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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

JASON HESTER, an individual, his successors and assigns, Plaintiff, v. LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITITES 1-10 and DOE GOVERNMENTAL UNITS 1-10, Defendants.	))))))))))))))))	CIV. NO. 14-1-0304 (Quiet Title/Summary Possession) **DEFENDANTS' COUNTER-MOTION TO SET ASIDE: (1) THE ICA-VACATED SUMMARY JUDGMENT; (2) ERRONEOUS GRANT OF WRIT OF EJECTMENT; AND (3) QUIET TITLE TO JASON HESTER. [HRCP Rule 1, 7(b) and RCCH 7.2(b)]; DEFENDANTS' MEMORANDUM IN SUPPORT; AFFIDAVIT OF LEONARD G. HOROWITZ; EXHIBITS A-S; NOTICE OF SUBMISSION OF ORDER TO SET ASIDE THE ICA-VACATED SUMMARY JUDGMENT OF MAY 27, 2015 ERRONEOUSLY GRANTING WRIT OF EJECTMENT AND QUIET TITLE TO PLAINTIFF "JASON HESTER"; NOTICE OF HEARING MOTION, EXHIBITS "A" AND "B"; CERTIFICATE OF SERVICE** Hearing: September 25, 2020 Time: 8:00 am Judge: Honorable Wendy DeWeese Trial Date: No trial date set

DEFENDANTS' COUNTER-MOTION TO SET ASIDE: (1) THE ICA-VACATED SUMMARY JUDGMENT; (2) ERRONEOUS GRANT OF WRIT OF EJECTMENT; AND (3) QUIET TITLE TO JASON HESTER

COMES NOW Defendants/Counterclaimants LEONARD G. HOROWITZ and SHERRI KANE, (hereafter, "Defendants") pro se, filing this Counter-Motion to: (1) oppose the Plaintiff's renewed Summary Judgment ("SJ") Motion by raising the 'material fact' that Plaintiff never complied with the strict non-judicial foreclosure ("NJF") requirement in HRS 667-5 thru10 because, for one, Plaintiff never accurately and fairly responded to we Defendants' request for a "final accounting" and also the amount necessary to cure the claimed "default" on the Mortgage and Note.

Additional material facts in dispute precluding granting the Plaintiff's SJ Motion are detailed in the Defendants' attached Memorandum that also pleads for the honorable Court to vacate the errors made by previous courts by setting aside: (1) the ICA-vacated summary judgment; (2) the erroneous grant of the Writ of Ejectment dispossessing the Defendants from their home; and (3) the quiet title unjustly granted to Plaintiff, Jason Hester.

Based on the material facts in dispute detailed herein and in Defendants' attached Memorandum in Support of this Counter-motion, the string of errors and injustices committed in this case resulted in the Defendants' dispossession and conversion of all equity the Defendants had built up in the Property between 2004 and 2010. Previous courts had denied the Defendants' standing and due process right to defend, which enabled the Plaintiff's SJ and caused substantial irreparable harm and severe financial damage to the Defendants. The resulting real Property conversion caused the loss of the Defendants' pets; break-up of Horowitz's family; conversion of their livestock and agricultural and personal properties; and Defendants' illnesses and threatened loss of life from suffering years of litigation duress and severe mental and emotional distress from being made homeless and Horowitz bankrupted.

To repair the damage done, the Defendants pray here for the Court to expediently deny the Plaintiffs' Renewed SJ Motion, vacate the improper SJ, vacate the unjust Writ of Ejectment, and vacate the Quiet Title erroneously granted to Mr. Hester, and return possession of the Property to Defendants, or otherwise compensate the Defendants for their damages, deficiencies, suffering, and fees and costs in assumpsit in accordance with the *Carey*, 36 Haw. at 125, wherein the court stated: "A mortgagee violation of the nonjudicial foreclosure requirements of HRS § 667-5, whether those violations are grievously prejudicial or merely technical, voids a subsequent foreclosure sale;" and the Ninth Circuit reiterated that "Hawaii law requires strict compliance with statutory foreclosure procedures... **That statute permits a plaintiff to recover treble (triple) damages; the Ninth Circuit remanded the case to the bankruptcy court to determine the borrower's actual damages** (*Kekauoha-Alisa v. Ameriquest Mortgage Co*).. . . Without such

compliance, the mortgagee has no legal authority to exercise its power of sale in a nonjudicial foreclosure sale. . . ." *Id.*

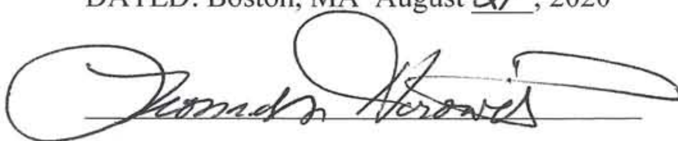
Therefore, to facilitate the timely and efficient administration of justice, to prevent further damage, distress, and illnesses to the Defendants, the Defendants have attached to this Counter-Motion proposed Orders vacating the 'Summary Judgment Order' of May 27, 2015, the Writ of Ejectment filed March 1, 2016, and the Final Judgment as it pertains to the Quiet Title and ejectment writ wrongly enriching co-counsel Paul J. Sulla, Jr., far more than Plaintiff Hester.

In addition, to facilitate the timely and efficient administration of justice, the Defendants have attached to this Counter-Motion a proposed "Writ of Ejectment" to enable the Defendants to expediently repossess their wrongfully converted Property.

Otherwise, the Defendants request that the honorable Court order Mr. Sulla and his current deed holder, Halai Heights, LLC (HHLLC), that is Mr. Hester's purported and presumed "assignee" and "successor," to pay the Defendants the difference between Mr. Sulla's listed sales price of $975,000 and the purported 'outstanding debt' of $200,000, respecting the wisdom discussed in *HawaiiUSA FEDERAL CREDIT UNION v. MONALIM*, Haw: Supreme Court 2020. Here the Supreme Court adopted "the majority approach to calculating deficiency judgments in order to properly balance the equities between mortgagors and mortgagees, protect mortgagors from double-loss [as the Defendants have damagingly experienced] by [former courts] not fairly recognizing the value of the foreclosed property," nor the material facts in dispute pursuant to the NJF that was not conducted in accordance with the standards of fairness, diligence, and good faith, ruled essential in *Kondauer capital v. Matsuyoshi*, 136 Hawaii 227, 361 P3d 454 (2015).

This Motion is made pursuant to Rules 7 and 56 of the Hawaii Rules of Civil Procedure, the attached Memorandum in Support of Motion, Affidavit of Defendant Horowitz, Exhibits A thru S, arguments to be made at the hearing on this Counter-motion, and the records and files for this matter.

DATED: Boston, MA August 24, 2020



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JASON HESTER, an individual, his successors and assigns, Plaintiff, v. LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITITES 1-10 and DOE GOVERNMENTAL UNITS 1-10, Defendants.	))))))))))))))))	CIV. NO. 14-1-0304 (Quiet Title/Summary Possession) **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S RENEWED MOTION FOR SUMMARY JUDGMENT, ALTERNATIVELY SUPPORTING DEFENDANTS' COUNTER-MOTION TO REPOSSESS THE PROPERTY [HRCP Rule 56(c); EXHIBITS A-S; AFFIDAVIT OF LEONARD G. HOROWITZ; NOTICE OF PROPOSED ORDERS; CERTIFICATE OF SERVICE** Hearing: September 25, 2020 Time: 8:00 am Judge: Honorable Wendy DeWeese Trial Date: No trial date set

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S RENEWED MOTION FOR SUMMARY JUDGMENT, ALTERNATIVELY SUPPORTING DEFENDANTS' COUNTER-MOTION TO REPOSSESS THE PROPERTY

I. Introduction

"The only issue remaining in this case," according to the Plaintiff's Memorandum, "is whether Plaintiff JASON HESTER . . . conducted the subject non-judicial foreclosure against Defendant . . . in a manner that was fair, reasonably diligent, and in good faith, and whether an adequate price was obtained for the property located at 13-3775 Kalapana-Pahoa, Pahoa, Hawaii and shown as two separate lots being TMK (3) 1-3-001-049 & 043 ("Property")."

Contrary to Plaintiff's pleading, limited exhibits, and provably false Declaration of disqualified attorney Paul J. Sulla, there are multiple remaining questions of material fact concerning the validity of the non-judicial foreclosure ("NJF") sale. The details, exhibits, and Affidavit of Leonard G. Horowitz, attached hereto provide clear-and-convincing evidence that the NJF was not "conducted in a manner that was fair, reasonably diligent, in good faith, and that an adequate price was obtained for the Property." *Kondauer capital v. Matsuyoshi*, 136 Hawaii 227, 361 P3d 454 (2015). The admissible evidence attached hereto, contrary to the Plaintiff's Memorandum (p.2), establishes beyond any reasonable doubt that the NJF was neither fair, diligent, on the up-and-up; nor was a proper sale price determined and recorded.

