

LEONARD G. HOROWITZ, pro se  
Post Office Box 150457  
Cape Coral, FL 33915  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

**IN DIVISION 2 OF THE THIRD CIRCUIT COURT  
OF THE STATE OF HAWAII**

JASON HESTER, an individual  
Plaintiff/Counterclaim Defendant  
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  
ENTITIES 1-10, DOE  
PARTNERSHIPS 1-10, DOE  
GOVERNMENTAL UNITS 1-10.  
  
Defendants/Counterclaimants

CIV. NO. 3CC171000407  
(HRS § 507D-4 Petition to  
Expunge Affidavit/Lis Pendens)

**DEFENDANT’S MOTION AND  
MEMORANDUM FOR JUDICIAL  
NOTICE OF PUBLIC RECORDS IN  
SUPPORT OF RULE 19 JOINDER OF  
PAUL J. SULLA, JR., HALAI HEIGHTS,  
LLC, AND THE COUNTY OF HAWAII,  
AS PARTIES; DECLARATION OF  
LEONARD G. HOROWITZ; EXHIBITS A  
THRU U; NOTICE OF HEARING;  
CERTIFICATE OF SERVICE**

JUDGE: Henry T. Nakamoto

Hearing Date: Friday July 9, 2021  
Hearing Time: 8:30 a.m.

**DEFENDANT’S MOTION AND MEMORANDUM FOR JUDICIAL NOTICE OF  
PUBLIC RECORDS IN SUPPORT OF RULE 19 JOINDER OF PAUL J. SULLA,  
JR., HALAI HEIGHTS, LLC, AND THE COUNTY OF HAWAII, AS PARTIES**

COMES NOW Defendant Leonard G. Horowitz (“Horowitz” or “Defendant”), pursuant to the Hawaii Rule of Evidence 201, requesting this Court to take Judicial Notice of twenty-one (21) public records, each recorded by branches of the State or federal governments, evidencing an enduring ‘pattern-and-practice’ of white collar organized crime in which attorney Paul J. Sulla, Jr. (“Sulla”) was indicted, reprimanded, or under investigation, for doing precisely what he has done in these proceedings—filing falsely and arguing “recklessly” to convert tax liabilities and/or real properties for unjust enrichment. These public records derive from actions in the U.S. Tax Court, or the State of Hawaii, the

Hawaii Supreme Court's Office of Disciplinary Counsel, the County of Hawaii Tax Office, the Hawaii Bureau of Conveyances, or the Hawaii Department of Commerce and Consumer Affairs ("DCCA"), involving altered or forged mortgages or deeds transferring real properties by actions of attorney Sulla, or the County of Hawaii, the Hawaii County Council, and the Hawaii County Land Use Commission. These public records are filed here in support of Defendant's May 18, 2021 filing of **"MOTION TO JOIN INDISPENSIBLE PARTIES PAUL J. SULLA, JR. AND HALAI HEIGHTS, LLC AS CO-PLAINTIFFS OR THIRD PARTY COUNTERCLAIM DEFENDANTS, AND THE COUNTY OF HAWAII, AS THIRD PARTY DEFENDANT AND COUNTERCLAIMANT."**

### **INTRODUCTION**

On May 12, 2021, Defendant received an e-mail notice from Judge Nakamoto's Clerk informing Defendant that his two Motions for Reconsideration were denied, and that the Court had directed Plaintiff's lawyer, Paul J. Sulla, Jr., to prepare a 'Final Judgment on Remand' to expunge the Defendant's public notices of ongoing and pending state and federal litigations involving ownership of the Defendant's subject properties. These instructions favoring un-joined indispensable party Sulla by Judge Henry Nakamoto followed Sulla's criminal indictment for forging a "Warranty Deed" central to Defendant's public notices (i.e., *lis pendens*). Judge Nakamoto's ruling to expunge Defendant's documents enable Sulla to "flip" Defendant's subject properties (hereafter, the "Property") to further immunize Sulla against prosecution despite his concealed 'arms length' advantage, and the prejudice this imposes upon Defendant. The resulting alleged public corruption aids-and-abets Sulla's alleged theft by forgery and money laundering. This was repeatedly brought to Judge Nakamoto's (and Judge Wendy DeWeese's) attention(s) in the Defendant's defense filings, but neglected. Neglect of Defendant's evidence of Sulla's thievery included the Hilo grand jury's indictment issued after examining the same evidence Judge Henry Nakamoto (and Judge DeWeese) repeatedly disregarded.

State and federal investigators/prosecutors allege these matters are continuing under investigation after this Third Circuit granted Sulla's motion to dismiss the criminal case against him "without prejudice" (encouraging further investigation) based on Sulla's claim that he had simply made a "mistake" in manufacturing and filing a forged Warranty Deed to the Defendant's Property. That "mistake" shows Sulla *intentionally*, because it shows he retyped the County of Hawaii's

Warranty Deed to Defendant, making therein four (4) clerical errors evidencing the retyping in order to remove the County of Hawaii's official engineer's certification stamp, and forgery.

Regardless, this Court has disregarded these facts, all the Defendant's Defenses, Counterclaims, due process rights, civil rights, real property rights, and pending federal court actions, including CV 15 00186JMS-BMK. That federal case that has been administratively stayed pending final determinations in State court actions, including this one. Satisfied here is the element of state actions required for federal actions under 42 U.S.C. §§ 1981 and 1983. *Focus on the Family v. Pinellas Suncoast Transit*, 344 F. 3d 1263 - Court of Appeals, 11th Circuit 2003.

In the case at bar, the *Younger* abstention does not apply by reason of the public records hereto attached evidencing Mr. Sulla's pattern-and-practice of forging documents including deeds for theft. These public records evidence the decade-long extraordinary bias, harassment, bad faith, and malicious prosecution committed by Sulla with consent of the Third Circuit judges, against the Defendants. These alleged torts and crimes have been aided-and-abetted by Third Circuit Court judges' (and other state actors') by willful blindness (or reckless negligence). These actions have caused damage and severe distress to the co-Defendants, proximal to the death of Dr. Horowitz's domestic partner and business partner, co-Defendant Sherri Kane. A federal court may enjoin pending state civil and criminal proceedings in the presence of "special circumstances such as bad faith, harassment or a biased state judiciary. *Id.*, [401 U.S. at 53-57](#), [91 S.Ct. at 755](#). All of these extraordinary impositions characterize the case at bar, necessitating this Motion and related relief requested.

Accordingly, in the interest of justice, efficiency, and economy per HRCF Rule 1, and the Hawaii Rules of Evidence, HRCF Rule 201, Judicial Notice is given to the following public records that document a chronic 'pattern-and-practice' of Sulla's wrongdoings; also evidencing Third Circuit Court complicity in Sulla's white collar organized crimes, with the judges Nakamoto and DeWeese continuing to indemnify, immunize, and/or aid-and-abet Sulla by neglecting or denying his interests, and those of his alter-ego, Halai Heights, LLC, both being indispensable and requiring their joinder as parties per HRCF Rule 19. To be clear, willful blindness to these public records is an 'administrative' not 'judicial' action voiding judicial immunity during the commission of crime. These records include:

**EXHIBIT A** – United States Tax Court sanction of attorney Paul J. Sulla, Jr. filed December 16, 2002, in *U.S. v. Brian G. Takaba*, (119 T.C. No. 18; Docket No. 5454-99). Here, "Mr. Sulla" was ruled liable for \$10,500 for arguing like "a reckless man" showing "deliberate recklessness" in a civil securities fraud action."

**EXHIBIT B** – The Supreme Court of Hawaii “Order of Public Censure” of Mr. Sulla in *Office of Disciplinary Counsel v. Paul J. Sulla, Jr.* (ODC 03-206-7806), filed December 16, 2003, pursuant to the **EXHIBIT A** U.S. Tax Court ruling.

**EXHIBIT C** – United States District Court for the District of Hawaii, September 19, 2007, Order Granting the Government’s Motion to Disqualify Attorney Paul J. Sulla, Jr. in *United States of America v. Bruce Robert Travis* (Cr. No. 07-00354 HG) wherein Sulla was found to have filed at least of one of several false tax returns for Mr. Travis, after “Sulla should have been aware that the challenge to the IRC’s enforceability was frivolous because the Tax Court and the Supreme Court of Hawai’I previously reprimanded him for raising similar arguments.”

**EXHIBIT D** -- United States District Court for the District of Hawaii, Superseding Indictment naming Paul J. Sulla, Jr. as complicit in tax evasion and money laundering of another convicted “client,” Arthur Lee Ong, in *U.S. v. Arthur Lee Ong*, filed July 28, 2010.

**EXHIBIT E** -- United States District Court for the District of Hawaii, Order Denying Defendant Arthur Lee Ong’s Motion for Judgment of Acquittal, detailing Sulla’s complicity in a conspiracy to evade taxes and launder money through a sham “religious” trust in *U.S. v. Arthur Lee Ong*, filed March 6, 2012 (Case 1:09-cr-00398-LEK, Doc. 121).

**EXHIBIT F** -- United States District Court for the District of Hawaii, Order Granting in Part and Denying in Part Defendants Leonard G. Horowitz and Sherri Kane’s Motion to Disqualify Co-Counsel Paul J. Sulla, Jr. and Phillip L. Carey from Representing Sham Plaintiff Jason Hester, filed January 5, 2015 in Civ. No. 14-00413 JMS-RLP (following removal of Third Circuit Court Civ. No. 14-1-0304, under appeal in CAAP 21-000018), wherein Sulla was ruled a “necessary witness at trial.” That “trial” never happened due to deprivation of due process rights of the co-Defendants Kane and Horowitz. Sulla was to have demonstrated that his presumed “client” Hester “is the rightful owner of the subject property.” Instead, this Court presumed Hester’s ‘ownership’ and ‘standing’ without question, and summarily granted Sulla’s theft by forged public records attached hereto. It is impossible to prove Hester’s valid (not void) ‘ownership’ or right to foreclose on the Defendant’s void Mortgage (voided by Finding of Fact and Conclusion of Law in Civ. No. 05-01-0196) due to **EXHIBIT G** (another forged record). “Defendant Horowitz and Defendant Kane’s counterclaims raise several disputed material issues related to the assignment of Defendant’s mortgage from Mr. Lee to the Overseer of Revitalize and the transfer of the subject property to Plaintiff.” (p. 12 of 13).

**EXHIBIT G** –State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, “Articles of Incorporation Corporation Sole for Ecclesiastical Purpose, for



“Substitute Plaintiff” and Mortgage transferee, The Office of the Overseer, a Corporation Sole and His Successors, Over/For the Popular Assembly of Revitalize, A Gospel of Believers,” filed May 28, 2009 (Doc. No. 05/29/200920052). This public record was filed by Sulla, and evidences photocopied signature(s) of Seller/Mortgagee Lee on pages “007” and “003” faxed on two separate days, “May-26-2009” and “May-28-2009”, respectively, as printed on the faxed records. These facts prove Sulla’s *mens rea* in altering pagination; altering dates on the “General Certification” pages “007” faxed “May-26-2009” versus page “003” signed by photocopy with the date changed to “28 day of May” (p. 003) from originally “8 day of May” (p. “007”)—a week before “Revitalize, a Gospel of Believers” legally existed.

**EXHIBIT H** –State of Hawaii Bureau of Conveyances, “Quitclaim Deed” (Doc. No. 2010-064623) filed May 11, 2010 by Paul J. Sulla, Jr. conveying (void) title to Defendants’ Property to “Revitalize, Gospel of Believers” incorporated by altered/forged incorporation Articles (**EXHIBIT G**). The transfer of the title from “Revitalize” to “Revitalize” followed Sulla’s (void) non-judicial foreclosure (“NJF”) committed to “revitalize” the void Mortgage and Note voided by Seller’s misrepresentations and encumbrances on title, as ruled in the underlying judicial foreclosure action, Civ. No. 05-1-0196. (See: Fifth Amended Final Judgment, filed March 4, 2016, p. 5, footnote 1, that states: “misleading statements by plaintiff, make foreclosure unjust.”)

**EXHIBIT I** –State of Hawaii Bureau of Conveyances, “Quitclaim Deed” (Doc. No. 2011-093772) filed June 14, 2011 by Paul J. Sulla, Jr. conveying (void) title to Defendants’ Property from “Revitalize, Gospel of Believers” to Hester based on the altered/forged incorporation Articles **EXHIBIT G**. This deed transfer is paired with simultaneously-filed **EXHIBIT J**—Sulla’s \$50,000.00 Mortgage “loan” to Hester securing Sulla’s superior interests in the Property.

**EXHIBIT J** –State of Hawaii Bureau of Conveyances, “Quitclaim Deed” (Doc. No. 2011-093773) filed June 14, 2011 by Paul J. Sulla, Jr. , securing in Sulla the superior (void) interest in title to Defendants’ Property over Hester and transferee “Revitalize, Gospel of Believers,” incorporated by altered/forged incorporation Articles (**EXHIBIT G**).

**EXHIBIT K** –State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, Articles of Organization for Limited Liability Company, Halai Heights, LLC, on February 1, 2016, evidencing “Paul J. Sulla” as the exclusive “organizer” and exclusive “Manager” and named “Member” of this corporate shell transferee of the Defendants’ Property (by Sulla).

**EXHIBIT L** -- County of Hawaii’s Real Property Tax Office record evidencing the purported “sale” of the subject Property from Plaintiff Jason Hester to Paul Sulla’s Halai Heights,

LLC on Sept. 6, 2016, for supposedly \$450,000.00.

**EXHIBIT M** – State of Hawaii Bureau of Conveyances, April 26, 2017, Doc. No. A-63250845, shows Sulla’s “Mortgage” “loan” to Halai Heights, LLC secured by Sulla’s forgery of the “PARCEL SECOND” land description retyped from the County of Hawaii’s Warranty Deed, granting Horowitz “Remnant ‘A’” (i.e., the “095” lot) as evidenced in **EXHIBIT N**.

**EXHIBIT N** – State of Hawaii Bureau of Conveyances, January 14, 2005, Doc. No. 2005-009276, Warranty Deed to “Remnant A” (lot 095) Granted by the County of Hawaii to Defendant’s Royal Bloodline of David ministry.

**EXHIBIT O** -- County of Hawaii’s Real Property Tax Office record evidencing Department of Finance Notice to Sulla of February 13, 2018 stating Mr. Hester did not own the property he allegedly sold to Mr. Sulla’s shell corporation as described in Sulla’s “Warranty Deed,” **EXHIBIT P**.

**EXHIBIT P** – State of Hawaii Bureau of Conveyances, “Warranty Deed” filed by Sulla on September 9, 2016 as Doc. No. 60960740, showing the false (retyped) “PARCEL SECOND” land description misappropriated from the County of Hawaii’s Warranty Deed to Horowitz shown in **EXHIBIT N** with the County engineer’s stamp missing in Sulla’s forgery.

**EXHIBIT Q** – The Circuit Court of the Third Circuit State of Hawaii, two count Indictment of Paul J. Sulla, Jr. filed December 5, 2019 in 3CPC-19-0000968, for alleged forgery for attempted theft of Defendants’ Property by Sulla’s filing of **EXHIBIT P**, the forged “Warranty Deed” misappropriating the “PARCEL SECOND” from the County of Hawaii’s grant to Defendants (**EXHIBIT N**).

**EXHIBIT R** – Hawaii County Council’s Committee on Public Works and Intergovernmental Relations’ Resolution No. 119-03, dated November 4, 2003, approving the conveyance of “PARCEL SECOND” (a.k.a., “Remnant A”) with road development and road maintenance encumbrances on Title concealed by Sulla’s “client” and predecessor-in-interest, Seller Cecil Loran Lee.

**EXHIBIT S** – Third Circuit Court for the State of Hawaii, “Findings of Fact, Conclusions of Law and Order Granting Petitioner’s Motion for Judgment on the Pleadings . . .” filed June 22, 2018 in Civ. No. 17-1-0407, evidencing this Court’s justification for complicity in the white collar organized crime consummating conversion of the Defendants’ Property by Sulla and Judge Henry T. Nakamoto.

**EXHIBIT T** – County of Hawaii Land Use Commission Meeting Minutes of November 28, 2018, evidencing Commissioner Ohigashi questioning Mr. Gyotoku on County officials who

authorized Sulla to change a “non-profit” low cost housing commitment the County imposed on Waikaloa Highlands Inc. (“WHI”) developers into a “for profit” transaction, selling for \$1.5 million 11.7 acres to Sulla’s entities, “Plumeria at Waikoloa LLC” and “Pua Melia,” each by void deed. (See: p. 10, last two paragraphs and p. 11. How the County “changed its position regarding the release of the affordable housing agreement,” and “how the County had determined that a ‘for-profit’ LLC entity [formed by Sulla] had been incorrectly involved in the conveyance of the WHI property; and the reasons why the County now felt that the release agreement was void.” This discussion followed Sulla’s public record declaration in **Exhibit U**.

**EXHIBIT U** – Paul J. Sulla, Jr.’s sworn declaration to the Hawaii County Land Use Commission neglects disclosing that Sulla’s “Plumeria sold Lot 2-B-2-B to Sulla and privies’ Pua Melia LLC, for \$1.5 million. “Pua Melia” translates to “Plumeria” in English. Both are Sulla entities “conveying title by Warranty Deed” later deemed void by County officials as **EXHIBIT Q** makes known.

### **MEMORANDUM OF LAW**

As set forth in the above Motion and public records (evidentiary exhibits), Defendant Horowitz seeks “Judicial Notice” of twenty-one (21) public records presenting the ‘chain-of-records” evidencing Sulla’s required joinder and organized crime pattern-and-practice. These readily verifiable public records evidence:

1) attorney Paul J. Sulla, Jr.’s record of material malpractices, official reprimands, and illegal conversions, pursuant to his pattern-and-practice of falsifying filings of governmental records for his “clients” in the commission of white collar organized crimes. Repeatedly, Mr. Sulla is evidenced by these **Exhibits A thru U** abusing sham “religious” trusts, corporations, or shell entities, to commit torts and crimes at “arms length” to protect his ‘qualified immunity,’ abuse his attorney-client privilege, and void Sulla’s superior interests in the converted Property as indemnified by Third Circuit Court judges; and

2) the indispensability of Mr. Sulla as a proper party Plaintiff and Counterclaim Defendant in the case at bar, albeit repeatedly neglected by Third Circuit fact finders, including Henry T. Nakamoto in this “0407” case, and Wendy DeWeese in the underlying quiet title action, Civ. No. 14-1-0304/CAAP 21-000018, and appellate proceeding.

Hawaii Revised Statutes § 626-1, Hawaii Rule of Evidence (HRE) 201, provides that judicial notice is permissible at any stage in the litigation and is mandatory when requested by a party upon supplying the necessary information. Specifically, Hawaii HRE 201 “Judicial Notice” provides in pertinent part:

- (a) Scope of rule. This rule governs only judicial notice of adjudicative facts.
- (b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) When discretionary. A court may take judicial notice, whether requested or not.
- (d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.
- (e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

Hence Judicial Notice is appropriate here, and must be taken of the public records seminal to the matter before the Court of Mr. Sulla claiming ownership of the subject Property in the name of his corporation, Halai Heights, LLC (“HHLLC”); and Defendant claiming deprivation of due process right to defend with material facts against attorney Sulla’s conversion of Defendant’s Property by forgery. Two such forgeries include Plaintiff Hester’s purported Warranty Deed transferring the Property to Mr. Sulla’s shell entity, HHLLC; and the second—the forged Articles of Incorporation for Sulla’s “Foreclosing Mortgagee” (i.e., ‘Gospel of Believers’) voids transferee Hester’s ownership and standing. *Kaho’ohanohano v. State*, 114 Haw. 302, 328, 162 P.3d 696, 722 (2007) (the court may take judicial notice of public records) See e.g. *In re Thomas H. Gentry Revocable Trust*, 138 Haw. 158, 172, 378 P.3d 874, 888, *reconsideration denied*, 138 Haw. 50, 375 P.3d 1288 (2016) (wherein the Court granted judicial notice in the context of rebutting the opposing party’s claim the case was moot for a warranty deed, because it was “a matter of public record and easily verifiable, and germane to the issues in this appeal”).

Likewise, the documents sought to be judicially noticed listed above are germane to justice in this case. They all are readily available and verifiable public records relevant to the Defendant’s/Appellee’s arguments, defenses, and counterclaims, and material facts in dispute in Sulla’s administration of Plaintiff Hester’s non-judicial foreclosure, transfers of the Property by void deeds, and erroneously presumed ‘standing’ by reason of illegal Mortgage, Note and deed transfers. These transactions ultimately favored Mr. Sulla as the currently registered owner of HHLLC holding slandered title to Defendant’s Property. These neglected transactions make Sulla

an indispensable party in this litigation, above and beyond being a witness at trial as ruled by federal Magistrate Richard L. Puglisi (in the underlying state “0304” case, [federal, Civ. No. 14-00413] **EXHIBIT F**).

The injustice of depriving the Defendants’ rights to due process and their Property is clear and convincing since Defendants have been deprived of ‘adjudication on the merits’ by Judges DeWeese and Nakamoto. These judges summarily dismissed case Civ. No. 14-1-0304 and this instant “0407” case in favor of ‘Hester’/Sulla. Therefore, this instant Motion is appropriate for Judicial Notice, appeal, and pending federal proceedings.

### **CONCLUSION**

Substantial evidence of torts and crimes committed by Mr. Sulla, and favored by Third Circuit Court judges Nakamoto and DeWeese, is presented in public records attached and judicially noticed herein. These records show Sulla’s enduring pattern-and-practice of “reckless” arguing and illegal filings continuing in the case at bar. Defendant Horowitz respectfully requests this Court take Judicial Notice of the twenty-one (21) public records identified herein, attached as **EXHIBITS A thru U**. These records supplement Defendant’s Motion to Join Paul J. Sulla, Jr. as an indispensable party in these proceedings, as well as the joiner of the County of Hawaii whose encumbrances on the original Title were leveraged by Sulla during his administration of public corruption aiding-and-abetting the illegal conversion of Defendant’s Property.

These public records also evidence just cause for Defendant’s Motion to Stay without posting bond during the pendency of the appeal, filed May 18, 2021.

Respectfully submitted.

DATED: May 25, 2021

/s Leonard G. Horowitz  
Plaintiff, pro se

LEONARD G. HOROWITZ, pro se  
Post Office Box 150457  
Cape Coral, FL 33915  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

**IN DIVISION 2 OF THE THIRD CIRCUIT COURT OF THE STATE OF  
HAWAII**

JASON HESTER, an individual	)	CIV. NO. 3CC171000407
Plaintiff	)	(HRS § 507D-4 Petition to
	)	Expunge Affidavit/Lis
	)	Pendens)
v.	)	
	)	<b>DECLARATION OF</b>
	)	<b>LEONARD G. HOROWITZ</b>
	)	<b>PURSUANT TO DEFENDANT'S</b>
	)	<b>MOTION AND MEMORANDUM</b>
	)	<b>FOR JUDICIAL NOTICE OF</b>
LEONARD G. HOROWITZ, an	)	<b>PUBLIC RECORDS IN SUPPORT</b>
Individual	)	<b>OF RULE 19 JOINDER OF PAUL J.</b>
	)	<b>SULLA, JR., HALAI HEIGHTS, LLC,</b>
Defendant	)	<b>AND THE COUNTY OF HAWAII,</b>
	)	<b>AS PARTIES.</b>

JUDGE: Henry T. Nakamoto

Hearing Date: Friday July 9, 2021  
Hearing Time: 8:30 a.m.

**DECLARATION OF LEONARD G. HOROWITZ PURSUANT TO  
DEFENDANT'S MOTION AND MEMORANDUM FOR JUDICIAL  
NOTICE OF PUBLIC RECORDS IN SUPPORT OF RULE 19 JOINDER  
OF PAUL J. SULLA**

I, LEONARD G. HOROWITZ, under pain of perjury of law, do hereby state and declare  
as follows:

- 1) I am an individual over the age of twenty-one (21) years, a resident of the State of  
Florida, and Lee County.

- 2) I am not licensed to practice law before any courts, but represent my interests herein pro se.
- 3) I am also the OVERSEER of THE ROYAL BLOODLINE OF DAVID, a Washington State Corporation Sole that was dissolved and continues in winding up its interests encumbered by matters detailed in the attached Motion and Memorandum; and in other cases ongoing or pending in state and federal courts.
- 4) I declare that Exhibits “A” thru “U” are true and correct copies of the public records on file with the State of Hawaii, and/or the courts relevant to these proceedings.
- 5) This Declaration is based upon my personal knowledge and I am competent to testify as to the truth of the statements contained herein.

Dated: Cape Coral, Florida: May 25, 2021

Signed: \_\_\s\ Leonard G. Horowitz\_\_\_\_\_

LEONARD G. HOROWITZ, pro se.

119 T.C. No. 18

UNITED STATES TAX COURT

BRIAN G. TAKABA, Petitioner v.  
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 5454-99.

Filed December 16, 2002

This case is before the Court to consider whether P must pay a penalty pursuant to sec. 6673(a)(1), I.R.C., and whether P's counsel must pay certain of R's costs pursuant to sec. 6673(a)(2), I.R.C. P, initially pro se, made frivolous arguments, which were continued by P's counsel, who further advocated the frivolous argument that the regulations under sec. 861, I.R.C., establish that, although P is a U.S. citizen, P's income in the form of remuneration for services and bank interest received from sources within the United States is not subject to tax.

1. Held: P is liable for a penalty under sec. 6673(a)(1), I.R.C., since his position in this case is frivolous.

2. Held, further, P's counsel is liable for R's excess costs under sec. 6673(a)(2), I.R.C., since he both knowingly and recklessly made frivolous arguments, thus unreasonably and vexatiously multiplying these proceedings.

**Exhibit A**



Paul J. Sulla, Jr., for petitioner.

David Lau, for respondent.

#### OPINION

HALPERN, Judge: This case is before the Court to consider whether petitioner must pay a penalty pursuant to section 6673(a)(1) and whether petitioner's counsel, Paul J. Sulla, Jr. (Mr. Sulla), must pay certain of respondent's costs pursuant to section 6673(a)(2). For the reasons that follow, the Court shall impose on petitioner a penalty of \$15,000 and on Mr. Sulla a liability of \$10,500.

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

#### Background

##### Previous Proceedings

Previously, this case was before the Court on respondent's motions for summary judgment and to award damages (the motions for summary judgment and for damages, respectively). By order dated June 6, 2001 (the June 6 order), we granted the motion for summary judgment, took under advisement the motion for damages, and ordered petitioner and Mr. Sulla to prepare to show cause why a penalty under section 6673(a)(1) should not be imposed on

petitioner and costs under section 6673(a)(2) should not be imposed on Mr. Sulla. Petitioner and Mr. Sulla appeared and were heard in response to the orders to show cause at the trial session of the Court commencing on June 18, 2001, in Honolulu, Hawaii (the 2001 trial session). Due in part to the length of Mr. Sulla's argument, the Court ordered additional submissions with respect to its orders to show cause.

June 6 Order

The following is extracted or summarized from the June 6 order and is helpful to explain our imposition of a penalty and costs.

By notice of deficiency dated December 21, 1998 (the notice), respondent determined a deficiency of \$3,407 in petitioner's 1996 income tax and additions to tax of \$669.52, \$295.35, and \$165.64 under sections 6651(a)(1) (failure to file a return), 6651(a)(2) (failure to pay tax), and 6654(a) (failure to pay estimated tax), respectively.

The facts that we relied on in granting the motion for summary judgment are as follows:

During 1996, petitioner was employed by Thunderbug, Inc. (Thunderbug), a domestic (United States) corporation doing business as Magnum Motorsport. During 1996, petitioner received remuneration in the amount of \$29,251 from Thunderbug as compensation for labor or services performed by petitioner in the United States. Petitioner also received interest in 1996 from American Savings Bank in the amount of \$13. Petitioner failed to file a U.S. Income tax return for 1996. Petitioner did not make any estimated tax payments for

1996. Petitioner was a citizen of the United States for 1996, and continues to be a citizen of the United States to the present.

In granting the motion for summary judgment, we rejected petitioner's arguments that he (1) did not receive any wages (as defined by section 3401(a)) or gross income from any source that could be included as taxable income, thereby making his income exempt from taxes, and (2) is not required to file a Form 1040, U.S. Individual Income Tax Return, because that form (for 1996) does not have an Office of Management and Budget approval number and is therefore a bogus form he is allowed by law to ignore without penalty.

With respect to the motion for damages, we set forth the provisions of section 6673(a)(1) (reproduced infra), and stated:

A taxpayer's position is frivolous "if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law. \* \* \* The inquiry is objective. If a person should have known that his position is groundless, a court may and should impose sanctions." Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Hansen v. Commissioner, 820 F.2d 1464, 1470 (9th Cir. 1987) (trial court's finding that taxpayer should have known that claim was frivolous allows for section 6673 penalty); Booker v. Commissioner, T.C. Memo. 1996-261.

This Court has imposed penalties on taxpayers for making arguments similar to those made by petitioner. See Aldrich v. Commissioner, supra; McCart v. Commissioner, supra; Liddane v. Commissioner, T.C. Memo. 1998-259; Wesselman v. Commissioner, T.C. Memo. 1996-85; see also Buchbinder v. Commissioner, 999 F.2d 542 (9th Cir. 1993) (sanctions for frivolous appeal).

With respect to the imposition of costs on Mr. Sulla, we set forth the pertinent provisions of section 6673(a)(2) (also reproduced infra) and stated:

The "Declaration of Paul J. Sulla, Jr." and "Petitioner's Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment", signed by Paul J. Sulla, Jr., both attached to petitioner's memorandum, indicate Mr. Sulla's advocacy of petitioner's nonmeritorious positions in this case.  
\* \* \*

As stated, we ordered both petitioner and Mr. Sulla to show cause why they should not be sanctioned under section 6673(a).

Pertinent Events Preceding the 2001 Trial Session

Respondent determined the deficiencies in, and additions to, tax set forth in the notice on the basis of (1) information reported to respondent by petitioner's employer, Thunderbug, and his bank, American Savings Bank, and (2) the fact that petitioner did not file any return for 1996 or pay any estimated tax.

The petition was filed on March 22, 1999, petitioner appearing on his own behalf. Mr. Sulla did not enter his appearance until June 21, 2000.

By the petition, petitioner denies "having any 'income' from any source for \* \* \* [1996] that is the subject of a tax." He denies "being required to file any annual return" for 1996. Finally, he denies "being liable for any penalties/additions to tax for" 1996.

On May 20, 1999, respondent received from petitioner a request for the production of documents. By that request, petitioner asked for "[a]ll records that Respondent intends to use at trial to establish that the Sixteenth Amendment authorized Congress to tax Petitioner's income."

By letter dated August 5, 1999, petitioner delivered to respondent petitioner's "Demand for Answers to a More Definite Statement", in which, among other things, petitioner demanded answers to the following questions:

On the first page of the 1040 Instruction Booklet, the Commissioner of the IRS states "Thank you for making this nations's tax system the most effective system of voluntary compliance in the world".

- (1) Why does the Commissioner say that?
- (2) What does that mean?
- (3) And how does it affect the Demandant [petitioner]?

