIGHT-PAULO ROBERTOSILVA E SOUZA** (a.k.a., “Big Island Ayahuasca Church”) at 46-4070 Kahana Dr. Honokaa, HI 96727.

6. Defendant **JASON HESTER** is purportedly Mr. SULLA’s “client,” whose last known and published residential address is 122 Felice Ct. Palm Desert, CA 92211-0724. SULLA administered HESTER’s duties as “Overseer” of the allegedly sham “Foreclosing Mortgagee” “**GOSPEL OF BELIEVERS**” (a.k.a., “**REVITALIZE.**”)

7. Defendant **HALAI HEIGHTS, LLC** (“HLLC”) is SULLA’s alleged alter ego that purportedly purchased the Property from HESTER in 2016. SULLA claims HESTER and he are the sole “members” of this alleged corporate fiction.

8. **PATRICK SNIFFEN** is a lieutenant in the State of Hawaii Sheriffs Department who is based in Maui, but executed the Plaintiffs’ ejection on the Big Island.

9. **BRADLEY R. TAMM** is a previously California Bar Association suspended lawyer who represented U.S. Bankruptcy Trustee **HOWARD M. S. HU**, in

HOROWITZ's bankruptcy case and adversarial proceeding. Subsequently, TAMM was appointed to his current position as Director, Office of Disciplinary Counsel, State of Hawaii.

10. **HOWARD M.S. HU** is the local U.S. Bankruptcy Trustee who acted with TAMM to deprive the Plaintiffs' civil rights and properties. Plaintiffs allege HU aided-and-abetted by negligence or willful blindness SULLA's conversion scheme during HOROWITZ's bankruptcy, and also acted to deprive KANE and HOROWITZ's lawyer, Margaret Wille, as valid creditors.

11. **GARY VICTOR DUBIN** is a local lawyer and nationally advertised "foreclosure expert" with whom the Plaintiffs contracted and paid to stop SULLA's non-judicial foreclosure (hereafter, "NJF") auction and sale, but neglected to file any paperwork as he promised, effectively permitting SULLA's NJF to take place.

12. **STEPHEN D. WHITTAKER** is SULLA's co-counsel who SULLA hired, paid, and allegedly bribed to represent HESTER following SULLA's Disqualification by federal Judge Puglisi in the quiet title case; concealing SULLA's interests in the Property and neglecting SULLA's wrongdoings and scheme to convert the Property "under color of law."

13. **JOHN S. CARROLL** is a local lawyer who represented HOROWITZ, et. al., in the “res case” judicial foreclosure action. Although prevailing in defeating foreclosure, Carroll was ruled to have neglected to plead “fraud” with “particularity,” resulting in the courts’ vacating HOROWITZ’s \$200,000 jury award.

14. In CV 15 00186 JMS/BMK, Co-Defendant **ALMA C. OTT**, (a.k.a., A. TRUE OTT, and “DR. TRUE OTT”) is a natural health store owner who operates **MOTHER EARTH MINERALS** (d.b.a, MEMINERALS.com) and is widely known for publishing anti-government, anti-Semitic and White Hate propaganda.

15. Plaintiffs have joined as parties herein every person having, or claiming to have, as far as is known to Plaintiffs any legal or equitable right, title or interest in the Property, or any part thereof, or any other claim with respect thereto.

16. Defendants John Does 1-20; Jane Does 1-20; Doe Corporations 1-20; Doe Partnerships 1-20; Doe Entities 1-20 and Doe Government Units 1-20 are persons who have or may claim to have an interest in the Property, who cannot be identified and whose names are unknown to Plaintiffs, and who are joined in this action pursuant to HAW. REV. STAT. SECTION 669 et. seq., as amended.

### **III. FACTS**

**(SEE FACTS SECTION ATTACHED ABOVE IN NOTICE OF REMOVAL.)**

## **IV. CIVIL CLAIMS**

### **COUNT I**

#### **VIOLATION OF 42 U.S.C. § 1983: Deprivation of civil rights**

1. Plaintiffs incorporate and restate each of the above paragraphs (in the above FACTS section) as if fully set forth herein.
2. State actors SNIFFEN and TAMM acted with SULLA under color of law to deprive HOROWITZ and KANE of their due process rights, and property rights.
3. SNIFFEN received compensation from SULLA (alleged bribery) to fly to the Big Island to seize the Plaintiffs' Property by threatening lethal force.
4. SNIFFEN deprived the Plaintiffs of their Property and civil right to due process in defense thereof in the appellate court that subsequently voided SULLA's NJF.
5. TAMM acted as a State agent as ODC Director to also deprive KANE and HOROWITZ of their due process rights, and property rights.
6. TAMM acted willfully blind to compelling evidence that SULLA's NJF was conducted invalidly—evidence provided him by HOROWITZ, confirmed by the ICA's MO.

7. TAMM acted under color of law and his official positions, both as attorney for HOWARD M.S. HU and as ODC Director, to deprive the Plaintiffs of their due process rights and properties.

8. TAMM and HU deprived KANE of her fair share of HOROWITZ's bankruptcy estate by conspiring with SULLA to deny HOROWITZ's rights to avoid SULLA's fraudulent transfers of the Property required for HOROWITZ'S Chapter 13 reorganization plans.

9. TAMM later concealed his aforementioned conflicting-interests while acting as ODC Director to deprive KANE (and vicariously HOROWITZ too) of due process and remedies in the ODC's investigation of GARY VICTOR DUBIN. ODC investigators had solicited KANE to file complaints against SULLA and WHITTAKER pursuant to the government's investigation of DUBIN. TAMM shut those two complaints down to protect SULLA and WHITTAKER, and his own actions during the bankruptcy proceedings.

10. SNIFFEN and TAMM acted with SULLA and WHITTAKER under the color of State law (including HRS § 667-5) to deprive Plaintiffs of their Constitutional rights precluding unlawful seizures of property.

11. As a direct or proximate result of SNIFFEN, TAMM's and HU's violation(s) of 42 U.S.C. § 1983, Plaintiffs were damaged, made homeless, suffered severe mental distress, health problems, and irreparable harm.

## **COUNT II**

### **VIOLATION OF 42 U.S.C. § 1981(a)(b)(c): Equal Rights Under the Law**

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. Plaintiffs represent a Judeo-Christian minority, and as made known by the MO, they are the successors-in-interest of HOROWITZ's ministry—THE ROYAL BLOODLINE OF DAVID (hereafter, "Royal").
3. Defendants SULLA, HESTER, WHITTAKER, SNIFFEN, TAMM and HU acted under color of law to deprive the Plaintiffs of their due process and property rights in favor of SULLA's conspiracy that involved and favored two religious corporations, "REVITALIZE" and "THE ECLECTIC CENTER," both competing against "Royal" for the Property.
4. SULLA's ECLECTIC CENTER "Ayahuasca Church" represents (or misrepresents) the "Daime Religion" and has been the leading manufacturer and

trafficker of what Daime Church members and online promoters call the “God Molecule”—the Class I narcotic hallucinogen dimethyltryptamine (“DMT”).

5. SULLA et. al. worked in concert with OTT, a widely known anti-government, anti-Semitic, White Hate propaganda publisher, to smear and libel the Plaintiffs online, to damage their reputability and ministry.

6. SULLA et. al. worked in concert with the Property Seller’s domestic partner, Herbert M. Ritke, who publicly made anti-Semitic statements to damage the Plaintiffs’ reputability in the Puna and Hilo communities.

7. Aside from the above facts, the element of discriminatory animus most reasonably contributed to the State and federal actors that enabled SULLA and his conversion scheme to prevail, despite obvious illegalities brought to their attention by the Jewish, non-lawyer, anti-drug industry, pro se Plaintiffs.

8. The acts of SULLA, HESTER, WHITTAKER, SNIFFEN, TAMM and HU violate the clear language in 42 U.S.C. § 1981(a)(b)(c), including the “statement of equal rights” therein for which this claim is brought.

9. These Defendants abused said religious corporations, or justified their actions in favor of SULLA’s REVITALIZE enterprise, to deprive Plaintiffs of their rights to enforce multiple contracts, depriving Plaintiffs of their right to “performance,

modification, and termination” of said contracts (including their Mortgage Contract and litigation contracts), “and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship(s)”.

10. SULLA, HESTER, WHITTAKER, SNIFFEN, TAMM and HU deprived Plaintiffs under color of law HRS 667-5, as aforementioned.

11. SULLA, HESTER, WHITTAKER, TAMM and HU repeatedly deprived Plaintiffs rights to due process in adjudicating their compulsory counterclaims, required under FRCP Rule 13(1)(A)(B), by causing courts to repeatedly block and/or strike Plaintiffs’ compulsory counterclaims, and prohibit Plaintiffs’ standing to sue, be parties, and give evidence, to the full and equal benefit of federal and State laws and proceedings.

12. By these violations of 42 U.S.C. § 1981 *et seq.* over five years, Defendants have prohibited Plaintiffs from enforcing and terminating the terms of HOROWITZ/ Royal’s Mortgage contract in law and equity, and to exercise the full and equal benefit of laws, and to be made whole and bring closure to these matters of deprived rights and real Property interests.

13. As a direct and proximate result of Defendants’ violations of 42 U.S.C. § 1981, Plaintiffs have sustained injuries and damages, as aforementioned.

### **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 representations in debt collection, and unfair practices.**

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. Plaintiffs alleged that SULLA, HESTER, SNIFFEN, WHITTAKER, HU AND TAMM acted directly, or vicariously to collect debt from HOROWITZ and/or his estate, that was not truly owed.
3. SULLA acted as a self-proclaimed “debt collector” to defraud HOROWITZ et. al., into making payments not due and owing.
4. SULLA’s debt collection enterprise was aided-and-abetted by HESTER, SNIFFEN, WHITTAKER, HU AND TAMM acting under false pretenses and under color of law.
5. SULLA, WHITTAKER, SNIFFEN, and TAMM abused the U.S. Postal Service and e-mail services to collect “false debt” generated by SULLA contested by the Plaintiffs.

6. As a direct and proximate result of SULLA's and HESTER's aforementioned violations of the Fair Debt Collection Practices Act, Plaintiffs have sustained injuries and damages, as aforementioned.

## **COUNT IV**

### **VIOLATION OF HRS §§ 480-2 and 480-8: Unfair and deceptive trade**

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. Defendant SULLA committed unfair and deceptive trade by acting as a lawyer and "interlocking director" of sham entities abused to advance unfair methods of debt collection and property conversion damaging the Plaintiffs, especially HOROWITZ.
3. Defendant SULLA committed HRS §§ 480-2 and 480-8 violations by acting to defraud, maliciously prosecute, and defame the Plaintiffs, to deprive them of their legal rights, businesses, money, and properties.
4. Direct and proximate damages to the Plaintiffs caused by SULLA under this claim, simply from the conversion of the subject Property, was assessed by the "0304" quiet title State court as "\$500/day," with Sulla subsequently advertising the Property for sale a \$975,000.00.

5. Additional damages caused by SULLA et. al.'s HRS §§ 480-2 and 480-8 violations will be proven at trial.

## COUNT V

### LEGAL MALPRACTICE [Haw. Rev. Stat. § 657(1);

*Kahala Royal Corporation v. Goodsill, Anderson, Quinn & Stifel, et. al.* Supreme Court of Hawaii, Appeal No. 26669 & 26670 , Jan. 11, 2007]

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. Plaintiffs claim attorneys SULLA, WHITTAKER, TAMM, HU, and DUBIN committed multiple malpractices and repeatedly breached standards of care and rules of professional conduct while acting negligently, fraudulently, and/or criminally as aforementioned. CARROLL is alleged by the courts to have acted negligently (not having pled fraud with the requisite particularity).
3. The four elements of legal malpractice in Hawaii apply to this case as follows:
  - 1) Each of the lawyers had a *duty* to follow State and federal laws, and ethical rules of professional conduct;
  - 2) Each lawyer *breached* his duty (as detailed above);
  - 3) Plaintiffs suffered *injuries* as a result; and the
  - 4) Lawyers' breaches of duties *caused* the Plaintiffs' damages, in that:

(a) SULLA and WHITTAKER maliciously prosecuted the Plaintiffs and (by the aforementioned torts) deprived Plaintiffs of their time, money, clear title, use and enjoyment of their Property, for years. These lawyers caused the Plaintiffs severe emotion distress and irreparable harm, and damaged their prospective business advantage in their careers and on the Property;

(b) The Plaintiffs, having acted reasonably, would not have engaged in the continuous litigations and malicious prosecutions were it not for SULLA's, WHITTAKER's, DUBIN'S, TAMM'S, HU'S and CARROLL's malpractices. (*Leyson v. Steuermann*. 705 P.2d 37, 1985.

4. SULLA's and WHITTAKER's legal malpractices are barred from the "absolute litigation privilege" due to evidence of fraud and crime to be adjudged at trial. This includes evidence of WHITTAKER'S alleged bribery by SULLA. (*Kahala Royal Corporation v. Goodsill, Anderson, Quinn & Stifel, et. al.* Supreme Court of Hawaii, Appeal No. 26669 & 26670, Jan. 11, 2007)

5. TAMM AND HU's legal malpractices are barred from the "absolute litigation privilege" due to evidence of fraudulent concealment of SULLA'S fraudulent transfers of the Note and Mortgage.

6. TAMM AND HU's legal malpractices are also barred from the "absolute litigation privilege" due to evidence of gross negligence, violation of official oaths and breach of public duties to oppose malpracticing lawyers, report lawyers'

property conversion schemes to proper authorities, and prevent damage to citizens from attorney fraud and illegalities, such as SULLA's obvious forgeries and wrongful foreclosure, as made known by the ICA's MO in vacating SULLA's NJF.

7. DUBIN's malpractice is evidenced by DUBIN taking money for services he did not provide—expressly, promising to block SULLA'S NJF, then filing nothing to enjoin SULLA'S auction.

8. DUBIN also breached express orders from the Plaintiffs to never negotiate with SULLA. DUBIN negotiated with SULLA to continue action and drove up costs,

9. DUBIN's subordinate, Benjamin Brower, also caused delays and drove up costs by filing the wrong warranty deed proving HOROWITZ's title.

10. CARROLL, as mentioned, was found by the courts to have malpracticed, affirmed on May 12, 2019 with the issuance of the ICA's denial of Motion for Reconsideration of the MO on this point of CARROLL'S alleged malpractice of defective pleading.

11. As a direct and proximate result of the aforementioned lawyers' malpractices, Plaintiffs sustained injuries and damages as aforementioned.

## **COUNT VI: Claim to Set Aside Fraudulent Transfer of Property Title**

[HRCF Rule 18(b); HRS §651C Uniform Fraudulent Transfer Act]

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. SULLA violated HRS § 651C by administering fraudulent transfers of HOROWITZ/Royal's Mortgage and Promissory Note(s) to the sham Revitalize two weeks before that corporation legally existed, to fraudulently generate \$375,000.00 of false debt that SULLA and HESTER demanded HOROWITZ pay.
3. When HOROWITZ refused, SULLA circumvented judicial processes ongoing at that time in two courts to conduct a non-judicial foreclosure (on the void Mortgage), and subsequently converted Plaintiffs' free and clear title to HESTER through another series of illegal deed transfers.
4. Subsequently, on September 9, 2016, SULLA caused HESTER to purportedly "sell" the Property to SULLA'S corporate fiction, HHLLC, as another fraudulent transfer, this one invalidated by prima facie forgery discovered by the County of Hawaii Tax Department officials. (**Exhibit 5**)
5. On February 13, 2016, a County official noticed SULLA, "I . . . recommend that you make contact with the title company or company [SULLA's Law Firm] that assisted with the transaction/legal description of the warranty deed from Jason

Hester to Halai Heights LLC as it appears Jason Hester did not have clear title to the legal description utilized in this document.” (**Exhibit 5**)

6. As a direct and proximate result of SULLA’s pattern-and-practice of committing fraudulent transfers, Plaintiffs have sustained injuries and damages as aforementioned.