II. Background Facts

For the sake of brevity, the Defendants exclusively provide background facts expressly relevant to their Opposition pleading and the four (4) questions of material fact pursuant to fairness, diligence, good faith and fair price considerations as directed by the ICA and *Kondauer* (Id.) within the following sections.

A. Material Fact #1: Plaintiff did not follow the strict requirements of HRS § 667-5, and his non-judicial foreclosure (NJF) and colored title are therefore *void*.

HRS § 667-5 required Mortgagee's power of sale to be conducted precisely according to that law. This includes: "(c) Upon the request of any person entitled to notice pursuant to this section . . . the attorney shall disclose to the requestor . . . (1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorney's 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 . . ."

Contrary to HRS § 667-5, Plaintiff failed to enumerate upon request: (1) "the estimated amount of the foreclosing mortgagee's attorney's fees and costs;" (2) "other fees and costs estimated to be incurred by the foreclosing mortgagee;" and most importantly (3) "the amount to cure the default," as further detailed below:

(1) A 667-5 request was made and evaded

Exhibit A evidences the Defendants' 'final balloon payment' requested by Mr. Sulla and received by him. **Exhibits B thru D** prove Defendants provided repeated requests for "Lee Payoff" amount along with several "inquiry notices" to attorney Sulla. Also, Mr. Sulla's client

was served by Horowitz a request for "payoff" amount on January 26, 2009 as shown in **Exhibit C**. Sulla's e-mail to Horowitz on January 19, 2010 (**Exhibit D**) shows Sulla was satisfied that the original Mortgage balance of $350,000 had been paid down by "$150,000." Yet now and here, in Plaintiff's instant SJ filing, Sulla's Declaration omits and disregards that 2010 correspondence.

A 2nd Notice to release the Mortgage with a final accounting by certified mail was sent by Mr. Horowitz to the Mortgagee on February 16, 2009. This too was known to Mr. Sulla through correspondence with Defendant's counsel and court filings in Civ. No. 05-1-0196.

Thus, ***there is no factual basis for Sulla, co-counsel Whittaker, or Mr. Hester to claim a $350,000 default justified the NJF or the Defendants' summary dispossession***.

Plaintiff's co-counsel Whittaker neglected or evaded this final accounting discrepancy in the instant SJ Motion. Lee, likewise, refused service of this final accounting and Mortgage satisfaction evidence. A 3rd certified mailing to the correct known postal box on March 3, 2009 was evaded. Then to evade the final correct accounting, Sulla's "substitute plaintiff" (i.e., "Gospel of Believers/Revitalize" "church") postal box was closed contemporaneously when this sham "church" Mortgagee was "*involuntarily dissolved*" after serving exclusively as *deed transferee*. These shenanigans concealed Sulla's agency and financial interests in the Property.

Based on the foregoing facts, Sulla's omissions, misrepresentations, and irrefutable evidence of evasion of Release of Mortgage Notices, it must be presumed that the Plaintiff is Sulla's 'strawman' and "Overseer" of a shell foreclosing entity that never actually existed nor responded to the Defendants' repeated requests to provide a final accounting, the Release of Mortgage, and later the precise amount needed to cure the alleged deficiency misrepresented as a "default".

Thus, the Plaintiff did not conduct the NJF "in a manner that was fair, reasonably diligent, in good faith" in accordance with HRS 667-5 and *Kondaur*. (Id)

(2) Attorney Sulla Untimely and Speciously Responded to "Negotiate" the Uncertain "Debt," further evidencing violation of HRS 667-5.

Attorney Sulla responded untimely for Lee and successor "Plaintiff Hester" to negotiate the claimed debt after evading the aforementioned correspondence. Instead of accurately accounting, Sulla contrived *confusion*. Sulla admitted he was confused and found his accounting "confusing" throughout 2009. Sulla's e-mail to Horowitz on January 26, 2010 (**Exhibit D, Exhibits page 20, 3rd paragraph**) proves Sulla's accounting confused him. Yet, Sulla makes known here his knowledge of a "confusing" Mortgage addendum that superseded the Mortgage involving an important neighboring lot and access road, "Remnant A". Sulla decided then to

disregard this "confusing," important, and superseding mortgage addendum and separate contract.

In response to the Defendants' repeated requests for payoff cooperation, and a Mortgage Release following the balloon payment completed on February 27, 2009, Sulla finally replied nine (9) months later, on November 6, 2009, and again on December 28, 2009. (**Exhibit B**) In this set of delayed and untimely correspondence, three months before Sulla served Notice of his NJF, the "church Plaintiff" did not enumerate as required: (a) "the estimated amount of the foreclosing mortgagee's attorney's fees and costs;" (b) "other fees and costs estimated to be incurred by the foreclosing mortgagee;" nor (c) "the amount to cure the default."

Exhibit B proves that ***Sulla recklessly neglected all payments made by the Defendants in November 2009, including the "final balloon payment" made to court-ordered Garnishee Philip Maise on February 27, 2009***. Sulla falsely pressured the Defendants stating in writing, "you still owe the entire $350K principal plus accrued interest since Feb 2009." This wrongful demand is shown on Exhibits pg. 8, para. 3. Sulla also recklessly stated the "$25,000 [note] dated January 15, 2004, [was] due and payable," when that unsecured contract concerning Remnant A, superseding the Mortgage, clearly did not state this. In fact, **Exhibit E** (final paragraph) shows that second Note would not commence until "the date of delivery of the release of the purchase money mortgage." To date, this has been withheld.

(3) Plaintiff's Response(s) *Did Not Comply* with H.R.S. §§ 667-5 thru 10.

When Sulla wrote Horowitz on January 26, 2010, that the payments made and outstanding claimed debt was "confusing," (**Exhibit D**, p. 20) Sulla compounded a pattern and practice of neglecting to respond, then responding untimely, then neglecting fees and costs accounting, then issuing a blatantly inaccurate amount to cure the alleged default, then claiming *confusion*, but demanding anyway a false debt payment of $350,000. This malpractice did not comply with H.R.S. § 667-5's strict compliance requirement. *Lee v. HSBC BANK USA*, 218 P. 3d 775.

(4) Case Law Establishes that HRS 667-5 Requires Strict Compliance.

In *Lee v. HSBC BANK USA*, 218 P. 3d 775, the Hawaii Supreme Court, 2009, considered, "a Nonjudicial Foreclosure Sale [that was] Void Where the Sale was Invalid Under HRS Section 667-5 . . [,]" holding: "A mortgagee, or an entity acting on its behalf, cannot, proceed with a nonjudicial foreclosure under a power of sale clause in the mortgage unless it

complies with either HRS section 667-5, or its alternative HRS sections 667-21, *et seq*. Without such compliance, the mortgagee has no legal authority to exercise its power of sale in a nonjudicial foreclosure sale. Enforcing a contract arising out of an invalid foreclosure sale would not serve any of the purposes of HRS section 667-5."

In the case at bar, the Defendants were dispossessed and irreparably harmed by Sulla and Whittaker's disregard of these laws. The co-counsel's claim that Sulla's NJF complied with 667-5 thru 10 is false and reckless. "Plaintiff", who never filed one affidavit in this case, cannot produce evidence of service of Notice of the three aforementioned accounting requirements of 667-5.

Evading compliance with 667-5 precluded Sulla and Plaintiff's authority to foreclose under the Power of Sale clause of the Mortgage. *Lee v. HSBC BANK USA* (Id.)

(5) Plaintiff's Violations of 667-5 Require that the NJF be Set Aside.

The NJF must be set aside because the Plaintiff, a Party in privity with Sulla and Sulla's transferee of the Property, HHLLC, violated the aforementioned three material requirements of 667-5. In *Lee*, The Supreme Court of Hawaii (2009), concluded: "[A]n agreement created at a foreclosure sale conducted pursuant to HRS section 667-5 is void and unenforceable where the foreclosure sale is invalid under the statute . . ."