\* \* \* \* \*

Is the Untied States/Internal Revenue service, Honolulu appeals Office #50089 in this case, in a condition of bankruptcy? If so, what authority does the United State/Internal Revenue Service, Honolulu Appeals Office #50089 claim as a right to make a claim against the Demandant in United States/Internal Revenue Service, Honolulu Appeals Office #50089's name as a principal?

\* \* \* \* \*

What facts are relied upon, if any, to assert that Demandant is a citizen, state resident, juristic person, or other legal person belonging to the Internal Revenue Service, Honolulu Appeals Office #50089?

State all facts relied upon which would put the Demandant in any venue, or jurisdiction other than one of common law?

\* \* \* \* \*

Is the statute, ordinance or regulation that you rely on to compel me to file tax returns, and pay a tax founded upon duties owed by citizen, resident or creation of the state?

(a) If so, what state?

(b) Where is the definition of that state found in the statutes, ordinances, or regulations relief [sic] upon?

On January 19, 2000, respondent's counsel sent a letter to petitioner advising him that his position was frivolous and that respondent would ask the Court to impose damages against him under section 6673(a).

In a letter dated April 6, 2000, from petitioner to respondent's counsel, petitioner states the following:

I reviewed the sections of the code that you supplied me [sections 1, 61, 6012, attached to counsel's letter of March 24, 2000]. There is no statement in any of those sections that specifically states that "income" is the thing that is being taxed. Until you establish a legal and factual basis for your claim that "income" is the subject of the tax[,] the amount and sources of my "income" is not relevant to the issue. The IRS issued the notice of deficiency claiming that "income" is the subject of the tax and that because I have "income" I am required to pay a tax on that "income". I can't wait to get IRS employees on the stand and ask them "On what factual basis do you claim that "income" is the subject of the tax?"

In another letter to respondent's counsel, dated May 4, 2000, petitioner states: "Provide me any documentation to support any claim that my services to Thunderbug did not have a fair market value of \$29,264.00 and that the property that

Thunderbug gave me in return did not have a fair market value of \$29,264.00. Provide me any documentation that you may have to show that 'income' is the subject of the tax."

This case was set for trial at the trial session of this Court commencing on June 19, 2000, in Honolulu, Hawaii (the 2000 trial session). Petitioner prepared a trial memorandum (the trial memorandum), as required by our standing pretrial order.<sup>1</sup> In the trial memorandum, petitioner claims that:

(1) "Based on advice from his professionals Petitioner challenges Respondent's claim that Petitioner has failed to comply with the law by not filing federal income tax returns."

(2) "Based on advice from his professionals Petitioner challenges Respondent's claim that petitioner is a 'taxpayer' as defined by I.R.C. § 1313(b) and 7701(A)(14)."

Attached to respondent's copy of the trial memorandum are documents purporting to be letters to petitioner from the aforementioned "professionals". The principal argument of those so-called professionals is that the filing and payment of taxes is voluntary.

At the call of the case from that calendar at the 2000 trial session, petitioner informed the presiding Judge, Judge Marvel, that he was attempting to hire an attorney to represent him.

---

<sup>1</sup> There is no copy of petitioner's trial memorandum in the record, but both parties describe it in their filings.

That attorney was Mr. Sulla (who, as stated, entered his appearance on June 21, 2000). In a subsequent telephone conference among Judge Marvel, Mr. Sulla, and respondent's counsel, Judge Marvel advised Mr. Sulla that, if petitioner continued to present frivolous arguments, the Court would impose penalties. The Court further advised Mr. Sulla that he bore the responsibility to straighten his client out. Petitioner's request for a continuance was granted.

By letter to respondent's counsel dated September 12, 2000, Mr. Sulla reviewed petitioner's arguments as to why he did not owe income tax for 1996. Those arguments include the following: (1) Petitioner had no income from any source taxable under the Internal Revenue Code; (2) no provision of the Internal Revenue Code obligates petitioner to file a Form 1040, U.S. Individual Income Tax Return, and, therefore, payment of the Federal income tax is voluntary, and (3) the Form 1040 provided by the Internal Revenue Service is a "bootleg" request because it does not conform to the requirements of the Paperwork Reduction Act of 1980, as amended, in that the form does not display a control number, an expiration date, or a statement whether the form is voluntary or mandatory. Mr. Sulla did not disavow those positions, but asked of respondent's counsel: "Any responses or interpretations, supported by authorities, which you would assert in opposition to the positions taken by [petitioner]".



On September 18, 2000, Mr. Sulla filed a status report with the Court advising the Court of petitioner's "newly-revealed" interpretation of the Internal Revenue Code and supporting regulations, i.e., that, under regulations interpreting section 861, "remuneration for services earned in the United States by a United States citizen from a United States employer was not an operative source of gross income under IRS [IRC] Section 61, and hence exempt income." Notwithstanding such new interpretation (hereafter, sometimes, the 861 argument), Mr. Sulla continued: "Petitioner does not want to waive or withdraw his two previously set forth arguments."

By letter to Mr. Sulla dated October 4, 2000, respondent's counsel advised Mr. Sulla that "the arguments presented by or on behalf of Mr. Takaba to date have been found to be frivolous."

By letter to Mr. Sulla dated February 5, 2001, respondent's counsel reiterated his advice that petitioner's arguments (including the 861 argument) were frivolous. He quoted from and referred Mr. Sulla to section 1.1-1(a), Income Tax Regs., which, in pertinent part, provides: "Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States". He analyzed in detail the 861 argument, advising Mr. Sulla that he had misread section 861 and the associated regulations. He provided citations to cases rejecting the argument that the regulations under section 861

provide a tax exemption for U.S. source income of U.S. citizens, including Williams v. Commissioner, 114 T.C. 136 (2000), and Aiello v. Commissioner, T.C. Memo. 1995-40. He quoted our statement in Williams v. Commissioner, supra at 138-139, that:

"Petitioner's arguments are reminiscent of tax-protester rhetoric that has been universally rejected by this and other courts." He also quoted that portion of our report in Aiello in which we refer to the position of the Court of Appeals for the Ninth Circuit:

The Court of Appeals for the Ninth Circuit, to which any appeal in this case will lie, has stated, "Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable." United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981). \* \* \*

He stated: "Although you apparently understood our arguments in this case, you dismissed them as 'a normal response from a tax collector'. But you provide no support for your interpretation of sections 61 and 861. Please provide us with any cases supporting your position." He warned Mr. Sulla that respondent would seek a penalty against petitioner under section 6673(a)(1) and was considering asking the Court to impose costs on Mr. Sulla pursuant to section 6673(a)(2).

Mr. Sulla reiterated the 861 argument in his declaration attached to petitioner's "Memorandum in Opposition to Motion for Summary Judgment and Motion for Damages" (sometimes, petitioner's

memorandum): "[T]he clear and unequivocal language contained under the several provisions of 26 CFR § 1.861 shows that the income of United States citizens from the remuneration of services from sources within the United States are not included as taxable or non-exempt income." The 861 argument is also contained in petitioner's memorandum of points and authorities in opposition to motion for summary judgment, which is signed by Mr. Sulla.

Also attached to petitioner's memorandum is petitioner's affidavit. Attached to the affidavit are Exhibits, including an Exhibit B, a letter to the Internal Revenue Service, dated April 11, 2001, in which, among other things, petitioner states:

pursuant to the filing of the attached and completed IRS Form(s) I hereby challenge, controvert and/or refute any and all claims that I made any "wages" as defined in Title 26 United States Code(USC) § 3401(a) and/or that I received any remuneration from any source for the afore said year(s) that is includable in "gross income", as defined in the operative sections of the IRC as listed in Title 26 Code of Federal Regulations (CFR) § 1.861-8(f)(1). \* \* \*

#### 2001 Trial Session

At the 2001 trial session, Mr. Sulla attempted to show cause why we should not make absolute our orders sanctioning him and petitioner under section 6673(a). He attempted to show the good faith of his argument that the wages and interest received by petitioner in 1996 are exempt from Federal income taxation. He stated as a factual predicate for his argument that petitioner is

a citizen of the State of Hawaii, he worked in the State of Hawaii, his employer is from the State of Hawaii, his employment activity took place in the State of Hawaii, and he was paid in the State of Hawaii. He agreed with the following summary by the Court of his argument: "I take your argument to be that a United States citizen, a resident of Hawaii, working in Hawaii for a U.S. corporation, earning a salary or wages, is not taxable under the Internal Revenue Code on that compensation as income, is that your position?" He responded: "Yes, Your Honor. My position is that it is intrastate income and that the Internal Revenue Code does not reach intrastate income." He further explained: "I can't find a constitutional power of Congress to tax that [intrastate] income." He added:

[I]n essence, Your Honor, I am stating that a U.S. person earning income from a U.S. source, whether it be interstate or intrastate, while he's in the United States, as long as it's not from a federal possessions corporation or a -- involved, or federal government involved, that would not be taxable income as defined and as stated in the regulations, Code of Regulations; and it would \* \* \* be considered \* \* \* exempt income.

He stated that he found support for his analysis in section 861 and the regulations thereunder. He agreed with the Court that his analysis led to the conclusion that a vast amount of the wages and interest paid to U.S. citizens and residents is not taxable under the Internal Revenue Code. He conceded, however, that he found no support for his reading of section 861 and the regulations in any reported case. Indeed, he stated that he had

consulted a legal research firm that reported to him: "That they found no case, rule, or regulation addressing the argument that domestic and foreign source rules under Section 861, modify or limit the definition of gross income under Section 61."

### Discussion

#### I. Introduction

By the motion for damages, respondent has asked that we impose a penalty on petitioner in the amount of \$25,000, or in such lesser amount that we deem appropriate, pursuant to section 6673(a)(1). On our own, because of Mr. Sulla's advocacy of petitioner's positions in this case, we have ordered Mr. Sulla to show cause why we should not impose costs on him pursuant to section 6673(a)(2).

#### II. Section 6673

In pertinent part, section 6673 provides:

##### SEC. 6673 SANCTIONS AND COSTS AWARDED BY COURTS

###### (a) Tax Court Proceedings.--

(1) Procedures instituted primarily for delay, etc.--Whenever it appears to the Tax Court that--

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer's position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies,

the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of \$25,000.

(2) Counsel's liability for excessive costs.

--Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require--

(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct \* \* \*

III. Discussion

A. Section 6673(a)(1) Liability of Petitioner

Respondent asks that we impose damages on petitioner under section 6673(a)(1) because petitioner "filed and maintained this action primarily for delay" and "his position \* \* \* is frivolous or groundless." Although disagreeing that he instituted or maintained these proceedings primarily for delay, petitioner virtually concedes that his initial arguments are frivolous: "Prior to Petitioner's counsel's entry, the Petitioner was maintaining several well known alleged 'tax protester' arguments in reliance upon professional opinions dating back to 1995." We agree that petitioner's initial arguments are frivolous. A taxpayer's position is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for a change in the law. E.g., Nis Family Trust v. Commissioner, 115

T.C. 523, 544 (2000). It is unclear to us whether petitioner is defending his initial arguments on the ground that, in good faith, he made those arguments in reliance on what he claims to be professional advice.<sup>2</sup> In any event, that reliance is unsubstantiated.

Petitioner relies on the 861 argument to defend against imposition of a section 6673(a)(1) penalty. The 861 argument is that the regulations under section 861 establish that petitioner's income in the form of remuneration for services and bank interest received from sources within the United States is not taxable income (or is not "non-exempt income"). The 861 argument is contrary to established law and, for that reason, frivolous. In Corcoran v. Commissioner, T.C. Memo. 2002-18, the taxpayer made a similar argument. We characterized the taxpayer's argument as "without factual or legal foundation", and addressed it as follows:

Section 1 imposes an income tax on the income of every individual who is a citizen or resident of the United States. Sec. 1.1-1(a)(1), Income Tax Regs. Section 61(a) provides that except as otherwise provided in subtitle A (income taxes) gross income

---

<sup>2</sup> There is some question whether it is necessary for a court to find that a taxpayer acted in bad faith in order to impose a penalty on him under sec. 6673(a)(1)(B) for putting forth a frivolous or groundless position. Compare Branch v. I.R.S., 846 F.2d 36, 37 (8th Cir. 1988) ("A taxpayer's asserted good faith is not relevant to the assessment of frivolous return [sec. 6702] penalties.") with May v. Commissioner, 752 F.2d 1301, 1306 (8th Cir. 1985) ("showing of willfulness or lack of good faith is required [for section 6673(a)(1) damages]").

includes "all income from whatever source derived," including compensation for services and interest. Secs. 61(a)(1), (4). \* \* \*

Ignoring these statutory provisions, petitioners argue that their compensation for services \* \* \* and interest do not constitute gross income because these items of income are not listed in section 1.861-8(f), Income Tax Regs. Their argument is misplaced and takes section 1.861-8(f), Income Tax Regs., out of context. The rules of sections 861-865 have significance in determining whether income is considered from sources within or without the United States. The source rules do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States. See, e.g., Williams v. Commissioner, 114 T.C. 136, 138-139 (2000) (rejecting claim that income is not subject to tax because it is not from any of the sources listed in sec. 1.861-8(a), Income Tax Regs.); Aiello v. Commissioner, T.C. Memo. 1995-40 (rejecting claim that the only sources of income for purposes of sec. 61 are listed in sec. 861); Great-West Life Assur. Co. v. United States, 230 Ct. Cl. 477, 678 F.2d 180, 183 (1982) ("The determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under section 1 and section 11, respectively, on their worldwide income.").

Petitioner's position, that respondent erred in determining a deficiency in, and additions to, petitioner's 1996 Federal income tax, is frivolous, since all of petitioner's arguments in support of that position are frivolous. Petitioner deserves a penalty under section 6673(a)(1), and that penalty should be substantial, if it is to have the desired deterrent effect. Cf. Talmage v. Commissioner, T.C. Memo. 1996-114 (text at n.5), affd. without published opinion 101 F.3d 695 (4th Cir. 1996). The purpose of section 6673 is to compel taxpayers to think and to conform their conduct to settled principles before they file



returns and litigate. Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986); see also Grasselli v. Commissioner, T.C. Memo. 1994-581 (quoting Coleman).

We have set forth in some detail the various arguments made by petitioner during the course of this litigation. Petitioner has wandered far afield from the track established by the petition, that he had no income from any source subject to tax and is not required to file a return (themselves frivolous arguments). At various times, he has argued that the Sixteenth Amendment does not authorize Congress to tax his income, his services were worth what his employer paid him, the income tax is voluntary, he is not a taxpayer, and he did not receive any wages. He has asked respondent ridiculous questions and threatened to put respondent's agents on the stand and question them on their basis for claiming that income is subject to tax. He has delayed this case by asking for a continuance after having been warned accurately by respondent's counsel that his arguments were frivolous. He did not heed Judge Marvel's caution on the same point. On the basis of petitioner's activities in bringing and prosecuting this case, we shall make absolute our order to show cause by granting the motion for damages to the extent that we shall impose on petitioner a penalty under section 6673(a)(1) in the amount of \$15,000.

B. Section 6673(a)(2) Liability of Mr. Sulla

1. Introduction

Section 6673(a)(2) empowers us to impose costs on an attorney who has multiplied the proceedings in any case unreasonably and vexatiously. Section 6673(a)(2) is a relatively new provision, having been added to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239, sec. 7731(a), 103 Stat. 2400. Section 6673(a)(2) is derived from section 1927 of the Judicial Code, 28 U.S.C. sec. 1927 (1988). See H. Rept. 101-247, at 1399-1400 (1989).

In Harper v. Commissioner, 99 T.C. 533, 545 (1992), we noted the dearth of opinions interpreting and applying section 6673(a)(2), and relied upon case law under 28 U.S.C. sec. 1927 (1988) to ascertain the level of misconduct justifying sanctions. The language of 28 U.S.C. sec. 1927 (1988)<sup>3</sup> is substantially identical to that of section 6673(a)(2), and the two statutes serve the same purposes in different forums. See Johnson v. Commissioner, 289 F.3d 452 (7th Cir. 2002), affg. 116 T.C. 111 (2001); Harper v. Commissioner, supra at 545. The interpretation given section 6673(a)(2) and 28 U.S.C. sec. 1927 (1988) has historically been the same.

---

<sup>3</sup> Title 28 U.S.C. sec. 1927 (1988) provides: "Any attorney \* \* \* who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

In Harper v. Commissioner, supra, we found that, while most Courts of Appeals require a finding of bad faith as a condition for imposing sanctions under 28 U.S.C. sec. 1927 (1988), a few have adopted the lower threshold of recklessness. Harper v. Commissioner, supra at 545-546. Among those few is the Court of Appeals for the District of Columbia Circuit. See Reliance Ins. Co. v. Sweeney Corp., 792 F.2d 1137, 1138 (D.C. Cir. 1986). The venue for appeal of the sanctions we imposed on Mr. Sulla may be to that Court of Appeals. See sec. 7482(b)(1) (second sentence). But compare Johnson v. Commissioner, supra (affirming Tax Court's imposition of section 6673(a)(2) liability without discussion of venue), with Dornbusch v. Commissioner, 860 F.2d 611 (5th Cir. 1988) (appellate venue lies in the Court of Appeals for the District of Columbia Circuit under the second sentence of section 7482(b)(1) in the case of an appeal of a criminal contempt sentence imposed on a witness by the Tax Court).<sup>4</sup> If the appellate venue for Mr. Sulla is not the Court of Appeals for the District of Columbia Circuit, it is likely the Court of Appeals for the Ninth Circuit. See sec. 7482(b)(1)(A). The Court of Appeals for the Ninth Circuit has occasionally stated that

---

<sup>4</sup> In Johnson v. Commissioner, 289 F.3d 452 (7th Cir. 2002), affg. 116 T.C. 111 (2001), the Court of Appeals for the Seventh Circuit may have been the appropriate venue for appeal pursuant to sec. 7482(b)(2), which allows an appeal to any U.S. Court of Appeals if agreed to in writing by the Secretary and the taxpayer.

sanctions under 28 U.S.C. sec. 1927 (1988) are appropriate where the attorney conduct multiplying the proceedings was reckless. B.K.B. v. Maui Police Dept., 276 F.3d 1091, 1107 (9th Cir. 2002); Fink v. Gomez, 239 F.3d 989, 993 (9th Cir. 2001); United States v. Associated Convalescent Enters., Inc., 766 F.2d 1342 (9th Cir. 1985). Because we are uncertain of appellate venue, and because we find that petitioner's counsel's conduct would constitute bad faith under the Court of Appeals for the Ninth Circuit cases applying a bad faith standard, e.g., In re Keegan Mgmt. Co., Sec. Litig., 78 F.3d 431, 436 (9th Cir. 1996), we shall, for purposes of this case (and without deciding the standard in this Court) (and without deciding the standard in this Court), adopt that standard. See Nis Family Trust v. Commissioner, 115 T.C. at 548.

## 2. Bad Faith

### a. Petitioner's Initial Arguments

In the view of the Court of Appeals for the Ninth Circuit, "bad faith" is present when an attorney knowingly or recklessly raises a frivolous argument. In re Keegan Mgmt. Co., Sec. Litig., supra; Estate of Blas v. Winkler, 792 F.2d 858, 860 (9th Cir. 1986). As discussed supra in section III.A., both petitioner's initial arguments and the 861 argument are frivolous. We recognize that petitioner originally appeared in this case pro se. Mr. Sulla appeared on June 21, 2000, at the time of the 2000 trial session. At that time, he was advised by

Judge Marvel that the Court viewed petitioner's arguments as frivolous and that he bore the responsibility to straighten out his client. Mr. Sulla claims that, following his appearance, petitioner abandoned his initial arguments and relied exclusively on the 861 argument. Nevertheless, by letter to respondent's counsel dated September 12, 2000 (the September 12 letter), Mr. Sulla reviewed petitioner's initial arguments and did not disclaim them; indeed, he asked respondent's counsel to rebut them. In the status report filed by Mr. Sulla on September 18, 2000 (the status report), Mr. Sulla set forth the 861 argument. He also stated: "Petitioner does not want to waive or withdraw his two previously set forth arguments." In "Petitioner's Surreply to Respondent's Memorandum of Points and Authorities" (petitioner's final filing in this case (the surreply)), Mr. Sulla states:

Any reservation of the Petitioner's prior arguments by Petitioner's counsel at that time while signaling to Respondent's counsel and to Court that Petitioner's counsel was informally conceding these arguments is not inconsistent. This negotiating posture by Petitioner's counsel at the initial contact with the Court and Respondent would normally be construed, among professionals in negotiations, as a strong signal of a parties' primary position. \* \* \*

A party may retain any number of different theories of action or defense "in reserve". The reservation of positions has no bearing on what the party ultimately corresponds, argues or pleads. \* \* \*  
[Emphasis added.]

By the time of the September 12 letter and the status report, Mr. Sulla had ample time to review petitioner's initial arguments. We believe from Mr. Sulla's statements in the surreply that he knew those arguments were frivolous but, in order to gain a tactical advantage, did not disclaim them. Thus, Mr. Sulla knowingly maintained petitioner's frivolous arguments, and that constitutes bad faith.<sup>5</sup>

b. The 861 Argument

Moreover, we believe that Mr. Sulla was reckless in making the 861 argument. The Court of Appeals for the Ninth Circuit has not defined the term "reckless" for purposes of determining whether an attorney acts in bad faith by recklessly making a

---

<sup>5</sup> Mr. Sulla's conduct with respect to petitioner's initial arguments (and, indeed, the 861 argument) also raises questions under the Rules. Rule 201(a) requires practitioners to carry on their practice in accordance with letter and spirit of the Model Rules of Professional Conduct of the American Bar Association (the Model Rules). In pertinent part, Model Rule 3.1 states: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous". Model Rule 3.2 requires a lawyer to make reasonable efforts to expedite litigation. Model Rule 3.3 imposes on lawyers a duty of candor towards the tribunal, which includes the requirement that a lawyer not knowingly make a false statement of law to the tribunal. A comment following Model Rule 3.3 states: "Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal." We question whether Mr. Sulla's "negotiating posture" and his apparent advice to petitioner that he "reserve" his initial arguments violate Model Rules 3.1 and 3.2. We also question whether Mr. Sulla breached his duty of candor to the Court when, in the status report, he reported that petitioner would not waive or withdraw arguments that Mr. Sulla knew to be frivolous and was maintaining only to gain some negotiating advantage.

frivolous argument. "Recklessness involves a greater degree of fault than negligence but a lesser degree of fault than intentional wrongdoing." Black's Law Dictionary 1277 (7th ed. 1999). In certain areas of the law, scienter (the fact of an act's having been done knowingly) is an element of recklessness. See Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). The Court of Appeals for the Ninth Circuit has not stated whether scienter is an element of recklessness for purposes of determining whether an attorney recklessly made a frivolous argument. It has, however, interpreted 28 U.S.C. sec. 1927 (1988) to require a finding of "subjective bad faith", e.g., B.K.B. v. Maui Police Dept., supra at 1107, which suggests that state of the mind, i.e., scienter, is an element. For guidance in making the necessary finding, we look to situations in which scienter is an element of a reckless false claim.

For a public official to recover damages for a defamatory falsehood relating to his official conduct, the official must prove that the statement was made with "'actual malice' that is, with knowledge that it was false or with reckless disregard of whether it was false or not". New York Times Co. v. Sullivan, 376 U.S. 254, 280 (1964) (emphasis added). Scienter is an element of such "reckless disregard": "The defendant must be proved to have subjectively 'entertained serious doubts as to the truth of his publication.'" Alioto v. Cowles Communications,

Inc., 519 F.2d 777, 779 (9th Cir. 1975) (quoting St. Amant v. Thompson, 390 U.S. 727, 731 (1968)). Nevertheless, the Supreme Court has said that, in determining the existence of actual malice in a defamation action: "[R]ecklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." St. Amant v. Thompson, supra at 732. In the same paragraph, the Court also says that a defendant is not likely to prevail "when the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation." Id. The Court of Appeals for the Ninth Circuit has likewise determined that the scienter necessary to show "deliberate recklessness" in a civil securities fraud action is shown when the danger of misleading customers "'is either known to the defendant or is so obvious that the actor must have been aware of it.'" In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 975-977 (9th Cir. 1999) (quoting Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990), for definition of reckless conduct). The reckless disregard inquiry appropriate for determining actual malice in a defamation action, like the deliberate recklessness inquiry appropriate in a civil securities fraud action, is an appropriate model for determining whether Mr. Sulla recklessly raised a frivolous argument, since common to all three inquiries



is scienter and a false (or, in the securities fraud context, misleading) statement.

We find that Mr. Sulla was reckless in making the 861 argument. We do so because (1) there were obvious reasons for Mr. Sulla to doubt his interpretation of the regulations and (2) the conclusions to be drawn from the 861 argument are so inherently improbable that only a reckless man would have made that argument. As stated, the 861 argument is that the regulations under section 861 establish that, although petitioner is a U.S. citizen, petitioner's income in the form of remuneration for services and bank interest received from sources within the United States is not taxable income (or is not "non-exempt income"). The most obvious reason for Mr. Sulla to doubt his interpretation of the regulations is that it is flatly contradicted by section 1.1-1, Income Tax Regs. In pertinent part, section 1.1-1, Income Tax Regs., provides:

SEC. 1.1-1 Income tax on individuals.--

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States \* \* \*

\* \* \* \* \*

(b) Citizens or residents of the United States liable to tax. In general, all citizens of the United States, wherever resident, \* \* \* are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. \* \* \*

Mr. Sulla acknowledges the authority of Treasury Regulations. In Petitioner's Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment (exhibit A to petitioner's memorandum), Mr. Sulla states: "When the Treasury regulations are published they become official notice to the public of what the law requires." In that same document, he quotes from section 1. Moreover, in respondent's counsel's letter to Mr. Sulla dated February 5, 2001 (the February 5 letter), respondent's counsel specifically directed Mr. Sulla to section 1.1-1(a), Income Tax Regs., and quoted a portion of that regulation. In the February 5 letter, respondent's counsel also advised Mr. Sulla that he had misread section 861 and the associated regulations, and he provided citations to cases rejecting the argument that the regulations under section 861 provide a tax exemption for U.S. source income of U.S. citizens. Mr. Sulla has indicated that he read those cases. He should not, therefore, have missed the fact that, in one of the cited cases, Williams v. Commissioner, 114 T.C. at 144, we penalized the taxpayer under section 6673(a)(1) for raising frivolous arguments, stating: "Petitioner's arguments concerning the underlying deficiency amount to tax protester rhetoric and are manifestly frivolous and groundless." Respondent's counsel asked Mr. Sulla to provide him with any cases supporting his position. Of course, Mr. Sulla did not do

so. In fact, Mr. Sulla consulted a legal research firm and learned that there are no such cases.

Mr. Sulla may have dismissed respondent's arguments as "a normal response from a tax collector", but he cannot disregard authority that was placed in front of his eyes and that was plain to see. We have no doubt that Mr. Sulla realized that there was some risk that the 861 argument was frivolous. Such risk was apparent from the conclusion of the legal research firm that he consulted that no case, rule, or regulation supported the 861 argument. We need not concern ourselves with the subjective valuation that Mr. Sulla placed on that risk. It is sufficient that the risk was significant and plain to see, and that he saw it. We need not concern ourselves with idiosyncratic thinking or tolerate willful obtuseness. Cf. Coleman v. Commissioner, 791 F.2d 68, 72 (7th Cir. 1986). Moreover, even if Mr. Sulla had not been presented with sufficient evidence contradicting the 861 argument, the 861 argument, on its face, is inherently improbable, because it leads to conclusions that defy common sense; i.e., U.S. citizens and residents earning income within the United States are taxable only on income earned from possessions, corporations, and the Federal Government, and the vast amount of wages and interest paid to U.S. citizens and residents is not taxable under the Internal Revenue Code. We agree with what the Court of Appeals for the Tenth Circuit said

in Charczuk v. Commissioner, 771 F.2d 471, 475 (10th Cir. 1985), affg. T.C. Memo. 1983-433, before imposing costs on a taxpayer's counsel under 28 U.S.C. sec. 1927: "Courts are in no way obligated to tolerate arguments that thoroughly defy common sense." The conclusions to be drawn from the 861 argument thoroughly defy common sense. We find that Mr. Sulla acted recklessly in making the 861 argument and, thus, he acted in bad faith.

3. Unreasonable and Vexatious Multiplication of the Proceedings

Mr. Sulla unreasonably and vexatiously multiplied the proceedings before the Court by championing petitioner's initial, frivolous arguments and by introducing a new frivolous argument, the 861 argument. Either action is a ground to find him liable for excess costs. This case should have concluded with petitioner's capitulation shortly after Mr. Sulla made his appearance. Mr. Sulla's actions caused needless delay; if he caused additional expense to respondent, he should bear those additional expenses. See Cook v. Am. S.S. Co., 134 F.3d 771, 774 (6th Cir. 1998) (in the context of 28 U.S.C. sec. 1927).

Before proceeding to determine the excess costs that Mr. Sulla must bear, we pause to state that we are mindful that there can be a thin line between zealous advocacy and frivolity. We must be careful not to cross that line and impose costs on zealous (but unsuccessful) advocacy. We must be careful not to

stifle the enthusiasm or chill the creativity that is the very lifeblood of the law. Edwards v. Commissioner, T.C. Memo. 2002-169 (quoting Greenhouse v. United States, 780 F. Supp. 136, 144 (S.D.N.Y. 1991)). We do not intend by today's ruling to stifle the enthusiasm or chill the creativity of counsel in this Court. Counsel, however, must reject arguments that he knows to be frivolous. If he advances arguments that he knows, or should know, risk being dismissed as frivolous, he risks the imposition on him of the opposing party's excess costs.

#### 4. Costs

"Attorney's fees awarded under section 6673(a)(2) are to be computed by multiplying the number of excess hours reasonably expended on the litigation by a reasonable hourly rate. The product is known as the 'lodestar' amount." Harper v. Commissioner, 99 T.C. at 549. To assist us in computing the lodestar amount, respondent has provided us with the declarations of attorneys David L. Lau and Peter R. Hochman (the Lau and Hochman declarations, respectively). Attached to the Lau declaration is a copy of respondent's internal time keeping records, showing the total time expended on this case by, among others, Messrs. Lau and Hochman. In the Lau and Hochman declarations, Messrs. Lau and Hochman calculate their time, dating from Mr. Sulla's appearance, spent working on this case

and which each claims was due to Mr. Sulla's actions "vexatiously multiplying these proceedings" (excess hours).