7. SULLA’s fraudulent transfers supplement the ICA’s determination that SULLA’S NJF was defective, vacating the invalid foreclosure, all providing substantial good cause to eject SULLA, his agents, and entities from Property as requested by the attached Notice to Vacate or Show Cause.

8. The Plaintiffs request the honorable Court set aside SULLA’s fraudulent transfers pursuant to the civil remedy in HRS 651C-7(a)(3)(A) prescribing the injunctive relief requested at this time.

### **COUNT VII: Conversion of Real Property**

[*FREDDY NOBRIGA ENTERPRISES v. STATE, DHHL*, 295 P. 3d 993 –  
Haw: Intermediate Court of Appeals 2013]

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.

2. Conversion encompasses the following acts: "(1) A taking from the owner without his consent; (2) an unwarranted assumption of ownership; (3) an illegal use or abuse of the chattel; and (4) a wrongful detention after demand." *Tsuru v. Bayer*, 25 Haw. 693, 696 (1920).

3. SULLA took ownership of the Property without HOROWITZ et. al.'s consent, by fraudulently altering the Mortgage contract and then transferring the already paid interest in the Mortgage by Assignment of Mortgage and Assignment of Notes into the sham "Revitalize" to bamboozle the Plaintiffs attorney and courts, to get away with (the crime by) the invalid NJF for title conversion.

4. SULLA and his agents, including Sheriff SNIFFEN, and later Marc Shackman, made "an unwarranted assumption of ownership" of the subject Property.

5. SULLA and his allegedly bribed co-counsel WHITTAKER first defrauded the "0304" court to obtain a writ of ejectment.

6. SULLA then is alleged to have bribed Sherriff SNIFFEN to dispossess the Plaintiffs after SULLA was refused by local Sheriffs who dutifully refused to become complicit in SULLA'S and WHITTAKER's apparent crime.<sup>5</sup>

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<sup>5</sup> Akin to a "false arrest," SNIFFEN committed a "false seizure." "The securing of a residence by the police constitutes a 'seizure' under the fourth amendment. *United States v. Chadwick*, 433 U.S. 1, 8, 97 S.Ct. 2476, 2481, 53 L.Ed.2d 538 (1977). Under the 'totality of the circumstances' SNIFFEN did not have 'probable cause' to believe the Writ of Ejectment that SULLA and WHITTAKER provided was obtained in 'good faith.' The underlying facts overwhelmingly

7. Subsequently, SULLA and his agents, Shackman et. al., used the converted Property illegally by advertising illegal ayahuasca ceremonies from the converted Property. SULLA's religious enterprise solicited Hawaii tourists and citizens to consume illegal drugs on the Property during special advertised events.

8. SULLA committed wrongful detention of the Property's usage after the Plaintiffs and their associates repeatedly Noticed SULLA that their conversion scheme was illegal, their use of the Property for drug events was dangerous to public health and safety, potentially damaging to the Property, and distressing to the Plaintiffs.

9. HOROWITZ made his demands for correction and repossession crystal clear during his 2015 Seabright court case, and 2016 bankruptcy proceeding to no avail.

10. "So long as he [or she] intends to deal with the property in a way which is in fact inconsistent with the plaintiff's right, he [or she] is a converter." *Fries*, 355 N.Y.S.2d at 744.

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evidenced bad faith and criminal conversion. There were no 'exigent circumstances' that reasonably justified defying due process ongoing at that time in the ICA. That court later vacated the improper NJF. This claim of "false seizure" and complicity of SNIFFEN in tortious conversion (under the Fourth Amendment and 42 U.S.C. § 1983) requires a demonstration "that there was no probable cause . . . . See *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir.1998). "Probable cause exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [the defendant] had committed a crime." See *Buckner*, 179 F.3d at 837 (changes in original). In this case, there was substantial probable cause for any prudent person to have concluded a high probability that SULLA and WHITTAKER were committing criminal conversion.

11. As a direct result of SULLA's, WHITTAKER's AND SNIFFIN's complicity in conversion, Plaintiffs have sustained injuries and damages as aforementioned.

### **COUNT VIII: Neglect to Prevent**

#### **[42 U.S. Code § 1986. Action for neglect to prevent]**

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.

2. SULLA, WHITTAKER, SNIFFEN, TAMM, HU and DUBIN could each have prevented the Plaintiffs from being damaged as encouraged by 42 U.S. Code § 1986.

3. Each lawyer, and SNIFFEN too (as a State Sheriff) certainly could have and should have recognized SULLA's and WHITTAKER's conversion scheme by prompt review of the Public Records provided by HOROWITZ.

4. The overwhelming evidence of criminal wrongdoing included forensic document and handwriting expert Beth Chrisman's Declaration analyzing SULLA's forged and "altered" State filings of the Articles of Incorporation for the "Foreclosing Mortgagee" Revitalize.

5. SULLA, WHITTAKER, TAMM, and HU made it a point in their court filings to avoid the prima facie evidence of forgery in the untimely filing of Revitalize’s incorporation papers.

6. SULLA, WHITTAKER, TAMM, and HU made it another point in their court filings to avoid mentioning, even answering to, HOROWITZ’s repeated notices of the foreclosure DENIED ruling in the first filed “0196” case.

7. Professional ethics rules required TAMM and HU to prevent, not neglect, even report to “appropriate officials” SULLA’s pending 2016 conversion of the Property.

8. WHITTAKER, TAMM and HU, thereby, defied their ethical, moral and legal responsibilities, and neglected to prevent HOROWITZ et. al.’s dispossession, financial damages, emotional distress, and irreparable harm by SULLA and his co-conspirators’ conversion.

### **COUNT IX: Trespass to Chattels**

[Restatement (Second) of Torts § 256]

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.

2. SULLA's aforementioned acts satisfy the basic elements of a claim of trespass to chattels:

a) the Plaintiffs did not consent to SULLA and his enterprise's trespass (and conversion) of HOROWITZ and KANE's personal properties, fixtures, improvements, pets, and agricultural and aqua-cultural properties; and

b) the Plaintiffs did not consent to SULLA and WHITTAKER's interference or intermeddling with those possessory interests; and

c) the intentionality of SULLA's and WHITTAKER's that documents mens rea, as mentioned above with the intentional avoidance, evasion, and diversion away from substantively answering to forgery allegations and the foreclosure DENIED conflicting 0196 case final disposition (Restatement (Second) of Torts § 256)

3. As a direct and proximate result of Defendants trespass to chattels, Plaintiffs have sustained injuries and damages as aforementioned.

**COUNT X: Defamation and/or Commercial Disparagement**

HRS § 663-1 (2015) and Lanham Act, 15 U.S.C. § 1125(a) 43(a)(1)(B)

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.

2. The elements of a cause of action for libel and defamation under Hawaii law require a false and defamatory statement concerning another—as when:

a) SULLA published on the Internet that the Plaintiffs were “squatters” and “trespassers” on their own Property; and

b) SULLA published under the alias “Sarah Pain” in the law journal *Cutting Edge Law*, on 8-28-13 falsely stating “Mr. Sulla won the case” against HOROWITZ and KANE, that SULLA actually lost (i.e., the SLAPP lawsuit) and also won the foreclosure case that he did not win either; and in that same article . . .

c) SULLA falsely published that HOROWITZ did not pay the “balloon payment” that HOROWITZ paid as soon as an earnest accounting was made despite total evasion and un-cooperation by the Mortgagee under SULLA’s direction.

d) OTT smeared HOROWITZ’s industrial and intellectual properties, products, and trademark in a series of online publications; and

e) OTT smeared HOROWITZ as “quite simply a Khazarian (Ashkenzi) Jew who labors under the strong mental delusion that he is the literal physical embodiment of the prophesied “Holy Angel of Philadelphia” . . . and that he alone represents the “Royal Bloodline of David” aka the descendants of the biblical Levi.”

f) DUBIN libeled HOROWITZ on the Better Business Bureau website (on 2-17-17) stating “This guy is nuts. . . . This guy belongs in the state mental hospital.”

g) TAMM smeared HOROWITZ publicly claiming the doctor is a “moron” for asking TAMM good questions about his past suspension, and actions favoring SULLA.

3. SULLA’s and OTT’s defamations are actionable, irrespective of the fact that their fraudulent statements in publications caused special harm to the Plaintiffs.

*Gold v. Harrison*, 88 Hawaii 94, 100, 962 P.2d 353, 359 (1998);

4. As a direct and proximate result of Defendants’ SULLA, OTT, DUBIN, and TAMM’s defamatory publications, Plaintiffs have sustained damages, and severe mental and emotional distress that damaged the Plaintiffs’ health.

### **COUNT XI:**

#### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)**

**[Haw. Rev. Stat. § 663-1 (2015)]**

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.

2. Defendants actions fulfill the elements of an IIED claim in Hawaii:

(1) Defendants SULLA, WHITTAKER, OTT and DUBIN, acted recklessly, causing harm to Plaintiffs intentionally, and quite obviously when:

a) SULLA and his predecessor-in-interest, Lee, purposely evaded Plaintiffs' notices to perform a final accounting requested by HOROWITZ, et. al., as well as evaded releasing the Mortgage following the balloon payment in full on 2- 27-09;

b) SULLA fraudulently transferred the Mortgage and Promissory Notes into the Revitalize

c) SULLA neglected Plaintiffs' warnings that the NFJ was unconscionable;

d) SULLA administered terrorizing false mailings of ejectment notices, and filed malicious prosecutions for Plaintiffs' ejectment, despite knowing what SULLA did was illegal;

e) SULLA helped OTT distribute intentionally defamatory postings of anti-Semitic Internet libel, trademark disparagement, and intellectual property misrepresentations to damage the Plaintiffs' businesses and professional reputations;

f) SULLA helped OTT caused KANE to suffer two heart attacks, and HOROWITZ to develop ulcers. *Marshall v. University of Hawaii*, 9 Haw. App. 21, 38, 821 P.2d 937, 947, (1991).

3. As a direct and proximate result of Defendants' IIED, Plaintiffs have sustained injuries and damages as aforementioned.

## COUNT XII: WRONGFUL FORECLOSURE

[Haw. Rev. Stat. §§ 663-1 and 657-1(4)]; Rule 10b-5, Rules and Regulations of the Exchange Act, 17 C.F.R. § 240.10b-5 (1990); *Nakamoto v. Hartley*, 758 F. Supp. 1357 (D. Haw. 1991)

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. The elements of wrongful foreclosure<sup>6</sup> include: (1): “the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.” *Lona v. Citibank, N.A.*, 202 Cal. App. 4th 89, 104 (Cal. Ct. App. 2011) (citing *Bank of Am. Nat. Trust & Sav. Ass'n v. Reidy*, 15 Cal. 2d 243, 248 (Cal. 1940)).
3. In this instant case, each of these elements are satisfied by SULLA’s actions with co-conspirator HESTER, as shall be proven at trial.

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<sup>6</sup> Plaintiffs claim Wrongful Foreclosure under Haw. Rev. Stat. § 663-1 and Rule 10b-5 of the Rules and Regulations of the Exchange Act, 17 C.F.R. § 240.10b-5 (1990), that carries a six-year statute of limitation provided in H.R.S. § 657-1(4) governs actions brought pursuant to Rule 10b-5. (*Cunha v. Ward Foods, Inc.*, 501 F.Supp. 830, 837 (D.Haw.1980)); and whereas this time began to toll on September 12, 2013, with the Ibarra Court’s issuance of the Third Amended Final Judgment in said judicial foreclosure case. (See also: *Nakamoto v. Hartley*, 758 F. Supp. 1357 (D. Haw. 1991))

4. As a direct and proximate result of SULLA's wrongful foreclosure based SULLA's evasion of HOROWITZ's notices to make a final accounting, and then notices to Release the Mortgage upon final payments made on February 27, 2009, SULLA breached the (already void) Mortgage Contract, which is an action in the nature of assumpsit, for which:

a) rescission of the Property conversion is requested pursuant to HRS 480-2, and for injunctive relief from ongoing compounding irreparable harm; and

b) attorneys fees and costs are requested, pursuant to Blair, 96 Hawai`i at 332, 31 P.3d at 189 (quoting Leslie v. Estate of Tavares, 93 Hawai`i 1, 5, 994 P.2d 1047, 1051 (2000)); and HRS § 667-33(c).

5. Quoting on point §480-13, "Although a damage claim under this section based on violations of §480-2 may only be asserted against the wrongdoer [as done above], a rescission claim under chapter 480 can stand against subsequent assignees [e.g., HESTER or HHLLC, or Marc Shackman] if the contract is void [which it is]; where plaintiff had alleged that defendant mortgage broker [SULLA] assigned or sold loans to other defendants [both of which SULLA did], plaintiff could seek rescission against other defendants [HESTER] if mortgage broker [SULLA] violated chapter 480 and the loans [from SULLA to HESTER dated June 9, 2011, accompanying SULLA's quitclaim deed issued to HESTER slandering the

Property title] were void; . . . .” 861 F. Supp. 2d 1153 (2012). Subsequent transfers of interest from HESTER to HHLLC are also void.

### **COUNT XIII: CIVIL RICO**

#### **18 U.S.C. § 1964**

1. Plaintiffs incorporate and restate each of the above paragraphs as if fully set forth herein.
2. Plaintiffs are prepared to prove the Defendants violated all the elements of a **RICO** claim based upon 18 U.S.C. § 1962(c) (1994), including: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985).
3. The aforementioned facts and Defendants acts evidence a pattern of Defendant SULLA’s “racketeering activity,” as defined in 18 U.S.C. § 1961(1)(A) and (B), including: (1) extortion of HOROWITZ to pay “false debt” or “unlawful debt;” (2) promoting in the controlled substance DMT on the subject Property; (3) mail fraud; (4) interference with Plaintiffs’ commerce; (5) laundering of monetary instruments (i.e., Plaintiffs’ Mortgage and Notes); (6) engaging Plaintiffs and HESTER in monetary transactions in property derived from specified unlawful activity; and (7) felonious manufacture and concealment of the controlled substance DMT.

4. As a direct and proximate result of Defendants' racketeering activity, Plaintiffs have sustained injuries and damages as aforementioned.

## **V. THE COURT'S POWER TO GRANT RELIEF**

WHEREFORE, the Plaintiffs request that this Court enter judgment(s) against Defendants providing the following relief:

(1) Injunctive relief is requested to stop irreparable harm to the Plaintiffs' physical and mental health; and to stop further damage to the Property caused by SULLA et. al.'s gross neglected that is photographically visible, and can be convincingly demonstrated if needed at a hearing on the attached "Motion to Show Cause" why SULLA et. al., should not vacate the Property within 30 days, or otherwise compel a hearing on these matters requesting injunctive relief.