The NJF must be set aside because the Plaintiff and counsel failed to respond within 5 business days of Defendant's repeated requests for a final accounting from January thru October, 2009. It was not until January 2010 that Plaintiff attempted to provide Defendants with a defective 667-5 accounting disclosure as shown in **Exhibit D.**

The Court in *Carey*, 36 Haw. at 125, stated: "A mortgagee violation of the nonjudicial foreclosure requirements of HRS § 667-5, whether those violations are grievously prejudicial or merely technical, voids a subsequent foreclosure sale." The Ninth Circuit reiterated that "Hawaii law requires strict compliance with statutory foreclosure procedures... **That statute permits a plaintiff to recover treble (triple) damages; the Ninth Circuit remanded the case to the bankruptcy court to determine the borrower's actual damages** (*Kekauoha-Alisa v. Ameriquest Mortgage Co*).. . . Without such compliance, the mortgagee has no legal authority to exercise its power of sale in a nonjudicial foreclosure sale. . . ." *Id.*

Accordingly, the NJF must be disallowed, the Plaintiff's instant SJ Motion must be denied, and "treble damages" are due to compensate the Defendants for their damages and severe distress. The Defendants honorably acted at every turn for the past fifteen years to justly defend their investments, equity, Property, due process rights, and administration of justice, all to no avail.

B. Proven Material Fact #2: Defendants' were never in default for nonpayment of $350,000 in principle Mortgage debt as falsely alleged and contrived by the Plaintiff's co-counsel to justify the unlawful NJF auction and Property conversion (as recorded on video).

Contrary to the Plaintiff's justification for committing the NJF, **Exhibits A-D** prove beyond any reasonable doubt the Defendants: (1) never defaulted in making Mortgage payments; (2) **Exhibit I** proves irrefutably that Mr. Sulla hatched a scheme to foreclose. Sulla is hereby-evidenced committing 'fraud-by-omission' by knowingly concealing records of payment checks and wire transfers controverting his "Declaration of Counsel" that falsely states: "the defendants thereafter refused to make any further payments on the promissory note to the plaintiff, including the $350,000 balloon payment;" Sulla never properly accounted for the true amount of the default, if any, after the Defendants made a final balloon payment including $154,204.13 on the principle not accounted for in this proceeding, nor in the default Notices, nor in the NJF recordation, in violation of HRS 667-5, fairness and diligence requirements.

The Plaintiff's lawyer(s) contrived all this 'fraud by omissions' as a way to circumvent appellate court proceedings, hoodwink this Court, deprive the Defendants of their due process rights, and convert Defendants' Property valued in excess of $1 million. All Defendants' properties were converted to Sulla's HHLLC by similar wrongdoings. In fact, to do this, Sulla manufactured the sham NJF Mortgagee by forging and altering "Gospel's" Incorporation Articles.

Evidence of this pattern and practice of chicanery is entered as **Exhibit A**—payment records and e-mail correspondence with Mr. Sulla on January 5, 2010 (three months before Sulla administered the NJF). This controverts the Plaintiff's instant Memorandum p. 7 that falsely states "the failure of the Defendant, as borrower, to pay the principal balance of its $350,000.00 mortgage note due on January 23, 20093" justified the NJF. In addition, this apparent falsehood appears in Mr. Sulla's instant Declaration of Counsel, paragraph 5 cited below.

The Plaintiff's erroneous date of "20093" diverts from the material falsity, omission, and misrepresentation that $350,000.00 went unpaid. This amount was cunningly claimed unpaid in January 2009 while the Defendants were regularly making payments and corresponding with all Parties to make their "final balloon payment." Regardless, Mr. Sulla capriciously justified *delaying the NJF fifteen (15) months to* April 20, 2010, begging the question: *Why the delay if the Defendants defaulted $350,000 in 2009?*

This unreasonable delay and misrepresentation is best explained by the co-counsels' omissions and misrepresentations. The "Plaintiff" omits here, and elsewhere, the regular $2,333.33 monthly payments the Defendants were making faithfully to the original Mortgagee's **court-**

ordered garnishee, Philip Maise. Maise, the defrauded third-party intervenor in the judicial foreclosure case, sought to obtain his nearly $225,000 in damage awards for having been similarly defrauded in the sale of the same Property by the same seller, Cecil Loran Lee. Lee was Hester's predecessor-in-interest and Sulla's client. Lee and Sulla used Hester to evade the court orders favoring Maise, and retaliate against the Defendants for complying with the garnishment orders.

This $350,000 falsely claimed amount of the default has been repeatedly recklessly misrepresented ever since by the Plaintiff's co-counsel since January 2010, as proven by **Exhibit A**. This evidence shows responsive e-mail(s) received by Mr. Sulla that clearly-and-convincingly controverts Plaintiffs' claim that $350,000 was the default amount justifying foreclosure. Mr. Sulla's e-mail correspondence with Defendant Horowitz on this matter dated January 5, 2010 responded to Sulla's demand to receive proof of the cancelled checks and wire transfer records. This correspondence with records attached showed that Sulla was aware that the Defendants paid $154,204.13 ON THE PRINCIPLE, above and beyond making all the monthly payments on the interest. **Exhibits A** proves the $154,204.13 balloon payment, and **Exhibit F** lists all payments.

Yet, Sulla and co-counsel Stephen Whittaker purposely obfuscated, misrepresented, and inflated the Defendants' alleged debt. **Exhibit A** also proves that $200,000.00 was known by Sulla to be the correct pending (albeit contested) amount of deficiency, not actually owed until a final determination by the appellate court was issued. Instead of patiently awaiting this Constitutionally-guaranteed due process determination, Sulla contrived the $350,000 false allegation of debt, and used this false justification to advance his non-judicial foreclosure scheme.

C. Genuine questions of material fact remain regarding the validity of the NJF sale, with clear-and-convincing evidence proving that the NJF was not "conducted in a manner that was fair, reasonably diligent, in good faith, [with] an adequate price . . . obtained for the Property." ***Kondauer capital v. Matsuyoshi*, 136 Hawaii 227, 361 P3d 454 (2015).**

The admissible evidence attached hereto in **Exhibits A thru G**, contrary to the Plaintiff's Memorandum (p.2), establishes beyond any reasonable doubt that the NJF administered by disqualified attorney Sulla, was neither fair, diligent, on the up-and-up; nor was a proper sale price administered nor recorded.

(1) Pursuant to *Kondauer capital (Id)*, Mr. Sulla's 2010 foreclosure was "unfair".

Mr. Sulla's NJF was unfair because there was never an actual default on the Mortgage contract, but Plaintiff/Sulla foreclosed non-judicially anyway.

The Mortgage Contract had been satisfied and made void many months prior to the $200,000 jury award vacation. This can be known by carefully examining Judge Ibarra's Fifth Amended Final Judgment, footnote 1, **Exhibit G**, pg. 5. Judge Ibarra wrote: "The equities involved with the timely payments, property improvements, balloon payment, and misleading statements by Plaintiff, make foreclosure unjust." Sulla evaded this ruling, including Judge Ibarra's added clarification: "Foreclosure having been denied the request for a joint and several deficiency judgment was not necessary nor the appointment of a commissioner." Thus, the Mortgage and Note were satisfied upon the balloon payment, and any deficiency judgment or court administrator was overruled.

Therefore, Sulla had no legal basis for committing the NJF. The Defendants consistently paid timely in compliance with the Mortgage Contract, two courts' orders, and Judge Ibarra's final disposition.

The NJF was obviously unfair because the successor Mortgagee "Gospel church" had no legitimate legal justification for any claim of default on the Mortgage. Not even any legal right to claim that the $200,000 jury award that the Defendants' used as a "credit" supplementing the final balloon payment represented *collectable debt* on the *void Mortgage*.

The NJF was unfair, damaging, and prejudicial because the Plaintiff/Sulla *falsely presumed* the $200,000 vacated jury award justified their right to inflate the claimed debt and claim default of $350,000, as misrepresented in their correspondence, their Notice of NJF, their instant Memorandum, and Sulla's false and misleading Declaration.

This unfairness or 'fraud-by-omissions' and misrepresentations is evidenced by Mr. Sulla knowingly concealing the records of the payment checks and wire transfers discrediting/controverting Sulla's instant "Declaration of Counsel."[1]

It is unfair that Plaintiff/Sulla's NJF, SJ, and Defendants' dispossession, violated the requirements of HRS 667-5 thru 10; HRS §506-8 (Release of Mortgage requirement); and HRS §480-2 and 480D et. seq. (deceptive acts and Mortgage Rescue Fraud Prevention Act) by wrongly foreclosing on a void Mortgage after evading releasing that Mortgage; then falsely transferring this void Mortgage interest to a sham Gospel/Revitalize "church" by way of forged and altered Assignments and Articles of Incorporation, all evidenced in **Exhibits H and I**.

[1] Sulla's Declaration falsely and unfairly states: "the defendants thereafter refused to make any further payments on the promissory note to the plaintiff, including the $350,000 balloon payment." This falsehood is proven by **Exhibits A, D and H. Exhibit D** evidences Sulla's e-mail to Horowitz on January 19, 2010 in which Sulla acknowledges the Defendants' "$150,000" balloon payment was made against that $350,000 contested debt with $200,000 remaining contested and under appeal.