Respondent asks reimbursement for 58 hours of Mr. Lau's time at \$150 an hour. Mr. Lau is the attorney with day-to-day responsibility for the case. He is an attorney employed in the Office of Chief Counsel in Honolulu, Hawaii. He has been a member of the Hawaii State Bar since 1982. He has detailed the time he spent on the case from June 20, 2000, onward, which involves time spent on research, drafting, telephone calls, review of submissions to the Court, consultations with Mr. Hochman, and appearances. Based on various factors, including the cost of living and attorney wages in Honolulu, Hawaii, and awards in previous cases, respondent asks reimbursement at a rate of \$150 an hour for Mr. Lau's time. The hourly rate properly charged for the time of a Government attorney is the "amount to which attorneys of like skill in the area would typically be entitled for a given type of work on the basis of an hourly rate of compensation." Harper v. Commissioner, 99 T.C. at 551. Mr. Sulla does not question the reasonableness of that rate. We do not, however, believe that 58 hours is the number of excess hours that Mr. Lau expended on this case. Respondent begins his computation of excess hours for Mr. Lau on June 20, 2000, adding 1 hour for time spent in preparing for and participating in a conference call with Judge Marvel and Mr. Sulla. Notwithstanding

that Mr. Sulla adopted and added to petitioner's frivolous arguments, thus unreasonably and vexatiously multiplying the proceedings in this case, we shall extend him the benefit of the doubt until such time as we are sure that he had adopted (and added to) petitioner's positions. We believe that we can safely say that he did so as of September 18, 2000, the date on which he filed the status report (advising the Court of the 861 argument and petitioner's failure to waive or withdraw his initial arguments). Mr. Lau declares that he spent 41 hours working on the case after that date. We are familiar with the procedural and factual history of this case and believe that 41 hours was reasonably necessary for Mr. Lau to do the work he described. See United States v. \$12,248 U.S. Currency, 957 F.2d 1513, 1520 (9th Cir. 1991). We disagree with Mr. Sulla that some of the 41 hours in question are not excess hours because they are normal to any litigation. Petitioner's position is totally without merit, and this litigation should not have been continued 1 minute after Mr. Sulla familiarized himself with the facts. We find that \$150 is a reasonable hourly charge for Mr. Lau's time and that he reasonably expended 41 excess hours on this litigation. The lodestar amount for Mr. Lau's time is \$6,150.

Respondent asks reimbursement for 21.75 hours of Mr. Hochman's time, at a rate of \$200 an hour. Mr. Hochman is Mr. Lau's supervisor. He is an Associate Area Counsel in the Office

of Chief Counsel in Honolulu, Hawaii. Mr. Hochman has been practicing law since at least 1982. Respondent asks reimbursement at a rate of \$200 an hour for Mr. Hochman's time. Mr. Sulla does not question the reasonableness of that rate. All of the hours claimed for Mr. Hochman were expended after Mr. Sulla filed the status report. We believe that 21.75 hours was reasonably necessary for Mr. Hochman to do the work he described. We find that \$200 is a reasonable hourly charge for Mr. Hochman's time and that he reasonably expended 21.75 excess hours on this litigation. The lodestar amount for Mr. Hochman's time is \$4,350.

The total lodestar amount for the time of Mr. Lau and Mr. Hochman is \$10,500. Respondent has not itemized costs for travel expense, photocopying, or supplies used in preparing the cases. Respondent limits his request for costs to the total lodestar amount. We shall require Mr. Sulla to pay costs in that amount.

##### 5. Conclusion

We find that \$10,500 is a reasonable amount for respondent's excess attorney's fees incurred by reason of Mr. Sulla's unreasonable and vexatious multiplication of these proceedings. Therefore, we shall make the order to show cause absolute and order Mr. Sulla personally to pay respondent \$10,500 pursuant to section 6673(a)(2), that he make payment by means of a certified check, cashier's check, or money order in favor of the Internal



Revenue Service, that such payment be delivered to respondent's counsel at the Office of Chief Counsel in Honolulu, Hawaii, not later than 30 days from the date the order is served, and that respondent report to the Court if such payment is not timely received.

IV. Conclusion

To reflect the foregoing,

An appropriate order will  
be issued and an order and decision  
will be entered.

NO. 26054

IN THE SUPREME COURT OF THE STATE OF HAWAII

---

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

PAUL J. SULLA, JR., Respondent.

---

(ODC 03-206-7806)

ORDER OF PUBLIC CENSURE

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the Office of Disciplinary Counsel's ex parte petition for issuance of reciprocal discipline notice under Rule 2.15(b) of the Rules of the Supreme Court of the State of Hawai'i ("RSCH"), the memorandum, affidavits, and exhibits thereto, Respondent Sulla's response to our September 16, 2003 notice and order, and the record, it appears: (1) that on May 30, 2003, Respondent Sulla was reprimanded by the United States Tax Court for professional misconduct in Brian G. Takaba v. Commissioner of Internal Revenue Service, (2) RSCH 2.15(c) requires this court to impose the identical discipline upon the attorney unless this court finds that upon the face of the record upon which the discipline is predicated it clearly appears (i) the Tax Court procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or (ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject, or (iii) the misconduct established warrants a substantially different discipline in this state, and (3) there is no basis in this record upon which to find a lack of due process, an infirmity of proof, or that such discipline is unwarranted in this jurisdiction. It further appears that a public censure by the supreme court is the equivalent discipline in Hawai'i. See RSCH 2.3(a). Therefore,

IT IS HEREBY ORDERED, pursuant to RSCH 2.15(c), that Respondent Paul J. Sulla, Jr. is Publicly Censured.

IT IS FURTHER ORDERED that Respondent Sulla shall pay all costs of this proceeding.

DATED: Honolulu, Hawai'i, December 16, 2003.

**Exhibit B**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 07-00354 HG
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BRUCE ROBERT TRAVIS,	)	
	)	
Defendant.	)	
_____	)	

**ORDER GRANTING THE GOVERNMENT'S MOTION  
TO DISQUALIFY ATTORNEY PAUL J. SULLA, JR.**

Before the Court is Plaintiff United States of America's ("the Government") Motion to Disqualify Attorney Paul J. Sulla, Jr. ("Motion"), filed August 22, 2007. Defendant Bruce Robert Travis ("Defendant") filed a memorandum in opposition to the Motion on September 4, 2007, and the Government filed its reply on September 4, 2007. This matter came on for hearing on September 6, 2007. Appearing on behalf of the Government was Clare Connors, Assistant United States Attorney, and appearing on behalf of Defendant, who was present, was Paul Sulla, Esq. After careful consideration of the Motion, supporting and opposing memoranda, and the arguments of counsel, the Government's Motion is HEREBY GRANTED for the reasons set forth below.

**BACKGROUND**

On July 26, 2007, Defendant, a real estate agent and broker, was indicted on one count of obstructing and impeding the

**Exhibit C**



administration of tax laws, in violation of 26 U.S.C. § 7212(a), and six counts of filing a false tax return, in violation of 26 U.S.C. § 7206(1). The indictment alleges, *inter alia*, that Defendant claimed deductions which he knew he was not entitled to claim in his tax returns for the years 1996, 1997, 1999, 2000, 2003, and 2004. During the course of an audit into Defendant's tax liability for the years 1996 through 2000, Defendant amended his returns to claim deductions equal to the amount of the adjusted gross income which he previously reported. He therefore claimed that he owed no income taxes for those years. The indictment also alleges that, in his 2003 and 2004 tax returns, Defendant falsely claimed charitable deductions for payments he made to the National Endowment for Financial Aid ("NEFA") and the Research Foundation, organizations affiliated with Royal Lamarr Hardy, a well known tax protestor. Defendant also allegedly tried to obstruct and impede the administration of the tax laws by obtaining a fraudulent arbitration judgment against the Internal Revenue Service ("IRS") and the IRS employee who performed his audit and by filing several civil actions against the IRS in the United States District Court for the District of Columbia. All of the complaints were subsequently dismissed.

In the instant Motion, the Government argues that the Court should disqualify Mr. Sulla from representing Defendant because Mr. Sulla is likely a necessary witness in the case. The

Government states that Defendant is one of Mr. Hardy's "clients" and that Mr. Sulla previously represented both Mr. Hardy and clients of the Research Foundation. According to the Government, Defendant consulted Mr. Hardy about how to subvert his tax obligations and Mr. Sulla facilitated, or was otherwise a part of, their relationship.

The Government alleges that Mr. Hardy worked with Defendant to obtain the fraudulent arbitration judgment and that Mr. Sulla assisted Defendant in using the fraudulent judgment in a proceeding before the Hawai'i Real Estate Commission ("the Commission"). Mr. Sulla represented Defendant when the Commission voted to deny his application for a real estate broker's license because of the IRS lien filed pursuant to the audit. In the course of this representation, Mr. Sulla sent a letter to the Commission which characterized the arbitration judgment as valid and challenged the enforceability of Title 26 of the Internal Revenue Code ("IRC"). Some of the documents that Mr. Sulla submitted as support for the letter came from Mr. Hardy's organizations and the letter's arguments are similar to those typically propounded by Mr. Hardy and his clients. The Government also argues that Mr. Sulla should have been aware that the challenge to the IRC's enforceability was frivolous because the Tax Court and the Supreme Court of Hawai'i previously reprimanded him for raising similar arguments. See Takaba v.



Comm'r of Internal Revenue, 119 T.C. 285 (2002). The Government therefore argues that Mr. Sulla will likely be a necessary witness on the issue whether Defendant wilfully violated the tax laws when he claimed he did not owe any personal income taxes for 1996 through 2000.

With regard to Defendant's 2003 and 2004 tax returns, the Government notes that Mr. Sulla transmitted them to the IRS and represented that he had convinced Defendant to comply with the tax laws. In the Government's view, based on his prior dealings with Mr. Hardy, Mr. Sulla should have known about the nature of the Research Foundation and the NEFA and should have realized that Defendant could not claim payments to those groups as deductible charitable donations. The Government states that it may call Mr. Sulla to testify on the issue whether Defendant knew that those deductions were improper. For these reasons, the Government argues that Mr. Sulla cannot represent Defendant pursuant to Rule 3.7 of the Hawai'i Rules of Professional Conduct ("HRPC").

In his memorandum in opposition, Defendant argues that Mr. Sulla only had a "sporadic relationship" with Mr. Hardy. [Mem. in Opp. at 2-3.] Mr. Sulla was not aware of Mr. Hardy's or the Research Foundation's tax programs, nor was he aware of Defendant's involvement with Mr. Hardy. Mr. Sulla denies taking part in Defendant's tax filings or in any of Defendant's

challenges to the IRS's authority, including obtaining the allegedly fraudulent arbitration judgment. In fact, Defendant claims that he has fully cooperated with the IRS since Mr. Sulla became involved in the tax collection matter. Defendant argues that Mr. Sulla's letter to the Commission did not challenge the enforceability of the IRC, but merely identified good faith questions that Defendant raised in the adjudication of his tax liability.

With regard to Takaba, Mr. Sulla did not present Takaba's tax protestor defense claims; he presented "a newly emerging § 861 Source Rule defense". [Mem. in Opp. at 6.] Mr. Sulla had not represented tax filers prior to that proceeding, nor had he been involved in any tax protestor activity. He now realizes raising that argument could have been construed as reckless at the time. Mr. Sulla asserts that Takaba has made him more aware of the consequences of challenging the IRS's tax collection authority. Defendant argues that, instead of being grounds for disqualification, Mr. Sulla's experience in Takaba makes him more competent to represent Defendant in the instant case.

Defendant argues that Mr. Sulla is not a necessary witness on any of the issues that the Government identified. The Government's claim that Mr. Sulla was involved in obtaining the arbitration judgment is merely speculative. Mr. Sulla stated in



a declaration that he was not involved in, and was not privy to, the relationship between Defendant and Mr. Hardy. Further, Defendant argues that there is no evidence that the arbitration awards were fraudulent. Defendant also asserts that Mr. Sulla's representation of him before the Commission was within the normal course of their attorney-client relationship and it should not disqualify Mr. Sulla from representing him in this case.

Mr. Sulla did not advocate tax protestor rhetoric to the Commission; the focus of his representation was to prevent the revocation of Defendant's real estate license by establishing that Defendant was contesting the amount of his tax liability in good faith. Mr. Sulla's letter to the Commission does not rise to the level of impeding tax collection or obstructing justice. Finally, although Mr. Sulla was acting as Defendant's attorney and assisted the IRS in procuring Defendant's 2003 and 2004 returns, he was not involved in their preparation.

In its reply, the Government reiterates many of the arguments it raised in the Motion. In addition, the Government argues that there is evidence that Defendant's arbitration judgments were invalid. The judgments were vacated twice by two different arbitrators before Mr. Sulla presented them to the Commission. Further, the IRS never participated in the arbitration. The Government notes that, in the memorandum in opposition, Defendant states that Mr. Sulla formed two limited



liability companies for him in 2004. The Government will present evidence that the purpose of one of the entities, Americorp International, LLC, was to hide Defendant's income from the IRS. Mr. Sulla will therefore be a necessary witness regarding the entity's formation. The Government also refutes Defendant's claim that he has cooperated with the IRS since retaining Mr. Sulla in this matter. Since then, Defendant filed two false tax returns and filed frivolous complaints in the United States District Court for the District of Columbia. The Government asserts that Mr. Sulla assisted Defendant in at least the first of those filings and that Mr. Sulla will be a necessary witness to establish the circumstances of those filings.

#### DISCUSSION

Criminal defendants have a constitutional right to hire counsel of their choice. See U.S. Const. amend VI. That right, however, is not absolute; "it may be abridged to serve some compelling purpose. A criminal defendant's exercise of this right cannot unduly hinder the fair, efficient and orderly administration of justice." United States v. Walters, 309 F.3d 589, 592 (9th Cir. 2002) (citations and quotation marks omitted).

Attorneys who practice in this district are required to comply with the HRPC. See Local Rule LR83.3. Rule 3.7(a) states that:

A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary

witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

Haw. R. Prof. Cond. 3.7(a). Allowing an attorney to continue as counsel of record when his representation violates Rule 3.7(a) would unduly hinder the fair administration of justice. This Court must therefore disqualify Mr. Sulla from representing Defendant if the representation would violate Rule 3.7(a).

Defendant is charged with violating 26 U.S.C. § 7212(a), attempting to interfere with administration of internal revenue laws, and § 7206(1), filing false tax returns. A person violates § 7212(a) when he

corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of [the IRC] . . . .

26 U.S.C. § 7212(a). In the present case, there is no allegation that Defendant used force or threats of force. In order to prove that Defendant acted "corruptly", the Government must establish that he acted with the intention of securing an unlawful benefit for himself or someone else. See United States v. Massey, 419



F.3d 1008, 1010 (9th Cir. 2005). The elements of a § 7206(1) violation are:

(1) the defendant made and subscribed a return, statement, or other document that was incorrect as to a material matter; (2) the return, statement, or other document subscribed by the defendant contained a written declaration that it was made under the penalties of perjury; (3) the defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and (4) the defendant falsely subscribed to the return, statement, or other document willfully, with the specific intent to violate the law.

United States v. Boulware, 384 F.3d 794, 810 (9th Cir. 2004) (citation omitted).

The Court acknowledges that the parties have given conflicting accounts of Mr. Sulla's knowledge of and involvement in Defendant's tax affairs. Even in light of this conflict, the Court finds that there is sufficient indication that Mr. Sulla will likely be a necessary witness at trial, particularly with regard to the issues related to Defendant's intent. These are contested issues which are not limited to the nature and value of the legal services Mr. Sulla rendered in this case. Further, Defendant has not established that Mr. Sulla's disqualification will work a substantial hardship on him. Insofar as none of the exceptions apply, this Court finds that Mr. Sulla is disqualified from representing Defendant in this case pursuant to HRPC Rule

3.7(a).<sup>1</sup>

**CONCLUSION**

On the basis of the foregoing, the Government's Motion to Disqualify Attorney Paul J. Sulla, Jr., filed August 22, 2007, is HEREBY GRANTED. The Court ORDERS Defendant to appear with new counsel at a status conference on September 9, 2007 at 2:00 p.m. before Magistrate Judge Kevin S.C. Chang.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, September 19, 2007.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States Magistrate Judge

**U.S.A. V. BRUCE ROBERT TRAVIS; CR. NO. 07-00354 HG; ORDER GRANTING THE GOVERNMENT'S MOTION TO DISQUALIFY ATTORNEY PAUL J. SULLA, JR.**

---

<sup>1</sup> In light of this Court's ruling, the Court declines to address the Government's alternate arguments that: 1) Mr. Sulla's representation may expose him to personal liability, which would create a conflict pursuant to HRPC Rule 1.7; and 2) if Defendant argues that he relied on Mr. Hardy's advice in carrying out his allegedly criminal conduct, Mr. Sulla's prior representation of Mr. Hardy may create a conflict under HRPC Rule 1.9.



ORIGINAL

FLORENCE T. NAKAKUNI #2286  
United States Attorney  
District of Hawaii

LESLIE E. OSBORNE, JR. #3740  
Chief, Fraud & Financial Crimes Section

CLARE CONNORS #7936  
Assistant U.S. Attorney  
Room 6-100, PJKK Federal Bldg.  
300 Ala Moana Boulevard  
Honolulu, HI 96850  
Telephone: 541-2850  
Facsimile: 541-2958  
E-mail: Clare.Connors@usdoj.gov

TIMOTHY J. STOCKWELL  
Special Attorney  
U.S. Department of Justice, Tax Division  
601 D Street, N.W. Room 7030  
Washington, D.C. 20004  
Telephone: (202) 514-5614  
Facsimile: (202) 514-9623  
Email: Timothy.J.Stockwell@usdoj.gov

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

ARTHUR LEE ONG,  
Defendant.

CR. NO. 09-00398 DAE

SUPERSEDING INDICTMENT

Count 1: 18 U.S.C. § 371  
Counts 2-8: 26 U.S.C. § 7201

SUPERSEDING INDICTMENT

**Exhibit D**

The Grand Jury charges that at all times relevant to this Superseding Indictment:

INTRODUCTORY ALLEGATIONS

1. The Defendant ARTHUR LEE ONG is a United States citizen and a resident of the State of Hawaii who owns and operates Thunder Bug, Inc., doing business as Magnum Firearms (Thunder Bug, Inc.), a subchapter-S Corporation. From at least in or about 1990 up to the date of this Superseding Indictment, Defendant ARTHUR LEE ONG earned income from Thunder Bug, Inc.'s sale of firearms and related products to federal, state, county, and military agencies, as well as to the general public.

2. R.L.H. was the founder of The Research Foundation, an organization through which he promoted the illegal nonpayment of federal income taxes. R.L.H., along with P.S., an attorney practicing in Hawaii and elsewhere, and others, assisted the Defendant with attempting to evade taxes.

3. Magnum Investments Trust (M.I.T.) was a nominee entity created by the Defendant, with the assistance of R.L.H., P.S., and others, which listed at various times T.B. and J.Y. as trustees and which was created to hide income and assets of the Defendant.

4. Charles Schwab account (ending #4720) held in the name of M.I.T. was an investment account over which the Defendant had signatory authority.



5. Aloha Ventures was a nominee entity created by the Defendant, with the assistance of R.L.H., P.S., and others, which listed at various times M.K. and B.T. as trustees and which was created to hide income and assets of the Defendant.

6. First Hawaiian Bank account (ending #9876) held in the name of Aloha Ventures was a checking account over which the Defendant had signatory authority.

7. Nahoa Enterprises was identified on federal tax returns filed by the Defendant on behalf of Aloha Ventures as a Hong Kong entity that was the beneficiary of Aloha Ventures.

COUNT 1

(Conspiracy to Defraud - 18 U.S.C. § 371)

The Grand Jury charges:

The Conspiracy

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.

2. From in or about 1989, the precise date being unknown to the Grand Jury, and continuing thereafter up to and including the date of the return of this Superseding Indictment, in the District of Hawaii and elsewhere, the Defendant ARTHUR LEE ONG (Defendant), and R.L.H., M.K., P.S., and others not charged in this Indictment, did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to defraud the United States by

deceitful and dishonest means for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service (I.R.S.) of the Treasury Department in the ascertainment, computation, assessment, and collection of revenue: to wit, individual income taxes.

Manner and Means

3. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

a. The Defendant met with R.L.H., P.S., and others for the purpose of devising ways to evade taxes.

b. The Defendant, with the assistance of R.L.H., P.S., and others, created M.I.T. and Aloha Ventures to help hide his assets and income.

c. The Defendant, with the assistance of R.L.H., P.S., and others, installed nominee trustees for M.I.T. and Aloha Ventures that acted at the direction of the Defendant.

d. The Defendant caused the transfer of funds from bank accounts in the name of Thunder Bug, Inc., doing business as Magnum Firearms (Thunder Bug, Inc.), to bank accounts in the name of M.I.T. and Aloha Ventures in an attempt to conceal his receipt of income from Thunder Bug, Inc.

e. The Defendant used funds deposited into bank accounts in the name of Thunder Bug, Inc., as well as funds he



transferred to bank accounts in the name of M.I.T. and Aloha Ventures, to pay for various personal expenses.

f. Beginning with calendar year 1994, the Defendant stopped filing individual income tax returns reporting to the federal government any income earned from any source, and ceased paying federal income taxes.

g. Beginning in the 1994 calendar year, the Defendant caused the filing of false corporate and trust tax returns on behalf of Thunder Bug, Inc., and his nominee entities to conceal his receipt of income.

Overt Acts

4. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the District of Hawaii and elsewhere:

5. On or about May 1, 1990, the Defendant signed a "Contract and Agreement of Trust" creating M.I.T.

6. On or about May 1, 1990, T.B. became the nominee trustee for M.I.T.

7. On or about May 1, 1990, the Defendant, with the assistance of R.L.H., P.S., and others, created Aloha Ventures.

8. On or about May 1, 1990, the Defendant conveyed three rental properties located in Hawaii from himself to Aloha Ventures.

9. On or about June 6, 1990, M.K., through his business entity Executive Trust, became the nominee trustee for Aloha Ventures.

10. On or about November 15, 1990, the Defendant signed a document purporting to make Aloha Ventures the beneficiary of M.I.T.

11. On or about the dates set forth below, the Defendant signed and caused to be filed with the I.R.S. the following false and fraudulent U.S. Income Tax Returns for an S Corporation, Forms 1120S, on behalf of Thunder Bug, Inc., that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.:

	Tax Year	Date Filed
a.	1994	8/29/95
b.	1995	8/30/96
c.	1996	9/22/97
d.	1997	9/17/98
e.	1998	12/7/99
f.	1999	12/26/00
g.	2000	11/8/01
h.	2001	5/5/03
i.	2002	7/27/03
j.	2003	9/21/04
k.	2004	10/24/05
l.	2005	2/22/07
m.	2006	4/1/2008



12. On or about the dates set forth below, the Defendant caused to be signed and filed with the I.R.S. the following U.S. Income Tax Returns for Estates and Trusts, Forms 1041, on behalf of M.I.T., that falsely represented to the I.R.S., among other things, that Aloha Ventures was the beneficiary of M.I.T.:

	Tax Year	Date Filed
a.	1995	8/30/96
b.	1996	10/20/97
c.	1997	11/16/98
d.	1998	12/27/99
e.	1999	6/11/07
f.	2000	6/11/07
g.	2001	6/11/07
h.	2002	6/11/07
i.	2003	6/12/07

13. On or about the dates set forth below, the Defendant caused to be signed and filed with the I.R.S. the following U.S. Income Tax Returns for Estates and Trusts, Forms 1041, on behalf of Aloha Ventures, that falsely represented to the I.R.S., among other things, that Nahoa Enterprises was the beneficiary of Aloha Ventures:

	Tax Year	Date Filed
a.	1993	10/19/94
b.	1994	8/28/95

	Tax Year	Date Filed
c.	1995	9/4/96
d.	1996	10/21/97
e.	1997	11/15/98

14. On or about the dates set forth below, the Defendant transferred funds from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859) into bank accounts in the names of M.I.T. and Aloha Ventures as follows:

	Date	Amount	Nominee
a.	12/30/99	\$10,000	M.I.T.
b.	10/31/01	\$50,000	M.I.T.
c.	4/18/02	\$30,000	Aloha Ventures
d.	1/9/03	\$50,000	M.I.T.
e.	5/27/03	\$50,000	M.I.T.
f.	3/9/04	\$100,000	M.I.T.
g.	6/3/04	\$120,000	M.I.T.
h.	9/28/04	\$125,000	M.I.T.
i.	10/26/04	\$100,000	M.I.T.
j.	1/31/05	\$10,000	Aloha Ventures
k.	7/27/05	\$50,000	M.I.T.
l.	8/10/05	\$50,000	M.I.T.
m.	12/20/05	\$20,000	Aloha Ventures

15. On or about the dates set forth below, the Defendant transferred funds from M.I.T.'s Charles Schwab account (ending #4720) to Aloha Venture's First Hawaiian Bank account (ending #9876):

	Date	Amount
a.	11/26/01	\$30,000



	Date	Amount
b.	4/12/02	\$20,000
c.	2/11/04	\$5,000
d.	10/29/04	\$20,000
e.	1/11/05	\$20,000
f.	6/27/05	\$20,000
g.	10/17/05	\$30,000

16. On or about the dates set forth below, the Defendant obtained funds for his benefit from bank accounts in the names of M.I.T. and Aloha Ventures, as follows:

	Date	Amount	Nominee Account
a.	11/2/00	\$20,000	Aloha Ventures
b.	8/31/01	\$50,000	Aloha Ventures
c.	2/19/02	\$30,000	Aloha Ventures
d.	9/2/03	\$20,000	M.I.T.
e.	6/29/04	\$9,000	Aloha Ventures
f.	7/29/05	\$25,000	M.I.T.
g.	8/17/05	\$40,500	M.I.T.
h.	12/20/05	\$5,000	Aloha Ventures

17. On or about August 10, 2005, the Defendant signed check #231 drawn on M.I.T.'s Charles Schwab account (ending #4720) made payable to Title Guaranty Escrow Services in the amount of \$40,500 for his benefit.

18. On or about August 11, 2006, the Defendant withdrew \$350,000 from Thunder Bug, Inc.'s account (ending #1881) for his benefit.

19. On or about August 21, 2006, the Defendant signed check #23006 drawn on Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859) made payable to Title Guaranty in the amount of \$129,090 for his benefit.

In violation of Title 18, United States Code, Section 371.

COUNT 2

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.

2. During the calendar year 2000, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and received taxable income in the sum of approximately \$37,400; that upon said taxable income there was owing to the United States of America an income tax of approximately \$4,400; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2000 and continuing up to and including June 2007, in the District of Hawaii, did willfully attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 16, 2001 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax, and by committing or causing to be committed the following affirmative acts of evasion, among others:



a. Depositing income into bank accounts in the names of M.I.T. and Aloha Ventures to conceal the Defendant's receipt of such income, including a deposit into M.I.T.'s Charles Schwab account (ending #4720) on or about April 17, 2000, in the amount of \$3,000, from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859).

b. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated March 6, 2000, to Aloha Ventures in the amount of \$800.

c. Causing to be filed with the I.R.S. on or about November 8, 2001, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2000, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.

d. Causing to be filed with the I.R.S. on or about June 11, 2007, a U.S. Income Tax Return for Estates and Trusts, Form 1041, on behalf of M.I.T. for calendar year 2000 that falsely represented to the I.R.S., among other things, that Aloha Ventures was the beneficiary of M.I.T.

In violation of Title 26, United States Code, Section 7201.

COUNT 3

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.

2. During the calendar year 2001, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and received taxable income in the sum of approximately \$260,500; that upon said taxable income there was owing to the United States of America an income tax of approximately \$77,100; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2001 and continuing up to and including June 2007, in the District of Hawaii, did willfully attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 15, 2002 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax, and by committing or causing to be committed the following affirmative acts of evasion, among others:

a. Depositing income into bank accounts in the names of M.I.T. and Aloha Ventures to conceal the Defendant's receipt of such income, including a deposit into M.I.T.'s Charles Schwab account (ending #4720) on or about October 31, 2001, in



the amount of \$50,000, from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859).

b. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated October 27, 2001, to Aloha Ventures in the amount of \$400.

c. Causing to be filed with the I.R.S. on or about May 5, 2003, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2001, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.

d. Causing to be filed with the I.R.S. on or about June 11, 2007, a U.S. Income Tax Return for Estates and Trusts, Form 1041, on behalf of M.I.T. for calendar year 2001, that falsely represented to the I.R.S., among other things, that Aloha Ventures was the beneficiary of M.I.T.

In violation of Title 26, United States Code, Section 7201.

COUNT 4

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.

2. During the calendar year 2002, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and

received taxable income in the sum of approximately \$189,200; that upon said taxable income there was owing to the United States of America an income tax of approximately \$50,500; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2002 and continuing up to and including June 2007, in the District of Hawaii, did willfully attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 15, 2003 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax, and by committing or causing to be committed the following affirmative acts of evasion, among others:

a. Depositing income into bank accounts in the names of M.I.T. and Aloha Ventures to conceal the Defendant's receipt of such income, including a deposit into Aloha Venture's First Hawaiian Bank account (ending #9876) on or about April 18, 2002, in the amount of \$30,000, from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859).

b. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated November 8, 2002, to Aloha Ventures in the amount of \$400.



c. Causing to be filed with the I.R.S. on or about July 27, 2003, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2002, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.

d. Causing to be filed with the I.R.S. on or about June 11, 2007, a U.S. Income Tax Return for Estates and Trusts, Form 1041, on behalf of M.I.T. for calendar year 2002, that falsely represented to the I.R.S., among other things, that Aloha Ventures was the beneficiary of M.I.T.

In violation of Title 26, United States Code, Section 7201.

COUNT 5

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.
2. During the calendar year 2003, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and received taxable income in the sum of approximately \$187,300; that upon said taxable income there was owing to the United States of America an income tax of approximately \$46,900; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2003 and continuing up to and including June 2007, in the District of Hawaii, did willfully

attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 15, 2004 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax, and by committing or causing to be committed the following affirmative acts of evasion, among others:

a. Depositing income into bank accounts in the names of M.I.T. and Aloha Ventures to conceal the Defendant's receipt of such income, including a deposit into M.I.T.'s Charles Schwab account (ending #4720) on or about January 9, 2003, in the amount of \$50,000, from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859).

b. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated April 28, 2003, to Aloha Ventures in the amount of \$400.

c. Causing to be filed with the I.R.S. on or about September 21, 2004, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2003, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.



d. Causing to be filed with the I.R.S. on or about June 12, 2007, a U.S. Income Tax Return for Estates and Trusts, Form 1041, on behalf of M.I.T. for calendar year 2003, that falsely represented to the I.R.S., among other things, that Aloha Ventures was the beneficiary of M.I.T.

In violation of Title 26, United States Code, Section 7201.

COUNT 6

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.

2. During the calendar year 2004, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and received taxable income in the sum of approximately \$281,900; that upon said taxable income there was owing to the United States of America an income tax of approximately \$77,600; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2004 and continuing up to and including October 2005, in the District of Hawaii, did willfully attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 15, 2005 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax and, and by committing or causing to be

committed the following affirmative acts of evasion, among others:

a. Depositing income into bank accounts in the names of M.I.T. and Aloha Ventures to conceal the Defendant's receipt of such income, including a deposit into M.I.T.'s Charles Schwab account (ending #4720) on or about September 28, 2004, in the amount of \$125,000, from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859).

b. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated June 28, 2004, to Aloha Ventures in the amount of \$2,000.

c. Causing to be filed with the I.R.S. on or about October 24, 2005, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2004, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.

In violation of Title 26, United States Code, Section 7201.

COUNT 7

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.