(2) Permanently enjoin the defendants from further violating the Plaintiffs' civil rights, including due process rights, real property rights, personal property rights, and interstate trade rights, by filing malicious prosecutions;

(3) Enter declaratory judgment that the Defendants' NJF was unlawful, and grant rescission of any contracts encumbering the Property caused by SULLA and his complicit agents and entities;

(4) Award compensatory damages for lost economic advantage caused by forced closure of the Property to tourism and interstate trade from June 15, 2005 to

the present at the court determined rate of \$500 per day. (SULLA having stepped into the shoes of Seller Lee, HESTER, Revitalize and HLLLC as the current mortgage holder and owner on record of the Property should be made to assume the full liabilities of his predecessors-in-interests whom SULLA directed to arrive at the current moment;)

(5) Reimburse Plaintiffs \$2500 per month for the funds they paid to maintain the Property in its 2006 state, when the bulk of improvements had been completed and malicious prosecution damage began to take its toll, or in the alternative, pay for all restoration costs required to return the Property to its 2006 condition;

(6) Reimburse Plaintiffs \$100 per week for the funds they paid to secure the Property against vandalism 24/7/365 since January 15, 2004 when SULLA's predecessors-in-interest began ethically smearing HOROWITZ and his family in the Puna, HI community and regular vandalism commenced;

(7) Compensate the Plaintiffs for lost business on the mainland from time required to be diverted to respond to malicious prosecutions;

(8) Enter judgment and punitive and/or exemplary damages in whatever amount, exclusive of costs and interest, that Plaintiffs are found to be entitled, including treble damages for unfair and deceptive trade pursuant to HRS § 480 et. seq.;

(9) Enter judgment and statutory damages against the Defendants in favor of the Plaintiffs for each civil statutory law found to have been violated;

(10) Award the plaintiff monetary damages for IIED, or pain and suffering;

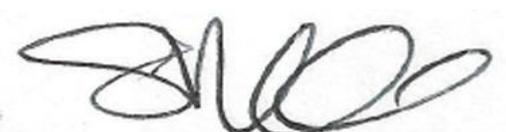
(11) Award of interest, costs and reasonable attorneys fees pursuant to 42 USC 1988, case law in matters of assumpsit, and/or HRS § 667-33(c).

(12) Award the Plaintiffs such additional relief as the Court may deem just, proper, or necessary to redress injury to Plaintiffs; and/or place Plaintiffs in the position that they would have been in had there been no violation of their rights.

Given the extraordinary nature of this case raising probable cause for grand jury investigations into charges of public corruption, drug trafficking, and racketeering involving SULLA and others named and unnamed in this Complaint, the Plaintiffs request that the honorable Court immediately engage the Plaintiffs, in accordance with 42 U.S.C. § 1964(b), with the **U.S. Attorney General for this district**, so that proper proceedings may be instituted without further delay.

**Plaintiffs hereby request a trial by jury on all issues raised in this complaint.**

DATED: May 31, 2019



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LEONARD G. HOROWITZ, pro se

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SHERRI KANE, pro se

LEONARD G. HOROWITZ  
and SHERRI KANE, pro se  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584**

JASON HESTER  
Plaintiff/Counterclaim  
Defendant

vs.

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Defendants

and

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Counterclaimants

vs.

PAUL J. SULLA, JR., and  
PAUL J. SULLA, JR., ATTORNEY  
AT LAW, A LAW  
CORPORATION;  
HALAI HEIGHTS, LLC;  
PATRICK SNIFFEN; BRADLEY  
R. TAMM; HOWARD M.S. HU;  
GARY VICTOR DUBIN;  
STEPHEN D. WHITTAKER; and  
JOHN S. CARROLL  
Third Party Counterclaim  
Defendants

) Civ. No.

)

)

)

)

) **DECLARATION OF**

) **LEONARD G. HOROWITZ**

) **and SHERRI KANE**

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**DECLARATION OF LEONARD G. HOROWITZ AND SHERRI KANE**

We, LEONARD G. HOROWITZ AND SHERRI KANE, under pain of perjury of law, do hereby state and declare as follows:

- 1) We are individuals over the age of twenty-one (21) years; Horowitz is a resident of Las Vegas, NV and Kane is a resident of Torrance, CA.
- 2) We are not licensed to practice law before any court, but represent ourselves pro se in this federal action.
- 3) As of May 12, 2019, we co-defendants/counterclaimants in State case, Civ. 14-1-0304, and Horowitz a defendant in the related cases Civ. 05-1-0196 and 3CC17-1000407, realized there is no hope of obtaining any semblance of justice in the State of Hawaii court system, because of the widespread 'public corruption' we have experienced as victims, witnesses, investigative journalists, and whistleblowers dedicated to gaining justice not only for ourselves, but also for society.
- 4) Every week we hear from people across Hawaii who have suffered similarly as we have in the Hawaii court system. They reach out to us as investigative journalists in the hope of gaining justice, just as we reach out to you.
- 5) We have been heavily damaged, distressed, and irreparably harmed by attorney Paul J. Sulla, Jr. and his actions to steal our property and, in effect, our lives and professional careers. With his complicit agents detailed in this filing, Sulla's 'judicial racket,' drug trafficking, and money-laundering enterprise has deprived us of our civil rights to due process, right to our properties, and caused us to suffer unimaginable anguish.
- 6) Like many others damaged and distressed by Mr. Sulla with whom we regularly correspond, we have been irreparably harmed, far beyond financial and career losses from being targeted and maliciously prosecuted by Sulla's lust to own our very special spa property.
- 7) I, Sherri Kane, have suffered severe anxiety, heart pains and palpitations, serious high blood pressure, sleeplessness, and depression from what Mr. Sulla and the courts have done in his favor; and I, Dr. Leonard Horowitz, have suffered severe anxiety, anger, depression, gastrointestinal ailments, symptoms of ulcerative colitis, and sleeplessness from this fourteen-year-long battle to prevail against this injustice.
- 8) As pro se litigants having been financially and emotionally devastated by the malicious prosecutions and civil rights deprivations we have been forced to endure in both State and federal court cases opposing Mr. Sulla, we are not optimistic about this Removal to the U.S.

District Court wherein we have been repeatedly denied justice by Judge Seabright, Judge Faris, Judge Kobayashi, and Judge Mansfield, but not Judge Puglisi who we were sad to learn had retired.

- 9) We know that we cannot get a ‘fair trial’ in any Hawaii State Court given Mr. Sulla’s powerful financial and political connections to the ‘mob’ that we know exists and as journalists now regularly cover; and
- 10) We believe that given our history of disappointments precluding justice in this U.S. District Court, we are justifiably concerned that existing bias here will also preclude justice for us.
- 11) We, therefore, make the following reasonable request: That whoever elects to adjudicate this case do some serious soul searching considering any and all bias that might preclude fairness in administering justice, and choose recusal rather than putting us through any more life-threatening abuse.
- 12) We have suffered enough, lost plenty, and aged terribly, under the burdens of public corruption and organized crime in this state.
- 13) So for all the above reasons we ask whoever accepts this case with clear conscience, please immediately engage us, in accordance with 42 U.S.C. § 1964(b), with the U.S. Attorney General for this district, so that proper proceedings may be instituted, *ab initio*.
- 14) We declare that all the statements we have made herein, and in the attached Notice of Removal, Complaint, and Motion to Show Cause, are true and correct to the best of our knowledge and belief; and
- 15) We declare that **Exhibit 1 thru 5** attached hereto, are true and correct copies of the original copies in our possession.

FURTHER DECLARANTS SAYETH NAUGHT

This Declaration is based upon our personal knowledge, and we are competent to testify as to the truth of the statements contained herein.

Dated: Honolulu Hawai‘i May 31, 2019

Signed: \_\_\_\_\_

Leonard G. Horowitz, pro se                      and                      Sherri Kane, pro se

*Jason Hester vs Leonard G. Horowitz et al; Civ. 05-1-0196, 14-1-0304, and 3CC17-1000407; Declaration of Defendants/Counterclaimants for Notice of Removal and Motion to Show Cause.*

## APPENDIX “A”

The neglected ‘elephant’ before the courts is the ‘common nucleus’ of willful blindness to Sulla-malfeasance and malicious prosecutions of the DCs, committed and permitted by ‘officers of the courts,’ always aiding-and-abetting the DCs’ deprivation of rights and properties. Instead of tripping over the ‘elephant’ in their *de novo* review, the ICA tribunal concealed, harbored, and indemnified attorney Sulla who the officers knew maintained blatant conflicting interests in the Property. Rather than administering justice, the MO’s remand continues malicious prosecutions in the lower courts suffered by the DCs, compounding the DCs’ damage and distress, depriving these victims of their civil rights in violation of 42 U.S.C. §§ 1981, 1983, 1985 and 18 USC §1964.

Aside from Sulla’s fraudulent transfers of Horowitz’s Mortgage and Notes always being disregarded, avoided, or concealed by State and federal actors who are comparatively liable for the DCs’ damages, pain and suffering, the MO records eleven (11) examples of this ‘common nucleus’ of willfully-blind injustice serving to aid-and-abet fellow Bar member Sulla. These delinquencies defy justice and favor Sulla’s racketeering enterprise that converted the DCs’ Property and is known to be damaging people across the United States by his drug-trafficking “religion.”

**The eleven (11) ‘operative facts’ recorded on the face of the MO that ‘shocks conscience’ include:**

- (1) Neglect of Sulla as the exclusive proper plaintiff in the three consolidated cases;
- (2) Neglect of Rule 19 required joinder of Sulla;

(3) Clear misrepresentation of HRAP Rule 10 to contrive an excuse to ‘waive’ required due process in the HRCF Rule 50a MJML controversy; thus ‘waiving’ Horowitz’s \$200,000 jury award, and extending the 14-year-old malicious prosecution;

(4) Clear conflicting misrepresentation of the *res judicata* issue, the MO falsely stating that the res 0196 judicial foreclosure was brought without claim of monetary default;

(5) Neglect of State law HRS 651-C(4) that invalidates *fraudulent transfers* of the subject Mortgage and Note to a not-yet-legally-existing corporate-fiction controlled by concealed “insider” Sulla;

(6) Neglect of Magistrate Judge Richard L. Puglisi’s Disqualification of Sulla from representing ‘sham Plaintiff’ Hester due to alleged conflicts of interests and as a necessary witness at trial. Sulla’s Disqualification was recklessly defied by State and federal officials who twisted the truth to deprive justice. The ICA falsely implied the Disqualification occurred in a separate quiet title action. Its MO (p. 20) stated:

“Disqualification Order apparently issued by the U.S. District Court in a prior quiet title action . . .” This is not so. Sulla’s Disqualification occurred in the same State 0304 case subsequent-to that case’s removal, and prior to its remand. The ICA cannot justify this ‘mistake’ as excusable error since they conducted a ‘*de novo* review’ of that case.

(7) The ICA neglected and denied Horowitz’s standing to contest the ‘elephant’ in the room—Sulla’s fraudulent Assignments of Horowitz’s Mortgage and Note into a not-yet-legally-existing “church” (i.e., “Revitalize”) effectively extending Horowitz’s malicious prosecution in the 14-year old case. The ICA ruled that Horowitz had no standing to contest the fact that Revitalize was incorporated by a set of “altered” and forged Articles of Incorporation filed by Sulla illegally and untimely, and after the final “balloon payment” on said Mortgage and Note was made and Notices to Release the Mortgage were served;

(8) The MO neglects or conceals Hester’s invalid standing as the ‘sham Plaintiff’ abused to shield Sulla from discovery and liability for malpractices, alleged fraud and crime;

(9) To deprive Horowitz of his standing, the ICA neglected the obvious ‘crime-fraud exception’ to the ICA’s own precedent-setting cases, in *U.S. Bank N.A. v. Mattos*, 140 Hawai’I 26, 35, 398 P. 3d 615, 624 (2017) and *U.S. Bank Nat. Ass’n v. Salvacion*, 134 Hawai’I 170, 174-65, 338 P. 3d 1185, 1189-90 (App. 2014).

(10) The ICA, like all of the courts, neglected appropriate sanctions, discipline, ethics rules, and Cannons requiring fact-finders to report lawbreaking Bar members to “appropriate authorities.” The FBI and U.S. Attorney General must be engaged in this case by the clear-and-convincing evidence showing public corruption and racketeering in organized crime, to accord with 18 U.S.C. 1964(a)(b). The assortment of alleged white collar crimes, including trafficking of the Class I narcotic hallucinogen, dimethyltryptamine (“DMT”) by Sulla, and money laundering and real property conversion with complicit co-conspirators, including Hester, Sniffen, Hu, Tamm, Dubin, and others named and unnamed herein; and

(11) The MO neglects the DCs’ post traumatic distress disorders that any reasonable person would suffer under the courts’ administration of malicious prosecutions, ejection, homelessness, all favoring Sulla—the proximal causes of the DCs’ physical illnesses, heart condition, digestive disorders, and worsening emotional distress.

In effect, the ‘common nucleus’ of this conspiracy to deprive the DCs’ rights and properties extends the toxic impacts of Sulla’s malicious prosecutions and victims’ abuse back to the same State courts that abused them. This is like rape victims being sent back into the clutches of their rapists. This unconscionable disregard of justice, civility, and decency is shameful.

This case must be Removed to a federal court wherein fairness in due process and a trial by jury on the merits of the claims can proceed.

# APPENDIX “B”

## RELEVANT RULES AND LAWS

### A. Federal Statutes & Rules

#### 28 U.S. Code § 1343. Civil rights and elective franchise

(a) The district [courts](#) shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United [States](#), by any act done in furtherance of any conspiracy mentioned in [section 1985 of Title 42](#);

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in [section 1985 of Title 42](#) which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any [State](#) law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United [States](#) or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United [States](#);

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered to be a [State](#); and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(June 25, 1948, ch. 646, [62 Stat. 932](#); Sept. 3, 1954, ch. 1263, § 42, [68 Stat. 1241](#); [Pub. L. 85–315, part III](#), § 121, Sept. 9, 1957, [71 Stat. 637](#); [Pub. L. 96–170](#), § 2, Dec. 29, 1979, [93 Stat. 1284](#).)

#### 28 U.S. Code § 1443. Civil rights cases

**Any of the following civil actions or criminal prosecutions, commenced in a [State court](#) may be removed by the defendant to the district [court](#) of the United [States](#) for the district and division embracing the place wherein it is pending:**

(1) Against any person who is denied or cannot enforce in the [courts](#) of such [State](#) a right under any law providing for the equal civil rights of citizens of the United [States](#), or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(June 25, 1948, ch. 646, [62 Stat. 938](#).)

## **28 U.S. Code § 1450. Attachment or sequestration; securities**

**Whenever any action is removed from a [State court](#) to a district [court](#) of the United [States](#), any attachment or sequestration of the goods or estate of the defendant in such action in the [State court](#) shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the [State court](#).**

All bonds, undertakings, or security given by either party in such action prior to its removal shall remain valid and effectual notwithstanding such removal.

All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district [court](#).

(June 25, 1948, ch. 646, [62 Stat. 940](#).)

## **42 U.S. Code § 1981. Equal rights under the law**

a) Statement of equal rights

All [persons](#) within the jurisdiction of the United [States](#) shall have the same right in every [State](#) and [Territory](#) to [make and enforce contracts](#), to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of [persons](#) and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, [taxes](#), licenses, and exactions of every kind, and to no other.

(b) “Make and enforce contracts” defined

For purposes of this section, the term “[make and enforce contracts](#)” includes the making, performance, modification, and termination of contracts, and the enjoyment of all [benefits](#), privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of [State](#) law.

(R.S. § 1977; [Pub. L. 102–166, title I](#), § 101, Nov. 21, 1991, [105 Stat. 1071](#).)

## **42 U.S. Code § 1983. Civil action for deprivation of rights**

Every [person](#) who, under color of any statute, ordinance, regulation, custom, or usage, of any [State](#) or [Territory](#) or the District of Columbia, subjects, or [causes](#) to be subjected, any citizen of the United [States](#) or other [person](#) within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; [Pub. L. 96–170](#), § 1, Dec. 29, 1979, [93 Stat. 1284](#); [Pub. L. 104–317, title III](#), § 309(c), Oct. 19, 1996, [110 Stat. 3853](#).)