These two sets of public records include the falsely warranted and misrepresented $350,000 Mortgage Assignment into Gospel/Revitalize--a "church" that did not even legally exist at the time those Assignments were made on May 15, 2009. Then, **Exhibit I** expertly analyzes Sulla's altered incorporation paperwork filed two weeks untimely on May 26 and 28, 2009.

Therefore, it is unfair that the NJF could have been brought and prosecuted by the Plaintiff's predecessor, Gospel/Revitalize, that did not legally acquire the Mortgage loan under the Assignment of Mortgage because, for one, this entity did not even exist on the date the Assignment was executed. "As a general rule, when a corporation has been legally formed, it has an existence as a separate and distinct entity." *Evanston Ins. Co. v. Luko* 7 Haw. App. 520, 783, P.2d 293 (1989).

Further, Plaintiff/Sulla had no legal right nor 'prudential standing' to conduct the NJF by "power of sale" on behalf of a sham corporation. DEUTSCHE BANK NATIONAL TRUST COMPANY v. Williams, Dist. Court, D. Hawaii 2012. "The issue of whether Plaintiff was validly assigned the Mortgage and Note is inextricably intertwined with the merits of the Plaintiff's claims seeking to foreclose on the subject property — that is, Plaintiff must prove that it was assigned the Mortgage and Note before it has the ability to foreclose. As a result, the court determines whether the evidence presented, viewed in a light most favorable to Plaintiff, establishes a genuine issue of material fact that Plaintiff was validly assigned the Mortgage and Note." *Id*, citing *Autery*, 424 F.3d at 956. Gospel never validly received the Assignment.

In fact, even if Gospel/Revitalize existed unincorporated at the time it was made the assigned mortgage 'transferee,' that Assignment was made void for two more reasons. As aforementioned, the Mortgage had already terminated upon the final balloon payment being made. The second reason is that Gospel/Revitalize was incorporated by the exhibited set of forged, altered, and manufactured Articles Incorporation. (**Exhibit I**) This illegality plagues the illegitimacy of the NJF foreclosing "Mortgagee." It was made to serve as an 'arms-length' surrogate for Mr. Sulla; to conceal and protect the disqualified attorney's real party interests.

> ***"[T]he transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument."*** HI Rev Stat § 490:3-203 (2013)

It is unfair that Sulla's NJF violated HRS §§ 490:3-203 and 651D (fraudulent transfer act) because when Sulla administered those void Assignments, he manufactured a new contract between parties not signatories to the original Mortgage Contract.

Thereby Plaintiff/Sulla further unfairly violated the terms of the Mortgage, burdened and damaged the Defendants, and unfairly foreclosed illegally.

Furthermore, even if it is presumed that the Defendants owed $200,000 on the Mortgage, it was unfair to claim this debt was due and owing in 2010 at the time of the NJF while under appeal, and additionally unfair to claim that the Defendants were in "default" at that time because the ICA did not rule on this matter until 2018. No party actually knew before 2018 that a $200,000 deficiency arguably exists.

Sulla's NJF unfairly resulted in the illegal conversion of the Defendants' Property. The NJF unfairly deprived the Defendants' due process rights, their real and personal property interests, and the equity they had established in the Property valued in excess of $1 million.

(2) The Plaintiff's co-counsel were not *diligent* in accounting for payments made by the Defendant on the $350,000 Mortgage principle.

Lacking *diligence* by Mr. Sulla in the accounting he used to justify the NJF is evidenced as aforementioned. This defect compounds a pattern and practice of chicanery in bringing the foreclosure and summary judgment dispossessing the Defendants and converting their Property to Sulla's own shell corporation, Halai Heights, LLC (HHLLC).

Diligence is defined in *Black's Law Dictionary*, (8th Ed., p., 488-89) as "a continued effort to accomplish something," in this case recordation of payments on the Mortgage and Note for accurate accounting and equitable "settlement" with due diligence defined as "the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation."

As further detailed below pursuant to Sulla's administration of the NJF and violations of HRS 667 et. seq., Sulla wrote that his *diligence* was labored, troublesome, and largely abandoned. He claimed in writing that he was *confused* by his accounting tasks throughout 2009. His e-mail thread filed in this case leaves out **Exhibit D (Exhibits page 20, 3rd paragraph)**. Therein, Sulla wrote of his *diligence* in accounting to Horowitz on January 26, 2010, wherein Sulla stated that his 2009 accounting of payments the Defendants made "is a bit confusing" despite repeated statements, cancelled checks, wire transfer receipts, and court records showing the same, and having been made available to him through the Defendants, their counsel, and Third Circuit Court filings in the 0196 judicial foreclosure case.

Sulla also made known in that correspondence that his knowledge of the Mortgage itself was limited. *Diligence* was neglected here pursuant to the Contract itself. The Mortgage provided the power of non-judicial foreclosure upon default, but there was no actual default: no failure to pay what was due at the time it became due.

That Mortgage and its power to bring foreclosure was *superseded* by an addendum—a "writing" co-signed and executed by Horowitz and the Mortgagee, Sulla's client, Seller Lee. Sulla wrote in that e-mail that he found this accounting so "confusing," especially as it pertained to this superseding Agreement for Closing Escrow, that he abandoned this task altogether.

The Agreement for Closing Escrow superseded the Mortgage per the Mortgage paragraph 19 that states: "19. **CHANGING THIS MORTGAGE**. This Mortgage can be changed only if the Lender and I sign a writing agreeing to the change."

This subsequent Agreement was a "writing" signed by both parties executing a separate unsecured contract involving the important "Remnant A" access road to the Property and a neighboring lot also owned by the Defendants. This "Remnant A" included the most valuable and coveted steam spa and bathing facilities. Sulla makes clear in his e-mail that this supplemental accounting and contract confused him so much that he abandoned the task.

In Sulla's ("Plaintiff's") instant pleading for renewed summary judgment he addresses this Remnant A matter as a "mistake" that allegedly "Hester" made in conveying this land description to Sulla's own HHLLC's by deed of ownership. This "mistake" is further considered below.

Sulla attached to his instant Motion his Exhibit 7 that shows a set of e-mails from January 2010 in which he does not inform the Defendant, or their counsel, that he intended to start a NJF. Instead, he states this *privately* and exclusively to purportedly Hester. Sulla gave no notice of his NJF action in writing to the Defendants on January 19, 2010. Sulla only mentioned pending "settlement" discussions "conditioned upon the outstanding appeal". Under contest was the $200,000 jury award to Defendant and its subsequent vacation. Consequently, it came as a shocking surprise to the Defendants and incredulous counsel, John S. Carroll, that Sulla Noticed the Defendants on-or-about March 19, 2010, that he would foreclose non-judicially on the void Mortgage defying and depriving the Defendants' due process in the appellate court and Sulla's own writing that settlement discussions would be "conditioned upon the outstanding appeal".

In addition, Sulla wrote to the Defendants at that time that "settlement discussions" should consider approximately $220,000 as the outstanding debt. To this the Defendant counter-offered to settle the case for $100,000. This offer was not only rejected by "Hester," but disregarded by Sulla in his filings with this Court pursuant to the instant Motion. Contrary to diligence and Sulla's own filings, he inflated the alleged default amount to $350,000, not $200,000, nor even $220,000.

Accordingly, any and all inferences or claims made by Plaintiff and co-counsel in the instant Motion, that $350,000 was the amount of the alleged "default" by the Defendants, not only lacks diligence, but misrepresents Sulla's own Exhibit 7.

Two more examples of fraud by omissions and misrepresentations in Sulla's instant filings are found in the Plaintiff's Memorandum p. 7 that states "the failure of the Defendant, as borrower, to pay the principal balance of its $350,000.00 mortgage note due on January 23, 20093" justified the NJF. This sly twisting of the truth, misrepresentation and falsehood, also appears in Mr. Sulla's instant Declaration of Counsel, paragraph 5. This states: "Relying upon the jury award, the defendants thereafter refused to make any further payments on the promissory note to the plaintiff, including the $350,000 balloon payment." This is egregiously false. Sulla/Plaintiff knew that the Defendants' final balloon payment included checks and wire transfers totaling $154,204.13 as evidenced in **Exhibit A**.

Obviously, Sulla's pattern-and-practice of not following through with the settlement commitment, not accounting accurately, nor diligently awaiting determination by the appellate court, defies the definition of "diligence."