2. During the calendar year 2005, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and



received taxable income in the sum of approximately \$308,600; that upon said taxable income there was owing to the United States of America an income tax of approximately \$85,900; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2005 and continuing up to and including February 2007, in the District of Hawaii, did willfully attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 17, 2006 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax, and by committing or causing to be committed the following affirmative acts of evasion, among others:

a. Depositing income into bank accounts in the names of M.I.T. and Aloha Ventures to conceal the Defendant's receipt of such income, including a deposit into M.I.T.'s Charles Schwab account (ending #4720) on or about July 27, 2005, in the amount of \$50,000, from Thunder Bug, Inc.'s Central Pacific Bank account (ending #8859).

b. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated June 30, 2005, to Aloha Ventures in the amount of \$2,000.

c. Causing to be filed with the I.R.S. on or about February 22, 2007, a false and fraudulent U.S. Income Tax

Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2005, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.

In violation of Title 26, United States Code, Section 7201.

COUNT 8

The Grand Jury further charges:

1. The Grand Jury re-alleges and incorporates paragraphs 1 to 7 of the Introductory Allegations.
2. During the calendar year 2006, the Defendant, ARTHUR LEE ONG, a resident of the State of Hawaii, had and received taxable income in the sum of approximately \$964,100; that upon said taxable income there was owing to the United States of America an income tax of approximately \$313,200; that well knowing and believing the foregoing facts, the Defendant, beginning in or about January 2006 and continuing up to and including April 2008, in the District of Hawaii, did willfully attempt to evade and defeat the said income tax due and owing by him to the United States of America for said calendar year by failing to make a federal individual income tax return on or before April 16, 2007 as required by law to any proper officer of the Internal Revenue Service (I.R.S.), by failing to pay to the I.R.S. said income tax, and by committing or causing to be committed the following affirmative acts of evasion, among others:



a. Causing rental properties to be titled in the name of Aloha Ventures and rental payments to be made to Aloha Ventures, including a check dated March 29, 2006, to Aloha Ventures in the amount of \$4,000.

b. Causing to be filed with the I.R.S. on or about April 1, 2008, a false and fraudulent U.S. Income Tax Return for an S Corporation, Form 1120S, on behalf of Thunder Bug, Inc., for calendar year 2006, that falsely represented to the I.R.S., among other things, that M.I.T. was the 100% shareholder of Thunder Bug, Inc.

In violation of Title 26, United States Code, Section 7201.

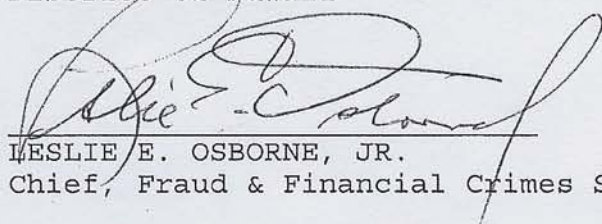
DATED: July 28, 2010, at Honolulu, Hawaii.

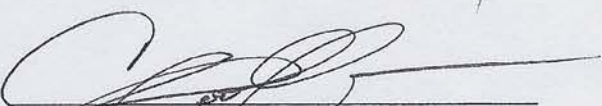
A TRUE BILL

/s/ Foreperson

\_\_\_\_\_  
FOREPERSON, GRAND JURY

FLORENCE T. NAKAKUNI  
United States Attorney  
District of Hawaii

  
\_\_\_\_\_  
LESLIE E. OSBORNE, JR.  
Chief, Fraud & Financial Crimes Section

  
\_\_\_\_\_  
CLARE CONNORS  
Assistant U.S. Attorney  
TIMOTHY J. STOCKWELL  
Special Attorney  
Tax Division  
U.S. Department of Justice

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 09-00398 LEK
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ARTHUR LEE ONG,	)	
	)	
Defendant.	)	
_____	)	

**ORDER DENYING DEFENDANT ARTHUR LEE ONG'S  
MOTION FOR JUDGMENT OF ACQUITTAL**

Before the Court is Defendant Arthur Lee Ong's ("Defendant") Motion for Judgment of Acquittal ("Motion"), filed on November 15, 2011. The United States of America ("Government") filed its memorandum in opposition on November 29, 2011, and Defendant filed his reply on December 12, 2011. The Court thereafter took the matter under advisement.

On November 7, 2011, a jury found Defendant guilty of Counts 1 through 4 and 6 through 8 in the July 28, 2010 Superseding Indictment, charging Defendant with income tax evasion. Defendant moves the Court for judgment of acquittal on Count 1, conspiracy under 18 U.S.C. § 371,<sup>1</sup> arguing that there

---

<sup>1</sup> Count 1 of the Superseding Indictment filed on July 29, 2010 alleges, in pertinent part, that:

From in or about 1989, the precise date being unknown to the Grand jury, and continuing thereafter up to and including the date of

(continued...)

**Exhibit E**

was insufficient evidence pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure. After careful consideration of the Motion, supporting and opposing memoranda, and applicable law, the Court HEREBY DENIES the Motion without a hearing, finding Defendant's conviction supported by the evidence.

### **DISCUSSION**

#### **I. Rule 29 Standard**

Rule 29 requires this Court to grant a motion for judgment of acquittal "if the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). Defendant's Motion is timely under Rule 29(c)(1). On a motion for judgment of acquittal under Rule 29, this Court must view the evidence in the light most favorable to the Government, deciding whether a

---

<sup>1</sup>(...continued)

the return of this Superseding Indictment, in the District of Hawaii and elsewhere, the Defendant ARTHUR LEE ONG (Defendant), and R.L.H., M.K., P.S., and others not charged in this Indictment, did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to defraud the United States by deceitful and dishonest means for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service (I.R.S.) Of the Treasury Department in the ascertainment, computation, assessment, and collection of revenue; to wit, individual income taxes.

[Superseding Indictment at ¶ 2.]

rational jury could have found Defendant guilty beyond a reasonable doubt. See United States v. Hazeem, 679 F.2d 770, 772 (9th Cir. 1982) (in deciding a Rule 29 motion, the "trial court must determine whether, viewing the evidence in the light most favorable to the government, the jury could reasonably find the defendant guilty beyond a reasonable doubt"). Accord Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("when deciding a motion based on alleged insufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"); United States v. Disla, 805 F.2d 1340, 1348 (9th Cir. 1986) ("A conviction is supported by the evidence if, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences, there was relevant evidence from which the jury could reasonably have found the defendant guilty beyond a reasonable doubt.").

## **II. Sufficiency of the Evidence**

Defendant asserts that the Superseding Indictment charges that he, Royal LaMarr Hardy, Paul Sulla, Michael Kailing, and others engaged in an elaborate scheme to defraud the Government through the non-filing of Defendant's income taxes. [Mem. in Supp. of Motion at 1.] He maintains that all that the Government proved during trial was that Defendant met with

Mr. Hardy, and that meeting and discussing matters of common interest is insufficient under the law to infer guilt.

Mr. Hardy, Mr. Sulla, and Mr. Kailing were never called as witnesses. According to Defendant, the Government failed to establish that any agreement ever existed between Defendant, Mr. Hardy, Mr. Sulla, Mr. Kailing or Thomas Brennan. [Id. at 3-4.]

On the other hand, the Government submits that it was required to prove that Defendant conspired with at least one other person, and not with all of the co-conspirators alleged in the indictment, and that Defendant's own testimony at trial established that, on Mr. Hardy's referral, Defendant retained Mr. Sulla to create various trusts in order to reduce his taxes. The Government further argues Defendant met Mr. Sulla in Mr. Hardy's office, used Mr. Hardy's secretary to notarize Defendant's trust documents prepared by Mr. Sulla, and met with Mr. Hardy, along with Mr. Sulla and Mr. Brennan. As to conspiring with Mr. Kailing, the Government points out that he served as Defendant's nominee trustee and that Defendant knew Mr. Kaling was involved in tax fraud because he was called to testify at Mr. Kailing's criminal trial in 2005.

During the Government's case, it presented evidence that Defendant conspired with others to evade his own personal income taxes through the use of sham trusts set up with the

assistance of Mr. Sulla, his attorney. There was testimony that Defendant attended Mr. Hardy's seminar on voluntary tax compliance and was motivated to eliminate his tax liability. The evidence showed that Mr. Hardy referred Defendant to Mr. Sulla, who was involved with Mr. Hardy's programs. Mr. Sulla set up Defendant's trust system. In an opinion letter to Defendant on May 6, 1990, Mr. Sulla stated: "Secondary to this estate plan planning concern, was your objective to reduce your income taxes." [Gov't Exh. 24GG, at 1.] It states: "Your trusts, properly established, should be able to withstand an attack by troublesome litigants, creditors, or even taxing authorities. . . ." [Id. at 2.] The witness testimony and documentary evidence presented at trial support the conclusion of the sham nature of the trust system set up by Mr. Sulla, and the finding of Defendant's knowledge thereof.

The government may prove a conspiracy by circumstantial evidence that the conspirators acted together in furtherance of a common goal. United States v. Kiriki, 756 F.2d 1449, 1453 (9th Cir. 1985). The circumstantial evidence establishes that Mr. Hardy referred Defendant to Mr. Sulla to help him evade taxes, that Defendant knew the trust system established with Mr. Sulla was a sham, and that he did not rely on Mr. Sulla's advice in good faith.

Based on the above evidence, a rational jury could have

found beyond a reasonable doubt that Defendant conspired to defraud the Government. The Court finds there was sufficient evidence to support the jury's finding of guilt on Count I. The Motion for judgment of acquittal on the basis of insufficient evidence is DENIED.

**CONCLUSION**

On the basis of the foregoing, Defendant Arthur Lee Ong's Motion for Judgment of Acquittal, filed November 15, 2011 is HEREBY DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, March 6, 2012.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**USA V. ARTHUR LEE ONG; CR. NO. 09-00398 LEK; ORDER DENYING  
DEFENDANT ARTHUR LEE ONG'S MOTION FOR JUDGMENT OF ACQUITTAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

JASON HESTER,	)	CIVIL NO. 14-00413 JMS-RLP
	)	
Plaintiff,	)	ORDER GRANTING IN PART AND
	)	DENYING IN PART DEFENDANTS
vs.	)	LEONARD G. HOROWITZ AND SHERRI
	)	KANE'S MOTION TO DISQUALIFY CO-
LEONARD G. HOROWITZ, ET AL.,	)	COUNSEL PAUL J. SULLA, JR. AND
	)	PHILLIP L. CAREY FROM
Defendants.	)	REPRESENTING SHAM PLAINTIFF JASON
	)	HESTER

---

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS  
LEONARD G. HOROWITZ AND SHERRI KANE'S MOTION TO  
DISQUALIFY CO-COUNSEL PAUL J. SULLA, JR. AND PHILLIP L.  
CAREY FROM REPRESENTING SHAM PLAINTIFF JASON HESTER

Before the Court is Defendants Leonard G. Horowitz and Sherri Kane's Motion to Disqualify Co-counsel Paul J. Sulla, Jr. and Phillip L. Carey from Representing Sham Plaintiff Jason Hester, filed on November 24, 2014 ("Motion"). See ECF No. 33. Plaintiff filed his Opposition to the Motion on December 8, 2014. ECF No. 36. Defendant Horowitz and Defendant Kane did not file a Reply. The Court found this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii. ECF No. 34. After careful consideration of the submissions of the parties and the relevant legal authority, the Court GRANTS IN PART and DENIES IN PART the Motion.

BACKGROUND

Plaintiff filed his Complaint to Quiet Title and For Summary Possession and Ejectment on August 11, 2014, in the

**Exhibit F**



Circuit Court of the Third Circuit, State of Hawaii. ECF Nos. 1-7, 25-2. Defendant Horowitz and Defendant Kane removed this action to federal court on September 12, 2014. ECF No. 1.

This action relates to certain real property located at 13-3775 Kalapana Road, Pahoa, Hawaii ("subject property"). According to Plaintiff's Complaint, Defendant The Royal Bloodline of David ("TRBD")<sup>1</sup> acquired title to the subject property from Loren Lee, a.k.a. Cecil L. Lee, in 2004, secured by a note and mortgage in the amount of \$350,000. ECF No. 25-2 ¶ 13. The note and mortgage were signed by Defendant Horowitz individually and as the "overseer" of Defendant TRBD. ECF No. 25-2 at 28, 42. Plaintiff alleges that the term of the note and mortgage expired on January 2009, with an outstanding balance still due and owing to Mr. Lee. Id. ¶ 14. In May 2009, Mr. Lee assigned his interest in the note and mortgage to himself as Overseer of the Office of the Overseer, a Corporate Sole and his Successor Over/For the Popular Assembly of Revitalize, a Hawaii corporate sole ("Overseer of Revitalize"). Id. ¶ 15. Plaintiff alleges that he succeeded Mr. Lee as Overseer of Revitalize when Mr. Lee passed away on June 27, 2009. Id. ¶ 16.

Plaintiff alleges that Defendant TRBD thereafter defaulted in the payments on the note and mortgage and Defendant Horowitz, as "guarantor," also failed to make the delinquent

---

<sup>1</sup> Default was entered against Defendant TRBD on September 24, 2014. ECF No. 11.

remaining payments under the note and mortgage. Id. ¶ 17. Plaintiff alleges that Notice of Mortgagee's Non-Judicial Foreclosure Under Power of Sale was served on Defendant TRBD and Defendant Horowitz in March 2010. Id. Plaintiff alleges that the foreclosure sale occurred on April 20, 2010, at which time the Overseer of Revitalize executed a quitclaim deed to the highest bidder, also the Overseer of Revitalize. Id. ¶ 18. Plaintiff obtained ownership of the subject property through a quitclaim deed from the Overseer of Revitalize to Plaintiff in June 2011. Id. ¶ 19.

Plaintiff alleges that on June 28, 2012, Defendant TRBD transferred an alleged interest in the subject property to Defendant Horowitz and Defendant Kane through a quitclaim deed. Id. ¶ 20. Plaintiff alleges that Defendant Horowitz and Defendant Kane executed a lease to Defendant Medical Veritas International, Inc.<sup>2</sup> in 2013 purporting to grant the right to use the subject property. Id. ¶¶ 22-23. Plaintiff alleges that Defendant Horowitz, Defendant Kane, and Defendant Medical Veritas International, Inc. are still occupying the subject property without Plaintiff's consent or permission and continue to unlawfully withhold possession of the subject property against Plaintiff's rights. Id. ¶ 24. Plaintiff alleges that a process server posted written notice to vacate on the subject property,

---

<sup>2</sup> Default was entered against Defendant Medical Veritas International, Inc. on September 24, 2014. ECF No. 11.

but Defendants are still in possession of the subject property. Id. ¶ 25. Plaintiff asserts claims for quiet title, tenancy by sufferance, and trespass. Id. ¶¶ 28-36.

For purposes of the present Motion, it is relevant to note that Mr. Sulla recorded the assignment of the note and mortgage from Mr. Lee to Mr. Lee as Overseer of Revitalize in 2009. ECF No. 25-2 at 47. Mr. Sulla also executed the Mortgagee's Affidavit of Foreclosure Under Power of Sale, filed with the State of Hawaii Bureau of Conveyances on May 11, 2010. See ECF No. 25-2 at 19-22. In that affidavit, Mr. Sulla states that he provided the required notices, conducted the foreclosure sale of the subject property to Plaintiff as "Overseer of The Office of Overseer for \$175,00.000," and attests to the fact that at the time of sale the default remained uncured. Id. at 20-21; see also id. at 53 (letter from Mr. Sulla to Defendant Horowitz regarding the foreclosure sale). Mr. Sulla recorded the quitclaim deed in May 2010 following the foreclosure sale between the Overseer of Revitalize to the Overseer of Revitalize. Id. at 74. Finally, Mr. Sulla recorded the quitclaim deed in June 2011 between the Overseer of Revitalize and Plaintiff. Id. at 81.

In their Answer to the Complaint, Defendant Horowitz and Defendant Kane assert several affirmative defenses including that the foreclosure sale was conducted fraudulently and that Plaintiff lacks standing to bring this action. See ECF No. 25-6 at 10-11. In their "First Amended Counter Complaint," Defendant

Horowitz and Defendant Kane assert twenty-nine counterclaims: slander of title, quiet title, unfair and deceptive acts and practices, malicious prosecution in criminal contempt, abuse of process tort, conversion in conspiracy to deprive, tortious interference with consortium, tortious interference with prospective business, breaches of two contracts, breach of duty to protect/negligence, breach of standard of care/malpractice, trespass to chattels, defamation, criminal negligence, gross negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, fraud and/or misrepresentation, comparative negligence, secondary liability and/or vicarious liability, Racketeer Influenced and Corrupt Organization Act violations, mail fraud, treason, sedition, and conspiracy to interfere with civil rights. See ECF No. 10.<sup>3</sup>

Defendant Horowitz and Defendant Kane allege that Mr. Sulla and others, including Plaintiff, unlawfully foreclosed on the subject property and unlawfully attempted to evict Defendant Horowitz and Defendant Kane. See id. at 14-20. Defendant Horowitz and Defendant Kane allege that they bought the subject

---

<sup>3</sup> Plaintiff filed a motion to dismiss the counterclaims on October 21, 2014. See ECF No. 17. Defendant Horowitz and Defendant Kane filed an opposition to that motion on November 12, 2014. ECF No. 30. The motion to dismiss the counterclaims is pending before United States District Judge J. Michael Seabright, who ordered that the court would not address the motion to dismiss the counterclaims until after the present Motion to Disqualify is decided. See ECF No. 37.



property in 2003 from Mr. Lee. Id. at 16. Defendant Horowitz and Defendant Kane allege that Defendant Horowitz was involved in state court litigation with Mr. Lee from 2005 to 2008 regarding the subject property, and that Defendant Horowitz was ordered by the state court to make a final mortgage payment to Mr. Lee. Id. at 16-17. Defendant Horowitz and Defendant Kane allege that Defendant Horowitz made that final mortgage payment to Mr. Lee, but Mr. Lee and Mr. Sulla repeatedly refused to release the mortgage. Id. at 17.

Defendant Horowitz and Defendant Kane allege that Mr. Sulla "schemed" with Mr. Lee to establish a "sham church" and transferred the mortgage for the subject property, which they allege was paid off, to that church in 2009. Id. at 17. Defendant Horowitz and Defendant Kane allege that Mr. Sulla then conducted an illegal nonjudicial foreclosure sale of the subject property in 2010. Id. at 18-19. Defendant Horowitz and Defendant Kane allege that Mr. Sulla then brought two improper ejectment actions against them in state court. Id. at 30.

Defendant Horowitz and Defendant Kane allege that Mr. Sulla issued Plaintiff a \$50,000 mortgage encumbering the subject property on June 9, 2011, with "Paul J. Sulla Jr. AAL, A Law Corporation," as the lender. Id. at 20; ECF No. 10-30. Defendant Horowitz and Defendant Kane allege that Mr. Sulla was responsible for many of the documents related to the subject



property, including the assignment of Defendants' mortgage to the "sham church" and the quitclaim deeds issued and filed in 2010 and 2011. Id. at 17-19. Defendant Horowitz and Defendant Kane also allege that Mr. Sulla conspired with others, including Plaintiff, to engage in assault, extortion, defamation, trespass, forgery, and theft against Defendant Horowitz and Defendant Kane. Id. at 21-23. Defendant Horowitz and Defendant Kane state in their First Amended Counter Complaint that Mr. Sulla "will be a necessary witness at trial." ECF No. 10 at 13.

In the present Motion, Defendant Horowitz and Defendant Kane ask the Court to disqualify Mr. Sulla and Mr. Carey from representing Plaintiff in this action. ECF No. 33.

#### DISCUSSION

Motions for disqualification of counsel are subject to strict judicial scrutiny because of the potential for abuse. Optyl Eyewear Fashion Int'l Corp. v. Style Cos., 760 F.2d 1045, 1050 (9th Cir. 1985). Therefore, the party seeking disqualification "carries a heavy burden and must satisfy a high standard of proof." White v. Time Warner Cable, Civ. No. 12-00406 JMS-BMK, 2013 WL 772848, at \*1 (D. Haw. Feb. 27, 2013) (citation omitted). A motion for disqualification must be supported by substantial evidence and should not be decided on the basis of general and conclusory allegations. Id.

As an initial matter, the Court DENIES Defendant Horowitz and Defendant Kane's request to disqualify Mr. Carey from representing Plaintiff. See ECF No. 33. Mr. Carey has not entered an appearance as an attorney of record for Plaintiff in this action. To the extent Defendant Horowitz and Defendant Kane are asking the Court to prohibit Mr. Carey from entering an appearance in the future, such request is DENIED.

Regarding Mr. Sulla, Defendant Horowitz and Defendant Kane argue that Mr. Sulla should be disqualified on three bases: 1) because there is a conflict of interest; 2) because he engaged in criminal and fraudulent acts; and 3) because he is a necessary witness at trial. See ECF No. 33.

First, the Court rejects Defendant Horowitz and Defendant Kane's arguments regarding conflict of interest. Although not entirely clear from the Motion, it appears that Defendant Horowitz and Defendant Kane contend that Mr. Sulla should be prohibited from representing Plaintiff in this action because he represented Plaintiff in other state court actions related to the subject property. See ECF No. 33 at 11-12. Hawaii Rule of Professional Conduct 1.7 addresses conflicts of interest arising from representing clients with opposing interests. Haw. R. Prof. Cond. 1.7. There is no indication that Mr. Sulla is attempting to represent another client with opposing interests. To the extent Defendant Horowitz and Defendant Kane

are arguing that Mr. Sulla should be disqualified because it appears that he hold a financial interest in the subject property, see ECF No. 33-4, such a business transaction with a client is governed by Hawaii Rule of Professional Conduct 1.8(a) and is permissible so long as certain procedures were followed between Mr. Sulla and Plaintiff. See Haw. R. Prof. Cond. 1.8(a).

Second, Defendant Horowitz and Defendant Kane have failed to demonstrate that disqualification is appropriate based on Mr. Sulla's alleged criminal and fraudulent activity. Although Defendant Horowitz and Defendant Kane have made allegations regarding Mr. Sulla's conduct, such allegations are insufficient to satisfy the substantial evidence standard applicable to requests for disqualification. There has been no finding by any court that Mr. Sulla has acted inappropriately or illegally related to the foreclosure of the subject property.

Third, Defendant Horowitz and Defendant Kane argue that Mr. Sulla is a necessary witness at trial. ECF No. 33 at 7-8. Hawaii Rules of Professional Conduct Rule 3.7 provides:

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case;  
or

(3) disqualification of the lawyer would work substantial hardship on the client.

Haw. R. Prof. Cond. 3.7. Rule 3.7(a) prohibits lawyers from acting as both advocate and witness because "[i]t may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof." Haw. R. Prof. Cond. 3.7, cmt. 2. Additionally, the comments to Rule 3.7 state that "a balancing is required between the interests of the client and those of the opposing party." Haw. R. Prof. Cond. 3.7, cmt. 4. In balancing these interests, the Court may consider "the nature of the case, the importance [] of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses." Id.

Defendant Horowitz and Defendant Kane contend that Mr. Sulla will be a necessary witness regarding "a) [the] securities instruments; b) [his] administration of his 'religious' racketeering enterprise; c) his conflicting interests in acquiring the Property; d) his commission of the illegal non-judicial foreclosure; e) prima facie crime featuring fraudulent transfers of the Mortgage and Promissory Notes; f) slandering Title; g) subsequently issuing [Plaintiff] an illegal mortgage 'loan' contract [] evidencing [Mr.] Sulla's concealed surety; h) malpractices in the Third Circuit Court as a concealed collection agent for extorting [Defendant Horowitz] to pay false debt without leave of the courts; and i) his and [Plaintiff's]

malicious and extortionate prosecutions damaging the Defendants." ECF No. 33 at 8.

Based on the pleadings in this case and the arguments made by the parties, the Court finds that Mr. Sulla will likely be a necessary witness in this case. In proving Plaintiff's quiet title claim against Defendants, Plaintiff will have to demonstrate that he is the rightful owner of the subject property. Defendant Horowitz and Defendant Kane assert that they have rightful title because Defendant Horowitz satisfied the note and mortgage to Mr. Lee. As noted above, Mr. Sulla executed the Mortgagee's Affidavit of Foreclosure Under Power of Sale, which includes Mr. Sulla attesting to the fact that at the time of foreclosure sale the default remained uncured. Mr. Sulla's testimony is likely to conflict with the testimony of Defendants' witnesses. As noted above, Mr. Lee passed away in 2009, so it is unlikely that there is other evidence available regarding the payment of the note. The Court rejects Plaintiff's argument that Mr. Sulla's testimony on these subjects falls under the exception listed in Rule 3.7(a)(2). See ECF No. 36 at 6. Testimony regarding whether Defendants' mortgage on the subject property was in default does not relate to the "nature and value of legal services" rendered in this case. See Haw. R. Prof. Cond. 3.7(a)(2).

In addition to finding that Mr. Sulla is a necessary witness regarding Plaintiff's quiet title claim, the Court also



finds that Mr. Sulla is a necessary witness regarding several of Defendant Horowitz and Defendant Kane's counterclaims. Plaintiff did not address the substance of the counterclaims in his Opposition. See ECF No. 36 at 3. Although the counterclaims are subject to a pending motion to dismiss, they have not been dismissed from this case to date. Defendant Horowitz and Defendant Kane's counterclaims raise several disputed material issues related to the assignment of Defendant Horowitz's mortgage from Mr. Lee to the Overseer of Revitalize and the transfer of the subject property to Plaintiff. Additionally, Defendant Horowitz and Defendant Kane allege that Plaintiff conspired with Mr. Sulla and others to engage in assault, extortion, defamation, trespass, forgery, and theft against them. Mr. Sulla would be a necessary witness to testify regarding the substance of these claims and his testimony is likely to conflict with the testimony of Defendants' witnesses on these claims.

Defendant Horowitz and Defendant Kane may be prejudiced if Mr. Sulla is permitted to remain as counsel for Plaintiff because Mr. Sulla's status as counsel and as witness may unduly complicate discovery and his dual role may create an improper inference that his testimony is more credible than that of Defendants' witnesses. Plaintiff argues that disqualification of Mr. Sulla would create substantial hardship for Plaintiff because Plaintiff would be unable to afford new counsel and would be unable to represent himself adequately if he proceeded pro se.

ECF No. 36 at 6-7. Although the Court is sympathetic to the fact that Plaintiff may have difficulty securing new counsel, the Court finds that the potential prejudice to Plaintiff does not outweigh the prejudice to Defendants. This case is in its early stages, giving Plaintiff ample time to find substitute counsel or choose to proceed pro se. Defendant Horowitz and Defendant Kane's request to disqualify Mr. Sulla is GRANTED.

CONCLUSION

In accordance with the foregoing, the Court GRANTS IN PART AND DENIES IN PART Defendants Leonard G. Horowitz and Sherri Kane's Motion to Disqualify Co-counsel Paul J. Sulla, Jr. and Phillip L. Carey from Representing Sham Plaintiff Jason Hester. Defendants' request to disqualify Phillip L. Carey is DENIED. Defendants' request to disqualify Paul J. Sulla, Jr. is GRANTED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, JANUARY 5, 2015.



A handwritten signature in black ink, appearing to read "Richard L. Puglisi".

Richard L. Puglisi  
United States Magistrate Judge

HESTER V. HOROWITZ, ET AL.; CIVIL NO. 14-00413 JMS-RLP; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS LEONARD G. HOROWITZ AND SHERRI KANE'S MOTION TO DISQUALIFY CO-COUNSEL PAUL J. SULLA, JR. AND PHILLIP L. CAREY FROM REPRESENTING SHAM PLAINTIFF JASON HESTER

**Orders on Motions**1:14-cv-00413-JMS-RLP Hester v. Horowitz et al**U.S. District Court****District of Hawaii****Notice of Electronic Filing**

The following transaction was entered on 1/5/2015 at 5:48 PM HST and filed on 1/5/2015

**Case Name:** Hester v. Horowitz et al**Case Number:** 1:14-cv-00413-JMS-RLP**Filer:****Document Number:** 46**Docket Text:**

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS LEONARD G. HOROWITZ AND SHERRI KANE'S MOTION TO DISQUALIFY CO-COUNSEL PAUL J. SULLA, JR. AND PHILLIP L. CAREY FROM REPRESENTING SHAM PLAINTIFF JASON HESTER re: [33].**

**Signed by JUDGE RICHARD L. PUGLISI on 1/5/2015.**

"Defendants' request to disqualify Phillip L. Carey is DENIED. Defendants' request to disqualify Paul J. Sulla, Jr. is GRANTED."

**(afc)**

---

**CERTIFICATE OF SERVICE**

Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications will be served by first class mail on January 6, 2014.

**1:14-cv-00413-JMS-RLP Notice has been electronically mailed to:**

Paul J. Sulla, Jr psulla@aloha.net

**1:14-cv-00413-JMS-RLP Notice will not be electronically mailed to:**

Leonard G. Horowitz  
13-3775 Pahoa-Kalapana Road  
Pahoa, HI 96778

Sherri Kane  
P.O. Box 75104  
Honolulu, HI 96836

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1095854936 [Date=1/5/2015] [FileNumber=1837798-0]  
[bf9b64ac6cda15dd2ac085036bf692cf891f56578baa42977e86f5ebc4761688e8f9  
4b5cb65a8f4094aa8fb6803c7f58fb68689bc17c0d33ca849979e67216e6]]



STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
Business Registration Division  
1010 Richard Street  
PO Box 40, Honolulu, HI 96810

ARTICLES OF INCORPORATION  
CORPORATION SOLE FOR ECCLESIASTICAL PURPOSES  
(Section 419, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned desires to form a Corporation Sole for Ecclesiastical purposes under the laws of the State of Hawaii and does certify as follows:

Article I

The name of the Corporation Sole is:

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**

Article II

Cecil Loran Lee of 13-811 Malama Street, Pahoa, HI 96778, duly authorized by the rules and regulations of the church **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, hereby forms **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and is the initial holder the office of Overseer hereunder.

Article III

The principal office of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS** is 13-811 Malama Street Pahoa, HI 96778. The Island of Hawaii is the boundary of the district subject to the ecclesiastical jurisdiction of the Overseer.

Article IV

The period of duration of the corporate sole is perpetual.

1

**Exhibit G**



05/29/200920052

## Article V

The manner in which any vacancy occurring in the incumbency of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, is required by the discipline of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, to be filled, through an appointment of Jason Hester of Pahoa, Hawaii as designated successor, and if said designated successor is unable or unwilling to serve, then through an appointment by the support and blessings by a formal "Popular Assembly" of clerical staff and the general membership of **REVITALIZE, A GOSPEL OF BELIEVERS**, as to the named designated successor. The corporate sole shall have continuity of existence, notwithstanding vacancies in the incumbency thereof, and during the period of any vacancy, have the same capacity to receive and take gifts, bequests, devise or conveyance of property as though there were no vacancy.