## **42 U.S. Code § 1985. Conspiracy to interfere with civil rights**

### (1) Preventing officer from performing duties

If two or more [persons](#) in any [State](#) or [Territory](#) conspire to prevent, by force, intimidation, or threat, any [person](#) from accepting or holding any [office, trust](#), or place of confidence under the United [States](#), or from discharging any duties thereof; or to induce by like [means](#) any officer of the United [States](#) to leave any [State](#), district, or place, where his duties as an officer are required to be performed, or to injure him in his [person](#) or property on account of his lawful [discharge](#) of the duties of his [office](#), or while engaged in the lawful [discharge](#) thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the [discharge](#) of his official duties;

### (2) Obstructing justice; intimidating party, witness, or juror

If two or more [persons](#) in any [State](#) or [Territory](#) conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United [States](#) from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his [person](#) or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure

such juror in his [person](#) or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more [persons](#) conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any [State](#) or [Territory](#), with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any [person](#), or class of [persons](#), to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more [persons](#) in any [State](#) or [Territory](#) conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any [person](#) or class of [persons](#) of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any [State](#) or [Territory](#) from giving or securing to all [persons](#) within such [State](#) or [Territory](#) the equal protection of the laws; or if two or more [persons](#) conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified [person](#) as an elector for President or Vice President, or as a Member of Congress of the United [States](#); or to injure any citizen in [person](#) or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more [persons](#) engaged therein do, or [cause](#) to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his [person](#) or property, or deprived of having and exercising any right or privilege of a citizen of the United [States](#), the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

## **42 U.S. Code § 1988. Proceedings in vindication of civil rights**

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all [persons](#) in the United [States](#) in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United [States](#), so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the [State](#) wherein the court having jurisdiction of such civil or criminal [cause](#) is held, so far as the same is not inconsistent with the Constitution and laws of the United [States](#), shall be extended to and govern the said courts in the trial and disposition of the [cause](#), and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections [1981](#), [1981a](#), [1982](#), [1983](#), [1985](#), and [1986](#) of this title, title IX of [Public Law 92–318](#) [[20 U.S.C. 1681](#) et seq.], the [Religious Freedom Restoration Act of 1993](#) [[42 U.S.C. 2000bb](#) et seq.], the [Religious Land Use and Institutionalized Persons Act of 2000](#) [[42 U.S.C. 2000cc](#) et seq.], title VI of the [Civil Rights Act of 1964](#) [[42 U.S.C. 2000d](#) et seq.], or [section 12361 of title 34](#), the court, in its discretion, may allow the prevailing party, other than the United [States](#), a reasonable attorney’s fee as part of the [costs](#), except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity such officer shall not be held liable for any [costs](#), including attorney’s fees, unless such action was clearly in excess of such officer’s jurisdiction.

(c) Expert fees

In awarding an attorney’s fee under subsection (b) in any action or proceeding to enforce a provision of section [1981](#) or [1981a](#) of this title, the court, in its discretion, may include expert fees as part of the attorney’s fee.

(R.S. § 722; [Pub. L. 94–559](#), § 2, Oct. 19, 1976, [90 Stat. 2641](#); [Pub. L. 96–481, title II](#), § 205(c), Oct. 21, 1980, [94 Stat. 2330](#); [Pub. L. 102–166, title I](#), §§ 103, 113(a), Nov. 21, 1991, [105 Stat. 1074](#), 1079; [Pub. L. 103–141](#), § 4(a), Nov. 16, 1993, [107 Stat. 1489](#); [Pub. L. 103–322, title IV](#), § 40303, Sept. 13, 1994, [108 Stat. 1942](#); [Pub. L. 104–317, title III](#), § 309(b), Oct. 19, 1996, [110 Stat. 3853](#); [Pub. L. 106–274](#), § 4(d), Sept. 22, 2000, [114 Stat. 804](#).)

## 11 U.S. Code § 548 - Fraudulent transfers and obligations

(a) (1) The trustee may avoid any transfer ([including](#) any transfer to or for the benefit of an [insider](#) under an employment contract) of an interest of the debtor in property, or any obligation ([including](#) any obligation to or for the benefit of an [insider](#) under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any [entity](#) to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii) (I) was [insolvent](#) on the date that such transfer was made or such obligation was incurred, or became [insolvent](#) as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor’s ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an [insider](#), or incurred such obligation to or for the benefit of an [insider](#), under an employment contract and not in the ordinary course of business.

(2) A transfer of a charitable contribution to a qualified religious or charitable [entity](#) or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was [insolvent](#) on the date such transfer was made or such obligation was incurred, or became [insolvent](#) as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section [544](#), [545](#), or [547](#) of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a [lien](#) on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation. . . .

## **18 U.S. Code § 1964. Civil remedies**

(a) The district courts of the United [States](#) shall have jurisdiction to prevent and restrain violations of [section 1962 of this chapter](#) by issuing appropriate orders, including, but not limited to: ordering any [person](#) to divest himself of any interest, direct or indirect, in any [enterprise](#); imposing reasonable restrictions on the future activities or investments of any [person](#), including, but not limited to, prohibiting any [person](#) from engaging in the same type of endeavor as the [enterprise](#) engaged in, the activities of which affect interstate or [foreign commerce](#); or ordering dissolution or reorganization of any [enterprise](#), making due provision for the rights of innocent [persons](#).

(b) The [Attorney General](#) may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any [person](#) injured in his business or property by reason of a violation of [section 1962 of this chapter](#) may sue therefor in any appropriate United [States](#) district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no [person](#) may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any [person](#) that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United [States](#) in any criminal proceeding brought by the United [States](#) under this chapter shall estop the defendant from denying the essential allegations of the criminal [offense](#) in any subsequent civil proceeding brought by the United [States](#).

(Added [Pub. L. 91-452, title IX](#), § 901(a), Oct. 15, 1970, [84 Stat. 943](#); amended [Pub. L. 98-620, title IV](#), § 402(24)(A), Nov. 8, 1984, [98 Stat. 3359](#); [Pub. L. 104-67, title I](#), § 107, Dec. 22, 1995, [109 Stat. 758](#).)

## **FRCP Rule 1. Scope and Purpose**

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in [Rule 81](#). They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

## **B. State Statutes & Rules**

### **2013 Hawaii Revised Statutes**

#### **TITLE 36. CIVIL REMEDIES AND DEFENSES AND SPECIAL PROCEEDINGS**

#### **651C. Uniform Fraudulent Transfer Act**

#### **651C-4 Transfers fraudulent as to present and future creditors.**

Universal Citation: [HI Rev Stat § 651C-4 \(2013\)](#)

**§651C-4 Transfers fraudulent as to present and future creditors.** (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
  - (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
  - (B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
- (b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:
  - (1) The transfer or obligation was to an insider;
  - (2) The debtor had retained possession or control of the property transferred after the transfer;
  - (3) The transfer or obligation was disclosed or concealed;
  - (4) Before the transfer was made or obligation was incurred, the debtor was sued or threatened with suit;
  - (5) The transfer was of substantially all the debtor's assets;
  - (6) The debtor had absconded;
  - (7) The debtor had removed or concealed assets;
  - (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
  - (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
  - (10) The transfer had occurred shortly before or shortly after a substantial debt was incurred; and
  - (11) The debtor had transferred the essential assets of the business to a lienor who had transferred the assets to an insider of the debtor. [L 1985, c 216, pt of §1]

#### Case Notes

Fraudulent transfers, discussed. 916 F.2d 528.

Plaintiffs pled facts with sufficient particularity to support a cause of action for fraudulent conveyance under subsection (a)(1) and (a)(2)(B) and §651C-5(a). 529 F. Supp. 2d 1190 (2007).

Although Hawaii's uniform fraudulent transfer act does not preclude preferential transfers per se, if the preferential transfer was made with "actual intent to hinder, delay, or defraud any creditor" the transfer will be deemed fraudulent. 113 H. 174, 150 P.3d 823 (2006).

## **2011 Hawaii Code**

### **DIVISION 4. COURTS AND JUDICIAL PROCEEDINGS TITLE 36. CIVIL REMEDIES AND DEFENSES AND SPECIAL PROCEEDINGS**

#### **667. Mortgage Foreclosures**

#### **§667-5 Foreclosure under power of sale; notice; affidavit after sale; deficiency judgments.**

**Universal Citation:** [HI Rev Stat § 667-5 \(2011 through Reg Sess\)](#)

#### **§667-5 Foreclosure under power of sale; notice; affidavit after sale; deficiency judgments.**

(a) When a power of sale is contained in a mortgage, and where the mortgagee, the mortgagee's successor in interest, or any person authorized by the power to act in the premises, desires to foreclose under power of sale upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:

(1) Give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property as follows:

(A) By serving, not less than twenty-one days before the date of sale, written notice of intent to foreclose on all persons entitled to notice under this part in the same manner as service of a civil complaint under chapter 634 and the Hawaii rules of civil procedure; provided that in the case of nonjudicial foreclosure of a lien by an association against a mortgagor who is not an owner-occupant, the association shall mail the notice by certified or registered mail, not less than twenty-one days before the date of sale, to:

(i) The unit owner at the address shown in the records of the association and, if different, at the address of the unit being foreclosed; and

(ii) All mortgage creditors whose names are known or can be discovered by the association; and

(B) By publication of the notice once in each of three successive weeks, constituting three publications with the last publication to be not less than fourteen days before the day of sale, in a daily newspaper having the largest general circulation in the specific county in which the mortgaged property lies; provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be

published in the newspaper having the largest circulation expressly in the eastern or western half of the county, corresponding to the location of the subject property;

(2) Give notice of the mortgagor's right to elect to participate in the mortgage foreclosure dispute resolution program pursuant to section 667-75 or to convert the nonjudicial power of sale foreclosure to a judicial foreclosure pursuant to section 667-53; and

(3) Give any notices and do all acts as authorized or required by the power contained in the mortgage.

(b) Copies of the notice required under subsection (a) shall be:

(1) Filed with the state director of taxation; and

(2) Posted on the premises not less than twenty-one days before the day of sale.

(c) Upon the request of any person entitled to notice pursuant to this section and sections 667-5.5 and 667-6, the attorney, the mortgagee, successor, or person represented by the attorney shall disclose to the requestor the following information:

(1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction within five business days of the request; and

(2) The sale price of the mortgaged property once auctioned.

(d) Any sale, of which notice has been given pursuant to subsections (a) and (b) may be postponed from time to time by public announcement made by the mortgagee or by a person acting on the mortgagee's behalf. Upon request made by any person who is entitled to notice pursuant to section 667-5.5 or 667-6, or this section, the mortgagee or person acting on the mortgagee's behalf shall provide the date and time of a postponed auction, or if the auction is canceled, information that the auction was canceled. The mortgagee, within thirty days after selling the property in pursuance of the power, shall file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.

(e) The mortgagee or other person, excluding an association, who completes the nonjudicial foreclosure of a mortgage or other lien on residential property pursuant to this part shall not be entitled to pursue or obtain a deficiency judgment against an owner-occupant of the residential property who, at the time the notice of intent to foreclose is served, does not have a fee simple or leasehold ownership interest in any other real property.

Nothing in this section shall prohibit any other mortgagee or person who holds a lien on the residential property subject to the nonjudicial foreclosure, whose lien is subordinate to the mortgage being foreclosed and is extinguished by the nonjudicial foreclosure sale, from pursuing a monetary judgment against an owner-occupant.

(f) Subject to the requirements of part V, the affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

(g) This section is inapplicable if the mortgagee is foreclosing as to personal property only. [L 1874, c 33, §1; am L 1907, c 59, §1; am L 1911, c 108, §1; am L 1915, c 121, §1; RL 1925, §2879; RL 1935, §4724; am L 1937, c 138, §1; RL 1945, §12424; RL 1955, §336-5; am L 1967, c 256, §1; HRS §667-5; am L 1972, c 90, §9(e); gen ch 1985; am L 1989, c 20, §5; am L 2008, c 138, §1; am L 2011, c 48, §17]

Note

Moratorium until July 1, 2012 on all new nonjudicial foreclosure actions; reports through 2013. L 2011, c 48, §§40, 41.

## **HRAP Rule 10. THE RECORD ON APPEAL.**

**(a) Composition of the record on appeal.** The record on appeal shall consist of the trial court or ADLRO record, as set out in Rule 4 of the Hawai'i Court Records Rules, or the agency record as defined by statutes or rules governing agency proceedings.

**(b) The transcript of court proceedings.**

(1) REQUEST TO PREPARE TRANSCRIPT.

(A) *When to request.* When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court appealed from, the appellant shall file with the appellate clerk, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file in the appeal. A request for transcripts of audiotapes or videotapes may list more than one tape on the request. The appellant shall transmit the request(s) to prepare transcript to the designated reporter(s) and the supervising court reporter, and shall demonstrate in the record that transmission was accomplished either by the automated JEFS notice of electronic filing or certificate of service.

## **HRCP Rule 19 - Joinder of Persons Needed for Just Adjudication**

**(a) Persons to be joined if feasible.** A person who is subject to service of process shall be joined as a party in the action if (1) in such party's absence complete relief cannot be accorded among those already parties, or (2) such party claims an interest relating to the subject of the action and is so situated that the disposition of the action in such party's absence may (A) as a practical matter impair or impede such party's ability to protect that interest or (B) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of such party's claimed interest. If such a party

has not been so joined, the court shall order that such person be made a party. If such party should join as a plaintiff but refuses to do so, such party may be made a defendant, or, in a proper case, an involuntary plaintiff.

Electronically Filed  
Intermediate Court of Appeals  
CAAP-18-0000584  
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NOS. CAAP-16-0000162, CAAP-16-0000163 AND CAAP-18-0000584

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

**CAAP-16-0000162**

JASON HESTER, Overseer of the Office of Overseer,  
a corporate sole and his successors, over/for the Popular  
Assembly of Revitalize, a Gospel of Believers,  
Plaintiff/Counterclaim-Defendant/Appellee,

v.

LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID,  
Defendants/Counterclaim-Plaintiffs/Appellants,  
and

JACQUELINE LINDENBACH HOROWITZ,  
Defendant/Counterclaim-Plaintiff/Appellee,  
and

PHILIP MAISE, Intervenor-Appellee,  
and

JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10, DOE  
PARTNERSHIPS 1-10, DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 05-1-0196)

**CAAP-16-0000163**

JASON HESTER, an individual,  
Plaintiff/Counterclaim-Defendant/Appellee,

v.

LEONARD G. HOROWITZ, an individual and  
SHERRI KANE, an individual  
Defendants/Counterclaim-Plaintiffs/Appellants,  
and

THE ROYAL BLOODLINE OF DAVID,  
a Washington Corporation Sole,  
Defendant/Appellant,  
and

MEDICAL VERITAS INTERNATIONAL, INC., a California  
non-profit corporation, JOHN DOES 1-10, JANE DOES 1-10,  
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,  
DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10,  
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 14-1-0304)

CAAP-18-0000584

JASON HESTER, Petitioner-Appellee,  
v.  
LEONARD G. HOROWITZ, Respondent-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 17-1-0407)

MEMORANDUM OPINION

(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

These consolidated appeals<sup>1</sup> arise from over a decade of legal proceedings primarily between Jason Hester (**Hester**), both individually and as "successor Overseer" of "the Office of the Overseer, A Corporate Sole and His Successors, Over/For The Popular Assembly of Revitalize, A Gospel of Believers" (**Revitalize**); Leonard G. Horowitz (**Horowitz**); and the Royal Bloodline of David (**RBOD**).<sup>2</sup> The appeals relate to two parcels of land (**subject property**)<sup>3</sup> that the RBOD had purchased from Cecil L. Lee (**Lee**) in 2004. The purchase was financed by two promissory notes executed by Horowitz, as "Overseer" of RBOD, in

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<sup>1</sup> CAAP-16-0000162, CAAP-16-0000163, and CAAP-18-0000584 were consolidated on appeal by an Order of Consolidation dated December 18, 2018.