Furthermore, lacking diligence is compounded by the "mistake" that Sulla admits in Plaintiff's Memorandum on Motion (p. 7, ftnt. 8). While administering the proceeds of the NJF, Mr. Sulla purportedly missed this serious "mistake" made supposedly by his client Hester. According to Sulla, this "mistake" was made when conveying Remnant A to Sulla's own HHLLC shell corporation by *forgery*. This improper recording was caught by Hawaii County Tax Office officials and later reprimanded by a Hilo grand jury. Sulla was indicted for this "mistake," on one count of forgery and one count of property theft. This "mistake" evidences falsification of a material fact in dispute—Hester's standing—and extends Plaintiff/Sulla's pattern-and-practice of *lacking diligence* resulting in damage to the Defendants, deprivation of their Property rights and due process rights. Sulla's criminal trial for this "mistake" is pending at the time of this writing.[2]

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[2] Defendants' **Exhibit K** is a copy of the County's Notice to Sulla that his "title company" had made the "mistake." But there was no title company involved. Nor can the legally incompetent Plaintiff Hester be presumed to have made the "mistake" as Sulla's Memorandum footnote falsely attributes. Sulla's office administered the "mistake." The County's Notice to Sulla objects to the deed transfer of the Defendants' Property to HHLLC by stating, "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."

Sulla responded to this February 13, 2018 Notice by e-mail on March 7, 2018 as recorded in Defendants' **Exhibit L** hereto attached. Here, contrary to his instant claim of "Hester's" "mistake," Sulla wrote that any error was made by the County. He wrote: "Halai Heights is the successor in title to Royal Bloodline of David and the owner of this property gained through Jason Hester's foreclosure of Royal Bloodline of David in 2010 and the Quiet Title Action Civil No. 14-1-0304 that issued Final Judgment to Jason Hester against Royal Bloodline in December

Plaintiff's instant Memorandum on "Hester's Motion" falsely excuses the illegal conversion of the Defendants' Property by Sulla's forgery. Sulla twists the truth by writing:

> "In September, 2016 Hester intended to convey the entire subject property to Halai Heights LLC, a Hawaii Limited Liability Company, but as a result of a mistake in the description, only the lot shown as TMK (3) 1-3-001-049 was conveyed to Halai and Hester retained TMK (3) 1-3-001-043."

Contradicting Sulla's response to the County on March 7, 2018, as shown in **Exhibit L** pursuant to this "mistake," the deed to the Property now held by Sulla's HHLLC is *void*. Sulla's instant Declaration of Paul J. Sulla, Jr. solidly evidences *lacking diligence to criminal proceedings and his unlawful filings*, and verifies that the Defendant's Property, including Remnant A—the neighboring lot and access roadway that was never foreclosed—was illegally converted to Sulla's own HHLLC corporation by allegedly "Hester's" "mistake."

Mr. Sulla lacked diligence so much here, that Mr. Sulla's client, the Mortgagee's successor, Mr. Hester, was exclusively left with a virtually worthless uninsurable piece of land—the "043" parcel—imposing liability from a huge sink hole upon exclusively Hester. This sink hole extends throughout the extent of this land wherein at least one person fell and died.

Mr. Hester's "mistake" favored exclusively Mr. Sulla's $1 million acquisition.

(3) Good faith is not apparent in the NJF administration by Mr. Sulla, nor in his verification by Declaration in these proceedings.

As mentioned, the Defendants have entered **Exhibits A thru E** evidencing their payments made with e-mail correspondence with Mr. Sulla showing Sulla's absence of fairness, diligence, and *good faith* dealing during Sulla's administration of the NJF.

"Good faith" is defined in *Black's Law Dictionary* (Eight edition, p. 713) as "A state of mind consisting in: (1) honesty in belief or purpose; (2) faithfulness to one's duty or obligation; (3) observance of reasonable commercial standards of fair dealing to a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."

Evidencing "intent to defraud" and "seek unconscionable advantage" during the NJF and in this proceeding too, Sulla signed his instant Declaration "under the penalties of the laws of the State of Hawaii" misrepresenting the Defendants' unwillingness to pay the balloon payment. Sulla's Declaration states in paragraph 5: "Relying upon the jury award, the defendants thereafter

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2015. (See attached) Halai Heights received its title from Hester in 2017. If the exchange has not been completed before Halai received its title, then Halai is the proper party for any land exchange."

refused to make any further payments on the promissory note to the plaintiff, including the $350,000 balloon payment." Sulla knew this was not true, and Sulla later contradicted himself in this same Declaration. Concealing the Defendants' $154,204.13 balloon payment known to Sulla and Hester as evidenced in **Exhibit A,** Sulla declared in his Declaration paragraph 8:

> "The defendants were claiming that they had made principal payments of $150,000.00 toward the $350,000.00 balloon payment to the intervenor Philip Maise in the Lee case and despite the lack of credible evidence coupled with their propensity to be litigious; the Plaintiff did not want to have to engage the Defendants in any further battles over determination of the outstanding balance."

This obviously false statement corroborates the lacking diligence Sulla applied while determining the falsely claimed default amount as detailed in the preceding sections. This shows 'bad faith,' intent to deceive the Defendants and this Court, and defiance "of reasonable commercial standards of fair dealing to a given trade or business." (Id.) In this case, real estate foreclosure laws HRS 667-5 thru 10, and others aforementioned, were defied by Sulla.

Lacking good faith is similarly evidenced in the Plaintiff's instant Memorandum p. 7 that falsely states that "the failure of the Defendant, as borrower, to pay the principal balance of its $350,000.00 mortgage note due on January 23, 20093" justified the NJF. This amount was likewise claimed unpaid by Sulla's correspondence in January 2009 while the Defendants were regularly making payments and corresponding with all Parties to make their "final balloon payment" and then secure their Mortgage Release. These facts are proven by **Exhibits B, C and D**.

Mr. Sulla's "mistakes" in his instant Declaration and Memorandum on Motion shows an "intent to defraud or to seek unconscionable advantage." Sulla thereby, compounds evidence of lacking 'good faith.'

This bad faith and "intent to defraud" best explains why Sulla *delayed the NJF fifteen (15) months to* April 20, 2010. During that time he develop his illegal scheme to convert the subject Property to his 'arms-length' ownership. Why else, if the Defendants defaulted on making their required balloon payment in January 2009, did Sulla delay all that time, pledge "settlement negotiations" in January 2010, and then subvert these commitments two months later by serving the defective March 2010 Notice of the NJF in direct defiance of HRS § 667-5 and the Defendants' appellate due process rights?

Sulla's multiple misrepresentations, material omissions, and telling delay, smacks of lacking good faith, unfair business dealings against which the Defendants hereby renew their tort counter-claims against the Plaintiff/Sulla, including HRS § 480 et. seq. for damages caused by unfair and deceptive trade.

SAKAL v. ASSOCIATION OF APARTMENT OWNERS, Haw: Supreme Court 2020 is a similar case in which "[t]he ICA vacated the dismissal of Sakal's claims for damages against the AOAO arising out of the wrongful foreclosure and remanded the case to the circuit court." The instant Defendants evidence the Mortgage and power of sale therein was *void* for multiple reasons, including timely balloon payment made more than a year prior to the subject NJF. The Sakal Court rejected the time limit on filing opposition and tort claims against wrongfully-foreclosing parties. The Court cited "HRS chapter 480" as "applicable" in "a scheme of sanctions and remedies" for unfair and deceptive nonjudicial foreclosures under HRS chapter 667, section 667-60.

> By its plain language, the statutory time limit is only applicable when there is a valid power of sale; it does not apply when a foreclosing party is alleged to have conducted a foreclosure without a power of sale. A claim based on a lack of power of sale is . . . governed by Hawai`i common law, under which an unauthorized nonjudicial foreclosure renders "the sale of the property H invalid and voidable at the election of the mortgagor, who shall then regain title to and possession of the property." Santiago v. Tanaka, 137 Hawai`i 137, 158, 366 P.3d 612, 633 (2016) (citing Ulrich v. Sec. Inv. Co., 35 Haw. 158, 168 (Haw. Terr. 1939)); see also Lee v. HSBC Bank USA, 121 Hawai`i 287, 296, 218 P.3d 775, 784 (2009) (holding a nonjudicial foreclosure sale void where the foreclosure sale was invalid under an applicable statute). . . .

Accordingly, the Honorable Court must deny the Plaintiff's Renewed Motion for Summary Judgment, vacate the erroneous Quiet Title and Writ of Ejectment granted Hester/Sulla, return "title to and possession of the property" (Id.) to the Defendants, and exercise 667-60's "scheme of sanctions and remedies" to compensate the Defendants for the damages and severe distress they suffered from the wrongful foreclosure.

(4) The "credit bid" Hester made at Sulla's auction evidences fraud in the factum, voiding the transaction and extending liability from Hester to Sulla.