## Article VI

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** shall have all the powers set forth in HRS c. 419-3 and 414D-52 including the power to contract in the same manner and to the same extent as any man, male or female, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatsoever, and shall have the authority to appoint attorneys in fact. It has in any venue and jurisdiction authority to borrow money, give promissory notes therefore, to deal in every way in prime notes, noble metals, planchets, commercial liens, stamps, mortgages, all manner of banking, and to secure the payment of same by mortgage or other lien upon property, real and person, enter into insurance and assurance agreements, own life insurance policies, and purchase and sell contracts and other commercial instruments. It shall have the authority to buy, sell, lease, and mortgage and in every way deal in real, personal and mixed property in the same manner as a "natural person" or covenant child of God. It may appoint legal counsel, licenses and/or unlicensed, but any professional or nonprofessional account services, legal or other counsel employed shall be utilized in a capacity never greater than subordinate co-counsel in any and all litigious matters whether private, corporate, local, national or international, in order to protect the right of the corporation sole to address all courts, hearings, assemblies, etc., as superior co-counsel.

05/29/200920052



**Article VII**

The presiding Overseer of **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** can be removed by a 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia, duly called for that purpose, provided that a successor Overseer is selected at that meeting.

The presiding Overseer may not amend or alter this Article VII without the 2/3 vote at a meeting of the Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS** duly called for that purpose.

**Article VIII**

The presiding Overseer, after prayers and counsel from The Popular Assembly of **REVITALIZE, A GOSPEL OF BELIEVERS**, may at any time amend these Articles, change the name, the term of existence, the boundaries of the district subject to its jurisdiction, its place of office, the manner of filling vacancies, its powers, or any provision of the Articles for regulation and affairs of the corporation and may by Amendment to these Articles, make provision for any act authorized for a corporate sole under HRS c. 419. Such Amendment shall be effective upon recordation with the State of Hawaii.

**Article IX**

The purpose of this corporation sole is to do those things which serve to promote Celestial values, the principles of Love, Harmony, Truth and Justice, the love of our brothers and sisters as ourselves, the comfort, happiness and improvement of Man and Woman, with special emphasis upon home church studies, research and education of those rights secured by God for all mankind and of the laws and principles of God for the benefit of the Members of the Assembly and the Community at large. This corporate sole is not organized for profit.

**Article X**

All property held by the above named corporation sole as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITLIZE, A GOSPEL OF BELIEVERS**, shall be held for the use, purpose, and benefit of **REVITLIZE, A GOSPEL OF BELIEVERS**, a Hawaiian non-profit corporation in the nature of Ecclesia.

05/29/200920052

I certify upon the penalties of perjury pursuant to Section 419 of the Hawaii Revised Statutes that I have read the above statements and that the same are true and correct.

Witness my hand this 8 day of May, 2009.

CECIL LORAN LEE

Cecil Loran Lee

05/29/200920052

**CERTIFICATE OF EVIDENCE OF APPOINTMENT**

## Asseveration

State of Hawaii

County of Hawaii

Signed and Sealed

FILED 05/28/2009 05:41 PM  
Business Registration Division  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
State of Hawaii

Gwen Hillman, Scribe, on the 8<sup>th</sup> day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine having first stated by prayer and conscience, avers, deposes and says:

Cecil Loran Lee is the duly appointed, qualified OVERSEER of THE OFFICE OF OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, by virtue of Spiritually and Divinely inspired appointment and he is, and has been, sustained as such by the general membership of said "body of believers" of REVITALIZE, A GOSPEL OF BELIEVERS a Hawaiian incorporated Church assembly, in the nature of Ecclesia, and THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, in a special Popular Assembly meeting on the 8 day of the fifth month in the Year of our Lord Jesus Christ, the Redeemer, Two Thousand Nine as evidenced by an official recording of such appointment signed by Gwen Hillman, Scribe of THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS.

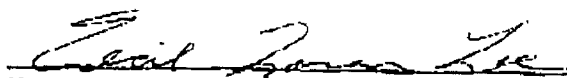
05/29/200920052

05/23/2009

# General Certification

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has herewith set his hand and seal, on this, the 8 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.



Affix Seal

Here.

Cecil Loran Lee, the Overseer  
The Office of the Overseer  
a corporation sole and his successors,  
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF  
BELIEVERS an incorporated Church assembly,  
in the nature of Ecclesia

## STATEMENT OF INCUMBENCY

**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS  
SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS.**

BE IT KNOWN BY THESE PRESENTS that Cecil Loran Lee of 13-811 Malama Street Pahoa, HI 96778 is the current incumbent OVERSEER for the corporation sole known as **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**. This Statement of Incumbency is provided pursuant to Hawaii Revised Statutes c.419-5.

Pursuant to Cecil Loran Lee's right to worship Almighty God, in accordance with the dictates of his own conscience, and having, humbly, taken possession of The Office of OVERSEER on the 28 day of May in the year two thousand nine, the OVERSEER does hereby certify, and adopt this "Statement of Incumbency".

In accordance with the disciplines of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation, in the nature of Ecclesia located in Pahoa, County and State of Hawaii having established said corporation sole **THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS** and by this Statement of Incumbency hereby notifies the State of Hawaii that Cecil Loran Lee is the duly appointed incumbent OVERSEER.

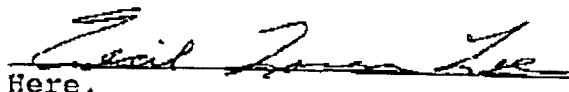
**THE OFFICE OF THE OVERSEER, A CORPORATION SOLE AND HIS SUCCESSORS, OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS**, does hereby establish that Cecil Loran Lee is the duly appointed incumbent OVERSEER of this corporate sole created for the purposes of administering and managing the affairs, property, and temporalities of REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian non-profit corporation in the nature of Ecclesia.



# General Certification

I, Cecil Loran Lee, the named Overseer in The Office of the Overseer a corporation sole and his successors, over/for The Popular Assembly of REVITALIZE, a Gospel of Believers the Affiant herein, certify, attest and affirm that I have read the foregoing and know the content thereof and that it is true, correct, materially complete, certain, not misleading, all to the very best of my belief, and this I solemnly pledge declare and affirm before my Creator.

In witness whereof, said Cecil Loran Lee, The Overseer, of a corporation sole, has hereunto set his hand and seal, on this, the 28 day of May in the Year of Jesus Christ our Lord, the Redeemer, two thousand nine.



Affix Seal

Here.  
Cecil Loran Lee, the Overseer  
The Office of the Overseer  
a corporation sole and his successors,  
over/for The Popular Assembly of REVITALIZE, A GOSPEL OF  
BELIEVERS an incorporated Church assembly,  
in the nature of Ecclesia

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

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



R-758 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAY 11, 2010 12:00 PM  
Doc No(s) 2010-084623



20 1/2 212

/s/ NICKI ANN THOMPSON  
REGISTRAR  
CONVEYANCE TAX: \$175.00

After Recordation, Return by Mail (X) Pickup ( ) To:

Paul J. Sulla, Jr.  
P. O. Box 5250  
Hilo, HI 96720

Tax Map Key (3) 1-3-001:049 & 043

TOTAL PAGES 7

QUITCLAIM DEED

THIS INDENTURE, made this 3rd day of May,  
2010, by and between THE OFFICE OF OVERSEER, A CORPORATE SOLE  
AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole, as foreclosing  
mortgagee, whose address is 13-811 Malama Street, Pahoa, HI  
96778, (hereafter referred to as the "Grantor") and THE OFFICE  
OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE  
POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a  
Hawaiian Corporation Sole, whose address is 13-811 Malama  
Street, Pahoa, HI 96778, (hereafter referred to as the  
"Grantee").

W I T N E S S E T H

THAT WHEREAS, THE ROYAL BLOODLINE OF DAVID, a Washington nonprofit corporation by Leonard George Horowitz individually and as Overseer (hereinafter referred to as the "Borrower/Mortgagor") executed a certain Promissory Note and Mortgage dated January 15, 2004, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2004-014441, with LORAN LEE a/k/a C. LORAN LEE, as the original Mortgagee; and

WHEREAS, LORAN LEE a/k/a C. LORAN LEE assigned that certain Mortgage to THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole by ASSIGNMENT OF MORTGAGE dated May 15, 2009 recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2009-136885 with LORAN LEE a/k/a C. LORAN LEE, as the original OVERSEER;

WHEREAS, LORAN LEE a/k/a CECIL LORAN LEE died on June 29, 2009 and JASON HESTOR of Pahoa, HI 96778 became the succeeding incumbent OVERSEER of THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole;

WHEREAS, the term of the Promissory Note currently held by Grantor, as foreclosing mortgagee expired on January 15, 2009; the entire remaining unpaid principal balance became due and

payable; and the Borrower/Mortgagor has defaulted on the repayment of the Promissory Note and Mortgage; and

WHEREAS, pursuant to Grantor's foreclosure rights under power of sale as provided in Sections 667-5 through 667-10, Hawaii Revised Statutes, and that aforesaid Mortgage dated January 15, 2004, and in accordance with the terms of the MORTGAGEE'S AFFIDAVIT OF FORECLOSURE UNDER POWER OF SALE, the Grantor herein duly held a sale by public auction on April 20, 2010 and the property hereinafter described was offered for sale, and wherein THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS was the purchaser of said property for the sum of \$175,000.00. Said auction being evidenced by MORTGAGEE'S AFFIDAVIT OF FORECLOSURE UNDER POWER OF SALE recorded herewith.

NOW, THEREFORE, Grantor, as foreclosing mortgagee under power of sale, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, does hereby release, remise, quitclaim, transfer and convey all of that certain real property described in Exhibit "A" attached hereto and made a part hereof, unto Grantee, as TENANT IN SEVERALTY; And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, in FEE SIMPLE, forever.

The Grantor makes no warranties or covenants with respect to this conveyance. The property is sold strictly "AS IS" and "WHERE IS" without covenant or warranty, express or implied, as to title, possession or encumbrances.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.





EXHIBIT A

ITEM I:

LOT 15-D

A Portion of Lot 15

Grant 5005 to J. B. Elderts

Kamali 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 "HEIHEIAHULU" 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" 325.15 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 2004-0144, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-0144

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. B. 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 Kamali 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 "HEHEKIAHULU" being 6,270.73 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 foot 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 The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01444 recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01444

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 X

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

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



R-883 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUN 14, 2011 11:00 AM  
Doc No(s) 2011-093772



20 1/2 Z1

/s/ NICKI ANN THOMPSON  
REGISTRAR  
CONVEYANCE TAX: \$220.00

*Kh*  
After Recordation, Return by Mail (X) Pickup ( ) To:

Paul J. Sulla, Jr.  
P. O. Box 5250  
Hilo, HI 96720

Tax Map Key (3) 1-3-001:049 & 043

TOTAL PAGES 5

QUITCLAIM DEED

THIS INDENTURE, made this 9<sup>th</sup> day of June,  
2011, by and between THE OFFICE OF OVERSEER, A CORPORATE SOLE  
AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A  
GOSPEL OF BELIEVERS, a Hawaiian Corporation Sole, whose address  
is 13-811 Malama Street, Pahoa, HI 96778, (hereafter referred  
to as the "Grantor"), for and in consideration of the sum of TEN  
DOLLARS (\$10.00) and other valuable consideration paid to  
Grantor by JASON HESTER, an individual whose address is PO Box  
758 Pahoa, HI 96778 (hereafter referred to as the "Grantee"),  
the receipt of which is hereby acknowledged, does hereby

**Exhibit I**

release, remise, quitclaim, transfer and convey all of that certain real property described on the tax maps of the Third Taxation Division, State of Hawaii, as **Tax Map Key (3) 1-3-001-043 & 1-2-001-049** in the interests noted above, more particularly described in **Exhibit "A"** attached hereto and made a part hereof, subject to the encumbrances noted therein

TO HAVE AND TO HOLD the same, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee, in FEE SIMPLE, forever.


IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees or corporations and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.



IN WITNESS WHEREOF, the undersigned executed these presents  
on the day and year first above written.

THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSOR  
OVER/FOR THE POPULAR ASSEMBLY OF  
REVITALIZE, A GOSPEL OF BELIEVERS

By

  
Jason Hester  
Its: Overseer

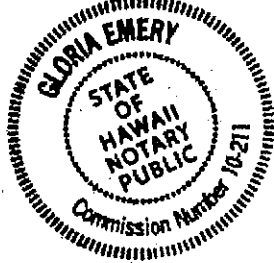
"Grantor"

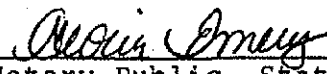
STATE OF HAWAII )

) SS.

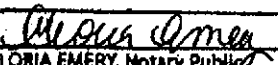
COUNTY OF HAWAII )

On this 9<sup>th</sup> day of June, 2011, before me appeared Jason  
Hester, to me personally known, who, being by me duly sworn, did  
say that he is the OVERSEER of THE OFFICE OF OVERSEER, A  
CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY  
OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii Corporation Sole  
and that on behalf of said corporation by authority of its  
OVERSEER, he acknowledges said instrument to be the free act and  
deed of said Corporation Sole.



  
Notary Public, State of Hawaii  
Print Name: Gloria Emery

My commission expires: July 18, 2014

Doc. Date: 6/9/11 3rd Circuit  
# Pages: 5  
Doc. Description: Quitclaim Deed  
x  6/9/11  
GLORIA EMERY, Notary Public Date

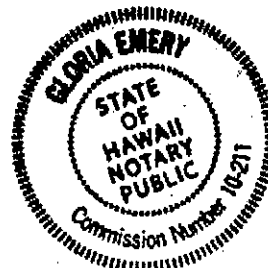


EXHIBIT A

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 "HEUHEIAHULU" 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. 142° 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 2004-01-14, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01441.

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:

EXHIBIT "A"

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 "HEIHKIAHULU" 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 The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-14 recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01444

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 X



R-884

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JUN 14, 2011 11:00 AM

Doc No(s) 2011-093773

/s/ NICKI ANN THOMPSON  
REGISTRAR

20 21/2 21

Land Court System

Regular System

After Recordation, Return by Mail ( X ) Pickup ( ) To:

Jason Hester  
PO Box 758  
Pahoa, HI 96778

20975

TAX MAP KEY: Hawaii (3) 1-3-001:043 &amp; 043

MORTGAGE

WORDS USED OFTEN IN THIS DOCUMENT AND PARTIES AND THEIR ADDRESSES:

(A) "Mortgage." This document, which is dated June 9<sup>th</sup>, 2011, will be called the "Mortgage."

(B) "Borrower." Jason Hester, an individual, whose address is P. O. Box 758, Pahoa, Hawaii 96778, County of Hawaii will sometimes be called "Borrower" and sometimes simply "I" or "me."

(C) "Lender." PAUL J. SULLA JR. AAL, A LAW CORPORATION, a Hawaii corporation, whose address is PO BOX 5258, Hilo, Hawaii 96720, will sometimes be called "Lender" or sometimes simply "you" or "your."

(D) "Note." The Mortgage Loan Note, signed by Borrower and dated June 9, 2011 will be called the "Note." The

Note shows that I owe Lender **FIFTY THOUSAND DOLLARS (\$50,000.00)** plus interest, which I have promised to repay according to the terms set out in the Note.

(E) "Property." The property that is described below in the section titled "Description of the Property," will be called the "Property."

#### **BORROWER'S MORTGAGE AND TRANSFER TO LENDER OF RIGHTS IN THE PROPERTY**

I mortgage, grant a security interest in and convey the Property to you subject to the terms of this Mortgage. This means that, by signing this Mortgage, I am giving you those rights that are stated in this Mortgage and also those rights that the law gives to lenders who hold mortgages on real property and security interests in personal property. I am giving you these rights to protect you from possible losses that might result if I fail to:

(A) Pay all the amounts that I owe you as stated in the Note;

(B) Pay, with interest, any amounts that you spend under this Mortgage, to protect the value of the Property and your rights in the Property;

(C) Keep all of my other promises and agreements under the Note or this Mortgage.

#### **DESCRIPTION OF THE PROPERTY**

Lender's rights apply to the following Property:

(A) The property is located at **13-3775 Pahoa-Kalapana Road, Kalapana, Hawaii TMK (3) 1-3-001-049 & (3) 1-3-001-043**. The full legal description of this property is contained in Exhibit "A" which is attached at the end of this Mortgage;

(B) All buildings and other improvements that are located on the property described in Paragraph (A) of this section;

(C) All rights in other property that I have as owner of the property described in Paragraph (A) of this section. These



rights are known as "easements, rights and appurtenances attached to the property;"

(D) All rents or royalties from the property described in Paragraph (A) of this section;

(J) All of the amounts that I pay to Lender under Paragraph 2 below; and

(K) Any voting rights I have as owner of the Property.

**BORROWER'S RIGHT TO MORTGAGE THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY**

I promise that:

- (A) I lawfully own the Property;
- (B) I have the right to mortgage, grant and convey the Property to Lender;
- (C) there are no outstanding claims or charges against the Property except for the claims and charges against the Property listed in Exhibit "A" attached to the end of this Mortgage.

I give a general warranty of title to Lender. This means that I will be fully responsible for any losses which you suffer because someone other than myself has some of the rights in the Property which I promise that I have. I promise that I will defend my ownership of the Property against any claims of those rights.

**BORROWER'S PROMISES AND AGREEMENT**

I promise and I agree with you as follows:

**1. BORROWER'S PROMISE TO PAY PRINCIPAL AND INTEREST UNDER THE NOTE AND TO FULFILL OTHER PAYMENT OBLIGATION.**

I will promptly pay you or anyone you name principal, interest and any late charges as stated in the Note.

## **2. LENDER'S APPLICATION OF BORROWER'S PAYMENTS**

Unless the law requires otherwise, Lender will apply each of my payments under the Note in the following order and for the following purposes:

- (A) First, to pay interest then due under the Note;
- (B) Next, to pay principal then due under the Note; and
- (C) Next, to pay interest and amounts paid by Lender under paragraph 6 below.

## **3. BORROWER'S OBLIGATION TO PAY CHARGES AND ASSESSMENTS AND TO SATISFY CLAIMS AGAINST THE PROPERTY.**

I will pay when they are due all taxes, assessments, and any other charges and fines that may be imposed on the Property. I will also make payments due under my lease if I am a tenant on the Property and I will pay lease rents (if any) due on the Property. I will do this either by making the payments to Lender that are described in Paragraph 2 above or, if I am not required to make payments under Paragraph 2, by making payments, when they are due, directly to the persons entitled to them. (In this Mortgage, the word "person" means any person, organization, governmental authority, or other party.) If I make direct payments, then promptly after making any of those payments I will give Lender a receipt which shows that I have done so.

Any claim, demand or charge that is made against property because an obligation has not been fulfilled is known as a "lien." I will promptly pay or satisfy all liens against the Property.

### ***Condominium and PUD Assessments.***

If the Property includes an apartment unit in a Condominium Project or in a PUD, I will promptly pay, when they are due, all assessments imposed by the owners' association or other organization that governs the Condominium Project or PUD. The association or organization will be called the "Owners' Association."

4. BORROWER'S OBLIGATION TO OBTAIN AND TO KEEP HAZARD INSURANCE ON THE PROPERTY.

(A) Generally.

I will obtain hazard insurance, if possible, to cover all buildings and other improvements that now are or in the future will be located on the Property. If possible, the insurance must cover loss or damage caused by fire, hazards normally covered by "extended coverage" hazard insurance policies, and other hazards for which Lender requires coverage. The insurance must be in the amounts and for the periods of time required by Lender. It is possible that the insurance policy will have provisions that may limit the insurance company's obligation to pay claims if the amount of coverage is too low. Those provisions are known as "co-insurance requirements." Lender may not require me to obtain an amount of coverage, if possible that is more than the larger of the following two amounts: either (i) the amount that I owe to Lender under the Note and under this Mortgage; or (ii) the amount necessary to satisfy the co-insurance requirements.

If I can get a policy, I will pay the premiums on the insurance policies by paying the insurance company directly when the premium payments are due.

If I get a policy, I will pay the premiums on the insurance policies either by making payments to Lender, as described in Paragraph 2 above, or by paying the insurance company directly when the premium payments are due. If Lender requires, I will promptly give Lender all receipts of paid premiums and all renewal notices that I receive.

If there is a loss or damage to the Property, I will promptly notify the insurance company and Lender. If I do not promptly prove to the insurance company that the loss or damage occurred, then Lender may do so.

The amount paid by the insurance company is called "proceeds." If the Property is used as a "residence" (for example, it is my home), then I have the right to decide whether the proceeds will be used to repair, restore or rebuild a residence on the Property or whether the proceeds will be used to reduce the amount that I owe you under the Note. In all other cases, Lender

will have the right to determine whether the proceeds are to be used to repair, restore or rebuild the Property or to reduce the amount I owe under the Note.

If any of the proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

If I abandon the Property, or if I do not answer, within 30 days, a notice from Lender stating that the insurance company has offered to settle a claim for insurance benefits, then Lender has the authority to collect the proceeds. Lender may then use the proceeds to repair or restore the Property or to reduce the amount that I owe to Lender under the Note and under this Mortgage. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered.

If any proceeds are used to reduce the amount which I owe to Lender under the Note, that use will not delay the due date but shall change the amount of any of my monthly payments under the Note and under Paragraphs 1 and 2 above.

If Lender acquires the Property under Paragraph 17 below, all of my rights in the insurance policies will belong to Lender. Also, all of my rights in any proceeds which are paid because of damage that occurred before the Property is acquired by Lender or sold will belong to Lender. However, Lender's rights in those proceeds will not be greater than the amount that I owe to Lender under the Note and under this Mortgage immediately before the Property is acquired by Lender or sold.

(B) Agreements that Apply to Condominiums and PUD's.

(i) If the Property includes an apartment unit in a Condominium Project, the Owners' Association may maintain a hazard insurance policy which covers the entire Condominium Project. That policy will be called the "master policy." If the master policy insures my apartment unit as well as the common elements of the Condominium Project, so long as the master policy remains in effect and meets the requirements stated in this Paragraph 4: (a) my obligation to obtain and to keep hazard insurance on the Property is satisfied; (b) I will not be required to include an amount for hazard insurance premiums in my monthly payment of Funds to Lender

under Paragraph 2 above; and (c) if there is a conflict, concerning the use of proceeds, between (1) the terms of this Paragraph 4, and (2) the law or the terms of the declaration, bylaws, regulations or other documents creating or governing the Condominium Project, then that law or the terms of those documents will govern the use of proceeds. I will promptly give Lender notice if the master policy is interrupted or terminated. During any time that the master policy is not in effect the terms of (a), (b) and (c) of this subparagraph 4(B)(i) will not apply.

(ii) If the Property includes a unit in a Condominium Project, it is possible that proceeds will be paid to me instead of being used to repair or to restore the Property. I give Lender my rights to those proceeds. If the Property includes a unit in a PUD, it is possible that proceeds will be paid to me instead of being used to repair or to restore the common areas or facilities of the PUD. I give Lender my rights to those proceeds. All of the proceeds described in this subparagraph 4(B)(ii) will be paid to Lender and will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. If any of those proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

**5. BORROWER'S OBLIGATION TO MAINTAIN THE PROPERTY AND TO FULFILL OBLIGATIONS IN LEASES AND MORTGAGES AND AGREEMENTS ABOUT LEASES, CONDOMINIUMS AND PUD'S.**

**(A) Agreements about Maintaining the Property.**

I will keep the Property in good repair. I will not destroy damage or change the Property, and I will not allow the Property to deteriorate.

**(B) Agreements About Keeping Promises in Leases and Mortgages.**

I will fulfill my obligations under any lease which is part of the Property. I will not change or agree to any change in any Lease which is a part of the Property. I will fulfill my obligations in any Mortgage on the Property listed on Exhibit "A" at the end of this Mortgage. I will not change or agree to any change in any such Mortgage.



(C) Agreements that Apply to Leases and Preventing Rejection or Termination of Leases in Bankruptcy Cases.

If (i) the Property includes, or is under, covered, or affected by and leases (the "Property Leases"), (ii) I, or anyone else with rights to and/or obligations under any Property Leases, including, but not limited to, lessors, lessees, sublessors, and sublessees, become a debtor in a voluntary or involuntary bankruptcy case, and (iii) an order for relief is issued pursuant to the bankruptcy laws, then I will take the actions necessary to prevent the Property Leases (a) from being rejected by me, any bankruptcy trustee or any other person pursuant to the bankruptcy laws, or (b) from being terminated in any manner. I will take such actions within five (5) days from the date of filing of the order for relief. The bankruptcy laws include, but are not limited to, Section 365 of Title 11 of the provisions of the United States Code, which is often referred to as Bankruptcy Code Section 365, as it may be amended from time to time.

I now appoint you as my attorney-in-fact to do whatever you, as Lender, believe is necessary to protect your interests in the Property and to prevent the rejection or termination of the Property Leases under the bankruptcy laws. This means that I now give you the right, in my place and name, or in your own name, to do whatever you believe is necessary to protect your interests in the Property. You have no obligation or responsibility to look out for or take care of my interests. You may, but you do not have to, take any actions to prevent the Property Leases from being rejected or terminated pursuant to the bankruptcy laws. Those actions include, but are not limited to, the following:

(I) The filing of any instruments, documents and pleadings with the court to assume and/or assign the Property Leases; and

(II) The filing of a notice of election to remain in possession of leased real property if my lessor becomes a debtor in a bankruptcy case and rejects my lease.

Your having the right to take such actions will not prevent me, on my own, from taking any actions to protect my interests and the Property Leases.

(D) Agreements that Apply to Condominiums and PUD's.

If the Property is a unit in a Condominium Project or in a PUD, I will fulfill all of my obligations under the declaration, bylaws, regulations and other documents that create or govern the Condominium Project or PUD. Also, I will not divide the Property into smaller parts that may be owned separately (known as "partition or subdivision"). I will not consent to certain actions unless I have first given Lender notice and obtained Lender's consent in writing. Those actions are:

(1) The abandonment or termination of the Condominium Project or PUD, unless, in the case of a condominium, the abandonment or termination is required by law;

(2) Any change to the declaration, bylaws or regulations of the Owners' Association, trust agreement, articles of incorporation, or other documents that create or govern the Condominium Project or PUD, including, for example, a change in the percentage of ownership rights, held by unit owners, in the Condominium Project or in the common areas or facilities of the PUD;

(3) A decision by the Owners' Association to terminate professional management and to begin self-management of the Condominium Project or PUD; and

(4) The transfer, release, creation of liens, partition or subdivision of all or part of the common areas and facilities of the PUD. (However, this provision does not apply to the transfer by the Owners' Association of rights to use those common areas and facilities for utilities and other similar or related purposes.)

**6. LENDER'S RIGHT TO TAKE ACTION TO PROTECT THE PROPERTY.**

If: (A) I do not keep my promises and agreements made in this Mortgage, or (B) someone, including me, begins a legal proceeding that may affect Lender's rights in the Property (such as, for example, a legal proceeding in bankruptcy, in probate, for condemnation, or to enforce laws or regulations), then Lender may do and pay for whatever Lender believes is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions under this Paragraph 6 may include, for example,

appearing in court, paying reasonable attorneys' fees, and entering on the Property to make repairs. Lender need not give me notice before taking any of these actions.

I will pay to Lender any amounts which Lender spends under this Paragraph 6. This Mortgage will protect Lender in case I do not keep this promise to pay those amounts with interest.

I will pay those amounts to Lender when Lender sends me a notice requesting that I do so. I will also pay interest on those amounts at the same rate stated in the Note. However, if payment of interest at that rate would violate the law, I will pay interest on the amounts spent by Lender under this Paragraph 6 at the highest rate that the law allows. Interest on each amount will begin on the date that the amount is spent by Lender. However, Lender and I may agree in writing to terms of payment that are different from those in this paragraph.

Although Lender may take action under this Paragraph 6, Lender does not have to do so.

**7. LENDER'S RIGHT TO INSPECT THE PROPERTY.**

Lender, and others authorized by Lender may, upon reasonable notice, enter on and inspect the Property. They must do so in a reasonable manner and at reasonable times.

**8. AGREEMENTS ABOUT CONDEMNATION OF THE PROPERTY.**

A taking of property by any governmental authority by eminent domain is known as "condemnation." I give to Lender my right: (a) to proceeds of all awards or claims for damages resulting from condemnation or other governmental taking of the Property; and (b) to proceeds from a sale of the Property that is made to avoid condemnation. All of those proceeds will be paid to Lender and will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. If any of the proceeds remain after the amount that I owe to Lender has been paid in full, the remaining proceeds will be paid to me.

If I abandon the Property, or if I do not answer, within 30 days, a notice from Lender stating that a governmental authority has offered to make a payment or to settle a claim for damages,

then Lender has the authority to collect the proceeds. Lender may then use the proceeds to repair or restore the Property or to reduce the amount that I owe to Lender under the Note and under this Mortgage. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered.

If any proceeds are used to reduce the amount of principal which I owe to Lender under the Note, that use will not delay the due date or change the amount of any of my monthly payments under the Note and under Paragraphs 1 and 2 above. However, Lender and I may agree in writing to those delays or changes.

#### ***Condemnation of Common Areas of PUD.***

If the Property includes a unit in a PUD, the promises and agreements in this Paragraph 8 will apply to a condemnation, or sale to avoid condemnation, of the PUD's common areas and facilities as well as of the Property.

#### **9. CONTINUATION OF BORROWER'S OBLIGATIONS**

Lender may allow a person who takes over my rights and obligations to delay or to change the amount of the payments of principal and interest due under this Note or under this Mortgage.

Even if Lender does this, however, that person and I will both still be fully obligated under the Note and under this Mortgage unless the conditions stated in paragraph 16 below have been met.

Lender may allow those delays or changes for a person who takes over my rights and obligations, even if Lender is requested not to do so. Lender will not be required to bring a lawsuit against such a person for not fulfilling obligation under the Note or under this Mortgage, even if Lender is requested to do so.

#### **10. CONTINUATION OF LENDER'S RIGHTS.**

Even if Lender does not exercise or enforce any right of Lender under this Mortgage or under the law, Lender will still have all of those rights and may exercise and enforce them in the future.

**11. LENDER'S ABILITY TO ENFORCE MORE THAN ONE OF LENDER'S RIGHTS.**

Each of Lender's rights under this Mortgage is separate. Lender may exercise and enforce one or more of those rights, as well as any of Lender's other rights under the law, one at a time or all at once.

**12. OBLIGATIONS OF BORROWERS AND OF PERSONS TAKING OVER BORROWER'S RIGHTS OR OBLIGATIONS.**

Subject to the terms of paragraph 16 below, any person who takes over my rights or obligations under this Mortgage will have all of my rights and will be obligated to keep all of my promises and agreements made in this Mortgage. Similarly, any person who takes over Lender's rights or obligations under this Mortgage will have all of Lender's rights and will be obligated to keep all of Lender's agreements in this Mortgage.

If more than one person signs this Mortgage as Borrower, each of us is fully obligated to keep all of Borrower's promises and obligations contained in this Mortgage. Lender may enforce Lender's rights under this Mortgage against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under the Note and under this Mortgage. However, if one of us does not sign the Note, then:

(a) that person is signing this Mortgage only to give that person's rights in the Property to Lender under the terms of this Mortgage; and (b) that person is not personally obligated to make payments or to act under the Note.

**13. CAPTIONS.**

The captions and titles of this Mortgage are for convenience only. They may not be used to interpret or to define the terms of this Mortgage.