<sup>2</sup> Horowitz represents that the RBOD is "an ecclesiastic corporation" that was incorporated on October 31, 2001 in the State of Washington, and dissolved on September 17, 2012, with Horowitz being its sole member.

<sup>3</sup> The subject property consists of two parcels of land designated on the tax maps for the State of Hawai'i as TMK: (3)1-3-001:049 and (3)1-3-001:43 and are situated in the County of Hawai'i. The record reflects that the parcels are 1.32 acres and 16.55 acres respectively.

favor of Lee, and secured by a mortgage on the subject property. The Mortgage, dated January 15, 2004, designated the RBOD as the "Borrower" and Lee as the "Lender" in this transaction. These appeals arise out of three separate actions related to the subject property and underlying mortgage, as explained below.

CAAP-16-0000162 arises from a judicial foreclosure action initiated by original mortgagee Lee on June 15, 2005, against Horowitz, RBOD, and Jacqueline Horowitz<sup>4</sup> in the Circuit Court of the Third Circuit (**circuit court**)<sup>5</sup> for numerous alleged non-monetary violations of the mortgage agreement. In February 2008, the case proceeded to bench trial where the circuit court denied Lee's claim for foreclosure as to all defendants, but granted other equitable relief in light of the defendants' non-monetary breaches of the mortgage agreement. That same month, an advisory jury trial was held in which the jury determined, in relevant part, that Lee was liable to Horowitz, RBOD, and Jacqueline Horowitz on their counterclaim for fraud and misrepresentation and awarded the defendants \$200,000.00 in damages. Subsequently, the circuit court vacated the jury award by granting a judgment as a matter of law pursuant to Hawai'i Rules of Civil Procedure (**HRCP**) Rule 50. Moreover, upon the death of Lee in 2009, the circuit court allowed Hester, as "successor Overseer" to Revitalize, to be substituted as Plaintiff.<sup>6</sup> Horowitz and RBOD appeal in CAAP-16-0000162.

CAAP-16-0000163 arises from a Quiet Title and Ejectment action initiated by Hester, individually, on August 11, 2014, against Horowitz, RBOD, Sherri Kane (**Kane**), and Medical Veritas

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<sup>4</sup> Defendant/Counterclaim-Plaintiff Jacqueline L. Horowitz is not a party to this appeal.

<sup>5</sup> The Honorable Ronald Ibarra presided in all proceedings relevant to CAAP-16-0000162.

<sup>6</sup> The record reflects that in May 2009, Lee created Revitalize, a nonprofit corporation sole pursuant to HRS Chapter 419, naming himself as the "overseer" and Hester as the "successor Overseer." Also in May 2009, Lee assigned to Revitalize all of his interest in the promissory notes and mortgage on the subject property. On June 27, 2009, Lee passed away.

International, Inc. in the circuit court.<sup>7</sup> In this case, Hester asserts he has title to the subject property following a non-judicial foreclosure conducted by Revitalize in 2010 due to RBOD's payment default of the mortgage agreement, and a subsequent transfer of the subject property by Revitalize in 2011, to Hester, individually. In this action, the circuit court entered judgment in favor of Hester, and entered a writ of ejectment removing all defendants from the subject property, giving rise to the appeal in CAAP-16-0000163.

Finally, CAAP-18-0000584 arises from a petition to expunge documents brought by Hester, individually, against Horowitz, individually, on July 26, 2016 in the Circuit Court of the First Circuit (**first circuit court**).<sup>8</sup> This case was eventually transferred to the third circuit court,<sup>9</sup> and Hester sought to expunge two affidavits filed by Horowitz in the Bureau of Conveyances pertaining to the subject property. The circuit court eventually entered summary judgment in favor of Hester, giving rise to CAAP-18-0000584.

#### **I. CAAP-16-0000162**

In CAAP-16-0000162, Defendants/Counterclaim-Plaintiffs Horowitz and the RBOD appeal from the "Fifth Amended Final Judgment" (**Final Foreclosure Judgment**) entered by the Circuit Court of the Third Circuit on March 4, 2016, which resolved all claims between Plaintiff/Counterclaim-Defendant Hester, Defendant/Counterclaim-Plaintiffs Horowitz, RBOD, and Jacqueline L. Horowitz, and Intervenor-Defendant/Intervenor-Plaintiff/Counterclaim-Defendant Philip B. Maise (**Maise**) in the

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<sup>7</sup> The Honorable Ronald Ibarra, Elizabeth A. Strance, and Melvin Fujino presided in the relevant proceedings in CAAP-16-0000163.

<sup>8</sup> The Honorable Virginia L. Crandall presided in the relevant First Circuit Court proceedings in CAAP-18-0000584.

<sup>9</sup> The Honorable Henry T. Nakamoto presided in the relevant Third Circuit Court proceedings in CAAP-18-0000584.

judicial foreclosure action regarding the subject property.<sup>10</sup> In this appeal, Horowitz and RBOD contend that: (1) the circuit court erred in granting Hester's HRCF Rule 50 Motion for Judgment as a Matter of Law vacating the \$200,000 jury award for damages in favor of the defendants; and (2) Hester lacks standing to prosecute the judicial foreclosure action, both as an individual and as "successor Overseer" of Revitalize.

In the June 15, 2005 "Complaint for Foreclosure", the original mortgagee Lee asserted six causes of action against all defendants relating to a number of alleged non-monetary breaches to the mortgage agreement.<sup>11</sup> In response, Horowitz, RBOD and Jacqueline Horowitz filed a counterclaim against Lee, asserting causes of action in fraud and misrepresentation, and abuse of process and malicious prosecution.

The case proceeded to a bench trial, where the circuit court concluded that although the defendants had violated non-monetary terms and conditions of the mortgage, foreclosure would be unjust. Instead, the circuit court fashioned alternative equitable remedies given the breaches. An advisory jury panel ruled on other causes of action brought in Lee's complaint and the Defendants' counterclaims. The jury determined, *inter*

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<sup>10</sup> Jacqueline L. Horowitz and Maise are not parties to this appeal.

<sup>11</sup> While the "Complaint for Foreclosure" appears to only allege a cause of action for foreclosure, it appears that the circuit court and the parties interpreted the complaint as asserting causes for action for: 1) foreclosure; 2) breach of contract; 3) waste; 4) fraud and misrepresentation; 5) conspiracy and; 6) trespass to chattels, as evidenced in the "Fifth Amended Final Judgment".

In the "Complaint for Foreclosure", Lee alleges that RBOD and Horowitz: made additions to the property without obtaining the necessary permits from the county of Hawaii, thus subjecting the property to increased liability and a substantial loss of value; engaged in illegal and unlicensed business activities on the property, thus subjecting it to liability and substantial loss of value; violated the mortgage agreement by failing to obtain and maintain fire and extended peril insurance coverage on the property; conspired with Maise to unlawfully deprive Lee of his receipt of mortgage payments, trespassed on Lee's chattels, and defrauded Lee; and fraudulently altered and inserted a legal addendum into the mortgage agreement that Lee did not agree to or authorize.

alia,<sup>12</sup> that Lee was liable to Horowitz, RBOD, and Jacqueline Horowitz for fraud and misrepresentation, and awarded the defendants \$200,000.00 in damages.

Following the trial, Lee filed "Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's [sic] July 6, 2006 Counterclaim for Fraud and Misrepresentation", asserting that Lee was entitled to a judgment as a matter of law (**JMOL**) pursuant to HRCP Rule 50 as to the defendants' counterclaim for fraud and misrepresentation because such claim was not sufficiently pled. Following two re-submissions of the motion for JMOL, and a number of amended judgments, the circuit court eventually granted Lee's motion for JMOL as to the defendants' counterclaim of fraud and misrepresentation, and vacated the jury's \$200,000.00 damage award in favor of the defendants.

During the post-trial litigation, Lee died and Lee's counsel, Paul J. Sulla, Jr. (**Sulla**), filed a "Motion for Substitution of Plaintiff", requesting that the court substitute Revitalize, with Hester as successor Overseer of Revitalize, as plaintiff in place of Lee. The motion asserts that Lee had assigned his interest in the promissory notes and mortgage for the subject property to Revitalize prior to his death, and that Hester, purportedly Lee's nephew, was "successor Overseer" of Revitalize. On August 31, 2009, the circuit court, with no objections on the record from any defendants, granted the motion for substitution, thus substituting Revitalize, with Hester as successor Overseer of Revitalize, as plaintiff.

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<sup>12</sup> The jury made the following findings: 1) that Lee was entitled to foreclosure on the subject property against Horowitz, RBOD, and Jacqueline Horowitz; 2) Horowitz, RBOD, and Jacqueline Horowitz were liable to Lee for trespass to chattels in the amount of \$400.00; 3) Horowitz, RBOD, and Jacqueline Horowitz were not liable to Lee for fraud; and 4) Lee was liable to Horowitz, RBOD, and Jacqueline Horowitz for "fraud and misrepresentation", in the amount of \$200,000.00.

Although the jury's special verdict form indicates that the jury determined that Lee was entitled to a foreclosure of the mortgage as prayed for in his complaint, it appears that the circuit court denied such relief under equitable principles.

In its "Fifth Amended Final Judgment", the circuit court ultimately resolved all claims as to all parties in this foreclosure action, and, in relevant part: denied Revitalize's claim for foreclosure against all defendants; and entered judgment in favor of Revitalize on the defendants' counterclaims for fraud and misrepresentation, vacating the \$200,000.00 jury award pursuant to the circuit court's Order Granting Plaintiff's JMOL.

The circuit court's grant of JMOL pertaining to the defendants' counterclaim of fraud and misrepresentation, the vacating of the corresponding jury award, and the substitution of Revitalize (with Hester as successor Overseer) as plaintiff, give rise to the points of error in the Judicial Foreclosure action.

**A. HRCF Rule 50 Motion for Judgment as a Matter of Law**

In their first point of error in CAAP-16-0000162, Horowitz and RBOD argue that the circuit court erred in granting Revitalize's July 29, 2008 "Notice of Re-Submission of Plaintiff's Motion for Judgment as a Matter of Law or Alternatively New Trial on Issue of Defendant's July 6, 2006 Counterclaim for Fraud and Misrepresentation", and its subsequent vacating of the corresponding jury award, because Lee failed to make a motion for JMOL prior to the case being submitted to the jury pursuant to HRCF Rule 50(a)(2). However, the appellants do not provide a transcript of the proceedings below, or any citation in the record that can corroborate such claim.<sup>13</sup>

It is the responsibility of each appellant "to provide a record, as defined in Rule 10 of [the Hawai'i Rules of Appellate Procedure (**HRAP**)] and the Hawai'i Court Records Rules, that is sufficient to review the points asserted and to pursue appropriate proceedings in the court or agency appealed from to correct any omission." HRAP Rule 11(a).

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<sup>13</sup> On March 20, 2016, appellants Horowitz and RBOD filed in the Intermediate Court of Appeals its "Certificate that No Transcripts are to be Prepared" pursuant to HRAP 10(b)(2).

Based on the foregoing, Horowitz and RBOD's first point of error in the Judicial Foreclosure Action is deemed waived:

**B. Hester's Standing as Substitute Plaintiff**

In their second point of error, Horowitz and RBOD contend that Hester lacks standing, both as an individual and as "successor Overseer" of Revitalize, to prosecute this judicial foreclosure. Horowitz and RBOD's challenge to Hester's standing appears to be based on their contentions that Hester lacks any familial relationship to the predecessor plaintiff Lee, and that the assignment of the subject mortgage from Lee to Revitalize was invalid. These arguments are without merit.

We first note that Hester's familial kinship with Lee is irrelevant to this judicial foreclosure action, as the circuit court substituted Revitalize as plaintiff, with Hester as "successor Overseer" to Revitalize, and not as an individual. Accordingly, Hester's standing as an individual, and likewise his familial kinship to Lee, is immaterial to this case.

As to Horowitz and RBOD's contentions regarding the validity of the assignment of the subject mortgage from Lee to Revitalize, our case law makes clear that, in a judicial foreclosure, borrowers do not have standing to challenge the validity of an assignment of their loans because they are not parties to the agreement. U.S. Bank N.A. v. Mattos, 140 Hawai'i 26, 35, 398 P.3d 615, 624 (2017); U.S. Bank. Nat. Ass'n v. Salvation, 134 Hawai'i 170, 174-75, 338 P.3d 1185, 1189-90 (App. 2014). As such, Horowitz and RBOD's challenge to Hester's standing in the judicial foreclosure action is without merit.

Based on the foregoing, the "Fifth Amended Final Judgment [on the Judicial Foreclosure action]", entered on March 4, 2016 by the Circuit Court of the Third Circuit is affirmed.

**II. CAAP-16-0000163**

In CAAP-16-0000163, Defendants/Counterclaim Plaintiffs Horowitz and Kane, and Defendant RBOD appeal from a "Final Judgment" (**Quiet Title Judgment**) entered in favor of Plaintiff/Counterclaim-Defendant Hester in the circuit court on

December 30, 2015. In this appeal, Horowitz, Kane, and RBOD contend that the circuit court erred in: (1) not dismissing the quiet title action in light of the prior judicial foreclosure action; (2) not vacating the entry of default entered against RBOD; (3) denying Horowitz and Kane's motion to amend their original answer; (4) granting Hester's motion for summary judgment where there existed substantial questions of material facts; and (5) entering judgment where Hester's standing to bring the quiet title action remained in dispute.

**A. Quiet Title Action**

On August 11, 2014, Hester, individually, filed a "Complaint to Quiet Title and For Summary Possession and Ejectment" (**Quiet Title Complaint**) against Horowitz, RBOD,<sup>14</sup> Kane, and Medical Veritas International, Inc. (**Medical Veritas**) in the circuit court. The Quiet Title Complaint asserts causes of action: 1) to quiet title; 2) based on tenants at sufferance; and 3) for trespass against all defendants.

In the Quiet Title Complaint, Hester alleges that the time period for repaying the underlying promissory notes for the purchase of the subject property had expired on January 14, 2009, "with an outstanding balance still due and owing to Lee", and that guarantor Horowitz had failed to make delinquent payments resulting in RBOD's default. Hester further alleges that following RBOD's default, Revitalize had obtained ownership of the subject property through a power of sale in a non-judicial foreclosure conducted under Hawaii Revised Statutes (**HRS**) §§ 667-5 through 667-10 against RBOD on April 20, 2010, subsequent to which Revitalize executed and recorded a quitclaim deed in favor of Hester, individually, making Hester the owner of the subject property.<sup>15</sup>

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<sup>14</sup> RBOD apparently was dissolved at the time the Quiet Title Complaint was filed.

<sup>15</sup> The quitclaim deed from Revitalize to Hester was recorded in the Bureau on June 14, 2011.

The Quiet Title Complaint identifies Horowitz and Kane as individuals who allege to have obtained an interest in the subject property through an invalid quitclaim deed executed by RBOD in their favor after the April 20, 2010 non-judicial foreclosure sale, and who had continued to occupy and withhold possession of the subject property from Hester. Medical Veritas is identified as a California nonprofit corporation that Horowitz and Kane had purportedly executed a lease with to conduct its business operations on the subject property.<sup>16</sup>

On September 17, 2014, the circuit court clerk entered default against Medical Veritas and RBOD, as both parties had failed to file an answer to the Quiet Title Complaint. On March 12, 2015, RBOD and Medical Veritas filed a "Motion to Vacate Default entered September 23, 2014, Against Defendants the Royal Bloodline of David and Medical Veritas International, Inc." (**Motion to Vacate Default**). Medical Veritas and RBOD again requested that the court vacate the entry of default in an April 10, 2015 "Counsel's Declaration in Support of Co-Defendants Opposition to Motion for Summary Judgment". On May 27, 2015, the circuit court denied the Motion to Vacate Default.<sup>17</sup>

In the meantime, on August 21, 2014, Horowitz and Kane filed an answer and twenty counterclaims in their "Defendants/Counterclaimants Answer, Affirmative Defense, and Counterclaims to Paul J. Sulla, Jr. and Jason Hester's Conspiracy to Commit Theft Under Color of Law" (**Horowitz/Kane Answer**). On September 12, 2014, Horowitz and Kane apparently filed a notice of removal in the U.S. District Court for the District of Hawai'i, seeking to remove the case from the circuit court. The Quiet Title action was remanded back to the circuit court on

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<sup>16</sup> Medical Veritas is not a party on appeal in CAAP-16-0000163.