The Mortgagee's 2019 "CORRECTED" Affidavit of Foreclosure states Hester made a $225,000 "credit bid" at auction for the Property. The Mortgagee's original 2010 Affidavit claimed Hester made a $175,000 credit bid. Both evidence fraud in the factum voiding the transaction and extending liability from Hester to Sulla because Hester did not have any credit to bid at that time, not $175,000, and certainly not $225,000, since as Mr. Sulla's e-mail of January 8, 2019, correctly states, the amount owed was "conditioned upon the outstanding appeal." See: Defendant's **Exhibit D**, ¶ 2.)

Even assuming the appellate court affirmed the vacated jury award of $200,000, the "corrected" Affidavit cannot account for the extra $25,000 bid by "credit." There was no such legitimate or legal "credit" to be bid by "Gospel" or Hester.

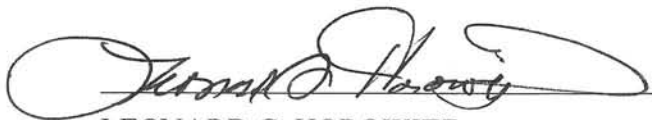
Another material fact in dispute is the ridiculously low $249,000 realtor assessment for the million-dollar-plus Property. That assessment is discredited by having sourced from Plaintiff/Sulla's business partner, "Greg" Gadd of Big Island Land Co., purportedly on June 8, 2010. See Plaintiff's Exhibit 8. The Defendants spent more than $600,000 in interest and principle between 2004 and 2010, and made more than $600,000 in improvements, not including maintenance and security costs, lost commerce from forced shutdowns, and legal fees and costs. Therefore, it is ridiculously unreasonable to claim the Defendants defaulted $225,000 in 2010 under the circumstances "conditioned upon the outstanding appeal;" or that the value of the Property was only $249,000 based on Sulla's unsigned listing contract Exhibit 8, preceding Sulla's subsequent $975,000 listing of this Property as shown in Defendant's **Exhibit M**.

In HawaiiUSA FEDERAL CREDIT UNION v. MONALIM, Haw: Supreme Court 2020, another similar case, the court stated that "equitable discretion [is] provided to our courts by HRS § 667-1.5 . . . governed by principles of equity and fairness." The adopted "majority rule . . . 'also protects the mortgagor from the harsh consequences of suffering both the loss of the real estate and the burden of a deficiency judgment that does not fairly recognize the value of that real estate.' Restatement (Third) of Property: Mortgages § 8.4 cmt. a. . . . We thus hold that a deficiency defendant "may request ... a determination of the fair market value of the real estate as of the date of the foreclosure sale." Id. § 8.4(c).[20]

Accordingly, the Plaintiff's Motion for Renewed Summary Judgment must be denied in lieu of the multiple material facts in dispute, since "[s]ummary judgment is appropriate [only] if the pleadings, . . . together with the affidavits, . . . show that there is no genuine issue as to any material fact" in dispute. *Hawaii Community Federal Credit Union v. Keka*, 11 P. 3d 1 - Haw: Supreme Court 2000. Citing HRCP . . . Rule 56(c) (1990).

Furthermore, the Defendants' Counter-Motion to vacate the erroneous Summary Judgment granted Hester, return Quiet Title, ownership, and possession of the Property to the wrongly dispossessed Defendants, should be granted in the interest of justice and equity.

DATED: Boston, MA August 24, 2020



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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

JASON HESTER, an individual, his successors and assigns, Plaintiff, v. LEONARD G. HOROWITZ, an individual; SHERRI KANE, an individual; MEDICAL VERITAS INTERNATIONAL, INC., a California nonprofit corporation; THE ROYAL BLOODLINE OF DAVID, a Washington Corporation Sole; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITITES 1-10 and DOE GOVERNMENTAL UNITS 1-10, Defendants.	))))))))))))))))	CIV. NO. 14-1-0304 (Quiet Title/Summary Possession) **AFFIDAVIT OF LEONARD G. HOROWITZ (IN OPPOSITION TO THE DECLARATION OF PAUL J. SULLA, JR. AND IN SUPPORT OF COUNTER-MOTION FOR PROPERTY REPOSSESSION)** Hearing: September 25, 2020 Time: 8:00 am Judge: Honorable Wendy DeWeese Trial Date: No trial date set

AFFIDAVIT OF LEONARD G. HOROWITZ (IN OPPOSITION TO THE DECLARATION OF PAUL J. SULLA, JR. AND IN SUPPORT OF COUNTER-MOTION FOR PROPERTY REPOSSESSION)

I, Leonard G. Horowitz, depose and state as follows:

1. I am a principle party, Defendant, and Affiant in this action.

2. I make this Affidavit based on my firsthand personal knowledge and belief, and I am competent to testify to the matters contained in this Affidavit.

3. In 2004, I executed the purchase of the subject Property known as the "Steam Vent Inn & Health Retreat" from Mr. Cecil Loran Lee with no knowledge Mr. Lee was a convicted drug trafficker who used the Property to traffic large amounts of marijuana. I also had no knowledge that I was being suckered, like Lee had done to previous buyers, by not informing us that a federal lien on the Property had been imposed and that the salable title was not "free and clear."

4. The Property consists of two lots: (1) The main "049" lot consists of less than 16 acres and includes an "Inn" (i.e., residential/commercial "bed & breakfast"); and (2) a small "043" neighboring lot that is mostly a huge deep sink hole with severe uninsurable liability. At least one person I know died when falling into that hole.

5. Instead of informing me properly about the federal lien, and previously defrauded buyer Philip Maise's encumbrances or liens on title, it was Mr. Lee's pattern and practice to defraud buyers and 'fraudulently transfer' the Property to his privies. I hold several public records evidencing such transfers. Lee acted repeatedly tortuously and feloniously to maintain his interests in the Property that he valued at $550,000—the purchase price I paid.

6. By court orders during the course of 5 years, 2004-2009, I paid off my entire Mortgage and Note. Mr. Lee was irate that my monthly mortgage payments to him were garnished by Judge Nakamura to pay instead Lee's previous defrauded buyers, Philip Maise and Didner Flamant.

7. Mr. Lee litigated extensively, abusing the courts to conduct 'lawfare' against his enemies that included the County of Hawaii, Maise, and me too. Lee lost his foreclosure case (Civ. No. 05-1-0196) against me and my ministry—the Buyer, The Royal Bloodline of David—also losing two cases against Maise. Lee's losses caused Lee to become a 'judgment debtor' and declare bankruptcy in April 2007. Lee's outstanding judgment debt to me and "Royal" from that "0196" case remains unpaid.

8. Subsequently, a few months after Lee lost his foreclosure case against me in 2008, and I was ordered by Judge Ibarra to make my final balloon payment that included my $200,000 jury award "credit" granted for my damages from Lee having misrepresented the Property as a licensed business, Lee declared bankruptcy. Lee, therefore, had no money to pay me, Maise, and any lawyer, including attorney Paul J. Sulla, Jr. in 2009.

9. In January 2009, when my lawyer, John S. Carroll, and I acted to satisfy the Ibarra court by making my ordered "final balloon payment," Lee and his newly appearing lawyer, Mr. Sulla, did everything in their power to evade accounting, evade acknowledging payments made on the Mortgage and Note, and evade/avoid multiple Notices to Release the Mortgage following my final payments made on February 27, 2009. (See: **Exhibits A and C**)

10. Under the reasonable advisement of my lawyer, Mr. Carroll, I applied the $200,000 jury award as a 'judgment credit' in my "final balloon payment" and added an additional $154, 204.13 to exceed the $350,000 original Mortgage debt.

11. Not only was this "final balloon payment" disregarded and contested by Mr. Sulla (as evidenced in correspondence **Exhibits A thru D**), but Mr. Sulla has consistently lied, by omissions and misrepresentations, claiming falsely that I defaulted on the Mortgage. This is further evidenced in his instant *Declaration of Paul J. Sulla, Jr.*, in violation of his oath of office, ethics rules, license, and good faith fair dealings; falsely stating in paragraph 5:

> "Relying upon the jury award, the defendants thereafter refused to make any further payments on the promissory note to the plaintiff, including the $350,000 balloon payment. See Exhibit 2 attached to Declaration of Counsel.

12. Mr. Sulla knows that this Declaration statement is false and misleading, as evidenced by **Exhibit D**, wherein Mr. Sulla wrote the Defendant on January 19, 2010 by e-mail: "I have recommended to Jason that for settlement purposes he accept the $150,000 as principal paid down by you on the outstanding $350,000 note . . ."