**14. AGREEMENTS ABOUT GIVING NOTICES REQUIRED UNDER THIS MORTGAGE.**

Unless the law requires otherwise, any notice that must be given to me under this Mortgage will be given by delivering it or by mailing it addressed to me at the address stated in Paragraph



(B) of the section above titled "Words Used Often In This Document and Parties and their Addresses." A notice will be delivered or mailed to me at a different address if I give Lender a notice of my different address. Any notice that must be given to Lender under this Mortgage will be given by mailing it to Lender's address stated in Paragraph (C) of the section above titled "words Used Often In This Document and Parties and Their Addresses." A notice will be mailed to Lender at a different address if Lender gives me a notice of the different address. A notice required by this Mortgage is given when it is mailed or when it is delivered according to the requirements of this Paragraph 14.

**15. LAW THAT GOVERNS THIS MORTGAGE.**

The law of the State of Hawaii will govern this Mortgage. If any term of this Mortgage or of the Note conflicts with that law, all other terms of this Mortgage and of the Note will still remain in effect if they can be given effect without the conflicting term.

This means that any terms of this Mortgage and of the Note which conflict with the law can be separated from the remaining terms, and the remaining terms will still be enforced.

**16. AGREEMENTS ABOUT ASSUMPTION OF THIS MORTGAGE AND ABOUT LENDER'S RIGHTS IF BORROWER TRANSFERS THE PROPERTY WITHOUT MEETING CERTAIN CONDITIONS.**

If I sell or transfer all or part of the Property or any rights in the Property, any person to whom I sell or transfer the Property may take over all of my rights and obligations under this mortgage (known as an "assumption of the Mortgage") if:

- (A) I give Lender notice of the sale or transfer;
- (B) Lender agrees that the person's credit is satisfactory and consents to the assumption, which consent shall not unreasonably be withheld;
- (C) the person agrees to pay interest on the amount owed to Lender under the Note and under this Mortgage at the rate set forth in the Note; and
- (D) the person signs an assumption agreement that is acceptable to Lender and that obligates the person to

keep all of the promises and agreements made in the Note and in this Mortgage.

I understand that even if I sell or transfer the Property and each of the conditions in (A), (B), (C) and (D) of this paragraph 16 are satisfied, Lender will still hold me to all of my obligations under the Note and under this Mortgage if the person assuming does not perform.

However, if I sell or transfer the Property and the conditions in (A), (B), (C) and (D) of this paragraph 16 are not satisfied, I will still be fully obligated under the Note and under this Mortgage and Lender may require Immediate Payment In Full, as that phrase is defined in paragraph 17 below. However, Lender will not have the right to require Immediate Payment In Full as a result of any of the following:

- (i) the creation of liens or other claims against the Property that are inferior to this Mortgage and the Lender consents in writing to their creation (Lender will not withhold its consent unreasonably);
- (ii) a transfer of rights in household appliances, to a person who provides me with the money to buy those appliances, in order to protect that person against possible losses;
- (iii) a transfer of the Property to surviving co-owners, following the death of a co-owner, when the transfer is automatic according to law; or
- (iv) leasing the Property for a term of one year or less, as long as the lease does not include an option to buy.

If Lender requires Immediate Payment In Full under this paragraph 16, Lender will send me a notice, in the manner described in paragraph 14 above, which states this requirement. The notice will give me at least 30 days to make the required payment. The 30-day period will begin on the date the notice is mailed or, if it is not mailed, on the date the notice is delivered. If I do not make the required payment during that period, Lender may bring a lawsuit for "foreclosure and sale" under paragraph 17 below without giving me any further notice or demand for payment. (See paragraph 17 for a definition of "foreclosure and sale.")

17. LENDER'S RIGHTS IF BORROWER FAILS TO KEEP PROMISES  
AND AGREEMENTS.

If the conditions in subparagraph (D) or all of the conditions stated in subparagraphs (A), (B), and (C) of this paragraph 17 are satisfied, Lender may require that I pay immediately the entire amount then remaining unpaid under the Note and under this Mortgage. Lender may do this without making any further demand for payment. This requirement will be called "Immediate Payment In Full."

If Lender requires Immediate Payment In Full, Lender may, at your sole option, either: (a) exercise a Power of Sale pursuant to HRS §667-5 or Part II HRS §667-21 et. seq. and/or (b) bring a lawsuit to take away all of my remaining rights in the Property and to have the Property sold. This is known as "foreclosure and sale." The Lender may be a buyer of the property at any foreclosure sale. The monies received from the foreclosure sale will be applied, first to pay the costs and expenses of the sale and the court costs and attorney's fees paid by the Lender because of my default; second, to the reimbursement of the Lender for all payments made by the Lender because of the property or because of my failure to keep any promise or agreement contained in this Mortgage; and lastly, to the payment of the balance of the principal and required interest then remaining unpaid. Any monies left over after these payments will be paid to me. If the money received from the foreclosure sale is not enough to make all of these payments, then the Lender will be entitled to recover the deficiency directly from me out of my own money.

Lender may require Immediate Payment In Full under this paragraph 17 only if all of the following conditions are satisfied:

(A) I fail to keep any promise or agreement made in this Mortgage, including the promise to pay when due the amounts that I owe to Lender under the Note and under this Mortgage; and

(B) Subject to subparagraph (D) below, Lender sends to me, in the manner described in paragraph 14 above, a notice that states:

- (i) The promise or agreement that I failed to keep;
- (ii) The action that I must take to correct that failure;

(iii) A date by which I must correct the failure. That date must be at least 30 days from the date on which the notice is mailed to me, or, if it is not mailed, from the date on which it is delivered to me;

(iv) That if I do not correct the failure by the date stated in the notice, I will be in default and Lender may require Immediate Payment In Full, and Lender or another person may acquire the Property by means of foreclosure and sale;

(C) Subject to subparagraph (D) below, if I do not correct the failure stated in the notice from Lender by the dated stated in that notice.

(D) The conditions in subparagraphs (B) and (C) above are subject to the condition that if I have been more than fifteen (15) days late in my installment payments and have received notices as set forth in B above more than three (3) times, then upon the fourth (4th) time I am late, the Lender may foreclose without further notice.

#### **18. TRANSFER OF LENDER'S INTEREST**

Lender retains the right to assign Lender's interest in this Mortgage at anytime subject only to preservation of the rights of the Borrower in the Mortgage.

#### **19. LENDER'S RIGHTS TO RENTAL PAYMENTS FROM THE PROPERTY AND TO TAKE POSSESSION OF THE PROPERTY.**

As additional protection for Lender, I give to Lender all of my rights to any rental payments from the Property. However, until I am in default, I have the right to collect and keep those rental payments as they become due. I have not given any of my rights to rental payments from the Property to anyone else, and I will not do so without Lender's consent in writing.

If I am in default, then Lender, persons authorized by Lender, or a receiver appointed by a court at Lender's request may:

(A) collect the rental payments, including over due rental payments, directly from the tenants; (B) enter on and take possession of the Property; (C) manage the Property; and (D) sign, cancel and change leases. I agree that if Lender notifies the

tenants that Lender has the right to collect rental payments directly from them under this Paragraph 18, the tenants may make those rental payments to Lender without having to ask whether I have failed to keep my promises and agreements under this Mortgage.

If there is a judgment for Lender in a lawsuit for foreclosure and sale, I will pay to Lender reasonable rent from the date the judgment is entered for as long as I occupy the Property. However, this does not give me the right to occupy the Property.

All rental payments collected by Lender or by a receiver, other than the rent paid by me under this Paragraph 18, will be used first to pay the costs of collecting rental payments and managing the Property. If any part of the rental payments remains after those costs have been paid in full, the remaining part will be used to reduce the amount that I owe to Lender under the Note and under this Mortgage. The costs of managing the Property may include the receiver's fees and reasonable attorneys' fees. Lender and the receiver will be obligated to account only for those rental payments that they actually receive.

**20. LENDER'S OBLIGATION TO DISCHARGE THIS MORTGAGE WHEN THE NOTE AND THIS MORTGAGE ARE PAID IN FULL.**

When Borrower has paid all amounts due under the Note and this Mortgage, Lender will discharge this Mortgage by delivering a certificate stating that this Mortgage has been satisfied. I will pay all costs of recording the discharge in the proper official records.

**21. CHANGING THIS MORTGAGE.** This Mortgage can be changed only if Lender and I sign a writing agreeing to the change.

**22. BORROWER'S FREEDOM TO CHOOSE INSURANCE COMPANY.**

I understand that I can get any insurance required by this Mortgage from any insurance company licensed to sell that insurance in Hawaii, subject to Lender's right to refuse an insurer for cause or reasonable excuse.

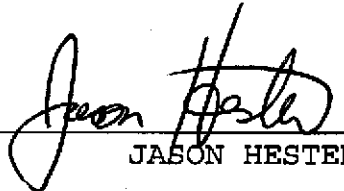
**23. FINANCING STATEMENT.**

This Mortgage also serves as a financing statement to perfect the Lender's security interest in the Property.

24. BORROWER'S COPY OF THE NOTE AND OF THIS MORTGAGE.

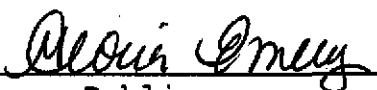
I will be given a copy of the Note and of this Mortgage. Those copies must show that the original Note and Mortgage have been signed. I will be given those copies either when I sign the Note and this Mortgage or after this Mortgage has been recorded in the proper official records.

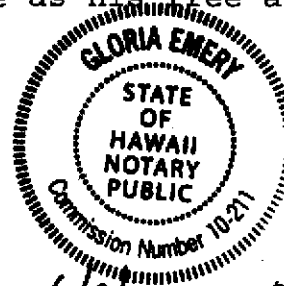
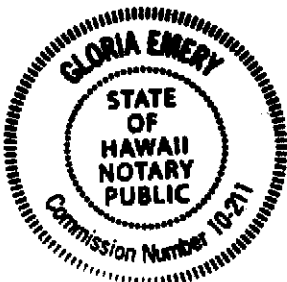
By signing this Mortgage I agree to all of the above.

  
JASON HESTER

STATE OF HAWAII       )  
                                  ) SS.  
COUNTY OF Hawaii    )

On this the 9<sup>th</sup> day of June, 2011, before me personally appeared JASON HESTER to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same as his free act and deed.

  
Notary Public  
My Commission Expires: July 18, 2014  
**GLORIA EMERY**



Doc. Date: 6/9/11 3rd Circuit  
# Pages: 20  
Doc. Description: MORTGAGE  
EXHIBIT "A"  
x GLORIA EMERY 6/9/11  
GLORIA EMERY, Notary Public Date



EXHIBIT A

ITEM I:

LOT 15-D  
A Portion of Lot 15  
Grant 5005 to J. E. Elderts  
Kamali 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 "HEHEKIAHULU" 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 The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01-11, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01-11.

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 Kamali 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 eastern 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 eastern 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 The Royal Bloodline of David, a Washington nonprofit corporation, by Warranty Deed dated 2004-01444, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2004-01444.

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

STATE OF HAWAII  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS



THE DIRECTOR'S OFFICIAL CERTIFICATION  
APPEARS ON THE BACK OF THE FIRST PAGE OF THE  
ATTACHED DOCUMENT.

(The name must contain the words *Limited Liability Company* or the abbreviation *L.L.C.* or *LLC*)

II

The mailing address of the initial principal office is:  
PO BOX 5258, HILO, HI 96720 USA

III

The company shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be an individual who resides in this State, a domestic entity or a foreign entity authorized to transact business in this State.

- a. The name (and state or country of incorporation, formation or organization, if applicable) of the company's registered agent in the State of Hawaii is:

PAUL J SULLA

(Name of Registered Agent)

(State or Country)

- b. The street address of the place of business of the person in State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered to is:

106 KAMEHAMEHA AVE, HILO, HI 96720 USA

IV

The name and address of each organizer is:

PAUL J SULLA

~~PO BOX 5258~~, PO BOX 5258, HILO, HI 96720 USA

**Exhibit K**



ARTICLES OF ORGANIZATION FOR LIMITED LIABILITY COMPANY  
(Section 428-203 Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, for the purpose of forming a limited liability company under the laws of the State of Hawaii, do hereby make and execute these Articles of Organization:

I

The name of the company shall be:

**HALAI HEIGHTS LLC**

(The name must contain the words *Limited Liability Company* or the abbreviation *L.L.C.* or *LLC*)

II

The mailing address of the initial principal office is:

**PO BOX 5258, HILO, HI 96720 USA**

III

The company shall have and continuously maintain in the State of Hawaii a registered agent who shall have a business address in this State. The agent may be an individual who resides in this State, a domestic entity or a foreign entity authorized to transact business in this State.

- a. The name (and state or country of incorporation, formation or organization, if applicable) of the company's registered agent in the State of Hawaii is:

**PAUL J SULLA**

(Name of Registered Agent)

(State or Country)

- b. The street address of the place of business of the person in State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered to is:

**106 KAMEHAMEHA AVE, HILO, HI 96720 USA**

IV

The name and address of each organizer is:

**PAUL J SULLA**

~~PO BOX 5258~~, PO BOX 5258, HILO, HI 96720 USA

I HEREBY CERTIFY that this is a true and correct copy of the official record(s) of the Business Registration Division.



*Catherine P. Awah-Colon*

DIRECTOR OF COMMERCE AND  
CONSUMER AFFAIRS

Date: December 23, 2016

The period of duration is (check one):

V

☒ At-will☐ For a specified term to expire on: \_\_\_\_\_

(Month Day Year)

The company is (check one):

VI

a. ☒ Manager-managed, and the names and addresses of the initial managers are listed in paragraph "c", and the number of initial members are: 2b. ☐ Member-managed, and the names and addresses of the initial members are listed in paragraph "c".c. List the names and addresses of the initial managers if the company is Manager-managed, or  
List the names and addresses of the initial members if the company is Member-managed.

PAUL J SULLA

PO BOX 5258, HILO, HI 96720 USA

The members of the company (check one):

VII

☒ Shall not be liable for the debts, obligations and liabilities of the company.☐ Shall be liable for all debts, obligations and liabilities of the company.☐ Shall be liable for all or specified debts, obligations and liabilities of the company *as stated below*, and have consented in writing to the adoption of this provision or to be bound by this provision.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements, I am authorized to sign this Articles of Organization, and that the above statements are true and correct to the best of our knowledge and belief.

01

Signed this \_\_\_\_\_ day of \_\_\_\_\_

FEBRUARY 2016

PAUL J SULLA

(Type/Print Name of Organizer)

PAUL J SULLA

(Signature of Organizer)

(Type/Print Name of Organizer)

(Signature of Organizer)





<a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Hawaii Home</a>	<a href="#">Real Property Home</a>
<b>Owner and Parcel Information</b>					
<b>Owner Name</b>	HALAI HEIGHTS LLC Fee Owner, Tenants in Severalty		<b>Today's Date</b>	December 22, 2016	
<b>Mailing Address</b>	PO BOX 5258 HILO, HI 96720-8258		<b>Parcel Number</b>	130010490000	
<b>Location Address</b>	13-3775 PAHOA KALAPANA ROAD		<b>Project Name</b>		
<b>Property Class</b>	AGRICULTURAL		<b>Parcel Map</b>	<a href="#">Show Parcel Map</a> <a href="#">Plat (TMK) Maps</a>	
<b>Neighborhood Code</b>	1362-5		<b>Land Area (acres)</b>	17.106	
<b>Legal Information</b>			<b>Land Area (approximate sq ft)</b>	745,137	

<b>Assessment Information</b> <a href="#">Show Historical Assessments</a>										
Year	Property Class	Market Land Value	Dedicated Use Value	Land Exemption	Net Taxable Land Value	Market Building Value	Assessed Building Value	Building Exemption	Net Taxable Building Value	Total Taxable Value
2016	AGRICULTURAL	\$ 94,900	\$ 15,700	\$ 0	\$ 15,700	\$ 477,500	\$ 477,500	\$ 0	\$ 477,500	\$ 493,200

<b>Appeal Information</b>			
No appeal information on parcel.			
<b>Land Information</b>			
Property Class	Square Footage	Acreage	Agricultural Usage
AGRICULTURAL	217,800	5	
AGRICULTURAL	527,337	12.106	Yes

<b>Agricultural Assessment Information</b>		
Acres in Production	Agricultural Type	Agricultural Value
0.25	Soll:H Use:S	\$500
0.856	Soll:5 Use:B	\$1,712
4	Soll:5 Use:B	\$8,000
4	Soll:8 Use:B	\$840
5	Soll: Use:	\$100
3	Soll:6 Use:B	\$4,500
This parcel has land in agricultural usage and therefore agricultural usage assessments have been made.		

<b>Residential Improvement Information</b>														
Building Number	Year Built	Effective Year Built	Square Feet	Total Room Count	Full Baths	Half Baths	Bedrooms	Framing	Exterior Wall	Roof Material	Heating/AC	Fireplace	Grade	Sketch
1	1993	1993	3,816	8	4	0	4	Frame	DOUBLE WALL	CORRUGATED IRON	NONE	0	3+	<a href="#">Sketch Building 1</a>

<b>Other Building and Yard Improvements</b>				
Description	Quantity	Year Built	Area	Gross Building Value
No information associated with this parcel.				

<b>Permit Information</b>			
Date	Permit Number	Reason	Permit Amount
12/03/2003	032410	POOL	\$ 15,000
04/07/1993	930622		\$ 5,600
08/18/1992	921782		\$ 240,616
04/17/1986	860656		\$ 2,000
03/11/1986	860412		\$ 46,000

<b>Dept of Public Works Bldg Division Permit and Inspections Information</b>							
Permit Date	Permit Type	Permit Number	Permit Reason	Permit Description	Estimated Cost	Inspection Date	Inspection Status
12/03/2003	Plumbing	<a href="#">M031472*</a>	New		\$100		

**Exhibit L**

12/03/2003	Building	<a href="#">032410*</a>	New		\$15,000		
04/07/1993	Building	<a href="#">930622*</a>	Addition		\$5,600	10/18/1993	COMPLETED
01/20/1993	Electrical	<a href="#">E930091*</a>	New		\$5,200	06/09/1993	COMPLETED
09/02/1992	Plumbing	<a href="#">M921418*</a>	New		\$3,000	10/21/1993	COMPLETED
08/18/1992	Building	<a href="#">921782*</a>	New		\$240,616	10/18/1993	COMPLETED
04/21/1986	Plumbing	<a href="#">MH41402*</a>	New		\$2,700		
04/17/1986	Building	<a href="#">860656*</a>	Alteration		\$2,000		
03/11/1986	Building	<a href="#">860412*</a>	New		\$46,000		

As a courtesy to the public, we provide building permit data as supplied by the Department of Public Works. As such, no warranties, expressed or implied, are provided for the data herein, its use or its interpretation, and accuracy.

Sales Information										
Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date of Recording	Land Court Document Number	Cert #	Book/Page	Conveyance Tax	Document Type
09/06/2016	\$ 450,000	60960740	FEE CONVEYANCE	Warranty Deed	09/09/2016				675	Warranty Deed
04/23/2013	\$ 0	48850886	OTHER	Quitclaim deed	05/17/2013				0	Quitclaim deed
06/28/2012	\$ 0	45750676	FEE CONVEYANCE	Quitclaim deed	07/11/2012				0	Quitclaim deed
06/09/2011	\$ 220,000	11-093772	FEE CONVEYANCE	Quitclaim deed	06/14/2011				220	Quitclaim deed
05/03/2010	\$ 0	10-064623	FEE CONVEYANCE	Quitclaim deed	05/11/2010				175	Quitclaim deed
01/08/2008	\$ 0	08-018452	OTHER	Dedication	02/07/2008				0	Dedication
12/03/2004	\$ 2,570	05-009226	FEE CONVEYANCE	Warranty Deed	01/14/2005				2.6	Warranty Deed
11/22/2004	\$ 0	05-009225	FEE CONVEYANCE	Warranty Deed	01/14/2005				0	Warranty Deed
01/27/2004	\$ 0		OTHER	Mapping Change	01/27/2004					Mapping Change
01/15/2004	\$ 550,000	04-014440	FEE CONVEYANCE	Warranty Deed	01/23/2004				550	Warranty Deed
04/12/2002	\$ 0	02-078633	OTHER	Judgment (all types)	05/07/2002					Judgment (all types)
11/14/2001	\$ 0	01-189329	FEE CONVEYANCE	Quitclaim deed	12/04/2001				.00	Quitclaim deed
10/25/2000	\$ 0	0000154598	FEE CONVEYANCE	Quitclaim deed	11/01/2000					Quitclaim deed
03/17/1998	\$ 0	9800038235		Cancellation of Dedication	03/23/1998					Cancellation of Dedication
01/02/1997	\$ 0	9700083700	FEE CONVEYANCE	Quitclaim deed	06/25/1997				0.00	Quitclaim deed
03/07/1994	\$ 0	9400063087			04/12/1994					
12/22/1986	\$ 1,000	9300211861	FEE CONVEYANCE	Deed	12/21/1993				1.00	Deed

Current Tax Bill Information										<a href="#">2016 Tax Payments</a>	<a href="#">Show Historical Taxes</a>
Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due		
2012-2	Real Property Tax	02/20/2013	\$ 0.00	\$ 0.00	\$ 186.60	\$ 0.00	\$ 1.87	\$ 0.00	\$ 188.47		
2013-1	Real Property Tax	08/20/2013	\$ 0.00	\$ 0.00	\$ 1,975.34	\$ 197.53	\$ 869.20	\$ 0.00	\$ 3,042.07		
2013-2	Real Property Tax	02/20/2014	\$ 0.00	\$ 0.00	\$ 1,975.34	\$ 197.53	\$ 738.82	\$ 0.00	\$ 2,911.69		
2014-1	Real Property Tax	08/20/2014	\$ 0.00	\$ 0.00	\$ 2,089.58	\$ 208.96	\$ 643.69	\$ 0.00	\$ 2,942.23		
2014-2	Real Property Tax	02/20/2015	\$ 0.00	\$ 0.00	\$ 2,089.58	\$ 208.96	\$ 505.75	\$ 0.00	\$ 2,804.29		
2015-1	Real Property Tax	08/20/2015	\$ 0.00	\$ 0.00	\$ 1,785.72	\$ 178.57	\$ 314.26	\$ 0.00	\$ 2,278.55		
2015-2	Real Property Tax	02/22/2016	\$ 0.00	\$ 0.00	\$ 1,785.71	\$ 178.57	\$ 196.42	\$ 0.00	\$ 2,160.70		
2016-1	Real Property Tax	08/22/2016	\$ 0.00	\$ 0.00	\$ 2,281.06	\$ 228.11	\$ 100.36	\$ 0.00	\$ 2,609.53		
2016-2	Real Property Tax	02/21/2017	\$ 0.00	\$ 0.00	\$ 2,281.05	\$ 0.00	\$ 0.00	\$ 0.00	\$ 2,281.05		
									<b>\$ 21,218.58</b>		
Tax bill is computed to 12/31/2016 Or pay online at <a href="http://payments.ehawaii.gov/propertytax/hawaii">http://payments.ehawaii.gov/propertytax/hawaii</a> Other Payment Options Click <a href="#">Here</a>											

<a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Hawaii Home</a>	<a href="#">Real Property Home</a>
--------------------------------------	---------------------------------	-----------------------------	--	-----------------------------	------------------------------------

The Hawaii County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. Website Updated: December 16, 2016

© 2013 by County of Hawai'i Real Property Tax Office | Website design by [qPublic.net](#)





STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

April 26, 2017 10:45 AM

Doc No(s) A-63250845



/s/ LESLIE T. KOBATA  
REGISTRAR

1 1/1 TAW  
B-32982572

:  
:  
:  
:

---

AFTER RECORDATION, RETURN BY MAIL TO:

Paul J. Sulla, Jr.  
PO Box 5258  
Hilo, HI 96720

---

TITLE OF DOCUMENT:

**MORTGAGE**

pages

PARTIES TO DOCUMENT:

**Lender:** PAUL J SULLA JR. AAL A LAW CORPORATION, a Hawaii professional business corporation, whose address is PO Box 5258 Hilo, HI 96720

**Borrowers:** HALAI HEIGHTS LLC, a Hawaii limited liability company, whose address is PO Box 5258, Hilo, HI 96720

---

**Affects:** TAX MAP KEY: (3) 1-3-001-043 & 049

---

**Exhibit M**

## MORTGAGE

**THIS MORTGAGE** is made the 11<sup>th</sup> day of April, 2017 between **HALAI HEIGHTS LLC, a Hawaii limited liability company, whose address is PO Box 5258, Hilo, HI 96720** (hereinafter called the "Borrower"), and **PAUL J SULLA JR. AAL A LAW CORPORATION, a Hawaii professional business corporation, whose address is PO Box 5258 Hilo, HI 96720** (hereinafter "Lender").

**WHEREAS**, Borrower is indebted to Lender in the principal sum of **ONE HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$150,000.00)**, which indebtedness is evidenced by Borrower's note of even date herewith (hereinafter referred to as the "Note");

**TO SECURE** to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon and the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of the Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant, convey and assign to Lender, with power of sale, all of the following property:

ALL of the property described in Exhibit "A" attached hereto and hereby incorporated herein by this reference.

**TOGETHER WITH** all the improvements now or hereafter erected on the property and all easements, rents, rights, appurtenances, royalties, minerals, water, water rights and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are herein referred to as the "Property".

**AND TOGETHER ALSO WITH** (1) if the mortgaged property consists of a leasehold, all options and rights of the Lessee under the lease agreement, and (2) if the mortgaged property consists of an apartment or unit in a condominium, or a unit in a planned unit development, all rights and options and voting rights accruing to the Borrower under the terms of the Declaration and by-laws of the Horizontal Property Regime or Condominium Property Regime or the Declaration of Covenants, Conditions and Restrictions of the planned unit development and other documents applicable to the premises and any amendment thereof, including the apartment or unit lease herein mentioned, if any. In either case, it being agreed and understood that at the option of the Lender, where the Borrower has the right to exercise any options or rights as between the lessee and the lessor if a leasehold, and any options or rights as among the apartment or unit owners, the decision as to the exercise of such rights and options shall be made solely by the Lender. The Borrower, in addition to the foregoing, hereby nominates and appoints the Lender (irrevocable so long as this Mortgage remains in effect) the Borrower's proxy to vote, and the Borrower's agent to act, pursuant to the Declaration, by-laws or the Declaration of Covenants, Conditions and Restrictions and other documents applicable to the premises and any amendment

thereof. Failure of the Lender to exercise said rights and options and voting rights shall not be construed as a waiver of the rights to exercise such rights, options or voting rights. The Borrower shall exercise such rights, options and votes, except for (1) rights, options and votes involved in the determination to rebuild upon destruction or condemnation of the mortgaged premises and the distribution of the insurance or condemnation proceeds arising upon such destruction or condemnation, (2) with respect to construction plans, partition of the condominium property regime or planned unit development, (3) amendments of the Declaration or by-laws or the Declaration of Covenants, Conditions and Restrictions and any amendment thereof, (4) appointment of a managing agent, if any, and (5) all rights, options and votes which, in the sole discretion of the Lender, would impair the security of this Mortgage, so long as this Mortgage is not in default, or in the alternative, unless the Lender shall give notice in writing to the Borrower at Borrower's last known address of its intention to exercise such rights, options and voting rights under the above provision.

**TO HAVE AND TO HOLD** the same with all improvements now or hereafter erected thereon, and all rights, privileges and appurtenances thereto belonging, and the rents, issues and profits thereof and all of the estate, rights, easements, title and interest of the Borrower both at law and in equity, therein and thereto, or appertaining or held and enjoyed therewith, unto the Lender, and its successors and assigns forever, or for the unexpired term of the lease, if leasehold.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that if the Property consists of a leasehold estate, then such lease is in all respects in good standing, genuine, valid and in full force and effect, that Borrower is the lawful owner of all personal property which may be mortgaged hereby, that the Property is unencumbered except as described in Exhibit "A", that all rents, covenants and conditions in any lease or grant or other interest herein mentioned to be paid, observed or performed by Borrower have been paid, observed or performed up to the date hereof, and that Borrower will **WARRANT AND DEFEND** the same to Lender against all claims and demands, subject to any declarations, easements or restrictions or encumbrances mentioned in Exhibit "A" attached hereto. Borrower covenants and agrees as follows:

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note, and any prepayment and late charges as provided in the Note.

**2. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraph 1 hereof shall be applied by Lender first to property expenses, then to any prepayment and late charges, then to any advance by or other costs of Lender, then to interest payable on the Note, and last to the principal due under the Note.



**3. Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, directly to the payee thereof, unless otherwise directed by Lender. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph and Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

**4. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations or the condominium or planned unit development, and constituent documents.

**5. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not incur any prepayment charge nor extend or postpone the due date of any installment called for under the Notes or change the amount of any such installments.



**6. Continuing Liability of Borrower.** Unless Lender agrees in writing to release the original Borrower or any of Borrower's successors in interest, any extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

**7. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

**8. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 11 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**9. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail, return receipt requested addressed to Borrower at the address on the first page of this Mortgage or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**10. Transfer of the Property; Assumption.** If all or any part of the Property or any interest therein is sold or transferred by Borrower without Lender's prior written consent including without limitation by way of a conveyance, mortgage, agreement of sale, or otherwise, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall not exercise such option if Lender is prohibited by federal law from doing so.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 9 hereof. Such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Borrower must pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand, invoke any remedies permitted by law.

**11. Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may bring a lawsuit to foreclose and sell the Property and may also invoke any other remedies permitted by law. The other remedies that Lender may invoke include remedies known variously as a power of sale, power of sale foreclosure, power of sale remedy, or a non-judicial foreclosure. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees

If Lender invokes the power of sale, Lender shall mail Borrower a notice of sale in the manner provided in paragraph 9 hereof. Lender shall publish a notice of sale and shall sell the Property at the time and place specified in the notice of sale. Lender or Lender's designee may purchase the Property at any sale under power of sale or judicial sale.

The proceeds of any sale shall be applied in the following order: (a) to all reasonable costs and expenses of sale, including, but not limited to, reasonable attorney's fees and costs of title evidence; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto. **IF THE PROCEEDS SHALL BE INSUFFICIENT TO DISCHARGE THE ENTIRE INDEBTEDNESS OF BORROWER TO LENDER, THE LENDER MAY HAVE OTHER LEGAL RECOURSE AGAINST BORROWER FOR THE DEFICIENCY.**

**12. Governing Law; Severability.** This Mortgage shall be governed by the law of the State of Hawaii. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such provision shall not be given effect and such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

**13. Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 12 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 12 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents



collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

**14. Release.** Upon payment of all sums secured by this Mortgage and payment by Borrower for the cost of a release, Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any.

**15. Prepayment.** There is a no prepayment penalty.

**IN WITNESS, WHEREOF,** Borrower has executed these presents the day and year first above written.

"Borrower": **HALAI HEIGHTS LLC,**

By: \_\_\_\_\_

**PAUL J SULLA JR., manager**

STATE OF HAWAII            )  
  ) SS.  
COUNTY OF HAWAII        )

On this 11<sup>th</sup> day of April 2017, before me personally appeared **Paul J Sulla Jr.** as the duly authorized manager of **HALAI HEIGHTS, LLC**, a Hawaii limited liability Company, to me proved on the basis of satisfactory evidence to be or known to be the person described in and who executed the foregoing instrument under her duly authorized capacity, entitled Mortgage, dated April 11, 2017, consisting of 7 pages in the Third Circuit and acknowledged that **HE** executed the same as **HIS** free act and deed.