<sup>17</sup> We note that the circuit court's order denying Medical Veritas and RBOD's Motion to Vacate Default incorrectly refers to the date of the entry of default as September 23, 2014. The record indicates that default was entered against RBOD and Medical Veritas on September 17, 2014.

January 13, 2015, as the U.S. District Court determined that it lacked subject-matter jurisdiction.

On January 26, 2015, Horowitz and Kane filed their "Motion to Amend Answer and Join Indispensible Party Paul J. Sulla, Jr. and Herbert M. Ritke" (**Motion to Amend Answer**), requesting the circuit court, *inter alia*, allow them leave to amend their answer and counterclaims. The circuit court eventually denied the Motion to Amend Answer, and dismissed all counterclaims asserted in the Horowitz/Kane Answer.

On March 9, 2015, Hester filed "Plaintiff/Counterclaim Defendant Jason Hester's Motion for Summary Judgment" (**Hester's Quiet Title MSJ**) against all defendants. On May 27, 2015 the circuit court entered its "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment" (**Order Granting Hester's Quiet Title MSJ**), which includes, *inter alia*, a provision that Hester is entitled to a writ of ejectment that would remove all the defendants from the subject property.<sup>18</sup> Accordingly, on December 30, 2015, the circuit court entered its "Final Judgment" (**Quiet Title Judgment**) pursuant to the: 1) Entry of Default against Medical Veritas and RBOD; 2) Order Granting Plaintiff's Motion to Dismiss Counterclaims; and 3) Order Granting Hester's Quiet Title MSJ.

**B. Preclusion of the Quiet Title Action under *res judicata***

In their first point of error, appellants Horowitz, Kane, and RBOD contend that the circuit court erred in not dismissing the Quiet Title Action in light of the prior Judicial Foreclosure action that ultimately denied the remedy of foreclosure on the subject property. Appellants appear to assert that the subsequent Quiet Title Action is precluded by the doctrine of *res judicata*. We disagree.

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<sup>18</sup> The circuit court's Order Granting Hester's Quiet Title MSJ was granted as to Hester's cause of action for tenants at sufferance and cause of action to quiet title, and denied as to Hester's cause of action for trespass. Hester's trespass claim was voluntarily dismissed pursuant to the circuit court's "Order Granting Plaintiff Jason Hester's Motion for Voluntary Dismissal of Trespass Claim", filed August 28, 2015.

The prior judicial foreclosure was related to Horowitz and RBOD's alleged non-monetary breaches of the mortgage agreement (see footnote 11), whereas the Quiet Title Action and underlying non-judicial foreclosure were based on the appellants' alleged monetary default that occurred subsequent to the judicial foreclosure. Accordingly, this case is not precluded by the doctrine of *res judicata* because the claim at issue in the prior judicial foreclosure action was not identical to the claim in this subsequent Quiet Title Action. Cf. E. Sav. Bank, FSB v. Esteban, 129 Hawai'i 154, 159, 296 P.3d 1062, 1067 (2013) (explaining that a "party asserting claim preclusion has the burden of establishing that (1) there was a final judgment on the merits, (2) both parties are the same or in privity with the parties in the original suit, and (3) the claim decided in the original suit is identical with the one presented in the action in question" (emphasis added) (citation omitted)).

**C. Entry of Default against RBOD**

In their second point of error, Horowitz, Kane and RBOD contend that the circuit court erred in not vacating the entry of default against RBOD. We deem this issue as moot, as both the parties and the record indicate that RBOD was dissolved prior to the initiation of the Quiet Title Action, and remains dissolved. Thus, any further adjudication as to its interests in the subject property is immaterial. See McCabe Hamilton & Renny Co., Ltd. v. Chung, 98 Hawai'i 107, 116, 43 P.3d 244, 253 (App. 2002) (noting that "[t]his court may not decide moot questions or abstract propositions of law." (Citations omitted)).

**D. Quiet Title - Summary Judgment**

We review the circuit court's grant or denial of summary judgment *de novo*. Kondaor Capital Corp. v. Matsuyoshi, 136 Hawai'i 227, 240, 361 P.3d 454, 467 (2015). "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment

as a matter of law." Id. (citations and brackets omitted). "The moving party has the initial burden of 'demonstrating the absence of a genuine issue of material fact.'" Id. (citation omitted). "Only with the satisfaction of this initial showing does the burden shift to the nonmoving party to respond 'by affidavits or as otherwise provided in HRCP Rule 56, . . . setting forth specific facts showing that there is a genuine issue for trial.'" Id. at 240-41, 361 P.3d at 467-68 (citation, emphasis, and brackets omitted, ellipses in original).

Based on our *de novo* review of the record, we conclude that the underlying non-judicial foreclosure on the subject property was deficient under Kondaur, and as such the circuit court erred in granting Hester's Quiet Title MSJ.

In order to maintain an ejectment action, the plaintiff must: (1) prove that he or she owns the parcel in issue, meaning that he or she must have the title to and right of possession of such parcel; and (2) establish that possession is unlawfully held by another. Kondaur, 136 Hawai'i at 241, 361 P.3d at 468. In a self-dealing transaction, where the mortgagee is the purchaser in a non-judicial foreclosure sale, the mortgagee has the "burden to prove in the summary judgment proceeding that the foreclosure 'sale was regularly and fairly conducted in every particular.'" Id. (citation omitted). "A prima facie case demonstrating compliance with the foregoing requirements [shifts] the burden to [the mortgagor] to raise a genuine issue of material fact." Id. at 242, 361 P.3d 469.

Here, Revitalize, with Hester as Overseer, was both the foreclosing mortgagee and the highest bidder at the non-judicial foreclosure sale on April 20, 2010. The Mortgagee's Affidavit of Foreclosure Under Power of Sale recorded on May 11, 2010, states that the subject property was sold at public sale to "John Hester, Overseer [for Revitalize] for \$175,000.00, which was the highest bid at said sale." Subsequently, on June 14, 2011, Revitalize transferred its interest in the subject property to Hester, individually, by way of a quitclaim deed. Thus, in

moving for summary judgment, Hester had the initial burden to establish that the non-judicial foreclosure was conducted in a manner that was fair, reasonably diligent, and in good faith, and to demonstrate that an adequate price was procured for the property. See id. at 241-43, 361 P.3d at 468-70; JPMorgan Chase Bank, Nat. Ass'n v. Benner, 137 Hawai'i 326, 327-29, 372 P.3d 358, 359-61 (App. 2016).

As in Kondaur, the Mortgagee's Affidavit of Foreclosure Under Power of Sale prepared and submitted by Revitalize fails to provide evidence concerning the adequacy of, *inter alia*, the purchase price. Kondaur, 136 Hawai'i at 242-43, 361 P.3d at 469-70; see also Benner, 137 Hawai'i at 328, 372 P.3d at 360 (finding a similar foreclosure affidavit was insufficient to establish that the sale was conducted in a manner that was fair, reasonably diligent, and in good faith, and that the purchase price was adequate).

Hester thus failed to satisfy his initial burden of showing that the non-judicial foreclosure sale was conducted in a manner that was fair, reasonably diligent, and in good faith, and that Revitalize had obtained an adequate price for the Property. In turn, the burden never shifted to the defendants to raise any genuine issue of material fact. Thus, the circuit court erred in its "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment". Given this ruling, we need not address the appellants' other points of error asserted in CAAP-16-0000163.

Based on the foregoing, the Circuit Court of the Third Circuit's "Final Judgment [on the Quiet Title action]" entered on December 30, 2015, solely as it pertains to the May 27, 2015 "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment" is vacated. This case is remanded to the circuit court for further proceedings consistent with this Memorandum Opinion.

**III. CAAP-18-0000584**

Finally, in CAAP-18-0000584, Defendant-Appellant Horowitz, *pro se*, appeals from the "Final Judgment" (**Expungement Judgment**) entered in favor of Plaintiff-Appellee Hester in the circuit court on July 26, 2018. In this appeal, Horowitz contends that the circuit court erred in: (1) granting Hester's motion for judgment on the pleadings, or in the alternative for summary judgment because it lacked personal jurisdiction over the parties; (2) failing to perform an "inquiry reasonable" into Hester's counsel Sulla's alleged interest in the subject property and case; (3) granting two *ex parte* motions filed by Hester because it violated relevant civil procedure rules and Horowitz's constitutional rights; and (4) denying Horowitz's motion for sanctions against Sulla.

**A. Expungement Action**

CAAP-18-0000584 arises from a "Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Petition to Expunge**) filed by Hester against Horowitz on July 26, 2016, in the Circuit Court of the First Circuit (**first circuit court**). In the Petition to Expunge, Hester alleges that Horowitz had filed an "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)" in the Hawai'i Bureau of Conveyances (the **Bureau**) on June 6, 2016, that includes false and misleading information meant to cloud Hester's title to the subject property. Hester alleges that the documents filed by Horowitz constitutes an invalid nonconsensual common law lien pursuant to HRS § 507D-5(b) (2018),<sup>19</sup> as they were not accompanied by a

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<sup>19</sup> HRS § 507D-5(b) provides:

**§507D-5 Requirement** of certified court order.

. . . .

(b) Any claim of nonconsensual common law lien against a private party in interest shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of nonconsensual common law lien.

certified court order from a state or federal court.

On May 18, 2017, Horowitz responded by filing "Defendant Leonard G. Horowitz's Motion to Dismiss 'Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii'" (**Motion to Dismiss Petition**). On June 27, 2017, Hester filed "Plaintiff's Motion for Judgment on the Pleadings, or in the Alternative, for Summary Judgment on Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Hester's MSJ**). On September 27, 2017, the first circuit court entered its "Order Granting in Part Defendant's Motion to Dismiss and Denying Without Prejudice Plaintiff's Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment" (**Order of Transfer**), granting in part Horowitz's Motion to Dismiss Petition to the extent that the case be transferred to the third circuit court, and denying Hester's MSJ without prejudice.<sup>20</sup>

On December 13, 2017, Hester filed his "Amended Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Amended Petition to Expunge**) against Horowitz in the third circuit court. The Amended Petition to Expunge was substantially similar to the original petition, except that it further alleged that since the original petition in the first circuit court, Hester had discovered an "Affidavit of First Lien of \$7,500,000.00 on Real Property TMK: (3) 1-3-001-043 and 049," filed in the Bureau on October 6, 2013, which he additionally seeks to have expunged as a nonconsensual common law lien pursuant to HRS § 507D-5.<sup>21</sup>

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<sup>20</sup> In its "Order Granting in Part Defendant's Motion to Dismiss and Denying Without Prejudice Plaintiff's Motion for Judgment on the Pleadings, or in the Alternative for Summary Judgment", the first circuit court notes that its dismissal was made "in part relative to venue of this matter only and orders this matter to be transferred to the Third Circuit Court for the State of Hawaii." Accordingly, the order effectuated a transfer of the case to the third circuit court, and was not a dismissal of the action.

<sup>21</sup> The amended petition further notes that while Hester was the sole owner of the subject property at the time the original petition was filed in  
(continued...)

On May 15, 2018, Hester filed two *ex parte* motions requesting an extension of time to serve the Amended Petition to Expunge on Horowitz, and to authorize service by certified mail. In both motions, Hester asserts that he had attempted to serve Horowitz at the physical address noted in Horowitz's notice of change of address filed on March 22, 2018, but service was impossible due to Horowitz's deliberate actions to evade service. The circuit court granted both *ex parte* motions on May 18, 2018, and eventually authorized service on Horowitz by certified mail *nunc pro tunc* to the date of receipt of the original Petition to Expunge *lis pendens*, December 21, 2016.

On April 20, 2018, Horowitz filed a motion for sanctions pursuant to HRCF Rule 11, alleging that Hester's counsel Sulla had violated various court orders and rules of the court in his prosecution of the petition. On June 22, 2018, the circuit court denied Horowitz's motion for sanctions against Sulla.

On June 22, 2018, the circuit court entered its "Findings of Fact, Conclusions of Law and Order Granting Petitioner's Motion for Judgment on the Pleadings, or in the Alternative, For Summary Judgment on Amended Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii" (**Order Granting Petition to Expunge**). On July 26, 2018, pursuant to its Order Granting Petition to Expunge, the circuit court entered its "Final Judgment" (**Expungement Judgment**), entering summary judgment in favor of Hester as to his Amended Petition to Expunge.

#### **B. Personal Jurisdiction over Horowitz**

From what we can discern, Horowitz's first point of error in CAAP-18-0000584 appears to assert that: (a) the circuit court lacked personal jurisdiction over Horowitz because Hester never properly served Horowitz with the Amended Petition to

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<sup>21</sup>(...continued)  
the first circuit court, the current title holder is now Halai Heights, LLC, with Hester retaining an interest in the property as a member.

Expunge pursuant to HRCF Rule 4; and (b) Hester lacks standing. We first note that Horowitz's argument regarding Hester's standing is based on Horowitz's similar argument regarding the prior substitution of Revitalize, with Hester as successor Overseer, in the Judicial Foreclosure action which was previously discussed and rejected above. Thus, we do not further address this contention here.

Because Horowitz's first and third points of error in CAAP-18-0000584 both pertain to the circuit court's jurisdiction over Horowitz, we address both points of error together.

Upon review of the record, we conclude that Horowitz waived the defense of insufficient service of process pursuant to HRCF Rule 12(h)(1). HRCF Rule 12(h)(1) provides:

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(Emphases added). Horowitz's first appearance in this case occurred when he filed "Defendant Leonard G. Horowitz's Motion to Dismiss 'Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii'" (**First Motion to Dismiss**), on May 18, 2017, in the first circuit court. In Horowitz's First Motion to Dismiss, he asserted a number of defenses under HRCF Rule 12(b), but did not raise the defense of insufficiency of service of process under HRCF Rule 12(b)(5). To the contrary, Horowitz acknowledges in his First Motion to Dismiss that he was served the original petition on December 21, 2016, by certified mail. Horowitz instead raised the issue of insufficiency of service of process in his subsequent "Defendant Leonard G. Horowitz's Motion to Dismiss 'Petition to Expunge Documents Recorded in the Bureau of Conveyances of the State of Hawaii'" (**Second Motion to Dismiss**), filed on January 23, 2018, in the third circuit court, eight months after the First Motion to Dismiss.

Because Horowitz failed to raise the defense of insufficiency of service of process in his First Motion to Dismiss, and continued to actively participate in the proceedings in the circuit court, his assertion on appeal that the circuit court lacked personal jurisdiction is deemed waived. HRCP Rule 12(h)(1); see Rearden Family Trust v. Wisenbaker, 101 Hawai'i 237, 247-48, 65 P.3d 1029, 1039-40 (2003) (holding that a pre-answer motion to dismiss which objected to service of process by registered mail under HRCP Rule 12(b)(5), but omitted the defense of lack of personal jurisdiction under HRCP Rule 12(b)(2), resulted in waiver of the omitted defense); see also Puckett v. Puckett, 94 Hawai'i 471, 480, 16 P.3d 876, 885 (App. 2000) (holding that defendant had waived the improper service issue by not raising it until after he had filed an answer, personally appeared at a hearing, and filed his first motion to dismiss).