13. This entire case boils down to Mr. Sulla's unfair, damaging, and concealed personal interests in the Property for which he litigates under the guise of Jason Hester, and also the current claimed 'owner' and possessor of our Property—Sulla's own Halai Height, LLC (HHLLC). In fact, Mr. Sulla has been the concealed proper party Plaintiff and neglected real party-in-interest since 2009, taking the case on for fellow drug trafficker Lee,[1] who had no money to pay Sulla to represent Lee's lost interests in the Property, Mortgage and Note. Having these concealed conflicting interests, having been disqualified in this case by federal Magistrate Richard Puglisi by reason of such conflicting interests requiring Sulla's necessary witness at trial, further neglect of Sulla's real party conflicting interests by this Court, or any court, wrongfully prejudices and damages me and my co-Defendants.

14. Once the Mortgage and Note were paid on February 27, 2009, the Contract terminated. There was no longer any valid 'power of foreclosure,' because there was no longer a valid Contract. As ruled in *Lee v. HSBC BANK USA*, 218 P. 3d 775 - Haw: Supreme Court 2009 "we hold that an agreement created at a foreclosure sale conducted pursuant to HRS section 667-5 is void and unenforceable where the foreclosure sale is invalid under the statute. The high

[1] Sulla's illegal drug trafficking is public knowledge as evidenced in federal court records in which the lawyer falsely defends his dimetyltryptamine "religious" enterprise by misrepresenting the U.S. Supreme Court's decision in *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 US 418 - Supreme Court 2006.

bidder at such a sale is entitled only to return of his or her down-payment plus accrued interest."[2] Hester paid nothing, only a false "credit bid" for the Property, thus is owed nothing.

15. Mr. Sulla is recorded on the subject auction video directing Mr. Hester's bidding. Mr. Sulla entered this evidence, alleging this video is somehow "defamatory," in order to prejudice the Court against me and my partner, Sherri Kane. Mr. Sulla lost to us in Judge Strance's court a similar "defamation" claim following more than 2 years of failed litigation.

16. In the video, Mr. Sulla is recorded manufacturing the new contract to convert the Property from ownership by Royal, my sole corporation, to Mr. Sulla's administered "Revitalize/Gospel of Believers" church (presumably started by Lee and directed by Mr. Hester as "Overseer"). But this transaction is *void* for lacking an actual default on the Mortgage, and other reasons stated in our Memorandum in Opposition including Mr. Hester objectionable 'standing' to represent Revitalize's invalid interests.

17. In fact, Plaintiff Hester not only invalidly purchased the Property at auction as stated, but Mr. Hester was not even a valid purchaser, because the Foreclosing Mortgagee that Lee/Sulla contrived did not even exist at the time Sulla administered the Assignment of Mortgage into this Revitalize/Gospel entity. In addition, the Assignments of Mortgage and Note were falsely warranted and facially defective. They misrepresented on May 15, 2009 the original $350,000 Mortgage debt that was paid in full on February 27, 2009.

18. Accordingly, by this single 'material fact in dispute,' the non-judicial foreclosure (NJF), Quiet Title to Hester, and Writ of Ejectment dispossessing me and my co-defendants must be set aside because the NJF was not properly conducted in accordance with the strict 667-5 requirements as detailed in our (the Defendants') Opposing Motion and Memorandum.

19. Supplementing Mr. Sulla's false and misleading filings, Mr. Sulla's instant Declaration paragraph 6 declares that he entered his appearance for Lee in March 2009 in Civ.

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[2] Further quoting the *Lee* court, "In general, the purposes behind nonjudicial foreclosure statutes are threefold: First, the nonjudicial foreclosure process should protect the debtor from a wrongful loss of property; second, the process should ensure that *properly conducted sales* are final between the parties and conclusive as to bona fide purchasers; and third, the process should give creditors a quick, inexpensive remedy against defaulting debtors." Citing Molly F. Jacobson-Greany, *Setting Aside Nonjudicial Foreclosure Sales: Extending the Rule to Cover Both Intrinsic and Extrinsic Fraud or Unfairness,* 23 Emory Bankr. Dev. J. 139, 151 (Fall 2006) (emphasis added) (citing, *e.g., Cox v. Helenius,* 103 Wash.2d 383, 693 P.2d 683, 685-86 (1985); *Moeller v. Lien,* 25 Cal.App.4th 822, 830, 30 Cal.Rptr.2d 777 (Cal.Ct.App.1994)).

No. 05-1-196 "in time to appeal the Amended Final Judgment in CAAP 16-0000162 in order to vacate the jury award and to preserve the value of Mr. Lee's Note and Mortgage." This statement is obviously inaccurate and misleading. CAAP 16-0000162 did not exist for another seven years. Plus, the statement that Sulla entered "to vacate the jury award and to preserve the value of Mr. Lee's Note and Mortgage" defies his representations that the Defendants' defaulted on the Mortgage and Note. Obviously, if Sulla entered and litigated to "preserve the value" of the Mortgage and Note, and the amount due and owing was still unknown at the time of the NJF, HRS 667-5 could not be validly complied with, nor procedurally followed because any default on the Mortgage was uncertain and under contest.

20. Mr. Sulla's Declaration goes to great lengths to justify the unjust, unjustifiable, and felonious administration that Sulla alone committed by forging Lee's signature(s), altering dates and page numbers to manufacture Sulla's own 'strawman,' sham Plaintiff, and shell Foreclosing Mortgagee "Revitalize/Gospel of Believers." A 'presumption of guilt' is required by the facts facially-evident in **Exhibit I**, expertly analyzed by examiner Beth Chrisman.

21. Accordingly, Lee's presumed 'grand nephew'—Plaintiff Hester—has prejudicially shielded Sulla's liability. Hester speciously secures Sulla immunity against sanctions and prosecution. Hester provides Sulla with his 'arms-length,' unfair, and unscrupulous concealed advantage. Sulla's forgery of Hester's predecessor Lee's signature(s) and altered documents shown in **Exhibit I** evidence white collar organized crime. These public records filed by Sulla with the State and the courts provide substantial good cause to piece the Plaintiff's/Sulla's HHLLC corporate shell. These records also prove facially-defective the foreclosing mortgagee's Articles of Incorporation that Sulla used to manufacture his "Hester/Gospel" protection scheme.

22. Mr. Sulla's Declaration, paragraph 8, compounds the Disqualified lawyer's bad faith justification for foreclosing. Here he diverts from his aforementioned torts, crimes and lawfare instigated to convert our Property. Further concealing Sulla's own real party interests, Sulla states the following in direct defiance of Sulla's own acknowledgement (in **Exhibit D**) that the Defendants made a final balloon payment on the Mortgage. Sulla declaration here attempts to excuse his lacking diligence in accounting. He flips his litigious misbehavior to the Defendants by stating: "despite the lack of credible evidence coupled with their propensity to be litigious the Plaintiff did not want to have to engage the Defendants in any further battles over determination of the outstanding balance." So much for diligence in accurate accounting!

23. Mr. Sulla's Declaration paragraph 10, further evidences his pattern and practice of omitting and misrepresenting facts to steal the Property by defrauding the courts, this time this

Court, falsely disparaging me and Ms. Kane by stating that the auction video "was originally posted with added defamatory remarks against the plaintiff and this Declarant by the Defendants online." Sulla added, "This video was made by the Defendants to try to pressure and defame Plaintiff and was posted on multiple web sites."

24. To the contrary, as mentioned. Sulla brought and *lost* this same "defamation" claim against us in a 'SLAPP lawsuit" before Judge Strance in Civ. No. 12-1-0417, filed July 20, 2012, and dismissed August 28, 2014). We prevailed and Sulla lost.

25. It is, therefore, unreasonable that I would waste my time to co-publish this video as a victim, witness, whistleblower, consumer activist, multiple award-winning filmmaker, best-selling author, and internationally recognized expert in the field of emerging diseases, including COVID-19, "to try to pressure and defame Plaintiff". In fact, I have helped publish this important record as a *public duty* to alert law enforcers and citizens at risk of being similarly damaged by Mr. Sulla's pattern and practice of committing alleged torts and crimes as aforementioned.

26. The fact that this case has festered and multiplied in many courts for more than a decade, having robed me of my valuable time, money, and most productive professional years serving humanity and saving lives, is good cause to continue and augment my public disclosures.

27. In fact, my public disclosures regarding Mr. Sulla and his "sham Plaintiff" Hester, has enabled dozens of other similarly-situated Sulla victims to bravely come forth and publish their stories as can be seen on several Internet pages, blogs and websites.

28. The fact that for all this time the courts have permitted, enabled, and safe-harbored Mr. Sulla's aforementioned torts and alleged crimes evidences *public corruption* that is now known to be widespread in Hawaii. Such public corruption has been increasingly confirmed by federal indictments and news stories exposing corrupt law enforcers.