Gloria Emery  
Name: Gloria Emery  
Notary Public, State of Hawaii  
My commission expires: July 18, 2018



**EXHIBIT "A"****-PARCEL FIRST:-**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Kamaili, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-D-1, being a portion of Lot 15, of the "Kamaili Homesteads" and thus bounded and described as per survey dated January 29, 2004:

Beginning at the west corner of this parcel of land, on 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 "HEIHEIAHULU" 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));
2. 239° 28' 30" 326.15 feet along Pahoa-Kalapana Road  
(Emergency Relief Project No. ER 4(1)) and Lot 19, Grant 5661 to Chas. Elderts;
3. 304° 03' 30" 220.00 feet along Lot 19, Grant 5651 to Chas. Elderts;
4. 347° 21' 30" 54.00 feet along Lot 15-D-2 (Government Road);
5. 334° 00' 250.69 feet along Lot 15-D-2 (Government Road);
6. Thence along Old Pahoa-Kalapana Road and Remnant "A" (Portion of Old Pahoa-Kalapana Road) on a curve to the right with a radius of 1016.74 feet, the chord azimuth and distance being:  
  
20° 16' 17" 719.46 feet;

7. 40° 59' 30" 275.69 feet along Remnant "A" (Portion of Old Pahoa-Kalapana Road);
8. 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 16.276 acres, more or less.

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being REMNANT "A", being a portion of Old Pahoa-Kalapana Road at Kamaili and thus bounded and described:

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet north and 16,652.94 feet east, and running by azimuths measured clockwise from true South:

1. 220° 59' 0" 275.69 feet along Lot 15-D, portion of Grant 5005 to J. E. Elderts;
2. Thence along Lot 15-D, portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:  
208° 29' 45" 439.98 feet;
3. 286° 00' 50.00 feet along the remainder of Old Pahoa-Kalapana Road;
4. Thence along Lot 15-B and Lot-A, portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:  
28° 29' 45" 461.62 feet;

5. 40° 50' 30" 261.10 feet along Lot 15-A, portion of Grant 5005 to J.E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as subdivision Number 7763

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR: THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii corporation sole

GRANTEE: JASON HESTER, an individual

DATED: June 9, 2011

RECORDED: Document No. 2011-093772

SUBJECT TO THE FOLLOWING:

1. FINAL JUDGMENT

AGAINST: Leonard G. Horowitz, Sherri Kane, individually, Medical Veritas International, Inc. and Royal Bloodline of David, a Washington non-profit corporation

IN FAVOR OF: Jason Hester, individually

DATED: December 29, 2015

FILED: Circuit Court of the Third Circuit, State of Hawaii, #14-1-304

RECORDED: Document No. \_\_\_\_\_



2. AFFIDAVIT OF LEONARD G. HOROWITZ

DATED: June 6, 2016  
RECORDED: Document No. A-60010681 on  
June 6, 2016

3. NOTICE OF INVALID LIEN

AGAINST: Leonard G. Horowitz  
IN FAVOR OF: Jason Hester, individually  
REGARDING: Affidavit of Leonard G. Horowitz  
RECORDED: Document No. A-60190688 on  
June 24, 2016

**END OF EXHIBIT "A"**

**RECORDER'S MEMO**  
**Document Text NOT Legible For Digital Imaging**



R-941

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
JAN 14, 2005 08:02 AM

Doc No(s) 2005-009226



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 Z6

CONVEYANCE TAX: \$2.60

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (XX) Pickup ( ) To:

Office of the Corporation Counsel (GT)  
County of Hawai'i  
101 Aupuni Street, Suite 325  
Hilo, Hawai'i 96720

Total Pages: 5

Tax Map Key (3)1-3-001 (Road)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That, the COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720, hereinafter called the "Grantor," in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration to it 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 of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, in fee simple forever, the following real property:

**Exhibit N**

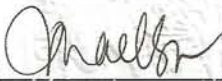
All of that certain piece or parcel of land situate at Kamā'ili, District of Puna, Island and County of Hawaii, State of Hawai'i, being Remnant "A," more particularly described in Exhibit "A" and delineated on Exhibit "B," all of which are attached hereto and made a part hereof by reference.

TO HAVE AND TO HOLD the same, together with all rights, improvements, easements, privileges and appurtenances thereunto belonging or in anywise appertaining, or held and enjoyed therewith, unto the Grantee, its successors and assigns, forever.

AND the Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that it is seised in fee simple of the above-described premises; that the same is free and clear of and from all encumbrances, except as aforesaid; that it has good right to sell and convey the same as aforesaid; and that it will, and its successors and assigns will, WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be executed this 3rd day of December, 2004.

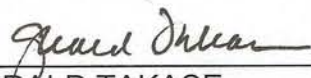
COUNTY OF HAWAI'I

By 

HARRY KIM DIXIE KAETSU  
Its Mayor Managing Director

*vmt*  
*vmt*

APPROVED AS TO FORM  
AND LEGALITY:

  
GERALD TAKASE  
Assistant Corporation Counsel  
County of Hawai'i

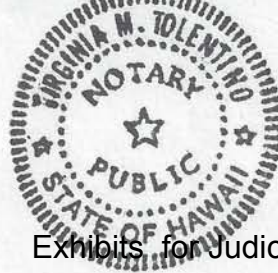


STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 3<sup>rd</sup> day of December, 2004, before me personally appeared DIXIE KAETSU, to me personally known, who, being by me duly sworn, did say that she is the Managing Director of the County of Hawai'i, a municipal corporation of the State of Hawai'i; that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i; that the foregoing instrument was signed and sealed in behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Section 5-1.3(g) of the County Charter, County of Hawai'i (2000), as amended, and assigned by the Mayor to the Managing Director pursuant to Section 6-1.3(h) of the County Charter; and said DIXIE KAETSU acknowledged said instrument to be the free act and deed of said County of Hawai'i.

*Virginia M. Tolentino*  
VIRGINIA M. TOLENTINO  
Notary Public, State of Hawai'i

My commission expires: 4/22/2005



Old Pahoa-Kalapana Road

REMNER "A"

Being a Portion of Old Pahoa-Kalapana Road  
at Kamaili, Puna, Island of Hawaii, Hawaii

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, Portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet North and 16,652.94 feet East, and running by azimuths measured clockwise from True South:

1. 220° 59' 30" 275.69 feet along Lot 15-D, Portion of Grant 5005 to J. E. Elderts;
2. Thence along Lot 15-D, Portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:  
208° 29' 45" 439.98 feet;
3. 286° 00' 50.00 feet along the remainder of Old Pahoa-Kalapana Road;
4. Thence along Lot 15-B and Lot 15-A, Portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:  
28° 29' 45" 461.62 feet;
5. 40° 59' 30" 261.10 feet along Lot 15-A, Portion of Grant 5005 to J. E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as Subdivision Number 7763.



Engineering Division  
Department of Public Works  
County of Hawaii

*Ronald M. Matsumura*

4/30/04

Expiration Date of the License

Aupuni Center  
101 Pauahi Street, Suite 7  
Hilo, Hawaii 96720-4224  
January 29, 2004

Tax Map Key: (3rd Div.) 1-3-01 (Road)





**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,

A handwritten signature in black ink, appearing to read "Lisa Miura".

Lisa Miura  
Assistant Real Property Administrator

**Exhibit O**

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

*Kobata*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

September 09, 2016 3:29 PM  
Doc No(s) A-60960740



1 1/1 OFC  
B-32865326

/s/ LESLIE T. KOBATA  
ACTING REGISTRAR

Conveyance Tax: \$675.00

*orig.*

Regular System

After Recordation, Return by Mail ( X ) Pickup ( ) To:

Paul J. Sulla, Jr.  
PO Box 5258  
Hilo, HI 96720

TOTAL NO. OF PAGES:

TITLE OF DOCUMENT:

**WARRANTY DEED**

PARTIES TO DOCUMENT:

GRANTOR: **JASON HESTER**, an individual, whose address is PO Box 748, Pahoa,  
HI 996778

GRANTEE: **HALAI HEIGHTS, LLC**, a Hawaii limited liability company, whose  
mailing address is P.O. Box 5258, Hilo, HI 96720

PROPERTY DESCRIPTION:

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

**Exhibit P**

### **WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

**JASON HESTER**, an individual, whose mailing address is PO Box 748, Pahoa, Hawaii 96778, hereinafter referred to as the "**Grantor**", for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration paid by **HALAI HEIGHTS, LLC**, a Hawaii Limited Liability Company, whose mailing address is PO Box 5258, Hilo, Hawaii 96720, hereinafter referred to as "**Grantee**", receipt whereof is hereby acknowledged, does hereby grant, sell and convey unto the Grantee, all of said interest in that certain real property as particularly designated on the tax maps of the Third Taxation District, State of Hawaii, as **Tax Map Key (3) 1-3-001-043/049**, 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, easements, privileges, and appurtenances thereunto belonging, appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, **as Tenant in Severalty**, 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 made or suffered by said Grantor, except as aforesaid, and except for assessments for real property taxes. 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 Grantor will **WARRANT AND DEFEND** the same unto the Grantee against the lawful claims and demands of all persons claiming by or through said Grantor, except as mentioned herein.

IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee," as and when used hereinabove or herein below 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.

IN WITNESS WHEREOF, the Grantor has executed these presents on the 6 day of September, 2016.

GRANTOR

  
\_\_\_\_\_  
**JASON HESTER**

STATE OF HAWAII   )  
                                  ) SS.  
COUNTY OF HAWAII )

On this 6<sup>th</sup> day of September 2016, before me personally appeared **JASON HESTER**, GRANTOR, to me known to be the person described in and who executed the foregoing instrument, entitled Warranty Deed, dated September 6, 2016 consisting of 8 pages in the Third Circuit, and acknowledged that **HE** executed the same as **HIS** free act and deed.

Gloria Emery

Print Name: Gloria Emery  
Notary Public, State of Hawaii  
My commission expires: July 18, 2018





## EXHIBIT "A"

### -PARCEL FIRST:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at Kamaili, District of Puna, Island and County of Hawaii, State of Hawaii, being LOT 15-D-1, being a portion of Lot 15, of the "Kamaili Homesteads" and thus bounded and described as per survey dated January 29, 2004:

Beginning at the west corner of this parcel of land, on 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 "HEIHEIAHULU" 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));
2. 239° 28' 30" 326.15 feet along Pahoa-Kalapana Road (Emergency Relief Project No. ER 4(1)) and Lot 19, Grant 5661 to Chas. Elderts;
3. 304° 03' 30" 220.00 feet along Lot 19, Grant 5651 to Chas. Elderts;
4. 347° 21' 30" 54.00 feet along Lot 15-D-2 (Government Road);
5. 334° 00' 250.69 feet along Lot 15-D-2 (Government Road);
6. Thence along Old Pahoa-Kalapana Road and Remnant "A" (Portion of Old Pahoa-Kalapana Road) on a curve to the right with a radius of 1016.74 feet, the chord azimuth and distance being:  
  
20° 16' 17" 719.46 feet;

7.     40° 59' 30"     275.69     feet along Remnant "A" (Portion of Old Pahoa-Kalapana Road);
8.     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 16.276 acres, more or less.

-PARCEL SECOND:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 5005 to J. E. Elderts) situate, lying and being at District of Puna, Island and County of Hawaii, State of Hawaii, being REMNANT "A", being a portion of Old Pahoa-Kalapana Road at Kamaili and thus bounded and described:

Beginning at the southwest corner of this parcel of land, being also the south corner of Lot 15-D, portion of Grant 5005 to J. E. Elderts, and the northwest corner of Grant S-23,403 to AMFAC, on the north boundary of Lot 2, Grant 4330 to C. L. Wight, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Heiheiahulu" being 6,074.61 feet north and 16,652.94 feet east, and running by azimuths measured clockwise from true South:

1.     220° 59' 0"     275.69     feet along Lot 15-D, portion of Grant 5005 to J. E. Elderts;
2.     Thence along Lot 15-D, portion of Grant 5005 to J. E. Elderts, on a curve to the left with a radius of 1016.74 feet, the chord azimuth and distance being:  
208° 29' 45"     439.98 feet;
3.     286° 00'     50.00     feet along the remainder of Old Pahoa-Kalapana Road;
4.     Thence along Lot 15-B and Lot-A, portions of Grant 5005 to J. E. Elderts, on a curve to the right with a radius of 1066.74 feet, the chord azimuth and distance being:  
28° 29' 45"     461.62 feet;

5. 40° 50' 30" 261.10 feet along Lot 15-A, portion of Grant 5005 to J.E. Elderts;
6. 114° 43' 30" 52.08 feet along Grant S-23,403 to AMFAC to the point of beginning and containing an area of 36,140 square feet or 0.830 acre, as shown on Final Plat approved by Hawaii County Planning Director on January 27, 2004 as subdivision Number 7763

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR: THE OFFICE OF OVERSEER, A CORPORATE SOLE AND HIS SUCCESSOR OVER/FOR THE POPULAR ASSEMBLY OF REVITALIZE, A GOSPEL OF BELIEVERS, a Hawaii corporation sole

GRANTEE: JASON HESTER, an individual

DATED: June 9, 2011

RECORDED: Document No. 2011-093772

SUBJECT TO THE FOLLOWING:

1. FINAL JUDGMENT

AGAINST: Leonard G. Horowitz, Sherri Kane, individually, Medical Veritas International, Inc. and Royal Bloodline of David, a Washington non-profit corporation

IN FAVOR OF: Jason Hester, individually

DATED: December 29, 2015

FILED: Circuit Court of the Third Circuit, State of Hawaii, #14-1-304

RECORDED: Document No. \_\_\_\_\_

2. AFFIDAVIT OF LEONARD G. HOROWITZ

DATED: June 6, 2016  
RECORDED: Document No. A-60010681 on  
June 6, 2016

3. NOTICE OF INVALID LIEN

AGAINST: Leonard G. Horowitz  
IN FAVOR OF: Jason Hester, individually  
REGARDING: Affidavit of Leonard G. Horowitz  
RECORDED: Document No. A-60190688 on  
June 24, 2016

**END OF EXHIBIT "A"**

MITCHELL D. ROTH 6012  
Prosecuting Attorney  
County of Hawai'i  
655 Kilauea Avenue  
Hilo, Hawai'i 96720  
Tel. No. (808) 961-0466  
Email: hilopros@co.hawaii.hi.us  
Attorneys for State of Hawai'i

Electronically Filed  
THIRD CIRCUIT  
3CPC-19-0000968  
05-DEC-2019  
08:57 AM

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,	)	CR. NO. _____
	)	
vs.	)	INDICTMENT
	)	
PAUL J. SULLA, JR. and	)	
HALAI HEIGHTS, LLC.,	)	(Hilo)
	)	
Defendant.	)	

INDICTMENT

The Grand Jury charges:

COUNT 1 C18009739/HL

On or about the 6th day of September, 2016, in the County and State of Hawaii,  
PAUL J. SULLA, Jr., with intent to defraud, falsely made, completed, endorsed or altered  
a written instrument, and/or uttered a forged instrument, which is or purports to be, or  
which is calculated to become or to represent if completed, a deed and/or other  
instrument which does or may evidence, create, transfer, terminate, or otherwise affect a  
legal right, interest, obligation or status concerning real property, thereby committing the  
offense of Forgery in the Second Degree, in violation of Section 708-852(1), Hawaii  
Revised Statutes, as amended.

**Exhibit Q**





It is further alleged that the statute of limitations has not run in accordance with Section 701-108(3)(a), Hawai'i Revised Statutes, as amended, as the above offense involves fraud and/or deception as defined in Section 708-800, and this action is being commenced within three years after discovery of the offense by an aggrieved party on or about February 1, 2018, and who is oneself not a party to the offense, but in no case is this action, under this provision, extending the period of limitations by more than six years from the expiration of the period of limitation prescribed in Section 701-108(2), Hawai'i Revised Statutes, as amended.

COUNT 2 (C19-\*/HL; C18009739/HL)

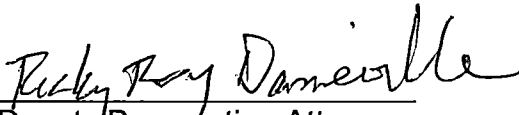
On or about the 6th day of September, 2016, to and including November 27, 2019, in the County and State of Hawai'i, PAUL J. SULLA, JR., and HALAI HEIGHTS, LLC, an unincorporated association, as part of one scheme and/or a continuing course of conduct intentionally obtained or exerted control over the property of another, a parcel of real estate known as Remnant "A" and later known as TMK 3-1-3-001-095-0000, belonging to LEONARD G. HOROWITZ and/or THE ROYAL BLOODLINE OF DAVID, by deception, with intent to deprive LEONARD G. HOROWITZ and/or THE ROYAL BLOODLINE OF DAVID of the property; and PAUL J. SULLA, JR., and HALAI HEIGHTS, LLC intended, believed, knew and/or was aware the value of the property taken exceeded \$20,000.00; And/or PAUL J. SULLA JR. and HALAI HEIGHTS, LLC, an unincorporated association, intentionally received, retained and/or disposed of the property of another, real property known as Remnant "A" and later known as TMK 3-1-3-001-095-0000, belonging to LEONARD G. HOROWITZ and/or THE ROYAL BLOODLINE OF DAVID, knowing that the real property had been stolen, with intent to

deprive LEONARD G. HOROWITZ and/or The ROYAL BLOODLINE OF DAVID, of the property; and PAUL J. SULLA, JR., and HALAI HEIGHTS, LLC intended, believed, knew and/or was aware the value of the property stolen exceeded \$20,000.00;

thereby committing the offense of Theft in the First Degree in violation of Section 708-830(2), and/or 708-830(7), and 708-830.5(1)(a), Hawai'i Revised Statutes, as amended.

Dated: Hilo, Hawai'i, December 4, 2019.

A TRUE BILL

  
\_\_\_\_\_  
Deputy Prosecuting Attorney  
County of Hawaii

  
\_\_\_\_\_  
Foreperson

REPORT OF THE  
COMMITTEE ON PUBLIC WORKS AND INTERGOVERNMENTAL RELATIONS

DATE: November 04, 2003  
PLACE: Councilroom  
TIME: 9:04 a.m.

RE: COMM. NO. 377 / RESO. NO. 119-03

Chair and Members  
Hawai'i County Council  
Hilo, Hawai'i 96720

Your Committee on Public Works and Intergovernmental Relations, to which was referred Communication No. 377, and attached Resolution No. 119-03, reports as follows:

Communication No. 377 is from Assistant Corporation Counsel Gerald Takase, dated October 8, 2003, transmitting Resolution No. 119-03 for the Council's review and consideration.

The purpose of Resolution No. 119-03 is to authorize the abandonment, exchange, and sale of a portion of the old Pāhoa-Kalapana Road to Loran Lee (Portion of Tax Map Key: (3)1-3-001).

Assistant Corporation Counsel Gerald Takase explained that the current road is not government property, and the property owner plans to develop the actual County right-of-way for access to the surrounding properties. Included in the proposal is the 36,000 square foot property the County is willing to abandon and the 11,000 square foot property Mr. Lee is offering to exchange with the County. He will also pay the difference in value to the County. It has been requested that Mr. Takase submit copies of the appraisal of the properties to Your Committee.

Mr. Lee assured the Committee members that he will submit a written and signed statement to attach to this resolution that he and the other property owners will assume maintenance liability for this road.

For informational purposes, Mr. Tyler voted "kanalua" twice.

Your Committee is in accord with the purpose and intent of Resolution No. 119-03 and recommends its adoption.

ey

	AYES	NOES	A&E	EX
ARAKAKI	X			
CHUNG			X	
ELARIONOFF	X			
HOLSCHUH	X			
JACOBSON	X			
REYNOLDS			X	
SAFARIK	X			
TULANG	X			
TYLER	X			

Respectfully submitted,

COMMITTEE ON PUBLIC WORKS &  
INTERGOVERNMENTAL RELATIONS

  
GARY SAFARIK, CHAIR

PWIRC REPORT NO. 30  
ADOPTED: NOV 19 2003

**Exhibit R**

Paul J. Sulla, Jr. (SBN 5398)  
Attorney at Law  
P.O. Box 5258  
Hilo, HI 96720  
Telephone: 808/933-3600  
Email: psulla@aloha.net  
Attorney for Plaintiff JASON HESTER

FILED

2018 JUN 22 AM 8:30

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
FOR THE STATE OF HAWAII

JASON HESTER,

Plaintiff

v.

LEONARD G. HOROWITZ,

Defendant.

CIVIL NO.: 17-I-407  
(Other Civil Action)  
Fmrly Civ. No. 1-CC-16-1-I442  
(venue changed to 3<sup>rd</sup> Cir.) and  
USDC Haw. Civ. No. 1:1777-cv-14-LEK  
(remanded)

**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**

Hearing Date: June 1, 2018

Hearing Time: 8:00 a.m.

Judge: Hon. Henry T. Nakamoto

Trial Date: None set

**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**

**Exhibit S**

Plaintiff JASON HESTER submits the following proposed Findings of Fact and Conclusions of Law following a hearing held on June 1, 2018 before the Honorable Henry T. Nakamoto, Judge of the above-entitled Court. Attorney Paul J. Sulla, Jr. appeared on behalf of the Plaintiff, who was present, and pro se Defendant Leonard G. Horowitz appeared by phone. No other parties or attorneys appeared at trial in this matter. The Court, having considered the testimony and exhibits of the parties at hearing and the arguments of counsel, being fully advised in the premises and for good cause therefore, hereby finds, concludes and orders as follows:

### **FINDINGS OF FACT**

1. To the extent that any of the following Findings of Fact shall be determined to be Conclusions of Law, they shall be deemed as such.
2. Plaintiff Jason Hester is a natural person and a resident of Hawaii County, Hawaii.
3. Defendant Leonard G. Horowitz is a natural person and is now a resident of Las Vegas, Nevada, but was previously a resident of the County of Honolulu, Hawaii.
4. The Nonconsensual Common Law Liens which are the subject of this lawsuit were filed in the State of Hawaii Bureau of Conveyances affecting the subject real property parcels located at Kalapana-Pahoa Road, Pahoa, Hawaii County, Hawaii 96778-7924 (the "Subject Properties") which bear the tax map keys of TMK (3) 1-3-001-043 and TMK (3) 1-3-001-049 and this Court has jurisdiction and venue over this matter.
5. On or about October 6, 2013, Respondent caused to be filed with the State of Hawaii Bureau of Conveyances a nonconsensual common law lien, entitled "AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) 1-3-001-043 and 049," recorded as Document No. A-5300768 (hereinafter "10/03/2013 Lien").



6. On or about June 6, 2016 at 3:29 p.m., Respondent caused to be filed with the State of Hawaii Bureau of Conveyances a document entitled "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)", recorded as Document No. A-60010681, (hereinafter "06/06/2016 Lien"), affecting the Subject Properties.

7. At the time of the filing of the Petition, these TMKS were owned solely by the Petitioner, Jason Hester, and title to said properties has been quieted by Final Judgement in Civ. No. 14-1-304, dated December 30, 2015, from the Third Circuit Court.

8. Petitioner Jason Hester continues to hold an interest in the subject property as a member of Halai Heights, LLC, the current title holder.

9. Neither the 10/03/2013 Lien and 06/06/2016 Lien were accompanied by a certified order from a state or federal court authorizing their filing.

10. Both liens affecting the Subject Properties include claims that are false and/or misleading.

11. No statutory, other legal authority, or order of the court is claimed or mentioned in the document to authorize the filing of these liens.

12. On or about March 14, 2014, Respondent Horowitz filed a similar lien against properties belonging to Plaintiff's counsel and his son. In Civ. No. 14-1-0173, Plaintiff's counsel and his son filed a Petition in the Third Circuit Court of the State of Hawaii to expunge that lien, resulting in a final judgment in favor of the Petitioners and expungement of the lien.

### **CONCLUSIONS OF LAW**

To the extent that any of the following Conclusions of Law shall be determined to be Findings of Fact, they shall be deemed as such.

1. This Court has jurisdiction of the parties and subject matter of this action, and venue is proper in this Circuit.

2. In Count I, Plaintiff states a claim for relief for violation of H.R.S. § 507D.

3. Pursuant to H.R.S. § 507D-5(b):

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

4. No certified court order from any state or federal court accompanied the Subject Liens.

5. The 10/03/2013 Lien and the 06/06/2016 Lien are nonconsensual common law liens on the Subject Properties within the meaning of Haw. Rev. Stat. § 507D, as neither document states a claim under a specific statute for which a lien is allowed, neither document was not consented to by Petitioner, and no court allowed for the filing of such liens.

5. The 10/03/2013 Lien and the 06/06/2016 Lien constitute "Liens" within the meaning of Haw. Rev. Stat. § 507D-2 and are a clouds on title and encumbrances on the Subject Properties.

6. This Court finds that the 10/03/2013 Lien and the 06/06/2016 Lien are both invalid and of no legal effect. Respondent did not have legal authority to vest any right, title or interest to the Subject Properties, which Respondent does not own, and these documents Respondent recorded or caused to be recorded were without authority or basis in law or fact.

7. Pursuant to H.R.S. § 507D-7, the Circuit Court find both the 10/03/2013 Lien and the 6/6/16 Lien invalid and hereby orders the registrar to expunge the instruments purporting to create them.

8. This court finds that the filing of the 10/03/2013 Lien was frivolous and filed with no legal basis whatsoever, merely with the intent to harass Petitioner and prevent him from selling the Subject Properties and to punish Jason Hester, who is adverse to Respondent in separate legal matters.

9. This court finds that the filing of the 06/06/2016 Lien was frivolous and filed with no legal basis whatsoever, merely with the intent to harass Petitioner and prevent him from selling the Subject Properties and to punish Jason Hester, who is adverse to Respondent in separate legal matters.

10. There exists no material issues of fact regarding the filing of the two liens.

11. Because the filing of the purported liens are frivolous and because these are subsequent violations of HRS § 507D by the Respondent against Petitioner and his counsel, Petitioner is entitled to an award of \$10,000.00 which represents \$5,000.00 for each invalid lien filed, pursuant to H.R.S. § 507D-7(a) plus attorneys' fees and costs.

12. Because the filing of the Liens were frivolous and because there exists a prior violations of HRS § 507D by the Respondent, Petitioner is entitled to injunctive relief against Respondent Horowitz to preclude further filings of any kind with the registrar for a period of five years pursuant to H.R.S. § 507D-7(b).

### **ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the "Affidavit of Leonard G. Horowitz (Lis Pendens on Real Property)", recorded as Document No. A-60010681 shall be expunged, stricken and released from the Bureau of Conveyances as an encumbrance on the Property, *nunc pro tunc*;

2. That the "AFFIDAVIT OF FIRST LIEN OF \$7,500,000.00 ON REAL PROPERTY TMK: (3) 1-3-001-043 and 049," recorded as Document No. A-5300768 shall be expunged, stricken and released from the Bureau of Conveyances as an encumbrance on the Property, *nunc pro tunc*;

3. Any and all other documents which are recorded in the Bureau of Conveyances by Respondent subsequent to the filing of this Petition which affect the Subject Properties and are filed without a basis in law or fact are also hereby expunged, *nunc pro tunc*;

4. Respondent shall pay Petitioner his actual damages, costs and reasonable attorneys' fees;

5. The 10/03/2013 Lien, 06/06/2016 Lien, and any other documents filed in the Bureau of Conveyances by Respondent subsequent to the filing of this Petition are hereby deemed frivolous;

6. This Order shall act as an injunction prohibiting Respondent from further filings of any kind with the State of Hawaii Bureau of Conveyances Registrar for a period of five years from the date of this Order pursuant to H.R.S. § 507D-7(b); and

7. There is no just reason for delay and this order shall be considered a judgment against Respondent Leonard G. Horowitz.

DATED: Hilo, Hawaii, \_\_\_\_\_

JUN 22 2018

  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

**HENRY T. NAKAMOTO**

*Hester v. Horowitz*, Civ. No. 17-1-407

**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**

LAND USE COMMISSION  
MEETING MINUTES  
November 28, 2018 a.m.  
Natural Energy Laboratory Hawai`i Authority (NELHA)  
73-987 Makako Bay Drive Kailua Kona, Hawai`i 96740-2637  
Hale `Iako Training Room #119

COMMISSIONERS PRESENT: Jonathan Scheuer  
Gary Okuda  
Lee Ohigashi  
Dawn Chang  
Edmund Aczon  
Nancy Cabral  
Aaron Mahi  
Arnold Wong

COMMISSIONERS EXCUSED: None  
(8 Seated Commissioners)

LUC STAFF PRESENT: Daniel Orodener, Executive Officer  
Patricia Ohara, Deputy Attorney  
General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Chief  
Clerk

COURT REPORTER: Jean McManus

**CALL TO ORDER**

Chair Scheuer called the meeting to order at 9:30 a.m.

**APPROVAL OF MINUTES**

Chair Scheuer asked if there were any corrections or additions to the November 14, 2018 meeting minutes. There were none. Commissioner Aczon moved to approve the minutes and Commissioner Mahi seconded the motion.

**Exhibit T**

The minutes were unanimously approved by voice vote (8 ayes-0 nays- 0 excused).

### **TENTATIVE MEETING SCHEDULE**

Executive Officer Orodenker provided the following:

The regular tentative meeting schedule has been distributed in the handout material for the Commissioners for the following dates and docket numbers.

November 29, 2018- Continued business on Docket No. A07-773

Emmanuel Lutheran and Adoption of Order for A05-755 Hale  
Mua

December 13, 2018- at Honolulu International Airport Conference Room

- A06-763 Kapolei Development –(O`ahu) – Extend Time

January 9, 2019- IAL Site visits on Oahu

January 10, 2019 (Hawai`i) at NELHA

- Status Reports- A10-788 HHFDC and A00-730 Lanihau
- OSC A06-770 Shopoff Group
- A18-805 Church – Motion to Accept FONSI

January 23, 2019- (Maui) at Courtyard Marriott- North Shore

- DR18-63 Malaekahana

February 6-7, 2019 – (Kaua`i) Kealia Properties

February 20-21, 2019- open

March 13-14, 2019- at Honolulu International Airport Conference  
Room- A18-804 Hawaii Memorial Park

Any questions or conflicts, please contact LUC staff.

There were no questions or comments on the schedule.

Chair Scheuer provided a brief informational background on what the mission of the Land Use Commission was, and how the Commissioners serve on a voluntary basis for the benefit of the public.

Chair Scheuer stated that the next agenda item was a hearing and action on A06-767 Waikoloa Mauka (Hawai`i).