**C. Circuit Court's failure to perform  
"inquiry reasonable" into Hester's counsel Sulla**

From what we can discern, Horowitz's second point of error in CAAP-18-0000584 appears to assert that the circuit court erred in failing to perform an "inquiry reasonable" into Hester's counsel's alleged personal interest in the subject property and collusion with the circuit court in prosecuting the petitions to expunge Horowitz's documents. In support of his contention, Horowitz relies on numerous unsubstantiated and irrelevant facts that are unsupported by the record, and which provide no basis for this court to review any purported error by the circuit court.

As Horowitz makes no discernable argument as to this point of error, it is deemed waived. See Kakinami v. Kakinami, 127 Hawai'i 126, 144 n. 16, 276 P.3d 695, 713 n. 16 (2012) (citing In re Guardianship of Carlsmith, 113 Hawai'i 236, 246, 151 P.3d 717, 727 (2007) (noting that this court may "disregard a particular contention if the appellant makes no discernible argument in support of that position") (internal quotation marks and brackets omitted)).

**D. The circuit court's denial of Horowitz's motion for sanctions under HRCF Rule 11**

Finally, we conclude that the circuit court did not abuse its discretion in its order denying Horowitz's motion for sanctions against Hester's attorney, Sulla.<sup>22</sup> The only discernable argument that Horowitz makes on appeal pertaining to the order denying sanctions is his contention that Sulla's representation of Hester was in contravention of a Disqualification Order apparently issued by the U.S. District Court in a prior quiet title action, which Horowitz contends warranted sanctions by the circuit court. Such argument provides no discernable basis to impose sanctions pursuant to HRCF 11, and as such the circuit court did not abuse its discretion in its order denying sanctions.

**E. Remand in light of our ruling under Kondaur in CAAP-16-0000163**

It appears from the record that our ruling above in CAAP-16-0000163 under Kondaur could potentially affect this case. Therefore, although we reject Horowitz's arguments on appeal in CAAP-18-0000584, we conclude it would be prudent to remand this case to the Circuit Court of the Third Circuit for further proceedings as the circuit court deems necessary in light of our rulings in this Memorandum Opinion.

**IV. Conclusion**

For the reasons discussed above, we conclude that:

(1) In CAAP-16-0000162, the "Fifth Amended Final Judgment", entered on March 4, 2016, by the Circuit Court of the Third Circuit, is affirmed.

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<sup>22</sup> Horowitz's final point of error in the Expungement Action appears to assert three different arguments, contending that the circuit court: 1) abused its discretion in its order denying sanctions against Hester's counsel, Sulla; 2) neglected Sulla's abuse of process, and; 3) neglected Sulla's Malicious Prosecution. We, however, only address Horowitz's contention pertaining to the circuit court's order denying sanctions, as Horowitz makes no discernable argument in support of the other contentions. See Kakinami, 127 Hawai'i at 144 n. 16, 276 P.3d at 713 n. 16 (citing In re Guardianship of Carlsmith, 113 Hawai'i at 246, 151 P.3d at 727 (noting that this court may "disregard a particular contention if the appellant makes no discernible argument in support of that position") (internal quotation marks and brackets omitted)).

(2) In CAAP-16-0000163, the December 30, 2015 "Final Judgment", solely as it pertains to the May 27, 2015 "Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment", is vacated. This case is remanded to the Circuit Court of the Third Circuit for further proceedings consistent with this Memorandum Opinion.

(3) In CAAP-18-0000584, the case is remanded to the Circuit Court of the Third Circuit for further proceedings as the circuit court deems necessary in light of our rulings in this Memorandum Opinion.

DATED: Honolulu, Hawai'i, May 2, 2019.

CAAP-16-0000162  
Margaret (Dunham) Willie,  
for Defendants/Counterclaim  
Plaintiffs/Appellants.

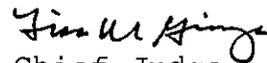
Paul J. Sulla, Jr.  
for Plaintiff/Counterclaim  
Defendant/Appellee.

CAAP-16-0000163  
Margaret (Dunham) Willie,  
for Defendants/Counterclaim  
Plaintiffs/Appellants.

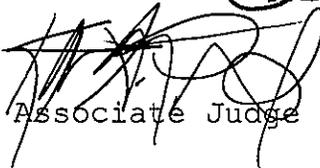
Stephen D. Whittaker, AAL,  
for Plaintiff/Counterclaim  
Defendant/Appellee.

CAAP-18-0000584  
Leonard G. Horowitz,  
pro se Respondent-Appellant.

Paul J. Sulla, Jr.,  
for Petitioner-Appellee.

  
Chief Judge

  
Associate Judge

  
Associate Judge

Electronically Filed  
Intermediate Court of Appeals  
CAAP-18-0000584  
17-MAY-2019  
10:30 AM

NOS. CAAP-16-0000162 AND CAAP-16-0000163

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

**CAAP-16-0000162**

JASON HESTER, Overseer of the Office of Overseer,  
a corporate sole and his successors, over/for the Popular  
Assembly of Revitalize, a Gospel of Believers,  
Plaintiff/Counterclaim Defendant/Appellee,

v.

LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID,  
Defendants-Counterclaim-Plaintiffs/Appellants,  
and

JACQUELINE LINDENBACH HOROWITZ,  
Defendant/Counterclaim-Plaintiff/Appellee,

and

PHILIP MAISE, Intervenor-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10, DOE  
PARTNERSHIPS 1-10, DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 05-1-0196)

**CAAP-16-0000163**

JASON HESTER, an individual,  
Plaintiff/Counterclaim-Defendants/Appellee,

v.

LEONARD G. HOROWITZ, an individual and  
SHERRI KANE, an individual  
Defendants/Counterclaim-Plaintiffs/Appellants,  
and

THE ROYAL BLOODLINE OF DAVID,  
a Washington Corporation Sole,  
Defendant/Appellant,

and

MEDICAL VERITAS INTERNATIONAL, INC., a California  
non-profit corporation, JOHN DOES 1-10, JANE DOES 1-10,  
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,  
DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10,

Defendants

**Exhibit 2**

Removal Exhibits pg. 22

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 14-1-0304)

**CAAP-18-0000584**

JASON HESTER, Petitioner-Appellee,  
v.  
LEONARD G. HOROWITZ, Respondent-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 17-1-0407)

ORDER DENYING THE MAY 12, 2019 MOTION FOR RECONSIDERATION  
(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

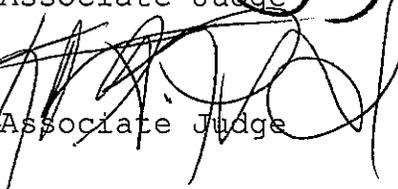
Upon consideration of (1) this court's Memorandum Opinion in these consolidated appeals, filed on May 2, 2019; (2) Appellant Leonard G. Horowitz's (**Horowitz**) "Appellant's Rule 40 Motion and Memorandum For Reconsideration (of the 'Memorandum Opinion' filed May 2, 2019)" (**Motion for Reconsideration**), filed on May 12, 2019, seeking reconsideration of the Memorandum Opinion; (3) the papers in support of the Motion for Reconsideration; and (4) the records and files in this case,

IT IS HEREBY ORDERED that Appellant Horowitz's Motion for Reconsideration is denied. However, an order of correction will be issued to correct a typographical error in the Memorandum Opinion.

DATED: Honolulu, Hawai'i, May 17, 2019.

  
Chief Judge

  
Associate Judge

  
Associate Judge

**Electronically Filed  
Intermediate Court of Appeals  
CAAP-18-0000584  
17-MAY-2019  
10:45 AM**

NOS. CAAP-16-0000162 AND CAAP-16-0000163

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

**CAAP-16-0000162**

JASON HESTER, Overseer of the Office of Overseer,  
a corporate sole and his successors, over/for the Popular  
Assembly of Revitalize, a Gospel of Believers,  
Plaintiff/Counterclaim Defendant/Appellee,

v.

LEONARD G. HOROWITZ and THE ROYAL BLOODLINE OF DAVID,  
Defendants-Counterclaim-Plaintiffs/Appellants,

and

JACQUELINE LINDENBACH HOROWITZ,  
Defendant/Counterclaim-Plaintiff/Appellee,

and

PHILIP MAISE, Intervenor-Appellee,

and

JOHN DOES 1-10, JANE DOES 1-10, DOE ENTITIES 1-10, DOE  
PARTNERSHIPS 1-10, DOE GOVERNMENTAL UNITS 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 05-1-0196)

**CAAP-16-0000163**

JASON HESTER, an individual,  
Plaintiff/Counterclaim-Defendants/Appellee,

v.

LEONARD G. HOROWITZ, an individual and  
SHERRI KANE, an individual  
Defendants/Counterclaim-Plaintiffs/Appellants,

and

THE ROYAL BLOODLINE OF DAVID,  
a Washington Corporation Sole,  
Defendant/Appellant,

and

MEDICAL VERITAS INTERNATIONAL, INC., a California  
non-profit corporation, JOHN DOES 1-10, JANE DOES 1-10,  
DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10,  
DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10,  
Defendants

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 14-1-0304)

CAAP-18-0000584

JASON HESTER, Petitioner-Appellee, v.  
LEONARD G. HOROWITZ, Respondent-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT  
(CIVIL NO. 17-1-0407)

ORDER OF CORRECTION

(By: Ginoza, Chief Judge, for the court<sup>1</sup>)

The Memorandum Opinion of the Court filed May 2, 2019,  
is hereby corrected as follows:

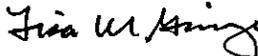
1. At page 13, second sentence of the last paragraph,  
change "John" to "Jason" so as corrected the sentence will read  
as follows:

The Mortgagee's Affidavit of Foreclosure Under Power of  
Sale recorded on May 11, 2010, states that the subject  
property was sold at public sale to "Jason Hester,  
Overseer [for Revitalize] for \$175,000.00, which was  
the highest bid at said sale."

The clerk of the court is directed to take all  
necessary steps to notify the publishing agencies of these  
changes.

DATED: Honolulu, Hawai'i, May 17, 2019.

FOR THE COURT:

  
Chief Judge

---

<sup>1</sup> Ginoza, Chief Judge, Fujise and Leonard, JJ.

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

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



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



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$550.00

20 3/4 Z2

LAND COURT SYSTEM

REGULAR SYSTEM

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

*The Royal Bloodline of David*

*P.O. Box 1739*

*Newport, Washington 99156*

**ITC**

ESCROW NO. : 302-00225945-BJI  
Brenda Ioane

THIS DOCUMENT CONTAINS 7 PAGES

TITLE OF DOCUMENT:

**WARRANTY DEED**

PARTIES TO DOCUMENT:

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

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

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

PKK/ITC2003.DED/11-6-03

EX **Exhibit 3**

Removal Exhibits pg. 26

**WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

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

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

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

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

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

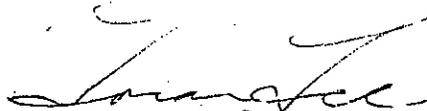
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for in the sales contract and any and all addenda thereto. The terms of said "AS IS" provisions are incorporated herein by reference and shall survive closing.

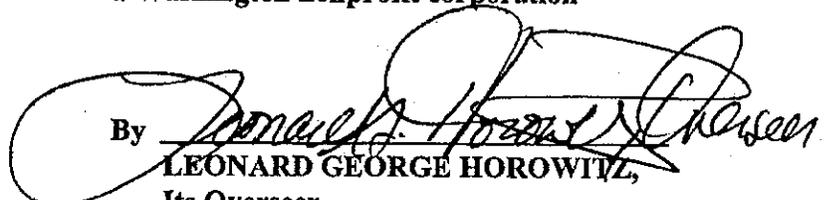
IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors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

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

IN WITNESS WHEREOF, this instrument has been executed by the undersigned on this 15th day of JANUARY, 2007. *11/24/05 ELL. bnp*

  
LORAN LEE A.K.A C. LORAN LEE

**THE ROYAL BLOODLINE OF DAVID,  
a Washington nonprofit corporation**

By   
LEONARD GEORGE HOROWITZ,  
Its Overseer

APPROVED AS TO FORM  
PETER K. KUBOTA  
ATTORNEY AT LAW

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

EXHIBIT A

ITEM I:

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

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

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

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

ITEM II:

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

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

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

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

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

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

SUBJECT, HOWEVER, TO:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. AS TO ITEM I:-

As to the road remnant within the land herein described:

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

3. AS TO ITEM II:-

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

END OF EXHIBIT A

Removal Exhibits pg. 30

SURVEY  
 COUNTY OF HAWAII  
 STATE OF HAWAII

4007  
QUITCLAIM DEED



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

July 11, 2012 1:00 PM

Doc No(s) A-45750676



B-32091676

/s/ NICKI ANN THOMPSON  
REGISTRAR

Conveyance Tax: \$0.00

4  
FILED FOR RECORD AT REQUEST OF Leonard G. Horowitz  
WHEN RECORDED RETURN TO:  
Leonard G. Horowitz  
13-3775 Kalapana Highway  
Pahoa, HI 96778

THE GRANTOR, THE ROYAL BLOODLINE OF DAVID, a Washington State Corporation Sole (non-profit ministry), represented by the "Body Corporate," Leonard G. Horowitz, Presiding Patriarch and Overseer for THE ROYAL BLOODLINE OF DAVID; for and in consideration of One Dollar, Love and faith, conveys and Quitclaims to the GRANTEES, Leonard G. Horowitz and Sherri Kane, residents at 13-3775 Kalapana Highway, Pahoa, HI 96778, the following described real estate, situated at 13-3775 Kalapana Highway, Pahoa, HI 96778, in the County of Hawaii, State of Hawaii, together with all after acquired title of the Grantor(s) therein (as per): Tax Parcel Numbers: 1-3-1-43 and 1-3-1-49, Island and County of Hawaii, Area Assessed: 1.320 acres and 16.550 acres, respectively, more or less. (As per Warranty Deed filed 1-23-04, between LORAN LEE Grantor and THE ROYAL BLOODLINE OF DAVID, Grantee, Exhibit A.)

DATED: June 28, 2012  
THE ROYAL BLOODLINE OF DAVID  
By: Leonard G. Horowitz, Overseer

*The Royal Bloodline of David*  
*By Leonard G. Horowitz, Overseer*  
Grantor, THE ROYAL BLOODLINE OF DAVID  
By: Leonard G. Horowitz, Overseer

DATED: June 28, 2012  
Leonard G. Horowitz and Sherri Kane

*Leonard G. Horowitz*  
*Sherri Kane*  
Grantees, Leonard G. Horowitz and Sherri Kane

State of Hawaii }  
City and County of Honolulu } ss  
}

On this day personally appeared before me Leonard G. Horowitz, the body corporate and Presiding Patriarch of THE ROYAL BLOODLINE OF DAVID, a non-profit corporation sole, Grantor(s), and Sherri Kane, Co-Grantee with the person of Leonard G. Horowitz, to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged that s/he signed the same as his/her free and voluntary act deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 9<sup>th</sup> day of July, 2012.