29. Subject to allegations of public corruption shielding or 'safe-harboring' Mr. Sulla is Sulla's Declaration (pg. 5) that references the foreclosure "video/Hawaii-ayahusaca-dmt-drug-kingpin-cult-leader-land-thief-forger-paul-j-sulla-jr . . ." This text properly characterizes the facts in this case. It is now public knowledge, thanks largely to my publications and international audience, that Mr. Sulla's previously concealed illegal dimethyltryptamine trafficking enterprise has come under increasing scrutiny. Mr. Sulla and his agents divert the Class I narcotic hallucinogen called "DMT" or "ayahuasca" from his "church" near Hamakua to the mainland, damaging people across North America, according to documents and sworn affidavits in my possession.

30. I conclude most reasonably that Sulla has been afforded 'limited immunity' against prosecution by the courts that have misruled regularly in his favor to my damage. They have deprived me of my Property in favor of Mr. Sulla who currently illegally possesses and presumably "owns" my house and land. I have witnessed the courts and law enforcers having vicariously aided-and-abetted Sulla's aforementioned torts, alleged crimes, and conversion scheme, despite prima facie evidence of Sulla having committed multiple forgeries.

31. Probable cause to deny Mr. Sulla's claims and pleadings is compounded by Mr. Sulla's recent grand jury indictment and pending criminal trial on only two counts of forgery and theft of the subject Property. This limited criminal indictment recklessly neglects the bulk of Sulla's obvious forgeries, such as those shown in **Exhibit I**. Another similarly forged deed that Sulla manufactured exists in the "Waikaloa Highlands Heist" case being concealed and stonewalled by some County of Hawaii officials at the time of this writing. These officials are subject to prosecution for criminal complicity with Mr. Sulla.

32. These facts and circumstances give probable cause to consider or presume public corruption backing organized crime, drug trafficking, and real estate money laundering involving Sulla and the officials who have thus far ruled in his favor, and/or harbored him from prosecution.

33. Another classic example of Sulla's bad faith in this case is shown in his Declaration, paragraph 11, wherein Sulla attempts to justify "Plaintiff's opening bid of $225,000" as "an amount close to the amount of the vacated jury award of $200,000 that the Defendants had claimed was to be used by them to pay the mortgage note balance due the Plaintiff." Sulla's statement not only disregards and discredits the $175,000 amount that Sulla swore in his first filed "Foreclosing Mortgagee's Affidavit of Foreclosure by Power of Sale" to be the amount that Sulla's 'insider' Hester bid, but blatantly proves the bad faith of that auction itself, not having been administered by Sulla in a way in which a reasonable value would be bid for the Property. Incredulously, that $175,000 or even $225,000 amount could only be construed as a *deficiency* in the Ibarra court's final judgment(s), and not a default by me or my ministry. That deficiency cannot be presumed to have occurred until nearly a year after the final balloon payment was made to terminate the Mortgage Contract; and that claimed deficiency in the Mortgage payment was not even known to be validly owed pending the appeal. Nevertheless, Mr. Hester's $225,000 bid was an amount about one-fifth of the listing price of $975,000 published by Sulla's realtors, as shown by the Defendants' **Exhibit M.**

34. Sulla's Declaration paragraph 11, further states, that Sulla "was surprised that there were no other bids" beyond Hester's "opening bid" of $225,000. The video makes clear that there

was substantial public disapproval of the generally-agreed fraud in the sale, including Sulla administration of the auction despite having concealed conflicting interests. Taken on its face, had Sulla actually been "surprised that there were no other bids," Sulla forcing the auction served as an extortion to gain more than $225,000, not yet even known to be validly owed. This set of facts provides insights into how Sulla's 'mens rea' worked to deprive me and the other Defendants of our due process rights, equity, and real property interests.

35. Sulla's Declaration, paragraph 12, states that he "obtained a real estate opinion of value of $249,000.00 for a quick sale of the property from the Big Island Land Company . . . from realtor Jaret Gates" who is Sulla's partner's subordinate. Sulla, according to my knowledge, belief and possession of public records, is partnered with Greg Gadd who owns Big Island Land Co.

36. Further showing conflicting interests in falsifying public records, including Mr. Sulla's "Mortgagee's Amended 'Corrected' Affidavit of Foreclosure Under Power of Sale" in this instance, is Gloria Emery's Notary on that record (pg. 6) filed August 15, 2019. This date was seven months after Sulla's grand jury indictment for forging Hester's deed to convert the subject Property to Sulla's own HHLLC following the presumed sale of the Property to HHLLC on Sept. 6, 2016 for $450,000. It is reasonable, therefore, to presume Sulla's "corrected" Affidavit, Notarized by Emery that corrects the $225,000 'purchase price' Revitalize/Gospel allegedly paid for the Property at auction (originally recorded as $175,000), were corrections made to cover-up 'mistakes' pending criminal investigatory proceedings and pending prosecution for forging the deed of ownership to the Property.

37. Notary Gloria Emery appears beside Sulla in the auction video. Gloria Emery is recorded as personally invested in Paul J. Sulla, Jr. Attorney at Law a Law Corporation as shown in Defendants' **Exhibit N**. Gloria Emery's Notary signature also appears on the forged deed. **Exhibit O.** Gloria Emery's Notarizing signature also appears on the Mortgage loan Sulla compelled Hester to sign in 2011, granting Sulla a secured superior ownership interest in the Property as shown in **Exhibit P** (cover and Notary page.)

38. These public records evidence a presumption of Emery's complicity in forgery for first degree theft of the subject Property, contempt of court as an officer of the court, and agency within Sulla's alleged racketeering enterprise that extends to real estate agent Greg Gadd and his subordinate Jaret Gates as documented in **Exhibits Q, R and S.** These exhibits evidence the extent of Sulla's enterprise that has herein attempted to defraud this Court to further deprive me and my co-defendant(s) of our due process rights and Property.

39. **Exhibit R** records that "Carol L. Silva" is sometimes used as an alternate Notary for Sulla. **Exhibits Q and S** evidence that Ms. Silva is also Sulla's partner in real estate transactions on behalf of a number of shady shell companies including KAOHIMAUNU VENTURES, LLC. This company is said to be under investigation by state and FBI investigators at the time of this filing. Carol L. Silva is Sulla's subordinate and "Manager" in KAOHIMAUNU VENTURES, LLC, as shown in **Exhibit R.**

40. According to my knowledge, belief, and public records in my possession, the aforementioned agents in Sulla's alleged racketeering enterprise are complicit in drug trafficking and money laundering transactions often involving real estate. As documented in this instant case, the Property was initially held under lien by the federal government, but was ultimately converted by Sulla to be operated by Sulla's subordinate agents in Sulla's drug trafficking enterprise.

41. Marc Shackman, who claims to now own an interest in the subject Property under alleged contract with Sulla, and who currently claims to be the Property's resident "manager", was required by the U.S. Drug Enforcement Agency (DEA) to stop selling and conducting "ayahusaca retreats" in Washington State. These illegal commercial activities are now known to be carried out on a continuing basis on the grounds of the stolen Property.

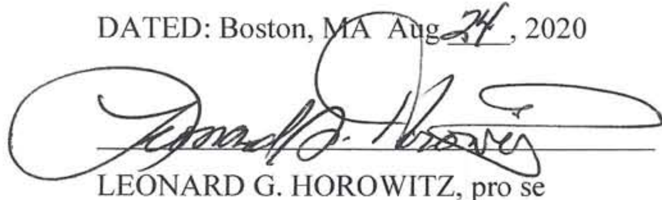
42. I, therefore, object to this criminal collusion, and attest to the aforementioned facts and corruption that has not only damaged and severely distressed me and Ms. Kane, but many other similarly-situated persons who have contacted us through web publication in response to our public disclosures pleading for justice.

43. For the sake of justice, to remedy the chronic injustice that has plagued the Third Circuit Court for Sulla's advantage, to compensate we Defendants who have been prejudiced and damaged, I pray for this Court to deny the Plaintiff's summary judgment motion.

44. I also pray for the honorable Court to grant our Counter-motion to return our Property to us, beginning the process of making me and my co-defendant, Ms. Kane, 'whole'.

Further Affiant sayeth not.

DATED: Boston, MA Aug 24, 2020



LEONARD G. HOROWITZ, pro se

(Notary signature on next page.)

NOTARY PAGE

On this 24th day of August, 2020, before me, the undersigned notary public, personally appeared LEONARD G. HOROWITZ, who proved to me on the basis of satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, who swore or affirmed to me that the contents of the document(s) is/are truthful and accurate to the best of his knowledge and belief.

Subscribed and sworn to before me this 24th day of August, 2020

______________________________ (SEAL)

Notary Public in and for Essex County, Massachusetts

My commission expires: 05/16/2025.

Notary Signature

AFFIX SEAL HERE

Total number of pages: 9.

EXHIBITS A - S