### **HEARING AND ACTION**



**A06-767 WAIKOLOA MAUKA LLC, (HAWAI'I)**

Hear evidence, deliberate and take action on order to show cause issued June 4, 2018

**APPEARANCES**

Steven Lim Esq. represented Petitioner Waikoloa Highlands Inc. (WHI)

Valery Grigoryants, WHI (Russian-speaking WHI Representative using Interpreter)

Irina McGriff, Interpreter for WHI

Natalia Batichtcheva, WHI

Joel La Pinta, WHI

Ron Kim Esq., Deputy Corporation Counsel, County of Hawaii Planning Department  
(County)

Jeff Darrow, Program Manager, represented County

Additional Members of County of Hawai'i, Department of Housing and Community  
Development in attendance (DHCD)

Neil Gyotoku, DHCD

Ann Bailey, DHCD

Dwayne Osaka, DHCD

Dawn Takeuchi-Apuna, Esq., represented State Office of Planning (OP)

Rodney Funakoshi, Planning Program Administrator, OP

Chair Scheuer updated the record and explained the procedures to be followed for the proceedings. There were no questions, comments or objections to the procedures.

Chair Scheuer called for Public Witnesses

**PUBLIC WITNESSES:**

1. Darlene Osorio – Representative for Ikaika Ohana (non-profit agency)

Ms. Osorio provided a printed folder of information on UHC Communities for the Commission to review, described her organizational role and shared her concerns about the lack of affordable housing in the area and how her organization was attempting to remedy the situation.

Mr. Lim requested clarification of Ms. Osorio concerns and interest in the development of the Petition Area. Ms. Osorio described how initial discussions had begun with WHI and why WHI's 11 acre parcel was attractive to her organization since it was clear of unexploded ordnance.

County commented that it recognized the need for affordable housing and thanked Ms. Osorio for her efforts.

OP had no comments.

Commissioner Wong asked when discussions with WHI were initiated. Ms. Osorio replied that they had just started a few weeks ago.

Commissioner Ohigashi inquired what the UHC Communities folder materials were. Ms. Osorio explained that the folder contained information on the “for profit” arm of her organization and to demonstrate that her organization was part of an active business involved in development.

There were no further questions for Ms. Osorio.

2. Julia Alos-

Ms. Alos provided written testimony and shared her concerns about the lack of development of the Petition Area and Petitioner’s failure to meet obligations to provide needed infrastructure improvements.

Mr. Lim requested clarification of Ms. Alos concerns regarding development of the Petition Area. Ms. Alos reiterated the items of concern that she had testified on and stated that if the Petition Area were not reverted, she would like the promised traffic improvements and roundabout be given top priority for completion.

County and OP had no questions.

Commissioner Cabral expressed her appreciation for Ms. Alos’ testimony.

Commissioner Chang inquired how long Ms. Alos had been a resident and whether she had observed any improvements in the Petition Area during her residency. Ms. Alos responded that she was an 18 year resident and had not observed any improvement activity on the Petition Area during that period.

Commissioner Mahi inquired whether Ms. Alos was assured that the improvements would be done. Ms. Alos replied that she was unsure that Petitioner would comply and that it would require a “fast track” approach to complete the project.

There were no further questions for Ms. Alos.

There were no other public witnesses.

## EXHIBITS

Chair Scheuer called for the Parties to offer their exhibits into evidence.

Petitioner

Mr. Lim offered Petitioner's Exhibit "65"-(various printed materials related to the County's Affordable Housing Release Agreement).

Chair Scheuer noted that other additional exhibits had been filed by Petitioner with the Commission. Mr. Lim stated that he would like to have his other exhibits that were filed with his second supplemental statement of position filing accepted as well.

Mr. Kim stated that there were no objections to Petitioner's exhibits by County except for Petitioner's Exhibit "65". Mr. Kim noted that the warranty deed included in Petitioner's filing differed from County's records. Commissioner Ohigashi questioned whether County would be filing its copy of the warranty deed with the Commission. Mr. Kim responded that he had filed it and had just received the warranty deed earlier in the week at his office and had not had time to process them; and had only just received Petitioner's Exhibit "65".

Chair Scheuer asked OP if it had any objections.

Ms. Apuna stated that she objected to portions of Petitioner's Second Supplemental Position Statement (Part II, arguments in support, pages 5-23) and Petitioner Exhibits 46-54 and argued why the Commission should deny them being entered into the record.

Commissioners Okuda, Ohigashi, Aczon, and Chair Scheuer requested clarification on whether actual prejudice had been suffered by OP, what relevance the exhibits had, what administrative rules might apply, what was needed to complete the record, and when the evidentiary portion of the hearing would end.

Chair Scheuer expressed that his reasoning for allowing the evidentiary portion to remain open was for the purpose of hearing arguments related to the late request of Petitioner to question an OP representative and to receive the briefs requested by the Chair at the October 24-25, 2018 meeting.

Mr. Lim provided his perception on the relevance of his exhibits and what administrative rules provided for allowing his exhibits to be offered for the record.

Commissioners Okuda, Ohigashi, Wong, and Mahi sought additional clarification on relevance, protection, claims of discriminatory enforcement and prejudicial treatment, the need for new exhibits, and the need to include other unrelated cases as exhibits. Commissioner Okuda stated that upon review against the standards set by Mahiai vs. Suwa, he felt that the proposed exhibit evidence was irrelevant and withdrew his earlier comment to admit all the exhibits. Mr. Ohigashi questioned whether Petitioner would be given an opportunity to

respond to OP's objections. Commissioners Wong and Mahi requested clarification on why additional exhibits were necessary and how they were applicable to the current proceedings. Mr. Lim described why he felt his actions were justified and argued why his additional new exhibits should be allowed.

Discussion ensued to determine how Mr. Lim would proceed with his presentation relative to the ongoing proceedings.

Commissioner Chang requested clarification on what Mr. Lim was attempting to demonstrate using his exhibits. Mr. Lim further expressed his reasons for submitting his exhibits. Chair Scheuer commented that Mr. Lim had used "Russian" and "Armenian" in his presentation and requested clarification on what distinction needed to be recognized. Mr. Lim responded that it was in reference to citizenship and ethnicity and could be considered as the same.

Chair Scheuer stated that Petitioner should conclude its response to OP's objection.

Mr. Lim argued that his exhibits should be allowed since the evidentiary portion of the proceedings were still open and that the evidentiary rules are less rigid in administrative hearings.

Commissioner Chang requested clarification on Mr. Lim's argument.

Commissioner Wong moved for an Executive Session to consult with the board's attorney on the LUC's duties, powers, etc. on this matter. Commissioner Aczon seconded the motion and noted that OP had not finished responding to Mr. Lim.

Chair Scheuer recognized Ms. Apuna to respond to Mr. Lim's offering of exhibits to the record. Ms. Apuna argued that the exhibits being offered were readily available and could have been produced earlier, and that filing them when he did was untimely.

Chair Scheuer confirmed that Ms. Apuna had completed her response and addressed the motion for Executive Session.

By a verbal vote, the Commission unanimously voted to enter Executive Session (8-0-0).

The Commission entered Executive Session at 10:37 a.m. and reconvened in regular session at 11:11 a.m.

Chair Scheuer requested clarification from OP on what exhibits were being objected to. Ms. Apuna stated that OP objected to Petitioner Exhibits 46-54. Mr. Lim argued that Exhibits "46"- "47" should be allowed based on relevance to the proceedings. Ms. Apuna contested Mr. Lim's argument and provided her reasoning for not allowing them into the record.

Chair Scheuer referred to HAR§15-15-63 regarding evidence and stated that the Chair or the Commission could admit the exhibits and initiated a discussion on the matter. Commissioners Mahi, Chang, and Wong verbally responded that they deferred the Chair to decide on the admissibility of exhibits.

Commissioners Okuda, Ohigashi, Cabral, and Aczon did not object to the Chair's deciding on admission of exhibits. Chair Scheuer categorized the exhibits and stated which ones would not be admitted and provided the reasoning for denying them. Chair Scheuer admitted Petitioner Exhibits "53d" and "54d" (those portions of the minutes relevant to A06-767 Waikoloa Mauka). Chair Scheuer also admitted "57, "62", "63a", "63b", and qualified that he recognized that although they supported explaining the ownership structure of WHI, they were unnotarized and unsworn documents. (all other Exhibits "46"- "64" that are not noted as being admitted were excluded from the record).

Discussion ensued to confirm what exhibits had been admitted. Chair Scheuer stated what exhibits had been allowed and noted that exhibit "65" had yet to be addressed due to its late submittal. Mr. Lim argued why "65" should be allowed.

Chair Scheuer admitted "65" to the record and noted that it was a late submittal.

Commissioner Ohigashi requested clarification on whether the copies of the County's documents included in Petitioner's Exhibit "65" were the same as what County possessed.

Chair Scheuer recognized Mr. Kim's offer to respond.

Mr. Kim stated that County had no objection to Petitioner's Exhibit "65" and described County's position on the matter.

County

Mr. Kim stated that he had no further exhibits to offer.

OP

Ms. Apuna stated that OP had no further exhibits to offer.

PRESENTATIONS

HEARING AND ACTION

A06-767 WAIKOLOA MAUKA LLC, (HAWAII)

Hearing on Motion for Issuance of A Subpoena To An Authorized Representative of the  
State of Hawai'i Office of Planning, In the Matter of the Petition of Waikoloa  
Mauka LLC

Chair Scheuer described the procedures for hearing the motion and called Petitioner to make their presentation regarding its motion for issuance of a subpoena to have a witness from OP to appear.

Mr. Lim stated that he would like to reserve time for rebuttal and argued why he had made the motion for issuance of subpoena. Mr. Kim argued why the motion for subpoena was not relevant and should be denied. Ms. Apuna stated that OP opposed the subpoena and argued why the motion should be denied. Mr. Lim restated why his motion should be granted and stated that he was providing administrative notice why other orders to show cause (OSC) and his exhibits "48"- "54" should be included.

Chair Scheuer requested clarification on what Mr. Lim's request for administrative notice was asking for and stated that he was denying the request for the Commission to take administrative notice as requested by Mr. Lim since it was a re-stated request to admit exhibits that were previously excluded.

Chair Scheuer directed the Commission's attention to the motion for issuance of subpoena and allowed Commissioner questions.

Commissioner Okuda requested clarification of Mr. Lim's position on the Motion. Mr. Lim described his offer of proof of why an OP witness was necessary and how his foreign investors were being treated.

Commissioner Chang requested further clarification on why Mr. Lim needed to have OP's testimony. Mr. Lim argued why OP's testimony would be relevant to the proceedings.

There were no further questions or comments on the Motion. Chair Scheuer sought the pleasure of the Commission.

Commissioner Okuda commented that he was inclined to defer deciding on the motion to the Chair. Chair Scheuer conferred with Ms. Ohara and stated that since a hearing had been requested on this matter, the Commission needed to decide on the motion.

Commissioner Okuda responded that he would move that the motion for issuance of a subpoena be denied. Commissioner Wong seconded the motion. There was no further discussion. Chair Scheuer directed Mr. Orodener to poll the Commission. The Commission unanimously voted to deny the Motion for



Issuance of A Subpoena To An Authorized Representative of the State of Hawai'i Office of Planning, In the Matter of the Petition of Waikoloa Mauka LLC (8-0-0). Chair Scheuer declared a recess at 11:43 a.m. and reconvened the hearing at 12:30 p.m.

Chair Scheuer moved on to the next agenda item.

## **CONTINUED HEARING AND ACTION**

### **A06-767 WAIKOLOA MAUKA LLC, (HAWAII)**

Hear evidence, deliberate and take action on order to show cause issued June 4, 2018

Chair Scheuer noted that he had denied in part and granted in part Petitioner's subpoena for a County Housing Agency witness to appear before the Commission. Chair Scheuer asked Mr. Lim who would be testifying. Mr. Lim identified Neil Gyotoku as his witness.

Petitioner's County Witness

1. Neil Gyotoku, Housing Administrator, DHCD

Disclosure:

Commissioner Cabral disclosed that her company receives rental income from Mr. Gyotoku's agency, but that it would not impact her ability to remain fair and impartial during the proceedings. There were no objections to Ms. Cabral's continued participation.

Mr. Gyotoku described his role at his agency and what had transpired during his term as DHCD Administrator relative to his agency's attempt to work with WHI to satisfy its affordable housing condition.

Mr. Kim requested clarification on the details of the DHCD's involvement with the WHI affordable housing effort; and requested specifics on the planned development and validity of the deed for the property; and what the non-profit status of the entities involved in the ownership of the approximately 11 acres conveyed to the County by Petitioner were. Mr. Gyotoku described the events and circumstances surrounding the DHCD/WHI affordable housing negotiations and could not answer how the deed for the conveyed property was altered while in County custody.

Mr. Apuna had no questions.

Commissioners Wong, Okuda, Chang, and Ohigashi requested clarification on when discussions began regarding conveyance of the land to the County, whether the

most recent correspondence from the County of Hawaii Mayor's office correctly identified the County's position that the affordable housing condition had not been fulfilled; and how Petitioner's Exhibit "65" and "11" provided evidence that supported the testimony provided. Mr. Gyotoku stated that discussions about affordable housing began around 2015 and that they were preliminary and only involved conceptual drawings and recounted the number of recent meetings that had occurred; and that Mayor Kim's letter correctly reflected the County's position on the non-fulfillment of the affordable housing condition. Mr. Gyotoku also described how the deed for the conveyed property may have been recorded and how his agency was investigating how the deed had been processed and how the release from the affordable housing requirement had been obtained.

Commissioner Ohigashi requested clarification on whether County had submitted any exhibits to support Mr. Gyotoku's testimony.

Discussion ensued to determine the status of County's exhibits. Mr. Kim stated that he had submitted the November 9, 2018 Mayor's letter to the LUC in response to the Chair's directions from the October 24-25, 2018 meeting, but had not offered it as an exhibit.

Chair Scheuer declared a recess at 12:58 p.m. and reconvened the meeting at 1:00 p.m.

Chair Scheuer summarized what information he had requested from the County to provide and that the letter would be admitted as County Exhibit "1". There were no objections to County's exhibit "1". Discussion ensued on how exhibits filed with other County submittals would be made part of the record. Chair Scheuer stated that the exhibits would be appropriately numbered and noted that there had been no objections from the Parties as to how the County's exhibits were to be identified.

Commissioner Ohigashi resumed questioning Mr. Gyotoku on why the County had changed its position regarding the release of the affordable housing agreement. Mr. Gyotoku described how the County had determined that a "for-profit" LLC entity had been incorrectly involved in the conveyance of the WHI property; and the reasons why the County now felt that the release agreement was void.

Commissioner Aczon requested clarification on Ms. Osorio's involvement with the affordable housing efforts of WHI. Mr. Gyotoku described Ms. Osorio's role in the affordable housing discussions. Mr. Lim described Petitioner's efforts with dealing with the 11.7 acre land parcel conveyance and in seeking to move forward on its housing project.

Commissioner Cabral requested clarification on the County's processing of documents using incorrect "for-profit" entities in regards to the release of the affordable housing agreement. Mr. Gytoku stated that County had copies of the documents involved with the acquisition of the property and could produce them upon request.

Commissioners Okuda, Chang, Aczon and Chair Scheuer requested clarification on how the County perceived the release agreements as valid, then determined they were "void", the sequence of discovery involved during the transaction, the determination that Plumeria at Waikoloa LLC was a "for-profit" buyer of the property, what triggered the letter rescinding the affordable housing agreement from the Mayor's office and whether Mr. Stephan Martirosian had any involvement in the transaction.

#### REDIRECT

Mr. Lim described various scenarios that he thought might satisfy the WHI affordable housing agreement for Mr. Gytoku to consider. Mr. Gytoku described the difficulties that he would be confronted with due to the "void" release of the WHI agreement and subsequent sales of the property. Mr. Lim shared that Petitioner was currently involved in discussions to resolve the situation.

Commissioner Wong requested clarification on what the Pua Melia project involved.

Mr. Gytoku provided his understanding of the 201h affordable housing proposals under consideration and what commercial components would be situated nearby.

Mr. Lim stated that he had concluded his presentation.

Chair Scheuer reviewed the sequence of the proceedings for the remainder of the day. Commissioner Chang requested clarification on whether Mr. Gytoku was the last witness. Chair Scheuer responded that Mr. Gytoku was the last witness and that the Parties would be presenting their briefs as requested by the Commission; responding to questions on their briefs, delivering closing arguments and then the Commission would deliberate.

There were no further questions or comments. Chair Scheuer declared a recess at 1:25 p.m. and reconvened the meeting at 1:38 p.m.

Chair Scheuer called for the oral presentations by the Parties on their briefs.

## PETITIONER

Mr. Lim stated that he rested on his briefs with the exception of how the Bridge Aina Lea and HRS §205-4g applied to this case; and how a 5 part test applied to OSCs. Mr. Lim provided his perspective on how the Commission should proceed in OSC matters and made an oral motion that the LUC dismiss the OSC under its consideration.

Chair Scheuer declared a recess at 1:44 p.m. and reconvened the meeting at 1:50 p.m.

Chair Scheuer stated that Mr. Lim's oral motion to dismiss the OSC seemed to seek the same relief as what the Commission was addressing in its proceedings, and since County and OP had not had a their chance yet, he would withhold deciding on it. Mr. Lim argued why his motion was worthy of consideration and ended his presentation.

## COUNTY

Mr. Kim stated that County would also stand on its brief and provided his perception of how HRS §205- 4g set the mechanism for the OSC action.

Chair Scheuer asked if the Commission had any questions for the County. Commissioner Okuda asked to question Petitioner. Chair Scheuer allowed the questioning of Mr. Lim before questions for the County were entertained.

Commissioner Okuda read a passage and requested clarification from Mr. Lim on whether a passage he read was an accurate statement of the law on how HRS §205- 4g applied in a different case. Mr. Lim argued how he perceived what was read differently.

Commissioner Chang requested clarification on what Mr. Lim was orally arguing since it appeared to differ from the written response to Commission's original questions. Mr. Lim described how, upon further consideration of HRS §205- 4g, and in an "evolving situation", he had a different perspective of how the Commission should respond to OSC matters and weigh the matter of "substantial commencement".

Commissioner Okuda requested clarification on Mr. Lim's "plain language" interpretation of the Supreme Court decision and its application to HRS §205- 4g. Mr. Lim shared his perspective of the "plain language" and agreed to disagree on how it applied to HRS §205- 4g.

Commissioner Chang requested clarification on Mr. Lim's position regarding non-compliance with infrastructure and build-out conditions (Conditions 2 and 3). Mr. Lim provided his perception of what alternatives the Commission could take rather than revert the land use designation of the Petition Area.

Chair Scheuer asked if there were any further questions for Petitioner or County. There were none.

Chair Scheuer called for OP's presentation.

OP

Ms. Apuna stated that OP rested on its written briefs and commented on the issues that Mr. Lim had orally brought up during his presentation. Ms. Apuna argued how the LUC had the authority to act on OSC matters based on Condition 3 as written, HAR §15-15-79 and HRS §205- 4g.

Commissioner Ohigashi requested clarification on "good cause" if there had been no substantial commencement. Ms. Apuna described what Petitioner could have done to demonstrate that it was moving forward with its project and what type of factors could be considered "good cause" for not complying with representations or conditions; and what actions Petition could have taken to avert being involved in OSC proceedings. Mr. Kim stated that County struggled with how "good cause" applied in the OSC proceedings.

Chair Scheuer asked if there were any further questions for OP. There were none. Chair Scheuer declared a recess at 2:21 p.m. and reconvened the meeting at 2:31 p.m.

Chair Scheuer called for closing arguments and stated that each Party had 15 minutes.

PETITIONER

Mr. Lim requested a ruling on his oral motion to dismiss the OSC. Chair Scheuer responded that the oral motion was in line with what the proceedings were seeking to determine and that the Commission would move forward with its proceedings.

Mr. Lim argued why the Petition Area should not be reverted to its former land use designation and requested that Petitioner be afforded an opportunity to continue to move forward and for the LUC to keep the OSC pending as an enforcement tool.

## COUNTY

Mr. Kim stated that Petitioner failed to demonstrate timely progress and substantial commencement; and described the elements of “good cause” that were considered by the County, and what the County would like to have had happen if Petitioner had complied; or alternative actions that it was willing to consider if the land use reversion was deferred.

Mr. Kim stated that County deferred to the Commission’s authority and decision-making in this matter and what expectations it had if a reversion occurred.

## OP

Ms. Apuna argued how Petitioner had failed to comply with Conditions 2, 6, 9, 11, 15, 20 and 21 and failed to take timely appropriate action to avert an OSC. Ms. Apuna summarized her presentation and stated that OP had no objection if the LUC reverted the Petition Area’s land use designation.

Chair Scheuer declared that the evidentiary portion of the hearing was closed and that the Commission would enter into formal deliberation. Chair Scheuer confirmed that all Commissioners present had reviewed the record and were prepared to deliberate. The Commissioners unanimously responded that they had reviewed the record and were ready to deliberate.

## DELIBERATIONS

Commissioners Wong, Ohigashi, Okuda, Mahi, Chang, Cabral and Chair Scheuer shared their viewpoints on the Petition Area ownership issues, substantial commencement and “good cause” issues, the performance of the Petitioner and County, the need for affordable housing, how the evidence in the case was weighed, what representations and conditions were not met and for what reasons, the legal authorities and rules/statutes/Constitutional concerns that need to be considered, and how difficult a decision this case posed.

Chair Scheuer sought the pleasure of the Commission.

Commissioner Mahi moved and Commissioner Wong seconded a motion noting that a violation of Conditions had occurred and that there had not been a substantial commencement of use of the land and that the Petition Area should be reverted back to its former agricultural land use designation.



Commissioner Wong stated that he was seconding the motion since there had been no substantial commencement of use of the land; and despite a conveyance of property, the affordable housing requirement had not been met.

#### Discussion

Commissioner Aczon described how he weighed the evidence and was in favor of the motion. Commissioner Ohigashi stated that he agreed with Commissioner Okuda that no substantial commencement had occurred and questioned what might happen if the property was reverted. Commissioner Okuda requested that his earlier comments from during deliberation be incorporated for his decision making and why he was in favor of the motion.

Chair Scheuer asked Mr. Orodenker to poll the Commission. The Commission voted as follows: Ayes- Commissioners Mahi, Wong, Chang, Aczon, Okuda, Cabral and Chair Scheuer. Nay-Commissioner Ohigashi. The motion passed by a vote of 7-1-0 excused (8 seated Commissioners).

Chair Scheuer stated that the Commission would reconvene at 9:30 a.m., November 28, 2018, on Maui at the Malcolm Center and declared a recess at 3:47 p.m.

.

PAUL J. SULLA, JR.

ATTORNEY AT LAW  
A LAW CORPORATION

106 Kamehameha Ave., Ste. 2A  
PO Box 5258  
Hilo, HI 96720

October 10, 2018

Telephone (808) 933-3600  
Facsimile (808) 933-3601  
e-mail psulla@aloha.net  
www.pauljsulla.com

Hawaii County Land Use Commission  
Hilo, HI 96720

**Reference:** Lot 2-B-2-B containing an area of 11.707 acres.  
See Exhibit "A" attached for complete legal description.  
Waikoloa, District of South Kohala, Island of Hawai'i.  
Tax Map Key No. (3) 6-8-002-058 ("Lot 2-B-2-B")

To whom it may concern:

1. I, Paul J Sulla Jr. of Hilo HI, under oath, make the following declaration from my personal knowledge. I acted as and am competent to make the following declaration.
2. I am the manager of Plumeria at Waikoloa LLC ("Plumeria") and also acted as attorney for Plumeria at all times relevant to the facts herein.
3. Title to Lot 2-B-2-B was conveyed to Plumeria by warranty deed from Waikoloa Highlands, Inc. a Colorado Corporation (WHI), dated May 1, 2017 and signed by its Director, Natalia Batichtcheva. The warranty deed was subsequently recorded at the Bureau of Conveyances of the State of Hawaii (Bureau) on January 29, 2018 as Doc. No. A-66030880.
4. No money was paid by Plumeria to WHI as consideration for the conveyance. I prepared and filed the Conveyance Tax Certificate using \$55,000 as the value of the transaction and paid the applicable conveyance tax to the state. The value of \$55,000 was based on taking the tax office assessed value for the entire ~731 acres and allocating 11/731th of that amount for the approximately 11 acres subdivided from the 731 acres.
5. Prior to closing on the deed, Title Guaranty Escrow Services made me aware of one mortgage that encumbered the property: a mortgage to 77 Holdings, LLC, a Utah limited liability company ("77 Holdings") recorded at the Bureau on February 17, 2015 as Document No. A-55340074.

**Exhibit U**

EXHIBIT 23

6. I found that 77 Holdings was managed by a certain Joe Brown of Utah. When I contacted Mr. Brown, he said the loan had been paid off and he would immediately send a release of mortgage to my office. I received the release and escrow had it recorded with the documents at the Bureau of Conveyances. No money was paid by Plumeria to 77 Holdings.
7. I was not aware of the mortgage to Aclaime Debt Partners, LLC a Utah limited liability company ("Aclaime") recorded at the Bureau on November 14, 2012 as Document No. A-47080677. Since escrow did not make me aware of any other encumbrances, I can only assume that this release had been taken care prior to the closing.
8. Plumeria sold Lot 2-B-2-B to Pua Melia LCC, a Hawaii LLC, conveying title by Warranty Deed dated April 24, 2018 and recorded on May 11, 2018 at the Bureau as Document No. A-67050158.
9. No money was paid from this transaction, or by the parties to this transaction, to Waikoloa Highlands, Inc. or its creditors, officers, directors, shareholders, or employees. No money was paid from this transaction, or by the parties to this transaction, to Waikoloa Mauka LLC, or to its creditors, officers, members, managers, or employees.

The preceding statements are true and made under the penalties of the law of Hawaii.

Sincerely,



Paul J. Sulla Jr.

LEONARD G. HOROWITZ, pro se  
Post Office Box 150457  
Cape Coral, FL 33915  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

JASON HESTER, an individual  
Plaintiff/Counterclaim Defendant  
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 ENTITIES 1-10,  
DOE PARTNERSHIPS 1-10, DOE  
GOVERNMENTAL UNITS 1-10.

Defendants/Counterclaimants

) CIV. NO. 3CC171000407  
) (Expungement)  
)  
)  
) **NOTICE OF HEARING on DEFENDANT'S**  
) **MOTION AND MEMORANDUM FOR JUDICIAL**  
) **NOTICE OF PUBLIC RECORDS IN SUPPORT**  
) **OF RULE 19 JOINDER OF PAUL J. SULLA, JR.,**  
) **HALAI HEIGHTS, LLC, AND THE COUNTY**  
) **OF HAWAII, AS PARTIES;**  
) and EXHIBITS A TO U, and  
) CERTIFICATE OF SERVICE  
)  
)  
) JUDGE: Henry T. Nakamoto  
) Hearing date: Friday July 9, 2021  
) Hearing time: 8:30 a.m.  
)  
)

**NOTICE OF HEARING**

TO:

PAUL J. SULLA, JR (#5398)  
Attorney at Law  
(Attorney for JASON HESTER in Civ. Nos. 3CC171000407 and 05-1-0196)  
106 Kamehameha Avenue, Ste. 2A  
Hilo, HI 96720

STEPHEN D. WHITTAKER (2191)

Attorney at Law  
(Attorney for JASON HESTER in Civ. Nos. 14-1-0304  
73-1459 Kaloko Drive  
Kailua Kona, HI 96740  
808-960-4536

*Attorney for Jason Hester/Gospel of Believers/Halai Heights, LLC*

YOU ARE HEREBY NOTIFIED that the undersigned has filed with the above-captioned court the **DEFENDANT’S MOTION AND MEMORANDUM FOR JUDICIAL NOTICE OF PUBLIC RECORDS IN SUPPORT OF RULE 19 JOINDER OF PAUL J. SULLA, JR., HALAI HEIGHTS, LLC, AND THE COUNTY OF HAWAII, AS PARTIES** with associated filings including Exhibits A- U; and a hearing on this motion is scheduled on the captioned date and time. Any response to this motion must be filed and served no later than 10 days after the service date indicated on the attached Certificate of Service. Pursuant to Rule 6(e) of the Hawai’I Rules of Civil Procedure, if the motion is served by mail, any response to said motion must be filed and served no later than 12 days after the service date indicated on the attached Certificate of Service.

DATED: Cape Coral, FL, 33915 May 25, 2021

\s] Leonard G. Horowitz \

---

LEONARD G. HOROWITZ, pro se

LEONARD G. HOROWITZ, pro se  
Post Office Box 150457  
Cape Coral, FL 33915  
Tel: 310-877-3002;  
Email: Editor@MedicalVeritas.org

**IN DIVISION 2 OF THE THIRD CIRCUIT COURT  
OF THE STATE OF HAWAII**

JASON HESTER, an individual Plaintiff	)	CIV. NO. 3CC171000407
	)	(HRS § 507D-4 Petition to
	)	Expunge Affidavit/Lis
	)	Pendens)
v.	)	<b>CERTIFICATE OF SERVICE for</b>
	)	<b>DEFENDANT'S MOTION AND</b>
	)	<b>MEMORANDUM FOR</b>
	)	<b>JUDICIAL</b>
LEONARD G. HOROWITZ, an	)	<b>NOTICE OF PUBLIC RECORDS</b>
Individual	)	<b>IN SUPPORT OF RULE 19 JOINDER</b>
	)	<b>OF PAUL J. SULLA, JR., HALAI</b>
Defendant	)	<b>HEIGHTS, LLC, AND THE COUNTY</b>
	)	<b>OF HAWAII, AS PARTIES; and</b>
	)	<b>EXHIBITS A TO U</b>

JUDGE: Henry T. Nakamoto  
Hearing date: Friday July 9.  
2021  
Hearing time: 8:30 a.m.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of May, 2021, I served a true and correct copy of the foregoing **DEFENDANT'S MOTION AND MEMORANDUM FOR JUDICIAL NOTICE OF PUBLIC RECORDS IN SUPPORT OF RULE 19 JOINDER OF PAUL J. SULLA, JR., HALAI HEIGHTS, LLC, AND THE COUNTY OF HAWAII, AS PARTIES** and Exhibits A thru U; pursuant to HRCF Rules 19, inter alia, by the method described below to:



PAUL J. SULLA, JR (#5398)  
Attorney at Law  
106 Kamehameha Avenue, Ste. 2A  
Hilo, HI 96720

\_\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_X\_\_\_ JEFS e-filing

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

\_\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_X\_\_\_ JEFS e-filing

Margaret Wille & Associates, LLLC  
Margaret Dunham Wille #8522  
Timothy Vandever #11005  
P.O. Box 6398, Kamuela, Hawaii 96743  
Tel: 808-854-6931  
Email: mw@mwlawhawaii.com

\_\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_X\_\_\_ JEFS e-filing

Judge Henry Nakamoto  
THE CIRCUIT COURT OF THE THIRD CIRCUIT STATE OF HAWAII  
Keahoulu Courthouse; Attn: Legal Documents  
74-5451 Kamakaeha Ave  
Kailua- Kona, HI 96750

\_\_\_\_\_ U.S. Mail.

\_\_\_X\_\_\_ JEFS e-filing

/s/ Leonard G. Horowitz

\_\_\_\_\_  
LEONARD G. HOROWITZ, pro se