*Joanne M.L. Chun*  
NOTARY PUBLIC in and for the State of Hawaii  
Residing at Honolulu, Hawaii  
My commission expires 05-09-2016  
Joanne M.L. Chun

Doc. Date: 6-28-12 # Pages: 11  
Joanne M.L. Chun First Circuit  
Doc. Description: Quitclaim Deed  
Tax Parcel # 1-3-1-43 & 1-3-1-49  
Removal Exhibits pg. 31

*Joanne M.L. Chun* 7-9-12  
Notary Signature Date  
NOTARY CERTIFICATION

11  
Exhibit 4

EXHIBIT A

ITEM I:

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

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

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

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

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

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

ITEM II:

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

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

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

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

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

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

SUBJECT, HOWEVER, TO:

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

As to the road remnant within the land herein described:

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

3. AS TO ITEM II:-

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



**County of Hawai'i**

**DEPARTMENT OF FINANCE - REAL PROPERTY TAX**

Aupuni Center • 101 Pauahi Street • Suite No. 4 • Hilo, Hawai'i 96720 • Fax (808) 961-8415  
Appraisers (808) 961-8354 • Clerical (808) 961-8201 • Collections (808) 961-8282  
West Hawai'i Civic Center • 74-5044 Ane Keohokalole Hwy. • Bldg. D, 2nd Flr. • Kailua Kona, Hawai'i 96740  
Fax (808) 327-3538 • Appraisers (808) 323-4881 • Clerical (808) 323-4880

Nancy Crawford  
Deputy Finance Director

February 13, 2018

Mr. Paul J Sulla, Manager  
Halai Heights LLC  
PO Box 5258  
Hilo, HI 96720

Re: TMK: 1-3-001-049-0000

Mr. Sulla,

After review of the documents recorded on the parcel noted above, there was a discrepancy in ownership due to an exchange deed the County of Hawaii had completed with the prior owner of record. During the review, the Real Property Tax Office concluded 36,140 square feet was not included in the original legal description which was foreclosed on (which ultimately resulted in Halai Heights receiving ownership).

As a result of the research conducted, a separate tax map key number has been issued for this area. The new TMK # for this 36,140 square feet is 1-3-001-095-0000, owner of record is the Royal Bloodline of David (original owner per exchange deed). To further complicate matters, the taxes for tax years 2010 through 2017 were paid by the following individuals:

Halai Heights (paid in 2016 & 2017) totaling: \$24,878.71

Medical Veritas/Leonard Horowitz/Sherri Kane (paid in 2013 thru 2017) totaling: \$13,100.00

I apologize for any inconvenience and can only recommend that you make contact with the title company or company that assisted with the transaction/legal description of the warranty deed from Jason Hester to Halai Heights LLC as it appears Jason Hester did not have clear title to the legal description utilized in this document.

Sincerely,

Lisa Miura  
Assistant Real Property Administrator

**Exhibit 5**

LEONARD G. HOROWITZ  
and SHERRI KANE, pro se  
5348 Vegas Drive, Suite 353  
Las Vegas, NV 89108  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584**

JASON HESTER  
Plaintiff/Counterclaim Defendant  
vs.

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Defendants/Counterclaimants

and

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Counterclaimants  
vs.

PAUL J. SULLA, JR., and  
PAUL J. SULLA, JR., ATTORNEY AT LAW,  
A LAW CORPORATION;  
HALAI HEIGHTS, LLC; PATRICK SNIFFEN;  
BRADLEY R. TAMM; HOWARD M.S. HU;  
GARY VICTOR DUBIN; STEPHEN D.  
WHITTAKER; and JOHN S. CARROLL  
Third Party Counterclaim Defendants

) Civ. No.  
)  
) **EX PARTE MOTION TO**  
) **SHOW CAUSE WHY**  
) **‘WRIT OF EJECTMENT’**  
) **SHOULD NOT ISSUE FOR**  
) **HOROWITZ ET. AL.’S**  
) **REPOSSESSION OF THE**  
) **WRONGLY FORECLOSED**  
) **SUBJECT PROPERTY**  
) **WITHIN 30-DAYS of THIS NOTICE**  
) **TO VACATE, OR IN THE**  
) **ALTERNATIVE FOLLOWING**  
) **A HEARING ON MOTON,**  
) **AS ORDERED BY THE COURT;**  
) **[FRCP Rule 5]**  
)  
) **CERTIFICATE OF SERVICE**  
)

**EX PARTE MOTION TO SHOW CAUSE WHY ‘WRIT OF EJECTMENT’  
SHOULD NOT ISSUE FOR HOROWITZ ET. AL.’S REPOSSESSION OF  
THE WRONGLY FORECLOSED SUBJECT PROPERTY WITHIN 30-DAYS  
of THIS NOTICE TO VACATE, OR IN THE ALTERNATIVE FOLLOWING  
A HEARING ON MOTON, AS ORDERED BY THE COURT**

COMES NOW Defendants/Counterclaimants Leonard G. Horowitz and Sherri  
Kane, pro se (collectively, “Defendants” or “DCs”), requesting that attorney Paul

J. Sulla, Jr., (“Sulla”) and his privies vacate the subject “Property” (TMKs (3) 1-3-001:049 and 043; located at 13-3775 Pahoia-Kalapana Rd. Pahoia, HI 96778) within 30-days of this Notice, or in the alternative following a hearing on this ‘Motion to Show Cause,’ as ordered by the Honorable Court. This would permit the safe, prompt, efficient and just repossession of the “Property” by the DCs who Sulla, Hester, Whittaker, et. al., wrongfully dispossessed in July 2016.

Good cause exists for this Notice, as determined by the Intermediate Court of Appeals (ICA) for the State of Hawaii’s ruling dated May 2, 2019, in their Memorandum Opinion (“MO”) (affirmed on May 12, 2019). This ruling concluded that Sulla improperly administered the non-judicial foreclosure by which he and his privies came to possess the Property wrongly and damagingly.

The ICA’s MO vacated the summary judgment in Civ. No. 14-1-0304, by which Sulla gained a void ‘quiet title.’

Sulla’s foreclosing entity has now been dissolved more than five years. His alleged sham “church” corporation (the MO cites as “Revitalize”) improperly foreclosed on April 20, 2010, and no longer exists. The foreclosure, administered by Sulla in an alleged conspiracy with ‘insider,’ Plaintiff Jason Hester, featured a ‘mock auction’ in which Hester made a \$175,000 “credit bid” for the Property valued in excess of \$1,000,000. The ICA thus vacated Sulla’s quiet title summary judgment, remanding for further deliberation on the non-judicial foreclosure that failed to meet threshold requirements of *Kondaur Capital Corp. v. Matsuyoshi*, 136 Hawai’I 227, 240, 361 P. 3d 454, 467 (2015).

Currently, Horowitz and Kane are homeless, damaged, severely distressed, and irreparably harmed, with health issues proximal to having been wrongfully ejected from their home, and being forced to suffer the monthly expenses of alternative residences and storage space for their personal possessions they were able to salvage at the time of their ejection.

The DCs are exclusive parties entitled to own and possess the Property, by reason of their owning the only valid Warranty Deed (**Exhibit 1**) filed with the State of Hawaii Bureau of Conveyances Recorded January 23, 2004. The ICA confirmed Horowitz's "Royal" ministry Grantee is succeeded by Horowitz exclusively. But Horowitz, as Royal's Overseer, administered a quit claim deed of the Property to the DCs on July 11, 2012. (**Exhibit 2**) Thus, the DCs' valid deeds are superior to Sulla's void deeds derived by way of the void non-judicial foreclosure.

Subsequent sales of the Property to Sulla's insiders are void. Public records prove Hester no longer owns the Property since purportedly selling the Property for \$450,000 to Sulla's alleged alter-ego, Halai Heights, LLC, (HLLC) on September 9, 2016. By that void transaction, County of Hawaii Tax Office records show HLLC the current "owner." But HLLC's warranty deed encumbering the Property contains a forgery, as determined by County Tax Office officials. That forgery voids that deed. Tax Officials mailed Sulla constructive notice of this problem invalidating HLLC's deed and claim of ownership on February 13, 2018. (**Exhibit 3**)

In conclusion, the DCs maintain the only valid deed(s) to their Property. Sulla's dispossession of the DCs from their home and commercial Property in July 2016 was wrongful, damaging, irreparably harming, and must be promptly reversed to prevent more damage, distress and irreparable harm. This "Demand to Vacate" is administered simultaneously with this request for hearing on the Motion to Show Cause, if any, in accordance with FRCP Rule 1. Sulla, et. al. should vacate quickly, or a Writ of Ejectment should be issued by the Court. By this Notice and Demand, Sulla should inform the DCs and the Court his intentions to comply, or otherwise detail his justification for delaying departure.

RESPECTFULLY SUBMITTED,

DATED: Honolulu, HI, May 30, 2019

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LEONARD G. HOROWITZ, pro se

---

SHERRI KANE, pro se

LEONARD G. HOROWITZ  
and SHERRI KANE, pro se  
5348 Vegas Drive, Suite 353  
Las Vegas, NV 89108  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
ICA Nos. CAAP-16-0000162, CAAP-16-0000163, CAAP-18-0000584**

JASON HESTER	) Civ. No.
Plaintiff/Counterclaim Defendant	)
vs.	)
LEONARD G. HOROWITZ	)
and SHERRI KANE,	) <b>WRIT OF EJECTMENT'</b>
Defendants/Counterclaimants	)
and	) <b>RETURN OF SERVICE ON</b>
	) <b>WRIT OF EJECTMENT</b>
	)
LEONARD G. HOROWITZ	) <b>CERTIFICATE OF SERVICE</b>
and SHERRI KANE,	)
Counterclaimants	
vs.	
PAUL J. SULLA, JR., and	
PAUL J. SULLA, JR., ATTORNEY AT LAW,	
A LAW CORPORATION;	
HALAI HEIGHTS, LLC; PATRICK SNIFFEN;	
BRADLEY R. TAMM; HOWARD M.S. HU;	
GARY VICTOR DUBIN; STEPHEN D.	
WHITTAKER; and JOHN S. CARROLL	
Third Party Counterclaim Defendants	

**WRIT OF EJECTMENT; RETURN OF SERVICE ON  
WRIT OF EJECTMENT**

THE STATE OF HAWAII

TO: THE DIRECTOR OF PUBLIC SAFETY OF THE STATE OF HAWAII,  
HIS/HER DEPUTY, THE CHIEF OF POLICE OR THE HAWAII POLICE  
DEPARTMENT, OR HIS DEPUTY, OR TO ANY POLICE OFFICER OR SHERIFF

OF THE COUNTY OF HAWAII, OR PERSON AUTHORIZED BY THE LAWS OF THE STATE OF HAWAII.

Pursuant to the Memorandum Opinion of the Intermediate Court of Appeals for the State of Hawaii, filed May 2, 2016, Defendants/Counterclaimants LEONARD G. HOROWITZ and SHERRI KANE, are entitled to the issuance of a Writ of Ejectment against JASON HESTER and his privies, including PAUL J. SULLA, JR., MARC SHACKMAN, HALAI HEIGHTS, LLC, and/or their agents, associates, property caretakers, etc. for possession of the premises located at 13-3775 Pahoia Kalapana Road, Pahoia, Hawaii 96778-7924, TMK Nos. (3) 1-3-001:049 & 043.

THEREFORE, EFFECTIVE IMMEDIATELY, FROM THE ISSUANCE DATE OF THIS WRIT, YOU ARE COMMANDED TO REMOVE the said above-named persons, JASON HESTER, PAUL J. SULLA, JR., MARC SHACKMAN, HALAI HEIGHTS, LLC or their privies; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10 and DOE GOVERNMENTAL UNITS 1-10, and all persons holding under or through said persons, from the premises above-named, including their personal belonging and properties, and put Defendants/Counterclaimants LEONARD G. HOROWITZ and SHERRI KANE, or their nominee(s), in full possession thereof; and make due return of this Writ with what you have done endorsed thereon.

Dated: Honolulu, Hawaii \_\_\_\_\_

---

JUDGE OF THE ABOVE-ENTITLED COURT

Hester vs Horowitz et al, ICA No. CAAP-16-0000162; CAAP-16-0000163; CAAP-17-0000584 Motion to Show Cause; Writ of Ejectment; Exhibits "1" thru "3".

LEONARD G. HOROWITZ  
and SHERRI KANE, pro se  
5348 Vegas Drive, Suite 353  
Las Vegas, NV 89108  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

**UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII**

JASON HESTER  
Plaintiff/Counterclaim Defendant  
vs.  
LEONARD G. HOROWITZ  
and SHERRI KANE,  
Defendants/Counterclaimants

and

LEONARD G. HOROWITZ  
and SHERRI KANE,  
Counterclaimants

vs.

PAUL J. SULLA, JR., and  
PAUL J. SULLA, JR., ATTORNEY AT LAW,  
A LAW CORPORATION;  
HALAI HEIGHTS, LLC; PATRICK SNIFFEN;  
BRADLEY R. TAMM; HOWARD M.S. HU;  
GARY VICTOR DUBIN; STEPHEN D.  
WHITTAKER; and JOHN S. CARROLL  
Third Party Counterclaim Defendants

Civ. No. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on this \_\_\_ day of \_\_\_\_, 2019, we served a true and correct copy of the foregoing **“EX PARTE MOTION TO SHOW CAUSE WHY ‘WRIT OF EJECTMENT’ SHOULD NOT ISSUE FOR HOROWITZ ET. AL.’S REPOSSESSION OF THE WRONGLY FORECLOSED SUBJECT PROPERTY WITHIN 30-DAYS of THIS NOTICE TO VACATE, OR IN THE ALTERNATIVE FOLLOWING A HEARING ON MOTON, AS ORDERED BY THE COURT [FRCP Rule 5]; CERTIFICATE OF SERVICE”** by the method described below to:

PAUL J. SULLA, JR. (5258)  
Attorney for JASON HESTER  
PAUL J. SULLA, JR. LAW, and  
THE ECLECTIC CENTER, et. al.  
106 Kamehameha Ave., Ste. 2A  
Hilo, HI 96720  
808-933-3600

Delivery by:  
 U.S. Mail

Hand

THE CLERK OF THE U.S. DISTRICT COURT  
HONORABLE JUDGE (To be assigned)  
IN THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF HAWAII  
300 Ala Moana Blvd. #C338  
Honolulu, HI 96850  
808-541-1300

U.S. Mail  
 Hand

THE HONORABLE JUDGE  
J. MICHAEL SEABRIGHT  
c/o Clerk of the District Court  
THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF HAWAII  
300 Ala Moana Blvd. #C338  
Honolulu, HI 96850  
808-541-1300

U.S. Mail  
 Hand

HOWARD M.S. HU, TRUSTEE  
Chapter 13 Trustee  
1132 Bishop Street, Suite 301  
Honolulu, HI 96813  
Telephone: (808) 526-3083

U.S. Mail  
 Hand

BRADLEY R. TAMM (JD 7841)  
Attorney at Law and  
Director, Office of Disciplinary Counsel  
P.O. Box 3047  
Honolulu, Hawai'i 96802  
(808) 206-1120

U.S. Mail  
 Hand

LT. PATRICK SNIFFEN  
State of Hawaii Sheriff's Department,  
Maui Section 2145 Main St.,  
Wailuku, HI 96793  
(808) 244-2900

U.S. Mail  
 Hand

STEPHEN D. WHITTAKER (2191)  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

U.S. Mail  
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GARY VICTOR DUBIN  
DUBIN LAW OFFICES  
55 Merchant Street, Suite 3100  
Honolulu, HI 96813  
(808) 537-2300

U.S. Mail  
 Hand Delivery

JOHN S. CARROLL  
810 Richards St #810,  
Honolulu, HI 96813  
(808) 526-9111

U.S. Mail  
 Hand Delivery

JUDGE MELVIN H. FUJINO,  
Deputy Chief Judge, Third Circuit Court  
777 Kilauea Ave,  
Hilo, HI 96720  
(808) 961-7464

U.S. Mail

JUDGE HENRY T. NAKAMOTO  
Third Circuit Court  
777 Kilauea Ave,  
Hilo, HI 96720  
(808) 961-7464

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65-1316 Lihipali Road  
Kamuela, Hawaii 96743  
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[margaretwille@mac.com](mailto:margaretwille@mac.com)

U.S. Mail

  
LEONARD G. HOROWITZ and/or SHERRI KANE, in Propria Persona